DEPARTMENT OF NATURAL RESOURCES
OFFICE OF MINES & MINERALS

MARY ELLEN DECLUE and MARY A. BATES,	
Petitioners.	
vs.	**Macoupin Energy, LLC Shay #1 Mine Renewal No. 3 to Permit #291**
ILLINOIS DEPARTMENT OF NATURAL RESOURCES, OFFICE OF MINES AND MINERALS,	
Respondent.	
MACOUPIN ENERGY LLC SHAY NO. 1 MACOUPIN COUNTY, ILLINOIS,	
Permittee/Intervenor.	

ORDER AS TO MACOUPIN ENERGY LLC'S MOTION TO DISMISS BATES' AND DECLUE'S PETITIONS

This Matter Comes to me pursuant to a Motion to Dismiss, filed by the Intervenor, Macoupin Energy, LLC, in the above-docketed matter on or about April 30, 2010 (by facsimile), and therein, the Intervenor, seeks to have me issue an Order dismissing both the Petition filed by Ms. Mary Bates and by Ms. Mary Ellen DeClue, and alleges, in part, as follows:

> [o]n September 4, 2009, Macoupin [Energy LLC, Intervenor] submitted to the Illinois Department of Natural Resources an Application for Renewal No. 3 to Permit No. 291 for an Air Shaft at the Shay #1 Mine. *See, Administrative Record, Application for Renewal No. 3 to Permit Number 291* (**See**, Macoupin's Motion to Dismiss, ¶1, p.1)

> [a]fter receiving a request for an informal hearing, on January 5, 2010, IDNR held an informal meeting at 6 P.M. at the Macoupin County Courthouse, 201 East Main Street, Carlinville, Illinois. Both Petitioners were present at the January 5, 2010 informal meeting. *See Administrative Record, Transcript of Informal Conference, January 5, 2010* (**See**, Macoupin's Motion to Dismiss, ¶2, pp.1,2)

[a]fter receiving a request for a formal hearing on February 4, 2010, IDNR held a formal meeting at 6:00 P.M. at the Carlinville City Council Chambers, 550 North Broad Street, Carlinville, Illinois. Both Petitioners were present at the February 4, 2010 formal hearing. *See Administrative Record, Transcript of Informal Conference, February 4, 2010* (**See**, Macoupin's Motion to Dismiss, ¶3, p.2)

[a]fter review of the Application for Renewal, comments from the aforementioned meeting and public hearing and written comments, and pursuant to 225 ILCS 720/2.07 and 62 Ill.Adm.Code 1774.15, on March 4, 2010, IDNR issued Notice of Renewal of Permit No. 291. *See, Administrative Record, Results of Review of Permanent Program Renewal Application No. 3 to Permit No. 291* (**See**, Macoupin's Motion to Dismiss, ¶4, p.2)

[o]n March 31, 2010, Ms. Bates filed a Request for Administrative Review of IDNR's approval of the Renewal Permit No. 3 for Permit No. 291. A copy is attached [to Macoupin's Motion to Dismiss]. In her Request, Ms. Bates sets forth the following issues for administrative review of IDNR's renewal of Permit No. 291: 1) concerns that coal slurry could be injected into the shaft; 2) belief that the shaft should be reclaimed; 3) concerns regarding groundwater pollution; and 4) allegations as to expiration of a NPDES permit and remediation regarding Constituents of Concern. (**See**, Macoupin's Motion to Dismiss, ¶5, p.2)

[o]n April 1, 2010, Ms. DeClue filed a Request for Administrative Review of IDNR's approval of the Renewal Permit No. 3 for Permit No. 291. A copy is attached [to Macoupin's Motion to Dismiss]. In her Request, Ms. DeClue sets forth the following issues for administrative review of IDNR's renewal of Permit No. 291: 1) concerns regarding groundwater, surface water and Spanish Needle Creek contamination; 2) speculation that the air shaft will be used for coal slurry injection; and 3) concerns regarding IDNR's apparent objection to an Illinois Senate Bill 3107 that would allow County Boards to request public meetings when longwall mining is set to begin in an area. (**See**, Macoupin's Motion to Dismiss, ¶6, pp.2,3)

[o]n April 14, 2010, the Hearing Officer, Michael O'Hara, filed a Notice of Formal Hearing, setting the Petitioners' requested hearing for May 5, 2010 at 9:00 a.m. A copy of this Notice is attached [to Macoupin's Motion to Dismiss] as Exhibit 3. (**See**, Macoupin's Motion to Dismiss, ¶7, p.3)

[o]n April 15, 2010, IDNR served the administrative record on the Petitioners and the Permittee and filed a Statement Regarding Burden of Proof. A copy is attached [to Macoupin's Motion to Dismiss] as Exhibit 4. (**See**, Macoupin's Motion to Dismiss, ¶8, p.3)

Macoupin Energy LLC, after listing the allegations above within its Motion to Dismiss, cites portions of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS

720/2.07, specifically, the following:

