

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
Standards for the Disposal) No. R20-19
of Coal Combustion) (Rulemaking - Land)
Residuals in Surface)
Impoundments: Proposed new)
35 Ill. Adm. Code 845)

REPORT OF THE PROCEEDINGS held in the above
entitled cause before Hearing Officer Vanessa Horton,
called by the Illinois Pollution Control Board, taken
by Pamela L. Cosentino, Certified Shorthand Reporter
for the State of Illinois, at James R. Thompson
Center, 100 West Randolph Street, Room 9-040, Chicago,
Illinois, on the 30th day of September, 2020,
commencing at the hour of 9:00 a.m.

1 A P P E A R A N C E S:

2 MR. VANESSA HORTON, Hearing Officer
3 MS. BARBARA FLYNN CURRIE, Chairwoman (via video)
4 MS. MARIE TIPSORD, General Counsel
5 MEMBER ANASTASIA PALIVOS (via video)
6 MEMBER CYNTHIA SANTOS (via video)
7 MEMBER JENNIFER VAN WIE (via video)
8 MR. ANAND RAO, Technical Unit (via video)
9 MS. ESSENCE BROWN, Technical Unit (via video)

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1 A P P E A R A N C E S: (CONT'D)

2

3 ILLINOIS EPA WITNESSES: (via video)

- 4 MS. JO LAKOTA
- MR. MARK ROKOFF
- 5 MS. SHARENE SHEALEY
- MR. RICHARD GNAT
- 6 MR. DAVID NIELSON
- MR. GARY KING
- 7 MR. MICHAEL WAGSTAFF

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1 HEARING OFFICER HORTON: Good morning,
2 everyone. So I'm Vanessa Horton. I'm the Hearing
3 Officer for this Rulemaking R20-19.

4 We are all set to go here in the Thompson
5 Center.

6 And I see that our first witness, Jo Lakota,
7 is on. Thank you. I believe everybody that would be
8 asking questions is also on as well. So I think we
9 will begin.

10 Ms. Lakota, could you hear us?

11 THE WITNESS: Okay.

12 HEARING OFFICER HORTON: Ms. Lakota, we can
13 hear you. Can you hear us?

14 THE WITNESS: Yes.

15 HEARING OFFICER HORTON: Oh, great.

16 So what we're going to do now is have the
17 court reporter swear you in. So I will leave that to
18 our court reporter.

19 (Witness duly sworn.)

20 HEARING OFFICER HORTON: Thank you very much.

21 And, Ms. Bugel, would you like to have
22 Ms. Lakota's pre-filed testimony entered into the
23 record?

24 MS. BUGEL: We can direct questions at

1 Ms. Courtney, who's representing Jo Lakota today.

2 HEARING OFFICER HORTON: No problem.

3 Ms. Courtney, would you like to have
4 Ms. Lakota's pre-filed testimony entered into the
5 record as an exhibit?

6 MS. COURTNEY: Yes, we would.

7 HEARING OFFICER HORTON: Okay. That would be
8 Exhibit 40.

9 (Whereupon, Exhibit No. 40 was
10 marked for identification.)

11 HEARING OFFICER HORTON: And I will ask the
12 participants if they have any follow-up questions for
13 Ms. Lakota.

14 And I'll begin with Illinois EPA, Ms. Diers,
15 any questions for this witness?

16 MS. DIERS: We have no questions.

17 HEARING OFFICER HORTON: Okay. Thank you.

18 Midwest Generation, Ms. Gale, any questions
19 for this witness?

20 MS. GALE: We have no questions. Thank you.

21 HEARING OFFICER HORTON: City of Springfield,
22 Ms. Williams, any questions for this witness?

23 MS. WILLIAMS: No questions.

24 HEARING OFFICER HORTON: Thank you.

1 Dynegy, Mr. More, any questions?

2 MR. MORE: We have no questions.

3 HEARING OFFICER HORTON: Thank you.

4 Illinois Environmental Regulatory Group,
5 Ms. Brown, any questions?

6 MS. BROWN: We have no questions for this
7 witness.

8 HEARING OFFICER HORTON: Ameren, Ms. Manning,
9 any questions for this witness?

10 MS. MANNING: We have no questions for this
11 witness.

12 HEARING OFFICER HORTON: Office for the
13 Illinois Attorney General, Mr. Sylvester and
14 Mr. Armstrong, any questions?

