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Patrick McRae
Clerk of Circuit Court
Third Judicial Circuit, Madison County Illinois

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

MARIE SMITH, MARK DONHAM, VITO MASTRANGELO, SAM STEARNS, TABITHA TRIPP, NATHAN CZUBA, ANNETTE McMICHAEL, and SOUTHERN ILLINOISANS AGAINST FRACTURING OUR ENVIRONMENT ("SAFE"), an Illinois not-for-profit corporation,	)	
Plaintiffs,	)	
v.	)	Case No. 14-CH-711
THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES, an Illinois State Agency, and WAYNE ROSENTHAL, Director of Natural Resources,	)	
Defendants.	)	

FIFTH AMENDED COMPLAINT FOR DECLARATORY JUDGMENT & PERMANENT INJUNCTION

The Plaintiffs—Marie Smith, Mark Donham, Vito Mastrangelo, Sam Stearns, Tabitha Tripp, Nathan Czuba, Annette McMichael, and Southern Illinoisans Against Fracturing Our Environment, an Illinois not-for-profit corporation—by and through their attorneys, Patricia Handlin and Vito A. Mastrangelo, hereby state their Fifth Amended Complaint against the Defendants—the Department of Natural Resources, an Illinois state agency, and Wayne Rosenthal, in his official capacity as the Director of Natural Resources.

ALLEGATIONS COMMON TO EACH COUNT ("COMMON ALLEGATIONS")— JURISDICTION & VENUE

1. Each Defendant has entered an entry of appearance herein, and this Court has jurisdiction over all Defendants.

2. This Court has general subject matter jurisdiction to consider this declaratory judgment action (735 ILCS 5/2-701) because it challenges Illinois administrative and statutory law. See Ill. Const. 1970, Art. VI, Sec. 9.

3. Venue is proper in this Court pursuant to Section 2-101(1) of the Illinois Code of Civil Procedure (735 ILCS 5/2-101(1)), in that the Illinois Department of Natural Resources has a regional office in Alton, Madison County, Illinois, and Plaintiff Marie Smith lives in Madison County.

COMMON ALLEGATIONS— THE PARTIES

4. This action is brought by seven individuals—Marie Smith, Mark Donham, Vito Mastrangelo, Sam Stearns, Tabitha Tripp, Nathan Czuba, and Annette McMichael (the "individual Plaintiffs") —and one Illinois not-for-profit corporation—Southern Illinoisans Against Fracturing Our Environment ("SAFE").

5. Plaintiff Marie Smith is a resident of Madison County, Illinois, and an Illinois taxpayer and owns land in Madison County.

6. Plaintiff Mark Donham is a resident of Pope County, Illinois, and an Illinois taxpayer and owns land in Pope County, including mineral interests in the land.

7. Plaintiff Vito Mastrangelo is a resident of Jefferson County, Illinois, and an Illinois taxpayer. Plaintiff Mastrangelo owns land in Jefferson County, including a majority of the mineral interests in the land. Plaintiff Mastrangelo's land is approximately 1,000 feet from an operating oil well, and the land is within one mile of several other operating wells. Also within one mile of the land are more than a dozen abandoned and/or plugged oil wells, and other types of wells.

8. Plaintiff Sam Stearns is a resident of Pope County, Illinois, and an Illinois taxpayer. Plaintiff Stearns owns land in Pope County, including the mineral interests in the land.

9. Plaintiff Tabitha Tripp is a resident of Union County, Illinois, and an Illinois taxpayer. Plaintiff Tripp owns land in Union County, including the mineral interests in the land. Plaintiff Tripp's land is within four miles of land leased for oil drilling, and IDNR has approved a drilling permit for the lease.

10. Plaintiff Nathan Czuba is a resident of Cook County, Illinois, and an Illinois taxpayer. Plaintiff Czuba owns land in Union County, including the mineral interests in the land.

11. Plaintiff Annette McMichael is a resident of Johnson County, Illinois, and an Illinois taxpayer. Plaintiff McMichael owns land in Johnson County. Plaintiff McMichael's land is adjoined by land leased for oil drilling.

12. Plaintiff SAFE is an Illinois not-for-profit corporation with its registered office in Johnson County, Illinois, and one part of its mission is to educate the public about hydraulic fracturing. Plaintiff SAFE has conducted public information events about hydraulic fracturing, and specifically about the Hydraulic Fracturing Regulatory Act and IDNR regulations thereunder.

12A. In 2013, Plaintiff Mastrangelo attended 3 public hearings and Plaintiff Tripp attended 5 public hearings on the First Notice Proposed Rules, Plaintiffs Donham and Stearns each attended 1 public hearing, and S.A.F.E. attended all hearings through its representatives.

12B. During the First Notice Period (November 15, 2013, to January 3, 2014), Plaintiffs Donham, Mastrangelo, Stearns, Tripp, McMichael, and S.A.F.E. submitted one or more public comments on the First Notice Proposed Rules. S.A.F.E.'s comments are mentioned more than 20 times in the Department's Response to Public Comments.

12C. During a period beginning before HFRA was adopted and continuing through the Rulemaking period, S.A.F.E. informed the public about hydraulic fracturing—by including content on its website, by holding informational events, and by distributing literature.

12D. During a period beginning before HFRA was adopted and continuing through approximately 2018, Plaintiffs Mastrangelo, Tripp, McMichael, and S.A.F.E. contacted legislators concerning hydraulic fracturing.

13. Defendant Illinois Department of Natural Resources ("IDNR") is an Illinois administrative agency within the Executive Branch of Illinois government. See 20 ILCS 5/5-15.

14. Defendant Wayne Rosenthal is the Director of Natural Resources ("the Director").

15. Among other duties and responsibilities, the Defendants oversee the permitting process for oil and gas exploration and extraction in Illinois, which is governed by the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act, and IDNR regulations thereunder.

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COMMON ALLEGATIONS—
FRACKING

16. The following health and environmental impacts of hydraulic fracturing (also known as "fracking") have been recorded in scientific research: the contamination of water supplies, the displacement of wildlife, noise and light pollution, earthquakes and seismic risks, silica dust hazards,

low level radiation exposure, and increased burdens on infrastructure, for example, roads, especially in rural communities. See *The Urgent Case for a Ban on Fracking*, Food & Water Action, available at https://www.foodandwatereurope.org/reports/the-urgent-case-for-a-ban-on-fracking/ (page last visited September 18, 2025).

17. High-volume horizontal hydraulic fracturing ("HVHHF") is an oil and/or gas operation that uses vertical and horizontal wellbores, together with large amounts of water, chemical additives, proppants, pressure and/or explosive charges, to reach and extract oil from underground. See United States Environmental Protection Agency online resource: https://www.epa.gov/hfstudy/hydraulic-fracturing-water-cycle (page last visited Oct. 1, 2025).

COMMON ALLEGATIONS— ILLINOIS STATUTES & RULEMAKING

18. On May 30, 2013, the Illinois House passed Senate Bill 1715, which was to become the Hydraulic Fracturing Regulatory Act; the Illinois Senate passed the bill on May 31, 2013.

19. Senate Bill 1715 was signed into law by Governor Quinn on June 17, 2013, and the bill has been enacted as the Hydraulic Fracturing Regulatory Act (225 ILCS 732/1-1 *et seq.*).

20. The Hydraulic Fracturing Regulatory Act states that it applies to all "horizontal wells where high volume horizontal hydraulic fracturing operations are planned, have occurred, or are occurring in this State." 225 ILCS 732/1-20, 1-98.

21. The Hydraulic Fracturing Regulatory Act also states that its provisions are in addition to the provisions of the Illinois Oil and Gas Act (225 ILCS 725/1 *et seq.*) and supersede any conflicting provisions in that statute. 225 ILCS 732/1-20.

22. All other oil or gas exploration and extraction is governed by the Illinois Oil and Gas Act.

23. IDNR undertook to draft, adopt, and file rules for HVHHF under the Hydraulic Fracturing Regulatory Act, as well as rules for HVHHF under the Illinois Oil and Gas Act ("HVHHF Rules" and "HVHHF Rulemaking").

24. In several Hydraulic Fracturing Regulatory Act provisions, the legislature expressed the importance of the rulemaking process by stating that IDNR was required to adopt rules on specific subjects before Hydraulic Fracturing Regulatory Act permits could be issued—for example, in Sections 1-50(c), 1-55(c), 1-75(c)(12), 1-77(l) (two references), 1-83(g), 1-96(b), and 1-96(c).

25. The Hydraulic Fracturing Regulatory Act authorized IDNR to adopt rules "to accomplish the purposes of the Act" (225 ILCS 732/1-130), but the Hydraulic Fracturing Regulatory Act does not explicitly set out its purposes.

26. On November 15, 2013, pursuant to the General Rulemaking provisions of the Illinois Administrative Procedure Act ("IAPA") (5 ILCS 100/5-40), IDNR published its First Notice of its Proposed Amendments to the Rules under the Oil and Gas Act (225 ILCS 725/1 *et seq.*) and of its Proposed Rules under the Hydraulic Fracturing Regulatory Act (225 ILCS 732/1-1 *et seq.*) ("First Notice Proposed Rules"). 37 Ill. Reg. 18081-096 (November 15, 2013); 37 Ill. Reg. 18097-235 (November 15, 2013).

27. In the First Notice Proposed Rules, IDNR scheduled public hearings for Chicago on November 26, 2013, and for Ina on December 3, 2013, and those hearings were conducted as scheduled.

28. Subsequently, within 14 days of the publication of the First Notice Proposed Rules in the Illinois Register, IDNR received a request or requests to hold additional public hearings. Department Response to Public Comments, at 308.

29. In a subsequent notice published in the Illinois Register on December 6, 2013, IDNR scheduled additional hearings for Effingham on December 5, 2013, Decatur on December 17, 2013,

and Carbondale on December 19, 2013. 37 Ill. Reg. 19746 (December 6, 2013); 37 Ill. Reg. 19747 (December 6, 2013).

30. The Effingham hearing was cancelled and rescheduled for December 16, 2013.

31. Public notice for the rescheduled hearing in Effingham was never published in the Illinois Register.

32. On August 29, 2014, after conducting public hearings and receiving 38,000 public comments and more than 43,000 pages of written comments (Department Response to Public Comments, Introduction), IDNR sent its Notice of Proposed Amendment and Notice of Adopted Rules to the Joint Committee on Administrative Rules ("JCAR"), the legislative committee with oversight over rulemaking. See 5 ILCS 100/5-40(d); 38 Ill. Reg. 18826-27.

33. By submitting its Notice of Proposed Amendment and Notice of Adopted Rules ("Second Notice Rules") to JCAR, the Second Notice Period commenced, which by default would expire 45 days thereafter, that is, October 13, 2014.

34. As a part of this Second Notice, IDNR published its Response to Public Comments, available at https://dnr.illinois.gov/oilandgas/publichearingtranscriptsandcomments.html (page last visited September 18, 2025).

35. On September 16, 2014, JCAR voted to extend the Second Notice Period for another 45 days; 45 days from October 13, 2014, was November 27, 2014.

36. Pursuant to Section 5-40(e) of the IAPA (5 ILCS 100/5-40(e)), the Second Notice Rules would have expired if they had not been acted upon by JCAR and IDNR and filed by November 15, 2014, unless the one-year period was suspended by JCAR's action under 5-115 of the IAPA (5 ILCS 100/5-115).

37. On November 6, 2014, JCAR held a meeting to consider the Second Notice Rules, at which time JCAR members agreed to issue no objection to IDNR's rulemaking, based on an

Agreement between IDNR and JCAR that IDNR would further modify the Second Notice Rules pursuant to JCAR's recommendations.

http://www.ilga.gov/commission/jcar/Minutes/20141106_November%206,%202014.pdf

38. On November 10, 2014, the Plaintiffs instituted this proceeding by filing the original Complaint for Declaratory Judgment and Preliminary and Permanent Injunction, as well as a Motion for Preliminary Relief. The Motion for Preliminary Relief was denied.

