

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PRAIRIE RIVERS NETWORK, )  
 by and for its members, )  
 SIERRA CLUB, ILLINOIS )  
 CHAPTER, by and for its members )  
 )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 FREEMAN UNITED COAL )  
 MINING CO., L.L.C., and )  
 SPRINGFIELD COAL CO., L.L.C. )  
 )  
 Respondents. )

PCB 2010-061  
(Enforcement-Water)

**NOTICE OF ELECTRONIC FILING**

To: Attached Service List

PLEASE TAKE NOTICE that on August 19, 2013, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, Intervenor's **MOTION TO COMPEL**, a copy of which is attached hereto and herewith served upon you.

Respectfully Submitted,




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Jessica Dexter  
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 312-795-3747

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PCB 2010-061  
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**MOTION TO COMPEL**

Intervenors hereby move to compel Springfield Coal Co., LLC (“Springfield Coal”) to answer certain of Intervenors’ discovery requests, pursuant to 35 Ill. Admin. Code 101.610 (g) and (h) and 35 Ill. Admin. Code 101.614. Specifically, Intervenors seek information relating to other Illinois mines that are owned or controlled by Springfield Coal or its principals. As explained below, this information is relevant to the 415 ILCS 5/42(h) and 5/33(c) factors the Board considers when assessing penalties. Intervenors therefore respectfully request that the Hearing Officer order Springfield Coal to answer the discovery requests detailed below.

**BACKGROUND**

On November 15, 2012, the Board granted ELPC’s motion for summary judgment finding Springfield Coal Mining Co., LLC (“Springfield”) and Freeman United Coal Mining Co., LLC (“Freeman”) liable for 624 violations of the Industry Mine NPDES Permit. *Board Order and Opinion*, PCB 10-61 & 11-02 at 70. Having found violations of Section 12(f) of the Illinois

Environmental Protection Act (“the Act”), the Board ordered a penalty hearing to gather further evidence regarding the factors and criteria provided in Section 33(c) and 42(h) of the Act. *Id.*

On April 23, 2013, Prairie Rivers Network and Sierra Club each submitted written discovery requests (including requests for admission, interrogatories and requests for production of documents) to Springfield Coal. (Intervenor Prairie Rivers Network’s Second Interrogatories and Requests For Production Of Documents To Springfield Coal Co. and Intervenor Sierra Club’s First Requests to Admit, Interrogatories and Requests for Production of Documents to Springfield Coal Co. are referred to collectively here as “Intervenors’ Discovery Requests”.)

On June 24, 2013, Intervenors’ counsel received Springfield Coal’s Responses to Prairie Rivers Network’s Second Interrogatories and Requests For Production Of Documents and Springfield Coal’s Responses to Sierra Club’s First Requests to Admit, Interrogatories and Requests for Production of Documents, attached here as Attachments 1 and 2.

On July 12, counsel for Intervenors submitted an email to Springfield Coal requesting supplemental discovery responses to 13 discovery requests.

On August 2, counsel for Springfield Coal supplemented its responses, but declined to answer several, claiming that such responses are not relevant to the Board’s consideration of penalties and are beyond the scope of discovery in this lawsuit. This response is provided here as Attachment 3.

### **ARGUMENT**

Information regarding other Illinois mines owned or controlled by Springfield Coal or its principals is relevant to the Board’s consideration of several statutory penalty factors, including “the amount of monetary penalty which will serve to deter further violations,” 415 ILCS

5/42(h)(4), the “number, proximity in time, and gravity” of any previously adjudicated violations, 415 ILCS 5/42(h)(5), and “any economic benefits accrued by the respondent because of delay in compliance with requirements.” 415 ILCS 5/42(h)(3).

Under Illinois law, the scope of discoverable information is interpreted broadly to include “not only what is admissible at the trial, but also that which leads to what is admissible at the trial.” *Monier v. Chamberlain*, 31 Ill. 2d 400, 403 (1964).

Intervenors have submitted the following requests to obtain information about other mines owned or controlled by Springfield Coal:

**SC Request to Admit No. 12:** The following mines are under the same ownership and control as the Industry Mine:

- a. North Canton Mine, Capital Resources Development Company, Office of Mines and Minerals Permit #385, Draft NPDES #IL0078221  
ADMIT \_\_\_\_\_ DENY\_\_\_\_\_
- b. Banner Mine, Capital Resources Development Company, Office of Mines and Minerals Permit #355  
ADMIT \_\_\_\_\_ DENY\_\_\_\_\_
- c. Littleton Mine, Grindstone Management, LLC, Office of Mines and Minerals Permit #410, NPDES # IL0079405  
ADMIT \_\_\_\_\_ DENY\_\_\_\_\_
- d. Crown II, Springfield Coal Company, LLC, Office of Mines and Minerals Permit # 4, #279, #320, NPDES # IL0056413  
ADMIT \_\_\_\_\_ DENY\_\_\_\_\_
- e. Crown III Springfield Coal Company, LLC, Office of Mines and Minerals Permit # 5, #289, #311, #340, #353, NPDES # IL0059471  
ADMIT \_\_\_\_\_ DENY\_\_\_\_\_
- f. Orient III Springfield Coal Company, LLC, Office of Mines and Minerals Permit # 40, NPDES # IL0004677

ADMIT \_\_\_\_\_ DENY\_\_\_\_\_

- g. Orient IV Springfield Coal Company, LLC, Office of Mines and Minerals Permit #41, NPDES # IL0004685

ADMIT \_\_\_\_\_ DENY\_\_\_\_\_

- h. Buckheart Springfield Coal Company, LLC, Office of Mines and Minerals Permit # 17, #18, #19, NPDES # IL0037672

ADMIT \_\_\_\_\_ DENY\_\_\_\_\_

- i. Fidelity Springfield Coal Company, LLC, Office of Mines and Minerals Permit # 46, NPDES # IL0000302

ADMIT \_\_\_\_\_ DENY\_\_\_\_\_

**PRN Interrog. No. 7:** Please identify all coal mines owned or controlled by Michael Caldwell, Brian Veldhuizen, and/or Thomas Austin.

**PRN Interrog. No. 8:** Please identify all previously adjudicated or pending cases where Springfield Coal or companies owned or controlled by any of its principals were accused of violations of any environmental regulation, including any cases that have settled. For any such cases, please indicate 1) the nature of the violation, 2) the forum, case name and number, 3) the outcome of the case, and 4) the amount of any civil penalties assessed and other terms of the disposition or settlement.

**PRN RFP No. 10:** Please produce all violation notices issued to Springfield Coal or other companies owned or controlled by any of its principals for violation of any environmental regulation.

Springfield Coal has objected to these requests (to the extent they pertain to mines other than the Industry Mine) as irrelevant and immaterial to this matter, and has not produced responsive information regarding mines other than the Industry Mine.

As explained below, this information is relevant to the Board's consideration of at least three penalty factors, and falls squarely within the scope of allowable discovery.

**A. The Amount of Penalty That Will Deter Further Violations**

In this case, a mine company violated its NPDES permit extensively over many years, without regard for the effluent limitations established in its NPDES permit. Therefore, one of the most important penalty considerations in this case is whether the penalty is sufficient to deter violations in the future. Intervenors have reason to believe that Springfield Coal and/or its principals own or operate a number of other coal mines in Illinois. The penalty assessed by the Board must impress upon this company that NPDES effluent limits must be taken seriously at all of the mines it owns or operates.

Under factor 42(h)(4), the Board considers “the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act.” 415 ILCS 5/42(h)(4). The Board’s thorough assessment of this factor requires a clear understanding of the extent to which this company owns or operates coal mines in Illinois. To that end, Intervenors have requested information in order to establish those facts, and ask that the Hearing Officer compel Springfield Coal to respond to the discovery requests identified in this motion.

**B. Previously Adjudicated Violations**

Intervenors also seek additional information relevant to the Board’s consideration of prior adjudicated violations of the Illinois Environmental Protection Act at mines other than the Industry Mine that are owned or controlled by Springfield Coal and/or its principals. Factor 42(h)(5) calls for the Board to consider the “number, proximity in time, and gravity” of any previously adjudicated violations. 415 ILCS 5/42(h)(4). The history of adjudicated violations by the company as a whole is an important factor the Board considers as it determines the penalty necessary to deter further violations. *People of the State of Illinois v. James Lee Watts*, 1995 WL

283727 (Ill.Pol.Control.Bd.), 11 (“The Board agrees... that the history of adjudicated violations against ESG Watts indicates that a high penalty is warranted in this case to deter further violations.”).

Springfield Coal also refuses to produce this information in response to Intervenors’ requests because it claims the information is available to the public. See Springfield Coal’s Response to PRN Interrogatory No. 8 and Document Request No. 10. In most cases, it is improper to object to interrogatories on the basis that the information can be obtained from a public source. 10 Ill. Prac. Civil Disc. § 13:24 (2012 ed.), citing *Cohn v. Dart Industries, Inc.*, 21 Fed. Serv. 2d (Callaghan) 3 (D. Mass. 1976) (“[I]t is immaterial whether matters are as much within the knowledge of the interrogating party as of the adverse party”). Therefore, Springfield Coal should be required to produce all relevant information regardless of whether it may be available elsewhere.

**C. Economic Benefit**

The information sought by these discovery requests may also help the Board to understand the economic benefit gained as a result of noncompliance with the permit. Factor 42(h)(3) instructs the Board to consider “any economic benefits accrued by the respondent because of delay in compliance with requirements.” 415 ILCS 5/42(h)(3). Intervenors still await the production of relevant financial documents (subject to any protective order established by the Board). Those documents may contain information suggesting a financial relationship between the Industry Mine and other coal mines owned or operated by Springfield Coal and/or its principals. If economic benefit from these violations were gained by a mine other than the Industry Mine, that benefit would be relevant to the Board’s consideration of Factor 42(h)(3).

The discovery requests identified above would help to establish the relationship among the mines, and is therefore within the scope of allowable discovery.

