

1 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA)  
2 NOTICE OF PUBLIC HEARING FOR  
3 401 WATER QUALITY CERTIFICATION

4  
5 PEABODY ARCLAR MINING, LLC

6 WILDCAT HILLS - COTTAGE GROVE PITS 9 & 10  
7 SALINE AND GALLATIN COUNTIES

8  
9 TRANSCRIPT OF PUBLIC HEARING

10  
11 THURSDAY, SEPTEMBER 15, 2011, 7:00 P.M.

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14 Transcript of Public Hearing for 401 Water  
15 Quality Certification taken on September 15,  
16 2011, at 7:00 p.m., at the SIC Foundation Center,  
17 540 North Commercial Street, in the city of  
18 Harrisburg, state of Illinois, before Andrea M.  
19 Murphy, Registered Professional Reporter,  
20 Illinois Certified Shorthand Reporter  
21 No. 084-004558, Missouri Certified Court Reporter  
22 No. 989.

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A P P E A R A N C E S

Dean Studer, Hearing Officer  
Brian T. Koch  
Thaddeus Faught

Illinois Environmental Protection  
Agency.

1 HEARING OFFICER STUDER: Good  
2 evening. My name is Dean Studer, and I'm the  
3 hearing officer for the Illinois EPA. On behalf  
4 of Interim Director Lisa Bonnett and Bureau of  
5 Water Chief Marsha Willhite, I welcome you to  
6 this hearing. Illinois EPA believes that this  
7 public hearing and the overall public comment  
8 process is a crucial part of the certification  
9 review process. As hearing officer my primary  
10 purpose tonight is to ensure that this proceeding  
11 is run properly and in accordance with  
12 established rules and in an orderly but efficient  
13 manner. Therefore, it is not part of my role to  
14 respond to issues regarding the certification  
15 process or the proposed certification but will  
16 defer these issues to the technical staff here  
17 with me on the hearing panel. However, I will  
18 assist those members from the public wishing to  
19 comment at this hearing to stay focused on the  
20 relevant issues. I point out that we have a  
21 limited amount of time for this hearing and the  
22 hearing panel will be responding to issues when  
23 clarification is necessary. We are primarily  
24 here to listen to your concerns.

25 This informational hearing is being

1 held by the Illinois Environmental Protection  
2 Agency, Bureau of Water, under the positions of  
3 35 Illinois Administrative Code 164, Procedures  
4 for Informational and Quasi Legislative Public  
5 Hearings, and also under 35 Illinois  
6 Administrative Code Part 395, Procedures and  
7 Criteria for Certification of Applications for  
8 Federal Permits or Licenses for Discharges Into  
9 Waters of the State. Copies of these regulations  
10 are available at Illinois Pollution Control Board  
11 at [www.ipcb.state.illinois.us](http://www.ipcb.state.illinois.us), or if you do not  
12 have ready access to the web, they are available  
13 from me upon request.

14 The purpose of this hearing is to  
15 provide an opportunity for the public to present  
16 information to the Illinois EPA regarding the  
17 review of the Section 401 water quality  
18 certification application associated with Peabody  
19 Arclar Mining, LLC, Cottage Grove Mine Pits 9 and  
20 10. I note that Illinois EPA conducted a hearing  
21 regarding the national pollutant discharge  
22 elimination system, NPDES, permit for this  
23 facility a little earlier this evening.

24 If issues are raised during this  
25 hearing regarding the NPDES permit, I will ask

1 you to submit your concerns to the Illinois EPA  
2 in writing and specify "Peabody Arclar NPDES" in  
3 that submittal. I point out that written  
4 comments will continue to be accepted on the  
5 NPDES permitting action, as well as on the 401  
6 water quality certification, through October 6,  
7 2011. Additionally, comment forms for both the  
8 NPDES proceeding and this 401 proceeding are  
9 available at the registration desk. The comment  
10 forms for the NPDES permit proceeding are on  
11 purple or violet paper, and the forms for the 401  
12 proceeding are on green paper. Please be sure  
13 that you submit your comments on the appropriate  
14 form to the appropriate proceeding. Again, we  
15 will accept all written comments -- they do not  
16 necessarily have to be on that form -- I just ask  
17 that you specify which proceeding you want it  
18 entered into the record by.

19 The process for this hearing  
20 regarding the 401 water quality certification  
21 will be as follows: I will finish reading this  
22 opening statement into the record. After that  
23 the panel from Illinois EPA will introduce  
24 themselves, giving a brief overview of the  
25 Section 401 water quality certification process

1 and their role in the agency review of the  
2 proposed project. This will be followed by  
3 comments from citizens, organized groups, and  
4 associations. People will be called upon 1 at a  
5 time to come forward and make comments on the  
6 record. This hearing is the only opportunity  
7 that the public will have to make oral comments  
8 on this 401 proceeding.

9 After the hearing is adjourned,  
10 comments must be submitted in writing to be  
11 included in the record. Comments may be  
12 submitted in hard copy by regular mail or by  
13 e-mail. E-mailed comments should be directed to  
14 epa.publichearingcom@illinois.gov. E-mail  
15 comments will be accepted if received by midnight  
16 on October 6th, 2011. Comments received at the  
17 stroke of midnight as the date is changing to  
18 October 7, 2011, will not be considered timely  
19 filed. E-mail comments must specify "Cottage  
20 Grove 401" in the subject line. E-mails are  
21 automatically sorted and distributed, so it is  
22 crucial that the e-mail contain the words  
23 "Cottage Grove 401" in the subject line exactly  
24 as indicated in the hearing notice to insure that  
25 they make it into the record and be considered.

