

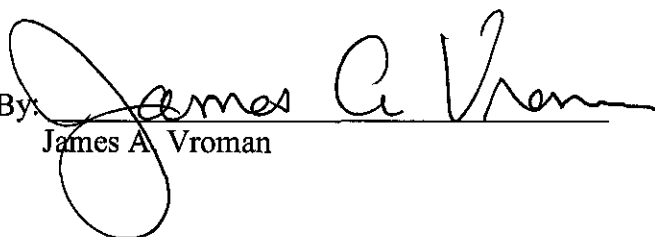
**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO. 10-061</b>
	)	<b>(Water Enforcement)</b>
<b>FREEMAN UNITED COAL MINING</b>	)	
<b>COMPANY, LLC,</b>	)	
<b>a Delaware limited liability company, and</b>	)	
<b>SPRINGFIELD COAL COMPANY, LLC,</b>	)	
<b>a Delaware limited liability company,</b>	)	
	)	
<b>Respondents.</b>	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

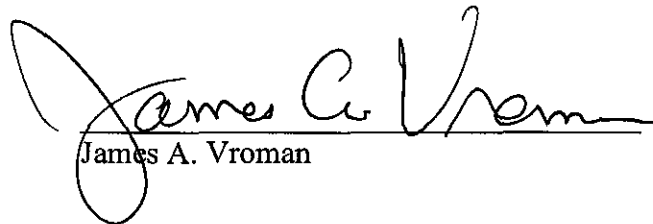
PLEASE TAKE NOTICE that on July 23, 2010, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, FREEMAN UNITED COAL MINING COMPANY, LLC'S ANSWER AND AFFIRMATIVE DEFENSES, a copy of which is attached hereto and herewith served upon you.

By:   
James A. Vroman

James A. Vroman  
Jenner & Block LLP  
Attorney for Respondent  
Freeman United Coal Mining Company, LLC,  
a Delaware limited liability company  
353 N. Clark Street  
Chicago, IL 60654-3456  
312/923-2836

**CERTIFICATE OF SERVICE**

**NOW COMES** the Respondent, Freeman United Coal Mining Company, LLC, a Delaware limited liability company, and through its attorneys, and pursuant to the Board's procedural rules, provides proof of service of the attached FREEMAN UNITED COAL MINING COMPANY, LLC'S ANSWER AND AFFIRMATIVE DEFENSES and NOTICE OF ELECTRONIC FILING upon the parties listed on the attached Service List, by having a true and correct copy affixed with proper postage placed in the U.S. Mail at Jenner & Block LLP, 353 North Clark Street, Chicago, IL 60654-3456, at or before 5:00 p.m., on July 23, 2010.



James A. Vroman

James A. Vroman  
Jenner & Block LLP  
Attorney for Respondent  
Freeman United Coal Mining Company, LLC,  
a Delaware limited liability company  
353 N. Clark Street  
Chicago, IL 60654-3456  
312/923-2964

Dated: July 23, 2010

**SERVICE LIST**

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

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

Dale A. Guariglia  
Pamela A. Howlett  
Dennis J. Gelner II  
Bryan Cave LLP  
One Metropolitan Square  
211 North Broadway, Suite 3600  
St. Louis, MO 63102-2750

Jessica Dexter  
Environmental Law and Policy Center  
35 East Wacker Drive, Suite 1300  
Chicago, IL 60601

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>v.</b>	)	<b>PCB NO. 10-061</b>
	)	<b>(Water Enforcement)</b>
<b>FREEMAN UNITED COAL MINING</b>	)	
<b>COMPANY, LLC,</b>	)	
<b>a Delaware limited liability company, and</b>	)	
<b>SPRINGFIELD COAL COMPANY, LLC,</b>	)	
<b>a Delaware limited liability company,</b>	)	
	)	
<b>Respondents.</b>	)	

**FREEMAN UNITED COAL MINING COMPANY, LLC'S**  
**ANSWER AND AFFIRMATIVE DEFENSES**

Respondent, FREEMAN UNITED COAL MINING COMPANY, LLC ("Freeman United"), by its attorneys, hereby answers the Complaint of the People of the State of Illinois ("the People"), and states as follows:

**COUNT I**  
**NPDES PERMIT VIOLATIONS**  
**FREEMAN UNITED**

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008).

**ANSWER:** Freeman United admits that the People purport to bring this Action pursuant to Sections 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2008). Freeman United is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 1, and, therefore denies the same.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2008), and charged, *inter alia*, with

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the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board (“Board”).

