

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	PCB No.
v.)	(Enforcement - _____)
)	
PEABODY COULTERVILLE MINING,)	
LLC, a Delaware limited liability)	
company,)	
Respondent.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you. You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN, Attorney General of the State
of Illinois

By: 
 BRIAN CLAPPIER
 Assistant Attorney General
 Environmental Bureau, Springfield
 Illinois Attorney General's Office
 500 South Second Street
 Springfield, Illinois 62706
 (217) 782-9034

Date: May 31, 2017

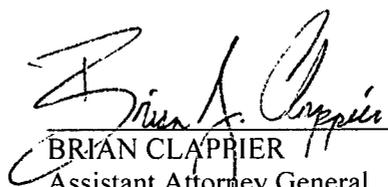
Service List

For the Respondent

John Watson, Esq.
300 E. Randolph Street, Suite 5000
Chicago, Illinois 60601
john.watson@bakermckenzie.com

CERTIFICATE OF SERVICE

I, Brian Clappier, an Assistant Attorney General, certify that on the 31st day of May 2017, I caused to be served by Regular U.S. Mail the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located in Springfield, Illinois.


BRIAN CLAPPIER
Assistant Attorney General
Environmental Bureau, Springfield
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706
(217) 782-9034

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB No.
v.)	
)	
PEABODY COULTERVILLE MINING,)	
LLC, a Delaware limited liability)	
company,)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, PEABODY COULTERVILLE MINING, LLC, a Delaware limited liability company, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2014).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board (“Board”). The Illinois EPA is further charged with the duty to abate violations of

the National Pollutant Discharge Elimination System (“NPDES”) Permit Program under the Federal Clean Water Act (“CWA”), 33 U.S.C. §1342(b)(7).

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. At all times relevant to the Complaint, Respondent Peabody Coulterville Mining, LLC, (“Peabody”) has owned and operated a coal mine and coal preparation plant, located at 13101 Zeigler #11 Road, Coulterville, Randolph County, Illinois (“Facility”).

5. On June 28, 2005, the Illinois EPA re-issued Peabody NPDES Coal Mine Permit No. IL0062189 (the “NPDES Permit”), setting forth the terms and conditions for discharges from the Facility.

6. On March 27, 2012, Peabody submitted a permit modification request for the NPDES Permit. The NPDES Permit was administratively extended for all relevant times to coal slurry decant water discharge. The NPDES Permit sets forth effluent limitations and monitoring requirements for total suspended solids (“TSS”), iron, pH, alkalinity/acidity, sulfates, and chlorides from alkaline mine drainage through Outfalls 001, 002, 003, 006, 007, and 008. The NPDES Permit also sets forth the effluent limitations and monitoring requirements for settleable solids and pH from stormwater discharges through Outfalls 001, 002, 003, 005, 006, 007, and 008.

7. On August 19, 2016, the Illinois EPA conducted an inspection of the Facility. Prior to the August 19, 2016 inspection, Peabody had constructed a basin (the “East Basin”) immediately to the east of Harp Pond.

8. Slurry disposal at the facility is accomplished by pumping coal slurry decant water from a wash plant (the "Wash Plant") to a series of slurry sedimentation basins with proper residency time to allow slurry solids to settle out of the water. The August 19, 2016 inspection verified slurry was pumped from the Wash Plant to a slurry cell ("Slurry Cell 3"), decanting to a subsequent slurry cell ("Slurry Cell 4"), and then decanting via fixed pipe from Slurry Cell 4 to a return ditch into a recirculation pond (the "Recirculation Pond"). Coal slurry decant water is pumped from the Recirculation Pond, chemically adjusted for pH, and reused in the Wash Plant to repeat the process again. Overflow of coal slurry decant water from the Recirculation Pond drains under a rail loop at the Facility, through small sedimentation basins, and into the East Basin. The East Basin overflows via a spillway (the "Spillway") into Harp Pond, which is located to the west of the East Basin. Harp Pond may discharge through a channel ("Channel") to Outfall 008 if pumping back to the Recirculation Pond from the East Basin and Harp Pond is insufficient. Pumping back to the Recirculation Pond occurs in the East Basin utilizing a manual diesel pump and in Harp Pond by a float controlled electric pump. An additional slurry cell ("Slurry Cell 5") was recently constructed at the Facility with a return water channel but did not receive any coal slurry decant water or generate any return water at the time of inspection on August 19, 2016.