For the foregoing reasons, Intervenors respectfully request that the Hearing Officer grant Intervenors' Motion to Compel and order Springfield Coal to produce all documents and information responsive to the discovery requests identified herein.

DATED this 19<sup>th</sup> day of August, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

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312-795-3747



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	PCB 2010-061 and 2011-002
ENVIRONMENTAL LAW AND	)	(Consolidated – Water –
POLICY CENTER, on behalf of PRAIRIE	)	Enforcement)
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.	)	

**RESPONDENT SPRINGFIELD COAL MINING CO. LLC'S RESPONSES TO INTERVENOR PRAIRIE RIVERS NETWORK'S SECOND INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

Respondent, Springfield Coal, Co., L.L.C. ("Springfield Coal") hereby provides the following responses to Intervenor Prairie Rivers Network's ("Prairie Rivers") interrogatories and document requests. During a conversation on June 20, 2013, counsel for Prairie Rivers, Jessica Dexter, agreed to allow Springfield Coal to submit these responses on or before June 25, 2013.

**General Objections**

1. Springfield Coal objects to the extent that any particular instruction, interrogatory, or document request seeks to impose a greater burden than required by the Illinois Rules of Civil Procedure and/or the Illinois Pollution Control Board Rules.

2. Springfield Coal objects to each and every interrogatory or document request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or doctrine. If Springfield Coal inadvertently produces any documents protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege, doctrine, law or rule, such production is not intended and shall not operate as a waiver of this objection.

3. Springfield Coal objects to Prairie Rivers' definition of "Industry Mine" in the Prairie Rivers' Second Interrogatories, and Requests for Production of Documents. Prairie Rivers states that "Industry Mine" is "the mine operation located 5 miles southwest of Industry, Illinois in McDonough and Schuyler Counties, Illinois and permitted under Illinois Department of Natural Resource Permit No. 357." See ¶11. Prairie Rivers' definition is not entirely accurate. The Industry Mine is permitted under Illinois Department of Natural Resource ("IDNR") Permit No. 357, and the Industry Mine is also permitted under the following permits: IDNR Permit Nos. 305, 180, 16, 341, 261, and 334.

4. As Prairie Rivers is aware, Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007. Therefore, Springfield Coal is only responding to Prairie Rivers' requests as they relate to the time period from August 31, 2007 to the present. Prairie Rivers has submitted separate discovery requests to Freeman United Coal Mining Company, LLC ("Freeman United"), the entity that had ownership or operational interest at the Industry Mine prior to August 31, 2007.

5. Springfield Coal's investigation and discovery into the matters specified is ongoing and continuing. Accordingly, Springfield Coal's responses to the interrogatories and document requests are made subject to and without waiving, or intending to waive, the right at any time to revise, correct, supplement, or clarify any of the responses set forth herein. Springfield Coal's responses are made without prejudice to Springfield Coal's right to produce evidence of any subsequently discovered facts or to supplement the responses if it should appear at any time that omissions or errors have been made.

6. Springfield Coal objects to Prairie Rivers' definition of "NPDES Permit" in the Prairie Rivers' Second Interrogatories and Requests for Production of Documents. As Prairie Rivers is aware, on April 26, 2013, the Illinois Environmental Protection Agency ("IEPA") issued Springfield Coal NPDES Permit No. IL0061247 ("April 2013 NPDES Permit"). See SC 02057 - 02095. The April 2013 NPDES Permit replaced the NPDES Permit (as defined in ¶13 of Prairie Rivers' Second Interrogatories and Requests for Production of Documents), and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit.

7. These General Objections are incorporated into each of the responses herein. The failure to repeat, renew or reassert any of the General Objections or the assertion of other objections in no way implies a failure to assert each and every General Objection in any way.

#### Interrogatories

1. Please describe any information you are aware of relating to the social and economic value of the Industry Mine.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by stating that the following list, while not exhaustive, identifies some of the social and economic values of the Industry Mine:

- The Industry Mine provides jobs and career opportunities to Illinois residents.
- The Industry Mine pays taxes to the State of Illinois.
- The Industry Mine provides goods and services to many people.
- The Industry Mine helps to provide one form of reliable energy to many people.
- The Industry Mine meets water quality standards.
- The Industry Mine has developed a reclamation plan.
- The Industry Mine is committed to preserving the environment.
- The Industry Mine engages in numerous environmental beautification projects, including recent projects such as planting and replanting trees, restoration of streams (2012), and planting 1.5 acres of prairie habitat (2013). Notably, some of these environmental projects were completed ahead of schedule and involved Springfield Coal employees and/or members of the community.

2. Please describe any economic benefits accrued by Springfield Coal because of delay in compliance with the NPDES Permit.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. Springfield Coal further objects to this Interrogatory because the Industry Mine has no obligation to come “into compliance with the NPDES Permit” since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by stating that Springfield Coal did not accrue any economic benefits because of a delay in compliance with the NPDES Permit. Rather, Springfield Coal incurred significant additional costs – or economic detriments -- to attempt to comply with the terms of the NPDES Permit. For example, it was technically impracticable and economically unreasonable for Springfield Coal to treat for sulfate at the Industry Mine pursuant to the terms of the NPDES Permit. The sulfate effluent limitation in the NPDES Permit was set as low as 500 mg/l (daily maximum), and this limitation was based upon a sulfate water quality standard which was officially rejected by the Illinois Pollution Control Board in September 2008. Moreover, the State of Illinois recognized that the sulfate limitation was not based in science and was inappropriate for mining operations. *See* Exhibit 3 of Springfield Coal’s Response to the

People of the State of Illinois' Motion for Partial Summary Judgment ("Springfield Coal's Response to the State's Motion"). Under the new sulfate standard, Springfield Coal would have had significantly fewer exceedances for sulfate. Springfield Coal continued to spend money (e.g., consulting and legal fees) in trying to comply with the terms of the NPDES Permit that were economically unreasonable to meet. For example, Springfield Coal hired additional employees and paid for the costs of treatment needed to comply with the terms of the NPDES Permit.

Springfield Coal further responds by stating that IEPA's delay of approving the NPDES permit renewal application filed by Freeman United, the previous owner of the Industry Mine, on August 15, 2003 has economically prejudiced Springfield Coal. Had IEPA timely issued a new NPDES permit in response to the renewal application, the Industry Mine would have been subject to different discharge limits. The NPDES Permit had standards and terms that are in contravention of the governing regulations. Springfield Coal has incurred years of costs (e.g., consulting, legal, etc.) as well as time (e.g., labor, subcontractors, etc.) attempting to comply with an outdated NPDES Permit and attempting to work with IEPA to issue a revised NPDES permit.

3. Please identify and itemize all costs incurred by Springfield Coal in efforts to bring the Industry Mine into compliance with the NPDES Permit.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. The Industry Mine has no obligation to come "into compliance with the NPDES Permit" since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal further objects that some information sought is protected by the attorney-client privilege and the work product doctrine. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Intervenor to documents produced in response to this Interrogatory. *See* SC 02790 – 02798. Springfield Coal further responds by stating that it Springfield Coal has engaged numerous consultants and subcontractors at the Industry Mine from 2007 to the present. Springfield Coal may produce additional invoices from consultants and/or subcontractors for costs incurred at the Industry Mine. *See* SC 02799 - 02823. Springfield Coal expressly reserves the right to supplement its response to this Interrogatory.

4. Please state Springfield Coal's net annual profits from the Industry Mine from 2007, 2008, 2009, 2010, 2011, and 2012.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in scope. Springfield Coal also objects to this Interrogatory because it requests extremely sensitive business, proprietary, and financial information that, if produced, needs to be designated as "Confidential and Non-Disclosable Information."

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to documents that, subject to the Illinois Pollution Control Board's ruling, will be produced as "Confidential and Non-Disclosable Information" pursuant to 35 Ill. Adm. Code §101.616, 35 Ill. Adm. Code §400 *et seq.*, and 415 ILCS §5/7(a). Springfield Coal filed an "Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order" with the Illinois Pollution Control Board on June 24, 2013.

5. Please identify the amount and purpose of all grants, loans or other assistance the Industry Mine has received from the State of Illinois.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present. Springfield Coal further objects to this Interrogatory because it seeks information that not relevant to this lawsuit. In light of the objections above, Springfield Coal is not providing a response to this Interrogatory.

6. Please describe the presence or absence of due diligence on the part of Freeman United or Springfield Coal in attempting to comply with requirements of the Illinois Environmental Protection Act and regulations thereunder or to secure relief therefrom as provided by the Illinois Environmental Protection Act.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the requirements of the Illinois Environmental Protection Act. Springfield Coal further objects to this Interrogatory to the extent that it attempts to impose a legal duty to secure relief from regulations under the Illinois Environmental Protection Act. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by stating that Springfield Coal, on multiple occasions, reached out to IEPA to request that IEPA update or renew the NPDES Permit. Had IEPA timely issued a new NPDES permit in response to the renewal application submitted by Freeman United in August 2003, the Industry Mine would have been subject to different discharge limits. The NPDES Permit had standards and terms that are in contravention of the governing regulations. Springfield Coal has incurred years of fees (consulting, legal, etc.) as well as time and energy attempting to comply with an outdated NPDES Permit and attempting to work with IEPA to issue a revised NPDES permit.

Springfield Coal further responds by stating that it incurred significant additional costs to attempt to comply with the terms of the NPDES Permit. For example, it was technically impracticable and economically unreasonable for Springfield Coal to treat for sulfate at the Industry Mine pursuant to the terms of the NPDES Permit. The sulfate effluent limitation in the NPDES Permit was set as low as 500 mg/l (daily maximum), and this limitation was based upon a sulfate water quality standard which was officially rejected by the Illinois

Pollution Control Board in September 2008. Moreover, the State of Illinois recognized that the sulfate limitation was not based in science and was inappropriate for mining operations. *See* Exhibit 3 of Springfield Coal's Response to the State's Motion for Partial Summary Judgment ("Springfield Coal's Response to State's Motion"). Under the new sulfate standard, Springfield Coal would have had significantly fewer exceedances for sulfate. Springfield Coal continued to spend money (e.g., consulting and legal fees) in trying to comply with the terms of the NPDES Permit that were unreasonable to meet. For example, Springfield Coal hired additional employees and paid for the costs of treatment needed to comply with the terms of the NPDES Permit.

