BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF ILLINOIS	)	
Complainant,	)	
v.	)	PCB 2010-061 (Enforcement-Water)
FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL CO., L.L.C.	)	
Respondents.	)	

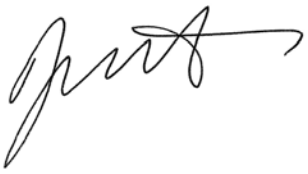
To:

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph St., Suite 11-500
Chicago, IL 60601

Persons included on the attached SERVICE LIST

PLEASE TAKE NOTICE that the Environmental Law and Policy Center has today filed a **Motion to Intervene** and **Complaint** in PCB 2010-061, a copy of which is herewith served upon you.

Respectfully Submitted,



Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601
312-795-3747

DATED: February 25, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF ILLINOIS	)	
Complainant,	)	
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FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL CO., L.L.C.	)	
Respondents.	)	

MOTION FOR LEAVE TO INTERVENE

I, JESSICA DEXTER, hereby file a MOTION TO INTERVENE in this matter on behalf of PRAIRIE RIVERS NETWORK, its individual members, and SIERRA CLUB, ILLINOIS CHAPTER, and its individual members. In support of this Petition, ELPC states the following:

1. Environmental Law & Policy Center (ELPC) is an Illinois-based not-for-profit organization and is counsel for Prairie Rivers Network and the Illinois Chapter of the Sierra Club. ELPC's mission includes advocating for the protection of water quality, and protection of public health related to water quality.

2. Prairie Rivers Network (PRN) is an Illinois-based not-for-profit organization concerned with river conservation and water quality throughout Illinois. PRN works with concerned citizens throughout the state to address those issues which impact Illinois' streams. PRN members live in the watersheds of Camp Creek, Willow Creek, Grindstone Creek, and their affected tributaries and receiving waters, and are concerned about issues which would impact recreational activities and environmental health of these waters.

3. The Sierra Club is a California not-for-profit corporation, which has among its purposes to protect and restore the quality of the natural and human environment. The Sierra

Club has over 25,000 members residing in the State of Illinois and has members who are adversely affected by any degradation of Camp Creek, Willow Creek, Grindstone Creek, and tributaries thereto that could affect the uses of those waters. Sierra Club members live in the affected watershed, and many Sierra Club members are concerned about pollution that would affect their ability to enjoy activities dependent on the ecological health of these waters, including swimming, wading, fishing, canoeing, kayaking, hiking, nature study, bird watching and other wildlife viewing.

4. On December 8, 2009, ELPC sent Freeman United Coal Mining Co., LLC, a letter giving notice of intent to sue Freeman United under the citizen suit provision of the Clean Water Act ("CWA"), 33 U.S.C. § 1365 (2006), for violations of NPDES Permit # IL0061247 at the Industry Mine. ELPC sent this letter on behalf of PRN and the Sierra Club. The letter was sent via certified mail, return receipt requested, to representatives of Freeman United, the Illinois Attorney General's Office, the administrator of the Illinois EPA, and the regional and national administrators of EPA, in accordance with federal regulations governing notice of intent to sue under the CWA. 40 C.F.R. § 135.3 (2009).

5. ELPC's notice letter detailed over three hundred violations of the effluent limits contained in NPDES Permit # IL0061247 over the last five years, as well as possible violations of Special Condition No. 1, which prohibits the permittee from causing or contributing to a violation of water quality standards.

6. Shortly after giving notice of our intent to sue under the CWA, ELPC was informed by a representative of Freeman United that it had sold the Industry Mine to Springfield Coal Co., LLC, in 2007, and retained no interest in the Industry Mine, despite the fact that Freeman United remains the permittee for NPDES Permit # IL0061247.

7. On December 15, 2009, ELPC sent a second letter giving notice of intent to sue under the CWA to Springfield Coal Co., LLC, the present owner and operator of the Industry Mine. This letter was also on behalf of ELPC, PRN, and the Sierra Club, and complied with the notice requirements of 40 C.F.R. § 135.3. In addition to the violations listed in the letter to Freeman United, the December 15 letter notified Springfield of the possibility that it was discharging without a permit due to its failure to comply with the regulations governing NPDES permit transfers.

8. Complainants intended to file suit in federal district court to enforce the CWA and the provisions of NPDES Permit # IL0061247 at the close of the sixty-day notice period required by the citizen suit provision of the CWA, 33 U.S.C. § 1365 (2006).

9. On February 10, 2010, the Illinois Attorney General's office filed a complaint with the Illinois Pollution Control Board against Freeman United and Springfield Coal for violations of NPDES Permit # IL0061247 and the Illinois Environmental Protection Act.

10. On February 18, 2010, the Board accepted the Attorney General's complaint for hearing.

11. Due to our prior notice of intent to sue for violations of the CWA, Complainants have an established interest in proceedings that affect the enforcement of the CWA and the provisions of NPDES Permit # IL0061247.

12. In enacting the Clean Water Act, Congress stated that "[p]ublic participation in the development, revision, *and enforcement* of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States." 33 U.S.C. 1251(e) (2006) (emphasis added).

13. The regulations governing EPA approval of state NPDES programs require that the states provide public participation in enforcement proceedings, either through an unconditional right to intervention by interested citizens, or by assurances that the state will, among other things, "[n]ot oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation[.]" 40 C.F.R. 123.27(d) (2009).

14. These regulations were promulgated in response to Citizens for a Better Environment v. EPA, 596 F.2d 720 (7th Cir. 1979), which held that EPA's approval of Illinois' NPDES program was invalid unless EPA first established public participation guidelines and certified that Illinois' program adhered to those guidelines. 46 Fed. Reg. 24295 (Apr. 30, 1981).

15. In order to comply with these regulations, the Illinois Attorney General's Office sent an official letter to EPA on July 1, 1980, stating that it "has a policy of not opposing citizen intervention in proceedings under the [NPDES program] in those cases where intervenors meet the statutory and regulatory requirements for intervention." 46 Fed. Reg. 24296 (Apr. 30, 1981).

16. The IPCB regulation governing intervention provides for permissive intervention in adjudicatory proceedings if "(1) [t]he person has a conditional statutory right to intervene in the proceeding; (2) [t]he person may be materially prejudiced absent intervention; or (3) [t]he person is so situated that the person may be adversely affected by a final Board order." 35 Ill. Admin. Code 101.402(d). An enforcement proceeding is an adjudicatory proceeding. 2 Ill. Admin. Code 2175.600; 35 Ill. Admin. Code 101.108(c).

17. Complainants hereby request that they be permitted to intervene to ensure that the Attorney General's enforcement action is diligently prosecuted before the Board and to raise additional complaints that the Attorney General has failed to raise. As discussed below, Complainants may be materially prejudiced absent intervention, and may be adversely affected

by a final Board order in this matter that has not fully considered our interests, consistent with the standards for permissive intervention under 35 Ill. Admin. Code 101.402 (d).

