

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 ENVIRONMENTAL LAW AND POLICY)
 CENTER, on behalf of PRAIRIE RIVERS)
 NETWORK and SIERRA CLUB,)
 ILLINOIS CHAPTER,)
)
 Intervenor,)
)
 vs.)
)
 FREEMAN UNITED COAL MINING)
 COMPANY, LLC, a Delaware limited)
 liability company, and SPRINGFIELD)
 COAL COMPANY, LLC, a Delaware)
 limited liability company,)
)
 Respondents.)

PCB No. 10-61 & 11-2
(Water - Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on March 6, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, PEOPLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT, a copy of which is attached hereto and herewith served upon you.


Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: _____


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CERTIFICATE OF SERVICE

I hereby certify that I did on March 6, 2012, cause to be served by United States Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instrument entitled NOTICE OF ELECTRONIC FILING and PEOPLE'S MOTION FOR PARTIAL SUMMARY JUDGMENT upon the Respondents listed on the Service List.



Thomas Davis, Chief
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This filing is submitted on recycled paper.

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 ILLINOIS CHAPTER,)
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 v.)
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 FREEMAN UNITED COAL MINING)
 COMPANY, LLC,)
 a Delaware limited liability company, and)
 SPRINGFIELD COAL COMPANY, LLC,)
 a Delaware limited liability company,)
)
 Respondents.)

**PCB Nos. 2010-061 & 2011-002
(Water-Enforcement)**

PEOPLE’S MOTION FOR PARTIAL SUMMARY JUDGMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for Partial Summary Judgment, pursuant to Section 101.516 of the Board’s Procedural Rules, against the Respondents, FREEMAN UNITED COAL MINING COMPANY, LLC, and SPRINGFIELD COAL COMPANY, LLC, and states as follows:

Introduction

The Complaint filed on February 10, 2010 alleges NPDES permit and water pollution violations at the Industry Mine during the time period January 2005 through December 2009; this motion addresses only the permit violation counts. On April 2, 1999 the Illinois EPA issued

NPDES Permit No. IL0061247 to Freeman United to control the discharges from the Industry Mine into waters of the State, including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries. 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 taken final action regarding the renewal and transfer of the NPDES permit, which remains in effect due to the timely renewal application. NPDES Permit No. IL0061247 was modified most recently on July 21, 2003; a copy of this document is attached. During all times relevant to the Complaint, the Respondents have submitted Discharge Monitoring Reports (“DMRs”) to the Illinois EPA as required by the NPDES Permit.

The Complaint separately alleges in Counts I and II violations by Freeman United and Springfield Coal of the applicable effluent limitations imposed by the NPDES permit. By discharging and exceeding these limitations, the Respondents have violated Section 12(f) of the Act and Section 406.106(b) of the Board’s Mine Related Water Pollution Regulations. The proof of these violations is established by the DMRs. Section 304.104(d) of the Board’s Water Pollution Regulations specifically provides that the proof of violation of effluent limitations contained in a permit shall be based on the language of the permit. Additionally, this Motion for Partial Summary Judgment addresses violations of these effluent limitations reported subsequent to the filing of the Complaint. The pleadings may be amended to conform to this proof or else the evidence may be used in aggravation of the civil penalties to be imposed through this request for partial judgment on the pleadings.

The Respondents filed Answers to the People's Complaint on July 23, 2010. These Answers also pleaded affirmative defenses to which the People have timely responded. In its Answer, Freeman United responds to the substantive effluent allegations with the following denials: "Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations . . . and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further." Freeman United Answer at ¶s 19 – 26 of Count I. Similarly, Springfield Coal has also denied the effluent violations by claiming lack of knowledge and that it "continues to investigate the accuracy of the allegations." Springfield Coal Answer at ¶s 19 – 25 of Count II. These Answers have not been amended or revised to include any admissions.

Since there are no admissions regarding the violations subject to this motion, the People must show that there is no genuine issue of material fact regarding the effluent allegations in the Complaint. The Respondents, however, have already provided substantive evidence of each "exceedance" (i.e., the amount by which something, especially a pollutant, exceeds a standard or permissible measurement) through their submission of Discharge Monitoring Reports. Larry Crislip is the Manager of the Permit Section for the Mine Pollution Control Program of the Illinois EPA has reviewed the DMRs submitted by Freeman United between January 2005 and August 2007 and by Springfield Coal from September 2007 through the present. Mr Crislip's affidavit provides a comprehensive and accurate tabulation of the exceedances generated through a careful comparison of the analytical data reported by the Respondents with the permitted effluent limitations for each pollutant applicable to the various outfalls. This evidence will prove the NPDES permit violations summarized in Counts I and II.

This Motion for Partial Summary Judgment addresses only Counts I and II (plus additional effluent exceedances subsequently reported by Springfield Coal). The relief sought through this motion against each Respondent consists of a finding of repeated violations of Section 12(f) of the Act and applicable regulations, and the imposition of civil penalties and the award of attorney's fees. A hearing on the merits of Counts III and IV, which allege violations of Section 12(a) of the Act resulting from the Mine's effluent discharges, may be conducted after the Board has imposed monetary sanctions on Counts I and II. This Motion for Partial Summary Judgment will properly resolve allegations for which there are no genuine issues of material fact and for which the People are entitled as a matter of law to judgment despite the denials of the Respondents.

Record for Decision

Counts I and II allege a total of 363 reported effluent violations since January 2004. The effluent allegations relate to excessive levels of iron, manganese, sulfates, total suspended solids ("TSS"), and pH in the discharges from the Industry Mine. NPDES Permit No. IL0061247 imposes daily maximum and monthly average limitations for these contaminants for each of the numerous outfalls at the Mine. The Respondents have repeatedly discharged contaminants in excess of the specific permit limits and the proof is in the DMRs. The affidavit for the Illinois EPA by the Manager of the Permit Section for the Mine Pollution Control Program verifies the accuracy of the effluent data reported in the DMRs and thereby establishes that these numerous effluent exceedances have repeatedly violated the NPDES Permit.

In particular, Mr Crislip reviewed the DMRs submitted by Freeman United and compared the analytical data reported therein as to the effluent concentrations of iron, manganese, sulfates,

pH, and TSS discharged from the Industry Mine from January 2004 through August 2007. Similarly, he also reviewed the DMRs submitted by Springfield Coal and compared the analytical data reported therein as to the effluent concentrations of manganese, sulfates, pH, and TSS discharged from the Industry Mine from September 2007 through December 2009. Mr Crislip compared the reported data to the applicable effluent limitations and certified that the documents submitted by the Respondents support the alleged exceedances. In addition to the exceedances reported during these six years (January 2004 through December 2009), Mr Crislip also evaluated the data reported by Springfield Coal since the Complaint was filed, and included any additional violations reported to the Illinois EPA.

The Complaint, the Answers thereto by the Respondents, and the affidavit of Larry Crislip constitute the entire record for decision at this juncture in the State's case. This record shows not only that the violations alleged in Counts I and II occurred but also that the effluent from the Industry Mine continues to exceed the permit limitations.

Argument

Section 101.516(b) of the Board's Procedural Rules provides: "If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." The record is limited but sufficient. In order to assist the Board in its consideration of this summary judgment request, the Complainant has performed a rigorous review of the DMRs and submitted the affidavit of Mr Crislip to verify the accuracy of the effluent quality reported by the Respondents as required by the NPDES Permit. In contrast to an evidentiary presentation at trial, the voluminous documents comprising more

than six years of monthly reports are not presented as exhibits. Instead, Mr Crislip has summarized in his affidavit the substance of what he would testify to regarding the data in the DMRs.

As noted above, the allegations of the Complaint have been denied and no depositions have been taken. Clearly, the information generated by the Respondents from the required sample collection and analyses was reported to the Illinois EPA with the required certification that the information is truthful. The Respondents are not anticipated to challenge the accuracy of the effluent concentration values they have diligently reported month after month without fail, albeit information that shows permit violations and effluent limit exceedances month after month.

The Complainant does, however, anticipate that the Respondents will raise the issue of a Compliance Commitment Agreement (“CCA”) previously accepted by the Illinois EPA on June 16, 2005 and perhaps other information relating to the Illinois EPA’s administrative compliance efforts prior to referral. Freeman United’s Answer alleges a purported affirmative defense regarding this June 2005 CCA (which pertained only to manganese discharges from Pond 19) and the Complainant responded as follows to the factual allegations:

The Complainant admits that the Illinois EPA issued a notice of violation to Freeman United in March 2005. The Complainant admits that the Illinois EPA accepted a compliance commitment agreement on June 16, 2005. The Complainant admits that the Respondent fully complied with the terms of the compliance commitment agreement; however, the Complainant is without knowledge or information to admit or deny that Freeman United “*believed* that it was taking all actions IEPA deemed to be necessary. . . .” The Complainant admits that the Respondent sought to extend the compliance commitment agreement. The Complainant admits that the Illinois EPA rejected the initial request to extend the compliance commitment agreement. The Complainant admits that on August 30, 2007 Freeman United submitted a revised proposal for extending the compliance commitment agreement. The Complainant admits that the Illinois EPA did not respond in writing to the August 30, 2007 revised proposal.

