

1 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA)
2 NOTICE OF WATER DISCHARGE PERMIT PUBLIC HEARING

3
4 PEABODY ARCLAR MINING, LLC

5
6 WILDCAT HILLS (COTTAGE GROVE PIT/WILDCAT UG)
7 AND WILLOW LAKE MINE

8
9 TRANSCRIPT OF PUBLIC HEARING

10 THURSDAY, SEPTEMBER 15, 2011, 5:00 P.M.

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14 Transcript of Public Hearing for Water Discharge
15 Permit taken on September 15, 2011, at 5:00 p.m.,
16 at the SIC Foundation Center, 540 North
17 Commercial Street, in the city of Harrisburg,
18 state of Illinois, before Andrea M. Murphy,
19 Registered Professional Reporter, Illinois
20 Certified Shorthand Reporter No. 084-004558,
21 Missouri Certified Court Reporter No. 989.

22 A P P E A R A N C E S

23 Dean Studer, Hearing Officer
24 Iwona Ward
25 Larry D. Crislip
Brian T. Koch
Stefanie N. Diers

Illinois Environmental Protection
Agency.

1 HEARING OFFICER STUDER: My name is
2 Dean Studer, and I'm the hearing officer for the
3 Illinois Environmental Protection Agency. On
4 behalf of the Interim Director Lisa Bonnett and
5 Bureau Of Water Chief Marsha Willhite, I welcome
6 you to tonight's hearing. The Illinois EPA
7 believes that the public hearings that we hold
8 are a crucial part of the permit review process
9 for the proposed Peabody Arclar Cottage Grove
10 Mine.

11 My purpose tonight is to ensure that
12 these proceedings run properly, according to
13 rules, and in a fair but efficient manner. To
14 that end I will start by reading this opening
15 statement into the record.

16 This is an informational hearing
17 before the Illinois IEPA in the matter of a
18 national pollutant discharge elimination system
19 (NPDES) permit application for surface coal mine
20 facility of Peabody Midwest Mining, LLC, with
21 proposed discharges of treated waste waters into
22 Cockerel Branch, North Fork Saline River, unnamed
23 tributaries of these 2 waters, as well as into
24 unnamed tributaries of both the Middle Fork
25 Saline River and Rocky Branch.

1 Following this hearing we will take a
2 short break and then we will conduct the hearing
3 for the 401 certification for this facility.
4 Since we do not have Illinois EPA staff members
5 here at the table from the 401 certification
6 program, I ask that issues involved with the 401
7 certification be raised at the second hearing
8 this evening. We would like to start the 401
9 hearing around 7:00.

10 Issues relevant to the NPDES permit
11 include compliance with the requirements of the
12 federal Clean Water Act and the rules set forth
13 in 35 Illinois Administrative Code Subtitle C and
14 D. Illinois EPA is not the state agency
15 authorized to permit the mining operations at in
16 the coal mine, so we will not accept issues
17 specifically concerning operations at the
18 proposed mine. However, we are empowered to
19 review and make a decision regarding the
20 issuance, denial, or revision of the NPDES
21 permit, and that permit number is IL0073351.
22 Please ensure that your comments are related to
23 the NPDES permit.

24 The authority for the Illinois EPA to
25 issue this permit is contained in Section 39 of

1 the Illinois Environmental Protection Act, 415
2 ILCS 5/39. In pertinent part, this section
3 indicates it shall be the duty of the agency to
4 issue such a permit once the application
5 demonstrates to the agency that they will not
6 cause a violation of the act or regulations
7 promulgated hereunder. The decision by the
8 agency in this matter will be based upon the
9 technical merits of the application as it relates
10 to compliance with this statute and regulations
11 promulgated under it. The agency decision is not
12 based on how many people desire for the permit to
13 be issued or on how many people desire for the
14 permit not to be issued but rather on compliance
15 with the law and regulations.

16 The Illinois EPA has made a
17 preliminary determination that the project meets
18 the requirements for obtaining a permit and has
19 repaired a draft permit for review.

20 The Illinois EPA is holding this
21 hearing for the purpose of accepting comments
22 from the public on the permit. Since we have a
23 limited time in which to conduct this hearing,
24 Illinois EPA staff members will be responding to
25 issues when clarification is necessary.

1 The Illinois EPA is holding this
2 hearing for the purpose of accepting comments
3 from the public on the permit, and, again, since
4 we have a limited time, I remind you all that we
5 will be responding to issues only when necessary.

6 This public hearing is being held
7 under the provisions of the Illinois EPA's
8 procedures for permit and closure plan hearings
9 which can be found in 35 Illinois Administrative
10 Code 166, subpart A, in accordance with 35
11 Illinois Administrative Code 309, Subpart A.
12 Copies of these regulations are available at the
13 Illinois Pollution Control Board website at
14 www.ipcb.state.il.us, or if you do not have easy
15 access to the web you may contact me, and I can
16 get a copy for you.

17 An informational public hearing means
18 exactly that: This is strictly an informational
19 hearing. It is an opportunity for you to provide
20 information to the Illinois EPA concerning the
21 permit. This is not a contested case hearing.

