BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PEOPLE OF THE STATE OF ILLINOIS, Complainant, ENVIRONMENTAL LAW AND POLICY CENTER, on behalf of PRAIRIE RIVERS NETWORK and SIERRA CLUB, ILLINOIS CHAPTER, Intervenor, v. FREEMAN UNITED COAL MINING CO., L.L.C., and SPRINGFIELD COAL COMPANY, L.L.C., Respondents.	)	PCB 2010-061 and 2011-002 (Consolidated – Water – Enforcement)

SPRINGFIELD COAL COMPANY, LLC'S RESPONSE TO THE PEOPLE OF THE STATE OF ILLINOIS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Respondent Springfield Coal Company, LLC ("Springfield Coal"), pursuant to 35 Ill. Admin. Code §§ 101.500 and 101.516, responds to the People of the State of Illinois' Motion (the "State") for Partial Summary Judgment dated March 6, 2012 (the "Motion"). The State's Motion should be denied since there are numerous genuine issues of material fact and those facts which are not contested support Springfield Coal's affirmative defenses.

INTRODUCTION

Since August 31, 2007, Springfield Coal has owned and overseen the operation of the Industry Mine located in Industry, Illinois ("Industry Mine"). Springfield Coal purchased the Industry Mine from Freeman United Coal Company, LLC ("Freeman United") effective August

31, 2007. Prior to that time, Springfield Coal had no ownership or operational interest in the Industry Mine. The operation of the Industry Mine is conducted pursuant to the permit numbers 16, 180, 261, 305, 334, 341, and 357 issued by the Illinois Department of Natural Resources, Office of Mines and Minerals.

On April 2, 1999, the Illinois Environmental Protection Agency ("IEPA") issued NPDES Permit No. IL0061247 (the "NPDES Permit") to Freeman United for the operation of the Industry Mine. On August 15, 2003, Freeman United submitted to the IEPA a timely application for the renewal of the NPDES Permit. On August 14, 2007, Springfield Coal submitted to the IEPA a written request to transfer the NPDES Permit from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. Although the renewal application for the NPDES permit was submitted almost nine years ago, the IEPA has completely failed to act on the application.

The present action by the State seeks to impose penalties against Freeman United and Springfield Coal for matters dating back over eight years, to January 2004. During this time, both Freeman United and Springfield Coal have worked cooperatively with the IEPA through the compliance commitment agreement process (as discussed in more detail below) and the submission of compliance plans which called for the active treatment of water prior to its discharge to the receiving streams.

Of significance in this case is that on September 8, 2008, the Illinois Pollution Control Board (the "Board") adopted a revised water quality standard for sulfate, relaxing the previous standard of 500 mg/l limit to a higher calculated limit. IEPA started the regulatory process to relax the standard in October 2006, a year prior to Springfield Coal purchasing the Industry Mine. Despite the change of the sulfate standard in 2008, Springfield Coal's NPDES Permit will

continue to contain the former 500 mg/l effluent limit until IEPA acts upon the 2003 renewal application. IEPA's inaction on the NPDES Permit renewal has created an environment where conduct which would be proper under the permit applied for is deemed violative of standards which have been outdated now for years, but which the State continues to seek to enforce.

Although the State in its Motion tries to portray the issues in this case as very simplistic, there are material factual issues in dispute and defenses that Springfield Coal has raised that preclude the granting of the Motion. In this response, Springfield Coal makes two different kinds of arguments: (1) arguments that address liability issues; and (2) arguments that address penalty demands. With respect to the first general category of issues involving liability, Springfield Coal argues as follows:

- (I) Since the State moved for summary judgment, the Board must construe the evidence strictly against the State. A motion for summary judgment should be denied when there are genuine issues of material fact.

- (II) The Springfield Coal Compliance Commitment Agreement precludes the State from pursuing all violations against Springfield Coal from August 30, 2007 to August 30, 2009. There is a significant issue of material fact regarding the existence of the Springfield Coal Compliance Commitment Agreement. Board precedent dictates that summary judgment is not appropriate when the parties dispute the existence of a compliance commitment agreement.

- (III) Since the water quality standard for sulfate was changed in 2008, the State should not be allowed to pursue violations against Springfield Coal for exceedances of the sulfate effluent limitation in the NPDES Permit which is based on the rejected standard.

- (IV) Prior to any mining activity, there were constituents in the streams traversing the Industry Mine site at background concentrations above the NPDES Permit effluent limitations. Fundamental material factual issues exist as to whether these historic background concentrations along with current upstream concentrations also above permit limits – and not the Industry Mine operations – caused exceedances of Springfield Coal's NPDES Permit.

- (V) The State cannot enforce the manganese and pH effluent limitations in the NPDES permit against Springfield Coal pursuant to applicable Illinois regulations.

- (VI) The State has attempted to financially benefit from its unreasonable and excessive delays in reissuing Springfield Coal's NPDES permit while pursuing violations occasioned by the delay and therefore, the equitable doctrine of "unclean hands" bars the State's request for summary judgment.

- (VII) The State's unreasonable delay in reissuing the NPDES permit has prejudiced Springfield Coal, and as a result, the doctrine of laches bars the State's recovery.

- (VIII) The record supporting the State's Motion is insufficient and there are discrepancies between the DMRs and Mr. Crislip's affidavit that raise material issues of fact. Also, some of the exceedances of the effluent limitations alleged by Mr. Crislip are not violations.

With respect to the second category of issues, Springfield Coal argues that the State's demand for civil penalties is improper and unprecedented because:

- (IX) Illinois case law and Board precedent hold that the State improperly demands the imposition of civil penalties against Springfield Coal during the summary judgment phase. In addition, the State's penalty demand of $496,000 against Springfield Coal is completely inappropriate and unprecedented. There are also many factual discrepancies that will impact the Board's review and analysis of the statutory factors listed in 415 ILCS 5/33(c) and 415 ILCS 5/42(h) affecting the level of penalties.

Ultimately, Springfield Coal will demonstrate in its response that, in addition to its numerous defenses, there are many issues of fact sufficient to preclude partial summary judgment and that it is inappropriate to assess penalties at this time. This is supported by the numerous exhibits attached to Springfield Coal's Response and the detailed affidavit of Thomas J. Austin, attached hereto as Exhibit 1.

ARGUMENTS REGARDING LIABILITY ISSUES

I. The Standard of Review for the Granting of a Motion for Summary Judgment is High and the Evidence Must be Construed in Favor of Springfield Coal

Because the State moved for summary judgment, the Board must construe the evidence strictly against the State and liberally in favor of Springfield Coal. *See, e.g.*, *Colvin v. Hobart Bros.*, 156 Ill. 2d 166, 170 (Ill. 1993) ("The Court must consider all the evidence before it strictly

against the movant and liberally in favor of the nonmovant."). Summary judgment is a "drastic means" of disposing of litigation, and therefore, it is only appropriate when the "resolution of a case hinges on a question of law and the moving party's right to judgment is clear and free from doubt." *See In re Estate of Hoover*, 155 Ill. 2d 402, 410 (Ill. 1993). Moreover, the right to summary judgment must be "clear beyond question," and "[i]f the court is presented with any set of facts about which reasonable [persons] 'might disagree,' summary judgment should be denied." *See Kay v. Mundelein*, 36 Ill. App. 3d 433, 437 (Ill. App. Ct. 1976).

In deciding whether a factual question precluding summary judgment exists, courts must consider all of the evidence on file, and they have a duty to construe the evidence liberally in favor of Springfield Coal. *See Hoover*, 155 Ill. 2d at 410-11; *see also Schmahl v. A.V.C. Enter., Inc.*, 148 Ill. App. 3d 324, 327 (Ill. App. Ct. 1986) ("In deciding whether a factual question precluding summary judgment exists, courts are admonished to construe evidence strictly against the party moving for summary judgment and liberally in favor of the motion's opponent."). In determining the existence of a genuine issue of material fact, courts must consider the pleadings, depositions, admissions, exhibits, and affidavits on file in the case. *See, e.g.*, *Purtill v. Hess*, 111 Ill.2d 229, 240 (Ill. 1986). A triable issue of fact exists when there is a dispute as to material facts or the material facts are undisputed but reasonable persons might draw different inferences from the facts. *See Hoover*, 155 Ill. 2d at 411. In other words, summary judgment should be denied if reasonable persons could draw divergent inferences from the undisputed facts. *See Pyne v. Witmer*, 129 Ill.2d 351, 358-59 (Ill. 1989).

If the court finds that the record contains "any material issues of genuine fact, the motion for summary judgment must be denied." *See Hoover*, 155 Ill. 2d at 411. Moreover, summary judgment should be denied when a defendant has an opportunity to prove a valid affirmative

defense that may bar the plaintiff's relief. *See Fed. Deposit Ins. Co. v. Maris*, 121 Ill. App. 3d 894, 901 (Ill. Ct. App. 1984). In considering the undisputed evidence and the law, the Board should deny the State's Motion.

II. The August 30, 2007 Springfield Coal Compliance Commitment Agreement Precludes the State From Pursuing Violations During the Term of the Agreement and Creates a Significant Factual Dispute Barring Summary Judgment

The State should not be allowed to pursue penalties against Springfield Coal for alleged violations which occurred during the time Springfield Coal was operating under a Compliance Commitment Agreement ("CCA") with the IEPA dated August 30, 2007, for a two-year period (the "Springfield Coal CCA"). The Springfield Coal CCA bars the State from enforcing all violations and/or exceedances during the term of the Springfield CCA (i.e., August 30, 2007 to August 30, 2009). Significantly, because the State refutes that the Springfield Coal CCA was in effect from 2007 to 2009, there is a substantial factual dispute between the parties regarding whether the Springfield Coal CCA should be recognized. For this reason alone, the State's Motion should be denied.

A. History of the Springfield Coal CCA

On March 11, 2005, IEPA submitted Violation Notice W-2005-00167 to Freeman United. *See* Exhibit 1A. Among other things, IEPA stated that Freeman United's written response will constitute a proposed CCA. *Id.* On May 19, 2005, Freeman United submitted a proposed CCA to IEPA. *See* Exhibit 1B. On June 16, 2005, IEPA accepted Freeman United's CCA, although IEPA imposed an additional monitoring requirement (the "Freeman United CCA"). *See* Exhibit 1C. The Freeman United CCA was in effect for a two-year period, from June of 2005 to June of 2007. On March 30, 2007, Freeman United sent IEPA a proposed two-year plan extension to the Freeman United CCA for continued treatment and monitoring. *See* Exhibit 1E. On July 13, 2007, IEPA sent a letter to Freeman United rejecting Freeman United's

March 30, 2007 proposed plan, but it also invited Freeman United to submit a revised plan and directed Freeman United as to what would need to be included in the plan to be an "acceptable CCA extension."[1] *See* Exhibit 1F.

On August 14, 2007, Freeman United informed IEPA that Springfield Coal intended to purchase the Industry Mine from Freeman United and that the NPDES Permit needed to be transferred to Springfield Coal. *See* Exhibit 1G. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA (herein "August 2007 Extension Letter"). *See* Exhibit 1H. IEPA did not respond in writing to the August 2007 Extension Letter. In fact, Freeman United and Springfield Coal had not received any written communications from IEPA concerning the August 2007 Extension Letter or any issues with the Industry Mines' discharges not meeting the effluent limitations in the NPDES Permit until October 8, 2009, over two years after the August 2007 Extension Letter was submitted. *See* Exhibit 1, at ¶18; *see also* Exhibit 2 (October 8, 2009 IEPA Letter to Freeman United). Rather, during an oral conversation in September 2007, IEPA told Springfield Coal to continue to operate pursuant to the terms of the Springfield Coal CCA. *See* Exhibit 1, at ¶16. Consequently, as discussed in more detail below, the Springfield Coal CCA was renewed for another two years beginning on August 30, 2007. Stated differently, it was Springfield Coal's understanding from IEPA's representations that Springfield Coal was operating under a Compliance Commitment Agreement from August 30, 2007 (when Springfield Coal purchased the Industry Mine) until August 30, 2009. *See* Exhibit 1, at ¶17. During this time period, Springfield Coal was working with the IEPA pursuant to the

[1] Although IEPA's July 13, 2007 letter suggests that the proposal does not constitute a CCA, IEPA's letter is, at best, vague because it states that "[a]n acceptable CCA Extension request must include a feasible and implementable compliance plan designed to result in an ultimate resolution to the current elevated manganese concentrations in the discharge at Outfall 019 and subsequent water quality standards violations." (emphasis added). IEPA specifically contemplates an "acceptable CCA Extension request" in this correspondence.

terms of the Springfield Coal CCA. *Id.* Springfield Coal relied upon IEPA's representations that if issues were to arise, IEPA would notify Springfield Coal, and the two parties would address the concerns together.

Surprisingly, although the State recognizes the Freeman United CCA, the State has explicitly stated that it did not enter into the Springfield Coal CCA. *See, e.g.*, State's Response to Springfield Coal's Affirmative Defenses, July 29, 2010, at 4 ("The Complainant [State] denies that Springfield Coal entered into a compliance commitment agreement with the Illinois EPA on August 30, 2007."); *see also* Motion, at 7 ("Springfield Coal's Answer also seeks to raise an affirmative defense regarding a Compliance Commitment Agreement that it alleges was entered into with the Illinois EPA on August 30, 2007; these allegations of fact are denied by the Complainant.")[2]. It is inexplicable for the State to completely ignore the fact that the Springfield Coal CCA existed, especially because IEPA had conversations with Springfield Coal regarding some of the issues contained in the Springfield Coal CCA from 2007 to 2009. Yet, the State somehow expressly denies the "allegation of fact" asserted by Springfield Coal that the Springfield Coal CCA existed from August 30, 2007, to August 30, 2009.

B. The Springfield Coal 2007 CCA Was Created by Statute Since IEPA Failed to Respond to the August 2007 Extension Letter

The Springfield Coal CCA was executed on August 30, 2007. The applicable statutory provision governing at that time was 415 ILCS 5/31(a)(9), a provision that was in effect from 2007 – 2009 and still remains in effect today.[3] The relevant statutory language appears below:

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[2] The State continues to argue that "[i]n other words, the Complainant admits that the June 2005 CCA existed and denies that the August 2007 proposal or extension was ever approved." *Id.*

[3] 415 ILCS 5/31(a)(9) was slightly modified in 2011 with a statutory amendment, but the revisions were very minor and did not affect the substance of the statute. *See* 415 ILCS 5/31(a)(9) (2012).

> The Agency's failure to respond to a written response submitted pursuant to subdivision (2) of this subsection (a), if a meeting is not requested, or subdivision (5) of this subsection (a) if a meeting is held, or within the time period otherwise agreed to in writing by the Agency and the person complained against, shall be deemed an acceptance by the Agency of the proposed Compliance Commitment Agreement for the violations alleged in the written notice issued under subdivision (1) of this subsection (a) as contained within the written response.

See 2011 Ill. Legis. Serv. P.A. 97-519 (S.B. 1357) (emphasis added). Neither Freeman United nor Springfield Coal received a written response from IEPA concerning the August 2007 Extension Letter or the Industry Mine's NPDES Permit discharges. *See* Exhibit 1, at ¶18. Importantly, IEPA personnel verbally advised Springfield Coal to continue operating the Industry Mine pursuant to the terms of the Springfield Coal CCA. *See* Exhibit 1, at ¶16. These facts demonstrate that IEPA failed to respond to the August 2007 Extension Letter, and as a result, the August 2007 Extension Letter was deemed accepted by IEPA pursuant to 415 ILCS 5/31(a)(9). Also, there is nothing in 415 ILCS 5/31(2009) prohibiting IEPA from amending or renewing a CCA, and in fact, IEPA, in its July 13, 2007 letter, invited Freeman to submit an "acceptable CCA extension". *See* Exhibit 1F. Accordingly, there was nothing procedurally incorrect about the August 2007 Extension Letter. Therefore, pursuant to 415 ILCS 5/31(a)(9), the August 2007 Extension Letter was not only accepted by IEPA, but it also constituted an enforceable CCA for two years.

In its Motion, the State attempts to argue that the relevant statutory language in 415 ILCS 5/31 provides "little support" for Springfield Coal's argument that the disputed facts regarding the Springfield Coal CCA are material. *See* Motion, at 7. Notably, the State only cites the newly enacted provisions of 415 ILCS 5/31 and does not cite the applicable statute that was in effect during the time the Springfield Coal CCA existed (i.e., 2007 – 2009). *Id.* at 7-8. Specifically, the State references a newly enacted provision at 415 ILCS 5/31(a)(7.6). This provision, among

others, was not enacted until August 23, 2011, nearly two years after the Springfield Coal CCA was no longer in effect. *See* 415 ILCS 5/31(a)(7.6) (2012); *see also* 2011 Ill. Legis. Serv. P.A. 97-519 (S.B. 1357) (presenting the legislative history regarding the creation of Section 31(a)(7.6) on August 23, 2011). Illinois case law consistently holds that a substantive statutory amendment will not be given retroactive effect absent a clear expression of legislative intent. *See, e.g.*, *Caveney v. Bower*, 207 Ill.2d 82, 91-92 (Ill. 2003); *Commonwealth Edison Co. v. Will Cnty. Collector*, 196 Ill.2d 27, 38-39 (Ill. 2001); *Foster Wheeler Energy Corp. v. LSP Equip., LLC*, 346 Ill. App. 3d 753, 758-59 (Ill. Ct. App. 2004). The legislative intent behind 415 ILCS 5/31(a)(7.6) demonstrates that the amended statute was not intended to apply retroactively; therefore, Illinois case law dictates that 415 ILCS 5/31(a)(7.6) only applies prospectively.

The relevant statute, the case law, and the facts support Springfield Coal's position that the Springfield Coal CCA was in effect for over a two year period from 2007 to 2009. Yet, somehow the State disagrees with this conclusion. At a minimum, further discovery is needed to confirm the existence and enforcement of the Springfield Coal CCA from 2007 - 2009. Accordingly, the State is not entitled to summary judgment.

C. Summary Judgment Should Not be Granted Because the Parties Dispute Whether the Springfield Coal CCA Existed

In 1997, the Board refused to dismiss an affirmative defense alleging that a CCA existed in an enforcement proceeding initiated by the State. *See People of the State of Illinois v. Midwest Grain Prod. of Illinois, Inc.*, 1997 WL 530544, at *4 (PCB 97-179) (Aug. 21, 1997) (holding that "[w]hether there is a Compliance Commitment Agreement between the Agency and Midwest Grain involves questions of fact which cannot be answered with only the limited information in the pleadings in this case"). In this situation, Midwest Grain Products of Illinois ("Midwest Grain") agreed to purchase and install additional emission control equipment at its

facility in Pekin, Illinois. *Id.* at *2. Midwest Grain stated that the agreement constituted as a valid CCA, and since Midwest Grain was in compliance with the CCA, Midwest Grain argued that the State's allegations in the matter should have been precluded. *Id.* The State objected, arguing that no CCA existed between the State and Midwest Grain. *Id.* at *4. The Board concluded that Midwest Grain's affirmative defense was properly pled and that "the validity of that affirmative defense cannot be tested without evidence not presently before the Board." *Id.* Therefore, the Board did not strike Midwest Grain's affirmative defense.

The present situation is strikingly similar. As discussed above, it is Springfield Coal's position that Springfield Coal was operating under a valid CCA from approximately August 30, 2007, until August 30, 2009; however, it is the State's position that Springfield Coal did not enter into a CCA with IEPA. *See, e.g.*, State's Response to Springfield Coal's Affirmative Defenses, July 29, 2010, at 4. Like Midwest Grain, Springfield Coal raised the existence of the CCA as an affirmative defense to precluding the State's claims. Notably, the State has even admitted that it denied Springfield Coal's "allegation of fact" regarding the existence of the Springfield Coal CCA.[4] *See* Motion, at 7.

Whether the Springfield Coal CCA was valid for over a two-year period is a key issue to this dispute, especially because the CCA could preclude the State from imposing all violations against Springfield Coal during that time. Consistent with the Board's precedent, whether a CCA existed between the State and Springfield Coal "involves questions of fact" that cannot be answered at this stage of the proceedings. *See People of the State of Illinois v. Midwest Grain*

[4] The State's Motion argues the following: "Springfield Coal's Answer also seeks to raise an affirmative defense regarding a Compliance Commitment Agreement that it alleges was entered into with the Illinois EPA on August 30, 2007; these allegations of fact are denied by the Complainant. See, Springfield Coal's Answer, seventh affirmative defense at p. 21; People's Response (filed July 29, 2011) at p. 4. In other words, the Complainant admits that the June 2005 CCA existed and denies that the August 2007 proposal or extension was ever approved." *Id.* (emphasis added).

Prod. of Illinois, Inc., 1997 WL 530544, at *4 (PCB 97-179) (Aug. 21, 1997). Similar to *Midwest Grain*, summary judgment is not appropriate in the present case. And, consistent with Illinois law, if the record contains "any material issues of genuine fact, the motion for summary judgment must be denied." *See Hoover*, 155 Ill. 2d at 411.

III. The State Should Not be Allowed to Pursue Violations against Springfield Coal for Exceedances of the Effluent Limitation in the NPDES Permit for Sulfate Because the Water Quality Standard for Sulfate was Changed in 2008

The sulfate effluent limitation in Springfield Coal's NPDES permit, which is set at 500 mg/l (daily maximum), is based upon a sulfate water quality standard which was officially rejected by the Board in September 2008,[5] and which the State knew for years before then was not based in science and was inappropriate for mining operations. *See* Exhibit 3 (Testimony of Robert Mosher, IPCB R07-09, Feb. 5, 2007). The current water quality standard for sulfate as set forth in 35 IAC 302.208 is now a calculated standard based upon the hardness and chloride content of the receiving water. Under this new standard, Springfield Coal would have had significantly fewer exceedances for sulfate over the last three years. Specifically, in its Motion, the State has alleged that from the time the new sulfate water quality standard was adopted by the Board in September 2008 through 2011, Springfield Coal had 77 excursions of the sulfate effluent limitation in its NPDES Permit. *See* Exhibit 1, at ¶26. However, if Springfield Coal had been subject to the new relaxed sulfate standard during this three year period, there would have only been 19 such excursions, a reduction of over 75%. *Id.*

[5] *In the Matter of: Triennial Review of Sulfate and Total Dissolved Solids Water Quality Standards: Proposed Amendments to 35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8), 302.102(b)(10), 302.208(g), 309.103(c)(3), 405.109(b)(2)(A), 409.109(b)(2)(B), 406.100(d); Repealer of 35 Ill. Adm. Code 406.203 and Part 407; and Proposed New 35 Ill. Adm. Code 302.208(h)*, IPCB R07-009 (Oct. 18, 2006); 30 Ill. Reg. 14978 (Sept. 19, 2008).

In October 2006, a year before Springfield Coal purchased the Industry Mine, IEPA filed with the Board proposed amendments to the water quality standards to raise the sulfate standard.[6] As part of the regulatory rulemaking proceedings, the IEPA submitted expert testimony in support of the raised sulfate standard. IEPA's expert, Robert Mosher, testified about the history of the sulfate standard, its application to mining operations, and the inability to practically treat for sulfate. Mr. Mosher testified that:

> General Use water quality standards for sulfate (500 mg/L) and TDS (1,000 mg/L) have existed in Illinois regulations since 1972. These standards were adopted to protect aquatic life and agricultural uses, however, few modern studies were available to determine appropriate values. Adopted standards stemmed more from the opinion of a few experts than from documented scientific experiments. Because coal mine effluents in particular are often high in sulfate, a special standard was developed that is unique to mine discharges and is found in Title 35, IAC, Subtitle D, Mine Related Water Pollution. Adopted in 1984, this sulfate standard of 3,500 mg/L also was not documented by the kind of aquatic life toxicity or livestock tolerance studies that are now expected in standards development. Under existing General Use water quality standards, permitting many mine discharges without the special rules provided in Subtitle D would be problematic because many mines cannot meet General Use sulfate and TDS standards in effluents at the point of discharge and do not qualify for conventional mixing zones. . . . [R]egardless of the source, sulfate and many of the other constituent of TDS are not treatable by any practical means.

See Exhibit 3 (emphasis added). It took two years for this rulemaking to become final on September 4, 2008. The State should not be allowed to seek violations against Springfield Coal for excursions of an effluent standard that the State knew in 2006 was not based in science, could not be achieved by the mining industry, was not achievable through treatment, and was ultimately rejected by the Board. In fact, the IEPA sent Freeman United a letter on April 12, 2007 (four months before Springfield Coal owned the mine) stating that because of the pending Sulfate Water Quality Standards Regulations, IEPA was requesting additional water quality information from Freeman "[i]n preparation for the permit renewal and/or modification for your

[6] *Id.*

facility . . ." *See* Exhibit 4 (April 12, 2007 IEPA Letter to Freeman United). Now, it has been over five years since that letter and three and a half years since the new sulfate standard was adopted by the Board, but Springfield Coal's NPDES permit has yet to be reissued with the raised sulfate standard.

The change in the sulfate standard should act as an automatic amendment of Springfield Coal's NPDES Permit or, at a minimum, should serve to preclude the State from pursuing violations based upon a standard that has been rejected. The State's Motion should be denied for all alleged excursions since October 2006 of the sulfate effluent limitation in the NPDES Permit unless the State can prove that the discharge from the Industry Mine would have exceeded the current sulfate water quality standard.

IV. Genuine Issues of Material Facts Exist Regarding Whether Background Concentrations of Constituents in the Receiving Streams at the Industry Mine Have Caused Exceedances of the NPDES Permit Effluent Limitations

Before there was any mining activity by the Industry Mine there were elevated levels of a number of constituents, including sulfate, manganese, iron, total suspended solids (TSS), and pH in the surface water on the property. *See* Exhibit 1, at ¶22; Exhibit 1J; Exhibit 1K. Sampling of the streams traversing the Industry Mine property was conducted in 1979 prior to the Industry Mine commencing operations on the property. This sampling showed that there were elevated levels of a number of constituents, including sulfate, manganese, iron, total suspended solids (TSS), and pH in the surface water. *Id.*; Exhibit 1J; Exhibit 1K. This sampling identified the following constituents and maximum concentrations: manganese (10.4 mg/l), sulfates (601 mg/l), and iron (3.54 mg/l). All of these concentrations would be considered exceedances of the Industry Mine's current NPDES permit. *Id.*; *see also* Exhibit 1J and Exhibit 1K. The IEPA has known about these issues for years and this is not a contested fact since the State "admits that

levels of sulfates and manganese in surface water runoff from the site have been documented through sampling and analyses prior to mining activities at the site and that some concentrations of sulfates and manganese exceeded some of the NPDES permit limits." *People's Response to Affirmative Defenses by Springfield Coal, LLC*, pg. 3.