**ANSWER:** The statements in Paragraph 2 are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. Section 4 of the Act, 415 ILCS 5/4 (2008) speaks for itself and to the extent an answer is required, Freeman United denies the allegations in Paragraph 2.

3. FREEMAN UNITED COAL MINING COMPANY, LLC (“Freeman United”) is a Delaware limited liability company authorized to do business in Illinois and until September 1, 2007 operated a strip mine located in McDonough and Schuyler Counties approximately 5 miles southwest of Industry, Illinois. The Industry Mine covers a total area of 5,651.3 acres of which 4,886.6 acres are in McDonough County and 1,064.7 acres are in Schuyler County.

**ANSWER:** Freeman United admits the allegations in Paragraph 3.

4. SPRINGFIELD COAL COMPANY, LLC (“Springfield Coal”) is a Delaware limited liability company authorized to do business in Illinois and since September 1, 2007 the owner and operator of the Industry Mine.

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4, and, therefore denies the same.

5. On April 2, 1999 the Illinois EPA issued a permit to Freeman United under the National Pollutant Discharge Elimination System (“NPDES”) program of the federal Water Pollution Control Act (“FWPCA” or “Clean Water Act”). NPDES Permit No. IL0061247 authorizes discharges from the Industry Mine into waters of the State, including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries. The NPDES permit for the Industry Mine also imposes monitoring and reporting requirements.

**ANSWER:** Freeman United admits the allegations of the first two sentences of Paragraph 5. With respect to the third sentence of Paragraph 5, Freeman United states that the NPDES permit speaks for itself and to the extent an answer is required, Freeman United denies the allegations in the third sentence of Paragraph 5.

6. On August 15, 2003 Freeman United submitted to the Illinois EPA a timely application regarding the renewal of the permit. On August 14, 2007 Springfield Coal submitted to the Illinois EPA a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. The Illinois EPA has not yet acted upon the renewal or transfer of the permit.

**ANSWER:** Freeman United admits that on August 15, 2003 Freeman United submitted to the Illinois EPA a timely application regarding the renewal of its NPDES permit and that on August 14, 2007, Springfield Coal submitted to the Illinois EPA a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal. Freeman United is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 6, and, therefore denies the same.

7. NPDES Permit No. IL0061247 imposes effluent limitations for iron, manganese, sulfates, pH, and total suspended solids (“TSS”), applicable to discharges from the Industry Mine. The pH of the effluent discharged from all outfalls must abide within a range (in standard units) of 6.0 to 9.0. The following limitations (as expressed in milligrams per liter or “mg/L”) are also applicable to all outfalls:

<u>Pollutant</u>	<u>30 Day Average</u>	<u>Daily Maximum</u>
Iron	3.5 mg/L	7.0 mg/L
Manganese	2.0 mg/L	4.0 mg/L
TSS	35.0 mg/L	70.0 mg/L

The concentration levels of sulfates in the effluent are regulated on a daily maximum basis according to the particular outfalls designated by the NPDES permit:

<u>Outfalls</u>	<u>Daily Maximum</u>
002, 003, 006, 009, 029, 030, 031, 032, 033, 035	1100 mg/L
005, 007, 010, 011, 018, 019	1800 mg/L
004, 008, 020, 021, 022, 024W, 026, 027	500 mg/L

**ANSWER:** Freeman United avers that NPDES Permit No. IL0061247 speaks for itself and to the extent an answer is required, Freeman United denies the allegations in Paragraph 7.

8. NPDES Permit No. IL0061247 identifies the following outfalls from the Industry Mine:

<u>Outfalls</u>	<u>Descriptions</u>	<u>Receiving Waters</u>
002	Acid Mine Drainage from Preparation Plant	Tributary to Grindstone Creek
003	Surface Acid Mine Drainage	Grindstone Creek
018, 019, 020, 021	Surface Acid Mine Drainage	Tributary to Grindstone Creek
009, 024W, 026	Surface Acid Mine Drainage	Willow Creek
022	Surface Acid Mine Drainage	Tributary to Camp Creek
029, 030	Alkaline Mine Drainage	Tributary to Willow Creek
031, 032, 033, 035	Alkaline Mine Drainage	Grindstone Creek
004, 005, 006, 007, 008, 010, 011	Reclamation Area Drainage	Grindstone Creek
027	Reclamation Area Drainage	Willow Creek
017	Stormwater Discharge	Grindstone Creek

**ANSWER:** Freeman United admits the allegations in Paragraph 8.

9. Mine discharge effluent limitations are set forth in Section 406.106(b) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 406.106(b):

