BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
ENVIRONMENTAL LAW AND POLICY CENTER, on behalf of PRAIRIE RIVERS NETWORK and SIERRA CLUB, ILLINOIS CHAPTER,	)	**PCB 2010-061 and 2011-002 (Consolidated – Water – Enforcement)**
Intervenor,	)	
v.	)	
FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL COMPANY, L.L.C.,	)	
Respondents.	)	

FREEMAN UNITED COAL MINING COMPANY, LLC'S MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO THE PEOPLE OF THE STATE OF ILLINOIS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Respondent, Freeman United Coal Mining Company, LLC ("Freeman United"), by its attorneys, hereby files its response to the State's Motion for Partial Summary Judgment (the "State's Motion") and its own Motion for Summary Judgment on Counts I and III of the State's complaint (the "Freeman Motion").

The State's Motion presents this case as a simple enforcement proceeding with undisputed facts. The State contends that Freeman United submitted discharge monitoring reports ("DMRs") that document violations of Freeman United's National Pollutant Discharge Elimination System ("NPDES") permit for the Industry Mine and therefore the State is entitled

to summary judgment on Count I of its complaint. Next, without the benefit of an evidentiary hearing or the Illinois Pollution Control Board's (the "Board") adjudication of the remaining counts in its complaint, the State asks the Board to assess penalties against Freeman United in an amount significantly higher than the Board has ever imposed for similar alleged violations.

The State's Motion, however, substantially ignores the enforcement history between Freeman United and the Illinois Environmental Protection Agency ("IEPA") with respect to the Industry Mine's effluent discharges. In 2005, Freeman United entered into a compliance commitment agreement ("CCA") in response to an IEPA notice of violation ("NOV") related to specific discharges from the Industry Mine. That CCA was extended on August 30, 2007, and one day later, Freeman United sold the Industry Mine to Springfield Coal Company, LLC ("Springfield Coal"). Freeman United had no further interaction with the State with respect to the Industry Mine until February 10, 2010, the date the State filed the complaint now pending before the Board.

As discussed below, the Illinois Environmental Protection Act (the "Act") contains specific provisions that govern if and when IEPA can refer a matter to the Attorney General for further enforcement proceedings. Here, IEPA's entry into a CCA with Freeman United, as well as its failure to otherwise meet the Act's procedural pre-enforcement requirements, barred IEPA from referring this matter to the Attorney General. Additionally, the undisputed facts clearly demonstrate the compelling circumstances necessary for this Board to find that the State failed to diligently exercise its enforcement authority, resulting in waiver and/or laches with respect to the violations that are the subject of the State's complaint. Alternatively, the State should be estopped from seeking to enforce these alleged violations at this late date. For these reasons, the

Board should deny the State's Motion and instead grant summary judgment in favor of Freeman United on Counts I and III of the State's complaint.

FACTUAL OVERVIEW

Freeman United agrees that many of the facts relating to the effluent discharges from the Industry Mine are not in dispute (although whether these facts constitute violations of the Act remains a disputed issue). These undisputed facts, however, require that the Board find, as a matter of law, that it is Freeman United and not the State that is entitled to summary judgment.[1]

It is undisputed that Freeman United owned and operated the Industry Mine until August 31, 2007, when it sold the mine to Springfield Coal. (Affidavit of Thomas J. Austin, attached hereto as Exhibit 1 (hereinafter "Austin Aff."), ¶1.) The State admits that on April 2, 1999, IEPA issued an NPDES permit to Freeman United authorizing discharges from its Industry Mine to various area waterways. (Complaint, ¶5.) As required by its NPDES permit, Freeman United submitted quarterly DMRs to IEPA. (Austin Aff., ¶3; State's Motion at 2.) These DMRs provided IEPA with detailed information on the specific levels of regulated substances in discharges from various outfalls at the Industry Mine. (Austin Aff., ¶4; State's Motion at 3.) According to Larry Crislip's affidavit, which is the primary evidence on which the State relies in support of its Motion, at various times between January 2004 and August 2007, Freeman United reported discharges in excess of its permitted limits for iron, manganese, sulfates, total suspended solids ("TSS") and pH from various outfalls at the Industry Mine.[2] (State's Motion at

[1] Although these undisputed facts warrant the Board's entry of summary judgment in favor of Freeman United, as discussed throughout Freeman United's Motion, there are numerous factual issues as to whether the violations alleged in the State's complaint are in fact violations of the Act. These factual issues standing on their own preclude the Board's entry of summary judgment in favor of the State. *See* discussion at Section V of the Freeman Motion.

[2] Freeman United notes that Larry Crislip's affidavit, on which the State's Motion is predicated almost entirely, contains factual errors and fails in a number of instances to identify alleged

3, 4; Affidavit of Larry Crislip (hereinafter "Crislip Aff."; attached as an Exhibit to the State's Motion), at ¶4.)

On March 11, 2005, IEPA issued Freeman United an NOV for alleged violations of the effluent limits in the Industry Mine's NPDES permit. (Austin Aff., ¶5.) Although Freeman United's DMRs provided IEPA with detailed information on the levels of iron, manganese, sulfate, TSS, and pH in the discharges from each of the Industry Mine's regulated outfalls (Crislip Aff., ¶4), IEPA's March 2005 NOV identified only three violations of the manganese limit from a single discharge point, Outfall 19. (Austin Aff. at Ex. 1A.)

Shortly after receiving the NOV, in accordance with Section 31(a)(5) of Act, Freeman United submitted a proposed CCA to IEPA (the "2005 CCA"). (Austin Aff. at Ex. 1B.) On June 16, 2005, IEPA accepted Freeman United's 2005 CCA, albeit with a minor modification requiring Freeman United to continue to monitor the manganese levels from Outfall 19 (notwithstanding that, as explained in the 2005 CCA, the waters being collected in Pond 19 at the Industry Mine constituted "Reclamation Area" drainage per 35 Ill. Admin. Code 406.109).[3] (People's Response to Affirmative Defenses by Freeman United Coal Mining Company, LLC

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violations appropriately. For example, in two instances Mr. Crislip's affidavit misstates the sulfate permit limit for Outfall 18 as 1,100 mg/L where it should be 1,800 mg/L. (Crislip Aff., ¶4E.) Mr. Crislip's affidavit also inaccurately reports the June 2006 discharge data for manganese at Outfall 19. (Crislip Aff., ¶4C.) There are also instances in which Mr. Crislip's affidavit cites only a month where an exceedance of a daily maximum effluent limitation is alleged (*e.g.*, second entry in ¶4E (Outfall 003)) or lists a calculated average data point as the reported discharge level on a specific date (*e.g.*, second entry for July 31, 2006, in ¶4E (Outfall 009)). See also Austin Aff., ¶27.

[3] 35 Ill. Admin. Code 406.109 provides specific effluent standards for coal mine discharges from "reclamation areas." These standards do not impose any discharge limits for manganese.

(hereinafter, the "State Answer," ¶8.); Austin Aff. at Ex. 1C.) The State admits that Freeman United fully complied with the 2005 CCA. (State Answer, ¶8.)

On March 30, 2007, a few months prior to expiration of the 2005 CCA, Freeman United submitted a proposed CCA extension to IEPA. (State Answer, ¶8.) On July 13, 2007, IEPA provided a written response to Freeman United's proposed CCA extension that advised Freeman United that its proposed CCA extension did not adequately address "the current elevated manganese concentrations in the discharge at Outfall 19 and subsequent water quality standards violations." (Austin Aff. at Ex. 1F.) In this July 13, 2007 letter, however, IEPA invited Freeman United to submit additional proposals and directed Freeman United as to what would need to be included in an "acceptable CCA extension." (*Id.*)

On August 30, 2007, Freeman United submitted a revised CCA that identified additional steps that it would take to minimize the total manganese levels in the effluent discharge from Outfall 19 (the "2007 CCA").[4] (Austin Aff. at Ex. 1H.) The next day, Springfield Coal acquired the Industry Mine. (Austin Aff., ¶1.) IEPA acknowledges that it never formally responded to Freeman United's August 2007 CCA (State Answer, ¶8), although IEPA later verbally advised

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[4] Freeman United does not dispute that IEPA's July 13, 2007 letter stated that subsequent communications with IEPA would not be considered a CCA and acknowledges that the State has denied that the 2007 CCA was ever approved. However, those statements are in conflict with other statements in IEPA's letter advising Freeman United what would need to be included in an "acceptable CCA extension." Moreover, as further discussed at page 10 of the Freeman Motion, we have found no authority, nor does the State cite to such authority, that would allow IEPA to ignore the General Assembly's mandate that IEPA's failure to respond to a CCA request results in the CCA being deemed accepted by operation of law. 415 ILCS 5/31(a)(9).

The validity of the 2007 CCA is a key issue in this matter as it would bar IEPA from having referred the matter of enforcement to the Attorney General. *See* discussion at pp. 9-10. If the Board does not find that the 2007 CCA was approved by operation of law, there is a factual issue as to the CCA's existence that at a minimum prevents entry of summary judgment in favor of the State.

Springfield Coal that it should continue to operate pursuant to the 2007 CCA. (Austin Aff., ¶16.)[5]

For the next two years, Freeman United had no contact with the State related to the Industry Mine. (Austin Aff., ¶18.) Then, almost five years after having first entered into the CCA and more than two years after the mine had been sold, the State filed the complaint now pending before the Board. Each of the alleged violations in the State's complaint is based on information from Freeman United's DMRs. (State's Motion at 3.) None of the information was new or otherwise unavailable to the State prior to February 10, 2010 when the State filed its complaint. As further set forth below, the State should not be allowed to disregard the Act's procedural enforcement framework, remain silent for years, and then suddenly file a complaint before the Board seeking hundreds of thousands of dollars in civil penalties.

ARGUMENT

Because the undisputed facts establish the requisite elements of the specific affirmative defenses asserted by Freeman United, the Board should deny the State's Motion and instead grant summary judgment in favor of Freeman United on Counts I and III of the State's complaint.[6] Perhaps recognizing its vulnerability with respect to these affirmative defenses, the State argues that Freeman United's affirmative defenses are not really defenses to liability, but rather, go to the issue of the amount of civil penalties that the Board should impose. (State's Motion at 8.) The State therefore asks the Board to ignore these affirmative defenses when

[5] On August 14, 2007, Freeman United advised IEPA that effective September 1, 2007, Springfield Coal would be the owner/operator of the Industry Mine and requested transfer of the NDPES permit. (Austin Aff., at Ex. 1G.) IEPA never responded to Freeman United's August 14, 2007 transfer letter. (Austin Aff., ¶18.)

[6] Count I of the State's complaint alleges that Freeman United violated the terms of its NPDES permit. Count III alleges water pollution violations of Section 12(a) of the Act.

evaluating the State's Motion. (State's Motion at 9-10.) In fact, however, Freeman United's affirmative defenses are defenses to liability; once Freeman United successfully demonstrates the requisite elements of these defenses, the State cannot prevail on its claims. *See e.g., People v. Texaco Ref. and Mktg., Inc.*, PCB 02-03, slip op. at 3 (Nov. 6, 2003) (defining affirmative defense as a "response to plaintiff's claim which attacks the plaintiff's legal right to bring an action, as opposed to attacking the truth of claim" (quoting *Farmer's State Bank v. Phillips Petroleum Co.*, PCB 97-100, slip op. at 2 n.1 (Jan. 23, 1997)). *See also People v. Midwest Grain Prods. of Ill.*, PCB 97-179 (Aug. 21, 1997) (Board refuses to strike affirmative defense alleging compliance with CCA); *People v. Peabody Coal Co.*, PCB 99-134 (June 5, 2003) (Board refuses to strike affirmative defenses of estoppel, laches, and waiver). Each of the defenses discussed below go directly to the State's legal right to assert claims against Freeman United.

First, the Act bars IEPA from having referred this matter to the Illinois Attorney General for enforcement with respect to Freeman United. Second, notwithstanding this statutory bar, the State sat on its rights for years and the equitable doctrines of laches and waiver should bar the State's claims. Third, the State should be estopped from initiating an enforcement action for alleged violations that were the subject of the previous CCAs. The facts supporting each of these affirmative defenses are undisputed and Freeman United is therefore entitled to summary judgment on Counts I and III of the State's complaint. 35 Ill. Admin. Code 101.516(b) (same). *See also In re Apex Auto. Warehouse, L.P.*, Nos. 96B04594, 96B04596, 2000 WL 640780 (Bankr. N.D. Ill. 2000) (acknowledging that summary judgment for defendant is appropriate if defendant can demonstrate that there are no genuine issues of material fact as to an affirmative defense); *Towne v. Swan*, No. 10-C-808, 2010 WL 4363329 (N.D. Ill. 2010) (same). Notwithstanding that Freeman United is entitled to summary judgment on its affirmative

defenses, there are material issues of disputed fact with respect to the alleged violations upon which the State's motion is predicated that, standing on their own, preclude the State from obtaining summary judgment on Count I of its complaint.

Finally, although the State is not entitled to summary judgment against Freeman United, the State's request that the Board impose civil penalties against Freeman United at this stage in the proceedings is premature. There are material issues of disputed facts that would preclude the Board from imposing penalties without Freeman United having had the benefit of an evidentiary hearing.

I. Section 31(a) of the Act Bars the Pending Enforcement Proceeding Against Freeman United

As a matter of law, IEPA was barred from referring this matter to the Attorney General for enforcement. Section 31 of the Act establishes mandatory pre-enforcement procedures that IEPA must follow before matters may be referred to the Attorney General. IEPA's failure to comply with these pre-enforcement procedures requires the Board to enter summary judgment in favor of Freeman United on Counts I and III of the State's complaint.

When the General Assembly amended Section 31 of the Act in 1996, it established procedures that required IEPA and alleged violators of the Act to work cooperatively to try to resolve alleged violations prior to referral of those matters to the Attorney General. *See People v. John Crane, Inc.*, PCB 01-76, slip op. at 3 (May 17, 2001) (stating, "As the Board has discussed many times, the General Assembly amended Section 31 in 1996 to provide an opportunity for the Agency and an alleged violator to meet to resolve alleged violations before the Agency refers the matter to the Attorney General for enforcement."). First, IEPA is required to provide the alleged violator with written notice (NOV) of all alleged violations in accordance with Section 31(a) of the Act. 415 ILCS 5/31(a). Within 45 days of receipt of the NOV, the

alleged violator must respond to the NOV. 415 ILCS 5/31(a)(2). One possible response is a CCA proposal. *Id.* In the event a CCA is proposed, IEPA may either approve the CCA or notify the alleged violator that the alleged violations cannot be resolved without the involvement of the Attorney General. 415 ILCS 5/31(a)(7). If the alleged violations remain the subject of disagreement between IEPA and the alleged violator, IEPA must issue a written notice informing the alleged violator that IEPA intends to pursue legal action. 415 ILCS 5/31(b).

Once these procedural steps have been complied with, IEPA may refer the matter to the Attorney General to initiate enforcement proceedings pursuant to Section 31(d) of the Act. 415 ILCS 5/31(d). Compliance with these procedural requirements is mandatory (*People v. John Crane, Inc.*, PCB 01-76, slip op. at *5 (May 17, 2001)), and IEPA's failure to follow these procedural requirements divests the Board of jurisdiction over the respondent (*see People v. Chicago Heights Refuse Depot, Inc.*, PCB 90-112, slip. op. at 4 (Oct. 10, 1991) (finding that defective notice under Section 31 "results in a lack of jurisdiction over the person of Respondent")).

Here, IEPA issued the required Section 31(a) notice on March 11, 2005 for manganese discharges from Outfall 19. (Austin Aff., ¶5.) Freeman United responded within 45 days with a proposed CCA as required by Section 31(a)(2). (Austin Aff., ¶6.) On June 16, 2005, IEPA accepted Freeman United's CCA as provided by Section 31(a)(7). (Austin Aff., ¶7.) Upon acceptance of Freeman United's CCA , IEPA should have ceased its enforcement activities with respect to the March 2005 NOV.

The Act is clear that acceptance of a CCA bars IEPA from referring a matter to the Attorney General for further enforcement proceedings. 415 ILCS 5/31(a)(10). Section 31(a)(10) of the Act provides:

> If the person complained against complies with the terms of a Compliance Commitment Agreement accepted pursuant to [415 ILCS 5/31(a)], the Agency shall not refer the alleged violations which are the subject of the Compliance Commitment Agreement to the Office of the Illinois Attorney General or the State's Attorney of the county in which the alleged violation occurred.

415 ILCS 5/31(a)(10) (emphasis added).[7] The State concedes that it both accepted Freeman United's 2005 CCA and that Freeman United fully complied with the 2005 CCA. (State's Motion at 6; State Answer, ¶8.) The State further concedes that Freeman United submitted the 2007 CCA, to which the State provided no written response.[8] (State's Motion at 6; State Answer, ¶8.) As a result, on September 30, 2007, by operation of law, Freeman United's 2007 CCA was deemed accepted by IEPA. 415 ILCS 5/31(a)(9). There is nothing in the record to indicate that IEPA ever advised Freeman United that it was in violation of either of the CCAs or provided written notice that it intended to pursue further legal action, as required by Section 31(b) of the Act (415 ILCS 5/31(b)). As such, Section 31(a)(10) of the Act clearly prohibits IEPA from having referred this matter to the Attorney General to file the complaint now pending before the Board.

The State may argue that because the CCAs only addressed the manganese discharges identified in the 2005 NOV, the statutory bar does not apply to non-manganese discharges and/or discharges from other outfalls. However, the Board need not consider this argument because the undisputed facts are that the State wholly ignored the pre-enforcement process set forth in Section 31 of the Act for any violations that were not addressed by the 2005 NOV. IEPA never

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[7] The use of the word "shall" in a statutory provision indicates that the legislature intended a mandatory, rather than a directory, provision. *See e.g. Behl v. Gingerich*, 396 Ill. App. 3d 1078, 1086 (4th Dist. 2009).

[8] Notwithstanding that IEPA verbally authorized Springfield Coal to comply with the procedures set forth in the 2007 CCA (Austin Aff., ¶16), IEPA's failure to provide a written response to the 2007 CCA resulted in the CCA being deemed accepted by operation of law. 415 ILCS 5/31(a)(9).

issued Freeman United another NOV or otherwise provided Freeman United notice prior to referring these violations to the Attorney General to file this complaint. IEPA's failure to make any effort to comply with the Section 31 pre-enforcement requirements is fatal to the State's claims. *See People v. John Crane, Inc.*, PCB 01-76 (May 17, 2001) (Section 31 referral process was mandatory); *People v. Chicago Heights*, PCB 90-112 (Oct. 10, 1991) (same).

