

ILLINOIS POLLUTION CONTROL BOARD
August 22, 2002

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
) PCB 99-134
 PEABODY COAL COMPANY, a Delaware) (Enforcement – Water)
 corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On July 23, 2002, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a motion for leave to file a second amended complaint (Mot.), attaching the second amended complaint (2nd Am. Compl.). Respondent Peabody Coal Company (Peabody) filed no response to the motion. For the reasons below, the Board grants the motion, but also directs the People to file a third amended complaint.

People filed the original complaint on March 25, 1999, and an amended complaint on May 31, 2000. In its complaint, the People allege that Peabody constructed and operated six refuse disposal areas at its Eagle No. 2 Mine Site between 1968 and 1993. 2nd Am. Comp. at 2. None of the six areas have liners or other forms of barrier to prevent or minimize the leaching of contaminants into the underlying Henry Aquifer, a Class I groundwater resource. 2nd Am. Comp. at 3. Southwest and hydraulically down-gradient from Eagle No. 2 Mine, are also public water supply wells that provide water for 17 communities. 2nd Am. Comp. at 2. Complainant alleges that Peabody's disposal of about 12.76 million tons of coal mine waste at these disposal areas has contaminated the groundwater both at the site of the mine and off-site. Am. Comp. at 3.

On March 20, 2002, Peabody filed a motion to dismiss or strike the complaint. Complainant subsequently filed a response to the motion to dismiss or strike (Resp.). On June 20, 2002, the Board granted in part and denied in part Peabody's motion. The Board also granted the People leave to file a second amended complaint confined to correcting technical errors and deleting those items that the Board struck, in particular, allegations relating to Sections 302.208 and 601.101 of the Board's regulations.

In the motion now pending before the Board, the People ask a second time for leave to file a second amended complaint because the People allege for the first time that Peabody has violated and continues to violate Section 12(a) of the Environmental Protection Act by contaminating the groundwater with inorganic chemicals "that may result in the necessity of

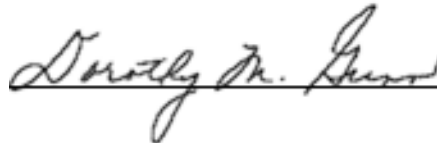
treatment to continue an existing use or assure a potential use of the groundwater.” 2nd Am. Comp. at 50-51. The Board finds that this amendment is reasonable to clarify the allegation.

Pursuant to the Board’s June 20 order, the People struck citations to 35 Ill. Adm. Code 601.101 (1996), and corrected several typographical errors. 2nd Am. Comp. at 2, 3, 6, 25, 47, 48, 50-51. The People have not stricken, however, citations to 35 Ill. Adm. Code 302.208 (1996), as ordered by the Board on June 20, 2002. This omission is an apparent oversight since the People have previously acknowledged and agreed that Section 302.208 does not apply to the subject site and situation. Resp. at 10.

The Board, therefore, grants People’s motion for leave to file the second amended complaint, but also directs complainant to file a third amended complaint, eliminating references to Section 302.208 of the Board’s regulations, and accepts the case for hearing. Peabody has 60 days to file an answer to the complaint. 35 Ill. Adm. Code 103.204(d). Peabody’s answer to the complaint is due by October 21, 2002. Missing this deadline may have severe consequences. If a respondent fails to timely file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board considers the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 22, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board