In 1991 and 1992, the Industry Mine planned to expand its operations and had samples taken of surface water runoff in the areas where many of the now existing ponds were to be built. *See* Exhibit 1, at ¶23. This area had been subject to some previous historic underground coal mining by other companies. *Id.* This sampling identified the following constituents and maximum concentrations: manganese (20.7 mg/l), sulfates (900 mg/l), Iron (15.6 mg/l), TSS (120 mg/l), and pH (3.45). *Id.*; *see also* Exhibit 1L. All of these concentrations would be considered exceedances of Springfield Coal's current NPDES Permit. *Id.*

In addition, in the Spring of 2006, Freeman United commissioned Key Agricultural Services, Inc. to prepare a Manganese Case Study of the Industry Mine. *See* Exhibit 1, at ¶11; *see also* Exhibit 1D. The study undertook soil sampling of both reclaimed soil at the mine and undisturbed soil adjacent to the mine location. The soils were sampled for pH and manganese. The Case Study identified that the reclaimed soil exhibited lower pH levels and higher manganese levels than the reclaimed soils. The Case Study concluded that "the Mn levels found in the water of retention pond 19 are most likely due to the naturally occurring Mn levels of the soil material in the region and not due to acid rock drainage." *Id.*

Moreover, sampling of the stream upstream of the Industry Mine over the last several years has shown elevated levels of constituents, and in a number of instances, at concentrations that exceed the effluent limitations in Springfield Coal's NPDES Permit. *See* Exhibit 1, at ¶24. Sampling of the streams traversing the Industry Mine property since 2003 has regularly shown

that the concentrations of iron, chlorides, and TSS are at higher concentrations upstream of Industry Mine rather than downstream. *Id.* Moreover, the upstream sampling has identified regular occurrences of iron and TSS at concentrations in excess of Springfield Coal's NPDES Permit. *Id.* The following are the effluent limitations in the NPDES Permit and examples of the upstream sampling results:

NPDES Permit Limits	**Iron - mg/l**	**Total Suspended Solids mg/l**
30 Day Avg.	3.0	35
Daily Max	6.0	70

Date of Upstream Sample	**Iron – mg/l**	**Total Suspended Solids mg/l**
7/18/2003	32.5	1900
3/5/2004	4.77	153
4/22/2009		63
10/30/2009	12.4	83
11/30/2009		167
1/24/2010		86
3/11/2010	4.86	203
7/21/2010	18.3	387
2/28/2011	19.6	114
4/25/2011		73
5/25/2011	36.2	760

Id.; see also Exhibit 1M.

These facts are very significant in light of 35 IAC 406.103 which provides an exception to a permittee having to meet an effluent limitation in its NPDES permit if background concentrations are the cause of the exceedances. Section 406.103, entitled "Background Concentrations," provides:

> Because the effluent standards in this part are based upon concentrations achievable with conventional treatment technology that is largely unaffected by ordinary levels of contaminants in intake water, they are absolute standards that must be met without subtracting background concentrations. However, it is not the intent of these regulations to require users to clean up contamination caused

> essentially by upstream sources or to require treatment when only traces of contaminants are added to the background. Compliance with the numerical effluent standards is therefore not required when effluent concentrations in excess of the standards result entirely from the contamination of influent before it enters the affected land. Background concentrations or discharges upstream from affected land are rebuttably presumed not to have caused a violation of this part.

(emphasis added). This section clearly provides a defense to a permittee such as Springfield Coal when exceedances of the effluent limitations in its NPDES permit result from contaminants in the influent water before it enters the affected land. The facts presented above, particularly when construed in favor of Springfield Coal as required when considering a motion for summary judgment, raise significant issues of fact as to whether background concentrations are the cause of many of the exceedances that the State alleges. Although the regulation states that background concentrations from affected land are rebuttably presumed not to have caused a violation, this regulatory presumption merely places the burden on Springfield Coal to prove this at a hearing; it in no way eliminates the significant factual issues that exist with regard to this matter. In short, material factual issues exist as to whether background concentrations of contaminants are causing the exceedances of Springfield Coal's NPDES permit such that it should preclude the granting of the State's Motion.

V. The State Cannot Enforce the Manganese and pH Effluent Limitations in the NPDES Permit Against Springfield Coal, Thereby Raising Additional Material Issues Barring Summary Judgment

There are material issues involving whether the State can enforce the manganese and pH effluent limitations in the NPDES Permit. 35 IAC 406.106 sets forth an effluent limitation for manganese of 2.0 mg/l. This same limit is included in the NPDES Permit. However, §406.106(b)(2) goes on to state:

> 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.

This regulatory section is clear that where chemical addition is not required to meet the iron or pH effluent limitations, the 2.0 mg/l manganese effluent limitation is not applicable. Chemical addition has been conducted at Ponds 18 and 19 on a periodic basis[7]. *See* Exhibit 1, at ¶25. The chemical addition at Ponds 18 and 19 was mainly conducted to lower the manganese concentrations by attempting to raise the pH in the ponds. *Id.* Since this chemical addition was actually done to lower the manganese concentrations, and not to meet the pH or iron effluent standards, all of the manganese excursions alleged by the State against Springfield Coal related to Ponds 18 and 19 should also be dismissed. In addition, alleged exceedances of the manganese effluent limit at other ponds should be dismissed unless the State can show that chemical addition was being conducted at the time of the alleged exceedance.

Also, according to §406.106(b)(2), if a facility is unable to comply with the manganese effluent limitation, then the pH effluent limit is 10 instead of 9. Springfield Coal's NPDES Permit provides an upper limit for pH of 9. The State in its Motion has alleged several exceedances of the pH limit where the actual discharge was measured as having a pH greater than 9 but less than 10. If a pH limit of 10 is applicable to the Industry Mine's discharge pursuant to §406.106(b)(2), then a number of the pH excursions alleged in the State's Motion would not be considered violations as a matter of law.

On April 21, 2010 Springfield Coal sent IEPA a letter requesting clarification of the application of §406.106(b)(2) to the effluent limitations in the NPDES Permit. *See* Exhibit 1, at ¶20; *see also* Exhibit 1I. To date, Springfield Coal has not received a response to its letter. *Id.* Springfield Coal would find it troubling if the State takes a position in this case that

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7/ Chemical addition has also been conducted very sporadically at Ponds 26, 2, and 3. *See* Exhibit 1, at ¶25.

§406.106(b)(2) does not eliminate the manganese effluent limitation in Springfield Coal's NPDES Permit, when the State had failed to provide any guidance when Springfield Coal specifically reached out to IEPA looking for clarification.

These issues of material fact, construed in favor of Springfield Coal, are significant enough that the Board should not grant summary judgment to the State. *See, e.g., In re Estate of Hoover*, 155 Ill. 2d at 411.

VI. The State's Excessive Delay in Reissuing the NPDES Permit While Pursing the Current Enforcement Action Amounts to "Unclean Hands" and Should Bar the State from Pursuing Violations against Springfield Coal

On April 2, 1999, IEPA issued the NPDES Permit to Freeman United for the operation of the Industry Mine. *See* Exhibit 5, at p. 2 (July 21, 2003 IEPA Letter to Freeman United). On August 15, 2003, Freeman United submitted to the IEPA a timely application for the renewal of the NPDES Permit. *See* Exhibit 6 (August 15, 2003 Freeman United's Permit Renewal Application). On August 14, 2007, Springfield Coal submitted to the IEPA a written request to transfer the NPDES Permit from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. *See* Exhibit 1G. The IEPA has yet to take final action in response to the application for renewal of the NPDES permit submitted almost nine years ago.

As stated above, in 2008, the sulfate water quality standard was relaxed, which if incorporated into the NPDES Permit in a timely manner would have raised the sulfate effluent limitation in the NPDES Permit, and Springfield Coal would have had significantly fewer excursions for sulfate. Despite the State's inaction on the NPDES Permit renewal application, the State has been very active in pursing Springfield Coal for penalties associated with sulfate excursions that would have been far less than had the State issued the NPDES Permit in a timely manner. The State's behavior in this case should not only preclude the State from pursing

violations of exceedances of the sulfate effluent limitation, but also from pursuing all alleged violations against Springfield Coal.

"The doctrine of 'unclean hands' precludes a party from taking advantage of his own wrong." *See Long v. Kemper Life Ins. Co.*, 196 Ill.App.3d 216, 219 (1990). The doctrine applies when the party seeking relief is guilty of misconduct or bad faith toward the party against whom relief is sought and the misconduct is connected with the transaction at issue. *Id.* If a plaintiff is found guilty of misconduct, the trial court should deny plaintiff's relief, "even if [the plaintiff] were otherwise entitled to it." *Id.* at 218-19. A court has wide discretion to refuse to aid the unclean litigant. *Id.* at 219.

Circumstances such as in the present case are precisely what the doctrine of unclean hands seeks to prevent. Here, IEPA has not taken action on Respondent's application to renew the NPDES permit filed in 2003. On July 20, 2010 – seven years after the renewal application was originally filed – Springfield Coal met with IEPA to discuss the current case and the status of the NPDES renewal application. When asked at the meeting where in the queue the renewal application was for consideration, IEPA informed Springfield Coal that "it was not even in the queue." *See* Exhibit 1, at ¶21. The State has also specifically admitted that no action has been taken on the application. See *People's Response to Affirmative Defenses* at ¶ 5. Now, close to two years have passed since the meeting in 2010, and still the NPDES Permit has not been renewed.

Springfield Coal understands that the State has limited resources and personnel and that these may be contributing factors to the nine-year delay in reissuing the permit. However, the State should not be allowed to capitalize on its delay and seek penalties against Springfield Coal for circumstances caused solely by the State's delay. Axiomatically, while the State may not

have the administrative time and resources necessary to timely take action on NPDES applications, the State appears to have has sufficient resources to bring this action.

The State has filed this action to recover monetary fines alleging that Springfield Coal has failed to comply with its NPDES permit effluent limitations. Significantly, Springfield Coal would have been in substantial compliance with the new sulfate effluent limitation had IEPA taken action on the NPDES renewal application. As discussed above, the State has alleged that from the time the new sulfate water quality standard was adopted by the Board in September 2008 through 2011, Springfield Coal had 77 excursions of the sulfate effluent limitation in its NPDES Permit. *See* Exhibit 1, at ¶26. However, if Springfield Coal had been subject to the new relaxed sulfate standard during this time period, there would have only been 19 such excursions, a reduction of over 75%. *Id.*

The State is acting in bad faith by administratively failing to act on Springfield Coal's permit renewal application while pursuing penalties for matters caused by its inaction. While Springfield Coal does not want to accuse the State of nefarious actions of intentionally delaying the reissuance of the NPDES Permit in order to increase the number of excursions, these circumstances raise material factual questions that can not be ignored by the Board. The State in its Motion makes many references to the sheer number of alleged violations against Springfield Coal, while knowing that its delay in reissuing Springfield Coal's permit is causing more excursions. The State is attempting to financially benefit from its intentional delay in reissuing Springfield Coal's permit by demanding outrageous penalties against Springfield Coal. Notably, almost half of the total excursions alleged in the State's Motion against Springfield Coal are for sulfate exceedances. This is unconscionable because the State knew a year before Springfield

Coal even purchased the Industry Mine that the sulfate effluent limitation in the NPDES Permit was not based in science and could not be achieved by the mining industry. *See* Exhibit 3.

Based upon the facts currently known about the State's actions and to serve as a deterrent to the State to engage in similar behavior in the future, the Board should bar the State from not only pursing penalties for the alleged sulfate excursions, but for all excursions. In addition, since no discovery has yet been undertaken in this case, granting summary judgment at this juncture is premature. Additional facts may be uncovered through discovery that may shed additional light on the State's actions in delaying the permit reissuance.

VII. The Doctrine of Laches Bars the State's Right to Recovery Because the State Has Unreasonably Delayed in Reissuing the NPDES Permit, and Its Delay Has Prejudiced Springfield Coal

"Laches is a doctrine which bars a plaintiff relief where, because of delay in asserting a right, the defendant has been misled or prejudiced." *City of Rochelle v. Suski*, 206 Ill.App.3d 497, 501 (1990); *Van Milligan v. Bd. of Fire and Police Com'rs of Vill. Of Glenview*, 158 Ill.2d 85, 93-94 (1994) (finding plaintiff not entitled relief because laches applied). "[I]f the defendant has relied on the circumstances complained of to his detriment and the delay has been unreasonable, it would be inequitable and unjust to grant relief to the plaintiff." *Suski*, 206 Ill.App.3d at 501. Laches is properly asserted against the State under "compelling circumstances." *Hickey v. Ill. Cent. R.R. Co.*, 35 Ill.2d 427, 428-29 (1966)). This Board has previously recognized that defendants have successfully pleaded laches such that they should be provided an opportunity to prove laches. *See, e.g., People v. Tradition Investments, LLC*, 2011 WL 4863706, PCB 11-68, at *11-12 (Oct. 6, 2011) (concluding laches may bar State's recovery because the State had been aware of its right, and the State's delay in asserting its right prejudiced defendant).

In the present case, the State's delay in undertaking its nondiscretionary duty of reviewing and acting upon the NPDES Permit renewal application made nine years ago is prejudicing Springfield Coal. The State's delay in reissuing the renewal of the NPDES Permit is causing Springfield Coal to rack up dozens of sulfate excursions that would not otherwise be excursions under the new sulfate water quality standard that was changed four years ago. Although laches applies to situations in which a person has delayed in exercising a right, the present case is more egregious in that the State is delaying undertaking a duty that the Illinois Legislature has entrusted it with.

Summary judgment is appropriate only when the "moving party's right to judgment is clear and free from doubt." *See Hoover*, 155 Ill.2d at 410. Summary judgment should be denied in this case since material facts exist as to whether the State's delay in issuing the NPDES Permit is prejudicing Springfield Coal.

VIII. Deficiencies with the State's Motion and Larry Crislip's Affidavit Preclude Summary Judgment

The State asserts that the record in support of its Motion is "limited but sufficient." *See* Motion, p. 5. The State's Motion provides that "[t]he proof of these violations is established by the DMRs." *See*, State's Motion at pgs. 2 and 4. Notably however, the State does not include copies of the DMRs with its Motion; rather, the State boldly asserts that the Complaint, the Respondents' Answers, and the affidavit of Larry Crislip constitutes as "the entire record" at this juncture. *Id.* Yet, there are numerous discrepancies between the information in Larry Crislip's affidavit and the data reported on the DMRs. *See* Exhibit 1, at ¶27.

Mr. Crislip's affidavit does not even list the specific dates on which Springfield Coal violated daily maximum effluent limitations. Affidavit of Larry Crislip, pp. 14-17. Rather, Mr.

Crislip only cites the month when Springfield Coal allegedly exceeded the permitted daily maximum effluent limitations. As a result, the State has failed to demonstrate with sufficient evidence that Springfield Coal has violated daily maximum effluent limitations. Also, for example, Mr. Crislip claims that on February 14, 2005 for Outfall 18 the concentration of iron in the discharge was 13.0 mg/l, whereas the DMR shows a value of only 0.43 mg/l. *Id.* This would not be considered an exceedance of the effluent limitation in the NPDES Permit.

Moreover, Mr. Crislip alleges twenty exceedances of the monthly average effluent limitations in the NPDES Permit; however, the DMRs indicate that less than three samples were taken in those particular months. *Id.* As a result, these should not be considered violations. 35 IAC 304.104 provides in pertinent part that:

> **Section 304.104 Averaging**
>
> a) Except as otherwise specifically provided, proof of violation of the numerical standards of this Part shall be on the basis of one or more of the following averaging rules:
>
> 1) No monthly average shall exceed the prescribed numerical standard.
>
> . . .
>
> b) Terms used in subsection (a) shall have the following meanings:
>
> 1) The monthly average shall be the numerical average of all daily composites taken during a calendar month. A monthly average must be based on at least three daily composites.

(emphasis added).

In short, the record supporting the State's Motion is insufficient and there are discrepancies between the DMRs and Mr. Crislip's affidavit that raise material issues of fact. In addition, some of the exceedances of the effluent limitations alleged by Mr. Crislip are not violations and should be dismissed.

ARGUMENTS REGARDING PENALTY DEMANDS

IX. The State's Demand for Civil Penalties is Improper and Unprecedented

The State spends nearly ten pages of its Motion demanding that Springfield Coal and Freeman United Coal Mining Company, LLC be assessed specific monetary penalties. The State alleges that a demand of nearly $500,000 against Springfield Coal will serve as a "reasonable" sanction and a deterrent not only to Springfield Coal, but also to other coal mines. *See* Motion at 18-19. These demands are unjustified, unprecedented, and improper, especially at this stage of the proceeding.

Moreover, the State's position regarding its individual claims against the Respondents is inconsistent. The State acknowledges that Counts III and IV require an evidentiary hearing because of disputed facts, and as a result, are not at issue in the Motion. *Id.* at 4. The State goes so far to say that the Board should conduct a hearing on the merits of Counts III and IV after the Board has imposed monetary sanctions with respect to Counts I and II. *Id.* Because there are numerous factual discrepancies with all of the counts in this case (and especially Counts I and II at issue in the Motion), the Board should not assess damages against the Respondents without first conducting an evidentiary hearing.

A. The State Improperly Demands the Imposition of Civil Penalties in its Motion

The State demands that the Board award a specific amount of penalties at the summary judgment phase. In short, the State is out of line in demanding damages at this stage of the proceedings. Importantly, Illinois case law dictates that the amount of damages to be awarded is a factual question that courts should leave to further evidentiary hearings after liability is determined. *See Mobil Oil Corp. v. Maryland Cas. Co.*, 288 Ill.App.3d 743, 758 (Ill. App. Ct.

1997) ("The amount of fees to be awarded was a factual question that the circuit court left to further evidentiary presentation and argument, after finding liability on summary judgment."). The amount of damages is "uniquely a question of fact" to be determined by the court and not by a dismissal action. *See Doe v. Montessori Sch. Of Lake Forest*, 287 Ill.App.3d 289, 301 (Ill. App. Ct. 1997).

In fact, the Board, on several occasions, has held that it is improper to evaluate and determine penalties at the summary judgment phase. *See Illinois v. Chemetco, Inc.*, 1998 Ill. ENV LEXIS 67, at *2, 29-30 (PCB No. 96-76) (Feb. 19, 1998) (holding that although partial summary judgment was proper, the Board refused to assess a penalty because the factual disputes "preclude the Board from assessing a penalty without a hearing"); *see also Illinois v. Cmty. Landfill Co, Inc.*, 2002 Ill. ENV LEXIS 583, at *2, 24-25 (PCB No. 97-193) (Oct. 3, 2002) (holding that the Board will not rule on the issues of penalty at the summary judgment phase and will instruct the parties to proceed to a hearing to present evidence as to the "appropriate penalty to be levied against respondent for these violations").

If the Board eventually determines that any penalties may be appropriate in this matter, an evidentiary hearing is the suitable venue to discuss the amount of penalties. During a hearing, both the State and Springfield Coal will be able to present evidence regarding what penalties are applicable, if any. This approach is consistent with both Illinois case law as well as with Board precedent.

B. The State Seeks Penalties that are Unprecedented and Unjustified

Even if a motion for summary judgment was the proper forum for the imposition of penalties, the level of civil penalties being pursued by the State against Springfield Coal is completely inappropriate and unprecedented based upon the facts of this case and the Board's

prior decisions. The State's penalty demand of $496,000 against Springfield Coal is significantly greater than any penalty that has been agreed to as part of any settlement of a CWA enforcement case before the Board or imposed by the Board which have alleged solely CWA violations. In fact, during the last eight years, there were only fifteen Board CWA enforcement cases in which the final penalty was even over $25,000.[8] Of these fifteen cases, the average penalty amount was approximately $56,918,[9] and the highest was only $135,000.[10] It is important to note that there are dozens and dozens of other CWA enforcement cases in which the penalties have been less than $25,000. Notably, the average of all CWA enforcement cases before the Board during the past three years was as follows: 2009 was $13,119.05;[11] 2010 was $8,711.67;[12] and 2011 was $13,318.24.[13] These penalties are substantially less than (and are not even in the same universe as) the $496,000 amount that the State is demanding from Springfield Coal. Based upon these calculations alone, the penalty demanded by the State is completely without merit.

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[8] *See* http://www.ipcb.state.il.us/cool/external/cases.aspx (the Board's website providing information regarding final penalties in cases before the Board). To locate similar cases to the present one, under the "Search Criteria," the "Case Type" is "Enforcement" and the "Media Type" is "Water." Upon reviewing all of the cases before the Board that meet this criteria, only fifteen (15) cases had final penalties of over $25,000. Please note that any cases that are still pending or were dismissed before the Board were not evaluated for the purposes of these calculations.

[9] *See* PCB 04-98 ($125,000); PCB 04-138 ($80,000); PCB 04-194 ($30,000); PCB 05-66 ($135,000); PCB 05-110 ($60,000); PCB 05-163 ($65,000); PCB 06-16 ($28,000); PCB 07-29 ($27,000); PCB 07-124 ($84,570); PCB 08-29 ($30,000); PCB 08-044 ($55,000); PCB 09-003 ($40,000); PCB 11-003 ($40,000); PCB 11-019 ($25,699.68); and PCB 12-001 ($28,500). The average penalty for these fifteen cases is $56,917.97.

[10] *See* PCB 05-66, People of the State of Illinois v. Petco Petroleum Corporation., 2/2/2006 Opinion and Order ($135,000).

[11] In 2009, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 21. The total penalties in all of these cases was $275,500. The average penalty was $13,119.05.

[12] In 2010, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 11. The total penalties in all of these cases was $95,828.34. The average penalty was $8,711.67.

[13] In 2011, the number of cases resolved before the Board that were not dismissed or are currently outstanding was 8. The total penalties in all of these cases was $106,545.88. The average penalty was $13,318.24.

Springfield Coal fails to see how this case warrants a penalty that is multiple times higher than any other CWA enforcement case ever before the Board. Significantly, in its Motion, the State even admits that the requested penalties are excessive: "In making these recommendations, the Complainant [the State] is fully aware that a hundred thousand dollar penalty for effluent violations by any operator of any Illinois coal mine exceeds all of the previous penalties imposed by Illinois courts or the Board in similar circumstances." *See* Motion, p. 18. The State has failed to demonstrate that these penalties are appropriate or reasonable in its Motion, and as a result, the State's penalty demand should be denied.

C. Significant Factual Discrepancies Will Impact the Board's Evaluation of the Section 33(c) Factors and the Section 42(h) Criteria

The State attempts to argue that, in weighing the statutory factors listed in 415 ILCS 5/33(c) ("Section 33(c) Factors") and the statutory criteria outlined in 415 ILCS 5/42(h) ("Section 42(h) Criteria"), the Board is able to demonstrate that the State is entitled to summary judgment regarding penalties. For example, one of the Section 33(c) Factors that the Board is to consider involves the "character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people." Addressing this factor, the State argues that the degree of injury "may be inferred" from Springfield Coal's number and frequency of reported effluent exceedances. *See* Motion, at 11. Another Section 33(c) Factor is the "technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source." The State argues that the technical practicability and economic reasonableness is "not in dispute" because compliance with a NPDES permit is both "practical and reasonable." *Id.* at 11-12. The State attempts, in a cursory and baseless manner, to demonstrate that since Springfield Coal cannot dispute or argue the interpretation of any of these statutory factors, the Board must grant summary judgment with

respect to penalties. This approach is unconvincing, largely because of the significant factual disputes in this matter.

For example, when talking about the "degree of injury" the alleged exceedances have caused, the State fails to discuss that, in April of 2010, IEPA proposed that Grindstone Creek, which runs through the Industry Mine, be removed from Illinois Section 303(d) Impaired Water List for sulfates. *See* the State's Response to Springfield Coal's Affirmative Defenses, July 29, 2010, at 3 ("The Complainant admits that the Illinois EPA proposed in April 2010 that Grindstone Creek be de-listed from the Section 303(d) Report."). This request was precipitated because of the change in the water quality standard for sulfate adopted by the Board in 2008. Mr. Mosher, IEPA's expert, provided relevant testimony regarding raising the sulfate standard during the 2007 rulemaking. Mr. Mosher testified that:

> Studies of aquatic life communities downstream from high sulfate and TDS discharges appeared to show that organisms incur no detrimental effect from concentration of these pollutants higher than the existing water quality standards.

See Exhibit 3. In addition, when the State discusses the "technical practicability" of reducing or eliminating the discharges, the State fails to mention the background concentrations of constituents (discussed above) or Mr. Moser's expert testimony that "[u]nder existing General Use water quality standards, permitting many mine discharges without the special rules provided in Subtitle D would be problematic because many mines cannot meet General Use sulfate and TDS standards in effluents at the point of discharge. . . . [R]egardless of the source, sulfate and many of the other constituent of TDS are not treatable by any practical means." *Id.*

Springfield Coal can cite numerous other examples of factual discrepancies that would influence the Board's evaluation of the Section 33(c) Factors and the Section 42(h) Criteria. The

State's mere suggestion that the Board assess penalties against Springfield Coal at the summary judgment stage without evaluating these factors in more detail is inappropriate.

Notably, the Board has already addressed this exact issue. Curiously, the State fails to cite, much less address, these Board decisions in its Motion. In *Illinois v. Chemetco, Inc.*, the Board concluded that since there were factual disputes regarding the Section 33(c) Factors and the Section 42(h) Criteria, these disputes "preclude the Board from assessing a penalty without a hearing." *See Illinois v. Chemetco, Inc.*, 1998 Ill. ENV LEXIS 67, at *29 (PCB No. 96-76) (Feb. 19, 1998). The Board has specifically held that an evidentiary hearing is the appropriate venue for parties to present factual arguments regarding the Section 33(c) Factors and the Section 42(h) Criteria. *See Illinois v. Cmty. Landfill Co, Inc.*, 2002 Ill. ENV LEXIS 583, at *24-25 (PCB No. 97-193) (Oct. 3, 2002) (holding that the Board will not rule on the penalty issues at the summary judgment phase, especially because the Board's evaluation of the Section 42(h) Criteria involves an evaluation of factual determinations, and the Section 42(h) Criteria is "not appropriately discussed in an order on cross motions for summary judgment").

There is no reason that the Board should deviate from its previous decisions in which it had evaluated the Section 33(c) Factors and Section 42(h) Criteria during an evidentiary hearing after the summary judgment stage. Accordingly, the State's demand for the Board to issue penalties at this stage of the proceeding is improper and should be denied.

CONCLUSION

WHEREFORE, Respondent, Springfield Coal Company, LLC respectfully requests that the Illinois Pollution Control Board deny the State's Motion for Partial Summary Judgment and for any other relief that the Board determines is appropriate.

Dated: April 27, 2012

BRYAN CAVE LLP

By: /Dale A. Guariglia/

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Attorneys for Respondent, Springfield Coal Company, LLC

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

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NOTICE OF ELECTRONIC FILING

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PLEASE TAKE NOTICE that on April 27, 2012, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., LLC's Response to the People of the State of Illinois' Motion for Partial Summary Judgment, copies of which are herewith served upon you.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	**PCB NO. 2010-061 and 2011-002**
	)	**(Consolidated – Water --**
	)	**Enforcement)**
FREEMAN UNITED COAL MINING COMPANY, LLC,	)	
a Delaware limited liability company, and	)	
SPRINGFIELD COAL COMPANY, LLC,	)	
a Delaware limited liability company,	)	
	)	
Respondents.	)	

AFFIDAVIT OF THOMAS J. AUSTIN

Thomas J. Austin, being first duly sworn upon oath, deposes and states as follows:

1. My name is Thomas J. Austin. I am currently the Vice President of Human Resources and Government Relations for Springfield Coal Company, LLC. ("Springfield Coal"). I have held this position since Springfield Coal acquired the Industry Mine from Freeman United Coal Mining Company, LLC ("Freeman United") on August 31, 2007.

2. From November 28, 2005 through August 31, 2007, I was the Vice President of Human Resources and Government Relations for Freeman United. From December 27, 2004 through November 28, 2005, I was the Director of Environmental Health and Safety for Freeman United.