See, Freeman United's Answer, second affirmative defense at p. 19; People's Response (filed July 29, 2011) at p. 4. While Freeman United might have complied with the terms of the CCA through the performance of the designated compliance actions, those actions did not achieve compliance with the NPDES Permit's manganese effluent limitations applicable to Pond 19 (i.e., permitted outfall 019). The legal issue whether any civil penalties may or should be imposed for these particular discharges during the two year term of the June 2005 CCA is not explicitly addressed in the Section 31 provisions, but it is not an issue of fact. In contrast, according to the DMRs evaluated and summarized by Mr Crislip, there is no genuine issue of material fact as to the higher than permissible levels of manganese in the discharges from Pond 19 during and after the CCA.

Springfield Coal's Answer also seeks to raise an affirmative defense regarding a Compliance Commitment Agreement that it alleges was entered into with the Illinois EPA on August 30, 2007; these allegations of fact are denied by the Complainant. See, Springfield Coal's Answer, seventh affirmative defense at p. 21; People's Response (filed July 29, 2011) at p. 4. In other words, the Complainant admits that the June 2005 CCA existed and denies that the August 2007 proposal or extension was ever approved.

The Respondents may contend in their opposition to summary judgment that the disputed facts regarding the CCA are material and thus preclude summary judgment. Such an argument would find little support in the statutes. The newly enacted provision at Section 31(a)(7.6) of the Act ("Successful completion of a Compliance Commitment Agreement or an amended Compliance Commitment Agreement shall be a factor to be weighed, in favor of the person completing the Agreement, by the Office of the Illinois Attorney General in determining whether

to file a complaint for the violations that were the subject of the Agreement.”) clearly shows that even where a violator returned to compliance during a CCA, the statute does not limit the Attorney General’s authority to take enforcement and seek penalties. Here, the CCA accepted by the Illinois EPA on June 16, 2005 addressed only manganese discharges from Pond 19. Freeman United sought a “renewal” of this CCA (which is not specifically authorized by Section 31) but the request was rejected by the Illinois EPA through a letter dated July 13, 2007.

Freeman United may contend that the June 2005 CCA was satisfied and thus no penalties ought to be imposed for the discharges subject to that CCA. This is not relevant to the issue of liability. Any factual contention as to the successful completion of the CCA would require proof but does not raise any genuine issue of material fact. Any argument would address an issue other than whether the reported levels of manganese in the discharges from Pond 19 complied with the permit. To be clear, a likely legal dispute regarding whether monetary sanctions ought to be imposed (for violations subject to an approved Compliance Commitment Agreement) does not mean that the facts of the violation allegations are subject to any dispute. This is so because, whether adjudicated after a contested hearing or through judgment on the pleadings, issues relating to penalties do not become ripe until there is a finding of liability. Therefore, any dispute (legal or factual) as to the satisfaction or completion of the CCA does not preclude summary judgment. The inquiry to establish liability is whether the discharges contained contaminants at levels in excess of permitted limits. As to the successful completion of a Compliance Commitment Agreement, the more precise issue is whether Freeman United’s discharges from Pond 19 during the two year period contained manganese in concentrations above the specified

monthly average and daily maximum limits. The Illinois EPA affidavit shows the six monthly average violations:

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
January 2007	019	2.0 mg/L	7.95 mg/L
February 2007	019	2.0 mg/L	15.2 mg/L
May 2007	019	2.0 mg/L	5.66 mg/L

The affidavit also shows twelve daily maximum violations of the manganese parameter:

June 29, 2005	019	4.0 mg/L	9.26 mg/L
April 19, 2006	019	4.0 mg/L	4.64 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
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
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

Crislip affidavit at pp. 4 & 5. Therefore, the Complainant is seeking a finding of liability on a total of eighteen manganese effluent violations which were reported during the two years following acceptance of the CCA for Pond 19. Whether civil penalties are to be imposed for these particular manganese violations reported from June 2005 through May 2007 is a matter within the Board's discretion in the context of Sections 33(c) and 42(h) of the Act.

The record for decision includes the assertion of affirmative defenses by the Respondents and the admissions and denials of any factual allegations by the Complainant. However, the mere assertion of affirmative defenses does not create a disputed material fact, especially where the Complainant's responses challenge the factual sufficiency and legal validity of such purported

defenses. The burden of proof as to any particular affirmative defense is upon the party asserting the defense. The factual allegations admitted by the Complainant may be considered by the Board but not any of the facts alleged by the Respondents that were denied by the Complainant.

In summary, the Crislip affidavit verifies that the effluent exceedances alleged in the Complaint are based solely upon discharge monitoring data generated and reported by the Respondents. This is no genuine issue of material fact as to any of these numerous and repeated violations of the permit limits. The Complainant is entitled to judgment as a matter of law.

Statutory Support for Relief Requested

The Complainant seeks the imposition of civil penalties for the violations alleged in Counts I and II and for which summary judgment is requested. The arguments supporting penalties to be imposed through summary judgment are based upon the number and nature of the violations, and the application of the Section 33(c) factors and the Section 42(h) criteria. Our arguments and rationale for penalties will necessarily be constrained by the record for summary judgment purposes. Counts III and IV are to be proved at trial upon a record to be developed through evidentiary and testimonial presentations. The allegations of Counts I and II, proven here by the Crislip affidavit, are that the Respondents violated the NPDES Permit by repeatedly discharging from the several sedimentation ponds and other outfalls effluent containing contaminants in excess of the permitted limits. In contrast, the proof to be adduced regarding the Section 12(a) violations alleged in Counts III and IV will establish through expert testimony the environmental impacts of these effluent discharges.

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

In making its orders and determinations, the Board shall take into consideration

all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

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

In response to these statutory factors, the Complainant submits that “the character, and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people” may be inferred from the sheer number and frequency of the reported effluent exceedances, the extent to which permit limits were exceeded, and the simple repetition of such violations. Although the record as it exists does not address any legal authorization other than the NPDES Permit, the Board will understand that the Illinois Department of Natural Resources, Office of Mines and Minerals, must have permitted the Respondents to operate the Industry Mine. Therefore, the Complainant simply acknowledges that there is some social and economic benefit to any particular coal mine and that the operation of the Industry Mine has been determined by the Department through its issuance of a mining permit as suitable for the area in which it is located.

Likewise, the technical practicability and economic reasonableness of reducing or eliminating the discharges resulting from such pollution source are not in dispute. In other words,

compliance with the NPDES Permit is both practical and reasonable, and this is demonstrated by the fact that Freeman United was issued NPDES Permit No. IL0061247 and did not appeal it, and by the fact that Springfield Coal submitted to the Illinois EPA on August 14, 2007 a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. The prevalence of sedimentation ponds at coal mines throughout Illinois also demonstrates the technical practicability and economic reasonableness of this approach to permit compliance. Lastly, the extent to which there has been any subsequent compliance may be inferred from any trends in the DMR data.

The Board is required by Section 33(c) to consider the reasonableness of the discharges from the Industry Mine in the context of the factors discussed above. The record for summary judgment is sufficient for purposes of fixing liability for the Section 12(f) violations alleged in Counts I and II, and there is ample information in the record for the imposition of civil penalties. Section 42(h) of the Act, 415 ILCS 5/42(h), provides in pertinent part as follows:

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

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

Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;

* * *

The duration and gravity of the violations are clearly evident from the Crislip affidavit and the NPDES permit included therein. During the time period from January 2004 through December 2009, according to the verified information attached to this motion, there have been at least 381 reported effluent violations at the Industry Mine; the Board may note that 363 effluent violations are alleged in the Complaint. As detailed by Mr Crislip in his affidavit, during 2010 and 2011 Springfield Coal reported at least 65 effluent violations that have occurred subsequent to the Complaint being filed. These additional violations may properly be considered either in aggravation of the penalty to be imposed against Springfield Coal or as additional substantive violations thereby also increasing the penalty to be imposed.

Each Respondent's lack of diligence in correcting its noncompliance with the NPDES permit effluent limitations may also be inferred by the verified information set forth in the affidavit. The question regarding the existence of an economic benefit by delaying expenditures necessary to achieve and maintain compliance with the NPDES permit might be answered in the affirmative but the record does not allow any such cost savings to be quantified.

