

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,)
)
 Intervenor,)
)
 v.)
)
 FREEMAN UNITED COAL)
 MINING CO., L.L.C., and)
 SPRINGFIELD COAL COMPANY, L.L.C.,)
)
 Respondents.)

PCB 2010-061 and 2011-002
(Consolidated – Water –
Enforcement)

**SPRINGFIELD COAL COMPANY, LLC'S, AND FREEMAN UNITED COAL MINING,
 CO., LLC'S MOTION FOR EXTENSION OF TIME TO RESPOND TO THE
 INTERVENORS' DISCOVERY REQUESTS**

Respondents Springfield Coal Company, LLC ("Springfield Coal") and Freeman United Coal Mining Co., LLC ("Freeman United") (collectively, "Respondents"), pursuant to 35 Ill. Adm. Code 101.522, hereby file this Motion for Extension of Time to Respond to the Intervenor's Requests to Admit, Interrogatories, and Requests for Production of Documents to Springfield Coal and Freeman United ("Intervenor's Discovery Requests"). Respondents request an extension of time to respond to the Intervenor's Discovery Requests for thirty (30) days, until and including, Thursday, June 20, 2012. In support of this Motion, Springfield Coal and Freeman United state as follows:

1. On or around April 23, 2013, the Intervenors submitted the Intervenors'

Discovery Requests to Springfield Coal.

2. On or around April 23, 2012, the Intervenors submitted the Intervenors'

Discovery Requests to Freeman United.

3. Included in the Intervenors' Discovery Requests to Springfield Coal are thirteen (13) requests to admit (some with multiple subparts), twenty (20) interrogatories, and twenty-four (24) requests for production of documents.

4. Included in the Intervenors' Discovery Requests to Freeman United are three (3) requests to admit, fifteen (15) interrogatories, and twenty-one (21) requests for production of documents.

5. 35 Ill. Adm. Code 101.522 allows a party to obtain an extension of time for filing any document or doing any act which is required after giving notice to the opposing party and for good cause.

6. On May 1, 2013, Freeman United's counsel asked Intervenors' counsel for a thirty (30) day extension to respond to the Intervenors' Discovery Requests. On May 3, 2013, Intervenors' counsel denied Freeman United's request.

7. On May 3, 2013, Springfield Coal's counsel asked Intervenors' counsel for a thirty (30) day extension to respond to Intervenors' Discovery Requests. On May 6, 2013, Intervenors' counsel denied Springfield Coal's request.

8. In denying Respondents' request for the extension, Intervenors' counsel has asserted the following: "I am not comfortable allowing a 30-day extension on the discovery request. That puts us way too close to the hearing date (and I feel strongly that the hearing date

should not be delayed any further)." *See* Exhibit A, May 6, 2013 e-mail from J. Dexter to J. Kindschuh.

9. This litigation has been pending for approximately three years, during which time Intervenors have not previously submitted any discovery requests to Freeman United and only one previous discovery request to Springfield Coal. Intervenors served the current discovery requests on Freeman United and Springfield Coal approximately two months before the tentative date of the penalty hearing. Intervenors' own delay in serving discovery requests should not be used as the basis for their denial of an extension to respond.

10. Pursuant to 35 Ill. Adm. Code 101.522, Respondents have provided separate notice to the Intervenors regarding the request for a thirty (30) day extension.

11. A thirty (30) day extension will allow the Respondents to compile the necessary documents and to provide meaningful discovery responses to the Intervenors' Discovery Requests. Investigation into this matter is ongoing, and additional time is necessary to respond to the Intervenors' Discovery Requests.

12. A thirty (30) day extension will also allow for substantive settlement discussions to continue among the parties so that this matter may be amicably resolved.

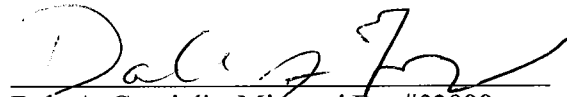
13. The extension will not harm the Intervenors or any other party because, among other reasons, the Hearing Officer specifically stated during the status conference on March 11, 2013, that a tentative hearing date was scheduled for June 25, 2013. If necessary, this hearing date could be moved.

