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)

MOTION FOR RECONSIDERATION

Respondent Springfield Coal Company, LLC ("Springfield Coal") and Freeman United Coal Mining Company, LLC ("Freeman United") (collectively referred to as "Respondents"), pursuant to 35 Ill. Admin. Code § 101.520, timely files this Motion for Reconsideration regarding the Illinois Pollution Control Board's ("Board") Opinion and Order dated November 15, 2012 ("Order") granting the People of the State of Illinois' ("State") motion for partial summary judgment dated March 6, 2012, and Prairie Rivers Network and Sierra Club's (the "Intervenors") motion for summary judgment on Count II dated April 27, 2012. For the reasons discussed below, Respondents request that the Board reconsider its Order.

STANDARD

In ruling upon the Motion for Reconsideration, the Board will consider factors including, but not limited to, new evidence, or a change in the law, to conclude that the Order was issued in error. *See* 35 Ill. Admin. Code §101.902; *see also* Citizens Against Regional Landfill v. The County Bd. of Whiteside County and Waste Mgmt., PCB 92-156, at *2 (March 11, 1993) (citing Korogluyan v. Chicago Title & Trust Co., 213 Ill.App.3d 622 (1st Dist. 1992)). "A motion to reconsider may specify evidence in the record that was overlooked." People v. Packaging Personified, Inc., PCB 04-16, at *8 (March 1, 2012); In re Westwood Lands, Inc., 2010 WL 4059855, at *7 (PCB Oct. 7, 2010). The Board should grant a motion for reconsideration, even if it ultimately declines to modify the underlying judgment, for the purpose of "discuss[ing] the assertions and further clarify[ing] the Board's reasoning for the benefit of any reviewing court." People v. Jersey Sanitation Corp., PCB 97-2, at *3 (June 16, 2005).

ARGUMENT

For the sake of brevity, Respondents will not repeat the factual or background information that has already been advanced in prior motions and responses to the Board.

I. Springfield Coal's Affirmative Defenses of Laches and Unclean Hands Require a Factual Inquiry Which Has Not Been Undertaken

In the Order, the Board held that Springfield Coal's affirmative defenses of "unclean hands" and laches were without merit. The Board stated that "IEPA's failure to act on the new NPDES permit may factor into appropriate penalties, but the lack of a new permit does not excuse the failure to comply with the existing permit." *See* Order, at p. 32. Springfield Coal is not arguing under these defenses that the lack of a new permit excuses Springfield Coal's failure to comply with the existing permit, but instead that if these defenses are valid, Springfield Coal's exceedances of the effluent limits in its permit should not be considered violations. That is the

nature of an affirmative defense. If Springfield Coal is successful in demonstrating these affirmative defenses, it would mean that the violations of the NPDES permit alleged by the State and the Intervenors would not be violations. Therefore, even if the discharge monitoring reports (DMRs) identified exceedances of the NPDES permit limits, these exceedances would not be violations of the permit.

These two affirmative defenses require a very factual intensive inquiry, particularly the unclean hands defense. Springfield Coal has brought to the attention of the Board facts supporting these defenses, and if additional discovery is done, new evidence may be brought forth further supporting these defenses. For example, Freeman United submitted an application to amend the Industry Mine's NPDES Permit almost ten years ago. The Illinois Environmental Protection Agency ("IEPA") has yet to take action in response to the application. The State has even admitted to taking no action with respect to the application. *See* State's Response to Springfield Coal's Affirmative Defenses, July 29, 2010, at ¶5. In addition, on July 20, 2010, 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 Springfield Coal's renewal application was for consideration, IEPA informed Springfield Coal that "it was not even in the queue." *See* Exhibit 1, Affidavit of Thomas J. Austin, dated April 27, 2012, at ¶21. That meeting has now been two and a half years ago and IEPA has yet to issue the amended Permit.

While Springfield Coal does not want to accuse the State of nefarious action by intentionally delaying the reissuance of the NPDES permit in order to increase the number of excursions (and thereby improve its position in the present enforcement action), these circumstances raise material factual questions that appear to have been ignored by the Board. Had IEPA granted the new permit years ago, the terms of the new permit would have modified

the terms of the existing permit, and Springfield Coal would not have had so many permit excursions. *See* Exhibit 1, at ¶26; *see also* Exhibit 2, Affidavit of Thomas J. Austin, dated June 6, 2012, at ¶¶4, 8. As detailed in Springfield Coal's Responses to the State's and the Intervenors' motions for summary judgment, the State has known since at least 2007 that the sulfate effluent limitation in Springfield Coal's NPDES permit was not based in science and cannot be met by mines since sulfate is not treatable by any practical means. *See* Springfield Coal Response to State's Motion, pp. 12-13.

This is exactly what the affirmative defense of unclean hands is designed to address. "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.

This is not an issue that should be pushed into the penalties phase of this proceeding. If IEPA has engaged in such activity, then as an affirmative defense, the alleged permit exceedances should not be considered violations. Respondents know that the Board has been put in place to be a neutral arbiter to make certain that agencies like the IEPA are not abusing their power by on one hand bringing enforcement actions, while on the other hand purposely withholding action that would improve IEPA's position.

Respondents have not yet propounded discovery in this case, in large part because the parties were engaged in settlement discussions until the time that the State and the Intervenors

filed their motions for summary judgment. The filing of the motions effectively halted the settlement discussions. Additional facts may be uncovered through discovery that may shed additional light on the State's actions in delaying the permit reissuance. At this time, neither Springfield Coal nor the Board know the facts behind IEPA's delay in issuing the amended NPDES permit. It is unclear why the Board would decide that the facts surrounding IEPA's delay of Springfield Coal's permit are not worthy of investigation. These are the kinds of facts that would help the Board to determine whether IEPA is purposefully delaying the reissuance of the permit.

The Board should allow Respondents the opportunity to engage in discovery to see if additional evidence exists to further support these defenses. Respondents do not believe that the Board has seen enough evidence to make a finding of fact that IEPA has not engaged in bad faith activities in order to deny an unclean hands defense. The Board should postpone issuing a ruling on the summary judgment motions until such time as Respondents have had the opportunity to propound discovery to support these defenses. Perhaps there are e-mails and/or internal memoranda from IEPA personnel discussing the rationale for its delay.

IEPA's near ten-year delay in reissuing the permit is not a question of law; rather, the factual circumstances surrounding IEPA's delay remain in question and go directly to whether the IEPA is acting with unclean hands. If it is determined that IEPA has engaged in such activities, then Springfield Coal should not be subject to violations of the permit as alleged by both the State and the Intervenors.

II. The Board Did Not Adequately Address Freeman's United's Affirmative Defenses of Waiver, Estoppel and Laches

In response to the State's and Intervenors' motions for summary judgment, Freeman United raised the affirmative defenses of waiver, estoppel and laches. The Board, however,

either summarily rejected and/or failed to consider these affirmative defenses. Therefore, as further discussed below, Freeman United respectfully requests that the Board reconsider its decision with respect to each of these defenses.

A. The Board Erred in Rejecting Freeman United's Argument that the State Had Waived Its Claims

With respect to Freeman United's affirmative defense of waiver, the Board acknowledged that there were disputed issues of fact relating to the circumstances leading up to the State's filing of the present enforcement action. *See* Order, at p. 33. Nevertheless, the Board held, as a matter of law, that the State did not waive its rights. *Id.* In support of its holding, the Board noted that it has consistently found that IEPA's actions under Section 31 of the Act do not bar prosecution by the Illinois Attorney General. *Id.*. Although Freeman United disagrees that IEPA's complete disregard of its statutory obligations under Section 31 of the Act provide the Illinois Attorney General with the unfettered discretion to do an end run around the statute, Freeman United's waiver argument rests upon a different premise.

As set forth in Freeman United's summary judgment motion, the State, acting through IEPA, intentionally relinquished its known right. *See* Freeman United's Motion for Summary Judgment, at 15. In its response, the State cites no cases nor does it make any effort to argue that the Illinois Attorney General, an instrumentality of the State, is not bound by the actions of IEPA, another instrumentality of the State. Instead, the State merely provided excuses attempting to explain why IEPA failed to exercise its known enforcement rights. *See* State's Response to Freeman United's Motion for Summary Judgment, at 29.

The Board acknowledged the existence of issues of fact with respect to the State's actions but then provided no authority for its conclusion that the State is somehow insulated from the

actions of its agencies. Because of the existence of issues of fact, the Board should not have granted summary judgment in favor of the State and Freeman United respectfully requests that the Board reconsider its decision.

B. The Board Did Not Adequately Explain The Factual Basis Upon Which is Relied to Reject Freeman United's Estoppel Defense

Freeman United also requests that the Board reconsider its decision on Freeman United's affirmative defense of estoppel. Here, the Board found that the facts relied upon by Freeman United were undisputed but that Freeman United had failed to satisfy the limited circumstances in which the doctrine of estoppel can lawfully be applied against the government. *See* Board Order, at p.33. However, the Board did not explain or describe the limited circumstances that Freeman United would have had to show to apply estoppel against the government and the Board did not find that Freeman United failed to meet the other six requirements of estoppel. The Board's ruling is therefore unsupported by the facts and law and should be reconsidered.

C. The Board Failed to Address Freeman United's Affirmative Defenses of Laches

Freeman United argued that the Intervenors' claims against it were barred by the equitable doctrine of laches. *See* Freeman United's Response to the Intervenors' Motion for Summary Judgment, at 17-18. In its response, the Intervenors made little effort to dispute the facts relied upon by Freeman United in support of its laches defense, but instead argued that the doctrine of laches shouldn't apply to environmental enforcement proceedings. See Intervenors' Reply Brief, at Section V.[1]

Although the Board acknowledged that Freeman United had raised this affirmative defense, the Board did not decide the issue. As such, Freeman United respectfully requests that

[1] For some reason, Interveners elected not to include page numbers in its reply brief.

the Board reconsider its decision to grant summary judgment in favor of Intervenors in light of Freeman United's laches defense.