Springfield Coal also responds by stating that it continues to reduce or eliminate the emissions, discharges or deposits resulting from the Industry Mine to the present day. Please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to reduce or eliminate emissions, discharges or deposits resulting from the Industry Mine. *See* SC 02054-56.

Springfield Coal further responds by directing the Prairie Rivers to a Compliance Commitment Agreement ("CCA") that was submitted to IEPA by Freeman United on May 19, 2005. *See* Exhibit 1B of Springfield Coal's Response to State's Motion. On March 30, 2007, Freeman United submitted a proposed two-year extension of the CCA. *See* Exhibit 1E of Springfield Coal's Response to State's Motion. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA which thereafter became effective. *See* Exhibit 1H of Springfield Coal's Response to the State's Motion. The State of Illinois did not provide a written response to Springfield Coal's revised CCA extension request. During an oral conversation in September 2007, IEPA told Springfield Coal to continue to operate pursuant to the terms of the CCA. *See* Exhibit 1, ¶16, Springfield Coal's Response to State's Motion. Therefore, Springfield Coal implemented the CCA, and it was valid and enforceable from August 30, 2007 until August 30, 2009. *See* Exhibit 1, ¶17.

In addition to the CCA discussed above, Springfield Coal submitted to IEPA compliance plans on February 18, 2010, May 7, 2010, June 3, 2010, June 30, 2011, and August 1, 2011. *See* Exhibits 4 – 8, Springfield Coal's Response to the Intervenor's Motion.

Springfield Coal also submitted correspondence to IEPA on July 20, 2010 seeking clarification from IEPA regarding the application of 35 IAC 406.106(b) to the effluent limitations in the NPDES Permit. *See* Exhibit 1I to Springfield Coal's Response to the State's Motion. Springfield Coal never received either an oral or written response from IEPA to the April 21, 2010 letter.

Springfield Coal further responds by stating that Springfield Coal has employed and utilized professional engineers to assist in, among other things, developing compliance plans and to ensure that Springfield Coal complies with the terms of the NPDES Permit. *See* Exhibit 2, ¶7, Springfield Coal's Response to the Intervenor's Motion.

Notably, the list of Springfield Coal's due diligence activities above is not intended to be exhaustive.

7. Please identify all coal mines owned or controlled by Michael Caldwell, Brian Veldhuizen, and/or Thomas Austin.

**RESPONSE:** Springfield Coal objects to this Interrogatory because it seeks information that not relevant to this lawsuit. Springfield Coal further objects to this Interrogatory because it seeks information that is nonresponsive. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope and is vague. In light of the objections above, Springfield Coal is not providing a response to this Interrogatory.

8. Please identify all previously adjudicated or pending cases where Springfield Coal or companies owned or controlled by any of its principals were accused of violations of any environmental regulation, including any cases that have settled. For any such cases, please indicate 1) the nature of the violation, 2) the forum, case name and number, 3) the outcome of the case, and 4) the amount of any civil penalties assessed and other terms of the disposition or settlement.

**RESPONSE:** Springfield Coal objects to this Interrogatory because it seeks information that not relevant to this lawsuit. It is irrelevant whether “companies owned or controlled by any of [Springfield Coal’s] principals” are accused of violations because the present suit involves Industry Mine. Springfield Coal objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present. Springfield Coal also objects to this Interrogatory because it seeks information that is available to the public.

Subject to and without waiving these objections, Springfield Coal responds by stating that the following with respect to adjudicated or pending cases or alleged violations involving the Industry Mine:

- Present matter. 1) Alleged violation of NPDES Effluent Limits. 2) Illinois Pollution Control Board, PCB 2010-061 and 2011-002. 3) Case pending. 4) Case pending.
- November 24, 2009 Reporting Issue. 1) Alleged failure to report NPDES excursions within five days of the event for a few months in 2009. 2) Violation number 38-05-09. 3) Terminated – no administrative or judicial actions. 4) Springfield Coal will report the excursions within the approved time frame, as needed.
- July 9, 2010 Fly Rock Issue. 1) Alleged failure to control fly rock. 2) Violation number 50-01-10. 3) Terminated – no administrative or judicial actions. 4) Fly rock was removed from the affected property.
- April 14, 2011 Submission Issue. 1) Alleged failure to submit impoundment detailed designs, post-construction certifications and quarterly examinations. 2) Violation number 38-07-11. 3) Terminated – no administrative or judicial actions. 4) Submitted a letter to the IDNR Office of Mines and Minerals.

- April 14, 2011 Operations Plan Issue. 1) Alleged failure to follow the mining operations plan by not seeding and mulching. 2) Violation number 38-08-11. 3) Terminated – no administrative or judicial actions. 4) Work was performed in accordance of the approved mining operations plan.
- April 14, 2011 Operations Plan Issue. 1) Alleged failure to follow the approved mining operations plan by not removing top soil. 2) Violation number 38-09-11. 3) Terminated – no administrative or judicial actions. 4) Work was performed to comply with the action required.
- April 14, 2011 Operations Plan Issue. 1) Alleged failure to follow the approved mining operations plan by not maintaining the log book. 2) Violation number 38-10-11. 3) Terminated – no administrative or judicial actions. 4) Maintain a log book in accordance with regulations.
- April 14, 2011 Submission Issue. 1) Alleged failure to submit a revegetation report. 2) Violation number 38-11-11. 3) Terminated – no administrative or judicial actions. 4) Submitted the revegetation report.
- August 3, 2011 Submission Issue. 1) Alleged failure to submit a quarterly water monitoring and ash report. 2) Violation number 38-14-11. 3) Terminated – no administrative or judicial actions. 4) Submitted reports to IDNR Office of Mines and Minerals.
- November 14, 2011 Discharge Issue. 1) Alleged failure that discharge water at Outfalls 009, 018, and 030 exceeds Sulfate limit. 2) Violation number 38-19-11. 3) Terminated – no administrative or judicial actions. 4) Submitted a plan to the IDNR Office of Mines and Minerals.

### Document Requests

1. Please produce all documents and communications relating to the social and economic value of the Industry Mine.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal also objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to SC 02054-56 which are being produced to Prairie Rivers in response to this Document Request.

2. Please produce all documents and communications relating to any economic benefits accrued by Springfield Coal because of delay in compliance with the NPDES Permit.



**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. Springfield Coal further objects to this Document Request because the Industry Mine has no obligation to come “into compliance with the NPDES Permit” since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to no documents as Springfield Coal did not accrue any economic benefits because of a delay in compliance with the NPDES Permit.

3. Please produce all documents and communications relating to costs incurred by Springfield Coal in efforts to correct the permit violations and bring the Industry Mine into compliance with the NPDES Permit.

**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit and needs to correct permit violations. The Industry Mine has no obligation to come “into compliance with the NPDES Permit” since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal further objects that some information sought is protected by the attorney-client privilege and the work product doctrine. Springfield Coal also objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by directing Prairie Rivers to the following documents produced in response to this Document Request. See SC 02790 - 02823.

4. Please produce all documents relating to profit & loss statements for Springfield Coal related to the Industry Mine.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to the issues in this lawsuit. Springfield Coal also objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal also objects to this Interrogatory because it requests extremely sensitive business, proprietary, and financial information that, if produced, needs to be designated as “Confidential and Non-Disclosable Information.”

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to documents that, subject to the Illinois Pollution Control Board’s ruling, will

be produced as “Confidential and Non-Disclosable Information” pursuant to 35 Ill. Adm. Code §101.616, 35 Ill. Adm. Code §400 *et seq.*, and 415 ILCS §5/7(a). Springfield Coal filed an “Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order” with the Illinois Pollution Control Board on June 24, 2013.

5. Please produce all documents relating to federal and state income tax returns Springfield Coal has filed for 2007, 2008, 2009, 2010, 2011, and 2012.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to the issues in this lawsuit. In light of the objections above, Springfield Coal is not providing documents in response to this Document Request.

6. Please produce all documents relating to the calculation of real property tax owed for the Industry Mine for 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to the issues in this lawsuit.

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to documents that are produced in response to this Document Request. SC 03538 – 03544.

7. Please produce documents relating to annual accounting reports for Springfield Coal for 2007, 2008, 2009, 2010, 2011, and 2012.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to the issues in this lawsuit. Springfield Coal also objects to this Interrogatory because it requests extremely sensitive business, proprietary, and financial information that, if produced, needs to be designated as “Confidential and Non-Disclosable Information.”

Subject to and without waiving these objections, Springfield Coal responds by referring Prairie Rivers to documents that, subject to the Illinois Pollution Control Board’s ruling, will be produced as “Confidential and Non-Disclosable Information” pursuant to 35 Ill. Adm. Code §101.616, 35 Ill. Adm. Code §400 *et seq.*, and 415 ILCS §5/7(a). Springfield Coal filed an “Application for Confidential and Non-Disclosable Information Designation, Seal, and Protective Order” with the Illinois Pollution Control Board on June 24, 2013.

8. Please produce all documents and communications relating to all grants, loans, or other assistance the Industry Mine has received from the State of Illinois.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to the issues in this lawsuit. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. Accordingly, in light of the objections above, Springfield Coal is not providing any documents in response to this Document Request.

9. Please produce all DMRs for the Industry Mine’s discharges from October 2011 to the present.

**RESPONSE:** Springfield Coal objects to this Document Request on the grounds of relevance. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. The present case does not allege any violations from October 2011 to the present. Springfield Coal also objects to this Document Request because it seeks information that is available to the public. Accordingly, in light of the objections above, Springfield Coal is not providing any documents in response to this Document Request.