18. Complainants may be directly and materially affected by the outcome of this proceeding. Members of Sierra Club and PRN would be directly harmed if enforcement of NPDES Permit # IL0061247 by the Attorney General does not fully represent the interests of Sierra Club and PRN in raising colorable claims of violations, securing penalties sufficient to compel future compliance with the law and requesting that the Board immediately issue an order to Respondents to cease and desist all violations of NPDES Permit No. IL0061247.

19. The Attorney General's action may as a legal or practical matter preclude Complainants from filing a citizen suit against the owners and operators of the Industry Mine for their ongoing violations of the CWA. *See* 33 U.S.C. § 1319(g)(6)(A)(ii) (2006) (barring citizen suits where "a State has commenced and is diligently prosecuting an action under a State law comparable to [the administrative penalty procedures of the CWA]").

20. The Attorney General's complaint in this matter does not raise two claims on which complainants gave notice of intent to sue in its letters: violations of Special Condition No. 1 of NPDES Permit # IL0061247, which prohibits the permittee from contributing to the violation of water quality standards in Grindstone Creek; and failure of Freeman Coal and Springfield Coal to properly transfer of NPDES Permit # IL0061247, leading to discharges to waters of the State without a valid NPDES Permit in violation of 415 ILCS 5/12(f) and 33 U.S.C. § 1311. Complainants intended to raise these claims in their citizen suit, and now offer to raise them before the Board in a Citizen's Complaint, which is attached to this Motion pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-408 (2008). Complainants now may to be unable to raise these claims in a separate citizen suit, and thus may be adversely affected by the Illinois

Attorney General's failure to raise these colorable claims of violations of the provisions of NPDES Permit # IL0061247, the CWA, and the Illinois Environmental Protection Act (the "Act"). Complainants will be further materially prejudiced by any order of the Board that precludes a citizen suit under the CWA without addressing these violations.

21. Complainants may be further adversely affected because the Illinois Attorney did not request that the Board immediately issue an order under Section 33 of the Act, 415 ILCS § 5/33 (2008), enforceable by injunction in circuit court under Section 45(e) of the Act, 415 ILCS § 5/45(e) (2008), to comply with the relevant environmental laws and to cease and desist all further violations of the provisions of NPDES Permit # IL0061247 at the Industry Mine. Without this relief, the operators of the Industry Mine may well continue to cause water pollution during the pendency of this proceeding. This pollution harms and will continue to harm the members of Sierra Club and PRN who live in the affected watershed.

22. The harm to Complainants may be avoided by allowing Complainants to intervene to (1) request that the Board immediately issue an order to Respondents under Section 33 of the Act to comply with NPDES Permit # IL0061247 and the terms and conditions thereof, the CWA and its implementing regulations, and the Act and its implementing regulations; (2) prosecute a citizen's complaint against Freeman United and Springfield Coal for their violation of Special Condition (1) of NPDES Permit # IL0061247 and Illinois water quality standards; and (3) prosecute a citizen's complaint against Freeman United and Springfield Coal for their failure to properly transfer NPDES Permit # IL0061247 and the resulting discharges to waters of the State without a permit.

23. WHEREFORE, Complainants hereby request that the Board GRANT their Motion to Intervene and file the attached Complaint. PRN and Sierra Club further request that the Board rule on this motion to intervene as soon as is practicably possible, so that it is not prejudiced by its inability to participate in the initial stages of this enforcement action.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PRAIRIE RIVERS NETWORK, by and for its members, SIERRA CLUB, ILLINOIS CHAPTER, by and for its members	)	
Complainant,	)	
v.	)	PCB 2010-061 (Enforcement-Water)
FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL CO., L.L.C.	)	
Respondents.	)	

COMPLAINT

Complainants, PRAIRIE RIVERS NETWORK, and its individual members, and SIERRA CLUB, ILLINOIS CHAPTER, and its individual members, by JESSICA DEXTER, Attorney, Environmental Law & Policy Center, complain of Respondents, FREEMAN UNITED COAL MINING COMPANY, LLC, and SPRINGFIELD COAL COMPANY, LLC, as follows:

PRELIMINARY STATEMENT

1. This Complaint is brought by the Environmental Law & Policy Center, counsel for Prairie Rivers Network and its members and the Illinois Chapter of the Sierra Club and its members, pursuant to Section 31(d)(1) of the Illinois Environmental Protection Act (the “Act"), 415 ILCS § 5/31(d)(1) (2008), which authorizes any person to file a complaint with the Board against any person allegedly violating the Act, any rule or regulation adopted under the Act, or any permit or term or condition thereof. This complaint alleges violations of a permit issued by the Illinois Environmental Protection Agency on April 2, 1999 to Freeman United Coal Mining

Co., LLC, under the National Pollutant Discharge Elimination System ("NPDES") program of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 *et seq.* (2006), as well as violations of water quality standards, discharges without a NPDES permit, and causation of water pollution in violation of Section 12 of the Act by Respondents.

2. NPDES Permit No. IL0061247 authorizes limited discharges into waters of the United States from a strip mine located in McDonough and Schuyler Counties in Illinois, approximately 5 miles southwest of Industry, Illinois (the "Industry Mine"). The Industry Mine covers a total area of 5,651.3 acres – 4,886.6 acres in McDonough County and 1,064.7 acres in Schuyler County – and discharges into Grindstone Creek, Willow Creek, Camp Creek, and several of their unnamed tributaries. The NPDES permit for the Industry Mine also imposes monitoring and reporting requirements. This is an action for civil penalties and a Board order to enforce provisions of the Illinois Environmental Protection Act and the Clean Water Act, regulations adopted pursuant to said Acts, and/or permits adopted and/or issued pursuant to said Acts.

PARTIES

3. Environmental Law and Policy Center ("ELPC"), is an Illinois-based not-for-profit organization and is counsel for Prairie Rivers Network and the Illinois Chapter of the Sierra Club. ELPC's mission includes advocating for the protection of water quality, and protection of public health related to water quality.

4. Complainant, Prairie Rivers Network ("PRN") is an Illinois-based not-for-profit organization concerned with river conservation and water quality throughout Illinois. PRN works with concerned citizens throughout the state to address those issues which impact Illinois' streams. PRN members live in the watersheds of Camp Creek, Willow Creek, Grindstone Creek,

and their affected tributaries and receiving waters, and are concerned about issues which would impact recreational activities and environmental health of these waters.

5. Complainant, the Illinois Chapter of the Sierra Club is a California not-for-profit corporation, which has among its purposes to protect and restore the quality of the natural and human environment. The Sierra Club has over 25,000 members residing in the State of Illinois and has members who are adversely affected by any degradation of Camp Creek, Willow Creek, Grindstone Creek, and tributaries thereto that could affect the uses of those waters. Sierra Club members live in the affected watershed and many Sierra Club members are concerned about pollution that would affect their ability to enjoy activities dependent on the ecological health of these waters, including swimming, wading, fishing, canoeing, kayaking, hiking, nature study, bird watching and other wildlife viewing.

6. Respondent Freeman United Coal Mining Company, LLC ("Freeman United") is a limited liability company incorporated in Delaware and authorized to do business in Illinois. Until September 1, 2007, Freeman United owned and operated the Industry Mine.

