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REPORT OF THE PROCEEDINGS of the  
Illinois Environmental Protection Agency (IEPA) 401  
Water Quality Certification taken at the  
Harris-Pruett Community Building, 107 East Church  
Street, Harrisburg, Illinois, on the 18th day of  
February, 2014.

1                   HEARING OFFICER STUDER: Good evening.  
2 We're going to begin the 401 hearing. I am assuming  
3 we're okay and ready to go. All right. My name is  
4 Dean Studer. I am the hearing officer for the  
5 Illinois Environmental Protection Agency. On behalf  
6 of Director Lisa Bonnett and Bureau of Water Chief  
7 Marcia Willhite, I welcome you to this hearing.  
8 Illinois EPA believes that public hearings and the  
9 overall public comment process are a crucial part of  
10 the certification review process. As hearing officer  
11 my primary purpose tonight is to ensure that this  
12 proceeding runs properly and in accordance with  
13 established rules and in an orderly, but efficient  
14 manner. Therefore, I will not generally be  
15 responding to issues regarding the certification  
16 process or the proposed certification, but will defer  
17 these issues to the technical staff here with me  
18 tonight. However, I will assist the members of the  
19 public making comments at this hearing to stay  
20 focused on relevant issues. We are primarily here to  
21 listen to your concerns, but will interrupt, if  
22 necessary, to ensure that we remain on topic at this  
23 hearing.

24                   This informational hearing is being held by  
25 Illinois EPA Bureau of Water, under provisions of 35

1 Illinois Administrative Code 164, Procedures for  
2 Informational and Quasi-Legislative Public Hearings  
3 and 35 Illinois Administrative Code 395, Procedures  
4 and Criteria for Certification of Applications for  
5 Federal Permits or Licenses for Discharges into  
6 Waters of the State. Copies of these regulations are  
7 available at the website for the Illinois Pollution  
8 Control Board at [www.ipcb.state.il.us](http://www.ipcb.state.il.us), or if you do  
9 not have ready access to the web, they are available  
10 from me by request.

11           The purpose of this hearing is to  
12 provide an opportunity for the public to present  
13 information to the Illinois EPA regarding the review  
14 of the Section 401 Water Quality Certification  
15 Application associated with the Peabody Arclar  
16 Mining, LLC, Rocky Branch Mine. I note that Illinois  
17 EPA conducted a hearing regarding the National  
18 Pollutant Discharge Elimination System, NPDES, permit  
19 for this facility. It just ended about 15 minutes  
20 ago. If issues are raised during the hearing  
21 regarding the NPDES permit, I will ask that you  
22 submit those concerns to the Illinois EPA in writing  
23 and specify Rocky Branch NPDES in your submittal. I  
24 point out that written comments will continue to be  
25 accepted on the NPDES permitting action as well as on

1 the 401 water quality certification through March 19,  
2 2014. However, when submitting comments, please  
3 indicate to which proceeding your comments are  
4 pertaining.

5           The process for this hearing regarding  
6 the 401 water quality certification will be as  
7 follows. I will finish reading this opening  
8 statement into the record. After that the panel from  
9 the Illinois EPA will introduce themselves, giving a  
10 brief overview of the Section 401 Water Quality  
11 Certification process and their role in the Agency  
12 review of the proposed project. This will be  
13 followed by comments from the public. People will be  
14 called out to come forward and make comments on the  
15 record. This hearing is the only opportunity the  
16 public will have to make oral comments on the 401  
17 proceeding. After the hearing is adjourned, comments  
18 must be submitted in writing to be included in the  
19 record. Comments may be submitted in hard copy by  
20 regular mail or by e-mail. E-mailed comments should  
21 be directed to [epa.publichearingcom@illinois.gov](mailto:epa.publichearingcom@illinois.gov).  
22 E-mailed comments will be accepted if received by  
23 March 19, 2014, and they should specify Rocky Branch  
24 401 in the subject line or specify the Army Corps of  
25 Engineers reference number and that is capital C,

1 capital O, capital E pound sign 2012 hyphen 1006.  
2 E-mails or -- originating on third party servers  
3 intended to send multiple comments of the same or  
4 nearly the same comment will not be accepted without  
5 prior written approval of the hearing officer.  
6 E-mails received at epa.publichearingcom@illinois.gov  
7 are automatically sorted and distributed so it is  
8 critical that e-mails contain the words Rocky Branch  
9 Mine 401 in the subject line exactly as indicated on  
10 the hearing notice to ensure that they make it to the  
11 record on this proceeding. E-mails arriving during  
12 normal business hours at the Agency should be sent an  
13 automated reply from the server. I know the server  
14 can become quite busy in the minutes before the  
15 record closes, so you may want to take this into  
16 account in submitting your comments. Any electronic  
17 comments received as the date is changing from  
18 March 19 to March 20, 2014, if they are after  
19 midnight on that date, they will not be considered  
20 timely filed. I will also attempt to send a reply to  
21 e-mailed comments within a few business days  
22 indicating the exhibit number assigned to electronic  
23 submittal. If you do not receive such a reply, you  
24 may contact me and I will provide that information to  
25 you.

1                   Comments sent by regular mail must be  
2 postmarked by March 19, 2014. They should be  
3 addressed to, excuse me, Dean Studer, Hearing  
4 Officer, Illinois Environmental Protection Agency,  
5 Office of Community Relations, Mail Code 5, Regarding  
6 Rocky Branch Mine 401, 1021 North Grand Avenue East,  
7 P.O. Box 19276, Springfield, Illinois 62794-9276.

8 This contact information is included on the notice of  
9 public hearing just in case you couldn't keep up with  
10 me as I was reading it. The hearing notice is posted  
11 on Illinois EPA's web page. Once this hearing is  
12 adjourned tonight the comment again remains open  
13 until March 19, 2014.

14                   Please make sure that written comments  
15 for this proceeding specify 401 Water Quality  
16 Certification Process for the Rocky Branch Mine to  
17 avoid confusion with the NPDES proceeding or, again,  
18 you may indicate the Army Corps of Engineers  
19 reference number as I indicated earlier. If  
20 comments -- if commenting on both proceedings two  
21 separate comment letters should be submitted. One  
22 for the NPDES and one for the 401 certification, as  
23 these are separate proceedings, each with their own  
24 set of regulatory requirements. Comments submitted  
25 in writing will be considered in the same manner and

1 given the same weight as statements made on the  
2 record during this hearing.

3           After the record closes in this matter  
4 the Illinois EPA will develop a responsiveness  
5 summary. In the responsiveness summary, the Illinois  
6 EPA will respond to all significant and relevant  
7 issues raised during this hearing or submitted in  
8 writing prior to the close of the comment period.

9 The hearing transcript and subsequent responsiveness  
10 summary will be posted on Illinois EPA's web page.

11 The agency will make every effort to post the hearing  
12 transcript on our website in approximately two to two  
13 and a half weeks from tonight, but the actual time  
14 will depend upon when we receive the transcript from  
15 the court reporter. All persons registering legibly  
16 or submitting comments in either of the two  
17 proceedings tonight will be notified when the  
18 responsiveness summary is available. Since these are  
19 two separate proceedings, the responsiveness summary  
20 and the final decision of Illinois EPA may be at  
21 different times for the two proceedings. However,  
22 each person making oral comments or filing written  
23 comments in one of the two proceedings will be  
24 notified of the final decision and the availability  
25 of decision documents in each of the two proceedings.

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

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

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



1 to speak at this hearing. Those that commented at  
2 the earlier NPDES permit hearing should have been  
3 asked if they also wanted to comment during this  
4 hearing. And, if so, the registration card should  
5 have been so marked. If you wish to comment but have  
6 a time constraint, please let Barb Lieberoff at the  
7 registration table know and we will try to call on  
8 you earlier in the proceeding. As an alternative,  
9 you may file written comments before the comment  
10 period closes and I will include them as an exhibit  
11 in the hearing record. Again, written comments are  
12 given the same weight and consideration as comments  
13 made orally during this hearing. If anyone has --  
14 has exhibits that they want to enter into the record,  
15 you should give a copy to me and so indicate and I  
16 will include them in the record.

17 For the purpose of allowing as many  
18 people as possible to speak this evening, I will give  
19 everyone three minutes to comment. Once everyone  
20 that desires to comment has had that opportunity, if  
21 time allows, I may come back to those that have  
22 already spoken, but ran out of time. If you have  
23 lengthy comments, I am requesting that you submit  
24 them to me in writing before the close of the comment  
25 period and I will make sure that they are included in

1 the record as -- excuse me, are included as an  
2 exhibit in the record. If you have spoken at the  
3 earlier NPDES hearing and plan to make the same  
4 comments at this hearing, I would recommend or  
5 suggest perhaps that you want to let me know and  
6 include a written comment, rather than going through  
7 the same comments and that way we may be able to save  
8 a little time. However, if you desire to go through  
9 the comments, that's fine. I just ask that you stay  
10 within the three-minute time limit. I will be timing  
11 and I will be holding you rather strictly to the  
12 three minutes. We ran a little over on some past  
13 speakers in the last hearing and it created some  
14 problems. So I would ask that you have three minutes  
15 and three minutes only.

16           When it is your turn to speak, if  
17 someone else has said what you intend to say, you can  
18 pass when your name is called. Persons coming  
19 forward to provide comments should first clearly  
20 state their name and, if applicable, identify any  
21 governmental body or organization they represent.  
22 You should also spell your last name so it can be  
23 accurately reflected in the record. If there are  
24 alternate spellings for your first name, you may also  
25 spell your first name. If you are representing

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

17           As hearing officer I intend to treat  
18 everyone here tonight in a professional manner with  
19 respect. I ask the same respect be shown to those  
20 raising relevant issues. While issues discussed  
21 tonight may indeed be heartfelt concerns to many of  
22 us here in attendance, this is a public hearing and  
23 everyone has the right to express comments relevant  
24 to the water quality certification process. However,  
25 I intend to conduct an orderly hearing and will

1 closely monitor what is said to ensure that the rules  
2 that I have just outlined are followed.

3 If conduct of persons attending this  
4 hearing become unruly, I am authorized to adjourn  
5 this hearing should the situation warrant. In such a  
6 case, Illinois EPA would accept written comments  
7 through the time indicated on the hearing notice.

8 Are there any questions on how we'll  
9 proceed tonight?

10 Okay. For the record, I need to  
11 indicate that we have several exhibits. The first is  
12 the notice of public hearing. The second is the  
13 public notice of the 401 certification and the third  
14 exhibit is the hearing request filed by the  
15 applicant. I will now ask our agency panel members  
16 to introduce themselves and briefly describe their  
17 role in the review of the 401 certification process.  
18 This will be followed by Thaddeus Faught making a  
19 brief presentation regarding the 401 certification  
20 process and this application. Following this I will  
21 allow those that have registered to speak to come  
22 forward as their name is called and they can then  
23 make their statements.

