

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)

PEOPLE OF THE STATE OF)
ILLINOIS)

Complainant,)

v.)

FREEMAN UNITED COAL MINING)
CO., LLC, and SPRINGFIELD)
COAL CO., LLC,)

Respondents.)

PCB 2010-061
(Enforcement – Water)

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

Intervenor-Complainant,)

v.)

FREEMAN UNITED COAL MINING)
CO., LLC, and SPRINGFIELD)
COAL CO., LLC,)

Respondents.)

PCB 2010-061
(Enforcement – Water)

TO:

John Therriault, Clerk
Illinois Pollution Control Board
J.R. Thompson Center
100 West Randolph St.,
Suite 11-500
Chicago, IL 60601

Persons included on the attached
SERVICE LIST

PLEASE TAKE NOTICE that I have filed today with the Illinois Pollution Control Board the Environmental Law and Policy Center's **Response to Respondents' Motion to Strike,**

Alternative Motions to Dismiss, and Alternative Motion to Challenge the Sufficiency of Intervenors' Complaint in Intervention, a copy of which is herewith served upon you.

Respectfully submitted,

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

Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601
312-795-3747

DATED: May 27, 2010

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
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)	(Enforcement – Water)
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FREEMAN UNITED COAL MINING)	
CO., LLC, and SPRINGFIELD)	
COAL CO., LLC,)	
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Respondents.)	

RESPONSE TO RESPONDENTS' MOTIONS TO STRIKE, ALTERNATIVE MOTIONS TO DISMISS, AND ALTERNATIVE MOTION TO CHALLENGE THE SUFFICIENCY OF INTERVENORS' COMPLAINT IN INTERVENTION

I, JESSICA DEXTER, hereby file a RESPONSE TO RESPONDENTS' MOTIONS TO STRIKE, ALTERNATIVE MOTIONS TO DISMISS, AND ALTERNATIVE MOTION TO CHALLENGE THE SUFFICIENCY OF INTERVENORS' COMPLAINT IN INTERVENTION in this matter on behalf of PRAIRIE RIVERS NETWORK, its individual members, and SIERRA CLUB, ILLINOIS CHAPTER, and its individual members. In support of this Response, the Environmental Law and Policy Center ("ELPC") states the following:

BACKGROUND

1. On December 8, 2009, ELPC sent to Freeman United Coal Mining Co., LLC (“Freeman United”), a letter giving notice of intent to sue Freeman United under the citizen suit provision of the Clean Water Act, 33 U.S.C. 1365 (2006), for violations of NPDES Permit No. IL0061247 at the Industry Mine. ELPC sent this letter on behalf of its clients, Prairie Rivers Network (PRN) and the Illinois Chapter of the Sierra Club. This letter notified Freeman United of over three hundred violations of the effluent limits contained in NPDES Permit No. IL0061247 over the last five years, as well as possible violations of Special Condition No. 1 of the NPDES Permit, which prohibits the permittee from causing or contributing to a violation of water quality standards.

2. ELPC sent this letter to Freeman United because IEPA currently lists Freeman United as the permittee for NPDES Permit No. IL0061247. *See* letter from Janet Christer, Bureau of Water, IEPA, to Jessica Dexter, ELPC, Oct. 9, 2009 (Attached as Exhibit A).

3. Despite the fact that Freeman United remains the listed permittee, Freeman United informed ELPC that it no longer owns or operates the Industry Mine, having sold the Mine to Springfield Coal as of September 1, 2007.

4. Upon receiving this information, ELPC sent a second letter to giving notice of intent to sue under the CWA to Springfield Coal Company, LLC (“Springfield Coal”), the present owner and operator of the Industry Mine. This letter, sent on December 15, 2009, notified Springfield Coal of the possibility that it was discharging without a permit due to failure to comply with the regulations governing NPDES permit transfers.

5. ELPC based its allegation that Freeman United and Springfield Coal had failed to properly transfer the permit on a letter from Freeman United to the Illinois Environmental

Protection Agency, dated August 14, 2007, which ELPC obtained through a Freedom of Information Act request. A copy of this letter is attached as Exhibit B.

