

ILLINOIS POLLUTION CONTROL BOARD
August 17, 2017

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 10-61
) (Enforcement - Water)
FREEMAN UNITED COAL MINING)
CO., LLC., and SPRINGFIELD)
COAL CO., LLC,)
)
Respondents.)
_____)
)
ENVIRONMENTAL LAW AND)
POLICY CENTER, on behalf of PRAIRIE)
RIVERS NETWORK and SIERRA CLUB,)
ILLINOIS CHAPTER,)
)
Complainant,)
)
v.) PCB 11-2
) (Enforcement - Water)
FREEMAN UNITED COAL MINING) (Consolidated)
CO., LLC., and SPRINGFIELD)
COAL CO., LLC,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD¹ (by K. Papadimitriu):

On February 10, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a four-count complaint against the Freeman United Coal Mining

¹ Chad Kruse, who worked for the Illinois Environmental Protection Agency prior to joining the Board as an attorney assistant on March 19, 2013, took no part in the Board's drafting or deliberation of any order or issue in this matter.

Company, LLC (Freeman United) and Springfield Coal Company, LLC (Springfield Coal) (collectively, respondents) in PCB 10-61. On April 15, 2010, the Board granted Environmental Law and Policy Center's motion to intervene in that docket on behalf of Prairie Rivers Network and Sierra Club, Illinois Chapter (collectively, Environmental Groups). On July 15, 2010, the Board accepted for hearing the Environmental Groups' four-count complaint against respondents in PCB 11-2 and consolidated these dockets. Both complaints concern a strip mine located in McDonough and Schuyler Counties, approximately five miles southwest of Industry, McDonough County (Industry Mine). Freeman United owned and operated Industry Mine until September 1, 2007. Since then, Springfield Coal owned and operated it. The parties now seek to settle without a hearing. For the reasons provided below, the Board accepts the parties' stipulation and proposed settlement (Settlement), and the Environmental Groups' and Springfield Coal's addendum to the Settlement (Addendum).

Under the Environmental Protection Act (Act) (415 ILCS 5 (2016)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31(c)(1) (2016); 35 Ill. Adm. Code 103. Additionally, any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2016); 35 Ill. Adm. Code 103. In this case, both complaints allege violations of Sections 12(a) and (f) of the Act (415 ILCS 5/12(a), (f) (2016)) and provisions of the National Pollutant Discharge Elimination System (NPDES) permit for Industry Mine. The People's complaint alleges that:

Count I: Freeman United violated Section 12(f) of the Act by causing or allowing the discharge of iron, manganese, sulfates, pH, and total suspended solids (TSS) in excess of the effluent limitations imposed by NPDES Permit No. IL0061247;

Count II: Springfield Coal violated Section 12(f) of the Act by causing or allowing the discharge of iron, manganese, sulfates, pH, and TSS in excess of the effluent limitations imposed by NPDES Permit No. IL0061247;

Count III: Freeman United violated Section 12(a) of the Act by causing or tending to cause water pollution; and

Count IV: Springfield Coal violated Section 12(a) of the Act by causing or tending to cause water pollution. 415 ILCS 5/12(a), (f) (2016).

Additionally, the People allege that from January 1, 2010 through the filing of the Settlement, Springfield Coal violated NPDES Permit No. IL0061247 and Section 12(f) of the Act by exceeding effluent limits 140 times. 415 ILCS 5/12(f) (2016).

The Environmental Groups' complaint alleges that:

Count I: Springfield Coal violated Section 12(f) of the Act by operating without a valid NPDES Permit;

Count II: Respondents violated Section 12(f) of the Act by causing or allowing the discharge of iron, manganese, sulfates, pH, and TSS in excess of the effluent limitations imposed by NPDES Permit No. IL0061247;

Count III: Respondents violated Section 12(a) of the Act by causing or tending to cause water pollution; and

Count IV: Respondents violated Section 12(f) of the Act by causing or allowing the discharges in excess of the effluent limitations imposed by NPDES Permit No. IL0061247 that caused or contributed to violation of water quality standards for sulfate. 415 ILCS 5/12(f) (2016).