10. Please produce all violation notices issued to Springfield Coal or other companies owned or controlled by any of its principals for violation of any environmental regulation.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to this lawsuit. It is irrelevant whether “companies owned or controlled by any of [Springfield Coal’s] principals” are accused of violations because the present suit involves Industry Mine. Springfield Coal objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal also objects to this Document Request because it seeks information that is available to the public.

Subject to and without waiving these objections, Springfield Coal responds by stating that Prairie Rivers has the ability to access the information requested in this Document Request from sources that are available to the public.

11. Please produce all documents and communications relating to the presence or absence of due diligence on the part of Freeman United or Springfield Coal in attempting to comply with the requirements of the Illinois Environmental Protection Act and regulations thereunder or to secure relief therefrom as provided by this Act.

**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the requirements of the Illinois Environmental Protection Act. Springfield Coal further objects to this Document Request to the extent that it attempts to impose a legal duty to secure relief from regulations under the Illinois Environmental Protection Act. Springfield Coal also objects to this Document Request as it is overly broad in time and scope and is vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal further objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter.

Subject to and without waiving these objections, Springfield Coal responds by directing Prairie Rivers to Exhibits 1, 1B, 1E, 1H, 1I, and 3 of Springfield Coal’s Response to the State’s Motion, Thomas J. Austin’s letter to Tom Davis dated May 1, 2013, and Exhibits 1, 2, and 4 – 8 of Springfield Coal’s Response to the Intervenors’ Motion. See SC 02054-56.

Importantly, the list of documents above is not meant to be exhaustive.

12. Please produce all documents and communications relating to any request by the Industry Mine for a release of a performance bond under 40 CFR 800.40.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that not relevant to this lawsuit. Springfield Coal objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal also objects to this Document Request because Prairie Rivers appears to misstate the regulation. Springfield Coal believes that Prairie Rivers intended to reference 30 CFR 800.40, not 40 CFR 800.40.

Subject to and without waiving these objections, Springfield Coal responds by directing Prairie Rivers to documents that are produced in response to this Document Request. See generally SC 02824 – 03277.

13. Please produce all documents requesting relief from water quality regulations sent by or on behalf of Springfield Coal or Freeman United to any state or federal agency or legislator.

**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Springfield Coal is “requesting relief.” Springfield Coal further objects to this Document Request to the extent that it attempts to impose a legal duty to secure relief. Springfield Coal also objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal further objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter.

Subject to and without waiving these objections, Springfield Coal responds by directing Prairie Rivers to Exhibits 1, 1B, 1E, 1H, 1I, and 3 of Springfield Coal’s Response to the State’s Motion, Thomas J. Austin’s letter to Tom Davis dated May 1, 2013, and Exhibits 1, 2, and 4 – 8 of Springfield Coal’s Response to the Intervenors’ Motion. See SC 02054-56.

Importantly, the list of documents above is not meant to be exhaustive.

Dated: June 24, 2013

BRYAN CAVE LLP

By: 

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John Kindschuh #6284933

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Attorneys for Springfield Coal Co., L.L.C.

**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)

**CERTIFICATE OF SERVICE**

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  
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100 West Randolph St., Suite 11-500  
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Steven M. Siros  
E. Lynn Grayson  
Allison Torrence  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456

PLEASE TAKE NOTICE that on June 24, 2013, I sent via U.S. Mail, Springfield Coal Co., L.L.C.'s Responses to Prairie River Network's Second Interrogatories and Request for Production of Documents, copies of which are herewith served upon you.

BRYAN CAVE LLP

By: 

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Attorneys for Respondent, Springfield Coal  
Co., L.L.C

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	PCB 2010-061 and 2011-002
ENVIRONMENTAL LAW AND	)	(Consolidated – Water –
POLICY CENTER, on behalf of PRAIRIE	)	Enforcement)
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.	)	

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**RESPONDENT SPRINGFIELD COAL MINING CO. LLC'S RESPONSES TO  
INTERVENOR SIERRA CLUB'S FIRST REQUESTS TO ADMIT,  
INTERROGATORIES, AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Respondent, Springfield Coal, Co., L.L.C. ("Springfield Coal") hereby provides the following responses to Intervenor Sierra Club, Illinois Chapter's ("Sierra Club") requests to admit, interrogatories and document requests. During a conversation on June 20, 2013, counsel for Sierra Club, Jessica Dexter, agreed to allow Springfield Coal to submit these responses on or before June 25, 2013.

**General Objections**

1. Springfield Coal objects to the extent that any particular instruction, request for admission, interrogatory, or document request seeks to impose a greater burden than required by the Illinois Rules of Civil Procedure and/or the Illinois Pollution Control Board Rules.
2. Springfield Coal objects to each and every request for admission, interrogatory, or document request to the extent that it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, or any other applicable privilege or doctrine. If Springfield Coal inadvertently produces any documents protected by the attorney-client privilege,



the work product doctrine, or any other applicable privilege, doctrine, law or rule, such production is not intended and shall not operate as a waiver of this objection.

3. Springfield Coal objects to Sierra Club's definition of "Industry Mine" in the Sierra Club's First Requests to Admit, Interrogatories, and Requests for Production of Documents. The Sierra Club states that "Industry Mine" is "the mine operation located 5 miles southwest of Industry, Illinois in McDonough and Schuyler Counties, Illinois and permitted under Illinois Department of Natural Resource Permit No. 357." See ¶11. The Sierra Club's definition is not entirely accurate. The Industry Mine is permitted under Illinois Department of Natural Resource ("IDNR") Permit No. 357, and the Industry Mine is also permitted under the following permits: IDNR Permit Nos. 305, 180, 16, 341, 261, and 334.

4. As Sierra Club is aware, Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007. Therefore, Springfield Coal is only responding to the Sierra Club's requests as they relate to the time period from August 31, 2007 to the present. The Sierra Club has submitted separate discovery requests to Freeman United, the entity that had ownership or operational interest at the Industry Mine prior to August 31, 2007.

5. Springfield Coal's investigation and discovery into the matters specified is ongoing and continuing. Accordingly, Springfield Coal's responses to the requests for admission, interrogatories, and document requests are made subject to and without waiving, or intending to waive, the right at any time to revise, correct, supplement, or clarify any of the responses set forth herein. Springfield Coal's responses are made without prejudice to Springfield Coal's right to produce evidence of any subsequently discovered facts or to supplement the responses if it should appear at any time that omissions or errors have been made.

6. Springfield Coal objects to Sierra Club's definition of "NPDES Permit" in the Sierra Club's First Requests to Admit, Interrogatories, and Requests for Production of Documents. As Sierra Club is aware, on April 26, 2013, the Illinois Environmental Protection Agency ("IEPA") issued Springfield Coal NPDES Permit No. IL0061247 ("April 2013 NPDES Permit"). See SC 02057 - 02095. The April 2013 NPDES Permit replaced the NPDES Permit (as defined in ¶13 of the Sierra Club's First Requests to Admit, Interrogatories, and Requests for Production of Documents) and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit.

7. These General Objections are incorporated into each of the responses herein. The failure to repeat, renew or reassert any of the General Objections or the assertion of other objections in no way implies a failure to assert each and every General Objection in any way.

#### **Requests to Admit**

1. Compliance with the NPDES Permit is not possible.

**RESPONSE:** Springfield Coal objects to this Request for Admission since it is vague and overbroad. Also, Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this request as it relates to the time period from August 31, 2007 to the present. While Springfield Coal admits that the NPDES permit was in effect from August 31, 2007 to April 26, 2013 for the

Industry Mine, Springfield Coal denies the remainder of the request. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. See SC 02057 - 02095. Springfield Coal asserts that IEPA's delay of approving the NPDES permit renewal application filed by Freeman United, the previous owner of the Industry Mine, on August 15, 2003 has prejudiced Springfield Coal such that had IEPA timely issued a new NPDES permit in response to the renewal application, the Industry Mine would be subject to different discharge limits. The NPDES Permit had standards and terms that are in contravention with the governing regulations.

ADMIT \_\_\_\_\_ DENY\_\_\_\_\_

2. Compliance with the NPDES Permit has been difficult or impossible because one or more of the settlement basins at the Industry Mine was improperly sized or designed.

**RESPONSE:** Springfield Coal denies this Request for Admission. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this request as it relates to the time period from August 31, 2007 to the present. The Illinois Department of Natural Resources Office of Mines and Minerals ("Office of Mines and Minerals") and Mine Safety and Health Administration ("MSHA") approved permits for the Industry Mine which included, but is not limited to, the design for the settlement basins. Moreover, a consultant was retained to design plans for, among other things, the settlement basins at the Industry Mine.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

3. Springfield Coal has not hired any outside contractors to evaluate how to correct the permit violations and bring the Industry Mine into compliance with the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this request as it relates to the time period from August 31, 2007 to the present. As discussed in Springfield Coal's Response to Prairie Rivers Network and Sierra Club's Motion for Summary Judgment dated June 6, 2012 ("Springfield Coal's Response to Intervenor's Motion"), Springfield Coal has hired and/or employed three licensed professional engineers from 2007 to the present at the Industry Mine. See p. 14. All of these engineers have worked at consulting firms but also have been employed by Springfield Coal.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

4. Springfield Coal does not intend to implement additional pollution controls in order to meet sulfate effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1,

2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

5. Springfield Coal does not intend to implement additional pollution controls in order to meet manganese effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

6. Springfield Coal does not intend to implement additional pollution controls in order to meet iron effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

7. Springfield Coal does not intend to implement additional pollution controls in order to meet pH effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY\_\_X\_\_

8. Springfield Coal does not intend to implement additional pollution controls in order to meet total suspended solids effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1,

2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY X \_\_\_\_\_

9. Springfield Coal does not intend to implement additional pollution controls in order to meet settleable solids effluent limits in the NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit. However, please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls. See SC 02054-56.