6. On February 10, 2010, the People of the State of Illinois, through the Attorney General's office, filed an enforcement action against the current and former owners of the Industry Mine for ongoing violations of the Industry Mine's NPDES Permit (Permit No. IL0061247) and the Illinois Environmental Protection Act. The People's complaint is divided into four counts. It alleges that (1) Freeman United violated section 12(f) of the Act by discharging contaminants in violation of NPDES Permit No. IL0061247 until September 1, 2007; (2) Springfield Coal violated section 12(f) of the Act by discharging contaminants in violation of NPDES Permit No. IL0061247 from September 1, 2007 to the present; (3) Freeman United violated section 12(a) of the Act by discharging contaminants at levels that caused water pollution; and (4) that Springfield Coal violated section 12(a) of the Act by discharging contaminants at levels that caused water pollution.

7. On February 18, 2010, the Board accepted the People's complaint for hearing.

8. On February 25, 2010, before either Respondent had answered the People's complaint and before any discovery had been taken, ELPC filed a Motion to Intervene accompanied by a Citizen's Complaint, which it proposed to file as an intervenor.

9. ELPC's Motion to Intervene detailed its prior interest in enforcing the CWA against the Industry Mine and stated that ELPC and its clients would be materially prejudiced and adversely affected if precluded from raising additional claims of violation at the Industry Mine either before the Board or in a separate citizen suit.

10. ELPC's complaint raised four causes of action: (1) that Springfield Coal, the current owner of the Industry Mine, has been and is discharging without a valid NPDES permit

due to its failure to comply with Illinois and federal regulations governing permit transfer; (2) that Freeman United, or Springfield Coal, or both (depending on the validity of the permit transfer), discharged pollutants in violation of the provisions of NPDES Permit No. IL0061247 and so violated Section 12(f) of the Illinois Environmental Protection Act; (3) that Freeman United, or Springfield Coal, or both, caused water pollution in violation of Section 12(a) of the Illinois Environmental Protection Act; and (4) that Freeman United, or Springfield Coal, or both violated Sections 12(f) and 12(a) of the Illinois Environmental Protection Act by causing or contributing to the violation of Illinois' water quality standard for sulfates in Grindstone Creek.

11. On April 15, 2010, the Board granted ELPC's Motion to Intervene, agreeing with ELPC's contention that it "may be materially prejudiced in that it may be unable to pursue the course of action originally intended" in its citizen suit due to the potential preclusive effect of the People's complaint.

12. The Board did not, however, rule on whether to accept its Citizen's Complaint for hearing. The Board granted Respondents thirty days "to file any motions to strike, dismiss, or challenge the sufficiency of the complaint . . . or to file any motions alleging the complaint to be duplicative or frivolous"

13. On May 14, 2010, Respondents each filed motions to strike and alternative motions to dismiss ELPC's complaint as duplicative or frivolous. Springfield Coal also filed an alternative motion challenging the sufficiency of ELPC's complaint.

ARGUMENT

14. For the purposes of an enforcement proceeding, a complaint is "duplicative" if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Admin. Code 101.202. A complaint is "frivolous" if it is "a request for relief that the Board does

not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Admin. Code 101.202.

15. ELPC’s complaint is not duplicative.

16. Two of the four causes of action in ELPC’s complaint are nowhere to be found in the People’s complaint. As acknowledged by Springfield Coal in its Motion to Dismiss, the People “considered filing” the Fourth Cause of Action in ELPC’s complaint, “but consciously chose not pursue [it] in this case.” Springfield Coal Motion to Strike ¶ 7. Since the People chose not to raise this claim, it is not “one brought before the Board or another forum” and cannot be duplicative according to the Board’s rules. *See United City of Yorkville v. Hamman Farms*, IPCB 08-96 (Order of Apr. 2, 2009 at p.6) (finding that allegations of additional violations weigh against a finding that a citizen’s complaint is duplicative).

17. ELPC’s First Cause of Action is also nowhere to be found in the People’s Complaint. ELPC’s First Cause of Action likewise cannot be duplicative, since it contains a claim that has not been brought before the Board or another forum. *See id.* at p.5 (“The Board has also considered [in determining whether a citizen’s complaint is duplicative] ‘whether the two complaints are based on different theories[.]’”) (quoting *Robert Smith v. Heritage Tool & Die Manufacturing, Inc.*, IPCB 99-145, slip op. at 2 (June 3, 1999)).

