

1 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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5 IN THE MATTER OF: )

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6 MACOUPIN ENERGY - SHAY )

NUMBER 1 MINE. )

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12 Public Hearing had on April 27, 2011, at

13 Blackburn College, Olin Lecture Hall, 700 College

14 Avenue, Carlinville, Illinois, 62626, before Julie A.

15 Brown, a Certified Court Reporter, commencing at the

16 hour of 6:09 o'clock P.M.

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1 A P P E A R A N C E S

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3 Illinois EPA Panel Members:

4 Mr. Dean Studer  
Hearing Officer/Right-To-Know Coordinator  
5 Office of Community Relations

6 Mr. Larry D. Crislip, P.E.  
Manager, Permits Section  
7 Mine Pollution Control Program  
Bureau of Water

8  
Mr. Lynn E. Dunaway, P.G.  
9 Environmental Protection Specialist  
Groundwater Section, Bureau of Water

10  
Mr. Brian T. Koch  
11 Environmental Protection Specialist  
Standards Section, Bureau of Water

12  
Ms. Stefanie Diers  
13 Assistant Counsel  
Illinois EPA

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22 Midwest Litigation Services  
Julie A. Brown, CSR  
23 Illinois CSR #084-004174  
711 North Eleventh Street  
24 St. Louis, Missouri 63101  
314-644-2191  
25 1-800-280-3376

1           MR. STUDER: Good evening. My name is Dean  
2 Studer and I am the Hearing Officer for the Illinois  
3 Environmental Protection Agency. On behalf of  
4 Interim Director, Lisa Bonnett, and Bureau of Water  
5 Chief, Marcia Willhite, I welcome you to tonight's  
6 hearing. The Illinois EPA believes that the public  
7 hearings that we hold are a crucial part of the  
8 permit review process.

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

14           This is an informational hearing before the  
15 Illinois EPA in the matter of a modified and reissued  
16 National Pollutant Discharge Elimination System,  
17 otherwise usually referred to by the acronym NPDES, a  
18 permit application for an underground coal mining  
19 facility of Macoupin Energy, LLC, the Shay Number 1  
20 Mine, with discharges of treated wastewater into  
21 Spanish Needle Creek and unnamed tributaries of both  
22 Spanish Needle Creek and Macoupin Creek.

23           Issues relevant to the NPDES hearing include  
24 compliance with the requirements of the Federal Clean  
25 Water Act and the rules set forth in 35 Illinois

1 Administrative Code, Subtitles C and D. Illinois EPA  
2 is not the state agency authorized to permit the  
3 mining operations at this coal mine, so issues  
4 specifically concerning operations at the mine are  
5 not relevant in this proceeding. However, we are  
6 empowered to review and make a decision regarding the  
7 issuance, denial or revision of the NPDES permit,  
8 Permit Number IL 0056022.

9 Illinois EPA is particularly interested in  
10 comments regarding the items contained in the draft  
11 permit that have been specifically modified and  
12 incorporated into this reissued permit. These items,  
13 four in number, have been identified on the bottom of  
14 page 1 of the Public Notice/Fact Sheet for the draft  
15 permit and are: 1, incorporation of various parcels  
16 of additional permit area totaling 42.5 acres for  
17 construction and installation of various facilities  
18 in support of the underground mining operation; 2,  
19 reclassification of alkaline Outfall 003 and  
20 reclamation Outfall 004 to stormwater discharges; 3,  
21 Outfall 006 has been deleted as the basin has been  
22 reclaimed; and 4, the transfer of the permit from the  
23 Montgomery Coal Company, Mine Number 1, to Macoupin  
24 Energy, LLC, Shay Number 1 Mine. While we are  
25 particularly interested in comments on these four

1 items, since this is a permit reissuance, any  
2 comments dealing with requirements of the NPDES  
3 permit are relevant.

4           The Illinois EPA has made a preliminary  
5 determination that the project meets the requirement  
6 for obtaining a reissuance of modification of this  
7 permit and has prepared a draft permit for review.  
8 The Illinois EPA is holding this hearing for the  
9 purpose of accepting comments from the public on the  
10 draft permit prior to taking final action on the  
11 permit application.

12           This public hearing is being held under the  
13 provisions of the Illinois EPA's procedures for  
14 permit and closure plan hearings which can be found  
15 in 35 Illinois Administrative Code Part 166, Subpart  
16 A and in accordance with 35 Illinois Administrative  
17 Code Part 309, Subpart A.

18           Copies of these regulations are available at  
19 the Illinois Pollution Control Board website at  
20 [www.ipcb.state.il.us](http://www.ipcb.state.il.us), or if you do not have easy  
21 access to the web you may contact me and I can get a  
22 copy for you.

23           An informational public hearing means  
24 exactly that. This is strictly an informational  
25 hearing. It is an opportunity for you to provide

1 information to the Illinois EPA concerning the  
2 permit. This is not a contested case hearing.  
3 Again, I stress that the purpose of this hearing is  
4 for the members of the public to provide information  
5 to the Illinois EPA that we may not have had when we  
6 made our preliminary determination.

7 I'd like to explain how tonight's hearing is  
8 going to proceed. First, we will have the Illinois  
9 EPA panel introduce themselves and provide a sentence  
10 or two regarding their involvement in this permit  
11 process. Then Larry Crislip from the Mine Pollution  
12 Control Program at Illinois EPA in Marion will make a  
13 brief presentation regarding the permit.

14 Following this, I will provide further  
15 instructions as to how statements and comments will  
16 be taken during this hearing and as to appropriate  
17 conduct during this hearing tonight. Following these  
18 additional instructions, I will allow the public to  
19 provide comments.

20 I will enforce a time limit for each  
21 speaker. I will announce the time limit when I  
22 provide the additional instructions and have a more  
23 firm number of those that desire to speak tonight.  
24 You may want to prioritize your comments so that you  
25 can make the comments at this hearing that you desire

1 to make. If you have lengthy comments, you should  
2 consider giving a summary of the comments and  
3 submitting the comments in writing in their entirety.

4           If you have not completed a registration  
5 card at this point, please see Michelle Tebrugge in  
6 the registration area and she can provide you with a  
7 card. You may indicate on the card that you would  
8 like to provide comments at this NPDES hearing.  
9 Everyone completing a card or filing written comments  
10 in this matter with me before the close of the  
11 hearing record will be notified when the Illinois EPA  
12 reaches a final decision in this matter. A  
13 responsiveness summary will be made available at that  
14 time.

15           In the responsiveness summary, the Illinois  
16 EPA will attempt to respond to all relevant and  
17 significant environmental issues that were raised at  
18 this hearing or submitted to me prior to the close of  
19 the comment period. The hearing record in this  
20 matter will close on May 27th, 2011. I will accept  
21 written comments as long as they are postmarked by  
22 May 27th.

23           Comments can also be filed electronically by  
24 e-mail at [epa.publichearing.com](mailto:epa.publichearing.com). That's public  
25 hearing, C-O-M, it's all one word, @illinois,



1 I-L-L-I-N-O-I-S., gov, and must specify Shay Number,  
2 N-U-M-B-E-R, and then the numeral 1, Mine NPDES in  
3 the subject line. Please make sure that these words  
4 are included in the subject line and are spelled  
5 correctly as e-mails are electronically sorted and  
6 distributed and may not make it into the record if  
7 the subject line is other than I just specified.  
8 When your e-mail arrives, the system should send you  
9 an automated reply if the e-mail was received before  
10 the comment period ends and the e-mail has been  
11 properly sorted and distributed.

12 I note that the server can become quite busy  
13 in the minutes before the record closes, so you may  
14 want to take this into account when submitting your  
15 comments as electronic comments received after the  
16 stroke of midnight on May 27th going into May 28th  
17 will not be considered timely filed. The comment  
18 instructions and information are also included in the  
19 notice for this hearing.

20 If you require any further information after  
21 the hearing on the filing of comments, you may  
22 contact me, that's Dean Studer, at (217) 558-8280 or  
23 you may contact our Community Relations Coordinator,  
24 Michelle Tebrugge, at (217) 524-4825 and either of us  
25 will be happy to assist you.

1           During this hearing and during the comment  
2 period all relevant comments, documents or data will  
3 also be placed into the hearing record as exhibits.  
4 Please send all written comments or documents or data  
5 to my attention, Dean Studer, Hearing Officer, Mail  
6 Code #5, Re: Shay Number 1 Mine, NPDES, at Illinois  
7 EPA, 1021 North Grand Avenue East, P.O. Box 19276,  
8 Springfield, Illinois, 62794-9276. This address is  
9 also listed on the public notice for the hearing  
10 tonight. Please indicate the NPDES permit number or  
11 reference Shay Number 1 NPDES on your comments to  
12 help ensure that they become part of the hearing  
13 record in this matter.

14           I know that everyone registering or  
15 submitting written comments to the Illinois EPA in  
16 this matter will be notified of the final decision of  
17 Illinois EPA.

18           I would like now to ask the Illinois EPA  
19 staff present here with me to introduce themselves  
20 and give a brief sentence as to their role in the  
21 review of this permit application. Then Larry  
22 Crislip will make a brief presentation. This will be  
23 followed by more detailed instructions as to how  
24 comments will be accepted this evening.

25           MR. DUNAWAY: My name is Lynn Dunaway. I

1 work in Groundwater Section of Bureau of Water and I  
2 review groundwater issues relative to this permit.

3 MR. CRISLIP: My name's Larry Crislip. I'm  
4 Manager of the Permit Section for the Mine Pollution  
5 Control Program and our program drafts the NPDES  
6 permits.

7 MS. DIERS: Stefanie Diers, Legal Counsel.

8 MR. KOCH: My name is Brian Koch. I work in  
9 the Water Quality Standard Section and I recommend  
10 water quality based permits for the NPDES permit.

11 MR. CRISLIP: Good evening, Ladies and  
12 Gentlemen. Again, my name is Larry Crislip. As I  
13 said before, I'm Manager of the Permit Section of the  
14 Mine Pollution Control Board Program for the Illinois  
15 Environmental Protection Agency.

16 The purpose of this renewed and modified  
17 NPDES Permit Number IL0056022 is to regulate surface  
18 discharges to Waters of the State from the surface  
19 facilities of the existing underground Shay Number 1  
20 Mine. The surface facilities of this underground  
21 mining operation are located on approximately 1,261.4  
22 acres and includes office and maintenance buildings,  
23 coal preparation facilities, coal refuse disposal  
24 areas, refuse disposal areas 1 through 6, fresh water  
25 lake recirculation pond, as well as various ditches

1 and sedimentation basins.

2           Five sedimentation basins and outfalls are  
3 identified in the NPDES permit which control runoff  
4 from these surface facilities. Of these outfalls,  
5 two outfalls are classified as acid mine drainage,  
6 one is classified alkaline mine drainage and two are  
7 classified as stormwater discharges.

8           These basins and outfalls are designed to  
9 collect and treat runoff from disturbed and reclaimed  
10 areas. Therefore, the discharges will generally  
11 coincide with precipitation events. Receiving waters  
12 for discharges from these sedimentation basins are  
13 identified as Spanish Needle Creek and unnamed  
14 tributaries to Spanish Needle Creek.

