



Illinois Department of Natural Resources

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www.dnr.illinois.gov

JB Pritzker, Governor
Colleen Callahan, Director

April 7, 2022

Mr. Clayton Cross
Hillsboro Energy, LLC
P. O. Box 457
Hillsboro, IL 62049

Re: Permit No. 399
Deer Run Mine
Incidental Boundary Revision No. 15

Dear Mr. Cross:

The appropriate Department technical staff have reviewed the proposed incidental boundary revision dated June 8, 2021, the supplemental information dated, November 22, 2021, November 30, 2021, and March 25, 2022, submitted by the permittee for the Deer Run Mine. The request would add 2.74 acres to conduct surface coal mining activities. The additional acres would be used for support underground mining with the installation of five 6-inch utility boreholes, and a total of 0.15 acres graveled area.

Section 1774.13: The Department finds the permittee has demonstrated in its request, and field inspections by the Department's field representative have confirmed, that these areas meet the requirements for an incidental boundary revision, as outlined in 62 Ill. Adm. Code 1774.13(d). Section 1774.13(d)(6) publication requirements have been met. Section 1774.13(c) findings are below.

The Department finds that the public participation requirements of Section 1774.13(d)(6) have been satisfied. Hillsboro Energy, LLC has placed a newspaper advertisement of the proposed IBR operations in The Journal-News, a newspaper of general circulation in the area affected, published in Montgomery County on July 29, 2021. A public hearing was held on September 15, 2021, at the Montgomery County Historic Courthouse in Hillsboro, IL. Comments received at the public hearing and in writing are addressed in Appendix A to this letter.

DEPARTMENT FINDINGS

Section 1761.11(d): The proposed area is within one hundred (100) feet measured horizontally of the outside right-of-way line of a public road in Montgomery County. The proposed affected area is adjacent to the right-of-way of State Highway 185. The proposed activities in the affected area include the installation of five (5) 6-inch utility boreholes, and a total of 0.15 acres graveled area.

No approvals from the authority with jurisdiction over the road was required.

The applicant provided proper public notice and opportunity for a public hearing. A hearing was requested and written comments were submitted to the Department concerning this road. Comments received at the public hearing and in writing are addressed in Appendix A to this letter.

The Department finds the interests of the public and affected landowners will be protected from the proposed mining operations as a result of the measures to be taken by the applicant as described in the mining operations plan concerning this road.

Section 1761.11(e) The proposed area is within three hundred (300) feet measured horizontally of an occupied dwelling. The owner of the dwelling located to the south has provided a written waiver pursuant to Section 1761.15 consenting to surface coal mining operations closer than three hundred (300) feet.

Section 1773.15(c)(12): The effect of the proposed permitting action on properties listed on or eligible for listing on the National Register of Historic Places has been taken into account by the Department.

Sections 1784.14(e)(4) and 1784.14(f)(2), respectively: The Department has determined that neither a new or updated probable hydrologic consequences determination nor a new or updated assessment of the probable cumulative hydrologic impacts is required.

Section 1817.46(e): A sediment pond exemption is requested for an area delineated in the application. The regulations at Section 1817.46(e) allow the Department to grant exemptions from the requirement to pass all disturbed drainage through a siltation structure when:

- a. The disturbed drainage area within the total disturbed area is small; and
- b. Alternate sediment control measures as described in Section 1817.45(b) are used in lieu of a siltation structure, and the applicant demonstrates that siltation structures are not necessary for drainage for the disturbed area to meet the effluent limitations and water quality standards for the receiving water set forth in Section 1817.42.

The Department has determined that the area for which a sediment pond exemption is requested meets the criteria established in Section 1817.46(e) and hereby grants an exemption from the use of a sedimentation pond for this area.

Section 1817.97(b): Based on the 17 Ill. Adm. Code Part 1075 consultation, the Department has determined that the operations, as approved, will neither affect the continued existence of endangered or threatened species nor result in the destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC 1531, et seq.).

FEE AND BOND

Section 1777.17(c): The fee for the area will be \$68.50. The fee is comprised of (\$5/acre x 2.74 acres x the 5 years the bond is in force).

Section 1800.15(d): In accordance with the Department letter dated November 9, 2021, a bond adjustment in the amount of \$27,840.00 has been collected for the proposed operation. No additional bond is required.

PERMIT CONDITIONS

Section 1778.15: Pursuant to Section 1778.15, the permittee shall possess all necessary legal rights to enter and conduct surface coal mining and reclamation operations within the permit area until final bond release is obtained.

