

Marc Miller, Director
Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702

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jwdmed@consolidated.net
January 3, 2012

RE: Request for a Public Hearing on the High Hazard
Coal Slurry Dam Construction at Deer Run Mine

Dear Director Miller:

I received a certified letter postmarked December 16, 2011 from Mr. Arlan Juhl regarding my request for a public hearing for the dam construction of a coal slurry impoundment at the Deer Run Mine. The letter was a form letter which denied my request because OWR did not consider, "such a hearing in the public interest, or believes it to be the most appropriate means of receiving information concerning the application."

This issue is critical to the health and well being of residents in the city, surrounding cities, county and state. I was disappointed by the superficial response that addresses a mine named "Deer Creek Mine." If Mr. Juhl really was engaged in evaluating the risks and concerns of citizens, he surely would have been aware of the correct name.

Mr. Juhl needs to describe the **better** way to relay information on the dam proposal, since a public hearing is not suitable. IDNR/OMM did not answer any questions concerning the dam construction at the Public Hearing for the Significant Revision 1 of Permit # 399. The application from Hillsboro Energy LLC (HEL) was finally made available just recently at the Montgomery County Court House although the unpublished public notice of the dam application occurred on March 24, 2010. Prior FOIA requests for copies or CDs of the dam application were essentially denied due to the high cost (\$446.45 per Ms. Virginia Yang's billing).

Joyce Blumenshine and I spent several hours on November 29, 2011 perusing the proposed dam construction for Deer Run Mine at IDNR in Springfield. We marked the pages and maps that we wanted copied through a FOIA request and Joyce wrote a check for \$46.60. Copies of the requested materials were received the next week except for 3 pages.

An additional FOIA request was faxed on December 16, 2011. Mr. Paul Mauer responded to me via e-mails that confirmed he could not find Density Test 242 E or Density Test 245 E. My request for the second page of a letter dated February 22, 2011 that HEL sent to Mr. Scott Fowler concerning Notice of Violation 38-06-11 was not received. Instead, Ms. Yang mailed a copy of HEL's letter dated February 15, 2011 to Mr. Fowler concerning Notice of Violation 38-05-11. This pattern of hide and seek and substitution is not acceptable. These actions are violations of the FOIA.

The dysfunction and disconnect of IDNR/OMM and IDNR/OWR with each other as well as other agencies nullify their purpose and effectiveness. Mr. Fowler on several occasions has explained that OMM must approve a permit application if it is clerically complete and processed through administrative steps. Whatever is the least expensive and most convenient for the mine operators are acceptable and approved. The coal processing at the mine can be in the worst location that damages health and well being of a community, but OMM will not do anything to alleviate the harm to the citizens and environment. The most updated mining practices are not employed and no precautions to minimize risks to the community are applied. The high hazard dam was maneuvered into Hillsboro through 7 Insignificant Revision changes to Permit # 399 and a “don’t tell anybody” application for the dam construction.

What a travesty for the citizens in the communities to be considered so unimportant and so available for sacrificial damage to enhance mine profits. IDNR/OMM and IDNR/OWR should not be considered regulatory agencies (who enforce SMCRA, CWA, and CAA), but rather permitting agencies whose clerical roles could be performed more efficiently by DMV. The residents and environment would be in the same disastrous situation, but the façade of being protected by regulatory agencies would be removed.

Director Miller, your attention to the out-of-control actions of OMM and OWR is desperately needed. Please intercede and arrange a Public Hearing for the proposed dam construction that is being constructed now and will remain in Hillsboro in perpetuity. Remember, OWR does not acknowledge SMCRA requirements or NPDES violations to be in their purview.

Thank you for your assistance.

Most sincerely,

Mary Ellen DeClue

Mary Bates
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December 28, 2011

Mr. Marc Miller
Illinois Department of Natural Resources
Office of Water Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

RE: Public Notice, Class I High Hazard Dam
Deer Run Mine #399, Hillsboro Energy LLC
Request for Public Hearing by OWR

Over the past three years it has been well documented that the SMCRA rules have been violated time after time by IDNR's regulatory agency, Mines and Minerals and Office of Water Resources! If anyone thinks building a Class I high hazard dam inside the city limits of a small town is a good idea they don't need to be employed at OWR ...or Mines and Minerals for that matter. Anyone who approves these permits for a political reasons should have his engineer's license revoked!

Dam safety should be the utmost important issue at OWR but their narrow focus has created an area of non-compliance so huge even the most egregious SMCRA violations are being permitted. Toxic slurry impoundments are being allowed to remain after mining is completed even though the SMCRA rules are very clear they must be removed. The residents' lives will be endangered by the toxic pollutants in the air, surface water and ground water for many years to come and long after the mining company has left the area. By refusing to hold a public hearing, citizens are denied public participation allowed in SMCRA...but OWR does not recognize SMCRA rules. However, it could be granted under IDNR rule 17 IAC 3702.140.

Most people in Montgomery County are hardworking families struggling to support their families. They don't have time to do research about mining issues. It has been up to retirees who have computer skills to uncover violations, greed and corruption in these mining permits. Most residents do not have broadband and the local newspaper avoids offending the mine operators for fear they will lose readers and good will from the mine.