15           In addition to the five sedimentation  
16 basins, this facility also has one active and one  
17 inactive sanitary wastewater discharge. The  
18 currently inactive sanitary wastewater treatment  
19 system with discharge designated as Outfall 001 would  
20 discharge to an unnamed tributary to Macoupin Creek.  
21 The currently active sanitary system with discharge  
22 designated at A02 is tributary to the recirculation  
23 lake which has a discharge designated as Outfall 002  
24 which discharges to Spanish Needle Creek.

25           I'd like to thank everyone for coming this

1 evening and welcome you to the EPA's public hearing.

2 MR. STUDER: Thank you, Larry. I'll go over  
3 the more specific instructions for making comments  
4 tonight. Many of you have been at previous hearings  
5 of Illinois EPA and are probably familiar with these,  
6 but for those of you that have never been at an  
7 Illinois EPA hearing I will go, we'll go through  
8 these.

9 While the issues raised tonight may indeed  
10 be heartfelt concerns to many of us in attendance,  
11 applause is not appropriate during the course of this  
12 hearing. Booing, hissing and jeering are also not  
13 appropriate and will not be allowed tonight.

14 Secondly, I am not going to allow statements  
15 to be made tonight that do not relate to the issues  
16 involved with the NPDES permit. Specifically,  
17 statements and comments that are of a personal nature  
18 or reflect on the nature or motive of a person or  
19 group of people are not appropriate at this hearing.  
20 If statements or comments begin to drift into this  
21 area, I may interrupt the person speaking.

22 As hearing officer, I intend to treat  
23 everyone here tonight in a professional manner and  
24 with respect. I ask the same respect be shown to  
25 those providing comments. If the conduct of persons

1 attending this hearing should become unruly, I am  
2 authorized to adjourn this hearing should the actions  
3 warrant. In such a case, the Illinois EPA would  
4 accept written comments through the time indicated in  
5 the notice for this hearing.

6           Since we have a limited time in which to  
7 conduct hearing, Illinois EPA staff members will be  
8 responding to issues only when directed to do so or  
9 when absolutely necessary. We are primarily here  
10 tonight to listen to environmental issues under the  
11 administrative control of the Illinois EPA.

12           Comments regarding personalities are not  
13 appropriate and will not be allowed during this  
14 hearing. You may disagree with or object to some of  
15 the statements and comments made tonight, but this is  
16 a public hearing and everyone has a right to express  
17 their comments on this draft permit and issues  
18 related to it.

19           You are not required to provide your  
20 comments orally. Written comments are given the same  
21 consideration and may be submitted to the Illinois  
22 EPA at any time within the public comment period  
23 which ends just before midnight on May 27th, 2011.  
24 Although we will continue to accept comments through  
25 that date, tonight is the only time that we will

1 accept oral comments. Any persons who wish to make  
2 an oral comment may do so as long as the statements  
3 are relevant to the issues at hand.

4 If you have lengthy comments, please submit  
5 them in writing to me before the close of the comment  
6 period and I will ensure that they are included in  
7 the hearing record as exhibits. If your comments  
8 fall outside the scope of this hearing, I may ask you  
9 to proceed to another issue.

10 For the purpose of allowing everyone to have  
11 a chance to comment and to ensure that we conduct  
12 this hearing in a timely fashion, I will impose a  
13 time limit of seven minutes per speaker. I will  
14 attempt to indicate when you have 30 seconds left so  
15 that you can finish within the time limit. This  
16 should allow everyone that desires to speak to have  
17 the opportunity to do so.

18 In addition, I'd like to stress that we want  
19 to avoid unnecessary repetition. If anyone before  
20 you has already presented a statement or comment that  
21 is contained in your comments, please skip over those  
22 issues when you speak. If someone has already said  
23 what you intended to say, you may pass when I call  
24 your name to come to the microphone. Once a point is  
25 made it makes no difference if the point is made once

1 or whether it is made 99 times, it will only be  
2 reflected once in the responsiveness summary. All  
3 comments will become part of the official record.

4 After everyone that has registered to speak  
5 has had an opportunity to do so and provided that  
6 time permits, I may allow those who initially did not  
7 speak to do so. In the event that we cannot  
8 accommodate everyone who wishes to make comments this  
9 evening or if you run out of time before you complete  
10 your comments, you do have the option to submit your  
11 comments to us in writing.

12 Written comments are given the same weight  
13 as comments made orally at this hearing provided that  
14 the written comments are filed within the comment  
15 period. All comments which are timely filed will be  
16 considered by the Illinois EPA in reaching a final  
17 decision in this matter.

18 We have a Court Reporter here who is taking  
19 a record of these proceedings for the purpose of us  
20 putting together our administrative record.  
21 Therefore, for her benefit, please keep the general  
22 background noise in the room to a minimum so that she  
23 can hear everything that is said. Illinois EPA will  
24 post the transcript of this hearing on our webpage in  
25 the same general place where the hearing notice, fact



1 sheet and draft permit have been posted. It is my  
2 desire to have this posted in about two to two and a  
3 half weeks following the close of this hearing, but  
4 the actual time will depend on when I receive the  
5 transcript.

6 When I call your name, please come to the  
7 microphone, state your name and if applicable, any  
8 governmental body, organization or association that  
9 you represent. If you are not representing a  
10 governmental body, an organization or an association,  
11 you may simply indicate that you are a concerned  
12 citizen or a member of the public.

13 For the benefit of the Court Reporter, I ask  
14 that you spell your last name. If there are  
15 alternate spellings for your first name, you may also  
16 spell your first name. Once you spell your name, I  
17 will start timing you and you will have seven minutes  
18 to complete your comments.

19 I ask that while you are speaking that you  
20 direct your comments and attention to the hearing  
21 panel and to the Court Reporter to ensure that an  
22 accurate record of your comments can be made.  
23 Prolonged dialogue with members of the hearing panel  
24 or with other members here in attendance will not be  
25 permitted. Comments directed to other members of the

1 public are not allowed. Again, I remind everyone  
2 that the focus of this hearing is the environmental  
3 issues associated with the NPDES permit.

4 People who have requested to speak will be  
5 called upon in the order that I have in front of me  
6 based on the registration cards.

7 Are there any questions regarding the  
8 procedures that I will use tonight to conduct this  
9 hearing? Okay. Then we will start.

10 The first person that I have that is  
11 registered to speak is it looks like Maggie Schomer.  
12 Maggie Schomer, if you would come to the microphone.

13 MS. SCHOMER: I pass right now.

14 MR. STUDER: Okay. Thank you.

15 Bruce Loveless.

16 MR. LOVELESS: I had a question but I'll --

17 MR. STUDER: You pass?

18 MR. LOVELESS: I'll defer too.

19 MR. STUDER: Okay. Randal, is it Suhling?

20 MR. Suhling: Yes. I'll defer for a while.

21 Well, I'll go ahead and do it.

22 MR. STUDER: All right. The microphone is  
23 at, it's in the back. You should be able to at least  
24 have a view of the audience and of the hearing panel.

25 MR. SUHLING: I'm Randal Suhling,

1 S-U-H-L-I-N-G. I live right west of the mine. I've  
2 lived there for 50 years. I have questions  
3 concerning the, the runoff in the creek of the mine,  
4 Spanish Needle Creek. Like I say, I've lived there  
5 for 50 years. There's stuff in the creek now that  
6 wasn't there 49 years ago. You know, it's getting  
7 worse and I've raised the issue to the mine and stuff  
8 and they looked at it but nothing ever gets done. We  
9 never hear anything from anybody. So I guess that's  
10 my question or comment. I don't know where to take  
11 it from here.

12 MR. STUDER: Can you elaborate as to what  
13 kind of stuff? Is it sludge?

14 MR. SUHLING: I've got pictures of it. It's  
15 like, I don't know. It's like an orangey looking  
16 substance and there's an oil sheen over the water and  
17 it's got like a translucent color to it when you look  
18 at it and I've seen dead fish, turtles in the creek.  
19 Like now when the water's running it's not so bad,  
20 but it's like when it's in the fall or summer.

21 In summer it's the worst where it's really  
22 stagnant and everything and then it gets really bad.  
23 I know water gets stagnant in the creek. I'm very  
24 aware of that, but this is different I think. So  
25 that's my comment.

1           MR. KOCH: I'd have to know exactly what  
2   locations you're speaking about, but in general each  
3   of the outfalls have to meet water quality based  
4   limits. So essentially once that discharge reaches  
5   Spanish Needle Creek, the water quality standards  
6   will be attained.

7           So again, I'd have to see, I'd have to see  
8   the photos and see what locations and from what I've  
9   seen from the mine's effluent data they are meeting  
10  water quality standards. So I don't see any problems  
11  from that perspective.

12          MR. SUHLING: Well, and there again, I don't  
13  know if this is relevant, but I think it's coming  
14  from the side pond under, you know, through the  
15  groundwater and then into the creek. That's my  
16  thinking. I don't know that it's coming off the  
17  discharge pond, you know, the sediment pond. So that  
18  might be a whole different issue. I don't know.  
19  That's just what I'm here to say.

20          MR. STUDER: Okay. Thank you. Those  
21  comments are on your record and we'll bring those to  
22  those that do the inspections.

23          The next person is Robert Card.

24          MR. CARD: My name is Robert Card, C-A-R-D.  
25  I just have one question now following Mr. Suhling's

1 comment and I was just wondering if those  
2 measurements are taken just immediately outside or  
3 are they taken in different areas. And the other is  
4 if this study had anything to do with potential  
5 erosion and containment. And that's, those are my  
6 questions.

7 MR. KOCH: The effluent data is taken at the  
8 end of the pipe actually before it reaches the creek.  
9 So when they take their measurements they're not  
10 taking into account any mixing that Spanish Needle  
11 Creek is providing. I'm not quite sure about your  
12 second question. Would you elaborate on that a  
13 little bit more?

14 MR. CARD: Well, I just was wondering if  
15 there's other areas where this could be coming from.  
16 I was taking a little bit of his question. Just say  
17 if you have a certain containment and it's coming out  
18 of a different area than just a certain pipe under  
19 certain conditions, that's something else also to be  
20 looking at I would think to see if that's a source of  
21 the problem.

22 MR. CRISLIP: We can consider those comments  
23 when we investigate the photos and the locations when  
24 they're provided.

25 MR. CARD: Okay. Thank you very much.

1 MR. STUDER: Thank you. Traci Barkley.

2 MS. BARKLEY: Good evening. My name is  
3 Traci Barkley. Traci is T-R-A-C-I. Barkley is  
4 B-A-R-K-L-E-Y. I work for an organization called  
5 Prairie Rivers Network. I'm a water resource  
6 scientist for them. It's state affiliated with the  
7 National Wildlife Federation.

8                   We're a nonprofit organization that strives  
9     to protect the rivers and streams and lakes of  
10    Illinois and to promote the lasting health and beauty  
11    of the water of our communities.  Much of our work is  
12    done to ensure that the Clean Water Act and the Safe  
13    Drinking Water Act are fully implemented and enforced  
14    in the State of Illinois.  We, our organization has  
15    members that live and recreate within the Macoupin  
16    Creek Watershed and we're here to ensure that they're  
17    protecting those uses from negative impact from  
18    mining activity.

19                   So I have a number of questions tonight and  
20    I have, I brought some maps that came out of a report  
21    that was done by Conestoga-Rover and Associates as  
22    part of a supplemental site investigation report and  
23    so I think if I can just talk loud enough can I move  
24    up to the map? Is that a problem?