3. As Director of Environmental Health and Safety at Freeman United and as Vice President of Human Resources and Government Relations for Freeman United and Springfield Coal, I was aware that the discharge monitoring reports ("DMRs") were submitted to the Illinois Environmental Protection Agency ("IEPA").

4. The DMRs that Freeman United and Springfield Coal submitted provided IEPA with detailed information on the specific levels of regulated constituents in discharges from the regulated outfalls at the Industry Mine.

5. On or about March 11, 2005, Freeman United received Violation Notice W-2005-00167, which is attached as Exhibit 1A to my affidavit. This violation notice referenced three violations of the Industry Mine's manganese effluent limit at Outfall 019.

6. On May 19, 2005, in response to the March 11, 2005 violation notice, Freeman United submitted a proposed Compliance Commitment Agreement ("CCA") to IEPA. A copy

of the May 19, 2005 CCA is attached as Exhibit 1B to my affidavit. The CCA outlined a number of specific steps that Freeman United intended to undertake to address the manganese effluent violations referenced in the violation notice.

7. On or about June 16, 2005, IEPA notified Freeman United that the CCA was accepted, although IEPA imposed an additional monitoring requirement. A true and correct copy of the June 16, 2005 IEPA letter is attached as Exhibit 1C to my affidavit.

8. During the two-year period that the June 2005 CCA was in effect, Freeman United continued to submit DMRs to IEPA in accordance with its NPDES permit.

9. I understood that once IEPA approved the CCA, Freeman United had addressed, to the satisfaction of IEPA, the alleged violations that were the subject of the March 11, 2005 NOV. I am not aware that IEPA or any other state agency between June 2005 and March 2007 advised Freeman United of any intent to take any further enforcement action related to effluent discharges from the Industry Mine.

10. As a general matter, had IEPA notified Freeman United of additional violations and/or issues, I would have ensured that the CCA that Freeman United submitted responded to those violations or issues.

11. In the Spring of 2006, Freeman United commissioned Key Agricultural Services, Inc. to prepare a Manganese Case Study of the Industry Mine. The Case Study concluded that "the Mn levels found in the water of retention pond 19 are most likely due to the naturally occurring Mn levels of the soil material in the region and not due to acid rock drainage." A true and correct copy of the Manganese Case Study is attached as Exhibit 1D to my affidavit.

12. On March 30, 2007, Freeman United sent IEPA a proposed two-year CCA extension. A true and correct copy of the March 30, 2007 proposed CCA extension is attached as Exhibit 1E to my affidavit. This proposed CCA extension also enclosed a copy of the Manganese Case Study.

13. On or about July 13, 2007, Freeman United received a letter from IEPA relating to Freeman United's March 30, 2007 proposed CCA extension. A true and correct copy of the July 13, 2007 IEPA letter is attached as Exhibit 1F to my affidavit.

14. On August 14, 2007, Freeman United sent a letter to IEPA stating that effective September 1, 2007, Springfield Coal would be the owner/operator of the Industry Mine and requesting transfer of the NPDES permit. A true and correct copy of the August 14, 2007 Freeman United letter is attached as Exhibit 1G to my affidavit.

15. On August 30, 2007, Freeman United submitted a revised CCA extension request to IEPA that responded to IEPA's comments in its July 13, 2007 letter. A true and correct copy of the August 30, 2007 CCA is attached as Exhibit 1H to my affidavit.

16. IEPA did not formally respond in writing to the August 30, 2007 CCA extension request. However, after the Industry Mine was sold to Springfield Coal, I had a telephone conversation in September of 2007 with IEPA in which I was advised by IEPA to continue to operate the Industry Mine pursuant to the terms of the August 30, 2007 CCA extension request.

17. It was my understanding from IEPA's representations that Springfield Coal was operating under a valid and enforceable CCA from August 30, 2007 until August 30, 2009. During this two year time period, Springfield Coal was working with IEPA pursuant to the terms of this August 30, 2007 CCA.

18. Except with respect to the telephone conversation referenced in paragraph 16 above, between July 13, 2007 and October 8, 2009, Freeman United and/or Springfield Coal did not receive any written communications from IEPA concerning: (a) Freeman United's August 14, 2007 transfer letter; (b) the August 30, 2007 CCA extension letter; or (c) any issues with the Industry Mine's discharges not meeting the effluent limitations in the NPDES Permit. As a general matter, had IEPA notified Freeman United and/or Springfield Coal of additional violations and/or issues, I would have ensured that the August 30, 2007 CCA responded to those violations or issues.

19. During the period of time I was employed by Freeman United and Springfield Coal, we exercised our best efforts to comply with all applicable effluent limits in the Industry Mine's NPDES permit. The CCAs that were submitted included the technically practicable and economically feasible means to enable the Industry Mine to meet the effluent limits in its NPDES permit.

20. On April 21, 2010, Springfield Coal sent a letter to Mr. Chad Kruse at IEPA seeking clarification from IEPA regarding the application of 35 IAC 406.106(b) to the effluent limitations in the Springfield Coal's NPDES Permit. Springfield Coal never received either an oral or written response from IEPA to the April 21, 2010 letter. A true and correct copy of the April 21, 2010 letter is attached as Exhibit 11 to my affidavit.

21. On July 20, 2010, Springfield Coal met with IEPA to discuss the status of the NPDES renewal application which was submitted by Freeman United on August 15, 2003. During the meeting, when we asked IEPA where in the queue the NPDES renewal application was for consideration, IEPA informed Springfield Coal that the renewal application from 2003 "was not even in the queue."

22. Sampling of the streams traversing the Industry Mine property was conducted in 1979 prior to any mining operations commencing on the property. I have reviewed the data generated from this sampling and it shows that there were elevated levels of a number of constituents, including sulfate, manganese, iron, total suspended solids (TSS), and pH in the surface water. This sampling identified the following constituents and maximum concentrations: manganese (10.4 mg/l), sulfates (601 mg/l), and iron (3.54 mg/l). All of these concentrations would be considered exceedances of the Industry Mine's current NPDES permit. This data is reported in the true and correct copies of the relevant

portions of the Environmental Impact Statement for the Proposed Freeman United Coal Mining Company Industry Mine Site, dated June 19, 1979, and Freeman United Coal Mining Company Industry Mine Surface Disturbance Report Volume I, which are attached as Exhibits 1J and 1K to my affidavit.

23. In 1991 and 1992, the Industry Mine planned to expand its operations and had samples taken of surface water runoff in the areas where many of the now existing ponds were to be built. This area had been subject to some previous historic underground coal mining by other companies. I have reviewed the data generated from this sampling and it identified the following constituents and maximum concentrations: manganese (20.7 mg/l), sulfates (900 mg/l), iron (15.6 mg/l), TSS (120 mg/l), and pH (3.45). All of these concentrations would be considered exceedances of the Industry Mine's current NPDES permit. This data is reported in the true and correct copy of the relevant portions of the Freeman United Coal Mining Company Industry Mine Permit Application No. 261, dated July 1, 1992, which is attached as Exhibit 1L to my affidavit.

24. Sampling of the streams traversing the Industry Mine property have been conducted since 2003. I have reviewed the data generated from such sampling and it has regularly shown that the concentrations of iron, chlorides, and TSS are at higher concentrations upstream of Industry Mine rather than downstream. Moreover, the upstream sampling has identified regular occurrences of iron and TSS at concentrations in excess of the effluent limits in the Industry Mine's NPDES Permit. The following are the effluent limitations in the NPDES Permit and examples of upstream sampling results:

NPDES Permit Limits	**Iron - mg/l**	**Total Suspended Solids (TSS) mg/l**
30 Day Avg.	3.0	35
Daily Max	6.0	70

Date of Upstream Sample	**Iron – mg/l**	**Total Suspended Solids (TSS) mg/l**
7/18/2003	32.5	1900
3/5/2004	4.77	153
4/22/2009		63
10/30/2009	12.4	83
11/30/2009		167
1/24/2010		86
3/11/2010	4.86	203
7/21/2010	18.3	387
2/28/2011	19.6	114
4/25/2011		73
5/25/2011	36.2	760

True and correct copies of the laboratory reports from which this data is taken are attached as Exhibits 1M to my affidavit.

25. At the Industry Mine, chemical addition has been conducted at Ponds 18 and 19 on a periodic basis mainly to lower the manganese concentrations by attempting to raise the pH in the ponds. Chemical addition has been conducted very sporadically at Ponds 26, 2, and 3.

26. I have reviewed Larry Crislip's March 1, 2012 affidavit and the exceedances he alleges of the sulfate effluent limitation in the NPDES Permit. I have also reviewed the sulfate data reported on the DMRs for the Industry Mine and have reviewed the current water quality standard for sulfate adopted by the Illinois Pollution Control Board on September 19, 2008. If the NPDES Permit for the Industry Mine had incorporated the current sulfate standard, there would have only been 19 excursions for sulfate from September 2008 through 2011 as opposed to the 77 excursions alleged in Larry Crislip's affidavit, a reduction of over 75%.

27. I have reviewed Larry Crislip's March 1, 2012 affidavit and the exceedances he alleges of the effluent limitations in the NPDES Permit. I have also reviewed the data reported on the DMRs for the Industry Mine that were submitted to IEPA. From my review of these documents, I have noted that there are numerous discrepancies between the information in Larry Crislip's affidavit and the data reported on the DMRs. For example Mr. Crislip claims that on February 14, 2005 for Outfall 18 the concentration of iron in the discharge was 13.0 mg/l, whereas the DMR shows a value of only 0.43 mg/l. This would not be considered an exceedance of the effluent limitation in the NPDES Permit. Also, Mr. Crislip identifies the following as exceedances of the monthly average effluent limitations in the NPDES Permit, however, the DMRs indicate that less than three samples were taken in those particular months and therefore pursuant to 35 IAC 304.104(b), which requires a monthly average to be based on at least three daily composites, these would not be exceedances:

Constituent	Month/Year	Outfall	Permit Limit	Actual Discharge
Iron	January 2005	018	3.5 mg/L	4.42 mg/L
Iron	January 2005	024W	3.0 mg/L	4.65 mg/L
Iron	January 2005	029	3.0 mg/L	4.98 mg/L
Iron	February 2005	029	3.0 mg/L	3.08 mg/L
Manganese	February 2005	018	2.0 mg/L	10.3 mg/L
Manganese	February 2005	019	2.0 mg/L	11.3 mg/L
Manganese	March 2005	019	2.0 mg/L	6.76 mg/L
Manganese	June 2005	018	2.0 mg/L	6.66 mg/L
Manganese	June 2005	019	2.0 mg/L	5.78 mg/L
Manganese	June 2006	019	2.0 mg/L	3.38 mg/L
Manganese	January 2007	019	2.0 mg/L	7.95 mg/L
Manganese	February 2007	019	2.0 mg/L	15.2 mg/L
Manganese	May 2007	019	2.0 mg/L	5.66 mg/L
Manganese	January 2008	019	2.0 mg/L	12.9 mg/L
Manganese	December 2008	018	2.0 mg/L	2.2 mg/L

Manganese	January 2009	018	2.0 mg/L	2.165 mg/L
Manganese	March 2009	026	2.0 mg/L	2.725 mg/L
TSS	January 2005	003	35.0 mg/L	48.5 mg/L
TSS	January 2005	018	35.0 mg/L	38 mg/L
TSS	February 2008	029	35.0 mg/L	64 mg/L

This concludes my affidavit.

Affiant:

Thomas J. Austin

Subscribed and sworn to before me this 27th day of April, 2012.

Notary Public

OFFICIAL SEAL
TRUDY D MANIS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:08/06/14

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7002 3150 0000 1256 3274
RETURN RECEIPT REQUESTED

March 11, 2005

Freeman United Coal Mining Company
Industry Mine
P.O. Box 260
Industry, Illinois 61440
Attention: Mr. Michael T. Stevinson, Mine Engineer

Re: Violation Notice: W-2005-00167
Facility I.D.: IL0061247

Dear Mr. Stevinson:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based upon review of available information and investigation by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each, an explanation of the activities that will be implemented and the time schedule for the completion of each activity. Also, if a pollution prevention activity will be implemented, indicate that intention in any written response. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject the proposal within 30 days of receipt.

Exhibit 1A

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to BEVERLY BOOKER at the ILLINOIS EPA, BUREAU OF WATER, CAS #19, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276. All communications must include reference to this Violation Notice number, W-2005-00167.

Questions regarding this Violation Notice should be directed to BARB CONNER at 217/782-9720.

FAX 217-557-1407

Sincerely,

Michael S. Garretson

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

Attachment

Bob Moser
Section Manager Water Quality

ATTACHMENT A

IL0061247

FREEMAN UNITED COAL MINING COMPANY **VIOLATION NOTICE: W-2005-00167**
INDUSTRY MINE

Questions regarding the violations identified in this attachment should be directed to Barb Conner at (217) 782-9720.

A review of information available to the Illinois EPA indicates the following violation of statutes, regulations or permits. Included with the violation is an explanation of the activity the Illinois EPA believes may resolve the violation including an estimated time period for resolution.

Effluent Violations

Review the treatment plant operations/operational procedures and evaluate the treatment equipment in order to correct the deficiencies which caused the violations. Compliance is expected to be achieved within 45 days.

Violation Date	Violation Description
09/13/2004	Outfall 019- Manganese Effluent Limit
Rule/Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit
11/15/2004	Outfall 019-Manganese Effluent Limit
Rule/Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit
12/28/2004	Outfall 019-Manganese Effluent Limit
Rule/ Reg.:	Section 12 (a) and (f) of the Act, 415 ILCS 5/12 (a) and (f) (2004), 35 Ill. Adm. Code 406.106, 304.141 (a), NPDES Permit

Freeman United
A GENERAL DYNAMICS COMPANY

May 19, 2005

Ms. Beverly Booker
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
Facility I.D. IL0061247
Violation Notice: W-2005-00167

Dear Ms. Booker:

With regard to the March 11, 2005 Violation Notice issued to Freeman United Coal Mining Company ("Freeman") and pursuant to Section 31(a)(5) of the Illinois Environmental Protection Act, we respond as follows:

Industry Mine. The aerial photograph transmitted herewith depict Freeman's Industry Mine, a surface coal mine. The coal seam is fairly close to the surface in this area and rests on a stratum of fire clay. The mine was opened in 1982 and has operated since that time under a series of mining permits issued by the Office of Mines & Minerals of the Illinois Department of Natural Resources and others. Pond 19, outlined in blue on the aerial photograph, was constructed as a sedimentation pond to collect waters from a drainage area located within the boundaries of Mining Permit 261. After that area was mined, Freeman proceeded with the reclamation work for that area as specified in the Reclamation Plan. The specified contouring and grading work in the Pond 19 surface drainage area was completed and the seeding work was commenced after mining. In 2004, final reclamation work was performed within the drainage area, including the placement of a two-foot clay cap in the area outlined in green on the aerial photograph. The seeding of that area was commenced in November of 2004 and has been largely completed. All of the drainage area from which Pond 19 collects runoff and seepage is a "Reclamation Area", as defined in 35 ILAC 402.101.

Prior Mining. When the initial application for a mining permit for the future Permit 261 area was prepared, Freeman noted that there was evidence of prior coal mining in the areas upstream of Pond 19. An excerpt from "Part II, PREMINING INFORMATION," of the original permit application is enclosed to demonstrate this. Runoff and seepage from these areas was affecting water quality within the Permit Area prior to any mining activity by Freeman. Results of analyses at downstream locations on Grindstone and Camp Creeks, which are attached, seem to reflect little if any negative impact on those streams.

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

Groundwater Seeps. Groundwater seeps, up gradient of Pond 19 became increasingly prevalent after 1995. Several years ago the rate of flow from these seeps into Pond 19 was estimated as approaching 100 gpm. The groundwater flowing from the seeps exhibited relatively high concentrations of manganese. Over the past several years, Freeman has applied a number of treatment technologies in order to reduce the manganese levels before discharge from Pond 19. Among other things:

1. The channels from the seeps to Pond 19 have been lined with limestone rip rap to increase aeration before the groundwater reaches Pond 19.

2. Approximately 20,000 cubic yards of material has been excavated from the upper portions of Pond 19, increasing its capacity to approximately 30,000 cubic yards, essentially providing a two cell system.

3. Soda ash briquettes in a metal aeration basket have been placed periodically in the flow from the seeps near the upper end of Pond 19.

4. Windmills have been constructed to drive aeration units in the pond.

5. Hydrated limestone slurry is being applied on a weekly basis except when pond surface is frozen.

Despite all of the above, the combined treatment steps do not consistently reduce magnesium concentrations at the outfall of Pond 19 to meet the discharge limits set out on page 4 of the NPDES Permit.

Clay Cap. Prior to 2004, Freeman personnel observed an area within Pond 19's drainage area in which surface water collected after a rain event and drained rapidly into the unconsolidated material of the overburden. It is assumed this water followed a pathway through the spoil and overburden to the fire clay stratum thereby saturating the overlying material and proceeding along the surface of the fire clay to the seeps. Based on that assumption and as mentioned above, a two-foot clay cap was placed over the porous area to seal off this pathway. Since that cap has been put in place, the flow from various seeps up gradient from Pond 19 has decreased. However, it will take a number of months for the saturated material above the fire clay seam to drain and to establish that the clay cap has effectively sealed the source of the seepage.

NPDES Permit No. IL 0061247. Page 4 of the current NPDES Permit covered the outfall for Pond 19 as long as it continued to be "Mine Drainage", and specified manganese limits of 2.0 mg/L (30-day average) and 4.0 mg/L (daily maximum). Page 12 of the Permit covers the outfall for Pond 19 since it became a "Reclamation Area Drainage", and consistent with 35 ILAC 406.109, Page 12 does not establish a limit for manganese. Freeman hereby requests that the Agency acknowledge that the waters being collected in Pond 19 at this time constitute Reclamation Area Drainage, and that the outfall from Pond 19 will henceforth be covered by the provisions of page 12 of the Permit.

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

Compliance Commitment Agreement. Freeman hereby proposes the following as its Compliance Commitment Agreement:

1. The term of this Agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this Agreement:

   a. Freeman will continue to maintain the forms of treatment, as set out above, to control the manganese levels in the discharge from Pond 19;

   b. Freeman will monitor the effluent discharging from Pond 19 as required by page 12 of the permit, except that;

   c. Freeman will monitor the rate of flow from the pond.

3. Not later than sixty (60) days before the expiration of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectfully submitted,

FREEMAN UNITED COAL MINING COMPANY

By _____
Thomas J. Austin
Director of Environmental, Health and Safety

Attachments

cc: Ron Morris, IEPA

Safety \ Environmental \ 63sfo11.doc

PO Box 4630
Springfield, IL 62708
Tel 217 698 3300
Fax 217 698 3381

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7004 2510 0001 8653 1689
RETURN RECEIPT REQUESTED

June 16, 2005

Mr. Thomas J. Austin
Freeman United
PO Box 4630
Springfield, Illinois 62708

Re: Compliance Commitment Conditional Acceptance
Violation Notice: W-2005-00167
Facility I.D.: IL0061247-Industry Mine

Dear Mr. Austin:

The Illinois Environmental Protection Agency ("Illinois EPA") **accepts with a condition** the Compliance Commitment Agreement ("CCA") proposed by Freeman United dated May 19, 2005 in response to the Violation Notice dated March 11, 2005. The CCA as proposed by Freeman United is as follows:

1. The term of this Agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this Agreement:

   a. Freeman will continue to maintain the forms of treatment, as set out in the May 19, 2005 CCA, to control the manganese levels in the discharge from Pond 19;

   b. Freeman will monitor the effluent discharging from Pond 19 as required by page 12 of the permit, except that;

   c. Freeman will monitor the rate of flow from the pond.

3. Not later than sixty (60) days before the expiration of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Exhibit 1C

Pursuant to Section 31 (a) (7) of the Illinois Environmental Protection Act, the Illinois EPA proposes the addition of the following condition to the CCA. During the term of the CCA, Freeman shall monitor and report the parameter of manganese at Outfall 019 as required by page 4 of the current NPDES Permit. Failure to fully comply with each of the commitments and the schedule for achieving each commitment as contained in the CCA may, at the sole discretion of the Illinois EPA, result in referral of this matter to the Office of the Attorney General, the State's Attorney or the United States Environmental Protection Agency.

The CCA does not constitute a waiver or modification of the terms and conditions of any license or permit issued by the Illinois EPA or any other unit or department of local, state or federal government or of any local, state or federal statute or regulatory requirement. All required permits or licenses necessary to accomplish the commitments stated above and comply with all local, state or federal laws, regulations, licenses or permits must be acquired in a timely manner. The need for acquisition of any licenses or permits does not waive any of the times for achieving each commitment as contained in the CCA.

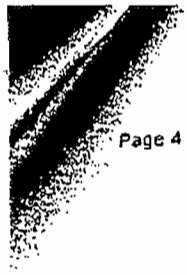
Questions regarding this matter should be directed to Barb Conner at 217/782-9720. Written communications should be directed to Beverly Booker at the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, IL 62794-9276, and all communications shall include reference to your Violation Notice Number W-2005-00167.

Sincerely,

Michael S. Garretson/k

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

NOTE: ON 6/20/05 RON MORRIS CALLED AND SAID TO SAMPLE MANGANESE QUARTERLY AND SEND RESULTS TO Him & Kruslip.



Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:						
Outfalls*:	018, 019 (Acid Mine Drainage)					
Flow (MGD)					Measure When Monitoring	
Total Suspended Solids			35.0	70.0	***	Grab
Iron (total)			3.5	7.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity				1/month	Grab
Sulfates				1800	***	Grab
Chlorides				500	***	Grab
Manganese (total)			2.0	4.0	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

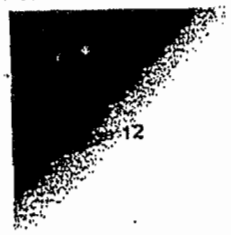
Pollutant or Pollutant Property	Effluent Limitations
Iron	7.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

Pollutant or Pollutant Property	Effluent Limitations
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times



Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
Upon completion of Special Condition No. 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:						
Outfalls*: 018, 019 (Reclamation Area Drainage)						
Flow (MGD)					Measure When Monitoring	
Settleable Solids				0.5 ml/l	1/month	Grab
pH			The pH shall not be less than 6.0 nor greater than 9.0		1/month	Grab
Sulfates				1800	1/month	Grab
Chlorides				500	1/month	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

Key Agricultural Services, Inc.

114 Shady Lane • Macomb, Illinois 61455 • Tel: (309) 833-1313

Manganese Case Study
Freeman Mine – Industry, Illinois

Introduction

Retention pond 19 located southwest of the intersection of County roads 125 North and 900 East in McDonough County has been testing above acceptable levels for Manganese (Mn) concentration.

Soil Scientists with Key Agricultural Services Inc. were digging soil pits to an approximate depth of 50 inches and noted that Mn concretions are common throughout the soil profile below the surface horizon. The presence of the Mn accumulations in the shallow depths of the soil profile raises the question as to whether the Mn levels found in the pond water are elevated due to acid rock drainage, or to the natural Mn concentrations associated with the parent material and soil forming factors of the undisturbed soils common to the region.

The dominant soil types originally located in the area of the mine that now drain into the pond are Rozetta and Keomah. The NRCS soil profile descriptions for the Rozetta and Keomah soil series note the presence of Mn accumulations beginning at 26 inches and the soil surface, respectively. Due to the natural occurrence of accumulated Mn in the undisturbed soil profiles it is possible that the concentration of Mn in the water of the pond is originating from the inherent concentrations of Mn and not that of acid rock drainage.

Methods

Six sample sites were selected in an undisturbed area adjacent to the mine location. Three of those sites were located in Rozetta and three in Keomah soils. Six corresponding sites were chosen from the reclaimed fields that drain into the pond. Three of the reclaimed sites represent the topographic-position of a Rozetta and three represent that of a Keomah soil.

Six inch soil samples were taken to a depth of 72 inches at each of the 12 locations. Each sample was analyzed in the laboratory for pH and Mn concentration.

The data obtained was then plotted by depth and comparisons were made between the values found in the undisturbed sites versus that of the reclaimed sites. Statistical significance was determined within each sample depth and calculated at 95% confidence.

KEY-AG

Summary of Results

pH

The pH levels found in the reclaimed soils ranged from 4.91 to 7.02. The pH levels found in the undisturbed soils ranged from 4.42 to 6.87.

The average pH of the undisturbed samples in each six inch sample range as well as over the entire profile was lower than that of the reclaimed soils (Table 1). The lowest pH readings obtained in each depth increment were all found in the undisturbed samples with the exception of the 60-66 inch range where both the reclaimed and undisturbed soils had a low pH of 5.39.

The lowest pH level found at each sample depth in the reclaimed soil profiles were never lower than the lowest pH level found at the same sample depth of the undisturbed soils (Graph 1).

In the surface 12 inches of all profiles, 3 of the 4 (75.0%) pH levels that were significantly lower were from the undisturbed soil profiles. In the upper 36 inches 15 of the 16 (93.75%) samples with significantly lower pH were from the undisturbed soils. From 36 to 72 inches 10 of the 16 (62.5%) samples with significantly lower pH levels were from the undisturbed soil profiles.

In the 12 sample depths tested, 2 (16.67%) depths had more reclaimed samples with significantly lower pH levels than undisturbed samples and the remaining 10 (83.33%) sample depths had more undisturbed samples with significantly lower pH levels than reclaimed samples (Graph 1).

A total of 72 samples were collected and analyzed for each of the reclaimed and undisturbed soils. 7 (9.72%) reclaimed samples and 25 (34.72%) undisturbed samples had significantly lower pH levels than the other samples collected at those depths.

Manganese

In all but one of the 12 soil profiles collected the Mn concentrations decreased from the surface sample down to 18 inches. The Mn content in most samples remained at relatively minimal levels from 12 to 72 inches, ranging from 8.9 to 67.8 ppm. At each sample depth one to five samples were found to be significantly higher in Mn than the rest of the samples at that same depth (Graph 2).

The reclaimed soil profiles contain less total Mn than the undisturbed soils both on average and in total from 0-12 inches, 30-72 inches, and through the entire 72 inch profile. The reclaimed soils contained more Mn than the undisturbed soils only through the 12-30 inch range (Table 2).

In the surface 12 inches of all profiles, 6 of the 7 (85.71%) Mn levels that were significantly higher were from the undisturbed soil profiles. In the upper 36 inches 10 of the 18 (55.56%) samples with significantly higher Mn concentrations were from the undisturbed soils. From 36 to 72 inches 11 of the 14 (73.33%) samples with significantly greater Mn concentrations were from the undisturbed soil profiles.

In the 12 sample depths tested, 2 (16.67%) depths had more reclaimed samples with significantly high Mn levels than undisturbed samples, 2 (16.67%) depths had equal incidences of

significantly high Mn levels between the undisturbed and reclaimed samples, and 8 (66.67%) had more undisturbed samples with significantly high Mn concentrations than reclaimed samples (Graph 2).

A total of 72 samples were collected and analyzed for each of the reclaimed and undisturbed soils. 12 (16.67%) reclaimed samples and 21 (29.17%) undisturbed samples had significantly higher Mn concentrations than the other samples collected at those depths.