III. The Board Failed to Address and/or Did not Consider Evidence Involving Numerous Alleged Violations of the DMRs that are Not Violations

Respondents advanced a number of arguments that the Board failed to address and/or did not consider the evidence presented. Respondents respectfully request that the Board evaluate each of these arguments as these arguments impact not only the Board's analysis, but ultimately the Board's decision.

A. The Board Failed to Evaluate Evidence from the DMRs that Less than Three Samples were Taken for at Least 61 Monthly Average Effluent Limitations

As the Board recognized, Respondents argued that the DMRs and/or the data supporting the DMRs demonstrated that at least 61 of the alleged monthly average effluent limit exceedances are not supported by the requisite number of samples to calculate a monthly average. *See* Order, at pp. 43-44; *see* Exhibit 2, at ¶5. Specifically, in these instances, less than three samples were taken during the particular months. According to 35 Ill. Admin. Code §406.101, three grab samples are required in order to have a monthly average. As a result, these should not be considered violations. 35 Ill. Admin. Code §406.101 provides in pertinent part that:

> Section 406.101 Averaging
>
> a) Compliance with the numerical standards of this part shall be determined on the basis of 24-hour composite samples averaged over any calendar month. In addition, no single 24-hour composite sample shall exceed two times the numerical standards prescribed in this part nor shall any grab sample taken individually or as an aliquot of any composite sample exceed five times the numerical standards prescribed in this part.
>
> b) Subsection (a) of this section notwithstanding, if a permittee elects monitoring and reporting by grab samples as provided in Section 406.102(f), then compliance with the numerical standards of this part shall be determined on the

> basis of three or more grab samples averaged over a calendar month. In addition, no single grab sample shall exceed two times the numerical standards prescribed in this part.

(emphasis added). Importantly, 35 Ill. Admin. Code §406.101(b) specifically states that "if a permittee" elects monitoring and reporting by grab samples, then the permittee must collect three or more grab samples to achieve the requisite monthly average. Springfield Coal is clearly a permittee; accordingly, 35 Ill. Admin. Code §406.101 is intended to apply to Springfield Coal. Similarly, Freeman United had been a permittee entitled to rely upon the provisions set forth in 35 Ill. Admin. Code ¶406.101.

The Board presented the Intervenors' response and opposition to Springfield Coal's argument. *See* Order, at p. 52. The Board also discussed Freeman United's arguments with respect to the monthly averages. *See* Order, at p. 59. Yet, the Board did not evaluate or analyze either Respondents' arguments or the Intervenors' arguments. The Board merely concluded the following: "Although Freeman United and Springfield Coal raise questions concerning the enforceability of the Industry Mine NPDES permit, the Board finds that these are merely questions of law because they do not attempt to dispute any data in the DMRs, which prove that 624 violations have occurred at the Industry Mine." *See* Order, at p. 63. The Board does not specifically address the monthly averaging arguments and counterarguments advanced by Respondents and the Intervenors.

Springfield Coal has presented evidence from the DMRs and the documents supporting the DMRs that at least 61 violations are not supported by the number of samples needed pursuant to 35 Ill. Admin. Code §406.101. Freeman United presented evidence that 69 violations are not supported by the number of samples needed pursuant to 35 Ill. Admin. Code §406.101. The Board's Order unfairly prejudices Respondents because the monthly averaging arguments go

directly to the number of violations in the DMRs in addition to determinations as to Respondents' liability. This Motion for Reconsideration provides an opportunity for the Board to evaluate the monthly averaging arguments and how 35 Ill. Admin. Code §406.101 impacts Respondents' alleged violations of the DMRs.

B. The Board Did Not Evaluate Whether Springfield Coal's Alleged Discharges for Outfall 017 Exceeded the Permit Limit

The Intervenors alleged that Springfield Coal's discharges for Outfall 017 exceeded its permit limit in April 2008, June 2008, and February 2011. However, in Springfield Coal's Response to the Intervenors' motion for summary judgment, Springfield Coal indicated that Outfall 017 was not discharging during these three months. *See* Exhibit 2, at ¶5. Accordingly, it is impossible for Springfield Coal to have exceeded its permit limit in these three instances. These alleged violations are, in fact, not violations at all.

C. The Board Did Not Evaluate Whether Springfield Coal's Alleged Discharge for Outfall 009 Exceeded the Effluent Limitation in the Permit

For September 2010, the Intervenors allege that there was a discharge of sulfate at Outfall 009 at a concentration of 1136 mg/L. However, this is actually an averaged value. The NPDES Permit does not have a monthly average effluent limitation for sulfate; therefore, this is not an exceedance of the effluent limitation in the NPDES Permit. *See* Exhibit 2, at ¶5. The Board should evaluate this violation in the Motion for Reconsideration.

D. The Board Did Not Evaluate Whether Springfield Coal's Alleged Discharge for Outfall 019 Exceeded the NPDES Permit

For January 2010, the Intervenors allege that the Industry Mine's discharge at Outfall 019 had a pH of 9.04. The DMR actually shows a pH value of 8.38, which is not a violation of the NPDES Permit. *See* Exhibit 2, at ¶5. At a minimum, because this alleged violation is actually

not a violation of Springfield Coal's NPDES Permit, the Board should reconsider finding Springfield Coal liable for this alleged violation.

E. The Board Did Not Evaluate Whether the Deficiencies with Larry Crislip's Affidavit Preclude Summary Judgment for Alleged Violations

As Springfield Coal argued in its response to the State's motion for partial summary judgment, Mr. Larry Crislip's affidavit does not list the specific dates on which Springfield Coal violated daily maximum effluent limitations. *See* Exhibit 3, pp. 14-17, Affidavit of Larry Crislip dated March 1, 2012. For example, Mr. Crislip only cites the month when Springfield Coal allegedly exceeded the permitted daily maximum effluent limitations. Freeman United also argued in its motion for summary judgment that Mr. Crislip's affidavit contained numerous factual errors. *See* Freeman United's Motion for Summary Judgment, at footnote 2. Therefore, the State failed to demonstrate with sufficient evidence that Respondents had violated daily maximum effluent limitations. This is a question of fact, not a question of law.

The Board recognized that Respondents argued the insufficiency of Mr. Crislip's affidavit. *See* Order, at p. 18. However, the Board did not address this issue in the Order. Rather, the Board stated the following: "Respondents have raised legal issue, but have not fundamentally challenged the affidavit of Mr. Crislip." *See* Order, at p. 30. Contrary to what the Board stated, Respondents directly challenged Mr. Crislip's affidavit because Mr. Crislip did not provide sufficient evidence to demonstrate that Respondents violated daily maximum effluent limitations. Respondents urge the Board to evaluate these factual arguments that it overlooked when applying the law in the Order.

All of the aforementioned issues are genuine issues of material fact that go directly to the threshold inquiry as to whether Respondents were liable. Respondents encourage the Board to

further evaluate and/or re-evaluate these issues in an effort to better determine Respondents' liability.

III. The Board Did Not Recognize that the NPDES Permit Explicitly States that Outfall 019 is to Become a Reclamation Area

The Board stated the following in the Order: "Furthermore, a review of the permit establishes that there is no reference to Outfall 019 becoming a reclamation area." *See* Order, at p. 34. This statement is, quite simply, not true based upon the facts.

A review of the IEPA July 21, 2003 NPDES Permit ("NPDES Permit") confirms this conclusion. *See* Exhibit 4. The NPDES Permit authorizes Freeman United, the permittee, to monitor the effluent limitations from discharges from Outfall 019 as "Reclamation Area Drainage" provided certain conditions are met. Specifically, page 12 of the NPDES Permit expressly states that "[U]pon completion of Special Condition No. 8 and approval by the Agency", the effluent from Outfall 019 shall be monitored as "Reclamation Area Drainage". *See* Exhibit 4, at p. 12. With respect to the manganese effluent limitations for Outfall 019, there is no manganese effluent limitation for Reclamation Area Drainage. *Id.* Special Condition No. 8 of the NPDES Permit states the following:

> 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.

See Exhibit 4, at p. 23. Freeman United successfully met the requirements articulated in Special Condition No. 8. On May 19, 2005, Freeman United prepared and submitted a proposed Compliance Commitment Agreement ("2005 CCA"). *See* Exhibit 5. In its correspondence to IEPA, Freeman United stated that page 12 of the NPDES Permit covers Outfall 019 since it

became a Reclamation Area Drainage.[2] On June 16, 2005, the IEPA accepted Freeman United's 2005 CCA. *See* Exhibit 6, at p. 1. IEPA stated that, during the term of the agreement, Freeman United will, among other things, "monitor the effluent discharging from Pond 19 as required by page 12 of the permit . . . ." *Id.* As discussed above, page 12 of the NPDES Permit directly involves Reclamation Area Drainage for Outfall 019. There is no manganese limit listed on page 12; however, IEPA added a minor modification to the CCA stating that Freeman United should monitor and report the parameter of manganese at Outfall 019.[3] *Id.* at p. 2. This obligation to monitor and report manganese concentrations did not impose a effluent limitation for manganese in the permit.

Freeman United fulfilled the requirements of Special Condition No. 8 because it timely submitted its request and supporting documentation, and IEPA formally approved of Freeman United's request. In fact, the State admits that Freeman United fully complied with the 2005 CCA. *See* People's Response to Affirmative Defenses by Freeman United Coal Mining Company, LLC, ¶8. Therefore, as of July 2005, pursuant to the terms of the NPDES Permit, the

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[2] *See* Exhibit 5, at p. 2, May 19, 2005 letter from Thomas Austin, Freeman United, to Ms. Beverly Booker, IEPA. The letter states the following:

> 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.

The letter also states that "[a]ll of the drainage area from which Pond 19 collects runoff and seepage is a "Reclamation Area", as defined in 35 ILAC 402.101. *Id.* at p. 1.

[3] IEPA's modification required Freeman United to monitor and report manganese at concentration limits of 2.0 mg/l for a 30 day average and 4.0 mg/l for a daily maximum. *See* Exhibit 5, at p. 4 (acid mine drainage effluent limits and monitoring).