9. The Channel and Outfall 008 are land structures, consisting of concrete, rocks, soil, and grass on a slope. The Channel discharges to Outfall 008, and Outfall 008 discharges to an unnamed tributary of Mary's River ("Unnamed Tributary of Mary's River"). Outfall 008 is identified in the NPDES Permit, and is located adjacent to the southern end of Harp Pond, approximately 100 feet immediately upstream of Mary's

River. Outfall 008 is located approximately 0.5 miles southeast of Slurry Cell 4, across Sarah's Road.

10. The Unnamed Tributary of Mary's River and a freshwater lake are located directly southeast of Harp Pond and Outfall 008, and are the headwaters of Mary's River.

11. At the time of the August 19, 2016 inspection, heavy red staining ("Precipitated Iron Staining"), from the presence of precipitated iron, existed on inner berms of Harp Pond and the East Basin, in the Channel, on Outfall 008, and in the Unnamed Tributary to Mary's River located to the south of Harp Pond. The earthen and concrete Channel and Outfall 008 appeared wet from a recent Harp Pond discharge and/or a flushing of water. Precipitated Iron Staining and dead fish existed in small sedimentation basins where water overflows from the Facility, northwest and upstream of the East Basin. Precipitated Iron Staining existed approximately two feet above the water level in Harp Pond with red staining in the Channel and Outfall 008 indicating approximately 18 inches of depth flowing from Harp Pond.

12. During the August 19, 2016 inspection, an authorized representative for Peabody stated that it did not maintain any documentation of the discharge ("August 2016 Discharge") of coal slurry decant water that had caused the Precipitated Iron Staining and wetness on the inner berms of Harp Pond and the East Basin, in the Channel, in Outfall 008, and in the Unnamed Tributary to Mary's River. Peabody was aware of the discharge, but did not sample as required by the NPDES Permit. At no time had Peabody contacted Illinois EPA to report the August 2016 Discharge.

13. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), provides the following:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides as follows:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency or any other legal entity, or their legal representative, agent or assigns.

15. Peabody, a Delaware limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides as follows:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

17. Coal slurry decant water is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

18. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides as follows:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides as follows:

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon the State.

20. Mary's River and the Unnamed Tributary to Mary's River are "waters" of the State of Illinois, within the meaning of Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), and Board Regulations promulgated thereunder, and also are all "waters of the United States" within the meaning of the Clean Water Act, 33 U.S.C. § 1251.

21. The coal slurry decant water released during the August 2016 Discharge altered the physical, thermal, chemical or biological properties of waters in such a manner that it is likely to create a nuisance and render the water harmful or detrimental to health and safety or to other legitimate uses or users of the waters. The release of coal slurry decant water in the August 2016 Discharge into waters of the State caused or tended to cause "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

22. By causing, threatening or allowing the release of coal slurry decant water in the August 2016 Discharge into the Channel, onto Outfall 008, and into the Unnamed Tributary to Mary's River, Peabody caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter an order against Respondent PEABODY COULTERVILLE MINING, LLC:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

- C. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- D. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against Respondent for each day of violation pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014) awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as this Board deems appropriate and just.

COUNT II
WATER POLLUTION HAZARD

- 1-21. Complainant realleges and incorporates by reference herein paragraph 1 through 21 of Count I as paragraphs 1 through 21 of this Count II.
- 22. Section 12(d) of the Act, 415 ILCS 5/12(d) (2014), provides as follows:
No person shall:

* * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.
- 23. On dates better known to Peabody, Peabody discharged the August 2016 Discharge onto the Channel, onto Outfall 008, and into the Unnamed Tributary to Mary's River, and thereby created a water pollution hazard and a threat to waters of the State.
- 24. By discharging the August 2016 Discharge onto the Channel, onto Outfall 008, and into the Unnamed Tributary to Mary's River, Peabody deposited contaminants

upon the land at the Facility in a place and manner that created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter a preliminary injunction and, after trial, a permanent injunction in favor of Complainant and against Respondent as follows:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);

C. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);

D. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against Respondent for each day of violation pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014) awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as this Board deems appropriate and just.

COUNT III
VIOLATIONS OF NPDES PERMIT

1 - 21. Complainant realleges and incorporates by reference herein Paragraphs 1 through 21 of Count I as Paragraphs 1 through 21 of this Count III.

22. Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), provides as follows:

No person shall:

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

23. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 309.102(a), provides as follows:

NPDES Permit Required

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

24. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 305.102(b), provides as follows:

Reporting Requirements

- b) Every holder of an NPDES (National Pollutant Discharge Elimination System) permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

25. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 301.240, provides the following definition:

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

26. Section 1362(14) of the CWA, 33 U.S.C. § 1362(14), provides the following definition:

- 14) The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Sampling Requirements

27. Special Condition No. 13 of the NPDES Permit provides as follows:

Sediment Pond Operation and Maintenance (Outfalls 001, 002, 006, 007, 008, 009, 010, 011 and 012):

- a. During all Discharge Conditions, in addition to the contaminants listed on the effluent page, discharges from Outfalls 001, 002, 006, 007, 008, 009, 010, 011 and 012 shall be monitored and reported for Discharge Rate, Sulfate, Chloride and Hardness.
- b. The following sampling and monitoring requirements are applicable to flow in the unnamed tributaries to Marys River which receives discharges from Outfalls 001, 002, 007, 008 and 009, unnamed tributary to Lick Branch which receives discharges from Outfall 010 and the unnamed tributary to Plum Creek which receives discharges from Outfalls 006, 011, 012.
- i. All sampling and monitoring required under 13(b)(ii) and (iii) below shall be performed during a discharge and monitoring event from the associated outfall.
- ii. Marys River, unnamed tributary to Lick Branch, and the unnamed tributary to Plum Creek shall be monitored and reported quarterly for Discharge Rate, Chloride, Sulfate and Hardness downstream of the associated outfall. This downstream monitoring shall be performed a sufficient distance downstream of the associated outfall to ensure that complete mixing has occurred. At such time that sufficient information has been collected regarding receiving stream flow characteristics and in-stream contaminant concentrations the permittee may request a re-evaluation of the monitoring frequency required herein for possible reduction or elimination. For the purpose of re-evaluating the downstream monitoring frequency of the receiving

stream, "sufficient information" is defined as a minimum of ten (10) quarterly sampling events.

In the event that downstream monitoring of the receiving waters is eliminated during the term of this permit based on an evaluation of the quarterly data, a minimum of three (3) additional samples analyzed for the parameters identified above must be submitted with the permit renewal application a minimum of 180 days prior to expiration of this permit.

- iii. The unnamed tributaries to Marys River, unnamed tributary to Lick Branch and the unnamed tributary to Plum Creek shall be monitored and reported annually for Discharge Rate, Chloride, Sulfate and Hardness upstream of the associated outfall.
- c. All results of sampling and monitoring performed in accordance with Special Condition 13(a) and (b) shall be submitted to the Agency in accordance with Special Condition Nos. 3 and 4 above.

28. Standard Condition No. 12(f) of the NPDES Permit provides as follows:

Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24-hours:

- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
- (2) Any upset which exceeds any effluent limitation in the permit.
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Agency in the permit or any pollutant which may endanger health or the environment.

The Agency may waive the written report on a case-by-case basis if the oral report has been received within 24-hours.

29. The August 2016 Discharge into the Unnamed Tributary to Mary's River was a discharge into the waters of the United States.

30. Outfall 008 was, and is, a "point source," as that term is defined in Section 1362(14) of the CWA, 33 U.S.C. § 1362(14) (2014).

31. As of the date of filing of this Complaint, Peabody was and is not authorized to discharge coal slurry decant water capable of causing the Precipitated Iron Staining, or to intentionally pump water from its internal ponds through Outfall 008 under the terms of the NPDES Permit. The NPDES Permit only allows the discharge of alkaline mine drainage and stormwater through Outfall 008, not of allegedly freshwater or any other type of discharge.

32. By pumping water from its internal ponds through Outfall 008, and discharging the August 2016 Discharge onto the Channel, onto Outfall 008, and into the Unnamed Tributary to Mary's River, Peabody violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

33. By failing to notify and report the August 2016 Discharge to the Illinois EPA, or to any State entity, within 24 hours, and failing to submit within 5 days a written submission describing the August 2016 Discharge, Peabody violated Standard Condition No. 12(f) of the NPDES Permit, and thereby violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2014).