> (a) Any valid permit issued under this Act shall carry with it the right of successive renewal on expiration of the permit term with respect to the areas within the boundaries of the existing permit.
> (b) * * * A renewal permit shall be issued unless it is established that, written finding by the Department are made that, (1) the present mining and reclamation project is not in compliance with the permit and this Act; (2 the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit area; (3) the operator has not provided evidence that the performance bond in effect for said operation will continue in full force and effect for the term of the requested renewal; (4) any additional bond the Department might require under Section 6.01 had not been filed; or (5) any additional revised or updated information required by the Department has not been provided.
> (d) With respect to an application for renewal, the burden shall be on the opponents of renewal to establish that the application is not in compliance with all requirements of this Act.[1]

Macoupin also states within its Motion to Dismiss that "pursuant to 62 Ill.Adm.Code §1847.3(b), Petitioners' Requests for Administrative Review are required to: (i) state a clear statement of facts entitling Petitioners to relief; (ii) state a clear statement of facts as to how Petitioners' interests may be adversely affected; and (iii) state an explanation of each specific alleged error in the Department's final decision and how that decision may or will adversely affect the Petitioners' interest." (**See**, Macoupin's Motion to Dismiss, ¶11, p.4) Macoupin Energy LLC then states that "[s]ince Petitioners' Requests for Administrative Review of the Renewal of the Air Shaft Permit No. 291 fail to comply with 62 Ill.Adm.Code §1847.3(b), they should be dismissed." (**See**, Macoupin's Motion to Dismiss, ¶12, p.4)

In support of its Motion to Dismiss, Macoupin Energy LLC cites the Act and states:

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[1] Note, Macoupin Energy LLC inexplicably skipped any reference to subsection © of Section 2.07, which provides that "[p]rior to the approval of any renewal of a permit, the requirements of Section 2.04 shall be complied with." (**See**, 225 ILCS 720/2.07©) I assume that such was merely an oversight on the part of Macoupin.

> ...pursuant to 225 ILCS 720/2.07, a valid permit shall be renewed unless IDNR establishes: (1) that the permit is currently not in compliance, (2) that the permit would jeopardize the current mining operations, (3) that the Permittee failed to maintain a performance bond or provide any other bonds required by IDNR, or (4) that the Permittee failed to provide any updated information requested by IDNR. (**See**, Macoupin's Motion to Dismiss, ¶13, p.4)

Macoupin asserts that because the Petitioners' Requests for Administrative Review were required to specifically address those delineated alleged failures listed in 225 ILCS 720.207 purportedly perpetrated by Macoupin --- none of which exists, according to Macoupin --- that the Requests for Administrative Review must be dismissed. Further, Macoupin asserts that:

> Petitioners mere highlighting of their concerns regarding groundwater, their issues in general with coal slurry injection, their belief that the shaft should be reclaimed, and allegations as to expiration of a NPDES' permit, on their face, have nothing to do with a renewal of an air shaft permit; and Petitioners --- as they are required to do under 62 Ill.Adm. Code §1847.3(b) --- have failed to state facts that entitle Petitioners to relief.... (**See**, Macoupin's Motion to Dismiss, ¶15, p.4)

Indeed, Macoupin goes on to argue within its Motion to Dismiss that:

> [b]eyond expressing generalized concerns for groundwater from mining activity, the requests for Administrative Hearing failed to provide any facts or connection of facts to an outcome or potential outcome from IDNR's approval of the air shaft permit renewal to groundwater. (**See**, Macoupin's Motion to Dismiss, ¶16, p.5)

Macoupin asserts that therefore "Petitioners have failed to state a claim by asserting any facts to show how an air shaft permit will affect groundwater, and thus Requests for Administrative hearing should be denied for failure to state a claim. (**See**, Macoupin's Motion to Dismiss, ¶17, p.5) As to Petitioners' allegations as to potential slurry injection, Macoupin states that Petitioners:

> ...cite no facts to support their allegations. Rather, the record of the February 4, 2010 Public Hearing refute these allegations. Daniel Barkley, a mining engineer and subsidence specialist with IDNR, explained at the Public Hearing that coal companies "would not fill a shaft with slurry. They might choose to try to fill with [course] refuse, but slurry would not be probably an option a company would pursue to fill a shaft. But we would have to specifically approve that per this operator memorandum I mentioned." *See Administrative Record, Transcript of Public Hearing, February 4, 2010 at 61.* (**See**,

Macoupin's Motion to Dismiss, ¶18, p.5)

Macoupin then also states that "Petitioners['] claim for reclamation is also meritless" since "[r]eclamation is required when the mine is completed" and "Macoupin is still actively mining the Shay Mine #1." (**See**, Macoupin's Motion to Dismiss, ¶19, p.5)