1           When your e-mail arrives, the system should send  
2           you an automated reply if the e-mail was received  
3           before the comment period ends and the e-mail has  
4           been properly sorted and distributed. I note  
5           that the server can become quite busy in the  
6           minutes before the record closes, so you may want  
7           to take this into account when submitting your  
8           comments as electronic comments received after  
9           midnight on October 6 as the date changes to  
10          October 7 will not be considered timely filed.

11                        Comments sent by regular mail must be  
12           postmarked no later than October 6. They should  
13           be addressed to Dean Studer, Hearing Officer,  
14           Illinois Environmental Protection Agency, Office  
15           of Community Relations, Mail Code 5, Regarding  
16           Cottage Grove 401, 1021 North Grand Avenue East,  
17           PO Box 19276, Springfield, Illinois 62794-9276.  
18           This contact information is included on the  
19           notice of public hearing as well as on the  
20           comment forms. The hearing notice is posted on  
21           the Illinois EPA web page also. Once hearing is  
22           adjourned tonight, the comment period will remain  
23           open, again, until October 6, 2011.

24                        Please make sure that written  
25           comments for this proceeding specify the 401

1 water quality certification process for the  
2 Cottage Grove Mine to avoid confusion with the  
3 NPDES proceeding. If commenting on both  
4 proceedings, 2 separate comment letters should be  
5 submitted, 1 for the NPDES and 1 for the 401  
6 certification, as these are separate proceedings  
7 each with their own set of regulatory  
8 requirements. Comments submitted in writing will  
9 be considered in the same manner and given the  
10 same weight as statements made on the record  
11 during this hearing.

12 After the record closes in this  
13 matter, the Illinois EPA will develop a  
14 responsiveness summary. The responsiveness  
15 summary will address the significant issues  
16 raised during this hearing or submitted in  
17 writing prior to the close of the comment period.  
18 The hearing transcript and subsequent  
19 responsiveness summary will be posted on the  
20 Illinois EPA web page. The agency will make  
21 every effort to post the hearing transcript in  
22 approximately a week, week and a half, but the  
23 actual date will depend on when I get the  
24 transcript from the court reporter.

25 The Illinois EPA has made a tentative

1 determination to issue the Section 401 water  
2 quality certification in accordance with the  
3 provisions of 35 Illinois Administrative Code  
4 395. However, any comments made as part of this  
5 hearing and the public comment process may cause  
6 the agency to request the applicant to revise the  
7 project to address the issues raised.

8 This hearing is for the Section 401  
9 water quality certification. Issues that are  
10 relevant in this hearing are those arising from  
11 the application for the 401 water quality  
12 certification and the antidegradation assessment  
13 specific to the 401 certification that was  
14 included in the public notice fact sheet for this  
15 project. Relevant issues include the mitigation  
16 of wetland and stream impacts as they relate to  
17 the 401 certification, impacts due to the  
18 discharge of dredge and fill into the surface  
19 waters of wetlands. Any person who wishes to  
20 comment tonight may do so as long as the comments  
21 are related to the issues I have just listed or  
22 to the water quality certification in some way  
23 and that time permits.

24 If you filled out a registration card  
25 at the door, you were asked to indicate if you

1           wished to speak at this hearing. Those that  
2           commented at the earlier NPDES permit hearing  
3           should have also been asked if they wished to  
4           comment at this hearing as well. The  
5           registration card should have been so marked.

6                       Persons will be called forward to  
7           make comments in the order assigned by the  
8           registration card. If you wish to comment but  
9           have a time constraint, please let Carol Fuller  
10          at the registration table know and we will try to  
11          call on you earlier in the proceeding. As an  
12          alternative you can make written comments on 1 of  
13          the comment forms available at the registration  
14          table and I will include it as an exhibit in the  
15          hearing record. Again, please make sure that  
16          your comments are on the correct form. If anyone  
17          has exhibits that they want to present into the  
18          record during this hearing, you should give me a  
19          copy when you give your testimony.

20                      For the purpose of allowing everyone  
21          to have a chance to comment and to ensure that  
22          this is an efficient hearing process, I will give  
23          everyone 9 minutes to comment. Once everyone  
24          that desires to comment has been given that  
25          opportunity, if time allows, I will come back to

1 those that have already spoken but ran out of  
2 time. If you have lengthy comments, I'm  
3 requesting that you submit them to me in writing  
4 before the close of the comment period and I will  
5 make sure that they are included in the hearing  
6 record as an exhibit.

7 When it is your turn to comment, if  
8 someone else has said what you intend to say, you  
9 can pass when your name is called. Persons  
10 coming forward to testify should first clearly  
11 state their name and, if applicable, identify any  
12 governmental body or organization that they  
13 represent. You should also spell your last name  
14 so that it can be accurately reflected in the  
15 record. If there are alternate spellings for  
16 your first name, you may also spell your first  
17 name. If you are representing yourself, you can  
18 state that you are an interested citizen. When  
19 you spell your name, I will start timing you. I  
20 will attempt to indicate when you have 30 seconds  
21 left so that you can finish within the time  
22 limit. At the end of the time limit, I will  
23 bring the next person forward to make comments.  
24 In this way we should be able to keep this  
25 hearing moving.