Except as provided in Sections 406.109 and 406.110, a mine discharge effluent shall not exceed the following levels of contaminants:

<u>Constituent</u>	<u>Storet Number</u>	<u>Concentration</u>
Acidity	00435	(total acidity shall not exceed total alkalinity)
Iron (total)	01045	3.5mg/l

Lead (total)	01051	1 mg/l
Ammonia Nitrogen (as N)	00610	5 mg/l
pH	00400	(range 6 to 9)
Zinc (total)	01092	5 mg/l
Fluoride (total)	00951	15 mg/l
Total suspended solids	00530	35 mg/l
Manganese	01055	2.0 mg/l

**ANSWER:** Freeman United admits that Section 406.106(b) of the Board's Mine Related Water Pollution Regulations is accurately set forth in the allegations of Paragraph 9.

10. Section 406.106(b)(2) of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 406.106(b)(2), provides as follows:

The manganese effluent limitation is applicable only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH shall be 10 for any such facility that is unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges which are associated with areas where no active mining, processing or refuse disposal has taken place since May 13, 1976.

**ANSWER:** Freeman United admits that Section 406.106(b)(2) of the Board's Mine Related Water Pollution Regulations is accurately set forth in the allegations of Paragraph 10.

11. Section 12 of the Act, 415 ILCS 5/12 (2008), provides, in pertinent part, as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

\* \* \*

(f) Cause or threaten or allow the discharge of any contaminants into the waters of the State ... without an NPDES permit for point source.



discharges ... or in violation of any term or condition imposed by such permit. ...

**ANSWER:** Freeman United admits that part of Section 12 of the Act is accurately set forth in the allegations of Paragraph 11, and is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11, and, therefore, denies the same.

12. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), provides this definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**ANSWER:** Freeman United admits that Section 3.545 of the Act provides the definition of “Water pollution” as set forth in Paragraph 12.

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides this definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

**ANSWER:** Freeman United admits that Section 3.165 of the Act provides the definition of “Contaminant” as set forth in Paragraph 13.

14. As regulated by the NPDES permit, iron, manganese, sulfates, pH, and TSS are each a “contaminant” as defined by Section 3.165 of the Act.

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**ANSWER:** The statements in Paragraph 14 are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies the allegations in Paragraph 14.

15. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides this definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

**ANSWER:** Freeman United admits that Section 3.550 of the Act provides the definition of “Waters” as set forth in Paragraph 15.

16. Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries are each “waters” of the State as defined by Section 3.550 of the Act.

**ANSWER:** The statements in Paragraph 16 are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies the allegations in Paragraph 16.

17. As set forth at Section 401.102 of the Board’s Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 401.102, the legislative policy for the environmental regulation of coal mining is based upon the following determinations:

... mining activities including the preparation, operation and abandonment of mines, mine refuse areas and mine related facilities without environmental planning and safeguards and the use of certain refuse materials can cause, threaten or allow the discharge of contaminants into the waters of Illinois so as to cause or threaten to cause a nuisance or to render such waters harmful or detrimental to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses including use by livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

**ANSWER:** The statements in Paragraph 17 are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies the allegations in Paragraph 17.

18. The purpose of the Board's Mine Related Water Pollution Regulations is stated at Section 401.103, 35 Ill. Adm. Code 401.103:

The purpose of this Subtitle 0 is to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the location, preparation, operation and abandonment of mining activities, mining and mine refuse operations. A permit system is established to control the multitude of contaminating point and non-point source discharges, visible and hidden, continuous and fluctuating, which are potentially present in mining activities, mining and mine refuse operations. In order to ensure that such activities meet environmental standards water quality and effluent standards are established to limit discharges from point sources as well as to protect waters for beneficial uses. In addition, procedural safeguards are established to ensure the protection of waters. Furthermore, it is the purpose of this Subtitle D to meet the requirements of Section 402 of the FWPCA.

**ANSWER:** The statements in Paragraph 18 are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies the allegations in Paragraph 18.