> Moreover [according to Macoupin] Air Shaft Permit No. 291 currently is providing ventilation for the mine. *See Administrative Record, Transcript for Public Hearing, February 4, 2010 at 50 and 53-54.* So, again [according to Macoupin] Petitioners' allegations fail to show how reclamation had anything to do with renewal for the Air Shaft No. 291. (**See**, Macoupin's Motion to Dismiss, ¶20, p.5)

Macoupin then concludes its Motion to Dismiss with the following:

> ....Petitioners seem[] to allege that Permittee's NPDES permit has lapsed. This is not true. As required, IDNR checked for compliance within IDNR's programs and [sic] any outstanding violations, and reported at the Public Hearing that Macoupin did not have any unabated violations or situations on the site. *See Administrative Record, Transcript for Public Hearing, February 4, 2010 at 50 and 51-52* Further, contrary to Petitioners' allegations, Macoupin has an effective NPDES permit as set forth in the July 1, 2008 letter from Larry Crislip with the Illinois Environmental Protection Agency to Mary Bates attached to Exhibit 1 [of the Motion to Dimiss]. Petitioners' Requests for Administrative Hearings contain nothing beyond general concern about mining. They lack specific facts, technical data, citations to applicable statutes, statements as to how adversely affected [sic], and any specificity as to IDNR's "errors" in their [sic] final decision. Bottom line --- Petitioners' Request for Administrative Hearing fail to state a claim for relief and should be dismissed. (**See**, Macoupin's Motion to Dismiss, ¶¶21-23, pp.5,6)

Unfortunately for the Petitioners, for the same reasons I found in favor of the Department's Motions to Dismiss these Petitions, I likewise find that Macoupin's Motion to Dismiss must be granted. That is, I concur with Macoupin that the Petitions filed in the above-docketed cause fail to comport with the requirements of 62 Ill.Adm.Code 1847.3(b). Specifically, the Petitioners failed to state with specificity the manner in which the Department's approval of the renewal failed to comply with the requirements of 225 ILCS 720.07. I concur with Macoupin's assertion that "Petitioners['] mere highlighting of their concerns regarding groundwater, their issues in general with coal slurry injection, their belief that the shaft should be reclaimed, and [their]

allegations as to expiration of a NPDES' permit, on their face, have nothing to do with a renewal of an air shaft permit" and that therefore Petitioners "have failed to state facts that entitle Petitioners to relief;" Petitioners have failed to state "how Petitioners' interests are adversely affected" by the Department's granting of the renewal, and Petitioners have failed to state any "specific errors in [the Department's] renewal decision." (**See**, Macoupin's Motion to Dismiss, ¶15, p.4)

For the reasons set forth within the Orders granting the Department's Motions to Dismiss the Petitions filed by Ms. DeClue and Ms. Bates, and for the reasons set forth herein, I find that the Petitioners have failed to comply with the pleading requirements of 62 Ill.Adm.Code 1847.3(b). The Petitions filed not only lack specific facts, but neither Petition contains any citation to applicable statutes or regulations supporting the notion that the Department erred in granting the Permittee's renewal request.

As I stated within the Orders granting the Department's Motions to Dismiss, I do not believe that I can allow the Petitioners the right to file amended petitions, inasmuch as any *new* substantive allegations would necessarily be untimely filed, pursuant to 62 Ill.Adm.Code 1847.3. Because I find that the Petitions filed, respectfully, by Mary Bates and Mary Ellen DeClue are substantively deficient, pursuant to the regulatory dictates of 62 Ill.Adm.Code 1847.3, I find that I cannot grant leave for either Ms. Bates or Ms. DeClue to file an amended Petition. Any new substantive allegations would be untimely raised. This may seem to be a harsh result under the circumstances, but I am bound by the regulations governing my jurisdiction as a Hearing Officer.

Therefore, pursuant to the Motion filed by Macoupin Energy LLC, this matter is dismissed with prejudice, subject to any timely perfected appeal(s) to the circuit or appellate courts, as the case may be.

IT IS SO ORDERED.

Dated: 5/03/2010

Hearing Officer

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Order as to Macoupin Energy LLC's Motion to Dismiss Bates'and DeClue's Petitions was served upon the following parties by enclosing the same in an envelope and depositing said in a U.S. Post Office box in Springfield, Illinois, with proper postage affixed thereto, on the 3rd day of May, 2010, as follows:

Virginia I. Yang, Esq.
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Supervisor, Land Reclamation Division
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Springfield, Illinois 62701

Michael W. O'Hara

STATE OF ILLINOIS
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF MINES & MINERALS

MARY A. BATES, **Petitioner.** **vs.** **ILLINOIS DEPARTMENT OF NATURAL RESOURCES, OFFICE OF MINES AND MINERALS,** **Respondent.** **MACOUPIN ENERGY LLC** **SHAY NO. 1** **MACOUPIN COUNTY, ILLINOIS,** **Permittee/Intervenor.**	**Macoupin Energy, LLC** **Shay #1 Mine** **Renewal No. 3 to Permit #291**