7. Respondent Springfield Coal Company, LLC ("Springfield Coal") is a limited liability company incorporated in Delaware and authorized to do business in Illinois. Springfield Coal has owned and operated the Industry Mine since September 1, 2007.

NOTICE

8. Pursuant to 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.3, on December 8, 2009, ELPC, PRN and Sierra Club (“Complainants”) gave Respondent Freeman United notice of the violations of NPDES Permit No. IL0061247 alleged herein, of possible violations of Special Condition No. 1, and of their intent to sue more than sixty (60) days prior to the filing of this complaint. Notice was mailed by certified mail to the registered Illinois agent for service of

process for such corporate Respondent. At the same time, a copy of this notice was mailed to the Administrator of the Environmental Protection Agency (EPA), the Regional Administrator of Region V of the EPA, the Director of the Illinois Environmental Protection Agency (Illinois EPA), and the Illinois Attorney General. Service of notice on Respondent complied with the requirements of 40 C.F.R. § 135.3 (2009).

9. Shortly after such Complainants gave notice to Freeman United, a representative of Freeman United informed ELPC that it had sold the Industry Mine to Springfield Coal in 2007, and that it retained no interest in the Industry Mine, despite the fact that Freeman United remains the permittee for NPDES Permit No. IL0061247.

10. On December 15, 2009, Complainants sent a second letter giving notice of intent to sue under the Clean Water Act to Respondent Springfield Coal, the present owner and operator of the Industry mine. In addition to the violations listed in the letter to Freeman United, the December 15 letter notified Springfield of the possibility that it was discharging without a permit due to its failure to comply with the regulations governing NPDES permit transfers. This letter also complied with the notice requirements of 40 C.F.R. § 135.3.

11. Since the Complainants gave notice, the violations complained of herein have not ceased. Illinois EPA has yet to issue a valid NPDES permit to Springfield Coal for their facility's discharges into waters of the State. Freeman United remains the permittee of NPDES Permit No. IL0061247.

FIRST CAUSE OF ACTION

DISCHARGE WITHOUT A VALID NPDES PERMIT

12. The Complainants hereby repeat, reallege, adopt, and incorporate by reference paragraphs 1 through 11 herein above as if fully set out in this Cause of Action.

13. Section 12 of the Illinois Environmental Protect Act ("the Act"), 415 ILCS § 5/12 (2008), provides, in pertinent part, as follows:

> 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.
>
> * * *
>
> (f) Cause or threaten or allow the discharge of any contaminants into the waters of the State . . . without an NPDES permit for point source discharges . . . or in violation of any term or condition imposed by such permit. . . .

14. Section 3.545 of the Act, 415 ILCS § 5/3.545 (2008), provides this definition:

> "Water pollution" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into 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 to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

15. Section 3.165 of the Act, 415 ILCS § 5/3.165 (2008), provides this definition:

> "Contaminant" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

16. Section 3.550 of the Act, 415 ILCS § 5/3.550 (2008), provides this definition:

> "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 this State.

17. These provisions of Illinois law closely follow the provisions of the Clean Water Act and are meant to provide a system of enforcement that complies with the requirements of the federal NPDES program. *See* 415 ILCS § 5/39(b) (2008).

18. Section 301 of the Clean Water Act, 33 U.S.C. § 1311, provides, in pertinent part, as follows:

> Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

19. Section 502 of the Clean Water Act, 33 U.S.C. § 1362, provides, in pertinent part, as follows:

> (5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
>
> (6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
>
> (7) The term "navigable waters" means the waters of the United States, including the territorial seas.
>
> …
>
> (12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source . . . .
>
> …
>
> (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.

20. As regulated by NPDES Permit No. IL0061247, iron, manganese, sulfates, pH, and TSS are each a "pollutant" as defined by Section 502(6) of the Clean Water Act.

21. As regulated by NPDES permit No. IL0061247, iron, manganese, sulfates, pH, and TSS are each a "contaminant" as defined by Section 3.165 of the Act.

22. Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries are each "waters of the United States" as defined by Section 502(7) of the Clean Water Act.

23. Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries are each "waters" of the State as defined by Section 3.550 of the Act.

24. Each outfall regulated by NPDES Permit No. IL0061247 is a "point source" as defined by section 502(14) of the Clean Water Act.

25. Section 402 of the Clean Water Act, 33 U.S.C. § 1342, allows the federal EPA and states to whom the EPA has delegated such authority to issue permits for the discharge of pollutants under the NPDES program.

26. The EPA has approved delegation of the NPDES program to Illinois. 46 Fed. Red. 24295-96 (Apr. 30, 1981).

27. On April 2, 1999, the Illinois EPA issued a permit to Freeman United under the NPDES program of the Clean Water Act. This permit, No. IL0061247, authorized Freeman United to discharge from the Industry Mine into waters of the United States, including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries.

28. Standard Condition No. 1 of NPDES Permit No. IL0061247 provides, in relevant part, as follows:

> The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the [Illinois Environmental Protection] Act and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or for denial of a permit renewal application.

29. Standard Condition No. 6 of NPDES Permit No. IL0061247 provides, in relevant part, as follows:

> This permit may be modified, revoked and reissued, or terminated for cause by the Agency pursuant to 40 C.F.R. 122.62. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

30. Section 122.61 of the federal regulations governing the NPDES program, 40 C.F.R. § 122.61, provides that permits may be transferred as follows:

> (a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.62(b)(2)), or a minor modification made (under § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.
>
> (b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:
>
> (1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;
>
> (2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
>
> (3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

31. Section 122.63 of the federal regulations governing the NPDES program provides that a permit transfer may take place as a minor modification, provided that "a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director." 40 C.F.R. § 122.63 (2009).

32. These regulations are applicable to Illinois' NPDES program. 40 C.F.R. § 123.25 (2009).

33. The "automatic transfer" regulation, 40 C.F.R. § 122.61(b), is incorporated into NPDES Permit No. IL0061247 as Standard Condition No. 13.

34. On August 14, 2007, Freeman United and Springfield Coal sent a letter requesting transfer of NPDES Permit No. IL0061247 to the Marion office of the Illinois Environmental Protection Agency. This letter requested transfer of the permit "effective no sooner than September 1, 2007."

35. Because the August 14, 2007 letter did not specify a date for transfer of permit responsibility, as required by 40 C.F.R. § 122.61(b)(2) and 40 C.F.R. § 122.63, and was not sent at least thirty days in advance of the earliest transfer date, as required by 40 C.F.R. § 122.61(b)(1), the transfer request did not comply with the applicable regulations. The permit transfer request was therefore ineffective and did not stay any permit condition.

36. Because the permit transfer was ineffective, Freeman United remains the permittee for NPDES Permit No. IL0061247. Freeman United has not been relieved of its duty to comply with all conditions of NPDES Permit No. IL0061247, and remains liable for any and all violations of the conditions of the NPDES permit which have taken place at the Industry Mine, including those after Springfield Coal began operation of the Industry Mine.