Section 1817.13: Upon completion of drilling activities, a borehole/well completion diagram shall be submitted to the Department for all boreholes (dewater, injection, observation, methane vent, rockdust, power supply, etc.) within thirty (30) days of completion of drilling activities. Pursuant to 62 Ill. Adm. Code 1817.13, each borehole shall be properly cased/lined. The construction diagram shall include the location and surveyed elevation of each borehole, a unique name for the borehole and details on the casing/construction materials used. A copy of the borehole/well completion diagram can be found on the Department's webpage under Miscellaneous Permittee/Operator Forms. Construction of all boreholes/monitoring wells shall be in accordance with Operator Memorandum 2017-01.

<https://www.dnr.illinois.gov/mines/LRD/Pages/FormsApplicationsMemoranda.aspx>

Section 1817.15: Pursuant to 62 Ill. Adm. Code 1817.15, each borehole shall be properly abandoned and sealed when no longer needed for its intended purpose. A copy of the plugging affidavit form can be found on the Department's Forms webpage under Miscellaneous Permittee/Operator Forms. Proof of plugging of all boreholes shall be in accordance with Operator Memorandum 2015-02.

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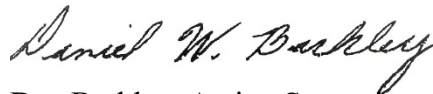
<https://www.dnr.illinois.gov/mines/LRD/Pages/FormsApplicationsMemoranda.aspx>

All other conditions and provisions contained in the approved permit also apply to this revision. Approval from this agency does not relieve the permittee from obtaining approval from other agencies requiring such.

Upon receipt by the Department of the fee plus forwarding two (2) copies of your request letter and map to Illinois Environmental Protection Agency, Mine Pollution Control Program, 2309 West Main Street, Suite 116, Marion, Illinois 62959, the Department will grant final approval for the activities on these 2.74 acres.

Should you have any questions, please contact Clifton Johnson at our Springfield Office.

Sincerely,



Dan Barkley, Acting Supervisor
Land Reclamation Division

DB:CJ:sc
Enclosure

cc: C. Johnson
IEPA, Iwona.ward@illinois.gov
IEPA, Darin.lecrone@illinois.gov
J. Kuhlman

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APPENDIX A

CONSIDERATION OF COMMENTS AND OBJECTIONS

Public Comments

Public comments were received regarding Hillsboro Energy, Deer Run Mine, Permit No. 399, Incidental Boundary Revision.

The Department has considered and evaluated all comments concerning the effects of mining within the proposed permit areas and adjacent areas. The issues raised that are deemed pertinent to the permit application are addressed below. Other issues were duplicative of those brought up at the public hearing. Such items are addressed in the public hearing section of this appendix.

Comment 1: Timelines are important to document the order of events, but when there are conflicting dates explanations are in order. In the Public Notice in the Journal-News, it is stated that HEL's request was submitted to IDNR/OMM/LRD on June 8, 2021. Stamped on the upper right corner of each page of HEL's application to IDNR is "Received Electronically Department of Natural Resources June 9, 2021 Office of Mines and Minerals Land Reclamation Division."

Perhaps a one-day discrepancy is not a meaningful issue, but be assured that it can be. That one day can dismiss a citizen from being a petitioner in an administrative review of a coal mining permit. The Illinois General Assembly has determined that a thirty-day period following notification of persons is a sufficient time to allow the recipients to determine if a mine permit appeal is warranted. The key issue is notification of persons in the area who are affected by a mine. IDNR seems to have trouble with that concept of public notification.

As a petitioner against the approval of Significant Revision #2 of Permit 399, I understand that IDNR must notify the public that a permit is approved, give the deadline date for requesting a review, and contact information. There was a five-year delay from public meetings regarding the 7,731.8-acre expansion of Deer Run Mine shadow area to when the approval occurred without any public notice to residents surrounding Deer Run Mine. The Permanent Program Findings and letter announcing were mailed only to those that signed up at the public hearings 5 years earlier. It seems these were the only persons "entitled" to get the notification of the permit approval.

If I wanted to request an administrative review of the IBR 2.74 addition to Permit 399, a 30 day deadline from June, 8, 2021 differs from a 30 day deadline from June 9, 2021. Of course my discussion is hypothetical, since the 2.74-acre IBR project has been completed before the request was made public. This is one of the

circumstances that seems to be easier to ask forgiveness than to get public permission.

The time delay of approximately 2 months when the application was submitted versus when the public is notified must be explained and justified. The Banner Rules state that IDNR should inform the public of applications in real time, not at the leisure of IDNR.

Response: The Department stamps the receipt date when it receives and opens said submittal. Such policy in no way affects a petitioner in an administrative review of a coal mining permit as that time period is based on the date of the Department's decision, not the initial receipt date of an application. Further, the Department notifies all persons that the regulations require be notified of a given permitting action. The time delay on the newspaper notice was the result of a Department error in failing to notify the operator in a timely manner whether the newspaper notice was accurate and ready to publish.