Finally, we acknowledge that the Attorney General has the authority, on her own motion, to institute civil actions for violations of the Act, especially in circumstances where there is substantial danger posed to human health or the environment.[9] 415 ILCS 5/42(e); 5/43(a). Here, the State alleges that the complaint is being brought "on her own motion and at the request of [IEPA] pursuant to the terms and provisions of Section 31 of the [Act]." (State Complaint at ¶1.)

There is no evidence in the record that this matter came to the attention of the Attorney General by any means other than by referral from IEPA.[10] It would be incongruous for the Board to allow IEPA to circumvent the clear prohibition on referrals to the Attorney General under the facts of this case where a CCA exists and IEPA has failed to comply with the requirements of Section 31. In a prior case with similar facts, the Board refused to allow IEPA to circumvent the Act in this manner. In *People v. Chiquita Processed Foods, LLC*, PCB 02-56 (Nov. 21, 2002), the State filed a complaint alleging that the respondent had caused water

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[9] Of course, in this case, the State waited years after Freeman United no longer owned the Industry Mine to bring this action so it is unlikely that the State can make a credible argument that Freeman United's activities in 2007 posed a substantial danger to public health or the environment.

[10] The State even references the "referral" of the matter by IEPA in its own Motion. (State's Motion at 6.) To the extent that the State responds by arguing that the facts underlying the present complaint came to the attention of the Attorney General by means other than a referral from IEPA, Freeman United would certainly be entitled to obtain discovery from the State on that issue, in which case summary judgment on behalf of the State would be inappropriate.

pollution in violation of the Act. Respondent filed a motion for summary judgment in which respondent argued that IEPA had failed to follow the procedural requirements of Section 31 prior to referring the matter to the Attorney General. *Id.* Notwithstanding that the State's complaint alleged that it was brought on behalf of both the Attorney General and IEPA,[11] the Board found that where there had been a referral from IEPA, IEPA was not free to ignore the procedural requirements of Section 31 of the Act. *Id.* The Board therefore granted summary judgment in favor of the respondent. *Id. See also People v. Midwest Grain Prods. of Ill.*, PCB 97-179 (Aug. 21, 1997) (refusing to strike affirmative defense of CCA in enforcement proceeding brought by the Attorney General at the request of the IEPA).[12]

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[11] The language in the *Chiquita* complaint is substantially similar to the allegations in this complaint:

Paragraph 1 of the *Chiquita* complaint reads: "This action is brought by the Attorney General of the State of Illinois on his own motion and at the request of the Illinois Environmental Protection Agency . . . ."

Paragraph 1 of the State's complaint reads: "This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency . . . ."

[12] In an effort to preserve its claims, the State refers to Section 31(a)(7.6) of the Act which provides that successful completion of a CCA shall be a factor to be weighed by the Attorney General in determining whether to file a complaint. (State's Motion at 7-8.) Again, the Board need not consider the State's argument since IEPA failed to comply with the mandatory pre-enforcement requirements prior to referring this matter to the Attorney General. That standing alone should be sufficient for the Board to enter summary judgment in Freeman United's favor.

However, in response to the State's specific argument, Section 31(a)(7.6) of the Act became effective August 23, 2011, almost two years after the State filed this complaint. (P.A. 097-0519, Sec. 99.) Illinois law is clear that where an amendment to a statute affects substantive (as opposed to procedural) rights, it cannot be applied retroactively absent a clear legislative intent to the contrary. *See Commonwealth Edison Co. v. Will Cnty. Collector*, 196 Ill. 2d 27 (2001).

Nothing in Section 31(a)(7.6) of the Act itself or the legislative history evidences an intent on the part of the General Assembly that the amendment have retroactive application. Clearly, to the extent that the statutory amendment created a new right on the part of the Attorney General to consider CCAs when determining whether to proceed with further enforcement, the amendment

Because IEPA failed to comply with the mandatory requirements of Section 31 of the Act, this matter should never have been referred to the Attorney General to file the complaint now pending before the Board and the Board does not have jurisdiction over Freeman United. Therefore, summary judgment should be entered in favor of Freeman United on Counts I and III of the State's complaint.

II. The State's Claims Against Freeman United are Barred by Laches

As required by its NPDES permit, each of Freeman United's quarterly DMRs provided IEPA with detailed information on the specific discharges from each of the Industry Mine's outfalls. (Austin Aff., ¶4.) However, the State waited years to file this complaint. The State's failure to exercise appropriate diligence with respect to the claims it now asserts should result in those claims being barred by laches.

Laches is an equitable doctrine that bars relief when a defendant has been misled or prejudiced due to a plaintiff's delay in asserting a right. *See City of Rochelle v. Suski*, 206 Ill. App. 3d 497, 501 (2d Dist. 1990); *People v. State Oil Co.*, PCB 97-103 (May 18, 2000). The doctrine applies to environmental enforcement matters brought before the Board. *See People v. Stein Steel Mills Servs., Inc.*, PCB 02-1, slip op. at 4, 6 (Apr. 18, 2002) (rejecting the argument that "laches is an affirmative defense only to actions in equity, not enforcement actions before the Board" and stating that "[t]he Board has held that laches may apply to the Board in its governmental capacity"); *see also People v. State Oil Co.*, PCB 97-103, slip op. at 3 (May 18, 2000) (holding that "the state is not immune from application of laches in exercise of its governmental functions"). In order to succeed on its laches defense, Freeman United must

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is clearly substantive in nature and cannot therefore apply retroactively. *See e.g., People v. Blanks*, 361 Ill. App. 3d 400, 408-09 (1st Dist. 2005) (substantive law "creates, defines, and regulates the rights, duties, and powers of parties").

demonstrate (i) lack of diligence by the State and (ii) prejudice to Freeman United. *See e.g., Van Milligan v. Bd. of Fire & Police Comm'rs*, 158 Ill. 2d 85, 89 (1994).

The State cannot reasonably dispute that IEPA was aware (or should have been aware) of the alleged discharge violations each time that Freeman United submitted its DMRs to IEPA. In fact, the fundamental purpose of DMRs is to apprise enforcement personnel of the results of facilities' self-monitoring efforts under an NPDES permit. *See* U.S. EPA DMR Electronic Data Interchange Implementation Guidelines (Sept. 1997). We know that IEPA reviewed Freeman United's DMRs because IEPA's 2005 NOV was predicated on manganese discharges that were identified in these DMRs. However, but for the 2005 NOV, IEPA sat on its rights and took no further action for five years. Such an unreasonable delay clearly evidences a lack of diligence.

The State also cannot reasonably dispute that Freeman United has been prejudiced by the unreasonable delay. Freeman United had a good faith belief that its 2005 CCA addressed any outstanding discharge violations at the time of its acceptance by IEPA. (Austin Aff., ¶9.) Freeman United's good faith belief was bolstered by the State's decision not to take further enforcement action (at least until now). The State now seeks substantial civil penalties from Freeman United for alleged violations that occurred between January 2004 and August 2007. Had the State diligently identified the violations now included in the State's complaint and complied with the procedural requirements set forth in Section 31 of the Act, Freeman United would have had the opportunity to work cooperatively with IEPA to address these alleged violations. Instead, the State remained silent, allowing potential penalties to accrue while Freeman United continued to act in good faith reliance on the CCAs. Under any definition of the term, Freeman United has been prejudiced by the excessive delay.

Because the State sat on its rights for an unreasonable length of time, with resulting prejudice to Freeman United, the doctrine of laches should bar the State's claims. The Board should therefore find, as a matter of law, that Freeman United is entitled to summary judgment on Counts I and III of the State's complaint.

III. The State Waived Its Right to Enforce the Alleged Violations Against Freeman United

Not only did the State's unreasonable delay result in its claims being barred by laches, but these same facts also demonstrate that the State has waived its right to seek enforcement for the violations alleged in its complaint. Where a party intentionally relinquishes a known right or where a party's conduct warrants an inference that the party has relinquished a known right, that party is deemed to have waived its rights. *People v. John Crane, Inc.*, PCB 01-76, slip op. at 8 (May 17, 2001); *People v. QC Finishers, Inc.*, PCB 01-7 (July 8, 2004).

Again, as noted in the previous section, IEPA was aware of the alleged violations now being asserted on each occasion that Freeman United submitted its DMRs. There was nothing that would have precluded IEPA from issuing an NOV with respect to these alleged violations and initiating the pre-enforcement process set forth in Section 31; however, IEPA made a conscious and knowing decision not to do so. IEPA's conduct clearly demonstrates the intentional relinquishment of its right to now seek to enforce these alleged violations (or at the very least, warrants an inference that it relinquished those rights). The Board should therefore find that the State waived its right to bring an enforcement proceeding against Freeman United for effluent discharges from the Industry Mine and enter summary judgment in its favor on Counts I and III of the State's complaint.

IV. The Equitable Doctrine of Estoppel Bars the State's Enforcement Action

In addition to laches and waiver, the equitable doctrine of estoppel bars the State from obtaining the relief it seeks. The undisputed facts present the very compelling circumstances that strongly favor application of the doctrine to the State. *See In re Pielet Bros. Trading, Inc.*, AC 88-51 (July 13, 1989) (in a case with similar facts, the Board agreed that the State was estopped from initiating enforcement proceedings for violations that it allowed or encouraged during the pendency of a permit application); *see also Pavlakos v. Dep't of Labor*, 111 Ill. 2d 257, 265 (1985) (noting that estoppel can be applied against the State when "some positive acts by State officials may have induced an action by the adverse party under circumstances where it would be inequitable to hold the adverse party liable for the act so induced").

In order to succeed with an estoppel claim, Freeman United must show: (1) words or conduct by the State constituting either a misrepresentation or concealment of material facts; (2) knowledge on the part of the State that the representations made were untrue; (3) that Freeman United did not know the representations to be false either at the time they were made or at the time they were acted upon; (4) that the State either intended or expected that the conduct or representation would be acted upon by Freeman United; (5) that Freeman United relied upon or acted upon the representations; and (6) that Freeman United has been prejudiced. *See City of Mendota v. Pollution Control Bd.*, 161 Ill. App. 3d 203 (3d Dist. 1987) (outlining the requisite elements for estoppel).

Here, the undisputed facts establish each of the required six elements. First, IEPA's decision to only pursue violations of the manganese effluent limits in 2005 misrepresented and/or concealed the fact that IEPA would later seek to enforce other alleged discharges that

IEPA apparently believed did not warrant enforcement in 2005.[13] Second, when IEPA accepted the 2005 CCA (and failed to formally respond to the 2007 CCA), the State clearly had in its possession Freeman United's DMRs that now form the basis for the allegations in the State's complaint. Third, Freeman United had no reason to believe that after accepting the CCA, the State would later change course and initiate enforcement proceedings more than five years later, especially when IEPA never issued a new NOV or notified Freeman United of its intent to pursue further legal action. (Austin Aff., ¶9.) Fourth, IEPA clearly was aware (or should have been aware) that Freeman United's compliance actions were predicated on the violations in IEPA's 2005 NOV. (Austin Aff., ¶6.) Again, Section 31(a) of the Act was intended to afford alleged violators the opportunity to work cooperatively with IEPA to address alleged violations of the Act which is exactly what Freeman United did by submitting the CCAs. Fifth, had IEPA identified additional violations in its NOV and/or required additional compliance measures as part of the CCAs, Freeman United would have endeavored to address those concerns.[14] (Austin Aff., ¶10.) Finally, the State's request that the Board impose substantial civil penalties for violations that were never previously identified by the State clearly demonstrates that Freeman United has been prejudiced.

The undisputed facts establish each of the elements necessary for the Board to find that the State should be estopped from asserting the claims set forth in its complaint. The Board

[13] IEPA's failure to take enforcement action against Freeman United until 2010 demonstrates that these misrepresentations and/or concealments were of a continuing nature.

[14] In fact, on the one occasion when IEPA did identify some specific concerns in July 2007, Freeman United submitted a revised CCA that was responsive to IEPA's comments. (Austin Aff., ¶15.) Although IEPA did not formally respond to the revised CCA extension, and it therefore became effective by operation of law, IEPA later verbally advised Springfield Coal that it should continue to comply with the 2007 CCA. (Austin Aff., ¶16.)

should, therefore, enter summary judgment in favor of Freeman United on Counts I and III of the State's complaint.

V. There Are Factual Issues With Respect to Alleged NPDES Violations

Although undisputed facts supporting Freeman United's affirmative defenses warrant the Board's entry of summary judgment in its favor, there are disputed factual issues as to whether the NPDES violations alleged in the State's complaint are in fact violations of the Act. These factual issues standing on their own preclude the Board's entry of summary judgment in favor of the State.

First of all, the sulfate effluent limitation in the Industry Mine NPDES permit, which is set at 500 mg/L (daily maximum), is based upon a sulfate water quality standard which IEPA first proposed to amend in October 2006 and which ultimately was amended in 2008.[15] The current water quality standard for sulfate is now a calculated standard based upon the hardness and chloride content of the receiving water, as set forth in 35 IAC 302.208.[16] If Freeman United had been subject to the sulfate standard that was proposed in 2006, as should have occurred had the State acted diligently to renew the Industry Mine NPDES permit (which renewal application has been pending with IEPA since 2003) (People's Response to Affirmative Defenses by Springfield Coal, LLC, ¶5), the number of sulfate excursions the Industry Mine experienced in the subsequent years would have been lower. (Austin Aff., ¶26 and Ex. 1E.) At a minimum, the

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[15] *In the Matter of: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h)*, IPCB R07-009 (Oct. 18, 2006); 30 Ill. Reg. 14978 (Sept. 19, 2008).

[16] As part of the rulemaking proceedings, IEPA's expert testifying in support of the revised sulfate standard testified that the then-existing sulfate standards had not been established based on reliable scientific evidence, could not be met by the mining industry, and were not practically achievable through treatment. Testimony of Robert Mosher, IPCB R07-09, Feb. 5, 2007.

State should be barred from pursuing violations based upon a standard that has been rejected. As such, there is disputed issue of material fact as to whether the sulfate violations alleged in the State's complaint did in fact constitute violations of the Act.

In addition, there are genuine issues of material fact with respect to whether background concentrations of constituents in the receiving streams at the Industry Mine have caused exceedances of the NPDES permit effluent limitations. For example, there is evidence that, prior to Freeman United's activities on the Industry Mine property, there were elevated levels of a number of constituents, including sulfate, manganese, iron, total suspended solids (TSS), and pH in the surface water; sampling of the streams traversing the property indicated that some of the levels of these constituents exceeded the effluent limitations in the current NPDES Permit. (Austin Aff., ¶¶22, 23.) In fact, the State admits that "levels of sulfates and manganese in surface water runoff from the site have been documented through sampling and analyses prior to mining activities at the site and that some levels of sulfates and manganese exceeded some of the NPDES permit limits." (State Answer, ¶11.)

In addition, sampling of the stream upstream of the Industry Mine has shown elevated levels of constituents, and in a number of instances, at elevated concentrations that exceed the effluent limitations in the Industry Mine NPDES Permit. (Austin Aff., ¶24.) Sampling of the streams traversing the Industry Mine property since 2003 has regularly shown that the concentrations of iron, chlorides, and TSS are at higher concentrations upstream of the Industry Mine rather than downstream. *Id.* Moreover, the upstream sampling has identified regular occurrences of iron and TSS at concentrations in excess of the Industry Mine NPDES Permit. *Id.* These sampling results are significant because 35 Ill. Admin. Code 406.103 provides that compliance with numerical effluent standards is not required "when effluent concentrations in

excess of the standards result entirely from the contamination of influent before it enters the affected land," and that "[b]ackground concentrations or discharges upstream from affected land are rebuttably presumed not to have caused a violation of this part." Therefore, material factual issues exist as to whether background concentrations of contaminants have caused the exceedances of the Industry Mine NPDES permit.

There are also material issues regarding whether the State can enforce the manganese and pH effluent limitations in the NPDES permit, as 35 Ill. Admin. Code 406.106(b)(2) states that the manganese effluent limitation is "applicable only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations." Chemical addition has been conducted at certain ponds at various times at the Industry Mine (Austin Aff., ¶25), and therefore least some of the manganese excursions alleged by the State do not constitute violations of the Act.

Also, if a facility is unable to comply with the manganese effluent limitation at pH 9, then the pH effluent limit should be revised to 10. 35 Ill. Admin. Code 406.106(b)(2). The Industry Mine NPDES Permit provides an upper limit for pH of 9. The State in its Motion has alleged exceedances of the pH limit where the actual discharge was measured as having a pH greater than 9 but less than 10. (Crislip Aff., ¶4H.) If a pH limit of 10 is applicable to the Industry Mine's discharge pursuant to § 406.106(b)(2), then certain pH excursions alleged in the State's Motion would not be considered violations.

Finally, as stated in Freeman United's 2005 CCA, the waters being collected in Pond 19 at the Industry Mine constituted "Reclamation Area" drainage governed by 35 Ill. Admin. Code 406.109 and thus should not have been subject to any manganese limitations; Freeman United continued to monitor for manganese at this outfall as part of its 2005 CCA. However, just

because Freeman United may have agreed to monitor its manganese discharges from Outfall 19, that does not change the fact that Outfall 19 should not have been subject to manganese effluent limitations.

Therefore, notwithstanding that Freeman United should be entitled to summary judgment on its affirmative defenses, there are material issues of fact as to whether the violations alleged in the State's complaint do in fact constitute violations of the Act. These material issues of fact, standing on their own, require the Board to deny the State's motion.

VI. The State's Request For Penalties Is Premature and Inappropriate

For the reasons discussed above, the Board should deny the State's Motion and instead enter summary judgment in favor of Freeman United. Therefore, the State's request that the Board impose civil penalties against Freeman United need not be considered by the Board. However, due to the unusual and inappropriate nature of the State's request for relief, Freeman United provides this response.

A. The State's Request is Procedurally Improper

The State's request that the Board impose penalties at this stage is procedurally improper and has previously been rejected by the Board. For example, in *Illinois v. Cmty. Landfill Co., Inc.*, PCB 97-193, slip op. at 10 (Apr. 5, 2001), the Board agreed that an evaluation of costs and penalties at the summary judgment phase was premature. In fact, in a later decision in that same case, the Board granted partial summary judgment and then ordered that the matter proceed to a hearing on the remaining counts and to determine the appropriate penalty for the counts for which summary judgment was granted. *Illinois v. Cmty. Landfill Co., Inc.*, PCB 97-193 (Oct. 3, 2002). *See also Illinois v. Chemetco, Inc.*, PCB 96-76 (Feb. 19, 1998) (granting partial summary judgment but refusing to assess a penalties without an evidentiary hearing).