24 Before we start, I do want to point out  
25 one thing and that is that Brian sitting on my left

1 here is filling in for an agency staff member that  
2 had a family emergency. He works in the same unit as  
3 the person that actually reviewed the  
4 anti-degradation and the water quality issues, but  
5 there may be issues that he is not quite as familiar  
6 with as Eric is and so there may be some times where  
7 we'll have to indicate and we will have to respond to  
8 those questions or those issues more fully in writing  
9 in our responsiveness summary. I do want to point  
10 that out.

11 MR. KOCH: Brian Koch, water quality  
12 standards section. And as Dean mentioned, I am  
13 filling in for Eric tonight. I'll answer questions  
14 to the best of my ability.

15 MS. DIERS: Stefanie Diers, legal  
16 counsel.

17 MR. FAUGHT: Thaddeus Faught. Part of  
18 my duties are doing 401 water quality certifications  
19 for the Army Corps of Engineers permits.

20 Projects that include the discharge of  
21 dredged or fill material into waters of the United  
22 States are required to be covered by a permit issued  
23 by the U.S. Army Corps of Engineers under Section 404  
24 of the Clean Water Act. The Illinois EPA issues  
25 water quality certifications pursuant to Section 401

1 of the Clean Water Act to the Corps for the Section  
2 404 Corps Permit. Issuance of the 401 certification  
3 does not have any effect or bearing on what is  
4 required of Peabody by any other federal, state or  
5 local regulations.

6 If issued, the water quality  
7 certification is not an approval of any discharge  
8 resulting from the completed mine facilities, nor an  
9 approval of the design of the mine facility. The  
10 project must also meet other applicable permit  
11 requirements of the Illinois Pollution Control Board.  
12 The 401 review is focused on potential impacts to  
13 water quality due to the proposed construction  
14 activity.

15 The Illinois EPA received an  
16 application on July 6, 2012, from Peabody Arclar  
17 Mining, LLC for 401 water quality certification for  
18 the discharge of dredged or fill materials associated  
19 with surface mining activities. The project site is  
20 approximately 1,092 acres in size. The project site  
21 is proposed to be mined by surface mining methods to  
22 extract bituminous coal. Mining activities would  
23 result in the discharge of dredged or fill material  
24 in 16,731 linear feet of ephemeral streams, 15,164  
25 linear feet of intermittent streams, 3,198 linear

1 feet of perennial streams, approximately 6.13 acres  
2 of wetlands and approximately 6.71 acres of open  
3 water. The waters include Rocky Branch, unnamed  
4 tributaries to Cockerel Branch, Middle Fork Saline  
5 River and Rocky Branch, unnamed wetlands and unnamed  
6 open water. Mitigation for stream impacts would be  
7 through reconstruction of streams in reclaimed areas  
8 once mining has been completed. The stream  
9 restoration plan includes the establishment of  
10 approximately 26,729 linear feet of streams. The  
11 approximately 6.13 acres of jurisdictional wetlands  
12 planned for disturbance would be mitigated through  
13 construction of approximately 9.87 acres of wetland.  
14 At least 7 acres of open water will be created or  
15 enhanced to mitigate for impacts to the 6.71 acres of  
16 open water.

17                   The Illinois EPA has reviewed the  
18 certification application with regard to the Illinois  
19 water quality standards and certification  
20 regulations. Based on that review, the Illinois EPA  
21 issued a public notice including the anti-degradation  
22 assessment fact sheet on December 20, 2013, to seek  
23 public comments on the project.

24                   HEARING OFFICER STUDER: Thank you,  
25 Thad. Are there questions tonight on how I'm going

1 to conduct this hearing? I neglected to ask that  
2 before I introduced the panel members. Okay. Let  
3 the record indicate no one raised their hand.

4 John Keller, did you want to make an  
5 opening statement this evening or did you want to  
6 pass?

7 MR. KELLER: If you could, apply my  
8 oral comments. I also gave written comment, from the  
9 last proceeding, and apply those to this one. I  
10 would appreciate that.

11 HEARING OFFICER STUDER: Yes. If  
12 you've already spoken at the earlier hearing and you  
13 want those comments to be included in the record, let  
14 me know and I will make sure that the comments are  
15 included in both hearing records and you don't have  
16 to go through and say those orally.

17 (The following was taken from the comments supplied  
18 by John Keller in the NPDES hearing and inserted into  
19 the record by the reporter.)

20 MR. KELLER: John Keller. Can you  
21 hear me?

22 HEARING OFFICER STUDER: Yeah. You  
23 can hold it or we can raise it, if you would like.

24 MR. KELLER: John Keller, K-E-L-L-E-R,  
25 Peabody Energy, operations manager at Cottage Grove



1 Mine. Good evening and thank you for hosting this  
2 hearing. I appreciate the opportunity to explain our  
3 permit request.

4 In detail our operations --

5 HEARING OFFICER STUDER: Can everyone  
6 in the back hear Mr. Keller?

7 AUDIENCE MEMBER: No.

8 HEARING OFFICER STUDER: Okay. You're  
9 going to have --

10 MR. KELLER: Now I'm assuming that  
11 doesn't go against my three minutes. Start over.

12 Good evening, and thank you for hosting  
13 this hearing. I appreciate the opportunity to  
14 explain our permit request and detail our operations  
15 for your consideration.

16 Cottage Grove mine began operations in  
17 1999 and has operated continuous in Saline and  
18 Gallatin Counties for more than 14 years. The  
19 proposed Rocky Branch permit number 428 consists of  
20 about 1092 acres of surface land that is to be  
21 utilized for drainage control, stockpiling and other  
22 mining support needs. Coal processing will continue  
23 under the previously approved Arclar permits.

24 Land within the permit will provide a  
25 continuation for coal production and preserve

1 employment for Cottage Grove's existing work force.  
2 Annual payroll for the 200 men and women who work at  
3 Cottage Grove is approximately 25 million dollars.  
4 These direct jobs provide a healthy income for the  
5 families who reside primarily in Saline and Gallatin  
6 Counties. In addition to Cottage Grove's direct  
7 employment, industry estimates indicate approximately  
8 600 additional mining-related jobs are supported by  
9 the mine's operations. The 800 direct and indirect  
10 jobs combined represent a significant part of the  
11 Southern Illinois economy.

12           Safety is a core value at Peabody. We  
13 value safety as a way of life, both on our sites and  
14 as well as in our local communities. Cottage Grove  
15 is an excellent example of our commitment. I'm proud  
16 to say that the mine has gone 948 days without a lost  
17 time accident. Has exceeded 1 million man hours  
18 without an incident. And year-to-date, as well as in  
19 2013, has an incident rate of zero with an industry  
20 average of 3.17 accidents per 200 thousand hours  
21 worked.

22           Peabody is also committed to conducting its  
23 operations in a reasonable and responsible manner  
24 that protects the environment and restores the land.  
25 Cottage Grove employs the latest technology and best

1 management practices, utilizing well-trained staff  
2 and resources to meet or exceed permit requirements  
3 and return the land to equal or better condition than  
4 we found it. As a matter of pride, average corn  
5 yields at Cottage Grove over the past five years show  
6 production on prime fields has exceeded native  
7 production by 5 percent.

8                 With this focus, Cottage Grove mine  
9 enjoys a strong record of compliance and has been  
10 recognized for reclamation efforts. For example,  
11 Cottage Grove mine was a 2010 recipient of the  
12 Outstanding Reclamation Award from the National  
13 Association of State Land Reclamations. Winner of  
14 the 2010 Illinois Land Reclamation Award in the coal  
15 category from the Department of Natural Resources  
16 Office of Mines and Minerals. And was honored with  
17 U.S. Department of Interior 2012 Excellence in  
18 Surface Coal Mining Reclamation Award.

19                 It is of critical importance that a  
20 permit decision is reached promptly to prevent an  
21 interruption in coal production and to provide  
22 continuous employment to the local workforce in  
23 Southern Illinois. Unemployment in Saline County  
24 stands at 9.9 percent and Gallatin County at  
25 9.8 percent. Both areas are considered high

1 unemployment locations in Illinois and job  
2 preservation is an important factor for the residents  
3 of this area.

4 We look forward to continuing our  
5 14-year history of being a good employer and a good  
6 neighbor in this region. I realize growth can be  
7 disruptive and I am committed to making Saline County  
8 a great place to live and work. Thank you.  
9 (End of inserted comments.)

10 HEARING OFFICER STUDER: Okay. The  
11 first person that will be up, then, will be  
12 Christopher Oliver and he will be followed by looks  
13 like Rhonda Dillard.

14 MR. OLIVER: My name is Christopher  
15 Oliver. Spelled C-H-R-I-S-T-O-P-H-E-R, O-L-I-V-E-R.  
16 Thank you board for giving me this brief moment to  
17 speak to you and thank you to the community for  
18 allowing me to come here and speak as well. I'm not  
19 from this area so first to let everyone know that. I  
20 am from Carbondale, however my partner, who I intend  
21 to marry in December, is from this area and so is his  
22 family and so things that are happening in Saline  
23 County matter to me indirectly through this union  
24 that we will have.

25 First off, I will have one

1 question for you, but I just want to address a couple  
2 of things that you mentioned in this document here.  
3 If we can go ahead -- and what I want to address is  
4 on page three it says purpose and social and economic  
5 benefits of the proposed activity. The second  
6 sentence says, According to information given by the  
7 applicant there will be significant social and  
8 economic losses experienced by the local economy if  
9 the mining plan does not proceed as planned. That is  
10 what you wrote. Specifically 200 direct jobs with a  
11 payroll of \$21.6 million annually would be lost.  
12 Again, what you wrote. I'm assuming they've given  
13 you proof of this. However, if you divide 200 into  
14 21.6 million, you get an awfully large number. You  
15 get over \$100,000 a person, so you guys are being  
16 paid or coal miners are being paid over a hundred  
17 thousand dollars to be a coal miner? That's pretty  
18 interesting. And why I'm bringing that up is that  
19 I'm asking you do you fact check what Peabody gives  
20 you? Because to me we're paying these coal miners a  
21 hundred thousand dollars to strip mine and my  
22 partner's granddad is a coal miner who was laid off  
23 by Peabody, he was not making anywhere near a hundred  
24 thousand dollars a year. So maybe we need to look at  
25 their facts and figures, because I know that it goes

1 into your decision-making.

2                   Also those numbers are repeated  
3 again under no mining on page four. And again you  
4 say that there will be economic losses and that --  
5 that will happen if they are not allowed to mine, but  
6 I'm assuming those economic losses would happen if  
7 they are not given this permit, because we are  
8 talking about the permit, and that's probably why  
9 they are in here. So this brings me to my question  
10 to the board. As the EPA you are to protect the  
11 environment, correct? Right? Do you make  
12 recommendations to whoever makes its permit  
13 application? Do you give them recommendations, if  
14 you deny them a permit? Let's say we'll tell  
15 Peabody, no, you can't have this permit, but maybe  
16 you should invest in renewable resources. Would that  
17 be something your office would do?

18                   HEARING OFFICER STUDER: First, we're  
19 not talking about a permit here. We're talking about  
20 401 water quality certification.

21                   MR. OLIVER: Right. Two things.  
22 Certification, it still involves with the clean water  
23 that you're supposed to protect.