Industry Mine's effluent from Outfall 019 was considered Reclamation Area Drainage. Any alleged exceedances of manganese after July 2005 at Industry Mine are, in fact, not exceedances.

It is unclear how the Board arrived at a conclusion that is contradictory to both page 12 of the NPDES Permit and the June 16, 2005 correspondence from IEPA. Had the Board determined that there was a reference to Outfall 019 becoming a reclamation area, it is reasonable to assume that the Board would have changed its holding that the exceedances of the effluent limits set forth in the NPDES Permit were without merit. Respondents' Motion for Reconsideration goes directly to the heart of a factual dispute – if Outfall 019 became a Reclamation Area Drainage, then how could there have been an exceedance after July 2005? Accordingly, summary judgment is not appropriate at this time. Respondents urge the Board to reconsider this persuasive evidence and apply the law to the facts presented.

CONCLUSION

WHEREFORE, Respondents, Springfield Coal Company, LLC and Freeman United Coal Mining Company, LLC, respectfully requests that the Illinois Pollution Control Board grant their Motion for Reconsideration of the Order and for any other relief that the Board determines is appropriate.

Dated: December 21, 2012

BRYAN CAVE LLP

By: _____

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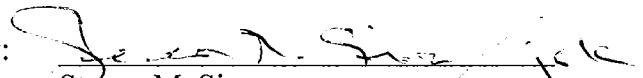
By: 

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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

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NOTICE OF ELECTRONIC FILING

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PLEASE TAKE NOTICE that on December 21, 2012, I electronically filed with the Clerk of the Pollution Control Board, Springfield Coal Co., LLC's Motion for Reconsideration, copies of which are herewith served upon you.

BRYAN CAVE LLP

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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

Exhibit 1

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 1I 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%.

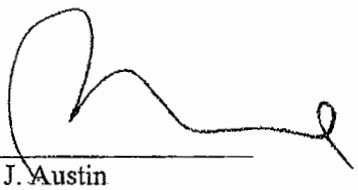
27. I have reviewed Larry Crislip's March 1, 2012 affidavit and the exceedances he alleges of the effluent limitations in the NPDES Permit. I have also reviewed the data reported on the DMRs for the Industry Mine that were submitted to IEPA. From my review of these documents, I have noted that there 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.

Trudy D. Manis

Notary Public

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
ENVIRONMENTAL LAW AND POLICY CENTER, on behalf of PRAIRIE RIVERS NETWORK and SIERRA CLUB, ILLINOIS CHAPTER,	)	**PCB NO. 2010-061 and 2011-002 (Consolidated–Water -- Enforcement)**
	)	
Intervenor,	)	
	)	
v.	)	
	)	
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. I have reviewed the Prairie Rivers Network and Sierra Club's ("Intervenors") Motion for Summary Judgment filed April 27, 2012 and the exceedances they allege of the sulfate effluent limitation in the NPDES Permit. I have also reviewed the sulfate

Exhibit 2

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. Under this new standard, Springfield Coal would have had significantly fewer exceedances for sulfate. In their Motion, the Intervenors have alleged that from the time Springfield Coal began operating the Industry Mine in September 2007 through September 2011, Springfield Coal had 124 excursions of the sulfate effluent limitation in its NPDES Permit. However, if Springfield Coal had been subject to the new increased sulfate standard during this four year period, there would have been 91 less excursions, a reduction of almost 75%.

5. I have reviewed the Intervenors' Motion for Summary Judgment filed April 27, 2012 and the exceedances they allege 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. There are numerous discrepancies between the information in the Intervenors' Motion for Summary Judgment and the data reported on the DMRs. There are 66 instances where the Intervenors have alleged there to be violations when in fact no such violations have occurred. For example, the Intervenors allege that in April 2008, June 2008, and February 2011 Springfield Coal's discharges for Outfall 017 exceeded its permit limit. However, Outfall 017 was not discharging during the months claimed. In September 2010, Intervenors allege that there was a discharge of sulfate from Outfall 009 at a concentration of 1136 mg/L. However, this is actually an averaged value and the NPDES Permit does not have a monthly average effluent limitation for sulfate, therefore, this would not be an exceedance of the effluent limitation in the NPDES Permit. And in January 2010, the Intervenors allege that the Industry Mine's discharge at Outfall 019 had a pH of 9.04, when actually the DMR shows a pH value of 8.38, which is not a violation of the NPDES Permit.

Also, the Intervenors identify the following 61 occurrences 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 406.101(b), which requires a monthly average to be based on at least three grab samples, these would not be exceedances:

Constituent	Month/Year	Outfall	Discharge Concentration
Iron	January 2010	033	3.52 mg/L
Iron	January 2010	031	8.08 mg/L
Iron	June 2010	031	4.39 mg/L
Iron	June 2010	032	12.18 mg/L
Iron	June 2010	033	4.905 mg/L
Iron	July 2010	032	7.02 mg/L
Iron	February 2011	031	4.30 mg/L
Iron	February 2011	033	4.66 mg/L
Iron	April 2011	031	4.04 mg/L
Iron	May 2011	031	24.10 mg/L
Iron	May 2011	035	4.84 mg/L

Iron	June 2011	031	8.575 mg/L
Manganese	January 2008	019	12.9 mg/L
Manganese	May 2008	019	6.95 mg/L
Manganese	July 2008	019	3.79 mg/L
Manganese	August 2008	019	3.43 mg/L
Manganese	September 2008	019	3.47 mg/L
Manganese	December 2008	018	2.2 mg/L
Manganese	January 2009	018	2.165 mg/L
Manganese	January 2010	009	2.76 mg/L
Manganese	March 2010	018	2.39 mg/L
Manganese	May 2010	018	2.13 mg/L
Manganese	June 2010	018	2.32 mg/L
Manganese	December 2010	018	2.55 mg/L
Manganese	January 2011	003	2.13 mg/L
Manganese	January 2011	009	2.91 mg/L
Manganese	January 2011	018	4.97 mg/L
Manganese	February 2011	018	2.78 mg/L
Manganese	May 2011	018	3.99 mg/L
Manganese	June 2011	018	3.18 mg/L
Manganese	July 2011	018	2.73 mg/L
Manganese	September 2011	018	2.13 mg/L
Manganese	January 2010	026	5.12 mg/L
Manganese	May 2010	026	2.695 mg/L
Manganese	December 2010	026	2.75 mg/L
Manganese	January 2011	024W	2.47 mg/L
Manganese	January 2011	026	2.61 mg/L
Manganese	February 2011	019	2.75 mg/L
Manganese	February 2011	024W	2.36 mg/L
Manganese	February 2011	026	2.73 mg/L
Manganese	March 2011	019	2.89 mg/L
Manganese	April 2011	019	2.25 mg/L
Manganese	May 2011	019	2.88 mg/L
Manganese	June 2011	026	2.09 mg/l
Manganese	July 2011	019	2.19 mg/l
Manganese	September 2011	019	3.07 mg/L
TSS	February 2008	003	49.0 mg/L
TSS	February 2008	029	64.0 mg/L
TSS	June 2008	003	41.0 mg/L
TSS	March 2010	031	42.5 mg/L
TSS	March 2010	033	37.0 mg/L
TSS	June 2010	018	49.0 mg/L
TSS	July 2010	018	38.5 mg/L
TSS	May 2010	033	43.0 mg/L
TSS	June 2010	031	44.0 mg/L
TSS	June 2010	032	45.5 mg/L

TSS	June 2010	033	36.0 mg/L
TSS	July 2010	032	47.0 mg/L
TSS	February 2011	033	64.0 mg/L
TSS	April 2010	035	60.0 mg/L
TSS	May 2010	035	36.0 mg/L

6. In addition to the Compliance Commitment Agreement submitted to the IEPA on August 30, 2007, Springfield Coal has submitted to IEPA compliance plans on February 18, 2010, May 7, 2010, June 3, 2010, June 30, 2011, and August 1, 2011. Springfield Coal has spent over $600,000 in undertaking the work under the compliance plans and work outside of the compliance plans to help maintain compliance with the NPDES Permit.

7. Springfield Coal has employed and utilized professional engineers to assist in, among other things, developing compliance plans and to ensure that the Springfield Coal complies with the terms of its NPDES Permit. Springfield Coal has utilized three licensed professional engineers from 2007 to the present at the Industry Mine, including Steven C. Phifer, P.E., Craig A. Schoonover, P.E., and Cory A. Schoonover, P.E. These engineers have significant experience in environmental management and remediation, civil engineering, construction engineering, mining engineering, and management of coal combustion waste. They have worked at consulting firms in the past. For example, Steven C. Phifer, P.E., served as Freeman United's Environmental Engineer/Project Engineer from 1978 to 2008 and is currently serving as Springfield Coal's Environmental Engineer from 2010 to the present. Craig A. Schoonover, P.E., has over twenty-five years of experience in environmental management, planning, engineering, permitting, remediation, and regulatory compliance.

8. Prior to July 21, 2003, the Industry Mine's NPDES Permit had an effluent limitation for sulfate of 3500 mg/l. Based upon my staff's review of the DMRs, from 1989 to July 21, 2003, the Industry Mine had zero exceedances of the sulfate effluent limitation in its NPDES Permit. On July 21, 2003, NPDES Permit was modified to significantly lower the sulfate effluent limitation to the limits that currently exist in the NPDES Permit (i.e., as low as 500 mg/l). Since July 21, 2003, the operations of the Industry Mine have not changed in any significant way which would materially affect the concentrations of sulfate being discharged.

9. Many of the Industry Mine outfalls did not discharge on a daily basis. The frequency of the discharges from the different outfalls at the Industry Mine was not constant, varying due to factors such as rainfall; thus, a given outfall may have discharged only one or two days in a reporting period, or not at all.