The reason that these Board decisions refused to impose civil penalties at the summary judgment phase should be obvious; penalty determinations require the Board to make factual findings with respect to specific statutory factors which simply cannot be decided at the summary judgment phase. The State admits as much in its Motion. First, the State argues (incorrectly) that Freeman United's affirmative defenses are "not relevant to the issue of liability" and "any dispute (legal or factual) as to the satisfaction or completion of the CCA does not preclude summary judgment." (State's Motion at 8.) Then, the State later asks the Board to find that there are no disputed material facts that would preclude the Board from imposing specific civil penalties on Freeman United. (State's Motion at 16.) As discussed below, there are material disputed issues of fact that preclude the Board's imposition of civil penalties at the summary judgment phase.

B. There Are Significant Factual Disputes With Respect to the Section 33(c) Factors and the Section 42(h) Criteria

In order to impose civil penalties, the Board must consider all of the facts and circumstances surrounding the alleged violations, including the factors and criteria set forth at 415 ILCS 5/33(c) and 415 ILCS 5/42(h).[17] The State argues, unconvincingly, that because

[17] The Section 33(c) factors are: (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. 415 ILCS 5/33(c).

The Section 42(h) criteria are: (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 the requirements of the Act; (3) any economic benefits accrued because of delay in compliance; (4) the amount of civil penalty that will serve to deter further violations; (5) the number, proximity in time, and gravity of previously adjudicated violations; (6) whether the respondent has self-disclosed; (7) whether the respondent undertook a supplemental environmental project;

Freeman United cannot dispute any of these statutory factors and criteria, the Board must grant summary judgment with respect to the penalties. Contrary to the State's argument, there are a number of significant factual issues with respect to the Section 33(c) factors and 42(h) criteria.

Turning to the first Section 33(c) factor, the State argues 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 the permit limits were exceeded, and the simple repetition of such violations."[18] (State's Motion at 11.) The State fails to acknowledge, however, that IEPA issued a single NOV for three alleged manganese discharges from one outfall at the Industry Mine. Presumably, if IEPA believed that the Industry Mine's iron, sulfate, TSS and pH discharges presented a threat to the health, general welfare or physical property of the people, IEPA's NOV would have included these discharges.

The State also ignores the fact that, as discussed above, during the pendency of the Industry Mine NPDES permit, the State's sulfate water quality regulations were revised. As discussed above, the State knew by at least October 2006 that the sulfate standard contained in the permit was stricter than necessary to protect health and the environment. Under the proper standard, at least some of the alleged sulfate violations would not be considered injurious to health and the environment. In addition, at page nine of the State's Motion, the State states that it seeks a finding of liability with respect to 18 manganese violations; however, in its penalty

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and (8) whether the respondent has completed any CCA that might exist. 415 ILCS 5/42(h). The last 42(h) factor was added to the statute in August 2011.

[18] Of course, as noted in footnote 2, Mr. Crislip's affidavit contains a number of factual inaccuracies that would need to be resolved before the Board could rely on his affidavit to impose penalties on Freeman United.

discussion, the State seeks penalties for 71 manganese violations. Clearly, there are significant factual issues that would need to be resolved by the Board with respect to the first 33(c) factor.[19]

As to the second 33(c) factor, the State acknowledges that the Industry Mine has social and economic value to the State. (State's Motion at 11.) As such, although there isn't a factual dispute with respect to this factor, consideration of this factor would mitigate against the imposition of a penalty.

With respect to the technical practicability and economic reasonableness of reducing and/or eliminating the complained of discharges, the State argues, without citation to authority, that the fact Freeman United didn't appeal its NPDES permit when it was issued is conclusive evidence that compliance with the permit's effluent limitations was both practical and reasonable. (State's Motion at 12.) By its own actions, however, in accepting a CCA that addressed only the manganese discharges, IEPA implicitly conceded that compliance with the permit's other effluent limitations wasn't practical or reasonable. Otherwise, IEPA would have been derelict in its enforcement responsibilities to ensure compliance with the Industry Mine NPDES permit. If this matter were to proceed to the penalty phase (for which there should be no need in light of Freeman United's request for summary judgment), Freeman United would provide additional testimony concerning the technical infeasibility of complying with the effluent limits in the Industry Mine's NPDES permit.[20]

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[19] Additionally, each of the disputed factual issues discussed in Section V would also be relevant to the first 33(c) factor.

[20] *See also* Testimony of Robert Mosher, IPCB R07-09 at 2 (Feb. 5, 2007) (testifying that under the State's existing water quality standards, "regardless of the source, sulfate and many other constituents of [total dissolved solids] are not treatable by any practical means" at mines in Illinois).

Turning next to the 42(h) criteria, again Mr. Crislip's affidavit contains numerous factual inaccuracies, creating additional issues of disputed fact with respect to the duration and gravity of any alleged violations. In addition, the same factual issues that would need to be resolved as part of the Board's consideration of the first 33(c) factor would have equal applicability to the first 42(h) criteria. Next, without explanation, the State contends that a lack of due diligence on the part of Freeman United can somehow be inferred from Mr. Crislip's inaccurate affidavit. (State's Motion at 13.) In fact, however, Freeman United was diligent in responding to the State's NOV. Freeman United submitted the following documents in a timely manner: (i) its original CCA; (ii) its 2007 CCA extension; and (iii) the final 2007 CCA that was responsive to IEPA comments. The State then sat on its rights until filing this complaint years later. Clearly, Freeman United has the better story with respect to the second 42(h) criteria. The State concedes it has no evidence that Freeman United realized any economic benefit as a result of the alleged violations. (State's Motion at 13.) Finally, with respect to prior violations of the Act, the best the State can do is reference a 32-year old Board order relating to Freeman United's closure activities at another mine in Southern Illinois. (A copy of this order is attached at Ex. 2.)[21]

Clearly, there are significant disputed issues of fact with respect to a number of the Section 33(c) factors and 42(h) criteria that would preclude the Board's imposition of penalties

[21] Although the State's Motion makes no reference to the 42(h) criteria which provides that the Board can consider CCA compliance, notwithstanding that it was added to the statute in August 2011, the legislative history makes it clear that the intent of the 2011 amendments was to allow the Board to consider a respondent's non-compliance with the CCA when imposing penalties. For example, in the Senate proceedings with respect to the amendments, Sen. Wilhelmi stated, "[I]f there is, in fact, a negotiated CCA, then the agency is prohibited from sending that on to the Attorney General. It's only when there's a violation of the CCA that the Attorney General's Office can come in and file a lawsuit . . ." and went on to explain that the new subparagraph 42(a)(k) imposing a $2,000 civil penalty for violation of 31(a)(7.6) was meant to provide a penalty "for violation of a Compliance Commitment Agreement." (Sen. Transcr. 4/13/11 at 89, 87). Here, the State concedes that Freeman United complied with its CCA. (State Answer, ¶8.)

against Freeman United at this stage. *See Illinois v. Cmty. Landfill Co., Inc.*, PCB 96-76, slip op. at 10 (Apr. 5, 2001) (refusing to impose penalties at summary judgment stage as evaluation of the penalty criteria involves factual determinations that are not the appropriate subjects of a summary judgment motion).

C. The State Seeks Penalties that are Unprecedented and Unjustified

Even if a motion for summary judgment was the proper forum for the imposition of penalties (which it is not), the State's request that the Board make an example of Freeman United and Springfield Coal by imposing civil penalties in excess of $800,000 is unprecedented and unjustified. In fact, the State admits as much. Although the State concedes that the Board may "consider the penalties for similar offenses which have been imposed . . . by Illinois courts or the Board in similar circumstances" (State's Motion at 15), the State asks the Board to ignore prior precedent and impose penalties on Freeman United and Springfield Coal that are multiple times higher than penalties previously imposed by the Board for similar Clean Water Act ("CWA") violations.

During the last eight years, there were only fifteen CWA enforcement cases where the Board's final penalty was over $25,000.[22] Of these fifteen cases, the average penalty amount was approximately $56,918,[23] and the highest was $135,000.[24] It is important to note that there

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[22] *See* http://www.ipcb.state.il.us/cool/external/cases.aspx (the Board's website providing information regarding final penalties in cases before the Board). To locate similar cases to the present one, under the "Search Criteria," the "Case Type" is "Enforcement" and the "Media Type" is "Water." Upon reviewing all of the cases before the Board that meet this criteria, only fifteen (15) cases had final penalties of over $25,000. Please note that any cases that are still pending or were dismissed before the Board were not evaluated for the purposes of these calculations.

[23] *See* PCB 04-98 ($125,000); PCB 04-138 ($80,000); PCB 04-194 ($30,000); PCB 05-66 ($135,000); PCB 05-110 ($60,000); PCB 05-163 ($65,000); PCB 06-16 ($28,000); PCB 07-29 ($27,000); PCB 07-124 ($84,570); PCB 08-29 ($30,000); PCB 08-044 ($55,000); PCB 09-003

are many dozens of other CWA enforcement cases where the penalties have been less than $25,000. Notably, the average of all CWA enforcement cases before the Board during the past three years was as follows: 2009 was $13,119.05;[25] 2010 was $8,711.67;[26] and 2011 was $13,318.24.[27] These penalties are substantially less than the $341,000 amount that the State is demanding from Freeman United.

Even if the State were entitled to the relief it seeks (which it is not), this is not the appropriate case for the Board to allow the State to reset the penalty levels for effluent violations from a coal mine, especially without having provided the parties with the opportunity to present their case to the Board through an evidentiary proceeding. As such, if this matter should ever proceed to a penalty phase, the Board should deny the State's request that the Board ignore prior precedent in order to set an example with respect to Freeman United.

($40,000); PCB 11-003 ($40,000); PCB 11-019 ($25,699.68); and PCB 12-001 ($28,500). The average penalty for these fifteen cases is $56,917.97.

[24] *See People of the State of Illinois v. Petco Petroleum Corporation*, PCB 05-66 (Feb. 2, 2006) ($135,000) (State alleged respondent violated 415 ILCS 5/12(a) and (d) (2004) and 35 Ill. Adm. Code 302.203, 304.105, 304.106, 302.208(g) "by causing or allowing water pollution and violating the chloride water quality standard"; the violations allegedly resulted from spills and leaks totaling approximately 1,100 barrels of salt water and 20 barrels of crude oil).

[25] In 2009, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 21. The total penalties in all of these cases was $275,500. The average penalty was $13,119.05.

[26] In 2010, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 11. The total penalties in all of these cases was $95,828.34. The average penalty was $8,711.67.

[27] In 2011, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 8. The total penalties in all of these cases was $106,545.88. The average penalty was $13,318.24.

Conclusion

For the reasons set forth above, the State is not entitled to summary judgment on Count I of its complaint. Rather, the undisputed facts require that the Board enter summary judgment in Freeman United's favor on Counts I and III of the State's complaint.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY, LLC

By: _____
Steven M. Siros

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Dated: April 27, 2012

This document was filed electronically.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

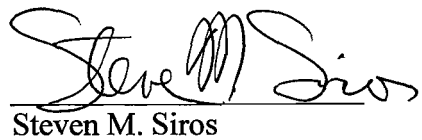
IN THE MATTER OF:

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
ENVIRONMENTAL LAW AND POLICY CENTER, on behalf of PRAIRIE RIVERS NETWORK and SIERRA CLUB, ILLINOIS CHAPTER,	)	**PCB 2010-061 and 2011-002 (Consolidated – Water – Enforcement)**
Intervenor,	)	
v.	)	
FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL COMPANY, L.L.C.,	)	
Respondents.	)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on April 27, 2012, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, Freeman United Coal Mining Company, LLC's Motion for Summary Judgment and Response to the People of the State of Illinois' Motion for Partial Summary Judgment, a copy of which is attached hereto and herewith served upon you.

By: 
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Freeman United Coal Mining Company, LLC,
a Delaware limited liability company

This document was filed electronically.

353 N. Clark Street
Chicago, IL 60654-3456
312-923-8347

This document was filed electronically.

CERTIFICATE OF SERVICE

NOW COMES Steven M. Siros, counsel for Respondent, Freeman United Coal Mining Company, LLC, a Delaware limited liability company, and provides proof of service of the attached Freeman United Coal Mining Company, LLC's Motion for Summary Judgment and Response to the People of the State of Illinois' Motion for Partial Summary Judgment and Notice of Electronic Filing upon the parties listed on the attached Service List, by having a true and correct copy affixed with proper postage placed in the U.S. Mail at Jenner & Block LLP, 353 North Clark Street, Chicago, IL 60654-3456, on April 27, 2012.

Steven M. Siros

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Dated: April 27, 2012

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EXHIBIT 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 2010-061 and 2011-002**
	)	**(Consolidated – Water --**
	)	**Enforcement)**
FREEMAN UNITED COAL MINING	)	
COMPANY, LLC,	)	
a Delaware limited liability company, and	)	
SPRINGFIELD COAL COMPANY, LLC,	)	
a Delaware limited liability company,	)	
	)	
Respondents.	)	

AFFIDAVIT OF THOMAS J. AUSTIN

Thomas J. Austin, being first duly sworn upon oath, deposes and states as follows:

1. My name is Thomas J. Austin. I am currently the Vice President of Human Resources and Government Relations for Springfield Coal Company, LLC. ("Springfield Coal"). I have held this position since Springfield Coal acquired the Industry Mine from Freeman United Coal Mining Company, LLC ("Freeman United") on August 31, 2007.

2. From November 28, 2005 through August 31, 2007, I was the Vice President of Human Resources and Government Relations for Freeman United. From December 27, 2004 through November 28, 2005, I was the Director of Environmental Health and Safety for Freeman United.

3. As Director of Environmental Health and Safety at Freeman United and as Vice President of Human Resources and Government Relations for Freeman United and Springfield Coal, I was aware that the discharge monitoring reports ("DMRs") were submitted to the Illinois Environmental Protection Agency ("IEPA").

4. The DMRs that Freeman United and Springfield Coal submitted provided IEPA with detailed information on the specific levels of regulated constituents in discharges from the regulated outfalls at the Industry Mine.

5. On or about March 11, 2005, Freeman United received Violation Notice W-2005-00167, which is attached as Exhibit 1A to my affidavit. This violation notice referenced three violations of the Industry Mine's manganese effluent limit at Outfall 019.

6. On May 19, 2005, in response to the March 11, 2005 violation notice, Freeman United submitted a proposed Compliance Commitment Agreement ("CCA") to IEPA. A copy

of the May 19, 2005 CCA is attached as Exhibit 1B to my affidavit. The CCA outlined a number of specific steps that Freeman United intended to undertake to address the manganese effluent violations referenced in the violation notice.

7. On or about June 16, 2005, IEPA notified Freeman United that the CCA was accepted, although IEPA imposed an additional monitoring requirement. A true and correct copy of the June 16, 2005 IEPA letter is attached as Exhibit 1C to my affidavit.

8. During the two-year period that the June 2005 CCA was in effect, Freeman United continued to submit DMRs to IEPA in accordance with its NPDES permit.

9. I understood that once IEPA approved the CCA, Freeman United had addressed, to the satisfaction of IEPA, the alleged violations that were the subject of the March 11, 2005 NOV. I am not aware that IEPA or any other state agency between June 2005 and March 2007 advised Freeman United of any intent to take any further enforcement action related to effluent discharges from the Industry Mine.

10. As a general matter, had IEPA notified Freeman United of additional violations and/or issues, I would have ensured that the CCA that Freeman United submitted responded to those violations or issues.

11. In the Spring of 2006, Freeman United commissioned Key Agricultural Services, Inc. to prepare a Manganese Case Study of the Industry Mine. The Case Study concluded that "the Mn levels found in the water of retention pond 19 are most likely due to the naturally occurring Mn levels of the soil material in the region and not due to acid rock drainage." A true and correct copy of the Manganese Case Study is attached as Exhibit 1D to my affidavit.

12. On March 30, 2007, Freeman United sent IEPA a proposed two-year CCA extension. A true and correct copy of the March 30, 2007 proposed CCA extension is attached as Exhibit 1E to my affidavit. This proposed CCA extension also enclosed a copy of the Manganese Case Study.

13. On or about July 13, 2007, Freeman United received a letter from IEPA relating to Freeman United's March 30, 2007 proposed CCA extension. A true and correct copy of the July 13, 2007 IEPA letter is attached as Exhibit 1F to my affidavit.

14. On August 14, 2007, Freeman United sent a letter to IEPA stating that effective September 1, 2007, Springfield Coal would be the owner/operator of the Industry Mine and requesting transfer of the NPDES permit. A true and correct copy of the August 14, 2007 Freeman United letter is attached as Exhibit 1G to my affidavit.

15. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA that responded to IEPA's comments in its July 13, 2007 letter. A true and correct copy of the August 30, 2007 CCA is attached as Exhibit 1H to my affidavit.

16. lEPA did not formally respond in writing to the August 30, 2007 CCA extension request. However, after the Industry Mine was sold to Springfield Coal, l had a telephone conversation in Septeinber of 2007 with lEPA in which l was advised by lEPA to continue to operate the lndustry Mine pursuant to the terms of the August 30, 2007 CCA extension request.

17. It was my understanding from lEPA's representations that Springfield Coal was operating under a valid and enforceable CCA from August 30, 2007 until August 30, 2009. During this two year time period, Springfield Coal was working with IEPA pursuant to the terms of this August 30, 2007 CCA.

18. Except with respect to the telephone conversation referenced in paragraph 16 above, between July 13, 2007 and October 8, 2009, Freeman United and/or Springfield Coal did not receive any written communications from IEPA concerning: (a) Freeman United's August 14, 2007 transfer letter; (b) the August 30, 2007 CCA extension letter; or (c) any issues with the Industry Mine's discharges not meeting the effluent limitations in the NPDES Permit. As a general matter, had IEPA notified Freeman United and/or Springfield Coal of additional violations and/or issues, I would have ensured that the August 30, 2007 CCA responded to those violations or issues.

19. During the period of time I was employed by Freeman United and Springfield Coal, we exercised our best efforts to comply with all applicable effluent limits in the Industry Mine's NPDES permit. The CCAs that were submitted included the technically practicable and economically feasible means to enable the Industry Mine to meet the effluent limits in its NPDES permit.

20. On April 21, 2010, Springfield Coal sent a letter to Mr. Chad Kruse at IEPA seeking clarification from IEPA regarding the application of 35 IAC 406.106(b) to the effluent limitations in the Springfield Coal's NPDES Permit. Springfield Coal never received either an oral or written response from IEPA to the April 21, 2010 letter. A true and correct copy of the April 21, 2010 letter is attached as Exhibit 11 to my affidavit.

21. On July 20, 2010, Springfield Coal met with IEPA to discuss the status of the NPDES renewal application which was submitted by Freeman United on August 15, 2003. During the meeting, when we asked IEPA where in the queue the NPDES renewal application was for consideration, IEPA informed Springfield Coal that the renewal application from 2003 "was not even in the queue."