24                   HEARING OFFICER STUDER: The answer to  
25 that is no, we don't make recommendations.

1                   MR. OLIVER: Who would make those  
2 recommendations?

3                   HEARING OFFICER STUDER: That is not a  
4 power that's given to us under the Environmental  
5 Protection Act so I don't know if there's anybody  
6 that's obligated under law to do so.

7                   MR. OLIVER: Okay. Well, I would just  
8 like to -- I guess the reason I ask that question is  
9 you know these millions of dollars that they claim  
10 that they will lose annually, they could keep that if  
11 they do invest in renewable resources and as the EPA  
12 you say you're governed and you don't give those  
13 recommendations; as a citizen I would like you to  
14 maybe think about starting to give those  
15 recommendations out. This area could benefit from  
16 solar -- from solar as another resource, right? And  
17 it's something that Peabody could say, oh, my  
18 goodness, we could invest in renewable resources and  
19 lead the way. That's all I wanted to say and I think  
20 you've pretty much answered my question that you  
21 don't give recommendations and you probably don't  
22 want to and that's pretty sad. Thank you.

23                   HEARING OFFICER STUDER: Thank you.  
24 Rhonda Dillard. She'll be followed by Judy, it looks  
25 like Kellen.

1 MS. DILLARD: My name is Rhonda  
2 Dillard, D-I-L-L-A-R-D. Because I don't exactly know  
3 how this goes and I already showed you my pictures --  
4 I do know you weren't sitting there. So we'll give  
5 you a set of my pictures. Who else didn't get a set?

6 HEARING OFFICER STUDER: I can take  
7 one -- I can take one for an exhibit in this  
8 proceeding.

9 MS. DILLARD: There's that. I would  
10 like to have -- unless you want to explain, because  
11 you weren't sitting here, I would like all of that  
12 put into the record for this. Is that how I do that?

13 HEARING OFFICER STUDER: If you  
14 submitted it in writing, we can do that. If it was  
15 done orally, we can't do that, however, you do have  
16 the option of filing that in -- in writing. We  
17 also -- we probably need to go through it if --

18 MS. DILLARD: Go through it all again?  
19 I'll talk mainly to you, since you weren't sitting  
20 here. We'll go through my pictures again.

21 The very first picture is  
22 standing in my front yard looking across toward the  
23 Davis home that Peabody has already bought and it's  
24 an area that is going to be mined. It is nine-tenths  
25 of a mile across there and that is as far as that



1 flood water runs all the way to Old Highway 13.

2                   Picture number two is standing on  
3 Old Highway 13 at the property, the Davis property  
4 that Peabody has acquired, looking toward the Dench  
5 farm, which is southwest. It shows just the vast  
6 amount of water.

7                   Picture number three is taken  
8 also from the Davis driveway, looking back toward my  
9 home and you will see, like I said, what looks like  
10 green bushes. You can put that picture out to the  
11 side. You are going to need it in a minute. Picture  
12 number four is taken again from my yard, but looking  
13 west this time toward Harrisburg and it shows the  
14 continuous vast amount of flood water.

15                  Then the last picture shows that  
16 the flood water going to the west toward Harrisburg  
17 goes as far as seven-tenths of a mile all the way  
18 down to the road past me, which is the intersection  
19 of Pebble Road and Berry Road.

20                  Okay. If you will put picture  
21 two and picture three together, where the green  
22 bushes are you can see the wide expanse of water that  
23 is there and the green bushes are not bushes, but  
24 they are treetops. That is a tree line. That is  
25 the -- part of the area that is to be mined. The

1 road that Peabody proposes goes behind that tree line  
2 and they have asked that that road be elevated, so,  
3 therefore, they already know that the area floods and  
4 that is just going to make this problem so much  
5 worse.

6                   Like I said before, I've lived in  
7 this area for 37 years. I guess I never thought that  
8 I would ever be standing at any kind of a hearing  
9 trying to defend my home, but here I am. Because it  
10 is personal to me. This is my home. This is my  
11 neighborhood. When you decide to live outside the  
12 city limits, you do it usually for one or two  
13 reasons. You're a farmer or you just want peace and  
14 quiet and no neighbors squished up on you and you  
15 like nature. And I am the latter. That is where I  
16 stand. I don't own any big property. We're not  
17 farmers. We live out there because we like the peace  
18 and quiet. We like to have horses. I like deer in  
19 my back yard. And all of that is about to change.

20                   I appreciate you giving me the  
21 time to talk. I hope you truly realize that my  
22 neighborhood and my home is in your hands. Your job  
23 is an important one because you have a decision to  
24 make. I hold nothing against these coal miners back  
25 here. I know that they are fighting for their job

1 the exact way I'm fighting for my home. If Peabody  
2 has made them promises and kept their promises, I'm  
3 happy for them. I really am. But from what I have  
4 talked to all of the neighbors who have already been  
5 through this, Peabody makes us promises and then they  
6 don't keep them. They send people into our homes to  
7 do home evaluations to check everything out before  
8 they start and then the minute you have any damage  
9 they send someone back to tell you that they didn't  
10 cause the damage. That's not keeping their promise.  
11 All I have to go on is the past. What has happened  
12 in the past is probably going to happen to me, if you  
13 give Peabody this permit. So I just hope that you  
14 take all of that into consideration when you make  
15 your decision.

16 Mr. Teegarden back there stated  
17 that change happens. Yes, change happens every day  
18 and the older we get, the more we see change, but  
19 change isn't always good. Sometimes you do things so  
20 long that you think it has to stay that way. It  
21 doesn't. It can change and it can change for the  
22 better.

23 I have one more thing --

24 HEARING OFFICER STUDER: You are  
25 beyond your time limit, so you need to be quick.

1 MS. DILLARD: This is an article that  
2 ran in our local paper here. It is about a couple  
3 that lived down there across -- Gallatin County  
4 across from the mining and the woman now has  
5 breathing problems and her doctor has already told  
6 her that it's caused by blasting dust. She couldn't  
7 be here tonight, they are just too ill to be here,  
8 but she gave me her blessing to submit this. So I'm  
9 going to submit this to them so you can see this.  
10 And that's all I have to say. Thank you.

11 HEARING OFFICER STUDER: Thank you  
12 very much.

13 MS. DILLARD: By the way, you need to  
14 pay your court reporter double tonight because she  
15 had to do two hearings.

16 HEARING OFFICER STUDER: She  
17 appreciates that I'm sure. Thank you. Judy Kellen.

18 MS. KELLEN: Judy Kellen, trustee for  
19 Cottage Township. And I don't have anything to give  
20 you this time, but submit that other thing in this  
21 one.

22 (The following was taken from the comments supplied  
23 by Judy Kellen in the NPDES hearing and inserted into  
24 the record by the reporter.)

25 MS. KELLEN: Judy Kellen, K-E-L-L-E-N.

1 And I'm a trustee for Cottage Township. If I wasn't  
2 that, I would probably be home knitting socks.

3           Everyone has heard over and over about  
4 the risks to health. Everyone has heard over and  
5 over about the damage to our environment. Everyone  
6 has heard over and over about destroying lives. How  
7 this permit will personally affect my husband and  
8 myself is our only water source is our ponds and our  
9 cisterns. Over the years we've worked to make  
10 ourselves pretty much self-sustaining and to live  
11 within our income. We planted an orchard and edible  
12 crops that return every year. Fixed alternate heat,  
13 electric and water sources and are able to irrigate  
14 because part of our ground was previously stripped,  
15 too. Since the mine blasting has started our ponds  
16 have been damaged, our chimney is cracked, cracks in  
17 our walls, cracks in the foundation, doors that do  
18 not shut, we do not know what has happened to our  
19 cisterns, we can no longer use our wood burner, but  
20 as soon as the blasting takes the last of our water  
21 supply they will have driven us out of our home.  
22 Maybe even sooner if that poisonous dust doesn't run  
23 us out first. We've had a cistern since 1976 because  
24 of health reasons and have not paid a water bill in  
25 37 years. Now I bet none of you all have done that.

1 If we are forced out of our home, the expense will  
2 then exceed our income. How could you or would you  
3 plan for this type of devastation in your retirement?  
4 It's not even in your mind to think of such a thing.  
5 How much of a price are we going to have to pay  
6 before it kills us? But where do you go? There's no  
7 longer a wild wild west to escape to because there's  
8 now land and water problems everywhere. It's very  
9 difficult for Americans to believe there's a never  
10 ending supply of land and water, but we're seeing it  
11 happen all over the country. So let's all live for  
12 today and to hell with tomorrow seems to be the  
13 attitude of a very selfish and greedy generation.  
14 Thank God my generation and the generations before us  
15 have all been able to enjoy what our forefathers  
16 built and established. What we are witnessing now is  
17 our children and grandchildren are going to have a  
18 very difficult time just sustaining a type of life  
19 with destroyed land and dirty water. Thank you very  
20 much.

21 (End of inserted comments.)

22 MS. KELLEN: But when we got -- we was  
23 talking about that water, back when we had that heavy  
24 rainfall, and I think it was the last of December,  
25 something like that, I received a call and they said

1 there is something that's coming in our streams and  
2 it's going out all over our fields and it's coming  
3 from the mines. And so we got a sample and we sent  
4 it off, but we didn't know about you all then, so we  
5 sent it to the wrong people. So we sent it to the  
6 DNR and I have not heard back from the DNR what the  
7 report was. But, now, see, we should have sent you  
8 all. So we're living and we're learning. Thank you.

9 HEARING OFFICER STUDER: Thank you,  
10 Ms. Kellen. We have Stephen Karns and Mr. Karns  
11 you'll be followed by Jennifer Dumbris.

12 MR. KARNs: Thank you. My comments  
13 will be briefer than the previous meeting.

14 The relentless unabated  
15 destruction of our natural water resources by the  
16 mining industry has continued in the state of  
17 Illinois since 1895. Many folks have worked to stop  
18 the senseless destruction. Big coal has reined  
19 supreme in Southern Illinois for too many years.  
20 Laws were enacted at the state and federal levels to  
21 mitigate pollution and destruction of hundreds of  
22 thousands of acres of farmland, wood land, lakes,  
23 rivers and streams. Wildlife has suffered along with  
24 their human counterparts as they were relentlessly  
25 driven from the land. Water is a gift. It is

1 essential to all forms of life on earth. Without  
2 clean, unpolluted water life would cease to exist.  
3 Millions of taxpayer dollars have and will be spent  
4 to correct the pollution created by mining operations  
5 across the United States. Southern Illinois is a  
6 leader in this pollution due to the high sulfur  
7 content of coal deposits that have been removed,  
8 often without care or thought of the pollution it  
9 caused and left behind. Much thought is given to the  
10 active phase of the mining operation, yet the vast  
11 majority of pollution occurs years after the mining  
12 operation has ceased.

13                   Pyrite takes time to decompose.  
14 The decomposition of pyrite creates sulfuric acid,  
15 which, in turn, dissolves heavy metals that then  
16 escape eventually into the water supply.