25 MR. STUDER: Traci, will this reach you?

1 That would help.

2 MS. BARKLEY: Okay. So I guess I'd like to  
3 start with a comment. One is that I think that the  
4 permit was extremely confusing to understand.  
5 There's reference made to many different log numbers  
6 which if people in the audience tonight if they  
7 didn't go to Illinois EPA, it took hours to go  
8 through the boxes of material and find the different  
9 logs numbers and read every word. Just from the  
10 permit alone you wouldn't have any idea half of  
11 what's going on at the site, what's being proposed by  
12 the NPDES permit and really what surface water and  
13 groundwater is in this area.

14 So I'd like to, once again I feel like we  
15 make this comment to the Agency that I think you  
16 really need to do a better job at providing maps that  
17 show what's going on at the site and what is being  
18 proposed in these permits and I think you need to do  
19 a better job spelling out in the permit in clear  
20 language what's being proposed instead of saying as  
21 referenced in log number 4053-28. I think that is  
22 very unfair and is really short circuiting the public  
23 notice process.

24 So I brought this map to walk everyone  
25 through and ask questions of what's really going on

1 here. One, and just to orient, RDAs are the refuse  
2 disposal piles and there's six of them here. This is  
3 the two that I think are mentioned in this permit are  
4 RDA6 and RDA5. This lake which is a reservoir is  
5 here. There's a recirculation pond here. There's  
6 the south holding pond here. I think that's  
7 everything. So what I wanted to ask does the Agency  
8 acknowledge that Smith Lake is a reservoir, an  
9 impounded stream?

10 MR. KOCH: I would probably have to say yes  
11 on that given that there's an unnamed tributary  
12 downstream on it and it seems like that would be  
13 receiving all the water from Smith Lake had the lake  
14 not been there.

15 MR. BARKLEY: Okay. So then the stream  
16 that's been impounded to create Smith Lake is an  
17 unnamed tributary that's Macoupin Creek. Does this  
18 stream --

19 MR. KOCH: I believe it's Spanish Needle  
20 Creek.

21 MS. BARKLEY: An unnamed tributary for  
22 Spanish Needle Creek.

23 MR. KOCH: Correct.

24 MS. BARKLEY: So is that stream considered a  
25 Waters of the State?



1           MR. KOCH: Correct, yes.

2           MS. BARKLEY: So impounding that stream that  
3 is a Waters of the State would mean that Smith Lake  
4 or really Smith Reservoir is the Waters of the State.

5           MR. KOCH: I'm not certain on that.

6           MS. BARKLEY: Okay. That's my question, is  
7 does the Agency consider the impoundment of Waters of  
8 the State to be Waters of the State and then  
9 receiving full protection under the Clean Water Act  
10 and, of designated uses and requirements for water  
11 quality standards to be met?

12          MR. CRISLIP: This issue has come up before  
13 in other situations. We will look into that further,  
14 but my understanding is that the facility has been,  
15 it is permitted. It's within a permitted area. It  
16 is a treatment facility and at least at this time it,  
17 it's a treatment facility rather than Waters of the  
18 State, but we will investigate that further.

19          MS. BARKLEY: Okay. So in the  
20 responsiveness summary I'd like to hear from the  
21 Agency under what state or federal regulations and  
22 entities such as, you know, Exxon Mobile in the past  
23 and now under the direction of Macoupin Energy, what  
24 legal authority they have to remove waters of the  
25 state protection --

1           MR. STUDER: In this responsiveness summary  
2 we won't be commenting on Exxon Mobile.

3           MS. BARKLEY: Well, then I guess what legal  
4 authority is this taken out from protection --

5           MR. STUDER: We can, the other issue  
6 definitely appears relevant and it appears to be an  
7 issue.

8           MS. BARKLEY: And I guess the point I'd like  
9 to make is that the outfall where permit limits are  
10 required to be met is at 007 where all of this water  
11 drains into the unnamed tributary at Spanish Needle  
12 Creek instead of having permit limits and water  
13 quality standards being met here.

14           And so then the following question is why,  
15 you know, one of the log numbers, I don't have it  
16 right now, but one of the log numbers allows water  
17 from RDA5 to be emptied into Smith Lake without  
18 meeting permit limits and without requiring water  
19 quality standards in Smith Lake and I'd like it know  
20 why that is.

21           Then, knowing that some water is going to be  
22 coming from RDA5 and then allowed to be dumped into  
23 Smith Lake, then Illinois EPA has a characterization  
24 of the water that is permitted to come from RDA5 and  
25 be discharged into Smith Lake? Has the chemical

1     characterization been done so you know what is coming  
2     from here and being discharged into here?

3             MR. CRISLIP: I don't believe we have  
4     required a characterization of that water because the  
5     permit limits are applicable at 007 and not at that  
6     internal outfall from RDA5.

7             MS. BARKLEY: Okay. Then can you explain  
8     the emergency spillway that has been constructed to  
9     discharge stormwater runoff from the interior of  
10    RDA5? And I can further elaborate. Will the water  
11    that's in RDA5 be spilling over the spillway into  
12    Smith Lake or will it be aided or pumped from the  
13    interior of RDA5 into Smith Lake? You know, is it a  
14    precipitation driven discharge or will it be actually  
15    pumped?

16            MR. CRISLIP: I'll have to do a little  
17    research on that. I don't recall off the top of my  
18    head.

19            MS. BARKLEY: In the permit material it's  
20    mentioned in both ways. The construction  
21    authorization dated August 23rd, 2010 states that the  
22    addition of 6.2 acres shall be utilized to facilitate  
23    the construction of a drop and let discharge  
24    structure and discharge channel to convey flow from  
25    RDA5 to Smith Reservoir.

1           Then it further states that other than the  
2   internal structure there will be no impact to any  
3   approved NPFO which I take issue with because  
4   anything that's coming from here into here will  
5   impact this 007 outfall, so I would contend that the  
6   Agency in order to do its full job and characterize,  
7   you know, and there be potential analysis and the  
8   ability for permit limits and water quality standards  
9   to be met you have to know what's in here and what's  
10   going in here both in quantity and quality to know  
11   that this stream is going to be fully protected.

12           MR. STUDER: We've gone through seven  
13   minutes, so if you have one short question or, time  
14   goes fast, doesn't it?

15           MS. BARKLEY: Can I just, I guess my  
16   follow-up question is how will this emergency  
17   spillway behave once reclamation of 005 is complete  
18   with vegetative soil caps? Because I do understand  
19   from DNR that handling the permit for this site the  
20   reclamation is in progress. I'll like to know if the  
21   Agency has any indication what's going to happen when  
22   this is closed, if that spillway will be closed as  
23   well, if it will be raised so that it prevents any  
24   water that's still inside from running off? Do you  
25   have any indication?

1           MR. CRISLIP: We should have a copy of the  
2   reclamation plan for that area on file. I'll have to  
3   research that and put that in the responsiveness  
4   summary.

5           MS. BARKLEY: Okay. Thank you.

6           MR. STUDER: Thank you, Traci.  
7           Brian Perkins.

8           MR. PERKINS: I'm going to pass for the  
9   moment, hopefully.

10          MR. STUDER: Okay. Mary Ellen DeClue.

11          MS. DECLUE: My name is Mary Ellen DeClue.  
12   The spelling is D-E, capital C, L-U-E. I'm from  
13   Litchfield, Illinois.

14                 First and foremost, I would like to thank  
15   you for conducting this very important public  
16   hearing. My concern is that some regulatory agencies  
17   have been less responsive to the needs of communities  
18   and thereby the protection of the environment. Your  
19   efforts are necessary and very much appreciated.

20                 I also want to thank the Inquirer Democrat  
21   for publishing a reminder for this hearing in its  
22   4/21/11 paper. Although there was a public notice  
23   published by EPA in the 3/10/11 paper, few people  
24   read these notices. I know I did not until I moved  
25   into this coal area seven years ago.

1           I respectfully basically request that this  
2 NPDES permit be denied. This is based on several  
3 issues. Number one, the groundwater conditions  
4 inherited from Exxon Mobile have not been resolved.  
5 The site of the remediation program and the  
6 groundwater management zone have not alleviated the  
7 contamination offsite. Excuse me. I'm getting over  
8 bronchitis and I know I sound a little bit like a  
9 frog.

10           Anyway, number 2, in Robert A. Messina's  
11 letter dated 1/21/09 to Mike Beyer of Macoupin  
12 Energy, conditions were established that would adapt  
13 groundwater standards to those achieved through  
14 remediation thereby removing any potential violation.  
15 And that might explain why all of the standards are  
16 not being violated if they, oh, well, you've got the  
17 idea. This outcome does not stop contamination  
18 offsite or fix the source of pollution and I have a  
19 copy of a letter which I will submit.

20           Number 3, the NPDES application was not  
21 clear due to references to conditions that were not  
22 accessed. Traci addressed that already.

23           Number 4, the reclassification of Outfall  
24 Number 3 and reclamation of Outfall 004 to storm  
25 water discharges absolutely ignores that mine waste

1 will exist in this effluent and will further  
2 contaminate Spanish Needle Creek. Stormwater is not  
3 the same as mine runoff. I mean at least in my  
4 neighborhood it isn't.

5           Number 5, the proposed transporting, mixing  
6 and diluting of fluids among RDA6, RDA5, south pond,  
7 recirculation pond, Spanish Needle Creek and Smith  
8 Lake have no volume, concentration, or rationale for  
9 outcome. It really sounds like an environmental  
10 disaster.

11           Number 6, the most toxic chemical  
12 constituents in a coal field are not monitored or  
13 analyzed. The Chloride and Sulfates can be attached  
14 to Mercury, Arsenic, Chromium, Cadmium, Selenium,  
15 etcetera. Coal particles as does any particulate  
16 matter adversely affect respiratory systems. We know  
17 they're particularly, especially dangerous for asthma  
18 and any type of respiratory illness.

19           Added to this known fact, polycyclic  
20 aromatic hydrocarbons, or PAHs, are attached to coal  
21 particles. This is established scientific fact.  
22 PAHs are carcinogenic and are found in cigarettes.  
23 Perhaps that is where the term cancer sticks was  
24 derived. Is coal dust analogous to cancer dust?  
25 Something to think about.

1           On page 14 of the construction  
2   authorization, number 8107-10, August 23rd, 2010, it  
3   is stated, as proposed, the Illinois EPA Log Number  
4   9489-09, the embankment of RDA6 may be raised from  
5   701 feet MSI to 705 feet MSI. Storm water  
6   accumulating within RDA 6 may be transferred to the  
7   recirculation lake with discharge designated at  
8   Outfall 002. This 002 outfall eventually will drain  
9   into Spanish Needle Creek.

10           On page 13 it is listed that commercial  
11   coagulants identified as coagulants 200 and  
12   coagulants 222 are approved to assist in remaining  
13   total suspended solids and pH adjustments. I'd like  
14   to know what is the composition of these chemicals.  
15   The effluent at Spanish Needle Creek will not be  
16   analyzed for any toxic material and this is  
17   unacceptable. Do you know what the chemical  
18   constituents of the coagulate 220 and 222 is?

19           MR. KOCH: Yes. They're aluminum based.

20           MS. DECLUE: Aluminum based? Well, I guess  
21   my thoughts are if this is just stormwater, why do  
22   you need to add a chemical like that to just runoff?

23           MR. KOCH: Stormwater inherently has high  
24   total suspended solids. So in order to meet water  
25   quality standards at end of pipe they need to settle



1 out the solids.