ORDER AS TO DEPARTMENT'S MOTION TO DISMISS BATES' PETITION

This Matter Comes to me pursuant to a Motion to Dismiss, filed by the Department in the above-docketed matter on or about April 30, 2010, and therein, the Department alleges as follows:

> [o]n March 4, 2010, the Department issued written notice of final decision to issue Permit No. 291, Renewal No. 3 ("Permit") authorizing Macoupin Energy, LLC ("Permittee"), to engage in coal mining operations on certain lands known as the Shay No. 1 Mine, located in Macoupin County, Illinois and owned by Permittee as described in the Permit. (**See**, Department's Motion to Dismiss, ¶1, p.1)
>
> [o]n March 31, 2010, the Department received a timely filed notice from Petitioner requesting administrative review of the Department's final decision to issue the Permit [to Macoupin Energy, LLC]. A copy of Petitioner's Request for Hearing is attached as Exhibit A [to the Department's Motion to Dismiss]. (**See**, Department's Motion to Dismiss, ¶2, pp. 1,2)

[p]ursuant to 62 Ill.Adm.Code 1847.3(b), the Petitioner's request for hearing shall be

filed stating the following:

a. The petitioner's name and address;
b. A clear statement of the facts entitling the petitioner to relief, including the petitioner's interest which is or may be adversely affected by the Department's final decision;
c. How the Department's final decision may or will be adversely affect the interests specified;
d. An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provision allegedly violated;
e. The specific relief sought from the Department; and
f. Any other relevant information.

(**See**, Department's Motion to Dismiss, ¶3, p.2)

[t]he Petitioner's request for hearing failed to comply with 62 Ill.Adm. Code 1847.3(b) as follows:

a. It fails to provide a clear statement of facts or the interests that may be adversely affected;
b. It fails to provide an explanation of how the Department's final decision may or will adversely affect Petitioner's interests as specified, including but not limited to standing;
c. It fails to provide an explanation of each specific alleged error in the Department's final decision, including any reference to the statutory and regulatory provisions allegedly violated;
d. It fails to state the specific relief sought from the Department; and
e. It fails to provide relevant information in support of the above.

(**See**, Department's Motion to Dismiss, ¶4, p.2)

[p]ursuant to 62 Ill.Adm.Code 1848.12, the Department states as follows:

a. A written motion has been filed;

b. Oral argument of this motion is not requested by the Department;

c. A concise statement of supporting facts for this motion has been provided herein; and

d. A proposed order for entry has not been provided herein to allow for such additional relief as the Hearing Officer may deem reasonable and just.

(**See**, Department's Motion to Dismiss, ¶5, pp.2,3)

> [p]ursuant to 62 Ill.Adm. Code 1848.19, the hearing officer upon motion filed in accordance with 62 Ill.Adm. Code 1848.12 may dismiss at any time a request for hearing which fails to state a claim upon which administrative relief may be granted. (**See**, Department's Motion to Dismiss, ¶6, p.3)

The Department thereafter requests that the Hearing Officer dismiss the hearing request sought by Petitioner Bates premised upon the assertion that such hearing request "fail[s] to state a claim pursuant to 62 Ill.Adm.Code 1848.19, and more specifically, 62 Ill.Adm.Code 1847.3(b)." (**See**, Department's Motion to Dismiss, ¶7, p.3) In the alternative, the Department requests that should the Hearing Officer grant the Department's Motion to Dismiss, the Department indicates that Hearing Officer should also afford the Petitioner an opportunity to "timely amend[] or revise[] [her Petition] to comply with the requirements of 62 Ill.Adm. Code 1848.3(b) upon issuance of an [sic] Scheduling Order for responsive pleadings by the Permittee and the Department." (**See**, Department's Motion to Dismiss, ¶8, p.3)

The "petition" filed by Ms. Mary Bates seeking an administrative review hearing, dated March 31, 2010, is attached to the Department's Motion to Dismiss, and that "petition" states as follows:

> Dear Mr. Fowler [Supervisor, Land Reclamation Division, Illinois Department of Natural Resources]:
>
> I am a member of Sierra Club and have many friends, with whom I visit frequently, living and working near the Shay 1 Mine. If highly toxic coal slurry is to be injected into this air shaft then the existing permit will not only be in non compliance but will jepordize [sic] the health of the residents surrounding the area. If Slurry injection is planned then it should be classified as a Class I hazardous [sic] and subjected to The [sic] appropriate permitting process through IEPA allowing citizens to participate in the process.
>
> The existing permit requires the shaft to be closed and reclaimed when the shaft is no longer needed. IDNR cannot explain what's going on near this shaft that needs an inoperable ventilation system with a permit. The mine operator has never documented why they need this shaft. There are no mining operations nearby and this portion of the

mine has been sealed off. According to the existing permit when there is no need for ventilation the shaft must be closed and reclaimed. There is no need to a permit if the only activity is reclamation.