17                   The communities of Rocky Branch  
18 and Cottage Grove has suffered long enough. The  
19 water table has been polluted in many areas. Streams  
20 that once supported healthy aquatic life are dead.  
21 Others are struggling. Farmland has been sterilized  
22 by the pollution and acid runoff caused by the mining  
23 operations. Human suffering has also plagued the  
24 area in the form of polluted water wells and  
25 cisterns. The constant blasting by the mining



1 operations have fractured the underground formations,  
2 allowing acid water and dissolved heavy metals to  
3 enter formally pristine waters. The continued mining  
4 of the area will cause more loss of habitat by the  
5 removal of miles of streams, ponds and lakes favored  
6 by the local mammals, birds and aquatic life.

7 Building new lakes, ponds and ditches or streams will  
8 not have an immediate benefit to the local ecosystem.  
9 Ecosystems take years to evolve. Try building a new  
10 pond or a lake. It will take years before the water  
11 will contain a diverse aquatic ecosystem. Trees take  
12 many years to grow to provide shade. Streams feeding  
13 into the water will require seeding, otherwise the  
14 body of water will fill with sedimentation and  
15 pollution. Pollution from the mine areas will  
16 eventually enter other waters. We will not know how  
17 adversely the water will be impacted by the pollution  
18 levels of this activity.

19 Peabody has not been a good  
20 neighbor. Their practices are questionable at times.  
21 The huge gob pile located north and east of  
22 Southeastern Illinois Junior College has large washes  
23 and gullies down the side. Waters runs off this pile  
24 of waste each and every time rainfall occurs. There  
25 are no apparent control measures visible. Water in

1 the ditches surrounding the area contains this runoff  
2 water. We have a right to expect unpolluted water to  
3 drink. Fishing and recreation are big in this  
4 community. It is becoming more and more difficult to  
5 find clean water. I know that the wildlife and birds  
6 share the same frustrations.

7 Peabody's new lakes and ponds  
8 will never be visited by members of the community.  
9 No trespassing signs will be more abundant than the  
10 wildlife that will eventually repopulate the area.

11 HEARING OFFICER STUDER: We're at your  
12 time limit so you need to --

13 WITNESS: Okay. I have like 30  
14 seconds here.

15 Okay. We are stewards of the  
16 land. Peabody claims to be a good steward, but yet  
17 they pump their used motor oil and other products  
18 onto the land. Okay? This eventually will end up in  
19 the water table. What other chemicals and pollutants  
20 are routinely dumped that the public is not made  
21 aware of?

22 Lastly, the U.S. Government once  
23 thought DDT to be a miracle. Time proved otherwise.  
24 What will Peabody bring upon us from water pollution  
25 that will surface in future years?

1                   And I would like to submit a copy  
2 of this for the record. There are other comments on  
3 there.

4                   HEARING OFFICER STUDER: Thank you.  
5 Jennifer Dumbris.

6                   MS. DUMBRIS: My name is Jennifer  
7 Dumbris.

8                   HEARING OFFICER STUDER: She will she  
9 be followed by Tabitha Tripp. I apologize.

10                  MS. DUMBRIS: Jennifer Dumbris,  
11 D-U-M-B-R-I-S. If you would go ahead and submit what  
12 I wrote the first time, I would be happy. And could  
13 I ask a question?

14                  HEARING OFFICER STUDER: Sure.

15                  MS. DUMBRIS: I want to know why and  
16 what made the decision for them to put a settlement  
17 pond behind our property?

18                  HEARING OFFICER STUDER: You're asking  
19 a question as to why the permit applicant did  
20 something and it really deals with the NPDES permit.

21                  MS. DUMBRIS: Can it be guaranteed  
22 that it will never harm our pond?

23                  HEARING OFFICER STUDER: We need to  
24 have the NPDES staff address that issue and they were  
25 at the NPDES hearing, not at this one, so we'll have

1 to have that question be carried over into the NPDES  
2 permit. The cleanest way to do that is really to  
3 submit that question to us in writing and we'll  
4 provide a response to you in the responsiveness  
5 summary.

6 MS. DUMBRIS: All right. Thank you.  
7 (The following was taken from the comments supplied  
8 by Jennifer Dumbris in the NPDES hearing and inserted  
9 into the record by the reporter.)

10 MS. DUMBRIS: My name is Jennifer  
11 Dumbris, D-U-M-B-R-I-S. I am a suffering Rocky  
12 Branch resident.

13 The mission of the Illinois  
14 Environmental Protection Agency Bureau of Water is to  
15 ensure that Illinois rivers, streams and lakes will  
16 support all uses for which they are designated,  
17 including protection of aquatic life, recreation and  
18 drinking water supplies, ensure that every Illinois  
19 public water system will provide water that is  
20 consistently safe to drink, protect Illinois  
21 groundwater resources for designated drinking water  
22 and other beneficial uses. These are not my words.  
23 This is your mission statement on the IEPA website.  
24 This is the job you agreed to take and uphold. This  
25 is the job we, as citizens of Illinois, count on you

1 to uphold with integrity and honesty, but we can't do  
2 that.

3                   We have to count on ourselves to  
4 protect our Constitutional right of well-being. We  
5 have to test our waters. We have to watchdog our  
6 land and homes. We have to sit in the middle of  
7 explosions, breathing silica and watching you go into  
8 our water supply, on our agriculture and into our  
9 homes, watching the very foundations of our homes  
10 crack after explosions and being told the proof of  
11 burden lies on us.

12                   So we at Rocky Branch as a community,  
13 as a citizen of Illinois, have made a decision. We  
14 are the ones to decide what happens to us. Not  
15 Peabody. Not bought out state legislators. Not  
16 bought out local representatives. Not corrupted  
17 state organizations. Not CO's. Not the so-called  
18 scientific experts. We the people and we the  
19 community have the fundamental right to decide our  
20 future and because we believe in a community's right  
21 to self-determination and self-governance, we will  
22 work every avenue possible to protect the civil  
23 rights of our community. Thank you.

24 (End of inserted comments.)

25                   HEARING OFFICER STUDER: Thank you.

1 Tabitha Tripp, did you want to comment?

2 MS. TRIPP: I'm going to submit  
3 online.

4 HEARING OFFICER STUDER: Okay. All  
5 right. Traci Barkley is next and she'll be followed  
6 by Alan Porter. For the record, the person that will  
7 submit online, the last name is T-R-I-P-P. Go ahead.

8 MS. BARKLEY: Good evening. My name  
9 is Traci, T-R-A-C-I, Barkley, B-A-R-K-L-E-Y. Thank  
10 you for holding this public hearing this evening  
11 allowing folks to bring information to light about  
12 these proposed permits. I'm going to cut to the  
13 chase, since I always run out of time. I just want  
14 to say that our members are here to support Rocky  
15 Branch. We're asking the panel to deny the 401  
16 certification for this proposed permit for a number  
17 of reasons.

18 One, this mine operation will  
19 destroy several miles of streams and several acres of  
20 wetlands impacting drainage, flooding, water supply,  
21 water quality and aquatic life and I would like to  
22 know what alternatives to mining through these water  
23 resources were considered?

24 HEARING OFFICER STUDER: Are you able  
25 to answer that, Brian?

1                   MR. KOCH: I believe in the public  
2 notice the degradation assessment was included. If  
3 so, that includes all of the alternatives that were  
4 listed. I presume there's alternative mining  
5 techniques. Looking at it now I see auger mining,  
6 pod mining. Underground mining was evaluated. I  
7 didn't work on this project, so I'm not familiar with  
8 what they proposed in the application, but it appears  
9 that they did provide us with some alternatives and  
10 that was included in the anti-degradation assessment.

11                   MS. BARKLEY: I would like to submit  
12 that I think the only reason those alternatives were  
13 not actually given full consideration is because  
14 there is coal underlaying these streams and there  
15 would be a loss of profit for Peabody to go around  
16 the streams, but in reality for the folks living in  
17 the community the streams serve many different  
18 purposes and values that are not recognized in your  
19 anti-degradation regulations. So I would like for  
20 some of the comments that are brought forward tonight  
21 to be considered not just under your rules and  
22 regulations in terms of clean water, but also for the  
23 economic benefits, the livelihood these folks rely on  
24 these streams and water bodies for.

25                   I would also like to ask what

1 sort of coordination occurs between your agency, the  
2 401 section, and the Department of Natural Resources  
3 Office of Mines and Minerals? Because right now they  
4 have a mine permit application before them and are  
5 considering the stream buffer rule, which is required  
6 under SAMACRA and Peabody has asked for an exemption  
7 from that stream body rule and it seems like that's  
8 only relevant if the 401 certification is denied. I  
9 just wonder timeline-wise, you know, are you  
10 coordinating with Army Corps of Engineers, DNR, OMM  
11 to talk about your decision and how that might impact  
12 their decision?

13 MR. FAUGHT: We definitely coordinated  
14 a lot with the US Army Corps of Engineers, since we  
15 are working on their permit. I guess to be honest we  
16 do less so with DNR because the NPDES group they  
17 are -- they deal a lot more with the OMM, DNR  
18 permits. We do work with Larry's group obviously on  
19 the NPDES side. So I guess there's not a whole lot  
20 of coordination with DNR usually, but it sort of  
21 comes through Larry's group.

22 MS. BARKLEY: One of the things that  
23 Joyce Blumenshine brought forward was the  
24 modifications that are being asked of Peabody by DNR  
25 and some of the things that were brought up were the



1 fact that they didn't identify seeps in springs, even  
2 though local residents have said they have spring fed  
3 ponds or they have seeps on their property. And I  
4 wonder if the 401 section of IEPA has gotten any  
5 information from Peabody or anyone from your agency  
6 has done a survey on your own of groundwater seeps  
7 and springs knowing that the Clean Water Act does  
8 require you to detect those?

9 MR. FAUGHT: I guess we can get back  
10 to you on responsive summary. Have to coordinate  
11 with our groundwater folks. But we do basically  
12 assess the -- our anti-degradation assessment we take  
13 an assessment of the water to be impacted to the best  
14 of our knowledge. But we will get back to you in the  
15 responsive summary on that question.