14. The Respondents' requested extension is not made for the purpose of undue delay, and will not prejudice the interests of any party to this case. At most, the parties may choose to postpone the hearing date to allow for additional time for discovery.

WHEREFORE, Respondents Springfield Coal and Freeman United respectfully request that the Illinois Pollution Control Board grant Respondents' request an extension of time to respond to the Intervenors' Discovery Requests for thirty (30) days, until and including, Thursday, June 20, 2012.

Respectfully submitted,


BRYAN CAVE LLP



Dale A. Guariglia, Missouri Bar #32988
John R. Kindschuh, Illinois Bar #6284933
One Metropolitan Square
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JENNER & BLOCK LLP

on behalf of: 

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*Attorneys for Respondent,
Freeman United Coal Mining Co., LLC*

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF)
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Complainant,)

ENVIRONMENTAL LAW AND)
POLICY CENTER, on behalf of PRAIRIE)
RIVERS NETWORK and SIERRA CLUB,)
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v.)

FREEMAN UNITED COAL)
MINING CO., L.L.C., and)
SPRINGFIELD COAL COMPANY, L.L.C.,)

Respondents.)

PCB 2010-061 and 2011-002
Consolidated – Water – Enforcement

NOTICE OF ELECTRONIC FILING

TO:

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

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

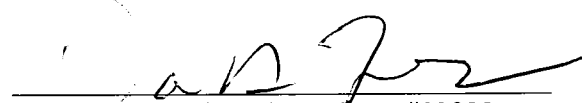
John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, IL 60601

Jessica Dexter
Environmental Law & Policy Center
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PLEASE TAKE NOTICE that on May 9, 2013, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., LLC's and Freeman United Coal Mining, Co., LLC's Motion for Extension of Time to Respond to Intervenors' Discovery Requests, copies of which are herewith served upon you.

BRYAN CAVE LLP



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*Attorneys for Respondent,
Springfield Coal Company, LLC*

Bailey, K. Michele

From: Kindschuh, John
Sent: Thursday, May 09, 2013 10:06 AM
To: Bailey, K. Michele
Subject: FW: ELPC/Springfield Coal -- Request for Extension to Respond to Intervenors' Discovery Requests

From: Jessica Dexter [mailto:JDexter@elpc.org]
Sent: Monday, May 06, 2013 10:51 AM
To: Kindschuh, John
Cc: Guariglia, Dale
Subject: RE: ELPC/Springfield Coal -- Request for Extension to Respond to Intervenors' Discovery Requests

As I told Freeman Coal, I am not comfortable allowing a 30-day extension on the discovery request. That puts us way too close to the hearing date (and I feel strongly that the hearing date should not be delayed any further).

I suggest that if there are particular requests that look like they will be troublesome, we may be able to consider a 15-day extension on those responses, but expect the bulk of the discovery on May 21.

Best,
Jessica

From: Kindschuh, John [mailto:john.kindschuh@BryanCave.com]
Sent: Friday, May 03, 2013 3:58 PM
To: Jessica Dexter
Cc: Guariglia, Dale
Subject: ELPC/Springfield Coal -- Request for Extension to Respond to Intervenors' Discovery Requests

Hello Jessica,

I am reaching out to you to request a thirty (30) day extension for Springfield Coal to respond to the requests to admit, the interrogatories, and the requests for production of documents that you submitted on behalf of the Intervenors on or around April 23rd to Springfield Coal. As you are aware, the Intervenors submitted 13 requests to admit (some with multiple subparts), 20 interrogatories, and 24 requests for production of documents to Springfield Coal. As you can appreciate, it takes considerable time to assemble documents and to respond to this number of requests. Accordingly, we request that the Intervenors provide Springfield Coal with a 30 day extension to respond to these discovery requests and to compile the necessary documents.

We appreciate you considering this request. Thank you for your time and courtesy.

Sincerely,

John

John Kindschuh
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Fax: (314) 259-2020
E-mail: john.kindschuh@bryancave.com

5/9/2013

Exhibit A

This electronic message is from a law firm. It may contain confidential or privileged information. If you received this transmission in error, please reply to the sender to advise of the error and delete this transmission and any attachments.

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