ADMIT \_\_\_\_\_ DENY X \_\_\_\_\_

10. The Industry Mine is not in compliance with the terms of its NPDES Permit.

**RESPONSE:** Springfield Coal denies this Request for Admission. On April 26, 2013, the IEPA issued Springfield Coal the April 2013 NPDES Permit which replaced the NPDES Permit, and therefore Springfield Coal and the Industry Mine are no longer subject to the NPDES Permit.

ADMIT \_\_\_\_\_ DENY X \_\_\_\_\_

11. Springfield Coal, LLC is under the ownership and control of Michael Caldwell, Brian Veldhuizen, and Thomas Austin.

**RESPONSE:** Springfield Coal admits this Request for Admission.

ADMIT X \_\_\_\_\_ DENY \_\_\_\_\_

12. The following mines are under the same ownership and control as the Industry Mine:

a. North Canton Mine, Capital Resources Development Company, Office of Mines and Minerals Permit #385, Draft NPDES #IIL0078221.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether the North Canton Mine is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

b. Banner Mine, Capital Resources Development Company, Office of Mines and Minerals Permit #355.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether the Banner Mine is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

c. Littleton Mine, Grindstone Management, LLC, Office of Mines and Minerals Permit #410, NPDES #IL0079405.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether the Littleton Mine is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

d. Crown II, Springfield Coal Company, LLC, Office of Mines and Minerals Permit #4, #279, #320, NPDES #IL0056413.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Crown II Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

e. Crown III Springfield Coal Company, LLC, Office of Mines and Minerals Permit #5, #289, #311, #340, #353, NPDES #IL0059471.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Crown III Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

f. Orient III Springfield Coal Company, LLC, Office of Mines and Minerals, Permit #40, NPDES #IL0004685.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Orient III Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

g. Orient IV Springfield Coal Company, LLC, Office of Mines and Minerals Permit #41, NPDES #IL0004685.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Orient IV Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

h. Buckheart Springfield Coal Company, LLC, Office of Mines and Minerals Permit #17, #18, #19, NPDES #IL0037672.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Buckheart Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

i. Fidelity Springfield Coal Company, LLC, Office of Mines and Minerals Permit #46, NPDES # IL0000302.

**RESPONSE:** Springfield Coal objects to this Request for Admission because this inquiry is unrelated to any allegations of NPDES Permit violations at the Industry Mine. It is irrelevant and immaterial to this matter whether Fidelity Springfield Coal Company is under the same ownership and control as the Industry Mine.

ADMIT \_\_\_\_\_ DENY \_\_\_\_\_

13. Springfield Coal, LLC remains willing to offer the Chandler Timbers as a supplemental environmental project.

**RESPONSE:** Springfield Coal admits this Request for Admission.

ADMIT   X   DENY \_\_\_\_\_

### **Interrogatories**

1. Please describe the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from the Industry Mine.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for legal conclusion by suggesting that Springfield Coal is responsible for the emissions, discharges, or deposits resulting from the Industry Mine. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Intervenor to the discussion in Springfield Coal's Response to Intervenor's Motion and Springfield Coal's Response to the People of the State of Illinois' Motion for Partial Summary Judgment ("Springfield Coal's Response to State's Motion"), in particular, the discussion regarding the existence of naturally occurring constituents and upgradient concentrations of constituents which have affected the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from the Industry Mine.

Springfield Coal also responds by stating that it continues to reduce or eliminate the emissions, discharges or deposits resulting from the Industry Mine to the present day. Please see Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to reduce or eliminate emissions, discharges or deposits resulting from the Industry Mine. See SC 02054-56. Springfield Coal further responds by directing the Sierra Club to a Compliance Commitment Agreement ("CCA") that was submitted to IEPA by Freeman United on May 19, 2005. See Exhibit 1B of Springfield Coal's Response to State's Motion. On March 30, 2007, Freeman United submitted a proposed two-year extension of the CCA. See Exhibit 1E of Springfield Coal's Response to State's Motion. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA which thereafter became effective. See Exhibit 1H of Springfield Coal's Response to the State's Motion.

Springfield Coal further responds by stating that it was technically impracticable and economically unreasonable to treat for sulfate at the Industry Mine pursuant to the terms of the NPDES Permit. The sulfate effluent limitation in the NPDES Permit was set as low as 500 mg/l (daily maximum), and this limitation was based upon a sulfate water quality standard which was officially rejected by the Illinois Pollution Control Board in September 2008. Moreover, the State of Illinois recognized that the sulfate limitation was not based in science and was inappropriate for mining operations. See Exhibit 3 of Springfield Coal's Response to the State's Motion. Importantly, IEPA finally recognized that the new sulfate limitation should be applied to the Industry Mine, as demonstrated in the April 2013 NPDES Permit. See SC 02057 - 02095.

2. Please identify all options for additional pollution controls known to Springfield Coal that could bring the Industry Mine into compliance with the NPDES Permit. For each alternative, provide detailed information regarding 1) which pollutant parameter(s) the option addresses at which outfalls and the scientific basis for how the pollution discharge will be reduced; and 2) the capital expense and annual operating costs of each option identified.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. Springfield Coal further objects to this Interrogatory because the Industry Mine has no obligation to come "into compliance with the NPDES Permit" since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only

responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by directing Sierra Club to Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that discusses Springfield Coal's intentions to implement additional pollution controls under the April 2013 NPDES Permit. See SC 02054-56.

Springfield Coal further responds by directing the Sierra Club to a Compliance Commitment Agreement ("CCA") that was submitted to IEPA by Freeman United on May 19, 2005. See Exhibit 1B of Springfield Coal's Response to State's Motion. On March 30, 2007, Freeman United submitted a proposed two-year extension of the CCA. See Exhibit 1E of Springfield Coal's Response to State's Motion. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA. See Exhibit 1H of Springfield Coal's Response to the State's Motion. Among other things, the CCAs identified options to implement additional pollution controls.

Springfield Coal also submitted to IEPA compliance plans on February 18, 2010, May 7, 2010, June 3, 2010, June 30, 2011, and August 1, 2011. See Exhibits 4 – 8, Springfield Coal's Response to Intervenors' Motion. These compliance plans also identified options to implement additional pollution controls.

3. Please identify any consultants that were engaged to help to correct the permit violations and bring the Industry Mine into compliance with its NPDES Permit. For each, provide 1) the consultant's name and employer; 2) what the contractor was asked to do; and 3) how much the consultant was paid for his/her services.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it asks for irrelevant and unrelated information, such as how much money the consultant was paid for his or her services. Springfield Coal further objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit and needs to correct permit violations. Springfield Coal further objects to this Interrogatory because the Industry Mine has no obligation to come "into compliance with the NPDES Permit" since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by directing Sierra Club to the "Manganese Case Study" prepared by Key Agricultural Services, Inc.. See Exhibit 1D of Springfield Coal's Response to State's Motion. Springfield Coal further responds by directing Sierra Club to the "Environmental Impact Statement for the Proposed Freeman United Coal Mining Company" prepared by Environmental Science and Engineering, Inc. See Exhibit 1J of Springfield Coal's Response to the State's Motion; see also SC 02245 - 02472. Springfield Coal further responds by identifying that Rapps Engineering & Applied Science was retained by Springfield Coal to, among other things, assist with investigation and study of water flow and water analysis at Industry Mine. Springfield Coal



further responds by stating that Brown & Caldwell was retained by legal counsel for Freeman United as consultants for Industry Mine.

4. Please identify any compliance plans that have been submitted to IEPA for the Industry Mine. For each, 1) provide the name(s) of the person(s) who developed the plan; 2) which pollutant parameters the compliance plan was meant to address and at which outfalls; and 3) describe the extent to which such plan was implemented at the Industry Mine and for how long.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal also objects to this Interrogatory because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter.

Subject to and without waiving these objections, Springfield Coal responds by directing the Sierra Club to a Compliance Commitment Agreement (“CCA”) that was submitted to IEPA by Freeman United on May 19, 2005. *See* Exhibit 1B of Springfield Coal’s Response to State’s Motion. On March 30, 2007, Freeman United submitted a proposed two-year extension of the CCA. *See* Exhibit 1E of Springfield Coal’s Response to State’s Motion. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA. *See* Exhibit 1H of Springfield Coal’s Response to the State’s Motion. Individuals involved in drafting the aforementioned CCAs are Thomas Austin and Steven Phifer. The terms of the CCAs speak for themselves. Springfield Coal implemented the CCA and it was valid and enforceable CCA from August 30, 2007 until August 30, 2009.

In addition to the CCA discussed above, Springfield Coal submitted to IEPA compliance plans on February 18, 2010, May 7, 2010, June 3, 2010, June 30, 2011, and August 1, 2011. *See* Exhibits 4 – 8, Springfield Coal’s Response to Intervenor’s Motion. Individuals involved in drafting these documents are Thomas Austin and Dale Guariglia. The terms of the documents speak for themselves.

5. Please state whether Springfield Coal has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of the Illinois Environmental Protection Act [415 ILCS 5/31] to correct the permit violations, describing in detail what work was done, to which outfalls, and to address what pollutants.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present. Springfield Coal further objects to the extent that the Interrogatory calls for a legal conclusion because the parties disagree as to whether the CCA exists in this matter.

Subject to and without waiving these objections, Springfield Coal responds by stating that on August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA. *See* Exhibit 1H of Springfield Coal’s Response to the State’s Motion. The State of Illinois did not provide a written response to Springfield Coal’s revised CCA extension request. During an oral conversation in September 2007, IEPA told Springfield Coal to continue to operate

pursuant to the terms of the CCA. *See* Exhibit 1, ¶16, Springfield Coal's Response to State's Motion. Therefore, Springfield Coal was operating under a CCA from August 30, 2007 until August 30, 2009. *See* Exhibit 1, ¶17.

6. Please explain how the Industry Mine will correct the permit violations and come into compliance with the NPDES Permit (including physical changes and changes to the operation) and the date by which the mine will come into compliance with the NPDES Permit.

**RESPONSE:** Springfield Coal objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. Springfield Coal further objects to this Interrogatory because the Industry Mine has no obligation to come "into compliance with the NPDES Permit" since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by directing Sierra Club to Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls under the April 2013 NPDES Permit. See SC 02054-56.