10. On April 27, 2012, I submitted an affidavit in the above matter (herein "April 2012 Affidavit"). To my knowledge, all of the information and exhibits in the April 2012 Affidavit is accurate and true except for one minor correction. Item number 22 of the April 2012 Affidavit states the following: "Sampling of the streams traversing the

Industry Mine property was conducted in 1979 prior to any mining operations commencing on the property." Based upon my review of documents in preparation for submitting this affidavit, I discovered that the sampling of the streams occurred in 1978, not 1979.

11. Item number 24 of the April 2012 Affidavit has been updated to include how upstream sampling has identified regular occurrences of settleable solids in excess of the effluent limits in the Industry Mines' NPDES Permit. Below is the updated version, including information regarding the settleable solids:

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, TSS, and settleable solids 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	Settleable Solids ml/l
30 Day Avg.	3.0	35	
Daily Max	6.0	70	0.5

Date of Upstream Sample	Iron–mg/l	Total Suspended Solids (TSS) mg/l	Settleable Solids ml/l
7/18/2003	32.5	1900	1.2
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	1.0
4/25/2011		73	
5/25/2011	36.2	760	

True and correct copies of the laboratory reports from which this data is taken were attached as Exhibits 1M to the April 2012 Affidavit.

This concludes my affidavit.

Affiant:

Thomas J. Austin

Subscribed and sworn to before me this 6 day of June, 2012.

Notary Public

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
PATRICIA L CAMILLE
MY COMMISSION EXPIRES
DECEMBER 3, 2015

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
ENVIRONMENTAL LAW AND POLICY CENTER, on behalf of PRAIRIE RIVERS NETWORK and SIERRA CLUB, ILLINOIS CHAPTER,	)	
	)	
Intervenor,	)	
	)	
v.	)	**PCB No. 2010-061 (Water-Enforcement)**
	)	
FREEMAN UNITED COAL MINING COMPANY, LLC, a Delaware limited liability company, and SPRINGFIELD COAL COMPANY, LLC, a Delaware limited liability company,	)	
	)	
Respondents.	)	

AFFIDAVIT OF LARRY CRISLIP

Upon penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that I verily believe the same to be true:

1. I, LARRY CRISLIP, am employed by the Illinois Environmental Protection Agency as the Manager of the Permit Section for the Mine Pollution Control Program. My business address is 2309 West Main Street, Marion, Illinois.

2. On April 2, 1999 the Illinois EPA issued NPDES Permit No. IL0061247 to Freeman United to control the discharges from the Industry Mine into waters of the State,

Exhibit 3

including Grindstone Creek, Willow Creek, Camp Creek, and their unnamed tributaries. On August 15, 2003 Freeman United submitted to the Illinois EPA a timely application regarding the renewal of the permit. On August 14, 2007 Springfield Coal submitted to the Illinois EPA a written request to transfer NPDES Permit No. IL0061247 from Freeman United to Springfield Coal, thereby assuming responsibility for permit compliance. The Illinois EPA has not yet taken final action regarding the renewal and transfer of the NPDES permit.

3. NPDES Permit No. IL0061247 was most recently modified on July 21, 2003 and, due to the timely renewal application, remains in effect. A true and accurate copy of this permit is attached as an exhibit to my affidavit, and the terms and conditions of this permit are herein incorporated by reference. According to Section 304.104(d) of the Board's Water Pollution Regulations, the proof of violation of effluent limitations contained in a permit shall be based on the language of the permit. Each Respondent has reported effluent data for each required parameter within Discharge Monitoring Reports (DMRs) in accordance with Standard Condition 12 of NPDES Permit No. IL0061247. For the purpose of this affidavit and in order to convey the effluent data in a more concise way than submitting a copy of each DMR, I have organized and tabulated the pertinent data reported by each Respondent.

4. I have reviewed the DMRs submitted by Freeman United and compared the analytical data reported therein with the applicable effluent limitations in the NPDES Permit as to the effluent concentrations of iron, manganese, sulfates, pH, and TSS discharged from the Industry Mine into waters of the State from January 2004 through August 2007. As explained above, I have transcribed the data reported in the DMRs into the tables set forth below. To the extent that any reporting inconsistencies or ambiguities may exist, or erroneous information may

need correction, Freeman United is obligated to correct such problems by Standard Condition 12(e) of NPDES Permit No. IL0061247. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that:

A. Freeman United reported the discharge of iron in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
June 2004	029	3.0 mg/L	26.0 mg/L
January 2005	018	3.5 mg/L	4.42 mg/L
January 2005	024W	3.0 mg/L	4.65 mg/L
January 2005	029	3.0 mg/L	4.98 mg/L
February 2005	029	3.0 mg/L	3.08 mg/L

B. Freeman United reported the discharge of iron in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
February 19, 2004	029	6.0 mg/L	7.05 mg/L
February 20, 2004	029	6.0 mg/L	6.75 mg/L
March 2, 2004	029	6.0 mg/L	8.65 mg/L
March 26, 2004	026	6.0 mg/L	22.9 mg/L
May 26, 2004	029	6.0 mg/L	24.1 mg/L
June 2, 2004	026	6.0 mg/L	6.91 mg/L
June 2, 2004	029	6.0 mg/L	29.6 mg/L
June 16, 2004	029	6.0 mg/L	27.4 mg/L
June 23, 2004	029	6.0 mg/L	21.1 mg/L
July 14, 2004	026	6.0 mg/L	6.47 mg/L
July 14, 2004	029	6.0 mg/L	13.9 mg/L
August 26, 2004	018	7.0 mg/L	12.3 mg/L
August 26, 2004	026	6.0 mg/L	11.9 mg/L
August 31, 2004	029	6.0 mg/L	7.23 mg/L
September 16, 2004	018	7.0 mg/L	9.74 mg/L
September 16, 2004	026	6.0 mg/L	13.9 mg/L
October 29, 2004	029	6.0 mg/L	8.00 mg/L
November 1, 2004	018	7.0 mg/L	46.4 mg/L
December 8, 2004	018	7.0 mg/L	25.4 mg/L

December 8, 2004	024W	6.0 mg/L	10.6 mg/L
December 8, 2004	026	6.0 mg/L	11.5 mg/L
January 17, 2005	018	7.0 mg/L	7.53 mg/L
January 17, 2005	024W	6.0 mg/L	6.37 mg/L
January 17, 2005	029	6.0 mg/L	6.20 mg/L
February 14, 2005	018	7.0 mg/L	13.0 mg/L
November 30, 2006	018	7.0 mg/L	9.04 mg/L
March 31, 2007	003	7.0 mg/L	15.4 mg/L
March 31, 2007	018	7.0 mg/L	47.9 mg/L
March 31, 2007	026	6.0 mg/L	21.1 mg/L
June 30, 2007	003	7.0 mg/L	11.8 mg/L

C. Freeman United reported the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

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

D. Freeman United reported the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
January , 2004	019	4.0 mg/L	7.38 mg/L

January 15, 2004	003	4.0 mg/L	5.32 mg/L
February 3, 2004	019	4.0 mg/L	13.4 mg/L
February 10, 2004	018	4.0 mg/L	4.37 mg/L
February 10, 2004	019	4.0 mg/L	14.3 mg/L
February 18, 2004	003	4.0 mg/L	9.39 mg/L
March , 2004	019	4.0 mg/L	9.18 mg/L
March 2, 2004	019	4.0 mg/L	4.86 mg/L
April 14, 2004	019	4.0 mg/L	5.31 mg/L
May 7, 2004	019	4.0 mg/L	4.40 mg/L
May 12, 2004	019	4.0 mg/L	4.71 mg/L
June 14, 2004	019	4.0 mg/L	6.15 mg/L
July 29, 2004	019	4.0 mg/L	4.79 mg/L
September 13, 2004	019	4.0 mg/L	8.22 mg/L
October 29, 2004	019	4.0 mg/L	9.15 mg/L
November 8, 2004	019	4.0 mg/L	5.73 mg/L
November 15, 2004	018	4.0 mg/L	5.51 mg/L
November 15, 2004	019	4.0 mg/L	9.25 mg/L
December 20, 2004	018	4.0 mg/L	4.32 mg/L
December 20, 2004	019	4.0 mg/L	16.3 mg/L
December 28, 2004	018	4.0 mg/L	8.88 mg/L
December 28, 2004	019	4.0 mg/L	20.6 mg/L
January 5, 2005	019	4.0 mg/L	4.69 mg/L
January 17, 2005	019	4.0 mg/L	11.2 mg/L
January 26, 2005	019	4.0 mg/L	11.9 mg/L
February 2, 2005	018	4.0 mg/L	10.3 mg/L
February 2, 2005	019	4.0 mg/L	11.3 mg/L
March 3, 2005	018	4.0 mg/L	11.8 mg/L
March 3, 2005	019	4.0 mg/L	7.83 mg/L
March 11, 2005	018	4.0 mg/L	7.53 mg/L
March 11, 2005	019	4.0 mg/L	5.70 mg/L
March , 2005	018	4.0 mg/L	11.6 mg/L
April 25, 2005	018	4.0 mg/L	6.08 mg/L
May 2, 2005	018	4.0 mg/L	7.60 mg/L
June 27, 2005	018	4.0 mg/L	7.14 mg/L
June 28, 2005	018	4.0 mg/L	6.18 mg/L
June 29, 2005	019	4.0 mg/L	9.26 mg/L
March 20, 2006	026	4.0 mg/L	6.68 mg/L
April 13, 2006	026	4.0 mg/L	4.63 mg/L
April 19, 2006	019	4.0 mg/L	4.64 mg/L
April 25, 2006	026	4.0 mg/L	7.99 mg/L
April 26, 2006	026	4.0 mg/L	8.42 mg/L
May 22, 2006	019	4.0 mg/L	5.88 mg/L
May 23, 2006	019	4.0 mg/L	5.70 mg/L