34. By failing to monitor and report the August 2016 Discharge to the Illinois EPA, Peabody violated Special Condition No. 13 of the NPDES Permit, and thereby

violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102, and Section 12(f) of the Act, 415 ILCS 5/12(f) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board grant an immediate and preliminary injunction and, after trial, a permanent injunction in favor of the Complainant and against Respondent, as follows:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), Standard Condition No. 12(f) and Special Condition No. 13 of the NPDES Permit, and Section 12(f) of the Act, 415 ILCS 5/12(f) (2014);

C. Enjoining Respondent from further violations of Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), Standard Condition No. 12(f) and Special Condition No. 13 of the NPDES Permit, and Section 12(f) of the Act, 415 ILCS 5/12(f) (2014);

D. Assessing a civil penalty against Respondent not to exceed Ten Thousand Dollars (\$10,000) for each day of NPDES-related violation, pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2014);

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014) awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as this Board deems appropriate and just.

COUNT IV
WATER QUALITY - OFFENSIVE DISCHARGE

1 - 21. Complainant realleges and incorporates by reference herein Paragraphs 1 through 21 of Count I as Paragraphs 1 through 21 of this Count IV.

22. Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides, in pertinent part, as follows:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

23. Section 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.107, provides as follows:

Offensive Discharges

In addition to the other requirements of this Chapter, no mine discharge effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity shall be reduced to below obvious levels.

24. On dates better known to Peabody, Peabody caused or allowed the August 2016 Discharge, a mine discharge effluent which caused heavy red staining and precipitated iron staining, with settleable solids, sludge solids, and color above obvious levels, to release onto the Channel and Outfall 008 and enter the Unnamed Tributary of Mary's River.

25. Peabody's August 2016 Discharge consisted of a coal slurry decant water and mine discharge effluent containing settleable solids and sludge solids, with noticeable color and thereby constituted an "offensive discharge" as defined in 35 Ill. Adm. Code

304.106 and 406.107, in violation of Sections 304.106 and 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106 and 406.107.

26. By violating Sections 304.106 and 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106 and 406.107, Peabody thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board grant an immediate and preliminary injunction and, after trial, a permanent injunction in favor of the Complainant and against Respondent, as follows:

- A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated Sections 302.203, 304.106, and 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.106, and 406.107, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- C. Enjoining Respondent from further violations of Sections 302.203, 304.106, and 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.106, and 406.107, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- D. Assessing a civil penalty against Respondent not to exceed Fifty Thousand Dollars (\$50,000) for each violation of the Act, and an additional penalty not to exceed Ten Thousand Dollars (\$10,000) for each day of violation, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- E. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

F. Granting such other relief as this Board deems appropriate and just.

COUNT V
WATER QUALITY - OFFENSIVE CONDITIONS

1 - 21. Complainant realleges and incorporates by reference herein Paragraphs 1 through 21 of Count I as Paragraphs 1 through 21 of this Count V.

22. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 302.203, provides the following water quality standard:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin...

23. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 304.105, provides as follows:

Violation of Water Quality Standards

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard. When the Agency finds that a discharge which would comply with effluent standards contained in this Part would cause or is causing a violation of water quality standards, the Agency shall take appropriate action under Section 31 or Section 39 of the Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards. When such a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding, and measures for necessary effluent reductions will be determined on the basis of technical feasibility, economic reasonableness and fairness to all dischargers.

24. Section 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 406.202, provides as follows:

Violation of Water Quality Standards

In addition to the other requirements of this Part, no mine discharge or non-point source mine discharge shall, alone or in combination with other sources, cause a violation of any water quality standards of 35 Ill. Adm. Code 302 or 303. When the Agency finds that a discharge which would comply with effluent standards contained in this Part would cause or is causing a violation of water quality standards, the Agency shall take appropriate action under Section 31 or 39 of the Environmental Protection Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards. When such a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding and measures for necessary effluent reductions will be determined on the basis of technical feasibility, economic reasonableness and fairness to all dischargers.

25. On dates better known to Peabody, Peabody caused or allowed the August 2016 Discharge, a mine discharge effluent which caused the Unnamed Tributary of Mary's River, a water of the state, to contain heavy red staining and precipitated iron staining, with sludge, bottom deposits, and color of other than natural origin, constituting an "offensive condition" as defined in 35 Ill. Adm. Code 302.203, in violation of the water quality standards in 35 Ill. Adm. Code 302.203.

26. Peabody's August 2016 Discharge consisted of a mine discharge that caused a violation of the water quality standards in 35 Ill. Adm. Code Part 302, and thereby violated Sections 304.105 and 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105 and 406.202.

