

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.)

NOTICE OF ELECTRONIC FILING

TO:

Thomas Davis
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, IL 62706

Bill S. Forcade
E. Lynn Grayson
James A. Vroman
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794

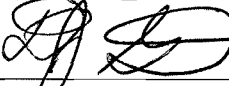
Jessica Dexter
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1300
Chicago, IL 60601

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

PLEASE TAKE NOTICE that on May 14, 2010, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., L.L.C.'s Motion to Strike, Alternative Motion to Dismiss, and Alternative Motion to Challenge the Sufficiency of the Environmental Law and Policy Center's Complaint, copies of which are herewith served upon you.

BRYAN CAVE LLP

By:


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Attorneys for Springfield Coal Co., L.L.C.

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IN THE MATTER OF:

PEOPLE OF THE STATE OF)
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Complainant,)

v.)

FREEMAN UNITED COAL)
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SPRINGFIELD COAL CO., L.L.C.)

Respondents.)

PCB 2010-061
(Enforcement-Water)

SPRINGFIELD COAL CO., L.L.C.'S MOTION TO STRIKE, ALTERNATIVE MOTION TO DISMISS, AND ALTERNATIVE MOTION TO CHALLENGE THE SUFFICIENCY OF THE ENVIRONMENTAL LAW AND POLICY CENTER'S COMPLAINT

COMES NOW Respondent, Springfield Coal Co., L.L.C. ("Springfield Coal"), by and through its attorneys, and pursuant to 35 Ill. Adm. Code 101.506, 35 Ill. Adm. Code 103.212(b), and 35 Ill. Adm. Code 103.204(e) hereby files this Motion to Strike, Alternative Motion to Dismiss, and Alternative Motion to Challenge the Sufficiency of the Environmental Law and Policy Center's ("ELPC") Complaint. Also, pursuant to 35 Ill. Adm. Code §§ 103.204(e) and 103.212(b), the filing of this motion shall stay the 60-day period for filing an answer to the ELPC's Complaint. In support of its motion, Springfield Coal states the following:

1. On April 15, 2010, the Illinois Pollution Control Board ("IPCB") granted ELPC's Motion to Intervene in this case and accepted ELPC's complaint for filing. However, the Board did not rule as to whether or not to accept the complaint for hearing, and noted in its Conclusion that Respondents had until May 15, 2010 to file any motions to strike, dismiss, challenge the sufficiency of the complaint, or alleging the complaint to be duplicative or frivolous. This is consistent with 35 Ill. Adm. Code 101.506.

2. ELPC should not be allowed to file a separate complaint in this case. It is well established that “an intervenor must take a case as he finds it.” Deesing v. City of Crystal Lake, IPCB Case No. 91-30, 1991 Ill. Env. Lexis 894 (Nov. 7, 1991). Much like in the present case, an intervenor in Deesing attempted to file a complaint in a preexisting enforcement case by attaching the complaint to its motion to intervene. In Deesing, the Board prevented the intervenor from filing the complaint and informed the intervenor that they have to take the case as they find it. Although the Board in the Deesing case made mention of that fact that the complaint the intervenor wanted to file merely restated the issues set forth by the original complainants, the Board did not base its decision on the grounds that the complaint was duplicative, but instead on the grounds that an intervenor must take the case as it finds it. The ELPC should not be allowed to come into this case and file another complaint. That is clearly not “taking the case as they find it”, but is instead trying to change the case. Consequently, the Board must dismiss ELPC’s complaint and ELPC must accept the present case as it found it. ELPC will continue to enjoy enhanced participation opportunities afforded to it as an intervenor, and thus will have an opportunity to be heard throughout the process.

3. In the event that the complaint is not stricken for the reasons above, Springfield Coal alternatively moves that the Board strike ELPC’s complaint for being duplicative and frivolous.

4. 35 Ill. Adm. Code 101.202 defines duplicative as “the matter is identical or substantially similar to one brought before the Board or another forum.”

5. 35 Ill. Adm. Code 101.202 defines frivolous as “a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.”

6. ELPC's complaint is clearly duplicative of the complaint of the People of the State of Illinois ("State of Illinois") in this case. ELPC's complaint has four alleged causes of action. The State of Illinois' complaint also has four alleged causes of action. The Second Cause of Action of ELPC's complaint is virtually identical to Counts I and II of the State of Illinois' complaint, often using the exact same wording. The Second Cause of Action of ELPC's complaint alleges virtually identical violations of effluent discharges as those alleged in Counts I and II by the State of Illinois, including identical dates of alleged violations and identical types of materials allegedly released into the environment, including manganese, sulfates, total suspended solids (TSS) and pH. In addition, the Third Cause of Action of ELPC's complaint is in fact identical to Counts III and IV of the State of Illinois' complaint, with some minor clerical changes to account for formatting differences. Such allegations are more than "substantially similar" to those brought by the State of Illinois, if not completely identical, and thus ELPC's complaint can properly be classified as duplicative.

7. The ELPC's complaint is also duplicative in that the First and Fourth Causes of Action in ELPC's complaint, while not contained in the State of Illinois' complaint, are causes of action that the State of Illinois considered filing but consciously chose not pursue in this case. Prior to filing this case, the State of Illinois sent to both counsel for ELPC and counsel for Springfield Coal a draft complaint. *See*, letters dated January 28, 2010 to Albert Ettinger and Dale Guariglia, along with a draft complaint, attached hereto and marked as Attachment A. The draft complaint had five counts instead of the four that were included in the final complaint filed in this case by the State of Illinois. The fifth count in the State of Illinois' draft complaint alleged violations of the State's water quality standards. Prior to filing the complaint in this case, the State of Illinois informed Springfield Coal that it decided not to include this fifth count in its

final complaint because changes in the water quality standards over the last few years had called into question whether such violations existed. The Fourth Cause of Action in ELPC's complaint is almost word-for-word identical to Count V in the State of Illinois' draft complaint. ELPC obviously used Count V of the State of Illinois' draft complaint as the basis for the Fourth Cause of Action in its complaint. Because the State of Illinois consciously chose not to pursue claims for violations of the water quality standards, the Board should respect this prosecutorial discretion, and not allow the ELPC to present a charge that the State of Illinois considered and chose not to pursue in this case.