July 31, 2006	018	4.0 mg/L	5.65 mg/L
January 31, 2007	019	4.0 mg/L	7 mg/L
January 31, 2007	019	4.0 mg/L	8.89 mg/L
February 28, 2007	019	4.0 mg/L	16.9 mg/L
February 28, 2007	019	4.0 mg/L	13.5 mg/L
March 31, 2007	019	4.0 mg/L	4.35 mg/L
March 31, 2007	026	4.0 mg/L	5.8 mg/L
April 30, 2007	019	4.0 mg/L	4.26 mg/L
May 31, 2007	019	4.0 mg/L	4.37 mg/L
May 31, 2007	019	4.0 mg/L	6.94 mg/L

E. Freeman United reported the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

Date	Outfall	Permit Limit	Actual Discharge
January 15, 2004	003	1100 mg/L	1190 mg/L
February , 2004	003	1100 mg/L	1600 mg/L
February , 2004	018	1100 mg/L	1880 mg/L
February , 2004	018	1100 mg/L	2000 mg/L
May 19, 2004	003	1100 mg/L	1120 mg/L
May 24, 2004	003	1100 mg/L	1220 mg/L
April 7, 2005	009	1100 mg/L	1170 mg/L
May 30, 2005	009	1100 mg/L	1270 mg/L
June 9, 2005	009	1100 mg/L	1230 mg/L
June 27, 2005	009	1100 mg/L	1330 mg/L
June 27, 2005	018	1800 mg/L	2020 mg/L
June 28, 2005	009	1100 mg/L	1240 mg/L
June 28, 2005	018	1800 mg/L	1900 mg/L
July 9, 2005	009	1100 mg/L	1440 mg/L
July 9, 2005	018	1800 mg/L	2020 mg/L
July 9, 2005	019	1800 mg/L	1840 mg/L
July 29, 2005	009	1100 mg/L	1440 mg/L
July 29, 2005	018	1800 mg/L	2050 mg/L
July 29, 2005	019	1800 mg/L	1810 mg/L
August 8, 2005	009	1100 mg/L	1430 mg/L
August 8, 2005	018	1800 mg/L	2030 mg/L
August 8, 2005	019	1800 mg/L	1910 mg/L
September 9, 2005	009	1100 mg/L	1380 mg/L
September 29, 2005	009	1100 mg/L	1260 mg/L
October 17, 2005	009	1100 mg/L	1550 mg/L
October 26, 2005	009	1100 mg/L	1540 mg/L

November 29, 2005	009	1100 mg/L	1270 mg/L
December 13, 2005	009	1100 mg/L	1350 mg/L
December 13, 2005	018	1800 mg/L	1920 mg/L
December 20, 2005	009	1100 mg/L	1270 mg/L
December 20, 2005	018	1800 mg/L	1930 mg/L
January 16, 2006	009	1100 mg/L	1160 mg/L
January 25, 2006	009	1100 mg/L	1200 mg/L
February 6, 2006	009	1100 mg/L	1220 mg/L
February 6, 2006	027	500 mg/L	516 mg/L
February 6, 2006	024W	500 mg/L	548 mg/L
February 27, 2006	009	1100 mg/L	1150 mg/L
February 27, 2006	024W	500 mg/L	600 mg/L
March 13, 2006	009	1100 mg/L	1240 mg/L
March 13, 2006	024W	500 mg/l	568 mg/L
March 20, 2006	024W	500 mg/L	506 mg/L
March 29, 2006	024W	500 mg/L	520 mg/L
April 13, 2006	024W	500 mg/L	511 mg/L
April 25, 2006	009	1100 mg/L	1190 mg/L
April 25, 2006	024W	500 mg/L	628 mg/L
April 25, 2006	026	500 mg/L	536 mg/L
April 26, 2006	024W	500 mg/L	558 mg/L
May 16, 2006	024W	500 mg/L	550 mg/L
May 17, 2006	009	1100 mg/L	1110 mg/L
May 17, 2006	024W	500 mg/L	552 mg/L
May 24, 2006	009	1100 mg/L	1150 mg/L
May 24, 2006	024W	500 mg/L	562 mg/L
June 14, 2006	009	1100 mg/L	1140 mg/L
June 14, 2006	024W	500 mg/L	592 mg/L
June 15, 2006	009	1100 mg/L	1150 mg/L
June 15, 2006	019	1800 mg/L	1890 mg/L
June 15, 2006	024W	500 mg/L	572 mg/L
June 22, 2006	009	1100 mg/L	1240 mg/L
June 22, 2006	024W	500 mg/L	635 mg/L
July 31, 2006	009	1100 mg/L	1170 mg/L
July 31, 2006	009	1100 mg/L	1180 mg/L
July 31, 2006	009	1100 mg/L	1190 mg/L
July 31, 2006	019	1800 mg/L	1830 mg/L
July 31, 2006	024W	500 mg/L	578 mg/L
August 31, 2006	009	1100 mg/L	1300 mg/L
August 31, 2006	009	1100 mg/L	1273 mg/L
August 31, 2006	009	1100 mg/L	1250 mg/L
August 31, 2006	018	1800 mg/L	1840 mg/L
August 31, 2006	019	1800 mg/L	1840 mg/L

September 30, 2006	009	1100 mg/L	1260 mg/L
September 30, 2006	009	1100 mg/L	1250 mg/L
September 30, 2006	009	1100 mg/L	1240 mg/L
October 31, 2006	009	1100 mg/L	1320 mg/L
October 31, 2006	009	1100 mg/L	1303 mg/L
October 31, 2006	009	1100 mg/L	1290 mg/L
October 31, 2006	018	1800 mg/L	1850 mg/L
October 31, 2006	019	1800 mg/L	1810 mg/L
November 30, 2006	009	1100 mg/L	1350 mg/L
November 30, 2006	009	1100 mg/L	1287 mg/L
November 30, 2006	009	1100 mg/L	1160 mg/L
November 30, 2006	018	1800 mg/L	1890 mg/L
November 30, 2006	019	1800 mg/L	1830 mg/L
December 31, 2006	009	1100 mg/L	1230 mg/L
December 31, 2006	009	1100 mg/L	1123 mg/L
December 31, 2006	024W	500 mg/L	1090 mg/L
January 31, 2007	026	500 mg/L	514 mg/L
January 31, 2007	026	500 mg/L	502 mg/L
January 31, 2007	027	500 mg/L	879 mg/L
January 31, 2007	024W	500 mg/L	610 mg/L
February 28, 2007	003	1100 mg/L	1810 mg/L
February 28, 2007	009	1100 mg/L	1310 mg/L
May 31, 2007	018	1800 mg/L	1870 mg/L
May 31, 2007	019	1800 mg/L	1830 mg/L
May 31, 2007	024W	500 mg/L	1080 mg/L
June 30, 2007	024W	500 mg/L	507 mg/L
June 30, 2007	024W	500 mg/L	576 mg/L
July 31, 2007	009	1100 mg/L	1400 mg/L
July 31, 2007	009	1100 mg/L	1200 mg/L
July 31, 2007	024W	500 mg/L	544 mg/L
August 31, 2007	009	1100 mg/L	1370 mg/L
August 31, 2007	009	1100 mg/L	1310 mg/L
August 31, 2007	009	1100 mg/L	1270 mg/L
August 31, 2007	019	1800 mg/L	2160 mg/L

F. Freeman United reported the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
January 2005	003	35.0 mg/L	48.5 mg/L
January 2005	018	35.0 mg/L	38 mg/L

May 2007	002	35.0 mg/L	46 mg/L
May 2007	018	35.0 mg/L	46 mg/L

G. Freeman United reported the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
May 26, 2004	029	70.0 mg/L	71 mg/L
July 14, 2004	029	70.0 mg/L	160 mg/L
January 17, 2005	003	70.0 mg/L	81 mg/L
April 26, 2005	019	70.0 mg/L	84 mg/L
December 13, 2005	009	70.0 mg/L	99 mg/L
February 28, 2007	009	70.0 mg/L	87 mg/L
May 31, 2007	002	70.0 mg/L	96 mg/L
May 31, 2007	018	70.0 mg/L	121 mg/L
July 31, 2007	026	70.0 mg/L	86 mg/L

H. Freeman United reported the discharge of pH outside of the permitted effluent limitation range of 6.0 to 9.0 standard units as follows:

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

5. I have reviewed the Discharge Monitoring Reports submitted by Springfield Coal and compared the analytical data reported therein with the applicable effluent limitations in the NPDES Permit as to the effluent concentrations of manganese, sulfates, pH, TSS, and iron discharged from the Industry Mine into waters of the State from September 2007 through the present. As explained above, I have transcribed the data reported in the DMRs into the tables set forth below. To the extent that any reporting inconsistencies or ambiguities may exist, or erroneous information may need correction, Springfield Coal is obligated to correct such

problems by Standard Condition 12(e) of NPDES Permit No. IL0061247. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that:

A. Springfield Coal reported the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
January 2008	019	2.0 mg/L	12.9 mg/L
February 2008	019	2.0 mg/L	7.617 mg/L
October 2008	018	2.0 mg/L	6.957 mg/L
November 2008	018	2.0 mg/L	2.877 mg/L
November 2008	019	2.0 mg/L	34.2 mg/L
December 2008	018	2.0 mg/L	2.2 mg/L
December 2008	019	2.0 mg/L	10.7 mg/L
January 2009	018	2.0 mg/L	2.165 mg/L
January 2009	019	2.0 mg/L	18.5 mg/L
February 2009	009	2.0 mg/L	2.69 mg/L
February 2009	019	2.0 mg/L	18.5 mg/L
March 2009	018	2.0 mg/L	5.493 mg/L
March 2009	026	2.0 mg/L	2.725 mg/L
March 2009	024W	2.0 mg/L	2.213 mg/L
April 2009	009	2.0 mg/L	2.23 mg/L
April 2009	018	2.0 mg/L	2.197 mg/L
April 2009	026	2.0 mg/L	2.306 mg/L
May 2009	009	2.0 mg/L	2.31 mg/L
May 2009	018	2.0 mg/L	5.45 mg/L
May 2009	019	2.0 mg/L	15.48 mg/L
May 2009	026	2.0 mg/L	3.04 mg/L
June 2009	018	2.0 mg/L	7.29 mg/L
June 2009	019	2.0 mg/L	39.27 mg/L
July 2009	018	2.0 mg/L	3.24 mg/L
July 2009	019	2.0 mg/L	59 mg/L
July 2009	026	2.0 mg/L	4.71 mg/L
August 2009	018	2.0 mg/L	2.74 mg/L
August 2009	019	2.0 mg/L	25.8 mg/L
August 2009	024W	2.0 mg/L	2.22 mg/L
September 2009	019	2.0 mg/L	23.27 mg/L
September 2009	024W	2.0 mg/L	3.18 mg/L