27. By violating Sections 302.203, 304.105 and 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105 and 406.202, Peabody thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board grant an immediate and preliminary injunction and,

after trial, a permanent injunction in favor of the Complainant and against Respondent, as follows:

- A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated Sections 302.203, 304.105 and 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105 and 406.202, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- C. Enjoining Respondent from further violations of Sections 302.203, 304.105 and 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105 and 406.202, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- D. Assessing a civil penalty against Respondent not to exceed Fifty Thousand Dollars (\$50,000) for each violation of the Act, and an additional penalty not to exceed Ten Thousand Dollars (\$10,000) for each day of violation, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as this Board deems appropriate and just.

COUNT VI
FAILURE TO COMPLY WITH GOOD MINING PRACTICES

1 – 23. Complainant realleges and incorporates by reference herein Paragraphs 1 through 21 of Count I, and Paragraphs 22 and 24 of Count V as Paragraphs 1 through 23 of this Count VI.

24. Section 406.204(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.204(b), provides as follows:

Good Mining Practices

In determining whether an operator is utilizing good mining practices designed to minimize discharge of total dissolved solids, chloride, sulfate, iron and manganese, the Agency shall consider whether the operator is utilizing the following good mining practices, further defined in the Sections indicated:

* * *

- (b) Retention and control within the site of waters exposed to disturbed materials (Section 406.206);

25. Section 406.206 of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 406.206, provides as follows:

Retention and Control of Exposed Waters

In considering whether an operator is utilizing practices leading to the retention and control within the site of waters exposed to disturbed materials, the Agency shall consider the extent to which the operator is utilizing:

- a) Erosion Controls: grading, sloping and revegetation of disturbed soil surfaces to reduce and detain runoff.
- b) Sedimentation Controls: routing and segregation or combination of wastewater and mine runoff water to minimize any effect on the quality of the receiving stream.
- c) Reuse of Discharges: Reuse of water bearing high concentrations of total dissolved solids, whenever possible, including:
 - 1) Recirculation ponds to recycle water to the preparation plant.
 - 2) Recirculation ponds to provide water for underground dust control.
 - 3) Holding ponds to provide irrigation waters to reclaimed land and/or adjacent crop land with tolerances to accept higher concentrations of total dissolved solids.
- d) Minimum Exposure of Waters to Disturbed Materials:
 - 1) Application of water management practices, either continuously or at frequent intervals, in order to minimize water contact with disturbed materials.

- 2) Prevention of accumulation of waters in active pits, benches, terraces, roads, processing areas, surface depressions and underground mine workings and cavities where the dissolution of contaminants will be facilitated.
- 3) Removal of water to diversions and appropriate impoundments as soon as possible to minimize additional loadings of total dissolved solids.

26. Condition 11(c) of the NPDES Permit provides as follows:

Any of the following shall be a violation of the provisions required under 35 Ill. Adm. Code 406.202:

* * *

- c. The Agency determines that the permittee is not utilizing Good Mining Practices in accordance with 35 Ill. Adm. Code 406.204 which are fully described in detail in Sections 406.205, 406.206, 406.207 and 406.208 in order to minimize the discharge of total dissolved solids, chloride, sulfate, iron and manganese. To the extent practical, such Good Mining Practices shall be implemented to:
 - i. Stop or minimize water from coming into contact with disturbed areas through the use of diversions and/or runoff controls (Section 406.205).
 - ii. Retention and control within the site of waters exposed to disturbed materials utilizing erosion controls, sedimentation controls, water reuse or recirculation, minimization of exposure to disturbed materials, etc. (Section 406.206).
 - iii. Control and treatment of waters discharged from the site by regulation of flow of discharges and/or routing of discharges to more suitable discharge locations (Section 406.207).
 - iv. Utilized unconventional practices to prevent the production or discharge of waters containing elevated contaminant concentrations such as diversion of groundwater prior to entry into a surface or underground mine, dewatering practices to remove clean water prior to contacting disturbed materials and/or any additional practices demonstrated to be effective in reducing contaminant levels in discharges (Section 406.208).

27. Peabody failed to adequately retain and control the waters exposed to disturbed materials, resulting in the August 2016 Discharge, and the Illinois EPA determined Peabody failed to comply with the Good Mining Practices of Sections 406.204(b) and 406.206 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.204(b) and 406.206, thereby violating Condition 11(c) of the NPDES Permit and Section 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202.