18. ELPC’s Second and Third Causes of Action do closely track claims raised by the People’s Complaint, but there are substantial differences between the two complaints. First and foremost, while ELPC and the People allege the same permit violations based on the concentrations reported in the Industry Mine’s Discharge Monitoring Reports (“DMRs”), ELPC’s complaint also raises the possibility that Freeman United is still liable for these violations due to its failure to comply with the regulations governing transfer of a NPDES

permit. In other words, ELPC's Second and Third Causes of Action claim that Freeman United – as the current permittee – and Springfield Coal – as the current owner and operator of the Industry Mine – are *both* liable for violations of NPDES Permit No. IL0061247 and the water pollution caused by those violations on or after September 1, 2007. *Cf. People v. Prior*, IPCB 02-177 (Order of May 6, 2004 at 26, 37) (holding both owner/operator *and* non-owner/operator permittee of a facility liable for violations, and imposing civil penalties on both). This claim alleges nearly three years of additional violations by Freeman United. It is thus substantially different from that raised by the People and cannot be duplicative. *See United City of Yorkville*, IPCB 08-96 (Order of Apr. 2, 2009 at p.6) (“[W]hen determining whether a citizen complaint is duplicative . . . , the Board has taken into account whether the two actions involved the same time frame.”) (internal quotation marks omitted)

19. Second, ELPC, unlike the People, allege that monitoring data within Respondents' possession may show additional violations. Intervenor's Complaint ¶ 52. These additional violations will almost certainly be found where Respondents took multiple samples during a single month, each of which violated the daily maximum effluent limits contained in NPDES Permit No. IL0061247, but was only required to report the sample with the highest concentration. For example, in December 2009, Springfield Coal reported discharging a monthly average concentration of 13.6 mg/L of manganese from outfall 018, well above the limit of 2.0 mg/L. Intervenor's Complaint ¶ 46. Springfield Coal also reported discharging a daily maximum concentration of 14.1 mg/L from the same outfall in December 2009. Intervenor's Complaint ¶ 47. If the highest sampled concentration of manganese discharged from outfall 018 in December 2009 was 14.1 mg/L, but the average concentration of manganese discharged from outfall 018 in December 2009 was 13.6 mg/L, simple arithmetic shows that Springfield Coal

must have taken at least one additional sample, and that a second sample would also have violated the daily maximum concentration limit of 4.0 mg/L. Yet without discovery to obtain Respondents' monitoring data, these violations cannot be specifically alleged. There are several similar instances in DMRs from the Industry Mine. These additional violations are not alleged by the People's complaint and thus are not duplicative. *See id.* at p.6 (finding that allegations of additional violations weigh against a finding that a citizen's complaint is duplicative).

20. Third, ELPC requests relief that the People chose to forego, specifically, that the Board issue an order under Section 33 of the Act requiring Respondents to immediately cease and desist from violations of the Act. *See id.* (“[I]n deciding whether a citizen complaint is duplicative, the Board has looked to whether the relief requested . . . differed.”).

21. Freeman United claims that ELPC's complaint is duplicative because ELPC is “bound by the scope and facts of the People's complaint.” *See* Freeman United's Motion to Strike ¶ 27. Springfield Coal similarly contends that ELPC's complaint is frivolous because intervenors cannot file a separate complaint. Springfield Coal's Motion to Dismiss ¶ 9.

22. Neither of these claims is correct, as Illinois law provides an intervenor an opportunity to raise issues “which are inextricably interrelated with those raised in the original suit.” Lake States Eng'g Corp. v. One Naperville Corp., 148 Ill. App. 3d 836, 841-42; 499 N.E. 2d 657, 660 (Ill. App. Ct. 1986). This is an exception to the general maxim that an intervenor “must take the case as he finds it.” *See Id.*; compare Diesing v. City of Crystal Lake, IPCB 91-30 (Order of Nov. 7, 1991) (quoting Lake States).

23. Lake States relies on the rule, set down by Strader v. Board of Educ., 351 Ill. App. 438, 115 N.E.2d 539 (Ill. App. Ct. 1953), that intervenors should be allowed to raise questions

which “were so interrelated to questions raised in the principal suit that the decision would affect the outcome.” Lake States, 499 N.E. 2d at 661 (quoting Strader, 351 Ill. App. at 460).