22 I would like to explain how tonight's
23 hearings is going to proceed. First we will have
24 the Illinois EPA panel introduce themselves and
25 provide a sentence or 2 regarding their

1 involvement in the permit process. Then Iwona
2 Ward from mine pollution control program at
3 Illinois EPA in Marion will make a brief
4 presentation regarding the permit. Following
5 this, I will provide further instructions as to
6 how statements and comments will be taken during
7 this hearing and as to appropriate conduct during
8 this hearing tonight. This will be followed by
9 Brandon Risner, a manager at the mine,
10 representing the permit applicant, Peabody Arclar
11 Mining, making a brief statement this evening.
12 After the brief remarks from Mr. Risner, I will
13 allow the public to provide comments.

14 We would like to adjourn this hearing
15 by around 6:45 if possible so that we can have a
16 short break before commencing with the 401
17 certification hearing this evening. Again,
18 because we have a limited time frame in which to
19 conduct this hearing, I will enforce time limits
20 for each speaker. The time limit will be
21 announced as soon as I get an indication of how
22 many people want to speak this evening. It will
23 probably be in the neighborhood of 9 minutes.
24 You may want to prioritize your comments so that
25 you can make the comments at the hearing that you

1 desire to make.

2 If you have not completed a
3 registration card at this point, please see Carol
4 Fuller in the registration area and she can
5 provide you with a card. You may indicate on the
6 card that you would like to provide comments at
7 the NPDES hearing. Additionally, if you plan to
8 also comment during the 401 certification
9 hearing, which will start at approximately
10 7:00 p.m., you should either indicate so on the
11 card or let me know when you are making your
12 comments on the NPDES permit this evening.
13 Everyone completing a card, either at the NPDES
14 hearing or the 401 hearing or filing written
15 comments in either of these 2 proceedings with me
16 before the close of the comment period, will be
17 notified when the Illinois EPA reaches a final
18 decision in each of these 2 matters. 2 separate
19 responsiveness summaries will be prepared. These
20 will be available at the time that we make a
21 final decision in the corresponding matter.

22 In the responsiveness summary, the
23 Illinois EPA will attempt to respond to all
24 relevant and significant issues that were raised
25 at this hearing or submitted to me prior to the

1 close of the comment period. The hearing record
2 in this matter will close on October 6th, 2011.
3 I will accept written comments as long as they
4 are postmarked by October 6th. Please be sure to
5 mark "NPDES" on the comments submitted for the
6 NPDES hearing and "401" on the comments for the
7 401 proceeding. I know that this may be a bit
8 confusing for some of us here tonight, but
9 Illinois EPA appreciates your efforts in
10 identifying the appropriate proceeding in which
11 to enter the comments.

12 Comments can be filed electronically
13 by e-mail at epa.publichearingcom@illinois.gov,
14 and must specify "Peabody Arclar NPDES" in the
15 subject line. Please make sure that these words
16 are spelled correctly as e-mails are
17 electronically sorted and distributed and may not
18 make it into the record if the words in the
19 subject line are misspelled. When your e-mail
20 arrives, the system will send you an automated
21 replay if the e-mail was received before the
22 comment period ends and the e-mail has been
23 properly sorted and distributed. I note that the
24 server can become quite busy in the minutes
25 before the record closes, so you may want to take

1 this into account when submitting your comments
2 as electronic comments received on or after the
3 stroke of midnight on October 26th [sic] as the
4 day changes to October 27 [sic] will not be
5 considered timely filed. The comment
6 instructions and information are also included in
7 the notice for this hearing. If you require any
8 further information after the hearing on the
9 filing of comments, you may contact me at
10 217/558-8280 or you may contact our community
11 relations coordinator Carol Fuller at
12 217/524-8807 and either of us will be glad to
13 assist you.

14 During this hearing and during the
15 comment period, all relevant comments, documents,
16 or data will be placed into the hearing record as
17 exhibits. Please send all written documents or
18 data to my attention at Dean Studer, Hearing
19 Officer, Mail Code Number 5, Regarding Peabody
20 Arclar NPDES, that's at Illinois EPA, 1021 North
21 Grand Avenue East, PO Box 19276, Springfield,
22 Illinois 62794-9276. This address is also listed
23 on the public notice for the hearing tonight.
24 Again, please indicate the NPDES Permit
25 Number "IL0073351" or reference "Peabody Arclar

1 NPDES" on your comments to help ensure that they
2 become part of this hearing record.

3 I note that everyone registering or
4 submitting written comments to the Illinois EPA
5 in either NPDES or 401 water quality
6 certification proceeding will be put on the
7 mailing list for both proceedings. These will be
8 notified of the final decision by Illinois EPA in
9 each of these 2 matters. Decisions in these 2
10 separate matters will not necessarily be made at
11 the same time as each of these 2 has their own
12 rules requirements and are handled in different
13 parts of Illinois EPA.

14 I have marked the following exhibits
15 in this record: The public hearing notice is
16 Exhibit 1; the draft permit is Exhibit 2; a
17 letter received from the office of US Senator
18 Dick Durbin just indicating that he would be
19 unable to attend hearing is Exhibit 3.

20 I would like to now ask the Illinois
21 EPA panel to introduce themselves, and then Iwona
22 Ward will make a brief presentation.

23 MR. CRISLIP: Good evening. My name
24 is Larry Crislip. I'm manager of the permit
25 section for the mine program for the agency.