8. The same is true for the First Cause of Action in the ELPC's complaint alleging that the facility's NPDES Permit was not properly transferred from Freeman United to Springfield Coal in 2007. ELPC alleges in its complaint that Freeman United's notice to have the permit transferred was sent to IEPA only 15 days in advance of the transfer instead of the 30 days required by the permit, and therefore the transfer was ineffective. IEPA reviewed the transfer notice when it was filed in 2007 and did not find the notice deficient at that time so as to issue a violation notice. IEPA has had ample time since the date of transfer to challenge the allegedly deficient transfer, yet has chosen not to do so. Again, ELPC's complaint is duplicative of the claims currently being pursued by the State of Illinois in this case in that most of ELPC's complaint is word-for-word identical to the State of Illinois' complaint, and those claims that are different still relate to the same set of facts but are claims that the State of Illinois consciously chose not to pursue.

9. Additionally, ELPC's complaint is frivolous since it is a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief. As discussed above, an intervenor must take a case as it

finds it, and according to the Deesing case, is not allowed to file its own separate complaint. Therefore ELPC' complaint is frivolous since the Board in its past rulings has held that such claims can not be pursued, and it should be dismissed.

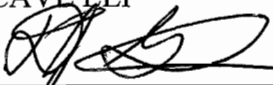
10. Until the Board rules on this Motion, pursuant to 35 Ill. Adm. Code §§ 103.204(e) and 103.212(b), the filing of this Motion shall stay the 60-day answer period on ELPC's complaint.

WHEREFORE, Respondent Springfield Coal Co. L.L.C. respectfully requests that the Board grant its MOTION TO STRIKE, ALTERNATIVE MOTION TO DISMISS, AND ALTERNATIVE MOTION TO CHALLENGE THE SUFFICIENCY OF THE ENVIRONMENTAL LAW AND POLICY CENTER'S COMPLAINT.

Respectfully Submitted,

BRYAN CAVE LLP

By:


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Pamela A. Howlett #6281863
Dennis J. Gelner II #6298390
One Metropolitan Square
211 North Broadway Suite 3600
St. Louis, MO 63102
Telephone: (314) 259-2000
Telefax: (314) 259-2020

Attorneys for Respondent, Springfield Coal
Co., L.L.C

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing response was served upon the following parties via U.S. Mail on the 14th day of May, 2010:

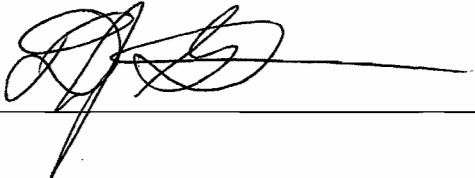
Thomas Davis
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35 East Wacker Drive, Suite 1300
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Chicago, IL 60601





Attachment A

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 28, 2010

Albert Ettinger
Environmental Law & Policy Center
35 East Wacker Drive Suite 1300
Chicago, Illinois 60601

Re: Industry Mine

Dear Albert:

The Illinois EPA has recently submitted an enforcement referral to my Office regarding both Freeman United Coal Mining Company and Springfield Coal Company. The attached complaint has been approved for filing. A draft copy is being provided herein as a courtesy in light of the 60-day notices issued on behalf of the Sierra Club, the Prairie Rivers Network and the Environmental Law & Policy Center. Please contact me with any questions,

Thank you for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Davis".

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
217.782.7968

cc: Chad Kruse/IEPA



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 28, 2010

Dale A. Guariglia
Attorney At Law
Bryan Cave LLP
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, Missouri 63102-2750

Re: Springfield Coal Company/Industry Mine

Dear Dale:

The Illinois EPA has submitted an enforcement referral to my Office regarding both Freeman United Coal Mining Company and Springfield Coal Company, but has not yet provided a penalty recommendation. As I mentioned, any penalty recommendation must first be reviewed internally so that any demand to be communicated by an Assistant Attorney General may be duly authorized. The draft complaint has been approved for filing and a copy is attached. Without an authorized penalty demand, and with the February 16th date looming, there appears to be no need to meet prior to filing the complaint. In any event, please give me a call next week after you have had a chance to review the draft pleadings. In the interim I will also contact Freeman United Coal Mining Company regarding our intent to take enforcement action.

Thank you for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Davis", is written over a horizontal line.

Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
217.782.7968

cc: Chad Kruse/IEPA

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 FREEMAN UNITED COAL MINING)
 COMPANY, LLC,)
 a Delaware limited liability company, and)
 SPRINGFIELD COAL COMPANY, LLC,)
 a Delaware limited liability company,)
)
 Respondents.)

PCB No. 10-
 (Water-Enforcement)

DRAFT

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, FREEMAN UNITED COAL MINING COMPANY, LLC, and SPRINGFIELD COAL COMPANY, LLC, as follows:

COUNT I
NPDES PERMIT VIOLATIONS
FREEMAN UNITED

1. This Complaint is brought by the Attorney General 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 (2008).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2008), and charged, *inter alia*, with

the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. FREEMAN UNITED COAL MINING COMPANY, LLC ("Freeman United") is a Delaware limited liability company authorized to do business in Illinois and until September 1, 2007 operated a strip mine located in McDonough and Schuyler Counties approximately 5 miles southwest of Industry, Illinois. The Industry Mine covers a total area of 5,651.3 acres of which 4,886.6 acres are in McDonough County and 1,064.7 acres are in Schuyler County.