39. Meanwhile, IDNR revised the Second Notice Rules and filed the HVHHF Rules on November 14, 2014, with the Secretary of State. See generally 5 ILCS 100/5-65.

40. The HVHHF Rules became effective when they were filed with the Secretary of State. See 5 ILCS 100/5-40(d).

41. The Secretary of State published the filed rules at 38 Ill. Reg. 22052-22066 and 38 Ill. Reg. 22067-22214, and the Secretary of State's publishing of the HVHHF Rules in the Illinois Register or the Illinois Administrative Code creates a rebuttable presumption that the rules were duly filed (see generally 5 ILCS 100/5-80(g)).

COMMON ALLEGATIONS—
PLAINTIFFS' CAUSES OF ACTION

42. The Plaintiffs' cause of action in each of the Counts of the Fifth Amended Complaint is based upon Section 2-701 of the Civil Practice Law, which authorizes a cause of action for a declaratory judgment "whether or not any consequential relief is or could be claimed." 735 ILCS 5/2-701. "The declaratory judgment procedure was designed to settle and fix rights before there has been an irrevocable change in the position of the parties that will jeopardize their respective claims of right. [Citation.] The remedy is used to afford security and relief against uncertainty so as to avoid potential litigation." *First of America Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 174, 651 N.E.2d 1105 (1995).

43. Regarding the HVHHF Rulemaking, pursuant to Sections 5-35(a) and 5-35(b) of the IAPA, IDNR was required to "accomplish the actions required by Section 5-40, 5-45, or 5-50, whichever is applicable."

44. In the case of the HVHHF Rulemaking, Section 5-40 is the applicable section.

45. Noncompliance with Section 5-35's directive results in the invalidity of the rulemaking, *automatically by virtue of the statute*: "No action by any agency to adopt, amend, or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section." 5 ILCS 5/35(b). In other words, where IDNR does not comply with the statutory directives, the rulemaking is invalid and void.

46. In addition, and more expansively, Section 5-6 of the IAPA (5 ILCS 100/5-6) provides that any rule not adopted in compliance with *any* provision of the IAPA is unauthorized:

> "Sec. 5-6. Rulemaking conditions. *All rulemaking authority* exercised on or after the effective date of this amendatory Act of the 96th General Assembly *is conditioned on the rules being adopted in accordance with all provisions of this Act* and all rules and procedures of the Joint Committee on Administrative Rules (JCAR); *any purported rule not so adopted, for whatever reason,* including without limitation a decision of a court of competent jurisdiction holding any part of this Act or the rules or procedures of JCAR invalid, *is unauthorized*." (Emphasis added.)

47. In this case, IDNR failed to follow the required statutory rulemaking procedures, as set out in more detail in Counts I through X of this Complaint directed against the HVHHF Rulemaking, and those failures rendered the HVHHF Rulemaking invalid.

48. IDNR's failures also deprived the Plaintiffs and many other Illinois citizens of their statutory rights to participate or participate fully in the rulemaking, as set out in the Common Allegations and in Counts I through X of this Complaint.

49. The adoption, filing, and publishing of the rulemaking under the Hydraulic Fracturing Regulatory Act (HFRA) and the Oil and Gas Act was accomplished in violation of the Plaintiffs' rights to

fully participate in rulemaking, as set out in the Common Allegations and in Counts I through X of this Fifth Amended Complaint.

50. The implementation of the HVHFF Rules threatens irreparable harm to the individual Plaintiffs as landowners and mineral rights owners, and to other landowners and mineral rights owners who are similarly situated, as set out in the Common Allegations and in Counts I through X of this Complaint.

51. The HVHHF Rulemaking was also in violation of the separation of powers clause of the Illinois Constitution, as set out in the Common Allegations and in Count XI of this Fifth Amended Complaint.

52. The implementation of the horizontal hydraulic fracturing provisions of the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act, and the regulations thereunder, will violate the Plaintiffs' rights under Article XI of the Illinois Constitution, as set out more fully in Count XII of this Fifth Amended Complaint.

53. The implementation of the hydraulic fracturing provisions of the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act, and the regulations thereunder, will cause irreparable harm by its application of unconstitutional statutory provisions and incomplete, inadequate, and invalidly enacted rules to the individual Plaintiff's rights as landowners, mineral interest owners, and other members of the communities where hydraulic fracturing operations will occur, as well as to others similarly situated, in that the statutes and regulations purport to authorize subsurface trespasses and unconstitutional takings of private property for private use, without notice, without compensation, and without a jury trial, as set out in the Common Allegations and Count XIII of this Fifth Amended Complaint.

54. Furthermore, at the present time, IDNR does not have an adequate budget or staff to supervise hydraulic fracturing operations and to monitor compliance with the statutes and regulations.

COUNT I

INVALID AND INADEQUATE NOTICE OF THE PUBLIC HEARINGS

IDNR Failed to Comply with the Requirements of Section 5-40(b) of the Illinois Administrative Procedure Act & Section 825.140 of Title 2 of the Illinois Administrative Code, Resulting in Prejudice to the Plaintiffs' Ability to Respond the Notice of Rulemaking

1-54. The Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

56. Under Section 5-40(b) of the IAPA and IDNR's own administrative rules, public hearings on its rulemaking must be preceded by 20 days' notice in the Illinois Register.

57. IDNR's rule states as follows:

> "The Hearing Officer shall set a time and place for hearing and *shall give notice as follows, at least 20 days prior to the date of the hearing*;
>
> a) to the proponent, by mail;
> b) *to members of the general public*, by means of a general news release and *notice in the Illinois Register*." (Emphasis added.) 2 Ill. Admin. Code 825.140.

58. All in all, five public hearings were held for the rulemaking involved in this litigation:

November 26, 2013, in Chicago,
December 3, 2013, in Ina (Rend Lake College),
December 16, 2013, in Effingham,
December 17, 2013, in Decatur, and
December 19, 2013, in Carbondale.

59. The first two public hearings—Chicago and Ina—were scheduled in IDNR's First Notice of Rulemaking, published in the Illinois Register on November 15, 2013.

60. Later, IDNR published a separate notice in the Illinois Register on December 6, 2013, for the three additional hearings—Effingham, Decatur, and Carbondale.

61. However, by that time, the Effingham hearing had been cancelled due to inclement weather.

62. IDNR rescheduled the Effingham hearing for December 16, 2013.

63. Notice of the rescheduled Effingham hearing was never published in the Illinois Register.

64. Thus, each of the five public hearings was preceded by notice in the Illinois Register as follows:

Chicago	11 days
Ina	18 days
Effingham	none
Decatur	11 days
Carbondale	13 days

65. None of the five public hearings were held with 20 days' notice, as required by 2 Ill. Adm. Code 825.140.

66. The latter three hearings were scheduled as a result of requests for more hearings.

67. Under these circumstances, for the latter three hearings, Section 5-40(b) of the IAPA requires notice of at least 20 days, published in the Illinois Register: "A public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of

proposed rulemaking in the Illinois Register unless notice of the public hearing is included in the notice of proposed rulemaking." 5 ILCS 100/5-40(b).

68. Because notices of these public hearings were not included in the First Notice of Proposed Rulemaking, the exception for notice of less than 20 days was not applicable.

69. As a result of IDNR's failure to submit a summary of the anticipated HVHHF Rulemaking in its regulatory agenda, in accordance with Section 5-60 of the IAPA (see Count VI), and as a result of the invalid and inadequate notice for the public hearings, the public was left scrambling to review a 154-page proposed rulemaking that citizens were seeing for the first time.

70. IDNR's invalid and inadequate notices of public hearing did not provide the public with adequate opportunities to participate in the development of these administrative rules, especially with respect to the first hearing, in Chicago, which was scheduled for two days prior to Thanksgiving Day (November 28, 2013), and allowed only 11 days to review the 154-page proposed rulemaking.

71. Given the invalid and inadequate notice, the Plaintiffs, and the public in general, were unable to review and evaluate the proposed rulemaking before the public hearings in the manner envisioned by the IAPA.

72. The Joint Committee on Administrative Rules (JCAR) acknowledges IDNR's duty to give the public advance notice of the proposed rulemaking:

> "[T]he IAPA encourages early public involvement and requires agencies to semiannually publish a Regulatory Agenda indicating, to the best of the agency's knowledge, the scope of the next 6 months' rulemaking activity."
>
> "One of the main reasons the IAPA was enacted was to give the public input into the rulemaking process."
>
> — http://www.ilga.gov/commission/jcar/ILRulemakingProcess.pdf.

73. The short advance notice of the public hearings also deprived Illinois citizens of a reasonable opportunity to attend.

74. Plaintiff Marie Smith was unable to attend a public hearing due to the distances to travel and the lack of advance notice.

75. Plaintiff Annette McMichael was unable to attend a public hearing due to the distances to travel and the lack of advance notice. McMichael had planned to attend the originally scheduled public hearing in Effingham, but it was cancelled, and she could not attend the rescheduled hearing.

76. Plaintiff Nathan Czuba was turned away from the only hearing held in Chicago and was unable to attend any of any other hearings, the nearest of which was more than 170 miles away.

77. The invalid and inadequate notice rendered the HVHHF Rulemaking invalid and also resulted in prejudice to the ability of the Plaintiffs and other members of the public to prepare for the public hearings, especially when considered in combination with the inadequate time to plan for travel to the venues of the public hearings.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT II

[This Count was dismissed with prejudice on April 6, 2017.]

FAILURE TO MAKE AN AGENCY OFFICIAL AVAILABLE TO ANSWER QUESTIONS AT THE PUBLIC HEARINGS

IDNR Failed to Comply with the Requirements of Section 5-40(b) of the Illinois Administrative Procedure Act

1-44. [The Plaintiffs here incorporated the Common Allegations appearing as paragraphs 1 through 44 of the Second Amended Complaint.]

45. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), as set out in more detail in paragraph 40 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

46. Section 5-40(b) of the IAPA provides, in part, as follows:

> "At least one agency representative shall be present during the hearing who is qualified to respond to general questions from the public regarding the agency's proposal and the rulemaking process." 5 ILCS 100/5-40.

At all the public hearings--Chicago on November 26, 2013, Ina (Rend Lake College) on December 3, 2013, Effingham on December 16, 2013, Decatur on December 17, 2013, and Carbondale on December 19, 2013, IDNR representatives were present on the panel, along with the hearing officer. See Exhibit A.

47. At the beginning of each of the hearings, the hearing officer made it clear to the citizens in attendance that the panel members would NOT answer questions. For example, the hearing officer stated that the IDNR representatives were there to "listen" and that they would not respond

to any comments. More specifically, at each of the hearings, the hearing officer stated that the hearing was “not a question-and-answer session." See Exhibit B.

48. Because the IDNR agency officials did not make themselves available to answer general questions regarding the proposal and the rulemaking process, these public hearings failed to comply with the public hearing requirements of Section 5-40(b) of the IAPA.

49. As a result of its violation of Section 5-40(b), IDNR’s rulemaking is invalid under Sections 5-6 and 5-35.

50. The unavailability of agency officials prejudiced the public’s opportunity to address the proposed rules and make informed public comments.

51. As a result of IDNR's failure to make an agency official available to answer questions at the public hearings, the public was “sandbagged” that is, IDNR withheld information that the public should have had available to evaluate the basis used to prepare the First Notice Proposed Rules, and IDNR did not provide the public with the statutorily required opportunity to participate in the development of these proposed administrative rules.

52. There is no remedy available under the IAPA to correct the problems with this rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory rulemaking procedures, that IDNR violated the Plaintiffs’ rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT III

[This Count was dismissed with prejudice on April 6, 2017.]

AT THE PUBLIC HEARINGS (1) SOME CITIZENS WERE DENIED ADMITTANCE & IDNR DID NOT ALLOW SOME CITIZENS TO SPEAK

IDNR Failed to Comply with the Requirements of Section 5-40 of the Illinois Administrative Procedure Act

1-44. [The Plaintiffs here incorporated the Common Allegations appearing as paragraphs 1 through 44 of the Second Amended Complaint.]

45. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), as set out in more detail in paragraph 40 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

46. Section 5-40(b) of the IAPA provides for Illinois citizens to provide input at public hearings on rulemaking: "At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking." 5 ILCS 100/5-40(b).

47. Nevertheless, at the public hearing in Chicago, some citizens were turned away.

48. Also, during at least one of the public hearings on the proposed HFRA rules--the one in Ina at Rend Lake College, the Hearing Officer refused to allow a citizen--Plaintiff Mark Donham–to speak, even though he had signed up to speak and had waited two hours to do so.

49. The Hearing Officer's predetermined allotment of two hours for the Ina hearing, and each of the other hearings, was insufficient to hear comments from the public.

50. The refusal to allow these citizens to attend the public hearing or to address the Hearing Officer and the agency officials on the panel are two parts of the failure to accommodate the great number of Illinois citizens who wished to participate in the rulemaking process.

51. IDNR has not adopted rules to prevent undue duplication, and in an event, the limitation of two hours was not a reasonable rule to prevent undue duplication.

52. As a result of its violation of Section 5-40(b), IDNR's rulemaking is invalid under Sections 5-6 and 5-35.

53. There is no remedy available under the IAPA to correct the problems with this rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT IV

FAILURE TO USE STUDIES, REPORTS, OR DATA TO COMPOSE THE RULEMAKING, OR FAILURE TO DISCLOSE THAT INFORMATION

IDNR Failed to Comply with the Requirements of Section 5-40(b) of the Illinois Administrative Procedure Act

1-54. The Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

56. As described more fully below, in its First Notice Proposed Rules, IDNR stated that it did not use any published studies, published reports, or underlying data in drafting the Proposed Rules.

57. This failure to use published studies, published reports, or data indicates (a) a failure to draft the First Notice Proposed Rules in compliance with its statutory procedural duties, as set out more fully below, and (b) a failure to draft the Proposed Rules in compliance with its duties under HFRA, as set out more fully below.

58. Pursuant to Section 5-40(b)(3.5) of the IAPA, for a First Notice of Proposed Rules, an agency is required to describe the information relied upon in drafting the Proposed Rules:

> (b) Each agency shall give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include all the following:
>
> ***
>
> (3.5) A descriptive title or other description of any published study or research report used in developing the rule, the identity of the person who performed such study, and a description of where the public may obtain a copy of any such study or research report. If the study was performed by an agency or by a person or entity that contracted with the agency for the performance of the study, the agency shall also make copies of the underlying data available to members of the public upon request if the data are not protected from disclosure under the Freedom of Information Act." 5 ILCS 100/5-40(b)(3.5).

59. In its First Notice Proposed Rules, in the introductory sections for both the proposed rule for seismicity under the Oil and Gas Act (Part 240, Section 240.796) and the proposed rules for

HFRA (Part 245), IDNR stated that it used no published studies, no published reports, and no data in preparing the Proposed Rules for HFRA.

60. Specifically, for each part, in response to this question—

> "Published studies or reports, and sources of underlying data used to compose this rulemaking:"

IDNR answered—

> "None."
>
> —37 Ill. Reg. 18081, 18099 (November 15, 2013).

61. Assuming the accuracy of IDNR's answer, IDNR's failure to consider published studies, published reports, or data in composing the First Notice Proposed Rules deprived the Plaintiffs and other members of the public of the opportunity, as given by the legislature in the IAPA, to evaluate IDNR's interpretation and application to Illinois of relevant information necessary to protect the health and safety of Illinoisans and their environment and economy. Even if the answer was somehow a misstatement, the effect for the Plaintiffs was the same.

62. In addition, IDNR's failure to consider published studies, published reports, or data in composing the First Notice Proposed Rules violated IDNR's statutory duty to "protect the public health and safety and prevent pollution or diminution of any water source" and its duty to ensure that "[a]ll phases of high volume horizontal hydraulic fracturing operations shall be conducted in a manner that shall not pose a significant risk to public health, life, property, aquatic life, or wildlife" (225 ILCS 732/1-53(a)(4), 1-75(a)(2)).

63. Sections 1-53, 1-75, and 1-130 of HFRA show the legislature's intent, and consequently IDNR's duty to ensure, that a high volume horizontal hydraulic fracturing operation be conducted only if it does not pose a significant risk to public health, life, property, aquatic life, or wildlife; and

only if the operation will be conducted in a manner that will protect the public health and safety and prevent pollution or diminution of any water source.

64. Sections 1-53, 1-75, and 1-130 of HFRA provide, in part, as follows:

> "Section 1-53. High volume horizontal hydraulic fracturing permit determination; judicial review.
> (a) The Department shall issue a high volume horizontal hydraulic fracturing permit, with any conditions the Department may find necessary, only if the record of decision demonstrates that:
> ***
> (4) the proposed hydraulic fracturing operations will be conducted in a manner that will protect the public health and safety and prevent pollution or diminution of any water source." 225 ILCS 732/1-53.

> "Section 1-75. High volume horizontal hydraulic fracturing operations.
> (a) General. ***
> ***
> (2) All phases of high volume horizontal hydraulic fracturing operations shall be conducted in a manner that shall not pose a significant risk to public health, life, property, aquatic life, or wildlife." 225 ILCS 732/1-75.

> "Section 1-130. Rules.
> The Department shall have the authority to adopt rules as may be necessary to accomplish the purposes of this Act. Any and all rules adopted under this Act by the Department are not subject to the review, consultation, or advisement of the Oil and Gas Board." 225 ILCS 732/1-130.

65. IDNR also failed to submit a summary of the anticipated rulemaking and failed to state its reasons in writing for not doing so, as required by Section 5-60 of the IAPA (see Count VI).

66. Especially when considered with IDNR's failure as described in Count VI, IDNR's failure to disclose studies, reports, and data in its First Notice on November 15, 2013, meant that the Plaintiffs and other members of the public had to wait until IDNR filed its Response to Public Comments, on August 29, 2014—more than eight months after the public hearings and the end of the public comment period—to find out what IDNR relied upon to draft the Proposed Rules.

67. IDNR's delay in disclosing the science behind the Proposed Rules completely deprived the Plaintiffs and other members of the public of the statutory opportunity—during the public

comment period and at the public hearings—to evaluate IDNR's interpretation and application to Illinois of the most recent published studies or reports and sources of underlying data.

68. In its Response to Public Comments, IDNR spent several pages (pp. 314-16) addressing comments directed to its First Notice answer that no published studies were used in its rulemaking, but it never acknowledged the prejudice caused to the Plaintiffs and other members of the public by the delay in revealing the science on which it relied in drafting the Proposed Rules.

69. One comment made during the First Notice public comment period by Plaintiff Vito Mastrangelo pointed out two then-recent, relevant studies, yet IDNR did not acknowledge them in its Response. See "Enhanced Remote Earthquake Triggering at Fluid-Injection Sites in the Midwestern United States", Nicholas J. van der Elst et al., DOI: 10.1126/science.1238948, Science 341, 164 (2013); "Why America's Heartland is Earthquake Country", United States Geological Service, September 30, 2013, available at https://web.archive.org/web/20131214090322/http://www.usgs.gov/newsroom/article.asp?ID=3706&from=rss#.UohRF40hRL8 (archived page last visited October 1, 2025).

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT V
[This Count was dismissed with prejudice on April 6, 2017.]

IDNR's DELAY IN PUBLISHING THE TRANSCRIPTS OF THE PUBLIC HEARINGS PREJUDICED THE PUBLIC'S ABILITY TO EVALUATE IDNR'S RULEMAKING

IDNR Violated the Spirit and Purpose of Section 5-40 of the Illinois Administrative Procedure Act

1-44. [The Plaintiffs here incorporated the Common Allegations appearing as paragraphs 1 through 44 of the Second Amended Complaint.]

45. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), as set out in more detail in paragraph 40 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

46. Section 5-40(b) of the Administrative Procedure Act requires IDNR to record the public hearings on the First Notice Proposed Rules. 5 ILCS 100/5-40(b).

47. IDNR published transcripts of the hearings on its website on or about August 29, 2014.

48. This delay violated the spirit and purpose of the recording requirement of Section 5-40(b).

49. As a result of its violation of Section 5-40(b), IDNR's rulemaking is invalid under Sections 5-6 and 5-35.

50. As a result of the delay in publishing the transcripts, the Plaintiffs and other members of the public have been prejudiced in their ability to evaluate the comments made at the hearings and the actions IDNR took in response thereto.

51. There is no remedy available under the IAPA to correct the problems with this rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory, statutory Rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in Rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT VI

IDNR FAILED TO PUBLISH A SUMMARY OF THE HFRA RULES IN THE REGULATORY AGENDA AND IT FAILED TO STATE REASONS, WITH A FACTUAL BASIS, FOR NOT DOING SO

IDNR Failed to Comply with the Procedural Requirements of Section 5-60 of the Illinois Administrative Procedure Act

1-54. Plaintiffs repeat and reallege paragraph 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above, as well as on Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

56. Section 5-60 of the IAPA calls for each state agency to include a Regulatory Agenda by January 1 and July 1 of each year for "any rule that the agency is considering proposing ***":

> "Sec. 5-60. Regulatory agenda. An agency shall submit for publication in the Illinois Register by January 1 and July 1 of each year a regulatory agenda to elicit public comments concerning any rule that the agency is considering proposing but for which no notice of proposed rulemaking activity has been submitted to the Illinois Register. A regulatory agenda shall consist of summaries of those rules. Each summary shall, in less than 2,000 words, contain the following when practicable:
>
> (1) A description of the rule.
>
> (2) The statutory authority the agency is exercising.
>
> (3) A schedule of the dates for any hearings, meetings, or other opportunities for public participation in the development of the rule.
>
> (4) The date the agency anticipates submitting a notice of proposed rulemaking activity, if known.
>
> (5) The name, address, and telephone number of the agency representative who is knowledgeable about the rule, from whom any information may be obtained, and to whom written comments may be submitted concerning the rule.
>
> (6) A statement whether the rule will affect small businesses, not for profit corporations, or small municipalities as defined in this Act.
>
> (7) Any other information that may serve the public interest.
>
> Nothing in this Section shall preclude an agency from adopting a rule that has not been summarized in a regulatory agenda or from adopting a rule different than one summarized in a regulatory agenda if in the agency head's best judgment it is necessary. If an agency finds that a situation exists that requires adoption of a rule that was not summarized on either of the 2 most recent regulatory agendas, it shall state its reasons in writing together with the facts that form their basis upon filing the notice of proposed rulemaking with the Secretary of State under Section 5-40. Nothing in this Section shall require an agency to adopt a rule summarized in a regulatory agenda. The Secretary of State shall adopt rules necessary for the publication of a regulatory agenda, including but not limited to standard submission forms and deadlines." 5 ILCS 100/5-60.

57. The bill that became the HFRA passed the second of the houses of the General Assembly on May 31, 2013, and was signed into law on June 17, 2013, as described in the Common Allegations.

58. IDNR's regulatory agenda for the fracking rules did not appear in the Illinois Register until July 19, 2013.

59. IDNR's July 19th regulatory agenda for the fracking rules did not include a summary of each rule that IDNR was considering proposing, as required by Section 5-60(1) of the IAPA.

60. Then, in its November 15, 2013, First Notice of Proposed Rulemaking for the fracking rules, IDNR answered this question–

"4) Regulatory Agenda on which this rulemaking was summarized:"

as follows:

> "This rulemaking was not included on either of the two most recent agendas because: The Department did not anticipate the need for this rulemaking at the time the agendas were published."

—37 Ill. Reg. 18081, 18083 (November 15, 2013); 37 Ill. Reg. 18097, 18100 (November 15, 2013).

61. Yet this statement by IDNR contradicts IDNR's public acknowledgment that it was already working on the fracking rules *before* June 17, 2013, and *before* the publication of the July 19th regulatory agenda: "The Department was already working on draft rules for the HFRA upon its passage ***." Department Response to Public Comments, at 10 ("Pace of Rulemaking").