22. Sampling of the streams traversing the Industry Mine property was conducted in 1979 prior to any mining operations commencing on the property. I have reviewed the data generated from this sampling and it shows that there were elevated levels of a number of constituents, including sulfate, manganese, iron, total suspended solids (TSS), and pH in the surface water. This sampling identified the following constituents and maximum concentrations: manganese (10.4 mg/l), sulfates (601 mg/l), and iron (3.54 mg/l). All of these concentrations would be considered exceedances of the Industry Mine's current NPDES permit. This data is reported in the true and correct copies of the relevant

portions of the Environmental Impact Statement for the Proposed Freeman United Coal Mining Company Industry Mine Site, dated June 19, 1979, and Freeman United Coal Mining Company Industry Mine Surface Disturbance Report Volume I, which are attached as Exhibits 1J and 1K to my affidavit.

23. In 1991 and 1992, the Industry Mine planned to expand its operations and had samples taken of surface water runoff in the areas where many of the now existing ponds were to be built. This area had been subject to some previous historic underground coal mining by other companies. I have reviewed the data generated from this sampling and it identified the following constituents and maximum concentrations: manganese (20.7 mg/l), sulfates (900 mg/l), iron (15.6 mg/l), TSS (120 mg/l), and pH (3.45). All of these concentrations would be considered exceedances of the Industry Mine's current NPDES permit. This data is reported in the true and correct copy of the relevant portions of the Freeman United Coal Mining Company Industry Mine Permit Application No. 261, dated July 1, 1992, which is attached as Exhibit 1L to my affidavit.

24. Sampling of the streams traversing the Industry Mine property have been conducted since 2003. I have reviewed the data generated from such sampling and it has regularly shown that the concentrations of iron, chlorides, and TSS are at higher concentrations upstream of Industry Mine rather than downstream. Moreover, the upstream sampling has identified regular occurrences of iron and TSS at concentrations in excess of the effluent limits in the Industry Mine's NPDES Permit. The following are the effluent limitations in the NPDES Permit and examples of upstream sampling results:

NPDES Permit Limits	**Iron - mg/l**	**Total Suspended Solids (TSS) mg/l**
30 Day Avg.	3.0	35
Daily Max	6.0	70

Date of Upstream Sample	**Iron – mg/l**	**Total Suspended Solids (TSS) mg/l**
7/18/2003	32.5	1900
3/5/2004	4.77	153
4/22/2009		63
10/30/2009	12.4	83
11/30/2009		167
1/24/2010		86
3/11/2010	4.86	203
7/21/2010	18.3	387
2/28/2011	19.6	114
4/25/2011		73
5/25/2011	36.2	760

True and correct copies of the laboratory reports from which this data is taken are attached as Exhibits 1M to my affidavit.

25. At the Industry Mine, chemical addition has been conducted at Ponds 18 and 19 on a periodic basis mainly to lower the manganese concentrations by attempting to raise the pH in the ponds. Chemical addition has been conducted very sporadically at Ponds 26, 2, and 3.

26. I have reviewed Larry Crislip's March 1, 2012 affidavit and the exceedances he alleges of the sulfate effluent limitation in the NPDES Permit. I have also reviewed the sulfate data reported on the DMRs for the Industry Mine and have reviewed the current water quality standard for sulfate adopted by the Illinois Pollution Control Board on September 19, 2008. If the NPDES Permit for the Industry Mine had incorporated the current sulfate standard, there would have only been 19 excursions for sulfate from September 2008 through 2011 as opposed to the 77 excursions alleged in Larry Crislip's affidavit, a reduction of over 75%.

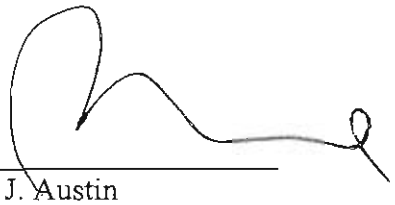
27. I have reviewed Larry Crislip's March 1, 2012 affidavit and the exceedances he alleges of the effluent limitations in the NPDES Permit. I have also reviewed the data reported on the DMRs for the Industry Mine that were submitted to IEPA. From my review of these documents, I have noted that there are numerous discrepancies between the information in Larry Crislip's affidavit and the data reported on the DMRs. For example Mr. Crislip claims that on February 14, 2005 for Outfall 18 the concentration of iron in the discharge was 13.0 mg/l, whereas the DMR shows a value of only 0.43 mg/l. This would not be considered an exceedance of the effluent limitation in the NPDES Permit. Also, Mr. Crislip identifies the following as exceedances of the monthly average effluent limitations in the NPDES Permit, however, the DMRs indicate that less than three samples were taken in those particular months and therefore pursuant to 35 IAC 304.104(b), which requires a monthly average to be based on at least three daily composites, these would not be exceedances:

Constituent	Month/Year	Outfall	Permit Limit	Actual Discharge
Iron	January 2005	018	3.5 mg/L	4.42 mg/L
Iron	January 2005	024W	3.0 mg/L	4.65 mg/L
Iron	January 2005	029	3.0 mg/L	4.98 mg/L
Iron	February 2005	029	3.0 mg/L	3.08 mg/L
Manganese	February 2005	018	2.0 mg/L	10.3 mg/L
Manganese	February 2005	019	2.0 mg/L	11.3 mg/L
Manganese	March 2005	019	2.0 mg/L	6.76 mg/L
Manganese	June 2005	018	2.0 mg/L	6.66 mg/L
Manganese	June 2005	019	2.0 mg/L	5.78 mg/L
Manganese	June 2006	019	2.0 mg/L	3.38 mg/L
Manganese	January 2007	019	2.0 mg/L	7.95 mg/L
Manganese	February 2007	019	2.0 mg/L	15.2 mg/L
Manganese	May 2007	019	2.0 mg/L	5.66 mg/L
Manganese	January 2008	019	2.0 mg/L	12.9 mg/L
Manganese	December 2008	018	2.0 mg/L	2.2 mg/L

Manganese	January 2009	018	2.0 mg/L	2.165 mg/L
Manganese	March 2009	026	2.0 mg/L	2.725 mg/L
TSS	January 2005	003	35.0 mg/L	48.5 mg/L
TSS	January 2005	018	35.0 mg/L	38 mg/L
TSS	February 2008	029	35.0 mg/L	64 mg/L

This concludes my affidavit.

Affiant:



Thomas J. Austin

Subscribed and sworn to before me this 27th day of April, 2012.

Trudy D. Manis

Notary Public

OFFICIAL SEAL
TRUDY D MANIS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/06/14

EXHIBIT 1A

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7002 3150 0000 1256 3274
RETURN RECEIPT REQUESTED

March 11, 2005

Freeman United Coal Mining Company
Industry Mine
P.O. Box 260
Industry, Illinois 61440
Attention: Mr. Michael T. Stevinson, Mine Engineer

Re: Violation Notice: W-2005-00167
Facility I.D.: IL0061247

Dear Mr. Stevinson:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based upon review of available information and investigation by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each, an explanation of the activities that will be implemented and the time schedule for the completion of each activity. Also, if a pollution prevention activity will be implemented, indicate that intention in any written response. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject the proposal within 30 days of receipt.

Exhibit 1A

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to BEVERLY BOOKER at the ILLINOIS EPA, BUREAU OF WATER, CAS #19, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276. All communications must include reference to this Violation Notice number, W-2005-00167.

Questions regarding this Violation Notice should be directed to BARB CONNER at 217/782-9720.

FAX 217-557-1407

Sincerely,

Michael S. Garretson /a

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

Attachment

Bob Moser
Section manager water quality

ATTACHMENT A

IL0061247

FREEMAN UNITED COAL MINING COMPANY **VIOLATION NOTICE: W-2005-00167**
INDUSTRY MINE

Questions regarding the violations identified in this attachment should be directed to Barb Conner at (217) 782-9720.

A review of information available to the Illinois EPA indicates the following violation of statutes, regulations or permits. Included with the violation is an explanation of the activity the Illinois EPA believes may resolve the violation including an estimated time period for resolution.

Effluent Violations

Review the treatment plant operations/operational procedures and evaluate the treatment equipment in order to correct the deficiencies which caused the violations. Compliance is expected to be achieved within 45 days.

Violation Date	Violation Description
09/13/2004	Outfall 019- Manganese Effluent Limit
Rule/Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit
11/15/2004	Outfall 019-Manganese Effluent Limit
Rule/Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit
12/28/2004	Outfall 019-Manganese Effluent Limit
Rule/ Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit

EXHIBIT 1B

Freeman United
A GENERAL DYNAMICS COMPANY

May 19, 2005

Ms. Beverly Booker
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
Facility I.D. IL0061247
Violation Notice: W-2005-00167

Dear Ms. Booker:

With regard to the March 11, 2005 Violation Notice issued to Freeman United Coal Mining Company ("Freeman") and pursuant to Section 31(a)(5) of the Illinois Environmental Protection Act, we respond as follows:

Industry Mine. The aerial photograph transmitted herewith depict Freeman's Industry Mine, a surface coal mine. The coal seam is fairly close to the surface in this area and rests on a stratum of fire clay. The mine was opened in 1982 and has operated since that time under a series of mining permits issued by the Office of Mines & Minerals of the Illinois Department of Natural Resources and others. Pond 19, outlined in blue on the aerial photograph, was constructed as a sedimentation pond to collect waters from a drainage area located within the boundaries of Mining Permit 261. After that area was mined, Freeman proceeded with the reclamation work for that area as specified in the Reclamation Plan. The specified contouring and grading work in the Pond 19 surface drainage area was completed and the seeding work was commenced after mining. In 2004, final reclamation work was performed within the drainage area, including the placement of a two-foot clay cap in the area outlined in green on the aerial photograph. The seeding of that area was commenced in November of 2004 and has been largely completed. All of the drainage area from which Pond 19 collects runoff and seepage is a "Reclamation Area", as defined in 35 ILAC 402.101.

Prior Mining. When the initial application for a mining permit for the future Permit 261 area was prepared, Freeman noted that there was evidence of prior coal mining in the areas upstream of Pond 19. An excerpt from "Part II, PREMINING INFORMATION," of the original permit application is enclosed to demonstrate this. Runoff and seepage from these areas was affecting water quality within the Permit Area prior to any mining activity by Freeman. Results of analyses at downstream locations on Grindstone and Camp Creeks, which are attached, seem to reflect little if any negative impact on those streams.

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

Groundwater Seeps. Groundwater seeps, up gradient of Pond 19 became increasingly prevalent after 1995. Several years ago the rate of flow from these seeps into Pond 19 was estimated as approaching 100 gpm. The groundwater flowing from the seeps exhibited relatively high concentrations of manganese. Over the past several years, Freeman has applied a number of treatment technologies in order to reduce the manganese levels before discharge from Pond 19. Among other things:

1. The channels from the seeps to Pond 19 have been lined with limestone rip rap to increase aeration before the groundwater reaches Pond 19.

2. Approximately 20,000 cubic yards of material has been excavated from the upper portions of Pond 19, increasing its capacity to approximately 30,000 cubic yards, essentially providing a two cell system.

3. Soda ash briquettes in a metal aeration basket have been placed periodically in the flow from the seeps near the upper end of Pond 19.

4. Windmills have been constructed to drive aeration units in the pond.

5. Hydrated limestone slurry is being applied on a weekly basis except when pond surface is frozen.

Despite all of the above, the combined treatment steps do not consistently reduce magnesium concentrations at the outfall of Pond 19 to meet the discharge limits set out on page 4 of the NPDES Permit.

Clay Cap. Prior to 2004, Freeman personnel observed an area within Pond 19's drainage area in which surface water collected after a rain event and drained rapidly into the unconsolidated material of the overburden. It is assumed this water followed a pathway through the spoil and overburden to the fire clay stratum thereby saturating the overlying material and proceeding along the surface of the fire clay to the seeps. Based on that assumption and as mentioned above, a two-foot clay cap was placed over the porous area to seal off this pathway. Since that cap has been put in place, the flow from various seeps up gradient from Pond 19 has decreased. However, it will take a number of months for the saturated material above the fire clay seam to drain and to establish that the clay cap has effectively sealed the source of the seepage.

NPDES Permit No. IL 0061247. Page 4 of the current NPDES Permit covered the outfall for Pond 19 as long as it continued to be "Mine Drainage", and specified manganese limits of 2.0 mg/L (30-day average) and 4.0 mg/L (daily maximum). Page 12 of the Permit covers the outfall for Pond 19 since it became a "Reclamation Area Drainage", and consistent with 35 ILAC 406.109, Page 12 does not establish a limit for manganese. Freeman hereby requests that the Agency acknowledge that the waters being collected in Pond 19 at this time constitute Reclamation Area Drainage, and that the outfall from Pond 19 will henceforth be covered by the provisions of page 12 of the Permit.

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

Compliance Commitment Agreement. Freeman hereby proposes the following as its Compliance Commitment Agreement:

1. The term of this Agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this Agreement:

    a. Freeman will continue to maintain the forms of treatment, as set out above, to control the manganese levels in the discharge from Pond 19;

    b. Freeman will monitor the effluent discharging from Pond 19 as required by page 12 of the permit, except that;

    c. Freeman will monitor the rate of flow from the pond.

3. Not later than sixty (60) days before the expiration of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY

By _____
Thomas J. Austin
Director of Environmental, Health and Safety

Attachments

cc: Ron Morris, IEPA

Safety \ Environmental \ 63sfo11.doc

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

EXHIBIT 1C

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7004 2510 0001 8653 1689
RETURN RECEIPT REQUESTED

June 16, 2005

Mr. Thomas J. Austin
Freeman United
PO Box 4630
Springfield, Illinois 62708

Re: Compliance Commitment Conditional Acceptance
Violation Notice: W-2005-00167
Facility I.D.: IL0061247-Industry Mine

Dear Mr. Austin:

The Illinois Environmental Protection Agency ("Illinois EPA") **accepts with a condition** the Compliance Commitment Agreement ("CCA") proposed by Freeman United dated May 19, 2005 in response to the Violation Notice dated March 11, 2005. The CCA as proposed by Freeman United is as follows:

1. The term of this Agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this Agreement:

   a. Freeman will continue to maintain the forms of treatment, as set out in the May 19, 2005 CCA, to control the manganese levels in the discharge from Pond 19;

   b. Freeman will monitor the effluent discharging from Pond 19 as required by page 12 of the permit, except that;

   c. Freeman will monitor the rate of flow from the pond.

3. Not later than sixty (60) days before the expiration of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Exhibit 1C

Pursuant to Section 31 (a) (7) of the Illinois Environmental Protection Act, the Illinois EPA proposes the addition of the following condition to the CCA. During the term of the CCA, Freeman shall monitor and report the parameter of manganese at Outfall 019 as required by page 4 of the current NPDES Permit. Failure to fully comply with each of the commitments and the schedule for achieving each commitment as contained in the CCA may, at the sole discretion of the Illinois EPA, result in referral of this matter to the Office of the Attorney General, the State's Attorney or the United States Environmental Protection Agency.

The CCA does not constitute a waiver or modification of the terms and conditions of any license or permit issued by the Illinois EPA or any other unit or department of local, state or federal government or of any local, state or federal statute or regulatory requirement. All required permits or licenses necessary to accomplish the commitments stated above and comply with all local, state or federal laws, regulations, licenses or permits must be acquired in a timely manner. The need for acquisition of any licenses or permits does not waive any of the times for achieving each commitment as contained in the CCA.

Questions regarding this matter should be directed to Barb Conner at 217/782-9720. Written communications should be directed to Beverly Booker at the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, IL 62794-9276, and all communications shall include reference to your Violation Notice Number W-2005-00167.

Sincerely,

Michael S. Garretson/bb

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

NOTE: ON 6/20/05 RON MORRIS CALLED AND SAID TO SAMPLE MANGANESE QUARTERLY AND SEND RESULTS TO HIM & KRUSIP.

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

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

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

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

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	Effluent Limitations
pH	6.0 - 9.0 at all times

EXHIBIT 1D

KEY-AG®

Key Agricultural Services, Inc.

114 Shady Lane • Macomb, Illinois 61455 • Tel: (309) 833-1313

Manganese Case Study
Freeman Mine – Industry, Illinois

Introduction

Retention pond 19 located southwest of the intersection of County roads 125 North and 900 East in McDonough County has been testing above acceptable levels for Manganese (Mn) concentration.

Soil Scientists with Key Agricultural Services Inc. were digging soil pits to an approximate depth of 50 inches and noted that Mn concretions are common throughout the soil profile below the surface horizon. The presence of the Mn accumulations in the shallow depths of the soil profile raises the question as to whether the Mn levels found in the pond water are elevated due to acid rock drainage, or to the natural Mn concentrations associated with the parent material and soil forming factors of the undisturbed soils common to the region.

The dominant soil types originally located in the area of the mine that now drain into the pond are Rozetta and Keomah. The NRCS soil profile descriptions for the Rozetta and Keomah soil series note the presence of Mn accumulations beginning at 26 inches and the soil surface, respectively. Due to the natural occurrence of accumulated Mn in the undisturbed soil profiles it is possible that the concentration of Mn in the water of the pond is originating from the inherent concentrations of Mn and not that of acid rock drainage.

Methods

Six sample sites were selected in an undisturbed area adjacent to the mine location. Three of those sites were located in Rozetta and three in Keomah soils. Six corresponding sites were chosen from the reclaimed fields that drain into the pond. Three of the reclaimed sites represent the topographic-position of a Rozetta and three represent that of a Keomah soil.

Six inch soil samples were taken to a depth of 72 inches at each of the 12 locations. Each sample was analyzed in the laboratory for pH and Mn concentration.

The data obtained was then plotted by depth and comparisons were made between the values found in the undisturbed sites versus that of the reclaimed sites. Statistical significance was determined within each sample depth and calculated at 95% confidence.

KEY-AG

Summary of Results

pH

The pH levels found in the reclaimed soils ranged from 4.91 to 7.02. The pH levels found in the undisturbed soils ranged from 4.42 to 6.87.

The average pH of the undisturbed samples in each six inch sample range as well as over the entire profile was lower than that of the reclaimed soils (Table 1). The lowest pH readings obtained in each depth increment were all found in the undisturbed samples with the exception of the 60-66 inch range where both the reclaimed and undisturbed soils had a low pH of 5.39.

The lowest pH level found at each sample depth in the reclaimed soil profiles were never lower than the lowest pH level found at the same sample depth of the undisturbed soils (Graph 1).

In the surface 12 inches of all profiles, 3 of the 4 (75.0%) pH levels that were significantly lower were from the undisturbed soil profiles. In the upper 36 inches 15 of the 16 (93.75%) samples with significantly lower pH were from the undisturbed soils. From 36 to 72 inches 10 of the 16 (62.5%) samples with significantly lower pH levels were from the undisturbed soil profiles.