7. Please state how many tons of coal have been extracted from the Industry Mine since 2004.

**RESPONSE:** Springfield Coal objects to the Sierra Club's definition of "Industry Mine," as discussed in the General Objections above. Springfield Coal further objects to this Interrogatory as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by stating that there have been zero (0) tons of coal that have been extracted from the Industry Mine since August 30, 2007. Springfield Coal further responds that there have been 647,660 tons of coal that have been extracted from the North Grindstone Mine since August 30, 2007.

8. Please describe the suitability or unsuitability of the Industry Mine to the area in which it is located, including the question of priority of location in the area involved.

**RESPONSE:** Springfield Coal objects to this Interrogatory as it is overly broad in time and scope and vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Interrogatory as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by stating that the Industry Mine is a suitable area because, among other reasons, the Office of Mines and Minerals and MSHA has issued permits for the Industry Mine to be operated in its permitted

location. Copies of the permits and related documents were previously produced to the Sierra Club. The specific area and location of the Industry Mine is also suitable since it is located away from population centers and large bodies of water. Springfield Coal further responds by directing Sierra Club to documents (e.g., an Environmental Impact Statement, studies discussing the potential impact to species, etc.) that addressed the suitability of the Industry Mine location. See SC 02245 - 02789.

Further responding, Springfield Coal states that geographic location of the Industry Mine raises challenges for Respondent to comply with NPDES limitations because as detailed in Springfield Coal's Response to the State's Motion and Springfield Coal's Response to the Intervenor's Motion, there are naturally occurring constituents and upgradient concentrations of constituents which have affected the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from the Industry Mine.

9. Please describe the changes that will be made to the mine site as the Industry Mine is reclaimed and how those changes may either increase or decrease the amount of pollutants discharged from the mine in the short-term and long-term.

**RESPONSE:** Springfield Coal objects to this Interrogatory since it is overly broad in time and scope and vague. Springfield Coal also objects to this Interrogatory to the extent that it calls for a legal conclusion by suggesting that there are pollutants discharged from the Industry Mine. Springfield Coal further objects to the extent that this Interrogatory suggests that Springfield Coal is obligated under law to make changes.

Subject to and without waiving these objections, Springfield Coal responds by directing Sierra Club to Thomas J. Austin's letter to Tom Davis dated May 1, 2013 that further discusses Springfield Coal's intentions to implement additional pollution controls under the April 2013 NPDES Permit. See SC 02054-56. Springfield Coal further responds by directing the Sierra Club to review the limitations and requirements for the Industry Mine in the April 2013 NPDES Permit. See SC 02057 - 02095. Springfield Coal also responds by directing the Sierra Club to review the permits issued by the Offices of Mines and Minerals for the Industry Mine which were previously produced to Intervenor along with related documents, such as the reclamation plans for the Industry Mine. Springfield Coal further responds by directing the Sierra Club to all documents produced involving correspondence, maps, and documents among Springfield Coal, Rapps Engineering & Applied Science, and/or the Office of Mines and Minerals involving reclamation for the Industry Mine. See generally SC 02824 – 03277.

10. Please identify any impacts to the Chandler Timbers area that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alterations, use of heavy machinery or earth disturbance in the area.

**RESPONSE:** Springfield Coal objects to this Interrogatory since it asks for irrelevant information not related to the issues in the present case.

11. Please state the current fair market value of Chandler Timbers.

**RESPONSE:** Springfield Coal objects to this Interrogatory since it asks for irrelevant information not related to the issues in the present case.

12. Please identify each expert who may testify at hearing on your behalf and state the Subject matter on which the expert is expected to testify, the facts and opinions to which the expert is expected to testify, the expert's qualifications, and all other cases in which the expert has testified.

**RESPONSE:** Subject to and without waiving the General Objections, Springfield Coal responds by stating that Springfield Coal has not, to date, retained any experts in connection with this lawsuit. Should Springfield Coal retain any experts, Springfield Coal will supplement this response.

### **Document Requests**

1. Please produce all documents and communications relating to the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from the Industry Mine.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal further objects to this Document Request to the extent that it calls for legal conclusion by suggesting that Springfield Coal is responsible for the emissions, discharges, or deposits resulting from the Industry Mine. Springfield Coal also objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to documents which are being produced to Sierra Club in response to this Document Request. See, e.g., SC 02054 – 02229 and SC 03278 – 03537. Springfield Coal also responds by referring Sierra Club to Exhibits 1, and 1A through 1M of Springfield Coal's Response to the State's Motion and Exhibits 1 through 19 of Springfield Coal's Response to the Intervenors' Motion.

2. Please produce all documents and communications relating to options available to correct the permit violations and bring the Industry Mine into compliance with its NPDES Permit, including but not limited to studies, reports, plans, and recommendations by staff or consultants.

**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit. Springfield Coal further objects to this Document Request because the Industry Mine has no obligation to come "into compliance with the NPDES Permit" since as of April 26, 2013, the NPDES Permit is no longer in effect. Springfield Coal also objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no

ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to documents which are being produced to Sierra Club in response to this Document Request. See, e.g., SC 02054 - 02056, SC 02096 – 02229, and SC 03278 – 03537. Springfield Coal also responds by referring Sierra Club to Exhibits 1, and 1A through 1M of Springfield Coal's Response to the State's Motion and Exhibits 1 through 19 of Springfield Coal's Response to the Intervenors' Motion.

3. Please produce all documents and communications relating to any consultants that were hired to help correct the permit violations and bring the Industry Mine into compliance with its NPDES Permit, including (but not limited to) any documents soliciting bids from contractors for any contracts for services.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that the Industry Mine is not in compliance with the NPDES Permit and needs to correct permit violations. Springfield Coal also objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal further objects to this Document Request because the Industry Mine has no obligation to come “into compliance with the NPDES Permit” since as of April 26, 2013, the NPDES Permit is no longer in effect.

Subject to and without waiving these objections, Springfield Coal responds by directing Sierra Club to Exhibits 1D and 1J of Springfield Coal's Response to the State's Motion. Springfield Coal further responds by directing the Sierra Club to all documents produced in response to this Document Request involving documents from Rapps Engineering & Applied Science, a consultant hired by Springfield Coal. See, e.g., SC 02096 – 02229. Without waiving any legal privileges, Springfield Coal further responds by directing the Sierra Club to all documents produced in response to this Document Request involving documents from Brown and Caldwell, a consultant retained by Freeman United's legal counsel. See SC 03278 - 03537.

4. Please produce all documents and communications relating to compliance plans that have been submitted to IEPA.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal also objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007;

therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to documents which are being produced to Sierra Club in response to this Document Request. See SC 02054 – 02056, SC 02231 – 02238, and SC 03547 – 03551. Springfield Coal further responds by directing Sierra Club to Exhibits 1, 1A, 1B, 1C, 1E, 1F, 1G, 1H, 1I, 1K, 1L, 1M, 2, 4, 5, and 6 of Springfield Coal's Response to the State's Motion. Springfield Coal also responds by directing Sierra Club to Exhibits 1 - 8, 10, 11, 12, 13, 15, 16, 18, and 19 of Springfield Coal's Response to the Intervenor's Motion.

5. Please produce all documents and communications relating to any successfully completed Compliance Commitment Agreement under subsection (a) of Section 31 of the Illinois Environmental Protection Act [415 ILCS 5/31].

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present. Springfield Coal also objects to the extent that the Document Request calls for a legal conclusion because the parties disagree as to whether the CCA exists in this matter.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to Exhibits 1 and 1H of Springfield Coal's Response to the State's Motion.

6. Please produce all documents and communications relating to the suitability or unsuitability of the Industry Mine to the area in which it is located, including the question of priority of location in the area involved.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal further objects to this Document Request as it is overly broad in time and scope and vague. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to Exhibits 1, and 1A through 1M of Springfield Coal's Response to the State's Motion and Exhibits 1 through 19 of Springfield Coal's Response to the Intervenor's Motion.

7. Please produce all documents and communications relating to the changes that will be made to the mine site as the Industry Mine is reclaimed and how these changes may either increase

or decrease the amount of pollutants discharged from the mine in the short-term and long-term.

**RESPONSE:** Springfield Coal objects to this Document Request to the extent that it calls for a legal conclusion by suggesting that there are pollutants discharged from the Industry Mine. Springfield Coal further objects to the extent that this Document Request suggests that Springfield Coal is obligated under law to make changes. Springfield Coal also objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter.

Subject to and without waiving these objections, Springfield Coal responds by directing the Sierra Club to all documents produced involving correspondence, maps, and documents among Springfield Coal, Rapps Engineering & Applied Science, and/or the Office of Mines and Minerals involving reclamation for the Industry Mine. See generally SC 02824 – 03277.

8. Please produce all site-specific biological or ecological studies related to the Industry Mine, including (but not limited to) an endangered species review, site-specific resource information, a protection and enhancement plan, a stream study or stream sampling, and all documents and communications relating to such studies.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal refers Sierra Club to Exhibits 1 1D, 1J, 1K, and 1L to Springfield Coal's Response to State's Motion. Springfield Coal also refers Sierra Club to Exhibits 1, 2, 4 – 8, and 14 - 18 to Springfield Coal's Response to Intervenor's Motion. Springfield Coal further responds by directing Sierra Club to documents (e.g., an Environmental Impact Statement, studies discussing the potential impact to species, etc.) produced in response to this Document Request. See SC 02245 – 02789.

9. Please produce all documents and communications related to coal ash used, store or disposed of onsite as either coal combustion byproduct or coal combustion waste, including documents identifying the location of where coal ash is used, stored or disposed of on the mine site, the amount of coal ash, what the coal ash is used for, the chemical characterization of the coal ash, the source of the coal ash; and any agency approval of the storage or disposal.

**RESPONSE:** Springfield Coal objects to this Document Request on the grounds of relevance. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. Springfield Coal also objects because this Document Request does not seek material information that is at issue in this lawsuit. Accordingly, in light of the objections

above, Springfield Coal is not providing any documents in response to this Document Request.