19. Freeman United caused or allowed the discharge of iron in excess of the permitted monthly average effluent limitation as follows:

<u>Month/Year</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
January 2005	018	3.5 mg/L	4.42 mg/L
January 2005	024W	3.0 mg/L	4.65 mg/L
January 2005	029	3.0 mg/L	4.98 mg/L
February 2005	029	3.0 mg/L	3.08 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19, and, therefore denies the same. Freeman

United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

20. Freeman United caused or allowed the discharge of iron in excess of the permitted daily maximum effluent limitation as follows:

<u>Date</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
February 19, 2004	029	6.0 mg/L	7.05 mg/L
February 20, 2004	029	6.0 mg/L	6.75 mg/L
March 2, 2004	029	6.0 mg/L	8.65 mg/L
March 26, 2004	026	6.0 mg/L	22.9 mg/L
May 26, 2004	029	6.0 mg/L	24.1 mg/L
June 2, 2004	026	6.0 mg/L	6.91 mg/L
June 2, 2004	029	6.0 mg/L	29.6 mg/L
June 16, 2004	029	6.0 mg/L	27.4 mg/L
June 23, 2004	029	6.0 mg/L	21.1 mg/L
July 14, 2004	026	6.0 mg/L	6.47 mg/L
July 14, 2004	029	6.0 mg/L	13.9 mg/L
August 26, 2004	018	7.0 mg/L	12.3 mg/L
August 26, 2004	026	6.0 mg/L	11.9 mg/L
August 31, 2004	029	6.0 mg/L	7.23 mg/L
September 16, 2004	018	7.0 mg/L	9.74 mg/L
September 16, 2004	026	6.0 mg/L	13.9 mg/L
October 29, 2004	029	6.0 mg/L	8.00 mg/L
November 1, 2004	018	7.0 mg/L	46.4 mg/L
December 8, 2004	018	7.0 mg/L	25.4 mg/L
December 8, 2004	024W	6.0 mg/L	10.6 mg/L
December 8, 2004	026	6.0 mg/L	11.5 mg/L
January 17, 2005	018	7.0 mg/L	7.53 mg/L
January 17, 2005	024W	6.0 mg/L	6.37 mg/L
January 17, 2005	029	6.0 mg/L	6.20 mg/L
February 14, 2005	018	7.0 mg/L	13.0 mg/L
November 30, 2006	018	7.0 mg/L	9.04 mg/L
March 31, 2007	003	7.0 mg/L	15.4 mg/L
March 31, 2007	018	7.0 mg/L	47.9 mg/L
March 31, 2007	026	6.0 mg/L	21.1 mg/L
June 30, 2007	003	7.0 mg/L	11.8 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

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21. Freeman United caused or allowed the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

<u>Month/Year</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
January 2005	019	2.0 mg/L	7.95 mg/L
February 2005	018	2.0 mg/L	10.3 mg/L
February 2005	019	2.0 mg/L	11.3 mg/L
March 2005	019	2.0 mg/L	6.76 mg/L
April 2005	018	2.0 mg/L	2.32 mg/L
April 2005	019	2.0 mg/L	3.07 mg/L
April 2005	026	2.0 mg/L	7.01 mg/L
June 2005	018	2.0 mg/L	6.66 mg/L
June 2005	019	2.0 mg/L	5.78 mg/L
May 2006	019	2.0 mg/L	4.93 mg/L
June 2006	019	2.0 mg/L	3.38 mg/L
August 2006	018	2.0 mg/L	2.35 mg/L
January 2007	019	2.0 mg/L	7.95 mg/L
February 2007	019	2.0 mg/L	15.2 mg/L
March 2007	018	2.0 mg/L	2.88 mg/L
March 2007	026	2.0 mg/L	3.64 mg/L
May 2007	019	2.0 mg/L	5.66 mg/L

ANSWER: Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

22. Freeman United caused or allowed the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

<u>Date</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
January 15, 2004	003	4.0 mg/L	5.32 mg/L
February 3, 2004	019	4.0 mg/L	13.4 mg/L
February 10, 2004	018	4.0 mg/L	4.37 mg/L
February 10, 2004	019	4.0 mg/L	14.3 mg/L
February 18, 2004	003	4.0 mg/L	9.39 mg/L
March 2, 2004	019	4.0 mg/L	4.86 mg/L
April 14, 2004	019	4.0 mg/L	5.31 mg/L
May 7, 2004	019	4.0 mg/L	4.40 mg/L
May 12, 2004	019	4.0 mg/L	4.71 mg/L
June 14, 2004	019	4.0 mg/L	6.15 mg/L
July 29, 2004	019	4.0 mg/L	4.79 mg/L
September 13, 2004	019	4.0 mg/L	8.22 mg/L
October 29, 2004	019	4.0 mg/L	9.15 mg/L