Comment 2: HEL's request for the following exemptions or lack of public protections should also be explained:

- a. The drainage exemption requested for the IBR area due to the small size. Page 65.
- b. The sediment pond exemption as listed on Page 56.
- c. Public protection from the access road off State Route 185 with the boreholes within 100-feet outside right-of-way line of the public road. Page 22
- d. Emergency approval of HEL's request allowed mining operations to begin May 5, 2021. This Public Notice of IBR 2.74 -acres is a "formal" submittal requirement. Cover letter dated June 8, 2021 to Nick San Diego from Clayton Cross.

Response:

- a) The entire area requested for the IBR is less than 3acres. Consistent with 62 Ill. Adm. Code 1817.46(e), exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small. The Department has determined the area meets the requirements for the exemption.
- b) The sediment pond exemption as is listed on Page 55 can also be described as a small drainage area exemption (referred to above). 62 Ill. Adm. Code 1817.46(a) defines a siltation structure as a sediment pond, a series of sedimentation ponds, or other treatment facility.
- c) Consistent with 62 Ill. Adm. Code 1761.11(d), the Department found the interests of the affected public and landowners were protected from the mining operations based upon all the information received.
- d) The Department considers any underground combustion event where the miners are required to evacuate for safety concerns to be an emergency. Surface drilling

operations become the only method to address the urgent issue. Locating, containing and ultimately eliminating the underground event to prevent it from spreading through the underground works is an extremely time sensitive issue. The Department has consistently addressed this issue in this manner on the rare occasions it has occurred throughout the history of the regulatory program. Thus, the justifiable need for a formal permit submittal after the fact in this instance.

Comment 3: State Rt 185 is an important route that needs to be protected. Many people depend on that route in their daily lives. This subsidence has made it impossible to travel without damaging my vehicle. We have had to find other ways to get to our destination and it will be this way for months or even years. (I'm referring to the Litchfield road in Macoupin County which was closed for several years due to subsidence from the Monterey Mine #1. (Also known as Shay #1)

Response: Although this permitting action is unrelated to the longwall subsidence, the Department offers the following. The longwall subsidence of public roads is addressed by requiring the permittee to obtain an agreement with the appropriate road authority. In this instance, an agreement was required per Condition M to Permit No. 399 with the Illinois Department of Transportation (IDOT). The company secured a permit for the subsidence event and all related surveillance, traffic control and ultimate restoration of the road post subsidence. The Litchfield Road closure was due to the County pursuing a change in the layout of the road for safety considerations that existed pre longwall subsidence relative to several 90-degree turns that were present. The process involved to relocate the road corridor to eliminate the 90-degree turns was the primary cause of the closure and long delay in re-constructing the road in its new straightened location.

Comment 4: IDNR approved Permit 399 and allowed Hillsboro Energy's Deer Run Mine to subside the land with their longwall mining and alter drainage. Water runoff and any leaching now can come across my property. What chemicals were used at this site during the drilling of the boreholes or were injected underground? Why did the mine request the drainage exemption for the permit area? Was IDNR's approval of this exemption included with the emergency approval of proposed mining operations apparently granted on May 5, 2021?

Response: The Department does not regulate what chemicals were used during drilling operations or subsequent injection operations. Those obligations lie with other agencies. The emergency authorization required appropriate sediment control measures be employed on the site. The entire area requested for the IBR is less than 3 acres. Consistent with 62 Ill. Adm. Code 1817.46(e), exemptions to the requirements to pass all drainage from disturbed areas through a siltation structure may be granted if the disturbed drainage area within the total disturbed area is small and alternate sediment control means are used in lieu of a siltation structure.

Therefore, the approval on May 5th included language requiring alternate sediment control measures.

Comment 5: Under Section 2.3.5.1 for describing the measures to be used to ensure that the interest of the affected public and landowners will be protected, the applicant states that the access road off Route 185 is within the existing road construction area and speeds are already reduced. I drive this section of Route 185 regularly and was stopped in traffic more than once for trucks to back into the construction area. But yes, due to the poor condition of the highway resulting from longwall mining subsidence (identified on the highway signs as Severe Pavement Distress) the speed limit was reduced to 35 mph in late February, and shortly thereafter to 20 mph, where it remains still. Rather than a “road construction zone” this section of Route 185 might be more accurately referred to as a “road destruction zone” due to the mining activities.