I am concerned about the health and safety of the landowners immediately surrounding the air shaft in permit #291. The potential of groundwater pollution or other contamination resulting from renewal of Permit #291 and subsequent mine activities regarding this permit area could cause significant adverse impacts to my friends and other individuals in Macoupin County in the area of the mine. They assume the activity at the air shaft is over and will be reclaimed as required in the permit. It is an eyesore on the landscape, an old rusting delapidated [sic] structure waiting to be reclaimed.

In accordance with 62 IAC 18473.3© [sic], I am requesting an Administrative Review for the Shay 1 permit #291.

I believe there is new information that has been uncovered after the informal conference and public hearing:

1) As the regulatory Agency, IDNR should have announced the fact that the NPDES #IL0956022 expired in 2000 and had not been renewed by IEPA. This fact was introduced in the "findings" after the comment period for the public hearing was closed. I believe this information should have been released at both the informal conference and the public hearing.

   I ask for an IEPA Freedom of Information request for the NPDES and was told by the FOIA Officer that it was not available until after April 5. I have made an appointment on April 7 to review the documents. Since the NPDES is 8 years past the renewal date, I believe there should be a public discussion at a public hearing. (See letter from Larry Crislip dated July 1, 2008.)

2) IDNR, the regulatory agency, did not reveal to the public that the Monterey 1/Shay 1 mine has been listed on the Illinois Site Remediation Program LPC 1170155003 since May 21, 2003. (See attached [*i.e.*, attached to Bates' "petition"] report from the work plan (1170155003 MACOUPIN ENERGY LLC -002 pages 7-10). "The focus of this Work Plan will be to delineate the full extent of groundwater impacts at the Site from the Constituents of Concern (COC's) indicating historical Class I exceedances [sic]. Results of this investigation will be summarized in a Supplemental Site investigation Report (SSIR)."

   The COC's listed in this report are sulfate, chloride, TDS, iron, and manganese and have the potential to impact nearby surface water of nearby shallow groundwater. IDNR will only discuss parts of the permit in their jurisdiction. Even as a regulatory agency, it will not discuss anything outside their [sic] agency. The Site Remediation Program was never mentioned. The expiration of the NPDES permit was never mentioned.

> I believe the regulatory agency is remiss in not discussing these exceedances [sic] with the participants of the informal hearing or the public hearing or the landowners living and working in the adjacent area.
>
> As a commenter, I discussed the possibility of the air shaft as a site for slurry injection and expressed by concern for the leaching of cpntaminants [sic] into the surface water or nearby groundwater. At the time I was unaware Shay 1 was in the Site Remediation Program and in fact the report suffected "underground slurry injection" as an alternative to RDA6 which is nearing capacity. I believe the regulatory agency was remiss in not discussing this fact with all the landowners attending both the informal conference and the public hearing.
>
> The Gillespie County Club is located across the road from the air shaft. I spoke with the president of the Country Club and he was unaware that Macoupin Energy LLC was considering slurry injection or the dangerous contaminants involved. I believe the Country Club membership should be included in an honest report from the regulatory agency regarding the Site Remediation Program and EPA's current NPDES status.
>
> According to IEPA slurry injection is classified as Class V, non hazardous material. Attached [to Ms. Bates' "petition"] is the Final 2008 Injection Well Inventory Date form IEPA web site. Illinois has 3 hazardous wells and 2 non hazardous wells. If this air shaft is to be used for slurry injection from RDA6, it should be classified as hazardous class I and go through the applicable permitting process. It should not be a one page application and a one page letter of approval as indicated by you at the public hearing. In fact I was confused as to why a nonfunctioning air shaft miles from active mining needed a permit renewal instead of a reclamation process.
>
> I believe the Department is in error in approving this permit for the air shaft until The Class I Groundwater Quality Standards are met for the COC's as defined in 35 IAC 620.410 for the entire mine area. I am requesting an Administrative Review to resolve these concerns.
>
> Thank you for your consideration in this matter.
>
> Sincerely,
> Mary A. Bates (**See**, Exhibit "A" attached to the Department's Motion to Dismiss)

Unfortunately for the Petitioner, I wholly agree with the Department and the assertions contained within its Motion to Dismiss. The Regulations, as cited by the Department, within 62 Ill.Adm.Code 1847.3(b), specifically indicate that which is required to be set forth within a Petition seeking an administrative review under the Act, and those regulations include:

> [a] clear statement of the facts entitling the petitioner to relief, including the petitioner's interest which is or may be adversely affected by the Department's final decision...(**See**, 62 Ill.Adm.Code 1847.3(b)(2))

Here, Petitioner does not even indicate her interest in the application, but rather indicates that she is concerned about "[t]he potential of groundwater polllution [sic] or other contamination resulting from renewal of Permit #291 and subsequent mine activities regarding this permit area [and how such] could cause significant adverse impacts to my friends and other individuals in Macoupin County in the area of the mine." Obviously, the Petitioner's legal standing to so represent her "friends and other individuals in Macoupin County in the area of the mine" as to such administrative review request is not apparent on the face of the Petition. The regulations specifically mandate that the Petitioner provide "[a]n explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provision allegedly violated," and also the petition is to state "[t]he specific relief sought from the Department"--- allegations that are wholly and completely missing from the Petitioner's petition. Indeed, the only reference within the Petitioner's letter that cites a statute or regulation (other than the Petitioner's reference to filing the letter pursuant to "62 IAC 18473.3©" [sic] is where the Petitioner states:

> I believe the Department is in error in approving this permit for the air shaft until The Class I Groundwater Quality Standards are met for the COC's as defined in 35 IAC 620.410 for the entire mine area. I am requesting an Administrative Review to resolve these concerns.

