



OFFICE OF THE LIEUTENANT GOVERNOR

SHEILA SIMON – LIEUTENANT GOVERNOR

**Illinois River Coordinating Council
Special Meeting
Phone Conference**

**Tuesday, August 7, 2012
Conference Line
414 Stratton Building - Springfield
11:15 AM**

Minutes

Call to Order and Attendance

DK Hirner, Office of the Lt. Governor, called the meeting to order and invited attendees of the conference call to introduce themselves. Hirner called roll for the voting members of the Illinois River Coordinating Council (IRCC).

Citizen Members

Doug Blodgett, The Nature Conservancy of Illinois; Lee Bunting, Association of Illinois Soil and Water Conservation Districts; Nancy Erickson, the Illinois Farm Bureau; Daphne Mitchell; and Richard Worthen.

State Agency Members

Janel Veile, the Illinois Department of Transportation; Terry Weldin-Frisch, the Illinois Department of Commerce and Economic Opportunity; and Marcia Willhite, the Illinois Environmental Protection Agency.

Ex-Officio Members

Bob Barry, the US Fish and Wildlife Service, Illinois River; Nani Bhowmik, Illinois State Water Survey; Mike Hays, the US Army Corps of Engineers, Rock Island District;

Advisors

Manohar Kulkarni, the Illinois Sustainable Technology Center; and C. Pius Weibel, the Illinois Geological Survey.

Guest: Mr. Tom Davis – Office of Attorney General

Absent Members

Joe Bybee, the Illinois Department of Agriculture; Margaret Frisbie, Friends of the Chicago River; Reggie Greenwood

Absent Ex-officio Members

Colleen Callahan, USDA Rural Development; Louise Clemency, the US Fish and Wildlife Service, Chicago Scherrie Giamanco, the USDA Farm Service Agency; William Gradle, the USDA Natural Resources Conservation Service Col. Christopher Hall, the US Army Corps of Engineers, St. Louis District and

Christine Urban, the US Environmental Protection Agency. ; Cpt. Steve Hudson, the US Coast Guard, Sector Upper Mississippi; Barry McCauley, the Illinois Department of Natural Resources; Lt. Doug Salik, the US Coast Guard, Sector Lake Michigan; Jim Schreiner, the US Army Corps of Engineers, Chicago District; Shelley Silch, the US Geological Survey

Absent Advisors

Brian Anderson, the Illinois Natural History Survey; Misganaw Demissie, the Illinois State Water Survey; Ted Kratschmer, the National Great Rivers Research and Education Center.

Discussion of the purpose of this Special Meeting

Hirner noted that although a quorum for the Council is present at the meeting, because the posted agenda only addressed discussion of the responses from the state agencies regarding the Mississippi Sand permitting process and consideration of action on those responses, the Council would be unable to vote on any resolution. She noted that the purpose of the meeting would be to review the responses from the agencies. The questions from the Council and corresponding responses from the agencies are attached hereto as [Exhibit A](#). An update to those responses, provided by the IEPA, was given to the Office of the Lt. Governor on August 6, 2012. That update is attached hereto as [Exhibit B](#).

Mitchell reminded the Council that the questions directed to the Illinois Department of Natural Resources (IDNR), the Illinois Environmental Protection Agency (IEPA), and the US Army Corps of Engineers (USACE) arose during a discussion of the permitting process and a proposed resolution at the last IRCC meeting on June 20, 2012. She commented that she hoped to discuss whether or not the questions regarding the resolution were fully answered, and return to a discussion on the resolution.

Lt. Governor Simon thanked Hirner for organizing the conference call and Mitchell for providing the questions to the Council. She mentioned that she appreciated having an opportunity to bring members of the Council together to pursue further explanations on the permitting process.

POINTS OF CLARIFICATION:

1. **IDNR:**

- a. *IDNR reported that it issues permits for reclamation of a site, and that it regulates surface blasting. Is a permit issued for surface blasting?*

Response: *The IDNR's regulations do not require that a blasting permit be issued. All blasting must be conducted to conform to the regulations.*

The IDNR requires that all blasting operations are conducted under the direct supervision of a licensed blaster (persons licensed by the IDNR, as provided under 62 Ill. Adm. Code 300.237). This individual is charged with ensuring that blasting operations are conducted in such a way as to prevent injury to persons and damage to public or private property. This is accomplished by adhering to the ground vibration and airblast standards set forth under 62 Ill. Adm. Code 300.225. These standards are based on scientific studies that were performed on protected structures to prevent cosmetic damage (microscopic cracks in plaster). Protected structures are defined as any

dwelling, public building, school, church or commercial or institutional building, per 62 Ill. Adm. Code 300.210.

In addition to the above, the IDNR also has inspection and enforcement responsibilities. By law the IDNR is required to make periodic inspections of the mining/blasting area, as well as review required blasting records of every blast conducted at the mining operation. The IDNR also has blasting seismographs at its disposal, which are utilized to ensure compliance of the IDNR's ground vibration and airblast limits at protected structures.

Should a violation of the IDNR's blasting regulations occur, enforcement action would be taken against the mining operation. Enforcement actions could include assessment of fines and required remedial actions, and possible suspension/revocation of the blaster's blasting license. In rare cases, violation of blasting regulations may result in a temporary shutdown of the blasting operation.

Discussion on Points of Clarification, Question and Response 1a:

Weibel noted that the response from IDNR describes their statutory requirement as “ensuring that blasting operations are conducted in such a way as to prevent injury to persons and damage to public or private property.” He voiced his concern that blasting could affect overhanging rocks in Starved Rock State Park, which if damaged, could fall and injure individuals inside the park.