In the 12 sample depths tested, 2 (16.67%) depths had more reclaimed samples with significantly lower pH levels than undisturbed samples and the remaining 10 (83.33%) sample depths had more undisturbed samples with significantly lower pH levels than reclaimed samples (Graph 1).

A total of 72 samples were collected and analyzed for each of the reclaimed and undisturbed soils. 7 (9.72%) reclaimed samples and 25 (34.72%) undisturbed samples had significantly lower pH levels than the other samples collected at those depths.

Manganese

In all but one of the 12 soil profiles collected the Mn concentrations decreased from the surface sample down to 18 inches. The Mn content in most samples remained at relatively minimal levels from 12 to 72 inches, ranging from 8.9 to 67.8 ppm. At each sample depth one to five samples were found to be significantly higher in Mn than the rest of the samples at that same depth (Graph 2).

The reclaimed soil profiles contain less total Mn than the undisturbed soils both on average and in total from 0-12 inches, 30-72 inches, and through the entire 72 inch profile. The reclaimed soils contained more Mn than the undisturbed soils only through the 12-30 inch range (Table 2).

In the surface 12 inches of all profiles, 6 of the 7 (85.71%) Mn levels that were significantly higher were from the undisturbed soil profiles. In the upper 36 inches 10 of the 18 (55.56%) samples with significantly higher Mn concentrations were from the undisturbed soils. From 36 to 72 inches 11 of the 14 (73.33%) samples with significantly greater Mn concentrations were from the undisturbed soil profiles.

In the 12 sample depths tested, 2 (16.67%) depths had more reclaimed samples with significantly high Mn levels than undisturbed samples, 2 (16.67%) depths had equal incidences of

significantly high Mn levels between the undisturbed and reclaimed samples, and 8 (66.67%) had more undisturbed samples with significantly high Mn concentrations than reclaimed samples (Graph 2).

A total of 72 samples were collected and analyzed for each of the reclaimed and undisturbed soils. 12 (16.67%) reclaimed samples and 21 (29.17%) undisturbed samples had significantly higher Mn concentrations than the other samples collected at those depths.

Conclusions

Although all twelve soil profiles tested have lower pH levels than typically recommended for the row crops planted in the region, the pH of the reclaimed soils is higher than that of the undisturbed soils indicating there is not increased acidity due to acid rock. This data also shows the Mn levels found in both the surface and sub-surface of the undisturbed soil profiles are higher than those found in the reclaimed soils and the undisturbed samples have far more incidences of significantly high Mn concentration than the reclaimed soils. Therefore, the Mn levels found in the water of retention pond 19 are most likely due to the naturally occurring Mn levels of the soil material in the region and not due to acid rock drainage.

KEY-AG

Comparison of pH Data

Table 1	Undisturbed Samples		Reclaimed Samples	
Sample Depth (inches)	Average pH	Lowest pH	Average pH	Lowest pH
0-6	5.75	5.23	6.19	5.31
6-12	5.28	4.52	5.95	5.04
12-18	4.83	4.59	5.55	4.98
18-24	4.75	4.42	5.49	5.01
24-30	4.80	4.47	5.67	4.91
30-36	4.96	4.49	5.60	4.97
36-42	5.16	4.65	5.61	4.99
42-48	5.14	4.73	5.78	5.02
48-54	5.39	4.92	6.06	5.08
54-60	5.63	5.20	6.10	5.38
60-66	5.79	5.39	5.96	5.39
66-72	5.87	5.29	5.83	5.40

= the lowest value for that depth when comparing Undisturbed and Reclaimed sites.

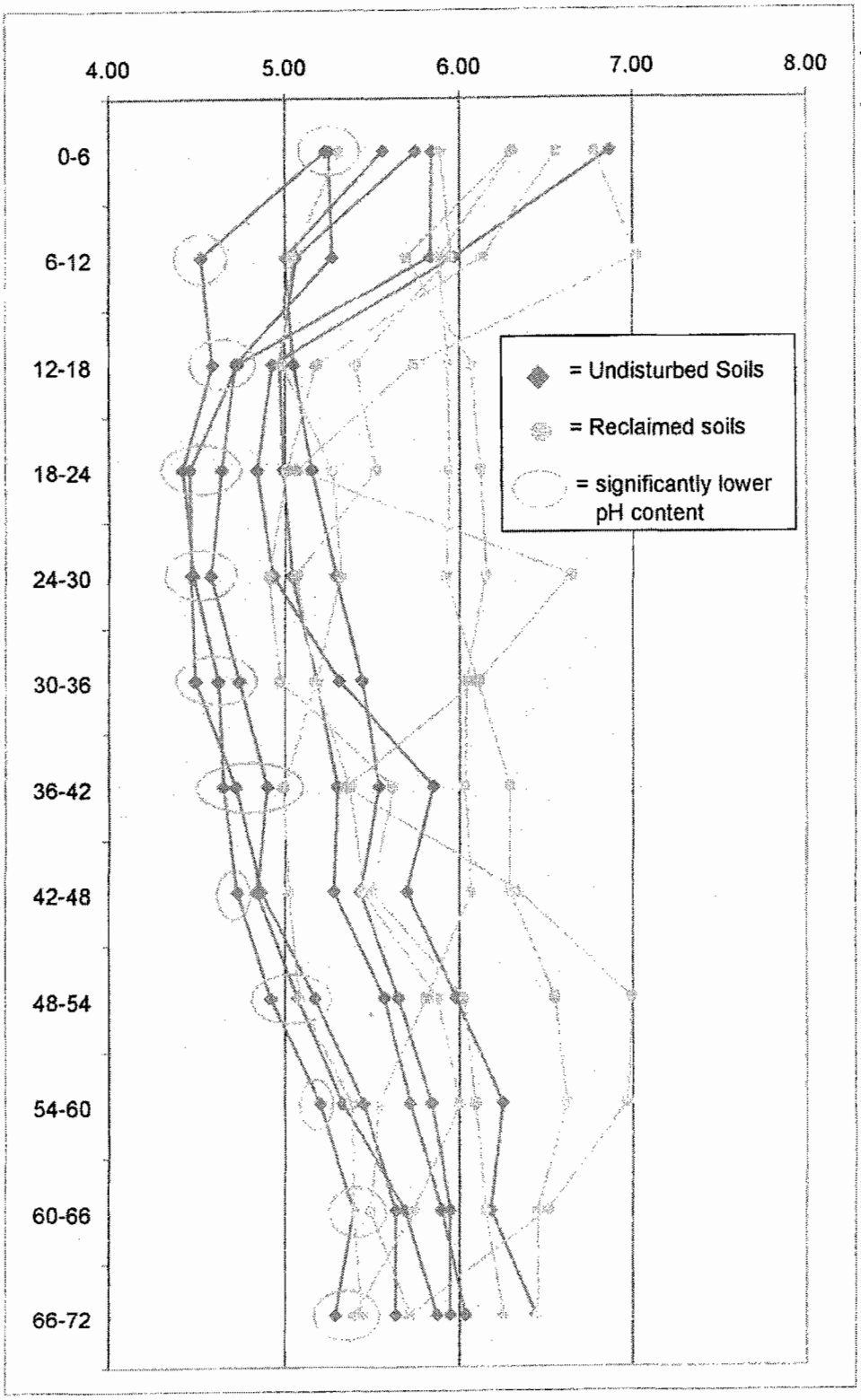
Comparison of Mn Data

Table 2	Undisturbed Samples		Reclaimed Samples	
Sample Depth (inches)	Average Mn	Highest Mn	Average Mn	Highest Mn
0-6	128.52	188.50	86.22	106.10
6-12	76.75	132.10	65.58	115.10
12-18	43.35	81.50	53.38	124.80
18-24	25.73	36.90	54.98	139.40
24-30	28.03	38.70	54.08	130.40
30-36	59.85	90.80	52.30	128.60
36-42	78.02	216.30	46.65	150.20
42-48	68.90	140.20	41.55	103.10
48-54	65.28	115.50	45.47	96.20
54-60	74.60	197.40	36.07	73.20
60-66	65.82	111.20	31.32	45.80
66-72	47.82	60.80	37.70	56.30

= the highest value for that depth when comparing Undisturbed and Reclaimed sites.

KEY-AG

Graph 1) **pH with Depth**

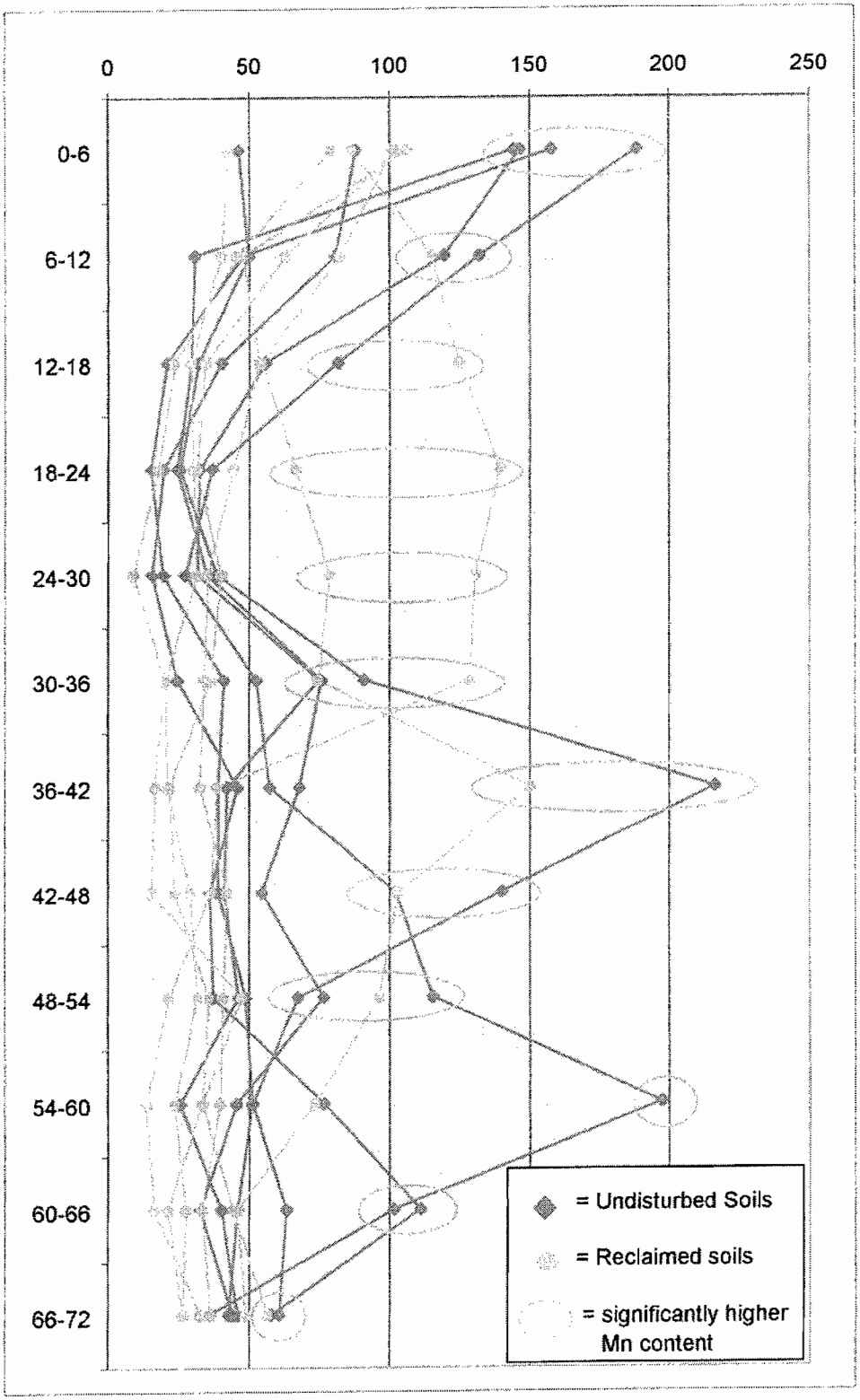


Incidences of significantly (95%) lower pH concentrations	
Undisturb.	**Reclaimed**
2	1
1	0
3	0
3	0
3	0
3	0
3	1
1	0
3	1
1	0
1	2
1	2
25	7

Total incidences of significantly lower pH levels in the soils =

KEY-AG

Graph 2) Mn Concentration with Depth



Incidences of significantly (95%) higher Mn concentrations	
Undisturb.	Reclaimed
4	0
2	1
1	1
0	2
0	2
3	2
1	1
2	1
3	1
1	0
2	0
2	1
21	12

Total incidences of significantly higher Mn Concentrations in the soils =

EXHIBIT 1E

FREEMAN UNITED

Freeman United Coal Mining Company

March 30, 2007

Ms. Barb Conner
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
NPDES Facility I.D. IL0061247
Violation Notice: W-2005-00167
Pond 19 Compliance Commitment Agreement Status

Dear Ms. Conner,

With regard to the status of the Compliance Commitment Agreement conditionally accepted by the Agency on June 16, 2005, Freeman United Coal Mining Company responds as follows:

Pond 19 Discharges

The outfall from Pond 19 has been monitored as a reclamation area drainage outfall (with additional Total Manganese monitoring) since the term of this agreement began. During this term, the base flow at the outfall has decreased from 80 to 95 gallons per minute to a level of 20 to 30 gallons per minute. Thirty-one samples have been analyzed for Total Manganese during the term; of these, 12 have been below 2 mg/L, the 30-day average standard, 9 have been in the range of 2 to 4 mg/L, and 10 have exceeded the maximum standard level of 4 mg/L. The exceedances, much less frequent than in the previous 2-year period, have occurred despite continued regular treatment of the influent to the pond and the pond itself. For the other parameters monitored, there have been no exceedances of permit limits for pH, Total Settleable Solids, and Chlorides. There have been 8 exceedances of the permit limit for Sulfates; however these would not have been exceedances under the proposed standard currently under review by the Illinois Pollution Control Board.

Upstream Drainage Area Study

In the Spring of 2006, Key Agricultural Services, Inc. was retained to determine problems with crop productivity results in several areas at the Industry Mine, including the area up-drainage of Pond 19. When penetrometer readings in that area had high values, they decided to dig test pits to possibly determine the cause. In those test pits, they discovered several manganese nodules, so they were retained to explore this further.

Six test pits each were excavated in similar soils unaffected by the mining operation and in those that were reclaimed up-drainage of Pond 19. Soils in the pits were sampled at 6 inch intervals from the ground surface to six feet below the surface. The samples were analyzed for paste pH and Manganese leachate (Mehlich No. 3 Extraction [with 2.5 pH Reagent]). Results indicated low pH levels in both groups at all levels (lowest

PO Box 259
Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

4.42 units in the unaffected soils and 4.91 units in the reclaimed soils) as well as high Manganeseat all levels (as high as 216.3 mg/L in the unaffected soils and 150.2 mg/L in the reclaimed soils). The lowest average (6 samples each at each 6" interval in the pits) Manganese levels were 36.9 mg/L in the unaffected soils at the 18-24" interval and 45.8 mg/L in the reclaimed soils at the 60-66" interval.

The study (copy enclosed) concluded that "the Manganese levels found in the water of Pond 19 are most likely due to the naturally occurring Manganese levels of the soil material in the region and not due to acid rock drainage."

Compliance Commitment Agreement

1. The term of this agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this agreement:

    a. Freeman will continue to maintain the forms of treatment, as set out in the May 12, 2005 letter to the Agency, to control the manganese levels in the discharge from Pond 19;

    b. Freeman will continue to monitor the effluent from Pond 19 as a Reclamation Area Discharge one time per month with the following parameters monitored: pH, Total Settleable Solids, Sulfates, Chlorides, Total Manganese, and Flow Rate.

    c. Freeman will monitor the influent to Pond 19 and Grindstone Creek downstream from the Pond 19 effluent monthly when monitoring the Pond 19 effluent with the following parameters monitored: pH and Total Manganese.

3. Not later than sixty (60) days before the expiration date of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectively submitted,

FREEMAN UNITED COAL MINING COMPANY

By: Steven C. Phifer

Steven C. Phifer, Environmental Engineer

PO Box 259
Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

EXHIBIT 1F

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7004 2510 0001 8619 5959
RETURN RECEIPT REQUESTED

July 13, 2007

Mr. Steven C. Phifer
Freeman United Coal Mining Company
P.O. Box 259
Farmersville, Illinois 62533

Re: Compliance Commitment Rejection
Violation Notice: W-2005-00167
Facility ID: IL0061247-Industry Mine Outfall 019

Dear Mr. Phifer:

The Illinois Environmental Protection Agency ("Illinois EPA") received the information concerning the above referenced project dated March 30, 2007, on April 2, 2007. This information has been reviewed by Illinois EPA staff and, based upon that review, the following is offered for your consideration and appropriate action. The request for extension of the original Compliance Commitment Agreement (CCA) dated May 19, 2005, is hereby rejected because this request appears to only propose continuation of treatment and monitoring as in the previous CCA, and fails to set forth a plan to address the underlying issue in an attempt to arrive at an ultimate resolution.

An acceptable CCA Extension request must include a feasible and implementable compliance plan designed to result in an ultimate resolution to the current elevated manganese concentrations in the discharge at Outfall 019 and subsequent water quality standards violations. The compliance plan must ultimately result in consistent compliance with the General Use Water Quality Standard as specified in 35 Ill. Adm. Code 302.208.

The Illinois EPA remains willing to evaluate any proposal you may have to address the specified deficiencies or to meet for discussion of possible alternatives. If you wish to submit a further proposal to resolve this matter short of formal enforcement, please do so by September 1, 2007. However, even though a proposal may be the subject of further consideration, it will not be considered to be a CCA as referenced in Section 31(a) of the Illinois Environmental Protection Act (415 ILCS 5/31(a)).

Exhibit 1F

If the violations remain the subject of disagreement between the Illinois EPA and Freeman United Coal Mining Company, this matter may be considered for referral to the Office of the Attorney General, the State's Attorney or the United States Environmental Protection Agency for formal enforcement action and the imposition of penalties.

Any written communication should be directed to Beverly Booker at the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, IL 62794-9276. All communication shall include reference to your Violation Notice W-2005-00167. If you have questions regarding this matter, please contact Barb Conner or Larry Crislip at 217/782-9720 or 618/993-7200.

Sincerely,

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

EXHIBIT 1G

FREEMAN UNITED

Freeman United Coal Mining Company

Crown Mine III
P.O. Box 259
Farmersville, IL 62533-0259
(217) 627-2161
Fax: (217) 627-3411

August 14, 2007

Mr. Ronald Morse
Illinois Environmental Protection Agency
2309 West Main Street
Marion, Illinois 62959

Re: NPDES Permit Transfer
Industry Mine, Permit No. IL0061247

Dear Mr. Morse,

We are herein requesting transfer of the above listed permit from Freeman United Coal Mining Company to Springfield Coal Company, L.L.C, effective no sooner than September 1, 2007. Ownership and control information for the new permittee is attached.