Response: Although this permitting action is unrelated to the longwall subsidence, the Department offers the following. The longwall subsidence of public roads is addressed by requiring the permittee to obtain an agreement with the appropriate road authority. In this instance, an agreement was required per Condition M, to Permit No. 399 with the Illinois Department of Transportation (IDOT). The company secured a permit from IDOT for the subsidence event and all related surveillance, traffic control and ultimate restoration of the road post subsidence. IDOT will assure that the road is restored to acceptable standards once the subsidence is complete.

Comment 6: My thought is, that when I drove by, it appeared much closer than 100 feet to Illinois State Route 185. This route is a main traffic corridor between Hillsboro and Coffeen. There are a lot of trucks using this route as it is part of an easy connection from Interstate 57 to Interstate 55 at Litchfield. The highway damages were and still are from the Deer Run Mine longwall subsidence, however, the location of a drill rig so close to the highway made me wonder what was really going on.

Response: Portions of the surface coal mining operations involved with this drill site were within 100 ft of Illinois State Route 185. The applicant demonstrated that the interests of the affected public were protected. Mining activities were within 100 feet of the State Route 185 Right-of-Way, hence the IBR application was subject to the requirements for a public hearing.

Comment 7: An adverse impact of the current IBR permit application is that there was no public information posted locally, to my knowledge and belief, about what this drill rig was for and what was happening at the drill rig location. There was no information about what was happening underground below that drill rig site. The fact that neither the mine nor the Illinois Department of Natural Resources has any requirement for

public reporting of issues that could impact the local public is of great concern to me. Worker safety is also a concern of IDNR. Public safety should be a consideration and at the least, prompt posting of the mine application for this IBR when it was received, June 9th, rather than the notice posted July 29th, would have at least supplied something to explain the situation to the public. As it is, the public had no information on what were the real conditions underground, what gasses could be released from underground, or how serious was the underground situation. I do not know if anyone was considering should fuel trucks, school buses, car loads of family members, or other vehicles be traveling along Illinois Route 185 within 100 feet of the drilling for five, six-inch boreholes at that time? These boreholes are listed at a depth of 440 feet (PDF page 99/115 of the permit application) and will continue in use for an unknown length of time.

It is clear the Deer Run Mine is continuing to have repeated incidences of underground conditions of extreme risk to the workers. These are very concerning for workers. I am also concerned about adverse impacts to the public because no timely information is available to understand what is happening at the mine.

Response: The Department continues to meet its regulatory obligations regarding notification requirements for permit revision applications. These regulations do not require an applicant to supply such information as the commenter would like to see. The worker safety issues are regulated by other state and federal agencies to which such comments should be directed.

Comment 8: It appears the mine completed all the work constructing these boreholes well before the July 29th public notice. Now, over three months after-the-fact of the actual construction work being done, the public gets to comment on the permit application for the construction work. While emergency situations certainly must be given priority, it is difficult to see the IDNR still failing to comply with the March, 2014, Sangamon County Circuit Court Order to institute specific improvements in public process. This was to include having public notices posted when mine permit applications are received at IDNR. The Department has denied the public prompt notices of permit filings for now well over seven years. That is an adverse impact to the public which clearly relates to this permit application.

Response: Compliance with the agreed order in the Sangamon County Court Order filed in 12-MR-706 in March of 2014 refers to “an administratively complete application, an applicant for a permit, significant revision of a permit under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15”. The matter at question currently is an Incidental Boundary Revision and not subject to the agreed order mentioned.

Comment 9: There is no mine-supplied information as to the definition of inert products or what sampling will be done at these boreholes. A general Google definition of inert

products includes that, “The term “inert” does not imply that the chemical is nontoxic.” No information is supplied regarding any gasses or substances that could be released by these boreholes during use for monitoring or injecting substances.

Response: The Department continues to meet its regulatory obligations regarding notification requirements for permit revision applications. These regulations do not require an applicant to supply such information as the commenter would like to see.

Comment 10: No information is supplied regarding mine violations listings nor is there a complete ownership listing.

Response: Insignificant permit revisions and incidental boundary revisions are allowed under 62 Ill. Adm. Code 1774.13 and do not require the applicant to submit either a history of violations or ownership and control information as required for new permits, renewals and significant revisions.

Comment 11: The mine does not indicate any budget for reclamation on the permit application PDF pages 97 98, and 99 /115 for soil and gravel areas reclamation. While the acres in total are small, added costs for reclamation if the mine were to close and the state would be required to use bonding for reclamation, is a concern.

Response: The applicant supplied the required information (e.g. topsoil replacement depth, dimensions of the gravel work yard, depth and diameter of the boreholes) in the applicable tables located in Part 9.5. The Department utilizes this information to assess the cost to reclaim the proposed operation. The applicant is not required to provide dollar value estimates. The Department has assessed the appropriate regulatory required fee, and an appropriate amount of bond has been collected based on the information supplied in Part 9.5.