4. SPRINGFIELD COAL COMPANY, LLC ("Springfield Coal") is a Delaware limited liability company authorized to do business in Illinois and since September 1, 2007 the owner and operator of the Industry Mine.

5. On April 2, 1999 the Illinois EPA issued a permit to Freeman United under the National Pollutant Discharge Elimination System ("NPDES") program of the federal Water Pollution Control Act ("FWPCA" or "Clean Water Act"). NPDES Permit No. IL0061247 authorizes discharges from the Industry Mine into waters of the State, including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries. The NPDES permit for the Industry Mine also imposes monitoring and reporting requirements.

6. On August 15, 2003 Freeman United submitted to the Illinois EPA a timely application regarding the renewal of the permit. On August 14, 2007 Springfield Coal submitted to the Illinois EPA a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. The Illinois EPA has not yet acted upon the renewal or transfer of the permit.

7. NPDES Permit No. IL0061247 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 must abide within a range (in standard units) of 6.0 to 9.0. The following limitations (as expressed in milligrams per liter or “mg/L”) are also applicable to all outfalls:

| <u>Pollutant</u> | <u>30 Day Average</u> | <u>Daily Maximum</u> |
|------------------|-----------------------|----------------------|
| 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 |

The concentration levels of sulfates in the effluent are regulated on a daily maximum basis according to the particular outfalls designated by the NPDES permit:

| <u>Outfalls</u> | <u>Daily Maximum</u> |
|--|----------------------|
| 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 |

8. NPDES Permit No. IL0061247 identifies the following outfalls from the Industry Mine:

| <u>Outfalls</u> | <u>Descriptions</u> | <u>Receiving Waters</u> |
|--------------------|---|-------------------------------|
| 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 |

9. Mine discharge effluent limitations are set forth in Section 406.106(b) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 406.106(b):

Except as provided in Sections 406.109 and 406.110, a mine discharge effluent shall not exceed the following levels of contaminants:

| Constituent | Storet Number | Concentration |
|-------------------------|---------------|---|
| Acidity | 00435 | (total acidity shall not exceed total alkalinity) |
| Iron (total) | 01045 | 3.5mg/l |
| Lead (total) | 01051 | 1 mg/l |
| Ammonia Nitrogen (as N) | 00610 | 5 mg/l |
| pH | 00400 | (range 6 to 9) |
| Zinc (total) | 01092 | 5 mg/l |
| Fluoride (total) | 00951 | 15 mg/l |
| Total suspended solids | 00530 | 35 mg/l |
| Manganese | 01055 | 2.0 mg/l |

10. Section 406.106(b)(2) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 406.106(b)(2), provides as follows:

The manganese effluent limitation is applicable only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH shall be 10 for any such facility that is unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges which are

associated with areas where no active mining, processing or refuse disposal has taken place since May 13, 1976.

11. Section 12 of 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. . . .

12. 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.

13. 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.

14. As regulated by the NPDES permit, iron, manganese, sulfates, pH, and TSS are

each a “contaminant” as defined by Section 3.165 of the Act.

15. 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.

16. 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.

17. As set forth at Section 401.102 of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 401.102, the legislative policy for the environmental regulation of coal mining is based upon the following determinations:

... mining activities including the preparation, operation and abandonment of mines, mine refuse areas and mine related facilities without environmental planning and safeguards and the use of certain refuse materials can cause, threaten or allow the discharge of contaminants into the waters of Illinois so as to cause or threaten to cause a nuisance or to render such waters harmful or detrimental to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses including use by livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

18. The purpose of the Board's Mine Related Water Pollution Regulations is stated at Section 401.103, 35 Ill. Adm. Code 401.103:

The purpose of this Subtitle D is to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the location, preparation, operation and abandonment of mining activities, mining and mine refuse operations. A permit system is established to control the multitude of contaminating point and non-point source discharges, visible and hidden, continuous and fluctuating, which are potentially present in mining activities, mining and mine refuse operations. In order to ensure that such activities meet environmental standards water quality and effluent standards are established to limit discharges from point sources as well as to protect waters for beneficial uses. In addition, procedural safeguards are established to ensure the protection of waters. Furthermore, it is the purpose of this Subtitle D to meet the requirements of Section 402 of the FWPCA.

19. Freeman United caused or allowed the discharge of iron in excess of the permitted monthly average effluent limitation as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
|-------------------|----------------|---------------------|-------------------------|

Electronic Filing - Received, Clerk's Office, May 14, 2010

| | | | |
|---------------|------|----------|-----------|
| January 2005 | 018 | 3.5 mg/L | 4.42 mg/L |
| January 2005 | 024W | 3.0 mg/L | 4.65 mg/L |
| January 2005 | 029 | 3.0 mg/L | 4.98 mg/L |
| February 2005 | 029 | 3.0 mg/L | 3.08 mg/L |