1 MS. WARD: Iwona Ward. I'm permit
2 engineer for Mine Pollution Control Program.

3 MS. DIERS: Stefanie Diers, legal
4 counsel.

5 MR. KOCH: Brian Koch, water quality
6 standards.

7 HEARING OFFICER STUDER: Then I will
8 give a brief explanation of this permit renewal.

9 MS. WARD: Good evening, ladies and
10 gentlemen. My name is Iwona Ward. I'm the
11 permit engineer for the mine pollution control
12 program for the Illinois Environmental Protection
13 Agency. I would like to welcome everyone here
14 this evening for this public hearing being held
15 regarding draft renewal and modified NPDES Permit
16 Number IL0073351 for Peabody Arclar Mining, LLC,
17 Wildcat Hills Mine, Cottage Grove Pit/Wildcat
18 Underground, and Willow Lake Mine.

19 The purpose of this renewed and
20 modified NPDES permit is to regulate surface
21 discharges to waters of the state from the
22 surface facilities of this mining complex,
23 commonly known as Cottage Grove. The previously
24 issued permit for this facility covered an area
25 of 6,005.5 acres. The current renewal of this

1 NPDES permit includes a modification to
2 incorporate an additional area of 879.5 acres, to
3 arrive at the final NPDES permit area for this
4 facility of 6,858 acres. The additional area
5 being incorporated into this permit includes the
6 office of Mines and Minerals Permit Number 415
7 area.

8 The additional area, indicated as OMM
9 Permit Number 415, being incorporated into the
10 NPDES with this renewal includes 6 new discharges
11 designated as Outfalls 028 through 033. Outfalls
12 028 through 032 will all discharge to unnamed
13 tributaries of Cockerel Branch; while Outfall 033
14 will discharge to an unnamed tributary to North
15 Fork Saline River.

16 31 outfalls are identified in the
17 draft renewed and modified NPDES permit for this
18 mining complex. This area includes the 6 new
19 outfalls proposed in the OMM Permit Number 415
20 area. Of the 31 outfalls located at this
21 facility, 28 outfalls are classified as alkaline
22 mine drainage, 2 outfalls are classified as
23 stormwater discharges, and 1 outfall is
24 classified as sanitary wastewater discharge.

25 I would like to thank everyone for

1 coming this evening and welcome you to the
2 Illinois EPA public hearing. Thank you.

3 HEARING OFFICER STUDER: Let me go
4 over the instructions for accepting comments this
5 evening.

6 While the issues raised tonight may
7 indeed be heartfelt concerns to many of us in
8 attendance, applause is not appropriate during
9 the course of this hearing. On a similar note,
10 booing, hissing, and jeering are also not
11 appropriate and will not be allowed tonight.

12 Secondly, I'm am going to allow
13 statements to be made tonight only that relate to
14 the issues involved with the NPDES permit.
15 Specifically, statements and comments that are of
16 a personal nature or reflect on the character or
17 motive of a person or group of people are not
18 appropriate in this hearing. If statements or
19 comments begin to drift into this area, I may
20 interrupt the person speaking. As hearing
21 officer, I intend to treat everyone here in a
22 professional manner and with respect; I ask that
23 the same respect be shown to those raising
24 relevant issues. If the conduct of persons
25 attending this hearing should become unruly, I am

1 authorized to adjourn this hearing should actions
2 warrant. In such a case the Illinois EPA would
3 accept written comments through the close of the
4 comment period on, which ends on October 6th,
5 2011.

6 Since we have a limited time in which
7 to conduct this hearing, the Illinois EPA staff
8 members will be responding to issues primarily
9 for clarification purposes. We are here tonight
10 to listen to environmental issues. Comments
11 regarding personalities are not appropriate and
12 will not be allowed during this hearing. You may
13 disagree with or object to some of the statements
14 and comments made tonight, but this is a public
15 hearing and everyone has a right to express their
16 comments on this draft permit and related issues.

17 You are not required to provide your
18 comments orally. Written comments are given the
19 same consideration and may be submitted to the
20 Illinois EPA at any time within the public
21 comment period, again, which ends at midnight on
22 October 6th, 2011. Although we will continue to
23 accept comments through that date, tonight is the
24 only time that we will accept oral comments. Any
25 person who wishes to make an oral comment may do

1 so as long as the statements are relevant to the
2 issues at hand.

3 If you have lengthy comments, it will
4 be helpful to submit them to me in writing before
5 the close of the comment period and I will ensure
6 that they are included in the hearing record as
7 exhibits. Please keep your comments relevant to
8 the issue at hand. If your subjects fall outside
9 the scope of this hearing, I may ask you to
10 proceed to another issue. For the purpose of
11 allowing everyone to have a chance to comment and
12 to sure that we conduct this hearing in a timely
13 fashion, I will impose a 9-minute per speaker
14 time limit. I will attempt to indicate when you
15 have 30 seconds left so that you can finish
16 within the time limit. This should allow
17 everyone that desires to speak to have the
18 opportunity do so.

19 In addition, I'd like to stress that
20 we want to avoid unnecessary repetition. If
21 anyone before you has already presented a
22 statement or comments that are contained in your
23 comments, please skip over those issues when you
24 speak. If someone has already said what you
25 intended to say, you may pass when I call your

1 name to come forward. Once a point is made, it
2 makes no difference if the point is made once or
3 whether it is made 99 times. It will be
4 considered and will be reflected only once in the
5 responsiveness summary. All written comments,
6 whether or not you say them out loud, will be
7 become part of the official record and will be
8 considered.