Mitchell voiced her concern that no blasting permit is required, when the area is heavily populated with both citizens and tourists. She also commented that the rocks in Starved Rock State Park are fragile, and are all interconnected.

Hirner asked if the current permitting legislation needed to be changed, if there is no requirement for a blasting permit and the IDNR is currently working within its regulatory requirements. She commented that there appears to be no question that the IDNR has complied with its statutory requirements, so the question becomes: *Are the current laws regarding blasting sufficient?*

Mitchell commented that she believed further questions on the legislation would arise during the discussion of the permitting process.

Tom Davis, Office of the Illinois Attorney General, noted that 62 Ill. Adm. Code 300.225 refers to the control of adverse effects from mining. He believed that the statute does not only apply to the structures expressly stated within the legislation, but can also be used for consideration and control regarding any adverse impacts. Davis believed that as Starved Rock State Park is the premier state park, with numerous geological structures, the IDNR has the authority to prevent or mitigate adverse impacts.

Bhowmik noted that the IDNR informed the Council, through the response to Question 1a, that seismographs, which can be used to ensure compliance to the IDNR's ground vibration and airblast limits, are at the disposal of the IDNR. Bhowmik questioned if those seismographs would be put into use by the IDNR if the project is approved, as the

IDNR has not said that the seismographs will be put into use within their response to the Council.

Weibel voiced his opinion that blasting of the sandstone would be different than blasting of limestone in the area. He believed that the seismographs could be used to verify the levels of vibrations at differing points along the mine site and within the state park.

Lt. Governor Simon asked if a representative from the IDNR was present at the phone conference. Hirner responded that no representative from the IDNR was present. Lt. Governor Simon noted that if no representative from the IDNR was available to answer questions raised by discussion of the responses, the Office of the Lt. Governor would record further questions to be provided to the agency. She noted that those questions, along with responses from the IDNR, could be placed on the agenda at a following meeting. Additional questions from this special meeting can be found [here](#).

Mitchell voiced her opinion that the discussion of air monitoring would join with the current discussion of blasting, in regard to what the blasting will produce. She voiced her opinion that the two could not be separated when the proposed mining operation is considered in its entirety.

- b. The approved reclamation plan is filed with the county. Who files the approved reclamation plan with the county?*

Response: *Following receipt of the required fee and bond, as stipulated in the Fee & Bond Letter, the operator is then required to file a copy of the “approved” reclamation plan, along with a form 1b, with the county.*

The form 1b (MLCR-1b) is used when filing the approved reclamation plan with the county clerk’s office. It is considered a receipt showing proof that the applicant has filed the approved reclamation plan (mining/reclamation permit along with any changes/modifications to the reclamation plan) with the county clerk’s office. Information found on the form includes the applicant’s name, the name of the mine/pit, the legal location of the mining operation (section, township and range), the county where the operation is located, the date that the approved reclamation plan was filed with the county clerk’s office, whether the permit is for surface mining or reuse deposition (in this case it was for surface mining) and the signature of the county clerk. Once the form has been properly filled out, it is then returned to the IDNR.

In this case, if the permit is issued, Mississippi Sand will need to file these documents with LaSalle County.

Discussion on Points of Clarification, Question and Response 1b:

Mitchell asked for clarification that the mining company is the one that provides the permit and reclamation plan to the county after the bond and fee is returned to the IDNR. Hirner clarified that the IDNR issues a bond and fee letter, which would be returned by the mining company, Mississippi Sand. When the bond and fee is returned,

the permit will be issued by the IDNR. Mississippi Sand will be required to give the approved permit and the approved reclamation plan to the LaSalle County Clerk's Office.

Mitchell voiced her opinion that a thorough mitigation plan should be created, and copies of that plan should be available to the public before the permit is approved. She noted that the current statutes do not require the reclamation plan to be filed with the county until the permit has already been approved, keeping citizens from viewing a copy of the reclamation plan until that time.

Hirner asked if a copy of the reclamation plan was given to the public at the public availability session, held by the IEPA on May 23, 2012

Lt. Governor Simon asked if LaSalle County had delayed in providing information to the Illinois Sierra Club after a Freedom of Information Act (FOIA) request was submitted by the organization. Mitchell believed that Hirner, and the Office of the Lt. Governor, had been working to get the information from the original county board hearing from LaSalle County. Mitchell noted that the Sierra Club has had difficulties receiving information from the IDNR after placing a FOIA request with the agency. Lt. Governor Simon clarified that she was specifically referring to LaSalle County, and was questioning how cooperative the county has been in providing information to the public. Hirner responded that the Office of the Lt. Governor had requested to receive copies of the permit application that was provided to the LaSalle County Board during the hearing. The LaSalle County Board provided that information to the Office of the Lt. Governor in full.

2. *The Corps said that no 404 permit was required for Phase 1, the 80-acre tract, of the project. Is this correct?*

Response:

IEPA: Yes. The Corps based this determination on establishment of a 25-foot buffer from a jurisdictional wetland in the Phase I area and avoidance of mining in the wetland area and buffer. The Corps determined that there was no indication of discharge of dredge or fill material in waters of the United States for Phase I.

USACE: Correct, their mining proposal avoids the placement of fill into any wetland or waterbody, thus avoiding the need for a 404 permit.

