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REPORT OF THE PROCEEDINGS of the
Public Hearing concerning Permit No. 413, taken
at the Illinois Department of Natural Resources,
Office of Mines and Minerals, 503 East Main
Street, Benton, Illinois, on the 27th day of
July, 2011, at 7:00 p.m.

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SOUTHERN REPORTING
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1 MR. HOLLOWAY: My name is Clifford
2 Holloway. I am the Southern District Supervisor
3 for the Office of Mines and Minerals Land
4 Reclamation Division. We are a part of the
5 Department of Natural Resources. I have been
6 appointed as hearing officer for tonight's
7 hearing.

8 We are here tonight to conduct a public
9 hearing concerning the application No. 413
10 submitted by Southern Illinois Power Cooperative
11 for the Southern Delta Mine. This hearing is
12 being held under the authority of 62 Ill. Adm.
13 Code 1773.14 promulgated under the Surface Coal
14 Mining Land Conservation and Reclamation Act.

15 This hearing was requested by
16 Christopher L. Cain and James E. Cain. The
17 format for this hearing is informal. Those of
18 you who have filled out speaker forms for us will
19 be given an opportunity to make your comments.

20 Because we are required by regulations
21 to make a verbatim transcript of the hearing, it
22 is imperative that if you wish to speak you sign
23 in so that we can have your name and address for
24 the record and that you make your comments from
25 the podium.

1 If you have written comments, a written
2 statement, maps or other information to be
3 submitted for the record, please let me know that
4 when you come up to speak and we will enter them
5 into the record.

6 Once the hearing is adjourned, we will
7 leave the record open for 10 days to submit
8 written comments. That date is August the 8th,
9 2011, since the tenth day falls on a weekend.
10 The Land Reclamation staff will then review all
11 comments made here at the hearing and those
12 received in writing, as well as the application
13 and any comments received from other agencies. A
14 decision will then be made to issue, deny or
15 require modifications to the application. If
16 modifications are required, we will notify the
17 applicant of those required modifications and
18 once we have reviewed their responses we will
19 issue our final decision.

20 Comments made at this hearing, as well
21 as comments received in writing, will be
22 addressed in our decision finding. Anyone who is
23 signed up to speak, who sends us written comments
24 or has just indicated that they are in attendance
25 will receive a copy of our written decision

1 finding when it is issued.

2 Once all those who have signed up have
3 had the opportunity to speak and the hearing is
4 adjourned, the Land Reclamation staff will be
5 available to talk to you and to answer your
6 questions. The Land Reclamation staff present
7 for this evening's hearing is Mr. Al Meyers, Mr.
8 Tim DeVardo, Mr. Scott Fowler, and Mr. Clifford
9 Holloway.

10 Scott, would you like to say something?

11 MR. FOWLER: Yeah. I want to thank
12 everyone for coming tonight, and I want to kind
13 of go over how our process works as far as a
14 permit review. And it's very important that we
15 get comments from the public like tonight
16 concerning the permit application we're going to
17 be looking at. I don't know if anybody is really
18 familiar with how our process works. If you're
19 familiar with how EPA, the Illinois EPA does
20 their MPDS permits, it's quite different. With
21 the MPDS permit, the EPA has already reviewed the
22 entire permit application. They have written a
23 draft permit, and then they go to public review
24 for people to be able to look at their draft
25 permit that they have written. Ours is

1 completely different. Ours is at the other end
2 of the spectrum. The permit application has just
3 been submitted. We have not completed our
4 review. In fact, we have not even begun review
5 of this application.

6 So we're looking for comments from the
7 public like here tonight and other written
8 comments you're going to provide. We also submit
9 the application to a lot of different agencies
10 that have expertise in different areas of that
11 application. The application goes to the EPA so
12 they can look at it for water issues, both
13 groundwater and surface water. It goes to
14 Department of Agriculture for soils issues. It
15 goes to U.S. Fish and Wildlife Service. It goes
16 internally within DNR, the agencies that have now
17 been combined together but once were apart. The
18 Water Resources Group for dams and other
19 structures like that. Our Threatened and
20 Endangered Species Group will review it for any
21 consultation necessity. And we wait and try to
22 get all their comments in to us so we can utilize
23 those comments from those agencies and also from
24 the public in our review of the application.

25 And it will be a couple of months from

1 now before we have completed our review of the
2 application. And Like Clifford said, we'll make
3 a decision at that point whether either to
4 approve, deny or in most cases ask for
5 modification. We will send a letter to the
6 applicant stating those areas that we feel are
7 deficient and that need to be addressed or
8 changed or additional information needs to be
9 provided. Then the company has a year to be able
10 to make those changes satisfactory to our
11 regulations. And then if they do, it will get
12 the permit approved. If they cannot, then the
13 permit will be denied.

14 So that's the process how we work. Like
15 I said, we're very early in the process. I know
16 a lot of times we get questions in the hearings
17 here, hey, what about this, what about this.
18 Well, please be knowledgeable that we don't know
19 all of the answer yet. We have not reviewed
20 this. You know, we're asking for help from you
21 on the issues and the topics that look to be of
22 interest in this application from the public so
23 that will help us in the review.

24 We're going to try to answer as many
25 questions as we can. We can definitely answer

1 procedural questions; how we're going to be able
2 to do stuff. We can answer some potentially
3 technical questions, because we've just begun the
4 technical review, but we'll try to answer as best
5 we can. We may not be able to. So please bear
6 with us if we can't give you an answer to all the
7 questions that you have. All of the questions
8 that you do have will be addressed in our
9 findings. Unfortunately, because it's so early
10 in our process, the findings document may not
11 come out for a year or more. So if you have a
12 question you're going to say, well, gee, I
13 thought you were going to address it. Well, we
14 will address it, but it's going to be after the
15 review of the permit and we'll tell you how we
16 handled your question and your issue in that
17 document.

18 But we're going to try the best we can
19 to answer stuff tonight. Like Clifford said,
20 we're going to try to go through everybody that
21 has a comment here tonight. We want to make sure
22 everybody gets their comments on the record. If
23 there are questions, I'm going to try to capture
24 those questions on a flip chart. And I'm not
25 real good at writing, so at the end of the

1 hearing tonight we'll take a little break and
2 come back and try to answer all these questions.
3 But I want to make sure everybody gets their
4 comments in first, and then we'll try to answer
5 the questions as best we can on what the issues
6 are. If there's some procedural questions, we
7 may try to answer them as the hearing is going
8 along. But just to make sure everybody gets an
9 opportunity to talk, I'll save most of the
10 questions till the end because sometimes
11 questions are duplicated through the evening and
12 that way we don't answer the same questions two
13 or three times, we'll just capture them here and
14 try to answer them later.

15 I think, unless there's a question
16 before we start that I may be able to answer, if
17 not, we'll start the hearing.

18 MR. HOLLOWAY: Okay. I'm going to
19 back up a little bit on what I said. If you're
20 not comfortable coming up here to the podium, you
21 don't have to. You're welcome to. But you have
22 got to speak so that the court reporter can hear
23 your comments and you need to identify yourself.

24 MR. FOWLER: Do you want this to be
25 the podium?

1 MR. HOLLOWAY: That's the podium.
2 But please feel comfortable. That's what I was
3 looking for, my podium, so.

4 The first speaker I would like to call
5 tonight -- and I just started pulling the
6 stack -- but I did pick the two people that had
7 requested the hearing that I had received a
8 formal request, Chris Cain.