9 After everyone has had an opportunity
10 to speak and provided that time permits, I may
11 allow those who initially did not desire to speak
12 to do so. If time still permits, I may then
13 allow those who initially ran out of time to
14 speak again. In the event that we cannot
15 accommodate everyone who wishes to make comments
16 this evening, you are asked to submit your
17 comments to us in writing. Again, written
18 comments are given the same weight as comments
19 made orally at this hearing.

20 To assist those that wish to make
21 written comments, we have comment forms available
22 in the registration area. Please feel free to
23 take a comment form with you when you leave this
24 hearing tonight if you plan to file written
25 comments. Again, I note that there are 2

1 different forms: 1 for comments on the NPDES
2 permit for this facility and another form for the
3 401 certification facility. The NPDES comment
4 forms are on purple or violet paper and the 401
5 comments are on green. Please make sure that you
6 comment on the form that's appropriate for the
7 proper proceeding. Illinois EPA desires to keep
8 the 2 proceedings as separate as possible and
9 will be compiling separate and different
10 administrative records for each of the 2
11 proceedings. I also point out that it is not
12 necessary that written comments are submitted on
13 the forms as Illinois EPA will accept all written
14 comments as long as the proceedings in which to
15 file comments is specified.

16 I remind you that we have a court
17 reporter here who is taking a record of these
18 proceedings for the purpose of us putting
19 together our administrative record. Therefore
20 for her benefit please keep the general
21 background noise in the room to a minimum so that
22 she can hear everything that is said. Illinois
23 EPA will post the transcript for this hearing on
24 our web page in the same general place where the
25 hearing notice, fact sheet, and draft permit have

1 been posted. It is my desire to have this posted
2 in about 1 and a half weeks following the close
3 of the hearing, but the actual date will depend
4 on when I get the transcript back from the
5 reporter.

6 When it is your turn to speak, please
7 come forward to the podium. State your name and,
8 if applicable, any governmental body,
9 organization, or association that you represent.
10 If you are not representing a governmental body,
11 an organization, or an association, you may
12 simply indicate that you are a concerned citizen
13 or member of the public. For the benefit of the
14 court reporter, I ask that you spell your last
15 name. If there are alternate spellings for your
16 first name, you may also spell your first name.
17 Once you spell your name, I will start timing and
18 you will have 9 minutes in which to complete your
19 comments.

20 I ask that while you are speaking
21 that you direct your attention to the hearing
22 panel and to the court reporter to ensure that an
23 accurate record of your comments are made.
24 Prolonged dialogue with the members of the
25 hearing panel or with others here in the audience

1 will not be permitted. Comments directed to the
2 audience are also not allowed.

3 Again, I remind everyone that the
4 focus of this hearing is the environmental issues
5 associated with the NPDES permit.

6 People who have requested to speak
7 will be called upon in the order that they
8 registered.

9 Are there any questions regarding the
10 procedures that will be used for conducting this
11 hearing this evening?

12 Seeing that no one raised their hand,
13 I'm going to ask that Mr. Risner come forward to
14 the podium, if he would make the statement that
15 he has this evening on behalf of the permit
16 applicant.

17 MR. RISNER: Brandon Risner. I'm the
18 operations manager at Cottage Grove Mine. Last
19 name is R-I-S-N-E-R.

20 Thank you for the opportunity to
21 speak. Many of our employees and their families
22 have joined us here tonight because, like me,
23 they care about the future of our mine, the jobs
24 it provides, and the impact it has on them
25 personally and the communities in which they

1 reside.

2 In total Cottage Grove employs
3 approximately 190 hardworking people from local
4 communities. These jobs provide \$18 million in
5 total annual wages and benefits. Altogether
6 Peabody's southeastern Illinois operations
7 provide employment for 1,250 people in Saline
8 County and roughly 250 people in Gallatin County.
9 In 2008 our operations had an economic impact of
10 roughly \$250 million in Saline County and
11 \$150 million in Gallatin County.

12 We are committed to being good
13 stewards of the land. We are further committed
14 to continuous improvement in all aspects of our
15 operation, including environmental stewardship.
16 We will utilize our well-trained staff and
17 resources to comply with all the permit
18 requirements. We look forward to resolving any
19 issues regarding this permit renewal, and we look
20 forward to receiving the appropriate approval as
21 soon as possible.

22 Thank you.

23 HEARING OFFICER STUDER: Thank you,
24 Mr. Risner.

25 The first person that I have is Traci

1 Barkley.

2 MS. BARKLEY: Good evening. My name
3 is Traci Barkley, T-R-A-C-I B-A-R-K-L-E-Y. I'm a
4 water resources scientist for the Prairie Rivers
5 Network, I'm also a member of Prairie Rivers
6 Network and a member of the Illinois chapter of
7 the Sierra Club.