The matter of previously adjudicated violations may easily be addressed by reference to the Board's own records of which it may properly take notice. Springfield Coal has no previous violations of the Act, but a finding of violation was entered against Freeman United on February 7, 1980 in PCB 75-488.

In summary, the Board should find pursuant to Section 33(c) that, due to the eight years of effluent exceedances reported by the Respondents, these discharges from the Industry Mine are not reasonable, have substantially interfered with the protection of the general welfare, and were both technically practicable and economically reasonable to control. The matters of record may be applied in aggravation of civil penalties pursuant to the applicable criteria of Section 42(h). Any information alleged in response to the People's Motion for Partial Summary Judgment must be either supported by counter-affidavits or ignored by the Board.

Penalty Calculations and Recommendations

The Board's adjudicatory practices have evolved over its four decades. The critical issue of penalty imposition has also received appellate scrutiny and legislative revision. As a fundamental matter, since the Board is a creature of statute without the inherent discretion and intrinsic powers of the courts, the Board may only exercise the authority granted by the Legislature. In the context of penalty imposition, the Board is constrained to consider the factors set forth in Section 33(c) and 42(h) of the Act. See, e.g., *People v. Gilmer*, PCB 99-27 (August 24, 2000). For instance, the unreasonableness of the alleged pollution is to be assessed by taking the Section 33(c) factors into account. See, e.g., *Wells Manufacturing Company v. Pollution Control Board*, 73 Ill. 2d 226 (1978). Section 42(h) expressly authorizes the Board to consider the Section 42(h) criteria to determine an appropriate penalty.

The Board is cognizant that no formula to derive a penalty exists; all the relevant facts and circumstances in any given must be reviewed. *Gilmer*, PCB 99-27 slip. op. at 8. Once liability is somehow established, the case-specific facts in the record are utilized as matters in aggravation or mitigation of the penalty to be imposed. The Board has consistently reiterated its

position that the statutory maximum penalty “is a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts.” *People v. Byrom Ward and Timothy James*, PCB 10-72 (November 17, 2011), slip. op. at 9 and *Gilmer*, PCB 99-27 slip. op. at 8, both quoting *IEPA v. Allen Barry*, PCB 88-71 (May 10, 1990), slip. op. at 72. The *Allen Barry* opinion also articulated the Board’s concerns for fairness and consistency in the imposition of civil penalties, and the usefulness of looking to the resolution of similar violations in previous enforcement matters: “In deriving a range of appropriate penalties, the Board may also consider the penalties for similar offenses which have been imposed in other forums (federal and other states). The Board may also consider relevant any penalties imposed by Illinois courts or the Board in similar circumstances.” *Ibid*.

For purposes of summary judgment on Counts I and II, the Complainant will abide with this approach to calculate a maximum civil penalty for each Respondent. Section 42(b)(1) of the Act provides the specific penalty authority for the NPDES Permit violations alleged in Counts I and II: “Any person that violates Section 12(f) of this Act or any NPDES permit or term or condition thereof . . . shall be liable to a civil penalty of not to exceed \$10,000 per day of violation.” The Crislip affidavit documents a total of 381 reported effluent violations since January 2004. The maximum total penalty for the violations pleaded in the Complaint and subject to summary judgment is \$3,810,000. The violations reported during 2010 and 2011 total 65 in number and would add \$650,000 in potential maximum penalties. As noted above, this evidence of these additional exceedances may either support findings of violation and liability (and the pleadings may be amended to conform to the proof) or else used as evidence in aggravation of penalty. The appropriate penalties to be derived for Counts I and II must be

justified upon the facts in the record and this total maximum amount (\$4,460,000) is merely suggested as the uppermost range.

There are sufficient facts in the record to impose a specific penalty for each Respondent. The Board may easily review the effluent data set forth in the Illinois EPA affidavit and compare the concentration values reported in the DMRs with the limits imposed in the NPDES Permit. In order to assist this calculation, the People suggest a simplistic approach. For each reported violation of a daily maximum limit, a somewhat nominal penalty of \$1,000 is requested. One rationale for this component is the possibility that the daily limit may be exceeded due to causes which might not persist long enough to result in monthly average violations. The Board will also note that the Respondents occasionally reported more than one analytical result for the same contaminant from the same outfall on the same day. Where the monthly average limitation is exceeded, however, a higher penalty ought to be imposed in order to deter further violations by both Freeman United and Springfield Coal, and to otherwise aid in enhancing voluntary compliance with this Act by these Respondents and other persons similarly subject to the Act. A penalty of at least \$5,000 for each violation of a monthly limit is also reasonable.

Since pH must not go below 6.0 or above 9.0 at any time, this limit would seem to be analogous to a daily limit. The Complainant suggests, however, that a \$5,000 penalty be imposed for each pH violation. One important reason is the nature of the pollution source, i.e. acid mine drainage. The threat of water pollution arises from the strip mining and processing of coal because of the chemistry involved. Since the coal in Illinois is typically high in sulfur, high sulfate levels in the effluent are not surprising. The concentration levels of other inorganic contaminants such as iron and manganese in the mine effluent typically increase as pH decreases.

On the other hand, excessive alkalinity in the discharges may evince operational or treatment problems in the sedimentation ponds. Even isolated or acute deviations from the permitted pH range may well be indicative of more persistent or chronic problems.

The violations by Freeman United are alleged from January 2004 through August 2007.

The DMRs and the affidavit in support of summary judgment provide the factual support for the following penalty calculations:

Iron	monthly average:	4	@ \$5,000	=	\$ 20,000
Iron	daily maximum:	30	@ \$1,000	=	\$ 30,000
Manganese	monthly average:	17	@ \$5,000	=	\$ 85,000
Manganese	daily maximum:	54	@ \$1,000	=	\$ 54,000
Sulfates	daily maximum:	103	@ \$1,000	=	\$103,000
TSS	monthly average:	4	@ \$5,000	=	\$ 20,000
TSS	daily maximum:	9	@ \$1,000	=	\$ 9,000
pH		4	@ \$5,000	=	\$ 20,000
Totals:		225			\$341,000

The violations by Springfield Coal reported from September 2007 through December 2009 will be combined with the additional violations since the filing of the Complaint. The DMRs and the affidavit in support of summary judgment provide the factual support for the following penalty calculations:

Manganese	monthly average:	46	@ \$5,000	=	\$230,000
Manganese	daily maximum:	35	@ \$1,000	=	\$ 35,000
Sulfates	daily maximum:	103	@ \$1,000	=	\$103,000

TSS	monthly average:	11	@ \$5,000	=	\$ 55,000
TSS	daily maximum:	6	@ \$1,000	=	\$ 6,000
pH		8	@ \$5,000	=	\$ 40,000
Iron	monthly average:	4	@ \$5,000	=	\$ 20,000
Iron	daily maximum:	7	@ \$1,000	=	\$ 7,000
Totals:		220			\$496,000

The Complainant recommends a penalty of \$341,000 to be imposed against Freeman United for 225 effluent violations alleged in Count I (as supported by the Crislip affidavit). The Complainant recommends a penalty of \$496,000 to be imposed against Springfield Coal for the 220 effluent violations alleged in Count II or occurring subsequent to the Complaint (as supported by the Crislip affidavit). In making these recommendations, the Complainant is fully aware that a hundred thousand dollar penalty for effluent violations by any operator of an Illinois coal mine exceeds all of the previous penalties imposed by Illinois courts or the Board in similar circumstances. The enforcement of environmental violations at coal mines in proceedings before the Board was much more prevalent before the enactment of the Illinois Surface Coal Mining Land Conservation and Reclamation Act (P.A. 81-1015, effective June 1, 1980). These old cases resulted in fairly marginal penalties.

The past is prologue, and the Board must confront the realities of the present and determine that hundreds of repeated effluent exceedances are indeed unreasonable under Section 33(c). Pursuant to Section 42(h)(4), the amount of monetary penalty which will serve to deter further violations by the Respondents and to otherwise aid in enhancing voluntary compliance with this Act by the Respondents and other coal mines must also be determined. The Board must

exercise its discretion to assess an appropriate penalty for each violator, and the State's recommendations of \$341,000 against Freeman United and \$496,000 against Springfield Coal are intended as reasonable sanctions for violations over an eight year period.

WHEREFORE, the People of the State of Illinois respectfully request that the Motion for Partial Summary Judgment be allowed and the relief sought herein be granted.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

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Dated: 3/06/12

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)
 Respondents.)

**PCB No. 2010-061
(Water-Enforcement)**

AFFIDAVIT OF LARRY CRISLIP

Upon penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true:

1. I, LARRY CRISLIP, am employed by the Illinois Environmental Protection Agency as the Manager of the Permit Section for the Mine Pollution Control Program. My business address is 2309 West Main Street, Marion, Illinois.