20. Freeman United caused or allowed the discharge of iron in excess of the permitted

daily maximum effluent limitation as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|--------------------|----------------|---------------------|-------------------------|
| February 19, 2004 | 029 | 6.0 mg/L | 7.05 mg/L |
| February 20, 2004 | 029 | 6.0 mg/L | 6.75 mg/L |
| March 2, 2004 | 029 | 6.0 mg/L | 8.65 mg/L |
| March 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 |
| August 26, 2004 | 018 | 7.0 mg/L | 12.3 mg/L |
| August 26, 2004 | 026 | 6.0 mg/L | 11.9 mg/L |
| August 31, 2004 | 029 | 6.0 mg/L | 7.23 mg/L |
| September 16, 2004 | 018 | 7.0 mg/L | 9.74 mg/L |
| September 16, 2004 | 026 | 6.0 mg/L | 13.9 mg/L |
| October 29, 2004 | 029 | 6.0 mg/L | 8.00 mg/L |
| November 1, 2004 | 018 | 7.0 mg/L | 46.4 mg/L |
| December 8, 2004 | 018 | 7.0 mg/L | 25.4 mg/L |
| December 8, 2004 | 024W | 6.0 mg/L | 10.6 mg/L |
| December 8, 2004 | 026 | 6.0 mg/L | 11.5 mg/L |
| January 17, 2005 | 018 | 7.0 mg/L | 7.53 mg/L |
| January 17, 2005 | 024W | 6.0 mg/L | 6.37 mg/L |
| January 17, 2005 | 029 | 6.0 mg/L | 6.20 mg/L |
| February 14, 2005 | 018 | 7.0 mg/L | 13.0 mg/L |
| November 30, 2006 | 018 | 7.0 mg/L | 9.04 mg/L |
| March 31, 2007 | 003 | 7.0 mg/L | 15.4 mg/L |
| March 31, 2007 | 018 | 7.0 mg/L | 47.9 mg/L |
| March 31, 2007 | 026 | 6.0 mg/L | 21.1 mg/L |
| June 30, 2007 | 003 | 7.0 mg/L | 11.8 mg/L |

21. Freeman United caused or allowed the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| January 2005 | 019 | 2.0 mg/L | 7.95 mg/L |
| February 2005 | 018 | 2.0 mg/L | 10.3 mg/L |
| February 2005 | 019 | 2.0 mg/L | 11.3 mg/L |
| March 2005 | 019 | 2.0 mg/L | 6.76 mg/L |
| April 2005 | 018 | 2.0 mg/L | 2.32 mg/L |
| April 2005 | 019 | 2.0 mg/L | 3.07 mg/L |
| April 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 |
| August 2006 | 018 | 2.0 mg/L | 2.35 mg/L |
| January 2007 | 019 | 2.0 mg/L | 7.95 mg/L |
| February 2007 | 019 | 2.0 mg/L | 15.2 mg/L |
| March 2007 | 018 | 2.0 mg/L | 2.88 mg/L |
| March 2007 | 026 | 2.0 mg/L | 3.64 mg/L |
| May 2007 | 019 | 2.0 mg/L | 5.66 mg/L |

22. Freeman United caused or allowed the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|--------------------|----------------|---------------------|-------------------------|
| January 15, 2004 | 003 | 4.0 mg/L | 5.32 mg/L |
| February 3, 2004 | 019 | 4.0 mg/L | 13.4 mg/L |
| February 10, 2004 | 018 | 4.0 mg/L | 4.37 mg/L |
| February 10, 2004 | 019 | 4.0 mg/L | 14.3 mg/L |
| February 18, 2004 | 003 | 4.0 mg/L | 9.39 mg/L |
| March 2, 2004 | 019 | 4.0 mg/L | 4.86 mg/L |
| April 14, 2004 | 019 | 4.0 mg/L | 5.31 mg/L |
| May 7, 2004 | 019 | 4.0 mg/L | 4.40 mg/L |
| May 12, 2004 | 019 | 4.0 mg/L | 4.71 mg/L |
| June 14, 2004 | 019 | 4.0 mg/L | 6.15 mg/L |
| July 29, 2004 | 019 | 4.0 mg/L | 4.79 mg/L |
| September 13, 2004 | 019 | 4.0 mg/L | 8.22 mg/L |
| October 29, 2004 | 019 | 4.0 mg/L | 9.15 mg/L |

| | | | |
|-------------------|-----|----------|-----------|
| November 8, 2004 | 019 | 4.0 mg/L | 5.73 mg/L |
| November 15, 2004 | 018 | 4.0 mg/L | 5.51 mg/L |
| November 15, 2004 | 019 | 4.0 mg/L | 9.25 mg/L |
| December 20, 2004 | 018 | 4.0 mg/L | 4.32 mg/L |
| December 20, 2004 | 019 | 4.0 mg/L | 16.3 mg/L |
| December 28, 2004 | 018 | 4.0 mg/L | 8.88 mg/L |
| December 28, 2004 | 019 | 4.0 mg/L | 20.6 mg/L |
| January 5, 2005 | 019 | 4.0 mg/L | 4.69 mg/L |
| January 17, 2005 | 019 | 4.0 mg/L | 11.2 mg/L |
| January 26, 2005 | 019 | 4.0 mg/L | 11.9 mg/L |
| February 2, 2005 | 018 | 4.0 mg/L | 10.3 mg/L |
| February 2, 2005 | 019 | 4.0 mg/L | 11.3 mg/L |
| March 3, 2005 | 018 | 4.0 mg/L | 11.8 mg/L |
| March 3, 2005 | 019 | 4.0 mg/L | 7.83 mg/L |
| March 11, 2005 | 018 | 4.0 mg/L | 7.53 mg/L |
| March 11, 2005 | 019 | 4.0 mg/L | 5.70 mg/L |
| April 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 |
| March 20, 2006 | 026 | 4.0 mg/L | 6.68 mg/L |
| April 13, 2006 | 026 | 4.0 mg/L | 4.63 mg/L |
| April 19, 2006 | 019 | 4.0 mg/L | 4.64 mg/L |
| April 25, 2006 | 026 | 4.0 mg/L | 7.99 mg/L |
| April 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 31, 2006 | 018 | 4.0 mg/L | 5.65 mg/L |
| January 31, 2007 | 019 | 4.0 mg/L | 7 mg/L |
| January 31, 2007 | 019 | 4.0 mg/L | 8.89 mg/L |
| February 28, 2007 | 019 | 4.0 mg/L | 16.9 mg/L |
| February 28, 2007 | 019 | 4.0 mg/L | 13.5 mg/L |
| March 31, 2007 | 019 | 4.0 mg/L | 4.35 mg/L |
| March 31, 2007 | 026 | 4.0 mg/L | 5.8 mg/L |
| April 30, 2007 | 019 | 4.0 mg/L | 4.26 mg/L |
| May 31, 2007 | 019 | 4.0 mg/L | 4.37 mg/L |
| May 31, 2007 | 019 | 4.0 mg/L | 6.94 mg/L |