Discussion on Points of Clarification, Question and Response 2:

Mitchell asked for expansion on why the 404 permit was not required, specifically for Horseshoe Creek, which flows from the mine site through Starved Rock State Park. Hirner responded that the 404 permit would apply to the wetlands. Mitchell noted that the wetlands intermingle with Horseshoe Creek, and that with or without a berm, the waters would all flow over or under the highway.

Worthen asked if Mitchell believed that Horseshoe Creek would be impacted by the mine. Mitchell noted that citizen letters, including those from Sierra Club, have argued that Horseshoe Creek will be impacted and has not been properly discussed.

Merlin Calhoun, citizen, noted that Mississippi Sand will be ejecting their waste water into Horseshoe Creek. He noted his concern that if Horseshoe Creek is filled with silt from the mining company, it could cause waters flowing into the canyon at Starved Rock State Park to back up.

Willhite noted that a 404 permit prohibits the discharge of dredge or fill material into waters of the United States. She noted that the USACE's requirement of the 404 permit hinges on their definition of a "water of the United States." Willhite was unsure as to whether or not Horseshoe Creek was considered, but that the judgment as to whether or not the body of water was jurisdictional to the USACE, as a water of the United States, would have been part of any consideration. Willhite commented that the impact of mining on surface waters, such as Horseshoe Creek, is an important piece of what the IEPA regulates under NPDES permits for sand mining. Within the NPDES permit, the primary protection is to ensure that sediment does not move from the mining site into the body of water which is being protected.

Mitchell asked for clarification that the NPDES permit for sand mining had not yet been granted. Willhite responded that the NPDES permit application for sand mining is still under consideration, as is the NPDES permit for stormwater construction at the site.

Mitchell noted that the consideration of whether a body of water is considered a "water of the United States" is a complicated part of the statutes regarding 404 permits. She commented that even if Horseshoe Creek is not considered a water of the United States, it could impact the Illinois River, which is jurisdictional under the USACE.

Hays informed the Council that Horseshoe Creek is considered a water of the United States, and is jurisdictional to the USACE under section 404 of the Clean Water Act. However, Hays noted, Mississippi Sand has not proposed a discharge or placement of dredge or fill material into Horseshoe Creek, which means that a 404 permit will not be required concerning the creek. Mitchell noted that Mississippi Sand will be discharging their wastewater into Horseshoe Creek. Hays responded that the USACE does not regulate the discharge of wastewater; rather, the USACE regulates the discharge of dredge or fill material, such as soil or sand, into jurisdictional bodies of water. Mitchell asked for clarification that the IEPA would then regulate the discharge of wastewater. Willhite confirmed that the IEPA will regulate the discharge of wastewater into Horseshoe Creek. She noted that the USACE's statutory regulations limit their concern to the injection of dredge or fill material, while the IEPA is regulated to address discharge of water from a site into a body of water.

3. *IEPA said there was not a statutory deadline for granting a NPDES permit. Could IEPA please further expand on the meaning of this statement?*

Response: *There is no deadline under federal or state law to issue or deny a NPDES permit, unlike, for example, state construction permits that have a statutory 90-day period for issuance or denial after the application is received.*

Questions on Points of Clarification, Question and Response 3

Mitchell asked for clarification as to why there was no deadline for the NPDES permit. Willhite responded that there is no statutory deadline for an NPDES permit, requiring it to be issued after a certain amount of time. This is unlike the air construction permit or water construction permits, which do have deadlines – typically 90 days – by which the agency must act.

Mitchell asked if, even if the IDNR has issued their mining permit, the mining company would need to wait to receive the NPDES permit to begin construction. Willhite responded that the company would not be able to begin construction before receiving the stormwater/construction permit.

Worthen asked if the company was required to receive a Phase 2 stormwater/construction permit. Willhite responded that the company would be required to receive the Phase 2 permit, because they will disturb more than one acre of land.

Mitchell asked if the company could begin blasting before a decision was reached on the stormwater/construction permit. Willhite was unsure as to whether blasting fell under the IEPA's definition of construction. She believed that construction referred specifically to moving earth, as done when creating berms.

Bhowmik voiced his concern that the 25-foot buffer around the wetlands would not stop the wetlands from being drained by the mining site. He noted that this could be a direction the Council may want to look at, when considering further legislation. Lt. Governor Simon commented that members of the Office of the Lt. Governor are recording comments from the meeting, which can be used to produce a list of legislation the IRCC may want to examine in the future.

Davis asked for clarification that Ernat's Marsh, an Illinois Natural Area Inventory site, is contained on the mining site. Hirner confirmed that Ernat's Marsh is an Illinois Natural Area Inventory site, but that it is not part of Phase 1 of the mining, which is the only phase that the permit applications refer to. Davis asked for further clarification that Ernat's Marsh is part of the jurisdictional wetlands. Hays believed that Ernat's Marsh is part of Wetland 1, which is jurisdictional. A small portion of Wetland 1 – around 2 acres – is involved in the mining of Phase 1.

Mitchell voiced her concern that the wetlands would be drained, even if they would not be directly mined during Phase 1, and argued that this should be considered within the impacts of the mining operation.

Davis asked if the IDNR utilized their regulations for consultation. Davis did not believe that the IDNR had done so, and noted that those regulations are the only protections afforded to the Illinois Natural Area Inventory sites. He voiced his opinion that the IDNR has not fulfilled its obligations to protect the site, if a consultation was not completed.

Weibel asked for the location of the Phase 1 mining site. Hirner responded that the Phase 1 mining site is around 80 acres, located in the northeast corner of the mining site.