2. On April 2, 1999 the Illinois EPA issued NPDES Permit No. IL0061247 to Freeman United to control the discharges from the Industry Mine into waters of the State,

including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries. 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 taken final action regarding the renewal and transfer of the NPDES permit.

3. NPDES Permit No. IL0061247 was most recently modified on July 21, 2003 and, due to the timely renewal application, remains in effect. A true and accurate copy of this permit is attached as an exhibit to my affidavit, and the terms and conditions of this permit are herein incorporated by reference. According to Section 304.104(d) of the Board's Water Pollution Regulations, the proof of violation of effluent limitations contained in a permit shall be based on the language of the permit. Each Respondent has reported effluent data for each required parameter within Discharge Monitoring Reports (DMRs) in accordance with Standard Condition 12 of NPDES Permit No. IL0061247. For the purpose of this affidavit and in order to convey the effluent data in a more concise way than submitting a copy of each DMR, I have organized and tabulated the pertinent data reported by each Respondent.

4. I have reviewed the DMRs submitted by Freeman United and compared the analytical data reported therein with the applicable effluent limitations in the NPDES Permit as to the effluent concentrations of iron, manganese, sulfates, pH, and TSS discharged from the Industry Mine into waters of the State from January 2004 through August 2007. As explained above, I have transcribed the data reported in the DMRs into the tables set forth below. To the extent that any reporting inconsistencies or ambiguities may exist, or erroneous information may

need correction, Freeman United is obligated to correct such problems by Standard Condition 12(e) of NPDES Permit No. IL0061247. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that:

A. Freeman United reported 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>
June 2004	029	3.0 mg/L	26.0 mg/L
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

B. Freeman United reported 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

C. Freeman United reported 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
June 2005	018	2.0 mg/L	6.66 mg/L
June 2005	019	2.0 mg/L	5.78 mg/L
April 2006	018	2.0 mg/L	2.32 mg/L
April 2006	019	2.0 mg/L	3.07 mg/L
April 2006	026	2.0 mg/L	7.01 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

D. Freeman United reported 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 , 2004	019	4.0 mg/L	7.38 mg/L

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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 , 2004	019	4.0 mg/L	9.18 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
March , 2005	018	4.0 mg/L	11.6 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

E. Freeman United reported 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>
January 15, 2004	003	1100 mg/L	1190 mg/L
February , 2004	003	1100 mg/L	1600 mg/L
February , 2004	018	1100 mg/L	1880 mg/L
February , 2004	018	1100 mg/L	2000 mg/L
May 19, 2004	003	1100 mg/L	1120 mg/L
May 24, 2004	003	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

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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
April 25, 2006	024W	500 mg/L	628 mg/L
April 25, 2006	026	500 mg/L	536 mg/L
April 26, 2006	024W	500 mg/L	558 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

F. Freeman United reported 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

G. Freeman United reported 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	99 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

H. Freeman United reported the discharge of pH outside of the permitted 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

5. I have reviewed the Discharge Monitoring Reports submitted by Springfield Coal and compared the analytical data reported therein with the applicable effluent limitations in the NPDES Permit as to the effluent concentrations of manganese, sulfates, pH, TSS, and iron discharged from the Industry Mine into waters of the State from September 2007 through the present. As explained above, I have transcribed the data reported in the DMRs into the tables set forth below. To the extent that any reporting inconsistencies or ambiguities may exist, or erroneous information may need correction, Springfield Coal is obligated to correct such

problems by Standard Condition 12(e) of NPDES Permit No. IL0061247. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that:

A. Springfield Coal reported 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
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
September 2009	019	2.0 mg/L	23.27 mg/L
September 2009	024W	2.0 mg/L	3.18 mg/L

October 2009	018	2.0 mg/L	3.817 mg/L
October 2009	019	2.0 mg/L	20.87 mg/L
October 2009	026	2.0 mg/L	2.41 mg/L
October 2009	024W	2.0 mg/L	2.41 mg/L
November 2009	018	2.0 mg/L	10.0 mg/L
November 2009	019	2.0 mg/L	29 mg/L
December 2009	018	2.0 mg/L	13.6 mg/L
December 2009	009	2.0 mg/L	2.437 mg/L

B. Springfield Coal reported 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, 2011	018	4.0 mg/L	4.8 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
September 30, 2009	019	4.0 mg/L	23.27 mg/L
September 30, 2009	019	4.0 mg/L	29.8 mg/L

October 2009	018	4.0 mg/L	5.19 mg/L
October 2009	019	4.0 mg/L	35.4 mg/L
November 2009	018	4.0 mg/L	12.3 mg/L
November 2009	019	4.0 mg/L	32.7 mg/L
December 31, 2009	018	4.0 mg/L	14.1 mg/L

C. Springfield Coal reported 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	026	500 mg/L	539 mg/L
May 31, 2009	026	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	018	1800 mg/L	2200 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	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
October 31, 2009	009	1100 mg/L	1260 mg/L
October 31, 2009	019	1800 mg/L	1900 mg/L
October 31, 2009	026	500 mg/L	694 mg/L
October 31, 2009	030	1100 mg/L	1150 mg/L

D. Springfield Coal reported 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
November 2009	031	35.0 mg/L	63.7 mg/L

E. Springfield Coal reported 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
November 2009	031	70.0 mg/L	89.0 mg/L

F. Springfield Coal caused or allowed the discharge of pH outside of the permitted 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
September 2009	022	9.58
December 2009	019	9.15

G. Springfield Coal reported 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>
November 2009	031	3.0 mg/L	11.85 mg/L
December 2009	031	3.0 mg/L	5.24 mg/L
December 2009	033	3.0 mg/L	8.133 mg/L

H. Springfield Coal reported 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>
November 2009	031	6.0 mg/L	15.4 mg/L

December 2009 033 6.0 mg/L 12.8 mg/L

6. I have compared these effluent data tabulations with the information set forth in Counts I and II of the Complaint and found additional effluent data not included in the allegations of violation; these data are set forth in this affidavit and I am informed by legal counsel that the Complaint may be amended to conform to the proof.

7. I have also reviewed the Discharge Monitoring Reports submitted by Springfield Coal after the Complaint was filed with the Pollution Control Board in February 2010. I compared the analytical data reported therein as to the effluent concentrations of contaminants discharged from the Industry Mine into waters of the State during 2010 and 2011. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that, in addition to the violations pleaded in the Complaint:

A. Springfield Coal reported 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>
March 2010	018	2.0 mg/L	2.39 mg/L
September 2010	019	2.0 mg/L	2.02 mg/L
October 2010	018	2.0 mg/L	2.23 mg/L
March 2011	009	2.0 mg/L	3.6 mg/L
March 2011	018	2.0 mg/L	2.92 mg/L
March 2011	024W	2.0 mg/L	2.38 mg/L
September 2011	018	2.0 mg/L	2.13 mg/L

B. Springfield Coal reported 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>
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January 2010	026	4.0 mg/L	6.84 mg/L
January 2011	018	4.0 mg/L	6.73 mg/L

C. Springfield Coal reported 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>
January 2010	026	500 mg/L	715 mg/L
February 2010	024W	500 mg/L	510 mg/L
February 2010	026	500 mg/L	566 mg/L
March 2010	009	1100 mg/L	1230 mg/L
May 2010	026	500 mg/L	672 mg/L
June 2010	026	500 mg/L	693 mg/L
July 2010	026	500 mg/L	1120 mg/L
August 2010	026	500 mg/L	1500 mg/L
September 2010	009	1100 mg/L	1290 mg/L
September 2010	026	500 mg/L	1100 mg/L
September 2010	030	1100 mg/L	1110 mg/L
October 2010	009	1100 mg/L	1260 mg/L
October 2010	026	500 mg/L	1170 mg/L
October 2010	030	1100 mg/L	1190 mg/L
November 2010	009	1100 mg/L	1500 mg/L
November 2010	026	500 mg/L	1240 mg/L
November 2010	030	1100 mg/L	1170 mg/L
November 2010	24W	500 mg/L	612 mg/L
December 2010	009	1100 mg/L	1700 mg/L
December 2010	026	500 mg/L	1520 mg/L
December 2010	030	1100 mg/L	1260 mg/L
December 2010	24W	500 mg/L	730 mg/L
January 2011	026	500 mg/L	736 mg/L
January 2011	030	1100 mg/L	1140 mg/L
January 2011	24W	500 mg/L	617 mg/L
March 2011	009	1100 mg/L	1230 mg/L
March 2011	026	500 mg/L	871 mg/L
August 2011	009	1100 mg/L	1550 mg/L
September 2011	009	1100 mg/L	1590 mg/L
September 2011	018	1800 mg/L	2410 mg/L
September 2011	019	1800 mg/L	2790 mg/L
October 2011	009	1100 mg/L	1600 mg/L
October 2011	018	1800 mg/L	2920 mg/L
October 2011	030	1100 mg/L	1140 mg/L