9 MR. CAIN: I just have a brief
10 comment and about nine questions that I would
11 like to ask.

12 MR. FOWLER: Sure.

13 MR. CAIN: Christopher Lee Cain, by
14 the way, if case you don't already know.

15 I would like to start with a little
16 history of my familiarity with the proposed mine
17 site. I have lived there my entire life and I am
18 fairly intimately familiar with the entire area,
19 the vast stretch of the wooded acreage covering
20 several acres, obviously. It is my understanding
21 that the permit states that all wooded areas are
22 no larger than 100 feet by 100 feet. Well, based
23 on what I have seen, this doesn't strike me as
24 being true. And the vast span of this wooded
25 acreage has obviously oak trees and hickory

1 trees. And after spending about two and a half
2 years overseas, I come home and I find that a lot
3 of trees had been cut down back there, so.
4 Anyways, upon further investigation, it was
5 revealed to me that these were shagbark hickory
6 trees; they had all been marked and cut down and
7 just left there, so I found this odd. I have a
8 few pictures showing these trees I would like to
9 submit.

10 MR. FOWLER: Will you give it to the
11 court reporter?

12 MR. HOLLOWAY: Yeah. I'll mark
13 those.

14 MR. CAIN: Along with another picture
15 of some trees that were left standing, but they
16 were few in number. The permit states that the
17 wooded areas have been logged in the past 20
18 years; however, it is my understanding from
19 obviously my family's information that it was
20 logged about 35 years ago, which, to me, is an
21 inconsistency, but it's not a big deal. Anyways,
22 it states it had been logged, but these trees
23 that were cut they weren't hauled out; they were
24 just left there. They're clearly older than
25 that. A lot of them have diameters up to 18 to

1 20 inches, which, to me, is indicative of a much
2 older tree because if the area had been logged in
3 the past 20 years then it seems like that those
4 trees would have been taken. I may be off base
5 here, but that's just my opinion.

6 And my family, whose property borders
7 the northern edge of the proposed mine, can
8 attest that the land adjacent to our own north of
9 the slurry lake has not been logged obviously in
10 the past 20 years. It is obvious to me that the
11 hickory trees were intentionally cut prior to
12 applying for this permit. And I find that act to
13 be suspicious, outside of observation. I am of
14 the opinion that these trees, being mature
15 shagbark hickories, are potential endangered
16 species habitat, which is for the Indiana bat,
17 and that they were intentionally cut down so that
18 having an endangered species in this area
19 wouldn't be problematic when applying for the
20 permit.

21 And I would like to go ahead and move on
22 to my questions. I have nine of them prepared,
23 so it won't take too long. My first question is:
24 How did the Southern Illinois Power Cooperative
25 know that shagbark hickory trees would raise a

1 red flag regarding the Indiana bat habitat? My
2 second question is: Does the Illinois Department
3 of Natural Resources condone the removal of
4 potential endangered species habitat prior to an
5 entity applying for a mining permit? Three:
6 Does the IDNR actively facilitate the removal of
7 potential endangered species habitat? Did the
8 Illinois Department of Natural Resources mark
9 these trees to be cut down? And did they mark
10 them with large orange X's that appear in my
11 photographs of all of the trees? Another
12 question: Most of the local creeks and flood
13 plains converge upon the slurry lake area, and I
14 would like to know how the ash will be contained
15 during periods of sustained precipitation?
16 According to the Illinois EPA, Saline Creek was
17 contaminated with heavy metals that exceed safe
18 groundwater standards. How can this be if coal
19 ash hardens like concrete? The permit states
20 that coal ash will form a hard concrete layer.
21 So, to me, if the coal ash is exposed, whether it
22 hardens like concrete or not, so long as there is
23 wind and sunlight hitting it there's still going
24 to be fugitive dust that comes in the air. I
25 would just like to know what would be done to

1 maybe prevent that? And what will be done to
2 ensure the surface water in the area will not be
3 contaminated with the ash or any other
4 byproducts? And if local wildlife -- I consider
5 this to be the most important question -- if
6 local wildlife drinks surface water contaminated
7 by the ash at this site, is that a potential
8 health hazard to whomever may harvest that
9 animal?

10 And that concludes all of my questions.
11 I appreciate the opportunity to speak.

12 MR. HOLLOWAY: And this was -- this
13 is you?

14 MR. CAIN: No. This is me.

15 MR. FOWLER: Could you hang on just
16 for a second?

17 MR. CAIN: Yes.

18 MR. FOWLER: Because I know I didn't
19 catch all of them as fast as you were going. I
20 have got SIPC shagbark hickory trees cut down;
21 cutting down trees before the permit was issued;
22 does DNR help facilitate cutting of the trees. I
23 think that was one of them?

24 MR. CAIN: Correct.

25 MR. FOWLER: The X's or the yellow

1 ribbon --

2 MR. CAIN: Did the IDNR mark these
3 trees to be cut?

4 MR. FOWLER: Yeah. Okay. Then I
5 missed a few after that.

6 MR. CAIN: How will the ash be
7 contained during periods of significant
8 precipitation like what we have had this past
9 spring?

10 MR. FOWLER: Yeah.

11 MR. CAIN: And that according to the
12 Illinois EPA -- did you already get that one?

13 MR. FOWLER: Ash contained, how it's
14 going to be contained?

15 MR. CAIN: Right. And according to
16 Illinois EPA, Saline Creek was contaminated with
17 heavy metals for a time that had exceeded
18 groundwater standards. Well, how can it
19 contaminate the groundwater if the ash is
20 supposed to harden like concrete? Because it
21 states in the permit it would harden like
22 concrete and form kind of a crust.

23 MR. FOWLER: Okay. This is Saline
24 Creek?

25 MR. CAIN: Right.

1 MR. FOWLER: Has trace elements you
2 said?

3 MR. CAIN: Yes.

4 MR. FOWLER: And where is Saline?
5 I'm not familiar with that Saline Creek. Is it
6 right there?

7 MR. CAIN: It's near the actual power
8 plant.

9 MR. FOWLER: Near the what?

10 MR. CAIN: Lake of Egypt.

11 MR. FOWLER: Oh. Okay.

12 MR. CAIN: My question is: How does
13 the groundwater become contaminated if the coal
14 ash forms essentially concrete?

15 MR. FOWLER: Okay.

16 MR. CAIN: And won't the sun and wind
17 contribute to dust so long as the ash surface is
18 exposed?

19 MR. FOWLER: Okay.

20 MR. CAIN: And you have the -- yeah,
21 the surface water contamination.

22 MR. FOWLER: And animal drinking
23 water. We'll come back to those and answer as
24 many as we can. I don't know if we're going to
25 get many of those answered, but we'll try.

1 MR. CAIN: I appreciate it, sir.

2 MR. HOLLOWAY: Now, I have Chris
3 Cain?

4 UNIDENTIFIED SPEAKER: No, this is
5 Chris.

6 MR. HOLLOWAY: Are you Chris?

7 MR. CAIN: Yeah, I'm his father.

8 MR. HOLLOWAY: Oh, okay. My father
9 and I have the same first name so that's okay.
10 So you don't wish to speak, Mr. Cain?

11 MR. CAIN: No. I'm good.

12 MR. HOLLOWAY: Okay. I have Terri
13 Treacy?

14 MS. TREACY: Terri Treacy,
15 T-R-E-A-C-Y. I'm just going to sit. Thanks for
16 having the hearing. I appreciate the chance to
17 ask some questions and make some comments.

18 I first would like to talk about some of
19 the official wildlife issues. The applicant
20 states that the presence of protected or
21 migratory bird species are not known in permit
22 area. That's in part 5, Section 3(b)1 and 2 is
23 where it says that. However, later in the permit
24 it says that the results of the 2010 field
25 assessment indicates the presence of endangered

1 rice rats. There were five caught in live traps
2 in July of 2010. And a common moorhen was
3 detected during three or four survey dates during
4 August and September of 2010. And then there's
5 also a long list of migratory birds that were
6 reported using this site, so I would like that
7 discrepancy to be fixed.

8 And then regarding the thoroughness of
9 the endangered and threatened survey, right in
10 the permit application it says the field
11 assessment admits that since the survey was
12 conducted during a single season, in this case
13 fall migration in the case of the birds, that the
14 documentation of wildlife species that may use
15 the proposed permit area may not reflect a
16 complete inventory of the floral and faunal
17 resources due to the phonological effects
18 associated with seasonal weather conditions and
19 migration patterns. That's a quote from the
20 permit application. So I guess what I am
21 requesting then or asking is that they do a
22 better job of documentation, maybe four seasons,
23 especially during spring migration and breeding
24 season to know what's really using that area.