37. Because the permit transfer was ineffective, Springfield Coal has been operating the Industry Mine without a permit since it took control of the facility. Since Springfield Coal has no NPDES permit, every discharge of pollutants into the receiving waters that has occurred during its control of the facility has been a discharge without a permit, in violation of 33 U.S.C. § 1311(a) and 415 ILCS § 5/12(f).

38. In the alternative, if the transfer was effective, Freeman Coal remains liable for any and all violations of NPDES Permit No. IL0061247 that occurred prior to the permit transfer, and Springfield Coal is liable for any and all violations of NPDES Permit No. IL0061247 that have occurred since the transfer became effective.

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request that the Board enter an Order against Respondents, Freeman United Coal Mining Co., L.L.C. or Springfield Coal Company, L.L.C. or both:

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

B. Finding that these Respondents have violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and its implementing regulations as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS § 5/42(b)(1) (2008), imposing upon these Respondents a monetary penalty of not more than the statutory maximum;

D. Ordering Respondents, under Section 33(b) of the Act, 415 ILCS § 5/33(b) (2008), to cease and desist from violations of the Act and its implementing regulations; and

E. Granting such other and further relief as the Board deems appropriate.

SECOND CAUSE OF ACTION

NPDES PERMIT VIOLATIONS

39. The Complainants hereby repeat, reallege, adopt, and incorporate by reference paragraphs 1 through 38 herein above as if fully set out in this Cause of Action.

40. NPDES Permit No. IL0061247, as modified July 21, 2003, imposes effluent limitations for iron, manganese, sulfates, pH, and total suspended solids ("TSS"), applicable to discharges from the Industry Mine. The pH of the effluent discharged from all outfalls may range (in standard units) only between 6.0 to 9.0. The following limitations (as expressed in milligrams per liter or "mg/L") are also applicable to all outfalls:

Pollutant	**30-Day Average**	**Daily Maximum**
Iron	3.5 mg/L	7.0 mg/L
Manganese	2.0 mg/L	4.0 mg/L
TSS	35.0 mg/L	70.0 mg/L

41. NPDES permit No. IL0061247, as modified July 21, 2003, contains the following daily maximum concentration level limits for sulfates in the effluent according to the specified outfalls:

Outfalls	**Daily Maximum**
002,003, 006, 009, 029,030, 031, 032, 033, 035	1100 mg/L
005, 007, 010, 011, 018, 019	1800 mg/L
004, 008, 020, 021, 022, 024W, 026, 027	500 mg/L

42. NPDES Permit No. IL0061247, as modified July 21, 2003, identifies the following outfalls from the Industry Mine:

Outfalls	**Descriptions**	**Receiving Waters**
002	Acid Mine Drainage from Preparation Plant	Tributary to Grindstone Creek
003	Surface Acid Mine Drainage	Grindstone Creek
018, 019, 020, 021	Surface Acid Mine Drainage	Tributary to Grindstone Creek

009 ,024W, 026	Surface Acid Mine Drainage	Willow Creek
022	Surface Acid Mine Drainage	Tributary to Camp Creek
029, 030	Alkaline Mine Drainage	Tributary to Willow Creek
031, 032, 033, 035	Alkaline Mine Drainage	Grindstone Creek
004, 005, 006, 007, 008, 010, 011	Reclamation Area Drainage	Grindstone Creek
027	Reclamation Area Drainage	Willow Creek
017	Stormwater Discharge	Grindstone Creek

43. Respondents Freeman United or Springfield Coal or both are liable for the violations of the terms and conditions of NPDES Permit No. IL0061247.

44. Respondents caused or allowed the discharge of iron in excess of the permitted monthly average effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Monthly Average**	**Actual Discharge**
Jan. 2005	018	3.5 mg/L	*4.42 mg/L*
Jan. 2005	24W	3.0 mg/L	*4.65 mg/L*
Jan. 2005	029	3.0 mg/L	*4.98 mg/L*
Feb. 2005	029	3.0 mg/L	*3.08 mg/L*

45. Respondents caused or allowed the discharge of iron in excess of the permitted daily maximum effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Daily Maximum**	**Actual Discharge**
Feb. 19, 2004	029	6.0 mg/L	*7.05 mg/L*
Feb. 20, 2004	029	6.0 mg/L	*6.75 mg/L*
Mar. 2, 2004	029	6.0 mg/L	*8.65 mg/L*
Mar. 26, 2004	026	6.0 mg/L	*22.9 mg/L*
May 26, 2004	029	6.0 mg/L	*24.1 mg/L*
June 2, 2004	026	6.0 mg/L	*6.91 mg/L*
June 2, 2004	029	6.0 mg/L	*29.6 mg/L*
June 16, 2004	029	6.0 mg/L	*27.4 mg/L*
June 23, 2004	029	6.0 mg/L	*21.1 mg/L*
July 14, 2004	026	6.0 mg/L	*6.47 mg/L*
July 14, 2004	029	6.0 mg/L	*13.9 mg/L*
Aug. 26, 2004	018	7.0 mg/L	*12.3 mg/L*
Aug. 26, 2004	026	6.0 mg/L	*11.9 mg/L*

Aug. 31, 2004	029	6.0 mg/L	*7.23 mg/L*
Sept. 16, 2004	018	7.0 mg/L	*9.74 mg/L*
Sept. 16, 2004	026	6.0 mg/L	*13.9 mg/L*
Oct. 29, 2004	029	6.0 mg/L	*8.00 mg/L*
Nov. 1, 2004	017	7.0 mg/L	*46.4 mg/L*
Dec. 8, 2004	017	7.0 mg/L	*25.4 mg/L*
Dec. 8, 2004	024W	6.0 mg/L	*10.6 mg/L*
Dec. 8, 2004	026	6.0 mg/L	*11.5 mg/L*
Jan. 17, 2005	018	7.0 mg/L	*7.53 mg/L*
Jan. 17, 2005	24W	6.0 mg/L	*6.37 mg/L*
Jan. 17, 2005	029	6.0 mg/L	*6.20 mg/L*
Feb. 14, 2005	018	7.0 mg/L	*13.0 mg/L*
Nov. 2006	018	7.0 mg/L	*9.04 mg/L*
Mar. 2007	003	7.0 mg/L	*15.4 mg/L*
Mar. 2007	018	7.0 mg/L	*47.9 mg/L*
Mar. 2007	026	6.0 mg/L	*21.1 mg/L*
June 2007	003	7.0 mg/L	*11.8 mg/L*