Conclusions

Although all twelve soil profiles tested have lower pH levels than typically recommended for the row crops planted in the region, the pH of the reclaimed soils is higher than that of the undisturbed soils indicating there is not increased acidity due to acid rock. This data also shows the Mn levels found in both the surface and sub-surface of the undisturbed soil profiles are higher than those found in the reclaimed soils and the undisturbed samples have far more incidences of significantly high Mn concentration than the reclaimed soils. Therefore, the Mn levels found in the water of retention pond 19 are most likely due to the naturally occurring Mn levels of the soil material in the region and not due to acid rock drainage.

KEY-AG

Comparison of pH Data

Table 1	Undisturbed Samples		Reclaimed Samples	
Sample Depth (inches)	Average pH	Lowest pH	Average pH	Lowest pH
0-6	5.75	5.23	6.19	5.31
6-12	5.28	4.52	5.95	5.04
12-18	4.83	4.59	5.55	4.98
18-24	4.75	4.42	5.49	5.01
24-30	4.80	4.47	5.67	4.91
30-36	4.96	4.49	5.60	4.97
36-42	5.16	4.65	5.61	4.99
42-48	5.14	4.73	5.78	5.02
48-54	5.39	4.92	6.06	5.08
54-60	5.63	5.20	6.10	5.38
60-66	5.79	5.39	5.96	5.39
66-72	5.87	5.29	5.83	5.40

= the lowest value for that depth when comparing Undisturbed and Reclaimed sites.

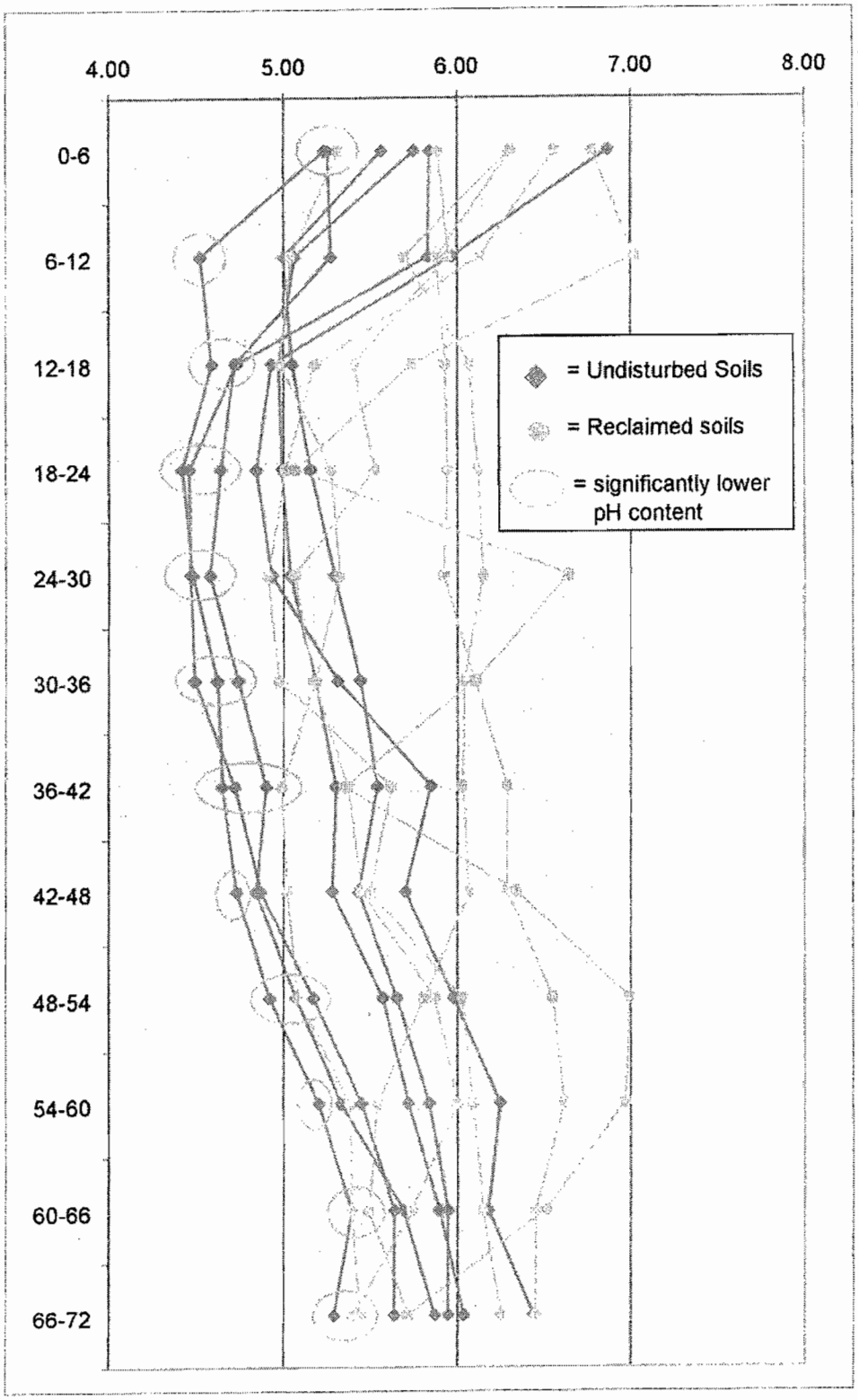
Comparison of Mn Data

Table 2	Undisturbed Samples		Reclaimed Samples	
Sample Depth (inches)	Average Mn	Highest Mn	Average Mn	Highest Mn
0-6	128.52	188.50	86.22	106.10
6-12	76.75	132.10	65.58	115.10
12-18	43.35	81.50	53.38	124.80
18-24	25.73	36.90	54.98	139.40
24-30	28.03	38.70	54.08	130.40
30-36	59.85	90.80	52.30	128.60
36-42	78.02	216.30	46.65	150.20
42-48	68.90	140.20	41.55	103.10
48-54	65.28	115.50	45.47	96.20
54-60	74.60	197.40	36.07	73.20
60-66	65.82	111.20	31.32	45.80
66-72	47.82	60.80	37.70	56.30

= the highest value for that depth when comparing Undisturbed and Reclaimed sites.

KEY-AG

Graph 1) **pH with Depth**

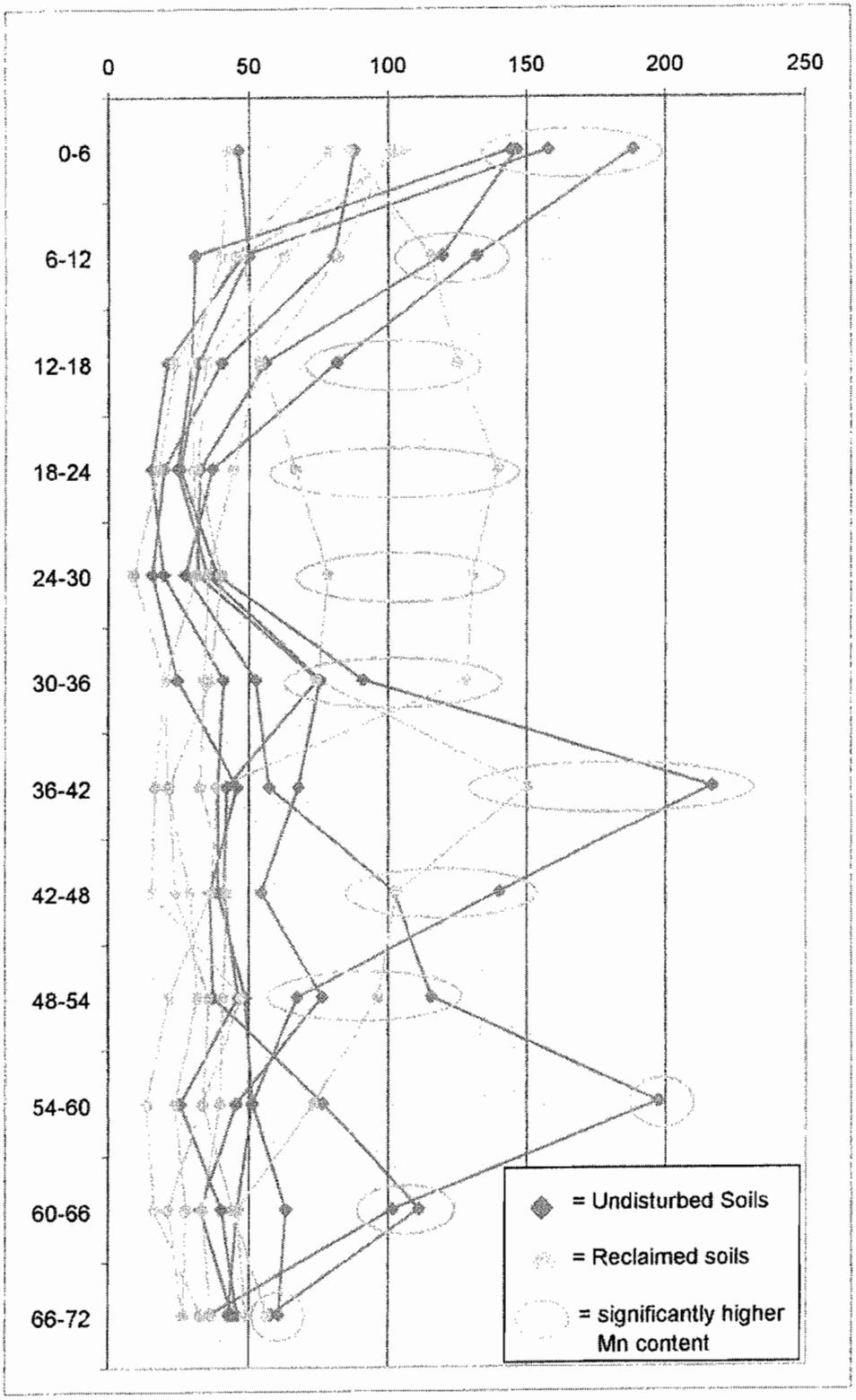


Incidences of significantly (95%) lower pH concentrations	
Undisturb.	**Reclaimed**
2	1
1	0
3	0
3	0
3	0
3	0
3	1
1	0
3	1
1	0
1	2
1	2
25	7

Total incidences of significantly lower pH levels in the soils =

KEY-AG

Graph 2) Mn Concentration with Depth



Incidences of significantly (95%) higher Mn concentrations	
Undisturb.	Reclaimed
4	0
2	1
1	1
0	2
0	2
3	2
1	1
2	1
3	1
1	0
2	0
2	1
21	12

Total incidences of significantly higher Mn Concentrations in the soils =

FREEMAN UNITED

Freeman United Coal Mining Company

March 30, 2007

Ms. Barb Conner
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
NPDES Facility I.D. IL0061247
Violation Notice: W-2005-00167
Pond 19 Compliance Commitment Agreement Status

Dear Ms. Conner,

With regard to the status of the Compliance Commitment Agreement conditionally accepted by the Agency on June 16, 2005, Freeman United Coal Mining Company responds as follows:

Pond 19 Discharges

The outfall from Pond 19 has been monitored as a reclamation area drainage outfall (with additional Total Manganese monitoring) since the term of this agreement began. During this term, the base flow at the outfall has decreased from 80 to 95 gallons per minute to a level of 20 to 30 gallons per minute. Thirty-one samples have been analyzed for Total Manganese during the term; of these, 12 have been below 2 mg/L, the 30-day average standard, 9 have been in the range of 2 to 4 mg/L, and 10 have exceeded the maximum standard level of 4 mg/L. The exceedances, much less frequent than in the previous 2-year period, have occurred despite continued regular treatment of the influent to the pond and the pond itself. For the other parameters monitored, there have been no exceedances of permit limits for pH, Total Settleable Solids, and Chlorides. There have been 8 exceedances of the permit limit for Sulfates; however these would not have been exceedances under the proposed standard currently under review by the Illinois Pollution Control Board.

Upstream Drainage Area Study

In the Spring of 2006, Key Agricultural Services, Inc. was retained to determine problems with crop productivity results in several areas at the Industry Mine, including the area up-drainage of Pond 19. When penetrometer readings in that area had high values, they decided to dig test pits to possibly determine the cause. In those test pits, they discovered several manganese nodules, so they were retained to explore this further.

Six test pits each were excavated in similar soils unaffected by the mining operation and in those that were reclaimed up-drainage of Pond 19. Soils in the pits were sampled at 6 inch intervals from the ground surface to six feet below the surface. The samples were analyzed for paste pH and Manganese leachate (Mehlich No. 3 Extraction [with 2.5 pH Reagent]). Results indicated low pH levels in both groups at all levels (lowest

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Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

4.42 units in the unaffected soils and 4.91 units in the reclaimed soils) as well as high Manganeseat all levels (as high as 216.3 mg/L in the unaffected soils and 150.2 mg/L in the reclaimed soils). The lowest average (6 samples each at each 6" interval in the pits) Manganese levels were 36.9 mg/L in the unaffected soils at the 18-24" interval and 45.8 mg/L in the reclaimed soils at the 60-66" interval.

The study (copy enclosed) concluded that "the Manganese levels found in the water of Pond 19 are most likely due to the naturally occurring Manganese levels of the soil material in the region and not due to acid rock drainage."

Compliance Commitment Agreement

1. The term of this agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this agreement:

    a. Freeman will continue to maintain the forms of treatment, as set out in the May 12, 2005 letter to the Agency, to control the manganese levels in the discharge from Pond 19;

    b. Freeman will continue to monitor the effluent from Pond 19 as a Reclamation Area Discharge one time per month with the following parameters monitored: pH, Total Settleable Solids, Sulfates, Chlorides, Total Manganese, and Flow Rate.

    c. Freeman will monitor the influent to Pond 19 and Grindstone Creek downstream from the Pond 19 effluent monthly when monitoring the Pond 19 effluent with the following parameters monitored: pH and Total Manganese.

3. Not later than sixty (60) days before the expiration date of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectively submitted,

FREEMAN UNITED COAL MINING COMPANY

By: Steven C. Phifer

Steven C. Phifer, Environmental Engineer

PO Box 259
Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7004 2510 0001 8619 5959
RETURN RECEIPT REQUESTED

July 13, 2007

Mr. Steven C. Phifer
Freeman United Coal Mining Company
P.O. Box 259
Farmersville, Illinois 62533

Re: Compliance Commitment Rejection
Violation Notice: W-2005-00167
Facility ID: IL0061247-Industry Mine Outfall 019

Dear Mr. Phifer:

The Illinois Environmental Protection Agency ("Illinois EPA") received the information concerning the above referenced project dated March 30, 2007, on April 2, 2007. This information has been reviewed by Illinois EPA staff and, based upon that review, the following is offered for your consideration and appropriate action. The request for extension of the original Compliance Commitment Agreement (CCA) dated May 19, 2005, is hereby rejected because this request appears to only propose continuation of treatment and monitoring as in the previous CCA, and fails to set forth a plan to address the underlying issue in an attempt to arrive at an ultimate resolution.

An acceptable CCA Extension request must include a feasible and implementable compliance plan designed to result in an ultimate resolution to the current elevated manganese concentrations in the discharge at Outfall 019 and subsequent water quality standards violations. The compliance plan must ultimately result in consistent compliance with the General Use Water Quality Standard as specified in 35 Ill. Adm. Code 302.208.

The Illinois EPA remains willing to evaluate any proposal you may have to address the specified deficiencies or to meet for discussion of possible alternatives. If you wish to submit a further proposal to resolve this matter short of formal enforcement, please do so by September 1, 2007. However, even though a proposal may be the subject of further consideration, it will not be considered to be a CCA as referenced in Section 31(a) of the Illinois Environmental Protection Act (415 ILCS 5/31(a)).

Exhibit 1F

If the violations remain the subject of disagreement between the Illinois EPA and Freeman United Coal Mining Company, this matter may be considered for referral to the Office of the Attorney General, the State's Attorney or the United States Environmental Protection Agency for formal enforcement action and the imposition of penalties.

Any written communication should be directed to Beverly Booker at the Illinois Environmental Protection Agency, Bureau of Water, CAS #19, P.O. Box 19276, Springfield, IL 62794-9276. All communication shall include reference to your Violation Notice W-2005-00167. If you have questions regarding this matter, please contact Barb Conner or Larry Crislip at 217/782-9720 or 618/993-7200.

Sincerely,

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

FREEMAN UNITED

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

BY: _____
Thomas Austin, V.P.

SPRINGFIELD COAL COMPANY, L.L.C.

BY: _____
Phillip Ott, V.P.

Exhibit 1G

FREEMAN UNITED

Freeman United Coal Mining Company

August 30, 2007

Ms. Beverly Booker
Illinois EPA, Bureau of Water
CAS #19, P.O. Box 19276
Springfield, IL 62794-9276

Re: Industry Mine
NPDES Facility I.D. IL0061247
Violation Notice: W-2005-00167
Pond 19 Compliance Commitment Agreement

Dear Ms. Booker,

In response to the Agency's July 13, 2007 rejection of our March 30, 2007 request for extension of the Compliance Commitment Agreement (CCA) for Pond 19 at the Industry Mine, I herein respond as follows:

Repair and modification of the Industry Mine Pond 19 decant structure this summer allows the mine personnel additional flexibility in controlling discharges from the pond at Outfall 019. Installation of a valve on the discharge piping allows periodic discharges. In addition, a pump that will allow better mixing between the upper and lower portions of the pond has been put in place at the pond. These actions allow us to present the following proposal:

Pond 19 Proposal

1. The term of this agreement shall be two years from the date of the Agency's acceptance of this proposal.

2. During the term of this agreement:

   a. Freeman will continue to maintain the forms of treatment, as set out in the May 12, 2005 letter to the Agency, to control the manganese levels in the discharge from Pond 19;

   b. Except during periods of higher flows in Grindstone Creek in response to larger precipitation events, Freeman will endeavor only to discharge water from Pond 19 only when the Total Manganese level in the pond is below the permit limits as determined by on-site monitoring.

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Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

c. Freeman will continue to monitor the effluent from Pond 19 as a Reclamation Area Discharge one time per month with the following parameters monitored: pH, Total Settleable Solids, Sulfates, Chlorides, Total Manganese, and Flow Rate.

d. Freeman will monitor Grindstone Creek downstream from the Pond 19 effluent monthly when monitoring the Pond 19 effluent with the following parameters monitored: pH and Total Manganese.

3. During the term of this Agreement, Freeman will continue to explore alternatives to treatment of the water in Pond 19 that would result in an ultimate resolution and water quality in consistent compliance with the General Use Water Quality Standard.

4. Not later than sixty (60) days before the expiration date of the term of this Agreement, Freeman will seek to meet with the Agency, at a time and place mutually convenient, to review the status of Pond 19 and to determine whether any further action is required regarding Pond 19 and the drainage area it serves.

Respectively submitted,

FREEMAN UNITED COAL MINING COMPANY

By: Steven C. Phifer

Steven C. Phifer, Environmental Engineer

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Farmersville, IL 62533
Tel 217 627-2161
Fax 217 627-3411

SPRINGFIELD COAL CO.

Springfield Coal Company, LLC

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

April 21, 2010

Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
1-217-782-2829

Re: Violation W-2009-00306

Dear Mr. Kruse,

Mr. Larry Crislip suggested that we send this letter to you to clarify an issue arising around Violation W-2009-00306. Title 35, Subtitle D, 406.106 b) 2) provides in pertinent part: "*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.*" As described in the letter we submitted to you dated February 18, 2010, chemical treatment is to be utilized at Pond 18 and Pond 19 to comply with the manganese standards set forth in NPDES permit for facility # IL0061247. As a result, although the upper limit of pH is 9 in the NPDES permit, a pH greater than 9 yet less than 10 should not be an excursion. Please confirm. On March 11, 2010 a NPDES sample at Pond 19 outfall had a pH of 9.04.

If you should have any questions regarding this request or require further information, please contact me at your convenience.

Sincerely,
Springfield Coal Company, LLC

Andrew R. Ditch
Environmental Engineer
1.217.627.2161 ext 229

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Illinois Environmental Protection Agency ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Warren Vilt

3. Service Type
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☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2 7008 1830 0005 0473 0428

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Mr. Chad Kruse
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PS Form 3800, August 2006 See Reverse for Instructions

PRELIMINARY DRAFT

ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED FREEMAN UNITED COAL MINING COMPANY

INDUSTRY MINE SITE

June 19, 1979

Prepared by:

ENVIRONMENTAL SCIENCE AND ENGINEERING, INC.
Gainesville, Florida 32604

Project No. 78-023-120

2.7 SURFACE WATER QUALITY

2.7.1 INTRODUCTION

Three small surface streams within the boundaries of the Freeman Coal property were sampled during 1978 to determine the quality of the water flowing through the proposed mining area (see Figure 2.7-1). Grindstone Creek, the largest stream, originates east of the property and flows through the Freeman Coal tract before intersecting the large LaMoine River. Samples from Grindstone Creek were collected at two locations, one on the eastern boundary and the other at the western boundary of the Freeman Coal tract (see Figure 2.7-1). Willow Creek originates within the Freeman Coal property and exits at the southwestern corner of the site. Sampling for this study was conducted at the southwestern corner. Horney Creek is located south of the property, but intersects the proposed haul road. Samples were collected from this intersection. Four seasonal sampling periods were included in the study, with samples collected on May 17, August 8, November 14, and December 19, 1978. Samples were collected during all four periods from the two locations on Grindstone Creek; however, no sample was collected from Willow Creek in August because the streambed was dry at the sampling time. The Horney Creek site was not initially included in the study; therefore only the fall and winter (November and December) samples were collected from the stream (see Table 2.7-1).

No past water quality data is available for the three streams sampled in this study. The closest regular water quality monitoring station is located on the LaMoine River into which the previously mentioned tributary streams flow.

2.7.2 PRESENT WATER QUALITY

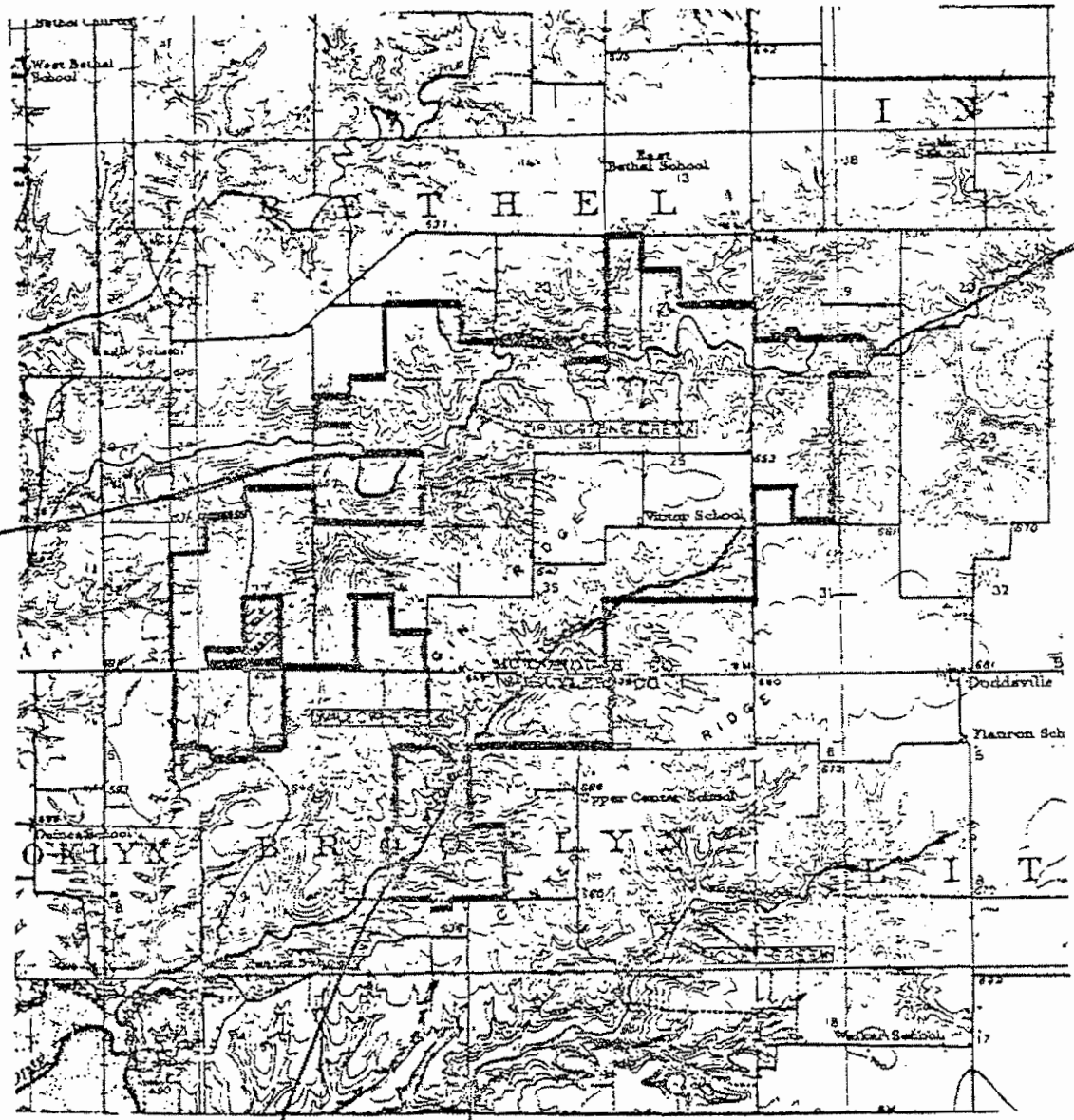
Physical Parameters

Physical parameters measured included discharge, temperature, dissolved oxygen, pH, turbidity and dissolved, suspended, and total solids.

Table 2-7-1 Mean and range of surface water quality parameters measured on the FUCMC property during 1978.