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November 8, 2004	019	4.0 mg/L	5.73 mg/L
November 15, 2004	018	4.0 mg/L	5.51 mg/L
November 15, 2004	019	4.0 mg/L	9.25 mg/L
December 20, 2004	018	4.0 mg/L	4.32 mg/L
December 20, 2004	019	4.0 mg/L	16.3 mg/L
December 28, 2004	018	4.0 mg/L	8.88 mg/L
December 28, 2004	019	4.0 mg/L	20.6 mg/L
January 5, 2005	019	4.0 mg/L	4.69 mg/L
January 17, 2005	019	4.0 mg/L	11.2 mg/L
January 26, 2005	019	4.0 mg/L	11.9 mg/L
February 2, 2005	018	4.0 mg/L	10.3 mg/L
February 2, 2005	019	4.0 mg/L	11.3 mg/L
March 3, 2005	018	4.0 mg/L	11.8 mg/L
March 3, 2005	019	4.0 mg/L	7.83 mg/L
March 11, 2005	018	4.0 mg/L	7.53 mg/L
March 11, 2005	019	4.0 mg/L	5.70 mg/L
April 25, 2005	018	4.0 mg/L	6.08 mg/L
May 2, 2005	018	4.0 mg/L	7.60 mg/L
June 27, 2005	018	4.0 mg/L	7.14 mg/L
June 28, 2005	018	4.0 mg/L	6.18 mg/L
June 29, 2005	019	4.0 mg/L	9.26 mg/L
March 20, 2006	026	4.0 mg/L	6.68 mg/L
April 13, 2006	026	4.0 mg/L	4.63 mg/L
April 19, 2006	019	4.0 mg/L	4.64 mg/L
April 25, 2006	026	4.0 mg/L	7.99 mg/L
April 26, 2006	026	4.0 mg/L	8.42 mg/L
May 22, 2006	019	4.0 mg/L	5.88 mg/L
May 23, 2006	019	4.0 mg/L	5.70 mg/L
July 31, 2006	018	4.0 mg/L	5.65 mg/L
January 31, 2007	019	4.0 mg/L	7 mg/L
January 31, 2007	019	4.0 mg/L	8.89 mg/L
February 28, 2007	019	4.0 mg/L	16.9 mg/L
February 28, 2007	019	4.0 mg/L	13.5 mg/L
March 31, 2007	019	4.0 mg/L	4.35 mg/L
March 31, 2007	026	4.0 mg/L	5.8 mg/L
April 30, 2007	019	4.0 mg/L	4.26 mg/L
May 31, 2007	019	4.0 mg/L	4.37 mg/L
May 31, 2007	019	4.0 mg/L	6.94 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

23. Freeman United caused or allowed the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

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<u>Date</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
January 15, 2004	003	1100 mg/L	1190 mg/L
May 19, 2004	003	1100 mg/L	1120 mg/L
May 24, 2004	002	1100 mg/L	1220 mg/L
April 7, 2005	009	1100 mg/L	1170 mg/L
May 30, 2005	009	1100 mg/L	1270 mg/L
June 9, 2005	009	1100 mg/L	1230 mg/L
June 27, 2005	009	1100 mg/L	1330 mg/L
June 27, 2005	018	1800 mg/L	2020 mg/L
June 28, 2005	009	1100 mg/L	1240 mg/L
June 28, 2005	018	1800 mg/L	1900 mg/L
July 9, 2005	009	1100 mg/L	1440 mg/L
July 9, 2005	018	1800 mg/L	2020 mg/L
July 9, 2005	019	1800 mg/L	1840 mg/L
July 29, 2005	009	1100 mg/L	1440 mg/L
July 29, 2005	018	1800 mg/L	2050 mg/L
July 29, 2005	019	1800 mg/L	1810 mg/L
August 8, 2005	009	1100 mg/L	1430 mg/L
August 8, 2005	018	1800 mg/L	2030 mg/L
August 8, 2005	019	1800 mg/L	1910 mg/L
September 9, 2005	009	1100 mg/L	1380 mg/L
September 29, 2005	009	1100 mg/L	1260 mg/L
October 17, 2005	009	1100 mg/L	1550 mg/L
October 26, 2005	009	1100 mg/L	1540 mg/L
November 29, 2005	009	1100 mg/L	1270 mg/L
December 13, 2005	009	1100 mg/L	1350 mg/L
December 13, 2005	018	1800 mg/L	1920 mg/L
December 20, 2005	009	1100 mg/L	1270 mg/L
December 20, 2005	018	1800 mg/L	1930 mg/L
January 16, 2006	009	1100 mg/L	1160 mg/L
January 25, 2006	009	1100 mg/L	1200 mg/L
February 6, 2006	009	1100 mg/L	1220 mg/L
February 6, 2006	027	500 mg/L	516 mg/L
February 6, 2006	024W	500 mg/L	548 mg/L
February 27, 2006	009	1100 mg/L	1150 mg/L
February 27, 2006	024W	500 mg/L	600 mg/L
March 13, 2006	009	1100 mg/L	1240 mg/L
March 13, 2006	024W	500 mg/L	568 mg/L
March 20, 2006	024W	500 mg/L	506 mg/L
March 29, 2006	024W	500 mg/L	520 mg/L
April 13, 2006	024W	500 mg/L	511 mg/L
April 25, 2006	009	1100 mg/L	1190 mg/L