10. Please produce all documents and communications relating to impacts to the Chandler Timbers are that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alternatives, use of heavy machinery or earth disturbance in the area.

**RESPONSE:** Springfield Coal objects to this Document Request since it asks for irrelevant information not related to the issues in the present case. Accordingly, in light of these objections, Springfield Coal is not providing any documents in response to this Document Request.

11. Please identify all documents and communications related to any assessments, reports, or opinions of environmental consultants or other experts concerning or relating to the operations of the Industry Mine, including any expert witness you intend to call or anticipate calling at the hearing of this case.

**RESPONSE:** Springfield Coal objects to this Document Request because it seeks information that has already been produced during discovery and/or is attached to documents filed with the Illinois Pollution Control Board in this matter. Springfield Coal further objects to this Document Request as it is overly broad in time and scope. Springfield Coal had no ownership or operational interest in the Industry Mine until August 31, 2007; therefore, Springfield Coal is only responding to this Document Request as it relates to the time period from August 31, 2007 to present.

Subject to and without waiving these objections, Springfield Coal responds by referring Sierra Club to Exhibits 1, 1D, 1J, 1K, and 1L to Springfield Coal's Response to State's Motion. Springfield Coal also refers Sierra Club to Exhibits 1, 2, and 14 - 18 to Springfield Coal's Response to Intervenor's Motion. Springfield Coal further responds by directing Sierra Club to documents produced in response to this Document Request. See SC 02245 - 02789. Springfield Coal expressly reserves the right to supplement its response to this Document Request.

Dated: June 24, 2013

BRYAN CAVE LLP

By: 

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John Kindschuh #6284933  
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Attorneys for Springfield Coal Co., L.L.C.



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Complainant,	)	
	)	PCB 2010-061 and 2011-002
ENVIRONMENTAL LAW AND	)	(Consolidated – Water –
POLICY CENTER, on behalf of PRAIRIE	)	Enforcement)
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.	)	

**CERTIFICATE OF SERVICE**

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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Jessica Dexter  
Environmental Law & Policy Center  
35 E. Wacker Dr., Ste. 1300  
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Steven M. Siros  
E. Lynn Grayson  
Allison Torrence  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456

PLEASE TAKE NOTICE that on June 24, 2013, I sent via U.S. Mail, Springfield Coal Co., L.L.C.'s Responses to Sierra Club's First Requests to Admit, Interrogatories, and Request for Production of Documents, copies of which are herewith served upon you.

BRYAN CAVE LLP

By: 

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Attorneys for Respondent, Springfield Coal  
Co., L.L.C

Jessica Dexter

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**From:** Kindschuh, John <john.kindschuh@BryanCave.com>  
**Sent:** Friday, August 02, 2013 2:09 PM  
**To:** Jessica Dexter  
**Cc:** 'Davis, Thomas E.'; Roubitchek, Mike (Mike.Roubitchek@Illinois.gov) (Mike.Roubitchek@Illinois.gov); Guariglia, Dale; Sher, Brian A.; Siros, Steven M; 'Torrence, Allison A.'  
**Subject:** Springfield Coal's Supplemental Responses to Intervenors' Discovery Requests  
**Attachments:** SL01DOCS-#4147535-v1-Privilege\_Log\_--\_Springfield\_Coal.pdf

Jessica,

As you requested, below please find Springfield Coal, Co. LLC's ("Springfield Coal") responses to your request from July 12, 2013 to supplement Prairie Rivers Network and the Sierra Club Illinois Chapter's ("Intervenors") discovery requests. Springfield Coal's responses to your specific requests appear below. Springfield Coal is mailing a copy of a CD to your attention today via U.S. mail. The CD includes copies of the additional documents that are responsive to the Intervenors' discovery requests. See SC 03553 - SC 04421.

Also, in response to your inquiry regarding whether Springfield Coal has withheld documents in its possession that existed prior to 2007 based on its claim that it had no ownership interest in the Industry Mine, Springfield Coal is not aware of any documents that have been deliberately withheld from the production to date. Springfield Coal expressly incorporates all general objections and specific objections from its responses to the Intervenors' discovery requests dated June 24, 2013 into its responses below.

**I. Requests for Supplemental Responses to Prairie Rivers Network's Second Discovery Requests:**

**Interrogatory 3:** Please identify and itemize all costs incurred by Springfield Coal in efforts to bring the Industry Mine into compliance with the NPDES permit.

Intervenors' Request: It appears that some amount of information was withheld based on claim of attorney-client privilege or work product, but no privilege log was included describing the particular nature of the withheld documents, as required by rules of discovery. Please produce such a privilege log.

Springfield Coal's Response: Subject to and without waiving any objections, Springfield Coal is producing a privilege log as requested (attached).

**Interrogatory 5:** Please identify the amount and purpose of all grants, loans or other assistance the Industry Mine has received from the State of Illinois

and

**Document Request 8:** Please produce all documents and communications relating to all grants, loans or other assistance the Industry Mine has received from the State of Illinois.

Intervenors' Request: Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of the social and economic value of the mine as well as the economic benefit gained by the mine, and potentially other factors. Please respond to this interrogatory and produce the requested documents.

Springfield Coal's Response: Springfield Coal continues to object to Interrogatory 5 and Document Request 8 as these requests are overly broad in time and scope and seek information that is not relevant to this lawsuit. Subject

to and without waiving any objections, Springfield Coal produces documents responsive to these requests. See SC 04395 – SC 04421.

**Interrogatory 7:** Please identify all coal mines owned or controlled by Michael Caldwell, Brian Veldhuizen, and/or Thomas Austin.

Intervenors' Request: Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of deterrence and the economic benefit gained by noncompliance with the NPDES permit, and potentially other factors. Please respond to this interrogatory.

Springfield Coal's Response: Springfield Coal continues to object to Interrogatory 7 because it seeks information that is not relevant to this lawsuit, is nonresponsive, is vague, and is overly broad in time and scope. Subject to and without waiving these objections, Springfield Coal responds by stating that, in contrast to Intervenors' assertion, this information is not relevant to the Board's consideration because any other coal mines owned or controlled by Mr. Caldwell, Mr. Veldhuizen, and/or Mr. Austin do not have any impact upon Industry Mine itself. The present lawsuit only involves alleged violations of the NPDES Permit at Industry Mine, not any other coal mines. Accordingly, the Board's determination concerns only Industry Mine, not other mines that may be owned by Mr. Caldwell, Mr. Veldhuizen, and/or Mr. Austin. The information sought in Interrogatory 7 is not appropriate based upon the subject matter of the present lawsuit.

**Interrogatory 8:** Please identify all previously adjudicated or pending cases where Springfield Coal or companies owned or controlled by any of its principals were accused of violations of any environmental regulation, including any cases that have settled. For any such cases, please indicate 1) the nature of the violation, 2) the forum, case name and number, 3) the outcome of the case, and 4) the amount of any civil penalties assessed and other terms of the disposition or settlement.

and

**Document Request 10:** Please produce all violation notices issued to Springfield Coal or other companies owned or controlled by any of its principals for violation of any environmental regulation.

Intervenors' Request: Springfield Coal declined to answer this question as to companies owned or controlled by any of its principal based on a claim of relevance. This information is relevant to the Board's consideration of prior adjudicated penalties by the respondent, as well as the level of penalty necessary for deterrence, and potentially other factors. Further, It is inappropriate, under present discovery guidance, to refuse to supply discoverable information merely because it is otherwise available to the public. Please respond to this interrogatory and produce the requested documents.

Springfield Coal's Response: Springfield Coal continues to object to Interrogatory 8 and Document Request 10 because it seeks information that is not relevant, is overly broad in time and scope, and seeks information that is available to the public. Subject to and without waiving these objections, Springfield Coal responds by stating that the present lawsuit only involves allegations of NPDES Permit violations at Industry Mine that is owned by Springfield Coal. The lawsuit does not involve allegations of violations at other mines "owned or controlled by any of its [Springfield Coal's] principals." In fact, this lawsuit does not ask for relief against entities that are "owned or controlled" by any of Springfield Coal's principals. Accordingly, Interrogatory 8 and Document Request 10 are beyond the scope of discovery in this lawsuit.

**Document Request 5:** Please produce all documents relating to federal and state income tax returns Springfield Coal has filed for 2007, 2008, 2009, 2010, 2011 and 2012.

Intervenors' Request: Springfield Coal declined to produce these documents based on a claim of relevance. This information is relevant to the Board's consideration of the social and economic value of the mine as well as the

economic benefit gained by the mine, and potentially other factors. Further, It is especially inappropriate to refuse to produce these documents when Springfield Coal alleges its payment of taxes as one of the ways it contributes social and economic value to the state of Illinois. Please produce these documents.

Springfield Coal's Response: Springfield Coal continues to object to Document Request 5 because it seeks information that is not relevant to the issues in this lawsuit. Subject to and without waiving these objections, Springfield Coal responds by stating that the information sought in Document Request 5 is confidential and contains sensitive business information. Springfield Coal further responds by stating that Springfield Coal intends to produce the documents requested in Document Request 5 subject to the Illinois Pollution Control Board's ruling that these documents will be produced as "Confidential and Non-Disclosable Information" pursuant to 35 Ill. Adm. Code §101.616, 35 Ill. Adm. Code §400 *et seq.*, and 415 ILCS §5/7(a).

**Document Request 9:** Please produce all DMRs for the Industry Mine's discharges from October 2011 to the present.

Intervenors' Request: Springfield Coal declined to produce these documents based on a claim of relevance. This information is relevant to the Board's consideration of any subsequent compliance at the mine, and to the mine's due diligence, and potentially other factors. Further, It is inappropriate, under present discovery guidance, to refuse to supply discoverable information merely because it is otherwise available to the public. Please produce these documents.