24. In Strader, the Third District allowed the prospective intervenor to raise a new issue that was “within the scope of the general prayer for relief contained in the [original] pleading and therefore does not raise an additional issue[.]” 115 N.E. 2d at 549.

25. Several factual considerations supported the Third District’s conclusion in Strader. First, the Court noted that “[t]he proposed intervening petition raised primarily questions of law . . .” Id. at 550. As a result, “there would have been little, if any, additional evidence to be taken under the proposed petition . . . causing relatively little delay.” Id. at 550-551. Moreover, due to the nature of the case, “if intervention were denied there can be but little doubt that further litigation would ensue.” Id. at 551. The litigation would involve largely the same parties and evidence. Id. Hence the Court ruled that the intervenor should be permitted to file its petition and raise new issues in the interest of preserving judicial resources. Id.

26. Similarly, in Lake States, the issue that the intervenor sought to raise was “within the scope of the general prayer for relief contained in the original pleadings and therefore does not raise an additional issue within the meaning of the general rule.” “499 N.E. 2d at 661. The intervenor could have brought a separate action raising claims not raised by the original plaintiff, and this action would involve largely the same parties doing the same discovery. Id. In the case to that point, “there had been limited discovery, and the case was not set for trial.” Id. The Second District thus found that there would be no delay as a result of the intervenors’ new claims, and, in fact, that allowing the intervenor to raise new issues and parties in their proposed complaint “would avoid a multiplicity of suits” and conserve judicial resources. Id. It therefore remanded with instructions to allow the intervenor to raise new issues and add a new party. Id.

27. In this case, the People's complaint raises generally the issue of violations of NPDES Permit No. IL0061247 and the Illinois Environmental Protection Act. ELPC's Complaint seeks to raise only those new issues that are inextricably interrelated with the claims already raised within the scope of the People's general prayer for relief: additional violations of the permit at issue by the named Respondents. The People effectively acknowledged that some of these claims are related to its own when it drafted a complaint including them. *See* Springfield Coal's Motion to Dismiss at ¶ 7. No discovery has been conducted in this case. Respondents have not yet answered the People's complaint. Accepting ELPC's Complaint would conserve the Board's resources by ensuring that ELPC does not attempt to pursue these claims through a separate citizen's complaint, which would involve largely the same discovery and could be eligible for consolidation with this one. *See* 2222 Elston LLC, IPCB 03-55 (Order of Nov. 6, 2003) (accepting the City of Chicago's complaint for hearing and consolidating it with the complaint in the existing citizen's enforcement case, after a prior order denying the City of Chicago's motion to intervene). Under the rule of Lake States and Strader, the Board has the authority to accept ELPC's Complaint for hearing and grant relief to Intervenors on their claims, each of which states a valid cause of action. The Board's own procedural rules give the Board discretion to allow intervenors to add new issues where appropriate, as stated in ELPC's April 14, 2010 Reply at ¶¶ 1-3. The rule that an intervenor "must take a case as he finds it" thus does not render ELPC's Complaint either duplicative or frivolous.

28. None of the cases cited by Respondents are to the contrary. ELPC refers the Board to its Reply of March 25, 2010 and its Reply of April 14, 2010, for discussion of several of these cases.

29. Only one case cited for the proposition that ELPC cannot file its Complaint in Intervention was not previously cited by Respondents (and responded to by ELPC): Saline County Landfill, Inc. v. IEPA, IPCB 02-108 (order of Apr. 18, 2002). The cited order in that case is distinguishable, however, for two reasons.

30. First, the intervenor in Saline County did not attempt to raise any new claims or issues; as in Diesing, it cannot be said that the Board ruled that an intervenor can never file a complaint stating new issues when that question was not before the Board.

31. Second, when the Board denied the intervenor's attempt to move for summary judgment, it was following a previously-issued order by the hearing officer – an order that, it ruled in granting intervention, bound the intervenor. Saline County, Order of Apr. 18, 2002, at 5 (citing 35 Ill. Admin. Code 101.402(c)). In Saline County, the Board agreed to hear an appeal of a landfill permit denial on expedited review. Id. at 2. Prior to granting intervention, the hearing officer entered a scheduling order, which “set a deadline for receipt of responses to [plaintiff's] motion for summary judgment [and] also provided that the Board would not entertain any reply from [the plaintiff] or any counter-motion for summary judgment from the only other party at the time, the [IEPA].” Id. at 5-6. As stated above, when the Board granted intervention in Saline County, it ruled that the intervenor would be bound by previously entered hearing officer orders. The Board's procedural regulations expressly provide for this limitation on an intervenor's rights “as justice may require”. 35 Ill. Admin. Code 101.402(e).