25 Other than identifying nearby areas to

1 where wildlife could potentially move, the plan
2 does not include protective measures or
3 enhancements to minimize adverse impacts on
4 state-listed endangered wildlife that will be
5 negatively impacted by mining. Nor does the plan
6 account for wildlife that cannot move, such as a
7 bird in a nest or a rice rat in a nest. So if
8 they're doing this work while there's breeding
9 going on, these critters can't flee to some other
10 site that's possibly there.

11 And then, furthermore, the fresh water
12 lake is identified as a potential refuge for the
13 state-listed endangered species present onsite;
14 however, the freshwater is also designated as a
15 treatment works, and when discussing the probable
16 hydrologic consequences it is stated that the
17 freshwater lake will be subject to increased
18 loading of sediments and I presume other
19 pollutants. So there's a discrepancy there as
20 well.

21 And then regarding the Indiana bat, I
22 won't go into that because I think Mr. Cain did a
23 really good job, but I, too, also have concerns
24 that the permit very, very clearly states that
25 there's no trees with exfoliating bark larger

1 than five inches in diameter. And Mr. Cain took
2 me out to that site and I saw with my own eyes
3 that all those trees were cut; and it does look a
4 little odd that just before a permit is applied
5 for that all these possible endangered habitat
6 was removed from the site. And I just would hate
7 to think that the DNR is complicit in this, but I
8 think they may have been, so.

9 I would like to talk a little bit about
10 the fly ash. I have a question. I am not a
11 scientist, and when I read the permit attachment
12 No. IV-1, Beneficial Use of CCB, No. 2 in the
13 attachment states that fly ash and bed ash from
14 circulation fluidized bed boilers will be placed
15 into the slurry impoundments. But then, a couple
16 paragraphs later it says that the fluidized bed
17 boiler ash will set up similar to concrete after
18 it's placed in the impoundment. Does that mean
19 that the fly ash doesn't? I mean, they seem to
20 indicate that there's two types of ash, but then
21 they say that one will turn into concrete, so I
22 think that needs to be made more clear in how
23 that works. And if the fly ash doesn't set up
24 like concrete, what happens to it when it's
25 placed into the impoundment?

1 And then the statement in No. 5 that the
2 CCB forms a solid crust much like concrete, is
3 highly stable even during periods of excessive
4 wind conditions. So, earlier it said that the
5 surface of the ash forms a concrete-like crust.
6 So if it's just the surface, what keeps layers
7 from underneath the surface of the crust from
8 leaching down into groundwater on the site? So
9 that's not clear to me from the permit how all
10 that is going to work.

11 And then I would also like the permit to
12 be a little bit tighter in what is going to
13 happen. No. 5 in attachment IV, to me, it seems
14 like it's like a lot of probabilities or
15 conjecture about what's going to happen. For
16 instance, it says the CCB should have the ability
17 to absorb most of the precipitation in the area.
18 It says the plan is designed to keep CCB below
19 ground and generally protected from excessive
20 wind. And using water spray should be sufficient
21 to contain fugitive dust from truck dumping
22 operation. I would hope for the wildlife and the
23 people that live in the neighborhood that these
24 things are more definite what will happen, not
25 might possibly work out but maybe it won't, so.

1 And then there's another, No. 6, I'm a
2 little bit confused. It talks about the pool
3 level. So the ash will never -- is not supposed
4 to be higher than 4 feet below the level of the
5 ground; however, it also goes on to say that if
6 it does come above the 4 foot level that it will
7 be covered with some sort of soil or something
8 but doesn't really say, like, so if it's 3 1/2
9 feet below pool level, is it going to get covered
10 to the top of the pool level? So it's real
11 loose. I don't understand what that means. Will
12 there always be a water impoundment? We need a
13 lot of clarity on that.

14 MR. FOWLER: Yeah.

15 MS. TREACY: Okay. The permit states
16 that ash is being taken from the Coop to six
17 other sites in the area, but it doesn't say where
18 those sites are. Can we find out where those
19 sites are and what type of sites they are?

20 MR. FOWLER: I don't know. It
21 probably is not relevant to this permit. You
22 know, it probably doesn't have --

23 MS. TREACY: Do you know of the
24 amount, which they say in the permit could be
25 100,000 to 200,000 tons of ash a year, how much

1 of that is the total amount of ash that's
2 generated at the plant?

3 MR. FOWLER: Again, that's
4 something --

5 MS. TREACY: That's out of your --

6 MR. FOWLER: Yeah, that's beyond --

7 UNIDENTIFIED SPEAKER: They have
8 regulations that they have to follow so why would
9 that be pertinent to this request anyway?

10 MR. FOWLER: Ma'am, what's your name?

11 MS. MUEHLENBEIN: Vickie Muehlenbein.

12 MR. HOLLOWAY: I'm sorry.

13 MS. MUEHLENBEIN: Well, I --

14 MR. HOLLOWAY: Excuse me just a
15 second. Any time we speak, the court reporter
16 has got to know. And I didn't mean to embarrass
17 you.

18 MR. MUEHLENBEIN: I'm sorry. He was
19 looking at me like he wanted an answer. I was
20 going to give him one.

21 MR. HOLLOWAY: I appreciate that, but
22 we have still got to keep --

23 MR. MUEHLENBEIN: Gotcha.

24 MR. HOLLOWAY: -- it somewhat formal,
25 though. Thank you, though. Go ahead.

1 MS. TREACY: Okay. Well, I will make
2 it relevant then because under the Surface Mining
3 Act the agency is required to produce a
4 cumulative hydrologic impact assessment. So if
5 there are other mines in the vicinity that ash is
6 being dumped, they have to consider that in this
7 permit because collectively it could cause more
8 of an issue, more of a problem. So I think it is
9 very relevant. And I think that the DNR should
10 find out where these other sites are and make
11 sure there's no cumulative --

12 MR. FOWLER: I can address that
13 because that's more procedural.

14 MS. TREACY: Okay.

15 MR. FOWLER: In the cumulative
16 hydrologic impact assessment what is evaluated
17 there are other permitted coal mines or future
18 coal mines. I can tell you what we do know that
19 there are no other coal mines in the area that
20 are permitted to take that back.

21 MS. TREACY: Okay.

22 MR. FOWLER: If it's going some place
23 else, it's going to a non-permitted coal mine
24 site, I believe. I think I'm speaking correctly
25 that there's not another permitted coal mine site

1 that has ash coming back because that would be a
2 permit requirement through us and we would know
3 that and so we would --

4 MS. TREACY: Okay. What about in
5 a -- I'm sorry. I didn't mean to interrupt you.

6 MR. FOWLER: Yeah. We would know
7 that. And when we do the "CHIA", or cumulative
8 hydrologic impact assessment, that would be taken
9 into account because it's permitted actions for
10 us; we would know it. If it's going to an
11 abandoned site or something like that, that's
12 outside our purview, one; and, two, it's also
13 outside the intent of the cumulative hydrologic
14 impact assessment. The assessment is for current
15 mines or potential future mines in the watershed
16 or in that impact area.

17 MS. TREACY: Okay.

18 MR. FOWLER: So, you know, that
19 assessment doesn't take into account other
20 potential sources of contamination or impact;
21 that's just not part of the regulations to do
22 that.

23 MS. TREACY: So there could be
24 dumping going on at abandoned mines in the area
25 and you wouldn't know about it if it was done?