Comment 12: The mine says this IBR will be temporary, however, that could be twenty to thirty years or more of mine operations, as the mines term everything ‘temporary’ if at some point when the mine closes, there is to be reclamation. To most people twenty to thirty years is not temporary. I question why IDNR would allow more impacts to even an ephemeral waterway, when this mine is subsiding thousands of acres and disrupting the natural drainage system for much or what is the Bearcat Creek watershed. The mine is also creating major erosion of prime topsoil in efforts to drain large areas of subsidence ponding. At Part 6 in the application ‘Streams’ on PDF page 21/115 it is indicated that there is nothing within 100 feet of any type of stream, including ephemeral. While no concerns regarding drainage are mentioned in the application or issues regarding stream buffer, it appears on the General Location Map at permit application PDF page 111 /115 that a tributary to Bearcat Creek is or possibly was, near this IBR permit on the west side:

It is asked if the Department has looked at the actual proximity to what could be an ephemeral tributary to Bearcat Creek?

Response: The Department has no authority to restrict the time frame an operator may use a site, provided they are complying with all appropriate regulations and the site is necessary for ongoing operations.

As part of the supplemental information required for this permitting action, the permittee provided a 100-foot buffer demarcation on the Operations Map and assured that no surface disturbance occurred within the 100 foot buffer of this unnamed tributary per 62 Ill. Adm. Code 1817.57.

Subsidence of the land surface and all associated drainage repair is addressed in the approved permit and the corresponding subsidence control plan.

Comment 13: I wish to remind IDNR that the Deer Run Mine and its ongoing underground combustion problems and resulting surface impacts to address those problems, are south or east near Schram City and the town of Hillsboro. The fact that large areas of aged room and pillar mined sections lie in the area north of current mine operations seems important to me. I wonder about this in light of the repeated underground combustion events. The fact that the mine continues to be able to close and open without providing public information on what is happening is disconcerting. The fact that state permits continue to be approved without any additional bonding or reclamation funds required is difficult to understand when this mine company has already gone through one major bankruptcy.

Response: The Department continues to ensure that the public notice requirements for permitting actions is in compliance with the regulations.

Bond is assessed and collected for every permitting action where collection of these funds is regulatorily required. A company's past bankruptcy status does not play a role in whether or not bond is required, these decisions are based on the regulations found at 62 Ill. Adm. Code 1800.

A public hearing regarding the application was held on September 15, 2021, in the Historic Courthouse in Hillsboro, Illinois.

Many of the comments were similar in nature. The primary issues addressed were:

- * Concern about emergency approval of operations.
- * Subsidence concerns.

Comment 1: Commenters expressed concern and confusion as to why the field work was completed prior to the issuance of a permit decision approving the work, or even making the application available for public review or an opportunity for public hearing.

Response: The Department considers any underground combustion event where the miners are required to evacuate for safety concerns to be an emergency. Surface drilling operations then become the only method to address the urgent issue which would create a greater problem to address every day lost. Locating, containing and ultimately eliminating the underground event to prevent it from spreading through the underground works is an extremely time sensitive issue. The Department has consistently addressed this issue in this manner on the rare occasions it has occurred throughout the history of the regulatory program. Preparing an application, reviewing the application, and allowing regulatory time frames to expire such as public comment periods is not an option in this type of emergency situation. Thus, the justifiable need for a formal permit submittal after the fact in this instance.

Comment 2: A commenter appreciated the Department posting the application on the website.

Response: The Department appreciates the comment.

Comment 3: Commenters asked what the justification was for the Department's emergency approval of operations, specifically if there are certain criteria that need to be met to qualify as an emergency, as well as indicating the public should receive notice of such approvals.

Response: See the response to Comment 1 above.

Comment 4: Commenters asked about specific information required for the Department to grant such emergency approval, including:

- a. Who grants the emergency approval?
- b. Is landowner consent required before such work is done?
- c. What does such approval grant the mine the right to do?
- d. How often are such approval requested and granted?
- e. Does the public have a right to the information involved in an emergency approval authorization?
- f. Is there a specific time frame the permit revision request for an emergency approval to be submitted?
- g. Why was the publication not in the paper until July 29th.
- h. Did the Department inspect the site after the emergency approval, and if so, how often?