1           Comments should be, one, relevant to  
2 this proceeding as I previously indicated and,  
3 two, not repetitious. Please understand that  
4 making the same point many times does not carry  
5 any more weight in the record than the first time  
6 it is made. Arguing or prolonged dialogue  
7 between agency panel members or the public will  
8 not be allowed. On a similar note, I will not  
9 allow anyone other than the person who has been  
10 given the floor to speak at the time. Because a  
11 verbatim record of this hearing is being made for  
12 the administrative record in this matter, I ask  
13 that you keep your conversation and noise levels  
14 to a minimum so that our court reporter can hear  
15 and transcribe everything that is being said.  
16 Comments are to be addressed to the hearing  
17 panel.

18           As hearing officer I intend to treat  
19 everyone here tonight in a professional manner  
20 and with respect. I ask that the same respect be  
21 shown to those raising relevant issues. While  
22 the issues discussed tonight may indeed be  
23 heartfelt concerns to many of us in attendance,  
24 this is a public hearing and everyone has the  
25 right to comment on issues relevant to the water

1 quality certification process. However, I intend  
2 to conduct an orderly hearing and I will closely  
3 monitor what is said to ensure that the rules  
4 that I have just outlined are followed.

5 If the conduct of persons attending  
6 this hearing should being unruly, I am authorized  
7 to adjourn this hearing should the actions  
8 warrant. In such a case the Illinois EPA would  
9 accept written comments through the time  
10 indicated in the notice for this hearing and that  
11 date is through October 6th.

12 Are there any comments for me on how  
13 we will proceed tonight?

14 Let the record reflect that no one  
15 indicated that that they had questions.

16 For the record I have entered the  
17 following exhibits into the record: Exhibit 1 is  
18 the notice of public hearing; Exhibit 2 is the  
19 public notice fact sheet; Exhibit 3 is the letter  
20 from US Senator Dick Durbin's office indicating  
21 that he will not be able to attend this hearing.

22 I will now ask our agency panel  
23 members to introduce themselves and briefly  
24 describe their role in the review of the 401  
25 certification. This will be followed by Thad

1 Faught making a brief statement regarding the 401  
2 certification process and this application.  
3 Following this I will allow the public to come  
4 forward as their name is called to make  
5 statements.

6 MR. KOCH: My name is Brian Koch.  
7 I'm from the water quality standards section, and  
8 I conducted the antidegradation assessment for  
9 the facility.

10 MR. FAUGHT: My name is Thaddeus  
11 Faught, and I'm an engineer in the permit section  
12 at the EPA.

13 Projects that include the discharge  
14 of dredged or fill material into waters of the  
15 United States are required to be covered by a  
16 permit issued by the US Army Corps of Engineers  
17 under Section 404 of the Clean Water Act. The  
18 Illinois EPA issues water quality certifications  
19 pursuant to Section 401 of the Clean Water Act to  
20 the Corps of Engineers for a Section 404 corps  
21 permit. Issuance of the 401 certification does  
22 not have any effect or bearing on what is  
23 required of Peabody by any of the federal, state,  
24 or local regulations.

25 If issued, the water quality

1 certification is not an approval of any discharge  
2 resulting from the completed mine facility nor an  
3 approval of the design of the mine facility. The  
4 project must also meet other applicable permit  
5 requirements of the Illinois Pollution Control  
6 Board. The 401 review is focused on potential  
7 impacts to water quality due to the proposed  
8 construction activity.

9 The Illinois EPA received an  
10 application on May 17, 2010, from Peabody Arclar  
11 Mining for 401 water quality certification for  
12 the discharge of dredged or fill materials  
13 associated with surface mining activities. This  
14 project site is approximately 878 acres in size.  
15 The project site is prosed to be mined by surface  
16 mining methods to extract bituminous coal.  
17 Mining activities would result in the discharge  
18 of dredged or fill materials in 8,797 linear feet  
19 of ephemeral streams, 13,732 linear feet of  
20 intermittent streams, and approximately .87 acres  
21 of wetlands. The waters include Cockerel Branch  
22 and unnamed tributaries to Cockerel Branch,  
23 Saline River, and the North Fork Saline River.

24 Mitigation for stream impacts would  
25 be through reconstruction of streams in reclaimed

1 areas once mining has been completed. The stream  
2 restoration plan includes the establishment of  
3 approximately 18,131 linear feet of streams. The  
4 approximately .87 acres of jurisdictional  
5 wetlands planned for disturbance would be  
6 mitigated through construction of approximately  
7 2.25 acres of forested wetland.

8 The Illinois EPA has reviewed the  
9 certification application with regard to the  
10 Illinois water quality standards and  
11 certification regulations. Based on that review  
12 the Illinois EPA issued a public notice,  
13 including the antidegradation assessment fact  
14 sheet, on July 28, 2011, to seek public comments  
15 on the project.