15 Mr. Sylvester, any questions for this
16 witness?

17 MR. SYLVESTER: No.

18 HEARING OFFICER HORTON: We will pass over.

19 And then the Pollution Control Board
20 Technical Unit, any questions for this witness?

21 MR. RAO: No questions for this witness.
22 Thank you.

23 HEARING OFFICER HORTON: Thank you.

24 That was Mr. Rao.

1 Okay. And with that, we'll conclude your
2 testimony, Ms. Lakota. Thank you very much for
3 appearing, and you are dismissed.

4 THE WITNESS: Thank you.

5 (Witness excused.)

6 HEARING OFFICER HORTON: We'll move on with
7 the next witness, which is Ms. Mark Rokoff.

8 Mr. Rokoff, are you on the line?

9 THE WITNESS: I am.

10 HEARING OFFICER HORTON: Okay. Good morning.

11 THE WITNESS: Good morning.

12 HEARING OFFICER HORTON: Ms. Court Reporter,
13 could you please swear in this witness.

14 (Witness duly sworn.)

15 HEARING OFFICER HORTON: Thank you.

16 Mr. More, would you like to enter
17 Mr. Rokoff's pre-filed testimony as Exhibit 41?

18 MR. MORE: Yes, I would.

19 HEARING OFFICER HORTON: Would you like to
20 enter Mr. Rokoff's pre-filed answers as Exhibit 42?

21 MR. MORE: Yes, please.

22 And I'd like to move to admit into the record
23 as Exhibit 43 Mr. Rokoff's PowerPoint presentation,
24 which is attached as Item -- or Attachment F to

1 Dynegy's pre-filed exhibits.

2 HEARING OFFICER HORTON: Okay. That will be
3 Exhibit 43.

4 (Whereupon, Exhibit
5 Nos. 41, 42 & 43 was marked
6 for identification.)

7 HEARING OFFICER COHEN: Okay. Mr. Rokoff,
8 you have an initial statement or a summary of your
9 testimony that you'd like to present?

10 THE WITNESS: I would.

11 HEARING OFFICER HORTON: You're limited to
12 five minutes. You may proceed.

13 THE WITNESS: Thank you very much.

14 I would like to open by referring to Slide 4.
15 Based on the requirements provided in the Federal CCR
16 rules, it is known what information will be
17 available -- be made available, where it will be
18 recorded, and when it is scheduled to be posted to
19 publicly available websites. We've collected all this
20 data and maintain it through regular checks to have an
21 up-to-date dataset or hatch mark.

22 My testimony focuses on those factors and
23 considerations affecting and influencing the method of
24 closure.

1 The next two slides, 5 and 6, provide a
2 high-level summary of my opinions found in my
3 testimony. That said, I intend to take this time to
4 focus on specific questions 1, 2, 4, and 6, as time is
5 limited.

6 Closure in place is the dominant method of
7 closure within the industry and it is not an outlier.
8 This is clearly supported by publicly available
9 information.

10 Turning our attention today to the figure at
11 the bottom of Slide 8, we see that 51 percent of the
12 surface impoundments by count or number are being
13 closed in place. But understanding this does not
14 capture the impact of size.

15 We further see that 76 percent of surface
16 impoundments are closing in place based on area, which
17 starts to illustrate that larger surface impoundments
18 typically close in place.

19 And the percent of closure in place continues
20 to rise when looking at the volume of CCR within the
21 pond all the way up to 83 percent. Given the three
22 options, volume of CCR is the best representation to
23 consider the true influence of size on selection of
24 closure method. And this leads me to my next opinion.

1 Looking at the bar chart on Slide 10, it
2 breaks the impoundments into three groups based on
3 average volume within a surface impoundment being
4 2 million cubic yards.

5 By this, I mean we take small ponds, volumes
6 of CCR less than 1 million cubic yards, mid-size ponds
7 range between 1 and 3, which centers on that average
8 volume, and large ponds, volumes greater than 3
9 million cubic yards.

10 Inspections of these bar charts -- or these
11 bars, illustrates that size is the primary driver in
12 closure decision-making. While the majority of small
13 ponds are closure by removal noted in yellow, this
14 falls away from mid-size ponds where only slightly
15 more than 25 percent are closure by removal.

16 And this trend continues as even fewer ponds
17 are closure by removal in the large group,
18 specifically only 14.

19 A few additional notes from this chart. Most
20 mid-size and large ponds are closure in place unless
21 there's an external factor driving the closure
22 decision. By "external factor," I mean a regulatory
23 directive, lawsuit settlement, beneficial-use
24 opportunity, or some combination of the aforementioned

1 as well as the ability for cost recovery.