Springfield Coal's Response: Springfield Coal continues to object to Document Request 9 because it seeks information that is not relevant, is overly broad in time and scope, and seeks information that is available to the public. Subject to and without waiving these objections, Springfield Coal responds that, in light of 415 ILCS 5/33(c)(v) stating that the Board will consider any "subsequent compliance" at the Industry Mine, Springfield Coal produces documents responsive to this request. See SC 03553 – SC 04394.

**Document Request 13:** Please produce all documents requesting relief from water quality regulations sent by or on behalf of Springfield Coal or Freeman United to any state or federal agency or legislator.

Intervenors' Request: Springfield Coal states that its response to this document request is "not meant to be exhausted." The document request specifically asks for all responsive documents, and a response is appropriate under the discovery rules. However, Prairie Rivers Network can narrow its request to supplement somewhat: please produce all additional documents responsive to this request that include requests for relief from water quality regulations other than the specific request to modify the NPDES permit.

Springfield Coal's Response: Subject to and without waiving objections, Springfield Coal responds by directing Intervenors to Springfield Coal's response to Document Request 13. Springfield Coal is not aware of other documents that are responsive to Document Request 13 as modified above.

## II. Requests for Supplemental Responses to Sierra Club's First Discovery Requests:

**Request to Admit 12(a) – (i).** The following mines are under the same ownership and control as the Industry Mine . . .

Intervenors' Request: Springfield Coal declined to admit or deny Requests to Admit 12a - 12i based on a claim of relevance. This information is relevant to the Board's consideration of deterrence and the economic benefit gained by noncompliance with the NPDES permit, and potentially other factors. Please admit or deny these statements.

Springfield Coal's Response: Springfield Coal continues to object to Request for Admission 12(a) – (i) because the inquiry is unrelated to any allegations of the NPDES Permit violation at the Industry Mine. Springfield Coal also objects because it is irrelevant and immaterial to this matter whether any of the mines listed are under the same

ownership and control as Industry Mine. The Intervenor's have not alleged that other mines (e.g., North Canton, Banner Mine, Littleton, etc.) have NPDES Permit violations in this lawsuit. Accordingly, this request for admission is beyond the scope of this matter.

**Interrogatory 10:** Please identify any impacts to the Chandler Timbers area that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alterations, use of heavy machinery or earth disturbance in the area

and

**Interrogatory 11:** Please state the market value of Chandler Timbers.

and

**Document Request 10:** Please produce all documents and communications relating to impacts to the Chandler Timbers area that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alternatives, use of heavy machinery or earth disturbance in the area.


Intervenor's Request: Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of whether the respondent has agreed to undertake a "supplemental environmental project," and to evaluate the value of such a project in the context of the overall penalty assessed. Please respond to these interrogatories and produce the requested documents.

Springfield Coal's Response: Springfield Coal continues to object to Interrogatories 10 and 11 and Document Request 10 on the grounds of relevance. Subject to and without waiving objections, Springfield Coal responds by stating that Springfield Coal made a settlement offer that, among other things, included a discussion regarding the Chandler Timbers property. Springfield Coal takes issue with the Intervenor's Request above because Springfield Coal has not "agreed" to undertake a supplemental environmental project; rather, Springfield Coal offered to undertake a supplemental environmental project. To date, this offer has not been formally accepted or rejected by the parties; therefore, the Chandler Timbers property remains a topic for settlement discussions. Accordingly, Springfield Coal is willing to provide further information regarding the Chandler Timbers property to the Intervenor's in the context of settlement negotiations.

Thanks,  
John

**John Kindschuh**

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-----Original Message-----

From: Jessica Dexter [mailto:JDexter@elpc.org]

Sent: Friday, July 12, 2013 2:38 PM

To: Davis, Thomas E.; Guariglia, Dale

Cc: Sher, Brian A.; Siros, Steven M; 'Torrence, Allison A.'; Kindschuh, John; Roubitchek, Mike (Mike.Roubitchek@Illinois.gov)

Subject: RE: State's Responses to Springfield Coal's Discovery Requests

I also cannot agree to the proposed scheduling order, or to delaying the hearing in order to allow additional discovery that has not already been propounded.

As stated on our call earlier this week, I am requesting that Springfield Coal supplement its responses to Intervenor's discovery requests as detailed below.

Requests to Supplement Responses to Prairie Rivers Network's second discovery request:

Interrogatory 3: Please identify and itemize all costs incurred by Springfield Coal in efforts to bring the Industry Mine into compliance with the NPDES permit.

It appears that some amount of information was withheld based on claim of attorney-client privilege or work product, but no privilege log was included describing the particular nature of the withheld documents, as required by rules of discovery. Please produce such a privilege log.

Interrogatory 5: Please identify the amount and purpose of all grants, loans or other assistance the Industry Mine has received from the State of Illinois.

and

Document Request 8: Please produce all documents and communications relating to all grants, loans or other assistance the Industry Mine has received from the State of Illinois.

Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of the social and economic value of the mine as well as the economic benefit gained by the mine, and potentially other factors. Please respond to this interrogatory and produce the requested documents.

Interrogatory 7: Please identify all coal mines owned or controlled by Michael Caldwell, Brian Veldhuizen, and/or Thomas Austin.

Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of deterrence and the economic benefit gained by noncompliance with the NPDES permit, and potentially other factors. Please respond to this interrogatory.

Interrogatory 8: Please identify all previously adjudicated or pending cases where Springfield Coal or companies owned or controlled by any of its principals were accused of violations of any environmental regulation, including any cases that have settled. For any such cases, please indicate 1) the nature of the violation, 2) the forum, case name and number, 3) the outcome of the case, and 4) the amount of any civil penalties assessed and other terms of the disposition or settlement.

and

Document Request 10: Please produce all violation notices issued to Springfield Coal or other companies owned or controlled by any of its principals for violation of any environmental regulation.

Springfield Coal declined to answer this question as to companies owned or controlled by any of its principal based on a claim of relevance. This information is relevant to the Board's consideration of prior adjudicated penalties by the respondent, as well as the level of penalty necessary for deterrence, and potentially other factors. Further, It is inappropriate, under present discovery guidance, to refuse to supply discoverable information merely because it is otherwise available to the public. Please respond to this interrogatory and produce the requested documents.

Document Request 5: Please produce all documents relating to federal and state income tax returns Springfield Coal has filed for 2007, 2008, 2009, 2010, 2011 and 2012.

Springfield Coal declined to produce these documents based on a claim of relevance. This information is relevant to the Board's consideration of the social and economic value of the mine as well as the economic benefit gained by the mine, and potentially other factors. Further, It is especially inappropriate to refuse to produce these documents when Springfield Coal alleges its payment of taxes as one of the ways it contributes social and economic value to the state of Illinois. Please produce these documents.

Document Request 9: Please produce all DMRs for the Industry Mine's discharges from October 2011 to the present.

Springfield Coal declined to produce these documents based on a claim of relevance. This information is relevant to the Board's consideration of any subsequent compliance at the mine, and to the mine's due diligence, and potentially other factors. Further, It is inappropriate, under present discovery guidance, to refuse to supply discoverable information merely because it is otherwise available to the public. Please produce these documents.

Document Request 13: Please produce all documents requesting relief from water quality regulations sent by or on behalf of Springfield Coal or Freeman United to any state or federal agency or legislator.

Springfield Coal states that its response to this document request is "not meant to be exhausted." The document request specifically asks for all responsive documents, and a response is appropriate under the discovery rules. However, Prairie Rivers Network can narrow its request to supplement somewhat: please produce all additional documents responsive to this request that include requests for relief from water quality regulations other than the specific request to modify the NPDES permit.

Requests to Supplement Responses to Sierra Club's first discovery request:



Request to Admit 12. The following mines are under the same ownership and control as the Industry Mine.

Springfield Coal declined to admit or deny Requests to Admit 12a - 12i based on a claim of relevance. This information is relevant to the Board's consideration of deterrence and the economic benefit gained by noncompliance with the NPDES permit, and potentially other factors. Please admit or deny these statements.

Interrogatory 10: Please identify any impacts to the Chandler Timbers area that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alterations, use of heavy machinery or earth disturbance in the area

and

Interrogatory 11: Please state the market value of Chandler Timbers.

and

Document Request 10: Please produce all documents and communications relating to impacts to the Chandler Timbers area that have occurred since September 28, 2011, including but not limited to any timber cutting, clearing of vegetation, stream alternatives, use of heavy machinery or earth disturbance in the area.

Springfield Coal declined to answer this question based on a claim of relevance. This information is relevant to the Board's consideration of whether the respondent has agreed to undertake a "supplemental environmental project," and to evaluate the value of such a project in the context of the overall penalty assessed. Please respond to these interrogatories and produce the requested documents.

#### OTHER MATTERS

Springfield Coal stated repeatedly in its responses that Springfield Coal is only responding to requests as they relate to the time period from August 31 to the present. However, Freeman stated that all documents, files and information related to the Industry Mine operations were transferred with the business in 2007 and are no longer in the custody or control of Freeman United. To the extent that Springfield Coal withheld documents in its possession that existed prior to 2007 based on its claim that it had no ownership interest in the mine prior to 2007, we ask that Springfield Coal produce such documents. Stated another way, to the extent that Springfield Coal has information to respond to any of the

requests with information from 2004 to 2007 (e.g. financial documents) we ask that that information be produced.

I have not specifically requested the financial documents withheld awaiting a decision on a protective order from the Board. It is my understanding that that request is the only thing standing in the way of the production of such documents.

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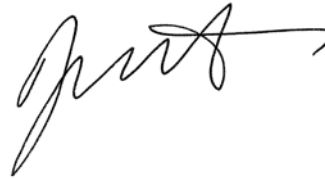
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bc1lp2013

**CERTIFICATE OF SERVICE**

I, Jessica Dexter, hereby certify that I have filed the attached **MOTION TO COMPEL** in PCB 2010-061 upon the below service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on August 19, 2013

Respectfully submitted,



Jessica Dexter  
Staff Attorney  
Environmental Law and Policy Center  
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Chicago, IL 60601  
312-795-3747

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