Parameter	1300 Road Location[a] Upper[b] Grindstone	900 Road Location[a] Lower[b] Grindstone	Willow[c] Creek	Honey[d] Creek	Criteria[e]
Discharge (cfs)	68.7	96.2	6.4	0.4	
Temperature (°C)	11.0[f]	13.0	8.0	6.0	
	2.0-25.0	3.0-29.0	3.0-11.0	4.0-8.0	
pH	7.8	7.9	8.0	7.7	6.5-9.0
	7.2-8.3	7.5-8.4	7.5-8.2	7.2-8.2	
Dissolved Oxygen	6.9	10.1	9.9	9.2	5.0
(mg/l O_2)	1.6-10.4	5.8-11.9	6.8-12.6	4.6-13.8	
Dissolved Solids	472	416	666	471	
(mg/l)	363-584	383-467	271-1051	468-475	
Suspended Solids	33.5	31.4	11.5	<10.0	
(mg/l)	5.0-59.0	6.0-46.0	1.0-21.0	<1-19.0	
Total Solids	502	465	695	501	
(mg/l)	393-635	423-529	291-1107	488-515	
Turbidity	0.71	0.69	0.56	0.30	
(JTU)	0.16-2.0	0.28-1.8	0.22-1.2	0.27-0.32	
Acidity	8.7	7.5	6.7	22.0	
(mg/l $CaCO_3$)	5.0-12.0	5.0-9.0	6.0-8.0	6.0-38.0	
Alkalinity	235	226	54	207	>20
(mg/l $CaCO_3$)	160-302	158-282	26-94	160-254	
Hardness	340	331	456	375	
(mg/l $CaCO_3$)	253-452	256-384	215-682	362-388	
Fecal Coliform	79	<243	148	65	<200
(MPN/100 ml)	3-170	<10-920	24-350	22-107	
Total Phosphorus	0.79	0.08	0.06	<0.03	
(mg/l P)	0.06-2.24	0.07-0.09	0.01-0.16	<0.005-0.046	
Ammonia Nitrogen	<0.72	<0.20	<0.15	0.4	0.02
(mg/l NH_3-N)	<0.1-1.80	<0.1-0.40	<0.1-0.20		
Inorganic Nitrogen	12.9	<10.7	<2.33	<1.10	
(mg/l N)	0.18-44.6	<0.12-39.5	<0.12-4.7	<0.12-<2.1	
Inorganic Carbon	23.1	33.8	8.1	29.4	
(mg/l C)	3.5-47.9	4.7-62.9	2.3-13.2	9.6-49.1	
Sulfates	85.6	82.5	363	173	
(mg/l SO_4)	48.3-135	48.9-130	82.6-601	147-199	
Phenols	<20	<10	<40	<5	1.0
(ug/l)	<5-43	<5-7.7	<5-100	4.9-<5	
Total Iron	1.32	0.95	<0.10	0.15	1.0
(mg/l Fe)	0.30-3.54	0.44-1.50	0.09-<0.10	0.13-0.16	0.3[g]
Fluoride	0.24	0.22	0.17	0.18	
(mg/l F)	0.20-0.29	0.20-0.25	0.15-0.22	0.15-0.21	
Arsenic	<10	<10	<4	<10	50[g]
(ug/l As)	<5-7.0	<5-<10	<0.1-5.7	<5-<10	
Total Chromium	<5.0[h]	<5.0	<5.0	<5.0	100
(ug/l Cr)					50[g]
Copper	<100[h]	<100	<100	<100	1000[g]
(ug/l Cu)					
Manganese	2.83	0.98	<0.046	0.21	.05[g]
(mg/l Mn)	0.088-10.4	0.115-2.20	0.038-<0.05	0.176-0.240	
Mercury	<2.0[h]	<2.0	<2.0	<2.0	0.05
(ug/l Hg)					2.0[g]
Lead	<5.0[h]	<5.0	<5.0	<5.0	50[g]
(ug/l Pb)					
Zinc	<100[h]	<100	<100	<100	5000[g]
(ug/l Zn)					
Pesticides (ug/l)[i]					
Aldrin	<0.01-<0.05	<0.01-<0.05	<0.01-<0.05	<0.05[h]	0.003
Dieldrin	<0.01 <0.05	<0.01 <0.05	<0.01 <0.05	<0.05	0.003
Chlordane	<0.3-0.6	<0.03-0.3	<0.3-0.4	<0.3	0.01
DDT	<0.01-<0.10	<0.01-<0.10	<0.01-<0.10	<0.10	0.001
Endrin	<0.10[h]	<0.10	<0.10	<0.10	0.004
Lindane	<0.01-<0.05	<0.01-<0.05	<0.01-<0.05	<0.05	0.01
Heptachlor	<0.01-<0.05	<0.01-<0.05	<0.01-<0.04	<0.05	0.001
Heptachlor Epoxide	<0.05-0.06	0.03-<0.05	0.02-<0.05	<0.05	
Methoxychlor	<0.10[h]	<0.10	<0.10	<0.10	0.03

[a] Location of streams and sampling sites is illustrated in Figure
[b] Four seasonal samples were collected at these sites.
[c] Three samples were collected at this site.
[d] Two samples were collected at this site.
[e] Unless otherwise noted, criteria are those recommended for the protection of fish and aquatic life.
[f] Top number is mean value, bottom numbers indicate range.
[g] Criteria for domestic water supplies.
[h] All values less than the detection minimum limit.
[i] Only the range of pesticide values is presented.



Proposed Industry Mine

Freeman United Coal Mining Company

Reclamation

Freeman United Coal Mining Company

P. O. Box 570
Canton, Illinois 61520

I N D U S T R Y M I N E

Surface Disturbance
~~Permit Application~~

T4N - R2W - and - R3W - McDonough County, Illinois
T3N - R3W - Schuyler County, Illinois

VOLUME I

Table of Contents, Application & Appendices

FREEMAN UNITED COAL MINING COMPANY
DIVISION OF MATERIAL SERVICE CORPORATION
300 WEST WASHINGTON STREET · CHICAGO, ILLINOIS 60606 · 312/263-2600
FIELD OFFICE: BOX 570 · CANTON, ILLINOIS 61520 · 309/647-0855

July 9, 1979

Mr. Douglas Downing, Supervisor
Land Reclamation Division
Dept. of Mines & Minerals
227 South Seventh, Suite 204
Springfield, IL 62706

Dear Mr. Downing:

Freeman United Coal Mining Company is hereby applying for a Surface Disturbance Coal Mining Permit for the proposed Industry Mine. The Industry Mine is a new surface mine and the plans are to mine the Colchester No. 2 coal seam in McDonough and Schuyler Counties. After the mine becomes fully operational approximately 500,000 tons of coal is to be mined annually. The Industry Mine has a design life in excess of fifteen (15) years.

Freeman United Coal Mining Company began acquiring property for the Industry Mine in 1947 and most of the property has been owned for more than twenty (20) years. The Industry Mine has been in the planning stages for several years. The Company has retained the mining equipment (1050-B shovel, W-3 wheel excavator, and haulage trucks) from the Banner Mine which was closed in 1974. This equipment will be reconditioned and used in the Industry Mine. In addition, on June 14, 1977, Freeman United Coal Mining Company submitted a NPDES questionnaire to the U.S. EPA, Region V; Permit Branch in accordance with 40 CFR 6.900. Upon receipt of the questionnaire, the U.S. EPA and the U.S. Army Corps of Engineers (COE) determined that : (1) an Environmental Impact Statement (EIS) would be required; and (2) the COE would be the lead federal agency for the EIS under provisions of its Section 404 permit. Preparation of the EIS has been ongoing since that date.

On May 31, 1979, the Board of Trustees of Muscatine Power and Water approved a fifteen year contract, subject to legal approval for the purchase of 700,000 tons of coal annually from Freeman United Coal Mining Company. Two-thirds of the coal requirements are to be supplied by the Industry Mine and one-third is to be supplied from Freeman United's existing mines.

A SD-1 Permit Application for the Industry Mine is enclosed. Necessary road closing agreements are pending negotiation and all agreements will be submitted as soon as they are completed. In addition, the EIS for the Industry Mine is nearly complete, and as soon as this document is submitted to the COE, then a copy will be submitted to the Department.

The Department's consideration of this application request is greatly appreciated. If there are any questions please feel free to contact us.

Sincerely,

DEW/jks
Attachments

Dale E. Walker

APPENDIX 8

HYDROLOGIC INFORMATION

6-a.

Willow and Grindstone Creeks are the two surface streams traversing the Freeman United Coal Mining Company's property. They are typical of Illinois dissected till plain streams, exhibiting their highest discharges in the spring and lowest flows in the late summer, when discharges may temporarily cease. During routine water quality sampling in 1978, the highest recorded discharges (at the sampling points shown on Map A (3)), for Willow and Grindstone Creeks were 6.4 and 96 cfs, respectively. No measurable flow was present during sampling in both August and November. Several small ephemeral channels intersect the two larger streams and these typically only have discharge in the spring or during major runoff events.

Both streams exhibit wide variations in water quality, and this may be directly related to discharge. During high flows, which are usually the result of runoff, suspended solids concentrations increase, carrying higher than normal concentrations of phosphorous, nitrogen, and organic detrital material. The highest phosphorous concentration measured was 2.24 mg/l; however, the average value was 0.35 mg/l. Suspended solids concentrations ranged from 12 to 59 mg/l and had a mean of 35 mg/l. Total dissolved solids concentrations are usually less than 500 mg/l, however a concentration of 1051 mg/l was measured in Willow Creek in low discharge in November, 1978. Dissolved solids concentrations generally increase with decreased discharge. Both creek are hardwater streams; average hardness was 361 mg/l; a value regarded as being very hard water. Sulfate values are normally less than 100 mg/l, but one concentration of 601 mg/l was recorded in Willow Creek in November.

Bacteriological quality is fair. The average fecal coliform concentration is 202 colonies per 100 ml. This compares to a standard of 200 colonies. The highest concentration recorded was 920 colonies per 100 ml.

Only two metallic constituents were measured in concentrations above state standards. Iron concentrations in Willow Creek were much below the 1.0 mg/l standard; however, six measurements in Grindstone Creek averaged 1.37 mg/l. Precipitation of dissolved iron may impair the viability of some sensititve aquatic species. Manganese concentrations should not exceed 1.0 mg/l (standard level) however, three of the six measurements in Grindstone Creek were above this level (2.46 mg/l average). Levels in Willow Creek were less than 0.05 mg/l.

Pesticide concentrations in the streams were usually below detection limits and below State criteria for water supplies. Small amounts of chlordane and heptachlor epoxide were detected in both streams, but should not pose a danger to either human or aquatic life.

(6-a. Cont.)

Physical characteristics of the streams may temporarily limit the productivity of the aquatic flora and fauna. The most obvious threat is lack of flow, and therefore habitat, during summer low or no flow periods. Water temperatures vary seasonally and range from 0^{0} to 30^{0} C. The higher temperatures usually coincide with summer low flows and this may temporarily depress dissolved oxygen levels below safe limits for aquatic fauna. Dissolved oxygen levels usually averaged above 8 mg/l at all sampling points, however significant diurnal variations occur. Early morning oxygen concentrations were often recorded below the 5 mg/l standard set for aquatic life. These temporary depressions appear not to harm the aquatic fauna as no fish kills were noted and fish were collected in these same stream segments during the sampling efforts in which the low measurements were recorded. Leaf litter and detrital deposits in the stream may be in part responsible for the low oxygen levels. Sedimentation of this material also influences the character of the bottom invertebrate fauna.

6-b.

The general land use of the watershed of Grindstone Creek is agricultural upstream from the proposed mining area. Willow Creek watershed begins within the proposed mining area and its' land usage is agricultural. The major potential pollution source on Grindstone Creek upstream from the proposed mining area would be surface runoff from the agricultural land.

6-c.

Public water supplies within ten miles of the proposed mining area are Colchester (7 miles) and Industry (3 miles).

6-d.

The mining operation should not have any effect on the public water supplies within ten miles. Both Colchester and Industry have wells which draw water from geologic units below the coal seam to be excavated. In addition, due to the attitude of bedrocks in the area and direction of surface flow, the flow of both surface and ground water in the vicinity of the proposed permit area is away from the Industry and Colchester wells. See Appendix 7, Hydrogeologic Information, for a more complete discussion about the groundwater in the area.

Appendix 9 and Map E, describe the biologic communities in the proposed mining area.

An archaeologic survey was conducted in 1978 on the property owned by Freeman United Coal Mining Company in McDonough and Schuyler Counties. This information will be included in the Environmental Impact Statement currently being prepared for the Army Corps of Engineer's 404 permit for the proposed mine.

The attached listing is a compilation of ponds and reservoirs contiguous to Freeman United Coal Mining Company's property.

FREEMAN UNITED COAL MINING COMPANY
INDUSTRY MINE
PERMIT APPLICATION NO. 261
MODIFICATIONS LETTER RESPONSE

JULY 1, 1992

Exhibit 1L

NPDES DISCHARGE #018

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	250	500		300	500	175	45
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	N	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	O	Grab	Grab	Grab	Grab
ACIDITY	27	4	T	< 2	4	< 2	8
ALKALINITY (mg/l)	82	76		85	75	104	125
LEAD (mg/l)	DID			NOT		SAMPLE	
IRON (mg/l)	< 0.25	0.019	S	0.043	0.384	9.39	0.138
MANGANESE (mg/l)	< 0.10	0.026	A	0.011	0.101	13.1	0.104
pH (range)	6.9	7.74	M	8.21	7.79	8.34	7.52
ZINC (mg/l)	< 0.10	0.01	P	0.030	0.032	0.212	0.016
FLUORIDE (mg/l)	DID			NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)	1	2	L	< 1	3	< 1	6
SULFATE (mg/l)	190	214	E	201	141	223	231
TOTAL DISSOLVED SOLIDS (mg/l)	370	477	D	449	323	439	520
CHLORIDE (mg/l)	6.0	8.0		6	< 5	< 5	5

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #019

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	30	15	10	8	30	NO FLOW	NO FLOW
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff		
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab		
ACIDITY	35	14	16	22	21		
ALKALINITY (mg/l)	160	172	128	173	58		
LEAD (mg/l)	DID NOT SAMPLE						
IRON (mg/l)	4.94	0.059	0.076	0.038	0.688		
MANGANESE (mg/l)	0.15	0.254	0.966	0.476	1.74		
pH (range)	6.9	7.17	6.86	7.26	6.69		
ZINC (mg/l)	0.24	0.229	0.277	0.278	0.396		
FLUORIDE (mg/l)	DID NOT SAMPLE						
TOTAL SUSPENDED SOLIDS (mg/l)	120	1	2	4	16		
SULFATE (mg/l)	130	193	247	242	206		
TOTAL DISSOLVED SOLIDS (mg/l)	1,300	587	607	588	424		
CHLORIDE (mg/l)	640	40	20	16	9		

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #020

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	60		45	50	60		2
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	N	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	O	Grab	Grab	Grab	O	Grab
ACIDITY	19	T	4	6	5	T	8
ALKALINITY (mg/l)	41		42	52	43		113
LEAD (mg/l)	DID		NOT		SAMPLE		
IRON (mg/l)	1.13	S	0.11	0.032	0.579	S	0.152
MANGANESE (mg/l)	0.53	A	0.608	0.161	0.643	A	0.353
pH (range)	6.9	M	7.26	7.51	7.46	M	7.37
ZINC (mg/l)	< 0.10	P	0.034	0.036	0.053	P	0.02
FLUORIDE (mg/l)	DID		NOT		SAMPLE		
TOTAL SUSPENDED SOLIDS (mg/l)	19	L	2	< 1	2	L	2
SULFATE (mg/l)	500	E	387	449	462	E	424
TOTAL DISSOLVED SOLIDS (mg/l)	810	D	789	955	254	D	929
CHLORIDE (mg/l)	6.0		5	< 5	< 5		7

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #021

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	40	20	40	45	55		15
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab	O	Grab
ACIDITY	58	52	42	71	19	T	92
ALKALINITY (mg/l)	< 1.0	< 2	< 2	< 2	< 2		< 2
LEAD (mg/l)	DID		NOT		SAMPLE		
IRON (mg/l)	4.38	4.17	3.79	5.75	0.771	S	7.46
MANGANESE (mg/l)	6.05	7.28	5.23	7.63	2.02	A	10.3
pH (range)	3.5	3.68	3.60	3.45	3.99	M	3.48
ZINC (mg/l)	0.39	0.388	0.288	0.382	0.147	P	0.363
FLUORIDE (mg/l)	DID		NOT		SAMPLE		
TOTAL SUSPENDED SOLIDS (mg/l)	25	9	< 1	1	< 1	L	2
SULFATE (mg/l)	500	70	358	426	195	E	492
TOTAL DISSOLVED SOLIDS (mg/l)	680	719	616	879	325	D	1130
CHLORIDE (mg/l)	3.0	< 5.0	< 5.0	6	< 5		7

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

NPDES DISCHARGE #022

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)	20	12	10	15	25		3
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	N	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)	Grab	Grab	Grab	Grab	Grab	O	Grab
ACIDITY	50	14	14	45	12	T	50
ALKALINITY (mg/l)	<1.0	5	14	3	41		<2
LEAD (mg/l)	DID		NOT		SAMPLE		
IRON (mg/l)	7.20	11.5	8.36	8.01	2.12	S	2.46
MANGANESE (mg/l)	8.85	9.24	6.24	9.13	1.73	A	20.7
pH (range)	4.1	5.43	6.28	4.77	7.26	M	4.41
ZINC (mg/l)	0.59	0.561	0.371	0.585	0.129	P	0.674
FLUORIDE (mg/l)	DID		NOT		SAMPLE		
TOTAL SUSPENDED SOLIDS (mg/l)	44	101	20	58	19	L	18
SULFATE (mg/l)	900	66	479	710	212	E	751
TOTAL DISSOLVED SOLIDS (mg/l)	1,200	1,310	834	1,380	374	D	1690
CHLORIDE (mg/l)	6.0	6.0	7.0	6	< 5		11

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

DISCHARGE #018 NORTH

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)		20	30	20	45	15	NO FLOW
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)		Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	
SAMPLING METHOD (24 hr. composite, grab, est, etc.)		Grab	Grab	Grab	Grab	Grab	
ACIDITY		22	48	61	43	50	
ALKALINITY (mg/l)		5	< 2	< 2	< 2	< 2	
LEAD (mg/l)		DID		NOT		SAMPLE	
IRON (mg/l)		15.6	7.15	4.32	6.57	5.27	
MANGANESE (mg/l)		5.43	3.81	5.43	2.32	6.49	
pH (range)		5.08	3.93	3.99	4.33	3.89	
ZINC (mg/l)		0.463	0.489	0.572	0.297	0.540	
FLUORIDE (mg/l)		DID		NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)		65	15	10	16	16	
SULFATE (mg/l)		533	424	541	273	471	
TOTAL DISSOLVED SOLIDS (mg/l)		1010	708	1000	502	963	
CHLORIDE (mg/l)		6	< 5	7	5	< 5	

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

DISCHARGE #018 ROAD

ANALYSIS OF ACTUAL FIELD SAMPLE BY MONTH

	MONTH						
	1991	1992					
	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
FLOW (gpm)		100	80	75	110	40	18
SOURCE OF DISCHARGE (e.g. pit pumpage, processing plant, circuit surface runoff, etc.)		Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff	Surface Runoff
SAMPLING METHOD (24 hr. composite, grab, est, etc.)		Grab	Grab	Grab	Grab	Grab	Grab
ACIDITY		24	19	37	20	6	46
ALKALINITY (mg/l)		14	10	21	12	22	58
LEAD (mg/l)		DID		NOT		SAMPLE	
IRON (mg/l)		12.7	6.68	11.1	2.79	0.028	15.0
MANGANESE (mg/l)		11.0	7.63	12.5	3.90	0.016	17.6
pH (range)		5.87	6.07	6.40	6.50	6.36	6.42
ZINC (mg/l)		0.281	0.323	0.390	0.189	0.036	0.05
FLUORIDE (mg/l)		DID		NOT		SAMPLE	
TOTAL SUSPENDED SOLIDS (mg/l)		28	16	30	5	5	30
SULFATE (mg/l)		319	310	319	240	327	306
TOTAL DISSOLVED SOLIDS (mg/l)		628	602	720	443	701	778
CHLORIDE (mg/l)		12	10	7	12	6	6

--- Discharge would be in violation of present NPDES discharge monitoring standards in effect for existing impoundments at Industry Mine.

WELLS OUTSIDE OF AND CONTIGUOUS TO FREEMAN UNITED COAL MINING COMPANY PROPERTY (SEE ATTACHED TABLE)

10 WELLS WITHIN FREEMAN UNITED COAL MINING COMPANY PROPERTY.

33 SURFACE WATER SUPPLIES OUTSIDE OF AND CONTIGUOUS TO FREEMAN UNITED COAL MINING COMPANY PROPERTY (SEE ATTACHED TABLE)

SURFACE WATER SUPPLIES WITHIN FREEMAN UNITED COAL MINING COMPANY PROPERTY.

1 SURFACE WATER MONITORING POINT

#1-S.E. 1/4 SECTION 19 T4N R2W
#2-S.W. 1/4 SECTION 27 T4N R3W
#3-N.W. 1/4 SECTION 16 T3N R3W
#5-S.W. 1/4 SECTION 15 T4N R3W
#8 N.E. 1/4 SECTION 31 T4N R3W - SHOWN ON MAP3(A-1)

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT: Freeman United Coal Mining
WorkOrder: 0307525
Lab ID: 0307525-03
Report Date: 29-Jul-03

Client Project: Industry Mine Stream Samples
Client Sample ID: Stream #1200
Collection Date: 7/18/03
Matrix: SURFACE WATER

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA/600 4.1.4, 200.7 TOTAL								
Iron	NELAP	0.020		**32.5**	mg/L	1	7/29/03 10:22:08 AM	SAM
Manganese	NELAP	0.005		**1.60**	mg/L	1	7/24/03 7:22:31 PM	JMW
Zinc	NELAP	0.010		**0.085**	mg/L	1	7/24/03 7:22:31 PM	JMW
EPA/600 METHOD 150.1								
pH	NELAP	1.00	H	**7.06**		1	7/22/03 10:45:00 AM	SAO
EPA/600 METHOD 160.1								
Total Dissolved Solids	NELAP	20		**184**	mg/L	1	7/24/03	JNS
EPA/600 METHOD 160.2								
Total Suspended Solids	NELAP	6		**1900**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 160.5								
Solids, Settleable	NELAP	0.1	H	**1.2**	ml/L	1	7/22/03 2:33:00 PM	SAO
EPA/600 METHOD 305.1								
Acidity, Total (as CaCO3)	NELAP	0		**-49**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 310.1								
Alkalinity, Total (as CaCO3)	NELAP	0		**88**	mg/L	1	7/23/03	DLY
EPA/600 METHOD 325.3								
Chloride	NELAP	1		**15**	mg/L	1	7/29/03	JAE
EPA/600 METHOD 375.4								
Sulfate, Turbidimetric	NELAP	5		**16**	mg/L	1	7/28/03	JAE

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

Laboratory Results

CLIENT:	Freeman United Coal Mining	**Client Project:**	Industry Mine Pond
WorkOrder:	04030301	**Client Sample ID:**	NGS1200
Lab ID:	04030301-013	**Collection Date:**	3/5/04
Report Date:	23-Mar-04	**Matrix:**	SURFACE WATER

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA/600 4.1.4, 200.7 TOTAL								
Iron	NELAP	0.020		**4.77**	mg/L	1	3/12/04 5:09:16 PM	JMW
Manganese	NELAP	0.005		**0.176**	mg/L	1	3/12/04 5:09:16 PM	JMW
EPA/600 METHOD 150.1								
pH	NELAP	1.00	H	**7.44**		1	3/11/04 11:28:00 AM	EAW
EPA/600 METHOD 160.2								
Total Suspended Solids	NELAP	6		**153**	mg/L	1	3/11/04	DLY
EPA/600 METHOD 160.5								
Solids, Settleable	NELAP	0.2	H	**< 0.2**	ml/L	2	3/22/04 1:12:00 PM	SAO
EPA/600 METHOD 305.1								
Acidity, Total (as CaCO3)	NELAP	0		**-127**	mg/L	1	3/12/04	DLY
EPA/600 METHOD 310.1								
Alkalinity, Total (as CaCO3)	NELAP	0		**138**	mg/L	1	3/12/04	DLY
EPA/600 METHOD 325.2								
Chloride		2		**36**	mg/L	2	3/18/04 12:15:22 PM	SMR
EPA/600 METHOD 375.4								
Sulfate, Turbidimetric	NELAP	10		**39**	mg/L	2	3/19/04	ADH

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09041022
Lab ID: 09041022-002
Report Date: 05-May-09

Client Project: Industry Mine Pond
Client Sample ID: 1200 road
Collection Date: 4/22/2009 11:25:00 AM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50		**53**	mg/L	1	4/30/2009 11:54:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**2.30**	mg/L	1	4/29/2009 7:00:00 PM	JMW
Manganese	NELAP	0.0050		**0.0849**	mg/L	1	5/1/2009 10:59:57 AM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**7.87**		1	4/28/2009 3:21:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-162**	mg/L	1	4/29/2009 12:10:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**174**	mg/L	1	4/29/2009 12:10:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**280**	mg/L	1	4/29/2009 10:00:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20	H	**302**	mg/L	1	4/30/2009 6:30:00 PM	MAB
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6	H	**63**	mg/L	1	4/29/2009 12:40:00 PM	MAB
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	**<0.1**	ml/L	1	5/1/2009 10:50:00 AM	NJM
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		**28**	mg/L	1	4/30/2009 11:54:00 AM	DLW

Sample Narrative
Standard Methods 18th Ed. 2540 C (Total)
Sample analysis did not meet hold time requirements.

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09110091
Lab ID: 09110091-001
Report Date: 09-Nov-09

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 10/30/2009 12:20:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		**16**	mg/L	1	11/6/2009 1:59:00 PM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**12.4**	mg/L	1	11/4/2009 12:43:42 PM	JMW
Manganese	NELAP	0.0050		**0.341**	mg/L	1	11/4/2009 12:43:42 PM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**7.49**		1	11/4/2009 1:32:00 PM	LDG
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-46.7**	mg/L	1	11/5/2009 1:20:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**71**	mg/L	1	11/5/2009 1:20:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**80**	mg/L	1	11/4/2009 12:30:00 PM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		**204**	mg/L	1	11/4/2009 3:55:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		**83**	mg/L	1	11/3/2009 2:30:00 PM	HMH
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		**17**	mg/L	1	11/4/2009 3:54:00 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 09120082
Lab ID: 09120082-002
Report Date: 08-Dec-09

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 11/30/2009 5:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50	S	**57**	mg/L	1	12/4/2009 11:40:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		**0.562**	mg/L	1	12/3/2009 6:08:28 PM	JMW
Manganese	NELAP	0.0050		**0.137**	mg/L	1	12/7/2009 10:23:21 AM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		**8.08**		1	12/2/2009 2:14:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		**-202**	mg/L	1	12/2/2009 1:30:00 PM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		**212**	mg/L	1	12/2/2009 1:30:00 PM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		**280**	mg/L	1	12/4/2009 12:00:00 PM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		**336**	mg/L	1	12/3/2009 9:00:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		**167**	mg/L	1	12/2/2009 4:50:00 PM	HMH
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1	S	**24**	mg/L	1	12/7/2009 1:57:00 PM	DLW

Sample Narrative

Standard Methods 18th Ed. 4500-Cl E (Total)

Matrix spike recovery was outside QC limits due to matrix interference.

EPA 600 375.2 Rev 2.0 1993 (Total)

Matrix spike did not recover within control limits due to matrix interference.

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10010980
Lab ID: 10010980-002
Report Date: 04-Feb-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 1/24/2010 4:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		29	mg/L	1	2/2/2010 9:14:12 AM	MVS
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		2.86	mg/L	1	2/1/2010 7:09:45 PM	JMW
Manganese	NELAP	0.0050		0.116	mg/L	1	2/2/2010 4:20:32 PM	JMW
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.90		1	1/29/2010 4:21:00 PM	NJM
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-170	mg/L	1	2/2/2010 11:15:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		178	mg/L	1	2/2/2010 11:15:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		240	mg/L	1	1/29/2010 10:00:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		356	mg/L	1	1/29/2010 4:30:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		86	mg/L	1	1/30/2010 3:40:00 PM	JMT
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		23	mg/L	1	1/29/2010 3:56:19 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10030573
Lab ID: 10030573-002
Report Date: 22-Mar-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 3/11/2010 5:50:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-135	mg/L	1	3/16/2010 8:10:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		143	mg/L	1	3/16/2010 8:10:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		180	mg/L	1	3/16/2010 11:30:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		270	mg/L	1	3/15/2010 4:30:00 PM	JMT
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		203	mg/L	1	3/17/2010 1:00:00 PM	JMT
SW-846 3005A, 6010B, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		4.86	mg/L	1	3/17/2010 6:12:24 PM	JMW
Manganese	NELAP	0.0050		0.164	mg/L	1	3/17/2010 6:12:24 PM	JMW
SW-846 9036 (TOTAL)								
Sulfate	NELAP	10		30	mg/L	2	3/19/2010 2:25:00 PM	DLW
SW-846 9040B, LABORATORY ANALYZED								
Lab pH	NELAP	0		7.72		1	3/15/2010 2:42:00 PM	NJM
SW-846 9251 (TOTAL)								
Chloride	NELAP	1		24	mg/L	1	3/15/2010 3:13:00 PM	DLW

Sample Narrative

TEKLAB, INC.