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April 25, 2006	024W	500 mg/L	628 mg/L
April 26, 2006	024W	500 mg/L	558 mg/L
May 16, 2006	009	1100 mg/L	1120 mg/L
May 16, 2006	024W	500 mg/L	550 mg/L
May 17, 2006	009	1100 mg/L	1110 mg/L
May 17, 2006	024W	500 mg/L	552 mg/L
May 24, 2006	009	1100 mg/L	1150 mg/L
May 24, 2006	024W	500 mg/L	562 mg/L
June 14, 2006	009	1100 mg/L	1140 mg/L
June 14, 2006	024W	500 mg/L	592 mg/L
June 15, 2006	009	1100 mg/L	1150 mg/L
June 15, 2006	019	1800 mg/L	1890 mg/L
June 15, 2006	024W	500 mg/L	572 mg/L
June 22, 2006	009	1100 mg/L	1240 mg/L
June 22, 2006	024W	500 mg/L	635 mg/L
July 31, 2006	009	1100 mg/L	1170 mg/L
July 31, 2006	009	1100 mg/L	1180 mg/L
July 31, 2006	009	1100 mg/L	1190 mg/L
July 31, 2006	019	1800 mg/L	1830 mg/L
July 31, 2006	024W	500 mg/L	578 mg/L
August 31, 2006	009	1100 mg/L	1300 mg/L
August 31, 2006	009	1100 mg/L	1273 mg/L
August 31, 2006	009	1100 mg/L	1250 mg/L
August 31, 2006	018	1800 mg/L	1840 mg/L
August 31, 2006	019	1800 mg/L	1840 mg/L
September 30, 2006	009	1100 mg/L	1260 mg/L
September 30, 2006	009	1100 mg/L	1250 mg/L
September 30, 2006	009	1100 mg/L	1240 mg/L
October 31, 2006	009	1100 mg/L	1320 mg/L
October 31, 2006	009	1100 mg/L	1303 mg/L
October 31, 2006	009	1100 mg/L	1290 mg/L
October 31, 2006	018	1800 mg/L	1850 mg/L
October 31, 2006	019	1800 mg/L	1810 mg/L
November 30, 2006	009	1100 mg/L	1350 mg/L
November 30, 2006	009	1100 mg/L	1287 mg/L
November 30, 2006	009	1100 mg/L	1160 mg/L
November 30, 2006	018	1800 mg/L	1890 mg/L
November 30, 2006	019	1800 mg/L	1830 mg/L
December 31, 2006	009	1100 mg/L	1230 mg/L
December 31, 2006	009	1100 mg/L	1123 mg/L
December 31, 2006	024W	500 mg/L	1090 mg/L
January 31, 2007	026	500 mg/L	514 mg/L
January 31, 2007	026	500 mg/L	502 mg/L



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January 31, 2007	027	500 mg/L	879 mg/L
January 31, 2007	024W	500 mg/L	610 mg/L
February 28, 2007	003	1100 mg/L	1810 mg/L
February 28, 2007	009	1100 mg/L	1310 mg/L
May 31, 2007	018	1800 mg/L	1870 mg/L
May 31, 2007	019	1800 mg/L	1830 mg/L
May 31, 2007	024W	500 mg/L	1080 mg/L
June 30, 2007	024W	500 mg/L	507 mg/L
June 30, 2007	024W	500 mg/L	576 mg/L
July 31, 2007	009	1100 mg/L	1400 mg/L
July 31, 2007	009	1100 mg/L	1200 mg/L
July 31, 2007	024W	500 mg/L	544 mg/L
August 31, 2007	009	1100 mg/L	1370 mg/L
August 31, 2007	009	1100 mg/L	1310 mg/L
August 31, 2007	009	1100 mg/L	1270 mg/L
August 31, 2007	019	1800 mg/L	2160 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

24. Freeman United caused or allowed the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

<u>Month/Year</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
January 2005	003	35.0 mg/L	48.5 mg/L
January 2005	018	35.0 mg/L	38 mg/L
May 2007	002	35.0 mg/L	46 mg/L
May 2007	018	35.0 mg/L	46 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