November 2011	009	1100 mg/L	1460 mg/L
November 2011	026	500 mg/L	751 mg/L
December 2011	009	1100 mg/L	1280 mg/L
December 2011	018	1800 mg/L	2070 mg/L
December 2011	026	500 mg/L	1010 mg/L

D. Springfield Coal reported 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 2010	031	35.0 mg/L	45.7 mg/L
February 2010	033	35.0 mg/L	40.3 mg/L
March 2010	031	35.0 mg/L	42.5 mg/L
March 2010	033	35.0 mg/L	37 mg/L
March 2011	031	35.0 mg/L	63.0 mg/L
March 2011	035	35.0 mg/L	38 mg/L

E. Springfield Coal reported 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 2010	031	70.0 mg/L	73 mg/L
February 2011	031	70.0 mg/L	120.0 mg/L
March 2011	031	70.0 mg/L	87.0 mg/L

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

<u>Month/Year</u>	<u>Outfall</u>	<u>Actual Discharge</u>
March 2010	019	9.04
June 2010	021	3.9

G. Springfield Coal reported the discharge of iron in excess of the permitted effluent limitations as follows:

<u>Month/Year</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
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January 2010	018P	7.0 mg/L	7.88 mg/L
January 2010	031	7.0 mg/L	15.9 mg/L
March 2011	018	7.0 mg/L	7.88 mg/L
March 2011	031	3.0 mg/L	4.7 mg/L
June 2010	031	6.0 mg/L	6.22 mg/L
June 2010	033	6.0 mg/L	7.53 mg/L

8. Based upon my review of these more recent Discharge Monitoring Reports, on several occasions during 2010 and 2011 Springfield Coal has either failed to adequately report the effluent concentrations of manganese discharged from the Industry Mine into waters of the State or failed to collect the necessary amount of samples to satisfy the reporting requirements of the NPDES permit.

9. The Illinois EPA relies upon the validity of all data reported in the Discharge Monitoring Reports because the NPDES permit mandates monitoring test procedures to ensure scientific reliability and because State and federal laws prohibit false reporting.

Date: 3-1-2012

/s/


LARRY CRISLIP

NPDES Permit No. IL0061247

Illinois Environmental Protection Agency

Division of Water Pollution Control

1021 North Grand Avenue, East

P.O. Box 19276

Springfield, Illinois 62794-9276

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Modified NPDES Permit

Expiration Date: February 28, 2004

Issue Date: April 2, 1999

Effective Date: April 2, 1999

Modification Date: March 9, 2000

Modification Date: December 11, 2000

Modification Date: July 21, 2003

Name and Address of Permittee:

Freeman United Coal Mining Company
1480 East 1200th Street
P.O. Box 260
Industry, IL 61440

Facility Name and Address:

Freeman United Coal Mining Company
Industry Mine
5 miles southwest of Industry, Illinois
(McDonough and Schuyler Counties)

Discharge Number and Name:

002 - Acid Mine Drainage
Discharge from Preparation Plant

Receiving waters

Unnamed tributary to Grindstone Creek

003-Surface Acid Mine Drainage

Grindstone Creek

018, 019, 020, 021-Surface Acid Mine Drainage

Unnamed tributary to Grindstone Creek

009, 024W, 026-Surface Acid Mine Drainage

Willow Creek

022-Surface Acid Mine Drainage

Unnamed tributary to Camp Creek

029, 030-Alkaline Mine Drainage

Unnamed 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

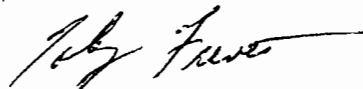
Willow Creek

017-Stormwater Discharge

Grindstone Creek

In compliance with the provisions of the Illinois Environmental Protection Act, Subtitle C and/or Subtitle D Rules and Regulations of the Illinois Pollution Control Board, and the Clean Water Act, the above-named permittee is hereby authorized to discharge at the above location to the above-named receiving stream in accordance with the standard conditions and attachments herein.

Permittee is not authorized to discharge after the above expiration date. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit the proper application as required by the Illinois Environmental Protection Agency (IEPA) not later than 180 days prior to the expiration date.


Toby Frevert, Manager
Division of Water Pollution Control
Bureau of Water

REM:LDC:jkb/2728c/03-31-03

NPDES Coal Mine Permit
 NPDES Permit No. IL0061247
 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfalls*: 002 (Acid Mine Drainage)

PARAMETER	LOAD LIMITS (lbs/day)	CONCENTRATION LIMITS (mg/l)	SAMPLE FREQUENCY	SAMPLE TYPE
Flow (MGD)			Measure When Monitoring	
Total Suspended Solids	35.0	70.0	***	Grab
Iron (total)	3.5	7.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity		1/month	Grab
Sulfates		1100	***	Grab
Chlorides		500	***	Grab
Manganese (total)	2.0	4.0	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 1-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 1-year, 24-hour precipitation event for this area is considered to be 2.52 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event is considered to be 4.45 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfalls*: 003, 009 (Acid Mine Drainage)

PARAMETER	LOAD LIMITS (lbs/day)	CONCENTRATION LIMITS (mg/l)	SAMPLE FREQUENCY	SAMPLE TYPE
Flow (MGD)			Measure When Monitoring	
Total Suspended Solids		35.0 / 70.0	***	Grab
Iron (total)		3.5 / 7.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		3/month	Grab
Alkalinity/Acidity	Total acidity shall not exceed total alkalinity		1/month	Grab
Sulfates		1100	***	Grab
Chlorides		500	***	Grab
Manganese (total)		2.0 / 4.0	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
Iron (total)	7.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit
 NPDES Permit No. IL0061247
 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfalls*: 018, 019 (Acid Mine Drainage)

Flow (MGD)			Measure When Monitoring	
Total Suspended Solids	35.0	70.0	***	Grab
Iron (total)	3.5	7.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity		1/month	Grab
Sulfates		1800	***	Grab
Chlorides		500	***	Grab
Manganese (total)	2.0	4.0	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

***. There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

Pollutant or Pollutant Property	Effluent Limitations
Iron	7.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

Pollutant or Pollutant Property	Effluent Limitations
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:

Outfalls: 020, 021, 022, 024W, 026 (Acid Mine Drainage)

Flow (MGD)			Measure When Monitoring	
Total Suspended Solids	35.0	70.0	***	Grab
Iron (total)	3.0	6.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity		1/month	Grab
Sulfates		500	***	Grab
Chlorides		500	***	Grab
Manganese (total)	2.0	4.0	***	Grab

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
Iron	6.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:

Outfalls*: 029, 030, 031, 032, 033, 035 (Alkaline Mine Drainage)

Flow (MGD)			Measure When Monitoring		
Total Suspended Solids		35.0	70.0	***	Grab
Iron (total)		3.0	6.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0			1/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity			1/month	Grab
Sulfates			1100	***	Grab
Chlorides			500	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt or equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property

Settleable Solids
pH

Effluent Limitations

0.5 ml/l daily maximum
6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(a), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt or equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

Pollutant or Pollutant Property

pH

Effluent Limitations

6.0 - 9.0 at all times

NPDES Coal Mine Permit
 NPDES Permit No. IL0061247
 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:

Outfalls: 004, 008, 027 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids	0.5 ml/l	1/month	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0	1/month	Grab
Sulfates	500	1/month	Grab
Chlorides	500	1/month	Grab

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property
 pH

Effluent Limitations
 6.0 - 9.0 at all times

NPDES Coal Mine Permit
 NPDES Permit No. IL0061247
 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day		CONCENTRATION LIMITS mg/l		SAMPLE FREQUENCY	SAMPLE TYPE
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:

Outfalls*: 006 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids		0.5 ml/l	1/month Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		1/month Grab
Sulfates		1100	1/month Grab
Chlorides		500	1/month Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property
 pH

Effluent Limitations
 6.0 - 9.0 at all times

NPDES Coal Mine Permit

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Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:

Outfalls*: 005, 007, 010, 011 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids	0.5 ml/l	1/month	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0	1/month	Grab
Sulfates	1800	1/month	Grab
Chlorides	500	1/month	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property
pH

Effluent Limitations
6.0 - 9.0 at all times

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

Upon completion of Special Condition 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:

Outfalls: 020, 021, 022, 024W, 026 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids		0.5 ml/l	1/month Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		1/month Grab
Sulfates		500	1/month Grab
Chlorides		500	1/month Grab

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property
pH

Effluent Limitations
6.0 - 9.0 at all times

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 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day		CONCENTRATION LIMITS mg/l		SAMPLE FREQUENCY	SAMPLE TYPE
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

Upon completion of Special Condition No. 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:

Outfalls*: 002, 003, 009, 029, 030, 031, 032, 033, 035 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids		0.5 ml/l	1/month Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		1/month Grab
Sulfates		1100	1/month Grab
Chlorides		500	1/month Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

<u>Pollutant or Pollutant Property</u>	<u>Effluent Limitations</u>
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit
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 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

Upon completion of Special Condition No. 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:

Outfalls*: 018, 019 (Reclamation Area Drainage)

Flow (MGD)		Measure When Monitoring	
Settleable Solids		0.5 ml/l	1/month Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0		1/month Grab
Sulfates		1800	1/month Grab
Chlorides		500	1/month Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property
 pH

Effluent Limitations
 6.0 - 9.0 at all times

NPDES Coal Mine Permit
 NPDES Permit No. IL0061247
 Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS		CONCENTRATION		SAMPLE FREQUENCY	SAMPLE TYPE
	lbs/day		LIMITS mg/l			
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		

From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:

	Outfall:	017 (Stormwater Discharge)					
Settleable Solids			0.5 ml/l		1/Year	Grab	
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/Year	Grab	

Storm water discharge monitoring is subject to the following reporting requirements:

Analysis of samples must be submitted with second quarter Discharge Monitoring Reports.