32. In Saline County the maxim that the intervenor “must take the case as it finds it” thus referred to the fact that the intervenor could not countermand a previously-entered order by the hearing officer. Here, on the other hand, there is no schedule set by the hearing officer for summary judgment and no hearing officer order precluding ELPC from filing its complaint.

33. Freeman United's Motion to Strike raises several additional contentions regarding ELPC's Complaint. First, Freeman United claims that Intervenors are estopped from challenging the validity of its transfer of NPDES Permit No. IL0061247; second, Freeman United claims that IEPA has concluded that the transfer was valid and that Intervenors are bound by that conclusion; third, that regardless of the validity of the permit transfer, Freeman United is not liable for any violations that occurred after September 1, 2007, because it no longer controlled the Industry Mine; and finally, that Intervenors lack standing because their injuries cannot be redressed by civil penalties and because Freeman United's lack of control over the Industry Mine triggers Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, 484 U.S. 49 (1987), and bars Intervenors from filing a complaint based on Freeman United's past violations.

34. Freeman United contends that its permit transfer complied with the applicable regulations because IEPA never objected to the transfer, quoting section (c) of Standard Condition 13 of NPDES Permit No. IL0061247. Freeman United's Motion to Strike, para. 14. Reading all sections of this permit condition, as is required by Illinois law, shows that Freeman United's contention is without merit.

35. Standard Condition 13 of NPDES Permit No. IL0061247 reads as follows:

Transfer of permits. A permit may be automatically transferred to a new permittee if:

- (a) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date;
- (b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees; and
- (c) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received the transfer is effective on the date specified in the agreement.

36. Freeman United's construction of the regulation reads section (c) in isolation. This approach does not comport with the method of interpretation required by Illinois law. "Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes." People ex rel. Madigan v. Illinois Commerce Comm'n, 231 Ill. 2d 370, 380; 899 N.E.2d 227, 232 (2008) (citing Union Electric Co. v. Dept. of Revenue, 136 Ill. 2d 385, 556 N.E. 2d 236 (1990)). "In determining the plain meaning [of a regulation], we consider the regulation in its entirety, keeping in mind the subject it addresses and the apparent intent of the Commission in enacting it." Id. (citing MD Electrical Contractors, Inc. v. Abrams, 228 Ill. 2d 281, 287; 888 N.E. 2d 54 (2008)). In the context of the entire regulation, "the use of the conjunctive, as in the word 'and,' indicates that the legislature intended for *all* of the listed requirements to be met." People v. Parcel of Property Commonly Known as 1945 North 31st St., 217 Ill. 2d 481, 501; 841 N.E. 2d 928, 940 (2005) (citing cases) (emphasis in original). This rule – coupled with the "and" that closes section (b) of Standard Condition 13 – makes it clear that a permittee must satisfy *all three* elements of the Condition in order to automatically transfer its permit. Freeman United's contention that it satisfied one of these three conditions is thus irrelevant. Freeman United did not give the minimum thirty days' notice required by Standard Condition 13(a). *See* Freeman United's Motion to Strike at ¶ 11; *see also* Exhibit B. Its transfer request was therefore ineffective.

37. Because Freeman United's request for an automatic transfer of NPDES Permit No. IL0061247 did not comply with the regulations incorporated into the permit, its transfer request was ineffective and it remains subject to the conditions of NPDES Permit No. IL0061247, including Standard Condition 1, which reads in part, "The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act

and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or for denial of a permit renewal application.”