16 HEARING OFFICER STUDER: Thank you,  
17 Thad.

18 Okay. The first person to make  
19 comments this evening is Traci Barkley.

20 MS. BARKLEY: Good evening. My name  
21 is Traci Barkley, T-R-A-C-I B-A-R-K-L-E-Y. I'm a  
22 water resource scientist for the Prairie Rivers  
23 Network. I'm also a member of the Prairie Rivers  
24 Network and a member of the Illinois chapter of  
25 the Sierra Club. Prairie Rivers Network is a

1 state affiliate of the National Wildlife  
2 Federation. We are a nonprofit organization that  
3 strives to protect the rivers, streams, and  
4 lakes of Illinois. Much of our work focuses on  
5 how policies such as the Clean Water Act and Safe  
6 Drinking Water Act are used in Illinois, laws  
7 that are intended to protect our waters, our  
8 environment, and ultimately our health. Prairie  
9 Rivers Network has members that live and  
10 recreate in the Saline River watershed, site of  
11 the proposed activities and related impacts, so  
12 we have substantial interest in ensuring that the  
13 modifications that are proposed under this 401  
14 certification and 404 permit don't impair waters  
15 in this area.

16 Our organization objects to the 401  
17 certification on the 401 permit for Peabody  
18 Arclar Mining for impacts to streams and wetlands  
19 in Saline and Gallatin Counties.

20 I think -- as we understand it, this  
21 draft 401 certification approval by Illinois EPA  
22 certifies that the streams and the wetlands  
23 slated for destruction under the proposed  
24 expansion of this mine would not contribute to  
25 the degradation of water quality.

1           We see that streams and wetlands will  
2 be lost from 2 ways under the proposed expansion.  
3 Some streams and wetlands will be mined through,  
4 and others will be impounded to form treatment  
5 basins.

6           The proposed expansion will include  
7 the destruction of over 4 miles of streams, and  
8 we are concerned that the proposed mitigation  
9 falls short of what it should be.

10          So I guess my first question is in  
11 regards to streams being impounded to form  
12 treatment basins, and I'm interested to hear from  
13 the agency under what authority that's allowed to  
14 happen.

15          MR. FAUGHT: I think we can respond  
16 to that in the responsiveness summary. I think  
17 part of it, they get approval from the US Army  
18 Corps of Engineers for those impacts, but we will  
19 give a full answer in the responsiveness summary.

20          MS. BARKLEY: Okay. I did mention in  
21 the NPDES hearing, but we feel that Illinois EPA  
22 should not allow strip mining through streams and  
23 wetlands or the damming of headwater streams to  
24 form treatment basins for the mine's polluted  
25 water. I think this is specifically prohibited

1 under -- as these streams are considered water of  
2 the state, they are afforded protection under the  
3 federal Clean Water Act and the state Illinois  
4 Environmental Protection Act. And specifically  
5 the practice of using streams as treatment basins  
6 is specifically prohibited under 35 Illinois  
7 Administrative Code 301.440.

8 I would like to further point out the  
9 Illinois EPA is charged with ensuring water  
10 quality standards be met in all waters of the  
11 state. The authority is under 35 Illinois  
12 Administrative Code 302.210.

13 And I think under 35 Illinois  
14 Administrative Code 301.440 that states that,  
15 quote, nothing herein contained shall authorize  
16 the use of natural or otherwise protected waters  
17 as sewers or treatment works except that instream  
18 aeration under agency permit is allowable. So  
19 the way I read the 404 permit, aeration is not --  
20 instream aeration is not what's being proposed  
21 here. It's the use of these treatment basins for  
22 sedimentation, which is the only treatment that  
23 runoff --

24 HEARING OFFICER STUDER:

25 Sedimentation is dealing with the NPDES. This is

1 the 401 hearing, so we're getting into an area  
2 where the issues were raised in the NPDES where  
3 they rightfully belong.

4 MS. BARKLEY: I understand that, but  
5 I think it's the 401 certification -- under 404  
6 it's being proposed that these streams be dammed  
7 to create impoundments, and if Illinois EPA under  
8 401 is charged with ensuring that water quality  
9 standards are going to be met, with anything  
10 that's proposed under 404, I would argue that  
11 it's not lawful to create these basins in the  
12 first place, and, if so, the water quality  
13 standards should still apply to that treatment  
14 basin. And as it's written right now, water  
15 quality standards would only apply downstream of  
16 the dam instead of upstream where the stream  
17 exists right now but if this permit is allowed  
18 would be a treatment basin. So I think it does  
19 apply.

20 And I would argue that it's not the  
21 intent of Peabody Arclar to meet water quality  
22 standards in that impoundment. They are using  
23 that for treatment to meet standards downstream.  
24 So I would like to see that taken into  
25 consideration. And I think, as I proposed in the

1 NPDES permit, I think there's an alternative.

2 Also, under antidegradation  
3 regulations, which falls under the 401 authority,  
4 it is required that alternatives be evaluated,  
5 alternatives to additional pollutant loading, and  
6 an avoidance analysis needs to be completed. And  
7 I don't see that -- I know that an  
8 antidegradation assessment was completed for this  
9 site, but I didn't see anything specifically that  
10 looked at whether there were alternatives to  
11 creating these sedimentation basins, alternatives  
12 to damming these streams and using them as  
13 treatment basins and I didn't see an avoidance  
14 analysis. And under antidegradation regulations  
15 under 35 Illinois Administrative Code 301.105,  
16 IEPA is to ensure that, quote, all technically  
17 and economically reasonable measures to avoid or  
18 minimize the extent of proposed increase in  
19 pollutant loading have been incorporated at the  
20 proposed activity. So that's on Illinois EPA to  
21 ensure that all alternatives and avoidance be  
22 completed, and I don't see that's been completed.