1 MR. FOWLER: That would be handled
2 through EPA.

3 MS. TREACY: Okay. I have a couple
4 more.

5 MR. FOWLER: Sure.

6 MS. TREACY: Okay. Also, the
7 National Academy of Sciences 2006 report entitled
8 "Managing Coal Combustion Residues in Mines"
9 demonstrates that CCW-related pollutants can be
10 discharged from coal mines and can cause
11 violations of water quality standards. The
12 committee concludes that the presence of high
13 contaminant levels in many CCW leachates may
14 create human health and ecological concerns at or
15 near some mine sites over the long term. The
16 report further confirms that some CCW disposal
17 sites have caused water quality standard
18 excursions in off-site surface waters and that in
19 the most extreme cases, multiple species have
20 experienced local extinctions. CCW-related
21 pollutants can be released from mines for many
22 years. In fact, the National Academy found that
23 the release of contaminants can occur over
24 several decades. Accordingly, recent monitoring
25 from other facilities that currently dispose of

1 the type of CCW that will be disposed of at the
2 mine cannot be used as proof that the mine will
3 not leach pollutants from the CCW over time. And
4 the leaching test whose results are reported in
5 the permit application, the Toxicity
6 Characteristics Leaching Procedure, or the "TCLP"
7 test, does not accurately measure the nature and
8 variability of coal combustion waste. Both the
9 EPA's Science Advisory Board and the National
10 Academy of Sciences have determined that the TCLP
11 does not accurately predict the toxicity of coal
12 ash.

13 That will conclude my comments, so thank
14 you.

15 MR. HOLLOWAY: Thank you very much.
16 Now, if I appear to be a clock-watcher, I'm just
17 trying to make sure everybody has an opportunity.
18 Thank you very much. My wife says I'm hyper,
19 but. Brian Perbix?

20 MR. PERBIX: Thank you for the
21 opportunity to provide comments on Southern
22 Illinois Power Cooperative's Application for Mine
23 Permit No. 413.

24 My name is Brian Perbix. I'm with the
25 Prairie Rivers Network. It is a state affiliate

1 of the National Wildlife Federation. We are a
2 non-profit organization that strives to protect
3 the rivers, streams and lakes of Illinois and to
4 promote the lasting health and beauty of
5 watershed communities. Several of our members
6 and members of other non-profits live and
7 recreate in Saline and Williamson County. They
8 depend on clean waters in the Middle Fork of the
9 Saline River and its tributaries such as Bankston
10 Fork for recreational activities including
11 fishing, boating, canoeing, bird watching and
12 other wildlife viewing and would be adversely
13 affected by proposed carbon recovery and coal
14 combustion residuals dumping that is proposed
15 within this permit.

16 So just to review a little bit, this
17 permit application proposes the removal of coal
18 slurry from 83 acres at this site which was
19 formerly operated by the AMAX Coal Company. It's
20 anticipated that this operation would generate
21 between 100,000 and 200,000 tons per year of
22 recovered coal; and, accordingly, 100,000 to
23 200,000 tons per year of coal combustion
24 residuals, the solid waste left over after the
25 coal is burned, would be replaced in that void

1 and that those coal combustion residuals will be
2 coming from the Marion Power Plant at the Lake of
3 Egypt. We object to the issuance of Permit No.
4 413 as written because the terms of the permit do
5 not ensure that all water quality standards,
6 including Illinois' antidegradation standards,
7 will be met.

8 And I'll just go through a couple of the
9 concerns that we have. And, as I said, I would
10 like to submit this.

11 MR. FOWLER: Sure. That will be
12 helpful.

13 MR. PERBIX: So our primary concern
14 is that we do not believe that Southern Illinois
15 Power Cooperative has met the requirements of
16 Memorandum 95-8 which provides guidelines for the
17 beneficial reuse of coal combustion residuals.
18 In order for coal combustion residuals to qualify
19 as coal combustion byproducts for beneficial
20 reuse, Memorandum 95-8 outlines specific
21 guidelines that an applicant must meet. We're
22 particularly concerned because the Southern
23 Illinois Power Cooperative proposes to use CCRs
24 from the Marion Power Plant at Lake of Egypt as a
25 fill material.

1 In effect, Southern Illinois Power
2 Cooperative is proposing to establish an unlined
3 CCR landfill in the streambed of a tributary of
4 Bankston Form Creek that will accept the same
5 coal combustion residuals disposed of at their
6 Marion Power Plant Lake of Egypt Plant. Now,
7 this is a major concern because leaching from
8 coal ash disposal at the Marion Power Plant has
9 led to documented onsite groundwater
10 contamination, as well as Mr. Cain mentioned
11 earlier discharging of groundwater contamination
12 offsite into the adjacent Saline Creek.

13 And I'll submit an excerpt of the report
14 "In Harm's Way" which was a report released in
15 2010 by the Environmental Integrity Project which
16 documents in more detail some of those
17 groundwater contamination issues. But just to
18 provide a summary, they have had problems there
19 with cadmium exceeding the Illinois Class I
20 Groundwater Standards, as well as high
21 concentrations of aluminum, boron, and manganese.
22 And, again, the concerns are that this is the
23 same material being put into the same kind of
24 unlined landfill there being proposed to put
25 here, and so that's why we believe that that's

1 particularly relevant.

2 In addition to the documented
3 groundwater contaminations at that site, the
4 Marion Power Plant has had multiple discharges
5 that violated water quality standards. And,
6 again, these are discharges from the same kind of
7 pond that is being proposed at this site. And
8 these are recent, you know, from the last two or
9 three years. Some of the violations include
10 copper and total dissolved solids.

11 And I will submit this compliance, the
12 enforcement of the EPA, as a second exhibit.

13 And so to summarize our position on
14 this, we believe that the Land Reclamation
15 Division must consider SIPC's poor NPDES
16 compliance history, as well as the documented
17 contamination of groundwater due to coal ash
18 disposal at the Marion Power Plant. We believe
19 that in order to make the next generation of coal
20 ash disposal more responsible and to prevent yet
21 another coal ash contamination site from coming
22 into existence the Land Reclamation Division must
23 require liners, thorough ash and site
24 characterization, extensive groundwater
25 monitoring, as well as strictly enforced best

1 management practices on site.

2 And so I think that I will skip my
3 questions for now and go on to my next section.
4 Secondly, we're mostly concerned with how the
5 applicant has provided, or rather failed to
6 provide, adequate hydrologic and geologic
7 information to provide -- to make a determination
8 of the probable hydrologic consequences for the
9 proposed activity. In particular, you know, we
10 note that a lot of -- in the application we would
11 typically see what the underlying strata looked
12 like. The applicant uses old information from
13 bore holes that were drilled before the mining
14 operation took place over the past 20, 30 years.
15 What we would really like to see is for the
16 applicant to characterize the mine spoil which
17 surrounds the site now; and then some way to
18 document how the groundwater moves through that
19 mine spoil; what the potential is for
20 infiltration and contamination, as well as
21 transport of contaminants offsite. That
22 information is not currently in the application
23 and we would like to see that present.

24 In addition to that, we would note that
25 the actual coal that's going to be mined, in this

1 case, coal slurry that's left over in the coal
2 impoundments, there's no current coal
3 characterization provided. Normally you would
4 characterize the coal seam between mines, but --
5 and that helps you get an idea of the potential
6 for pollution later on, but that's not present in
7 the application.

8 I guess the question that I would ask --
9 and maybe you would know the answer to this -- is
10 there a creek that runs to the southeast of the
11 slurry lake and the freshwater lake? It kind of
12 runs on the north and south parallel in the
13 direction of the mining area. It seems to me
14 that there might be a path for water to flow
15 there.

16 MR. FOWLER: How far away are you
17 talking about?

18 MR. PERBIX: More or less adjacent.

19 MR. FOWLER: Adjacent to it? I
20 believe there is a drainage on both sides; on the
21 north and the south there is drainage that takes
22 it down to the freshwater lake.

23 MR. PERBIX: Okay. Yeah. And just
24 in terms of placement of monitoring wells, we
25 would be interested in knowing whether is there a

1 monitoring well placed that would potentially
2 detect any flow into that stream from the slurry
3 lake, as mining suggested? And then another
4 question I have is about the freshwater lake and
5 the impoundment that constructs it. Is it
6 considered abandoned? Was it? Was it at any
7 point considered abandoned, the impoundment, this
8 location structure that forms the freshwater
9 lake?