Per your request, I am enclosing 2 copies of an ownership change map for the mine. Although a portion of the property will be transferring to another party, Springfield Coal Company, LLC will retain all permits and will continue to have access as required for reclamation of the properties. In addition, all surface and ground water monitoring will continue to be the responsibility of Springfield Coal Company, LLC.

Location names and contact information for all the former Freeman facilities will remain as they were previously. The Springfield office address will be P.O. Box 9320, Springfield, IL 62791-9320; its location will be 4440 Ash Grove, Suite A, Springfield, IL 62708.

Respectfully,

FREEMAN UNITED COAL MINING COMPANY

BY: _____
Thomas Austin, V.P.

SPRINGFIELD COAL COMPANY, L.L.C.

BY: _____
Phillip Ott, V.P.

Exhibit 1G

EXHIBIT 1H

FREEMAN UNITED

Freeman United Coal Mining Company

August 30, 2007

Ms. Beverly Booker
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
NPDES Facility I.D. IL0061247
Violation Notice: W-2005-00167
Pond 19 Compliance Commitment Agreement

Dear Ms. Booker,

In response to the Agency's July 13, 2007 rejection of our March 30, 2007 request for extension of the Compliance Commitment Agreement (CCA) for Pond 19 at the Industry Mine, I herein respond as follows:

Repair and modification of the Industry Mine Pond 19 decant structure this summer allows the mine personnel additional flexibility in controlling discharges from the pond at Outfall 019. Installation of a valve on the discharge piping allows periodic discharges. In addition, a pump that will allow better mixing between the upper and lower portions of the pond has been put in place at the pond. These actions allow us to present the following proposal:

Pond 19 Proposal

1. The term of this agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this agreement:

   a. Freeman will continue to maintain the forms of treatment, as set out in the May 12, 2005 letter to the Agency, to control the manganese levels in the discharge from Pond 19;

   b. Except during periods of higher flows in Grindstone Creek in response to larger precipitation events, Freeman will endeavor only to discharge water from Pond 19 only when the Total Manganese level in the pond is below the permit limits as determined by on-site monitoring.

PO Box 259
Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

c. Freeman will continue to monitor the effluent from Pond 19 as a Reclamation Area Discharge one time per month with the following parameters monitored: pH, Total Settleable Solids, Sulfates, Chlorides, Total Manganese, and Flow Rate.

d. Freeman will monitor Grindstone Creek downstream from the Pond 19 effluent monthly when monitoring the Pond 19 effluent with the following parameters monitored: pH and Total Manganese.

3. During the term of this Agreement, Freeman will continue to explore alternatives to treatment of the water in Pond 19 that would result in an ultimate resolution and water quality in consistent compliance with the General Use Water Quality Standard.

4. Not later than sixty (60) days before the expiration date of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectively submitted,

FREEMAN UNITED COAL MINING COMPANY

By: Steven C. Phifer

Steven C. Phifer, Environmental Engineer

PO Box 259
Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

EXHIBIT 1I

SPRINGFIELD COAL CO.

Springfield Coal Company, LLC

Crown Mine III
P.O. Box 259
Farmersville, IL 62533-0259
(217) 627-2161
Fax: (217) 627-3411

April 21, 2010

Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
1-217-782-2829

Re: Violation W-2009-00306

Dear Mr. Kruse,

Mr. Larry Crislip suggested that we send this letter to you to clarify an issue arising around Violation W-2009-00306. Title 35, Subtitle D, 406.106 b) 2) provides in pertinent part: "*The manganese effluent limitation is applicable only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH shall be 10 for any such facility that is unable to comply with the manganese limit at pH 9.*" As described in the letter we submitted to you dated February 18, 2010, chemical treatment is to be utilized at Pond 18 and Pond 19 to comply with the manganese standards set forth in NPDES permit for facility # IL0061247. As a result, although the upper limit of pH is 9 in the NPDES permit, a pH greater than 9 yet less than 10 should not be an excursion. Please confirm. On March 11, 2010 a NPDES sample at Pond 19 outfall had a pH of 9.04.

If you should have any questions regarding this request or require further information, please contact me at your convenience.

Sincerely,
Springfield Coal Company, LLC

Andrew R. Ditch
Environmental Engineer
1.217.627.2161 ext 229

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Illinois Environmental Protection Agency ☐ Agent ☐ Addressee

B. Received by (Printed Name) Spring... 62794-9276 C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Warren Vilt

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2 7008 1830 0005 0473 0428

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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7008 1830 0005 0473 0428

Sent To
Mr. Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PS Form 3800, August 2006 See Reverse for Instructions

EXHIBIT 1J

PRELIMINARY DRAFT

ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED FREEMAN UNITED COAL MINING COMPANY

INDUSTRY MINE SITE

June 19, 1979

Prepared by:

ENVIRONMENTAL SCIENCE AND ENGINEERING, INC.
Gainesville, Florida 32604

Project No. 78-023-120

2.7 SURFACE WATER QUALITY

2.7.1 INTRODUCTION

Three small surface streams within the boundaries of the Freeman Coal property were sampled during 1978 to determine the quality of the water flowing through the proposed mining area (see Figure 2.7-1). Grindstone Creek, the largest stream, originates east of the property and flows through the Freeman Coal tract before intersecting the large LaMoine River. Samples from Grindstone Creek were collected at two locations, one on the eastern boundary and the other at the western boundary of the Freeman Coal tract (see Figure 2.7-1). Willow Creek originates within the Freeman Coal property and exits at the southwestern corner of the site. Sampling for this study was conducted at the southwestern corner. Horney Creek is located south of the property, but intersects the proposed haul road. Samples were collected from this intersection. Four seasonal sampling periods were included in the study, with samples collected on May 17, August 8, November 14, and December 19, 1978. Samples were collected during all four periods from the two locations on Grindstone Creek; however, no sample was collected from Willow Creek in August because the streambed was dry at the sampling time. The Horney Creek site was not initially included in the study; therefore only the fall and winter (November and December) samples were collected from the stream (see Table 2.7-1).

No past water quality data is available for the three streams sampled in this study. The closest regular water quality monitoring station is located on the LaMoine River into which the previously mentioned tributary streams flow.

2.7.2 PRESENT WATER QUALITY

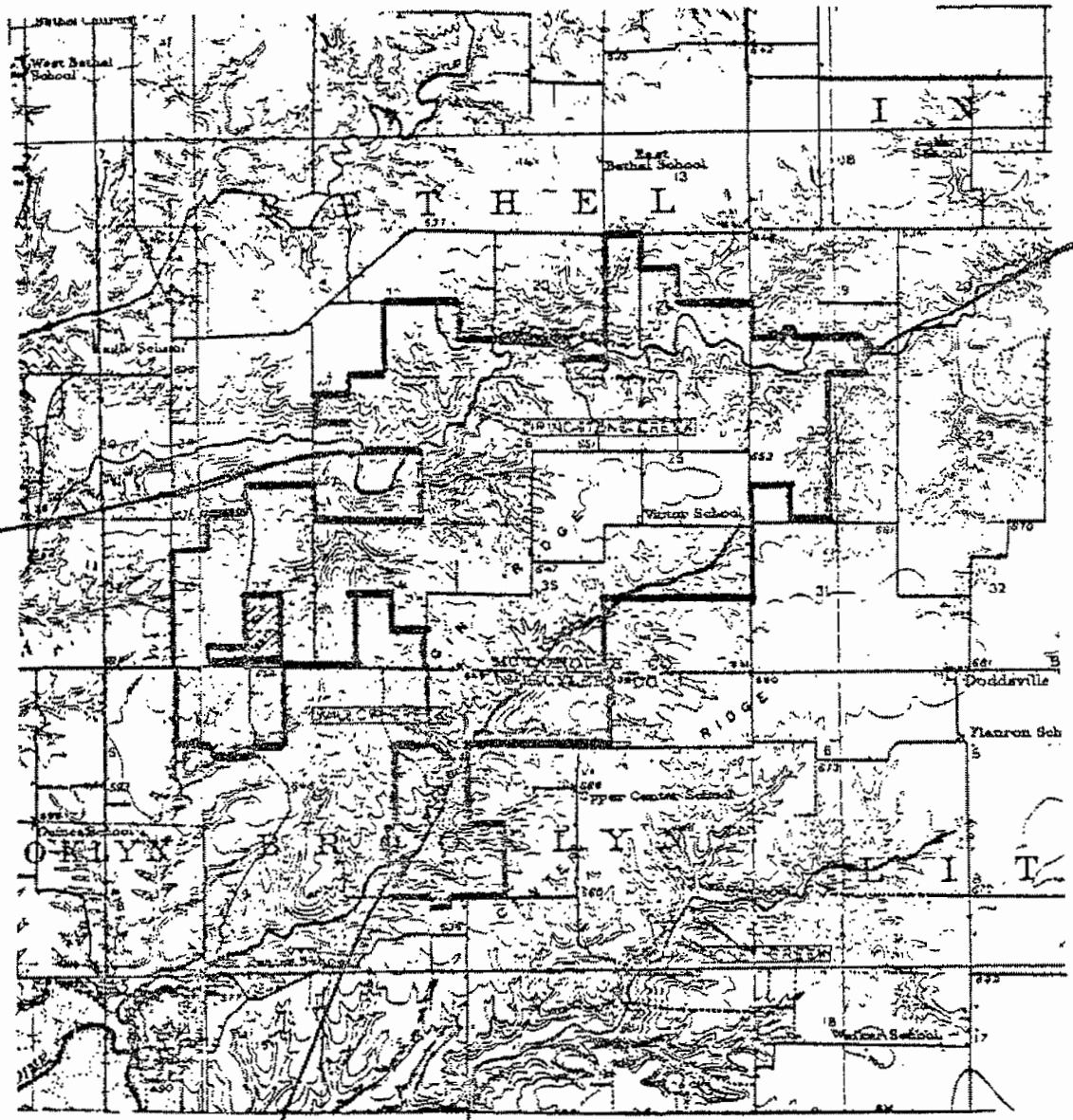
Physical Parameters

Physical parameters measured included discharge, temperature, dissolved oxygen, pH, turbidity and dissolved, suspended, and total solids.

Table 2-7-1 Mean and range of surface water quality parameters measured on the FUCMC property during 1978.

Parameter	Location[a] 1800 Road: Upper[b] Grindstone	900 Road: Lower[b] Grindstone	Willow[c] Creek	Honey[d] Creek	Criteria[e]
Discharge (cfs)	68.7	96.2	6.4	0.4	
Temperature (°C)	11.0[f]	13.0	8.0	6.0	
	2.0-25.0	3.0-29.0	3.0-11.0	4.0-8.0	
pH	7.8	7.9	8.0	7.7	6.5-9.0
	7.2-8.3	7.5-8.4	7.5-8.2	7.2-8.2	
Dissolved Oxygen	6.9	10.1	9.9	9.2	5.0
(mg/l O_2)	1.6-10.4	5.8-11.9	6.8-12.6	4.6-13.8	
Dissolved Solids	472	416	666	471	
(mg/l)	363-584	383-467	271-1051	468-475	
Suspended Solids	33.5	31.4	11.5	<10.0	
(mg/l)	5.0-59.0	6.0-46.0	1.0-21.0	<1-19.0	
Total Solids	502	465	695	501	
(mg/l)	393-635	423-529	291-1107	488-515	
Turbidity	0.71	0.69	0.56	0.30	
(NTU)	0.16-2.0	0.28-1.8	0.23-1.2	0.27-0.32	
Acidity	8.7	7.5	6.7	22.0	
(mg/l $CaCO_3$)	5.0-12.0	5.0-9.0	6.0-8.0	6.0-38.0	
Alkalinity	235	226	54	207	>20
(mg/l $CaCO_3$)	160-302	158-282	26-94	160-254	
Hardness	340	331	456	375	
(mg/l $CaCO_3$)	253-452	256-384	215-682	362-388	
Fecal Coliform	79	<243	148	65	<200
(MPN/100 ml)	3-170	<10-920	24-350	22-107	
Total Phosphorus	0.79	0.08	0.06	<0.03	
(mg/l P)	0.06-2.24	0.07-0.09	0.01-0.16	<0.005-0.046	
Ammonia Nitrogen	<0.72	<0.20	<0.15	0.4	0.02
(mg/l NH_3-N)	<0.1-1.80	<0.1-0.40	<0.1-0.20		
Inorganic Nitrogen	12.9	<10.7	<2.33	<1.10	
(mg/l N)	0.18-44.6	<0.12-39.5	<0.12-4.7	<0.12-<2.1	
Inorganic Carbon	23.1	33.8	8.1	29.4	
(mg/l C)	3.5-47.9	4.7-62.9	2.3-13.2	9.6-49.1	
Sulfates	85.6	82.5	363	173	
(mg/l SO_4)	48.3-135	48.9-130	82.6-601	147-199	
Phenols	<20	<10	<40	<5	1.0
(ug/l)	<5-43	<5-7.7	<5-100	4.9-<5	
Total Iron	1.32	0.95	<0.10	0.15	1.0
(mg/l Fe)	0.30-3.54	0.44-1.50	0.09-<0.10	0.13-0.16	0.3[g]
Fluoride	0.24	0.22	0.17	0.18	
(mg/l F)	0.20-0.29	0.20-0.25	0.15-0.22	0.15-0.21	
Arsenic	<10	<10	<4	<10	50[g]
(ug/l As)	<5-7.0	<5-<10	<0.1-5.7	<5-<10	
Total Chromium	<5.0[h]	<5.0	<5.0	<5.0	100
(ug/l Cr)					50[g]
Copper	<100[h]	<100	<100	<100	1000[g]
(ug/l Cu)					
Manganese	2.83	0.98	<0.046	0.21	.05[g]
(mg/l Mn)	0.088-10.4	0.115-2.20	0.038-<0.05	0.176-0.240	
Mercury	<2.0[h]	<2.0	<2.0	<2.0	0.05
(ug/l Hg)					2.0[g]
Lead	<5.0[h]	<5.0	<5.0	<5.0	50[g]
(ug/l Pb)					
Zinc	<100[h]	<100	<100	<100	5000[g]
(ug/l Zn)					
Pesticides (ug/l)[i]					
Aldrin	<0.01-<0.05	<0.01-<0.05	<0.01-<0.05	<0.05[h]	0.003
Dieldrin	<0.01 <0.05	<0.01 <0.05	<0.01 <0.05	<0.05	0.003
Chlordane	<0.3-0.6	<0.03-0.3	<0.3-0.4	<0.3	0.01
DDT	<0.01-<0.10	<0.01-<0.10	<0.01-<0.10	<0.10	0.001
Endrin	<0.10[h]	<0.10	<0.10	<0.10	0.004
Lindane	<0.01-<0.05	<0.01-<0.05	<0.01-<0.05	<0.05	0.01
Heptachlor	<0.01-<0.05	<0.01-<0.05	<0.01-<0.04	<0.05	0.001
Heptachlor Epoxide	<0.05-0.06	0.03-<0.05	0.02-<0.05	<0.05	
Methoxychlor	<0.10[h]	<0.10	<0.10	<0.10	0.03

[a] Location of streams and sampling sites is illustrated in Figure
[b] Four seasonal samples were collected at these sites.
[c] Three samples were collected at this site.
[d] Two samples were collected at this site.
[e] Unless otherwise noted, criteria are those recommended for the protection of fish and aquatic life.
[f] Top number is mean value, bottom numbers indicate range.
[g] Criteria for domestic water supplies.
[h] All values less than the detection minimum limit.
[i] Only the range of pesticide values is presented.



Proposed Industry Mine

Freeman United
Coal Mining
Company

EXHIBIT 1K

Reclamation

Freeman United Coal Mining Company

P. O. Box 570
Canton, Illinois 61520

I N D U S T R Y M I N E

Surface Disturbance
~~Permit Application~~

T4N - R2W - and - R3W - McDonough County, Illinois
T3N - R3W - Schuyler County, Illinois

VOLUME I

Table of Contents, Application & Appendices

Exhibit 1K

FREEMAN UNITED COAL MINING COMPANY
DIVISION OF MATERIAL SERVICE CORPORATION
300 WEST WASHINGTON STREET · CHICAGO, ILLINOIS 60606 · 312/263-2600
FIELD OFFICE: BOX 570 · CANTON, ILLINOIS 61520 · 309/647-0855

July 9, 1979

Mr. Douglas Downing, Supervisor
Land Reclamation Division
Dept. of Mines & Minerals
227 South Seventh, Suite 204
Springfield, IL 62706

Dear Mr. Downing:

Freeman United Coal Mining Company is hereby applying for a Surface Disturbance Coal Mining Permit for the proposed Industry Mine. The Industry Mine is a new surface mine and the plans are to mine the Colchester No. 2 coal seam in McDonough and Schuyler Counties. After the mine becomes fully operational approximately 500,000 tons of coal is to be mined annually. The Industry Mine has a design life in excess of fifteen (15) years.

Freeman United Coal Mining Company began acquiring property for the Industry Mine in 1947 and most of the property has been owned for more than twenty (20) years. The Industry Mine has been in the planning stages for several years. The Company has retained the mining equipment (1050-B shovel, W-3 wheel excavator, and haulage trucks) from the Banner Mine which was closed in 1974. This equipment will be reconditioned and used in the Industry Mine. In addition, on June 14, 1977, Freeman United Coal Mining Company submitted a NPDES questionnaire to the U.S. EPA, Region V; Permit Branch in accordance with 40 CFR 6.900. Upon receipt of the questionnaire, the U.S. EPA and the U.S. Army Corps of Engineers (COE) determined that : (1) an Environmental Impact Statement (EIS) would be required; and (2) the COE would be the lead federal agency for the EIS under provisions of its Section 404 permit. Preparation of the EIS has been ongoing since that date.

On May 31, 1979, the Board of Trustees of Muscatine Power and Water approved a fifteen year contract, subject to legal approval for the purchase of 700,000 tons of coal annually from Freeman United Coal Mining Company. Two-thirds of the coal requirements are to be supplied by the Industry Mine and one-third is to be supplied from Freeman United's existing mines.

A SD-1 Permit Application for the Industry Mine is enclosed. Necessary road closing agreements are pending negotiation and all agreements will be submitted as soon as they are completed. In addition, the EIS for the Industry Mine is nearly complete, and as soon as this document is submitted to the COE, then a copy will be submitted to the Department.

The Department's consideration of this application request is greatly appreciated. If there are any questions please feel free to contact us.

Sincerely,

DEW/jks
Attachments

Dale E. Walker

APPENDIX 8

HYDROLOGIC INFORMATION

6-a.

