

2018 Issues Briefing Next Steps After Tonight

Schedule District Office Meetings

March or early April

Check Websites

ILGA.gov: bill status, co-sponsors

Sierra Club: updated fact sheets

Complete Online Forms

Scheduler and Report-back

Optional Springfield Lobby Day

April 25 and 26



SIERRA CLUB

ILLINOIS CHAPTER

Lobby Team

Lobby Team Co-Chairs

Denise Corkery, denise.corkery@mac.com

Andy Kimmel, ask14nature@gmail.com

2018
Issues Briefing
Make-up Webinar



SIERRA CLUB
ILLINOIS CHAPTER
Lobby Team

Welcome

Jack Darin

Executive Director
Illinois Sierra Club

**Importance of
District Office Visits**

2018 State Political Climate



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HB 5564: Property Rights for Illinois Landowners

Correcting Troyer

Presented to:



SIERRA CLUB
ILLINOIS CHAPTER

Brought to you by...

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- John Albers
 - Attorney with Shay Phillips Ltd.
 - Regulatory work involving Illinois Commerce Commission and utility matters
 - Solar land leases
 - Retained by Save Our Illinois Land
 - Administrative Law Judge at Illinois Commerce Commission
 - Utility facility siting dockets
 - Rate cases
 - Rulemakings
 - Public hearings
 - Legislation analysis

In a nutshell...

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- HB 5564 represents an attempt to correct bad law created by a 2015 Illinois appellate court decision
- The appellate court decision allowed a pipeline company to take possession of land before the condemnation process was complete
- This could be used to accelerate other pipeline projects in Illinois
- HB 5564 simply bars a condemnor from taking possession of land before the condemnation process is complete

Eminent Domain 101

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- “Eminent domain” and “condemnation” used interchangeably
- Refer to State’s ability to take or damage private property for a public use/purpose
- Constitution requires compensation (US: 5th Am., IL: Art 1, §15)
- The Eminent Domain Act, 735 ILCS 30/1-1-1 *et seq.*, governs this power and process in Illinois
- Generally, condemnor files condemnation complaint - argues authority to condemn for public purpose, negotiation attempted and failed, and offered compensation is reasonable; if wins, court grants condemnor possession of property interest

Eminent Domain 101 - Quick-Take

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- Sometimes project is considered really important - so condemnor is allowed to “quickly take” property
- Quick-take must be authorized by General Assembly
- Articles 20 and 25 of Eminent Domain Act describe process for exercising quick-take and specific instances where it can be used
 - Examples: redevelopment of blighted areas, public works projects, and airport runways; statute identifies specific parcels in specific towns
- Condemnor gets possession of property - compensation determined later

House Rule 41 and Senate Rule 5-6

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- 100th General Assembly (2017-2018) House of Reps. has adopted Rule 41 and Senate has adopted Rule 5-6
- §41(c) and 5-6 - no bill authorizing quick-take powers may be voted on unless certain procedures followed
 - Specified information provided to House Executive Committee/Senate leaders
 - Notice to affected property owners provided
- Identical §41(c) also in effect during 99th General Assembly (2015-2016) -- when Troyer was decided

Eminent Domain and the ICC

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- Generally - new electric, natural gas, water, sewer, and pipeline transmission projects require ICC approval
- Under Public Utilities Act, can ask ICC for eminent domain authority too
- Because it tips negotiating power, ICC usually expects company to try negotiation before grants eminent domain power
- If negotiations fail - as long as company made reasonable negotiation effort and because such projects thought to benefit public good - ICC commonly grants eminent domain power

Enbridge v. Troyer, 395 Ill. Dec. 526 (2015)

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- **2007** - Enbridge Pipelines files application with ICC seeking authority to build 170-mile long liquid petroleum pipeline known as the “Southern Access Extension,” aka “SAX”
- **2009** - ICC grants Enbridge authority to construct SAX
- **2013** - Enbridge asks ICC to let it condemn easements on 148 parcels b/c negotiations failed to result in agreement
- **2014** - ICC grants Enbridge eminent domain authority
- **2015** - Enbridge files condemnation complaint and asks circuit court to prohibit landowners from keeping Enbridge off their property before compensation for the condemned easements is determined

The Ruling

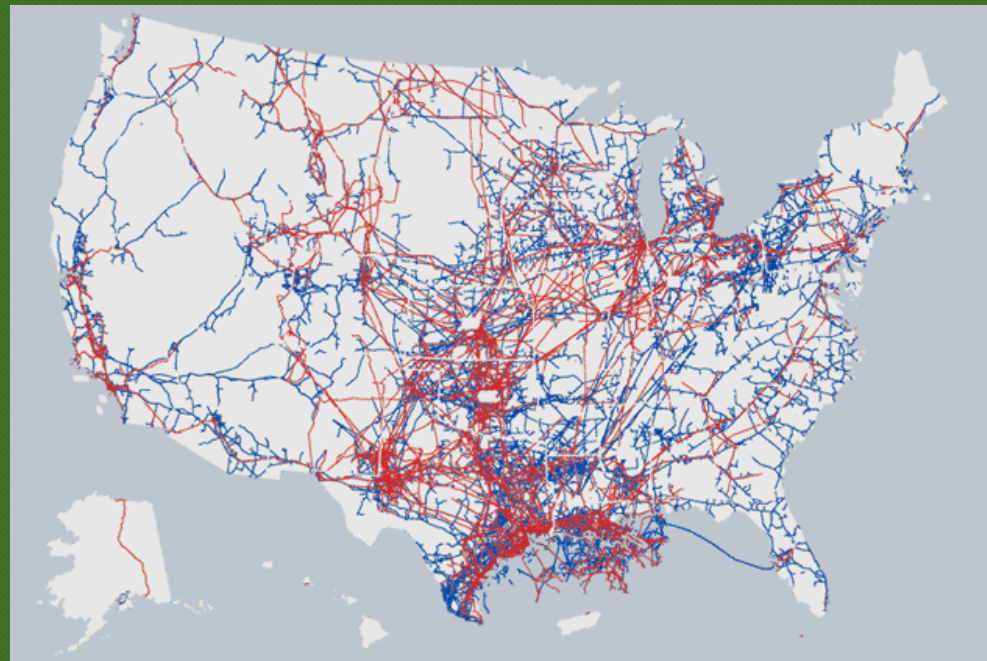
13

- McLean County trial court agrees with Enbridge - Enbridge can enter land and build pipeline before compensation determined
 - ICC already found project to be in public interest
 - Compensation for easements only thing left to determine
 - Enbridge willing to set aside money landowners sought as compensation
- **2015** - Landowners appeal to 4th District Appellate Court and lose
- **2016** - IL Supreme Court denied petition for leave to appeal
- End Result: judicial branch created and gave Enbridge “quick-take” power

So what? Bad Precedent

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- Troyer decision = Unexpected gift to pipeline industry in Illinois
 - Whenever ICC grants authority to build a new pipeline and to exercise eminent domain power, Troyer could be used to get quick-take authority to accelerate construction
- Quicker pipeline construction =
 Increased use of fossil fuels =
 Climate Change Acceleration
- Also - robs landowners of bargaining power



The Remedy?

