

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB NO. 99-134
v.)	(Enforcement)
)	
)	
VIRGINIA CONSERVATION LEGACY FUND,)	
INC.,)	
)	
Respondent.)	

NOTICE OF FILING

Jane E. McBride, Assistant Attorney General, hereby certifies that she has served a copy of the foregoing Notice of Filing, Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirements upon:

Bradley Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
Chicago, IL 60601

Stephen Hedinger
Sorling, Northrup, Hanna, Cullen & Cochran
1 North Old State Capitol Plaza, Ste. 200
P.O. Box 5131
Springfield, IL 62705

by placing a copy of same in the United States Mail in Springfield, Illinois, with postage fully prepaid on February 25, 2016.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS, ex rel. LISA
MADIGAN, Attorney General,
State of Illinois

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

BY: s/Jane E. McBride
Jane E. McBride
Assistant Attorney General

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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VIRGINIA CONSERVATION)	
LEGACY FUND, INC.)	
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Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS (the “People” or “Complainant”), by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“the Illinois EPA”), and VIRGINIA CONSERVATION LEGACY FUND, INC., (“Respondent”) (collectively, the “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 (the “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.

STATEMENT OF FACTS

A. Parties

1. On March 25, 1999, 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 (1998), against Peabody Coal Company, a Delaware corporation ("Peabody Coal"). On May 31, 2000, the People filed a Motion for Leave to Amend the Complaint and the Amended Complaint which was later granted by the Board. On July 23, 2002, the People filed a Motion for Leave to Amend the Amended Complaint and the Second Amended Complaint which was later granted by the Board. On September 16, 2002, the People filed a Third Amended Complaint which was denied by the Board. On October 24, 2002, the People filed a Motion for Leave to Amend the Second Amended Complaint and the Third Amended Complaint was granted by the Board on November 21, 2002.

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 (1998).

3. On June 11, 2005, Peabody Coal was converted from a corporation to a Delaware limited liability company, Peabody Coal Company LLC.

4. On May 12, 2008, Peabody Coal filed a Notice of Name Change which notified the Board that its name had changed from Peabody Coal Company LLC to Heritage Coal Company LLC ("Heritage Coal").

5. Heritage Coal is in good standing and authorized to do business in the State of Illinois. Its registered agent is CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, IL 60604-1135.

6. The Eagle No. 2 mine site ("Eagle No. 2") is located in Gallatin County, Illinois. Eagle No. 2 is located on a 250 acre tract of land, approximately one mile northwest of Shawneetown, Illinois at the base of the west side of the Shawneetown Hills. The surface portion of Eagle No. 2 is located in Sections 15, 16, 21 and 22 of Township 9 South, Range 9 East, Gallatin County.

7. Eagle No. 2 is located at the eastern edge of the Henry Aquifer, which is a Class 1 groundwater resource.

8. On July 12, 2012, Heritage Coal filed a Notification of Bankruptcy, stating that on July 9, 2012, Patriot Coal Corporation and substantially all of its subsidiaries, including Heritage Coal, filed for reorganization under Chapter 11 of the United States Bankruptcy Code, *In re: Patriot Coal Corporation, et al.*, Case No. 12-51502-659, U.S. Bankruptcy Court, Eastern District of Missouri (the "First Patriot Bankruptcy Case"). The parties to this Board matter agreed that the automatic stay conditions inherent in U.S. Bankruptcy proceedings applied to this case.

9. On December 18, 2013, the U.S. Bankruptcy Court for the Eastern District of Missouri entered an amended order confirming the joint plan of reorganization under Chapter 11 of the Bankruptcy Code. This lifted the automatic stay in this Board matter.

10. Thereafter, the parties to this Board matter reached a settlement agreement in principle as to all remaining issues in this case and began to undertake the preparation of the papers necessary to resolve it.

11. However, on May 12, 2015, Patriot Coal Corporation and substantially all of its subsidiaries, including Heritage Coal, again filed for reorganization under Chapter 11 of the United States Bankruptcy Code, *In re: Patriot Coal Corporation, et al.*, Case No. 15-32450

(KLP), U.S. Bankruptcy Court, Eastern District of Virginia (the "Second Patriot Bankruptcy Case"). The parties to this Board matter agreed to hold this matter in abeyance pending the completion of proceedings in this Second Patriot Bankruptcy Case that might substantively affect this matter.