Under such circumstances, I find that I am mandated to dismiss the Petitioner's Request for an administrative hearing, pursuant to the mandate of 62 Ill.Adm.Code 1847.3(b). Such generalized statements are hardly the type of specificity envisioned by the drafters of the regulations. The assertion that "the regulatory agency [was] remiss in not discussing ["the full extent of groundwater impacts at the Site from the Constituents of Concern (COC's) indicating historical

Class I"] exceedances with the participants of the informal hearing or the public hearing or the landowners living and working in the adjacent area" is not sufficient allegation to satisfy the mandate of 62 Ill.Adm.Code 1847.3(b). Indeed, 225 ILCS 720.2.07 provides that a valid permit shall be renewed unless the Department establishes that (1) the permit is currently not in compliance; (2) that the permit would jeopardize the current mining operations; (3) that the Permittee failed to maintain a performance bond or provide any other bonds required by the Department, or (4) that the Permittee failed to provide any updated information requested by the Department. The Petitioner has not even alleged any facts substantiating an alleged failure on the part of Macoupin under such statutory provision in conjunction with Macoupin's renewal of an air shaft.

Although the Department indicates that in the alternative of simply dismissing the Petition, I should allow Petitioner leave to "timely" file a "Revised Request for Hearing with responsive pleadings by the Permittee and the Department pursuant to the requirements of 62 Ill.Adm.Code 1848.12, or as the Hearing Office deems necessary and just." (**See**, Department's Motion To Dismiss, *ad damnum* clause, p.3) However, I do not believe that I can so permit the Petitioner the right to file an amended petition, inasmuch as any *new* substantive allegations would necessarily be untimely filed, pursuant to 62 Ill.Adm.Code 1847.3. Because I find that the Petition filed by Mary Bates is substantively deficient, pursuant to the regulatory dictates of 62 Ill.Adm.Code 1847.3, I find that I cannot grant leave for Ms. Bates to file an amended Petition. Any new substantive allegations would be untimely raised. This may seem to be a harsh result under the circumstances, but I am bound by the regulations governing my jurisdiction as a Hearing Officer.

Therefore, this matter is dismissed with prejudice, subject to any timely perfected appeal

to the circuit or appellate courts, as the case may be.

IT IS SO ORDERED.

Dated: 5/3/2010

Hearing Officer

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Order as to Department's Motion to Dismiss Bates' Petition was served upon the following parties by enclosing the same in an envelope and depositing said in a U.S. Post Office box in Springfield, Illinois, with proper postage affixed thereto, on the 3rd day of May, 2010, as follows:

Virginia I. Yang, Esq.
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Michael W. O'Hara

STATE OF ILLINOIS
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF MINES & MINERALS

MARY ELLEN DECLUE,	)	
	)	
Petitioner.	)	
	)	**Macoupin Energy, LLC**
vs.	)	**Shay #1 Mine**
	)	**Renewal No. 3 to Permit #291**
ILLINOIS DEPARTMENT OF NATURAL RESOURCES, OFFICE OF MINES AND MINERALS,	)	
	)	
Respondent.	)	
	)	
MACOUPIN ENERGY LLC SHAY NO. 1 MACOUPIN COUNTY, ILLINOIS,	)	
	)	
Permittee/Intervenor.	)	

ORDER AS TO DEPARTMENT'S MOTION TO DISMISS DECLUE'S PETITION

This Matter Comes to me pursuant to a Motion to Dismiss, filed by the Department in the above-docketed matter on or about April 30, 2010, and therein, the Department alleges as follows:

> [o]n March 4, 2010, the Department issued written notice of final decision to issue Permit No. 291, Renewal No. 3 ("Permit") authorizing Macoupin Energy, LLC ("Permittee"), to engage in coal mining operations on certain lands known as the Shay No. 1 Mine, located in Macoupin County, Illinois and owned by Permittee as described in the Permit. (**See**, Department's Motion to Dismiss, ¶1, p.1)
>
> [o]n April 1, 2010, the Department received a timely filed notice from Petitioner requesting administrative review of the Department's final decision to issue the Permit [to Macoupin Energy, LLC]. A copy of Petitioner's Request for Hearing is attached as Exhibit A [to the Department's Motion to Dismiss]. (**See**, Department's Motion to Dismiss, ¶2, pp. 1,2)
>
> [p]ursuant to 62 Ill.Adm.Code 1847.3(b), the Petitioner's request for hearing shall be

filed stating the following:

a. The petitioner's name and address;
b. A clear statement of the facts entitling the petitioner to relief, including the petitioner's interest which is or may be adversely affected by the Department's final decision;
c. How the Department's final decision may or will be adversely affect the interests specified;
d. An explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provision allegedly violated;
e. The specific relief sought from the Department; and
f. Any other relevant information.