10 MR. FOWLER: The dam for the
11 freshwater lake?

12 MR. PERBIX? Yes.

13 MR. FOWLER: Is it abandoned? It is
14 no longer within our program. It's been released
15 from Mining Regulatory Bond, but whether there is
16 a water resources dam permit on that, I'm not
17 familiar with whether there is a mine safe -- I
18 mean a dam safety organization permit.

19 MR. PERBIX: And the reason why I ask
20 is because, you know, to me, the freshwater lake,
21 as Ms. Treacy mentioned, is being treated as a
22 treatment works, as a facilitation pond, rather
23 than as an impounded stream, and so I'm wondering
24 if, you know, because that structure has been
25 taken out of the regulatory program how that

1 works. Why doesn't the Stream Buffer Rule apply?
2 What kind of regulatory keeping; how that's
3 justified. So if you could look into that during
4 your response in the summary, I would appreciate
5 that.

6 MR. FOWLER: Thank you.

7 MR. PERBIX: And I think I'll
8 conclude for now and submit my written statement
9 as an exhibit. And I appreciate it very much.
10 Thank you.

11 MR. HOLLOWAY: Thank you. Ron Balch?

12 MR. BALCH: I will not speak at this
13 time. Thank you.

14 MR. HOLLOWAY: Joyce Blumenshine?

15 MS. BLUMENSHINE: Thank you to Mr.
16 Fowler and the hearing officer and the IDNR for
17 holding this hearing.

18 My name is Joyce Blumenshine. I am a
19 volunteered member of Sierra Club. It's a
20 national organization. Our primary goal is to
21 protect the environment for our families and for
22 our future because without clean water to drink,
23 without reliably fresh air to breathe, and
24 without land that can sustain agriculture, none
25 of us are going to have a good future or our

1 children or our grandchildren.

2 And so our members in Illinois are
3 spread across the state. They recreate our
4 lands. They depend on clean water and creeks and
5 on fresh air. I'm here tonight because of
6 concerns about this permit. And just a few
7 questions and comments. Thank you.

8 I noted in talking briefly to -- Mr.
9 Chris Cain was kind enough before the meeting to
10 talk with me. He mentioned that on the perimeter
11 of the mine area there are still existing some
12 mature, large shagbark hickories. So that means
13 there are trees, as Ms. Treacy talked about, that
14 could be habitat for bats, so I just specifically
15 ask the IDNR in their review to require an
16 assessment, as was mentioned earlier, for Indiana
17 bats. There are trees there that could harbor
18 these creatures. And as everyone likely knows in
19 this meeting, Indiana bats are in a crisis
20 situation. Their numbers are plummeting. We
21 rely on those very important creatures for
22 pollination for the fruits and vegetables and
23 foods that we need, so that is critical.

24 I also noticed in the application that
25 it mentions the Lively Grove Fault that is north

1 of the site. Perhaps I missed it, but I did not
2 notice is there is any, what I will describe in
3 my layman's terms, as emergency action plan? I
4 specifically ask you, Mr. Fowler, that there
5 might be something to assess the impact of any
6 kind of seismic activity, whether it be an
7 earthquake or other --

8 MR. FOWLER: Joyce?

9 MS. BLUMENSHINE: Yes.

10 MR. FOWLER: Hold for a second. Let
11 this train go by. Okay. Thank you.

12 MS. BLUMENSHINE: So one of my
13 questions that I specifically ask is what
14 assessment has been done by Southern Illinois
15 Power Cooperative regarding impacts on this site
16 and project if there is any kind of earthquake or
17 other seismic activity, whether the safeguards to
18 the water, whether the safeguards of possible ash
19 flows. Just a few years ago on the news we were
20 all astounded, I'm sure, by the Tennessee ash
21 levee, the dam that broke and the gallons of
22 waste that spewed out on private property,
23 ruining homes, ruining fields. Kids were in it.
24 People are looking at years of cleanup. So that
25 is a specific question.

1 Related to the ash, also, I would just
2 like to point out that there has been a series of
3 articles in the *New York Times* about the impacts
4 of cadmium on health. We are now, the society is
5 much more aware that heavy metals affect us. We
6 see this with Alzheimer's, Parkinson's Disease;
7 in particular, in children and some adults are
8 more sensitive.

9 So the other question is in the permit
10 application it refers to what I'll call "highest
11 and best technology" in several places, and I am
12 just a citizen, but I don't consider just dumping
13 the ash back into the ground any longer
14 acceptable as highest and best technology. And I
15 think it's, you know, not acceptable to see that;
16 and that our state should require better. I am
17 aware that in other mine locations, most
18 particularly in Hillsboro in Montgomery County, I
19 believe IDNR required that the mine put in a
20 plastic liner under the coal refuse impoundment.
21 So I specifically ask, Why isn't a liner being
22 required at this site? Because there are known
23 water issues, as Mr. Perbix referred to, and that
24 seems to be a major importance; that better
25 strategies could be used that would be more

1 protective for the long-term; and that should be
2 employed because we know better now. And things
3 shouldn't be kept to be done in the last decade
4 as they were done 20, 30, 40, 50 years ago. I am
5 concerned about air pollution issues for people
6 in the area and also for wildlife.

7 I want to know what the mine will be
8 doing on an ongoing basis to monitor any dust.
9 Will they be sampling for air pollution at the
10 site? So if it's a windy day and there's dumping
11 from trucks, and there's a cloud that isn't
12 captured by water or some escaping dust, what
13 happens to that? Where does it go? Whose
14 backyard is coated? And what does that mean to
15 those families? What protection does this offer
16 for people who have lived here, invested in their
17 homes and their properties and love this area. I
18 believe there is a concern that this company owes
19 the residents of this area who have invested in
20 their properties and want to live here and thrive
21 here with their families.

22 I do not see a discussion of what the
23 truck traffic will mean as far as impacts to
24 noise. Will trucks be driving 24/7 up and down
25 haul roads? Can IDNR put any limitations on

1 that? Can they say dawn to dusk? Can you exempt
2 traffic from Sundays? I think these are
3 questions that should be answered.

4 I am also concerned about lighting at
5 this site. What kind of lighting will be
6 employed? Will it will directional lighting or
7 will it be lighting that spreads out over the
8 entire area? What are the impacts on wildlife?
9 And whose country residents that they treasure
10 the quiet and night sky are going to be impacted?
11 I think the company owes an explanation to the
12 public residents about that. What is happening
13 here is in an area that's suffered the impacts of
14 mining for many decades and then was left to
15 heal, and it has healed because there's a variety
16 of wetlands there with habitat there for wildlife
17 and endangered species, now this area is again
18 going to be torn apart. The wildlife will be
19 displaced. The water will be impacted. And
20 residents who have come in to establish homes,
21 thinking that the industrial mining operations
22 are done, are now faced with a whole new
23 industrial operation hoisted upon their rural
24 lifestyle. And I think it should be answered as
25 to what the noise levels will be, in addition to

1 the lighting and the truck traffic.

2 I am concerned about abandoned mine
3 lands in the area. I am specifically asking IDNR
4 to check their records and ascertain what
5 existing "AML", abandoned mine landsites, might
6 be potentially leaking any kind of contaminated
7 water or have been under investigation. I
8 appreciate Mr. Fowler's comments at the beginning
9 of the meeting saying there's no active mine
10 permits, but as we all know, there are many
11 closed mine sites. And I respectfully suggest
12 that IDNR (LRD) that a complete assessment should
13 be done around the surrounding area because if
14 there are existing abandoned land mines with
15 documented water contamination issues or problems
16 or testing that shows contamination, that it is
17 not appropriate to now permit a new operation to
18 add insult upon injury to areas that are already
19 mined out and trying to recover. Since here you
20 have a healthy wetland; a creek and water system
21 that have been restored and been trying to gain
22 ecological balance for well over 30 years, three
23 decades, that are now the subject of yet another
24 industrial intrusion and the added impact of
25 toxic hazardous coal ash waste.