28. By violating Section 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, Peabody thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board grant an immediate and preliminary injunction and, after trial, a permanent injunction in favor of the Complainant and against Respondent, as follows:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated Section 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

C. Enjoining Respondent from further violations of Section 406.202 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

D. Assessing a civil penalty against Respondent not to exceed Fifty Thousand

Dollars (\$50,000) for each violation of the Act, and an additional penalty not to exceed Ten Thousand Dollars (\$10,000) for each day of violation, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as this Board deems appropriate and just.

COUNT VII
FAILURE TO NOTIFY ILLINOIS EPA OF DISCHARGES

1 - 21. Complainant realleges and incorporates by reference herein Paragraphs 1 through 21 of Count I as Paragraphs 1 through 21 of this Count VII.

22. Section 405.111 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 405.111, provides in pertinent part as follows:

- a) A permittee shall notify the Agency within one hour of becoming aware of an emergency situation concerning mining activities which causes or threatens to cause a discharge of contaminants into the waters of Illinois. The permittee shall initially notify the Agency by telephone and follow this with written notice including a description of corrective measures taken. The permittee shall immediately undertake necessary corrective measures consistent with Agency approval under paragraph (b) of this Section. Emergency situations, likely to cause a violation of the Act or this Chapter I, include but are not limited to the following:
 - 1) Dike, levee, dam or pipeline rupture;
 - 2) Flooded pit containing waters which do not meet the standards of Part 406;
 - 3) Power failure or mechanical breakdown of any wastewater treatment facility.

23. Peabody was aware of the August 2016 Discharge prior to the Illinois EPA's inspection on August 19, 2016, but failed to notify the Illinois EPA of the Discharge.

24. The August 2016 Discharge caused or threatened to cause a discharge of contaminants into the waters of Illinois.

25. By failing to notify the Illinois EPA within one hour of becoming aware of the August 2016 Discharge, which caused or threatened to cause a discharge of contaminants into the waters of Illinois, Peabody violated Section 405.111 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 405.111.

26. By violating Section 405.111 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 405.111, Peabody violated regulations or standards adopted by the Pollution Control Board under the Act, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board grant an immediate and preliminary injunction and, after trial, a permanent injunction in favor of the Complainant and against Respondent, as follows:

A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated Section 405.111 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 405.111, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

C. Enjoining Respondent from further violations of Section 405.111 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 405.111, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

D. Assessing a civil penalty against Respondent not to exceed Fifty Thousand Dollars (\$50,000) for each violation of the Act, and an additional penalty not to exceed Ten Thousand Dollars (\$10,000) for each day of violation, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

E. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014), awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as this Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: /s/ Andrew Armstrong
ANDREW ARMSTRONG, Chief
Environmental Bureau South
Assistant Attorney General

Of Counsel:
BRIAN CLAPPIER
Assistant Attorney General
Environmental Bureau South
500 South Second Street
Springfield, Illinois 64706
(217) 782-9034
bclappier@atg.state.il.us
ebs@atg.state.il.us

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	PCB No.
v.)	(Enforcement - _____)
)	
PEABODY COULTERVILLE MINING,)	
LLC, a Delaware limited liability)	
company,)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and PEABODY COULTERVILLE MINING, LLC (“Respondent”), (collectively “Parties to the Stipulation”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board’s approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, et seq. (2014), and the Board’s regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. Simultaneously with the filing of this Stipulation, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois,

on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2014), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2014).

3. At all times relevant to the Complaint, Respondent was and is a Delaware limited liability company that is authorized to transact business in the State of Illinois.

4. At all times relevant to the Complaint, Respondent owned and operated a coal mining facility located at 13101 Zeigler #11 Road, Coulterville, Randolph County, Illinois ("Facility").

5. On June 28, 2005, the Illinois EPA re-issued Peabody NPDES Coal Mine Permit No. IL0062189 (the "NPDES Permit"), setting forth the terms and conditions for discharges from the Facility. On March 27, 2012, Peabody timely submitted a permit modification and renewal request for the NPDES Permit, continuing its coverage thereunder. The NPDES Permit sets forth effluent limitations and monitoring requirements for total suspended solids ("TSS"), iron, pH, alkalinity/acidity, sulfates, and chlorides from alkaline mine drainage through Outfalls 001, 002, 003, 006, 007, and 008. The NPDES Permit also sets forth the effluent limitations and monitoring requirements for settleable solids and pH from stormwater discharges through Outfalls 001, 002, 003, 005, 006, 007, and 008.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: Water Pollution
415 ILCS 5/12(a) (2014).