Response:

- a. The Land Reclamation Division's Supervisor gives consent to immediately begin the effort to locate, evaluate and contain the underground combustion event through surface drilling operations.
- b. Landowner consent is required.
- c. It allows the company to immediately begin drilling because this is the only alternative with the mine being required to evacuate workers to protect their health and safety. Further, the operator is required to conduct all the protections that would be required for the site as if it is formally permitted.
- d. Extremely limited over the history of the program dating back to 1977.
- e. Such time sensitive issues are carried out through phone calls and followed up with emails. Emails are available through FOIA requests.
- f. No because it is extremely infrequent, and no standards have been established. This situation clearly required immediate action.
- g. The Department worked to receive the appropriate permitting information and documents before a newspaper advertisement could be run. In addition, the time delay on the newspaper notice was in part the result of a Department error in failing to notify the operator in a timely manner whether the newspaper notice was accurate and ready to publish.
- h. The Department frequently inspected the site immediately and continued through the process. The site is still inspected routinely and will be until final bond release as required by 62 Ill. Adm. Code 1700 through 1850.

Comment 5: A commenter asked why part 1.4 for violation history was not answered and if it was required for an incidental boundary revision.

Response: Applications for insignificant permit revisions and incidental boundary revisions are not required to provide violation history. See response to Public Comment No. 10 above.

Comment 6: A commenter asked when the highway would be repaired (presumably due to the subsidence effects on the road)?

Response: Although this permitting action is unrelated to the longwall subsidence, the Department offers the following. The emergency that is the subject of this permitting action halted the advance of the longwall for several months. The wall was halted while still progressing under the IL 185. This delayed any road restoration work as plans were to resume mining and increase the area of subsidence to the north as the longwall continued to advance and further subside IL 185. The bulk of the work to restore IL 185 has been completed and normal speed limits are restored now.

Comment 7: A commenter indicated that a recently vacated home was within 300 feet of the mining activities.

Response: The home that is located within 300 feet of the mining activities had been previously vacated due to pending planned subsidence. Documentation was also submitted to confirm waiver of the 300 foot occupied dwelling buffer zone.

Comment 8: A commenter indicated the applicant stated that no culverts were proposed within the permit area, but a culvert was installed for access to the site from Route 185. Was this culvert then outside of the permit area, possibly on state right-of-way? Does the mine have to have IDOT's approval for work, such as culverts or ditching, adjacent to a state highway?

Response: The Department addressed the culvert issue as part of the required supplemental information. The culvert is in the right of way of IL 185 and therefore is outside of the permit boundary. The company consulted with IDOT relative to the culvert. Anything associated with the road ditch work is covered as part of the permit with IDOT.

Comment 9: A commenter indicated that the site could not be restored to pre-mine conditions due to compaction, and that the subsided land cannot be restored to how it was previously.

Response: The Department has been evaluating reclamation operations, as well as subsidence mitigation of surface lands since the program's inception. Reclamation operations meeting the regulatory obligations have been consistently demonstrated throughout that time. Should compaction prove to be an issue, effective deep tillage procedures exist to address that.

Comment 10: A commenter indicated longwall mining destroys homes and farmland and landowners who do not control their subsidence rights have no recourse in preventing damage to their property.

Response: If a company possesses or acquires the legal right to subside, and adheres to the approved subsidence control plan, the Department cannot deny mining. Pursuant to 62 Ill. Adm. Code 1817.121, the company must repair replace or compensate for all material damage to structures and facilities and must restore the land capabilities. Longwall mining has been in existence in Illinois since the 1970's and over 60,000 acres have been subsided. Subsidence compensation and restoration has been achieved throughout the regulatory program. Should a landowner have questions or concerns in advance of being impacted by planned subsidence, or after subsidence, feel their structures were not appropriately addressed or compensated for, or, land and drainage damages were not properly restored, they should contact the Department to investigate.

Comment 11: A commenter indicated that runoff from the drilling site had discolored the surface of the soil in their field.

Response: The Department was not made aware of any discoloration of soil from runoff of the site. No discoloration was noted during inspections of the area.

Comment 12: A commenter asked how the mine can change “drainage flow” when others cannot?

Response: It is assumed the commenter is referring to subsidence drainage restoration. Although this permitting action is unrelated to the longwall subsidence, the Department offers the following. Longwall drainage restoration typically involves reestablishing traditional drainage patterns. Although the Department has no authority over the Illinois Drainage Law, the commenter is invited to contact the Department with any specific concerns on the repair of drainage.

Comment 13: A commenter indicated no one from the Department has talked to them since May.

Response: Monthly inspections are made of the mine site, however, those inspections do not require the Department to talk to any specific citizen. If a citizen would like to request a state inspection pursuant to 62 Ill. Adm. Code 1840.15, that must be submitted in writing and give the Department reason to believe that a violation, condition or practice of any requirement of the State Act or permit condition required by the State Act exists.

Comment 14: A commenter indicated that subsidence repair issues remain that haven’t been addressed including flooding and ongoing field erosion.