2 MS. DECLUE: So it does have mine waste in  
3 it.

4 MR. KOCH: Excuse me?

5 MS. DECLUE: It has mine waste in it. Total  
6 suspended solids would be mine waste?

7 MR. KOCH: It could be mine waste depending  
8 on what, where you're talking about. If it's at  
9 outfall, designated storm water outfall that means  
10 it's been reclaimed. It's no longer a mine outfall.

11 MS. DECLUE: I'm sorry. I don't follow you.

12 MR. KOCH: Larry, can you explain it better?

13 MR. CRISLIP: The total suspended solids  
14 could potentially be related to mine waste, but it  
15 also could simply be soil particles.

16 MS. DECLUE: I see.

17 MR. CRISLIP: Runoff from a farm field that  
18 has particles in it, that's total suspended solids  
19 also.

20 MS. DECLUE: Okay. Thank you. Number 8.  
21 On page 19, special conditions number 5, it is  
22 mentioned that coal combustions waste analysis  
23 reports are to be retained by the permittee for three  
24 months and then forwarded to Illinois EPA. Is coal  
25 combustion waste being deposited in underground mine

1 areas or are there plans for future toxic waste  
2 storage in this area?

3 MR. CRISLIP: There is no coal combustion  
4 waste disposal at this facility or proposed at this  
5 facility. Those special conditions of the permit are  
6 all just, are standard and they're, they're used for  
7 all facilities.

8 MS. DECLUE: Okay. So that's just a, the  
9 standard form letter so to speak.

10 MR. CRISLIP: Yes, exactly. On the special  
11 conditions those are just standard form conditions.

12 MS. DECLUE: I'm glad to hear that because  
13 I'm very, very much opposed to coal combustion waste  
14 or coal slurry injection.

15 So I want to thank you as a panel and I  
16 again appreciate your providing this hearing.

17 MR. STUDER: Thank you, Ms. DeClue.

18 The next person is Mary Bates.

19 MS. BATES: Can I go a little later after  
20 some of the others?

21 MR. STUDER: Yeah, provided time allows.

22 Lindell Loveless.

23 Ms. DeClue, did you want this entered as an  
24 exhibit?

25 MS. DECLUE: Yes, I'm sorry. Thank you,

1     sir.

2                 MR. STUDER:  Thank you.  I will do that.  
3     I'll actually admit both of these as, so there will  
4     be two exhibits that will be added to the record from  
5     these.

6                 MS. DECLUE:  Okay.  I appreciate that.

7                 MR. STUDER:  Yes.  You're welcome.

8                 Go ahead, Mr. Loveless.

9                 MR. LOVELESS:  I apologize for being a  
10    little slow, but I just wasn't born very smart.  
11    Can't help it.  I'm not --

12                MR. STUDER:  Could you state your name for  
13    the record, please?

14                MR. LOVELESS:  Sure.  Lindell Loveless,  
15    L-O-V-E-L-E-S-S.

16                MR. STUDER:  Thank you.

17                MR. LOVELESS:  Okay.  I would like to get  
18    further clarification in laymen's language as to the  
19    purpose of this permit.  I've never been told and I  
20    didn't really understand actually.  Is it, the  
21    purpose of the permit to approve the present methods  
22    of cleaning the water before it's discharged or what  
23    is the purpose of the permit?

24                MR. CRISLIP:  The basic purpose of this  
25    permit is to regulate the discharges from the site

1     into Waters of the State or the receiving streams and  
2     to ensure that those, those discharges meet  
3     applicable effluent limits or water quality  
4     standards.

5             MR. LOVELESS: Thank you, sir. You did a  
6     fine job. I understood that, and I'll reserve  
7     comment until later on.

8             MR. STUDER: Thank you, Mr. Loveless.  
9     Cynthia Skrukud.

10            MS. SKRUKRUD: Good evening. My name's  
11     Cindy Skrukud, C-I-N-D-Y. My last name is spelled  
12     S-K-R-U-K-R-U-D. I serve as the Clean Water Advocate  
13     for the Illinois Chapter of the Sierra Club. I'm  
14     here representing the concerns of our members,  
15     members of the public and myself about the impacts of  
16     this mine on the waters in the Macoupin Creek  
17     Watershed.

18            I had a number of questions. First, I just  
19     wonder can anyone on the panel kind of refresh my  
20     memory as to how long this mine has been operating?

21            MR. CRISLIP: I don't recall.

22            MR. STUDER: Larry says it's been  
23     operating --

24            MR. CRISLIP: I believe it's been operating  
25     since the early 70s. Yeah, on and off.

1           MS. SKRUKRUD: Thank you. So then I wanted  
2 to follow up on Mr. Suhling's concerns about impacts  
3 on the biology in Spanish Needle Creek. Has there  
4 been a biological study done of the creek, and if so  
5 when?

6           MR. KOCH: The Surface Water Section of the  
7 Illinois EPA has not done a formal intensive basin  
8 survey on Spanish Needle Creek given its small  
9 watershed and its tendency to go dry during the  
10 summer conditions. However, last September of 2010  
11 the Surface Water Section went to Spanish Needle  
12 Creek and did a facility related stream survey and I  
13 was part of that study. We collected  
14 macroinvertebrates upstream of the mine site,  
15 adjacent to the mine site and near Outfall 002 and  
16 also downstream of the mine site and I've included  
17 the report of that stream survey as an exhibit.  
18 Basic findings were that there were no stream  
19 impairments observed based on the macroinvertebrate  
20 populations.

21           MR. STUDER: For the record, that's Exhibit  
22 12 I believe in the current record.

23           MS. SKRUKRUD: Thank you. I was going to  
24 ask because facility related streams would be in  
25 that. I'm glad to hear that. Would it be possible

1 to, before the end of the comment period for you to  
2 post that exhibit on the website so we could review  
3 it?

4 MR. STUDER: I'll check with management and  
5 see if we can get that posted. I've got it in PDF.  
6 I just need the approval from within the Agency to  
7 get it posted. So I'll check on that.

8 MS. SKRUKRUD: Great. Thank you.

9 Another simple question. I wondered if you  
10 could explain why Outfalls 2 and 5 are listed as acid  
11 mine drainage while Outfall 7 is listed as alkaline  
12 mine drainage. As far as I can tell the conditions  
13 placed on all three outfalls are the same.

14 MR. CRISLIP: I'm going from memory here  
15 since I didn't draft the permit myself. I believe  
16 Outfalls 2 and 5 both have potentially as safe  
17 conditions as the watershed and they may occasionally  
18 need pH adjustment. We had no indication that there  
19 was acid runoff going to Outfall 007 and therefore it  
20 did not qualify as an acid discharge.

21 MS. SKRUKRUD: So it's what you expect to  
22 discharge from those will be discharged from those.

23 MR. CRISLIP: Whether it's classified as  
24 acid or alkaline is based on the runoff that is  
25 tributary to the basins, not the discharge itself.

1           MS. SKRUKRUD: And then with all the  
2 transfers of water from different basins that are  
3 described in the permit, has that been reconsidered  
4 at all?

5           MR. CRISLIP: Those transfers have been  
6 approved since the, some of them started in the early  
7 90s, in the mid 90s through the late 90s. So that  
8 transfer has been ongoing for quite some time. So  
9 those effects would have been considered in the  
10 reclassification or the original classification of  
11 any of those outfalls.

12          MS. SKRUKRUD: Okay. Thank you. Then I  
13 have some questions that are on page 3, page 13,  
14 excuse me, of the draft permit. The first is in the  
15 second paragraph talking about the discharge 001, the  
16 inoperative sanitary wastewater treatment system.  
17 There's a sentence here that says this system is  
18 inactive and shall not be utilized until the  
19 requirements of condition number 13 have been  
20 fulfilled. Is that supposed to read 17 as opposed to  
21 13?

22          MR. CRISLIP: I don't think so, but let me  
23 check.

24          MS. SKRUKRUD: That was my guess.

25          MR. CRISLIP: 17 is the condition regarding

1 total residual chlorine. 13 is a condition regarding  
2 disinfection exemption of that sanitary discharge  
3 001. And actually, condition 13 references the  
4 requirements of special condition 17 of the permit.  
5 Condition 13 is on page 16.

6 MS. SKRUKRUD: Okay. I'm sorry. I was  
7 looking at special condition 13 as opposed to  
8 condition 13.

9 MR. CRISLIP: Correct.

10 MS. SKRUKRUD: Thank you for resolving that.

11 Further down on that page just below the  
12 table, there's a sentence about installation of a  
13 pumping station on Spanish Needle Creek has been  
14 approved. What is the role of that pumping station?

15 MR. CRISLIP: It's my understanding that  
16 during dry weather conditions they, some of their  
17 impoundments for water supply for the mine gets low  
18 and they use that pumping station to supply water to  
19 their coal washing circuit. I believe that supplies  
20 water into Smith Lake if I'm not mistaken.

21 MS. SKRUKRUD: And then are there conditions  
22 on that pumping? I mean, I'm assuming they're not  
23 allowed to pump the creek dry. Where does one find  
24 the conditions on that?

25 MR. CRISLIP: I will have to look into that



1 for you.

2 MS. SKRUKRUD: Then later on a couple of  
3 paragraphs down in that same section on page 13, it  
4 talks about the transfer of water from refuse  
5 disposal area 5 to Smith Lake. It says this pumping  
6 of water is for maintaining a stable water level in  
7 Smith Lake and I just wondered if you could explain  
8 what's the goal. Why, why are you trying to maintain  
9 a stable water level in Smith Lake?

10 MR. CRISLIP: Again, that was an approval  
11 from a proposal in 1996, so I'd have to do some  
12 research for that information and supply that to you  
13 in the responsiveness summary.

14 MR. STUDER: We've gone the time limit. Do  
15 you have a wrap up question, Cindy, that you want to  
16 ask?

17 MS. SKRUKRUD: Well, my next question was  
18 about on page 17 on condition 14G dealing with  
19 statistical analysis of groundwater monitoring to  
20 determine, to determine if a statistical significant  
21 change has occurred and I wondered if you could  
22 provide us some information on the results that  
23 you've gathered through this condition.

24 MR. DUNAWAY: This condition is just now  
25 appearing in the permits, so that statistical

1 calculation wouldn't be done until after this permit  
2 was issued. That's a requirement of this permit.

3 MS. SKRUKRUD: Okay. Thank you. I may have  
4 some questions later. Thank you.

5 MR. STUDER: Yes. We've got about a little  
6 over 50 minutes yet, so we should have adequate time  
7 to come back.

8 The next person is Catherine Edmiston.

9 MS. EDMISTON: I'm Catherine Edmiston. I  
10 represent Citizens Against Longwall Mining from  
11 Montgomery County.

12 Macoupin Creek has its source in northern  
13 Montgomery County.

14 MR. STUDER: Catherine, can you spell your  
15 last name for the Court Reporter?

16 MS. EDMISTON: E-D-M-I-S-T-O-N. Catherine  
17 spelled with a C.

18 A lot of good questions have been asked and  
19 more intricate questions, but in looking over the  
20 public hearing I notice it says that Spanish Needle  
21 Creek and the unnamed tributary have not been  
22 assessed. How come these smaller tributaries are not  
23 assessed if you've been talking about them being  
24 checked for things?