23. Freeman United caused or allowed the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

Electronic Filing - Received, Clerk's Office, May 14, 2010

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|--------------------|----------------|---------------------|-------------------------|
| January 15, 2004 | 003 | 1100 mg/L | 1190 mg/L |
| May 19, 2004 | 003 | 1100 mg/L | 1120 mg/L |
| May 24, 2004 | 002 | 1100 mg/L | 1220 mg/L |
| April 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 |
| August 8, 2005 | 009 | 1100 mg/L | 1430 mg/L |
| August 8, 2005 | 018 | 1800 mg/L | 2030 mg/L |
| August 8, 2005 | 019 | 1800 mg/L | 1910 mg/L |
| September 9, 2005 | 009 | 1100 mg/L | 1380 mg/L |
| September 29, 2005 | 009 | 1100 mg/L | 1260 mg/L |
| October 17, 2005 | 009 | 1100 mg/L | 1550 mg/L |
| October 26, 2005 | 009 | 1100 mg/L | 1540 mg/L |
| November 29, 2005 | 009 | 1100 mg/L | 1270 mg/L |
| December 13, 2005 | 009 | 1100 mg/L | 1350 mg/L |
| December 13, 2005 | 018 | 1800 mg/L | 1920 mg/L |
| December 20, 2005 | 009 | 1100 mg/L | 1270 mg/L |
| December 20, 2005 | 018 | 1800 mg/L | 1930 mg/L |
| January 16, 2006 | 009 | 1100 mg/L | 1160 mg/L |
| January 25, 2006 | 009 | 1100 mg/L | 1200 mg/L |
| February 6, 2006 | 009 | 1100 mg/L | 1220 mg/L |
| February 6, 2006 | 027 | 500 mg/L | 516 mg/L |
| February 6, 2006 | 024W | 500 mg/L | 548 mg/L |
| February 27, 2006 | 009 | 1100 mg/L | 1150 mg/L |
| February 27, 2006 | 024W | 500 mg/L | 600 mg/L |
| March 13, 2006 | 009 | 1100 mg/L | 1240 mg/L |
| March 13, 2006 | 024W | 500 mg/L | 568 mg/L |
| March 20, 2006 | 024W | 500 mg/L | 506 mg/L |
| March 29, 2006 | 024W | 500 mg/L | 520 mg/L |
| April 13, 2006 | 024W | 500 mg/L | 511 mg/L |
| April 25, 2006 | 009 | 1100 mg/L | 1190 mg/L |

Electronic Filing - Received, Clerk's Office, May 14, 2010

| | | | |
|--------------------|------|-----------|-----------|
| April 25, 2006 | 024W | 500 mg/L | 628 mg/L |
| April 26, 2006 | 024W | 500 mg/L | 558 mg/L |
| May 16, 2006 | 009 | 1100 mg/L | 1120 mg/L |
| May 16, 2006 | 024W | 500 mg/L | 550 mg/L |
| May 17, 2006 | 009 | 1100 mg/L | 1110 mg/L |
| May 17, 2006 | 024W | 500 mg/L | 552 mg/L |
| May 24, 2006 | 009 | 1100 mg/L | 1150 mg/L |
| May 24, 2006 | 024W | 500 mg/L | 562 mg/L |
| June 14, 2006 | 009 | 1100 mg/L | 1140 mg/L |
| June 14, 2006 | 024W | 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 | 024W | 500 mg/L | 572 mg/L |
| June 22, 2006 | 009 | 1100 mg/L | 1240 mg/L |
| June 22, 2006 | 024W | 500 mg/L | 635 mg/L |
| July 31, 2006 | 009 | 1100 mg/L | 1170 mg/L |
| July 31, 2006 | 009 | 1100 mg/L | 1180 mg/L |
| July 31, 2006 | 009 | 1100 mg/L | 1190 mg/L |
| July 31, 2006 | 019 | 1800 mg/L | 1830 mg/L |
| July 31, 2006 | 024W | 500 mg/L | 578 mg/L |
| August 31, 2006 | 009 | 1100 mg/L | 1300 mg/L |
| August 31, 2006 | 009 | 1100 mg/L | 1273 mg/L |
| August 31, 2006 | 009 | 1100 mg/L | 1250 mg/L |
| August 31, 2006 | 018 | 1800 mg/L | 1840 mg/L |
| August 31, 2006 | 019 | 1800 mg/L | 1840 mg/L |
| September 30, 2006 | 009 | 1100 mg/L | 1260 mg/L |
| September 30, 2006 | 009 | 1100 mg/L | 1250 mg/L |
| September 30, 2006 | 009 | 1100 mg/L | 1240 mg/L |
| October 31, 2006 | 009 | 1100 mg/L | 1320 mg/L |
| October 31, 2006 | 009 | 1100 mg/L | 1303 mg/L |
| October 31, 2006 | 009 | 1100 mg/L | 1290 mg/L |
| October 31, 2006 | 018 | 1800 mg/L | 1850 mg/L |
| October 31, 2006 | 019 | 1800 mg/L | 1810 mg/L |
| November 30, 2006 | 009 | 1100 mg/L | 1350 mg/L |
| November 30, 2006 | 009 | 1100 mg/L | 1287 mg/L |
| November 30, 2006 | 009 | 1100 mg/L | 1160 mg/L |
| November 30, 2006 | 018 | 1800 mg/L | 1890 mg/L |
| November 30, 2006 | 019 | 1800 mg/L | 1830 mg/L |
| December 31, 2006 | 009 | 1100 mg/L | 1230 mg/L |
| December 31, 2006 | 009 | 1100 mg/L | 1123 mg/L |
| December 31, 2006 | 024W | 500 mg/L | 1090 mg/L |
| January 31, 2007 | 026 | 500 mg/L | 514 mg/L |
| January 31, 2007 | 026 | 500 mg/L | 502 mg/L |