16 MS. BARKLEY: Okay. Then I wanted to  
17 submit a couple of or highlight a couple of comments  
18 from the Army Corps of Engineers on this permit  
19 application. One, Peabody regrated water sheds will  
20 generally resemble the pre-mining areas. Army Corps  
21 of Engineers says it has been our experience that is  
22 not necessarily true. They also point to when  
23 headwater stream system has perhaps ten to 15 smaller  
24 femoral springs and contain first, second streams,  
25 blah, blah, blah, it's difficult at best to defend

1 our decision it will be put back to natural stream  
2 designs. There's a lot of criticism of the permit  
3 application for 401 permit on seemingly good ideas,  
4 but not a lot of supporting those plans. And they  
5 also criticize Peabody saying other mining companies  
6 are able to show what the landscape will look like  
7 following the mining. Peabody has not submitted a  
8 landscape plan on what the stream design should look  
9 like. So I really question how IEPA can consider  
10 moving forward on the stream certification when  
11 materials have been lacking and found lacking by Army  
12 Corps of Engineers, also by Dr. Matthew Wild, a  
13 geology professor at Southern Illinois University;  
14 John Tyner, a professional geologist, hydrologist,  
15 engineer. There are a number of experts coming  
16 forward saying the materials that have been submitted  
17 in support of the 404 application are significantly  
18 lacking in detail and I really question the ability  
19 to move forward with a certification that is  
20 scientifically and supported -- and also in line with  
21 regulations --

22 HEARING OFFICER STUDER: We've gone  
23 the time limit, too.

24 MS. BARKLEY: Thank you.

25 HEARING OFFICER STUDER: Thank you.

1 Alan Porter will be followed by Don Dumbris.

2 MR. PORTER: I've still got the same  
3 last name. I spoke a while ago and asked some  
4 questions and you know I've stood here tonight and  
5 sat here at many other meetings and I've listened to  
6 both sides of this story and there's always two sides  
7 to a story, but, you know, the thing that really --  
8 the whole thing that bothers me more than anything  
9 else is I'm 75 years old and I have lived in the  
10 neighborhood all of that -- well, except when I was  
11 ten years old I moved there and, you know, we hear a  
12 lot about streams and all of this and Peabody done  
13 this and we've changed notions here from side to  
14 side, but, you know, the thing that concerns me, and  
15 I want you to bear with me, is there's been very  
16 little mentioned about the other side, the true side  
17 of the whole thing. You know, it's all we talk about  
18 the economy and all of this, but I want to appeal to  
19 you tonight from a human side of this.

20 You know, each one of us,  
21 according to the scripture, has been given  
22 inalienable rights by our creator. We are all  
23 entitled to our opinion and our beliefs. And I thank  
24 God we live in a nation where we're still able to do  
25 that. You know tonight if we lay all of these things

1   aside, the thing that bothers me the most is what  
2   we're going to leave for the next generation.  You  
3   know, I'm 75 years old and I don't need Peabody's  
4   money.  I've made it this far and I'll make it the  
5   rest of the way.  And, you know, I see these young  
6   men and they work and I -- a man that don't work,  
7   they don't eat.  But let's consider something that is  
8   far more important than -- as I see it, than our  
9   fish, our wildlife.  These things have a way God  
10   created to where they'll replenish themselves.  You  
11   know, the only creature that God made that can  
12   destroy themself is man.  And if we don't take into  
13   consideration the affects it has upon our rights as  
14   human beings.  And I found this out, you know, I have  
15   a right to my property and all of this and it always  
16   bothers me when somebody, you know, challenges that.  
17   And, you know, this country was created in a way that  
18   no other country has been created and it's been given  
19   some things that we all tonight can sit here and  
20   enjoy.  My good friend, he has his opinion, you know,  
21   and I farm and we are under regulation just as much  
22   as the coal mines.  I can tell you all of them, but  
23   that's not my point.  My point is that as a human  
24   being I have rights and if you come in to infringe  
25   upon those rights there's laws that says that that's

1 illegal. So I would like to leave something with you  
2 tonight and all of us and let's consider this before  
3 we totally destroy the whole thing. You know, if  
4 we're not conscious of what we're doing, whether it's  
5 a farmer or a coal miner --

6 HEARING OFFICER STUDER: Let's keep  
7 the comments addressed to the hearing panel.

8 MR. PORTER: Okay. I will. I'm not  
9 used to speaking with people at my back. But, you  
10 know, if we don't consider the human side of this  
11 we're going to miss the whole thing. And I fully  
12 respect the men that work with Peabody. I respect  
13 Mr. Keller. I differ with him greatly, but I still  
14 can shake hands with him. But, you know, let me read  
15 you something --

16 HEARING OFFICER STUDER: You've got  
17 about 30 seconds.

18 MR. PORTER: In this country we have a  
19 thing called civil rights. Let me read them to you.  
20 It's those rights guaranteed to the individual by the  
21 13<sup>th</sup> and 14<sup>th</sup> amendment to the Constitution of  
22 the United States and by certain other acts of  
23 Congress especially exemption from involuntary  
24 servitude and equal treatment of all people without  
25 respect -- with due respect to the enjoyment of life

1 and liberty and property and to the very protection  
2 of the law. So I claim those civil rights tonight.  
3 And I believe I have a right, if somebody infringes  
4 upon those, and tonight I appeal to you that there's  
5 more involved than the economy and all of these other  
6 things, even the environment. The greatest  
7 environment we need to protect is human life. And we  
8 have -- in this country now we have a very slim view  
9 of human life and we can see it all over the place.  
10 So I appeal not only to this side, but to this side  
11 and to you. Let's consider there's more to it than  
12 the water down the stream. And all of these things  
13 one of these days is all going to pass away anyway,  
14 but we've been given stewards of it. So let's  
15 consider the fact that we are human beings and we  
16 have rights. Thank you.

17 HEARING OFFICER STUDER: Thank you,  
18 Mr. Porter. Don Dumbris? I think I'm mispronouncing  
19 that last name.

20 MR. DUMBRIS: I'll pass.

21 HEARING OFFICER STUDER: Donald Karns.  
22 He'll be followed by Rita Karns.

23 MR. KARNS: I'm Donald Karns. Last  
24 name K-A-R-N-S. I was born and raised in Rocky  
25 Branch. 1936 was born. I can tell you a lot of

1 history about Rocky Branch. I waded in the ditch  
2 when I went to grade school, right beside of it. It  
3 empties into Hoop-Pole and about 3 miles that carries  
4 it into Middle Fork or Saline River, which is  
5 25 miles from the Ohio. You go down the Saline River  
6 any time and scoop up and what you will come up with  
7 is coal cuttings in that river. I remember the time  
8 we would go down when Peabody had Will Scarlet Mine  
9 going and they say the fish is coming down. We would  
10 go down and catch the fish ahead of the water. They  
11 flush them out of Saline River. And Hoop-Pole there  
12 runs through my farm, where I was born and raised. I  
13 used to go down there in 1948, '47 and I could catch  
14 bluegill and catfish out of that ditch. A mouse will  
15 hardly drink out of it today. That's coming from  
16 their mines on the north side of 13. That's where  
17 the water comes in first. That's about a half mile  
18 north of Rocky Branch.

19                   And they claim unnamed  
20 tributaries. If they look at the bridges where the  
21 road is crossing they can get it -- I showed you a  
22 picture of the plat that's put in them bridges that  
23 tells when it was built and the names of the ditch.  
24 And South Fork over there is still polluted from  
25 Wills Scarlet Peabody's mine and the fish don't live

1 in it. And I know that river and I used to fish  
2 commercial, had a commercial license, until they  
3 ruined it. And you could go up there and that water  
4 is just as green and pure as it can be because of the  
5 sulfur and the coal that settles it out. And now  
6 River King or -- I believe that's what they call it  
7 down there, Franks' mine south of town, they are  
8 pumping in -- very little water is discharged in dry  
9 weather. There's no need to discharge water. When  
10 we get these big rains, they have to discharge. I  
11 understand that. But their settlement ponds runs  
12 over and here they come across the land. These  
13 ditches don't contain that water. They go  
14 everywhere. Rocky Branch is just a little stream.  
15 It can't carry that water. And Hoop-Pole definitely  
16 can't carry it. And I showed you pictures there and  
17 Hoop-Pole is under that water that I showed you.

18 I hope that -- I've got nothing  
19 against the mines and these people, but they are not  
20 good neighbors. They are the worst you can have.  
21 These people wouldn't all be here tonight if they  
22 were good neighbors. And that's the way they are.  
23 They make you believe that sugar wouldn't melt in  
24 their mouth, but I can remember just not too long ago  
25 that they had 10,000 retirees, they tried to strip



1   them of their benefits.  Think about that, boys.  
2   You're working towards it.  And I thank you very  
3   much.

4                   HEARING OFFICER STUDER:  Thank you,  
5   Mr. Karns.  Rita Karns.

6                   MS. KARNs:  Pass.

7                   HEARING OFFICER STUDER:  Sabrina  
8   Harper.

9                   MS. HARPER:  I'll pass and submit  
10  online comments.

11                   HEARING OFFICER STUDER:  I'm sorry?

12                   MS. HARPER:  I said I'll pass oral  
13  comments tonight, but write online later.

14                   HEARING OFFICER STUDER:  Okay.  Joyce  
15  Blumenshine is next.  And Joyce will be followed by  
16  George Teegarden.

17                   MS. BLUMENSHINE:  Thank you.  Good  
18  evening.  My name is Joyce Blumenshine,  
19  B-L-U-M-E-N-S-H-I-N-E.  I am a volunteer with the  
20  Illinois chapter of the Sierra Club and I do want to  
21  thank the IEPA for your dedication and the hearings.  
22  We especially thank IEPA for your keeping the 401  
23  water quality certification to your state review.  It  
24  is so important that you are putting your eyes and  
25  your knowledge of this state on the 401 process and

1 we are very appreciative of that. Comments and  
2 questions. And I'll just start with concerns also  
3 about the anti-degradation statement, please.

4 I do have a letter here, which  
5 I'll present as an exhibit. It is from the United  
6 States Department of Interior, U.S. Fish and Wildlife  
7 Service dated November 12, 2013, to IDNR. It talks  
8 about some things that I would like to ask if these  
9 things were included in any considerations of the  
10 value of the site for anti-degradation. And one of  
11 those issues is the over 200 acres -- 206.8 acres of  
12 forest on this site. Is any value given to the  
13 oxygen or the land holding qualities of forest that  
14 exist currently on this site?

15 HEARING OFFICER STUDER: Is that  
16 something you can answer or is that something --

17 MR. KOCH: Yeah. Again, I didn't  
18 write the anti-degradation assessment. We do consult  
19 with IDNR. We know IDNR works with Fish and  
20 Wildlife. In this -- in this instance I don't think  
21 IDNR had any comments, any formal comments, at least  
22 not through the EcoCAT consultation. I would have to  
23 have Thad or Eric go through the file and see if  
24 there were any comments that were received by us.  
25 I'm not sure if Eric had seen any comments from Fish

1 and Wildlife regarding the forested areas, but  
2 basically that EcoCAT consultation includes our  
3 consultation with IDNR and in some cases Fish and  
4 Wildlife will also write letters and review those as  
5 well, include those.

6 MS. BLUMENSHINE: Thank you. Because  
7 in addition to concerns on the forest there is a  
8 significant written part here about concerns for  
9 potentially endangered the Indiana bat habitat. I  
10 would like to read a brief comment because Indiana  
11 bats are an important part of our echo system related  
12 to water, trees, roots hold the ground. It affects  
13 the quality of the water and bats are part of the  
14 whole cycle of life. And there is concern here that  
15 there could be loss of habitat for bats. And there  
16 are -- I counted five -- six, I'm sorry, six areas  
17 here where the U.S. Fish and Wildlife Service says  
18 the service does not concur that the measures  
19 proposed by this mine have been sufficiently  
20 addressed regarding that replanting of the woods will  
21 serve as travel corridors, that the stream buffer  
22 zones will be restored in the permit area and they  
23 are very concerned that it is unclear from the  
24 reclamation plan as to whether this measure is being  
25 addressed. And that is regarding the restored stream

1 buffer zone. So I believe this letter has great  
2 pertinence for the 401 concerns. For sediment that  
3 will not -- will be continuing and not be contained  
4 from this site.