46. Respondents caused or allowed the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Monthly Average**	**Actual Discharge**
Jan. 2005	019	2.0 mg/L	*7.95 mg/L*
Feb. 2005	018	2.0 mg/L	*10.3 mg/L*
Feb. 2005	019	2.0 mg/L	*11.3 mg/L*
Mar. 2005	019	2.0 mg/L	*6.76 mg/L*
Apr. 2005	018	2.0 mg/L	*2.32 mg/L*
Apr. 2005	019	2.0 mg/L	*3.07 mg/L*
Apr. 2005	026	2.0 mg/L	*7.01 mg/L*
June 2005	018	2.0 mg/L	*6.66 mg/L*
June 2005	019	2.0 mg/L	*5.78 mg/L*
May 2006	019	2.0 mg/L	*4.93 mg/L*
June 2006	019	2.0 mg/L	*3.38 mg/L*
Aug. 2006	018	2.0 mg/L	*2.35 mg/L*
Jan. 2007	019	2.0 mg/L	*7.95 mg/L*
Feb. 2007	019	2.0 mg/L	*15.2 mg/L*
Mar. 2007	018	2.0 mg/L	*2.88 mg/L*
Mar. 2007	026	2.0 mg/L	*3.64 mg/L*
May 2007	019	2.0 mg/L	*5.66 mg/L*
Jan. 2008	019	2.0 mg/L	*12.9 mg/L*
Feb. 2008	019	2.0 mg/L	*7.617 mg/L*
Oct. 2008	018	2.0 mg/L	*6.957 mg/L*
Nov. 2008	018	2.0 mg/L	*2.877 mg/L*

Nov. 2008	019	2.0 mg/L	*34.2 mg/L*
Dec. 2008	018	2.0 mg/L	*2.2 mg/L*
Dec. 2008	019	2.0 mg/L	*10.7 mg/L*
Jan. 2009	018	2.0 mg/L	*2.165 mg/L*
Jan. 2009	019	2.0 mg/L	*18.5 mg/L*
Feb. 2009	009	2.0 mg/L	*2.69 mg/L*
Feb. 2009	019	2.0 mg/L	*18.5 mg/L*
Mar. 2009	018	2.0 mg/L	*5.493 mg/L*
Mar. 2009	026	2.0 mg/L	*2.725 mg/L*
Mar. 2009	24W	2.0 mg/L	*2.213 mg/L*
Apr. 2009	009	2.0 mg/L	*2.23 mg/L*
Apr. 2009	018	2.0 mg/L	*2.197 mg/L*
Apr. 2009	026	2.0 mg/L	*2.306 mg/L*
May 2009	009	2.0 mg/L	*2.31 mg/L*
May 2009	018	2.0 mg/L	*5.45 mg/L*
May 2009	019	2.0 mg/L	*15.48 mg/L*
May 2009	026	2.0 mg/L	*3.04 mg/L*
June 2009	018	2.0 mg/L	*7.29 mg/L*
June 2009	019	2.0 mg/L	*39.27 mg/L*
July 2009	018	2.0 mg/L	*3.24 mg/L*
July 2009	019	2.0 mg/L	*59 mg/L*
July 2009	026	2.0 mg/L	*4.71 mg/L*
Aug. 2009	018	2.0 mg/L	*2.74 mg/L*
Aug. 2009	019	2.0 mg/L	*25.8 mg/L*
Aug. 2009	24W	2.0 mg/L	*2.22 mg/L*
Sept. 2009	019	2.0 mg/L	*23.28 mg/L*
Sept. 2009	24W	2.0 mg/L	*3.18 mg/L*
Oct. 2009	018	2.0 mg/L	*3.817 mg/L*
Oct. 2009	019	2.0 mg/L	*20.87 mg/L*
Oct. 2009	026	2.0 mg/L	*2.41 mg/L*
Oct. 2009	24W	2.0 mg/L	*2.41 mg/L*
Nov. 2009	018	2.0 mg/L	*10.0 mg/L*
Nov. 2009	019	2.0 mg/L	*29 mg/L*
Dec. 2009	018	2.0 mg/L	*13.6 mg/L*
Dec. 2009	009	2.0 mg/L	*2.437 mg/L*

47. Respondents caused or allowed the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Daily Maximum**	**Actual Discharge**
Jan. 5, 2005	019	4.0 mg/L	*4.69 mg/L*
Jan. 17, 2005	019	4.0 mg/L	*11.2 mg/L*
Jan. 26, 2005	019	4.0 mg/L	*11.9 mg/L*

Feb. 2, 2005	018	4.0 mg/L	*10.3 mg/L*
Feb. 2, 2005	019	4.0 mg/L	*11.3 mg/L*
Mar. 3, 2005	018	4.0 mg/L	*11.8 mg/L*
Mar. 3, 2005	019	4.0 mg/L	*7.83 mg/L*
Mar. 11, 2005	018	4.0 mg/L	*7.53 mg/L*
Mar. 11, 2005	019	4.0 mg/L	*5.70 mg/L*
Apr. 25, 2005	018	4.0 mg/L	*6.08 mg/L*
May 2, 2005	018	4.0 mg/L	*7.60 mg/L*
June 27, 2005	018	4.0 mg/L	*7.14 mg/L*
June 28, 2005	018	4.0 mg/L	*6.18 mg/L*
June 29, 2005	019	4.0 mg/L	*9.26 mg/L*
Mar. 20, 2006	026	4.0 mg/L	*6.68 mg/L*
Apr. 13, 2006	026	4.0 mg/L	*4.63 mg/L*
Apr. 19, 2006	019	4.0 mg/L	*4.64 mg/L*
Apr. 25, 2006	026	4.0 mg/L	*7.99 mg/L*
Apr. 26, 2006	026	4.0 mg/L	*8.42 mg/L*
May 22, 2006	019	4.0 mg/L	*5.88 mg/L*
May 23, 2006	019	4.0 mg/L	*5.70 mg/L*
July 2006	018	4.0 mg/L	*5.65 mg/L*
Jan. 2007	019	4.0 mg/L	*7 mg/L*
Jan. 2007	019	4.0 mg/L	*8.89 mg/L*
Feb. 2007	019	4.0 mg/L	*16.9 mg/L*
Feb. 2007	019	4.0 mg/L	*13.5 mg/L*
Mar. 2007	019	4.0 mg/L	*4.35 mg/L*
Mar. 2007	026	4.0 mg/L	*5.8 mg/L*
Apr. 2007	019	4.0 mg/L	*4.26 mg/L*
May 2007	019	4.0 mg/L	*4.37 mg/L*
May 2007	019	4.0 mg/L	*6.94 mg/L*
Jan. 2008	019	4.0 mg/L	*12.9 mg/L*
Feb. 2008	019	4.0 mg/L	*14 mg/L*
Oct. 2008	018	4.0 mg/L	*9.45 mg/L*
Nov. 2008	019	4.0 mg/L	*30.6 mg/L*
Nov. 2008	019	4.0 mg/L	*40.4 mg/L*
Dec. 2008	019	4.0 mg/L	*18.8 mg/L*
Jan. 2009	019	4.0 mg/L	*13.5 mg/L*
Jan. 2009	019	4.0 mg/L	*23.8 mg/L*
Feb. 2009	018	4.0 mg/L	*5.68 mg/L*
Feb. 2009	019	4.0 mg/L	*13.5 mg/L*
Feb. 2009	019	4.0 mg/L	*23.8 mg/L*
Mar. 2009	018	4.0 mg/L	*8.05 mg/L*
May 2009	018	4.0 mg/L	*9.5 mg/L*
May 2009	019	4.0 mg/L	*8.04 mg/L*
May 2009	019	4.0 mg/L	*29.8 mg/L*
June 2009	018	4.0 mg/L	*6.89 mg/L*
June 2009	018	4.0 mg/L	*8.07 mg/L*