25 MR. KOCH: When I stated that the waters

1 have not been assessed, what I mean is that an  
2 assessment by the Illinois EPA is generally done in  
3 the summer during low flow conditions and typically  
4 these can only be conducted in larger watersheds that  
5 actually convey water during these drought  
6 conditions.

7 Spanish Needle Creek is a small watershed.  
8 It doesn't possess permanent water for, to provide  
9 residence for fish species during summer. So  
10 generally our stream biologists have to go further  
11 downstream to such as Macoupin Creek to perform those  
12 intensive basin surveys.

13 The facility related stream survey I had  
14 spoke about, that can be conducted in a smaller  
15 watershed. All that survey looks at is  
16 macroinvertebrate populations because again, these  
17 streams simply are so small and intermittent that  
18 fish species can't be collected.

19 MS. EDMISTON: Well, the streams may not be  
20 important to you folks, but those tributaries are  
21 very important to the farms where they go through.  
22 They've been used for generations to water livestock  
23 and for other uses too. You know, somehow or other  
24 it seems to me that IDNR should be more concerned  
25 about the tributaries of Macoupin Creek as well as

1 Shoal Creek in Montgomery County.

2 Now, it mentions waste impoundments 1  
3 through 6 and this is a new permit, you understand.  
4 You said we could ask questions. Those waste  
5 impoundments are mighty important because, how they  
6 are lined because they can leak into groundwater and  
7 they have done that in Illinois. Now then, can you  
8 tell me how six waste impoundments are lined? Do  
9 they have plastic liners or is it 4 foot of clay?

10 MR. DUNAWAY: To my knowledge none of those  
11 impoundments are lined.

12 MS. EDMISTON: None of them are lined?

13 MR. DUNAWAY: Not to my knowledge, no.

14 MS. EDMISTON: And do we test all the waters  
15 around them to see if they have been leaked into with  
16 these compounds that Mary Ellen mentioned, Arsenic,  
17 Mercury, the works?

18 MR. DUNAWAY: Not, no. There's not, this  
19 permit contains requirements to monitor for a wide  
20 range of contaminants in the groundwater monitoring  
21 wells. That's not currently being monitored.

22 MS. EDMISTON: It isn't?

23 MR. DUNAWAY: It's being monitored, but not  
24 for the full, large set of contaminants. It's TDS,  
25 total dissolved solids, sulfate, chloride and some

1 others that don't come to mind immediately, but it's  
2 not the larger set of contaminants.

3 MS. EDMISTON: Not those metallic ones like  
4 Arsenic and Mercury and all the others.

5 MR. DUNAWAY: No. Those are proposed in  
6 this permit. To my knowledge those are not  
7 monitored.

8 MS. EDMISTON: Only proposed. Only proposed  
9 in this permit.

10 MR. DUNAWAY: Because this is a draft  
11 permit, so we can't, we can't do it yet because it's  
12 not permitted.

13 MS. EDMISTON: I see. It amazes me as we  
14 are lacking in laws in Illinois. Some other states  
15 have much stricter laws than we have in Illinois. I  
16 would like to see waste impoundments lined with not  
17 only four foot of clay, but also a plastic liner. I  
18 think it's something we should work for and something  
19 we should all write our Congressmen about.

20 That's all I have to say.

21 MR. STUDER: Thank you, Ms. Edmiston.

22 Joyce Blumenshine.

23 MS. BLUMENSHINE: Thank you. My name is  
24 Joyce, J-O-Y-C-E, last name Blumenshine,  
25 B-L-U-M-E-N-S-H-I-N-E.

1           Thank you very much for the hearing tonight,  
2   Mr. Studer, and members of the IEPA. I'm a volunteer  
3   with Illinois Sierra Club and as a volunteer I have  
4   friends and people that are members of Sierra Club  
5   who live in Macoupin County and this area and depend  
6   on a clean environment for their family's health and  
7   for the future of our state and also we value our  
8   water resources for now and for the present. I just  
9   have a few questions, please.

10           Has IEPA ever taken any actions regarding  
11   NPDES permit violations regarding this facility?

12           MS. DIERS: We would have to look into that.  
13   I don't know off hand if we have issued violations or  
14   anything on this mine at any time.

15           MS. BLUMENSHINE: Is that, if a site has  
16   violations is that considered as far as your review  
17   process whether to approve or not approve a draft  
18   NPDES permit?

19           MR. CRISLIP: We do take those violations  
20   into consideration when we evaluate the discharges to  
21   ensure that in the future they are going to meet the  
22   water quality standards for those discharges, but the  
23   actual handling of the violation is a separate issue.

24           MS. BLUMENSHINE: Thank you, Mr. Crislip. I  
25   just have as an exhibit which I'll bring down in a

1 moment. I have the Federal Environmental Protection  
2 Agency Enforcement and Compliance History Online Eco  
3 Report which, this is regarding Outfall 007 which was  
4 mentioned earlier by Ms. Barkley. It shows solids as  
5 recently as 2008 out of compliance and also out of  
6 compliance on pH as recently as 2010 in the fourth  
7 quarter, and I'll turn this in.

8           The reason I raise this issue, I would like  
9 to ask is this site known to be in the site  
10 remediation program with your Agency?

11           MR. CRISLIP: Yes, it is currently in the  
12 site remediation.

13           MS. BLUMENSHINE: Does that mean that this  
14 site is current polluting surface or groundwater in  
15 the area?

16           MR. CRISLIP: I can't answer that at this  
17 time.

18           MS. BLUMENSHINE: Thank you. My limited  
19 understanding, as I'm not a scientist, I'm a member  
20 of the public trying their very best to do our job  
21 and hopefully ask you to do your regulatory duties,  
22 this site is in the site remediation program because  
23 of violations not only of the pollution onsite, but  
24 offsite and it involves Spanish Needle Creek and land  
25 adjacent to this location which is of great concern

1 to members of the public. It may seem that we have a  
2 lot of these hearings, but really we don't. We are  
3 at the situation where we see the worst situations  
4 where we are overly concerned that there are sites  
5 that are not only polluting area waters, but are not  
6 being, what should I say, addressed currently  
7 adequately to cleanup the problems that they are  
8 causing.

9           So I would ask that this Agency deny this  
10 permit renewal and you make anything that is done to  
11 allow this site to continue contingent on, number 1,  
12 cleaning up the current pollution they are causing  
13 onsite and offsite and that there be a rigorous IEPA  
14 requirement that this site come into compliance with  
15 its, whether it's the site remediation program or  
16 whatever is being done now to assess what's honestly  
17 going on at this site which will impact the  
18 neighbors' adjacent property values and waters of the  
19 area, not just the NPDES, but the long-term  
20 conditions here.

21           What we are looking at personally from a  
22 citizen concern is a situation like Monterey II or  
23 some other area that this is going to be an  
24 environmental sacrifice zone for this mine to  
25 continue in the 1970s operating in the 21st Century



1 and allowed to continue polluting the area with the  
2 innocent people bearing the burden on their health,  
3 well-being and the future.

4 I have one last question, please. I brought  
5 in, again, and I apologize for my limited  
6 understanding, Title 35 of the Illinois Environmental  
7 Protection Act which is Part 740 under Site  
8 Remediation Program. It says here in Section, and I  
9 don't expect anybody to know this off the cuff, but  
10 part of my consternation is it says in Section  
11 740.105 applicability, that places can be in a site  
12 remediation program unless they are under current  
13 state or federal permits. So I'm just even wondering  
14 how this site can be allowed to be in some program  
15 that lets us continue polluting.

16 MR. STUDER: You're referring to 35 Illinois  
17 Administrative Code 742?

18 MS. BLUMENSHINE: Yes, sir.

19 MR. STUDER: Yeah. That part is dealing  
20 specifically with Land Pollution Control Permits. So  
21 if there's not a land pollution control permit, that  
22 does not impact the federal permit. That would be  
23 for water pollution control which is what the NPDES  
24 program is about.

25 MS. BLUMENSHINE: Thank you so much.

1           MR. STUDER: And we can provide a little  
2 more detail on the SRP program in our responsiveness  
3 summary. We don't have someone from the Bureau of  
4 Land with us this evening, but we could go through  
5 and provide some additional comments on that.

6           MS. BLUMENSHINE: I do appreciate that.  
7 That would be very helpful.

8           In closing, I will look forward to that  
9 because it is very difficult for the public to  
10 understand how your Agency could even consider  
11 issuing new permits and new standards when this site  
12 has been in a problematic polluting condition for so  
13 long and it appears to us, the public, that nothing  
14 is being done. Thank you.

15          MR. STUDER: Thank you, Ms. Blumenshine.  
16 Okay. And you want these entered as exhibits.  
17 Correct?

18          MS. BLUMENSHINE: Yes.

19          MR. STUDER: Okay. Thank you, Ms.  
20 Blumenshine. I'll get those entered as exhibits.

21          Okay. We've been through the cards of those  
22 that have indicated on the cards that they want to  
23 speak and so it is customary at a hearing after we do  
24 that and when we still have time is I ask if there's  
25 anyone in the room that has not yet spoken that would

1     like to do so.

2                 Ms. Bates, if you'd go to the microphone and  
3     state your name and spell your last name for the  
4     Court Reporter, please.

5                 MS. BATES: My name is Mary Bates and my  
6     address is 936 Vandalia Street in Hillsboro, Illinois  
7     and I have friends and relatives in this area of the  
8     mine.

9                 I have a few questions here. Has RDA 6 ever  
10    spilled over the top?

11                MR. CRISLIP: I don't know. I don't know  
12    the answer to that question right now, but I can  
13    research it for you certainly.

14                MS. BATES: Okay. How many acres does RDA 6  
15    cover and how deep is it?

16                MR. CRISLIP: Again, I would have to  
17    research that.

18                MS. BATES: Okay. In January 21st of '09  
19    Robert Messina in a letter to the mining company,  
20    Michael Beyers, made a statement. I'll read it to  
21    you. It says the Agency believes that the site  
22    remediation coupled with the ground management zone  
23    best reflects the realities of the current situation,  
24    that Macoupin is stepping into groundwater problems  
25    created by prior owners and operators. At present,

1 these groundwater problems have not been precisely  
2 qualified so it will be important to establish the  
3 baseline contamination levels through reliable  
4 testing.

5           The agency intends to cooperate with  
6 Macoupin in its efforts in mitigating the prior  
7 contamination at Monterey Mine site, both through its  
8 involvement in the site remediation program as well  
9 as Macoupin's efforts to have alternate disposal  
10 plans permitted. Please note, when the Agency takes  
11 this position, it is not our practice to bring  
12 enforcement actions or levy monetary penalties as  
13 long as a new operator owner is making good faith  
14 efforts to work within the bounds of the site  
15 remediation program and the ground management  
16 designations.

17           Please note, however, the Agency cannot  
18 relinquish its primary mandate of environmental  
19 protection. In this light the SRP and the  
20 groundwater management zone do not eliminate an  
21 owner's operator's potential liability for any  
22 worsening of the groundwater after the GMC has been  
23 established.

24           So does that mean that EPA is not enforcing  
25 penalties or regulations?

1           MS. DIERS: I can tell you right now at the  
2 site we are aware of some groundwater issues. We are  
3 looking at it as an Agency. A decision will be made  
4 after we go through all the information that we have  
5 on how to proceed, but this is not saying we can't do  
6 a penalty or anything against them, but we are taking  
7 in information right now and trying to make those  
8 decisions.