(**See**, Department's Motion to Dismiss, ¶3, p.2)

[t]he Petitioner's request for hearing failed to comply with 62 Ill.Adm. Code 1847.3(b) as follows:

a. It fails to provide a clear statement of facts or the interests that may be adversely affected;
b. It fails to provide an explanation of how the Department's final decision may or will adversely affect Petitioner's interests as specified, including but not limited to standing;
c. It fails to provide an explanation of each specific alleged error in the Department's final decision, including any reference to the statutory and regulatory provisions allegedly violated;
d. It fails to state the specific relief sought from the Department; and
e. It fails to provide relevant information in support of the above.

(**See**, Department's Motion to Dismiss, ¶4, p.2)

[p]ursuant to 62 Ill.Adm.Code 1848.12, the Department states as follows:

a. A written motion has been filed;

b. Oral argument of this motion is not requested by the Department;

c. A concise statement of supporting facts for this motion has been provided herein; and

d. A proposed order for entry has not been provided herein to allow for such additional relief as the Hearing Officer may deem reasonable and just.

(**See**, Department's Motion to Dismiss, ¶5, pp.2,3)

> [p]ursuant to 62 Ill.Adm. Code 1848.19, the hearing officer upon motion filed in accordance with 62 Ill.Adm. Code 1848.12 may dismiss at any time a request for hearing which fails to state a claim upon which administrative relief may be granted. (**See**, Department's Motion to Dismiss, ¶6, p.3)

The Department thereafter requests that the Hearing Officer dismiss the hearing request sought by Petitioner DeClue premised upon the assertion that such hearing request "fail[s] to state a claim pursuant to 62 Ill.Adm.Code 1848.19, and more specifically, 62 Ill.Adm.Code 1847.3(b)." (**See**, Department's Motion to Dismiss, ¶7, p.3) In the alternative, the Department requests that should the Hearing Officer grant the Department's Motion to Dismiss, the Department indicates that Hearing Officer should also afford the Petitioner an opportunity to "timely amend[] or revise[] [her Petition] to comply with the requirements of 62 Ill.Adm. Code 1848.3(b) upon issuance of an [sic] Scheduling Order for responsive pleadings by the Permittee and the Department." (**See**, Department's Motion to Dismiss, ¶8, p.3)

The "petition" filed by Ms. Mary Ellen DeClue seeking an administrative review hearing, dated April 1, 2010, is attached to the Department's Motion to Dismiss, and that "petition" states as follows:

> [o]n behalf of my friends and their families living near the air shaft that was approved for renewal by IDNR on March 4, 2010, I am requesting an Administrative Review of this ruling. My concern is the inevitable contamination of groundwater, surface water, and Spanish Needle Creek. Numerous studies have confirmed poor health outcomes with contaminated water. I am concerned about the quality of the environment and health of the citizens in my area.
>
> As stated in my letter to Mr. Don Pflederer (attachment [to the Petition]) on February 16, 2010, I feel there is no justification for renewing the permit of a defunct air shaft. Since that letter, I have become even more convinced of the inappropriate action of IDNR in approving this permit and its undue bias toward mining applicants. This conclusion is based on two issues that I have been recently made aware.
>
> 1. The Monterey 1/Shay 1 Mine has been listed on the Illinois Site Remediation Program LPC 1170155003 since May 21, 2003. In the Delineation Work Plan

(received 9/14/2009 by IEPA) prepared for Macoupin Energy for its #1 Coal Mine by Conestoga-Rovers and Associates, as evaluation of what is proposed for RDA6 is as follows:

"RDA#6 still has room for additional fine slurry disposal. The current Shay #1 Mine plan is to inject the fine slurry refuse underground into the abandoned areas of the mine, with most of the coarse refuse being used top cap RDA#5. The remaining fine and coarse refuse space in RDA #6 will be used as a backup placement area for refuse materials if the underground injection system or RDA #5 belt system goes down. RDA #6 will remain open, as a backup refuse disposal area for course and fine materials, for the remainder of the mine life."

The speculation that coal slurry injection is the real function of the air shaft is confirmed.

2. An earlier bill SB 3107 would have allowed County Boards to request a public meeting when longwall mining is going to begin in an area. The bill would have provided fundamental fairness for local government and citizens. IDNR supported the mine operators instead of the citizens of Illinois. IDNR announced its objections to SB 3107 on March 2 and March 17, 2010 at the Agriculture and Conservation Committee Hearings. A more equitable treatment by IDNR in these matters is needed.