62. IDNR did have sufficient time to anticipate the need for the rulemaking, as described herein.

63. In any event, IDNR did not "state in writing its reasons [for not publishing a summary of a rule] together with the facts that form their basis," as required by Section 5-60.

64. A written comment was submitted on November 15, 2013, by Emily Masalski, that noted IDNR's failure to submit a summary of proposed rulemaking in a regulatory agenda, and its failure to give reasons for the lack of the summary and regulatory agenda, as required by statute.

65. IDNR has not acknowledged this comment in its Department Response to Public Comments, and IDNR has failed to state its reasons for not giving the public, including the Plaintiffs herein, its reasons for the lack of the required notice.

66. IDNR's First Notice of Proposed Rulemaking in the Illinois Register was 154 pages long.

67. IDNR's First Notice of Proposed Rulemaking was published on November 15, 2013, and IDNR provided a mere 11 days and 18 days of notice for the first two public hearings, set to take place on November 26, 2013, and December 3, 2013. See Count I herein.

68. IDNR scheduled the November 26, 2013, public hearing in Chicago to take place only two days prior to the long Thanksgiving holiday weekend.

69. As a result of IDNR's failure to submit a summary of anticipated HVHHF Rules in a regulatory agenda in accordance with Section 5-60 of the IAPA, the publication of the First Notice Proposed Rules left members of the public scrambling to review a 154-page proposed rulemaking that they were seeing for the first time.

70. IDNR's scheduling of the first public hearing only two days prior to the long Thanksgiving holiday weekend compounded this problem.

71. As a result of its violation of Section 5-60, IDNR's rulemaking is invalid under Sections 5-6 and 5-35.

72. IDNR's violation of rulemaking procedures deprived the public of an adequate opportunity to participate in the First Notice stage of the development of these proposed administrative rules.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in the rulemaking, and that the fracking rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the fracking rules and that the Court direct the Defendants to publish a disclaimer that the fracking rules have been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT VII

[This Count was dismissed with prejudice on April 6, 2017.]

IDNR PROVIDED FALSE STATEMENTS TO THE PUBLIC IN ITS FIRST NOTICE-- REGARDING INCORPORATIONS BY REFERENCE AND EFFECT ON LOCAL GOVERNMENTS

IDNR Failed to Comply With Section 5-75 of the Illinois Administrative Procedure Act

1-44. [The Plaintiffs here incorporated the Common Allegations appearing as paragraphs 1 through 44 of the Second Amended Complaint.]

45. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), as set out in more detail in paragraph 40 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-40 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

46. Section 5-75 of the IAPA allows state agencies to incorporate certain documents into its rules, but only with certain conditions:

> "(a) An agency may incorporate by reference, in its rules adopted under Section 5-35, rules, regulations, standards, and guidelines of an agency of the United States or a nationally or state recognized organization or association without publishing the incorporated material in full. **The reference in the agency rules must fully identify the incorporated matter by publisher address and date in order to specify how a copy of the material may be obtained and must state that the rule, regulation, standard, or guideline does not include any later amendments or editions. An agency may incorporate by reference these matters in its rules only if the agency, organization, or association originally issuing the matter makes copies readily available to the public.** This Section does not apply to any agency internal manual.
>
> ***
>
> (b) Use of the incorporation by reference procedure under this Section shall be reviewed by the Joint Committee on Administrative Rules during the rulemaking process as set forth in this Act.
>
> (c) The agency adopting a rule, regulation, standard, or guideline under this Section shall maintain a copy of the referenced rule, regulation, standard, or guideline in at least one of its principal offices and shall make it available to the public upon request for inspection and copying at no more than cost. Requests for copies of materials incorporated by reference shall

not be deemed Freedom of Information Act requests unless so labeled by the requestor. The agency shall designate by rule the agency location at which incorporated materials are maintained and made available to the public for inspection and copying. These rules may be adopted under the procedures in Section 5-15. In addition, the agency may include the designation of the agency location of incorporated materials in a rulemaking under Section 5-35, but emergency and peremptory rulemaking procedures may not be used solely for this purpose." (Emphasis added.) 5 ILCS 100/5-75.

47. In Paragraph 9 of its First Notice of the proposed HFRA rules (37 Ill. Reg. 18099), IDNR responds to the question—

"Does this rulemaking contain incorporations by reference?"

with this answer—

"No"

48. This is a false statement because in First Notice Proposed Rule 245.115, the proposed rules incorporate "ANSI/API"standards (American National Standards Institute/American Petroleum Institute) and other documents. In addition, all of the various incarnations of HFRA Rulemaking violated Section 5-75(a) of the IAPA because they did not "fully identify the incorporated matter by publisher address and date" as explicitly required by that subsection.

49. By not identifying the documents that IDNR was incorporating by reference into its First Notice Proposed Rules, IDNR misled the Plaintiffs and members of the public to their prejudice in their ability to fully evaluate the proposed rulemaking.

50. Additionally, in Paragraph 11 of its First Notice of the Proposed Rules (37 Ill. Reg. 18099), IDNR responds to this question—

"Statement of Statewide Policy Objectives:"

with this answer—

"This rulemaking does not affect units of local government."

51. This, too, is a false statement because the First Notice Proposed Rules include various provisions that affect units of local government. For example, the First Notice Proposed Rule

245.210(b) provision would give each Illinois city, village, and incorporated town the authority to determine whether or not HVHF occurs within its borders; conversely, the rulemaking implicitly deprives other Illinois local governmental units, including counties, of the authority. In addition, First Notice Proposed Rule 245.270(a)(1) would allow county boards to file a written request for a public hearing on a permit application. Also, First Notice Proposed Rule 245.210(a) requires "a] traffic management plan that is developed by the applicant, preferably in coordination with the impacted highway authorities (county, township, road district system, and municipal street system) to identify the anticipated roads, streets, and highways that will be used ***."

52. As a result of its violation of Section 5-75(a), IDNR's rulemaking is invalid under Sections 5-6 and 5-35.

53. Because of these omissions/false statements in violation of statute, the Plaintiffs and other members of the public were prejudiced in their ability to evaluate the rulemaking and make appropriate comments during the limited public comment period.

54. There is no remedy available under the IAPA to correct the problems with this rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT VIII

IN ITS SECOND NOTICE, IDNR FAILED TO LIST THE NAMES OF THOSE REQUESTING A PUBLIC HEARING

IDNR Failed to Comply with Section 220.600 of Title 1 of the Illinois Administrative Code

1-54. Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above.

56. IDNR's Response to Public Comments, at 308, states, "After IDNR received feedback that more public hearings were needed, IDNR scheduled three additional hearings ***."

57. Yet IDNR's Second Notice failed to list "t]he names of all the persons or organizations requesting a public hearing ***," as required by Section 220.600(a)(9)(D) of Article 1 of the Illinois Administrative Code.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory administrative rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT IX

[This Count was dismissed with prejudice on April 6, 2017.]

IDNR DID NOT PUBLISH THE REQUIRED REPORT TO THE ILLINOIS GENERAL ASSEMBLY BY FEBRUARY 1, 2014

IDNR Failed to Comply With HFRA Section 1-97

1-44. [The Plaintiffs here incorporated the Common Allegations appearing as paragraphs 1 through 44 of the Second Amended Complaint.]

45. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), as set out in more detail in paragraph 40 of the Common Allegations above.

46. Section 1-97 of HFRA (225 ILCS 732/1-97) required IDNR to submit a report to the General Assembly by February 1, 2014, as follows:

> "Section 1-97. Department mapping and reporting.
> On or before February 1, 2014, the Department shall, with the assistance of the Illinois State Geological Survey, submit a report to the General Assembly and Governor identifying the following in Illinois and include any recommendations for additional legislative or administrative action on these items:
> (a) the location of resources of shale gas and oil, conventional gas and oil, and process materials, including sand and other naturally occurring geologic materials used in high volume horizontal hydraulic fracturing operations;
> (b) the potential impacts of high volume horizontal hydraulic fracturing operations on:
> (1) sites owned, managed or leased by the Department;
> (2) nature preserves;
> (3) sites on the Register of Land and Water Reserves;
> (4) the availability of water for human consumption and general domestic use; and
> (5) the potential for influencing natural seismic activity."

47. This information would have been very valuable, even essential, for evaluating the Proposed Rules for HFRA.

48. IDNR claims that it submitted the report to the General Assembly and the Governor, but the report has not been published.

49. Either IDNR did not submit the report or it submitted the report but did not publish it. In any event, IDNR deprived the Plaintiffs and other members of the public of their opportunity to fully evaluate and respond to its rulemaking during the limited time for public comment.

50. There is no remedy available under the IAPA to correct the problems with this rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that the HFRA Rulemaking is invalid for IDNR's failure to submit the Section 1-97 report or in the alternative to publish the report, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that therefore the Rulemaking is invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT X

WHEN CONSIDERED CUMULATIVELY OR IN COMBINATIONS, THE VIOLATIONS OF ADMINISTRATIVE AND STATUTORY LAW DESCRIBED IN COUNTS I THROUGH IX, AND OTHER VIOLATIONS OF STATUTORY AND ADMINISTRATIVE LAW, HAVE DEPRIVED THE PLAINTIFFS AND THE PUBLIC OF THEIR RIGHTS UNDER THE ADMINISTRATIVE PROCEDURE ACT

IDNR Failed to Comply With the Requirements of the Illinois Administrative Procedure Act and the Illinois Administrative Code

1-54. The Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in

paragraph 42 of the Common Allegations above, as well as on Section 5-35(b) of the IAPA (5 ILCS 100/5-35(b)), which acknowledges a cause of action for an agency's noncompliance with Section 5-50 of the IAPA, and Section 5-6 of the IAPA (5 ILCS 100/5-6), which states that any rule not adopted in accordance with all the provisions of the IAPA is unauthorized.

56. In Counts I through IX, the Plaintiffs state their claims that IDNR violated mandatory statutory rulemaking procedures.

57. In addition, IDNR failed to respond to at least two comments made during the public comment period (see Count IV, par. 69, and Count VI, par. 64-65), as required by Title 1, Section 220.600 of the Illinois Administrative Code, which states as follows:

> "a) Submission of Second Notice
>
> A second notice that contains all the information specified in subsections (1) through (14) of this subsection (a) will be accepted by the Joint Committee [JCAR]. A second notice that does not include the information required by this Section will not be accepted and will be returned to the agency within 2 working days after receipt with an explanation of the reason for the return.
>
> ***
>
> (1) *An evaluation of all comments receive by the agency concerning the proposed rulemaking during the first notice period* ***. ***. The failure of an agency to evaluate, pursuant to this Section the comments received will be deemed to be an incomplete second notice." 1 Ill. Adm. Code 220.600.

58. Pursuant to Sections 5-6 and 5-35 of the IAPA, the violations rendered the rulemaking invalid.

59. In addition, the violations prejudiced the Plaintiff's rights, and the rights of other members of the public, to participate fully in the HFRA Rulemaking.

60. In this Count, the Plaintiffs further state that especially when considered cumulatively, or in combination, the violations show a violation of the public's right to participate fully in the HFRA Rulemaking.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that IDNR failed to comply with mandatory statutory and administrative rulemaking procedures, that IDNR violated the Plaintiffs' rights to fully participate in rulemaking, and that the HFRA Rulemaking is therefore invalid. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT XI

JCAR VIOLATES ARTICLE II OF THE ILLINOIS CONSTITUTION

1-54. Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above.

56. The HFRA Rulemaking is invalid because the Joint Committee on Administrative Rules (JCAR) violates the separation-of-powers provision of Article II of the Illinois Constitution. The relevant constitutional language provides: "The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another." Ill. Const. 1970, Art. I, Sec. 2.

57. In 1975, the Illinois General Assembly enacted the IAPA, thereby creating a rulemaking procedure through which administrative agencies would exercise the authority delegated to them by the legislature to create administrative law by adopting agency regulations. In 1977, the IAPA

was amended to add a process by which the General Assembly would oversee the exercise of this delegated authority through JCAR (5 ILCS 100/5-90).