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- HB 5564
 - Sponsored by Rep. Anna Moeller (D) (43rd Dist.)
 - Restores legislature's authority to determine who can use quick-take power
 - Adds one sentence to §10-5-5(a) of Eminent Domain Act:

“Except as provided in Article 20 or 25 of this Act, if either party in the condemnation action demands a trial by jury under this Section, the condemning authority shall not be granted title or possession and the owner shall not be restrained from denying access to the property until the jury ascertains compensation.”

Obstacles/Opponents

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- Enbridge and all other utilities
- Labor organizations
- Farm Bureau - **red herring** - Farm Bureau opposed earlier version of bill (HB 2532) but offending language has been removed
- Environmental groups - **red herring** - some suggestion that would delay electric lines transmitting renewable energy
 - All electric transmission lines have same options for getting built, regardless of energy source

HB 5564 simply restores to the General Assembly and landowners the power that Troyer diluted

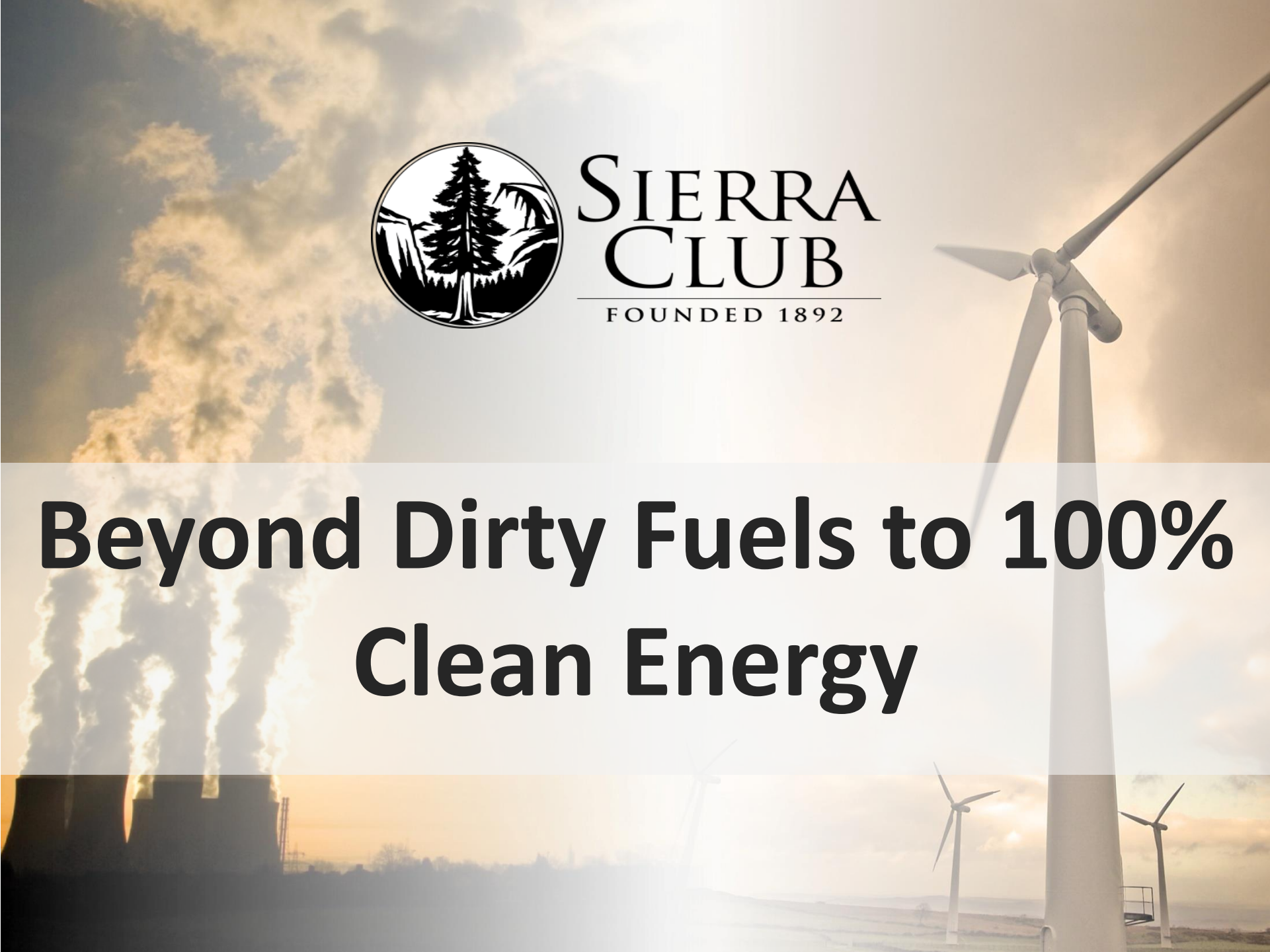
Thank you for your attention
QUESTIONS?