October 2009	018	2.0 mg/L	3.817 mg/L
October 2009	019	2.0 mg/L	20.87 mg/L
October 2009	026	2.0 mg/L	2.41 mg/L
October 2009	024W	2.0 mg/L	2.41 mg/L
November 2009	018	2.0 mg/L	10.0 mg/L
November 2009	019	2.0 mg/L	29 mg/L
December 2009	018	2.0 mg/L	13.6 mg/L
December 2009	009	2.0 mg/L	2.437 mg/L

B. Springfield Coal reported the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
January 31, 2008	019	4.0 mg/L	12.9 mg/L
February 29, 2008	019	4.0 mg/L	14 mg/L
October 31, 2008	018	4.0 mg/L	9.45 mg/L
November 30, 2008	019	4.0 mg/L	30.6 mg/L
November 30, 2008	019	4.0 mg/L	40.4 mg/L
December 31, 2008	019	4.0 mg/L	18.8 mg/L
January 31, 2009	019	4.0 mg/L	13.5 mg/L
January 31, 2009	019	4.0 mg/L	23.8 mg/L
February 28, 2009	018	4.0 mg/L	5.68 mg/L
February 28, 2009	019	4.0 mg/L	13.5 mg/L
February 28, 2009	019	4.0 mg/L	23.8 mg/L
March 31, 2009	018	4.0 mg/L	8.05 mg/L
May 31, 2009	018	4.0 mg/L	9.5 mg/L
May 31, 2009	019	4.0 mg/L	8.04 mg/L
May 31, 2009	019	4.0 mg/L	29.8 mg/L
June 30, 2009	018	4.0 mg/L	6.89 mg/L
June 30, 2009	018	4.0 mg/L	8.07 mg/L
June 30, 2009	019	4.0 mg/L	14.4 mg/L
June 30, 2009	019	4.0 mg/L	53.8 mg/L
July 31, 2009	019	4.0 mg/L	57 mg/L
July 31, 2009	019	4.0 mg/L	61 mg/L
July 31, 2009	026	4.0 mg/L	8.6 mg/L
August 31, 2011	018	4.0 mg/L	4.8 mg/L
August 31, 2009	019	4.0 mg/L	18 mg/L
August 31, 2009	019	4.0 mg/L	40.2 mg/L
September 30, 2009	019	4.0 mg/L	15.2 mg/L
September 30, 2009	019	4.0 mg/L	23.27 mg/L
September 30, 2009	019	4.0 mg/L	29.8 mg/L

October 2009	018	4.0 mg/L	5.19 mg/L
October 2009	019	4.0 mg/L	35.4 mg/L
November 2009	018	4.0 mg/L	12.3 mg/L
November 2009	019	4.0 mg/L	32.7 mg/L
December 31, 2009	018	4.0 mg/L	14.1 mg/L

C. Springfield Coal reported the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

Date	Outfall	Permit Limit	Actual Discharge
September 30, 2007	009	1100 mg/L	1620 mg/L
September 30, 2007	009	1100 mg/L	1410 mg/L
September 30, 2007	009	1100 mg/L	1280 mg/L
September 30, 2007	018	1800 mg/L	2100 mg/L
September 30, 2007	018	1800 mg/L	1930 mg/L
September 30, 2007	019	1800 mg/L	2180 mg/L
October 31, 2007	009	1100 mg/L	2970 mg/L
October 31, 2007	009	1100 mg/L	2380 mg/L
October 31, 2007	009	1100 mg/L	2080 mg/L
October 31, 2007	018	1800 mg/L	2710 mg/L
October 31, 2007	018	1800 mg/L	2370 mg/L
October 31, 2007	018	1800 mg/L	1920 mg/L
November 30, 2007	009	1100 mg/L	2230 mg/L
November 30, 2007	009	1100 mg/L	1930 mg/L
November 30, 2007	009	1100 mg/L	1610 mg/L
November 30, 2007	018	1800 mg/L	3080 mg/L
November 30, 2007	018	1800 mg/L	2740 mg/L
November 30, 2007	018	1800 mg/L	2420 mg/L
November 30, 2007	019	1800 mg/L	2940 mg/L
December 31, 2007	009	1100 mg/L	2040 mg/L
December 31, 2007	009	1100 mg/L	1408 mg/L
December 31, 2007	018	1800 mg/L	2970 mg/L
December 31, 2007	018	1800 mg/L	2390 mg/L
December 31, 2007	018	1800 mg/L	2080 mg/L
February 29, 2008	009	1100 mg/L	1150 mg/L
July 31, 2008	024W	500 mg/L	531 mg/L
November 30, 2008	019	1800 mg/L	2190 mg/L
December 31, 2008	009	1100 mg/L	1400 mg/L
December 31, 2008	018	1800 mg/L	2380 mg/L
December 31, 2008	018	1800 mg/L	2130 mg/L
December 31, 2008	019	1800 mg/L	2920 mg/L

February 28, 2009	009	1100 mg/L	1230 mg/L
February 28, 2009	018	1800 mg/L	2570 mg/L
March 31, 2009	024W	500 mg/L	544 mg/L
April 30, 2009	026	500 mg/L	539 mg/L
May 31, 2009	026	500 mg/L	515 mg/L
June 30, 2009	019	1800 mg/L	2690 mg/L
June 30, 2009	026	500 mg/L	818 mg/L
June 30, 2009	026	500 mg/L	656 mg/L
June 30, 2009	026	500 mg/L	509 mg/L
July 31, 2009	009	1100 mg/L	1310 mg/L
July 31, 2009	009	1100 mg/L	1470 mg/L
July 31, 2009	018	1800 mg/L	1940 mg/L
July 31, 2009	018	1800 mg/L	2077 mg/L
July 31, 2009	018	1800 mg/L	2200 mg/L
July 31, 2009	019	1800 mg/L	3290 mg/L
July 31, 2009	026	500 mg/L	869 mg/L
July 31, 2009	026	500 mg/L	927 mg/L
August 31, 2009	009	1100 mg/L	1360 mg/L
August 31, 2009	009	1100 mg/L	1430 mg/L
August 31, 2009	018	1800 mg/L	1820 mg/L
August 31, 2009	019	1800 mg/L	2490 mg/L
September 30, 2009	009	1100 mg/L	1200 mg/L
September 30, 2009	009	1100 mg/L	1287 mg/L
September 30, 2009	009	1100 mg/L	1350 mg/L
September 30, 2009	018	1800 mg/L	1920 mg/L
September 30, 2009	019	1800 mg/L	2020 mg/L
September 30, 2009	026	500 mg/L	692 mg/L
September 30, 2009	026	500 mg/L	768 mg/L
September 30, 2009	026	500 mg/L	853 mg/L
October 31, 2009	009	1100 mg/L	1260 mg/L
October 31, 2009	019	1800 mg/L	1900 mg/L
October 31, 2009	026	500 mg/L	694 mg/L
October 31, 2009	030	1100 mg/L	1150 mg/L

D. Springfield Coal reported the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
February 2008	003	35.0 mg/L	49 mg/L
February 2008	018	35.0 mg/L	47.7 mg/L
February 2008	029	35.0 mg/L	64 mg/L

January 2009	009	35.0 mg/L	44.3 mg/L
November 2009	031	35.0 mg/L	63.7 mg/L

E. Springfield Coal reported the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
February 29, 2008	018	70.0 mg/L	116 mg/L
January 31, 2009	009	70.0 mg/L	80 mg/L
November 2009	031	70.0 mg/L	89.0 mg/L

F. Springfield Coal caused or allowed the discharge of pH outside of the permitted effluent limitation range of 6.0 to 9.0 standard units as follows:

Month/Year	Outfall	Actual Discharge
May 2009	019	5.29
June 2009	019	4.25
July 2009	019	3.62
July 2009	027	9.4
September 2009	022	9.58
December 2009	019	9.15

G. Springfield Coal reported the discharge of iron in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
November 2009	031	3.0 mg/L	11.85 mg/L
December 2009	031	3.0 mg/L	5.24 mg/L
December 2009	033	3.0 mg/L	8.133 mg/L

H. Springfield Coal reported the discharge of iron in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
November 2009	031	6.0 mg/L	15.4 mg/L

December 2009	033	6.0 mg/L	12.8 mg/L

6. I have compared these effluent data tabulations with the information set forth in Counts I and II of the Complaint and found additional effluent data not included in the allegations of violation; these data are set forth in this affidavit and I am informed by legal counsel that the Complaint may be amended to conform to the proof.