Count II: Water Pollution Hazard

415 ILCS 5/12(d) (2014).

- Count III: Violation of NPDES Permit
415 ILCS 5/12(f) (2014); 35 Ill. Adm. Code 305.102(b) and 309.102(a);
NPDES Permit Standard Condition No. 12(f) and Special Condition No.
13.
- Count IV: Water Quality – Offensive Discharge
415 ILCS 5/12(a) (2014); 35 Ill. Adm. Code 302.203, 304.106 and
406.107.
- Count V: Water Quality – Offensive Conditions
415 ILCS 5/12(a) (2014); 35 Ill. Adm. Code 302.203, 304.105 and
406.202.
- Count VI: Failure to Comply with Good Mining Practices
415 ILCS 5/12(a) (2014); 35 Ill. Adm. Code 406.202; NPDES Permit
Condition 11(c).
- Count VII: Failure to Notify Illinois EPA of Discharges
415 ILCS 5/12(a) (2014); 35 Ill. Adm. Code 405.111.

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violations within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

1. On September 29, 2016, Respondent installed an alarm system in its internal water treatment cells at the Facility alerting management of rising water prior to discharging into the last internal cell. Respondent is currently using automatic switches on its internal pumps that pump water back into the internal circuit to minimize potential discharges.
2. On March 15, 2017, Respondent submitted to the Illinois EPA the Standard

Operating Procedures and Emergency Management Plan for the Facility.

3. On March 15, 2017, Respondent submitted to the Illinois EPA a Water Balance Report for the Facility.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2014).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2014), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

5. any subsequent compliance.

In response to these factors, the Parties to the Stipulation state the following:

1. Complainant alleges that human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's violations. Respondent denies that human health and the environment were threatened, and denies that the Illinois EPA's information gathering responsibilities were hindered by actions of the Respondent.
2. There is social and economic benefit to the Facility.
3. Operation of the Facility is suitable for the area in which it is located, if the Facility is operated in compliance with the Respondent's NPDES permit.
4. Eliminating unpermitted discharges at the Facility and complying with the terms of the Respondent's NPDES permit is both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2014), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary

compliance with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency;
7. whether the respondent has agreed to undertake a supplemental environmental project, which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform; and
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

In response to these factors, the Parties to the Stipulation state as follows:

1. Complainant alleges that Illinois EPA observed the violations alleged in the Complaint on August 19, 2016, and the violations existed for an undetermined period of time prior to the August 19, 2016 inspection. Complainant further alleges that, at the time of the August 19, 2016 inspection, orange and red discoloration existed in the spillway of Outfall 008, and in the unnamed tributary of Marys River. Complainant further alleges that, at the time of the August 19, 2016 inspection, accumulated liquids existed on the spillway of Outfall 008, showing that a discharge, or flushing activity, had recently occurred on Outfall 008 and into the unnamed tributary of Marys River. Respondent denies that the August 19, 2016 inspection established or otherwise confirmed that any discharge occurred at the Facility in violation of the Act as alleged in the Complaint.

2. Complainant alleges that Respondent did not sample the discharge and did not notify Illinois EPA of the discharge that Illinois EPA observed during the August 19, 2016 inspection. Complainant further alleges, however, that Respondent eventually took measures to

come into compliance with the Act. Respondent alleges that Facility personnel took appropriate actions to ensure that discharges from the Facility from Outfall 008 during a rain event prior to the August 19, 2016 inspection were minimized and ultimately terminated and resulted in no observed adverse impacts to the receiving stream. Respondent further alleges that it had no obligation to report any discharges from Outfall 008 during the above referenced rain event.

3. Complainant alleges that Respondent obtained an economic benefit by not reporting the discharge observed during the August 19, 2016 inspection, which afforded Respondent time to mitigate the severity of the discharge. Complainant asserts that the civil penalty takes into account any economic benefit realized by the Respondent as a result of avoided or delayed compliance. Respondent alleges that it obtained no economic benefit from a failure to report discharges from Outfall 008 to Illinois EPA, as Facility personnel took immediate and appropriate measures to manage and control any such discharges in response to the rain event preceding the August 19, 2016 inspection.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Forty-Two Thousand Five Hundred Dollars (\$42,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations. Respondent alleges it has agreed to the \$42,500 civil penalty for purposes of settlement only and does not believe that a penalty in such an amount is justified based on the limited nature of proven violations and the absence of environmental harm and denies that there is any need to deter further violations of the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act at the Facility.