5445 HORSESHOE LAKE ROAD
COLLINSVILLE, ILLINOIS 62234

ENVIRONMENTAL TESTING LABORATORY

TEL: 618-344-1004
FAX: 618-344-1005

LABORATORY RESULTS

Client: Springfield Coal Company
WorkOrder: 10070918
Lab ID: 10070918-002
Report Date: 29-Jul-10

Client Project: Industry Mine Stream Samples
Client Sample ID: 1200 Road
Collection Date: 7/21/2010 4:00:00 PM
Matrix: AQUEOUS

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Analyst
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		16	mg/L	1	7/29/2010 10:33:00 AM	DLW
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		18.3	mg/L	1	7/27/2010 12:28:57 PM	LAL
Manganese	NELAP	0.0050		0.475	mg/L	1	7/27/2010 12:28:57 PM	LAL
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.66		1	7/26/2010 2:14:00 PM	CS
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-113	mg/L	1	7/27/2010 10:45:00 AM	MK
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		123	mg/L	1	7/27/2010 10:45:00 AM	MK
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		160	mg/L	1	7/26/2010 10:40:00 AM	MK
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		218	mg/L	1	7/26/2010 12:30:00 PM	MK
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		387	mg/L	1	7/26/2010 5:30:00 PM	BSJ
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		15	mg/L	1	7/27/2010 2:57:00 PM	DLW

Sample Narrative

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11030076
Client Project: Industry Mine Stream Samples
Report Date: 08-Mar-11
Lab ID: 11030076-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 02/28/2011 13:10

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	10		34	mg/L	2	03/07/2011 14:39	R146588
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.71		1	03/03/2011 14:45	R146430
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-84	mg/L	1	03/03/2011 8:20	R146402
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		101	mg/L	1	03/03/2011 8:20	R146400
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		140	mg/L	1	03/02/2011 9:30	R146327
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		276	mg/L	1	03/02/2011 13:00	R146347
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		114	mg/L	1	03/03/2011 9:30	R146401
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	1.0	ml/L	1	03/02/2011 14:55	R146419
Sample analysis did not meet hold time requirements.								
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		64	mg/L	1	03/04/2011 11:56	R146516
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		19.6	mg/L	1	03/04/2011 19:13	66350
Manganese	NELAP	0.0050		0.505	mg/L	1	03/04/2011 19:13	66350

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11041150
Client Project: Industry Mine Stream Samples
Report Date: 02-May-11
Lab ID: 11041150-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 04/25/2011 16:00

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	5		33	mg/L	1	04/28/2011 11:42	R148750
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		8.08		1	04/27/2011 17:59	R148709
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-182	mg/L	1	04/28/2011 9:15	R148746
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		189	mg/L	1	04/28/2011 9:15	R148745
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		280	mg/L	1	04/29/2011 9:30	R148792
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		310	mg/L	1	04/28/2011 15:25	R148764
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		73	mg/L	1	04/29/2011 9:00	R148776
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2		< 0.2	ml/L	1	04/27/2011 12:45	R148688
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	1		25	mg/L	1	04/27/2011 10:29	R148726
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		1.81	mg/L	1	04/29/2011 21:32	67770
Manganese	NELAP	0.0050		0.132	mg/L	1	04/29/2011 21:32	67770

Teklab, Inc.
Environmental Laboratory

Laboratory Results

http://www.teklabinc.com/

Client: Springfield Coal Company
Work Order: 11051330
Client Project: Industry Mine Stream Samples
Report Date: 06-Jun-11
Lab ID: 11051330-002
Client Sample ID: 1200 Road
Matrix: AQUEOUS
Collection Date: 05/25/2011 15:50

Analyses	Certification	RL	Qual	Result	Units	DF	Date Analyzed	Batch
EPA 600 375.2 REV 2.0 1993 (TOTAL)								
Sulfate	NELAP	50		86	mg/L	1	05/31/2011 13:23	R150152
STANDARD METHOD 18TH ED. 4500-H B, LABORATORY ANALYZED								
Lab pH	NELAP	1.00		7.28		1	05/31/2011 16:07	R150121
STANDARD METHODS 18TH ED. 2310 B								
Acidity, Total (as CaCO3)	NELAP	0		-5.5	mg/L	1	06/02/2011 7:40	R150204
STANDARD METHODS 18TH ED. 2320 B								
Alkalinity, Total (as CaCO3)	NELAP	0		46	mg/L	1	06/02/2011 7:40	R150203
STANDARD METHODS 18TH ED. 2340 C								
Hardness, as (CaCO3)	NELAP	5		100	mg/L	1	06/01/2011 8:30	R150148
STANDARD METHODS 18TH ED. 2540 C (TOTAL)								
Total Dissolved Solids	NELAP	20		196	mg/L	1	05/31/2011 13:00	R150101
STANDARD METHODS 18TH ED. 2540 D								
Total Suspended Solids	NELAP	6		760	mg/L	1	05/31/2011 9:10	R150095
STANDARD METHODS 18TH ED. 2540 F								
Solids, Settleable	NELAP	0.2	H	0.2	ml/L	1	05/31/2011 8:30	R150075
STANDARD METHODS 18TH ED. 4500-CL E (TOTAL)								
Chloride	NELAP	10	J	6	mg/L	10	06/03/2011 13:17	R150307
Elevated reporting limit due to matrix interference.								
EPA 600 4.1.4, 200.7R4.4, METALS BY ICP (TOTAL)								
Iron	NELAP	0.0200		36.2	mg/L	1	06/01/2011 22:25	68559
Manganese	NELAP	0.0050		0.845	mg/L	1	06/01/2011 22:25	68559

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-9720

CERTIFIED MAIL # 7008 1830 0001 4719 7152
RETURN RECEIPT REQUESTED

October 8, 2009

Freeman United Coal
P.O. Box 260
Industry, IL 61440

Re: Violation Notice: W-2009-00306
Facility I.D.: IL0061247 – Freeman United Coal - Industry

Dear Facility Owner:

This constitutes a Violation Notice pursuant to Section 31(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/31(a)(1), and is based upon review of available information and investigation by representatives of the Illinois Environmental Protection Agency ("Illinois EPA").

The Illinois EPA hereby provides notice of violations of environmental statutes, regulations or permits as set forth in Attachment A to this letter. Attachment A includes an explanation of the activities that the Illinois EPA believes may resolve the specified violations, including an estimate of a reasonable time period to complete the necessary activities. However, due to the nature and seriousness of the violations cited, please be advised that resolution of the violations may also require the involvement of a prosecutorial authority for purposes that may include, among others, the imposition of statutory penalties.

A written response, which may include a request for a meeting with representatives of the Illinois EPA to be held at an Illinois EPA facility, must be submitted via certified mail to the Illinois EPA within 45 days of receipt of this letter. The response must address each violation specified in Attachment A and include for each, an explanation of the activities that will be implemented and the time schedule for the completion of each activity. Also, if a pollution prevention activity will be implemented, indicate that intention in any written response. The written response will constitute a proposed Compliance Commitment Agreement ("CCA") pursuant to Section 31 of the Act. The Illinois EPA will review the proposed CCA and will accept or reject the proposal within 30 days of receipt.

If a timely written response to this Violation Notice is not provided, it shall be considered a waiver of the opportunity to respond and meet, and the Illinois EPA may proceed with a referral to the prosecutorial authority.

Written communications should be directed to BEVERLY BOOKER at the ILLINOIS EPA, BUREAU OF WATER, CAS #19, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276. All communications must include reference to this Violation Notice number, W-2009-00306.

Questions regarding this Violation Notice should be directed to ROGER CALLAWAY at 217/782-9720.

Sincerely,

Michael S. Garretson, Manager
Compliance Assurance Section
Bureau of Water

Attachment

ATTACHMENT A

IL0061247

FREEMAN UNITED COAL - INDUSTRY **VIOLATION NOTICE: W-2009-00306**

Questions regarding the violations identified in this attachment should be directed to ROGER CALLAWAY at (217) 782-9720.

A review of information available to the Illinois EPA indicates the following violation of statutes, regulations or permits. Included with the violation is an explanation of the activity the Illinois EPA believes may resolve the violation including an estimated time period for resolution.

Effluent Violations

Review the treatment plant operations/operational procedures and evaluate the treatment equipment in order to correct the deficiencies which caused the violations. Compliance is expected to be achieved within 30 days.

Violation Date	Violation Description
03/31/2009	024W Effluent – Sulfate, Total (as SO4) Effluent Limit
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit
03/31/2009	018 Effluent – Manganese, Total (as MN) Effluent Limit
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit
03/31/2009	026 Effluent – Manganese, Total (as MN) Effluent Limit
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit
03/31/2009	024W Effluent – Manganese, Total (as MN) Effluent Limit
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit
04/30/2009	024W Effluent – Sulfate, Total (as SO4) Effluent Limit
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit
04/30/2009	009 Effluent – Manganese, Total (as MN) Effluent Limit
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit

ATTACHMENT A

IL0061247

FREEMAN UNITED COAL - INDUSTRY **VIOLATION NOTICE: W-2009-00306**

04/30/2009	018	Effluent – Manganese, Total (as MN)
	Effluent Limit	
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit	
04/30/2009	019	Effluent – Manganese, Total (as MN)
	Effluent Limit	
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit	
04/30/2009	026	Effluent – Manganese, Total (as MN)
	Effluent Limit	
Rule/Reg.:	Section 12 (f) of the Act, 415 ILCS 5/12(f) (2008), 35 Ill. Adm. Code 305.102(a) and (b), NPDES Permit	
05/31/2009	026	Effluent – Sulfate, Total (as SO4)
	Effluent Limit	
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit	
05/31/2009	019	Effluent - pH
	Effluent Limit	
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit	
06/30/2009	019	Effluent – Sulfate, Total (as SO4)
	Effluent Limit	
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit	
06/30/2009	026	Effluent – Sulfate, Total (as SO4)
	Effluent Limit	
Rule/Reg.:	Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2008), 35 Ill. Adm. Code 304.125, 304.141(a), NPDES Permit	

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	
35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8)	)	R07-09
302.102(b)(10), 302.208(g), 309.103(c)(3),	)	(Rulemaking - Water)
405.109(b)(2)(A), 405.109(b)(2)(B), 406.100(d);	)	
REPEALED 35 Ill. Adm. Code 406.203, PART 407; and	)	
PROPOSED NEW 35 Ill. Adm. Code 302.208(h)	)	

NOTICE OF FILING

Dorothy Gunn, Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601

Mathew Dunn
Illinois Attorney General's Office
Environmental Control Division
James R. Thompson Center
100 West Randolph Street
Chicago, Illinois 60601

Jonathan Furr
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

ALSO SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Illinois Environmental Protection Agency's written testimony of Robert Mosher and Brian Koch, a copy of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By:_____
Sanjay K Sofat, Assistant Counsel
Division of Legal Counsel

Dated: February 2, 2004
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	
35 Ill. Adm. Code 302.102(b)(6), 302.102(b)(8)	)	R07-09
302.102(b)(10), 302.208(g), 309.103(c)(3),	)	(Rulemaking - Water)
405.109(b)(2)(A), 405.109(b)(2)(B), 406.100(d);	)	
REPEALED 35 Ill. Adm. Code 406.203, PART 407; and	)	
PROPOSED NEW 35 Ill. Adm. Code 302.208(h)	)	

TESTIMONY OF ROBERT MOSHER

Qualifications/Introduction

My name is Robert Mosher and I have been employed by the Illinois Environmental Protection Agency for over 21 years. For almost the last 20 years I have been the manager of the Water Quality Standards Unit. My duties in this capacity are primarily to oversee the development of new and updated water quality standards and together with others in the Division of Water Pollution Control, to apply those standards in NPDES permits and Section 401 Water Quality Certifications. I have a B.S. in zoology and environmental biology and an M.S. in zoology from Eastern Illinois University.

In my testimony today, I will discuss the current regulatory environment that necessitates changes to water quality standards for sulfate, total dissolved solids ("TDS") and mixing zones. First, I will relate the general benefits that the Agency's proposed changes will bring to our system of water quality standards and water quality based effluent limitations in NPDES permits. Second, I will discuss the deletion of the water quality standard for total dissolved solids. Third, I will explain the changes proposed for

mixing zone standards and the basis for these in terms of the reasoning behind the changes and the discharges that would benefit from these changes. Finally, I will cover the reasons for the deletion of portions of 35 Illinois Administrative Code ("IAC") Subtitle D, Mine Related Water Pollution regulations.

Sulfate Aquatic Life Water Quality Standard:

General Use water quality standards for sulfate (500 mg/L) and TDS (1,000 mg/L) have existed in Illinois regulations since 1972. These standards were adopted to protect aquatic life and agricultural uses, however, few modern studies were available to determine appropriate values. Adopted standards stemmed more from the opinion of a few experts than from documented scientific experiments. Because coal mine effluents in particular are often high in sulfate, a special standard was developed that is unique to mine discharges and is found in Title 35, IAC, Subtitle D, Mine Related Water Pollution. Adopted in 1984, this sulfate standard of 3,500 mg/L also was not documented by the kind of aquatic life toxicity or livestock tolerance studies that are now expected in standards development. Under existing General Use water quality standards, permitting many mine discharges without the special rules provided in Subtitle D would be problematic because many mines cannot meet General Use sulfate and TDS standards in effluents at the point of discharge and do not qualify for conventional mixing zones. Other industries also have difficulty meeting the general standards and many have received adjusted standards or site-specific water quality standards relief from the Illinois Pollution Control Board given that regardless of the source, sulfate and many of the other constituents of TDS are not treatable by any practical means.

A solution to this dilemma was to re-evaluate the sulfate and TDS standards that account for most of the permitting problems. Studies of aquatic life communities downstream from high sulfate and TDS discharges appeared to show that organisms incur no detrimental effect from concentrations of these pollutants higher than the existing water quality standards. Since no national criteria exist for these pollutants and few other states even have sulfate and TDS standards, a long process was begun to gather existing information on sulfate aquatic life toxicity. When available data proved inadequate to derive a standard, new studies were commissioned with sponsorship from USEPA, the Illinois Coal Association and Illinois EPA. At the same time, investigations on the tolerance of livestock to sulfate in drinking water were begun.

This new research into sulfate toxicity found that, as suspected, high sulfate concentrations pose a problem of osmotic (salt) balance for some organisms. Many organisms, including all species of fish tested and many invertebrate species are very tolerant of sulfate, so much so that no known existing concentrations in Illinois would cause harm. Other species including the invertebrate water fleas (*Daphnia* and *Ceriodaphnia*) and scud (*Hyalella*) have a harder time maintaining salt balance under high sulfate conditions, which leads to toxicity. Unlike other toxicants that have ongoing effects that lead to mortality over extended time periods, sulfate-induced mortality occurs relatively quickly, but with no apparent residual effect. The new research also found that two common constituents of natural waters, chloride and hardness, are key to an understanding of the toxicity of sulfate. Brian Koch will further explain in his testimony how sulfate standards were developed to protect both aquatic life and livestock water uses.

TDS Water Quality Standard:

While sulfate was being evaluated, it became increasingly obvious that TDS is a very inappropriate parameter for use in water quality standards. TDS is the sum of all dissolved substances in water and is dominated by the common ions of sulfate, chloride, sodium, calcium, carbonate and magnesium in various proportions. Our investigations into sulfate toxicity reinforced the notion that it makes little sense to have a standard that covers all these substances together when the toxicity of each constituent is really what is important. For example, a water sample with high chloride and a TDS concentration of 2,000 mg/L is acutely toxic to some species of aquatic life, but a sample with high sulfate at that same TDS concentration is nontoxic. In my experience with toxicity testing with ambient waters and effluents, I am not aware of an instance where any common ions other than sulfate or chloride cause toxicity. With protective sulfate and chloride standards in force, salt toxicity is effectively regulated and there is no need for a TDS standard. Illinois EPA is therefore proposing that the TDS water quality standard be deleted along with the adoption of the new sulfate standard. The existing chloride standard is considered to be protective of uses without being overprotective and therefore is not proposed to be changed by our proposal.

Changes to the Board's Mixing Regulations at 35 Ill. Adm. Code 302.102:

Mixing zone standards at 35 IAC 302.102 dictate the conditions under which the Agency may allow dilution of an effluent by its receiving water. As regulations change, the realities of mixing needs must be reassessed. Sulfate is part of a small group of substances for which treatment is usually infeasible and for which mixing becomes an important option in regulation. The other common substances for which treatment does

not exist are chloride, boron and fluoride. It is not uncommon for discharges from coal mining operations as well as other activities to exceed these water quality standards and require some mixing zone allowance to achieve attainment of standards in the receiving stream.

Most high sulfate discharges from coal mines occur during wet weather events that bring sediment-laden water into treatment ponds and from there the water is discharged to water bodies where water quality standards apply. The ponds function to remove sediment and if necessary, control pH, but sulfate and chloride are not reduced. Water from the un-mined or reclaimed watershed also enters streams during sedimentation pond discharge events and provides dilution for these effluents. At many mines this is a simultaneous process, in other words, rain makes both the effluent and the receiving stream flow and lack of rain means both sources do not flow. For the past few years, Illinois EPA has granted wet weather discharges allowed mixing zones for sulfate and sometimes chloride, with consideration of these upstream flows. We now propose to augment the mixing regulations to make them clear in this regard. The changes to the mixing standards will allow mixing if it is verifiable that upstream dilution will always exist when an effluent is discharged.

35 Ill. Adm. Code 302.102(b)(6) and (b)(10):

Two aspects of the mixing regulations found at 35 IAC 302.102 are proposed for change. The first of these is the prohibition at 302.102(b)(6) and (10) preventing any receiving stream being entirely used for mixing. The existing standard dictates that a zone of passage, an area not impacted by the mixture of effluent with the receiving water, must be preserved for use by aquatic life whenever mixing is allowed. This is a concept recognized in regulations nationwide as a precept of mixing zones. However, there is one

circumstance of mixing of effluent with receiving water that practically and physically cannot include a zone of passage. Many discharges of storm water, particularly those from mines, are located high in the watershed where only a few square miles or less of drainage area supplies the receiving stream. These receiving streams are so small and narrow that storm water driven effluent will mix completely across the stream channel and leave no zone of passage as would have been physically realized in a wider stream. Under a strict interpretation of the existing mixing standards, these discharges would not be allowed mixing and a large segment of dischargers would not be able to exist.

If the Agency's proposal to do away with the zone of passage requirement in very small streams high in watersheds is to be functional, a method of defining 'very small streams' is needed. With the help of the Illinois State Water Survey, the Illinois EPA proposes that a concept similar to the commonly used and well understood 7Q10 flow be adopted to identify these streams. 'Small' may be equated with a stream's ability to maintain flow. Streams very high up in watersheds will typically dry up during periods of little rainfall and then fill with water again when rainfall returns. The more often a stream is dry, the more hostile that habitat will be to aquatic life. Streams losing all flow for at least a one week period nine out of ten years on average will present only a very limited habitat for aquatic life. This will consist of organisms that can live out their life cycles in a relatively short time and then survive dry conditions as eggs or dormant stages. Fish will use these headwater streams on a migratory basis, with a few pioneering species possibly using them only seasonally as spawning or feeding areas. Streams identified as 7Q1.1 zero flow are defined as having no flow for at least seven days in nine out of every ten years.

Under our proposal, wet weather discharges to streams determined to be 7Q1.1 zero flow will be allowed the entire stream volume for mixing. Aquatic life that may inhabit the stream at the time of discharge will be protected because an analysis of the effluent and the amount of flow expected in the stream during discharge events will be required in order to determine that the available mixing will reduce effluent concentrations to below water quality standards. For streams that have been determined to have adequate dilution potential for a given discharge, the force present in these storm water driven effluents will be sufficient to cause near instant mixing to occur. Therefore, aquatic life will not be exposed to concentrations over the water quality standards. Fish will be able to migrate through the area of mixing with no ill effects.

35 Ill. Adm. Code 302.102(b)(8):

The other change to mixing zone regulations is to delete the statement in 35 IAC 302.102(b)(8) that prohibits mixing in streams that have a 7Q10 flow of zero. The storm water mixing I just described depends on this change as well as non-storm water discharges that have unique characteristics. The existing definition of Dilution Ratio at 35 IAC 301.270 states that dilution ratio is to be determined from the 7Q10 stream flow or the lowest flow that is present when discharge occurs, whichever is greater. This implies that for non-continuous dischargers, the allowed stream flow to be used in the mixing based permit limit calculation is the flow expected when the discharge occurs. Under our proposal, these flows must allow for a zone of passage, which is 75% of the stream flow if the dilution ratio is 3:1 or greater and the stream 7Q1.1 is greater than zero. Many effluents are continuously discharged and consequently the default stream flow for calculating dilution is 7Q10. These would include sewage treatment plants, power plants and most industrial discharges. However, some facilities outside these

general categories produce effluent only periodically, and where it can be demonstrated that effluent will only be discharged at times and in quantities that will be sufficiently diluted by the stream flow present at the time of discharge, that stream flow may be used for the mixing granted. Deleting the sentence 'Mixing is not allowed in receiving waters which have a zero minimum seven day low flow which occurs once in ten years' enables the definition of dilution ratio to guide the Illinois EPA in granting mixing. Discharges that can be withheld until sufficient stream flow exists, or naturally are only produced in tandem with higher stream flows, will benefit from this clarification.

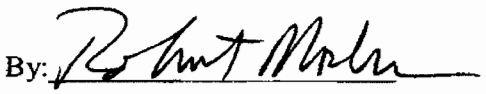
It is important to note that all other aspects of the mixing zone regulation, and for that matter all other water regulations, are still in force and work together with the changes proposed. Especially important is the reference to the provisions of 35 IAC 304.102 which stipulates that the best degree of treatment must be provided to effluents before mixing may be allowed.

Changes to Subtitle D of the Board Regulations:

With the changes proposed for sulfate and TDS, and the deletion of Subtitle D mine exemptions to water quality standards, Illinois EPA is proposing to regulate all types of discharges in an equitable manner. Water quality based permit limit decisions will now be required in lieu of the special exemptions formerly allowed for mines. Additionally, as a housekeeping measure, an outdated portion of Subtitle D unrelated to water quality standards will also be deleted.

The changes to standards proposed in the Illinois EPA's petition are based on sound science and assure the protection of designated uses of waters of the state. These modernized standards will benefit mines and other dischargers of sulfate and other dissolved salts that are not amenable to treatment. Permit limits issued using the new

sulfate and mixing regulations will be protective, yet not overly so, and will cause no unnecessary burden on economic activity. The Agency requests that the Board adopt this proposal.

By: 

Robert Mosher

February 1, 2007

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5350 Richland Road
Pleasant Plains, Illinois 62677

Phone 217-785-3950
E-mail Bob.Mosher@Illinois.gov

Robert G. Mosher

Education

Eastern Illinois University — Charleston, Illinois

BS Environmental Biology and Zoology 1977

MS Zoology 1979

Professional experience

1988 - Present Illinois Environmental Protection Agency

Supervisor, Water Quality Standards Unit, Bureau of Water

Supervision of 3-5 profession employees of the Unit, consisting of engineers, toxicologists and environmental biologists.

1. **Implementation of water quality standards.**

   Work extensively with Permit Section staff to incorporate water quality based effluent limits in NPDES permits for metals, ammonia, chlorine and other parameters. Coordinate the Agency's whole effluent biomonitoring program including review of bioassays conducted by the Agency laboratory, private consulting laboratories and permittees. Recommend permit actions related to whole effluent biomonitoring such as monitoring requirements and limits. Evaluate Illinois Pollution Control Board (IPCB) nondegradation standard for new or expanding discharges, explore alternatives to increasing pollutant load increases and work with municipal and industrial dischargers to seek less polluting solutions under the nondegradation regulation. Provide expert witness testimony at IPCB hearings and appeals related to NPDES permits.

2. **Coordination of Special Rulemakings.**

   Work with Division of Legal Council staff concerning petitions submitted by dischargers to the IPCB. Review petitions for Adjusted Standards, Variances and Site-specific changes to the water quality standards from dischargers based on unique needs. Recommend Agency position on such relief based on federal regulations and compatibility with protection of the waters of the state. Provide expert witness testimony at IPCB hearings related to special relief.

3. **Development of water quality standards regulations.**

   Develop water quality standards suitable for use in Illinois using information obtained from USEPA and the scientific literature. Work with Agency legal staff and the IPCB in the adoption of these standards into Illinois Administrative Code. Coordinate and participate in stakeholders workgroups to explain new standards and obtain public participation in standards initiatives. Participated as a lead worker or primary manager of many standards rulemakings including Disinfection Exemptions (1988), Toxics Control (1990), Ammonia (1996), Great Lakes Initiative (1997) Dissolved Metals Update and Nutrient Standards (2002) and currently, Sulfate and Mixing Zones. Provide expert witness testimony at hearings.

4. **Other Duties.**

   Speak at three to five professional organization conferences (such as Water Environment Federation) each year on water quality initiatives and Agency programs. ORSANCO subcommittee member. ASIWPCA subcommittee member.

1985 - 1988 Illinois Environmental Protection Agency

Data Management Unit, Planning Section, Division of Water Pollution Control

Managed Ambient Water Quality Monitoring Network data through the USEPA STORET system. Lead worker in compilation of the 1988 Illinois Water Quality Report. Performed quality assurance work for Agency water quality data.

1982 - 1985 Monsanto Company, St. Louis, Missouri

Contract Worker

Performed aquatic life bioassays in Monsanto's Environmental Sciences Center. Developed Standard Operating Procedures for several aquatic life bioassays. Traveled to Monsanto plant sites across the country collecting samples and conducting stream biosurveys. Used a mobile aquatic bioassay laboratory at some of these sites to perform whole effluent bioassays.

1981 - 1985 Belleville Area College, Belleville &Granite City, Illinois

Instructor of Biology

Instructed Community College courses in introductory biology and human anatomy and physiology on a full to part time basis. Member of the Charter Staff at the Granite City Campus.

1980 - 1981 Environmental Science & Engineering, Inc., St. Louis MO

Aquatic Biologist

Performed surveys of fishes and macroinvertebrates in large rivers and small streams for power plant location feasibility studies.

Community activities

- Tutor, Washington Street Mission, Springfield
- Coach, Boys Baseball and Girls Softball, Pleasant Plains Junior Athletic Association
- Deacon Board Member, Cherry Hills Baptist Church, Springfield

Awards received

Illinois EPA Employee of the Month, February 1995

STATE OF ILLINOIS)
) **SS**
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached written testimony of Robert Mosher and Brian Koch upon the persons to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601
(OVERNIGHT MAIL)

Marie E. Tipsord
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(OVERNIGHT MAIL)

Mathew Dunn
Illinois Attorney General's Office
Environmental Control Division
James R. Thompson Center
100 West Randolph Street
Chicago, Illinois 60601
(OVERNIGHT MAIL)

Jonathan Furr
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

(OVERNIGHT MAIL)

ALSO SEE ATTACHED SERVICE LIST
(FIRST CLASS)

Meredith Kelly

SUBSCRIBED AND SWORN BEFORE ME
THIS 2nd DAY OF FEBRUARY 2007.