Willow and Grindstone Creeks are the two surface streams traversing the Freeman United Coal Mining Company's property. They are typical of Illinois dissected till plain streams, exhibiting their highest discharges in the spring and lowest flows in the late summer, when discharges may temporarily cease. During routine water quality sampling in 1978, the highest recorded discharges (at the sampling points shown on Map A (3)), for Willow and Grindstone Creeks were 6.4 and 96 cfs, respectively. No measurable flow was present during sampling in both August and November. Several small ephemeral channels intersect the two larger streams and these typically only have discharge in the spring or during major runoff events.

Both streams exhibit wide variations in water quality, and this may be directly related to discharge. During high flows, which are usually the result of runoff, suspended solids concentrations increase, carrying higher than normal concentrations of phosphorous, nitrogen, and organic detrital material. The highest phosphorous concentration measured was 2.24 mg/l; however, the average value was 0.35 mg/l. Suspended solids concentrations ranged from 12 to 59 mg/l and had a mean of 35 mg/l. Total dissolved solids concentrations are usually less than 500 mg/l, however a concentration of 1051 mg/l was measured in Willow Creek in low discharge in November, 1978. Dissolved solids concentrations generally increase with decreased discharge. Both creek are hardwater streams; average hardness was 361 mg/l; a value regarded as being very hard water. Sulfate values are normally less than 100 mg/l, but one concentration of 601 mg/l was recorded in Willow Creek in November.

Bacteriological quality is fair. The average fecal coliform concentration is 202 colonies per 100 ml. This compares to a standard of 200 colonies. The highest concentration recorded was 920 colonies per 100 ml.

Only two metallic constituents were measured in concentrations above state standards. Iron concentrations in Willow Creek were much below the 1.0 mg/l standard; however, six measurements in Grindstone Creek averaged 1.37 mg/l. Precipitation of dissolved iron may impair the viability of some sensititve aquatic species. Manganese concentrations should not exceed 1.0 mg/l (standard level) however, three of the six measurements in Grindstone Creek were above this level (2.46 mg/l average). Levels in Willow Creek were less than 0.05 mg/l.

Pesticide concentrations in the streams were usually below detection limits and below State criteria for water supplies. Small amounts of chlordane and heptachlor epoxide were detected in both streams, but should not pose a danger to either human or aquatic life.

(6-a. Cont.)

Physical characteristics of the streams may temporarily limit the productivity of the aquatic flora and fauna. The most obvious threat is lack of flow, and therefore habitat, during summer low or no flow periods. Water temperatures vary seasonally and range from 0^{o} to 30^{o} C. The higher temperatures usually coincide with summer low flows and this may temporarily depress dissolved oxygen levels below safe limits for aquatic fauna. Dissolved oxygen levels usually averaged above 8 mg/l at all sampling points, however significant diurnal variations occur. Early morning oxygen concentrations were often recorded below the 5 mg/l standard set for aquatic life. These temporary depressions appear not to harm the aquatic fauna as no fish kills were noted and fish were collected in these same stream segments during the sampling efforts in which the low measurements were recorded. Leaf litter and detrital deposits in the stream may be in part responsible for the low oxygen levels. Sedimentation of this material also influences the character of the bottom invertebrate fauna.

6-b.

The general land use of the watershed of Grindstone Creek is agricultural upstream from the proposed mining area. Willow Creek watershed begins within the proposed mining area and its' land usage is agricultural. The major potential pollution source on Grindstone Creek upstream from the proposed mining area would be surface runoff from the agricultural land.

6-c.

Public water supplies within ten miles of the proposed mining area are Colchester (7 miles) and Industry (3 miles).

6-d.

The mining operation should not have any effect on the public water supplies within ten miles. Both Colchester and Industry have wells which draw water from geologic units below the coal seam to be excavated. In addition, due to the attitude of bedrocks in the area and direction of surface flow, the flow of both surface and ground water in the vicinity of the proposed permit area is away from the Industry and Colchester wells. See Appendix 7, Hydrogeologic Information, for a more complete discussion about the groundwater in the area.

Appendix 9 and Map E, describe the biologic communities in the proposed mining area.

An archaeologic survey was conducted in 1978 on the property owned by Freeman United Coal Mining Company in McDonough and Schuyler Counties. This information will be included in the Environmental Impact Statement currently being prepared for the Army Corps of Engineer's 404 permit for the proposed mine.

The attached listing is a compilation of ponds and reservoirs contiguous to Freeman United Coal Mining Company's property.

EXHIBIT 1L

FREEMAN UNITED COAL MINING COMPANY
INDUSTRY MINE
PERMIT APPLICATION NO. 261
MODIFICATIONS LETTER RESPONSE

JULY 1, 1992

Exhibit 1L

NPDES DISCHARGE #018

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	250	500		300	500	175	45
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	N	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	O	Grab	Grab	Grab	Grab
ACIDITY	27	4	T	< 2	4	< 2	8
ALKALINITY (mg/l)	82	76		85	75	104	125
LEAD (mg/l)	DID			NOT		SAMPLE	
IRON (mg/l)	< 0.25	0.019	S	0.043	0.384	9.39	0.138
MANGANESE (mg/l)	< 0.10	0.026	A	0.011	0.101	13.1	0.104
pH (range)	6.9	7.74	M	8.21	7.79	8.34	7.52
ZINC (mg/l)	< 0.10	0.01	P	0.030	0.032	0.212	0.016
FLUORIDE (mg/l)	DID			NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)	1	2	L	< 1	3	< 1	6
SULFATE (mg/l)	190	214	E	201	141	223	231
TOTAL DISSOLVED SOLIDS (mg/l)	370	477	D	449	323	439	520
CHLORIDE (mg/l)	6.0	8.0		6	< 5	< 5	5

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #019

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	30	15	10	8	30	NO FLOW	NO FLOW
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff		
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab		
ACIDITY	35	14	16	22	21		
ALKALINITY (mg/l)	160	172	128	173	58		
LEAD (mg/l)	DID		NOT		SAMPLE		
IRON (mg/l)	4.94	0.059	0.076	0.038	0.688		
MANGANESE (mg/l)	0.15	0.254	0.966	0.476	1.74		
pH (range)	6.9	7.17	6.86	7.26	6.69		
ZINC (mg/l)	0.24	0.229	0.277	0.278	0.396		
FLUORIDE (mg/l)	DID		NOT		SAMPLE		
TOTAL SUSPENDED SOLIDS (mg/l)	120	1	2	4	16		
SULFATE (mg/l)	130	193	247	242	206		
TOTAL DISSOLVED SOLIDS (mg/l)	1,300	587	607	588	424		
CHLORIDE (mg/l)	640	40	20	16	9		

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #020

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	60		45	50	60		2
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	N	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	O	Grab	Grab	Grab	O	Grab
ACIDITY	19	T	4	6	5	T	8
ALKALINITY (mg/l)	41		42	52	43		113
LEAD (mg/l)	DID		NOT		SAMPLE		
IRON (mg/l)	1.13	S	0.11	0.032	0.579	S	0.152
MANGANESE (mg/l)	0.53	A	0.608	0.161	0.643	A	0.353
pH (range)	6.9	M	7.26	7.51	7.46	M	7.37
ZINC (mg/l)	< 0.10	P	0.034	0.036	0.053	P	0.02
FLUORIDE (mg/l)	DID		NOT		SAMPLE		
TOTAL SUSPENDED SOLIDS (mg/l)	19	L	2	< 1	2	L	2
SULFATE (mg/l)	500	E	387	449	462	E	424
TOTAL DISSOLVED SOLIDS (mg/l)	810	D	789	955	254	D	929
CHLORIDE (mg/l)	6.0		5	< 5	< 5		7

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #021

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	40	20	40	45	55		15
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab	O	Grab
ACIDITY	58	52	42	71	19	T	92
ALKALINITY (mg/l)	< 1.0	< 2	< 2	< 2	< 2		< 2
LEAD (mg/l)	DID			NOT		SAMPLE	
IRON (mg/l)	4.38	4.17	3.79	5.75	0.771	S	7.46
MANGANESE (mg/l)	6.05	7.28	5.23	7.63	2.02	A	10.3
pH (range)	3.5	3.68	3.60	3.45	3.99	M	3.48
ZINC (mg/l)	0.39	0.388	0.288	0.382	0.147	P	0.363
FLUORIDE (mg/l)	DID			NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)	25	9	< 1	1	< 1	L	2
SULFATE (mg/l)	500	70	358	426	195	E	492
TOTAL DISSOLVED SOLIDS (mg/l)	680	719	616	879	325	D	1130
CHLORIDE (mg/l)	3.0	< 5.0	< 5.0	6	< 5		7

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #022

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	20	12	10	15	25		3
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab	O	Grab
ACIDITY	50	14	14	45	12	T	50
ALKALINITY (mg/l)	< 1.0	5	14	3	41		< 2
LEAD (mg/l)	DID			NOT		SAMPLE	
IRON (mg/l)	7.20	11.5	8.36	8.01	2.12	S	2.46
MANGANESE (mg/l)	8.85	9.24	6.24	9.13	1.73	A	20.7
pH (range)	4.1	5.43	6.28	4.77	7.26	M	4.41
ZINC (mg/l)	0.59	0.561	0.371	0.585	0.129	P	0.674
FLUORIDE (mg/l)	DID			NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)	44	101	20	58	19	L	18
SULFATE (mg/l)	900	66	479	710	212	E	751
TOTAL DISSOLVED SOLIDS (mg/l)	1,200	1,310	834	1,380	374	D	1690
CHLORIDE (mg/l)	6.0	6.0	7.0	6	< 5		11

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

DISCHARGE #018 NORTH

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)		20	30	20	45	15	NO FLOW
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)		Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	
SAMPLING METHOD (24 hr. composite, grab, est, etc.)		Grab	Grab	Grab	Grab	Grab	
ACIDITY		22	48	61	43	50	
ALKALINITY (mg/l)		5	< 2	< 2	< 2	< 2	
LEAD (mg/l)		DID		NOT		SAMPLE	
IRON (mg/l)		15.6	7.15	4.32	6.57	5.27	
MANGANESE (mg/l)		5.43	3.81	5.43	2.32	6.49	
pH (range)		5.08	3.93	3.99	4.33	3.89	
ZINC (mg/l)		0.463	0.489	0.572	0.297	0.540	
FLUORIDE (mg/l)		DID		NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)		65	15	10	16	16	
SULFATE (mg/l)		533	424	541	273	471	
TOTAL DISSOLVED SOLIDS (mg/l)		1010	708	1000	502	963	
CHLORIDE (mg/l)		6	< 5	7	5	< 5	

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

DISCHARGE #018 ROAD

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)		100	80	75	110	40	18
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)		Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)		Grab	Grab	Grab	Grab	Grab	Grab
ACIDITY		24	19	37	20	6	46
ALKALINITY (mg/l)		14	10	21	12	22	58
LEAD (mg/l)		DID		NOT		SAMPLE	
IRON (mg/l)		12.7	6.68	11.1	2.79	0.028	15.0
MANGANESE (mg/l)		11.0	7.63	12.5	3.90	0.016	17.6
pH (range)		5.87	6.07	6.40	6.50	6.36	6.42
ZINC (mg/l)		0.281	0.323	0.390	0.189	0.036	0.05
FLUORIDE (mg/l)		DID		NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)		28	16	30	5	5	30
SULFATE (mg/l)		319	310	319	240	327	306
TOTAL DISSOLVED SOLIDS (mg/l)		628	602	720	443	701	778
CHLORIDE (mg/l)		12	10	7	12	6	6

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

UNITED COAL MINING COMPANY PROPERTY
(SEE ATTACHED TABLE)

10 ● WELLS WITHIN FREEMAN UNITED COAL MINING COMPANY PROPERTY.

(33) SURFACE WATER SUPPLIES OUTSIDE OF AND CONTIGUOUS TO FREEMAN UNITED COAL MINING COMPANY PROPERTY
(SEE ATTACHED TABLE)

◯ SURFACE WATER SUPPLIES WITHIN FREEMAN UNITED COAL MINING COMPANY PROPERTY.

(1) SURFACE WATER MONITORING POINT

#1 S.E. 1/4 SECTION 19 T4N R2W
#2 S.W. 1/4 SECTION 27 T4N R3W
#3 N.W. 1/4 SECTION 15 T3N R3W
#5 S.W. 1/4 SECTION 15 T4N R3W
#6 N.E. 1/4 SECTION 31 T4N R3W - SHOWN ON MAP3(A-1)

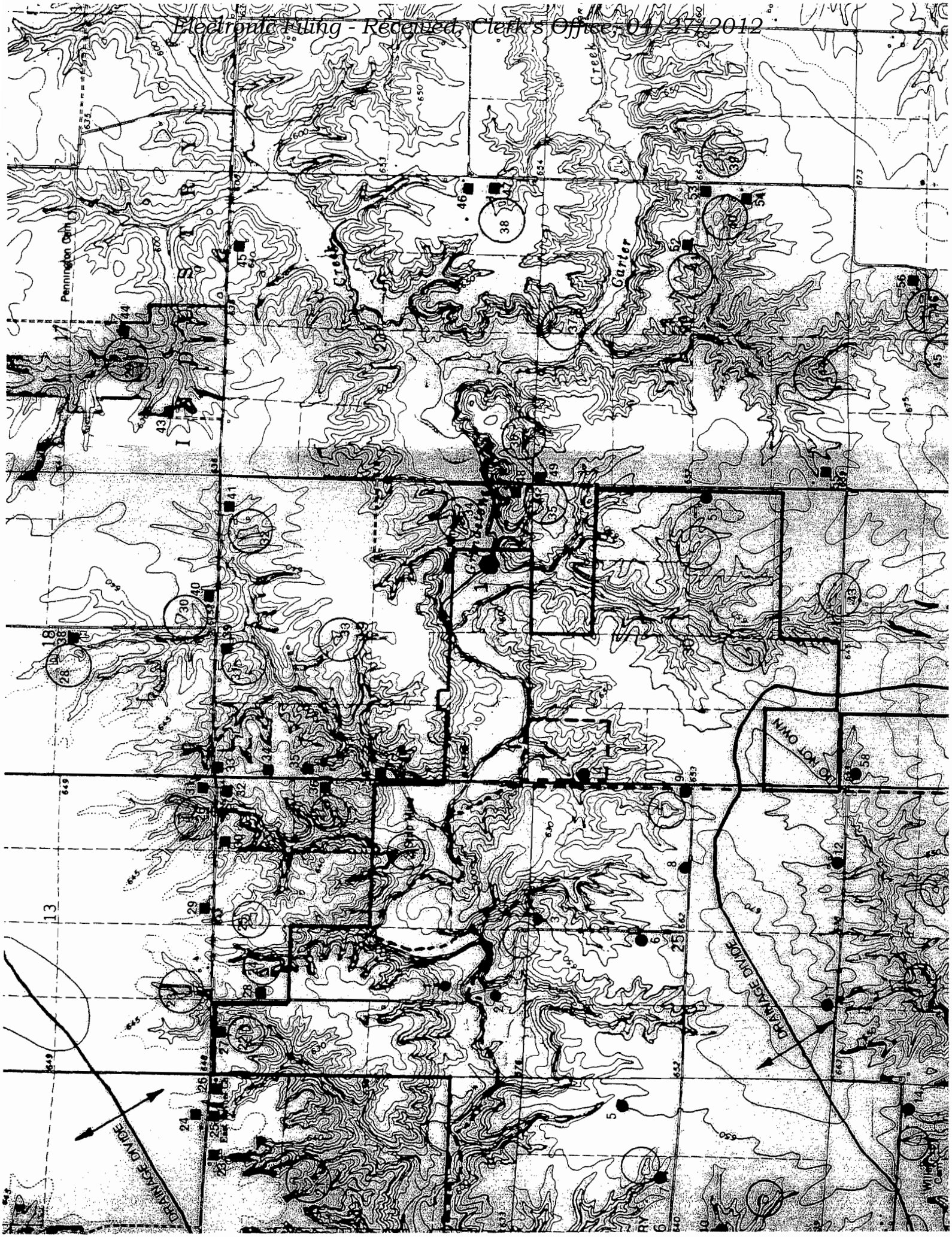


EXHIBIT 1M

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Freeman United Coal Mining
WorkOrder: 0307525
Lab ID: 0307525-03
Report Date: 29-Jul-03

Client Project: Industry Mine Stream Samples
Client Sample ID: Stream #1200
Collection Date: 7/18/03
Matrix: SURFACE WATER

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA/600 4.1.4. 200.7 TOTAL								
Iron	NELAP	0.020		**32.5**	mg/L	1	7/29/03 10:22:08 AM	SAM
Manganese	NELAP	0.005		**1.60**	mg/L	1	7/24/03 7:22:31 PM	JMW
Zinc	NELAP	0.010		**0.085**	mg/L	1	7/24/03 7:22:31 PM	JMW
EPA/600 METHOD 150.1								
pH	NELAP	1.00	H	**7.06**		1	7/22/03 10:45:00 AM	SAO
EPA/600 METHOD 160.1								
Total Dissolved Solids	NELAP	20		**184**	mg/L	1	7/24/03	JNS
EPA/600 METHOD 160.2								
Total Suspended Solids	NELAP	6		**1900**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 160.5								
Solids, Settleable	NELAP	0.1	H	**1.2**	ml/L	1	7/22/03 2:33:00 PM	SAO
EPA/600 METHOD 305.1								
Acidity, Total (as CaCO3)	NELAP	0		**-49**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 310.1								
Alkalinity, Total (as CaCO3)	NELAP	0		**88**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 325.3								
Chloride	NELAP	1		**15**	mg/L	1	7/29/03	JAE
EPA/600 METHOD 375.4								
Sulfate, Turbidimetric	NELAP	5		**16**	mg/L	1	7/28/03	JAE

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Freeman United Coal Mining
WorkOrder: 04030301
Lab ID: 04030301-013
Report Date: 23-Mar-04

Client Project: Industry Mine Pond
Client Sample ID: NGS1200
Collection Date: 3/5/04
Matrix: SURFACE WATER

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA/600 4.1.4, 200.7 TOTAL								
Iron	NELAP	0.020		**4.77**	mg/L	1	3/12/04 5:09:16 PM	JMW
Manganese	NELAP	0.005		**0.176**	mg/L	1	3/12/04 5:09:16 PM	JMW
EPA/600 METHOD 150.1								
pH	NELAP	1.00	H	**7.44**		1	3/11/04 11:28:00 AM	EAW
EPA/600 METHOD 160.2								
Total Suspended Solids	NELAP	6		**153**	mg/L	1	3/11/04	DLY
EPA/600 METHOD 160.5								
Solids, Settleable	NELAP	0.2	H	**< 0.2**	ml/L	2	3/22/04 1:12:00 PM	SAO
EPA/600 METHOD 305.1								
Acidity, Total (as CaCO3)	NELAP	0		**-127**	mg/L	1	3/12/04	DLY
EPA/600 METHOD 310.1								
Alkalinity, Total (as CaCO3)	NELAP	0		**138**	mg/L	1	3/12/04	DLY
EPA/600 METHOD 325.2								
Chloride		2		**36**	mg/L	2	3/18/04 12:15:22 PM	SMR
EPA/600 METHOD 375.4								
Sulfate, Turbidimetric	NELAP	10		**39**	mg/L	2	3/19/04	ADH

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09041022
Lab ID: 09041022-002
Report Date: 05-May-09

Client Project: Industry Mine Pond
Client Sample ID: 1200 road
Collection Date: 4/22/2009 11:25:00 AM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50		**53**	mg/L	1	4/30/2009 11:54:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**2.30**	mg/L	1	4/29/2009 7:00:00 PM	JMW
Manganese	NELAP	0.0050		**0.0849**	mg/L	1	5/1/2009 10:59:57 AM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**7.87**		1	4/28/2009 3:21:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-162**	mg/L	1	4/29/2009 12:10:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**174**	mg/L	1	4/29/2009 12:10:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**280**	mg/L	1	4/29/2009 10:00:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20	H	**302**	mg/L	1	4/30/2009 6:30:00 PM	MAB
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6	H	**63**	mg/L	1	4/29/2009 12:40:00 PM	MAB
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	**<0.1**	ml/L	1	5/1/2009 10:50:00 AM	NJM
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		**28**	mg/L	1	4/30/2009 11:54:00 AM	DLW

Sample Narrative
Standard Methods 18th Ed. 2540 C (Total)
Sample analysis did not meet hold time requirements.

