

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on June 19, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, PEOPLE'S RESPONSE TO MOTION FOR EXTENSION OF TIME, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: _____

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

ENVIRONMENTAL LAW AND)

POLICY CENTER, on behalf of PRAIRIE)

RIVERS NETWORK and SIERRA CLUB,)

ILLINOIS CHAPTER,)

Intervenor,)

v.)

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

FREEMAN UNITED COAL MINING)

COMPANY, LLC,)

a Delaware limited liability company, and)

SPRINGFIELD COAL COMPANY, LLC,)

a Delaware limited liability company,)

Respondents.)

PEOPLE'S RESPONSE TO MOTION FOR EXTENSION OF TIME

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the Motion for Extension of Time, and states as follows:

The motion by the Respondents requests additional time within which to respond to discovery requests by the Intervenor, and does not directly affect the Complainant's litigation efforts. However, as grounds for the request, the Respondents make representations regarding their settlement discussions with the Complainant and the Complainant's discussions with the Intervenor. See motion at ¶s 9 & 11. This response will address the issues raised by the Respondents relating to settlement discussions.

The case is scheduled for hearing on August 20, 2013 to make an evidentiary record for the Board's consideration and imposition of civil penalties. In the motion for summary judgment filed on March 6, 2012 the Complainant recommended penalties of \$341,000 against Freeman United and \$496,000 against Springfield Coal for violations over an eight year period.

Subsequent to the Board's November 15, 2012 opinion and order granting summary judgment on the effluent violations, the Illinois EPA has on April 26, 2013 taken final action regarding the renewal and transfer of the NPDES permit. On August 15, 2003 Freeman United had submitted to the Illinois EPA a timely application regarding the renewal of the permit. On August 14, 2007 Springfield Coal had submitted to the Illinois EPA a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. An appeal of this permit has been filed by the Intervenors in PCB 13-76 for the following reasons: 1) the Illinois EPA should not have reissued the Industry Mine's NPDES permit because the Illinois EPA cannot assure compliance with the permit's terms, the Act and the Board's water quality standards, and the Clean Water Act; 2) the NPDES permit improperly weakened sulfate effluent limitations in violation of Clean Water Act anti-backsliding and anti-degradation rules; 3) the Illinois EPA established a compliance schedule for manganese that is not in compliance with law; 4) the NPDES permit improperly allows coal processing at the proposed Grindstone Management, LLC – Littleton Mine; 5) the Illinois EPA improperly reclassified former alkaline mine drainage outfalls 029 and 030 as "reclamation area discharge" outfalls, removing some effluent limitations and monitoring requirements imposed under the 2003 NPDES permit; and 6) the Illinois EPA failed to ensure that discharges from the Industry Mine do not cause or contribute to a violation of the water quality standards.

Pursuant to good faith settlement discussions, the Complainant has performed a re-calculation of the civil penalties to be recommended in light of the prolonged delay in the reissuance and transfer of the NPDES permit. This information has been shared with the Respondents and the Intervenors, and provides a basis for a revised recommendation to the Board.

The settlement negotiations discussed by the Respondents in the motion involve proposals by Springfield Coal for supplemental environmental projects (SEPs); no settlement proposal has been made by Freeman United. The April 9, 2013 meeting among Springfield Coal, the Illinois EPA and the Attorney General's Office primarily pertained to activities at the Industry Mine to comply with the effluent limits in the previously effective NPDES permit and to the sulfate effluent limitations and compliance schedule for manganese to be imposed in the resissued permit. Springfield Coal's previous SEP proposal was discussed and a new SEP proposal was communicated by Springfield Coal; both SEPs would involve the donation of land and would seek a reduction in the civil penalty. In fact, Springfield Coal is seeking a total waiver of civil penalties if the SEPs are accepted. Complainant, however, indicated at the April 9, 2013 meeting that we would not agree to a total waiver of civil penalties. In other words, the Illinois EPA and the Attorney General's Office will not agree to any settlement that does not include a civil penalty against Springfield Coal, and in that sense have already responded to the settlement offers by Springfield Coal.

Complainant continues to prepare for the evidentiary hearing scheduled for August 20, 2013. Simultaneously, consideration of the feasibility of the SEPs is ongoing and does not affect our trial preparation. The requested additional time for the completion of discovery responses

does not affect the Illinois EPA and the Attorney General's Office. This response is wholly intended to clarify the statements in the motion regarding settlement discussions.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, hereby responds to the request for additional time to respond to discovery requests.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN,
Attorney General
of the State of Illinois

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

BY: 

THOMAS DAVIS, Chief
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Assistant Attorney General

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Dated: 6/19/13

CERTIFICATE OF SERVICE

I hereby certify that I did on June 19, 2013, cause to be served by United States Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and PEOPLE'S RESPONSE TO MOTION FOR EXTENSION OF TIME upon the Respondents listed on the Service List.



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

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