DNR should schedule an Administrative Review to reconsider the Shay 1 Mine, Air Shaft Permit #291.

Sincerely,
Mary Ellen DeClue (**See**, Exhibit A, attached to Department's Motion to Dismiss)

The letter that is referred to within the Petition is also attached to the Department's Motion to Dismiss, a letter that is undated, but which Petitioner indicates that she sent on or about February 16, 2010. That letter, addressed to Don Pflederer, Land Reclamation Division of the Illinois Department of Natural Resources, states as follows:

Dear Mr. Pflederer:

The Public Hearing on February 4, 2010 was very important to me for several reasons. I learned that 5 mine sites in Illinois currently have been injected with coal slurry. I learned that if Macoupin Energy decides to inject coal slurry into Shay 1 mine, the request to IDNR/OMM will be approved with no public awareness or input since it is considered "insignificant" to the overall permitting process. IEPA will then be in charge of regulating the coal slurry site. Without Public Hearings, it is virtually impossible to know what is going on with the permitting process. Just reading the permit application

does not begin to inform citizens in the community.

There seems to be an overall outcome failure inherent within the permitting process. The citizens turn to the regulatory agencies for details and assurances that their health and safety are protected with close adherence to clear air and clean water laws. After all, the purpose is first and foremost to safeguard the quality of life and the environment for the citizens. It is assumed that all the regulations and the manner in which they are applied and enforced are adequate to protect citizens. I believe that is not the outcome; this has been substantiated numerous times.

Too many aspects of the permitting process are based on what is convenient and cheap for the coal operator. The sustainability of our community and the health and safety of citizens are sacrificed. Injecting toxic coal slurry or course refuse in a mine does not protect the health and safety of citizens. Care for the environment is not contrary to mining.

Do not renew this permit.

Thank you for your assistance.

Sincerely

Mary Ellen DeClue (**See**, Exhibit A, attached to Department's Motion to Dismiss)

Unfortunately for the Petitioner, I wholly agree with the Department and the assertions contained within its Motion to Dismiss. The Regulations, as cited by the Department, within 62 Ill.Adm.Code 1847.3(b), specifically indicate that which is required to be set forth within a Petition seeking an administrative review under the Act, and those regulations include:

> [a] clear statement of the facts entitling the petitioner to relief, including the petitioner's interest which is or may be adversely affected by the Department's final decision…(**See**, 62 Ill.Adm.Code 1847.3(b)(2))

Here, Petitioner does not even indicate her interest in the application, but rather indicates that she is purportedly filing the request for administrative review "on behalf of [her] friends and their families." Obviously, the Petitioner's legal standing to so represent her friends and their families as to such administrative review request is not apparent on the face of the Petition. Moreover, the Petitioner's letter does not state "[h]ow the Department's final decision may or

will adversely affect the interests specified," as required by 62 Ill.Adm.Code 1847.3(b)(3), since the Petitioner failed to identify her own interests that purportedly might be affected by approval of the permit renewal. The generalized statements contained within her letter of April 1, 2010, hardly constitute the type of allegations envisioned by the drafters of the regulations so as to precipitate a formal administrative hearing. Indeed, the regulations also specifically mandate that the Petitioner also provide "[a]n explanation of each specific alleged error in the Department's final decision, including reference to the statutory and/or regulatory provision allegedly violated" --- allegations that are wholly and completely missing from the Petitioner's letter. Under such circumstances, I find that I am mandated to dismiss the Petitioner's Request for an administrative hearing, pursuant to the mandate of 62 Ill.Adm.Code 1847.3(b).

Although the Department indicates that in the alternative of simply dismissing the Petition, I should allow Petitioner leave to "timely" file a "Revised Request for Hearing with responsive pleadings by the Permittee and the Department pursuant to the requirements of 62 Ill.Adm.Code 1848.12, or as the Hearing Office deems necessary and just." (**See**, Department's Motion To Dismiss, *ad damnum* clause, p.3) However, I do not believe that I can so permit the Petitioner the right to file an amended petition, inasmuch as any *new* substantive allegations would necessarily be untimely filed, pursuant to 62 Ill.Adm.Code 1847.3. Because I find that the Petition filed by Mary Ellen Declue is substantively deficient, pursuant to the regulatory dictates of 62 Ill.Adm.Code 1847.3, I find that I cannot grant leave for Ms. DeClue to file an amended Petition. Any new substantive allegations would be untimely raised. This may seem to be a harsh result under the circumstances, but I am bound by the regulations governing my jurisdiction as a Hearing Officer.

Therefore, this matter is dismissed with prejudice, subject to any timely perfected appeal

to the circuit or appellate courts, as the case may be.

IT IS SO ORDERED.

Dated: 5/3/2010

Hearing Officer

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Order as to Department's Motion to Dismiss DeClue's Petition was served upon the following parties by enclosing the same in an envelope and depositing said in a U.S. Post Office box in Springfield, Illinois, with proper postage affixed thereto, on the 3rd day of May, 2010, as follows:

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