23 Illinois Pollution Control Board  
24 ruled a few years ago in a case considering the  
25 bilge at New Lennox that economically reasonable

1 -- so the measures are whether something is  
2 technically feasible or economically reasonable  
3 -- and they determined -- Illinois Pollution  
4 Control Board determined that an affordability  
5 analysis needs to be done using the USEPA interim  
6 economic guidance for water quality standards.  
7 So we would like to see that applied here to  
8 determine whether the alternative of avoiding  
9 impacts to damming up streams is -- well, we  
10 would like to see that completed. And I think  
11 the applicant -- really, to dam up these streams  
12 and use them as treatment basins, they have to  
13 show that they cannot afford avoidance, and I  
14 don't see that that work has been done.

15 Then I had a question about the  
16 antidegradation assessment. This is probably a  
17 question for Mr. Koch. In the antidegradation  
18 assessment, it states that there was previously  
19 failed stream mitigation that will now be  
20 mitigated. And I'm interested to learn how that  
21 stream mitigation failed and what will be done to  
22 correct it and how the agency will ensure that  
23 future stream and wetland mitigation will not  
24 fail and will meet the anticipated expectations  
25 that are written into the 404 permit.

1           MR. KOCH: I believe I included this  
2           in the antidegradation assessment. I believe the  
3           damage, the culverts that were set up for  
4           Cockere1 Branch, they were partially obstructed  
5           or maybe crushed with equipment, and the flow was  
6           not properly getting through, which basically the  
7           drainage wasn't appropriate and that's what led  
8           to development of more of an emergent wetland  
9           than a stream.

10           MS. BARKLEY: So considering that  
11           with the expansion of this mine site there's  
12           going to be over 4 miles of affected streams and  
13           a couple acres of wetlands and these are natural  
14           water bodies that are being mined through or  
15           dammed -- really completely obliterated as far as  
16           their current function and aesthetics and habitat  
17           and water quality that they provide right now --  
18           I guess I would like to know what steps the  
19           agency is taking to make sure that the  
20           destruction that will happen as part of this  
21           permitted activity, that -- you know, I know it's  
22           being mitigated for, but it sounds like that  
23           wasn't -- even the mitigation that was required  
24           wasn't fully realized, so you end up having  
25           destruction of natural water bodies, creation of

1 water bodies which will never be fully functional  
2 the way they were before, and that's not even  
3 being fully realized.

4 So I guess I would like to know what  
5 the agency -- what steps are you going to take to  
6 make sure that what's being proposed under the  
7 404 permit and the 401 will be actually be  
8 realized to the fullest extent that's being  
9 promised by the company right now?

10 HEARING OFFICER STUDER: That's an  
11 issue that's going to take correspondence with  
12 the Corps, so we will have to respond to that in  
13 writing.

14 MS. BARKLEY: Okay.

15 MR. KOCH: I can just provide a  
16 follow-up to that. Regarding Cockere1 Branch,  
17 due to the previously failed mitigation for that  
18 stream segment, I believe the applicant is  
19 proposing to construct, I guess, a more enhanced  
20 segment in that area, they call it a 2-stage -- I  
21 believe they call it a 2-stage channel design in  
22 that specific area that had the failed  
23 mitigation.

24 So Army Corps and Illinois EPA had  
25 discussed this previously and, you know, we

1 pushed for greater mitigation plan in that area.

2 MS. BARKLEY: I would just like to  
3 wrap up with -- I know this is not technical,  
4 legal, in any respect. But when you are looking  
5 at proposed destruction of water bodies like this  
6 and degradation of water quality -- these are  
7 headwater streams or wetlands that provide a  
8 pretty significant function within the entire  
9 watershed. And when this is the starting point  
10 for an entire river system that many species rely  
11 upon and folks in the audience, I'm sure, rely  
12 upon for fishing and recreation and aesthetic  
13 purposes and just all the different things that  
14 we get from natural water system, we need to see  
15 that the agency is holding the applicant to the  
16 highest standard. That's -- and when we see that  
17 they are promising things that aren't fully  
18 realized and we know in the back of our heads  
19 that this will never come to be the fullest  
20 extent that it was by nature in the first place,  
21 you know, it is problematic for our members and  
22 for folks in the area to see that, even with all  
23 the money that's spent by the company getting the  
24 permits in place and putting the mitigation in  
25 place, that we are still not seeing even, you

1 know, the bit of, I guess, fixing the restoration  
2 that they are agreeing to.

3 So I guess I would like to ask on  
4 behalf of our members and people living in the  
5 area that the agency really do what they can do  
6 to monitor that what is agreed to under the 404  
7 permit under 401 certification is held to the  
8 standard that the Clean Water Act would ask you  
9 to.

10 Thank you.

11 HEARING OFFICER STUDER: Thank you,  
12 Ms. Barkley.

13 Brian Perbix.

14 MR. PERBIX: I'm going to pass for  
15 the moment, please.

16 HEARING OFFICER STUDER: Terri  
17 Treacy.

18 MS. TREACY: T-E-R-R-I T-R-E-A-C-Y.

19 I'm a conservation field  
20 representative for the Illinois chapter of the  
21 Sierra Club. I'm also a member of the Sierra  
22 Club, and I'm also a member of Prairie Rivers  
23 Network. The Illinois chapter of the Sierra Club  
24 has approximately 27,000 members, including  
25 400-plus members living in southernmost region of

1 the state. Our members depend on clean water for  
2 health, well-being, and recreational enjoyment  
3 across the State of Illinois, including the  
4 Saline watershed. We are a nonprofit  
5 organization that works for the protection of our  
6 land, water, and air for our families and for  
7 future.