1 I have a question for IDNR regarding the
2 coal ash, and that is, if the gob that is mined
3 from this site does not come up to the
4 anticipated 100,000 or to 200,000 tons per year,
5 is the amount of coal ash that then can be back
6 hauled to the mine, could it reduce the amount of
7 what the gob might be? So what I'm saying is who
8 monitors if the mine -- I'm sorry -- the power
9 company takes out X amount of gob to be used and
10 hauls back X amount of ash. Who is checking to
11 be sure that those amounts could out go? I mean,
12 would there be a situation where maybe the mining
13 wasn't going as well, they had a lot of rain or
14 there were other problems, do they then have to
15 cut back the amount of ash that comes in? And
16 what guarantees do we have as the public that
17 these issues will be monitored and these levels
18 will be kept in balance?

19 MR. FOWLER: I'll try to answer that
20 right now so that we can go through this. I
21 don't want to write it down.

22 MS. BLUMENSHINE: Okay.

23 MR. FOWLER: If -- and we're going to
24 go through this first -- if ash is approved to be
25 brought back beneficially to the mine site, there

1 will be a very detailed plan of how that will be
2 done and how it would be done beneficially so
3 that the intention of how that ash was to be
4 brought back, if it is allowed to be brought
5 back, would fit a specific plan; therefore, if
6 they had more ash than the plan would allow them,
7 they obviously could not do that. You know, they
8 would have to be able to place the ash in the
9 approved places at the approved levels at the
10 time. If they don't have the space or the proper
11 place to put it, then they won't be able to bring
12 it back at that time, if it's approved to be
13 done.

14 You know, like I said, this is still
15 early in the permitting process, the permit
16 application review process, and it has not been
17 determined that ash would be approved yet to be
18 brought back in a beneficial manner, or maybe not
19 even in the manner that it's already proposed.
20 So there's a lot of -- we do appreciate all the
21 comments that you have provided tonight; and that
22 will help us in reviewing the application and
23 bring up those specific issues as we go through
24 and deal with the permit review -- or the
25 application review, I should say.

1 MS. BLUMENSHINE: Thank you. I just
2 have a few. And I do appreciate your answer.
3 Thank you very much. I just have a few comments
4 in closing. I would second Mr. Brian Perbix's
5 comments. I don't see how this is a beneficial
6 use. You have an existing healthy wetland system
7 with not one, not two, probably more than three
8 endangered species. This is very significant.
9 As we know, habitat issues for these creatures is
10 challenged in parts of our state; and I would
11 urge IDNR to use all its resources in consulting
12 with the U.S. Fish and Wildlife Service for their
13 recommendations on appropriate plans for all the
14 possible endangered species here and whether or
15 not that outweighs whether coal ash should even
16 be put in this place. I would respectfully urge
17 that coal ash is not appropriate for this site
18 because of the muddied waters running around the
19 area; and that it's even questionable if the gob
20 reuse, digging up and basically forcing this area
21 to start all over again and the residents of this
22 area to suffer through a whole other years of
23 industrial facility in their rural habitat is,
24 indeed, it's beyond me how it could be beneficial
25 use. Thank you very much.

1 MR. HOLLOWAY: Thank you. Vickie
2 Muehlenbein?

3 MS. MUEHLENBEIN: I just mainly come
4 here as a concerned citizen as I have been a
5 customer for Southeastern Electric Coop, born and
6 raised right here in Southern Illinois. And from
7 everything that I have heard tonight so far, they
8 have made Southeastern out to be this big, bad
9 company; and they are not. They're actually
10 owned by all of the members that sit here tonight
11 and all of the members that actually live in this
12 area. So when you call our rural community here,
13 you're saying that this big industrial thing is
14 going to destroy it. You have no clue. You
15 don't know the benefits that it will actually
16 bring. You're worried about the species that are
17 in this area, but are you worried about the poor
18 women and children that can't afford their
19 electricity whenever you make Southeastern have
20 to go to other resources to make our power? You
21 know, what are you going to tell them whenever
22 they can't pay their bills because they can't
23 afford electricity that you want them to have to
24 pay.

25 That's why -- and I did bring up some

1 things on the cadmium that you claim that is so
2 bad for our health. All you have got to do is
3 google it. Sierra Club wants you to believe that
4 cadmium is going to give everybody cancer and
5 everybody is going to start dropping like flies,
6 when the truth is we have this in our everyday
7 lives. Let me look real quick. Cadmium is found
8 naturally in small quantities of water, air and
9 soil. It comes from your car exhaust. It can
10 enter your body from smoking tobacco, eating and
11 drinking food and water containing cadmium, and
12 inhaling it from the air. Your skin does not
13 absorb easily the cadmium. And it is not likely
14 to cause adverse health effects. And then, also,
15 I wanted here: There is no evidence that cadmium
16 causes cancer at low levels normally found in the
17 environment. That's all I would like to say.

18 MR. HOLLOWAY: Thank you very much.

19 Leonard Hopkins?

20 MR. HOPKINS: My name is Leonard
21 Hopkins. I'm the fuel and environmental manager
22 at Southern Illinois Power Coop. I just have a
23 few comments about what we have talked about here
24 tonight. SIPC looks forward to recovering and
25 reusing the coal fines left behind after the

1 closing of the Delta Mine in the mid 90's, and
2 we'll use it to make health power to serve
3 Southern Illinois. SIPC will mine this in an
4 efficient and effective and environmentally
5 acceptable manner. We will employ the best
6 environmental practice. During reclamation we
7 plan to use coal combustion byproducts, not coal
8 wastes, not hazardous wastes, these are
9 byproducts and they meet the definition of
10 byproducts. These byproducts will improve the
11 site and reduce the chance for acid mine
12 drainage. We test these byproducts often, and we
13 assure that they are safe.

14 Now, I have just got a recent test and
15 here is some examples. If you drank a quart of
16 water that came through these byproducts everyday
17 you would get one half of the selenium in your
18 daily vitamin. If you drank a quart of water
19 that ran through these byproducts everyday you
20 would get one quarter of the chromium that comes
21 in your daily vitamin. There is only one two
22 hundredths of the copper in that quart of water
23 than would be in your daily vitamin. And there
24 would be one one thousandth of the zinc that
25 would come in your daily vitamin. One two

1 hundredth of the manganese.

2 So I assure you these are byproducts
3 that are very safe and they're very useful. And
4 it is more environmentally acceptable to reuse
5 such products than to try to hide them in a
6 landfill and have to remine other products for
7 use as fill.

8 So I wanted to bring that forward. And
9 as a representative of Southern Illinois Power, I
10 wanted to show everyone that we will perform this
11 project in the best manner we can. Thank you.

12 MR. HOLLOWAY: Thank you. Now,
13 hopefully I have went through all the forms.
14 Have I missed anybody? Is there somebody here
15 that filled out a form and I lost it? I hope
16 not. I'm going to read my closing statement and
17 then after that Mr. Fowler will be available to
18 field all questions.

19 MR. FOWLER: Yeah. What we're going
20 to do -- excuse me -- once he gets done, we're
21 going to probably take five minutes to take a
22 little break and I'll huddle my staff together
23 and we'll try to come up with answers to the
24 questions. And I'm sure there will be
25 supplemental questions that will come up from our

1 answers, so we'll try to answer them as best we
2 can this evening. And we'll do that as soon as
3 he closes. We'll take just a little break.

4 MR. HOLLOWAY: I want to thank all of
5 the speakers. I thought you all did well, and I
6 appreciate all your comments.

7 Noting that all those wishing to make
8 comments have done so, I will restate that the
9 hearing record will remain open until August 8th
10 for interested parties to submit written comments
11 for the record. As noted earlier, once the
12 hearing record is closed, the Land Reclamation
13 staff will then review all comments made here at
14 the informal conference, this hearing and
15 received in writing, as well as the application
16 and any comments received from other agencies. A
17 decision will then be made to issue, deny or
18 require modifications to the application. If
19 modifications are required, we will notify the
20 applicant of all of those required modifications
21 and once we have reviewed the responses we will
22 issue our final decision.