38. Freeman United nonetheless contends that IEPA was aware of the transfer and acted as though it was completed, and thus that Intervenors are estopped from contesting the transfer as private attorneys general. Freeman United’s Motion to Strike ¶¶ 16-17. Freeman United cites no authority in support of its contention that estoppel applies and no authority in support of its contention that Intervenors are “bound by IEPA’s determination”. *Id.* This is likely because the citizen suit provisions of the Clean Water Act and Illinois Environmental Protection Act are designed to allow private citizens to enforce the requirements of the law when the government turns a blind eye to violations. A ruling that private citizens are estopped from contesting an agency’s failure to comply with the law would clearly be at odds with the robust public participation envisioned by Congress. *See, e.g., Friends of the Earth v. Laidlaw Env’tl. Servs. (TOC)*, 528 U.S. 167, 177-78 (2000) (allowing a citizen suit to proceed where a government enforcement action had not been “diligently prosecuted”). It would also be at odds with the principle that requests for variances or permit modifications are “carried out on the polluter’s time, not the public’s[.]” *U.S. Steel Corp. v. Train*, 556 F.2d 822, 847 (7th Cir. 1977) (quoting *Train v. Natural Resources Defense Council*, 421 U.S. 60 (1975)). The Board should not take Freeman United’s invitation to ignore the letter and spirit of the law.

39. Freeman United next contends that it cannot be held liable for any violations after September 1, 2007, since it did not maintain control over the premises, citing *Illinois v. Prior*, IPCB 02-177, at 26 (Order of May 6, 2004). In *Prior*, however, the Board stated that “[o]wnership of property is not a prerequisite to violating the Act or Board rules against causing or allowing improper emissions.” *Id.* In that case, the Board held the named permittee liable for

violations at the facility in question, despite the fact that he had sold the facility and neither owned nor operated it. Id. at 25. As in Prior, “[t]o hold that [the named permittee] is not liable here would contradict the Act and case law, as well as promote sham operating arrangements at the expense of the environment.” Here, the Board should follow Prior and hold Freeman United, the named permittee of NPDES Permit No. IL0061247, liable for its violations of the Act.

40. Finally, Freeman United contends that Intervenors lack standing, first because civil penalties cannot redress their injury, and second because their claims are for wholly past violations and are thus barred by Gwaltney.

41. In Laidlaw, the U.S. Supreme Court held that civil penalties can serve to redress a citizen plaintiff’s injury in a Clean Water Act enforcement suit, despite the fact that they are paid to the government and not the citizen plaintiff, because they serve to deter future violations. 528 U.S. at 174, 186-87. Freeman’s contention that civil penalties are insufficient to provide standing is contradicted by Laidlaw.

42. Freeman also misstates the Supreme Court’s holding in Gwaltney that the Clean Water Act “confers jurisdiction over citizen suits when the citizen-plaintiffs *make a good faith allegation* of continuous or intermittent violation.” 484 U.S. at 64 (emphasis added). ELPC has alleged in good faith that Freeman remains the named permittee at the Industry Mine and is thus liable for the continuing violations at the facility according to the plain language of the permit; this is all that Gwaltney requires.

43. Freeman’s claim about Gwaltney also ignores Section 33 of the Illinois Environmental Protection Act, 415 ILCS 5/33, which reads in part as follows:

“It shall not be a defense to findings of violations of the provisions of this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order, or a bar to the assessment of civil penalties that the

person has come into compliance subsequent to the violation, except where such action is barred by any applicable State or federal statute of limitation.”

44. In Shelton v. Crown, the Board interpreted Section 33 to provide “ample statutory authority . . . for the Board to find a violation of the Act or Board regulations in cases where compliance has been achieved subsequent to a violation.” IPCB 96-53, Order of Oct. 2, 1997, at 11. Where, as here, there are ongoing violations at a permitted facility, surely the Board has the same authority to hold the named permittee liable.

45. ELPC’s Complaint in Intervention raises only those issues that are within the scope of the People’s existing complaint. Since ELPC’s complaint raises the issue of violations not addressed by the People’s complaint, it is not duplicative; and since the Board has authority to hear claims of ongoing violations of the Act and its implementing regulations, ELPC’s complaint is not frivolous. ELPC has standing to raise these claims of ongoing violation against the named permittee and the current owner and operator of the Industry Mine.

WHEREFORE, ELPC respectfully requests that the Board DENY Freeman United Coal Mining Company, L.L.C.'s Motion to Strike and Alternative Motion to Dismiss, and DENY Springfield Coal Company, L.L.C.'s Motion to Dismiss, Alternative Motion to Strike, and Alternative Motion Challenging the Sufficiency of ELPC's Complaint.