If discharges can be shown to be similar, a plan may be submitted by November 1 of each year preceding sampling to propose grouping of similar discharges and/or updated previously submitted groupings. If updating of a previously submitted plan is not necessary, a written notification to the Agency, indicating such is required. Upon approval from the Agency, one representative sample for each group may be submitted.

Annual storm water monitoring is required for all discharges until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day		CONCENTRATION LIMITS mg/l		SAMPLE FREQUENCY	SAMPLE TYPE
	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM		
Settleable Solids				0.5 ml/l	1/Year	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/Year	Grab

Upon completion of Special Condition No. 9 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:

Outfalls: 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 018, 019
020, 021, 024, 026, 027, 029, 030, 031, 032, 033, 035 (Stormwater Discharge)

Storm water discharge monitoring is subject to the following reporting requirements:

Analysis of samples must be submitted with second quarter Discharge Monitoring Reports.

If discharges can be shown to be similar, a plan may be submitted by November 1 of each year preceding sampling to propose grouping of similar discharges and/or updated previously submitted groupings. If updating of a previously submitted plan is not necessary, a written notification to the Agency, indicating such is required. Upon approval from the Agency, one representative sample for each group may be submitted.

Annual storm water monitoring is required for all discharges until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

NPDES Permit No. IL0061247

Construction Authorization No.: 0368-98

C.A. Date: January 13, 1999

Engineer: Craig Schoonover, P.E.

Authorization is hereby granted to the above designee to construct the mine and mine refuse area described as follows:

A surface coal mining operation consisting of 4548.0 acres located in Sections 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36, T4N, R3W, and Sections 19 and 30 in T4N, R2W of McDonough County; and 474.5 acres in Section 2 and 3 in T3N, R3W, Schuyler County.

The operations consist of strip mining, coal processing, support facilities, refuse disposal areas, and surface drainage control facilities. Sediment pond and Outfall classifications are as follows:

<u>Discharge No.</u>	<u>Classification</u>	<u>Receiving Waters</u>
002	Acid Mine Drainage from Coal Refuse Piles	Grindstone Creek
003, 018, 019, 020, 021	Non-Controlled Acid Mine Drainage	Grindstone Creek
022	Non-Controlled Acid Mine Drainage	Camp Creek
009, 024W, 025, 026	Non-Controlled Acid Mine Drainage	Willow Creek
004, 005, 006, 007, 008, 010, 011	Reclamation Area Drainage	Grindstone Creek
017	Stormwater Discharge	Grindstone Creek

Grindstone Creek is tributary to Camp Creek, tributary to LaMoine River. Willow Creek is tributary to LaMoine River.

Pond 017 may be converted to a dry dam as proposed in Log No. 4061-94. The discharge will be classified as a stormwater discharge.

The preparation plant facilities are revised to include a blending conveyor and a 25-ton capacity truck hopper as described in Log No. 4286-94.

Outfall 019 is reclassified as acid mine drainage as proposed in Log No. 3259-95

An additional surface mining area, identified as IDNR/OMM Permit Area No. 305, is incorporated as proposed in Log No. 1099-97, 1099-97-A and 1099-97-B. This IDNR/OMM permit area contains 255.0 acres in Section 2, T3N, R3W, Schuyler County; however, due to overlapping OMM permit areas, only 104.5 acres is added to this NPDES permit and is included in the above totals.

Drainage from disturbed areas in OMM Permit Area No. 305 will report to Ponds 009 and 024W, which are classified acid mine drainage and report to Willow Creek.

Three groundwater monitoring wells shall be installed around a coal combustion by-product beneficial use area as proposed in Log No. 1062-97 (OMM Permit No. 261, Insignificant Permit Revision (IPR) No. 10). These monitoring wells are for the Permittee's use and data collection only. Monitoring data from these wells is not required to be submitted to the Agency. Haul roads to the beneficial use area will be modified as proposed in Log No. 2300-96 (OMM Permit No. 261, IPR No. 7 and OMM Permit No. 16, IPR No. 36).

Two areas of 22 acres and 7 acres, previously designated as support areas, are incorporated into the mining area as proposed in Log Nos. 1230-97 (OMM Permit No. 261, IPR No. 13) and 1252-97 (OMM Permit 261, IPR No. 14), respectively.

Soda ash briquets may be used to neutralize acidic water in Pond 019 as proposed in Log No. 1394-97.

The operations plan is modified as proposed in Log No. 0006-98, identified as Revision No. 4 to OMM Permit No. 16, Revision No. 1 to OMM Permit No. 180 and Revision No. 1 to OMM Permit No. 261. No additional area or Outfalls are added with these modifications.

NPDES Permit No. IL0061247

Construction Authorization No.: 0368-98

C.A. Date: January 13, 1999

Reclamation plans for the final cut lake in OMM Permit No. 16 area as proposed in Log No. 1354-97 for downdrain structures and Log No. 0005-98 for the discharge structure are approved. Discharges from this final cut will report to Pond 009.

The embankment of Impoundment No. 12 will be raised approximately 6 feet to an elevation of 643 M.S.L. as described in IEPA Log No. 0380-98. The impoundment water surface elevation will also be raised by installing a 6-foot extension onto the existing 24-inch drop inlet decant. The final impoundment water surface elevation will be 637 feet M.S.L.

This Construction Authorization replaces C.A. No. 4158-94; S.C.A. Nos. 4158-94-1, 4158-94-2, 4158-94-3, 4158-94-4, 4158-94-5 and 4158-94-6; and State Permit No. 1998-MD-0380.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109.

All water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.202. For constituents not covered by Parts 302 and 303, all water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.106.

This Authorization is issued subject to the following Conditions. If such Conditions require additional or revised facilities, satisfactory engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. If any statement or representation is found to be incorrect, this permit may be revoked and the permittee thereupon waives all rights thereunder.
2. The issuance of this permit (a) shall not be considered as in any manner affecting the title of the premises upon which the mine or mine refuse area is to be located; (b) does not release the permittee from any liability for damage to person or property caused by or resulting from the installation, maintenance or operation of the proposed facilities; (c) does not take into consideration the structural stability of any units or parts of the project; and (d) does not release the permittee from compliance with other applicable statutes of the State of Illinois, or with applicable local laws, regulations or ordinances.
3. Final plans, specifications, application and supporting documents as submitted by the person indicated on Page 1 as approved shall constitute part of this permit and are identified by Logs. 9159-79, 6038-82, 6113-82, 2020-86, 1076-87, 0511-88, 0709-88, 6008-92, 6182-92, 5184-93, 5185-93, 4061-94, 1099-97, 1099-97-A, 1230-97, 1252-97, 1354-97, 0005-98, 0006-98 and 0380-98 in the records of the Illinois Environmental Protection Agency.
4. There shall be no deviations from the approved plans and specifications unless revised plans, specifications and application shall first have been submitted to the Illinois Environmental Protection Agency and a supplemental permit issued.
5. The permit holder shall notify the Environmental Protection Agency (217/782-3637) immediately of an emergency at the mine or mine refuse area which causes or threatens to cause a sudden discharge of contaminants into the waters of Illinois and shall immediately undertake necessary corrective measures as required by 35 Ill. Adm. Code 405.111. (217/782-3637 for calls between the hours of 5:00 p.m. to 8:30 a.m. and on weekends.)
6. The termination of an NPDES discharge monitoring point or cessation of monitoring of an NPDES discharge is not authorized by this Agency until the permittee submits adequate justification to show what alternate treatment is provided or that untreated drainage will meet applicable effluent and water quality standards.
7. Initial construction activities in areas to be disturbed shall be for collection and treatment facilities only. Prior to the start of other activities, surface drainage controls shall be constructed and operated to avoid violations of the Act or Subtitle D. At such time as runoff water is collected in the sedimentation pond, a sample shall be collected and analyzed, with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must be obtained. Discharge from this pond is not allowed unless applicable effluent and water quality standards are met.
8. This Agency must be informed in writing and an application submitted if drainage, which was previously classified as alkaline (pH greater than 6.0), becomes acid (pH less than 6.0) or ferruginous (base flow with an iron concentration greater than 10 mg/l). The type of drainage reporting to the basin should be reclassified in a manner consistent with the applicable rule of 35 Ill. Adm. Code 406 as amended in R84-29 at 11 Ill. Reg. 12899. The application should discuss the treatment method and demonstrate how the discharge will meet the applicable standards.