58. JCAR consists of 12 legislators who are appointed by legislative leadership, with the membership equally divided between the two legislative houses and the two political parties established statewide. JCAR is co-chaired by two members, who must represent each of those political parties and each legislative house. Pursuant to the IAPA, JCAR may conduct systematic reviews of administrative rules promulgated by State agencies.

59. Since legislators are members of JCAR, JCAR is charged with the exercise of powers belonging to the legislative branch. Under Article II of the Illinois Constitution, a legislative body is prohibited from performing any functions properly granted to the other two branches. Hence, the Illinois Constitution prohibits legislative committees such as JCAR from performing any function that is not legislative in nature.

60. When the legislature (the legislative branch) passes a law—a statute, the statute goes to the governor (the executive branch) for signature. After the law enters into effect, administrative agencies promulgate regulations to implement the statute. However, JCAR has not only the power to review adopted rules, but also the power to invalidate adopted rules promulgated by Illinois administrative/executive agencies under Sections 5-105(d), 5-110, and 5-115 of the IAPA.

61. This power is better known as the legislative veto and should be removed from the Illinois legislature, as it was from the United States Congress in *Immigration & Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

62. Legislative veto power exists when the legislature, after granting an administrative body the power to make reasonable rules and regulations, retains some type of review power over the promulgation of those rules and regulations. Essentially, the legislative veto allows less than the entire legislature to review, modify, and invalidate administrative rules.

63. In *Chadha*, the United States Supreme Court held that a legislative veto is unconstitutional in part because the legislature had assumed for itself the reviewing role of the courts. The *Chadha* court determined that federal legislative vetoes were unconstitutional because they circumvented the presentment clause and the bicameral provisions of the United States Constitution.

64. The separation-of-powers doctrine is not meant to promote efficiency but to preclude the exercise of arbitrary power. "It is also essential to the successful working of this system [of three branches of government] that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other." *Kilbourn v. Thompson* (1881), 103 U.S. 168, 191, 26 L. Ed. 377, 387. The purpose is not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three branches, to save the people from autocracy. *Myers v. United States*, 272 U.S. 52, 293, 71 L. Ed. 160, 47 S. Ct. 21 (1926) (Brandeis, J., dissenting).

65. It follows that this was also the intent of the Illinois Constitution's distribution of powers in Article II, since the framers of both constitutions, the United States's and Illinois's, were concerned with the same problems regarding the separation of powers. Any other conclusion would be a misreading of the distribution-of-powers clause in Article II.

66. Because JCAR can object to adopted administrative agency rules and prevent them from entering into effect, under Sections 5-105(d), 5-110, and 5-115 of the IAPA, JCAR is able to exercise a legislative veto over those actions of the executive branch. The Illinois Constitution does not permit the legislature to unilaterally suspend or veto such regulatory action.

67. JCAR violates the Illinois Constitution in three ways. First, JCAR, in being able to invalidate adopted administrative rules under Sections 5-105(d), 5-110, and 5-115 of the IAPA,

performs functions properly belonging to the judicial branch. Second, JCAR performs functions properly belonging to the executive branch under Sections 5-105(d), 5-110, and 5-115. Third, JCAR's powers to modify and invalidate administrative rules under Sections 5-105(d), 5-110, 5-115 are unconstitutional because they are performed in a manner not properly granted to the legislative branch.

68. First, regardless of whether JCAR must make a finding, the function performed by JCAR under Sections 5-105(d), 5-110, and 5-115 properly belongs to the judiciary. The judiciary performs the function of interpreting the laws passed by the legislative branch and rules promulgated by the executive branch. In performing this function, the judiciary has the sole power to declare the validity or invalidity of statutes and administrative rules. Therefore, because this is a judicial function, Article II prohibits JCAR from performing this function. This action violates Article II of the Illinois Constitution.

69. Article IV of the Illinois Constitution gives the legislative branch the power to pass laws. This power, however, must be exercised by the entire legislature and not by JCAR's 12 legislative members at its discretion. If JCAR either validates or invalidates administrative rules solely at its discretion, the promulgation of rules leaves the hands of the executive branch and ends up instead in the hands of those 12 members of the legislature. Thus, the legislature would not only be making laws but would also be executing and administering the laws as well. This action violates Article II of the Illinois Constitution.

70. Finally, the Illinois legislature, through the IAPA, has provided that JCAR has not only the power to invalidate administrative rules but has also the power to prevent rules from being promulgated in the first place. This power is the power of approval. However, the Illinois Constitution implies that only the executive branch may promulgate rules and regulations. Accordingly, JCAR, as a legislative branch committee, cannot promulgate rules and regulations.

Otherwise, JCAR is passing a law each time it makes a ruling or decision on rulemaking. This action violates Article II of the Illinois Constitution.

71. In this case, after IDNR adopted its Second Notice Rules, JCAR issued an objection.

72. JCAR's objection was not made public.

73. After JCAR objected to the adopted rules, the rules were revised and filed as revised.

74. The revisions include changes to the seismicity (earthquake) provisions, radioactivity testing, permit decision elements, recordkeeping requirements, permit modifications, modifications to mechanical integrity testing, and water sampling minimums.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that the HFRA Rulemaking is invalid because the JCAR role in rulemaking violates the separation-of-powers provision of Article II of the Illinois Constitution. The Plaintiffs request that the Court prohibit IDNR from implementing or using the HFRA Rules and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT XII

HFRA AND IDNR'S HFRA RULEMAKING ARE INVALID BECAUSE THEY VIOLATE ARTICLE XI OF THE ILLINOIS CONSTITUTION

1-54. Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above.

56. The legislature's HFRA and IDNR's HFRA Rulemaking are invalid because they violate Section 1 of Article XI of the Illinois Constitution of 1970, which states as follows:

"SECTION 1. PUBLIC POLICY - LEGISLATIVE RESPONSIBILITY

> "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations."

57. HFRA and IDNR's HFRA Rulemaking violate Article XI, Section 1, in that high-volume horizontal hydraulic fracturing will result in detrimental impacts to human health and the environment as determined by the scientific community.

58. Our environmental laws and natural resource protection laws were created to be consistent with the constitutional mandate that "[t]he General Assembly shall provide by law for the implementation and enforcement of this public policy" (Ill. Const. 1970, Art. XI, Sec. 1). HFRA is not consistent with this constitutional mandate.

59. Furthermore, each person has the constitutional right to a healthful environment, as provided by the plain language in Section 2 of Article XI of the Illinois Constitution of 1970: "Each person has the right to a healthful environment. Each person may enforce this right against any party, government or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."

60. Recent developments have demonstrated the increased probabilities for HVHHF creating an unhealthful environment.

61. In 2012, the International Energy Agency warned: "Two thirds of all proven fossil fuel reserves must stay in the ground if the world is serious about avoiding dangerous climate change."

62. In 2012, the State of Vermont banned fracking.

63. On December 17, 2014, after HFRA was enacted and the HVHHF Rulemaking was finalized and went into effect, Governor Cuomo of New York State announced that fracking would

be banned in that state, based on a report issued by the New York Department of Health (DOH) entitled "Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development," which was released in December 2014 (https://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf (page last visited October 2, 2025):

> "DOH's review found significant uncertainties about: the adverse health outcomes that may be associated with HVHF; the likelihood of occurrence of adverse health outcomes; and the adequacy of mitigation measures to protect public health. DOH's report concludes that it will be years until science and research provide sufficient information to determine the level of risk HVHF poses to public health and whether those risks can be adequately mitigated. Given the red flags raised by current studies, absent conclusive studies that disprove health concerns, the report states the activity should not proceed in New York State." N.Y. Dept. of Public Health Press Release, December 17, 2014. https://www.health.ny.gov/press/releases/2014/2014-12-17_fracking_report.htm (page last visited October 2, 2025).

See also *Compendium of Scientific, Medical, and Media Findings Demonstrating Risks & Harms of Fracking (Unconventional Gas & Oil Extraction)*, available at www.concernedhealthny.org/compendium (page last visited October 2, 2025); "Toward an understanding of the environmental and public health impacts of shale gas development: an analysis of the peer-reviewed scientific literature, 2009-2014," https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0154164 (last visited October 2, 2025).

64. In a 2016 report, the United States Environmental Protection Agency confirmed that fracking has contaminated drinking water.

65. In March 2017, the State of Maryland banned fracking.

66. In the New York DOH report, public health commissioners gathered and reviewed the current science and came to the conclusion that "the overall weight of the evidence from the cumulative body of information contained [in this Public Health Review] demonstrates that there are significant uncertainties about the kinds of adverse health outcomes that may be associated with

HVHF, the likelihood of the occurrence of adverse health outcomes, and the effectiveness of some of the mitigation measures in reducing or preventing environmental impacts which could adversely affect public health"and that "until the science provides sufficient information to determine the level of risk to public health from HVHF and whether the risks can be adequately managed, HVHF should not proceed in New York State." Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, at 11-12.

67. The Plaintiffs ask this Court to also rely on this report in making its own determination that HFRA and the HVHHF Rulemaking are invalid because they violate Article XI of the Illinois Constitution of 1970, which states that it is the public policy of the State of Illinois and the duty of each person (including the agencies of the State of Illinois proper) "to provide and maintain a healthful environment for the benefit of this and future generations" (Section 1) and that "each person has the right to a healthful environment"(Section 2). In light of the State of New York's expending its own resources to conduct an independent analysis evaluating the public health and environmental impacts studied by the national and global scientific community and determining that it was not in the best interest of its citizens' health and environment to move forward with hydraulic fracturing, the Plaintiffs respectfully request that this Court adopt the same conclusion in application to the citizens of Illinois and their constitutional rights under Article XI of the Illinois Constitution.

68. The Plaintiffs respectfully request that this Court review and apply the Report's following major findings of environmental impacts and health outcomes potentially associated with HVHF activities: air, water, land, and health impacts which demonstrate they are contrary to and in violation of the original intent and meaning of Article XI of the Illinois Constitution.

69. The Report's findings on the *air impacts* of HVHF:

> "Studies provide evidence of uncontrolled methane leakage, emissions of other volatile organic chemicals, and particulate matter from well pads and natural-gas infrastructure. State authorities in both Texas and Pennsylvania have documented methane leakage from natural

gas infrastructure by the use of infrared cameras. A recent West Virginia study also determined that heavy vehicle traffic and trucks idling at well pads were the likely sources of intermittently high dust and benzene concentrations, sometimes observed at distances of at least 625 feet from the center of the well pad (McCawley, 2012, 2013; WVDEP, 2013). These emissions have the potential to contribute to community odor problems, respiratory health impacts such as asthma exacerbations, and longer-term climate change impacts from methane accumulation in the atmosphere (Allen, 2013, Bunch, 2014, CDPHE, 2010; Macey, 2014; Miller, 2013; Petron, 2012; Weisel, 2010).

— Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, Executive Summary, at 5.

70. The Report's findings on the *water quality impacts* of HVHF:

"Studies have found evidence for underground migration of methane associated with faulty well construction (Darrah, 2014; EPA, 2011). For example, a recent study identified groundwater contamination clusters that the authors determined were due to gas leakage from intermediate-depth strata through failures of annulus cement, faulty production casing, and underground gas well failure (Darrah, 2014). Shallow methane- migration has the potential to impact private drinking water wells, creating safety concerns due to explosions. Other studies suggest additional sources of potential water contamination, including surface spills and inadequate treatment and disposal of radioactive wastes (Warner, 2013). A recent review paper presented published data revealing evidence for stray gas contamination, surface water impacts, and the accumulation of radium isotopes in some disposal and spill sites (Vengosh, 2014). One recent study also suggests that chemical signals of brine from deep shale formations can potentially be detected in overlying groundwater aquifers (Warner, 2012). These contaminants have the potential to affect drinking water quality."

— Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, Executive Summary, at 5-6.

71. The Report's findings on HVHF *impacts to land*:

"Recent evidence from studies in Ohio and Oklahoma suggest that HVHF can contribute to the induction of earthquakes during fracturing (Holland, 2014; Maxwell, 2013). Although the potential public health consequences of these relatively mild earthquakes is unknown, this evidence raises new concerns about this potential HVHF impact."
— Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, Executive Summary, at 6.