25. Freeman United caused or allowed the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

<u>Date</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Actual Discharge</u>
May 26, 2004	029	70.0 mg/L	71 mg/L
July 14, 2004	029	70.0 mg/L	160 mg/L
January 17, 2005	003	70.0 mg/L	81 mg/L
April 26, 2005	019	70.0 mg/L	84 mg/L
December 13, 2005	009	70.0 mg/L	84 mg/L
February 28, 2007	009	70.0 mg/L	87 mg/L
May 31, 2007	002	70.0 mg/L	96 mg/L
May 31, 2007	018	70.0 mg/L	121 mg/L
July 31, 2007	026	70.0 mg/L	86 mg/L

**ANSWER:** Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

26. Freeman United caused or allowed the discharge of pH outside of the permitted monthly average effluent limitation range of 6.0 to 9.0 standard units as follows:

<u>Month/Year</u>	<u>Outfall</u>	<u>Actual Discharge</u>
July 2004	002	4.82
July 2006	026	10.4
May 2007	026	9.74
June 2007	026	9.43

**ANSWER:** Freeman United denies that the terms of the NPDES permit provide a monthly average effluent limitation for the discharge of pH. Freeman United is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26, and, therefore denies the same. Freeman United avers that it is attempting to gain access to relevant documents, to the extent they are available, in order to investigate this matter further.

27. Freeman United repeatedly caused or allowed the discharge from the Industry Mine of iron, manganese, sulfates, pH, and TSS, in excess of the effluent limitations imposed by NPDES Permit No. IL0061247.

**ANSWER:** Freeman United denies the allegations in Paragraph 27.

28. By repeatedly discharging contaminants into waters of the State in violation of the terms or conditions of NPDES Permit No. IL0061247, Freeman United violated Section 12(f) of the Act, 415 ILCS 5112(f) (2008).

**ANSWER:** Freeman United denies the allegations in Paragraph 28.

### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, FREEMAN UNITED COAL MINING COMPANY, LLC:

A. Authorizing a hearing in this matter at which time this Respondent will be required to answer the allegations herein;

B. Finding that this Respondent has violated Section 12(f) of the Act, 415 ILCS 5112(f) (2008), and the regulations as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum;

D. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), award Complainant its reasonable costs in this matter, including attorney's fees and expert witness costs; and

E. Grant such other and further relief as the Board deems appropriate.

**ANSWER:** The statements in this prayer for relief are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies this paragraph and denies that the People are entitled to any relief from Freeman United.

**COUNT II**  
**NPDES PERMIT VIOLATIONS**  
**SPRINGFIELD COAL**

**ANSWER:** The allegations in Count II relate solely to Springfield Coal Company, LLC. Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Count II, and, therefore denies the same.

**COUNT III**  
**WATER POLLUTION VIOLATIONS**  
**FREEMAN UNITED**

1-25. Complainant realleges and incorporates herein by reference paragraphs 1 through 25 of Count I as paragraphs 1 through 25 of this Count III.

**ANSWER:** Freeman United realleges and incorporates by reference herein answers to paragraphs 1 through 25 of Count I as answers to paragraphs 1 through 25 of this Count III.

26. From at least January 2004 until September 2007, Freeman United caused or allowed the discharge of iron, manganese, sulfates, pH, and TSS into waters of the State so as to cause or tend to cause water pollution in Illinois in combination with matter from other sources. These repeated discharges from the Industry Mine in excess of the permitted concentration levels have likely created a nuisance or rendered such waters harmful or detrimental or injurious to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**ANSWER:** Freeman United denies the allegations in Paragraph 26.

27. By so causing or tending to cause water pollution, Freeman United has violated Section 12(a) of the Act, 415 ILCS 5112(a) (2008).

**ANSWER:** Freeman United denies the allegations in Paragraph 27.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, FREEMAN UNITED COAL MINING COMPANY, LLC:

A. Authorizing a hearing in this matter at which time this Respondent will be required to answer the allegations herein;

B. Finding that this Respondent has violated Section 12(a) of the Act, 415 ILCS 5112( a) (2008), and the regulations as alleged herein;

C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2008), impose upon this Respondent a monetary penalty of not more than the statutory maximum; and

D. Grant such other and further relief as the Board deems appropriate.

**ANSWER:** The statements in this prayer for relief are legal conclusions to which a response from Freeman United is neither necessary nor appropriate. To the extent an answer is appropriate, Freeman United denies this paragraph and denies that the People are entitled to any relief from Freeman United.