23 Comments made at this hearing, as well
24 as comments received in writing, will be
25 addressed in our decision finding. Anyone who

1 spoke tonight, who has simply indicated that they
2 are in attendance or who sends us written
3 comments will receive a copy of our written
4 decision finding when it is issued.

5 For those of you who wish to submit
6 written comments, our mailing address is: Mr.
7 Scott Fowler, Illinois Department of Natural
8 Resources, Land Reclamation Division, One Natural
9 Resources Way, Springfield, Illinois 62702-1271.

10 Thank you for your participation.

11 One other thing, there was no informal
12 conference. I mentioned that in the closing
13 statement. There was none. This is the hearing.

14 The hearing is adjourned. Thank you.

15 (Recess was taken at 8:15 p.m.)

16 MR. HOLLOWAY: I apologize. I'll
17 open the record up again during this question and
18 answer session. Mr. Fowler will be available.
19 Anybody that wants to move further up, there's
20 plenty of chairs here. So anybody that has a
21 little trouble hearing is welcome to come up
22 closer to here.

23 MR. FOWLER: First off, I want to
24 thank everybody that participated this evening
25 and was here. This was one of the best hearings

1 we have had in my 12 years that I have been
2 associated with the department. There was a lot
3 of work done by the folks that made comments
4 tonight in reviewing the application and
5 providing us with very good in-depth comments on
6 the application and that is very refreshing to be
7 able to have that type of comments from the
8 public so that it will help us in our review; and
9 we'll take those comments and those concerns into
10 consideration and evaluation as we evaluate and
11 look at the technical aspects of this permit
12 application.

13 I do want to go through some of the
14 questions that were brought up tonight. I'll be
15 able to answer some of them. Some of them I
16 won't be able to. Some I'm going to punt to a
17 future time. We'll talk first off with some of
18 the questions brought up about the shag bark
19 hickory trees that were out there and were cut.
20 I can -- I'm almost sure that all the cutting was
21 done during a period of time that is protective
22 of the Indiana bat that would exist out there.
23 Yes, there may be habitat that was removed, but
24 the bats -- the trees were fell during a period
25 of time when the Indiana bat is not present.

1 That would be during the winter periods. I do
2 believe DNR was involved in that. The person
3 that would have been involved with it is not here
4 tonight, so I don't want to speak for him or how
5 that was done, but it will be addressed. We will
6 get an answer to that in the res -- well, the
7 findings document responsive to this because I
8 think it's a very important aspect that needs to
9 be addressed and not just be overlooked. So,
10 yes, for these tree issues, yes, DNR was involved
11 in it to help facilitate, you know, those trees
12 being taken at the proper time so that it
13 wouldn't be involved with the mining process -- I
14 mean, hurting the bat population. So we will
15 address the specifics of that.

16 How is the ash going to be contained?
17 Again, we talked a little bit about that earlier.
18 The question is going to be if the ash is going
19 to be involved, how it's going to be involved.
20 Yes, there will be detailed plans to make sure
21 that it is contained. There will be protection
22 to make sure that we don't have wind blown or
23 escaping ash from the property. It will be
24 detailed in their plan on how it's going to be
25 used, if it is approved to be taken back to the

1 site.

2 I'm a little lost on I don't know much
3 about the Lake of Egypt stuff, and so I'm going
4 to have to pass on that. I don't know about the
5 metals. I know there's reports that have been
6 provided to us, but I'm just not that familiar
7 with the history of that, how long it's been
8 there, what kind of processes were being used at
9 the time when those ashes were being produced,
10 and, you know, what is the sources of the metals.
11 So there's a report, but I haven't read that.
12 I'll have to punt that one because I just flat
13 don't know.

14 Again, sun, wind erosion, there will be
15 specific plans within the permit that require
16 them to handle material properly in a manner that
17 won't cause that, if it is approved to be able to
18 be brought to it, and it will be monitored. And
19 if it's not working the way it's supposed to be
20 done, then adjustments will be made to make sure
21 that it does. And if it can't be fixed, then
22 that process will have to be eliminated because
23 it has to be able to be handled in a proper
24 manner. We can't allow fugitive dust or things
25 to get away from the permit site.

1 Surface water contaminated by the ash?
2 That, again, will be taken into consideration
3 when we are evaluating the permit application
4 itself to make sure that that doesn't happen;
5 that we don't get escape of surface water that
6 comes in contact with the ash that could be
7 containing materials above what is allowed to go
8 out. Obviously, there is going to be -- and I
9 don't think there is now an MPDS point approved
10 or an MPDS permit for this site. So any water --
11 any area within the site will have to report to
12 an MPDS point, which will have constraints on
13 what the limits of discharge can be of different
14 components in the water. So as far as when the
15 water as it leaves the site after it's been in
16 contact with the ash or the other materials on
17 the site will have to meet strict standards of a
18 MPDS permit. And I might be wrong because I'm
19 not sure about EPA's actions, but I do not
20 believe that the proposed discharge point is a
21 current MPDS point. It will have to be
22 repermitted. It will have to go through all the
23 processes through EPA. It will have to go
24 through the non degradation analysis and
25 everything else that the EPA will have to go

1 through on handling an MPDS permit and point for
2 this potential mine site.

3 Animals drinking water? Again, that
4 will have to be addressed to make sure that even
5 the water onsite is not going to be of a level
6 that will be problematic to the animals,
7 especially the water that comes in contact with
8 the potential ash disposal there.

9 I don't want to just blow past this if
10 there's additional questions. If I didn't answer
11 all your questions the way that you had asked
12 them, I would want to make sure.

13 MR. CAIN: Oh, no sir. You did an
14 adequate job answering my questions.

15 MR. FOWLER: Okay. But if there's
16 any follow-up, we'll be here as long as anybody
17 wants to ask questions afterwards. If they're
18 not comfortable in a large setting, we'll be here
19 for as long as you want to talk about things
20 tonight.

21 One of the things I have written down
22 that Ms. Blumenshine had brought up about truck
23 traffic and lighting and noise levels, I know
24 those are extremely important to the local
25 citizens that live around these sites and it is a

1 very important aspect to mining and a very
2 difficult thing to live around when you have
3 these things. Unfortunately, the law that we
4 administer is called Surface Mining Control and
5 Reclamation Act, or "SMCRA" for short. It was
6 done back in the 70's and most of the mining was
7 done in the rural communities, you know, out in
8 remote areas. Now mining has come encroached
9 more towards the civilization, you know, where
10 people live and these issues are not regulated in
11 our law. You know, we don't have rules to handle
12 truck traffic and all that, you know. We know
13 it's a big issue for people that live around the
14 mine, but, unfortunately, the law that we
15 administer does not take this into consideration.

16 The same thing with lighting. We don't
17 have any rules that handle lighting issues. It's
18 unfortunate, you know, but the law is the law
19 that we have to administer. You know, we can't
20 make up portions of it. We have to live with
21 what the rules require.

22 The same thing with noise. We don't
23 have any rules within SMCRA to address noise
24 issues. Now, you know, the EPA may have some
25 rules that deal with noise. I believe they do.

1 And they may have the ability to regulate noise
2 issues at a coal mine, but our regulatory agency
3 and the rules that we handle do not address these
4 issues. Like I said, if there was a SMCRA II
5 that was written nowadays, that may be part of
6 it, but that, unfortunately, is not part of our
7 rules now. We don't have the ability to regulate
8 these issues.

9 I know there were a lot of other
10 questions that you brought up. I'm hoping those
11 questions were more for us to evaluate as we
12 review it and you weren't really looking for
13 answers to those things tonight. If there was,
14 if I missed one, please, because I didn't write
15 them all down, if there was one that you really
16 wanted us to address tonight that I didn't have
17 on the list here?