8 Prairie Rivers Network is the state
9 affiliation of the National Wildlife Federation.
10 We are a nonprofit organization that strives
11 protect the rivers, streams, and lakes of
12 Illinois and to promote the lasting health and
13 beauty of watershed communities. Much of our
14 work focuses on policies such as the Clean Water
15 Act and Safe Drinking Water Act are used in
16 Illinois. These are laws intended to protect our
17 waters, our environment, and ultimately our
18 health. Our organization has members that live
19 and recreate in the Saline River watershed, the
20 site of the proposed activities, related impacts,
21 and have substantial interest in ensuring that
22 discharges do not impair waters in the area.

23 So I would like to start out by first
24 thanking you for holding this hearing and giving
25 folks in the area and throughout the state an

1 opportunity to comment on the proposed
2 activities.

3 1 of the issues that we are concerned
4 about is that the expansion of mining activities
5 under this permit would allow the discharges to
6 waterways that have already been identified by
7 your agency as impaired.

8 So I would like to point out 3 main
9 segments that are impaired as noted by your
10 agency but also bring attention to the fact that
11 most of the segments that are receiving runoff
12 from this site have not been characterized by the
13 Illinois Environmental Protection Agency and so
14 it's hard to say whether they are impaired and
15 meeting their uses or not. They have not been
16 given the same consideration as the streams that
17 have been found.

18 So I guess, you know, to summarize,
19 for the streams that have -- are receiving
20 wastewater from the site and have received
21 wastewater from previous mine activities, they
22 are impaired or they have not been -- they have
23 not been evaluated, so every site that has been
24 looked at that has been impacted by mining is
25 considered impaired right now.

1 The first one I would like to draw
2 your attention to is the North Fork of the Saline
3 River, which receives flow from Outfalls 001,
4 002, 006, 013, 014, 014WL, and 013 [sic]. So
5 this is impaired due to alteration in stream-side
6 or littoral vegetative covers and loss of
7 instream cover. And obviously what's planned is
8 expansion of mining and discharges from mining.
9 Much of that activity would remove vegetation and
10 change the landscape, which is exactly what it's
11 been listing as causing the impairment for this
12 stream.

13 The second segment is the Middle Fork
14 of the Saline River, Segment ATG-03, receives
15 flow from the unnamed tributary into which
16 Outfall 016 discharges. That's classified as
17 impaired due to alteration in stream-side or
18 littoral vegetative cover, sedimentation and
19 siltation, total suspended solids, changes in
20 stream depth, and velocity patterns, among other
21 things. Same thing at this site, preparation of
22 the mining site, including vegetation removal,
23 regrading, auger mining, impacts of large mine
24 equipment including trucks, shovels, and dump
25 trucks, boulders, et cetera, will further

1 contribute to loading of sediment, will remove
2 vegetation that currently serve as sediment traps
3 and filters, contributes to uptake of stormwater,
4 and also provides habitats to aquatic or
5 semi-aquatic species. So allowing for this
6 mining to continue as proposed is setting these
7 streams up to receive more of the offending
8 materials and more of the changes in the
9 landscape that contribute to these streams not
10 being able to meet their needs right now.

11 Third, the Saline River, which is
12 Segment AT-05, receives flow from the unnamed
13 tributary into which Outfall 027 discharges.
14 That also is listed as impaired due to alteration
15 in stream-side or littoral vegetative cover,
16 excessive amounts of boron, manganese, and loss
17 of instream cover. I will say the same thing,
18 continued mining activity will contribute to
19 release of additional boron and manganese and
20 changes in the landscape and habitat.

21 So considering that Illinois EPA's
22 charge is to ensure that the water quality
23 standards are met and the instream uses of these
24 streams must be met while permitting an NPDES, I
25 guess I would like to ask -- and this can be in

1 the responsiveness summary -- but how the agency
2 can justify additional permitting of activities
3 that contributed to the impairment of these
4 stream segments.

5 Second, we're concerned about
6 sedimentation ponds being created out of streams.
7 It appears through the permit that several
8 streams will be impounded to form treatment ponds
9 that would be used for sedimentation of mine
10 runoff. This is prohibited by law as these
11 streams are considered waters of the state per
12 Title 35 Illinois Administrative Code
13 Section 301-440. Illinois EPA is charged with
14 ensuring water quality standards be met in all
15 waters of the state per 35 IAC 302.210.

16 So our recommendation is that the
17 applicant develop off-line sedimentation basins,
18 so instead of impounding a stream and taking that
19 out of protections afforded by the Clean Water
20 Act, that instead they create off-line
21 sedimentation basins, direct runoff from the site
22 to those sedimentation basins, and have an
23 outfall from that sedimentation basin into a
24 stream which is afforded protection as waters of
25 the state by the Clean Water Act.

1 I can see from a map that was
2 provided in the materials that they submitted to
3 the Department of Natural Resources that they
4 have done that throughout other previously mined
5 portions, namely Pits 7 and 8, that there have
6 been off-line sedimentation basins created, so
7 it's obviously technically feasible and
8 economically reasonable. I see no reason that
9 that can't be seen here instead of impounding
10 streams that harbor life and, you know, need
11 protection.

12 We're also concerned, as we always
13 are at these sites, that the agency has not fully
14 characterized the condition and existing uses of
15 the water bodies that are receiving mine
16 stormwater discharge. We note the majority of
17 streams that are proposed for receiving
18 wastewater have not been fully characterized in
19 terms of their function and what resides there.
20 And I understand they have small watersheds, but
21 talking to some of the folks that live around
22 here and their experiences with the streams, we
23 note there is fishing happening in these streams
24 and they do provide habitat for aquatic and
25 semi-aquatic species and feel that those streams

1 deserve a biological characterization to know
2 what's there to begin with.