9           MS. BATES: Thank you.

10           IEPA, as the coal waste is toxic to both the  
11 water and air, IEPA's mission is to protect, restore  
12 and enhance the quality of air, land and water  
13 resources to the benefit of the current and future  
14 generations and I have a list of, of the, from the  
15 Agency for Toxic Substances and Disease Registry and  
16 their top 20 substances are Arsenic, Lead, Mercury,  
17 Vinyl Chloride, Poly Biphenyls, Benzene and Cadmium  
18 and there are four of these minerals are listed as  
19 coal leachates and I have a list of 34 minerals from  
20 the SME Coal Preparation 1991 Fifth Edition which  
21 I'll turn in to you and these are also found in coal  
22 leachates in coal mining. I'll turn that in.

23           I have a list of, from the Container Space  
24 Doctrine that is 24 pages. I didn't print the whole  
25 thing out, but I wondered if you were aware of

1 Illinois' position in that? What it essentially is  
2 is the rights of the landowners. Do they know what  
3 you're putting into the ground under when you do  
4 slurry injection and when it leaches into their  
5 groundwater?

6 MR. CRISLIP: I believe that has been an  
7 issue in West Virginia and some of the mountainous  
8 states. I'm not sure what Illinois' position is on  
9 that, but at this facility we do not have underground  
10 injection.

11 MS. BATES: Are you planning it, underground  
12 injection?

13 MR. CRISLIP: We do not have any application  
14 in-house at this time for underground injection.

15 MS. BATES: Okay. In the site remediation  
16 program that was just withdrawn they did recommend  
17 that it was slurry injection.

18 I understand the crest of RDA 6 was raised  
19 from 701 feet to 705. Has that been done?

20 MR. CRISLIP: I don't believe the  
21 construction has been done, no. I could be mistaken.  
22 I will confirm that in the responsiveness summary.

23 MS. BATES: Okay. RDA 6 is a high hazard  
24 dam and it requires a emergency management program  
25 and I wondered if that was on file at the Montgomery

1 County Court House.

2 MR. CRISLIP: The high hazard issue is  
3 either an IDOT issue or a Mine Safety and Health  
4 Administration issue.

5 MS. BATES: So you have no information on  
6 that. Okay.

7 I have an article here that says coal waste  
8 is toxic to both water and air and it's titled the  
9 IEPA Strategic Plan, FY 2004, Revised May 1st, 2006.  
10 It says the mission of the IEPA is to protect,  
11 restore and enhance the quality of air, land and  
12 water resources to benefit current and future  
13 generations, and I wondered if some of these  
14 polycyclic aromatic hydrocarbons were listed or do  
15 you have records of those or do you keep track of  
16 them? I think Mary Ellen DeClue mentioned  
17 polycyclics.

18 MR. STUDER: Are you talking before PAHs?

19 MS. BATES: Yes.

20 MR. STUDER: More than likely if there are  
21 records of those those would be in the SRP program.  
22 So we'll have to check into that and respond  
23 accordingly with the SRP type information.

24 MS. BATES: Okay. Thank you. And the last  
25 thing I have to submit to you, it's the Illinois

1 Administrative Code and U.S. Federal Register Rules  
2 to remove coal mine waste. Since we don't know the,  
3 we don't have the original permit, the operations  
4 portion of that permit should have described how that  
5 is to be removed and before it is reclaimed and I  
6 have all of these rules, administrative and Federal  
7 Register Rules for you to look at.

8 MR. STUDER: I don't know what operating  
9 permit you're referring to, ma'am.

10 MS. BATES: It's the original operating  
11 permit.

12 MR. STUDER: Yeah, I know, but what type of  
13 permit is this?

14 MS. BATES: Oh. I'm sorry. This might be I  
15 IDNR.

16 MR. STUDER: I think it's a Mines and  
17 Minerals --

18 MS. BATES: Okay. I think you're right.  
19 I'm sorry.

20 Okay. That's all I have. Thank you.

21 MR. STUDER: Thank you.

22 Okay. Is there anyone else that has not  
23 spoken this evening that would like to speak? Go  
24 ahead, Brian.

25 MR. PERBIX: Good evening. My name is Brian



1     Perbix. I am an organizer, I'll spell my name first.  
2     Brian, B-R-I-A-N, Perbix, P as in Paul, E-R, B as in  
3     boy, I-X. I'm an organizer with the Prairie Rivers  
4     Network and I also do some work with the Sierra Club,  
5     Illinois Chapter. My work supports citizens in coal  
6     producing areas of the state where they're concerned  
7     about water pollution, the environmental effects of  
8     coal.

9             I'd just like to ask some follow-up  
10     questions. Actually, I'm going to start with a new  
11     line of questioning I think. So, curious about the  
12     chloride limits at Outflows 2, 5 and 7. It appears  
13     to me that for each of the precipitation related  
14     discharge conditions, you know, under dry conditions  
15     the limit is set at 500 milligrams per liter of  
16     chloride and with a precipitation discharge that  
17     bumps up to 1,000. And I notice with sulfates the  
18     current limit is the same for each of the discharge  
19     conditions. Can you explain how you go through that  
20     calculation?

21             MR. KOCH: The previous permit had the  
22     chloride limit of 1,000 for each outfall and we could  
23     not give a discharge of 1,000 at Outfall 007 given  
24     that the receiving water for 007 is an unnamed  
25     tributary and the standards must be met in that

1 receiving water. That's why 500 milligrams per liter  
2 of chloride must be met at Outflow 007.

3 1,000 milligrams per liter of chloride was  
4 given for the other two outfalls because the chloride  
5 there is 500 milligrams per liter and there's a,  
6 that's the concentration that must be met on average  
7 meaning there's a multiplier of 2 for an acute limit  
8 that's to be used and basically given the past  
9 history of having high chloride at those outfalls we  
10 retain that 1,000 milligrams per liter limit and in  
11 my memo to Larry Crislip where I describe the water  
12 quality limits, I basically showed that if Outfall  
13 005 and 002 were to discharge 1,000 milligrams per  
14 liter of chloride there is sufficient mixing in  
15 Spanish Needle Creek to attain the chloride standard.  
16 In fact, if you were to allow 1,000 milligrams per  
17 liter of chloride from Outfall 007 there's still  
18 adequate dilution. Basically after mixing it all  
19 through those effluents the downstream chloride  
20 concentration would be roughly 185 milligrams per  
21 liter.

22 MR. PERBIX: Okay. Thank you.

23 And so the special condition number 16, is  
24 that right? That's the one that's over the next two  
25 years going to take Outfall 007 down to the 500

1 milligrams per liter?

2 MR. KOCH: That's correct.

3 MR. PERBIX: And so that's two years to do  
4 that?

5 MR. KOCH: Technically, yeah. Two years to  
6 either meet the standard of 500 milligrams per liter  
7 or reroute the effluent. Basically a few years ago  
8 when the Water Quality Standards Unit visited the  
9 mine we were aware of a chloride issue in Smith Lake  
10 and some of the Outfalls and over the last couple of  
11 years the chloride concentrations have decreased  
12 within each of the outfalls to the point that we're  
13 pretty confident that chloride limits could be met,  
14 the requirement of 500 milligrams per liter could be  
15 met at Outfall 007, but given the past history we  
16 determined that it's appropriate to at least put a  
17 compliance schedule in in case they can't meet 500  
18 just so the permit is protected.

19 MR. PERBIX: Okay. Thank you. And I want  
20 to follow-up on a couple of questions that Ms. Bates  
21 was asking about RDA 6. Good mining practices are  
22 incorporated into this permit and I assume under the  
23 previous permit. Is that correct?

24 MR. CRISLIP: That's correct.

25 MR. PERBIX: And that includes things likes

1 erosion controls and vegetation of refuse disposal  
2 areas?

3 MR. CRISLIP: Yes.

4 MR. PERBIX: Okay. And so if a refuse  
5 disposal area was unvegetated and had erosion gullies  
6 forming, that would be a violation of the NPDES  
7 permit? Hypothetic.

8 MR. CRISLIP: I assume you're talking about  
9 a reclaimed refuse area. Correct?

10 MR. PERBIX: Is refuse disposal area 6  
11 active?

12 MR. CRISLIP: Yes, it's active.

13 MR. PERBIX: Well, then define for me what  
14 an active refuse disposal area is.

15 MR. CRISLIP: Okay. In that case, would you  
16 please state your question again?

17 MR. PERBIX: If an active refuse disposal  
18 area was unvegetated and showed significant signs of  
19 erosion along the embankments that form the disposal  
20 area, would that be a violation of the permit?

21 MR. CRISLIP: We would discuss with the  
22 applicant whether those best past management  
23 practices are being implemented and possibly issue  
24 them a violation for that activity. It depends on  
25 the severity of it and what we find at the site when

1 we inspect it.

2 MR. PERBIX: Okay. To IEPA's knowledge has  
3 there been any, anything done to address what appear  
4 to be visible erosion problems on RDA 6 and lack of  
5 vegetation?

6 MR. CRISLIP: Repeat, please.

7 MR. PERBIX: If RDA 6 has visible erosion  
8 problems and lacks vegetative cover has anything been  
9 done to address this through enforcement?

10 MR. CRISLIP: The lack of vegetative cover  
11 is not necessarily an issue. We would have to go out  
12 and inspect it for the erosion and gullies issue.

13 MR. PERBIX: Okay. Then also continuing on  
14 with the refuse disposal areas, the groundwater  
15 monitored beneath those refuse disposal areas, which  
16 class of groundwater quality standards would that  
17 water be held to, the water that's directly  
18 underneath those.

19 MR. DUNAWAY: Directly underneath them it  
20 depends on when the impoundment was placed in  
21 service.

22 MR. PERBIX: So for refuse disposal areas 5  
23 and 6.

24 MR. DUNAWAY: 5 was placed in service  
25 between, well, it's an area, 5 is subject to 302, 35

1 Illinois Administrative Code 302. Number 6 is  
2 subject to Class IV of Groundwater Standards Number  
3 35 Illinois Administrative Code 620.

4 MR. PERBIX: And that's because RDA 5 is  
5 older than 6?

6 MR. DUNAWAY: It's the time frame it was put  
7 in. It was put in after the mining law came into  
8 being in February of 1983, but before the Groundwater  
9 Standards under 620 were adopted in '91. So  
10 therefore the standard that would have applied at  
11 that point in time was 302.

12 MR. PERBIX: Okay. And so for RDA 6 it's  
13 covered under Section 620 --

14 MR. DUNAWAY: Class IV Groundwater  
15 Standards.

16 MR. PERBIX: Class IV Groundwater Standards.  
17 Okay. So under, what do you call it, point F under  
18 Section 620.240, that's the one that, that's the  
19 condition that describes groundwater which underlies  
20 a coal mine refuse disposal area, let's see, and so  
21 Subpoint number 2 underneath, well, points number 2  
22 and 3 describe conditions that would effect whether  
23 or not Class IV Groundwater Standards would apply to  
24 that water or not. Is that right?

25 MR. DUNAWAY: I wouldn't try to answer that

1 question without the regulations in front of me  
2 because it's difficult to follow.