The landowners have been lied to and cheated by fear and intimidation out of their land. Without the help of Sierra Club, Prairie Rivers Network, Citizens Against Longwall Mining, and the Illinois Attorney General, the landowners would be alone in their fight to protect their property and livelihood. This is a low income community where the townspeople need and want jobs at any cost. Even at the cost of their neighbors' lives. The corruption in Illinois didn't stop when Blagojevich was sent to prison. Corruption is alive and well in IDNR Mines and Minerals and Office of Water Resources. I suspect in many other agencies as well.

The situation developing at the Shay 1 Mine in Carlinville has violated SMCRA rules for years. IDNR/MM/EPA has known since May 21, 2003 when it was entered into the Site Remediation Program (#1170155003) illegally by Exxon/ Mobil. We are waiting to see how IEPA resolves an enormous offsite pollutant discharge. Will IDNR/MM approve a permit for Macoupin Energy LLC to inject coal slurry at the same site? Why can't IDNR/MM supply a FOIA request for Permit #56 for Monterey1 for RDA5 and RDA6? There are claims that reclamation plans are on going while continuing to dump

slurry into RDA5.

I'm sure you are aware of the Illinois Supreme Court decision due soon in Clinton County on Exxon/Mobil vs. Citizens Opposed to Pollution. These are the same SMCRA rules violated in Exxon Mobil, Monterey1 and now the same scenario is happening at the new Deer Run Mine in Hillsboro.

The Deer Run Mine is becoming a well documented disgrace gaining national attention. [See the attached article](#) by Jeff Biggers of the Huffington Post. This mine is operating without 1) revised NPDES permit, 2) without a Significant Permit #399, Revision #1 and 3) an approved High Hazard Dam Permit. An Emergency Dam Permit from OWR was issued only after it was revealed that the dam was already in construction for 18 months. This is irresponsible and an abuse of power.

There is also abuse of power in the IDNR legal department for stonewalling FOIA requests for documents concerning engineering construction plans for the Deer Run Mine. Complaints are now being filed with the Attorney General and FOIA Review Board.

Unless a public hearing is held to explain why SMCRA rules are not being enforced, there will be more public disgrace and more litigation involving IDNR. A qualified engineer needs to be in charge at OWR that is willing to protect the residents and landowners from dam failure due to shoddy construction as well as enforcing SMCRA rules to remove an impoundment after mining has been completed. Due to the size of projected production at Deer Run, there will be several more impoundments in the coming years. This disagreement is not just over one impoundment but many more to come. This impoundment will be full in 4.4 years according to the permit. Also, why is the Emergency Action plan not completed and approved before the construction was begun? Emergency Management personnel are completely unaware of the hazards they will be facing in the event of an accident or earthquake. This is completely irresponsible by OWR!

There will be pollutants blowing off the coal piles into the residential areas. The air permit did not require air monitors. The closest air monitor is in Nilwood in Macoupin County. Hospital patients, nursing home residents, day care children, and confined inmates at Graham correctional are exposed to daily contamination from mercury, arsenic, lead, cadmium, and polycyclic aromatic hydrocarbons (PAH'S) in coal particles smaller than 2.5 microns. This is in violation of the Clean Air Act and the Clean Water Acts. But how would anyone know since there are no monitoring devices for the most harmful constituents in coal?

Instead of using the latest technology with a centrifuge, there will be seepage from passive sediment ponds flowing through Central Park Creek and through the center of town. Mine overflows and mine runoff flow past the swimming pool, basketball court, mini golf, skateboard court, baseball diamond and playground. There are no barriers to protect children from playing in the contaminated creek.

But the worst will be the toxic mountains of coal waste slurry left on an abandoned mine site after the mine operator is gone. The impoundment will be covered up with 4 foot of soil and vegetated...not removed as required.

The Administrative Review has been held up on Deer Run for months due to the hearing officer's personal problems. Are you willing to take responsibility of your department and to protect citizens and landowners? Why is SMCRA not enforced at Mines & Minerals? MM was evasive and would not answer questions at the informal conference or public hearing for the original permit #399. The impoundment was described as a non-impounding impoundment...then a few months later two insignificant permit revisions were approved to change the configuration completely. Without public participation!

The work has already begun and toxic slurry is being put into the dam every day without the general public's knowledge. The general public was never notified of the OWR's public notice posted in March 2010. The notice was only sent to the internal agencies that have no personal interest in the project.

The Class I dam was begun under an Insignificant Permit revision #4 and #7 by Mines and Minerals in October and November 2010 respectively. After much complaining, a second Public Notice was printed in the newspaper on September 29, 2011. An emergency permit was issued because the dam was already in construction without the public being aware.

OWR's assumption that there is no interest in a public hearing is untrue and an excuse to evade responsibility. It is your responsibility to see that SMCRA is enforced at IDNR/MM and OWR! Unless you as Director of IDNR Mines and Minerals and Office of Water Resources stop the corruption there will continue to be complaints and possible litigation against these agencies.

How many people have to request a public hearing for OWR to consider there is enough public interest

To hold a hearing?

I am requesting a public hearing for the Class I High Hazard Dam in Hillsboro, Illinois.

Sincerely,

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cc: Tom Davis
Irvin Barchenger
Andrew Gilmore
Arlan Juhl
Paul Mauer