Mitchell asked what could be done to ensure that the IDNR completes all of its regulatory requirements before any further movement is made on the project. Hirner noted that she believed that the Office of the Lt. Governor had consultation letters that were provided by the IDNR during the LaSalle County Board hearing.

Mitchell asked where the public could locate answers to their concerns, such as those regarding the wetlands, in the reclamation plan and its accompanying materials. Hirner noted that the Office of the Lt. Governor would locate the responses from the mining company to the LaSalle County Board, regarding the consultation process. She noted that the Office of the Lt. Governor received its copy of the permit application from LaSalle County Board following the county board hearing.

Calhoun believed that the consultation process did not refer to the potential of draining the wetland, but rather, relocation of the discharge point for wastewater. Calhoun believed that the mining company originally intended to discharge its wastewater into Ernat's Marsh, which would change the delicate pH of the brine marsh. Calhoun believed that the consultation process from the IDNR requested that the mining company relocate its discharge point to avoid damaging the pH of the brine marsh.

Hirner asked if any federal laws applied to dewatering a wetland. Hays responded that Section 404 of the Clean Water Act does not provide any statutes regarding the dewatering of a jurisdictional wetland. Mitchell asked if dewatering of a wetland fell under the jurisdiction of the IEPA or USEPA. Willhite responded that it did not.

4. *IEPA reported that it anticipates that the Air State Construction Permit will be issued in August. Does this remain the anticipated date for issuing the construction permit?*

Response: *Yes, the deadline for taking final action on the permit application is August 13.*

Discussion on Points of Clarification, Question and Response 4

There were no questions regarding this response.

5. *For IEPA: Openlands and Sierra Club have made a request that IEPA conduct baseline studies of the air quality and the amount of particulate matter in the air prior to making any decisions regarding whether to permit or deny the permit application submitted by Mississippi Sand. The goal is to be able to know what the air quality is prior to the initiation of work by Mississippi Sand, and what additional emissions it contributes. What is the status of the request?*

Response: *The Illinois EPA has information on the air quality in the area. The area is in attainment with all National Ambient Air Quality Standards. Additional air monitoring is not a prerequisite to permit issuance. Notwithstanding, the Agency will take measures to ensure initial and ongoing compliance with all applicable laws and regulations before a permit is issued.*

6. *For IEPA: Openlands and Sierra Club also anticipate asking for air monitoring on site, and will be looking at daily and hourly exceedances in requesting that Mississippi Sand do additional monitoring, as a permit condition. Is attaching such conditions to a permit within the IEPA's scope of authority?*

Response: *As already noted, the Illinois EPA has information on the air quality in the area. The area is in attainment with all National Ambient Air Quality Standards, and as the emissions for this site are well below major source thresholds, there is no demonstrable need for additional air monitoring.*

Discussion on Points of Clarification, Question and Response 5 and 6

Mitchell noted that this question tied in to a portion of the proposed resolution which argued that the IEPA should require baseline air monitoring around the mining site. Mitchell voiced her opinion that individuals in the area surrounding the proposed mining site felt strongly that baseline monitoring should be done to protect the health of the citizens of LaSalle County. Mitchell commented that she did not understand why the baseline air monitoring could not be required. Hirner responded that the IEPA has noted that the area is in attainment with all National Ambient Air Quality Standards, and that additional air monitoring is not a prerequisite to permit issuance. Hirner believed that the IEPA may not have the ability to make additional air monitoring a requirement for permit issuance.

Mitchell noted that the citizens of LaSalle County have not been given the data on current air quality in the area that the IEPA noted is in attainment with National Ambient Air Quality Standards. She requested the ability to see the data, so that the public could know the current status of air quality in the area surrounding the mine. Mitchell also voiced her opinion that the response given by the IEPA, in reference to the fact that additional air monitoring was not required by the regulatory process, did not adequately address the potential effects of the silica sand on the air quality around the proposed mining location. She asked if baseline monitoring at the site should be required prior to beginning the mining process, as well as monthly, during the mining process. Mitchell also asked if the public would have to do independent testing to receive baseline air quality data, and how independent testing could be used if problems were found later, during the mining process. Hirner responded that air monitoring would not be required by any applicable law or regulation.

Calhoun commented that he had written a letter to the IEPA, requesting baseline air quality monitoring. He voiced his opinion that the public had a right to know any data related to the permitting process.

Mitchell noted that as a citizen member, she felt it her responsibility to bring issues from the citizens of the Illinois River Watershed to the IRCC. She voiced her opinion that the IRCC has always focused on not only what is the letter of the law, but also what is right for the citizens of the watershed. Mitchell voiced her opinion that all of the answers received from the IEPA and the IDNR have stated that the agencies are doing what is required by their statutory regulations, but that those regulations may not

adequately protect the health of the environment and the citizens. She voiced her opinion that the IRCC should look at the legislation behind the regulatory process, and ask, "Is this right?"

Lt. Governor Simon voiced her belief that the IRCC should first question whether the state and federal agencies, and the county, were completing all of their regulatory requirements, and if the citizens were given access to the permitting process. Beyond that, she commented, if the entities involved in the permitting process have completed all of their regulatory requirements, but the IRCC is still not satisfied, the following step should be to consider if the Council is interested in promoting changes in the current legislation regarding the permitting of sand mines. Lt. Governor Simon noted that approaching changes in legislation is a long-term solution that could, unfortunately, have no impact on the permitting process for the proposed sand mine near Starved Rock State Park. Mitchell voiced her opinion that continuing the current permitting process for the proposed sand mine near Starved Rock State Park would be an injustice to the people of LaSalle County, as well as a negative impact for tourism in the area. Lt. Governor Simon responded that she understands frustration surrounding the issue, but that the next steps should depend on further responses from the state agencies following this discussion.

