

**CIRCUIT COURT OF ILLINOIS**

NINTH JUDICIAL CIRCUIT  
FULTON COUNTY COURTHOUSE  
LEWISTOWN, ILLINOIS 61542

**COPY**

EDWARD R. DANNER  
CIRCUIT JUDGE



RESPOND TO:  
100 NORTH MAIN STREET  
LEWISTOWN, IL 61542  
309/547-3041 EX. 31

**FILED**

December 1, 2009

DEC 02 2009

**ADMINISTRATIVE ORDER  
ASSIGNMENT ORDER - FULTON COUNTY**

*Mary C. Hampton*

CLERK OF THE CIRCUIT COURT, 9th JUDICIAL CIRCUIT  
FULTON COUNTY ILLINOIS

Pursuant to the authority vested in the undersigned Administrative Judge of Fulton County, the Judge named below is assigned as follows:

**Circuit Judge William C. Davis**

**Fulton County Case No. 09-MR-107**

**Lisa Madigan, Attorney General vs. Illinois Dept. of Natural Resources, et al**

DATED this 1st day of December, 2009.

*Edward R. Danner*

Edward R. Danner  
Administrative Judge - Fulton County

cc: Thomas Davis  
Virginia Yang  
Jennifer Martin  
Terrence N. Ingram  
Joyce Blumenshine  
Rudy Habben  
Janis King  
Kenneth Fuller  
Richard B. Fuller  
John R. Grigsby, Sr.  
Mike & Teresa Grigsby  
Kenneth Grigsby  
Sheila & Joseph Cook  
Naomi & William Lott  
Lavern & Jean Yeske  
Elizabeth Gray  
Robert L. Williams  
Margaret A. Mitchell

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DEPT. OF NATURAL RESOURCES  
SPRINGFIELD

DEC 12 2009

OFFICE OF MINES & MINERALS  
LAND RECLAMATION DIVISION

**RECEIVED**

DEC 04 2009

Dept. of Natural Resources  
OFFICE OF LEGAL COUNSEL

Dr. Richard Stout  
Jane Johnson  
Anna Johnson

### PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the following:

Thomas Davis  
Virginia Yang  
Jennifer Martin  
Terrence N. Ingram  
Joyce Blumenshine  
Rudy Habben  
Janis King  
Kenneth Fuller  
Richard B. Fuller  
John R. Grigsby, Sr.  
Mike & Teresa Grigsby  
Kenneth Grigsby  
Sheila & Joseph Cook  
Naomi & William Lott  
Lavern & Jean Yeske  
Elizabeth Gray  
Robert L. Williams  
Margaret A. Mitchell  
Dr. Richard Stout  
Jane Johnson  
Anna Johnson

by enclosing the same in an envelope addressed to said persons properly addressed as disclosed by the pleadings of record herein with postage fully prepaid and by depositing said envelope in a U.S. Post Office Mail Box in Lewistown, Illinois, on the 2<sup>nd</sup> day of

Dec, 2009.

McThomas

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT  
FULTON COUNTY, ILLINOIS

LISA MADIGAN, ATTORNEY GENERAL )  
OF THE STATE OF ILLINOIS, )

Plaintiff, )

vs. )

No. 09-MR-107

ILLINOIS DEPARTMENT OF NATURAL )  
RESOURCES; CAPITAL RESOURCES )  
DEVELOPMENT COMPANY, LLC; )  
JOYCE BLUMENSHINE on behalf of the )  
SIERRA CLUB; SHEILA and JOSEPH COOK; )  
KENNETH FULLER on behalf of the VILLAGE )  
OF BANNER; RICHARD FULLER; )  
ELIZABETH GRAY; KENNETH GRIGSBY; )  
MIKE GRIGSBY; JOHN GRIGSBY, SR.; )  
RUDY HABBEN on behalf of the SIERRA )  
CLUB; TERRENCE INGRAM on behalf of the )  
EAGLE NATURE FOUNDATION; JANE )  
JOHNSON; JANIS KING; NAOMI and )  
WILLIAM LOTT; MARGARET MITCHELL; )  
DR. RICHARD STOUT; ROBERT WILLIAMS; )  
and JEAN and LAVERN YESKE; )