Respectfully Submitted,

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

Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Ste. 1300
Chicago, IL 60601
312-795-3747



Electronic Filing - Received, Clerks' Office, May 28, 2010
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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 James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

10/9/2009

Phone: 217/782-8482

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Email: foia@illinois.gov

Jessica Dexter
 Environmental Law and Policy Center
 35 East Wacker Drive
 Chicago, IL 60601

RE: Freedom of Information Act (FOIA) Request /FOIA Files
 Freeman Coal, Industry - 1480 E. 1200th St., IL

Dear Jessica Dexter:

The FOIA Sector, Bureau of Water, has processed your FOIA request ~~2009-2779~~ dated 10/5/2009 for public records pursuant to the Freedom of Information Act ("FOIA") (5 ILCS 140/1 et. Seq. Information regarding the subject of your request, as referenced above, is enclosed.

For the DMR Data, go to: <http://www.epa.gov/echo/>. At this screen pick Related Links from the list on the left hand side. On the next screen, pick the EPA Envirofacts Warehouse. In the middle of the screen under advanced capabilities, pick queries and pick PCS from the drop down box. At the query form, you must enter the information needed for the site.

Please contact me at the above referenced number, if you require further assistance.

Sincerely,

Janet Christler
 FOIA Coordinator
 Bureau of Water
 Enclosure

cc: File

Electronic Filing - Received, Clerks' Office, May 28, 2010



Freeman United Coal Mining Company

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

August 14, 2007

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

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

Dear Mr. Morse,

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

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

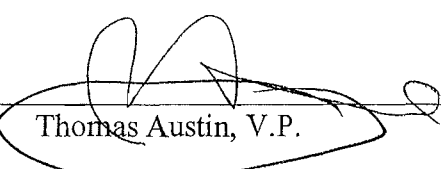
Location names and contact information for all the former Freeman facilities will remain as they were previously. The Springfield office address will be P.O. Box 9320, Springfield, IL 62791-9320; its location will be 4440 Ash Grove, Suite A, Springfield, IL 62708.

Respectfully,

FREEMAN UNITED COAL MINING COMPANY

RECEIVED
AUG 23 2007

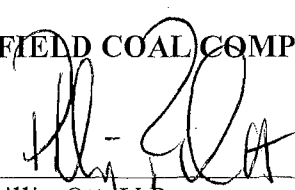
BY:


Thomas Austin, V.P.

IL Environmental Protection Agency
MARION REGIONAL OFFICE

SPRINGFIELD COAL COMPANY, L.L.C.

BY:


Phillip Ott, W.P.

OWNERSHIP AND CONTROL INFORMATION

Springfield Coal Company, LLC
A Member Managed LLC
P.O. Box 9320
Springfield, Illinois 62791
(217) 698-3300
Incorporated August 10, 2007 in Delaware

**OWNERS AND OFFICERS OF
SPRINGFIELD COAL COMPANY, LLC**

<u>NAME</u>	<u>TITLE</u>	<u>ADDRESS</u>	<u>Date</u>
Brian Veldhuizen	Chief Executive Officer	P.O. Box 9320, Zip 62791 4440 Ash Grove, Suite A Springfield, IL 62708	8/07
Mike Caldwell	Chief Operating Officer	P.O. Box 9320, Zip 62791 4440 Ash Grove, Suite A Springfield, IL 62708	8/07
Thomas Austin	Vice President	P.O. Box 9320, Zip 62791 4440 Ash Grove, Suite A Springfield, IL 62708	8/07
Phillip Ott	Vice President	P.O. Box 9320, Zip 62791 4440 Ash Grove, Suite A Springfield, IL 62708	8/07

CERTIFICATE OF SERVICE

I, Jessica Dexter, hereby certify that I have served the attached **Response to Respondents' Motion to Strike, Alternative Motions to Dismiss, and Alternative Motion to Challenge the Sufficiency of Intervenors' Complaint in Intervention** in PCB 2010-061 upon:

Mr. John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

via electronic filing on May 27, 2010; and upon the attached service list by depositing said documents in the United States Mail, postage prepaid, in Chicago, Illinois on May 27, 2010.

Respectfully submitted,

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

Jessica Dexter
Staff Attorney
Environmental Law and Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601
312-795-3747

SERVICE LIST

May 27, 2010

Carol Webb, Hearing Officer
Illinois Pollution Control Board
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P.O. Box 19274
Springfield, Illinois 62794-9274

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