6. Respondent failed to self-disclose the violations alleged in the Complaint. The

Illinois EPA became aware of the violations during an inspection of the Facility on August 19, 2016. Respondent denies that it had any self disclosure obligations with respect to this matter.

7. The settlement of this matter does not include a supplemental environmental project.

8. A Compliance Commitment Agreement was not at issue in this matter.

V. TERMS OF SETTLEMENT

A. **Penalty Payment**

1. The Respondent shall pay a civil penalty in the sum of Forty-Two Thousand Five Hundred Dollars (\$42,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

2. Respondent admits without reservation that the aforementioned civil penalty of \$42,500.00 is an administrative expense afforded priority of payment to Complainant, pursuant to Section 503(b)(1)(A) of the United States Bankruptcy Code, 11 U.S. Code §503(b)(1)(A), for the purposes of Respondent's pending Chapter 11 bankruptcy, Case No. 16-42529-399 (E.D. Mo.). Notwithstanding anything to the contrary, Complainant shall not be required to file a request for payment of administrative expenses in Respondent's Chapter 11 bankruptcy proceeding in order to be entitled to payment under this Stipulation and Proposal for Settlement.

B. **Default and Interest**

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

1. All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. The case name and case number shall appear on the face of the certified check or money order.

3. A copy of the certified check or money order and any transmittal letter shall be sent to:

Brian Clappier
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

Roberto Durango
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

D. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times, for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. Respondent shall comply with all provisions of the Standard Operating Procedures and Emergency Management Plan for the Facility, attached hereto as Exhibit A.

4. Respondent shall comply with the terms of the Facility's NPDES Permit, including but not limited to proper sampling, documentation, and reporting of any discharges that occur from permitted outfalls.

5. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$42,500.00 penalty, its commitment to cease and desist as contained in Section V.D.5 above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the violations of the Act

and Board regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed simultaneously with this Stipulation. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

G. Opportunity For Public Comment

Pursuant to 35 Ill. Adm. Code 103.306, the Board shall publish a notice of this Stipulation in the Environmental Register for at least 30 days prior to the Board accepting the Stipulation. If public comments are submitted to the Board regarding this Stipulation, the Complainant reserves the right to withdraw its consent if the comments regarding the Stipulation

disclose facts or considerations which indicate that the Stipulation is inappropriate, improper, or inadequate. Respondent consents to the entry of this Stipulation without further notice and agrees not to withdraw from or oppose acceptance of this Stipulation or to challenge any provision of the Stipulation, unless the Complainant has notified Respondent in writing that it withdraws or withholds its consent for the Stipulation. In the event the Complainant notifies the Respondent that it withdraws or withholds its consent for the Stipulation, then the terms of the agreement may not be used as evidence in any litigation between those entities.

H. Execution of Stipulation

The undersigned representatives for the Parties to the Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ALEC MESSINA, Director
Illinois Environmental Protection Agency

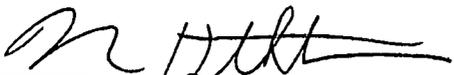
BY: _____
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

PEABODY COULTERVILLE MINING,
LLC


By: Marc Hathhorn
Its: President

DATE: 31-May-2017

WHEREFORE, the Parties to the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ALEC MESSINA, Director
Illinois Environmental Protection Agency

BY: 
ANDREW ARMSTRONG, Chief
Assistant Attorney General
Environmental Bureau

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 05/24/2017

DATE: 5/22/17

PEABODY COULTERVILLE MINING,
LLC

By:
Its:

DATE: _____

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB No.
v.)	
)	
PEABODY COULTERVILLE MINING,)	
LLC, a Delaware limited liability)	
company,)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the requirement of a hearing in this matter. In support thereof, the Complainant states as follows:

1. Along with this Motion, Complainant filed on May 31, 2017 the initial Complaint in this matter and a Stipulation and Proposal for Settlement executed between Complainant and Respondent, PEABODY COULTERVILLE MINING, LLC.

2. Section 31 of the Act, 415 ILCS 5/31 (2016), provides, in pertinent part, as follows:

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after

receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

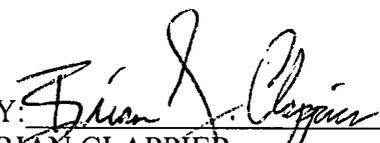
* * *

3. No hearing is scheduled in this matter.
4. The Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2016).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
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