Defendants. )

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Dept. of Natural Resources  
OFFICE OF LEGAL COUNSEL

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DEPT. OF NATURAL RESOURCES  
SPRINGFIELD

DEC 1 2 2009

OFFICE OF MINES & MINERALS  
LAND RECLAMATION DIVISION

ATTORNEY GENERAL'S OBJECTION TO ELECTRONIC FORMAT

LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Section 3-108 of the Administrative Review Law and Section 8.10 of the Illinois Surface Coal Mining Land Conservation and Reclamation Act, and in order to facilitate judicial review of a final administrative decision issued on September 15, 2009, by the ILLINOIS DEPARTMENT OF NATURAL RESOURCES, respectfully objects to the Motion for Extension to Answer with Record and states as follows:

1. The Attorney General received service of the Department's Motion on November 20, 2009. The Court entered an Order on November 19, 2009, granting the Motion.
2. The Attorney General objects only to the filing of the administrative record in an electronic format and does not object to the extended deadline of January 19, 2010. However, the request for an extended deadline is apparently premised upon a mistaken belief that copies of the administrative record to be filed as the Department's Answer must be served on all parties.
3. The Department's Motion indicates that it intends to scan and number the documents, including the hearing transcripts, as well as the photographs, maps, engineering diagrams, and other admitted exhibits, comprising the existing administrative record for filing in an electronic format and "for distribution to all parties." The Department's Motion estimates that the total cumulative pages of the existing administrative record exceeds 7,000 and that a "bound paper version" would number more than twenty binders.
4. Section 3-108(b) of the Administrative Review Law requires that the administrative agency's answer "shall consist of the original or a certified copy of the entire record of [the] proceedings under review, including such evidence as may have been heard by it and the findings and decisions made by it." None of the provisions of the Administrative Review Law requires the administrative agency to generate additional copies "for distribution to all parties" or even to file a "bound paper version" of the existing administrative record.
5. Counsel for the Plaintiff has communicated with counsel for the Department subsequent to receipt of the Motion and represented to her that the scanning, numbering and distribution of the existing administrative record are unnecessary. Counsel for the Department indicated that she would still proceed with this effort to file its Answer in an electronic format.

6. The Attorney General objects to electronic format as an unnecessary and inconvenient substitute for the original documents because many of the exhibits admitted during the administrative review proceeding by the Department's hearing officer contain photographs and oversized maps and engineering diagrams, the probative value of which might be literally diminished through the scanning process. For instance, Department Exhibit 3 is a colored topographic map depicting the permit area and the adjacent resources, including the protected fish and wildlife areas and natural areas, and measures 36 inches by 39 inches; any reduction of this exhibit would result in a loss of detail and render viewing more difficult. Additionally, the electronic Bates stamping would create a numbered reference system that did not exist during the hearing and subsequent briefing; without a comprehensive index, this new system would not be feasible or convenient for the Court's review.

7. The Attorney General believes that original of the existing administrative record, which is in the possession of the Department and its hearing officer, ought to be filed instead of the requested electronic format and that any problems caused by reviewing and searching electronic disks would detrimentally affect the Court's consideration of whether the final administrative decision is against the manifest weight of the evidence. For instance, the review of fifteen volumes of hearing transcripts (2,970 pages in total) may be more difficult on a computer screen especially if the particular exhibits are to be referred to during the reading of the testimony about the exhibits. As noted, a cross-index to the electronic Bates number would be necessary to locate any particular exhibit. The possibility of confusion or even prejudice outweighs any benefits of an electronic format.

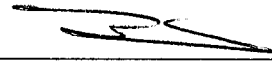
WHEREFORE, the Attorney General prays that an Order be entered requiring the

Department to comply with Section 3-108(b) of the Administrative Review Law by filing as its  
Answer the original existing administrative record no later than January 19, 2010.