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-3-2009

Brenda Boehner

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 – (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

April 12, 2007 618/993-7200

Mr. Steven C. Phifer
Freeman United Coal Mining Company
P.O. Box 259
Farmersville, IL 62533-0259

Re: Freeman United Coal Mining Company - Industry Mine
NPDES Permit No. IL0061247

Gentlemen:

Considering the pending Sulfate Water Quality Standards Regulations, additional water quality information will be required for NPDES Permit renewals and modifications. In preparation for the permit renewal and/or modification for your facility, the following additional monitoring information will be required.

Sulfate water quality standards and sulfate effluent limits will be based on hardness, chloride and sulfate concentrations in the effluent and receiving streams. Please provide a minimum of three (3) analyses of hardness, chloride and sulfate for the outfall discharge and the receiving stream upstream of the outfall location. In addition, flow estimates will be required for the outfalls and receiving streams. If possible, all monitoring should be performed at a time when flow exists both from the outfall and in the receiving stream.

The monitoring data required herein shall be submitted on or before July 20, 2007.

Should you have any questions or comments regarding the above, or need any additional information concerning Agency requirements, please contact me at the above telephone number or the Marion address listed below.

Sincerely,

Larry D. Crislip, P.E.
Manager, Permit Section
Mine Pollution Control Program
Bureau of Water

LDC:gs/swqsr.doc/04-11-07

Exhibit 4

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

618/993-7200

July 21, 2003

Freeman United Coal Mining Company
1480 East 1200th Street
P.O. Box 260
Industry, IL 61440

Re: . Freeman United Coal Mining Company
Industry Mine
NPDES Permit No. IL0061247
Final Modified Permit (Modified After Public Notice)

Gentlemen:

Attached is the final modified NPDES Permit for your discharge. The modified Permit as issued covers discharge limitations, monitoring, and reporting requirements. The failure of you to meet any portion of the modified Permit could result in civic and/or criminal penalties. The Illinois Environmental Protection Agency is ready and willing to assist you in interpreting any of the conditions of the modified Permit as they relate specifically to your discharge.

Please be advised that the Permit attached hereto includes modifications made after the public notice to incorporate comments and/or address concerns received from the public during the public notice comment period. The Permit has been modified as follows:

1. Page 4 and 5 – The second (2^{nd}) paragraph in the footnotes was deleted and replaced with the appropriate requirements.

2. Page 24 – Special Condition No. 11 was clarified to incorporate reference to the "area of allowed mixing."

3. Page 24 – Special Condition No. 11 was modified to clarify that Sulfate and Chloride monitoring performed pursuant to this Condition shall be subject to compliance with the Permit limitations.

The modified Permit as issued is effective as of the date indicated on the first page of the modified Permit. You have the right to appeal any conditions of the modified Permit to the Illinois Pollution Control Board within a 35 day period following the issuance date.

Exhibit 5

SO71-03

NPDES Permit No. IL0061247

Illinois Environmental Protection Agency

Division of Water Pollution Control

1021 North Grand Avenue, East

P.O. Box 19276

Springfield, Illinois 62794-9276

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Modified NPDES Permit

Expiration Date: February 28, 2004

Issue Date: April 2, 1999
Effective Date: April 2, 1999
Modification Date: March 9, 2000
Modification Date: December 11, 2000
Modification Date: July 21, 2003

Name and Address of Permittee:

Freeman United Coal Mining Company
1480 East 1200th Street
P.O. Box 260
Industry, IL 61440

Facility Name and Address:

Freeman United Coal Mining Company
Industry Mine
5 miles southwest of Industry, Illinois
(McDonough and Schuyler Counties)

Discharge Number and Name:	Receiving waters
002 – Acid Mine Drainage Discharge from Preparation Plant	Unnamed tributary to Grindstone Creek
003-Surface Acid Mine Drainage	Grindstone Creek
018, 019, 020, 021-Surface Acid Mine Drainage	Unnamed tributary to Grindstone Creek
009, 024W, 026-Surface Acid Mine Drainage	Willow Creek
022-Surface Acid Mine Drainage	Unnamed tributary to Camp Creek
029, 030-Alkaline Mine Drainage	Unnamed 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

In compliance with the provisions of the Illinois Environmental Protection Act, Subtitle C and/or Subtitle D Rules and Regulations of the Illinois Pollution Control Board, and the Clean Water Act, the above-named permittee is hereby authorized to discharge at the above location to the above-named receiving stream in accordance with the standard conditions and attachments herein.

Permittee is not authorized to discharge after the above expiration date. In order to receive authorization to discharge beyond the expiration date, the permittee shall submit the proper application as required by the Illinois Environmental Protection Agency (IEPA) not later than 180 days prior to the expiration date.

Toby Frevert, Manager
Division of Water Pollution Control
Bureau of Water

REM:LDC:jkb/2728c/03-31-03

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:						
	Outfalls*:	003, 009 (Acid Mine Drainage)				
Flow (MGD)					Measure When Monitoring	
Total Suspended Solids			35.0	70.0	***	Grab
Iron (total)			3.5	7.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity				1/month	Grab
Sulfates				1100	***	Grab
Chlorides				500	***	Grab
Manganese (total)			2.0	4.0	***	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

Pollutant or Pollutant Property	Effluent Limitations
Iron (total)	7.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

Pollutant or Pollutant Property	Effluent Limitations
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

 Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge(s) shall be monitored and limited at all times as follows:						
Outfalls:	020, 021, 022, 024W, 026 (Acid Mine Drainage)					
Flow (MGD)					Measure When Monitoring	
Total Suspended Solids			35.0	70.0	***	Grab
Iron (total)			3.0	6.0	***	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				3/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity				1/month	Grab
Sulfates				500	***	Grab
Chlorides				500	***	Grab
Manganese (total)			2.0	4.0	***	Grab

*** There shall be a minimum of nine (9) samples collected during the quarter when the pond is discharging. Of these 9 samples, a minimum of one sample each month shall be taken during base flow conditions. A "no flow" situation is not considered to be a sample of the discharge. A grab sample of each discharge caused by the following precipitation event(s) shall be taken for the following parameters during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s). The remaining three (3) samples may be taken from either base flow or during precipitation event.

Any discharge or increase in volume of a discharge caused by precipitation within any 24-hour period less than or equal to the 2-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 2-year, 24-hour precipitation event for this area is considered to be 3.02 inches.

Pollutant or Pollutant Property	Effluent Limitations
Iron	6.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

Any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b).

Pollutant or Pollutant Property	Effluent Limitations
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

In accordance with 35 Ill. Adm. Code 406.110(d), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10-year, 24-hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:						
	Outfalls:	004, 008, 027 (Reclamation Area Drainage)				
Flow (MGD)					Measure When Monitoring	
Settleable Solids				0.5 ml/l	1/month	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/month	Grab
Sulfates				500	1/month	Grab
Chlorides				500	1/month	Grab

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:						
	Outfalls*:	005, 007, 010, 011 (Reclamation Area Drainage)				
Flow (MGD)					Measure When Monitoring	
Settleable Solids				0.5 ml/l	1/month	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/month	Grab
Sulfates				1800	1/month	Grab
Chlorides				500	1/month	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
Upon completion of Special Condition No. 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:						
Outfalls*:	002, 003, 009, 029, 030, 031, 032, 033, 035 (Reclamation Area Drainage)					
Flow (MGD)					Measure When Monitoring	
Settleable Solids				0.5 ml/l	1/month	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/month	Grab
Sulfates				1100	1/month	Grab
Chlorides				500	1/month	Grab

*Outfalls permitted herein are also subject to the limitations and monitoring and reporting requirements of Special Condition No. 11.

In addition to the above base flow sampling requirements, a grab sample of each discharge caused by the following precipitation event(s) shall be taken (for the following parameters) during at least 3 separate events each quarter. For quarters in which there are less than 3 such precipitation events resulting in discharges, a grab sample of the discharge shall be required whenever such precipitation event(s) occur(s).

In accordance with 35 Ill. Adm. Code 406.109(c), any discharge or increase in the volume of a discharge caused by precipitation within any 24-hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) shall comply with the following limitations instead of those in 35 Ill. Adm. Code 406.106(b). The 10 year, 24 hour precipitation event for this area is considered to be 4.45 inches.

Pollutant or Pollutant Property	Effluent Limitations
pH	6.0 - 9.0 at all times

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

PARAMETER	LOAD LIMITS lbs/day 30 DAY AVERAGE	LOAD LIMITS lbs/day DAILY MAXIMUM	CONCENTRATION LIMITS mg/l 30 DAY AVERAGE	CONCENTRATION LIMITS mg/l DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
From the effective date of this Permit until February 28, 2004 the effluent of the following discharge shall be monitored and limited at all times as follows:						
	Outfall:	017 (Stormwater Discharge)				
Settleable Solids				0.5 ml/l	1/Year	Grab
pH	The pH shall not be less than 6.0 nor greater than 9.0				1/Year	Grab

Storm water discharge monitoring is subject to the following reporting requirements:

Analysis of samples must be submitted with second quarter Discharge Monitoring Reports.

If discharges can be shown to be similar, a plan may be submitted by November 1 of each year preceding sampling to propose grouping of similar discharges and/or updated previously submitted groupings. If updating of a previously submitted plan is not necessary, a written notification to the Agency, indicating such is required. Upon approval from the Agency, one representative sample for each group may be submitted.

Annual storm water monitoring is required for all discharges until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

NPDES Permit No. IL0061247

Construction Authorization No.: 0368-98

C.A. Date: January 13, 1999

Engineer: Craig Schoonover, P.E.

Authorization is hereby granted to the above designee to construct the mine and mine refuse area described as follows:

A surface coal mining operation consisting of 4548.0 acres located in Sections 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36, T4N, R3W, and Sections 19 and 30 in T4N, R2W of McDonough County; and 474.5 acres in Section 2 and 3 in T3N, R3W, Schuyler County.

The operations consist of strip mining, coal processing, support facilities, refuse disposal areas, and surface drainage control facilities. Sediment pond and Outfall classifications are as follows:

Discharge No.	Classification	Receiving Waters
002	Acid Mine Drainage from Coal Refuse Piles	Grindstone Creek
003, 018, 019, 020, 021	Non-Controlled Acid Mine Drainage	Grindstone Creek
022	Non-Controlled Acid Mine Drainage	Camp Creek
009, 024W, 025, 026	Non-Controlled Acid Mine Drainage	Willow Creek
004, 005, 006, 007, 008, 010, 011	Reclamation Area Drainage	Grindstone Creek
017	Stormwater Discharge	Grindstone Creek

Grindstone Creek is tributary to Camp Creek, tributary to LaMoine River. Willow Creek is tributary to LaMoine River.

Pond 017 may be converted to a dry dam as proposed in Log No. 4061-94. The discharge will be classified as a stormwater discharge.

The preparation plant facilities are revised to include a blending conveyor and a 25-ton capacity truck hopper as described in Log No. 4286-94.

Outfall 019 is reclassified as acid mine drainage as proposed in Log No. 3259-95

An additional surface mining area, identified as IDNR/OMM Permit Area No. 305, is incorporated as proposed in Log No. 1099-97, 1099-97-A and 1099-97-B. This IDNR/OMM permit area contains 255.0 acres in Section 2, T3N, R3W, Schuyler County; however, due to overlapping OMM permit areas, only 104.5 acres is added to this NPDES permit and is included in the above totals.

Drainage from disturbed areas in OMM Permit Area No. 305 will report to Ponds 009 and 024W, which are classified acid mine drainage and report to Willow Creek.

Three groundwater monitoring wells shall be installed around a coal combustion by-product beneficial use area as proposed in Log No. 1062-97 (OMM Permit No. 261, Insignificant Permit Revision (IPR) No. 10). These monitoring wells are for the Permittee's use and data collection only. Monitoring data from these wells is not required to be submitted to the Agency. Haul roads to the beneficial use area will be modified as proposed in Log No. 2300-96 (OMM Permit No. 261, IPR No. 7 and OMM Permit No. 16, IPR No. 36).

Two areas of 22 acres and 7 acres, previously designated as support areas, are incorporated into the mining area as proposed in Log Nos. 1230-97 (OMM Permit No. 261, IPR No. 13) and 1252-97 (OMM Permit 261, IPR No. 14), respectively.

Soda ash briquets may be used to neutralize acidic water in Pond 019 as proposed in Log No. 1394-97.

The operations plan is modified as proposed in Log No. 0006-98, identified as Revision No. 4 to OMM Permit No. 16, Revision No. 1 to OMM Permit No. 180 and Revision No. 1 to OMM Permit No. 261. No additional area or Outfalls are added with these modifications.

9. A permittee has the obligation to add a settling aid if necessary to meet the suspended solids or settleable solids effluent standards. The selection of a settling aid and the application practice shall be in accordance with subsection a. or b. below.

   a. Alum ($Al_2(SO_4)_3$), hydrated slime ($Ca(OH)_2$), soda ash (Na_2CO_3), alkaline pit pumpage, acetylene production by-product (tested for impurities), and ground limestone are acceptable settling aids and are hereby permitted for alkaline mine drainage sedimentation ponds.

   b. Any other settling aids such as commercial flocculents and coagulants are permitted only on prior approval from the Agency. To obtain approval a permittee must demonstrate in writing to the Agency that such use will not cause a violation of the toxic substances standard of 35 Ill. Adm. Code 302.210 or of the appropriate effluent and water quality standards of 35 Ill. Adm. Code parts 302, 304, and 406.

10. A general plan for the nature and disposition of all liquids used to drill boreholes shall be filed with this Agency prior to any such operation. This plan should be filed at such time that the operator becomes aware of the need to drill unless the plan of operation was contained in a previously approved application. After settling, recirculation water which meets the requirements of 35 Ill. Adm. Code 406.106 and 406.202, may be discharged. The use of additives in the recirculation water which require treatment other than settling to comply with the Act will require a revised permit.

11. Any of the following shall be a violation of the provisions required under 35 Ill. Adm. Code 406.203(c):

   A. It is demonstrated that an adverse effect on the environment in and around the receiving stream has occurred or is likely to occur.

   B. It is demonstrated that the discharge has adversely affected or is likely to adversely affect any public water supply.

   C. The Agency determines the permittee is not utilizing good mining practices as defined in 35 Ill. Adm. Code 406.204 which are applicable in order to minimize the discharge of total dissolved solids, chloride, sulfate, iron and manganese.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-2

S.C.A. Date: December 1, 1999

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999 and Supplemental Construction Authorization No. 0368-98-1 dated October 18, 1999. Tnese facilities have been revised as follows:

The addition of 131.0 acres, identified as OMM Permit No. 334 area, located in Sections 3 and 10, Township 3 North, Range 3 West, Schuyler County, for surface mining activities as proposed in IEPA Log Nos. 9162-99, 9162-99-A and 9162-99-B. This additional area includes 20.0 acres (OMM Permit No. 180, IBR No. 1) previously incorporated into this Permit under IEPA Log No. 9471-99 in Supplemental Construction Authorization No. 0368-98-1. Therefore, the total area permitted herein is increased by only 111.0 acres to 4,679.0 acres, of which 605.5 acres is located in Schuyler County.

Coal will be processed at the existing preparation facility. Fine refuse is disposed in slurry ponds with coarse refuse being returned to the active pit.

Drainage control is provided by temporary diversions and two (2) permanent impoundments (sedimentation ponds) with discharges designated as Outfalls 026 and 027. The discharge designated as Outfall 027 is located at Latitude 40°15'54" North, Longitude 90°43'19" West, classified as alkaline mine drainage and reports to an unnamed tributary to Willow Creek, tributary to LaMoine River. Pond and Outfall 026 were previously approved.

A currently permitted area of 2.7 acres, previously designated as not to be disturbed, is hereby incorporated into the mining area as proposed in IEPA Log No. 9582-99 (OMM Permit No. 180, IPR No. 4). This area is included in the total permit area noted above.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in IEPA Log Nos. 9162-99, 9162-99-A and 9162-99-B.

All Conditions in the original Authorization to Construct are incorporated in this Supplemental Authorization unless specifically deleted or revised herein.

NPDES Permit No. IL0061247

Supplemental Construction Authorization No. 0368-98-4

S.C.A. Date: March 27, 2003

Steven M. Bishoff, P.E., Rapps Engineering and Applied Science

Supplemental Authorization is hereby granted to the above designee to construct the mine and mine refuse area, which were previously approved under Authorization No. 0368-98 dated January 13, 1999 and Supplemental Authorization Nos. 0368-99-1, 0368-99-2 and 0368-99-3 dated October 18, 1999, December 1, 1999 and July 25, 2000 respectively. These facilities have been revised as follows:

Total area covered by this permit is increased to 5651.3 acres of which 1064.7 acres are located in Schuyler County and 4886.6 acres are in McDonough County.

An area of 493.1 acres located in Sections 22, 23, 26 and 27, Township 4 North, Range 3 West, 4th P.m. McDonough County will be surface mined as proposed in Log Nos. 6244-02, 6244-02-A, 6244-02-B and 6244-02-D.

- Surface drainage will be controlled by diversions and four sediment ponds designated as Pond Nos. 031, 032, 033 and 035 with respectively numbered Outfalls. Outfall Nos. 031, 032, 033 and 035 all report to Grindstone Creek and are classified as alkaline mine drainage.

An area of 20 acres located in Section 27, Township 4 North, Range 3 West, 4th P.M., McDonough County will be added to the permit for construction of a haul road as proposed in Log No. 5132-03. This area is also identified as Incidental Boundary Revision (IBR) No. 6 to IDNR/OMM Permit No. 16.

Active surface mining will not be conducted in this area. Since this is a narrow strip of land for construction of a road, a sedimentation pond will be not required, however standard erosion controls will be. Construction will be completed in dry weather conditions and at a time when seeding will likely be most successful. This road will cross Grindstone Creek, where four (4) nine foot diameter culverts will be used to pass water under the road. The crossing will be constructed so that flow over the road from significant precipitation events will not endanger the crossing.

The abandonment plan for this area in accordance with Log No. 5132-03 consists of removing the road and crossing and returning the area to its current use, with minimal disturbance.

Outfall No. 027 is re-classified as reclamation area drainage as proposed in Log No. 5071-03.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in Log Nos. 6244-02, 6244-02-A and 6244-02-B.

All water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.202. For the constituents not covered by Parts 302 or 303, all water remaining upon abandonment must meet the requirements of 35 Ill. Adm. Code 406.106.

Longitude and latitude co-ordinates for all Outfalls covered by this Permit are as follows:

Outfall	Latitude (North)	Longitude (West)
002	40°17'45.0"	90°43'07.0"
003	40°18'00.0"	90°43'15.0"
004	40°18'24.0"	90°42'43.0"
005	40°18'40.0"	90°42'03.0"
006	40°18'30.0"	90°41'45.0"
007	40°18'39.0"	90°41'13.0"
008	40°18'30.0"	90°40'33.0"
009	40°16'22.0"	90°42'53.0"
010	40°18'16.0"	90°42'50.0"
011	40°18'19.0"	90°42'43.0"
017	40°18'41.0"	90°42'18.0"
018	40°17'40.0"	90°43'49.0"
019	40°17'55.0"	90°44'06.0"
020	40°17'45.0"	90°44'47.0"
021	40°17'43.0"	90°45'05.0"
022	40°17'17.0"	90°45'13.0"
024W	40°16'14.0"	90°42'55.0"
026	40°16'20.0"	90°43'03.0"
027	40°15'54.0"	90°43'19.0"

NPDES Permit No. IL0061247

Special Conditions

Special Condition No. 1: No effluent from any mine related facility area under this permit shall, alone or in combination with other sources, cause a violation of any applicable water quality standard as set out in the Illinois Pollution Control Board Rules and Regulations, Subtitle C: Water Pollution.

Special Condition No. 2: Samples taken in compliance with the effluent monitoring requirements shall be taken at a point representative of the discharge, but prior to entry into the receiving stream.

Special Condition No. 3: The permittee shall record monitoring results on Discharge Monitoring Report Forms using one such form for each discharge each month. The Discharge Monitoring Report forms shall be submitted to the Agency in accordance with the schedule outlined in Special Condition No. 4 below.

Discharge Monitoring Reports shall be mailed to the IEPA at the following address:

Illinois Environmental Protection Agency
Division of Water Pollution Control
1021 North Grand Ave., East
P.O. Box 19276
Springfield, Illinois 62794-9276

Attn: Compliance Assurance Section

Special Condition No. 4: The completed Discharge Monitoring Report form shall be retained by the permittee for a period of three months and shall be mailed and received by the IEPA in accordance with the following schedule, unless otherwise specified by the permitting authority.

Period	Received by IEPA
January, February, March	April 28
April, May, June	July 28
July, August, September	October 28
October, November, December	January 28

Special Condition No. 5: If an applicable effluent standard or limitation is promulgated under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the NPDES Permit, the Agency shall revise or modify the permit in accordance with the more stringent standard or prohibition and shall so notify the permittee.

Special Condition No. 6: The permittee shall notify the Agency in writing by certified mail within thirty days of abandonment, cessation, or suspension of active mining for thirty days or more unless caused by a labor dispute. During cessation or suspension of active mining, whether caused by a labor dispute or not, the permittee shall provide whatever interim impoundment, drainage diversion, and wastewater treatment is necessary to avoid violations of the Act or Subtitle D.

Special Condition No. 7: Plans must be submitted to and approved by this Agency prior to construction of a sedimentation pond. At such time as runoff water is collected in the sedimentation pond, a sample shall be collected and analyzed for the parameters designated as 1M-15M under Part 5-C of Form 2C and the effluent parameters designated herein with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must also be obtained. Discharge from a pond is not allowed unless applicable effluent and water quality standards are met.

Special Condition No. 8: The special reclamation area effluent standards of 35 Ill. Adm. Code 406.109 apply only on approval from the Agency. To obtain approval, a request form and supporting documentation shall be submitted 45 days prior to the month that the permittee wishes the discharge be classified as a reclamation area discharge. The Agency will notify the permittee upon approval of the change.

Special Condition No. 9: The special stormwater effluent standards apply only on approval from the Agency. To obtain approval, a request with supporting documentation shall be submitted 45 days prior to the month that the permittee proposes the discharge to be classified as a stormwater discharge. The documentation supporting the request shall include analysis results indicating the discharge will consistently comply with reclamation area discharge effluent standards. The Agency will notify the permittee upon approval of the change.

Standard Conditions

Definitions

Act means the Illinois Environmental Protection Act, 415 ILCS 5 as Amended.

Agency means the Illinois Environmental Protection Agency.

Board means the Illinois Pollution Control Board.

Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) means Pub. L 92-500, as amended. 33 U.S.C. 1251 et seq.

NPDES (National Pollutant Discharge Elimination System) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318 and 405 of the Clean Water Act.

USEPA means the United States Environmental Protection Agency.

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

Maximum Daily Discharge Limitation (daily maximum) means the highest allowable daily discharge.

Average Monthly Discharge Limitation (30 day average) means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average Weekly Discharge Limitation (7 day average) means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Aliquot means a sample of specified volume used to make up a total composite sample.

Grab Sample means an individual sample of at least 100 milliliters collected at a randomly-selected time over a period not exceeding 15 minutes.

24 Hour Composite Sample means a combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24-hour period.

8 Hour Composite Sample means a combination of at least 3 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over an 8-hour period.

Flow Proportional Composite Sample means a combination of sample aliquots of at least 100 milliliters collected at periodic intervals such that either the time interval between each aliquot or the volume of each aliquot is proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot.

(1) Duty to comply. 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. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. If the permittee submits a proper application as required by the Agency no later than 180 days prior to the expiration date, this permit shall continue in full force and effect until the final Agency decision on the application has been made.

(3) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(5) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up, or auxiliary facilities, or similar systems only when necessary to achieve compliance with the conditions of the permit

(6) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause by the Agency pursuant to 40 CFR 122.62. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(7) Property rights. This permit does not convey any property rights of any sort or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the Agency within a reasonable time, any information which the Agency may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with the permit. The permittee shall also furnish to the Agency, upon request, copies of records required to be kept by this permit.

(9) Inspection and entry. The permittee shall allow an authorized representative of the Agency, upon the presentation of credentials and other documents as may be required by law, to:

(a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(d) Sample or monitor at reasonable times, for the purpose of assuring permit compliance, or as otherwise authorized by the Act, any substances or parameters at any location.

(10) Monitoring and records.

(a) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. This period may be extended by request of the Agency at any time

(c) Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit. Where no test procedure under 40 CFR Part 136 has been approved, the permittee must submit to the Agency a test method for approval. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals to ensure accuracy of measurements.

(11) Signatory requirement. All applications, reports or information submitted to the Agency shall be signed and certified.

(a) Application. All permit applications shall be signed as follows:

(1) For a corporation: by a principal executive officer of at least the level of vice president or a person or position having overall responsibility for environmental matters for the corporation;

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

(b) Reports. All reports required by permits, or other information requested by the Agency shall be signed by a person described in paragraph (a) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a); and

(2) The authorization specifies either an individual or a position responsible for the overall operation of the facility, from which the discharge originates, such as a plant manager, superintendent or person of equivalent responsibility; and

(3) The written authorization is submitted to the Agency.

FREEMAN UNITED

Freeman United Coal Mining Company

P.O.Box 260
Industry, IL 61440
309/254-3333
Fax 309/254-3781

Certified Mail 7001 2510 0005 2397 8262

August 15, 2003

Mr. Larry Crislip, P.E.
Manager, Permit Section
Mine Pollution Control Program
Illinois Environmental Protection Agency
2309 West Main Street
Marion, Illinois 62959

Re: Industry Mine
NPDES Permit Renewal
Permit No. IL0061247

Dear Mr. Crislip:

Enclosed are two (2) copies of the permit renewal application for Permit No. IL0061247.

If you have any questions or need additional information, please contact me.

Sincerely,

Craig Schoonover
Engineer

CAS/cs
Copy: G. Arnett
File: NPDESNI

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Mr. Larry Crislip, P.E.
Manager, Permit Sec., Mine Pollution
IEPA, Bureau of Water
2309 West Main Street
Marion IL 62959

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 8/20/03

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 2510 0005 2397 8262

PS Form 3811, August 2001 Domestic Return Receipt

Exhibit 6

Please print or type in the unshaded areas only
(fill-in areas are spaced for elite type, i.e., 12 characters/inch).

Form Approved. OMB No 2040-0086.

FORM 1 GENERAL

U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program
(Read the "General Instructions" before starting.)

I. EPA I.D. NUMBER

F IL0061247 D

LABEL ITEMS

I. EPA I.D. NUMBER

III. FACILITY NAME

V. FACILITY MAILING ADDRESS

VI. FACILITY LOCATION

Freeman United Coal Mining Co.
1480 E 1200th St
PO Box 260
Industry IL 61440

GENERAL INSTRUCTIONS

If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate fill-in area below. Also, if any of the preprinted data is absent *(the area to the left of the label space lists the information that should appear)*, please provide it in the proper fill-in area(s) below. If the label is complete and correct, you need not complete Items I, III, V, and VI *(except VI-B which must be completed regardless)*. Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorizations under which this data is collected.

II. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold-faced terms.