June 2009	019	4.0 mg/L	*14.4 mg/L*
June 2009	019	4.0 mg/L	*53.8 mg/L*
July 2009	019	4.0 mg/L	*57 mg/L*
July 2009	019	4.0 mg/L	*61 mg/L*
July 2009	026	4.0 mg/L	*8.6 mg/L*
Aug. 2009	019	4.0 mg/L	*18 mg/L*
Aug. 2009	019	4.0 mg/L	*40.2 mg/L*
Sept. 2009	019	4.0 mg/L	*29.8 mg/L*
Sept. 2009	019	4.0 mg/L	*23.27 mg/L*
Sept. 2009	019	4.0 mg/L	*15.2 mg/L*
Oct. 2009	018	4.0 mg/L	*5.19 mg/L*
Oct. 2009	019	4.0 mg/L	*35.4 mg/L*
Nov. 2009	018	4.0 mg/L	*12.3 mg/L*
Nov. 2009	019	4.0 mg/L	*32.7 mg/L*
Dec. 2009	018	4.0 mg/L	*14.1 mg/L*

48. Respondents caused or allowed the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

Date	**Outfall**	**Concentration Limit: Daily Maximum**	**Actual Discharge**
Apr. 7, 2005	009	1100 mg/L	*1170 mg/L*
May 30, 2005	009	1100 mg/L	*1270 mg/L*
June 9, 2005	009	1100 mg/L	*1230 mg/L*
June 27, 2005	009	1100 mg/L	*1330 mg/L*
June 27, 2005	018	1800 mg/L	*2020 mg/L*
June 28, 2005	009	1100 mg/L	*1240 mg/L*
June 28, 2005	018	1800 mg/L	*1900 mg/L*
July 9, 2005	009	1100 mg/L	*1440 mg/L*
July 9, 2005	018	1800 mg/L	*2020 mg/L*
July 9, 2005	019	1800 mg/L	*1840 mg/L*
July 29, 2005	009	1100 mg/L	*1440 mg/L*
July 29, 2005	018	1800 mg/L	*2050 mg/L*
July 29, 2005	019	1800 mg/L	*1810 mg/L*
Aug. 8, 2005	009	1100 mg/L	*1430 mg/L*
Aug. 8, 2005	018	1800 mg/L	*2030 mg/L*
Aug. 8, 2005	019	1800 mg/L	*1910 mg/L*
Sept. 9, 2005	009	1100 mg/L	*1380 mg/L*
Sept. 29, 2005	009	1100 mg/L	*1260 mg/L*
Oct. 17, 2005	009	1100 mg/L	*1550 mg/L*
Oct. 26, 2005	009	1100 mg/L	*1540 mg/L*
Nov. 29, 2005	009	1100 mg/L	*1270 mg/L*
Dec. 13, 2005	009	1100 mg/L	*1350 mg/L*

Dec. 13, 2005	018	1800 mg/L	*1920 mg/L*
Dec. 20, 2005	009	1100 mg/L	*1270 mg/L*
Dec. 20, 2005	018	1800 mg/L	*1930 mg/L*
Jan. 16, 2006	009	1100 mg/L	*1160 mg/L*
Jan. 25, 2006	009	1100 mg/L	*1200 mg/L*
Feb. 6, 2006	009	1100 mg/L	*1220 mg/L*
Feb. 6, 2006	027	500 mg/L	*516 mg/L*
Feb. 6, 2006	24W	500 mg/L	*548 mg/L*
Feb. 27, 2006	009	1100 mg/L	*1150 mg/L*
Feb. 27, 2006	24W	500 mg/L	*600 mg/L*
Mar. 13, 2006	009	1100 mg/L	*1240 mg/L*
Mar. 13, 2006	24W	500 mg/L	*568 mg/L*
Mar. 20, 2006	24W	500 mg/L	*506 mg/L*
Mar. 29, 2006	24W	500 mg/L	*520 mg/L*
Apr. 13, 2006	24W	500 mg/L	*511 mg/L*
Apr. 25, 2006	009	1100 mg/L	*1190 mg/L*
Apr. 25, 2006	24W	500 mg/L	*628 mg/L*
Apr. 26, 2006	24W	500 mg/L	*558 mg/L*
May 16, 2006	009	1100 mg/L	*1120 mg/L*
May 16, 2006	24W	500 mg/L	*550 mg/L*
May 17, 2006	009	1100 mg/L	*1110 mg/L*
May 17, 2006	24W	500 mg/L	*552 mg/L*
May 24, 2006	009	1100 mg/L	*1150 mg/L*
May 24, 2006	24W	500 mg/L	*562 mg/L*
June 14, 2006	009	1100 mg/L	*1140 mg/L*
June 14, 2006	24W	500 mg/L	*592 mg/L*
June 15, 2006	009	1100 mg/L	*1150 mg/L*
June 15, 2006	019	1800 mg/L	*1890 mg/L*
June 15, 2006	24W	500 mg/L	*572 mg/L*
June 22, 2006	009	1100 mg/L	*1240 mg/L*
June 22, 2006	24W	500 mg/L	*635 mg/L*
July 2006	009	1100 mg/L	*1170 mg/L*
July 2006	009	1100 mg/L	*1180 mg/L*
July 2006	009	1100 mg/L	*1190 mg/L*
July 2006	019	1800 mg/L	*1830 mg/L*
July 2006	24W	500 mg/L	*578 mg/L*
Aug. 2006	009	1100 mg/L	*1300 mg/L*
Aug. 2006	009	1100 mg/L	*1273 mg/L*
Aug. 2006	009	1100 mg/L	*1250 mg/L*
Aug. 2006	018	1800 mg/L	*1840 mg/L*
Aug. 2006	019	1800 mg/L	*1840 mg/L*
Sept. 2006	009	1100 mg/L	*1260 mg/L*
Sept. 2006	009	1100 mg/L	*1250 mg/L*
Sept. 2006	009	1100 mg/L	*1240 mg/L*
Oct. 2006	009	1100 mg/L	*1320 mg/L*