Respectfully submitted,  
LISA MADIGAN  
Attorney General  
of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY: \_\_\_\_\_

  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

Attorney Reg. No. 3124200  
500 South Second Street  
Springfield, Illinois 62706  
217/782-7968  
Dated: November 30, 2009

**IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT  
FULTON COUNTY, ILLINOIS**

LISA MADIGAN, ATTORNEY GENERAL )  
OF THE STATE OF ILLINOIS, )

Plaintiff, )

vs. )

No. 09-MR-107

ILLINOIS DEPARTMENT OF NATURAL )  
RESOURCES; CAPITAL RESOURCES )  
DEVELOPMENT COMPANY, LLC; )  
JOYCE BLUMENSHINE on behalf of the )  
SIERRA CLUB; SHEILA and JOSEPH COOK; )  
KENNETH FULLER on behalf of the VILLAGE )  
OF BANNER; RICHARD FULLER; )  
ELIZABETH GRAY; KENNETH GRIGSBY; )  
MIKE GRIGSBY; JOHN GRIGSBY, SR.; )  
RUDY HABBEN on behalf of the SIERRA )  
CLUB; TERRENCE INGRAM on behalf of the )  
EAGLE NATURE FOUNDATION; JANE )  
JOHNSON; JANIS KING; NAOMI and )  
WILLIAM LOTT; MARGARET MITCHELL; )  
DR. RICHARD STOUT; ROBERT WILLIAMS; )  
and JEAN and LAVERN YESKE; )

Defendants. )

**CERTIFICATE OF SERVICE**

I hereby certify that I did on November 30, 2009, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the foregoing instruments entitled ATTORNEY GENERAL'S OBJECTION TO ELECTRONIC FORMAT and proposed ORDER to:

Marc Miller, Director  
Illinois Department of Natural  
Resources  
One Natural Resources Way  
Springfield, Illinois 62702-  
1271

Richard B. Fuller  
2200 West Hyman Street  
Banner, Illinois 61520

Kenneth Grigsby  
1405 East Walnut Street  
Canton, Illinois 61520

Jane Johnson  
1776 Knox Hwy 11  
Gilson, Illinois 61436-9433

Margaret A. Mitchell  
2009 North Broad Street  
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Lavern Yeske  
Jean Yeske  
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Canton, Illinois 61520

John McMahon  
Attorney at Law  
One Main Street, Suite 200  
Champaign, Illinois 61820

Sheila Cook  
Joseph Cook  
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Canton, Illinois 61520

Elizabeth Gray  
431 East High Point Drive  
Peoria, Illinois 61614

Mike Grigsby  
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Canton, Illinois 61520

Janis King  
Citizens Organizing  
Project  
1455 Knox Station Road  
Knoxville, Illinois 61448

Dr. Richard Stout  
Knox College  
2 East South Street  
Galesburg, Illinois 61520

Reese Elledge  
Attorney at Law  
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Chicago, Illinois 60601

Virginia Yang, Legal  
Counsel  
Illinois Department of  
Natural Resources  
One Natural Resources  
Way  
Springfield, Illinois 62702-  
1271

Kenneth Fuller  
Village of Banner  
360 South Fulton Street  
Banner, Illinois 61520

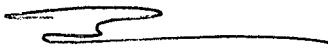
John R. Grigsby, Sr.  
19942 North U.S. Hwy 24  
Canton, Illinois 61520-8683

Terrence N. Ingram  
Eagle Nature Foundation Ltd.  
300 East Hickory Street  
Apple River, Illinois 61001

Naomi Lott  
William Lott  
22031 North U.S. Hwy 24  
Canton, Illinois 61520

Robert L. Williams  
26712 East McKinley Road  
Canton, Illinois 61520

Jennifer Martin  
Attorney at Law  
Hodge Dwyer Driver  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-  
5776



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Thomas Davis, Chief



IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT  
FULTON COUNTY, ILLINOIS

LISA MADIGAN, ATTORNEY GENERAL )  
OF THE STATE OF ILLINOIS, )

Plaintiff, )

vs. )

No. 09-MR-107

ILLINOIS DEPARTMENT OF NATURAL )  
RESOURCES; CAPITAL RESOURCES )  
DEVELOPMENT COMPANY, LLC; )  
JOYCE BLUMENSHINE on behalf of the )  
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OF BANNER; RICHARD FULLER; )  
ELIZABETH GRAY; KENNETH GRIGSBY; )  
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RUDY HABBEN on behalf of the SIERRA )  
CLUB; TERRENCE INGRAM on behalf of the )  
EAGLE NATURE FOUNDATION; JANE )  
JOHNSON; JANIS KING; NAOMI and )  
WILLIAM LOTT; MARGARET MITCHELL; )  
DR. RICHARD STOUT; ROBERT WILLIAMS; )  
and JEAN and LAVERN YESKE; )