SPECIFIC QUESTIONS	MARK 'X' YES	NO	FORM ATTACHED
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.? (FORM 2A)		X	
B. Does or will this facility *(either existing or proposed)* include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.? (FORM 2B)		X	
C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A or B above? (FORM 2C)	X		2C
D. Is this a proposed facility *(other than those described in A or B above)* which will result in a discharge to waters of the U.S.? (FORM 2D)		X	
E. Does or will this facility treat, store, or dispose of hazardous wastes? (FORM 3)		X	
F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)		X	
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)		X	
H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)		X	
I. Is this facility a proposed stationary source which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	
J. Is this facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	

III. NAME OF FACILITY

1 SKIP INDUSTRY MINE

IV. FACILITY CONTACT

A. NAME & TITLE (last, first, & title)	B. PHONE (area code & no.)
2 SCHOONOVER CRAIG ENGINEER	309 254 3333

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX

3 P O B O X 2 6 0

B. CITY OR TOWN	C. STATE	D. ZIP CODE
4 INDUSTRY	IL	61440

VI. FACILITY LOCATION

A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER

5 1480E 1200th STREET

B. COUNTY NAME

McDONOUGH

C. CITY OR TOWN	D. STATE	E. ZIP CODE	F. COUNTY CODE (if known)
6 INDUSTRY	IL	61440	109

CONTINUE ON REVERSE

Please print or type in the unshaded areas only.

EPA I.D. NUMBER (copy from Item 1 of Form 1): IL 0061247

Form Approved. OMB No. 2000-0059 Approval expires 12-31-85

FORM 2C NPDES

U.S. ENVIRONMENTAL PROTECTION AGENCY
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER
EXISTING MANUFACTURING, COMMERCIAL, MINING AND SILVICULTURAL OPERATIONS
Consolidated Permits Program

I. OUTFALL LOCATION

For each outfall, list the latitude and longitude of its location to the nearest 15 seconds and the name of the receiving water.

A. OUTFALL NUMBER (list)	B. LATITUDE 1. DEG.	2. MIN.	3. SEC.	C. LONGITUDE 1. DEG.	2. MIN.	3. SEC.	D. RECEIVING WATER (name)
							SEE ATTACHED LIST

II. FLOWS, SOURCES OF POLLUTION, AND TREATMENT TECHNOLOGIES

A. Attach a line drawing showing the water flow through the facility. Indicate sources of intake water, operations contributing wastewater to the effluent, and treatment units labeled to correspond to the more detailed descriptions in Item B. Construct a water balance on the line drawing by showing average flows between intakes, operations, treatment units, and outfalls. If a water balance cannot be determined *(e.g., for certain mining activities)*, provide a pictorial description of the nature and amount of any sources of water and any collection or treatment measures.

B. For each outfall, provide a description of: (1) All operations contributing wastewater to the effluent, including process wastewater, sanitary wastewater, cooling water, and storm water runoff; (2) The average flow contributed by each operation; and (3) The treatment received by the wastewater. Continue on additional sheets if necessary.

1. OUTFALL NO. (list)	2. OPERATION(S) CONTRIBUTING FLOW a. OPERATION (list)	b. AVERAGE FLOW (include units)	3. TREATMENT a. DESCRIPTION	b. LIST CODES FROM TABLE 2C-1	
	Surface Runoff	See Sch.	Suspended Solids	1	U
002	Pit Pumpage	ME	Settlement	4	A
	Slurry Water Circuit			4	C
~~003~~ ~~029~~ ~~030~~ 031 ~~032~~					
	Surface Runoff	See Sch.	Suspended Solids	1	U
033	Pit Pumpage	ME	Settlement	4	A
035					
018					
019 020	Surface Runoff	See Sch.	Suspended Solids	1	U
021	From Reclaimed Land	ME	Settlement	4	A
022					
~~024~~ 026					
027					
004					
005 006	Surface Runoff	See Sch.	Suspended Solids	1	U
007	From Reclaimed Land (Stormwater)	ME	Settlement	4	A
008 010					
011 017					

OFFICIAL USE ONLY *(effluent guidelines sub-categories)*

CONTINUED FROM PAGE 2

EPA I.D. NUMBER (copy from Item 1 of Form 1)
IL0061247

Form Approved.
OMB No. 2000-0059
Approval expires 12-31-85

V. INTAKE AND EFFLUENT CHARACTERISTICS

A, B, & C: See instructions before proceeding — Complete one set of tables for each outfall — Annotate the outfall number in the space provided. NOTE: Tables V-A, V-B, and V-C are included on separate sheets numbered V-1 through V-9.

D. Use the space below to list any of the pollutants listed in Table 2c-3 of the instructions, which you know or have reason to believe is discharged or may be discharged from any outfall. For every pollutant you list, briefly describe the reasons you believe it to be present and report any analytical data in your possession.

1. POLLUTANT	2. SOURCE	1. POLLUTANT	2. SOURCE
NONE EXPECTED TO BE PRESENT IN ANALYZABLE QUANITIES			

VI. POTENTIAL DISCHARGES NOT COVERED BY ANALYSIS

Is any pollutant listed in Item V-C a substance or a component of a substance which you currently use or manufacture as an intermediate or final product or byproduct?

☐ YES (list all such pollutants below) XX NO (go to Item VI-B)

FREEMAN UNITED COAL MINING COMPANY

Permit #IL0061247

Outfall	Latitude	Longitude	Legal Description
002	40-17-45	90-43-07	T4N-R3W Sec. 27 SE1/4,SE1/4,SE1/4
003	40-18-00	90-43-15	T4N-R3W Sec. 26 NE1/4,SW1/4
004	40-18-24	90-42-43	T4N-R3W Sec. 26 SE1/4,NW1/4,NW1/4
005	40-18-40	90-42-03	T4N-R3W Sec. 23 NW1/4,SE1/4,SE1\4
006	40-18-30	90-41-45	T4N-R3W Sec. 24 SW Corner
007	40-18-39	90-41-13	T4N-R3W Sec. 24 NW1/4,SW1/4,SE1/4
008	40-18-30	90-40-33	T4N-R2W Sec. 30 NW1/4,NW1/4,NW1/4
009	40-16-22	90-42-53	T3N-R3W Sec. 2 SW1/4,SW1/4,SW1/4
010	40-18-16	90-42-50	T4N-R3W Sec. 26 N1/2,SW1/4,SE1/4
011	40-18-19	90-42-48	T4N-R3W Sec. 26 N1/2,SW1/4,SE1/4
017	40-18-41	90-42-18	T4N-R3W Sec. 23 SW1/4,SE1/4
018	40-17-40	90-43-49	T4N-R3W Sec. 34 NW1/4,NW1/4
019	40-17-55	90-44-06	T4N-R3W Sec. 27 SE1/4,SE1/4
020	40-17-45	90-44-47	T4N-R3W Sec. 27 SE1/4,SW1/4
021	40-17-43	90-45-06	T4N-R3W Sec. 33 NW1/4,NW1/4
022	40-17-17	90-45-13	T4N-R3W Sec. 33 NW1/4,SW1/4
024W	40-16-14	90-42-55	T3N-R3W Sec. 2 NW1/4,SW1/4
026	40-16-20	90-43-03	T3N-R3W Sec. 3 SE1/4,NE1/4
027	40-15-54	90-43-19	T3N-R3W Sec. 3 SW1/4,SE1/4
029	40-16-22	90-45-08	T3N-R3W Sec. 4 SW1/4,NW1/4
030	40-16-16	90-44-51	T3N-R3W Sec. 4 NE1/4,SW1/4
031	40-18-11.5	90-43-33.6	T4N-R3W Sec. 27 SE1/4,NW1/4
032	40-18-11.5	90-43-10.6	T4N-R3W Sec. 27 SE1/4,NE1/4
033	40-18-24.5	90-43-01.9	T4N-R3W Sec. 27 NE1/4,NE1/4
035	40-18-46.8	90-42-55.9	T4N-R3W Sec. 22 NE1/4,SE1/4

July 21, 2003
FILE: LATLONGI

PLEASE PRINT OR TYPE IN THE UNSHADED AREAS ONLY. You may report some or all of this information on separate sheets *(use the same format)* instead of completing these pages. SEE INSTRUCTIONS.

EPA I.D. NUMBER *(copy from Item 1 of Form 1)*: IL 0061247

Form Approved. OMB No. 2000-0059 Approval expires 12-31-85

V. INTAKE AND EFFLUENT CHARACTERISTICS *(continued from page 3 of Form 2-C)*

OUTFALL NO. 002

PART A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

1. POLLUTANT	2. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	3. UNITS (specify if blank) a. CONCENTRATION	3. UNITS b. MASS	4. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	4. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	4. INTAKE b. NO. OF ANALYSES
a. Biochemical Oxygen Demand *(BOD)*												
b. Chemical Oxygen Demand *(COD)*												
c. Total Organic Carbon *(TOC)*												
d. Total Suspended Solids *(TSS)*	30				11		8	mg/l				
e. Ammonia *(as N)*												
f. Flow	VALUE 200		VALUE		VALUE 88		8	GPM		VALUE		
g. Temperature *(winter)*	VALUE		VALUE		VALUE			°C		VALUE		
h. Temperature *(summer)*	VALUE		VALUE		VALUE			°C		VALUE		
i. pH	MINIMUM 7.26	MAXIMUM 7.96	MINIMUM	MAXIMUM			8	STANDARD UNITS				

PART B - Mark "X" in column 2-a for each pollutant you know or have reason to believe is present. Mark "X" in column 2-b for each pollutant you believe to be absent. If you mark column 2a for any pollutant which is limited either directly, or indirectly but expressly, in an effluent limitations guideline, you must provide the results of at least one analysis for that pollutant. For other pollutants for which you mark column 2a, you must provide quantitative data or an explanation of their presence in your discharge. Complete one table for each outfall. See the instructions for additional details and requirements.

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X' a. BELIEVED PRESENT	2. MARK 'X' b. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	4. UNITS b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	5. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	5. INTAKE b. NO. OF ANALYSES
a. Bromide (24959-67-9)		X												
b. Chlorine, Total Residual		X												
c. Color		X												
d. Fecal Coliform		X												
e. Fluoride (16984-48-8)		X												
f. Nitrate-Nitrite *(as N)*		X												

EPA I.D. NUMBER (copy from Item 1 of Form 1)	OUTFALL NUMBER
IL 0061247	002

Form Approved.
OMB No. 2000-0059
Approval expires 12-31-85

CONTINUED FROM PAGE 3 OF FORM 2-C

PART C - If you are a primary industry and this outfall contains process wastewater, refer to Table 2c-2 in the instructions to determine which of the GC/MS fractions you must test for. Mark "X" in column 2-a for all such GC/MS fractions that apply to your industry and for ALL toxic metals, cyanides, and total phenols. If you are not required to mark column 2-a *(secondary industries, nonprocess wastewater outfalls, and nonrequired GC/MS fractions)*, mark "X" in column 2-b for each pollutant you know or have reason to believe is present. Mark "X" in column 2-c for each pollutant you believe is absent. If you mark column 2a for any pollutant, you must provide the results of at least one analysis for that pollutant. If you mark column 2b for any pollutant, you must provide the results of at least one analysis for that pollutant if you know or have reason to believe it will be discharged in concentrations of 10 ppb or greater. If you mark column 2b for acrolein, acrylonitrile, 2,4 dinitrophenol, or 2-methyl-4, 6 dinitrophenol, you must provide the results of at least one analysis for each of these pollutants which you know or have reason to believe that you discharge in concentrations of 100 ppb or greater. Otherwise, for pollutants for which you mark column 2b, you must either submit at least one analysis or briefly describe the reasons the pollutant is expected to be discharged. Note that there are 7 pages to this part; please review each carefully. Complete one table *(all 7 pages)* for each outfall. See instructions for additional details and requirements.

POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT						4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	a. LONG TERM AVERAGE VALUE (2) MASS	b. NO. OF ANALYSES
METALS, CYANIDE, AND TOTAL PHENOLS														
M. Antimony, Total (7440-36-0)	X			<0.005						1	mg/l				
M. Arsenic, Total (7440-38-2)	X			<0.025						1	mg/l				
M. Beryllium, Total, 7440-41-7)	X			<0.001						1	mg/l				
M. Cadmium, Total (7440-43-9)	X			<0.002						1	mg/l				
M. Chromium, Total (7440-47-3)	X			<0.010						1	mg/l				
M. Copper, Total (7440-50-8)	X			0.026						1	mg/l				
M. Lead, Total (7439-92-1)	X			<0.002						1	mg/l				
M. Mercury, Total (7439-97-6)	X			<0.0002	SAMPLE DATE 8/1/03					1	mg/l				
M. Nickel, Total (7440-02-0)	X			0.029						1	mg/l				
OM. Selenium, Total (7782-49-2)	X			<0.050						1	mg/l				
1M. Silver, Total (7440-22-4)	X			<0.010						1	mg/l				
2M. Thallium, Total (7440-28-0)	X			<0.002						1	mg/l				
3M. Zinc, Total (7440-66-6)	X			0.206						1	mg/l				
4M. Cyanide, Total (57-12-5)	X			<0.007						1	mg/l				
5M. Phenols, Total	X									1	mg/l				
DIOXIN															
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)			X	DESCRIBE RESULTS											

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	(2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	(2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	(2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	(2) MASS	b. NO. OF ANALYSES
GC/MS FRACTION – VOLATILE COMPOUNDS (continued)															
22V. Methylene Chloride (75-09-2)			X												
23V. 1,1,2,2-Tetrachloroethane (79-34-5)			X												
24V. Tetrachloroethylene (127-18-4)			X												
25V. Toluene (108-88-3)			X												
26V. 1,2-Trans-Dichloroethylene (156-60-5)			X												
27V. 1,1,1-Trichloroethane (71-55-6)			X												
28V. 1,1,2-Trichloroethane (79-00-5)			X												
29V. Trichloroethylene (79-01-6)			X												
30V. Trichlorofluoromethane (75-69-4)			X												
31V. Vinyl Chloride (75-01-4)			X												
GC/MS FRACTION – ACID COMPOUNDS															
1A. 2-Chlorophenol (95-57-8)			X												
2A. 2,4-Dichlorophenol (120-83-2)			X												
3A. 2,4-Dimethylphenol (105-67-9)			X												
4A. 4,6-Dinitro-O-Cresol (534-52-1)			X												
5A. 2,4-Dinitrophenol (51-28-5)			X												
6A. 2-Nitrophenol (88-75-5)			X												
7A. 4-Nitrophenol (100-02-7)			X												
8A. P-Chloro-M-Cresol (59-50-7)			X												
9A. Pentachlorophenol (87-86-5)			X												
10A. Phenol (108-95-2)			X												
11A. 2,4,6-Trichlorophenol (88-06-2)			X												

OMB No. 2000-0059
Approval expires 12-31-85

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TEST INCLUDED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	4. UNITS b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (2) MASS	5. INTAKE (optional) b. NO. OF ANALYSES
GC/MS FRACTION — BASE/NEUTRAL COMPOUNDS (continued)															
22B. 1,4-Dichlorobenzene (106-46-7)			X												
23B. 3,3'-Dichlorobenzidine (91-94-1)			X												
24B. Diethyl Phthalate (84-66-2)			X												
25B. Dimethyl Phthalate (131-11-3)			X												
26B. Di-N-Butyl Phthalate (84-74-2)			X												
27B. 2,4-Dinitrotoluene (121-14-2)			X												
28B. 2,6-Dinitrotoluene (606-20-2)			X												
29B. Di-N-Octyl Phthalate (117-84-0)			X												
08. 1,2-Diphenylydrazine (as Azoenzene) (122-66-7)			X												
31B. Fluoranthene (206-44-0)			X												
32B. Fluorene (86-73-7)			X												
3B. Hexachlorobenzene (18-74-1)			X												
34B. Hexachlorobutadiene (87-68-3)			X												
35B. Hexachlorocyclopentadiene (77-47-4)			X												
36B. Hexachloroethane (67-72-1)			X												
37B. Indeno (1,2,3-cd) Pyrene (193-39-5)			X												
38B. Isophorone (78-59-1)			X												
39B. Naphthalene (91-20-3)			X												
40B. Nitrobenzene (98-95-3)			X												
41B. N-Nitrosodimethylamine (62-75-9)			X												
42B. N-Nitrosodi-n-Propylamine (621-64-7)			X												

CONTINUE ON REVERSE

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TEST-ING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	4. UNITS b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (2) MASS	5. INTAKE (optional) b. NO. OF ANALYSES
GC/MS FRACTION — PESTICIDES (continued)															
17P. Heptachlor Epoxide (1024-57-3)			X												
18P. PCB-1242 (53469-21-9)			X												
19P. PCB-1254 (11097-69-1)			X												
20P. PCB-1221 (11104-28-2)			X												
21P. PCB-1232 (11141-16-5)			X												
22P. PCB-1248 (12672-29-6)			X												
23P. PCB-1260 (11096-82-5)			X												
24P. PCB-1016 (12674-11-2)			X												
25P. Toxaphene (8001-35-2)			X												

EPA Form 3510-2C (Rev. 4-84)

EPA Form 3510-2C (Rev. 2-85)

PLEASE PRINT OR TYPE IN THE UNSHADED AREAS ONLY. You may report some or all of this information on separate sheets *(use the same format)* instead of completing these pages. SEE INSTRUCTIONS.

EPA I.D. NUMBER (copy from Item 1 of Form 1): IL 0061247

Form Approved. OMB No. 2000-0059 Approval expires 12-31-85

V. INTAKE AND EFFLUENT CHARACTERISTICS *(continued from page 3 of Form 2-C)*

OUTFALL NO. 009

PART A - You must provide the results of at least one analysis for every pollutant in this table. Complete one table for each outfall. See instructions for additional details.

1. POLLUTANT	2. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	3. UNITS (specify if blank) a. CONCENTRATION	3. UNITS b. MASS	4. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	4. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	4. INTAKE b. NO. OF ANALYSES
a. Biochemical Oxygen Demand *(BOD)*												
b. Chemical Oxygen Demand *(COD)*												
c. Total Organic Carbon *(TOC)*												
d. Total Suspended Solids *(TSS)*	42				16.5		24	mg/l				
e. Ammonia *(as N)*												
f. Flow	VALUE 320		VALUE		VALUE 147		24	GPM		VALUE		
g. Temperature *(winter)*	VALUE		VALUE		VALUE			°C		VALUE		
h. Temperature *(summer)*	VALUE		VALUE		VALUE			°C		VALUE		
i. pH	MINIMUM 7.73	MAXIMUM 8.37	MINIMUM	MAXIMUM			24	STANDARD UNITS				

PART B - Mark "X" in column 2-a for each pollutant you know or have reason to believe is present. Mark "X" in column 2-b for each pollutant you believe to be absent. If you mark column 2a for any pollutant which is limited either directly, or indirectly but expressly, in an effluent limitations guideline, you must provide the results of at least one analysis for that pollutant. For other pollutants for which you mark column 2a, you must provide quantitative data or an explanation of their presence in your discharge. Complete one table for each outfall. See the instructions for additional details and requirements.

1. POLLUTANT AND CAS NO. *(if available)*	2. MARK 'X' a. BELIEVED PRESENT	2. MARK 'X' b. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	4. UNITS b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	5. INTAKE a. LONG TERM AVERAGE VALUE (2) MASS	5. INTAKE b. NO. OF ANALYSES
a. Bromide (24959-67-9)		X												
b. Chlorine, Total Residual		X												
c. Color		X												
d. Fecal Coliform		X												
e. Fluoride (16984-48-8)		X												
f. Nitrate–Nitrite *(as N)*		X												

EPA I.D. NUMBER (copy from Item 1 of Form 1)	OUTFALL NUMBER
IL 0061247	009

Form Approved.
OMB No. 2000-0059
Approval expires 12-31-85

CONTINUED FROM PAGE 3 OF FORM 2-C

PART C - If you are a primary industry and this outfall contains process wastewater, refer to Table 2c-2 in the instructions to determine which of the GC/MS fractions you must test for. Mark "X" in column 2-a for all such GC/MS fractions that apply to your industry and for ALL toxic metals, cyanides, and total phenols. If you are not required to mark column 2-a *(secondary industries, nonprocess wastewater outfalls, and nonrequired GC/MS fractions)*, mark "X" in column 2-b for each pollutant you know or have reason to believe is present. Mark "X" in column 2-c for each pollutant you believe is absent. If you mark column 2a for any pollutant, you must provide the results of at least one analysis for that pollutant. If you mark column 2b for any pollutant, you must provide the results of at least one analysis for that pollutant if you know or have reason to believe it will be discharged in concentrations of 10 ppb or greater. If you mark column 2b for acrolein, acrylonitrile, 2,4 dinitrophenol, or 2-methyl-4, 6 dinitrophenol, you must provide the results of at least one analysis for each of these pollutants which you know or have reason to believe that you discharge in concentrations of 100 ppb or greater. Otherwise, for pollutants for which you mark column 2b, you must either submit at least one analysis or briefly describe the reasons the pollutant is expected to be discharged. Note that there are 7 pages to this part; please review each carefully. Complete one table *(all 7 pages)* for each outfall. See instructions for additional details and requirements.

POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X'			3. EFFLUENT						4. UNITS		5. INTAKE (optional)		
	a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	a. MAXIMUM DAILY VALUE (1) CONCENTRATION	a. MAXIMUM DAILY VALUE (2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	b. MAXIMUM 30 DAY VALUE (if available) (2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	c. LONG TERM AVRG. VALUE (if available) (2) MASS	d. NO. OF ANALYSES	a. CONCENTRATION	b. MASS	a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	a. LONG TERM AVERAGE VALUE (2) MASS	b. NO. OF ANALYSES
METALS, CYANIDE, AND TOTAL PHENOLS														
A. Antimony, Total (7440-36-0)	X			<0.005						1	mg/l				
A. Arsenic, Total (7440-38-2)	X			<0.025						1	mg/l				
A. Beryllium, Total, 7440-41-7)	X			<0.001						1	mg/l				
A. Cadmium, Total (7440-43-9)	X			<0.002						1	mg/l				
A. Chromium, Total (7440-47-3)	X			<0.010						1	mg/l				
L. Copper, Total (40-50-8)	X			<0.010						1	mg/l				
M. Lead, Total (39-92-1)	X			<0.002						1	mg/l				
M. Mercury, Total (439-97-6)	X			<0.0002	SAMPLE DATE 8/1/03					1	mg/l				
M. Nickel, Total (440-02-0)	X			<0.010						1	mg/l				
M. Selenium, Total (7782-49-2)	X			<0.050						1	mg/l				
M. Silver, Total (440-22-4)	X			<0.010						1	mg/l				
M. Thallium, Total (7440-28-0)	X			<0.002						1	mg/l				
M. Zinc, Total (440-66-6)	X			<0.01						1	mg/l				
M. Cyanide, Total (57-12-5)	X			<0.007						1	mg/l				
M. Phenols, Total	X									1	mg/l				
DIOXIN														
2,3,7,8-Tetrachlorodibenzo-P-Dioxin (1764-01-6)			X	DESCRIBE RESULTS										

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TESTING REQUIRED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	(2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	(2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	(2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	(2) MASS	b. NO. OF ANALYSES
GC/MS FRACTION – VOLATILE COMPOUNDS *(continued)*															
22V. Methylene Chloride (75-09-2)			X												
23V. 1,1,2,2-Tetrachloroethane (79-34-5)			X												
24V. Tetrachloroethylene (127-18-4)			X												
25V. Toluene (108-88-3)			X												
26V. 1,2-Trans-Dichloroethylene (156-60-5)			X												
27V. 1,1,1-Trichloroethane (71-55-6)			X												
28V. 1,1,2-Trichloroethane (79-00-5)			X												
29V. Trichloroethylene (79-01-6)			X												
30V. Trichlorofluoromethane (75-69-4)			X												
31V. Vinyl Chloride (75-01-4)			X												
GC/MS FRACTION – ACID COMPOUNDS															
1A. 2-Chlorophenol (95-57-8)			X												
2A. 2,4-Dichlorophenol (120-83-2)			X												
3A. 2,4-Dimethylphenol (105-67-9)			X												
4A. 4,6-Dinitro-O-Cresol (534-52-1)			X												
5A. 2,4-Dinitrophenol (51-28-5)			X												
6A. 2-Nitrophenol (88-75-5)			X												
7A. 4-Nitrophenol (100-02-7)			X												
8A. P-Chloro-M-Cresol (59-50-7)			X												
9A. Pentachlorophenol (87-86-5)			X												
10A. Phenol (108-95-2)			X												
11A. 2,4,6-Trichlorophenol (88-06-2)			X												

CONTINUED FROM PAGE V-6

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TEST INCLUDED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	(2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	(2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	(2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	(2) MASS	b. NO. OF ANALYSES
GC/MS FRACTION – BASE/NEUTRAL COMPOUNDS (continued)															
22B. 1,4-Dichlorobenzene (106-46-7)			X												
23B. 3,3'-Dichlorobenzidine (91-94-1)			X												
24B. Diethyl Phthalate (84-66-2)			X												
25B. Dimethyl Phthalate (131-11-3)			X												
26B. Di-N-Butyl Phthalate (84-74-2)			X												
27B. 2,4-Dinitrotoluene (121-14-2)			X												
28B. 2,6-Dinitrotoluene (606-20-2)			X												
29B. Di-N-Octyl Phthalate (117-84-0)			X												
30B. 1,2-Diphenylhydrazine (as Azobenzene) (122-66-7)			X												
31B. Fluoranthene (206-44-0)			X												
32B. Fluorene (86-73-7)			X												
33B. Hexachlorobenzene (118-74-1)			X												
34B. Hexachlorobutadiene (87-68-3)			X												
35B. Hexachlorocyclopentadiene (77-47-4)			X												
36B. Hexachloroethane (67-72-1)			X												
37B. Indeno (1,2,3-cd) Pyrene (193-39-5)			X												
38B. Isophorone (78-59-1)			X												
39B. Naphthalene (91-20-3)			X												
40B. Nitrobenzene (98-95-3)			X												
41B. N-Nitrosodimethylamine (62-75-9)			X												
42B. N-Nitrosodi-N-Propylamine (621-64-7)			X												

1. POLLUTANT AND CAS NUMBER (if available)	2. MARK 'X' a. TEST INCLUDED	b. BELIEVED PRESENT	c. BELIEVED ABSENT	3. EFFLUENT a. MAXIMUM DAILY VALUE (1) CONCENTRATION	(2) MASS	b. MAXIMUM 30 DAY VALUE (if available) (1) CONCENTRATION	(2) MASS	c. LONG TERM AVRG. VALUE (if available) (1) CONCENTRATION	(2) MASS	d. NO. OF ANALYSES	4. UNITS a. CONCENTRATION	b. MASS	5. INTAKE (optional) a. LONG TERM AVERAGE VALUE (1) CONCENTRATION	(2) MASS	b. NO. OF ANALYSES
GC/MS FRACTION – PESTICIDES *(continued)*															
17P. Heptachlor Epoxide (1024-57-3)			X												
18P. PCB-1242 (53469-21-9)			X												
19P. PCB-1254 (11097-69-1)			X												
20P. PCB-1221 (11104-28-2)			X												
21P. PCB-1232 (11141-16-5)			X												
22P. PCB-1248 (12672-29-6)			X												
23P. PCB-1260 (11096-82-5)			X												
24P. PCB-1016 (12674-11-2)			X												
25P. Toxaphene (8001-35-2)			X												

EPA Form 3510-2C (Rev. 4-84)

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