5                   The other concerns for the  
6 anti-degradation is there anything that the mine has  
7 to do to mitigate for loss of habitat, for loss of  
8 plants and animals during the mining?

9                   MR. KOCH: All of the mitigation  
10 regarding the 401 as proposed is done after the area  
11 has been mined. As soon as an area has been mined,  
12 reclamation begins immediately and they restore the  
13 soiled area. They seed the soil. That's the initial  
14 stages of it. Then they'll proceed with the actual  
15 mitigation plan. Depends on what the plan is in  
16 restoring in that area. But I don't -- I'm unaware  
17 of any sort of mitigation regarding the removal of  
18 plants and animals during the actual mining stage.

19                   MS. BLUMENSHINE: You know, I  
20 respectfully submit that the whole process misses the  
21 point that habitat is lost, there is degradation and  
22 yet these mines are continuing with what is called  
23 their best practices, like, you know, the things  
24 they've been doing for a hundred years. The sediment  
25 ponds and destroying the topsoil of the land and then

1 waiting and trying to put things back together. And  
2 I do want to ask IEPA after mitigation is done for  
3 such a mine do the streams function? Do you go back  
4 and assess the sediment control and the discharges  
5 after the mine is done with reclamation?

6 HEARING OFFICER STUDER: We're  
7 approaching the time limit here, too, so --

8 MS. BLUMENSHINE: Okay.

9 MR. FAUGHT: In most cases we do not,  
10 but we do have monitoring requirements where they  
11 send in reports that show the -- if the mitigation is  
12 succeeding or not and the Army Corps of Engineers,  
13 they do a lot more of actual field inspections and  
14 look at the mitigation in person. It is their  
15 permit, so they -- they do that and then we do  
16 written reports and monitoring reports.

17 MS. BLUMENSHINE: Thank you. In  
18 closing I would just like to question some of the  
19 figures that I wrote when I looked on the U.S. -- I'm  
20 sorry, energy information website. It said that  
21 contrary to estimates of 45 percent of the U.S.  
22 energy is coal, it's now down to 37 percent. I think  
23 there's a big change in our society. The true costs  
24 of coal are not being considered here.

25 And the other issue is there's a

1 question about this mine. Coal seams are only a foot  
2 thick in some areas and there could be concern that  
3 some of the coal is of poor quality or will be  
4 unsuitable to mine and will be dumped back in, which  
5 will create more sediment and more pollution. So  
6 this is a short amount of mining for a long-term  
7 deficit and harm to this area. Please deny this  
8 certification. Thank you.

9 HEARING OFFICER STUDER: Thank you,  
10 Joyce. I will enter this as an exhibit. Is it  
11 George Teegarden? And he will be followed by Roberta  
12 Matthews.

13 MR. TEEGARDEN: George Teegarden,  
14 T-E-E-G-A-R-D-E-N. Both of my comments I would just  
15 transfer from the earlier period to this, but I do  
16 want to add a few things.

17 HEARING OFFICER STUDER: So you want  
18 your NPDES comments put into this record?

19 MR. TEEGARDEN: Yes.

20 (The following comments of George Teegarden were  
21 taken from the NPDES Hearing and inserted into the  
22 record by the reporter.)

23 MR. TEEGARDEN: My name is George  
24 Teegarden. T, as in Tom, E-E-G-A-R-D-E-N. I've  
25 worked in the coal fields here in Gallatin County and

1 Saline County for 50 plus years and it's all been  
2 surface mine. And I look at the panel here  
3 representing the EPA state of Illinois, we also have  
4 Department of Mines and Minerals, other different  
5 agencies governing the mining industry and when  
6 Peabody applied for a permit this was all drew up  
7 by engineers with Peabody Coal Company in compliance  
8 with all of the state of Illinois rules and  
9 regulations concerning mining. Being in mining that  
10 long, I've been in reclamation for years, and I know  
11 Peabody does a good job. And I've heard a lot of  
12 talk about this dirty water. I go to St. Louis  
13 frequently and I go up Interstate 64. There's no  
14 where a surface mine is in that area, within, 50, 60  
15 miles or even farther. And I come to them little  
16 streams and creeks and rivers, I see them polluted  
17 with dirty water, which Sierra Club and some of these  
18 claim that all comes from the coal company. There's  
19 no coal company up there. Where is that dirty water  
20 coming from? It's coming from the fields that have  
21 been cultivated for corn or wheat or other products.  
22 Chemicals are put on these fields. There's nothing  
23 to keep them there in that field. If it's cultivated  
24 and it comes a hard rain, it's going right down the  
25 stream. Going on about the farmers, because the

1 farmers don't have to build the ponds to catch all of  
2 the runoff and all of this water that comes off of  
3 the coal company property is in silting ponds and  
4 silting pond to silting pond and then it is monitored  
5 and they have a track record of a good record water  
6 coming off the property. But all of a sudden now --  
7 I've been working for this coal company right here in  
8 this area now 16 years as of this last January 2 and  
9 most of the procedures in the permit has drawed some  
10 conflict. Until this one we run into an area of  
11 Rocky Branch. Those little creeks and things aren't  
12 going to stay the same forever. Things changes. You  
13 can look around in any industry. It changes. And I  
14 know people are concerned for their homes. I would  
15 be concerned for mine. I live within about 400 feet  
16 a long road called Liberty Road here in Harrisburg,  
17 Illinois, and I was blasting supervisor for Sahara  
18 Coal Company. They mined that coal. My house didn't  
19 shake down. It was an old house. I kept it  
20 remodeled. Kept working on it. Doing what I could.  
21 And every time you blast, you have got seismographs  
22 set up for air blast, ground vibration and these have  
23 to be monitored. They have to be kept. The laws of  
24 the state has made it very clear for what you can  
25 blast for. Mine keeps that within their limits.



1 Also dust. This is my last statement. They do the  
2 best they can. No one says anything when you go down  
3 Route 13 when they are combining corn and beans,  
4 better slow down because the dust is coming across  
5 the road. Nobody tells farmers to put a sprinkling  
6 system on your combine. Too much dust. But we have  
7 to work together here. This is our livelihood for  
8 over six, 700 people. This is where we make our  
9 living, raise our families. This morning 200 people  
10 got up at 4, 5 o'clock, drove 20, 30, 40, 50, hundred  
11 to 150, two or three hours to work, some of them.  
12 Why? There's no other employment around. This is it  
13 in this area. And I beg of you, give us this permit  
14 so we can keep our employment. Thank you.

15 (End of inserted comments.)

16 MR. TEEGARDEN: The IEPA, Department  
17 of Natural Resources, Mines and Minerals, you all  
18 have inspectors. They come out to these coal mines  
19 and they check these mines regularly. When they find  
20 a violation, they write it up. We can go back to the  
21 records on Peabody Coal Company out here at Cottage  
22 Grove. Very few, and I don't know of any on mine  
23 reclamation that have been violated. Someone made  
24 the statement that just a few inches of topsoil. If  
25 you see a 789 truck coming up the road there with

1 200-ton of dirt, he backs up and dumps it, almost as  
2 high as this ceiling right here, and they don't pick  
3 that up and move it. They level it off. That's your  
4 subsoil. It could run anywhere -- the law requires  
5 40 inches. They'll put 7 to 8 feet on all of it.  
6 The law requires 8 inches of topsoil. When 8 inches  
7 of topsoil is put on the Department of Natural  
8 Resources sends inspectors out. They dig to make  
9 sure that the proper amount of subsoil, the topsoil,  
10 is put on. They'll also check the drainage ditches,  
11 the silting ponds. They have got to be in compliance  
12 with the law that you people have set down. And I've  
13 worked for this company now for 16 years. I don't  
14 see them breaking the laws or getting in the habit of  
15 breaking the law to mine coal in this new permit and  
16 I ask you to permit it to my company. Thank you.

17 HEARING OFFICER STUDER: Thank you,  
18 Mr. Matthews. I'm sorry, Mr. Matthews is next. It's  
19 not Mr. It's Roberta Matthews is next. Boy, I'm all  
20 mixed up here. Roberta Matthews? Okay. We'll move  
21 on. Lindy Bowman.

22 MS. BOWMAN: Again, just press.

23 HEARING OFFICER STUDER: Pass?

24 MS. BOWMAN: Pass.

25 HEARING OFFICER STUDER: Chris Karns.

1 Chris Karns? Okay. Cindy Skurkrud. She'll be  
2 followed by Mary Rivera, if she's here.

3 MS. SKRUKRUD: Again, for the record,  
4 my name is Cindy Skrukud, S-K-R-U-K-R-U-D. I'm the  
5 clean water advocate for the Illinois chapter of the  
6 Sierra Club and I'm here tonight to support the  
7 justice for Rocky Branch citizens in their efforts to  
8 protect their land and water resources from Peabody's  
9 mining desire to strip mine coal in their community.

10 I have a number of questions and  
11 comments to make on the anti-degradation assessment  
12 fact sheet for the 401 certification. At the bottom  
13 of page one there's a discussion of the sampling that  
14 Peabody Mining conducted and it says sampling was  
15 conducted during a time of high stream flows because  
16 it was raining the preceding week and that collection  
17 processing and analysis were conducted following  
18 agency procedures as best as possible. So my  
19 question is would IEPA typically utilize biological  
20 samples that are taken during a high stream flow?

21 MR. KOCH: I guess it depends on how  
22 high the stream flow actually is. Our stream  
23 biologists can only assess a stream when it's  
24 wadeable. All of our assessments are done in  
25 wadeable streams. So either the stream is too dry to

1 sample, which is often the case in small unnamed  
2 tributaries, or you're in a larger stream that is  
3 wadeable, but in certain conditions it becomes  
4 unwadeable. So given the size of these streams and  
5 looking at the pictures that were provided with  
6 the -- the NPDES portion of the permit, which I  
7 worked on, I didn't see the conditions as being too  
8 high to conduct these samplings. And in addition to  
9 that I believe conditions actually were beneficial  
10 given that a lot of interest regarding the stream bio  
11 surveys is in regards to aquatic life and under  
12 drought conditions you're not going to find much in  
13 these streams. So given that the flow was high we  
14 did see some fish species in a few of those waters.  
15 So that was a good sign that those waters are  
16 connected to downstream waters. But, again, I do  
17 think that the streams were acceptable for being  
18 surveyed.

19 MS. SKRUKRUD: Okay. And then on the  
20 top of page two there's a discussion of the value for  
21 the macroinvertebrate IBI and the fish IBI that are  
22 indicative of a stream that's fully supportive of  
23 aquatic life use. And my question is that criteria  
24 for downstream larger streams or is that your -- is  
25 that a criteria for a headwater stream, such as those

1 found here?

2 MR. KOCH: In looking at the -- the  
3 text here in the anti-degradation assessment, I'm not  
4 sure if the results found from that survey would  
5 consider that stream as being fully supportive of  
6 aquatic life use. The threshold is greater than 41.8  
7 for macroinvertebrates and for fish it's 41.