On November 15, 2012, the Board granted the People's motion for summary judgment on counts I and II of the People's complaint and granted the Environmental Groups' motion for summary judgment on count II of Environmental Groups' complaint.

On June 28, 2017, the Board received the Settlement and the Addendum, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2016)). This filing is authorized by Sections 31(c)(2) and (d)(2) of the Act (415 ILCS 5/31(c)(2), (d)(2) (2016)). See 35 Ill. Adm. Code 103.300(a), 103.301. The Board provided notice of the Settlement and request for relief. The newspaper notice was published in *Rushville Times* and *McDonough County Voice* on July 12, 2017. The Board did not receive any public comments or requests for hearing. The Board grants the parties' request for relief from the hearing requirement. See 415 ILCS 5/31(c)(2) (2016); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. See 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondents' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2016)), which bears on the reasonableness of the circumstances surrounding the alleged violations. The Settlement also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2016)), which may mitigate or aggravate the civil penalty amount. Under the Settlement, respondents do not admit to any of the alleged violations but agree to jointly and severally pay a civil penalty of \$250,000. Respondents also agree to cease and desist from future violations that were the subject matter of the complaints and to perform a supplemental environmental project valued at \$350,000. The Settlement also addresses an alleged additional 140 effluent exceedances by Springfield Coal, in violation of Section 12(f) of the Act. Under the Addendum, Springfield Coal and any future successors or assigns to its real estate must refrain from mining raw coal for specified periods of time at Industry Mine and other specified mines. The parties have satisfied Section 103.302. The Board accepts the Settlement and the Addendum.

Finally, the Settlement provides that the parties may agree to "extend any compliance dates or modify the terms" of the Settlement. Settlement at 16. The Board notes that any modification of the Settlement made by the parties and not accepted by the Board in a

subsequent order is not enforceable under the Act. People v. Reliable Materials Lyons, PCB 12-52, slip op. at 2 (Aug. 21, 2014).

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the Settlement and the Addendum. However, any modification of the Settlement made by the parties will not be incorporated into this Board order and will not be enforceable under the Environmental Protection Act (415 ILCS 5 (2016)) unless accepted by the Board in a subsequent order.
2. Respondents must jointly and severally pay a civil penalty of \$250,000 no later than September 18, 2017, which is the 30th day after the date of this order. Respondents must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case name and case number must appear on the certified check or money order.
3. Respondents must submit payment of the civil penalty to:

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

Respondents must send a copy of the certified check or money order and any transmittal letter to:

Stephen Sylvester
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2016)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2016)).
5. Respondents must perform the Supplemental Environmental Project (SEP) as stipulated in the Settlement. The SEP is valued at \$350,000. The SEP must be completed no later than November 15, 2017, which is the 90th day after the date

of this order. Within 30 days thereafter, respondents must submit a SEP project completion report as required in the Settlement. If the SEP program cannot be completed due to Springfield Coal's actions, Springfield Coal must pay \$225,000 as required in the Settlement and no later than December 15, 2017, which is the 120th day after the date of this order.

6. If respondents fail to make any payment, complete any activity or fail to comply with any response or reporting requirement stipulated by the Settlement by the date specified in the Settlement, respondents must provide notice to the People and Environmental Groups of each failure and must pay penalties stipulated in the Settlement.
7. Respondents must cease and desist from future violations of the Environmental Protection Act that were the subject of the People's and the Environmental Groups' complaints.
8. Springfield Coal and any future successors or assigns to its real estate must refrain from mining raw coal as described in the Addendum:
 - a. At Industry Mine, North Grindstone Mine, Orient III Mine, Orient IV Mine, Orient VI Mine, Crown II Mine, Crown III Mine, Buckheart Mine and Littleton Mine for two years from the date of this order; and
 - b. At North Canton Mine for five years from the date of this order.
9. If Springfield Coal fails to comply with the Addendum, Springfield Coal must provide notices to the Environmental Groups as specified in the Addendum and must pay penalties as stipulated in the Addendum.

IT IS SO ORDERED.

Board Members C.M. Santos and B.K. Carter abstained.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2016); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 17, 2017 by a vote of 5-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Clerk
Illinois Pollution Control Board