7. I have also reviewed the Discharge Monitoring Reports submitted by Springfield Coal after the Complaint was filed with the Pollution Control Board in February 2010. I compared the analytical data reported therein as to the effluent concentrations of contaminants discharged from the Industry Mine into waters of the State during 2010 and 2011. I have evaluated the effluent data according to the applicable limitations for contaminants discharged from the particular outfalls and certify that, in addition to the violations pleaded in the Complaint:

A. Springfield Coal reported the discharge of manganese in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
March 2010	018	2.0 mg/L	2.39 mg/L
September 2010	019	2.0 mg/L	2.02 mg/L
October 2010	018	2.0 mg/L	2.23 mg/L
March 2011	009	2.0 mg/L	3.6 mg/L
March 2011	018	2.0 mg/L	2.92 mg/L
March 2011	024W	2.0 mg/L	2.38 mg/L
September 2011	018	2.0 mg/L	2.13 mg/L

B. Springfield Coal reported the discharge of manganese in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge

January 2010	026	4.0 mg/L	6.84 mg/L
January 2011	018	4.0 mg/L	6.73 mg/L

C. Springfield Coal reported the discharge of sulfates in excess of the permitted daily maximum effluent limitations as follows:

Date	Outfall	Permit Limit	Actual Discharge
January 2010	026	500 mg/L	715 mg/L
February 2010	024W	500 mg/L	510 mg/L
February 2010	026	500 mg/L	566 mg/L
March 2010	009	1100 mg/L	1230 mg/L
May 2010	026	500 mg/L	672 mg/L
June 2010	026	500 mg/L	693 mg/L
July 2010	026	500 mg/L	1120 mg/L
August 2010	026	500 mg/L	1500 mg/L
September 2010	009	1100 mg/L	1290 mg/L
September 2010	026	500 mg/L	1100 mg/L
September 2010	030	1100 mg/L	1110 mg/L
October 2010	009	1100 mg/L	1260 mg/L
October 2010	026	500 mg/L	1170 mg/L
October 2010	030	1100 mg/L	1190 mg/L
November 2010	009	1100 mg/L	1500 mg/L
November 2010	026	500 mg/L	1240 mg/L
November 2010	030	1100 mg/L	1170 mg/L
November 2010	24W	500 mg/L	612 mg/L
December 2010	009	1100 mg/L	1700 mg/L
December 2010	026	500 mg/L	1520 mg/L
December 2010	030	1100 mg/L	1260 mg/L
December 2010	24W	500 mg/L	730 mg/L
January 2011	026	500 mg/L	736 mg/L
January 2011	030	1100 mg/L	1140 mg/L
January 2011	24W	500 mg/L	617 mg/L
March 2011	009	1100 mg/L	1230 mg/L
March 2011	026	500 mg/L	871 mg/L
August 2011	009	1100 mg/L	1550 mg/L
September 2011	009	1100 mg/L	1590 mg/L
September 2011	018	1800 mg/L	2410 mg/L
September 2011	019	1800 mg/L	2790 mg/L
October 2011	009	1100 mg/L	1600 mg/L
October 2011	018	1800 mg/L	2920 mg/L
October 2011	030	1100 mg/L	1140 mg/L

November 2011	009	1100 mg/L	1460 mg/L
November 2011	026	500 mg/L	751 mg/L
December 2011	009	1100 mg/L	1280 mg/L
December 2011	018	1800 mg/L	2070 mg/L
December 2011	026	500 mg/L	1010 mg/L

D. Springfield Coal reported the discharge of TSS in excess of the permitted monthly average effluent limitation as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge
February 2010	031	35.0 mg/L	45.7 mg/L
February 2010	033	35.0 mg/L	40.3 mg/L
March 2010	031	35.0 mg/L	42.5 mg/L
March 2010	033	35.0 mg/L	37 mg/L
March 2011	031	35.0 mg/L	63.0 mg/L
March 2011	035	35.0 mg/L	38 mg/L

E. Springfield Coal reported the discharge of TSS in excess of the permitted daily maximum effluent limitation as follows:

Date	Outfall	Permit Limit	Actual Discharge
February 2010	031	70.0 mg/L	73 mg/L
February 2011	031	70.0 mg/L	120.0 mg/L
March 2011	031	70.0 mg/L	87.0 mg/L

F. Springfield Coal caused or allowed the discharge of pH outside of the permitted effluent limitation range of 6.0 to 9.0 standard units as follows:

Month/Year	Outfall	Actual Discharge
March 2010	019	9.04
June 2010	021	3.9

G. Springfield Coal reported the discharge of iron in excess of the permitted effluent limitations as follows:

Month/Year	Outfall	Permit Limit	Actual Discharge

January 2010	018P	7.0 mg/L	7.88 mg/L
January 2010	031	7.0 mg/L	15.9 mg/L
March 2011	018	7.0 mg/L	7.88 mg/L
March 2011	031	3.0 mg/L	4.7 mg/L
June 2010	031	6.0 mg/L	6.22 mg/L
June 2010	033	6.0 mg/L	7.53 mg/L

8. Based upon my review of these more recent Discharge Monitoring Reports, on several occasions during 2010 and 2011 Springfield Coal has either failed to adequately report the effluent concentrations of manganese discharged from the Industry Mine into waters of the State or failed to collect the necessary amount of samples to satisfy the reporting requirements of the NPDES permit.

9. The Illinois EPA relies upon the validity of all data reported in the Discharge Monitoring Reports because the NPDES permit mandates monitoring test procedures to ensure scientific reliability and because State and federal laws prohibit false reporting.

Date: 3-1-2012

/s/ Larry D. Crislip
LARRY CRISLIP

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:	Facility Name and Address:
Freeman United Coal Mining Company 1480 East 1200th Street P.O. Box 260 Industry, IL 61440	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

Exhibit 4

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*:	002 (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 greater than the 1-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). The 1-year, 24-hour precipitation event for this area is considered to be 2.52 inches.

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 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(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*: 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
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

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*:	029, 030, 031, 032, 033, 035 (Alkaline 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				1/month	Grab
Alkalinity/ Acidity	Total acidity shall not exceed total alkalinity				1/month	Grab
Sulfates				1100	***	Grab
Chlorides				500	***	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 10-year, 24-hour precipitation event (or snowmelt or 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
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(a), 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).

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

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*: 006 (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

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 8 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:

Outfalls: 020, 021, 022, 024W, 026 (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

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
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

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:						
	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.

Modification Date: July 21, 2003

NPDES Coal Mine Permit

NPDES Permit No. IL0061247

Effluent Limitations and Monitoring

	LOAD LIMITS lbs/day		CONCENTRATION LIMITS mg/l			
PARAMETER	30 DAY AVERAGE	DAILY MAXIMUM	30 DAY AVERAGE	DAILY MAXIMUM	SAMPLE FREQUENCY	SAMPLE TYPE
Upon completion of Special Condition No. 9 and approval from the Agency, the effluent of the following discharges shall be monitored and limited at all times as follows:						
	Outfalls:	002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 018, 019 020, 021, 024, 026, 027, 029, 030, 031, 032, 033, 035 (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.

NPDES Permit No. IL0061247

Construction Authorization No.: 0368-98

C.A. Date: January 13, 1999

Reclamation plans for the final cut lake in OMM Permit No. 16 area as proposed in Log No. 1354-97 for downdrain structures and Log No. 0005-98 for the discharge structure are approved. Discharges from this final cut will report to Pond 009.

The embankment of Impoundment No. 12 will be raised approximately 6 feet to an elevation of 643 M.S.L. as described in IEPA Log No. 0380-98. The impoundment water surface elevation will also be raised by installing a 6-foot extension onto the existing 24-inch drop inlet decant. The final impoundment water surface elevation will be 637 feet M.S.L.

This Construction Authorization replaces C.A. No. 4158-94; S.C.A. Nos. 4158-94-1, 4158-94-2, 4158-94-3, 4158-94-4, 4158-94-5 and 4158-94-6; and State Permit No. 1998-MD-0380.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109.

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

This Authorization is issued subject to the following Conditions. If such Conditions require additional or revised facilities, satisfactory engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. If any statement or representation is found to be incorrect, this permit may be revoked and the permittee thereupon waives all rights thereunder.

2. The issuance of this permit (a) shall not be considered as in any manner affecting the title of the premises upon which the mine or mine refuse area is to be located; (b) does not release the permittee from any liability for damage to person or property caused by or resulting from the installation, maintenance or operation of the proposed facilities; (c) does not take into consideration the structural stability of any units or parts of the project; and (d) does not release the permittee from compliance with other applicable statutes of the State of Illinois, or with applicable local laws, regulations or ordinances.

3. Final plans, specifications, application and supporting documents as submitted by the person indicated on Page 1 as approved shall constitute part of this permit and are identified by Logs. 9159-79, 6038-82, 6113-82, 2020-86, 1076-87, 0511-88, 0709-88, 6008-92, 6182-92, 5184-93, 5185-93, 4061-94, 1099-97, 1099-97-A, 1230-97, 1252-97, 1354-97, 0005-98, 0006-98 and 0380-98 in the records of the Illinois Environmental Protection Agency.

4. There shall be no deviations from the approved plans and specifications unless revised plans, specifications and application shall first have been submitted to the Illinois Environmental Protection Agency and a supplemental permit issued.

5. The permit holder shall notify the Environmental Protection Agency (217/782-3637) immediately of an emergency at the mine or mine refuse area which causes or threatens to cause a sudden discharge of contaminants into the waters of Illinois and shall immediately undertake necessary corrective measures as required by 35 Ill. Adm. Code 405.111. (217/782-3637 for calls between the hours of 5:00 p.m. to 8:30 a.m. and on weekends.)

6. The termination of an NPDES discharge monitoring point or cessation of monitoring of an NPDES discharge is not authorized by this Agency until the permittee submits adequate justification to show what alternate treatment is provided or that untreated drainage will meet applicable effluent and water quality standards.

7. Initial construction activities in areas to be disturbed shall be for collection and treatment facilities only. Prior to the start of other activities, surface drainage controls shall be constructed and operated to avoid violations of the Act or Subtitle D. At such time as runoff water is collected in the sedimentation pond, a sample shall be collected and analyzed, with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must be obtained. Discharge from this pond is not allowed unless applicable effluent and water quality standards are met.

8. This Agency must be informed in writing and an application submitted if drainage, which was previously classified as alkaline (pH greater than 6.0), becomes acid (pH less than 6.0) or ferruginous (base flow with an iron concentration greater than 10 mg/l). The type of drainage reporting to the basin should be reclassified in a manner consistent with the applicable rule of 35 Ill. Adm. Code 406 as amended in R84-29 at 11 Ill. Reg. 12899. The application should discuss the treatment method and demonstrate how the discharge will meet the applicable standards.