Hirner asked if the Council wished to continue considering the responses as a group, or if members of the Council would like to consider the responses on their own, and provide further questions to the Office of the Lt. Governor. Mitchell requested to continue the discussion of the responses as a group.

SPEAKING TO THE RESOLUTION:

1. *Air monitoring is not required by any applicable law or regulation. IEPA should require baseline air monitoring on site prior to construction activities.*

Response: *Additional air monitoring is not required nor a prerequisite to permit issuance. Moreover, there are no air quality standards being violated in the area, and the emissions for this site are well below major source thresholds, there is no demonstrable need for air monitoring.*

Discussion on Speaking to the Resolution, Question and Response 1:

There were no further questions on this response, after consideration of Points of Clarification Questions 5 and 6.

2. *IEPA should require a thorough chemical and biological study of Horseshoe Creek & its tributaries.*

Response: *The Illinois EPA has requested the applicant conduct a chemical study and biological study of Horseshoe Creek and a tributary of Horseshoe Creek.*

Discussion on Speaking to the Resolution, Question and Response 2:

Mitchell asked if the chemical and biological studies of Horseshoe Creek had been completed and provided to the IEPA by the applicant. Willhite was unsure at this time, but promised to provide the answer to the Council.

Mitchell asked if the Council and the public would be told who was contracted to complete the chemical and biological studies of Horseshoe Creek. Mitchell also asked if the public would be allowed to request an independent organization to complete a secondary study if dissatisfied with the work done by the company contracted to complete the first study. Willhite was unsure who was contracted to complete the chemical and biological studies, but promised to provide the answer to the Council. Hirner promised to follow up with an answer regarding the ability of an independent organization to do a secondary chemical and/or biological study of Horseshoe Creek.

3. *IEPA should determine if the Illinois River is impaired for sediment at the confluence with Horseshoe Creek and whether the mining operation will contribute further sediment into the waterway.*

Response: *Sedimentation/siltation can cause impairment of aquatic life use. The Illinois River is not impaired for aquatic life use in the segment at the confluence of Horseshoe Creek and the Illinois River, based on the 2010 303 (d) listing and draft 2012 303 (d) listing. The discharge under the mining operation's NPDES permits will contain suspended solids. This discharge will be subject to either best management practices and or effluent limitations that will control and limit the discharge of sediment and suspended solids. These controls and limitations are expected to prevent impairment of aquatic life use in the Illinois River from the discharge.*

Discussion on Speaking to the Resolution, Question and Response 3:

Mitchell asked for clarification as to whether the IEPA had determined that the mining operation would discharge sediment and suspended solids in a quantity that would damage the Illinois River, and asked if the IEPA had completed its NPDES determination. She also asked for clarification as to how the two processes interact. Willhite responded that the IEPA's response has provided two answers. The original question asked if the Illinois River was impaired for sediment at its confluence with Horseshoe Creek, to which the IEPA responded that the confluence is not impaired for sediment and siltation, or for aquatic life use. The original question also asked if the mining operation will contribute further sediment into the waterway, to which the IEPA has responded that the NPDES requirements will be in place to ensure that the company does not adversely affect the waterway with sediment or any other pollutant.

Mitchell asked for clarification that the NPDES permit has not yet been approved. Willhite responded that the IEPA has received the application from the mining company, which is still under review to ensure that conditions in the approved permit will address and control discharge from the mining operation.

Bhowmik asked if the IEPA would require the mining company to complete monitoring to ensure that the mining operation would not contribute to the impairment of the

waterway. Willhite responded that the IEPA has asked the mining operation to complete a study of the current conditions of the waterway, to provide IEPA with baseline data on the waterway. She noted that the NPDES permit would then provide limitations to the mining operation, to ensure that the mining operation would not impair the waterway with discharge of sediment. Willhite was unsure if the company was required to monitor their discharges.

Mitchell asked why the IEPA would not require monitoring of sediment discharge. Willhite responded that if the practices approved by the permit regarding sediment discharge were understood to be highly effective, monitoring is not typically required of the company. She noted that the goal of the permitting process is to ensure that the practices used by the company are highly effective processes.

Mitchell asked if the IEPA would monitor that the company is following the limitations of the NPDES permit on their mining practices. Willhite noted that with any permit from the IEPA, inspections are used to ensure that the company is complying with their permit regulations. The approved permit will be used as a basis for enforcement.

4. *IDNR should require a thorough study of the hydrology of the mine site in order to consider the short and long term impact of the proposed mining on vegetation, wildlife, land use, land values, local tax base, the economy of the region and the State, employment opportunities, water pollution, soil contamination, and drainage. The proposed mining plan will likely dewater wetlands on the mining site, as well as the St. Peter sandstone formation which extends into the neighboring Starved Rock State Park and is a key attraction of the park.*

Response: *Under 62 Ill. Adm. Code 300.50(a)(9) and (10), the applicant is required to provide the location and names of all streams, creeks, bodies of water and underground water resources within the lands to be affected. In addition, the applicant is also required to describe drainage on and away from the lands to be affected during mining and after mining and reclamation is completed.*

In the application, the applicant states that the mining will take place in the St. Peter aquifer, which is located between four and ninety-five feet below ground surface. The applicant has installed 5 long-term ground water monitoring wells within or near the above mentioned aquifer. Figures were included in the application showing what the water table conditions are currently. The applicant has provided locations of local water wells within one mile of the proposed permit area, as well as modeled potential aquifer drawdown (five and ten years) impacts based on site hydrogeologic testing. The company has entered into an agreement with LaSalle County, through a Special Use Condition, to offer well replacement with neighboring property owners, upon request.