8 MS. SKRUKRUD: So are those the  
9 numbers for IEPA's protocol for a wadeable stream?

10 MR. KOCH: That's correct.

11 MS. SKRUKRUD: Again, seems to me  
12 there should be a different protocol for headwater  
13 streams, because you wouldn't expect them to have the  
14 same abundance of aquatic life of --

15 MR. KOCH: Possibly.

16 MS. SKRUKRUD: My next question is  
17 about the -- on page three, the section fate and  
18 effects of parameters proposed for increased loading  
19 and as you recall to be granted a 404 permit the  
20 applicant is first to consider how can they avoid  
21 impacts to streams and wetlands, then minimize those  
22 impacts and then lastly mitigate for any remaining  
23 impacts. So at the bottom of that paragraph it talks  
24 about that avoidance area of about 28 acres was  
25 identified. My question is were there other areas

1 evaluated as potential avoidance areas?

2 MR. KOCH: I'm unaware of that. Eric  
3 will have to get back to you on that once he has a  
4 chance to look at the questions we receive tonight.  
5 But, again, I didn't write this anti-degradation  
6 assessment.

7 MS. SKRUKRUD: Okay. So then my next  
8 questions are about the mitigation and that's  
9 described at the top of that permit and there's a  
10 couple of sentences there that I'll just read. They  
11 say aquatic -- they are talking about their  
12 mitigation. They say aquatic communities, at least  
13 as diverse as currently inhabiting streams will  
14 return on reclamation. And then there's a second  
15 sentence says, The streams restored will be  
16 constructed to "as good or better quality than  
17 previously existed." What's the basis for those  
18 statements? Is that IEPA speaking or is that Peabody  
19 speaking there?

20 MR. KOCH: I'm not sure what that text  
21 refers to, but in my working knowledge of the 401  
22 program I would think that refers to the physical  
23 nature of the stream that is restored in regards to  
24 the stability of the stream channel, whether or not  
25 they put in the enhanced features within the stream

1 channel. I think that also takes into consideration  
2 the buffer on each side of the stream. I think those  
3 are the items that the stream is assessed against  
4 during the monitoring period.

5 MS. SKRUKRUD: Okay. And the next  
6 thing I want to read is from a document that I know  
7 is in the IEPA's 401 certification file, because it  
8 was cc'd to Thad and it is a letter from Peabody  
9 Mining to the Army Corps of Engineers dated July 3,  
10 2013. And in it Peabody is responding to issues that  
11 a number of organizations raised. And Sierra Club  
12 and Prairie Rivers had -- had noted that the  
13 mitigation plan did not fully compensate for the  
14 ideological functions that will be lost by the  
15 streams destroyed and Peabody in their answers says  
16 femoral streams, while proposed to be constructed at  
17 one-half the existing length, that means that they  
18 are going to destroy, you know, for example,  
19 2,000 feet of stream and only replace it with a  
20 thousand feet of stream, will be constructed with  
21 enhancements that will provide a functional lift  
22 above the present conditions. The functional lifts  
23 will be comprised, but not limited to, placing,  
24 repairing buffers consisting of hard mass tree  
25 species. And I just question how can Peabody remove

1 these streams that we find now in a mature forest,  
2 replace it with a 25-foot width buffer planted with  
3 we know what will be very young trees and then call  
4 that an ecological lift in function beyond what is  
5 there? I want to -- I guess that's a rhetorical  
6 question.

7 I wanted to also note that U.S.  
8 Fish and Wildlife service recommended that mitigation  
9 should be done at a one to one ratio instead of a 0.5  
10 to one ratio. The USEPA has stated that more  
11 mitigation is needed. This gets to the issue that  
12 Joyce Blumenshine raised about temporal losses. The  
13 USEPA said that the Corps must determine the  
14 appropriate amount of additional mitigation needed to  
15 offset the temporal loss until successful mitigation  
16 is achieved. The USEPA also said in addition  
17 cumulative impacts are significant and mitigation for  
18 this project needs to account for these impacts on  
19 the water shed. So, you know, Fish and Wildlife  
20 Service, USEPA are both saying the mitigation is  
21 insufficient.

22 In addition, hydrologist John  
23 Tyner, who had prepared expert testimony for Sierra  
24 Club and Prairie Rivers Network described his  
25 reasoning that the manmade streams proposed by



1 Peabody Mining will not hold water.

2                   So I ask you to look back at are  
3 we truly avoiding minimizing and then mitigating the  
4 loss of function? I think I just have two more  
5 things.

6                   On page -- on page three there's  
7 a section purpose and social and economic benefits of  
8 the proposed activity. The IEPA needs to also list  
9 the detriments of the proposed mining in the -- in  
10 this anti-degradation assessment. You need to  
11 consider both pros and cons to be able to evaluate  
12 the proposed mining impacts on the community at  
13 large, which is something you need to do before you  
14 certify the Army Corps permit, just as you need to do  
15 with regards to the NPDES permit.

16                   And then last on page four there  
17 is -- one of the alternatives considered is pod  
18 mining and there's a -- there's a paragraph about pod  
19 mining and my question is is -- is the language that  
20 we see here, is this a summary of what Peabody had to  
21 say about pod mining or is it their whole evaluation?  
22 Specifically I wondered if they gave actual costs,  
23 because they are claiming that the pod mining costs  
24 will be much higher than the mining through the  
25 streams that they plan.

1                   MR. KOCH: Again, Eric will have to  
2 get back to you in the responsiveness summary on  
3 that. I'm not quite sure if the text here on the pod  
4 mining paragraph is from Peabody or if that was  
5 something Eric put together. I'm sure there is more  
6 information. I would have to go back and check the  
7 application.

8                   MS. SKRUKRUD: Okay. Thank you.

9                   HEARING OFFICER STUDER: Thank you.  
10 Mary Rivera.

11                  AUDIENCE MEMBER: She's gone.

12                  HEARING OFFICER STUDER: Sam Stearns.

13                  MR. STEARNS: Please apply my comments  
14 from the previous hearing to this one and I request  
15 that the certification be denied.

16                  HEARING OFFICER STUDER: We will  
17 include the comments supplied in the previous hearing  
18 to this hearing.

19 (The following was taken from the comments supplied  
20 by Sam Stearns in the NPDES hearing and inserted into  
21 the record by the reporter.)

22                  MR. STEARNS: My name is Sam Stearns,  
23 S-T-E-A-R-N-S. I appreciate the opportunity to speak  
24 and ask at least one question.

25                  I'm the third generation of my family

1 who has worked in the coal mines. Both of my  
2 grandfathers came from Southern Illinois from Europe  
3 to mine coal. My father retired from the Sahara Coal  
4 Company. Many of my male relatives worked in the  
5 mines and I, myself, worked underground for Zeigler  
6 Coal. I grew up in Two Patch, a suburb of the old  
7 coal mining community of Ledford just outside of  
8 Harrisburg. Two Patch was named for the old No. 2  
9 coal mine which had operated there long before I was  
10 born. I grew up playing on old mine spoils and  
11 swimming in the strip pits in that area. My parents  
12 loved me. Had they known what we know now about the  
13 poison soil which is brought to the surface by strip  
14 mining, had they known about the chemicals leaching  
15 into those strip pits, they would never have let me  
16 play in those places. But they did out of honest  
17 ignorance and they simply did not know any better.

18           There are already too many acres of  
19 strip mined area in Saline and surrounding counties.  
20 Thousands of acres in this area are already spoiled  
21 and poisoned for innumerable years to come. Forever  
22 in terms of human existence. Once the topography and  
23 the hydrology of the land is changed, it is changed  
24 forever. The notion of strip mine reclamation is a  
25 fraud. It is simply putting makeup on a corpse.

1                   Now, I realize that periodically  
2 extractive industries like Peabody and government  
3 bureaucracies like the USDA and the IDNR will hold  
4 ceremonies where they slap each other on the backs  
5 and give each other plaques and awards and  
6 congratulate each other on how well they have  
7 reclaimed some small piece of land in those thousands  
8 of acres of strip mined land. But, I repeat,  
9 reclamation is a fraud. It is putting makeup on a  
10 corpse.

11                   Putting a few inches of topsoil back on  
12 top of many feet of poisoned substrate can produce  
13 some shallow-rooted crops for a few years as long as  
14 that layer of topsoil is treated with probiotics and  
15 fed fertilizers. But the soil structure and  
16 hydrology are changed forever and that land will  
17 never be able to support deep-rooted native trees and  
18 plants again.

19                   Citizens like me who have watched these  
20 coal wastelands for decades have little confidence in  
21 the state agencies which are charged with protecting  
22 us and our streams from the discharges of these  
23 polluting sacrifice zones. We know that agencies  
24 such as IEPA operate at the whim of politicians who  
25 are in the pocket of industry and are many times

1   staffed with corporate shills who put the interests  
2   of industry over the health of our citizens. My  
3   parents let me play in poisoned soil and swim in  
4   poisoned water out of benign, honest ignorance of the  
5   situation. Be we no longer have the luxury of  
6   pleading ignorance. Now we know better. That is why  
7   I ask you to deny this proposed permit for a Rocky  
8   Branch Mine. We now know that there is no way that  
9   the pollutants from the water and the soil of the  
10  strip mine can safely be discharged into Rocky Branch  
11  and other streams without harming the citizens of  
12  this state and beyond.

13               Now, earlier it was mentioned that you  
14  couldn't -- that the panel could not remember any  
15  strip mine permits that have been denied so I have  
16  another question, which is does the IEPA have the  
17  authority to refer a case to the Illinois Attorney  
18  General when permit violations are found and, if so,  
19  how many times has the EPA done so in the past?

20               HEARING OFFICER STUDER: We don't know  
21  the number offhand. The answer to your question is  
22  yes, we have that authority. There's a process  
23  that's outlined in the Environment Protection Act  
24  which requires us to send a written notice to a  
25  facility that's violating the permit. It's called a

1 Notice of Violation. When the facility receives that  
2 notice, then they have the opportunity to contact us  
3 for a meeting and there's a time limit on which they  
4 have to respond. After that, there's a next step,  
5 which is a notice of intent to pursue legal action,  
6 which would be the next step in the process. If that  
7 is not resolved through the Notice of Violation, then  
8 another written notice is sent out and the facility  
9 again has the opportunity to meet with the agency  
10 and, again, there are time limits that are imposed by  
11 the Environmental Protection Act. If it is not  
12 resolved, then the case can be referred to  
13 prosecutorial authorities or to the Attorney  
14 General's Office, to USEPA, to the -- I'll let the  
15 attorney say it.

16 MS. DIERS: It can actually go to the  
17 state's attorney as well. When we do refer those  
18 cases it's then the discretion of the state's  
19 attorney, Illinois Attorney General's Office, USEPA,  
20 they are going to pursue. So once we get to that  
21 step, then it's in their court, you should say, and  
22 they would decide how to proceed with those cases.  
23 We do a lot of referrals through the years, but I  
24 can't give you a number on that right now.

25 MR. STEARNS: So is it less than

1 three, less than six, less than ten?