John Albers
jalbers@shay-law.com



SIERRA
CLUB
FOUNDED 1892

Beyond Dirty Fuels to 100% Clean Energy



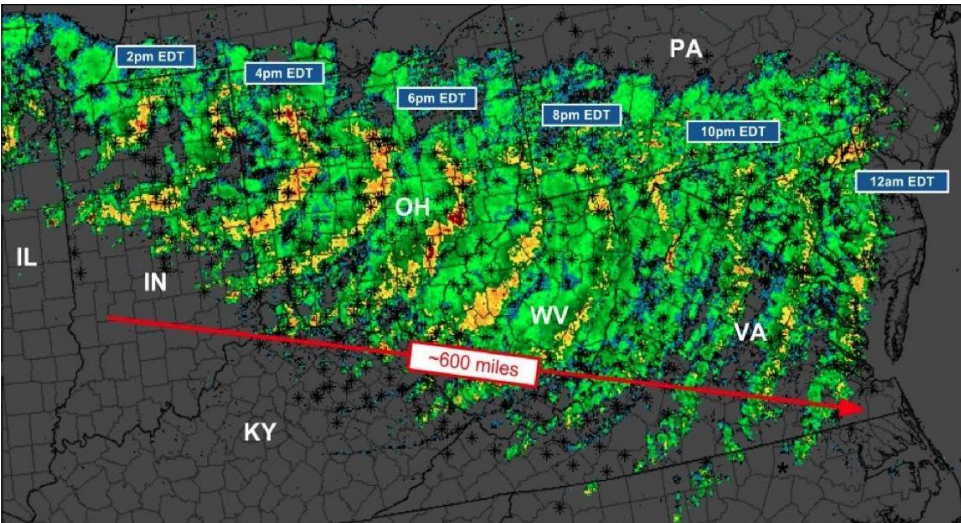
Climate disruption is on our doorstep



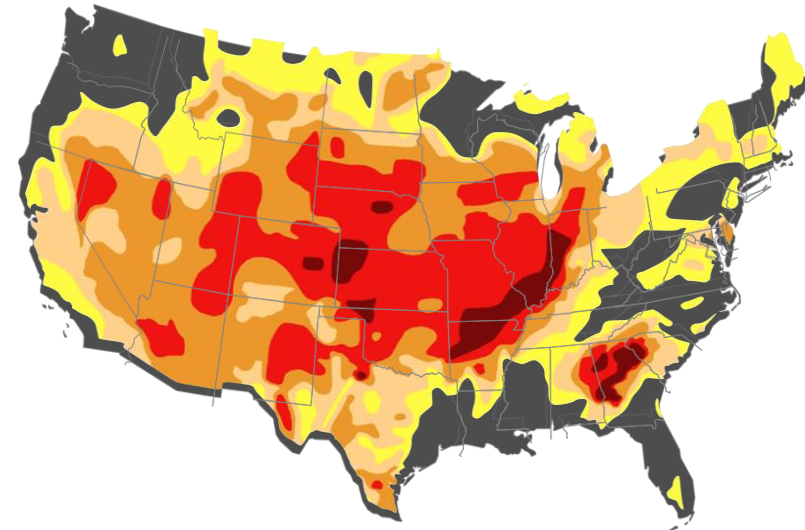
Hurricane Sandy, October 2012



Colorado wildfires, June 2012

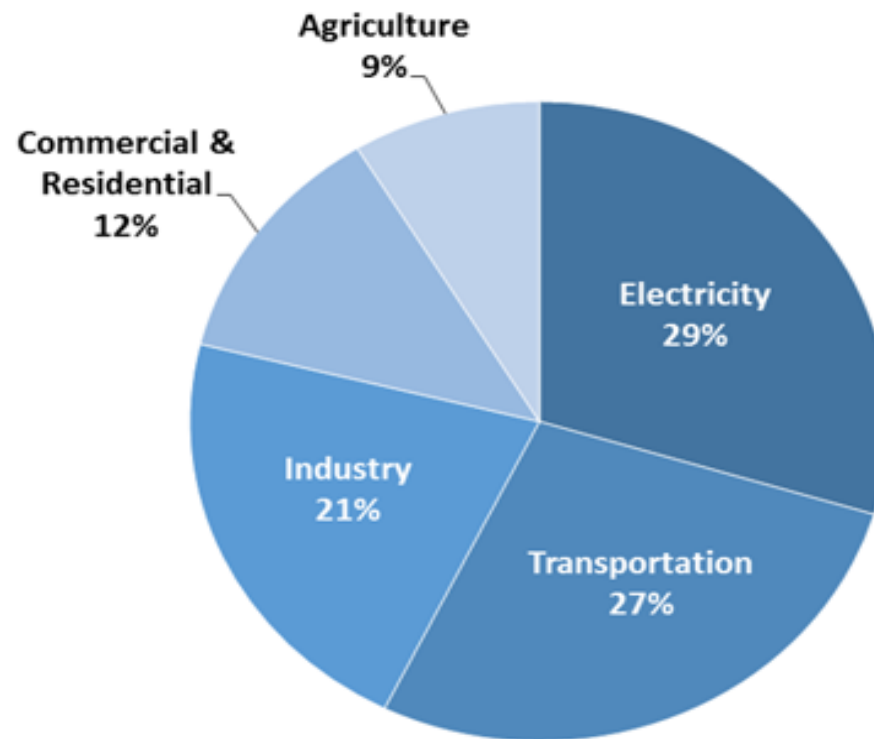


Mid-Atlantic and Midwest Derecho, June 2012



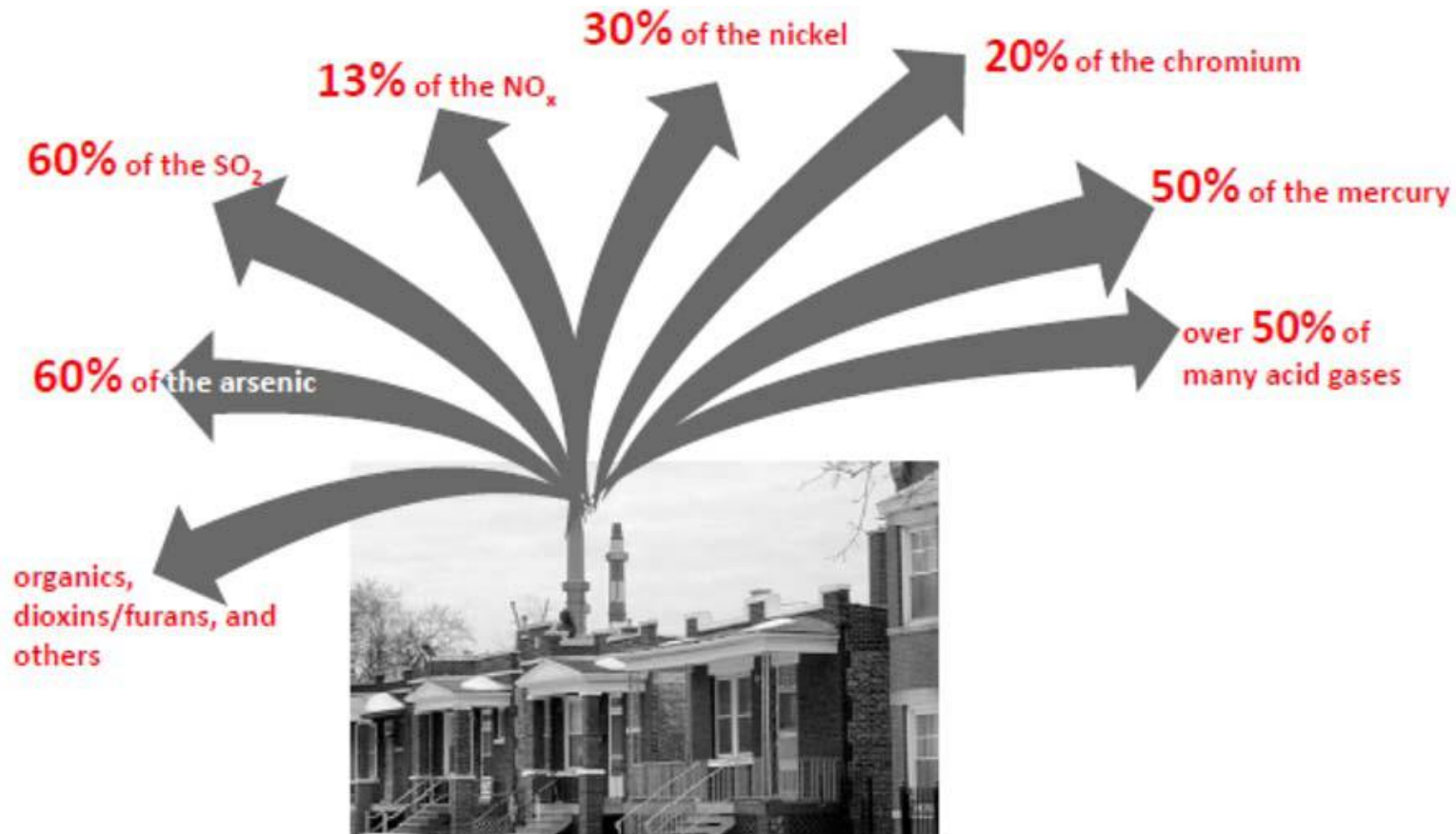
U.S. drought conditions, July 2012

Total U.S. Greenhouse Gas Emissions by Economic Sector in 2015



U.S. Environmental Protection Agency (2017). Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2015.