As for drainage on and off the proposed site, the applicant provided current drainage patterns as well as how drainage will be directed on and off the proposed permit area during mining. The applicant further included a description of the buffer zones that will be maintained around all wetlands under the jurisdiction of the US Army Corps of Engineers (USACE). Any infractions regarding Jurisdictional Wetlands will be handled by the USACE.

In regards to storm water and groundwater collected in the stripped or affected areas, all such drainage will be directed through a series of sumps which will then be directed to an outfall regulated by the IEPA, thus protecting against water pollution and soil contamination.

In regards to short and long term impacts of the proposed mining on vegetation, wildlife, land use, land values, local tax base, the economy of the region and the State and employment opportunities, the IDNR ensured all of these items were addressed during its permit review process. The review as a whole is coordinated through the IDNR's field inspector whose territory the operation is located in. In order for the IDNR to evaluate the short and long term impacts that the proposed mining will have on the items specified under 62 IL Adm. Code 300.70 (a), the inspector will use information submitted with the application, make onsite inspections of the proposed permit area and utilize the expertise of those individuals on staff who are considered experts in specific areas. Once the inspector has gathered the information needed to make an informed assessment, he uses this information to create the IDNR's Impact Assessment document.

Discussion on Speaking to the Resolution, Question and Response 4

Mitchell asked for clarification as to how the IDNR came to its determinations regarding the short and long term impacts of the proposed mining. She noted that the public has not seen the study on any of the potential impacts.

Tracy Yang, Illinois Sierra Club, noted that the Illinois Sierra Club has been submitting FOIA requests to the IDNR, requesting information on their determinations on the short and long term impacts of the mine. The IDNR has responded that the evaluations cannot be shared, because the permit has not been finalized. Yang asked if there was any way that the Illinois Sierra Club, along with other members of the public, could receive copies of these studies regarding environmental concerns.

Mitchell voiced her concern that the public did not have access to such information, although a representative from the IDNR had previously informed the IRCC that the public would be able to access the reclamation plan.

Yang noted that the IDNR informed the Illinois Sierra Club that the FOIA request could be resubmitted after the permit application was approved and finalized. Mitchell noted that this would only allow the public to see the information within the permit application, and to discuss that information, after the permit had already been approved. Mitchell voiced her concern that members of the public would not be able to address any perceived shortcomings in the reclamation plan once it was already approved.

Lt. Governor Simon requested that Yang provide the Office of the Lt. Governor with her original FOIA request and a copy of the responses from the IDNR.

Hirner clarified that Mitchell would like to ask how the public can see copies of the final consultations from the IDNR, which took the potential short and long term effects into consideration. Mitchell verified her question.

5. *IDNR should require a thorough study of the mine's blasting plan on the sensitive sandstone formations in the neighboring Starved Rock State Park.*

Response: *As stated previously, the IDNR requires that all blasting operations are conducted under the direct supervision of a licensed blaster (persons licensed by the IDNR, as provided under 62 Ill. Adm. Code 300.237). This individual is charged with ensuring that blasting operations are conducted in such a way as to prevent injury to persons and damage to public or private property. This is accomplished by adhering to the ground vibration and airblast standards set forth under 62 Ill. Adm. Code 300.225. These standards are based on scientific studies that were performed on protected structures to prevent cosmetic damage (microscopic cracks in plaster). Protected structures are defined as any dwelling, public building, school, church or commercial or institutional building, per 62 Ill. Adm. Code 300.210. Therefore, sandstone bluffs do not meet the definition of protected structure. However, there are protected structures much closer to the proposed permit area than the sandstone bluffs of Starved Rock State Park. Given the type of blasting that is utilized at similar operations in close proximity to the proposed mining site, the IDNR does not anticipate adverse impacts to the sandstone bluffs.*

Discussion on Speaking to the Resolution, Question and Response 5

Hirner noted that previous discussion had addressed that the IDNR only discussed what they were required to study, not what they could potentially study under their statutory regulations. She also asked for clarification that Davis believed the IDNR had the ability to create further requirements under their legislation. Davis responded that the Office of the Illinois Attorney General believed that under Section 5G of the Surface-Mined Land Conservation and Reclamation Act, the IDNR would be able to consider *any* potential short and long term impacts. He noted that the language expresses that the IDNR “shall consider the short and long term impact of the proposed” on a long list of potential areas of impact. Davis argued that anything the mining company could do which might have adverse impacts should be studied by the IDNR.

Hirner noted that under Section 5G of the Surface-Mined Land Conservation and Reclamation Act, the legislation reads, “The Department shall approve a conservation and reclamation plan if the plan complies with this Act and completion of the plan will in fact achieve every duty of the operator required by this Act.” She noted that the section requiring the IDNR to consider short and long term impacts of the mining operation follows the aforementioned statement, and questioned if the IDNR is therefore required to only consider those impacts in terms of the conservation and reclamation plan. Davis responded that the statutory text is intended to be broad, allowing the IDNR to make other considerations.

Weibel asked how the IDNR could define protected structures as “any dwelling, public building, school, church or commercial or institutional building, per 62 Ill. Adm. Code 300.210,” if they are unsure of the impacts of blasting on sandstone bluffs. He voiced his opinion that no one knows the impacts of blasting on sandstone bluffs, when no mining operations are currently blasting near the sandstone bluffs.