NPDES Permit No. IL0061247

Construction Authorization No.: 0368-98

C.A. Date: January 13, 1999

9. A permittee has the obligation to add a settling aid if necessary to meet the suspended solids or settleable solids effluent standards. The selection of a settling aid and the application practice shall be in accordance with subsection a. or b. below.
 - a. Alum ($Al_2(SO_4)_3$), hydrated lime ($Ca(OH)_2$), soda ash (Na_2CO_3), alkaline pit pumpage, acetylene production by-product (tested for impurities), and ground limestone are acceptable settling aids and are hereby permitted for alkaline mine drainage sedimentation ponds.
 - b. Any other settling aids such as commercial flocculents and coagulants are permitted only on prior approval from the Agency. To obtain approval a permittee must demonstrate in writing to the Agency that such use will not cause a violation of the toxic substances standard of 35 Ill. Adm. Code 302.210 or of the appropriate effluent and water quality standards of 35 Ill. Adm. Code parts 302, 304, and 406.
10. A general plan for the nature and disposition of all liquids used to drill boreholes shall be filed with this Agency prior to any such operation. This plan should be filed at such time that the operator becomes aware of the need to drill unless the plan of operation was contained in a previously approved application. After settling, recirculation water which meets the requirements of 35 Ill. Adm. Code 406.106 and 406.202, may be discharged. The use of additives in the recirculation water which require treatment other than settling to comply with the Act will require a revised permit.
11. Any of the following shall be a violation of the provisions required under 35 Ill. Adm. Code 406.203(c):
 - A. It is demonstrated that an adverse effect on the environment in and around the receiving stream has occurred or is likely to occur.
 - B. It is demonstrated that the discharge has adversely affected or is likely to adversely affect any public water supply.
 - C. The Agency determines the permittee is not utilizing good mining practices as defined in 35 Ill. Adm. Code 406.204 which are applicable in order to minimize the discharge of total dissolved solids, chloride, sulfate, iron and manganese.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-1

S.C.A. Date: October 18, 1999

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999. These facilities have been revised as follows:

The addition of 20.0 acres identified as OMM Permit No. 180, IBR No. 1, located in Section 3, Township 3 North, Range 3 West, Schuyler County, to be used for the construction of a borrow area as proposed in IEPA Log No. 9471-99. The inclusion of this additional area brings the total area under OMM Permit No. 180 to 178.8 acres; and the total area covered under this NPDES permit to 4568.0 acres of which 494.5 acres is located in Schuyler County.

Pond and Outfall 026 will be constructed as requested in IEPA Log No. 9472-99 (OMM Permit No. 180, IPR No. 3). It is noted for reference purposes only at this time that the designs for Pond 026 are contained in IEPA Log No. 9162-99 (OMM Permit No. 334 Application). This reference is not to imply that IEPA Log No. 9162-99 (OMM Permit No. 334) is being approved at this time. As-built plans shall be submitted to the Agency upon completion of construction of Basin 026. Discharge from Outfall 026 is subject to Condition No. 1.

Drainage from the borrow area will report to Basin 026. In the event that pit pumpage is directed to the basin, any material removed during pond clean-out shall be disposed in the active pit.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in Log Nos. 9471-99 and 9472-99.

All Conditions in the original Authorization to Construct are incorporated in this Supplemental Authorization unless specifically deleted or revised herein.

This Supplemental Authorization is issued subject to the following Conditions. If such Conditions require additional or revised facilities, appropriate engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. At such time as runoff is collected in Pond 026, a sample shall be collected and analyzed for the parameters designated as 1M-15M under Part 5-C of Form 2C, with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must be obtained. Discharge from a pond is not allowed unless applicable effluent and water quality standards are met.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-2

S.C.A. Date: December 1, 1999

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999 and Supplemental Construction Authorization No. 0368-98-1 dated October 18, 1999. These facilities have been revised as follows:

The addition of 131.0 acres, identified as OMM Permit No. 334 area, located in Sections 3 and 10, Township 3 North, Range 3 West, Schuyler County, for surface mining activities as proposed in IEPA Log Nos. 9162-99, 9162-99-A and 9162-99-B. This additional area includes 20.0 acres (OMM Permit No. 180, IBR No. 1) previously incorporated into this Permit under IEPA Log No. 9471-99 in Supplemental Construction Authorization No. 0368-98-1. Therefore, the total area permitted herein is increased by only 111.0 acres to 4,679.0 acres, of which 605.5 acres is located in Schuyler County.

Coal will be processed at the existing preparation facility. Fine refuse is disposed in slurry ponds with coarse refuse being returned to the active pit.

Drainage control is provided by temporary diversions and two (2) permanent impoundments (sedimentation ponds) with discharges designated as Outfalls 026 and 027. The discharge designated as Outfall 027 is located at Latitude 40°15'54" North, Longitude 90°43'19" West, classified as alkaline mine drainage and reports to an unnamed tributary to Willow Creek, tributary to LaMoine River. Pond and Outfall 026 were previously approved.

A currently permitted area of 2.7 acres, previously designated as not to be disturbed, is hereby incorporated into the mining area as proposed in IEPA Log No. 9582-99 (OMM Permit No. 180, IPR No. 4). This area is included in the total permit area noted above.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in IEPA Log Nos. 9162-99, 9162-99-A and 9162-99-B.

All Conditions in the original Authorization to Construct are incorporated in this Supplemental Authorization unless specifically deleted or revised herein.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-3

S.C.A. Date: July 25, 2000

Michael W. Rapps, P.E., Rapps Engineering and Applied Science

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999 and Supplemental Construction Authorization Nos. 0368-98-1 and 0368-98-2 dated October 18, 1999, and December 1, 1999, respectively. These facilities have been revised as follows:

An additional 459.2 acres located in Sections 3 and 4, Township 3 North, Range 3 West, Schuyler county, 4th P.M. to be surface mined as proposed in Log Nos. 8119-00 and 8119-00-B. Total area covered by this permit is increased to 5138.2 acres of which 1064.7 acres is located in Schuyler County.

Surface drainage will be controlled by diversions and two sediment ponds. Outfalls 029 and 030 from these ponds will be classified as alkaline mine drainage and report to an unnamed tributary to Willow Creek, tributary to LaMoine River. If either pond requires sediment to be removed to maintain performance, and pit pumpage has been directed to or chemical treatment has been conducted in the pond, sediment must be buried with the refuse, unless testing shows that the material is suitable for use as root medium.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in the log numbers referenced in Condition as detailed in Log Nos. 8119-00 and 8119-00-B.

All Conditions in the original Authorization to Construct are incorporated in this Supplemental Authorization unless specifically deleted or revised herein.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-4

S.C.A. Date: March 27, 2003

Steven M. Bishoff, P.E., Rapps Engineering and Applied Science

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999 and Supplemental Authorization Nos. 0368-99-1, 0368-99-2 and 0368-99-3 dated October 18, 1999, December 1, 1999 and July 25, 2000 respectively. These facilities have been revised as follows:

Total area covered by this permit is increased to 5651.3 acres of which 1064.7 acres are located in Schuyler County and 4886.6 acres are in McDonough County.

An area of 493.1 acres located in Sections 22, 23, 26 and 27, Township 4 North, Range 3 West, 4th P.m. McDonough County will be surface mined as proposed in Log Nos. 6244-02, 6244-02-A, 6244-02-B and 6244-02-D.

Surface drainage will be controlled by diversions and four sediment ponds designated as Pond Nos. 031, 032, 033 and 035 with respectively numbered Outfalls. Outfall Nos. 031, 032, 033 and 035 all report to Grindstone Creek and are classified as alkaline mine drainage.

An area of 20 acres located in Section 27, Township 4 North, Range 3 West, 4th P.M., McDonough County will be added to the permit for construction of a haul road as proposed in Log No. 5132-03. This area is also identified as Incidental Boundary Revision (IBR) No. 6 to IDNR/OMM Permit No. 16.