Oct. 2006	009	1100 mg/L	*1303 mg/L*
Oct. 2006	009	1100 mg/L	*1290 mg/L*
Oct. 2006	018	1800 mg/L	*1850 mg/L*
Oct. 2006	019	1800 mg/L	*1810 mg/L*
Nov. 2006	009	1100 mg/L	*1350 mg/L*
Nov. 2006	009	1100 mg/L	*1287 mg/L*
Nov. 2006	009	1100 mg/L	*1160 mg/L*
Nov. 2006	018	1800 mg/L	*1890 mg/L*
Nov. 2006	019	1800 mg/L	*1830 mg/L*
Dec. 2006	009	1100 mg/L	*1230 mg/L*
Dec. 2006	009	1100 mg/L	*1123 mg/L*
Dec. 2006	24W	500 mg/L	*1090 mg/L*
Jan. 2007	026	500 mg/L	*514 mg/L*
Jan. 2007	026	500 mg/L	*502 mg/L*
Jan. 2007	027	500 mg/L	*879 mg/L*
Jan. 2007	24W	500 mg/L	*610 mg/L*
Feb. 2007	003	1100 mg/L	*1810 mg/L*
Feb. 2007	009	1100 mg/L	*1310 mg/L*
May 2007	018	1800 mg/L	*1870 mg/L*
May 2007	019	1800 mg/L	*1830 mg/L*
May 2007	24W	500 mg/L	*1080 mg/L*
June 2007	24W	500 mg/L	*507 mg/L*
June 2007	24W	500 mg/L	*576 mg/L*
July 2007	009	1100 mg/L	*1400 mg/L*
July 2007	009	1100 mg/L	*1200 mg/L*
July 2007	24W	500 mg/L	*544 mg/L*
Aug. 2007	009	1100 mg/L	*1370 mg/L*
Aug. 2007	009	1100 mg/L	*1310 mg/L*
Aug. 2007	009	1100 mg/L	*1270 mg/L*
Aug. 2007	019	1800 mg/L	*2160 mg/L*
Sept. 2007	009	1100 mg/L	*1620 mg/L*
Sept. 2007	009	1100 mg/L	*1410 mg/L*
Sept. 2007	009	1100 mg/L	*1280 mg/L*
Sept. 2007	018	1800 mg/L	*2100 mg/L*
Sept. 2007	018	1800 mg/L	*1930 mg/L*
Sept. 2007	019	1800 mg/L	*2180 mg/L*
Oct. 2007	009	1100 mg/L	*2970 mg/L*
Oct. 2007	009	1100 mg/L	*2380 mg/L*
Oct. 2007	009	1100 mg/L	*2080 mg/L*
Oct. 2007	018	1800 mg/L	*2710 mg/L*
Oct. 2007	018	1800 mg/L	*2370 mg/L*
Oct. 2007	018	1800 mg/L	*1920 mg/L*
Nov. 2007	009	1100 mg/L	*2230 mg/L*
Nov. 2007	009	1100 mg/L	*1930 mg/L*
Nov. 2007	009	1100 mg/L	*1610 mg/L*

Nov. 2007	018	1800 mg/L	*3080 mg/L*
Nov. 2007	018	1800 mg/L	*2740 mg/L*
Nov. 2007	018	1800 mg/L	*2420 mg/L*
Nov. 2007	019	1800 mg/L	*2940 mg/L*
Dec. 2007	009	1100 mg/L	*2040 mg/L*
Dec. 2007	009	1100 mg/L	*1408 mg/L*
Dec. 2007	018	1800 mg/L	*2970 mg/L*
Dec. 2007	018	1800 mg/L	*2390 mg/L*
Dec. 2007	018	1800 mg/L	*2080 mg/L*
Feb. 2008	009	1100 mg/L	*1150 mg/L*
July 2008	24W	500 mg/L	*531 mg/L*
Nov. 2008	019	1800 mg/L	*2190 mg/L*
Dec. 2008	009	1100 mg/L	*1400 mg/L*
Dec. 2008	018	1800 mg/L	*2380 mg/L*
Dec. 2008	018	1800 mg/L	*2130 mg/L*
Dec. 2008	019	1800 mg/L	*2920 mg/L*
Feb. 2009	009	1100 mg/L	*1230 mg/L*
Feb. 2009	018	1800 mg/L	*2570 mg/L*
Mar. 2009	24W	500 mg/L	*544 mg/L*
Apr. 2009	24W	500 mg/L	*539 mg/L*
May 2009	24W	500 mg/L	*515 mg/L*
June 2009	019	1800 mg/L	*2690 mg/L*
June 2009	026	500 mg/L	*818 mg/L*
June 2009	026	500 mg/L	*656 mg/L*
June 2009	026	500 mg/L	*509 mg/L*
July 2009	009	1100 mg/L	*1310 mg/L*
July 2009	009	1100 mg/L	*1470 mg/L*
July 2009	018	1800 mg/L	*1940 mg/L*
July 2009	018	1800 mg/L	*2077 mg/L*
July 2009	019	1800 mg/L	*3290 mg/L*
July 2009	026	500 mg/L	*869 mg/L*
July 2009	026	500 mg/L	*927 mg/L*
Aug. 2009	009	1100 mg/L	*1360 mg/L*
Aug. 2009	009	1100 mg/L	*1430 mg/L*
Aug. 2009	018	1800 mg/L	*1820 mg/L*
Aug. 2009	019	1800 mg/L	*2490 mg/L*
Sept. 2009	009	1100 mg/L	*1350 mg/L*
Sept. 2009	018	1800 mg/L	*1920 mg/L*
Sept. 2009	019	1800 mg/L	*2020 mg/L*
Sept. 2009	026	500 mg/L	*853 mg/L*
Oct. 2009	009	1100 mg/L	*1260 mg/L*
Oct. 2009	019	1800 mg/L	*1900 mg/L*
Oct. 2009	026	500 mg/L	*694 mg/L*
Oct. 2009	030	1100 mg/L	*1150 mg/L*

49. Respondents caused or allowed the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Monthly Average**	**Actual Discharge**
Jan. 2005	003	35.0 mg/L	*48.5 mg/L*
Jan. 2005	018	35.0 mg/L	*38 mg/L*
May 2007	002	35.0 mg/L	*46 mg/L*
May 2007	018	35.0 mg/L	*46 mg/L*
Feb. 2008	003	35.0 mg/L	*49 mg/L*
Feb. 2008	018	35.0 mg/L	*47.7 mg/L*
Feb. 2008	029	35.0 mg/L	*64 mg/L*
Jan. 2009	009	35.0 mg/L	*44.3 mg/L*

50. Respondents caused or allowed the discharge of TSS in excess of the permitted daily average effluent limitation as follows:

Date	**Outfall**	**Concentration Limit: Daily Maximum**	**Actual Discharge**
Jan. 17, 2005	003	70.0 mg/L	*81 mg/L*
Apr. 26, 2005	019	70.0 mg/L	*84 mg/L*
Dec. 13, 2005	009	70.0 mg/L	*99 mg/L*
Feb. 2007	009	70.0 mg/L	*87 mg/L*
May 2007	002	70.0 mg/L	*96 mg/L*
May 2007	018	70.0 mg/L	*121 mg/L*
July 2007	026	70.0 mg/L	*86 mg/L*
Feb. 2008	018	70.0 mg/L	*116 mg/L*
Jan. 2009	009	70.0 mg/L	*80 mg/L*

51. Respondents caused or allowed the discharge of pH in excess of the permitted monthly average effluent limitation range of 6.0 to 9.0 standard units as follows:

Date	**Outfall**	**Concentration Limit**	**Actual Discharge**
July 2006	026	Between 6.0 and 9.0 at all times	*10.4*
May 2007	026	Between 6.0 and 9.0 at all times	*9.74*
June 2007	026	Between 6.0 and 9.0 at all times	*9.43*
May 2009	019	Between 6.0 and 9.0 at all times	*5.29*
June 2009	019	Between 6.0 and 9.0 at all times	*4.25*
July 2009	019	Between 6.0 and 9.0 at all times	*3.62*
July 2009	027	Between 6.0 and 9.0 at all times	*9.4*

52. Respondents repeatedly caused or allowed the discharge from the Industry Mine of iron, manganese, sulfates, pH, and TSS, in excess of the effluent limitations imposed by NPDES Permit No. IL0061247. Monitoring records in the possession of Respondents may show additional discharges in excess of the effluent limitations imposed by NPDES Permit No. IL0061247.