| | | | |
|-------------------|------|-----------|-----------|
| January 31, 2007 | 027 | 500 mg/L | 879 mg/L |
| January 31, 2007 | 024W | 500 mg/L | 610 mg/L |
| February 28, 2007 | 003 | 1100 mg/L | 1810 mg/L |
| February 28, 2007 | 009 | 1100 mg/L | 1310 mg/L |
| May 31, 2007 | 018 | 1800 mg/L | 1870 mg/L |
| May 31, 2007 | 019 | 1800 mg/L | 1830 mg/L |
| May 31, 2007 | 024W | 500 mg/L | 1080 mg/L |
| June 30, 2007 | 024W | 500 mg/L | 507 mg/L |
| June 30, 2007 | 024W | 500 mg/L | 576 mg/L |
| July 31, 2007 | 009 | 1100 mg/L | 1400 mg/L |
| July 31, 2007 | 009 | 1100 mg/L | 1200 mg/L |
| July 31, 2007 | 024W | 500 mg/L | 544 mg/L |
| August 31, 2007 | 009 | 1100 mg/L | 1370 mg/L |
| August 31, 2007 | 009 | 1100 mg/L | 1310 mg/L |
| August 31, 2007 | 009 | 1100 mg/L | 1270 mg/L |
| August 31, 2007 | 019 | 1800 mg/L | 2160 mg/L |

24. Freeman United caused or allowed the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| January 2005 | 003 | 35.0 mg/L | 48.5 mg/L |
| January 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 |

25. Freeman United caused or allowed the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| May 26, 2004 | 029 | 70.0 mg/L | 71 mg/L |
| July 14, 2004 | 029 | 70.0 mg/L | 160 mg/L |
| January 17, 2005 | 003 | 70.0 mg/L | 81 mg/L |
| April 26, 2005 | 019 | 70.0 mg/L | 84 mg/L |
| December 13, 2005 | 009 | 70.0 mg/L | 84 mg/L |
| February 28, 2007 | 009 | 70.0 mg/L | 87 mg/L |
| May 31, 2007 | 002 | 70.0 mg/L | 96 mg/L |
| May 31, 2007 | 018 | 70.0 mg/L | 121 mg/L |
| July 31, 2007 | 026 | 70.0 mg/L | 86 mg/L |

26. Freeman United caused or allowed the discharge of pH outside of the permitted monthly average effluent limitation range of 6.0 to 9.0 standard units as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Actual Discharge</u> |
|-------------------|----------------|-------------------------|
| July 2004 | 002 | 4.82 |
| July 2006 | 026 | 10.4 |
| May 2007 | 026 | 9.74 |
| June 2007 | 026 | 9.43 |
| May 2009 | 019 | 5.29 |
| June 2009 | 019 | 4.25 |
| July 2009 | 019 | 3.62 |
| July 2009 | 027 | 9.4 |

27. Freeman United 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.

28. By repeatedly discharging contaminants into waters of the State in violation of the terms or conditions of NPDES Permit No. IL0061247, Freeman United violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, FREEMAN UNITED COAL MINING COMPANY, LLC:

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

B. Finding that this Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and the regulations as alleged herein;

- C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum;
- D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), award Complainant its reasonable costs in this matter, including attorney's fees and expert witness costs; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT II
NPDES PERMIT VIOLATIONS
SPRINGFIELD COAL

1-18. Complainant realleges and incorporates herein by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count II.

19. Springfield Coal caused or allowed the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| January 2008 | 019 | 2.0 mg/L | 12.9 mg/L |
| February 2008 | 019 | 2.0 mg/L | 7.617 mg/L |
| October 2008 | 018 | 2.0 mg/L | 6.957 mg/L |
| November 2008 | 018 | 2.0 mg/L | 2.877 mg/L |
| November 2008 | 019 | 2.0 mg/L | 34.2 mg/L |
| December 2008 | 018 | 2.0 mg/L | 2.2 mg/L |
| December 2008 | 019 | 2.0 mg/L | 10.7 mg/L |
| January 2009 | 018 | 2.0 mg/L | 2.165 mg/L |
| January 2009 | 019 | 2.0 mg/L | 18.5 mg/L |
| February 2009 | 009 | 2.0 mg/L | 2.69 mg/L |
| February 2009 | 019 | 2.0 mg/L | 18.5 mg/L |
| March 2009 | 018 | 2.0 mg/L | 5.493 mg/L |
| March 2009 | 026 | 2.0 mg/L | 2.725 mg/L |
| March 2009 | 024W | 2.0 mg/L | 2.213 mg/L |
| April 2009 | 009 | 2.0 mg/L | 2.23 mg/L |
| April 2009 | 018 | 2.0 mg/L | 2.197 mg/L |
| April 2009 | 026 | 2.0 mg/L | 2.306 mg/L |
| May 2009 | 009 | 2.0 mg/L | 2.31 mg/L |

Electronic Filing - Received, Clerk's Office, May 14, 2010

| | | | |
|-------------|------|----------|------------|
| 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 |
| August 2009 | 018 | 2.0 mg/L | 2.74 mg/L |
| August 2009 | 019 | 2.0 mg/L | 25.8 mg/L |
| August 2009 | 024W | 2.0 mg/L | 2.22 mg/L |