6. *IDNR should not issue a mining permit until Mississippi Sand reconciles how it can excavate an 80-foot deep reclamation lake in an area with wetlands that the U.S. Army Corps determined*

were jurisdictional under Section 404 of the Clean Water Act, after assuring the Corps that the mining operation will buffer against introducing any fill into wetlands in the same area. Either the mining permit has a flawed reclamation plan, or the operation is subject to a federal wetlands permit.

Response: As was discussed previously, the applicant has committed to maintaining a 25-foot buffer around any Jurisdictional Wetlands within the proposed permit area. This commitment ensures there will be no stripping or overburden placement within the boundaries of the buffer. Issues pertaining to Jurisdictional Wetlands (those under the jurisdiction of the USACE) fall outside the scope of the IDNR's regulatory authority under 62 Ill. Adm. Code 300. Therefore, if the applicant has met all the requirements under the Surface Mines Land Conservation and Reclamation Act, the IDNR has no regulatory authority to withhold reclamation permit issuance based on issues outside its jurisdiction.

Discussion on Speaking to the Resolution, Question and Response 6

Mitchell noted that Bhowmik's previous comment on the 25-foot buffer should be considered by the USACE, the IEPA, and the IDNR.

Lt. Governor Simon informed the Council that she would have to leave the call early, due to another scheduled meeting. She thanked the Council members, the agencies, and members of the public for their participation.

GENERAL QUESTIONS DIRECTED TO THE AGENCIES:

1. (IDNR) *What is the status of the permit application and what is the approval process?*
 - a. *What follows the fee and bond letter having been transmitted to Mississippi Sand?*
 - b. *What happens if the reclamation plan changes during the course of permitting the project?*

Response: *The current status of the Mississippi Sand's proposed permit application is that the IDNR Office of Mines and Minerals has completed its review of the application and has issued its bond and fee letter. Once the IDNR has received the requested bond and fee from the applicant and determined the bond and fee are adequate, the IDNR can issue the mining/reclamation permit. Once the mining/reclamation permit is issued, Mississippi Sand will be required to file the approved permit, the final reclamation plan, and a form 1b to LaSalle County.*

If, during the review of the application, the reclamation plan were to be changed/modified, those changes/modifications would be incorporated into the approved reclamation plan submitted to the LaSalle county clerk's office.

Again, the issuance of the IDNR's mining/reclamation permit does not supersede any other federal, state or local laws (or permits), regulating the commencement, location and operation of surface mining facilities.

Discussion on General Questions Directed to the Agencies, Question and Response 1

Mitchell asked if there was a possibility for a public hearing regarding the permit applications from both the IDNR and the IEPA. Willhite noted that with the general NPDES permit, the public would be notified that the applicant would be covered under a general NPDES permit, but there would be no public hearing. However, under an individual NPDES permit, a public hearing is required. The IEPA is still determining whether an individual NPDES permit, based on what conditions will be required for the discharges from the mining site.

Hirner noted that there are four pending permit applications: the sand mining permit from the IDNR, the air permit from the IEPA, and two NPDES permits from the IEPA.

2. *Is the reclamation map accurate?*

It appears that the jurisdictional wetlands will be covered over by the reclamation lake as indicated on the map. Discussion indicates Mississippi Sand will leave a 25-foot buffer around the wetlands. However, this is not demarcated on the map.

Response:

IDNR: In the application documents, the operator stated that "if Wetland #1 was deemed as jurisdictional by the USACE," the operator would maintain a 25-foot buffer around any part of Wetland #1 that was contained within the application acreage. The USACE made such a designation, and the 25-foot buffer was required. An additional reclamation map is not required because the matter of the buffer was fully and clearly addressed within the application.

USACE: If the intent of the map is that the wetlands are left intact (not filled), yet they are inundated with water, then the activity would not trigger the need for a 404 permit.

Discussion on General Questions Directed to the Agencies, Question and Response 2

Mitchell voiced her opinion that the question was still not adequately answered as to whether or not the map of the reclamation plan was accurate.

Davis asked Hays how the USACE came to the determination that a 404 permit would not be required, and how that determination was communicated. Hays noted that approximately 2 acres of jurisdictional wetland fall within the area that would be mined during Phase 1 of the mining process, which will last for a 10-year period. The mining company informed the USACE that they would avoid the discharge of dredge and fill material into the 2-acre area of jurisdictional wetland, and promised to ensure the wetlands were protected from dredge and fill material by the use of a 25-foot buffer, demarcated by fencing. Hays was unsure what Davis meant by "communicated," but noted that the company was informed by the USACE that no permit would be required, based on their use of the 25-foot buffer and avoidance of the jurisdictional wetland areas. Davis asked for clarification as to when that determination was provided to the mining company. Hays noted that the mining company was informed by letter as to the determination. He was unsure as to the exact date of the letter, but believed the date

on the letter was April 19, 2012. He noted that no determinations had been made regarding the other phases of mining. Davis responded that he found it hard to believe that the map showed the exact location of the 25-foot buffer, if the letter from the USACE was not provided until April 19th, 2012. Yang noted that the 25-foot buffer was not included in the copy of the reclamation map that she had. Hirner noted that she believed the Office of the Lt. Governor had copies of the letters from the USACE, and informed the Council that the Office of the Lt. Governor would locate those copies for the Council's reference. Hays noted that he was also willing to provide a copy of those letters. Hirner noted that the Office of the Lt. Governor did have a copy of a letter from Planning Resources Inc. to the USACE regarding the revision of the boundaries of Wetland 1 and the submission of a revised request for a jurisdictional determination on that wetland, dated August 30, 2011. She believed that Planning Resources, Inc. was the company employed by Mississippi Sand to complete a study on the wetland area within the mine site.