8 We understand the needs for  
9 good-paying jobs here, but we also understand the  
10 need for a clean, healthy, safe environment which  
11 the workers live and raise their families. We  
12 believe we can have both around. That's why we  
13 support a just transition away from the boom and  
14 bust economy of coal to a new energy economy that  
15 launches us, as leaders, in a energy efficiency  
16 and renewable energy world.

17 In the meantime, as long as coal  
18 mines are operating, we are going to make sure  
19 they operate with the highest level of  
20 environmental protection allowed under the law,  
21 and that's why I'm here tonight.

22 I'm going to be talking about the  
23 mitigation and the plants involved. The first  
24 thing along that line is that we do object to the  
25 plan that does not compensate for 100 percent of

1           what will be destroyed. The planned disturbance  
2           will destroy a total 22,530 linear feet,  
3           approximately 4 miles, of ephemeral and  
4           intermittent streams; however, only 18,131 feet  
5           are proposed for restoration and this represents  
6           only 80 percent of what will be lost.

7                       We are also concerned with the  
8           planting plan proposed for the repairing of  
9           corridors. These corridors -- the plan calls for  
10          5 tree species consisting of yellow poplar,  
11          persimmon, red oak, white oak, hickory, and black  
12          walnut; 5 species of grasses; unnamed species of  
13          clovers; and a minimum of 5 unnamed herbaceous  
14          species as ground cover.

15                      Repairing corridors can be wet or  
16          fairly well drained. Without having more  
17          specific soils info, we question the suitability  
18          of the yellow poplar, red oak, white oak, most  
19          hickories, and walnut. The Illinois Department  
20          of Natural Resources Regional Forester Gary  
21          Stratton recommends species that will do well in  
22          both wet or dry sites. Such species include burr  
23          oak, swamp, white oak, cherry bark oak, pin oak,  
24          pecan, and shell bark hickory.

25                      Mr. Stratton further advises to,

1 quote, go easy on pin and cherry bark oaks  
2 because of susceptibility to gouty and horned oak  
3 galls.

4 We would like to see a complete list  
5 of -- complete species specific list for the  
6 trees, as well as the specific species for the  
7 grasses that are intended, the names of the  
8 clovers, and we would like a list of the unnamed  
9 herbaceous species.

10 We also note the apparent lack of  
11 shrub layer, and we feel that the current plan is  
12 too vague, it contains plants that are not  
13 suitable to handle wet conditions, lacks adequate  
14 species diversity, mentions using unnamed  
15 herbaceous and grass species, which could be  
16 unsuitable and/or nonnative invasive species.  
17 And the clover species are most likely nonnative.

18 We object to the mitigation planting  
19 plan as proposed for wetlands. For the wetland  
20 mitigation, the planting plan calls again for red  
21 oak, white oak, hickory, and pecan, 5 species of  
22 grasses, and clover. On the wetlands red oak,  
23 Quercus rubra, white oak, Quercus alba, are not  
24 suitable. Pecan is probably okay. And good oak  
25 species for wetlands would include burr oak,

1 swamp white oak, overcup oaks, and pin oaks --  
2 again, with the caution about not too many pin  
3 oaks because of their susceptibility to galls.

4 I do want to submit the USGS Midwest  
5 wetland floral species list for your  
6 consideration.

7 HEARING OFFICER STUDER: Thank you.  
8 I will enter that as Exhibit 4.

9 MS. TREACY: So we would like to see  
10 a complete species list, again, for the trees,  
11 the grasses, the clovers, the unnamed herbaceous  
12 species, and we also note the apparent lack of  
13 shrub layer. Again, the current plan is too  
14 vague. It contains plants that are not suitable  
15 to handle wet conditions, lacks adequate species  
16 diversity, mentions using unnamed herbaceous and  
17 grass species which could be unsuitable and/or  
18 nonnative invasive species, and clover species  
19 which are most likely, again, nonnative.

20 So to summarize we request a riparian  
21 and wetland mitigation plan that contains only  
22 native species, contains more species diversity,  
23 including a shrub layer, has comprehensive list  
24 of plant with scientific, not common, names, or  
25 in addition to the common names so we really know

1           what we are talking about. For instance, white  
2           oaks, there's a lot of different white oaks. So  
3           we need those names.

4                       We further request, if possible,  
5           ample time beyond the stated close of the comment  
6           period to provide substantive comments on the  
7           plant list, because if we can't get this list  
8           until right up at the time when it's due, then we  
9           don't have time to look at it. I don't know if  
10          that's possible, but we would like to work with  
11          you on a good plant list.

12                      We also would like to see a 10-year  
13          mitigation monitoring plan as opposed to the  
14          5-year plan as proposed.

15                      And we didn't note that the plan  
16          addressed invasive species control measures, so  
17          we would like to see that fleshed out some more,  
18          make sure that there's that in place and how you  
19          are going to handle that.

20                      So that concludes my comments  
21          tonight. I thank you very much for allowing us  
22          to speak. Thank you.