Emissions from Fossil-Fueled Power Plants as a Percent of Total U.S. Air Emissions



Source: U.S. EPA, "Reducing Toxic Pollution from Power Plants," March 16, 2011, p. 6.

Note: The figure includes emissions from oil-fired units as well as coal-fired, but oil-fired units account for only 1% of U.S. electric generation. Air emissions are not necessarily the major source of exposure for each of these pollutants.



Power Plants are the largest source of toxic water pollution in the United States

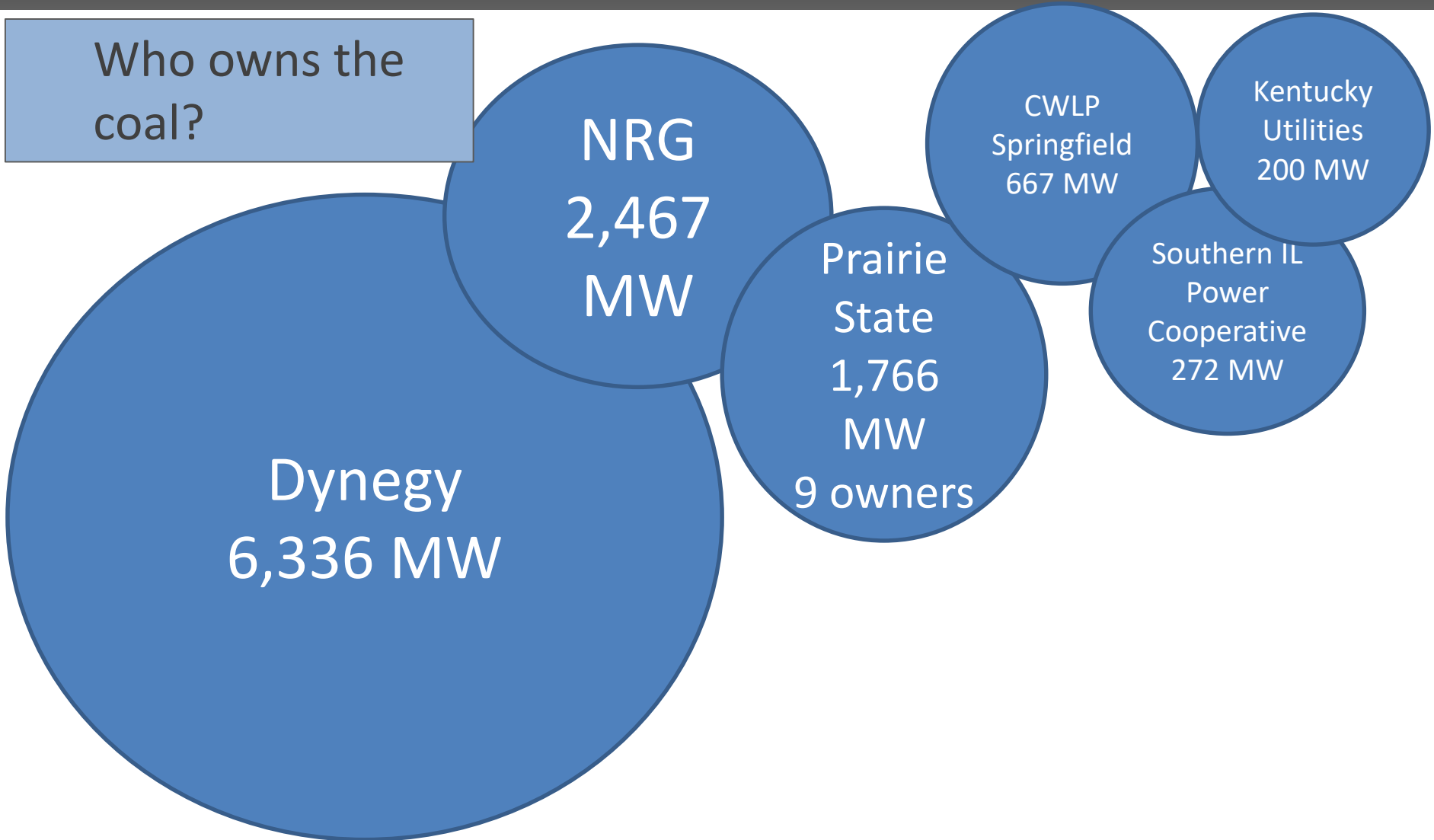
**#TOXICPOWERPLANTS
DUMP 2.2 BILLIONS LBS OF
POLLUTION INTO OUR WATER
EVERY YEAR.
#NOTOXICWATER**