Defendants. )

**ORDER**

THIS CAUSE COMING to be heard on the Attorney General's Objections regarding the Department's Motion for Extension to Answer with Record, and the Court being fully advised in the premises: IT IS HEREBY ORDERED that the Department shall file as its Answer the original existing administrative record as required by Section 3-108(b) of the Administrative Review Law (and not in an electronic format as requested) no later than January 19, 2010.

ENTERED: December \_\_, 2009

\_\_\_\_\_  
JUDGE EDWARD R. DANNER

**COPY**

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
FULTON COUNTY, ILLINOIS

LISA MADIGAN, ATTORNEY GENERAL  
OF THE STATE OF ILLINOIS,

Plaintiff,

vs.

ILLINOIS DEPARTMENT OF NATURAL  
RESOURCES; CAPITAL RESOURCES  
DEVELOPMENT COMPANY, LLC  
JOYCE BLUMENSHINE on behalf of the  
SIERRA CLUB; SHEILA and JOSEPH COOK;  
KENNETH FULLER on behalf of the VILLAGE  
OF BANNER; RICHARD FULLER;  
ELIZABETH GRAY; KENNETH GRIGSBY;  
MIKE GRIGSBY; JOHN BRIGSBY, SR;  
RUDY HABBEN on behalf of the SIERRA  
CLUB; TERRENCE INGRAM on behalf of the  
EAGLE NATURE FOUNDATION; JANE  
JOHNSON; ANNA JOHNSON, JANIS KING;  
NAOMI and WILLIAM LOTT; MARGARET  
MITCHELL; DR. RICHARD STOUT;  
ROBERT WILLIAMS; and JEAN and  
LAVERNE YESKE,

Defendants.

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DEPT. OF NATURAL RESOURCES  
FIELD  
DEC 17 2009  
STATE OF ILLINOIS & MINERALS  
LAND RECLAMATION DIVISION

No. 09-MR-107

**FILED**

DEC 08 2009

*Mary C. Hampton*

CLERK OF THE CIRCUIT COURT, 9th JUDICIAL CIRCUIT  
FULTON COUNTY ILLINOIS

**RECEIVED**

DEC 08 2009

Dept. of Natural Resources  
OFFICE OF LEGAL COUNSEL

**ORDER SETTING CASE MANAGEMENT CONFERENCE**

ON THE COURT'S OWN MOTION, the above entitled cause is hereby set for hearing  
on the 7th day of January, 2010, Courtroom 302 on the following matters:

- A. A Case Management Conference for purposes of narrowing the issues and setting a briefing schedule on those issues; and,
- B. Any other matters properly noticed for hearing on that date.

IT IS FURTHER ORDERED that the "Attorney General's Objection for Electronic Format" be set for prompt hearing by the Attorney General's Office.

ENTERED this 8 day of December, 2009.

*William C. Davis*  
\_\_\_\_\_  
Judge William C. Davis

## PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the following parties by enclosing the same in an envelope addressed to said person(s) properly addressed below and as disclosed by the pleadings of record herein with postage fully prepaid and by depositing said envelope in a U.S. Post Office Mail Box in Lewistown, Illinois, on the 8<sup>th</sup> day of Dec, 2009.

M. Thomas

Attorney General Lisa Madigan  
c/o Attorney Thomas Davis  
500 South Second St.  
Springfield, IL 62706

Capital Resources Development Co.  
c/o Attorney Jennifer L. Martin  
3150 Roland Ave. - Box 5776  
Springfield, IL 62705-5776

Attorney Virginia Yang  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, IL 62701-1271

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Attorney Reese Elledge  
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Canton, IL 61520

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Galesburg, IL 61520

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Canton, IL 61520

Lavern & Jean Yeske  
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Canton, IL 61520

Anna Johnson  
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Wataga, IL 61488