23                      HEARING OFFICER STUDER: Thank you  
24          Ms. Treacy. We appreciate your comments.

25                      Mary Rivera? Mary Rivera?

1 MS. RIVERA: I pass at this time.

2 HEARING OFFICER STUDER: Barney Bush?

3 MR. BUSH: I'm Barney Bush, chairman  
4 of the Vineyard Indian Settlement. And we  
5 believe that Prairie Rivers Network people and  
6 the Sierra Club --

7 HEARING OFFICER STUDER: You are  
8 going to have to come forward if you are going to  
9 talk more than 2 words or so.

10 For the record this is Barney Bush.  
11 Last named is spelled B-U-S-H.

12 MR. BUSH: Yes, sir. No relation.

13 As chairman of the Vineyard Indian  
14 Settlement, at this point we believe the Prairie  
15 Rivers Network and the Sierra Club people have  
16 covered the concerns that we have here.

17 We also have concerns, of course,  
18 about village sites and graveyards -- that's  
19 always an issue for us -- because there's been  
20 nothing but destruction in that area since coal  
21 mines have come into this country.

22 And we also are still upset at the  
23 numbers of abandoned coal mines that are upstream  
24 in the Saline River watershed that are still  
25 emptying out sulfur water and still contributing

1 to the pollution along the creek. The pollution  
2 is so tremendous that for several miles until you  
3 get close to the mouth of the Ohio there's no  
4 fish in that water. There isn't any -- there  
5 isn't any life in the water because they are  
6 choked out in the strip mines.

7 And at this point I think that I  
8 would like to turn the floor over to the next  
9 person who has a list of more things that  
10 probably will not be covered by me. Thank you  
11 for your time and your attention, and I reserve  
12 the right to maybe say something later.

13 HEARING OFFICER STUDER: Okay. Thank  
14 you, Mr. Bush. I appreciate your comments.

15 Jackson Matthews? Jackson Matthews?

16 MR. MATTHEWS: At this time I would  
17 like to pass.

18 HEARING OFFICER STUDER: Very good.

19 We have gone through the hearing  
20 cards for those who have registered to speak at  
21 this hearing. Is there anyone that hasn't spoken  
22 this evening that would like to do so?

23 Okay. Brian, if you would come  
24 forward.

25 MR. PERBIX: Good evening. My name

1 is Brian Perbix, and I'm an organizer with the  
2 Prairie Rivers Network. Thank you again for the  
3 opportunity to comment here tonight.

4 Prairie Rivers Network is the state  
5 affiliate of the National Wildlife Federation, a  
6 nonprofit organization that strives to protect  
7 rivers, streams, and lakes of Illinois, promote  
8 the lasting health and beauty of watershed  
9 communities. Prairie Rivers Network has members  
10 that live and recreated in that Saline River  
11 watershed, the site of proposed activities and  
12 related impacts, and have substantial interest in  
13 ensuring that the discharges to do not impair  
14 waters in the area.

15 I just have a couple follow-up  
16 questions.

17 We appreciate the antidegradation  
18 assessment that was prepared; however, I think  
19 Mr. Bush alluded to concerns that local residents  
20 have expressed about the cumulative impacts of  
21 surface mining in the area.

22 And I note in the antideg assessment  
23 here that, you know, we see that this particular  
24 piece of this particular mine will impact, you  
25 know, nearly -- over 4 miles of streams, and so

1 we would ask the agency to provide a number  
2 indicating to what extent this entire mine, the  
3 entire almost 7,000 acres at this point, how many  
4 linear feet of streams have been impacted up to  
5 this point? Is that something that's known or is  
6 that ever looked at in a more cumulative way than  
7 piece by piece?

8 MR. KOCH: No. That's something that  
9 we haven't looked at. I can take an attempt to  
10 try and figure that out for you.

11 MR. PERBIX: Give you a big homework  
12 project. But we really do think it's difficult  
13 to get a full sense of the water quality impact  
14 of such a large mine as this.

15 And then following up in that  
16 direction, as Mr. Bush mentioned there, there are  
17 a number of strip mines upstream in the watershed  
18 and we would ask also has that been taken into  
19 consideration in the antideg assessment, the  
20 entire landscape of strip mines in this area.

21 MR. KOCH: No. Upstream sources such  
22 as old abandoned mines weren't taken into  
23 consideration.

24 MR. PERBIX: And then I just had a  
25 quick question about fish. I saw -- we thank the

1 agency and the applicant for conducting  
2 biological monitoring in certain downstream  
3 sections of Cockerel Branch Stream based on its  
4 watershed size and noting that there were life  
5 present in those streams, including  
6 macroinvertebrates and fish. I just had a couple  
7 questions about how the agency accounts for fish  
8 under the antidegradation assessment.

9 So in particular I'm looking at --  
10 the most downstream sample point -- I think it  
11 was 4 something -- had a fish IBI of around 30,  
12 and it's my understanding that the proposed  
13 project would be creating sedimentation basins  
14 and that would be approved under this 401 permit  
15 that would hold backflow to downstream segments  
16 of Cockerel Branch. That's correct? It would at  
17 the very least reduce the flashiness of the flow  
18 at Cockerel Branch.

19 MR. KOCH: Potentially.

20 MR. PERBIX: My concern is, you know,  
21 we go back and forth in these debates about, you  
22 know, what's a headwater stream versus a stream  
23 that's likely to be fully supportive of aquatic  
24 life uses, and it seems like Cockerel Branch is 1  
25 of these streams that's right on the border where

1           there's just enough flow to be sustaining some  
2           fish for parts of the year. And I have  
3           definitely spoken with folks who do fish those  
4           areas, and it's a current use that ought to be  
5           protected under the 401.