Illinois – remaining coal → 14 plants, 32 units, ~11,700

megawatts

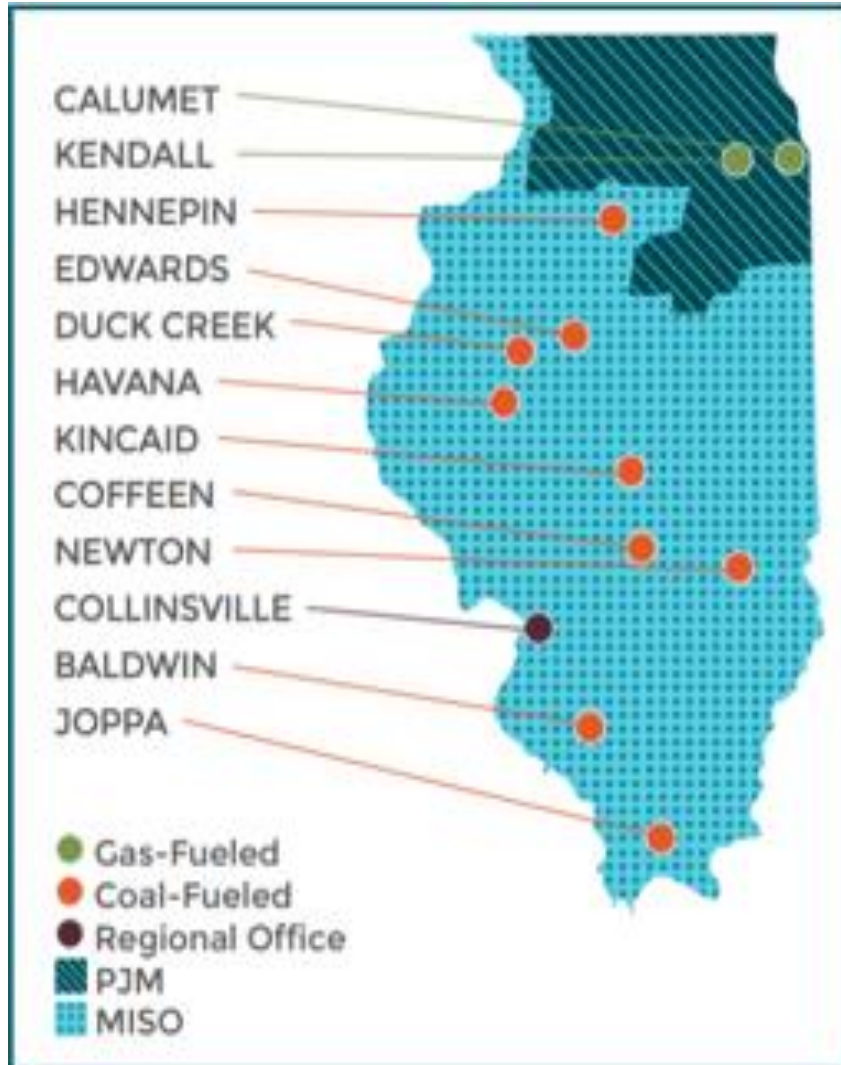


Who owns the coal?



Success to date: already announced or retired 32 coal units totaling 7,211 MW

Dynegy Coal Fleet in Illinois



DYNEGY ILLINOIS GENERATING FACILITIES ⁽²⁾

FACILITY	LOCATION	NET CAPACITY MEGAWATTS	FUEL
Baldwin	Baldwin, IL	1,185	Coal
Calumet	Chicago, IL	380	Gas
Coffeen	Coffeen, IL	915	Coal
Duck Creek	Canton, IL	425	Coal
Edwards	Bartonville, IL	585	Coal
Havana	Havana, IL	434	Coal
Hennepin	Hennepin, IL	294	Coal
Joppa	Joppa, IL	802/221	Coal/Gas
Kendall	Minooka, IL	1,288	Gas
Kincaid	Kincaid, IL	1,108	Coal
Newton	Jasper County, IL	615	Coal

Forces Ameren rate-payers to prop-up uneconomic coal plants in the Dynegy fleet- a \$115 rate-hike per customer annually.

- Creates an in-state energy market that would specifically favor Dynegy coal plants – delivering greater profit margins to Dynegy financed by Ameren ratepayers.

Why should this bill be defeated:

- Ameren families and businesses should not be saddled with a \$115 rate increase to subsidize the profits of a Texas corporation that knowingly made a risky investment in uneconomic coal plants in Illinois.
- The bailout is unnecessary and Illinois would face dirtier air and carbon pollution.
- The pending merger between Dynegy and Vistra Energy, valued at \$20 Billion, should put an immediate halt to any legislation
- This is not a long-term solution for plant workers and does not guarantee jobs.



Christine.nannicelli@sierraclub.org

State Legislation Giving Counties and Municipalities the Authority to Regulate the Sale and Use of Toxic Pavement Sealants

Sponsors:

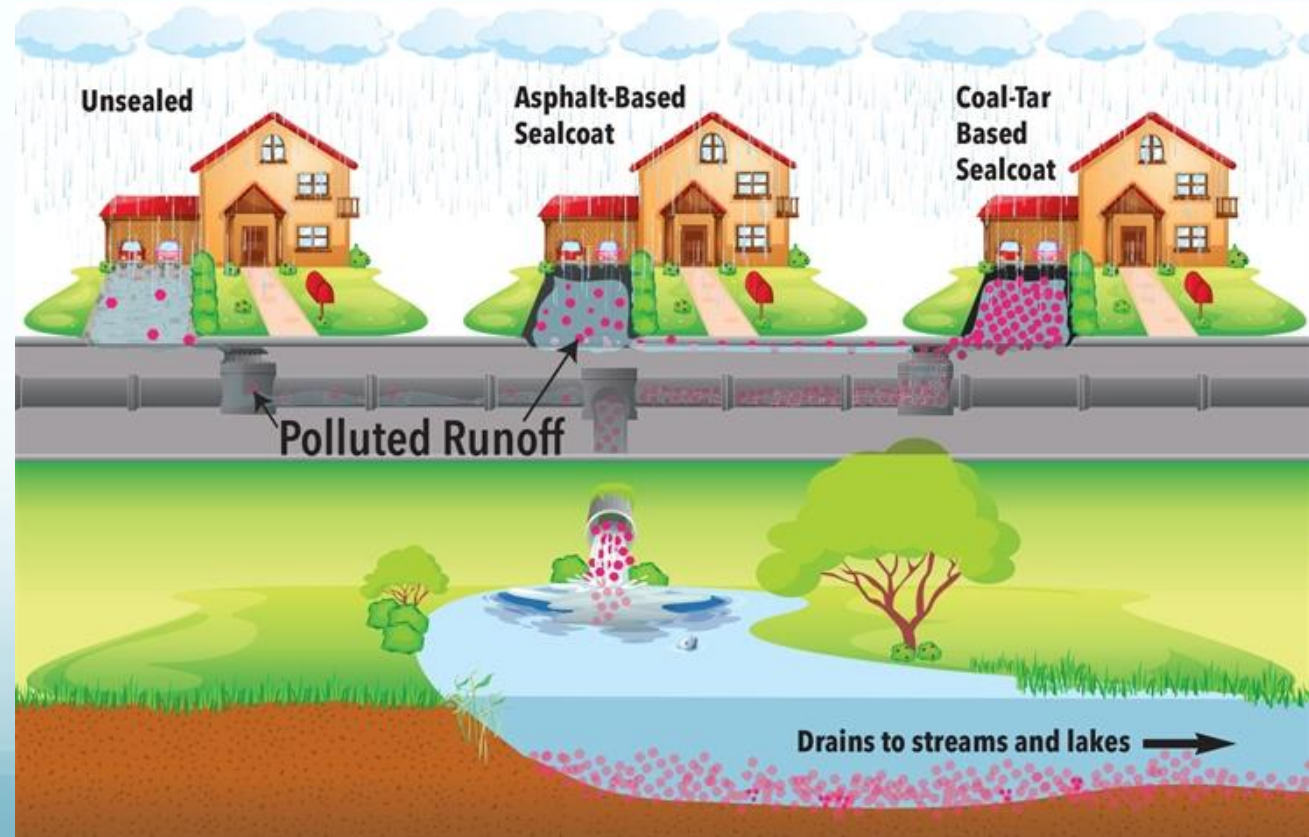
Representative Laura Fine **HB2958**

Senator Julie Morrison **SB237**



Why not to use Coal Tar or other High PAH pavement sealants

- High levels of polycyclic aromatic hydrocarbons (PAHs) are found in coal tar and some other pavement sealants.
- PAH compounds are known **human** carcinogens. Early childhood exposure is linked to increased risk of developing lung, skin and bladder cancer.
- Sealants wear off and are tracked into buildings and washed off into detention ponds and our waterways.
- PAHs are toxic to **aquatic organisms**.
- PAH levels in the alternative asphalt-based sealants are 1000 times lower than in coal tar sealant.