**COUNT IV**  
**WATER POLLUTION VIOLATIONS**  
**SPRINGFIELD COAL**

**ANSWER:** The allegations in Count IV relate solely to Springfield Coal Company, LLC. Freeman United is without knowledge or information sufficient to form a belief as to the truth of the allegations of Count IV, and, therefore denies the same.

**AFFIRMATIVE DEFENSES**

Freeman United denies all allegations of alleged wrongdoing by itself and further denies all allegations which otherwise have not been expressly admitted in this Answer. In addition,

Freeman United asserts the following affirmative defenses. Freeman United does not assume the burden of proof on these defenses where substantive law provides otherwise.

**FIRST AFFIRMATIVE DEFENSE**

The People's claims are barred in whole or in part by the applicable statute of limitations and by the doctrine of laches.

**SECOND AFFIRMATIVE DEFENSE**

The People's claims should be dismissed because Freeman United entered into a Compliance Commitment Agreement with IEPA pursuant to 415 ILCS 5/31(a) after receiving a Notice of Violation from IEPA on March 11, 2005. On June 16, 2005, Freeman United and IEPA entered into a two-year Compliance Commitment Agreement regarding alleged effluent violations at the Industry Mine. Freeman United fully complied with the terms of the Compliance Commitment Agreement and believed that it was taking all actions IEPA deemed to be necessary to bring the Industry Mine into compliance with the Illinois Environmental Protection Act. Freeman United also sought to extend the Compliance Commitment Agreement in 2007. Although Freeman United's initial request to extend the Compliance Commitment Agreement was rejected by IEPA, on August 30, 2007, Freeman United submitted a revised proposal for extending the Compliance Commitment Agreement. IEPA never responded to Freeman United's revised proposal for extending the Compliance Commitment Agreement. Pursuant to 415 ILCS 5/31(a)(9), IEPA's failure to respond to the August 30, 2007, revised proposal is deemed an acceptance by IEPA of the proposed Compliance Commitment Agreement.

Pursuant to 415 ILCS 5/31(a)(10), IEPA was prohibited from referring Freeman United's alleged violations to the Illinois Attorney General because Freeman United complied with the terms of its Compliance Commitment Agreement.

**THIRD AFFIRMATIVE DEFENSE**

The People and IEPA have failed to follow the required procedures of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1, *et. seq.* (2008). IEPA did not provide Freeman United with a notice of violation, as required by 415 ILCS 5/31(a)(1), for all of the alleged violations contained in this complaint and therefore did not give Freeman United the opportunity to respond to IEPA regarding the alleged violations.

**FOURTH AFFIRMATIVE DEFENSE**

On information and belief, in April 2010, the State proposed that Grindstone Creek be removed from the Illinois Section 303(d) Impaired Water List based on water quality data dating back to 2007 or earlier.

**FIFTH AFFIRMATIVE DEFENSE**

Prior to any mining activity at the Industry Mine, naturally occurring constituents, including sulfates and manganese, were present in the surface water runoff at the site at levels that would be considered exceedances of Freeman United’s NPDES permit.

**SIXTH AFFIRMATIVE DEFENSE**

The People’s Complaint should be dismissed because it fails to state a cause of action upon which relief can be granted.

**SEVENTH AFFIRMATIVE DEFENSE**

The People’s claims are barred by the doctrine of waiver.

**EIGHTH AFFIRMATIVE DEFENSE**

The People’s claims are barred by the doctrine of estoppel.

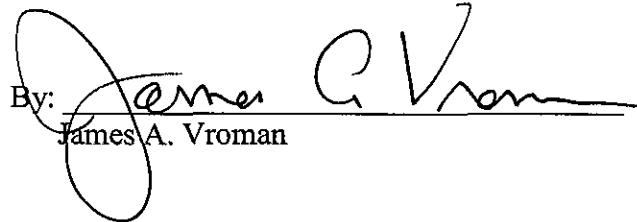
**ADDITIONAL AFFIRMATIVE DEFENSES**

Freeman United reserves the right to add further additional defenses after receiving information from The People or other parties through discovery.

WHEREFORE, Respondent, Freeman United, respectfully requests that the Board enter an order in favor of Respondent and any such other relief as the Board deems appropriate.

Respectfully submitted,

FREEMAN UNITED COAL MINING  
COMPANY, LLC

By:   
James A. Vroman

James A. Vroman  
Bill S. Forcade  
E. Lynn Grayson  
Jenner & Block LLP  
Attorneys for Respondent  
Freeman United Coal Mining Company, LLC,  
a Delaware limited liability company  
353 N. Clark Street  
Chicago, IL 60654-3456  
312/923-2836

Dated: July 23, 2010