3 1 example would be that in the
4 materials submitted as part of the DNR
5 application for the mining permit, it was found
6 that specimens of the fat pocketbook mussel,
7 which is an endangered species, reside in the
8 North Fork Saline River 2 and a half miles
9 downstream of this mine site. So knowing that
10 the habitat exist there and that this endangered
11 species has resided there, we would like to see
12 mussel surveys done in the upstream reaches that
13 are proposed to be impacted by this site, either
14 through discharges or mining through or creation
15 of sedimentation basins. So we feel like a
16 mussel survey needs to be conducted throughout
17 the proposed site.

18 And just some technical issues. The
19 antidegradation assessment notes that underground
20 water located in a sealed section of the mine is
21 proposed to be pumped and discharged through
22 Outfall 006. So I wondered if a reasonable
23 potential analysis had been done -- well, first,
24 if that water had been characterized for what
25 pollutants exist in that right now and if a

1 reasonable potential analysis had been done to
2 determine whether current limits can be met at
3 Outfall 006.

4 MR. KOCH: Traci, we did have data
5 for Outfall 006 due to the new potential source
6 from the underground pumpage, if that were to
7 occur. We looked at chloride and hardness data
8 in order to recalculate the sulfate standard. So
9 the applicant did submit data to us to review.

10 MS. BARKLEY: Was there any data on
11 metals in that water?

12 MR. KOCH: There may have been
13 manganese. I'm not sure of other metals.

14 MS. BARKLEY: And is there any reason
15 why manganese or mercury limit wasn't put at the
16 outfall considering that contribution?

17 MS. WARD: I will look into this, and
18 I will get back to you in the responsiveness
19 summary.

20 MS. BARKLEY: Okay. Then at 001
21 there's a temporary coal crusher and coal
22 stockpile that will be tributaries 001, so I
23 wondered why -- I know it's been the practice of
24 the agency in other mining permits where there is
25 a coal source pile, either raw or washed coal,

1 that a manganese limit of 1 and a mercury
2 monitoring requirement is put in place, and I
3 wondered why that's not the case at 001.

4 MS. WARD: I will look into this
5 also.

6 MS. BARKLEY: Okay. Then it looked
7 like --

8 HEARING OFFICER STUDER: We have gone
9 9 minutes, but --

10 MR. KOCH: I just have one more -- I
11 can save it actually.

12 HEARING OFFICER STUDER: If it's
13 associated, I will let you go ahead and ask it
14 rather than --

15 MS. BARKLEY: It's not. I will wait.
16 Thank you.

17 HEARING OFFICER STUDER: Okay. Brian
18 Perbix.

19 MR. PERBIX: I'm passing. Thanks.

20 HEARING OFFICER STUDER: Turn Treary.
21 I'm sorry. Terri Treary.

22 MS. TREACY: Treacy? I'm 401.

23 HEARING OFFICER STUDER: You want to
24 do 401. Okay.

25 Judith -- is it Killman?

1 MS. KELLEN: K-E-L-L-E-N.

2 I'm trustee for Cottage Township.
3 Live in Cottage Township. I'm getting calls from
4 the people that live there concerned about our
5 living. Everything that the mines have done so
6 far has been detrimental to the people that live
7 in the township. When you're sitting at your
8 kitchen table and your walls are going in and out
9 -- we're scared because they are pushing us out
10 of our homes. So anything they have done so far,
11 I can't see where with them doing the water
12 thing, it's going to be any better. And I have
13 to answer to the people that I was elected to
14 serve, and right now I don't like phone calls I'm
15 getting.

16 HEARING OFFICER STUDER: Thank you.

17 That is through the first round of
18 those that had indicated that they wanted to
19 speak at the NPDES hearing. I know there is at
20 least 1 person that wants to have additional
21 comments. Before I go that route I want to ask
22 if there's anyone here that hasn't spoken that
23 would like to speak this evening.

24 Go ahead, Brian.

25 MR. PERBIX: Good evening. My name

1 is Brian Perbix, P-E-R-B-I-X, and I'm an
2 organizer with the Prairie Rivers Network.

3 As Traci Barkley said, Prairie Rivers
4 Network is the statewide affiliate of the
5 National Wildlife Federation, a nonprofit
6 organization that strives to protect the rivers,
7 streams, and lakes of Illinois and to promote the
8 lasting health and beauty of watershed
9 communities here in Illinois. Prairie Rivers
10 Network has members that live and recreate in the
11 Saline watershed which is the side of the
12 proposed activities, and our members would be
13 impacted and have a substantial interest in
14 ensuring that the NPDES permit for this mine
15 would not impact their uses of those waters.

16 I just had a couple of follow-up
17 questions to Traci's comments.

18 First, I did want to point out the
19 history of at least 40 NPDES violations on the
20 existing permit -- and you can address this in
21 the responsiveness summary -- but I would like to
22 know if the agency is aware of those and what
23 will be done in the new permit to correct for
24 those and anticipate from, you know, mistakes
25 that have been made from following or not

1 following best management practices at the site
2 so far.