Routes of Contamination of Buildings and Waterways from Coal Tar or other High PAH Pavement Sealants



Urban PAH Sources by the Numbers

Fresh asphalt	1.5
Weathered asphalt	3
Fresh motor oil	4
Brake particles	16
Road dust	24
Tire particles	86
Diesel engine exhaust	102
Gasoline engine exhaust	370
Used motor oil	440
Asphalt-based sealant	50
Coal-tar-based sealant	70,000

All concentrations in mg/kg.
See tx.usgs.gov/sealcoat.html for references.

Talking Points

- ◆ Living next to coal-tar-sealed pavement is estimated to increase cancer risk 38 times, much of the increased risk occurs during early childhood.
- ◆ A 2016 American Medical Association policy calls for legislation to ban the use of high PAH sealants or mandate the use of minimal PAH products— This bill would give counties and municipalities the authority to do that.
- ◆ Safer asphalt-based alternatives are readily available. Home Depot, Lowes, and Menards no longer sell coal tar sealant products.
- ◆ Communities want the authority to protect their citizens and their waterways and to reduce the costs of clean-up of their stormwater management facilities.

The “Ask”

- Please co-sponsor SB237 and HB2958
 - Check first to see if you Representative is already a co-sponsor, thank them if they are. www.ilga.gov
- Will you vote for SB237 (or HB2958)?

Questions?

Cindy Skrukud
Clean Water Program Director

Cindy.Skrukud@SierraClub.org

312-251-1680 x1015

Lead in Drinking Water Prevention

Jen Walling, Illinois Environmental
Council

Flint Drinking Water Crisis

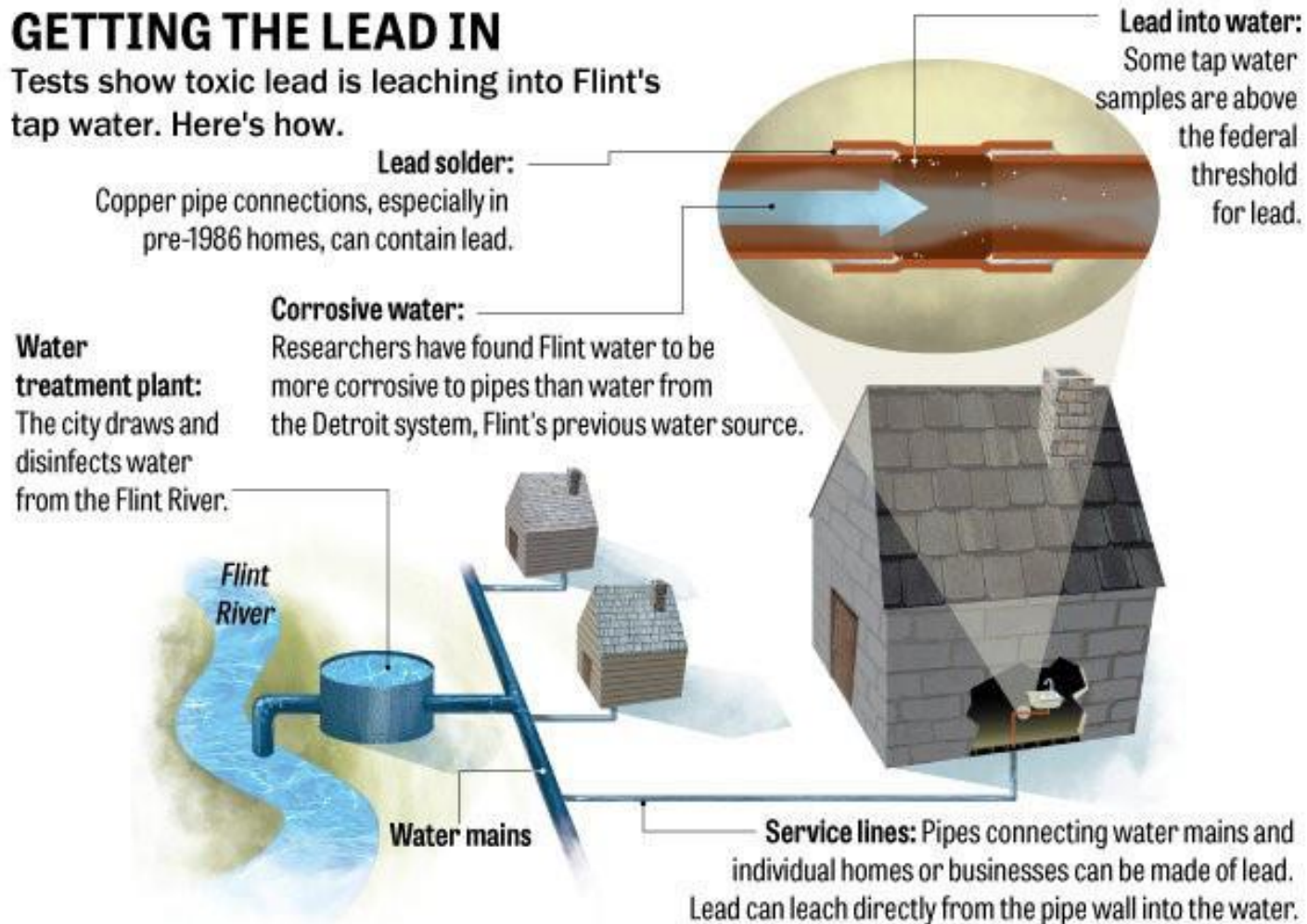
- In 2014, Flint switched its water source to the Flint River because of financial issues with its water department.
- The water from the Flint River was 19 times more corrosive than water from Lake Huron, its previous water source.
- Lead levels were found above 5,000 ppb, which is considered hazardous.



There is no safe level of lead in
our children's drinking water.

GETTING THE LEAD IN

Tests show toxic lead is leaching into Flint's tap water. Here's how.



Source: <https://micondolaw.com/2016/01/20/failing-infrastructure-how-to-handle-common-element-lead-pipes-in-your-condominium/>

SB3080/HB5044

Legislation Summary:

- This bill would require municipalities and private water utilities to replace all lead service lines in 10 years, with a focus on high priority environmental justice areas. This bill would also place stringent requirements on communities to reduce water loss, a symptom of crumbling infrastructure that is very costly for ratepayers.

Lead pipe replacement

- This bill will require every community water system to create a plan to remove all known lead service lines within 10 years from the completion of the plan.
- Water systems will also be required to complete an asset management plan, from which to inspect infrastructure and resolve any deficiencies.
- For high risk facilities and areas, such as schools, daycares, hospitals, transitional housing, and churches, lead lines will be replaced on an expedited time frame to minimize risk to these populations.

Affordability

- This bill balances the costs to consumers by addressing water loss, as leaking pipes throughout Illinois are costing consumers substantial money.
- Creates the Low-Income Water Assistance Program to provide rate relief for low-income customers.
- Creates the Statewide Advisory Council on Lead in Drinking Water to monitor progress.