3 MR. PERBIX: Well, the way I'm reading it it  
4 says, I can read it. Groundwater which underlies a  
5 coal mine refuse disposal area not contained within  
6 an area from which overburden has been removed, well,  
7 dah, dah, dah, dah, dah, dah, dah, in which  
8 contaminants may be present. If such an area or  
9 impoundment was placed into operation after  
10 February 1st, 1983, if the owner and operator notify  
11 the Agency in writing and if the following conditions  
12 are met. Condition number 2 is that the source of  
13 any release of contaminants to groundwater has been  
14 controlled. Has that happened at this site? Is  
15 that --

16 MR. DUNAWAY: I think the actual reference  
17 stops at F, I want to say FF, I think it says F1.  
18 Does F1 start out that it's within 25 feet of --

19 MR. PERBIX: Yeah.

20 MR. DUNAWAY: Okay. I believe the reference  
21 is F1 which means it stops there. It does not  
22 include those other things under certain conditions.  
23 It depends on where your, which, that Section is  
24 referenced in various spots and it may, other spots  
25 reference it a little bit differently than in other

1 spots and without tracing it through in front of me I  
2 can't tell you off my cuff which is right.

3 MR. PERBIX: Okay. Then in the  
4 responsiveness summary that's the, your explanation  
5 about how --

6 MR. DUNAWAY: We can certainly give a  
7 thorough explanation in the responsiveness summary.

8 MR. PERBIX: F, Subsection 2 and 3.

9 MR. DUNAWAY: Yeah.

10 MR. PERBIX: Thank you. That's all for now.  
11 Thank you.

12 MR. STUDER: You must have seen me reaching  
13 for the mic. Thank you, Mr. Perbix.

14 Is there anyone here, last chance, that has  
15 not spoken that would like to do so? Okay. Then I'm  
16 going to go back to those that have previously spoken  
17 and may have additional comments. Could I see a show  
18 of hands of those that have additional comments?  
19 Traci? Cindy? Okay.

20 Traci Barkley, if you want to go ahead, and  
21 then Cindy we'll come back to her. I'll give each  
22 another seven minutes or so.

23 MS. BARKLEY: Okay. I'm going to follow-up  
24 on some previous questions.

25 So for Mr. Koch, the facility related stream



1 survey, can you tell us what month that was conducted  
2 in?

3 MR. KOCH: Yeah. The survey was conducted  
4 on September 28th, 2010.

5 MS. BARKLEY: And can you tell us what  
6 method for collecting the macroinvertebrates was  
7 followed?

8 MR. KOCH: The Agency has its own I guess  
9 published, I think you can find them on the website,  
10 they have their own method for collecting, processing  
11 and reporting the results of the macroinvertebrate  
12 collections.

13 MS. BARKLEY: Does that method also include  
14 the time that the survey should be conducted, the  
15 season?

16 MR. KOCH: Can you state that again, please?

17 MS. BARKLEY: Does the method followed by,  
18 followed for that facility related stream survey  
19 state at what season those methods should be applied  
20 to be used for --

21 MR. KOCH: I believe so. I know the methods  
22 for the intensive basin surveys, they stipulate that  
23 the macroinvertebrate indices are to be used during  
24 summer months. I think the middle of October is  
25 where they wouldn't recommend using those biotic

1 indices, but in general, all the facility related  
2 stream surveys are done after the Agency completes  
3 their intensive basin surveys and again, those are  
4 concluded by the beginning of the fall.

5 MS. BARKLEY: Thank you. So as I mentioned,  
6 I went through the file and I looked at information  
7 that's available for both surface water and  
8 groundwater from three reports, one from Patrick  
9 Engineering, two from Conestoga-Rovers and Associates  
10 detailing data at 60 plus sites with groundwater and  
11 surface water and what I found is that there were  
12 exceedences of both groundwater and surface water  
13 standards at almost every site and, you know, I don't  
14 even need to put that into the record. You have that  
15 in your own file, but the data that was collected for  
16 Chloride, Sulfates, Total Dissolved Solids, Total  
17 Suspended Solids, pH, Iron, both Total and Dissolved,  
18 Manganese, both total and dissolved, and so I guess  
19 the first thing I want to state is that, you know,  
20 I'm not going to waste any of my minutes pulling up  
21 that map, but if you pull up the first one, or if  
22 anybody wants to step up and do that, it shows in  
23 color what the Agency is not acknowledging here  
24 tonight which is that there are groundwater problems,  
25 there are surface water problems in Spanish Needle

1 Creek throughout the site and I have two maps back  
2 here that show green lines where Groundwater  
3 Standards are not being met, both onsite and offsite,  
4 so I really take issue with the inability of the  
5 Agency not to acknowledge the fact that there are  
6 groundwater and surface water problems here.

7           And so one, knowing that we have exceedences  
8 of Total Dissolved Solids, Total Suspended Solids,  
9 Iron, Manganese, Sulfates, Chloride, I'd like to know  
10 what additional monitoring has been done to find out  
11 what's behind those indicated pollutants. Coal  
12 washing at a coal preparation plant such as the Shay  
13 1 site usually pull other things out of the coal like  
14 Mercury, Arsenic, Beryllium, Cadmium, Chromium,  
15 Boron, Nickle and Selenium. I'd like to know to what  
16 extent those pollutants have been monitored on the  
17 site.

18           MR. DUNAWAY: To my knowledge, those  
19 parameters have not been monitored at this site.

20           MS. BARKLEY: So knowing that there are  
21 existing problems with what is being monitored, why  
22 is the Agency drafting a permit and proposing  
23 additional continuing mining and washing of coal and  
24 disposal of coal waste onsite here for, you know,  
25 another five years knowing that we do have problems

1 with what we are looking at while not looking any  
2 further at any of the things that really impact  
3 public health, aquatic life, the designated uses that  
4 are required by the Agency to be protected? What is  
5 the justification for drafting a permit without  
6 looking any further than where we're already finding  
7 problems?

8 MR. CRISLIP: This draft permit increases  
9 the monitoring requirements for several of those  
10 parameters that you mentioned in groundwater. The  
11 list of required monitoring in this permit is  
12 significantly greater than what was in the previous  
13 permit and several of the other issues that you have  
14 referenced or discussed I believe is the items that  
15 we have indicated are being investigated currently.

16 MS. BARKLEY: Okay. So I do acknowledge and  
17 I thank the Agency for adding 30 some pollutants to  
18 be monitored from Aluminum to Zinc under Special  
19 Condition Number 14 in the permit. However, I don't  
20 see any reason why that sampling can't be done now  
21 prior to issuing the permit to a site that has  
22 already degraded the groundwater and surface water.  
23 Is there any reason the Agency --

24 MR. STUDER: Do you have a mechanism by  
25 which we would exercise that authority?

1           MS. BARKLEY: I think that there's enough  
2 evidence that the Agency is seeing to require  
3 additional monitoring under the current permit. They  
4 are currently permitted to discharge water in this  
5 area.

6           MR. STUDER: So is, what your comment is is  
7 that we should be, I'm just trying to get your, what  
8 you're really trying to say here in a comment form  
9 that's --

10          MS. BARKLEY: I guess I have a question. My  
11 questions is is there anything that's stopping the  
12 Agency from requiring Macoupin Energy from doing  
13 additional testing for the things that threaten  
14 public health and aquatic life before giving them  
15 another permit?

16          MR. STUDER: I don't know if we have that  
17 authority to do that outside of a permit. That's  
18 something we'd have to look into.

19          MS. BARKLEY: Okay.

20          MR. STUDER: The other option would be to go  
21 through enforcement route, but again, you know,  
22 that's nothing that's going to happen immediately  
23 because that wouldn't happen until it got to, you  
24 know, got out of our Agency's hand and into the  
25 prosecutorial authorities and you're looking at a

1 fairly substantial time frame. Historically, an  
2 enforcement case has been referred to either the AG's  
3 Office or State's Attorney's Office or USEPA or to  
4 the Pollution Control Board, so.

5 MS. BARKLEY: I think the people living in  
6 this area that are drinking water from wells and the  
7 fish that are living in these streams and the people  
8 that are eating the fish from these streams would  
9 probably appreciate that time being taken.

10 Second, I'd like to know with the  
11 information the Agency already does have about on and  
12 offsite contamination what does the permitting IEPA  
13 propose to do about that?

14 MS. DIERS: Traci, that's what I referred to  
15 earlier. That is all under investigation right now  
16 in our office and we're looking at the groundwater  
17 issues. Once we finish that investigation we'll  
18 decide what steps if we need to take to address them.

19 MS. BARKLEY: Thank you. Can you tell us  
20 how long the Agency has been aware that the permitted  
21 surface facilities of this site have been  
22 contributing to the degradation of both groundwater  
23 and surface water quality?

24 MR. STUDER: That's nothing that anyone on  
25 the panel would have knowledge of this evening. It's

1 something that we'll have to look into further.

2 MS. BARKLEY: Is the panel aware of how many  
3 groundwater wells are located in the vicinity of the  
4 Shay Number 1 site?

5 MR. DUNAWAY: I couldn't tell you the exact  
6 number.

7 MS. BARKLEY: And I don't mean monitoring  
8 wells for determining what's going on. I mean wells  
9 that are used by members of the public.

10 MR. DUNAWAY: To the best of my knowledge  
11 there are possibly two nearby, one certainly and  
12 possibly another one that I'm not certain of.

13 MS. BARKLEY: Has the Agency taken steps to  
14 let them know that there's groundwater contamination  
15 both onsite and moving offsite?

16 MR. DUNAWAY: Not that I'm aware of, no.

17 MS. BARKLEY: Is a permit under the Resource  
18 Conservation Recovery Act and Program, is that  
19 considered a land permit?

20 MR. STUDER: Yes.

21 MS. BARKLEY: So this facility does have a  
22 land permit which then would take into consideration  
23 their ability to be accepted into the site  
24 remediation program?

25 MR. STUDER: We'll have our land people look

1     into that and respond to that in writing in the  
2     responsiveness summary.

3                 MS. BARKLEY:   Then Ms. DeClue mentioned  
4     stormwater and I think there's some confusion from  
5     the panel on where the stormwater is being discussed  
6     and I just wanted to point out that within the permit  
7     the water that's being, that's allowed through the  
8     different Log numbers to be pumped from RD, the  
9     interior RDA 5 and RDA 6 isn't even referred to as  
10    the stormwater.   So I'd like to know how water inside  
11    a refuse disposal area can be considered stormwater.

12                Let me just clarify.   I do understand the  
13    rain's going to fall and go in there, but I also  
14    understand that what's being put into these RDAs is  
15    coal slurry and that the solids are settling down and  
16    it's possible, well, I mean it just make sense that  
17    there's water at the top.   So to have that as a  
18    permitted as stormwater is disingenuous.   I'd like to  
19    know if you have another explanation for that.

20                MR. CRISLIP:   I have one.

21                MS. BARKLEY:   Okay.   Let's hear it.

22                MR. CRISLIP:   The paragraph that discussed  
23    the stormwater from that RDA 5, that verbiage and the  
24    reference to stormwater there came from the applicant  
25    submittal.   Their utilization of the term stormwater



1 is not the same as what would fall under our  
2 definition of stormwater. So that's, that's where  
3 the discrepancy comes in and it would probably have  
4 been prudent on our part to clarify that or use a  
5 different term.