2 MS. DIERS: It would be definitely  
3 more than six, more than ten, but it would be based  
4 on given years. You have to think there's land  
5 violations, air violations, water violations. So it  
6 can be a lot of different bureaus involved. I can't  
7 give you a number offhand.

8 MR. STEARNS: You think more than ten.  
9 Have ever referred to the Illinois Attorney General's  
10 Office?

11 MS. DIERS: If you look at land, air  
12 and water altogether. If you're looking at --

13 MR. STEARNS: I'm sorry, ma'am. Strip  
14 mine permits.

15 MS. DIERS: That I couldn't tell you.  
16 I know there's several, but, again, I can't give you  
17 an approximate number.

18 MR. STEARNS: This panel will come up  
19 with an answer to that question as part of the --

20 HEARING OFFICER STUDER: Responsive  
21 summary.

22 MR. STEARNS: -- that you're going to  
23 produce?

24 HEARING OFFICER STUDER: Yeah. We'll  
25 have an opportunity to review records at that time

1 and provide a response in writing.

2 MR. STEARNS: Thank you for the  
3 opportunity to comment.

4 (End of inserted comments.)

5 HEARING OFFICER STUDER: It looks like  
6 we have Georgia, if I can pronounce this it looks  
7 like De LaGarza --

8 MS. DE LaGARZA: De LaGarza.

9 HEARING OFFICER STUDER: You could be  
10 a doctor.

11 MS. DE LaGARZA: I am not trying to be  
12 cool. Left my glasses at home. My name is Georgia  
13 De LaGarza. That's spelled D-E space L-A capital  
14 G-A-R-Z-A. And I'm a political activist, an  
15 environmentalist.

16 HEARING OFFICER STUDER: Can everyone  
17 hear in the back?

18 MS. DE LaGARZA: Hold on. My voice  
19 does not carry. I'm going to be like Joyce and stand  
20 on my toes.

21 We were recently referred to as a  
22 skilled propagandist, so if that's a new word for a  
23 steward of the earth, then I'll take it.

24 I am a -- we don't want to take  
25 any jobs away. That's not what we're about. We love



1 Southern Illinois and we want Southern Illinois to  
2 prosper and we have a strong -- we want to have a  
3 strong economy and have good jobs that are  
4 consistent. We want to have clean industry and safe  
5 environment viable for our children and their  
6 children.

7                   We all know the history of the  
8 coal mining industry. They come in. They mine.  
9 They leave. They come in. They mine. They leave.  
10 They come in. They mine. They leave. We lose our  
11 jobs. We lose our booming economy. We are left with  
12 respiratory illnesses, kidney diseases, cancers,  
13 depressions, social organizations overburdened with  
14 things like domestic violence and rape, an effect  
15 from a poor economy. We have food pantry lines right  
16 now that I see in towns traveling Southern Illinois  
17 that are down the block. Food pantries that are  
18 begging for food to give to these people that are  
19 standing in the line down the block. That's what  
20 happens when we boom and they leave. And this is a  
21 result now of our last boom. We don't need hundreds  
22 of jobs, we need thousands of jobs and ones that  
23 last.

24                   You say, Mr. Keller, you have had  
25 one hundred, and it doesn't matter, hours, days,

1 weeks, years, without incident. As you've been going  
2 door to door bullying the residents, many of them  
3 elderly, of Cottage Grove and Rocky Branch or passing  
4 out the famous turkey, did you care to ask if they  
5 had any incidents? Have you asked if their  
6 foundation is cracked or are you breathing okay? Is  
7 your water running clear? Are you able to get silica  
8 out of your draperies, out of your carpets, out of  
9 your attics? Or how about your kids? Are they  
10 traumatized when your house shakes from explosions?  
11 Do you get any sleep with all of the noise and light  
12 pollution? Or how about, I'm sorry your dog got sick  
13 and you had to put it down? That's a good neighbor.  
14 Why are we living like this?

15 Remember, the earth was created  
16 first and then the animals and then we were created  
17 to steward the earth and to take care of the animals.  
18 Let's open our minds and let's broaden our thinking  
19 of our future. We have abundant solar and abundant  
20 wind. Let's stop worrying about only our backyards.  
21 Let's be that good neighbor and begin to think of the  
22 well-being of each other. Please take a stand with  
23 us EPA. Restore our faith. Thank you.

24 HEARING OFFICER STUDER: Thank you,  
25 Ms. De LaGarza. Is there anyone that registered to

1 speak at this hearing that I missed? Okay. Is there  
2 anyone that has not spoken that would like to make a  
3 comment on the record before we close the evening?  
4 All right. Come forward to the microphone and if you  
5 would please state your name and spell your last name  
6 for the record, please.

7 MR. RANN: My name is Ryan Rann,  
8 R-Y-A-N, R-A-N-N. I just have a few things. I have  
9 a couple questions, rhetorical questions, mostly.  
10 One statement, there is no clean energy that's viable  
11 without a government subsidy. So you can either let  
12 Peabody mine coal or you can subsidize somebody else,  
13 but you're going to pay for it one way or the other.  
14 The rhetorical question is does Peabody have the  
15 right to use their land as they see fit. And the  
16 other statement is that I actually have a piece of  
17 land that I hunt and fish that was mined 70 years ago  
18 by Peabody and in the area that it's in there is no  
19 better hunting or fishing or water quality, for that  
20 matter. I don't see why -- everybody tries to make  
21 it sound like after it's mined it's useless for any  
22 purpose. That's not the case. Thank you.

23 HEARING OFFICER STUDER: Thank you.  
24 Is there anyone that has not spoken at this hearing  
25 that would like to make a comment on the record?

1                   Okay. It's 5 minutes to 9.  
2 We've been here -- most of us have been here since  
3 around 5 this evening. Is there anyone that has  
4 spoken that has a brief comment in summary that they  
5 would like to make and, if so -- I'm not going to  
6 have this be identified. I'm going to ask for a hand  
7 raise and you have to be identified now and once  
8 those people have spoken we're going to adjourn the  
9 hearing. There will be no add-ons after they speak.  
10 So I'm going to really lower the boom. We've got one  
11 person there. Two. Three. Okay. You need to stand  
12 up, if you plan to speak, just so we can -- you can't  
13 speak from back there. I'm not going to allow that  
14 to go on. I want to get a full count before you come  
15 to the microphone. All right. We've got one, two  
16 and there was a third person.

17                   AUDIENCE MEMBER: That's me.

18                   HEARING OFFICER STUDER: Go ahead.  
19 I'll give you about 90 seconds.

20                   MR. PORTER: I don't need any more  
21 than that. I would just encourage all of us on both  
22 sides, up here at the courthouse there's public  
23 records and I encourage you to go up there and take  
24 you a plat book and look at the land in Southern  
25 Illinois, in Saline County, that's been mined and go

1 up there and ask them about 4,000 acres in Carrier  
2 Mills Township that had been stripped years ago and  
3 you go in the treasurer's office and ask him what is  
4 the taxes now that this county receives off of that  
5 4,000 acres and I'll tell you what, it will shock  
6 you. What it is? Zero. Now, somewhere in this  
7 we're losing out in this county and one of these days  
8 all of that land that has been done that way that is  
9 not being taxed, you know who is going to pay, the  
10 property owners. Coal miners, farmers, whatever,  
11 we're going to pick up the tab. Thank you.

12 HEARING OFFICER STUDER: Thank you.  
13 Ninety seconds.

14 MS. DILLARD: Mine is real quick, too.  
15 And I'll add just a little bit on what Alan said.  
16 Well, I lost my train of thought. Darn it. The  
17 property tax is already increasing. Ask anyone who  
18 lives within the city limits of Harrisburg if their  
19 taxes haven't already gone up. They are having to  
20 make the difference in what's being eliminated out in  
21 the rural areas. What I want to say in my township  
22 alone already there is almost 5,000 acres mined in  
23 Cottage Township. That's not including the 1,092  
24 that they are wanting to add now. How much of our  
25 area are you going to give them? Pretty soon there

1 is going to be nothing left. Please think about  
2 that.

3 HEARING OFFICER STUDER: Thank you.

4 MR. KARNS: I have three very quick  
5 questions. Steve Karns.

6 First of all, you mentioned once  
7 mining has been completed on air that reclamation  
8 begins immediately. Can you define that term in  
9 months, weeks, years and how long is immediate?

10 MR. KOCH: Again, I haven't reviewed  
11 the 401 application for this specific project, but in  
12 past projects I would say it's weeks. It's not  
13 months. In a week or two they begin the reclamation  
14 process and again a lot of that is just putting the  
15 soil back and then the -- you know, the grass is just  
16 to prevent soil erosion. I'm not sure when they  
17 begin doing the tree plantings and whatnot, but they  
18 do restore the area as soon as possible. They don't  
19 want to have the earth exposed like that.

20 MR. KARNS: Okay. Very quickly. The  
21 Illinois EPA has one of the strictest clean water  
22 acts on the books anywhere in the nation. Yet in all  
23 of the research that I have done it states that the  
24 Illinois EPA rarely, if ever, takes action against  
25 mining operations. Why is that?

1 MS. DIERS: When you say take action,  
2 what exactly do you mean? We go after them on  
3 violations, send it to the --

4 MR. KARNS: Water pollution.

5 MS. DIERS: I can tell you sitting  
6 here we do go after people who violate our act.

7 WITNESS: You said people. Do you  
8 mean the mining company?

9 MS. DIERS: Yes, we go after the  
10 mining company. When there is a violation we look  
11 into it. We have to go through that process. If we  
12 can't work it out with them, we can refer them to the  
13 Illinois Attorney General's Office.

14 MR. KARNS: All right. Thank you for  
15 your time. I appreciate you listening to my  
16 comments.

17 HEARING OFFICER STUDER: Thank you. I  
18 said there would be no additions.

19 AUDIENCE MEMBER: I would like to add  
20 to my comment earlier, if I could.

21 HEARING OFFICER STUDER: Go ahead.  
22 I'll give you just a --

23 AUDIENCE MEMBER: I just want to add  
24 that I would like for the permit to be approved, is  
25 all.

1                   HEARING OFFICER STUDER: Okay. I'm  
2 sorry. I wasn't understanding what you're saying.

3                   I would remind everyone here that  
4 the record is open through mid March, as indicated in  
5 the public notice for this, and I thank you for your  
6 patience and attendance here this evening. This  
7 hearing is adjourned.

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1 STATE OF ILLINOIS     )  
                              ) SS  
2 COUNTY OF WILLIAMSON)

3  
4               I, Valeri Bleyer do hereby certify:  
5               That the witness in the foregoing  
6 deposition was present at the time and place therein  
7 stated;

8               That I am a Certified Shorthand Reporter  
9 for the State of Illinois; that the said proceedings  
10 was thereafter under my direction transcribed into  
11 computer-aided transcription; that the foregoing  
12 transcript constitutes a full, true and correct  
13 report of the proceedings which then and there took  
14 place;

15               IN WITNESS WHEREOF, I have hereunto  
16 subscribed my hand and affixed my official seal this  
17 25th day of February, 2014.

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VALERI BLEYER, CSR# 084-002678