72. The Report's findings on *health outcomes* near HVHF activity:

"Although well-designed, long-term health studies assessing the effect of HVHF activity on health outcomes have not been completed, there is published health literature that examines health outcomes in relation to residential proximity to HVHF well pads. One peer-reviewed study and one university report have presented data indicating statistical associations between birth outcomes (low birth weight and some congenital defects) and residential proximity of the mother to well pads during pregnancy (Hill, 2012; McKenzie, 2014). Proximity to higher-density HVHF well pad development was associated with increased incidence of congenital heart defects and neural-tube defects in one of the studies (McKenzie, 2014).

Several published reports present data from surveys of health complaints among residents living near HVHF activities. Commonly reported symptoms include skin rash or irritation, nausea or vomiting, abdominal pain, breathing difficulties or cough, nosebleeds, anxiety/stress, headache, dizziness, eye irritation, and throat irritation in people and farm animals within proximity to HVHF operations (USDOL, 2012). While this report focused on worker exposures, it highlights a possible exposure concern for residents living close to HVHF operations if silica emissions from onsite operations are not properly controlled."

— Public Health Review of High Volume Hydraulic Fracturing for Shale Gas Development, Executive Summary, at 7.

73. HVHHF uses carcinogens, endocrine disruptors, and other toxic chemicals.

74. HVHHF creates radioactive wastewater, which must be disposed of in special injection wells—Class 2 injection wells.

75. In Oklahoma, the government concludes that wastewater injected into wells can cause earthquakes; one of the factors is the presence of faults that are large enough to produce felt earthquakes, available at https://web.archive.org/web/20170517014247/https://earthquakes.ok.gov/faqs/ (archived page last visited September 20, 2025).

76. The Illinois Oil Basin in southeastern Illinois is in the Wabash Valley Fault Zone and the New Madrid Fault Zone.

77. HFRA and the HVHHF Rules allow HVHHF operators to create multiple earthquakes before imposing restrictions.

78. For all these reasons, HFRA and HFRA Rulemaking violate Article XI of the Illinois Constitution of 1970 and are invalid.

WHEREFORE, the Plaintiffs request that this Honorable Court enter a Declaratory Judgment

finding that HFRA and HFRA Rulemaking are invalid because they violate Article XI of the Illinois Constitution. The Plaintiffs request that the Court enjoin the use of HFRA and HFRA Rulemaking and that the Court direct the Defendants to publish a disclaimer that the HFRA Rulemaking has been invalidated. In addition, pursuant to Section 10-55(c) of the IAPA (5 ILCS 100/10-55(c)), the Plaintiffs request that the Court enter an order awarding the Plaintiffs the reasonable expenses of bringing the action, including reasonable attorney fees.

COUNT XIII

HFRA AND THE CORRESPONDING IDNR RULES, AND THE OIL AND GAS ACT AND THE CORRESPONDING IDNR RULES, ARE UNCONSTITUTIONAL INSOFAR AS THEY AUTHORIZE SUBSURFACE TRESPASSES AND/OR PROVIDE FOR TAKINGS OF PRIVATE PROPERTY WITHOUT DUE PROCESS

1-54. The individual Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. The individual Plaintiffs' cause of action in this Count is based on Section 2-701 of the Civil Practice Law (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above.

56. The individual Plaintiffs also invoke state court jurisdiction to hear the takings aspect of this claim under 42 U.S.C. sec. 1983.

57. The Illinois Constitution provides as follows: "Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law." Ill. Const. 1970, Art. I, Sec. 15.

58. In Illinois, it is well-settled that a trespass to land does not require the physical intrusion by a person's body:

> "[O]ne can be liable under present-day trespass for causing a thing or a third person to enter the land of another either through a negligent act or an intentional act." *Dial v. City of O'Fallon*, 81 Ill. 2d 548, 556-57 (1980).

59. The Illinois Oil and Gas Act (225 ILCS 725/1 *et seq.*) and the Hydraulic Fracturing Regulatory Act (225 ILCS 732/1-1 *et seq.*), and the corresponding regulations adopted by the Defendants, purport to authorize, under some circumstances, subsurface trespasses and the taking of property rights from Illinois landowners for the private use of other parties, without notice, without a jury determination of damages, and without compensation at all.

60. The Illinois Supreme Court has described the limitations on the government's right to take private property, as follows:

> "The State of Illinois, as a sovereign, has the inherent right to condemn property, subject to the state constitutional mandate that private property shall not be taken or damaged for public use without just compensation to its owner. [Citations.] The fifth amendment to the United States Constitution [citation], made applicable to the states through the fourteenth amendment [citation], also provides that private property shall not be taken for public use without just compensation. [Citation.]
>
> ***
>
> The right of a sovereign to condemn private property is limited to takings for a public use. [Citations.] Clearly, private persons may ultimately acquire ownership of property arising out of a taking and the subsequent transfer to private ownership does not by itself defeat the public purpose. [Citation.] However, that principle alone cannot adequately resolve the issues presented in this case. 'Before the right of eminent domain may be exercised, the law, beyond a doubt, requires that the use for which the land is taken shall be public as distinguished from a private use.' [Citation.]" *Southwestern Illinois Development Authority v. National City Environmental, L.L.C.*, 199 Ill. 2d 225, 235-36 (2002).

61. In Illinois, a person who owns the full bundle of rights in land owns the surface and all that is below it. *Miller v. Ridgley*, 2 Ill. 2d 223 (1954); *Save Our Little Vermillion Environment, Inc., v. Illinois Cement Co.*, 311 Ill. App. 3d 747 (3d Dist. 2000).

62. In Illinois, mineral rights are but one or more of the sticks in the bundle of land rights:

> "It is the settled law of this State that oil and gas in place are minerals but by reason of their fugacious qualities they are incapable of ownership distinct from the soil. [Citation.] They belong to the owner so long as they remain under the land, and if an owner makes a grant of them to another by lease [citation] or mineral deed for a term [citation], it is a grant only of the oil and gas that the grantee may take from the land, as well as the right to enter upon the land for the purpose of prospecting and operating wells. No title to it vests in the grantee until it is actually removed from the ground, thus oil and gas in the earth cannot be subject to an ownership distinct from the soil so long

> as they remain in the earth. [Citations.] They belong to the owner of the land as long as they remain under the land. [Citations.] In general, a landowner is entitled to the surface and all that is below it, and when he makes a deed that contains no reservation and does not limit the estate conveyed, he conveys everything under the surface as well as on the surface itself. His legal interest in the oil and gas is accessory to his legal interest in the land and will pass by a grant of the land, unless he expresses an intention to retain that interest." *Murbarger v. Franklin*, 18 Ill. 2d 344, 347-48 (1960).

63. In the early days of mineral extraction in Illinois, due to the fugacious nature of oil and gas, Illinois courts developed the rule of capture, which allows an extraction operation on one parcel of land to drain oil or gas from the land owned by someone else. *Triger v. Carter Oil Co.*, 372 Ill. 182, 23 N.E.2d 55 (1939).

64. However, the rule of capture was adopted at a time when the extraction process was such that oil drained **naturally** from beneath the land of another to the bottom of the well for extraction, and the rule was adopted before the use of repressurization using chemicals (rather than water) and before the use of horizontal wellbores.

65. Also, the rule of capture was founded upon the principle that the adjacent owner of land could extract the oil or gas him- or herself.

66. Fast forward to the modern-day process of vertical hydraulic fracturing—vertical hydraulic fracturing now typically includes hydraulic pressure and chemical fluids injected into the well to **artificially** move the minerals to the bottom of the well for extraction. This is sometimes referred to as "secondary recovery."

67. In the process of modern-day vertical hydraulic fracturing, when the pool of minerals spans multiple land parcels, the hydraulic pressure and the fluids are physically injected into other parcels besides the parcel on which the vertical well is sited.

68. For vertical hydraulic fracturing, the Oil and Gas Act does not provide for notice to all landowners who would suffer the encroachment of hydraulic pressure or fracking fluids into their land or to all landowners whose mineral rights would be taken by secondary recovery.

69. For vertical hydraulic fracturing, the Oil and Gas Act does not provide for *compensation*, determined by a jury or otherwise, to all landowners who would suffer the encroachment of hydraulic pressure or fracking fluids into their land or to all landowners whose mineral rights would be taken by secondary recovery.

70. Fast forward to the modern-day process of *horizontal* hydraulic fracturing—the horizontal wellbores may be drilled up to two miles horizontally from the bottom of the vertical wellbore.

71. Given the length of the horizontal wellbores, the process of horizontal hydraulic fracturing typically involves physically drilling under land parcels other than the parcel on which the well is sited.

72. For horizontal hydraulic fracturing, neither the Oil and Gas Act nor the Hydraulic Regulatory Act provides for notice to all landowners who would suffer the encroachment of hydraulic pressure or fracking fluids into their land or to all landowners whose mineral rights would be taken by secondary recovery.

73. For horizontal hydraulic fracturing operations, neither the Illinois Oil and Gas Act nor the Hydraulic Fracturing Regulatory Act provide for notice to all landowners under whose land a horizontal wellbore might pass, only to those landowners within 1,500 feet from the well site.

74. For horizontal hydraulic fracturing operations, neither the Illinois Oil and Gas Act nor the Hydraulic Fracturing Regulatory Act provides for *compensation*, determined by a jury or otherwise, to all landowners who would suffer the encroachment of hydraulic pressure or fracking fluids into their land or to all landowners whose mineral rights would be taken by secondary recovery.

75. For horizontal hydraulic fracturing, neither the Illinois Oil and Gas Act nor the Hydraulic Fracturing Regulatory Act requires the *consent* of all landowners and all mineral right owners in the path of the horizontal well bores.

76. Section 1-35(b)(16) of the Hydraulic Fracturing Regulatory Act states as follows:

> "(b) Every applicant for a permit under this Act must submit the following information to the Department on an application form provided by the Department: ***
>
> ***
>
> (16) the names and addresses of all owners of any real property within 1,500 feet of the proposed well site, as disclosed by the records in the office of the recorder of the county or counties."

77. Section 1-40(c)(1) of the Hydraulic Fracturing Regulatory Act states as follows:

> "(c) The applicant shall provide the following public notice:
>
> (1) Applicants shall mail specific public notice *** to all persons identified as owners of real property within 1,500 feet of the proposed well site, as disclosed by the records in the office of the recorder of the county or counties ***."

78. The quoted Hydraulic Fracturing Regulatory Act sections (Sections 1-35(b)(16) and 1-40(c)(1)) are the only Hydraulic Fracturing Regulatory Act provisions regarding notice to landowners.

79. When a landowner owns the full bundle of rights in the land, any drilling on, under, or into that land without the landowner's consent is a trespass and an unconstitutional taking, and similarly, any access to the surface for drilling purposes without the landowner's consent is a trespass.

80. When a landowner owns the majority of the mineral rights in the land, any drilling on, under, or into that land without the landowner's consent is a trespass and an unconstitutional taking, and similarly, any access to the surface for drilling purposes without the landowner's consent is a trespass.

81. Even when there has been a transfer of a majority of the mineral interests or a complete severance of the mineral estate, the surface owner typically has not transferred all rights in the

subsurface; instead, the surface owner has transferred only the rights to access the minerals; in other words, the surface owner retains all the other sticks in the bundle of land rights aside from those specifically transferred.

82. The Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act assume that once there has been a severance, the owner of the mineral rights owns all the subsurface rights. This is not always the case and likely is not the usual situation. Even when mineral rights have been severed, the right to access the minerals for extraction is not mutually exclusive of other rights in the subsurface owned by the surface owner or others, depending on the deed or the contract, for example, water rights, coal or other substance rights, or subsurface carbon sequestration.

83. Because the Illinois Oil and Gas Act and the Hydraulic Fracturing Act do not require notice to all landowners who would suffer the encroachment of hydraulic pressure or fracking fluids into their land, or to all landowners whose mineral rights would be taken by secondary recovery, or to all those who own land above the planned horizontal legs of a horizontal well, let alone provide compensation determined by a jury for the taking of private property, they authorize subsurface trespasses and a deprivation of property without due process of law.