3 And then from going through the IDNR
4 materials, I had a couple questions about
5 groundwater. And since there isn't someone from
6 groundwater here today, should I just ask a
7 couple questions for being addressed in the
8 responsiveness summary?

9 The easternmost pit that's proposed
10 for the expansion -- I believe it's Pit
11 Number 9 -- I'm wondering about the baseline data
12 that's been collected there, specifically how
13 many monitoring wells have been installed in that
14 area immediately adjacent to Pit Number 10 and
15 how many -- you know, what time period of
16 baseline data we have on groundwater quality and
17 quantity there.

18 And then I would also be interested
19 in a summary of what existing groundwater
20 monitoring from the monitoring wells around the
21 rest of the exiting site has shown to date and
22 whether or not those -- that monitoring has shown
23 the site to be in compliance for groundwater
24 quality standards.

25 Third, just to follow up on the

1 previous comment that was made by Ms. Kellen from
2 Cottage Township, I too have been speaking with
3 folks around the mine site and have received
4 numerous complaints about dust, blasting, and
5 problems associated with management practices
6 on-site. I'm wondering if EPA has been made
7 aware of the violations that have been issued by
8 IDNR for things like failure to control air
9 blast, as well as failure to control dust
10 impacts, and I would question whether or not
11 those fall under following best mining practices
12 as enumerated in the current NPDES proposed here
13 tonight.

14 Thank you for your time.

15 HEARING OFFICER STUDER: Thank you,
16 Mr. Perbix.

17 Ms. Barkley, did you have additional
18 comments that you would like to make?

19 MS. BARKLEY: Traci Barkley, Prairie
20 Rivers Network.

21 I wondered about coal washing, if
22 coal washing is covered under this permit.
23 There's a mention of it in the construction
24 authorization -- let me see if I can find it --
25 page 43 of the construction authorization dated

1 July 15th, 2011, and it just -- so it describes a
2 fine coal refuse underground injection system and
3 then it mentions development of a coarse refuse
4 disposal area but there really isn't any mention
5 of the washing process or how that is handled
6 under the NPDES permit. I'm wondering if that
7 area is covered under this permit or if there is
8 another NPDES permit that would handle that.

9 MS. WARD: The coal washing process,
10 it is covered under this NPDES permit.

11 MS. BARKLEY: Okay. Can you
12 describe -- I understand that there isn't a
13 slurry impoundment like other mines, that the
14 coal slurry is injected underground, but could
15 you describe what the coal preparation process is
16 at this site?

17 MS. WARD: I could respond in the
18 responsiveness summary and describe exactly with
19 the details.

20 MS. BARKLEY: Okay. Because looking
21 through this permit, it appears -- trying to put
22 the map together, it appears that there is a
23 processing area and it seems like it would be
24 tributary to Sedimentation Basin 016, but
25 nowhere in the permit does it state that, that

1 that is tributary.

2 And it seems to me that when
3 you're storing the rock coal there and you're
4 putting it through the processing plant and even
5 if all the water is -- all the water that's used
6 in washing is looped through the process again,
7 that seems like 1 of the -- probably the dirtiest
8 spots of the mine site, so seems like best
9 management practices would be needed there, and
10 that under the antidegradation assessment, that
11 if there are 2 new pits that are being opened up,
12 more coal would be sent to that processing
13 facility and should be handled under the
14 antidegradation regulations, and I didn't see
15 that addressed in any way, either through the
16 antidegradation assessment special conditions or
17 the construction authorization.

18 MS. WARD: We will explain this
19 exactly in the responsiveness summary.

20 MS. BARKLEY: Okay. Then I wondered
21 if any groundwater monitoring had been done
22 anywhere on the site and then specifically in the
23 area where the coal washing is happening.

24 MS. WARD: We actually don't have
25 anybody from the groundwater section with us

1 tonight, so we will take any comments and get
2 back to you.

3 MS. BARKLEY: I guess in the
4 responsiveness summary I would be interested in
5 knowing if monitoring is taking place, where the
6 sites are located, and if there are any
7 exceedances of groundwater standards to date
8 on-site.

9 Then when I look at -- I think it's
10 page 49 -- Special Condition Number 12, it
11 shows -- there's a table that shows the flow
12 ratio of the receiving stream to the outfall
13 discharge. And I was just looking in particular
14 at 016, if that is the stream that's receiving
15 runoff from the coal prep plant, that is the
16 lowest ratio there. So I wondered if you could
17 just explain to everybody how this table is used.

18 Because it appears to me that no
19 discharge is during low-flow or no-flow
20 conditions, so this is the ratio that's supposed
21 to guide the plant operator, the mine operator,
22 of when they would be able to discharge from the
23 pond? I'm just wondering how one would apply
24 that 0.72 to know whether this is a yes discharge
25 situation or no discharge situation.

1 MR. KOCH: I believe what that
2 special condition is referring to is the amount
3 of flow required in the receiving stream in order
4 to have that special permit limit that they are
5 getting, whether it's mixing involved, when -- go
6 ahead.