Supporter

- Illinois Sierra Club and other environmental groups
- AFL-CIO and Plumbers and pipefitters
- Illinois Manufacturers Association

Water loss

- According to a 2014 report published by CMAP and CNT, in 2012, 22.187 billion gallons of water were lost. This is enough water to provide the residential needs of over 698,000 people for one year.
- “Of the 946 million gallons that Maywood bought from Melrose Park in 2016, 367 million gallons, or 38.7 percent, never made it to taps, costing residents and businesses in this cash-strapped village nearly \$1.7 million.” Chicago Tribune
- The Tribune also estimated that northeastern Illinois communities would have saved \$9.1 million of water in 2016 if all communities had met Illinois’ water loss standards.
- Nearly 1 in 4 communities in Illinois do not meet the water loss standards put forth by the Illinois Department of Natural Resources.

Contact information

- Jen Walling
- jwalling@ilenviro.org
- Ilenviro.org
- 217-544-5954



STANDING FOR JUSTICE

SB3005 (RAOUL), HB 5119 (ANDERSSON)

Mark Templeton
Presentation to Sierra Club Illinois Lobby Team
February 24, 2018

Starved Rock



Sand Mining Near Starved Rock



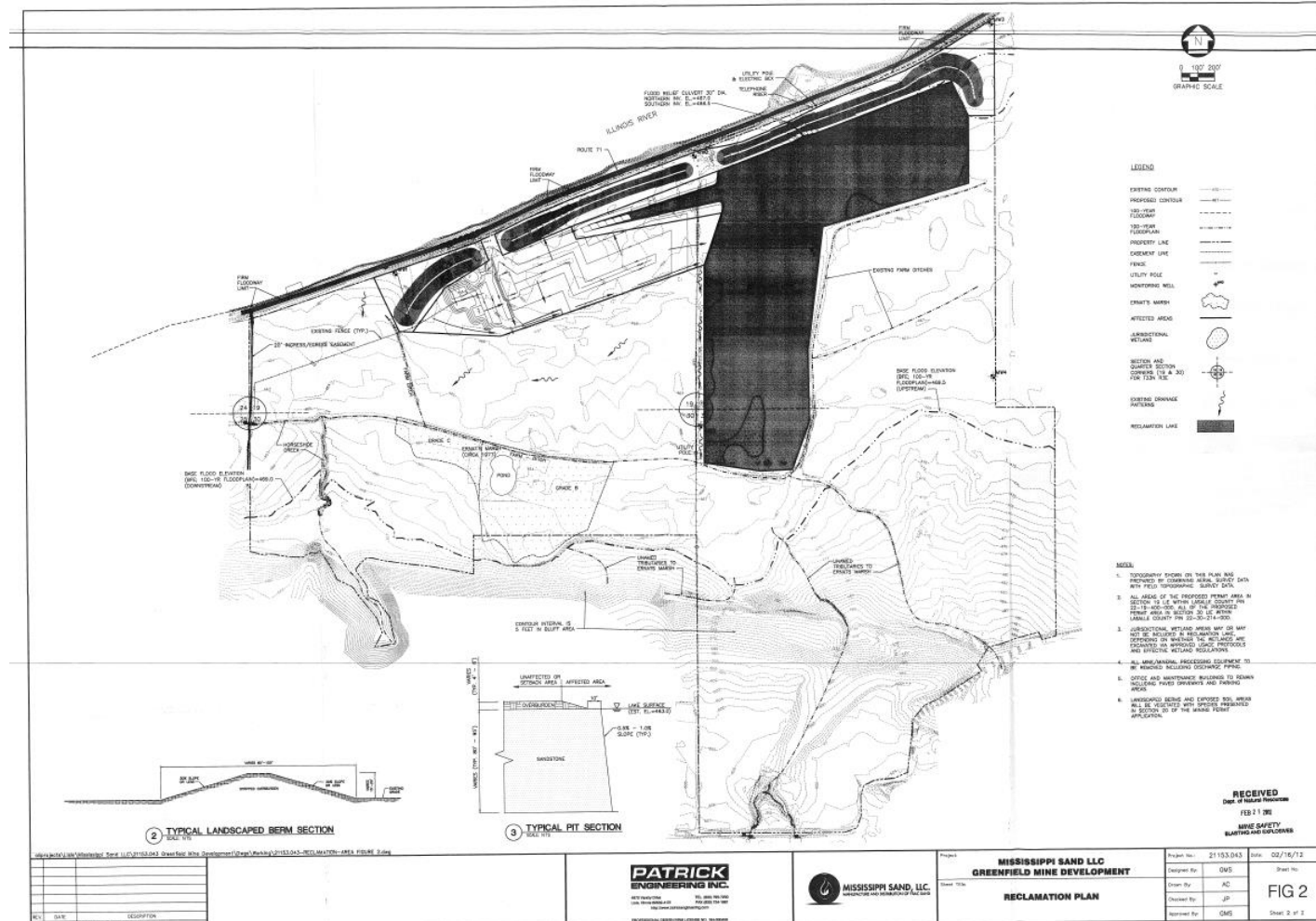
Sand Mining Near Residences



Merlin and Susan Calhoun



Mississippi Sand's Proposed Mine



REVISIONS

NO.	DATE	DESCRIPTION

PATRICK ENGINEERING INC.
 1000 N. WILSON AVENUE
 SUITE 200
 CHICAGO, IL 60642
 TEL: 773.399.8800
 FAX: 773.399.8801
 WWW.PATRICKENGINEERING.COM

