

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 2013

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
ENVIRONMENTAL LAW AND POLICY )  
CENTER, on behalf of PRAIRE RIVERS )  
NETWORK and SIERRA CLUB, ILLINOIS )  
CHAPTER, )  
)  
Intervenor, )  
)  
v. ) PCB 10-61 & 11-02  
) (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. )  

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CENTER, on behalf of PRAIRIE RIVERS )  
NETWORK and SIERRA CLUB, ILLINOIS )  
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v. )  
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FREEMAN UNITED COAL MINING CO., )  
and SPRINGFIELD COAL CO., LLC, )  
)  
Respondents. )

ORDER OF THE BOARD (by D. Glosser):

This matter is before the Board on a complaint filed by the People of the State of Illinois (People) against Freeman United Coal Mining Company, LLC (Freeman United) and Springfield Coal Company, LLC (Springfield Coal) (collectively respondents). The Environmental Law and Policy Center (ELPC) intervened on behalf of Prairie Rivers Network (PRN) and Sierra Club,

Illinois Chapter (Sierra Club) (collectively ELPC) and filed a separate complaint against Freeman United and Springfield Coal.

Today, the Board denies Freeman United and Springfield Coal's motion to reconsider a November 15, 2012 opinion and order. The Board directs the parties to hearing on the remaining issues.

### **PROCEDURAL BACKGROUND**

On February 10, 2010, the People filed a four-count complaint against Freeman United and Springfield Coal alleging water pollution and National Pollutant Discharge Elimination System (NPDES) permit violations. The violations allegedly occurred at the strip mine (Industry Mine) located in McDonough and Schuyler Counties, approximately 5 miles southwest of Industry, Illinois, between January 2005 and December 2009.

On April 15, 2010, the Board granted ELPC's motion to intervene and on July 15, 2010, the board accepted ELPC's four-count complaint for hearing.

On March 6, 2012, the People filed a motion for partial summary judgment and on April 27, 2012, ELPC filed a motion for partial summary judgment. On April 27, 2012, Freeman United and Springfield Coal each filed responses to the People's motion, with Freeman United's response also including a cross-motion for summary judgment on certain counts.

On April 27, 2012, ELPC filed a motion for partial summary judgment regarding the NPDES permit violations. On June 6, 2012, Freeman United and Springfield Coal separately responded to ELPC's motion.

On November 15, 2012, the Board granted the People's motion for partial summary judgment and denied Freeman United's cross-motion for partial summary judgment. The Board also granted ELPC's motion for partial summary judgment. The Board declined to issue a civil penalty and ordered the parties to hearing to address factual issues that may affect the penalty finding.

On December 21, 2012, Freeman United and Springfield Coal filed a joint motion to reconsider. By agreement and hearing officer order, the responses were timely filed by the People and ELPC on January 11, 2013. *See* Hearing Officer Order 1/2/13.

### **MOTION TO RECONSIDER**

Respondents ask the Board to reconsider its November 15, 2012 decision arguing that the Board erred in deciding to grant the partial motions for summary judgment. Respondents assert that the Board erred because Springfield Coal's affirmative defenses of laches and unclean hands require a factual inquiry that has not been undertaken. Respondents argue further error by the Board in that the Board did not adequately address Freeman United's affirmative defenses of waiver, estoppels, and laches. Respondents claim that the Board did not evaluate evidence concerning the items reported on the daily monitoring report. Respondents further claim that the

Board did not consider evidence regarding an outfall that should be considered a reclamation area.

The People and ELPC oppose the motion to reconsider arguing that the respondents have failed to provide any grounds for reconsideration.

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). The Board finds that the respondents have provided no new evidence or a change in the law that would indicate that the Board's November 15, 2012 decision granting partial summary judgment to the People and ELPC was in error. Therefore, the motion to reconsider is denied.

IT IS SO ORDERED.

Member J. A. Burke Abstained

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 7, 2013, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board