12. On October 26, 2015, the U.S. Bankruptcy Court for the Eastern District of Virginia entered an order confirming the joint plan of reorganization under Chapter 11 of the Bankruptcy Code in connection with the Second Patriot Bankruptcy Case, effective as of October 27, 2015. Among other things, that order approved and effectuated the transfer from Heritage Coal to Respondent all assets necessary for Respondent to assume full responsibility for the management of environmental conditions at Eagle No. 2, including the substitution of Virginia Conservation Legacy Fund, Inc. ("VCLF"), for Heritage Coal as the respondent in this matter.

B. Allegations of Non-Compliance

Complainant contends that in connection with its operations at Eagle No. 2, Heritage Coal violated the following provisions of the Act and Board regulations:

Count I: Water Pollution Violations

Heritage Coal allegedly violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d)(1998).

Count II: Water Pollution Violations

Heritage Coal allegedly violated Section 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d)(1998).

Count III: Groundwater Quality Standards and Regulation Violations

Heritage Coal allegedly violated Section 12(a) of the Act, 415 ILCS 5/12(a), formerly Ill. Rev. Stat. Ch 111 1/2 § 1012(a) (1980), and Rule 204(b) of Chapter 3: Water Pollution Control Rules and Regulations

(1979); 35 Ill. Adm. Code 302.208(1982); 35 Ill. Adm. Code 302.304 (1982); 35 Ill. Adm. Code 302.304 (1996); 35 Ill. Adm. Code 620.410(a)(1996); 35 Ill. Adm. Code 620.301 (1996); and 35 Ill. Adm. Code 620.405 (1996).

C. Non-Admission of Violations

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, Respondent does not affirmatively admit the allegations of violation 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

On December 6, 2006, the Illinois EPA approved Peabody Coal's proposal to establish a groundwater management zone ("GMZ"), pursuant to 35 Ill. Adm. Code 620.250, at Eagle No. 2. The GMZ has been successfully implemented since it was approved in December 2006. The continued implementation of the GMZ resolves the technical compliance for this enforcement action.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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.

No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of Respondent under this Stipulation. In the event that Respondent proposes to sell or transfer any real property or operations subject to this Stipulation, Respondent shall

notify Complainant thirty (30) calendar days prior to the conveyance of title, ownership or other interest, including a leasehold interest in the facility or a portion thereof. Respondent shall make as a condition of any such sale or transfer, that the purchaser or successor provide to Respondent site access and all cooperation necessary for Respondent to perform to completion any compliance obligation(s) required by this Stipulation. Respondent shall provide a copy of this Stipulation to any such successor in interest and Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation. In appropriate circumstances, however, Respondent and a proposed purchaser or operator of the facility may jointly request, and Complainant, in its discretion, may consider modification of this Stipulation to obligate the proposed purchaser or operator to carry out future requirements of this Stipulation in place of, or in addition to, the Respondent. This provision does not relieve Respondent from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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.

With respect to these factors, the Parties to the Stipulation state the following:

1. Complainant contends that Heritage Coal's placement of coal mine refuse and other related waste upon the land at Eagle No. 2 caused a water pollution hazard and that discharge or release of inorganic chemicals including chlorides, manganese, TDS, sulfates, and iron into the groundwater caused water pollution, caused exceedances of groundwater quality standards and threatened to cause the mineral content in drinking water to be offensive.

2. Eagle No. 2 ceased operation in 1993. There was very little economic activity underway at the mine at the time the original Complaint was filed in this matter and since that time.

3. Complainant contends that Heritage Coal disposed of approximately 12.76 million tons of coarse coal mine waste and coal slurry waste in the six coal refuse disposal areas ("RDAs") at Eagle No. 2. None of the six RDAs have liners or other forms of barrier to prevent or minimize the leaching of contaminants into the underlying aquifer. Complainant contends that Heritage Coal did not construct and operate the RDAs in a manner that was suitable for the area in which it occurred given the proximity to the Henry Aquifer. Eagle No. 2 was opened in 1968. Most necessary facilities were constructed and gob and slurry disposal was carried out prior to the enactment of the environmental protection laws and regulations currently applicable

to mining activities . Only one of the subject RDAs, Refuse Area 3, was placed into service after Feb. 1, 1983. Respondent contends that the operation of the Eagle No. 2 RDAs was suitable for the area in which it occurred. Respondent contends that no liners for coal refuse for on- or in-ground coal refuse disposal areas at Illinois coal mines were required by the Illinois EPA or Illinois DNR until after the Eagle No. 2 RDAs were put into service, and that all of the Eagle No. 2 RDAs were permitted prior to their use.