MISSISSIPPI SAND, LLC
 GREENFIELD MINE DEVELOPMENT

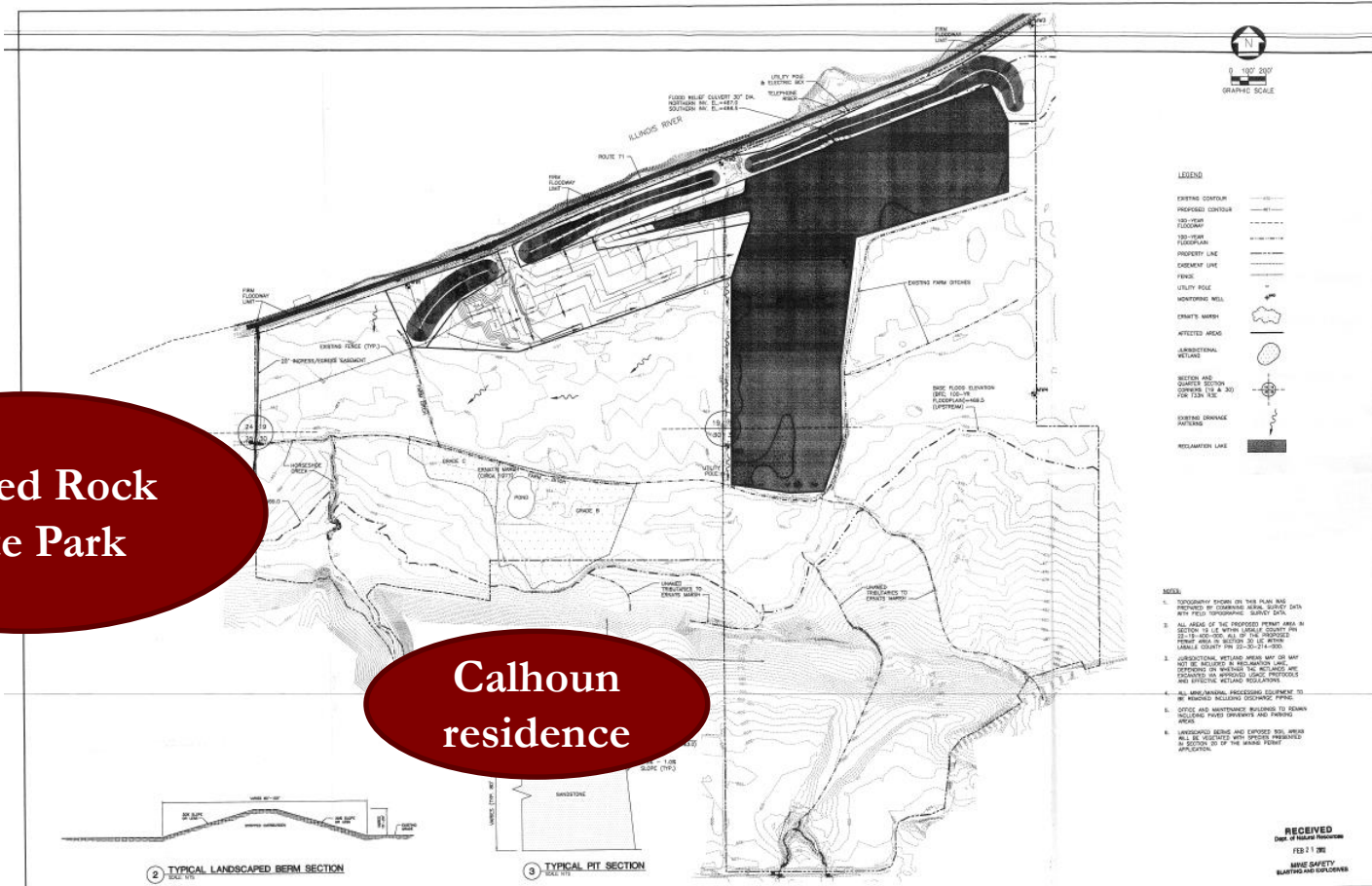
**MISSISSIPPI SAND LLC
 GREENFIELD MINE DEVELOPMENT**
 RECLAMATION PLAN

Project No.	21155.043	Date	02/16/12
Design By	QWS	Drawn By	KC
Checked By	JP	Scale	FIG 2
Reviewed By	QMS	Sheet No.	Sheet 2 of 3

Mississippi Sand's Proposed Mine

Starved Rock
 State Park

Calhoun
 residence



<p>ISSUES & REVISIONS</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		NO.	DATE	DESCRIPTION										<p>PATRICK ENGINEERING INC.</p> <p>1000 N. LAKE ST. SUITE 200 CHICAGO, IL 60610 TEL: 312.235.1000 FAX: 312.235.1001 WWW.PATRICKENGINEERING.COM</p>	<p>MISSISSIPPI SAND, LLC.</p> <p>1000 N. LAKE ST. SUITE 200 CHICAGO, IL 60610 TEL: 312.235.1000 FAX: 312.235.1001 WWW.MISSISSIPPI-SAND.COM</p>	<p>Project: MISSISSIPPI SAND LLC GREENFIELD MINE DEVELOPMENT</p> <p>Drawn By: OWS</p> <p>Checked By: JGP</p> <p>Approved By: GMS</p>	<p>Project No.: 21155.043</p> <p>Drawn By: OWS</p> <p>Checked By: JGP</p> <p>Approved By: GMS</p>	<p>Date: 02/16/12</p> <p>Sheet No.: FIG 2</p> <p>Sheet 2 of 3</p>
NO.	DATE	DESCRIPTION																

Sierra Club et al. v. Office of Mines of Minerals



Sangamon County Courthouse



Judge John P. Schmidt

Sierra Club et al. v. Office of Mines of Minerals

“So, the sole question, or the question before the Court in this hearing right now is:

Do the Plaintiffs have standing in this matter?”



Judge John P. Schmidt

Requirements for Standing from *Greer v. Illinois Housing Development Authority* (*Illinois Supreme Court 1988*)

“Standing in Illinois requires only some injury in fact to a legally cognizable interest.”

“[T]he claimed injury, whether ‘actual or threatened’ must be: (1) ‘distinct and palpable’; (2) ‘fairly traceable’ to the defendant’s actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief.”

Sierra Club et al. v. Office of Mines of Minerals (2014)

“So, the sole question, or the question before the Court in this hearing right now is:

Do the Plaintiffs have standing in this matter?

And the Court finds clearly in this case that the answer is no.”



Judge John P. Schmidt

Sierra Club et al. v. Office of Mines of Minerals (2014)

“This case is in this court under the theory or under the venue or in the terms of administrative review, and **when the Court is acting in administrative review, we are acting under the limited, the limited authority granted to us by the statute...**”



Judge John P. Schmidt

Sierra Club et al. v. Office of Mines of Minerals (2014)

“It’s one of the few times the Court is very limited in its authority, and this is a Court that always exercises its authority very cautiously, but **under administrative review, the authority is granted to us by statute, and we do not have it in this case.**”



Judge John P. Schmidt

What Is the Scope of the Administrative Review Law?

This Article ... shall apply to and govern *every action* to *review judicially a final decision of any administrative agency* where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Article ... or its predecessor, the Administrative Review Act.

What Qualifies as an “Administrative Decision”?

“Administrative decision” or “decision” means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency.

Sierra Club et al. v. Office of Mines of Minerals (2015)

“In Illinois, a long-standing general rule exists that **‘administrative review is limited to parties of record before the administrative agencies and then only when their rights, duties or privileges are adversely affected by the decision.’**”



Justice
Steigmann



Justice
Turner



Justice
Pope

Sierra Club et al. v. Office of Mines of Minerals (2015)

“[U]nder the language of the Mining Act, plaintiffs are not parties of record to Mississippi Sand’s permit-application process”



Justice
Steigmann



Justice
Turner



Justice
Pope

How Does Standing for Justice SB3005, HB5119 Address These Problems?

Gives persons affected by a final administrative agency decision—not just parties or parties of record—the opportunity to challenge the decision in court, regardless of what the relevant specific statute says

How Does Standing for Justice SB3005, HB5119 Address These Problems?

Gives persons affected by a final administrative agency decision—not just parties or parties of record—the opportunity to challenge the decision in court, regardless of what the relevant specific statute says

- In practice, means courts should apply the Illinois Supreme Court standard of *Greer* to decisions of administrative agencies
- Gives persons the opportunity to introduce evidence to the court that they have standing
- Does not increase liability for agencies or permittees if they have followed the relevant law for permits
- Applies only when there is no other protection in the relevant statute (such as the Illinois Environmental Protection Act's provisions for review by the Illinois Pollution Control Board)

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April 25 and 26



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