Mitchell asked Calhoun when he received his letter from Mississippi Sand informing him that the mine location would be near, and potentially affect, his property. Calhoun noted that he received the letter on October 20, 2011. Mitchell noted that the public had no idea, until that date in October, that the permitting process was already underway. Calhoun commented that he felt citizens had to scramble to get information on the proposed mine site, in light of the news.

A citizen commented that Mississippi Sand noted, at the county board hearing, that the wetland on the mining site would be drained prior to the completion of Phase 1, which would allow the company to mine the wetland area during Phase 2. He commented that the public was informed that no regulations protect the wetland from being drained. Mitchell agreed that she believed this was the company's stance on the wetland issue.

Mitchell and Calhoun noted that no opportunities were given to the public to speak at the county board hearing, or during the land use application process. Mitchell noted that the only opportunity for the public to speak on this issue has been provided by the IRCC and the Office of the Lt. Governor.

3. *(IEPA) Is it anticipated that the Air Operating Permit will be a FESOP?*

Response: *Yes, it is anticipated that the Air Operating Permit will be a FESOP. As part of the regulatory process, a public notice and opportunity for public hearing will occur prior to issuance of the FESOP.*

a. *What is the implication of the granting of the FESOP?*

Response: *If issued, the permit would contain federally enforceable permit conditions to ensure compliance with all applicable laws and regulations.*

b. *How do the construction and operating permits interface?*

Response: *The application for FESOP must demonstrate compliance with all the terms and conditions of the construction permit. Relevant conditions in the construction permit are carried over into the FESOP.*

Discussion on General Questions Directed to the Agencies, Question and Response 3

Mitchell asked if further detail on what a FESOP is, and what the implications of receiving a FESOP permit would be for the mining company and the proposed mining location. Hirner responded that the Office of the Lt. Governor would ask for further detail from the IEPA, and provide that information to the IRCC. Hirner noted that she understood a FESOP to place federally enforceable requirements, such as greater compliance and monitoring, on the proposed mining operation.

Mitchell asked what the timeline would be for approval of the FESOP. Hirner responded that the FESOP would be the air permit issued by the IEPA, which has a deadline of August 13. Willhite clarified that the August 13 deadline would apply to the air construction permit, not the FESOP. She was unsure of a date for the FESOP, but believed that it would be further out than the air construction permit.

4. *(IEPA) Regarding the NPDES for the mining operation discharge – does IEPA anticipate this will be considered for an individual or a general permit?*

Response: *The project is under review to determine whether a general permit or individual permit will be required. If the project does not require special conditions beyond those in the general permit, and can meet the general permit terms and conditions, the general permit may be used to cover the mining activities and discharges.*

Discussion on General Questions Directed to the Agencies, Question and Response 4

Willhite noted that the IPEA is still looking at the permit application provided by Mississippi Sand, as well as further consultation, to determine whether the NPDES permit will be an individual or a general permit. She noted that the determination would depend on whether or not special conditions would be necessary, beyond what the general permit requires.

Hirner informed the Council that the Office of the Lt. Governor would compile its notes from the conference call, as well as the questions raised from the call, and provide those to the Council members, public attendees, and state agencies. Hirner requested that all members of the call provide their email to Marc Ayers, Office of the Lt. Governor, at Marc.Ayers@Illinois.gov so that he could forward those notes.

Hirner reminded the Council that the next IRCC meeting would occur the following day, on August 8, 2012. She noted that the Open Meetings Act requires that any final action be included on the agenda. As no final action on the proposed resolution or the responses from the state agencies was included on the agenda for the August 8 meeting, the Council would be unable to take action at that meeting. Hirner noted that an additional phone conference could be held to discuss the questions from this phone conference and responses from the state agencies, at which time, final action could be considered.

Hirner reminded the Council that at the August 8 meeting, the IRCC agreed to host a dedication ceremony celebrating the designation of the Sue and Wes Dixon Waterfowl Refuge and the Emiquon Complex as Wetlands of International Importance under the Ramsar Convention on Wetlands. Hirner informed the Council that due to the dedication, the agenda of the August 8 meeting would have an extremely tight schedule.

Mitchell asked if an update regarding the phone conference and the status of the proposed resolution could be included on the agenda for August 8. Hirner responded that she would ask the Lt. Governor to include that update within her opening remarks, so that it would appear on record.

Mitchell asked what the requirements on notification for meetings were under the Open Meetings Act. Hirner responded that if a special meeting is called, the public needs to be notified 48 hours prior to the special meeting, while a regular meeting requires a week's notice. She also commented that a vote could not be taken unless a quorum of voting members was present. Mitchell requested that notice would be given in enough time to include any voting members that wished to be present for final action on the resolution or responses from the state agencies, to allow voting members who were unable to attend the phone conference to participate.

Bunting asked if the IRCC had received a copy of the map of the proposed reclamation site. Hirner noted that the Office of the Lt. Governor had the same copy that was provided at the public availability session held by the IEPA on May 23, 2012, and offered to provide that map to the members of the Council.

Consider if Council Action on Agencies Responses is Warranted

No action was taken.

Adjournment

The meeting was adjourned.