84. Insofar as the Oil and Gas Act and the Hydraulic Fracturing Regulatory Act purport to authorize a subsurface trespass and an unconstitutional taking of property, those statutes and the corresponding regulations are invalid under the Illinois and United States Constitutions (U.S. Const., Am. V, XIV; Ill. Const. 1970, Art. I, Sec. 2, 15).

WHEREFORE, the Individual Plaintiffs request that this Honorable Court enter a Declaratory Judgment finding that the Oil and Gas Act and the Hydraulic Fracturing Regulatory Act are unconstitutional insofar as they purport to authorize a subsurface trespass and an unconstitutional taking of property. The Individual Plaintiffs request that the Court enjoin the use of HFRA or HFRA Rulemaking with respect to any parcel of land for which the Defendants and the hydraulic

fracturing operator have not obtained the consent of the subsurface owner to use hydraulic fracturing.

COUNT XIV

The Oil and Gas Act and the Hydraulic Fracturing Regulatory Act and their Corresponding Regulations Violate the Illinois Constitution

1-54. Plaintiffs repeat and reallege paragraphs 1 through 54 of the Common Allegations as though fully set forth herein.

55. Plaintiffs' causes of action in this Count are based on Section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701), providing for declaratory judgments, as set out in more detail in paragraph 42 of the Common Allegations above.

56. The Illinois Constitution at Article XI-Environment provides as follows:

> Section 1. Public Policy - Legislative Responsibility
> The public policy of the state and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.
>
> Section 2. Rights Of Individuals
> Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

Introduction

57. The process of extraction of oil and gas includes but is not limited to the process of creating wells; operating wells; storing fossil fuels; disposing of flowback and other liquids, solids, and chemicals used and produced in extraction; and, if allowed, the existence of marginal conventional wells, temporary abandoned wells, orphaned and abandoned wells.

58. This process of extraction releases greenhouse gases such as methane and carbon dioxide, carcinogens, endocrine disruptors, and other toxic chemicals and radioactive materials into the environment, including but not limited to into the water, air, and soil; it negatively impacts public

infrastructure; and it can trigger earthquakes through fracturing and waste disposal.[1]

59. The release of these greenhouse gases has been scientifically determined to significantly contribute to climate change that has had, and continues to have, a negative impact on the State of Illinois, including a negative impact on the health of its environment and citizens.

60. The burning of oil and gas releases greenhouse gases into the environment which has been scientifically determined to significantly contribute to climate change that has had, and continues to have, a negative impact on the State of Illinois, including a negative impact on the health of the environment and citizens.

Defendants' Admissions of Harm From Greenhouse Gas Emissions in Illinois

61. The State of Illinois, through its elected officials and agencies, has recognized the negative impacts of the release of greenhouse gas emissions on the State and its significant contribution to climate change, and it has adopted a policy to limit or eliminate greenhouse gas emissions, including but not limited to carbon dioxide and methane. This recognition is set forth in the Executive Order signed by Governor Pritzker in 2019 committing the State to the principles of the Paris Climate Agreement and by the creation of the State of Illinois Priority Climate Action Plan developed by the Illinois Environmental Protection Agency in 2024.[2] https://www.illinois.gov/government/executive-orders/executive-order.executive-order-number-6.2019.html; https://epa.illinois.gov/topics/climate/climate-alliance.html.

62. Defendant Illinois Department of Natural Resources similarly recognizes the harm caused by the process of extraction of oil and gas in Illinois, including the resulting greenhouse gas emissions such as methane and carbon dioxide and its contribution to climate change and the need to limit these emissions and harms to the citizens and environment as follows:

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[1] https://pmc.ncbi.nlm.nih.gov/articles/PMC7225182/

[2] See https://usclimatealliance.org/letter/unfccc-paris-agreement-jan-2025/

a. The public document titled "Marginal Conventional Well Prioritization Plan - Methane Emissions Reduction Program for Marginal Conventional Wells", dated October 24, 2024, contains public disclosures by Defendants that there are 26,000 wells in Illinois categorized by Defendants as "marginal conventional wells" (producing 15 barrels or less of oil per day) or "temporary abandoned wells" (which have not had production within the last 24 months, but have an active lease), both categories of which are a significant source of methane emissions, a greenhouse gas, that contributes to climate change. These wells should be plugged, according to Defendants. https://dnr.illinois.gov/content/dam/soi/en/web/dnr/oilandgas/merp/documents/well_prioritization_plan_rev.pdf.

b. The principal investigator for this document is listed as Daniel Brennan, the Director of Oil and Gas Resource Management of IDNR.

c. Defendants, on behalf of themselves and the State of Illinois, again acknowledge the harm to the environment caused by greenhouse gas emissions from these 26,000 marginal and temporary abandoned wells in their statement disclosing an award from the United States Environmental Protection Agency and Department of Energy in the amount of $17,367,009 to "mitigate" the harm caused by these wells through plugging. https://dnr.illinois.gov/oilandgas/merp-grant.html.

d Defendant IDNR, referring to 4,000 orphaned oil and gas wells, admits in an August 26, 2022, press release as follows: "Methane has been found to leak from unplugged wells, creating a serious safety hazard and a significant cause of climate change. Methane is more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere." https://dnr.illinois.gov/press-release.25369.html.

e. Further, in that press release the Governor of Illinois is quoted as stating, "Orphaned oil

and gas wells are environmental and safety hazards that threaten the wellbeing of our rural communities." *Id.*

f. In that press release, Defendants acknowledge that Illinois has been awarded $24,000,000 from the United States Department of the Interior over a five-year period, for use by Illinois to "begin plugging, capping and reclaiming up to 20% of the orphaned oil and gas wells in rural communities around the state." *Id.*

g. Defendants also acknowledge the importance of measuring the contamination of groundwater and surface water and the contamination from unplugged wells: "The federal funding will also be used to measure and track methane emissions and contamination in groundwater and surface water. Additionally, it will allow Illinois to increase its well plugging capacity with the purchase of safety equipment, computers, vehicles, gas detectors and a Forward Looking InfraRed camera, among other items." *Id.*

h. Defendants further admit that unplugged and abandoned wells "are an environmental hazard and jeopardize public health and safety by contaminating groundwater, emitting noxious gases and methane, littering the landscape with rusted and dangerous equipment, and harming wildlife." *Id.*

Illinois Statutes Regulating the Extraction of Oil and Gas

63. The Illinois General Assembly has passed two primary laws which regulate extraction of oil and gas in the State of Illinois--the Illinois Oil and Gas Act and the Hydraulic Fracturing Regulatory Act.

64. The Illinois Oil and Gas Act (225 ILCS 725/1 *et seq.*) (OGA) was originally passed by the Illinois General Assembly in 1951 and has been amended from time to time. It regulates the extraction of oil and gas in the State of Illinois.

65. In Section 3 of the OGA (225 ILCS 725/3), the Illinois General Assembly provided that IDNR is charged with the duty of enforcing the OGA, including the duty to issue rules, regulations, and orders to implement the OGA.

66. The Hydraulic Fracturing Regulatory Act (225 ILCS 732/1-1 et seq.) was passed by the Illinois General Assembly in 2013 and signed into law in 2014. HFRA, in addition to the OGA, regulates wells in the State of Illinois in which high-volume horizontal hydraulic fracturing operations will take place.

67. "High volume horizontal hydraulic fracturing operations" are defined in HFRA as "all stages of a stimulation treatment of a horizontal well by the pressurized application of more than 80,000 gallons per stage or more than 300,000 gallons total of hydraulic fracturing fluid and proppant to initiate or propagate fractures in a geologic formation to enhance extraction or production of oil or gas." 225 ILCS 732/1-5.

68. Like other methods used in the extraction of oil and gas, hydraulic fracturing releases greenhouse gases, toxic chemicals, and radioactive materials into the environment, including, but not limited to, into the water, air, and soil. It also negatively impacts public infrastructure, and it can trigger earthquakes through hydraulic fracturing or the disposal of waste produced in extraction.

69. As with the OGA, the Illinois General Assembly empowered IDNR with the primary authority to administer the provisions of the HFRA, including the authority to issue and enforce rules and orders in accordance with the Act. 225 ILCS 732/1-15; 225 ILCS 732/1- 130. This includes the requirement that the proposed hydraulic fracturing operation be conducted in a manner that will protect the public health and safety and prevent pollution and diminution of any water source. 225 ILCS 732/1-53(a)(4).

Illinois Oil and Gas Act Regulations

70. The rules, regulations, and orders promulgated by IDNR in accordance with HFRA fail

to meet the Illinois constitutional mandate to maintain a healthful environment and are inadequate to protect the citizens of Illinois and future generations from the harmful effects of horizontal hydraulic fracturing operations, the extraction of oil and gas, and the burning of fossil fuels.

71. The rules, regulations, and orders promulgated by IDNR pursuant to the OGA fail to meet the Illinois constitutional mandate to maintain a healthful environment and are inadequate to protect the citizens of Illinois and future generations from the harmful effects of the extraction of oil and gas by the following actions and/or inactions:

a. Failing to ensure the plugging of orphaned and abandoned wells and temporary abandoned wells, the termination and plugging of marginal wells, and the restoration of the surrounding areas (see 225 ILCS 732/1-95);

b. Failing to require an adequate fee or bond from the operator or owner to ensure the plugging of abandoned wells and the restoration of the surrounding area should the owner fail to do so (see 225 ILCS 732/1-95; 225 ILCS 725/19.7);

c. Failing to utilize the best and latest knowledge and technology to protect Illinois from induced seismic activity caused by extraction and the by-products of extraction where tens of thousands of wells have been allowed to be situated in or near two fault zones --the New Madrid Seismic Zone and the Wabash Valley Fault System (see 225 ILCS 732/1-96);

d. Failing to implement an earthquake monitoring and prevention system like TexNet initiated in the State of Texas in January 2017, and/or the seismic arrays around disposal wells as implemented in the State of Arkansas;

e. Allowing the continued operation of wells suspected of inducing seismicity until after multiple seismic events have occurred (see 62 Ill. Adm. Code 240.796);

f. Allowing wells no longer in production to remain in that status for up to two years before requiring a request for temporary abandon status or plugging (see 62 Ill. Adm. Code 240.630);

g. Allowing temporary abandon status for up to five years with a five-year renewal (see 62 Ill. Adm. Code 240.1130);

h. Allowing the continued operation of 26,000 marginal wells and failing to require the plugging of 3,000 wells which are in "temporary abandoned status," which continue to release toxins and greenhouse gases, including but not limited to methane. https://dnr.illinois.gov/content/dam/soi/en/web/dnr/oilandgas/merp/documents/well_prioritization_plan_rev.pdf;

i. Failing to require an adequate fee from permittees for allowing well status to be converted to that of temporary abandoned status, in order to ensure sufficient funds for plugging should the owner fail to do so (see 225 ILCS 725/8e);

j. Allowing 4,000 unplugged and abandoned wells in Illinois with plans to plug only 20% of these wells, while admitting that these unplugged wells are an environmental hazard and jeopardize public health and safety by contaminating groundwater, emitting noxious gases and methane, littering the landscape with rusted and dangerous equipment, and harming wildlife. https://dnr.illinois.gov/press-release.25369.html;

k. Failing to measure or limit greenhouse gas emissions during and after extraction, including but not limited to, from marginal wells, wells in temporary abandoned status, unplugged and abandoned wells, and operating wells;

l. Requiring the flaring of casing head gas, not collected for sale, in wells which have been idle for two years, including but not limited to methane and hydrogen sulfide (62 Ill. Adm. Code 240.630 (e),(f));

m. Providing no restriction on the additives used in the composition of drilling fluid and mud (62 Ill. Adm. Code 240.760);

n. Failing to adequately prevent or even measure the pollution of water, air, soil, and the environment with brine, toxic chemicals, radioactive waste, and greenhouse gas emissions, as a result of extraction. https://dnr.illinois.gov/press-release.25369.html;

o. Allowing liquid oilfield waste and the disposition of said waste to be recorded and maintained by permittees, not IDNR (62 Ill. Adm. Code 240.925);

p. Allowing toxic bottom sediments from wells to be used, without testing, on road oiling, among other means of disposal (62 Ill. Adm. Code 240.945);

q. Allowing the spacing of wells to be reduced from 40 acres to 10 acres, significantly increasing the density of well locations (62 Ill. Adm. Code 240.410, eff. October 25, 2021; see 225 ILCS 725/6(10), 21.1);

r. Allowing drilling units to operate and forcing nonconsenting mineral rights owners to participate in the operation without the right to due process or trial by jury (see 225 ILCS 725/21.1);

s. Failing to maintain data transparency for the citizens of Illinois by allowing data to be hidden for two years before disclosure (62 Ill. Adm. Code 650); and

t. Failing to require permittees to publicly disclose the contents of drilling fluid.