18 MS. BLUMENSHINE: Joyce Blumenshine
19 speaking. Thank you, Mr. Fowler. I realize on
20 the AML issues that you haven't likely looked at
21 that around the area if there was problem sites,
22 so I will be expecting to see those kinds of
23 responses.

24 MR. FOWLER: We will try, yes. I
25 mean, yes, AML are one of my sister divisions

1 that is the other half of SMCRA does take care of
2 mining problems that occurred and still exist
3 from mining that occurred prior to 1977. Since
4 1977, all coal mining has been regulated and it's
5 regulated by our rules here. Prior to 1977, the
6 coal mines when they closed down prior to that
7 didn't have any responsibilities out there. What
8 happens is the coal that's produced today,
9 there's a levy on it; there's a reclamation fee
10 that goes into a big fund that is distributed to
11 the states for the states to go out and take care
12 of these what they call "abandoned mine sites"
13 that have, oh, safety issues or environmental
14 issues so they can go out and try to address
15 those issues. Whether there are some AML sites
16 that haven't been reclaimed out in the area that
17 still have problems, I don't know, but we can try
18 to do an evaluation of that because that group
19 does keep a database of their issues and I think
20 maybe some of those they do have a running idea
21 of what problems may still exist out at those
22 sites. But we can definitely take a look at
23 those sites that they have worked in this area to
24 see if there's anything that can be contributing
25 to that.

1 Unfortunately, as far as, you know, our
2 CHIA analysis and things like that, those things
3 aren't part of it because it's previous mining
4 and those things -- those previous mining issues
5 are expected at least in the CHIA analysis to be
6 part of the background information, the
7 background data. That's because, you know, it's
8 not changing out there, so it will be captured in
9 the background data. The CHIA looks at current
10 mining and potential future mining, things that
11 aren't currently in the water system or the
12 hydrologic balance today so that you would
13 address those and take those into consideration
14 when you're looking at the permit application.

15 I kind of went through it. Like I said,
16 this was a very good hearing. We had comments
17 directed to us on this specific permit
18 application, which is wonderful. You know, you
19 generally sometimes get a whole list of
20 questions, you know, from folks that haven't
21 really looked at the application. And this was
22 extremely helpful tonight to have an audience
23 that has done some research into it and brought
24 us some very specific questions. It's going to
25 be extremely helpful as we go through and do our

1 evaluation of the technical levels of the
2 application.

3 If there's any other questions that we
4 missed, anybody wants to bring up, I'll be happy
5 to try to answer what I can. Again, like I said,
6 we're very early in the review of this and we
7 still haven't got our comments in from the other
8 expert agencies that we're going to get good
9 comments from as we do the review. And we're
10 just not very far into the system. We can't tell
11 you why we're going to allow them to do this or
12 not allow them because we haven't got to that
13 point yet, I mean, the determination of what is
14 going to be approved in the permit and what may
15 not be and what may have to be modified later on.

16 Is there any other questions before we
17 come a close? Yes, Brian?

18 MR. PERBIX: I hate to prolong this,
19 but --

20 MR. FOWLER: No. That's fine.

21 MR. PERBIX: -- just one question
22 that I think is important in terms of SMCRA'S
23 Public Participation Division.

24 MR. FOWLER: Yes.

25 MR. PERBIX: I noticed that the

1 applicant has applied for permission to waive the
2 300 foot boundary rule between the permit area
3 and the occupied residence.

4 MR. FOWLER: Yes.

5 MR. PERBIX: I think there's a clause
6 in the regulations that states that it's the
7 haulage road, the department may make an
8 exception to that rule. But I looked through all
9 of the maps and I didn't see a 300 foot line from
10 the permit application, and I'm wondering
11 normally in this kind of situation would the
12 department expect an applicant seeking that
13 exception to have a 300 foot line on a map? And
14 please correct me if I'm wrong, if that 300 foot
15 line is in the application materials. And the
16 concern is that, you know, if permission is
17 granted down the road after the public comment
18 period is closed, I don't see how local residents
19 who may live in that area would necessarily
20 realize that they were within 300 feet before
21 permission was granted.

22 MR. FOWLER: I understand. I did a
23 quick view of the mapping and I don't remember
24 seeing it on the maps. Whether the 300 foot, or
25 at least identification of which house would be

1 within the 300 foot, generally, yeah, we do
2 require that and probably will at least identify
3 the home that is asking for that waiver. That's
4 a good comment.

5 MR. HOLLOWAY: That's usually
6 individual houses identified. It's not like a
7 broad buffer zone all the way along the road, but
8 each house -- each residence --

9 MR. PERBIX: Each residence --

10 MR. HOLLOWAY: Yes.

11 MR. PERBIX: -- within that boundary?

12 MR. HOLLOWAY: Yes.

13 MR. PERBIX: So the department would
14 contact them after --

15 MR. FOWLER: Well, I'm not sure. Do
16 you have any comments to it? If not, I'll try to
17 fumble through it. You know, there are -- there
18 is a requirement that mining not be within 300
19 foot of an occupied dwelling; and they can get a
20 waiver for that. But there are certain instances
21 where that rule does not apply. And, you know,
22 where you have a haulage road that comes out to a
23 main road, the home on the opposite side of the
24 street would be exempt from that 300 foot buffer
25 zone. It's only for where the haulage road comes

1 out to a highway. And I think that's the only
2 exception.

3 MR. HOLLOWAY: And not just a haulage
4 road. Any mining activity on the permit, that
5 300 foot buffer applies to the residence --

6 MR. FOWLER: Yes.

7 MR. HOLLOWAY: -- unless there's a
8 waiver granted.

9 MR. FOWLER: Yeah, without a waiver
10 granted. But where the haulage road comes out I
11 think is the only place there would be an
12 exemption. They don't have to get the waiver
13 from the landowner because where the haulage road
14 enters the --

15 MR. HOLLOWAY: Public road.

16 MR. FOWLER: -- the public road.

17 MR. PERBIX: At that one point they
18 don't have the exemption? Am I understanding
19 that?

20 MR. HOLLOWAY: Yes.

21 MS. BLUMENSHINE: Joyce Blumenshine
22 speaking. Just for a clarification, I'm sorry,
23 I'm trying to follow this, but don't they have to
24 get an exemption from IDNR to move the haulage
25 road within 300 feet of a buffer? I'm not sure,

1 Mr. Fowler, but, I mean, you said they didn't
2 have to have an exemption --

3 MR. FOWLER: Let's say this is the
4 main public road out here. And, Tim, you jump on
5 me if I'm wrong. Say you have a house here and
6 the haulage road onto the property, you know,
7 into the mine comes in here, and this point here
8 is within 300 foot of that house, the 300 foot
9 buffer zone doesn't apply for this. So you could
10 go out 300 foot from this point and any house
11 that fell within that doesn't have it. But I
12 think this is the only place in the regulations
13 that it exempts having to get a waiver or having
14 a setback from the 300 foot of a house. And I
15 believe this is the case in this permit; that
16 there is a haulage road that comes out to the
17 road and there is a house on the other side. But
18 you're right, it isn't identified in the permit,
19 that I can remember.

20 MR. PERBIX: Thank you.

21 MR. FOWLER: Anybody else? If not,
22 Mr. Hearing Officer?

23 MR. HOLLOWAY: Again, I want to thank
24 everybody. Everybody gave some really good
25 comments tonight. The conduct was wonderful.

1 And I want to thank you for your efforts for
2 coming out tonight. Hearing closed.

3 (Hearing concluded at 8:40 p.m.)

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STATE OF ILLINOIS)
) SS
COUNTY OF FRANKLIN)

I, Michele Thomas, a Notary Public in and for the County of Franklin, State of Illinois, do hereby certify:

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

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

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 2nd day of August, 2011.

Michele Thomas

Michele Thomas, CSR#084-004396
Notary Public in and for the
County of Franklin, State of
Illinois