7 MS. BARKLEY: What are the units?

8 MR. KOCH: It's volume of flow of the
9 effluent versus volume of flow of the receiving
10 water.

11 MS. BARKLEY: So if you were an
12 on-site operator, how would this condition in
13 this permit be helpful?

14 MR. KOCH: I believe they have stream
15 gauges in order to determine when mixing is
16 available.

17 MS. BARKLEY: So they would need the
18 volume of discharge in the stream and they would
19 need to have a set volume of what they would want
20 to be discharging from the pond and it would have
21 to equal 0.72 for this to be allowed under this
22 condition. Is that correct?

23 MR. KOCH: I believe so.

24 MS. BARKLEY: Okay. So, you know, I
25 know a lot of these outfalls are receiving

1 runoff -- well, runoff from the site going to a
2 sedimentation basin and then discharged into a
3 stream, and depending on whether it's an active
4 site or under reclamation, there's going to be
5 different things going in.

6 To me, in looking at the worst case
7 scenario, if, in fact, the coal prep plant is
8 discharging 016, that's a pretty low ratio and
9 that seems like probably the most egregious or
10 high pollutant waste stream from the entire site.

11 So I guess I would like to ask the
12 agency to show how that number was developed, you
13 know, and really give an example. Because I
14 think, you know, last time we were in this
15 setting for this permit we talked about how
16 confusing the permit was written in terms of
17 different discharge scenarios, and we really
18 appreciate the agency writing this in a way so
19 you see the discharge condition, whether it's no
20 precipitation, a little bit of precipitation, a
21 lot of precipitin, it makes it easier for those
22 folks that have to comply with this permit, they
23 know how to read this and how to comply with the
24 law. But I look at Special Condition Number 12
25 and I think this is pretty confusing and this is

1 a pretty important part of the permit, which is
2 you can't discharge these discharges that are
3 high in sulfates and chlorides and suspended
4 solids and metals especially into streams that
5 are already impaired unless there's sufficient
6 flow to dilute it down. But this table, when I
7 look at it, is not -- you can't just look at this
8 and know what you are supposed to do.

9 I guess I would like to know does
10 Arclar have another table they look at? Is there
11 something in the field that directs them?

12 Because, you know, the ultimate
13 question is: Is there any way to prevent
14 discharge from those ponds? If it's full and you
15 have had a rain event but maybe, you know, hasn't
16 reached a stream yet -- I don't know. I guess I
17 would just like to know kind of in a practical
18 way how you make sure that these protections
19 you're writing into this permit to ensure the
20 water quality standards are being met can
21 actually be met in practice. So I guess that's
22 probably enough.

23 MR. KOCH: Traci, I have a follow-up
24 to that.

25 Yeah, I'm not involved with creating

1 this table -- these tables in the permits or
2 anything, but actually the lower the ratio means
3 the less dilution that effluent really needs.
4 So, for example, Outfall 19 requires much more
5 dilution than Outfall 16.

6 And I believe that these ratios are
7 developed using what the -- after you determine
8 what the standard would be before, then after
9 mixing, then you determine how much mixing you
10 need in order to meet that standard, then you
11 determine that's the minimum dilution you need
12 from that point. If there's more dilution, then
13 it's fine. If there's less than that dilution
14 available, then you don't need any mixing and you
15 have to meet the water quality standards. So I
16 believe that's what the table is intended to
17 describe.

18 MS. BARKLEY: Okay. Thank you.

19 I think, you know, for working for an
20 organization that it's -- our entire purpose is
21 to protect clean water, when I look at the stream
22 and work backwards, I think, you know, we have a
23 situation which is primarily precipitation
24 driven, this is a huge strip mine, just driving
25 by and seeing what's disturbed right now, then on

1 a map what's proposed to be disturbed, this is,
2 you know, very flashy in terms of its impact to a
3 stream, given, you know, what activity is going
4 on and then what precipitation events happen.
5 And then you look at the compliance record and
6 see over 40 Clean Water Act violations in the
7 past 3 years and know that the sampling is done
8 when -- there are some guidelines as to when and
9 where but it is self-regulated by the company.

10 So I think that the more you can
11 write into this permit controls that allow for
12 those operating the mine to be in compliance and
13 know what's intended by this permit but also to
14 ensure that the agency knows that what you put in
15 the permit can be complied with and understand
16 it, I think those steps really need to be taken
17 because this is not an easy document to work
18 through. And I think these streams, given that
19 they are already struggling, deserve as much help
20 as they can get.

21 MR. KOCH: Yeah.

22 I was wondering if you are going to
23 include the NPDES violations in an exhibit?

24 MS. BARKLEY: Yeah. In fact, we have
25 it printed out, and we can submit it tonight.

1 It's a snapshot of the last 12 quarters, all of
2 the noncompliance, and I believe that for the
3 most part they were violations of settleable
4 solids, total suspended solids, and pH.

5 MR. KOCH: Thank you.

6 HEARING OFFICER STUDER: I will enter
7 this into the record as Exhibit Number 4 then.

8 MS. BARKLEY: Thank you.

9 HEARING OFFICER STUDER: Is there
10 anyone here this evening that has any additional
11 comments on the NPDES that they would like to
12 make this evening?

13 Okay. Seeing that no one raised
14 their hand, then we are going to adjourn the
15 NPDES hearing. We will commence with the 401
16 hearing at 7:00. I thank you for your attendance
17 and your participation, and I remind everyone
18 here that the record in this matter is open until
19 October 6th. Thank you. The NPDES hearing is
20 now 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



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