6                         So my question is: Does the agency  
7           anticipate that flow being decreased by  
8           sedimentation basins may impact fish one way or  
9           another in Cockerel Branch Creek, and how would  
10          that be accounted for in the antideg?

11                        MR. KOCH: Well, that's not accounted  
12          for in the antideg, but I guess my opinion of  
13          Cockerel Branch is that I -- I agree, it is on  
14          the threshold of being not a headwater stream I  
15          guess. The applicant did do a biological survey  
16          and they conducted it in March of 2010, which at  
17          that point I believe it had probably greater than  
18          average flow. Today we looked at that site, it  
19          did have flow -- of course, it did rain I believe  
20          over an inch and a half down here a couple days  
21          ago.

22                        But I guess the way I look at the  
23          biological survey is that it gives us a idea of  
24          what's there with the macroinvertebrate  
25          populations. With the fish I'm not necessarily

1 convinced that using the full scale intensive  
2 basin survey protocol that our surface water  
3 section uses, which is what they used in this  
4 assessment, I'm not sure that's appropriate for  
5 these smaller streams.

6 And I can definitely give you a more  
7 thorough response once I speak with the surface  
8 water section in regards to that.

9 But it does show that there are some  
10 fish there and the applicant is proposing to do  
11 follow-up biological surveys once the streams are  
12 being reclaimed. So we will have an idea if  
13 those streams are still providing a habitat for  
14 fish.

15 MR. PERBIX: Okay. Again, I'm  
16 curious mostly in the context of this hearing  
17 with respect to reduced flows to downstream  
18 segments of Cockerel Branch and other streams.

19 Thank you for your time.

20 HEARING OFFICER STUDER: Thank you,  
21 Mr. Perbix.

22 Is there anyone else that hasn't  
23 spoken this evening that would like to make a  
24 comment on the record?

25 Is there anyone that has spoken

1 earlier that has additional comments that they  
2 would like to make?

3 MS. BARKLEY: Traci Barkley, Prairie  
4 Rivers Network.

5 Just as follow up to Brian Perbix'  
6 questions -- and this is relating to the  
7 impounding of streams for sedimentation basins --  
8 I'm interested to hear just from an internal  
9 process point of view how the Illinois EPA  
10 evaluates water quality considerations of the  
11 proposed impounding of these streams given that  
12 the release of water is precipitation driven and  
13 somewhat water quality driven, how do you -- how  
14 do you consider both water quality implications  
15 and the hydrologic implications as Brian was  
16 referring to?

17 This idea that you are changing in a  
18 pretty major way the hydrological regime by  
19 impounding that water and holding water back from  
20 downstream segments and that's really driven both  
21 by precipitation and whether water quality  
22 standards can be met, I'm just interested  
23 internally how you ensure that all the existing  
24 uses from an aquatic life use, you know,  
25 perspective -- both water quality and flow-wise,

1           how do you ensure that those are met and  
2           evaluate, you know, that proposed 404 project?

3                     MR. KOCH: That's a pretty broad  
4           question.

5                     I can say that I believe we went over  
6           this treatment basin question before. I wasn't a  
7           part of the previous hearings. I believe there  
8           are some personnel who aren't here tonight that  
9           might better assist us in answering that  
10          question.

11                    And, also, I will have to give some  
12          thought to your comment on the flow. That's  
13          something I will have to discuss with other  
14          personnel who aren't here tonight.

15                    MS. BARKLEY: You know, I imagine  
16          that the size of the sedimentation basin in terms  
17          of what size storm event it's equipped to handle  
18          is part of it, but I think it would be helpful  
19          for us to look at just, you know, how you -- how  
20          you work through the physical and the chemical  
21          part of that, you know, the impounding of the  
22          stream issue. Because, you know, with your  
23          charge of protecting aquatic life, downstream  
24          segments, seems like both of those would have  
25          been considered, and not only considered on the

1 front hand but be monitored appropriately by  
2 Arclar to ensure that they are protecting those  
3 uses that you have, you know -- you have approved  
4 through the permit, through the approval of that  
5 permit.

6 Anyway, I don't do a whole lot of 401  
7 work, but I thought it would be helpful for us to  
8 understand how you ensure that both physical and  
9 chemical considerations are taken. Thanks.

10 HEARING OFFICER STUDER: Thank you,  
11 Ms. Barkley.

12 One last time, is there anyone here  
13 that has additional comments that they would like  
14 to put on the record before I adjourn this  
15 hearing?

16 Okay. I remind everyone that the  
17 hearing record will remain open until  
18 October 6th, and I thank you for your attendance  
19 this evening. This hearing is adjourned.  
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STATE OF ILLINOIS            )  
  )        SS  
COUNTY OF FRANKLIN        )

I, Andrea M. Murphy, a Notary Public in and for the County of Franklin, State of Illinois, do hereby certify:

That the said proceeding was taken before me as a Notary Public at the said time and place and was taken down in shorthand writing by me;

That I am a Certified Shorthand Reporter of the State of Illinois, that the said proceeding was thereafter under my direction transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a full, true, and correct report of the proceedings which then and there took place;

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 19th day of September, 2011.

*Andrea M. Murphy*



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Andrea M. Murphy, RPR, CSR, CCR  
IL CSR #084-004558  
Notary Public in and for the  
County of Franklin,  
State of Illinois