20. Springfield Coal caused or allowed the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|--------------------|----------------|---------------------|-------------------------|
| January 31, 2008 | 019 | 4.0 mg/L | 12.9 mg/L |
| February 29, 2008 | 019 | 4.0 mg/L | 14 mg/L |
| October 31, 2008 | 018 | 4.0 mg/L | 9.45 mg/L |
| November 30, 2008 | 019 | 4.0 mg/L | 30.6 mg/L |
| November 30, 2008 | 019 | 4.0 mg/L | 40.4 mg/L |
| December 31, 2008 | 019 | 4.0 mg/L | 18.8 mg/L |
| January 31, 2009 | 019 | 4.0 mg/L | 13.5 mg/L |
| January 31, 2009 | 019 | 4.0 mg/L | 23.8 mg/L |
| February 28, 2009 | 018 | 4.0 mg/L | 5.68 mg/L |
| February 28, 2009 | 019 | 4.0 mg/L | 13.5 mg/L |
| February 28, 2009 | 019 | 4.0 mg/L | 23.8 mg/L |
| March 31, 2009 | 018 | 4.0 mg/L | 8.05 mg/L |
| May 31, 2009 | 018 | 4.0 mg/L | 9.5 mg/L |
| May 31, 2009 | 019 | 4.0 mg/L | 8.04 mg/L |
| May 31, 2009 | 019 | 4.0 mg/L | 29.8 mg/L |
| June 30, 2009 | 018 | 4.0 mg/L | 6.89 mg/L |
| June 30, 2009 | 018 | 4.0 mg/L | 8.07 mg/L |
| June 30, 2009 | 019 | 4.0 mg/L | 14.4 mg/L |
| June 30, 2009 | 019 | 4.0 mg/L | 53.8 mg/L |
| July 31, 2009 | 019 | 4.0 mg/L | 57 mg/L |
| July 31, 2009 | 019 | 4.0 mg/L | 61 mg/L |
| July 31, 2009 | 026 | 4.0 mg/L | 8.6 mg/L |
| August 31, 2009 | 019 | 4.0 mg/L | 18 mg/L |
| August 31, 2009 | 019 | 4.0 mg/L | 40.2 mg/L |
| September 30, 2009 | 019 | 4.0 mg/L | 15.2 mg/L |

Electronic Filing - Received, Clerk's Office, May 14, 2010

| | | | |
|--------------------|-----|----------|------------|
| September 30, 2009 | 019 | 4.0 mg/L | 23.27 mg/L |
| September 30, 2009 | 019 | 4.0 mg/L | 29.8 mg/L |

21. Springfield Coal caused or allowed the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|--------------------|----------------|---------------------|-------------------------|
| September 30, 2007 | 009 | 1100 mg/L | 1620 mg/L |
| September 30, 2007 | 009 | 1100 mg/L | 1410 mg/L |
| September 30, 2007 | 009 | 1100 mg/L | 1280 mg/L |
| September 30, 2007 | 018 | 1800 mg/L | 2100 mg/L |
| September 30, 2007 | 018 | 1800 mg/L | 1930 mg/L |
| September 30, 2007 | 019 | 1800 mg/L | 2180 mg/L |
| October 31, 2007 | 009 | 1100 mg/L | 2970 mg/L |
| October 31, 2007 | 009 | 1100 mg/L | 2380 mg/L |
| October 31, 2007 | 009 | 1100 mg/L | 2080 mg/L |
| October 31, 2007 | 018 | 1800 mg/L | 2710 mg/L |
| October 31, 2007 | 018 | 1800 mg/L | 2370 mg/L |
| October 31, 2007 | 018 | 1800 mg/L | 1920 mg/L |
| November 30, 2007 | 009 | 1100 mg/L | 2230 mg/L |
| November 30, 2007 | 009 | 1100 mg/L | 1930 mg/L |
| November 30, 2007 | 009 | 1100 mg/L | 1610 mg/L |
| November 30, 2007 | 018 | 1800 mg/L | 3080 mg/L |
| November 30, 2007 | 018 | 1800 mg/L | 2740 mg/L |
| November 30, 2007 | 018 | 1800 mg/L | 2420 mg/L |
| November 30, 2007 | 019 | 1800 mg/L | 2940 mg/L |
| December 31, 2007 | 009 | 1100 mg/L | 2040 mg/L |
| December 31, 2007 | 009 | 1100 mg/L | 1408 mg/L |
| December 31, 2007 | 018 | 1800 mg/L | 2970 mg/L |
| December 31, 2007 | 018 | 1800 mg/L | 2390 mg/L |
| December 31, 2007 | 018 | 1800 mg/L | 2080 mg/L |
| February 29, 2008 | 009 | 1100 mg/L | 1150 mg/L |
| July 31, 2008 | 024W | 500 mg/L | 531 mg/L |
| November 30, 2008 | 019 | 1800 mg/L | 2190 mg/L |
| December 31, 2008 | 009 | 1100 mg/L | 1400 mg/L |
| December 31, 2008 | 018 | 1800 mg/L | 2380 mg/L |
| December 31, 2008 | 018 | 1800 mg/L | 2130 mg/L |
| December 31, 2008 | 019 | 1800 mg/L | 2920 mg/L |
| February 28, 2009 | 009 | 1100 mg/L | 1230 mg/L |
| February 28, 2009 | 018 | 1800 mg/L | 2570 mg/L |
| March 31, 2009 | 024W | 500 mg/L | 544 mg/L |