6 MS. BARKLEY: Okay. Thank you.

7 MR. STUDER: We've gone seven minutes also.

8 MS. BARKLEY: Can I just ask one more  
9 question?

10 MR. STUDER: That may cut into her.

11 MS. SKRUKRUD: That's okay. I need maybe  
12 two minutes.

13 MS. BARKLEY: I'll be quick.

14 I'd like to know if the panel knows when RDA  
15 5 stopped accepting fine coal refuse for storage or  
16 disposal.

17 MR. CRISLIP: I do not. We'll have to  
18 research that for you.

19 MS. BARKLEY: The Log 2048-06 requested  
20 water transfers from RDA 6 to RDA 5 and the  
21 information that I have states that fine coal refuse  
22 placement ended in 1988 at RDA 5. DNR, the person at  
23 Mines and Minerals says that it's in final  
24 reclamation right now which means that only course  
25 materials being placed in a cap and cover is being

1 placed right now, so I'd like to know why the Agency  
2 is allowing under this permit water to be moved from  
3 RDA 6 into RDA 5 when it's in the final stage of  
4 reclamation. And the reason this is important is  
5 because RDA, the water coming from RDA 6 to RDA 5 is  
6 then allowed to go to Smith Lake and if that's  
7 picking up additional pollutants on the way or is  
8 really just bypassing a more direct system, it seems  
9 like there's some monkey business going on onsite if  
10 that is being permitted under this NPDES permit.

11 MR. CRISLIP: I'll research that and  
12 determine what the reasoning there is and discuss,  
13 discuss that with Mines and Minerals also regarding  
14 the timing.

15 MS. BARKLEY: Okay. Because I think if you  
16 look at the map at all the arrows the way the logs  
17 work what is actually allowed to come out of 002, 005  
18 and 007 is a composite wastewater from south holding  
19 pond, recirculation pond, RDA 5, RDA 6 and Smith  
20 Lake. If you follow the arrows it all is allowed to  
21 be mixed and I'd like to know how the Agency has gone  
22 through the analysis to determine what is coming out  
23 of each one of those outflows knowing that at any  
24 point what's legally allowed with the permit right  
25 now is transfers between five different water bodies,

1 some of them fresh water, some of them being pumped  
2 from a stream, some of it coal slurry recently placed  
3 there, some of it placed 15 years ago and I'd like to  
4 know how the Agency can assure that water quality  
5 standards are being met and the permit be met knowing  
6 that they have full authorization to move it around  
7 at any point. Thank you.

8 MR. STUDER: Thank you. Also, I think Brian  
9 also has a comment and I also have one other question  
10 regarding the maps just so that I can make sure that  
11 they're clearly reflected in the record.

12 MR. KOCH: Yeah. Traci, before Cindy speaks  
13 you raised a concern over surface water violations.  
14 I don't work in Compliance, but I haven't seen any to  
15 my knowledge. I guess we can talk about it after the  
16 hearing, but I think you also raised concerns over  
17 additional metals monitoring, things like Mercury I  
18 believe. Mary raised concerns over that as well.

19 Each Outfall is going to have to monitor for  
20 Mercury, so Mercury will be monitored for. Also as  
21 part of the facility related stream survey we  
22 conducted, table 2 has several metals that were  
23 sampled at, within Spanish Needle Creek as well as at  
24 Outfall 007 and Arsenic was non-detect, Cadmium was  
25 non-detect at Outfall 007. There are additional

1 metals there that you can review, but again, I  
2 haven't seen any surface water violations so we can  
3 talk about that afterwards.

4 MS. BARKLEY: Okay. Thank you.

5 MR. STUDER: And Traci, do you know what the  
6 name of the report is that those maps are from or you  
7 can just --

8 MS. BARKLEY: The supplemental site  
9 investigation report that was turned in this last  
10 fall.

11 MR. STUDER: Okay. This is for the, Shay  
12 Number 1, Reference Number 0546583 and it was  
13 received in our Agency on February 24th, 2001. I  
14 believe we've got it. I'm sorry, 2011. February  
15 24th, 2011. Okay. And the map numbers, are they on  
16 there just so that I --

17 MS. BARKLEY: The maps are all actually  
18 referenced in the table of contents of this report.

19 MR. STUDER: Right. What I'm getting at is  
20 what two maps were made reference, we've made  
21 reference to two maps.

22 MS. BARKLEY: I made reference to figure  
23 2.2.

24 MR. STUDER: Figure 2.2. Okay.

25 MS. BARKLEY: And then the ones that show

1 the surface water and groundwater exceedences are  
2 5.14.

3 MR. STUDER: 5.14.

4 MS. BARKLEY: 5.12.

5 MR. STUDER: 5.12.

6 MS. BARKLEY: 5.13.

7 MR. STUDER: 5.13.

8 MS. BARKLEY: And 5.15.

9 MR. STUDER: And 5.15. Thanks. I  
10 appreciate that. I just want to make sure that  
11 they're appropriately reflected in the record.

12 MS. BARKLEY: Actually 10A and 10B.

13 MR. STUDER: 10A and 10B also?

14 MS. BARKLEY: They all show the exceedences.

15 MR. STUDER: All right. Thank you.

16 MS. SKRUKRUD: Cindy Skrukrud. I just have  
17 a couple of questions. I think three more questions.

18 Just to follow-up on Traci's discussion  
19 about water moving through the different water bodies  
20 on this site, is it permissible to pump water out of  
21 a stream such as Spanish Needle Creek as a method to  
22 dilute pollutants in effluent from a site like this?  
23 Is that Agency practice to allow that?

24 MR. CRISLIP: The pumping out of Spanish  
25 Needle Creek is for makeup water, not necessarily for

1 delusion.

2 MS. SKRUKRUD: Would you ever allow pumping  
3 of water out of a water body to dilute pollutants so  
4 that they could meet water quality standards upon  
5 discharge?

6 MR. STUDER: I don't know, but I do know  
7 that the question is kind of a lot broader than this  
8 particular, it's something that we can look at, what  
9 standard practice is and respond in writing.

10 MS. SKRUKRUD: Okay. Thank you.

11 And then I just had a couple of questions  
12 again following-up on, I think these questions are  
13 all directed at Brian about Special Conditions 15 and  
14 16 which deal with trying to meet the chloride water  
15 quality standard and discharges from this site. In  
16 Special Condition 15, the last sentence says that a  
17 mixing zone for Chloride has been granted for each  
18 outfall and Brian, I was wondering if you could tell  
19 me what size that mixing zone is for each outfall.

20 MR. KOCH: Each of the outfalls would get  
21 25 percent of the stream flow for mixing. In other  
22 situations a discharge could get 100 percent of the  
23 stream flow if that water body was a, if that water  
24 body had less, if it had 07q1.1 flow. But in the  
25 instance of Spanish Needle Creek it has positive

1 7q1.1 flow, so we're restricted to giving mixing to  
2 25 percent of the stream.

3 MS. SKRUKRUD: And then do you calculate  
4 then how far downstream it takes before the water  
5 quality standard is achieved?

6 MR. KOCH: Yeah. It's, basically the way I  
7 did the calculations was I looked at the watershed  
8 area of each outfall and I looked at the upstream  
9 watershed area of Spanish Needle Creek and based on  
10 those two ratios and given 25 percent mixing in the  
11 Spanish Needle Creek watershed I could determine what  
12 the downstream Chloride concentration would be in  
13 Spanish Needle Creek. Then for the next downstream  
14 outfall I'll use that Chloride concentration as the  
15 upstream calculations for the following outfall.

16 MS. SKRUKRUD: I guess I'm used to, I'm used  
17 to seeing when you do those calculations then you'll  
18 say well, the mixing zone is such, so many feet.

19 MR. KOCH: Yeah. It's based on volume of  
20 flow. It doesn't take into account stream diameter.

21 MS. SKRUKRUD: Okay. Okay. And then under  
22 Special Condition 16 there's the options of either  
23 commencing pipe construction or reducing Chloride  
24 levels to achieve the water quality standard and if a  
25 permit is granted, you, I think you would have

1 granted the mine the option to construct a pipeline.  
2 My question is shouldn't an anti-degradation  
3 assessment be conducted for a new outfall if such  
4 pipeline is going to be constructed?

5 MR. KOCH: If the pipeline were to be  
6 constructed it would discharge at the exact point  
7 that that unnamed tributary currently discharges into  
8 Spanish Needle Creek. So essentially the effluent  
9 from Smith Lake would be received directly at the  
10 confluence of that unnamed tributary at Spanish  
11 Needle Creek. So the actual loading of pollutants is  
12 not changing in Spanish Needle Creek.

13 However, again this is a contingency plan if  
14 they can't meet the Chloride standard. Based on the  
15 last two years of data it seems that they're going to  
16 be able to meet the Chloride limit. The reasoning  
17 for me to acknowledge that is the layer they're  
18 mining has lower chloride compared to what the  
19 previous owner was mining through and again, in the  
20 past the Chloride concentrations were well over 500  
21 milligrams per liter. I think they were up to 800  
22 milligrams per liter in Smith Lake. Now we're  
23 looking at concentrations in the 300s to low 400s.

24 MS. SKRUKRUD: Okay. So Outfall, you're  
25 saying the pipeline would discharge at the same point



1 as Outfall 007, therefore --

2 MR. KOCH: Outfall 007 spills over into an  
3 unnamed tributary. That unnamed tributary travels  
4 approximately a half mile to Spanish Needle Creek.  
5 If a pipeline were to be constructed, it would have  
6 to be constructed and discharged exactly where that  
7 unnamed tributary goes to Spanish Needle Creek.  
8 Otherwise, it would be received in a different  
9 portion of Spanish Needle Creek and require a  
10 anti-degradation assessment.

11 MS. SKRUKRUD: Okay. That's creative.  
12 Thank you for that answer.

13 MR. STUDER: Thank you.

14 MR. SUHLING: Can I make one comment?

15 MR. STUDER: Sure. You're going to have to  
16 step to the mic though.

17 MR. SUHLING: I'm Michael Suhling. I've  
18 lived here all my life. Obviously they're not  
19 thinking there's much wrong over there. There's a  
20 problem with the mine. There's stuff in the creek.  
21 Brian, have I ever meet you?

22 MR. KOCH: I don't believe so.

23 MR. SUHLING: I own property just right down  
24 the creek, on both sides of the creek and then on  
25 down the creek and if you did a study I thought I

1 would have met you, somebody, you know, but I guess  
2 my statement or question is when this is all said and  
3 done at the end of the day when the mine's done, who  
4 cleans this up? Who clean this mess up? It might  
5 not be relevant. I don't know.

6 MR. CRISLIP: I understand. The cleanup is  
7 basically the reclamation plan and the reclamation of  
8 the site and at that time all discharge and runoff  
9 from that site is required to meet the water quality  
10 standards.

11 MR. SUHLING: So it's an ongoing long-term  
12 thing.

13 MR. CRISLIP: Certainly, yes.

14 MR. STUDER: All right. I remind everyone  
15 that the comment period is open for 30 days following  
16 the close of this hearing and that we will be  
17 accepting written comments for 30 days. Please make  
18 sure that if you submit them by mail that they are  
19 postmarked by the 27th of May and there are  
20 directions for submitting electronic comments that  
21 were contained in the hearing notice for this  
22 hearing.

23 I thank you for your attendance tonight.  
24 There's been some very good issues raised and we will  
25 notify those that are registered when our

1     responsiveness summary is completed and available and  
2     what our final decision in this matter is.

3             Thank you again for your attendance.

4             (Hearing concluded at 8:04 P.M.)

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## 1 CERTIFICATE

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3 I, Julie A. Brown, a Certified Court Reporter  
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