72. IDNR Marginal Conventional Well Prioritization Plan makes it clear that Defendants have failed to promulgate sufficient regulations under the OGA to maintain a healthful environment by allowing the permitted owners and operators to continue to operate these wells when they reach marginal status and by allowing wells to remain in temporary abandon status for years.

73. IDNR has further failed to require that owners and operators provide sufficient fees and bonds to ensure that each well can be plugged when it reaches the marginal or temporary abandoned

status.

74. The OGA established the Oil and Gas Advisory Board composed of seven members with whom IDNR is required to consult and "first present proposed rules for review and recommendation," only including six members "actively engaged in the oil and gas industry" and one from the farming industry, and no other stakeholders. 225 ILCS 25/1.2.

Hydraulic Fracturing Regulatory Act Regulations

75. The HFRA regulations promulgated by IDNR have not been updated since they were initially drafted in 2014.

76. The HFRA regulations promulgated by IDNR fail to properly address the items set forth in paragraph 18(a) through (t) and fail to meet the Illinois constitutional mandate to maintain a healthful environment for the benefit of this and future generations.

77. IDNR failed to adequately consider the potential for harm from induced seismic activity when it granted a high-volume horizontal fracking well permit under these regulations. (No. HVHHF-000001.)

78. Maryland, Vermont, and New York have banned hydraulic fracturing as a means of extraction of oil and gas.

79. Thus, permitting extraction of oil and gas and disposal of the produced waste in Illinois under this inadequate statutory and regulatory scheme violates the Illinois Constitution.

80. Permitting oil and gas extraction under this regulatory scheme is in violation of the July 23, 2025, opinion of the International Court of Justice which unanimously held that the climate change Treaties, including but not limited to the Paris Agreement, of which Illinois is a signatory, "… set forth binding obligations for States parties to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. https://www.icj-cij.org/case/187.

Task Force Report on Hydraulic Fracturing Regulation

81. The report of the Task Force on Hydraulic Fracturing Regulation mandated by HFRA is required to include the following information (225 ILCS 732/1-99 (f)): "The task force shall (1) prepare a report evaluating the scope of *hydraulic fracturing* activity in the State and (2) provide recommendations to the General Assembly as to whether further legislation is needed to regulate *hydraulic fracturing* in this State. In performing these tasks, the task force shall consider, at a minimum, the data collected by the Department under Section 1-98 of this Act and the Illinois Oil and Gas Act." (Emphasis added.)

82. The mandated report reflects that the Task Force considered only "high volume horizontal hydraulic fracturing activity" and failed to consider other "hydraulic fracturing" in Illinois as mandated by the Illinois General Assembly, failed to consider data collected under the OGA, and failed to make substantive recommendations, all in violation of Section 1-99 of HFRA (225 ILCS 732/1-99).

83. On information and belief, the triennial report mandated in Section 1-97 of HFRA (225 ILCS 732/1-97) has been prepared only once, not every three years as the Act mandates and, on information and belief, was not made available to the public.

WHEREFORE: We ask that this Honorable Court enter a declaratory judgment as follows:

A. Declaring that the statutory scheme established by the Illinois General Assembly to regulate of oil and gas extraction through the Oil and Gas Act and the Hydraulic Fracturing Regulatory Act and the corresponding regulations promulgated by the Illinois Department of Natural Resources are in violation of Article XI, Sections 1 and 2, of the Illinois Constitution, and

B. Declaring that the corresponding regulaDtions promulgated by the Illinois Department of Natural Resources pursuant to its duties under the Oil and Gas Act and the Hydraulic

Fracturing Regulatory Act are in violation of Article XI, Sections 1 and 2, of the Illinois Constitution, and,

C. Declaring that any additional permits issued by IDNR under this regulatory scheme would be invalid, and,

D. Grant such additional and further relief as this Honorable Court determines to be just and equitable.

MARIE SMITH, MARK DONHAM, VITO MASTRANGELO, SAM STEARNS, TABITHA TRIPP, NATHAN CZUBA, ANNETTE McMICHAEL, and SOUTHERN ILLINOISANS AGAINST FRACTURING OUR ENVIRONMENT (SAFE), an Illinois not-for-profit corporation,

By: /s/ Vito A. Mastrangelo
One of the Attorneys for the Plaintiffs

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LIST OF EXHIBITS TO THE PLAINTIFFS' AMENDED COMPLAINT

EXHIBIT A:

Agency Officials Present at Public Hearings on Proposed First Notice HFRA Rules

EXHIBIT B :

Excerpts from Public Hearings: Not question-and-answer sessions

EXHIBIT A TO PLAINTIFFS' COMPLAINT

Agency Officials Present at Public Hearings on Proposed First Notice HFRA Rules

November 26, 2013 -- Chicago, Transcript at 1-3

Robert Welch, Hearing Officer
Mitchell Cohen, Director of IDNR Office of Oil and Gas Resources Management
Robert Mool, Attorney, IDNR Office of Legal Counsel
Nick San Diego, Attorney, IDNR Office of Legal Counsel
Brendan Dailey, IDNR Legislative Counsel
Jim Stephens, Well Inspector, IDNR Office of Oil and Gas Resources Management

December 3, 2013 -- Rend Lake College, Ina, Transcript at 1-2

Robert Welch, Hearing Officer
Mitchell Cohen, Director of IDNR Office of Oil and Gas Resources Management
Robert Mool, Attorney, IDNR Office of Legal Counsel
Nick San Diego, Attorney, IDNR Office of Legal Counsel
Brendan Dailey, IDNR Legislative Counsel
Doug Shutt, Permit Manager, IDNR Office of Oil and Gas Resource Management

December 16, 2013 -- Effingham, Transcript at 1, 5-6

Robert Welch, Hearing Officer
Mitchell Cohen, Director of IDNR Office of Oil and Gas Resources Management
Robert Mool, Attorney, IDNR Office of Legal Counsel
Nick San Diego, Attorney, IDNR Office of Legal Counsel
Brendan Dailey, IDNR Legislative Counsel
Ron Sullivan, Well Inspector, IDNR Office of Oil and Gas Resource Management

December 17, 2013 -- Decatur, Transcript at 1-3

Robert Welch, Hearing Officer
Mitchell Cohen, Director of IDNR Office of Oil and Gas Resources Management
Robert Mool, Attorney, IDNR Office of Legal Counsel
Nick San Diego, Attorney, IDNR Office of Legal Counsel
Brendan Dailey, IDNR Legislative Counsel
Jim Stephens, Well Inspector, IDNR Office of Oil and Gas Resources Management

December 19, 2013 -- Carbondale, Transcript at 2-3

Robert Welch, Hearing Officer
Mitchell Cohen, Director of IDNR Office of Oil and Gas Resources Management
Robert Mool, Attorney, IDNR Office of Legal Counsel
Nick San Diego, Attorney, IDNR Office of Legal Counsel
Kathy Weiss, IDNR Office of Oil and Gas Resource Management
Alan Whitler, Well Inspector, IDNR Office of Oil and Gas Resource Management

EXHIBIT B TO PLAINTIFFS' COMPLAINT

CHICAGO HEARING, 11/26/13

Hearing Officer Robert Welch:

"The purpose of this public hearing is to allow members to express their views and comments ***."

"These gentlemen up here beside me are here to listen to your comments and make notes in regards to your comments."

"They are not going to respond and they are not going -- they are not here to talk to you. They are here to listen to you. This is not a question and answer."

" *** Now remember, the sole purpose of this hearing is to hear comments and the suggestions from the public in regards to the proposed administrative regulations. It is not a question and answer session."

— Chicago Hearing Transcript, page 4, lines 4-6; page 5, lines 8-10 and lines 21-24; page 8, lines 16-20.
— http://www.dnr.illinois.gov/OilandGas/Documents/HearingTranscriptChicago.pdf

INA (REND LAKE COLLEGE) HEARING, 12/3/13

Hearing Officer Robert Welch:

"The purpose of this public hearing *** is to allow members of the public to express their views and comments ***."

"Now, these gentlemen here are here to listen to your comments and make note of them. They are not here -- they are here because they are interested in hearing from you and due to the time limitations will not be responding to any of your comments."

"Now, please remember that the sole purpose of the hearing is to hear comments and suggestions from the public in regard to the proposed administrative regulations. It's not a question and answer session."

--- Rend Lake Hearing Transcript, page 3, lines 7-10; page 4, lines 10-15; page 7, lines 11-15.
--- http://www.dnr.illinois.gov/OilandGas/Documents/HearingTranscriptRendLake.pdf

EFFINGHAM HEARING, 12/16/13

Hearing Officer Robert Welch:

"Now, the purpose of this public hearing is to allow members of the public to express their views and comments ***."

"Now, these gentlemen that are up here with me are here to listen to your comments and to make note of them."

"Please remember now that the sole purpose of the hearing is to hear comments and suggestions from the public in regard to the proposed administrative regulations. This isn't a question and answer session. These gentlemen are not up here to answer questions."

--- Effingham Hearing Transcript, page 7, lines 4-6; page 8, lines 8-10;
page 11, lines 12-17.
--- http://www.dnr.illinois.gov/OilandGas/Documents/HearingTranscriptEffingham.pdf

DECATUR HEARING, 12/17/13

Hearing Officer Robert Welch:

"Now, the purpose of the hearing is to allow members of the public to express their views and comments ***."

"Due to the time limitation, I will not be responding to any of your comments, but will take them into account when reviewing all the public comments.
So the purpose is not to have DNR people talking to you, but have the public talking to DNR."

"Now, please remember that the sole purpose of this hearing is to hear comments and suggestions from the public in regard to the proposed administrative regulations. It's not a question and answer session."
--- Decatur Hearing Transcript, page 4, lines 4-6; page 6, lines 1-7;
page 9, lines 11-15.
--- http://www.dnr.illinois.gov/OilandGas/Documents/HearingTranscriptDecatur.pdf

CARBONDALE HEARING, 12/19/13

Hearing Officer Robert Welch:

"The purpose of this public hearing *** is to allow members of the public to express their views and comments ***."

"Now, these gentlemen here are here to listen to your comments and make note of them. They are not here -- they are here because they are interested in hearing from you and due to the time limitations will not be responding to any of your comments."

"Now, please remember that the sole purpose of the hearing is to hear comments and suggestions from the public in regard to the proposed administrative regulations. It's not a question and answer session."

--- Carbondale Hearing Transcript, page 3, lines 18-21; page 4, line 21, to page 5, line 1; page 7, lines 16-20.
--- http://www.dnr.illinois.gov/OilandGas/Documents/HearingTranscriptCarbondale.pdf

CERTIFICATE OF SERVICE

Vito A. Mastrangelo, under penalties as provided by law pursuant to §1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), certifies that this document was submitted for e-filing on October 22, 2026, and on that day a copy of the foregoing document was served upon:

Joshua D. Ratz
Assistant Attorney General
Joshua.Ratz@ilag.gov

by electronic mail.

/s/ Vito A. Mastrangelo
Vito A. Mastrangelo
One of the Attorneys for the Plaintiffs