| | | | |
|--------------------|------|-----------|-----------|
| April 30, 2009 | 024W | 500 mg/L | 539 mg/L |
| May 31, 2009 | 024W | 500 mg/L | 515 mg/L |
| June 30, 2009 | 019 | 1800 mg/L | 2690 mg/L |
| June 30, 2009 | 026 | 500 mg/L | 818 mg/L |
| June 30, 2009 | 026 | 500 mg/L | 656 mg/L |
| June 30, 2009 | 026 | 500 mg/L | 509 mg/L |
| July 31, 2009 | 009 | 1100 mg/L | 1310 mg/L |
| July 31, 2009 | 009 | 1100 mg/L | 1470 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 |
| July 31, 2009 | 026 | 500 mg/L | 869 mg/L |
| July 31, 2009 | 026 | 500 mg/L | 927 mg/L |
| August 31, 2009 | 009 | 1100 mg/L | 1360 mg/L |
| August 31, 2009 | 009 | 1100 mg/L | 1430 mg/L |
| August 31, 2009 | 018 | 1800 mg/L | 1820 mg/L |
| August 31, 2009 | 019 | 1800 mg/L | 2490 mg/L |
| September 30, 2009 | 009 | 1100 mg/L | 1200 mg/L |
| September 30, 2009 | 009 | 1100 mg/L | 1287 mg/L |
| September 30, 2009 | 009 | 1100 mg/L | 1350 mg/L |
| September 30, 2009 | 018 | 1800 mg/L | 1920 mg/L |
| September 30, 2009 | 019 | 1800 mg/L | 2020 mg/L |
| September 30, 2009 | 019 | 1800 mg/L | 2020 mg/L |
| September 30, 2009 | 019 | 1800 mg/L | 2020 mg/L |
| September 30, 2009 | 026 | 500 mg/L | 692 mg/L |
| September 30, 2009 | 026 | 500 mg/L | 768 mg/L |
| September 30, 2009 | 026 | 500 mg/L | 853 mg/L |

22. Springfield Coal caused or allowed the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| February 2008 | 003 | 35.0 mg/L | 49 mg/L |
| February 2008 | 018 | 35.0 mg/L | 47.7 mg/L |
| February 2008 | 029 | 35.0 mg/L | 64 mg/L |
| January 2009 | 009 | 35.0 mg/L | 44.3 mg/L |

23. Springfield Coal caused or allowed the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

| <u>Date</u> | <u>Outfall</u> | <u>Permit Limit</u> | <u>Actual Discharge</u> |
|-------------------|----------------|---------------------|-------------------------|
| February 29, 2008 | 018 | 70.0 mg/L | 116 mg/L |
| January 31, 2009 | 009 | 70.0 mg/L | 80 mg/L |

24. Springfield Coal caused or allowed the discharge of pH outside of the permitted monthly average effluent limitation range of 6.0 to 9.0 standard units as follows:

| <u>Month/Year</u> | <u>Outfall</u> | <u>Actual Discharge</u> |
|-------------------|----------------|-------------------------|
| May 2009 | 019 | 5.29 |
| June 2009 | 019 | 4.25 |
| July 2009 | 019 | 3.62 |
| July 2009 | 027 | 9.4 |

25. Springfield Coal repeatedly caused or allowed the discharge from the Industry Mine of manganese, sulfates, pH, and TSS, in excess of the effluent limitations imposed by NPDES Permit No. IL0061247.

26. By repeatedly discharging contaminants into waters of the State in violation of the terms or conditions of NPDES Permit No. IL0061247, Springfield Coal has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, SPRINGFIELD COAL COMPANY, LLC:

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

B. Finding that this Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and the regulations as alleged herein;

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

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), award Complainant its reasonable costs in this matter, including attorney's fees and expert witness costs; and

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

COUNT III
WATER POLLUTION VIOLATIONS
FREEMAN UNITED

1-25. Complainant realleges and incorporates herein by reference paragraphs 1 through 25 of Count I as paragraphs 1 through 25 of this Count III.

26. From at least January 2004 until September 2007, Freeman United 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.

27. By so causing or tending to cause water pollution, Freeman United has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully

request that the Board enter an Order against Respondent, FREEMAN UNITED COAL MINING COMPANY, LLC:

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

B. Finding that this Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and the regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum; and

D. Grant such other and further relief as the Board deems appropriate.

COUNT IV
WATER POLLUTION VIOLATIONS
SPRINGFIELD COAL

1-18. Complainant realleges and incorporates herein by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count IV.

19-25. Complainant realleges and incorporates herein by reference paragraphs 19 through 25 of Count II as paragraphs 19 through 25 of this Count IV.

26. Since September 2007, Springfield Coal caused or allowed the discharge of 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.

27. By so causing or tending to cause water pollution, Springfield Coal has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, SPRINGFIELD COAL COMPANY, LLC:

- A. Authorizing a hearing in this matter at which time this Respondent will be required to answer the allegations herein;
- B. Finding that this Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and the regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

COUNT V
WATER QUALITY DEGRADATION VIOLATIONS
SPRINGFIELD COAL

1-18. Complainant realleges and incorporates herein by reference paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count V.

19. 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.

20. 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. . . ."

21. 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. Grindstone Creek is designated as an impaired waters for aquatic life use in the Section 303(d) List due to excessive levels of sulfates. Grindstone Creek was also listed as impaired in the June 2006 Section 303(d) List due to excessive levels of sulfates.

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

31. 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.

32. Since September 8, 2008, Springfield Coal caused or allowed the discharge of sulfates to Grindstone Creek and its tributaries from outfalls 002, 003, 018, and 019 so as to, in combination with effluent from other sources, cause 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).

33. By violating the regulations or standards adopted by the Board under this Act, Springfield Coal has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

34. By violating Special Condition 1 of NPDES Permit No. IL0061247, Springfield Coal has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, SPRINGFIELD COAL COMPANY, LLC:

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

B. Finding that this Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and the regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum; and

D. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
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BY: _____

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