53. By repeatedly discharging contaminants into waters of the State in violation of the terms or conditions of NPDES Permit No. IL0061247, Freeman United or Springfield Coal or both violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and Section 301 of the Clean Water Act, 33 U.S.C. § 1311 (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request that the Board enter an Order against Respondents, Freeman United Coal Mining Co., L.L.C. or Springfield Coal Company, L.L.C. or both:

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

B. Finding that these Respondents have violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and its implementing regulations as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS § 5/42(b)(1) (2008), imposing upon these Respondents a monetary penalty of not more than the statutory maximum;

D. Ordering Respondents, under Section 33(b) of the Act, 415 ILCS § 5/33(b) (2008), to cease and desist from violations of NPDES Permit No. IL0061247; and

E. Granting such other and further relief as the Board deems appropriate.

THIRD CAUSE OF ACTION

WATER POLLUTION VIOLATIONS

54. The Complainants hereby repeat, reallege, adopt, and incorporate by reference paragraphs 1 through 53 herein above as if fully set out in this Count.

55. From at least January 2004 until September 2009, Respondents caused or allowed the discharge of iron, manganese, sulfates, pH, and TSS into waters of the State so as to cause or tend to cause water pollution in Illinois in combination with matter from other sources. These repeated discharges from the Industry Mine in excess of the permitted concentration levels have likely created a nuisance or rendered such waters harmful or detrimental or injurious to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

56. By so causing or tending to cause water pollution, Respondents have violated Section 12(a) of the Act, 415 ILCS § 5/12(a) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request that the Board enter an Order against Respondents, Freeman United Coal Mining Co., LLC or Springfield Coal Company, LLC or both:

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

B. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and its implementing regulations as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS § 5/42(b)(1) (2008), imposing upon Respondents a monetary penalty of not more than the statutory maximum;

D. Ordering Respondents, under Section 33(b) of the Act, 415 ILCS § 5/33(b) (2008), to cease and desist from violations of the Act; and

E. Granting such other and further relief as the Board deems appropriate.

FOURTH CAUSE OF ACTION

WATER QUALITY STANDARD VIOLATIONS

57. The Complainants hereby repeat, reallege, adopt, and incorporate by reference paragraphs 1 through 56 herein above as if fully set out in this Cause of Action.

58. Section 406.202 of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code § 406.202, provides as follows:

> 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 [Part] 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.

59. Special Condition 1 of NPDES Permit No. IL0061247 prohibits the discharge of contaminants so as to degrade the water quality in the receiving streams:

> “No effluent from any mine related facility area under this permit shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . . ."

60. Section 303(d) of the Clean Water Act, 33 U.S.C. 1313(d), requires each State to identify waters whose uses are impaired by pollutants in the waters. The list of impaired waters is called the "Section 303(d) List." In August 2008, Illinois EPA issued its most recent Section 303(d) List of impaired waters of the State. In that List, Grindstone Creek is designated as having impaired water quality for aquatic life use in the Section 303(d) List due to excessive levels of sulfates.

61. Grindstone Creek was also listed as impaired in the June 2006 Section 303(d) List due to excessive levels of sulfates.

62. The currently applicable water quality standard for sulfates within Grindstone Creek is determined through Section 302.208(h) of Illinois' Water Quality Standards, 35 Ill. Adm. Code § 302.208(h). These regulatory provisions were adopted by the Pollution Control Board in the PCB R07-9 rulemaking proceeding and are effective September 8, 2008.

63. Prior to the adoption of revised regulations in the PCB R07-9 rulemaking proceeding, Section 406.100(d) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code § 406.100(d), had provided that Part 302 (Water Quality Standards) was inapplicable to mine discharges; that exemption is repealed effective September 8, 2008.

64. Since September 8, 2008, Respondents caused or allowed the discharge of sulfates to Grindstone Creek and its tributaries from outfalls 002, 003, 018, and 019 of the Industry Mine so as to, in combination with effluent from other sources, cause or contribute to a violation of the water quality standard applicable pursuant to Section 302.208(h) of the Board's Water Quality Standards, 35 Ill. Adm. Code § 302.208(h).

65. Respondents caused or allowed the discharge of sulfates to Grindstone Creek and its tributaries in violation of the effluent limits contained in NPDES Permit No. IL0061247, on at least the following occasions:

Nov. 30, 2008	019	1800 mg/L	*2190 mg/L*
Dec. 31, 2008	018	1800 mg/L	*2380 mg/L*
Dec. 31, 2008	018	1800 mg/L	*2130 mg/L*
Dec. 31, 2008	019	1800 mg/L	*2920 mg/L*
Feb. 28, 2009	018	1800 mg/L	*2570 mg/L*
June 30, 2009	019	1800 mg/L	*2690 mg/L*
July 31, 2009	018	1800 mg/L	*1940 mg/L*
July 31, 2009	018	1800 mg/L	*2077 mg/L*
July 31, 2009	019	1800 mg/L	*3290 mg/L*
Aug. 31, 2009	018	1800 mg/L	*1820 mg/L*

Aug. 31, 2009	019	1800 mg/L	*2490 mg/L*
Sept. 30, 2009	018	1800 mg/L	*1920 mg/L*
Sept. 30, 2009	019	1800 mg/L	*2020 mg/L*
Oct. 2009	019	1800 mg/L	*1900 mg/L*

These discharges caused or contributed to the ongoing violation of water quality standards for sulfate in Grindstone Creek.

66. By violating the regulations or standards adopted by the Board under this Act, Respondents have violated Section 12(a) of the Act, 415 ILCS § 5/12(a) (2008).

67. By violating Special Condition 1 of NPDES Permit No. IL0061247, Respondents have violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and Section 301 of the Clean Water Act, 33 U.S.C. § 1311 (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainants respectfully request that the Board enter an Order against Respondents Freeman United Coal Mining Co., LLC or Springfield Coal Company, LLC or both:

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

B. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS § 5/12(f) (2008), and its implementing regulations as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS § 5/42(b)(1) (2008), imposing upon Respondents a monetary penalty of not more than the statutory maximum;

D. Ordering Respondents, under Section 33(b) of the Act, 415 ILCS § 5/33(b) (2008), to cease and desist from violations of the Act and Illinois water quality standards; and

E. Granting such other and further relief as the Board deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that I have served the attached **Motion to Intervene** and **Complaint** in PCB 2010-061 upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

via electronic filing on February 25, 2010; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on February 25, 2010.

Respectfully submitted,

Jessica Dexter
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Feb. 25, 2010

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