Response: Subsidence restoration is ongoing and continuous as the longwall panels progress through time. Should a landowner believe the company has completed its mitigation efforts and contends a specific area was not properly restored, that landowner should contact the Department with their concerns so that it can be evaluated.

Comment 15: A commenter was confused by whether the public hearing held was either a public hearing or an informal conference based on a discrepancy in the newspaper announcement.

Response: At the hearing in question, there was a hearing officer who indicated, on the record, that it was a public hearing. A court reporter was present to create a record of all comments and questions that were presented that evening. There was a scrivener error in the title of the newspaper publication of “Informal Conference”. However, the body of the publication correctly identifies that “a public hearing for submission of comments will be conducted by the Department on the incidental boundary

revisions application for Permit No. 399...”. The newspaper again, later in the body of the publication, cites that the “public hearing is scheduled...” in the body.

Comment 16: Commenters questioned why the Department radically changed its policy and does not answer questions at public hearings?

Response: The Department is meeting its regulatory obligations per 62 Ill. Adm. Code 1773.14(d)(2) which states, “The hearing officer shall allow the county board, the applicant, and any interested persons to **present data, views, or arguments.**” (emphasis added). This type of hearing process dates back to 2018. An example of such a prior public hearing was on October 23, 2018 for Permit 456 held in the Benton Office that the commenter attended and spoke, on the record, about concerns regarding that permit and water feeding into the Big Muddy River. <https://www2.illinois.gov/dnr/mines/LRD/PendingApplication/p426HrgTrnscrpt.pdf#search=permit%20456> The public hearing had representatives of IDNR and the mining company in attendance. No responses were given by IDNR staff and the questions and comments were gathered and responded to by individual specialists in each field and attached as an Appendix to that permit decision.

Comment 17: A commenter wondered what was specifically going on underground at the mine.

Response: This comment has been forwarded to the applicant.

Comment 18: A commenter made several comments in regards to this application as it relates to the “Banner Order,” including:

- a. If the order had been followed the application would have been made public much sooner than July 29th.
- b. That fees would have been collected at the time of the application instead of potentially not at all.
- c. That the mine operator would be required to answer questions.
- d. Outlining several things the Order would eventually require.

Response: Compliance with the agreed order in the Sangamon County Court Order filed in 12-MR-706 in March of 2014 refers to “an administratively complete application, an applicant for a permit, significant revision of a permit under 62 Ill. Adm. Code 1774.13, or renewal of a permit under 62 Ill. Adm. Code 1774.15”. The matter at question currently is an Incidental Boundary Revision and not subject to the agreed order mentioned.

Comment 19: A commenter asked when the Banner Order might become effective.

Response: An agreed order in the Sangamon County Court Order was filed in 12-MR-706 on March 24, 2014. IDNR is currently working with the Attorney General's Office to finalize the formal rules for presentation to the Joint Committee on Administrative Rules of the Illinois General Assembly (JCAR), as outlined in said order.

Comment 20: A commenter asked about the boreholes on the site and whether they terminated in a mine void or in the area that has been subsided and is now collapsed.

Response: The boreholes that were drilled terminated either just above the coal seam or within the mine void. All boreholes have or will be properly plugged once their use is expired.

Comment 21: A commenter questioned whether the Director of IDNR had much input in the affairs of the Office of Mines and Minerals and if the director is briefed on such applications and their outcomes?

Response: The Office of Mines and Minerals (OMM) submits material for inclusion in the Governor's Weekly Report on the permitting activity within all divisions of OMM. This information is emailed to IDNR Director Callahan.

Comment 22: A commenter asked if the Office of Mines and Minerals was fully staffed and if budget cuts were "conflicting" its budget.

Response: The Office of Mines and Minerals is not fully staffed. This situation is not a budgetary issue.

Comment 23: A commenter questioned how soon answers to the questions and comments presented at the public hearing would be addressed.

Response: The Department must wait until the hearing transcript is prepared and forwarded and then make that available to staff to draft responses. The Department strives to complete these efforts as soon as possible and cannot give a definitive answer to when the decision document, and the responses, will be provided.

Comment 24: A commenter indicated that people's lives are being affected by this action and that the public was not being enlightened as to what is occurring.

Response: This question falls outside of the regulatory requirements of 62 Ill. Adm. Code 1700 through 1850.

Comment 25: A commenter expressed concerns regarding the boreholes, specifically what may come out of the holes and the proximity to the road, what would have been injected into those holes, and whether any testing would be done at the boreholes. The commenter went on to ask if there were provisions for the company to notify the public of any issues with dangerous materials escaping the mine.

Response: The Department ensures operators meet their regulatory obligations regarding notification requirements for permit revision applications. These regulations do not require an applicant to supply such information as the commenter would like to see.