4. Complainant contends that compliance with applicable groundwater quality standards at the site is both technically practicable and economically reasonable.

5. The Parties to the Stipulation agree that the GMZ has resolved the technical compliance for this enforcement action.

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.

With respect to these factors, the Parties to the Stipulation state as follows:

1. Complainant contends that Heritage Coal failed to comply with various groundwater quality standards and that the violations alleged in the Third Amended Complaint began on or around 1980 and lasted through 2000.
2. Heritage Coal was diligent in attempting to maintain compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its alleged noncompliance.
3. The economic benefit was calculated in this case under two different scenarios. The penalty amount assessed in this matter is impacted by the pre-petition status of the instant enforcement action (see Paragraph 4 below). Factoring of any economic benefit realized by Heritage Coal has been done to the extent possible.
4. In the context of First Patriot Bankruptcy Case and the court-approved reorganization plan in that matter, this enforcement action is a pre-petition matter. Therefore, any penalty assessed in this matter is, *arguendo*, subject to the terms of the reorganization plan

and within the subject matter jurisdiction of the bankruptcy court. In the interest of judicial economy, resolution of this matter and settlement, Complainant believes, in the context of the First Patriot Bankruptcy Case reorganization plan, and the facts stated above, that the amount of five thousand four hundred dollars (\$5,400.00) meets the Act's enforcement objectives.

5. On September 19, 2000, a Consent Order was entered in People v. Peabody Coal, Case No. 96 CH 25, Randolph County. The Marissa Mine in Randolph County was the subject of that air pollution enforcement matter. Respondent had and has no involvement in that matter.

6. Self-disclosure is not at issue in this matter.

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

8. In response to a Violation Notice dated January 28, 1997 and a meeting held on March 31, 1997, Peabody Coal submitted a proposed Compliance Commitment Agreement to the Illinois EPA. By its letter dated April 23, 1997, the Illinois EPA rejected Peabody Coal's proposed Compliance Commitment Agreement.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. Respondent shall pay to the Illinois EPA a civil penalty in the sum of Five Thousand Four Hundred Dollars (\$5,400.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by 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 Procedure

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, IL 62794-9276

The name, case number and Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Jane E. McBride
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

D. Future Compliance

1. Respondent shall continue to implement the PEABODY COAL COMPANY – EAGLE 2 MINE, APPLICATION FOR ESTABLISHMENT OF GROUNDWATER MANAGEMENT ZONE dated November 17, 2006 and approved by the Illinois EPA on December 6, 2006.

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

3. In addition to any other authorities and subject to constitutional and statutory restrictions and limitations, which Respondent does not waive but expressly reserves, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon Eagle No. 2 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.

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

E. Release from Liability

In consideration of Respondent's payment of the \$5,400.00 penalty, its commitment to desist as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, Complainant releases, waives, and discharges Heritage Coal and Respondent, their respective parent subsidiary, and sister business entities and their respective officers, directors, employees, attorneys, agents, representatives, and other persons acting on their behalf, and their respective predecessors and successors in interest, from any further liability or penalties for any and all alleged violations of the Act and Board Regulations that are the subject matter of each iteration of the Complaint herein. This release does not extend to any matters other than those expressly specified in or which could have been

specified in, Complainant's Complaint filed on March 25, 1999, as subsequently amended. Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against Respondent with respect to all other matters, including but not limited to, the following:

1. criminal liability;
2. liability for future violation of state, federal, local, and common laws and/or regulations;
3. liability for natural resources damage arising out of the alleged violations; and
4. liability or claims based on 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 Respondent and the other entities expressly released hereby.

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. 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.

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

LISA BONNETT
Director

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

By: 

JOHN J. KIM
General Counsel

BY: 

ANDREW B. ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

DATE: 2/22/16

DATE: 02/25/2016

VIRGINIA CONSERVATION LEGACY FUND, INC.

BY: 

Name: Thomas M. Clarke

Title: President and CEO

DATE: January 26, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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VIRGINIA CONSERVATION LEGACY)	
FUND, INC.,)	
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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 pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2012), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012). In support of this motion, Complainant states as follows:

1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2012).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN , ATTORNEY GENERAL

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

By: s/Jane E. McBride
Jane E. McBride
Environmental Bureau
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: February 25, 2016