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. 0368-98-1

S.C.A. Date: October 18, 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. These facilities have been revised as follows:

The addition of 20.0 acres identified as OMM Permit No. 180, IBR No. 1, located in Section 3, Township 3 North, Range 3 West, Schuyler County, to be used for the construction of a borrow area as proposed in IEPA Log No. 9471-99. The inclusion of this additional area brings the total area under OMM Permit No. 180 to 178.8 acres; and the total area covered under this NPDES permit to 4568.0 acres of which 494.5 acres is located in Schuyler County.

Pond and Outfall 026 will be constructed as requested in IEPA Log No. 9472-99 (OMM Permit No. 180, IPR No. 3). It is noted for reference purposes only at this time that the designs for Pond 026 are contained in IEPA Log No. 9162-99 (OMM Permit No. 334 Application). This reference is not to imply that IEPA Log No. 9162-99 (OMM Permit No. 334) is being approved at this time. As-built plans shall be submitted to the Agency upon completion of construction of Basin 026. Discharge from Outfall 026 is subject to Condition No. 1.

Drainage from the borrow area will report to Basin 026. In the event that pit pumpage is directed to the basin, any material removed during pond clean-out shall be disposed in the active pit.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in Log Nos. 9471-99 and 9472-99.

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

This Supplemental Authorization is issued subject to the following Conditions. If such Conditions require additional or revised facilities, appropriate engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. At such time as runoff is collected in Pond 026, a sample shall be collected and analyzed for the parameters designated as 1M-15M under Part 5-C of Form 2C, with the results sent to this Agency. Should additional treatment be necessary to meet these standards, a Supplemental Permit must be obtained. Discharge from a pond is not allowed unless applicable effluent and water quality standards are met.

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. 0368-98-3

S.C.A. Date: July 25, 2000

Michael W. Rapps, 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 Construction Authorization Nos. 0368-98-1 and 0368-98-2 dated October 18, 1999, and December 1, 1999, respectively. These facilities have been revised as follows:

An additional 459.2 acres located in Sections 3 and 4, Township 3 North, Range 3 West, Schuyler county, 4th P.M. to be surface mined as proposed in Log Nos. 8119-00 and 8119-00-B. Total area covered by this permit is increased to 5138.2 acres of which 1064.7 acres is located in Schuyler County.

Surface drainage will be controlled by diversions and two sediment ponds. Outfalls 029 and 030 from these ponds will be classified as alkaline mine drainage and report to an unnamed tributary to Willow Creek, tributary to LaMoine River. If either pond requires sediment to be removed to maintain performance, and pit pumpage has been directed to or chemical treatment has been conducted in the pond, sediment must be buried with the refuse, unless testing shows that the material is suitable for use as root medium.

The abandonment plan shall be executed and completed in accordance with 35 Ill. Adm. Code 405.109 as detailed in the log numbers referenced in Condition as detailed in Log Nos. 8119-00 and 8119-00-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°42'48.0"
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°45'06.0"
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

Supplemental Construction Authorization No. 0368-98-4

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

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

Outfall	Latitude (North)	Longitude (West)
029	40°16'22.0"	90°45'08.0"
030	40°16'16.0"	90°44'51.0"
031	40°18'11.5"	90°43'33.6"
032	40°18'11.5"	90°43'10.6"
033	40°18'24.5"	90°43'01.9"
035	40°18'46.8"	90°42'55.9"

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

This Supplemental Authorization is issued subject to the following Condition. If such Condition requires additional or revised facilities, appropriate engineering plan documents must be submitted to this Agency for review and approval to secure issuance of a Supplemental Authorization to Construct.

1. No discharge is allowed from any herein permitted Outfall during "low flow" or "no flow" conditions in the receiving stream, unless such discharge meets the water quality standards of 35 Ill. Adm. Code 302. Discharges not meeting the water quality standards of 35 Ill. Adm. Code 302 may only be discharged in combination with storm water discharges from the basin, and only at such times that sufficient flow exists in the receiving stream to ensure that water quality standards in the receiving stream beyond the mixing zone will not be exceeded. Following any such stormwater discharge during which water quality standards are not being met, but prior to the flow in the receiving stream subsiding, the impounded water in the basin(s) may be pumped or otherwise evacuated sufficiently below the discharge elevation to provide capacity for holding a sufficient volume of mine pumpage and/or surface runoff to preclude the possibility of discharge until such time that subsequent precipitation event results in discharge from the basin. At times of stormwater discharges, in addition to the alternate effluent monitoring requirements, the basin discharges shall be analyzed for sulfate and chloride concentrations. Also, basin discharge, and stream flow upstream and downstream of the basin discharge confluence shall be determined, recorded, and submitted with basin Discharge Monitoring Reports (DMR's) to demonstrate that adequate mixing is provided to ensure water quality standards in the receiving stream are not exceeded.

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.

NPDES Permit No. IL0061247

Special Conditions

Special Condition No. 10: Annual stormwater monitoring is required for all discharges not reporting to a sediment basin until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

A. Each discharge must be monitored for pH and settleable solids annually.

B. Analysis of samples must be submitted with second quarter Discharge Monitoring Reports. A map with discharge locations must be included in this submittal.

C. 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 update 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.

Special Condition No. 11: No discharge is allowed from any herein permitted Outfall during "low flow" or "no flow" conditions in the receiving stream, unless such discharge meets the water quality standards of 35 Ill. Adm. Code 302. Discharges not meeting the water quality standards of 35 Ill. Adm. Code 302 may only be discharged in combination with storm water discharges from the basin, and only at such times that sufficient flow exists in the receiving stream to ensure that water quality standards in the receiving stream beyond the area of allowed mixing will not be exceeded. Following any such stormwater discharge during which water quality standards are not being met, but prior to the flow in the receiving stream subsiding, the impounded water in the basin(s) may be pumped or otherwise evacuated sufficiently below the discharge elevation to provide capacity for holding a sufficient volume of mine pumpage and/or surface runoff to preclude the possibility of discharge until such time that subsequent precipitation event results in discharge from the basin. At times of stormwater discharges, in addition to the alternate effluent monitoring requirements, the basin discharges shall be analyzed for sulfate and chloride concentrations to demonstrate compliance with the permit limitations. Also, basin discharge, and stream flow upstream of the basin discharge confluence shall be determined, recorded, and submitted with basin Discharge Monitoring Reports (DMR's) to demonstrate that adequate dilution is provided to ensure water quality standards in the receiving stream are not exceeded.

LDC:BK:cs/2728c/3-31-03

Attachment H

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.

age 26.

(c) Changes of Authorization. If an authorization under (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of (b) must be submitted to the Agency prior to or together with any reports, information, or applications to be signed by an authorized representative.

12) Reporting requirements.

(a) Planned changes. The permittee shall give notice to the Agency as soon as possible of any planned physical alterations or additions to the permitted facility.

(b) Anticipated noncompliance. The permittee shall give advance notice to the Agency of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(2) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Agency in the permit.

(e) Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and time; and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Agency in the permit to be reported within 24 hours.

The Agency may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(f) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (12)(c), (d), or (e), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (12)(e).

(g) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application, or in any report to the Agency, it shall promptly submit such facts or information.

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

(a) The current permittee notifies the Agency at least 30 days in advance of the proposed transfer date;

(b) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees; and

(c) The Agency does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement.

14) All manufacturing, commercial, mining, and silvicultural dischargers must notify the Agency as soon as they know or have reason to believe:

(a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant identified under Section 307 of the Clean Water Act which is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4,6 dinitrophenol; and one milligram per liter (1 mg/l) for antimony.

(3) Five (5) times the maximum concentration value reported for that pollutant in the NPDES permit application; or

(4) The level established by the Agency in this permit.

(b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the NPDES permit application.

(15) All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Agency of the following:

(a) Any new introduction of pollutants into that POTW from an indirect discharge which would be subject to Sections 301 or 306 of the Clean Water Act if it were directly discharging those pollutants; and

(b) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(c) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(16) If the permit is issued to a publicly owned or publicly regulated treatment works, the permittee shall require any industrial user of such treatment works to comply with federal requirements concerning:

(a) User charges pursuant to Section 204(b) of the Clean Water Act, and applicable regulations appearing in 40 CFR 35;

(b) Toxic pollutant effluent standards and pretreatment standards pursuant to Section 307 of the Clean Water Act; and

(c) Inspection, monitoring and entry pursuant to Section 308 of the Clean Water Act.

(17) If an applicable standard or limitation is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2), or 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked, and reissued to conform to that effluent standard or limitation.

(18) Any authorization to construct issued to the permittee pursuant to 35 Ill. Adm. Code 309.154 is hereby incorporated by reference as a condition of this permit.

(19) The permittee shall not make any false statement, representation or certification in any application, record, report, plan or other document submitted to the Agency or the USEPA, or required to be maintained under this permit.

(20) The Clean Water Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed $10,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing Sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

(21) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(22) The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit shall, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(23) Collected screening, slurries, sludges, and other solids shall be disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into waters of the State. The proper authorization for such disposal shall be obtained from the Agency and is incorporated as part hereof by reference.

(24) In case of conflict between these standard conditions and any other condition(s) included in this permit, the other condition(s) shall govern.

(25) The permittee shall comply with, in addition to the requirements of the permit, all applicable provisions of 35 Ill. Adm. Code, Subtitle C, Subtitle D, Subtitle E, and all applicable orders of the Board.

(26) The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit is held invalid, the remaining provisions of this permit shall continue in full force and effect.

(Rev. 3-13-98)

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

Exhibit 5

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 6

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/kr

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

NOTE: ON 6/20/05 RON MORRIS EMAILED 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.

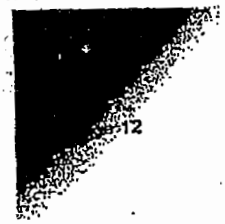
Pollutant or Pollutant Property	Effluent Limitations
Iron	7.0 mg/l daily maximum
Settleable Solids	0.5 ml/l daily maximum
pH	6.0 - 9.0 at all times

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