Comment 26: A commenter asked why the application did not include any information on uncontrolled properties in Table 1.5.3 and if the operator had rights to access and begin operations via landowner agreements.

Response: The applicant indicated property ownership for the area of operations in Table 1.5.1 Property Ownership Within Permit Area. The applicant indicated an agreement with the property owner effective May 6, 2021, providing the applicant consent. Table 1.5.3 is for properties within the permit boundary which the applicant does not have title/deed or legal agreement with the property owner.

Comment 27: A commenter noted there was much standing water in the permit area and questioned if the Department needed to consider some sort of drainage control for the site.

Response: During inspections adequate drainage was observed at the site.

Comment 28: A commenter asked if the Department came out and verified the information in the application.

Response: Department staff made site visits to verify information submitted. The Department also performs monthly inspections that can encompass all or part of the mining operations. During these inspections the site was observed for compliance with the emergency approval granted on May 5, 2021.

Comment 29: A commenter asked how many feet the residences are from the operations.

Response: All residences are outside the 300 foot buffer zone or the applicant has submitted a waiver and release agreement as required under 62 Ill. Adm. Code 1761.15(b).

Comment 30: Commenters questioned whether the mine was safe, how long should it remain open if they cannot avoid these shutdown situations, whether the State was monitoring

the mine, if the mine had to notify anyone in the community about the situation they encountered, and how can the public know what is going on.

Response: These questions fall outside of the regulatory requirements of 62 Ill. Adm. Code 1700 through 1850 and should be addressed to the agencies who are responsible for regulating such situations. The Department meets its regulatory obligations regarding public participation.

Comment 31: A commenter expressed concern that there was no bonding for the acreage involved and what would happen if the company didn't emerge from bankruptcy, as well as state being left with unfunded clean up obligations on other non-bonded acreage such as the 7,700 acres involved with Revision No. 2.

Response: The Department assessed the appropriate regulatory required fee and has collected an appropriate amount of bond for the reclamation of these operations based on the information supplied in Part 9.5. The company has emerged from bankruptcy, however because bond has been assessed and collected for the reclamation of these operations, the bankruptcy comment is not relevant to this permitting action. The shadow area acreage associated with Revision No. 2 mentioned by the commenter does not fall under the requirements for bonding found in 62 Ill. Adm. Code 1800.

Comment 32: A commenter asked if the Department inspected sites in temporary cessation to ensure public safety and future use of the land.

Response: Mines in temporary cessation are inspected by the Department and the obligations to meet the pertinent regulatory requirements remain.

Comment 33: A commenter asked which Incidental Boundary Revision (IBR) No. this site was given and if that number was in the application.

Response: The IBR number is not included in the application, that number is assigned at the time the decision document is developed.

Comment 34: A commenter indicated they felt the Department should talk to local farmers or people during the inspections and be looking at the mine's operations more closely.

Response: At a minimum, monthly inspections are made of the mine site, however, those inspections do not require the Department to talk to any specific citizen. These inspections meet or exceed the mandates required by the regulations. See also Public Hearing Comment No. 13 and the response above.

Comment 35: A commenter questioned whether the Department's Operator Memorandum dated February 14, 2011 allowed approval of operations prior to the actual landowner agreements being obtained or does the emergency authorization affect this.

Response: The Operator Memorandum (Memo) in question only clarified that uncontrolled properties could be included within a permit application, provided certain criteria were met. The Memo did not allow operations to begin prior to a permittee demonstrating it had the right to enter and begin surface coal mining and reclamation operations. The Department has no authority to let any such operations begin on lands where the permittee does not have said rights. This would also apply to any emergency authorization.

Comment 36: A commenter indicated they could find nothing on the Department's website explaining what an emergency authorization is.

Response: Because of the infrequent occurrence, you will not find anything concerning emergencies of this nature on the website. The Department reacts to the best of its ability to address the emergent issue. Please see Public Comment No. 2 d) and Public Hearing Comment Nos. 1 and 4.

Comment 37: A commenter asked how the speakers at the hearing would get answers to their questions.

Response: Questions are addressed in writing in the "Appendix A" of the Department's decision document and are provided to anyone who files comments or objections, and to each party at the public hearing.

Comment 38: A commenter asked if the Department could require various things from the operator, should conditions warrant, since the emergency authorization was granted and the application was being addressed after the fact.

Response: The emergency authorization allowed necessary operations to begin addressing the miner safety concerns of MSHA. The Department required submission of an Incidental Boundary Revision promptly after the permittee determined what operations were required. Any operations at the site are required to meet the regulatory performance standards of 62 Ill. Adm. Code 1700 through 1850. The Department can require changes to the operations to ensure compliance with the regulations.