Active surface mining will not be conducted in this area. Since this is a narrow strip of land for construction of a road, a sedimentation pond will be not required, however standard erosion controls will be. Construction will be completed in dry weather conditions and at a time when seeding will likely be most successful. This road will cross Grindstone Creek, where four (4) nine foot diameter culverts will be used to pass water under the road. The crossing will be constructed so that flow over the road from significant precipitation events will not endanger the crossing.

The abandonment plan for this area in accordance with Log No. 5132-03 consists of removing the road and crossing and returning the area to its current use, with minimal disturbance.

Outfall No. 027 is re-classified as reclamation area drainage as proposed in Log No. 5071-03.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in Log Nos. 6244-02, 6244-02-A and 6244-02-B.

All water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.202. For the constituents not covered by Parts 302 or 303, all water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.106.

Longitude and latitude co-ordinates for all Outfalls covered by this Permit are as follows:

<u>Outfall</u>	<u>Latitude (North)</u>	<u>Longitude (West)</u>
002	40°17'45.0"	90°43'07.0"
003	40°18'00.0"	90°43'15.0"
004	40°18'24.0"	90°42'43.0"
005	40°18'40.0"	90°42'03.0"
006	40°18'30.0"	90°41'45.0"
007	40°18'39.0"	90°41'13.0"
008	40°18'30.0"	90°40'33.0"
009	40°16'22.0"	90°42'53.0"
010	40°18'16.0"	90°42'50.0"
011	40°18'19.0"	90°42'48.0"
017	40°18'41.0"	90°42'18.0"
018	40°17'40.0"	90°43'49.0"
019	40°17'55.0"	90°44'06.0"
020	40°17'45.0"	90°44'47.0"
021	40°17'43.0"	90°45'06.0"
022	40°17'17.0"	90°45'13.0"
024W	40°16'14.0"	90°42'55.0"
026	40°16'20.0"	90°43'03.0"
027	40°15'54.0"	90°43'19.0"

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-4

S.C.A. Date: March 27, 2003

Steven M. Bishoff, P.E., Rapps Engineering and Applied Science

<u>Outfall</u>	<u>Latitude (North)</u>	<u>Longitude (West)</u>
029	40°16'22.0"	90°45'08.0"
030	40°16'16.0"	90°44'51.0"
031	40°18'11.5"	90°43'33.6"
032	40°18'11.5"	90°43'10.6"
033	40°18'24.5"	90°43'01.9"
035	40°18'46.8"	90°42'55.9"

All Conditions in the original Authorization to Construct are incorporated in this Supplemental Authorization unless specifically deleted or revised herein.

This Supplemental Authorization is issued subject to the following Condition. If such Condition requires additional or revised facilities, appropriate engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. No discharge is allowed from any herein permitted Outfall during "low flow" or "no flow" conditions in the receiving stream, unless such discharge meets the water quality standards of 35 Ill. Adm. Code 302. Discharges not meeting the water quality standards of 35 Ill. Adm. Code 302 may only be discharged in combination with storm water discharges from the basin, and only at such times that sufficient flow exists in the receiving stream to ensure that water quality standards in the receiving stream beyond the mixing zone will not be exceeded. Following any such stormwater discharge during which water quality standards are not being met, but prior to the flow in the receiving stream subsiding, the impounded water in the basin(s) may be pumped or otherwise evacuated sufficiently below the discharge elevation to provide capacity for holding a sufficient volume of mine pumpage and/or surface runoff to preclude the possibility of discharge until such time that subsequent precipitation event results in discharge from the basin. At times of stormwater discharges, in addition to the alternate effluent monitoring requirements, the basin discharges shall be analyzed for sulfate and chloride concentrations. Also, basin discharge, and stream flow upstream and downstream of the basin discharge confluence shall be determined, recorded, and submitted with basin Discharge Monitoring Reports (DMR's) to demonstrate that adequate mixing is provided to ensure water quality standards in the receiving stream are not exceeded.

NPDES Permit No. IL0061247

Special Conditions

Special Condition No. 1: 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 as set out in the Illinois Pollution Control Board Rules and Regulations, Subtitle C: Water Pollution.

Special Condition No. 2: Samples taken in compliance with the effluent monitoring requirements shall be taken at a point representative of the discharge, but prior to entry into the receiving stream.

Special Condition No. 3: The permittee shall record monitoring results on Discharge Monitoring Report Forms using one such form for each discharge each month. The Discharge Monitoring Report forms shall be submitted to the Agency in accordance with the schedule outlined in Special Condition No. 4 below.

Discharge Monitoring Reports shall be mailed to the IEPA at the following address:

Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand Ave., East
P.O. Box 19276
Springfield, Illinois 62794-9276

Attn: Compliance Assurance Section

Special Condition No. 4: The completed Discharge Monitoring Report form shall be retained by the permittee for a period of three months and shall be mailed and received by the IEPA in accordance with the following schedule, unless otherwise specified by the permitting authority.

Period	Received by IEPA
January, February, March	April 28
April, May, June	July 28
July, August, September	October 28
October, November, December	January 28

Special Condition No. 5: If an applicable effluent standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the NPDES Permit, the Agency shall revise or modify the permit in accordance with the more stringent standard or prohibition and shall so notify the permittee.

Special Condition No. 6: The permittee shall notify the Agency in writing by certified mail within thirty days of abandonment, cessation, or suspension of active mining for thirty days or more unless caused by a labor dispute. During cessation or suspension of active mining, whether caused by a labor dispute or not, the permittee shall provide whatever interim impoundment, drainage diversion, and wastewater treatment is necessary to avoid violations of the Act or Subtitle D.

Special Condition No. 7: Plans must be submitted to and approved by this Agency prior to construction of a sedimentation pond. At such time as runoff water is collected in the sedimentation pond, a sample shall be collected and analyzed for the parameters designated as 1M-15M under Part 5-C of Form 2C and the effluent parameters designated herein with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must also be obtained. Discharge from a pond is not allowed unless applicable effluent and water quality standards are met.

Special Condition No. 8: The special reclamation area effluent standards of 35 Ill. Adm. Code 406.109 apply only on approval from the Agency. To obtain approval, a request form and supporting documentation shall be submitted 45 days prior to the month that the permittee wishes the discharge be classified as a reclamation area discharge. The Agency will notify the permittee upon approval of the change.

Special Condition No. 9: The special stormwater effluent standards apply only on approval from the Agency. To obtain approval, a request with supporting documentation shall be submitted 45 days prior to the month that the permittee proposes the discharge to be classified as a stormwater discharge. The documentation supporting the request shall include analysis results indicating the discharge will consistently comply with reclamation area discharge effluent standards. The Agency will notify the permittee upon approval of the change.

NPDES Permit No. IL0061247

Special Conditions

Special Condition No. 10: Annual stormwater monitoring is required for all discharges not reporting to a sediment basin until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

- A. Each discharge must be monitored for pH and settleable solids annually.
- B. Analysis of samples must be submitted with second quarter Discharge Monitoring Reports. A map with discharge locations must be included in this submittal.
- C. If discharges can be shown to be similar, a plan may be submitted by November 1 of each year preceding sampling to propose grouping of similar discharges and/or update previously submitted groupings. If updating of a previously submitted plan is not necessary, a written notification to the Agency indicating such is required. Upon approval from the Agency, one representative sample for each group may be submitted.

Special Condition No. 11: No discharge is allowed from any herein permitted Outfall during "low flow" or "no flow" conditions in the receiving stream, unless such discharge meets the water quality standards of 35 Ill. Adm. Code 302. Discharges not meeting the water quality standards of 35 Ill. Adm. Code 302 may only be discharged in combination with storm water discharges from the basin, and only at such times that sufficient flow exists in the receiving stream to ensure that water quality standards in the receiving stream beyond the area of allowed mixing will not be exceeded. Following any such stormwater discharge during which water quality standards are not being met, but prior to the flow in the receiving stream subsiding, the impounded water in the basin(s) may be pumped or otherwise evacuated sufficiently below the discharge elevation to provide capacity for holding a sufficient volume of mine pumpage and/or surface runoff to preclude the possibility of discharge until such time that subsequent precipitation event results in discharge from the basin. At times of stormwater discharges, in addition to the alternate effluent monitoring requirements, the basin discharges shall be analyzed for sulfate and chloride concentrations to demonstrate compliance with the permit limitations. Also, basin discharge, and stream flow upstream of the basin discharge confluence shall be determined, recorded, and submitted with basin Discharge Monitoring Reports (DMR's) to demonstrate that adequate dilution is provided to ensure water quality standards in the receiving stream are not exceeded.