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09110091
Lab ID: 09110091-001
Report Date: 09-Nov-09

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 10/30/2009 12:20:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		**16**	mg/L	1	11/6/2009 1:59:00 PM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**12.4**	mg/L	1	11/4/2009 12:43:42 PM	JMW
Manganese	NELAP	0.0050		**0.341**	mg/L	1	11/4/2009 12:43:42 PM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**7.49**		1	11/4/2009 1:32:00 PM	LDG
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-46.7**	mg/L	1	11/5/2009 1:20:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**71**	mg/L	1	11/5/2009 1:20:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**80**	mg/L	1	11/4/2009 12:30:00 PM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		**204**	mg/L	1	11/4/2009 3:55:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		**83**	mg/L	1	11/3/2009 2:30:00 PM	HMH
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		**17**	mg/L	1	11/4/2009 3:54:00 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09120082
Lab ID: 09120082-002
Report Date: 08-Dec-09

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 11/30/2009 5:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50	S	57	mg/L	1	12/4/2009 11:40:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		0.562	mg/L	1	12/3/2009 6:08:28 PM	JMW
Manganese	NELAP	0.0050		0.137	mg/L	1	12/7/2009 10:23:21 AM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		8.08		1	12/2/2009 2:14:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-202	mg/L	1	12/2/2009 1:30:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		212	mg/L	1	12/2/2009 1:30:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		280	mg/L	1	12/4/2009 12:00:00 PM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		336	mg/L	1	12/3/2009 9:00:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		167	mg/L	1	12/2/2009 4:50:00 PM	HMH
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1	S	24	mg/L	1	12/7/2009 1:57:00 PM	DLW

Sample Narrative

Standard Methods 18th Ed. 4500-Cl E (Total)

Matrix spike recovery was outside QC limits due to matrix interference.

EPA 600 375.2 Rev 2.0 1993 (Total)

Matrix spike did not recover within control limits due to matrix interference.

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10010980
Lab ID: 10010980-002
Report Date: 04-Feb-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 1/24/2010 4:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		**29**	mg/L	1	2/2/2010 9:14:12 AM	MVS
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**2.86**	mg/L	1	2/1/2010 7:09:45 PM	JMW
Manganese	NELAP	0.0050		**0.116**	mg/L	1	2/2/2010 4:20:32 PM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**7.90**		1	1/29/2010 4:21:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-170**	mg/L	1	2/2/2010 11:15:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**178**	mg/L	1	2/2/2010 11:15:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**240**	mg/L	1	1/29/2010 10:00:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		**356**	mg/L	1	1/29/2010 4:30:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		**86**	mg/L	1	1/30/2010 3:40:00 PM	JMT
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		**23**	mg/L	1	1/29/2010 3:56:19 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10030573
Lab ID: 10030573-002
Report Date: 22-Mar-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 3/11/2010 5:50:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-135	mg/L	1	3/16/2010 8:10:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		143	mg/L	1	3/16/2010 8:10:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		180	mg/L	1	3/16/2010 11:30:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		270	mg/L	1	3/15/2010 4:30:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		203	mg/L	1	3/17/2010 1:00:00 PM	JMT
SW-846 3005A, 6010B, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		4.86	mg/L	1	3/17/2010 6:12:24 PM	JMW
Manganese	NELAP	0.0050		0.164	mg/L	1	3/17/2010 6:12:24 PM	JMW
SW-846 9036 (TOTAL)								
Sulfate	NELAP	10		30	mg/L	2	3/19/2010 2:25:00 PM	DLW
SW-846 9040B, LABORATORY ANALYZED								
Lab pH	NELAP	0		7.72		1	3/15/2010 2:42:00 PM	NJM
SW-846 9251 (TOTAL)								
Chloride	NELAP	1		24	mg/L	1	3/15/2010 3:13:00 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10070918
Lab ID: 10070918-002
Report Date: 29-Jul-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 7/21/2010 4:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		16	mg/L	1	7/29/2010 10:33:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		18.3	mg/L	1	7/27/2010 12:28:57 PM	LAL
Manganese	NELAP	0.0050		0.475	mg/L	1	7/27/2010 12:28:57 PM	LAL
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.66		1	7/26/2010 2:14:00 PM	CS
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-113	mg/L	1	7/27/2010 10:45:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		123	mg/L	1	7/27/2010 10:45:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		160	mg/L	1	7/26/2010 10:40:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		218	mg/L	1	7/26/2010 12:30:00 PM	MK
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		387	mg/L	1	7/26/2010 5:30:00 PM	BSJ
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		15	mg/L	1	7/27/2010 2:57:00 PM	DLW

Sample Narrative

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11030076
Client Project: Industry Mine Stream Samples
Report Date: 08-Mar-11
Lab ID: 11030076-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 02/28/2011 13:10

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	10		34	mg/L	2	03/07/2011 14:39	R146588
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.71		1	03/03/2011 14:45	R146430
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-84	mg/L	1	03/03/2011 8:20	R146402
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		101	mg/L	1	03/03/2011 8:20	R146400
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		140	mg/L	1	03/02/2011 9:30	R146327
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		276	mg/L	1	03/02/2011 13:00	R146347
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		114	mg/L	1	03/03/2011 9:30	R146401
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	1.0	ml/L	1	03/02/2011 14:55	R146419
Sample analysis did not meet hold time requirements.								
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		64	mg/L	1	03/04/2011 11:56	R146516
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		19.6	mg/L	1	03/04/2011 19:13	66350
Manganese	NELAP	0.0050		0.505	mg/L	1	03/04/2011 19:13	66350

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11041150
Client Project: Industry Mine Stream Samples
Report Date: 02-May-11
Lab ID: 11041150-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 04/25/2011 16:00

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		33	mg/L	1	04/28/2011 11:42	R148750
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		8.08		1	04/27/2011 17:59	R148709
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-182	mg/L	1	04/28/2011 9:15	R148746
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		189	mg/L	1	04/28/2011 9:15	R148745
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		280	mg/L	1	04/29/2011 9:30	R148792
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		310	mg/L	1	04/28/2011 15:25	R148764
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		73	mg/L	1	04/29/2011 9:00	R148776
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2		< 0.2	ml/L	1	04/27/2011 12:45	R148688
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		25	mg/L	1	04/27/2011 10:29	R148726
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		1.81	mg/L	1	04/29/2011 21:32	67770
Manganese	NELAP	0.0050		0.132	mg/L	1	04/29/2011 21:32	67770

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11051330
Client Project: Industry Mine Stream Samples
Report Date: 06-Jun-11
Lab ID: 11051330-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 05/25/2011 15:50

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50		86	mg/L	1	05/31/2011 13:23	R150152
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.28		1	05/31/2011 16:07	R150121
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-5.5	mg/L	1	06/02/2011 7:40	R150204
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		46	mg/L	1	06/02/2011 7:40	R150203
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		100	mg/L	1	06/01/2011 8:30	R150148
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		196	mg/L	1	05/31/2011 13:00	R150101
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		760	mg/L	1	05/31/2011 9:10	R150095
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	0.2	ml/L	1	05/31/2011 8:30	R150075
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	10	J	6	mg/L	10	06/03/2011 13:17	R150307
Elevated reporting limit due to matrix interference.								
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		36.2	mg/L	1	06/01/2011 22:25	68559
Manganese	NELAP	0.0050		0.845	mg/L	1	06/01/2011 22:25	68559

EXHIBIT 2

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1980

ENVIRONMENTAL PROTECTION AGENCY, Complainant,	)	
v.	)	PCB 75-488
MATERIAL SERVICE CORPORATION, a Delaware Corporation, FREEMAN UNITED COAL MINING COMPANY DIVISION, Respondent.	)	

MR. MARVIN I. MEDINTZ, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. RICHARD R. ELLEDGE APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Pollution Control Board upon a two count complaint filed December 19, 1975 by the Environmental Protection Agency (Agency) alleging that Freeman United Coal Mining Company (Freeman), a Division of the Material Service Corporation, violated Rules 201 and 502 of the Board's Chapter 4: Mine Related Pollution (Rules) relating to the permit requirements of the abandonment of their 3800 acre Banner No. 27 mine located in both Banner Township, Fulton County and Timber Township, Peoria County, Illinois.

Following continuances granted to both the Agency (filed April 16, 1976) and to Freeman (filed May 19, 1976), a hearing was held in Peoria, Illinois on August 27, 1976. A stipulation of facts was presented, an agreement to submit briefs, and a brief summary of the facts by Respondent constituted the hearing. No testimony or citizen comments were forthcoming.

The stipulated facts are enumerated, in pertinent part, as follows. Material Service is successor by merger to the United Electric Coal Companies (United) which operated a coal mine known as Banner 27 mine. United ceased operations February 23, 1974 after producing nine million tons of coal since its opening in 1959. Thereafter United completed all

reclamation procedures required under the Surface-Mined Land Conservation Act, Ill. Rev. Stat. Ch. 93, Sec. 201, et seq. (1975) and sent to the Agency on March 20, 1974 a notification of abandonment. On September 19, 1974, William N. Busch of the Agency sent a letter to United that Rule 502 of the Rules requires an abandonment permit to be obtained within one year after abandonment. United submitted an application to the Agency on February 17, 1975 and extended the 90-day decision time to August 1, 1975 during which period United met with the Agency to discuss appropriate procedures particularly with respect to the gob pile and water quality. On July 30, 1975 the Agency denied the permit for lack of "an acceptable proposal for covering the gob pile . . ." From that date to the date of filing the complaint herein, United neither appealed the permit denial nor submitted a reapplication to the Agency.

Subsequent to filing the aforementioned complaint the parties undertook discovery, engaged in settlement discussions and jointly collected additional water samples.

In light of the above, both parties believe that the public interest will be best served by an expeditious resolution of the instant action under the terms and conditions herein provided without a protracted hearing, and further that the undertakings provided herein satisfy all requirements of the Act.

Stipulated Facts Relating to the Litigation

1.* All parts of the gob pile placed after May 25, 1972 had been graded and vegetated pursuant to Rule 401(e) prior to December 19, 1975.

2. Water samples taken by both parties on February 28, 1975, March 19, 1975 and February 27, 1976 upon analysis showed: (1) a pH $\geq$ 7 everywhere except at the pond at the base of the gob pile, (2) TDS substantially in excess of 1000 mg/l at almost every sampling point. The Board observes Exhibit "B" delineates the sampling points and directions of water flow and shows the general shape and size of the mined area which lies adjacent to and along the northwest bank of the Illinois River for a distance estimated from section lines to be in excess of five miles. It is apparent from this exhibit that waters effluent from the area would discharge to the Illinois River. The general shape of the area is long and fairly narrow being perhaps as wide as 1 1/2 miles at its broadest point. Laboratory analyses are shown in Exhibit "C".

* Numbers relate to paragraph numbers in the Stipulation as follows: 1 = 11, 2 = 12, etc.

3,4. The new abandonment permit submitted on February 5, 1976 was denied by the Agency on April 16, 1976 for:

A. Failure to cover and revegetate the acid pond area.

B. Failure to provide for neutralizing, fertilizing and revegetating the rest of the gob pile.

C. All sampling points had a TDS concentration in excess of standards set by Rule 203 of Chapter 3: Water Pollution.

5. It was the Agency's position at the time of the denial that stabilizing and revegetating the gob pile was necessary and that the acid pond needed to be filled and covered.

6,7. On June 19, 1976 representatives from both parties, including attorneys, made an on-the-site inspection after which the Agency concluded that conditions of the gob pile and acid pond would have a very minimal impact on overall water quality. A new potential problem was observed by the Agency which was the drying up of areas of the slurry pond which might be subject to wind erosion and cause air pollution; however, the high banks around the pond were deemed sufficient protection.

8. On June 23, 1976 Respondent reapplied for an abandonment permit to the Agency, Exhibit "E".

9,10. While technically feasible to reduce the TDS of the site waters, it is not economically feasible in the absence of over-riding health and/or security reasons.

11. The site in its present condition is well suited for recreational purposes such as boating, fishing, hunting and wildlife management. The Department of Conservation (Department) is currently negotiating with the several owners to acquire the entire site for use as a wildlife refuge and public recreation area. The Department's experts have ascertained the waters are well suited for fish, fowl and other wildlife growth. The Department has petitioned the Illinois Commerce Commission to acquire by condemnation a parcel of land owned by Central Illinois Light Company. Exhibit "F" shows certain testimony presented by the Department in that proceeding (ICC Docket No. 51913) delineating

the scope and status of the program as well as testimony regarding the quality of the waters.

12. The position of the Agency is that no useful purpose would be served by reducing TDS in site waters for the use proposed by the Department.

13. The parties call to the Board's attention a proposed regulatory change (PCB R76-7) to permit increased TDS concentrations in mine waters.

14. The Agency contends it has no authority to issue a permit without a proposal to reduce TDS to the levels mandated by Rule 203 of Ch. 3: Water Pollution.

15,16. Material Service Corporation contends that a proposal to reduce TDS would be "useless and perhaps evasive" considering the uses contemplated for this site and without such a proposal a variance could not be granted. Likewise an appeal for a permit denial based on the above stipulated facts would only delay resolution and incur additional expense.

17. The Agency concurs that either a variance or permit appeal would only delay a decision.

18,19. The Agency contends and Respondent denies that a penalty should be imposed.

The Closing Argument of Complainant reveals that the June 23, 1976 application for permit was denied. The Brief for Respondent states there is a very substantial volume of water flowing on and across the mine site which is protected from the waters of the Illinois River by a series of levees maintained by a drainage district. Site waters are drained to a pumping station maintained by the Banner Drainage District and pumped into the Illinois River. (Resp. Brief at 2).

Further information is given about the conditions of the site waters by testimony of E. E. Filer, Supervisor of the Division of Land Reclamation, Illinois Department of Mines and Minerals:

". . . The mined lands are extensive enough to provide a practical sized work and development area. It is more or less enclosed by U.S. 24, the Illinois River, and Copperas Creek. A levee keeps water from the river and Copperas Creek from moving in and out of the area, a most important feature to prevent sedimentation, pollution, and to make possible a

stable water level." (Stip. Ex. F). In the same proceedings, Kenneth C. Russell, Department of Fisheries Biologist, states: "Waters on the site have an everage total alkalinity of 176 which represents high fish productivity. This proposed project, having a projected 1300 acres of manageable fishing waters could support at least 18 species of sport fishes. . . . nearly 50 separate lakes and ponds on the area." The testimony of Phillip E. DeTurk (Id), Department's Supervisor of the Site Planning Division, reveals the total area the Department seeks and also the source of waters: "The 5141 acres represent a project total. The marsh area contains approximately 4007 acres. . . . The water supply will consist of three primary sources: There will be a ground water supply fed into the marsh through the deep cuts of the mining operation; there will be surface water runoff from the adjacent wooded bluffs; and finally there will be Illinois River water filtered and cleaned of silt and pollutants as it seeps into the marsh area through the ground under the levee."

In mitigation the Board has considered Section 33(c) of the Act. The depressed nature of the site minimizes the possibility of waters seeping from the site to cause environmental harm. The social and economic value of the site is well documented by the Department of Conservation's efforts to obtain it. Its location is particularly fortuitous for the intended recreational and wildlife use, being near to population centers and adjacent to a major waterway so that any effluent effects should be negligible. The tremendous volume of water and the lack of showing of any environmental harm because of the dissolved solids seems to indicate an unreasonable burden on the Respondent to attempt to reduce the concentrations of salts in this case. While part of the gob pile mined prior to 1972 "pre-law land" has not been covered, the Agency believes the acid drainage would have no effect because of the tremendous dilution afforded by the alkaline waters into which the acid pond drains. In addition, this small acid area would provide an interesting ecological area if the site is developed as intended.

The Board notes that since the filing of this case there has been considerable change in the law applicable to abandonment of mine areas. In 1979 the legislature adopted the Surface Coal Mining Land Conservation and Reclamation Act. The proceedings proposal to exempt coal mining from the TDS water quality limitation, R76-7, have been completed and entry of a Final Order stayed pending the outcome of the general Chapter 4 revisions, R77-10. The Board has recently entered an Order in that proceeding which proposes to replace the abandonment permit of Rule 502 with an abandonment plan under new Rule 509. The Board has also proposed Rule 605.1 which would authorize a temporary exemption from the TDS water quality standards applicable to Respondent. The Board will therefore order Respondent to apply for new permit containing a Rule 509 abandonment plan pursuant to the transitional provisions of new Rules 702 and 704. Respondent will have 180 days after the effective date of Chapter 4 to make such application. This Order will be subject to modification in the event the Final Order of R77-10 differs materially from the Proposed Order.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. Respondent Material Service Corporation and its Freeman United Coal Mining Company Division violated Rules 201 and 502 of Chapter 4: Mine Related Pollution by abandoning the Banner No. 27 coal mine without securing the required permits from the Agency.

2. Within 180 days of the effective date of the proposed Chapter 4, Respondent shall complete and submit the necessary application forms to obtain a permit containing an approved abandonment plan pursuant to Rules 401, 509 and 704 of the new Chapter 4.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 7½ day of February, 1980 by a vote of 4-0.

Christan L. Moffett

Christan L. Moffett, Clerk
Illinois Pollution Control Board