2 Now, building on my previous opinions,
3 Opinion 4 further demonstrates the influence of
4 external factors in the closure selection process,
5 more specifically, rate recovery and beneficial-use
6 opportunities.

7 The pie charts on Slide 12 illustrates the
8 significance of rate recovery by State, on the left,
9 and by site, on the right, as compared to regulated,
10 the upper pies, and deregulated, the lower pies, based
11 on states or sites.

12 A couple of key observations: Closure by
13 removal is notably higher in states or sites with
14 regulated markets. Additionally, closure by removal
15 is rarely selected if there is no ability for cost
16 recovery.

17 While not illustrated by the figure itself,
18 it should be noted that beneficial use impacts the
19 closure approach, however only where key factors align
20 that justify it as viable.

21 Finally, within Opinion 6, the basis for this
22 opinion centers on the identification that the
23 schedule is very compressed within Part 845 and
24 justifies providing additional time.

1 would, to your responses to the Environmental Group's
2 questions 12-B, which is on Pages 10 to 11 of your
3 pre-filed answer.

4 A. Okay. Did you say D, as in David, or B, as
5 in boy.

6 Q. D, as in David.

7 A. Thank you. I'm there.

8 Q. Great. You state there, Mr. Rokoff, that:
9 "Identification of viable alternatives,
10 conceptual design of these alternatives, and modeling
11 of these alternatives is an iterative data-intensive
12 and time-consuming process."

13 Do you see that answer?

14 A. Yes. That's the first part of my response.
15 Yes.

16 Q. Thank you for clarifying that.

17 So, sir, I wanted to ask, with the exception
18 of legacy impoundments, that is, impoundments that are
19 no longer actively being operated at power plant sites
20 that are no longer producing electricity, CCR surface
21 impoundments subject to the federal CCR rule were
22 required to develop and post a closure plan in 2015.
23 Correct?

24 A. That is correct.

1 **Q. And based on your review, sir, is it accurate**
2 **that most of those impoundments did develop a closure**
3 **plan?**

4 A. Yes, they did.

5 **Q. Is that true for Illinois?**

6 A. Yes, it is.

7 **Q. Would you agree that identification of viable**
8 **alternatives is a task that most CCR surface**
9 **impoundment owners, including those in Illinois, began**
10 **years ago in order to develop their closure plan under**
11 **the federal CCR rule?**

12 A. I would state that -- that viable
13 alternatives is a process that continues to evolve as
14 the -- as the owner or operator continues to assess
15 what is the most appropriate solution. So it is
16 something that did begin probably for many sites,
17 although I couldn't speak to all of them, at sometime
18 before today.

19 **Q. And they would have had to do at least some**
20 **level of evaluation to develop and post a closure plan**
21 **under the federal CCR rule. Would you agree?**

22 A. I can't speak to the specific level of detail
23 that everyone was required to do. I can speak to the
24 fact that the CCR rule does require certain elements

1 under Section 102 -- I'm sorry -- Section 257.102 to
2 be posted within that document, and there's some
3 analysis, some assessment, that would be required.

4 Q. Now, sir, I'd like to move to your response
5 to the Pollution Control Board's Question 26, which is
6 on Page 2 of your pre-filed answers.

7 A. Okay.

8 Q. So part of your answer to 26-A is that:

9 "The annual volume of beneficial use is not
10 an item that is required to be posted under the
11 provisions of the federal CCR rule, and I do not have
12 access to this data."

13 Do you see that portion of your answer?

14 A. I do.

15 Q. Are you aware that the Illinois Coal Ash
16 Pollution Prevention Act, the Public Act 101.171,
17 specifies, at 415 ILCS 22.59(h), that:

18 "Any owner of a CCR surface impoundment that
19 generates CCR and sells or provides coal combustion
20 by-products pursuant to Section 3.135 shall, every
21 12 months, post on its publicly available website a
22 report specifying the volume or weight of CCR in cubic
23 yards or tons that it sold or provided during the past
24 12 months"?

1 A. I'm not aware of that document. What I am
2 aware, and in reference to full answer to the question
3 and the response that you asked, I stated that in my
4 testimony that I did provide that the data used to
5 support the opinions is based on the publicly
6 available data that's supported under the federal CCR
7 rule.

8 **Q. Right. So what I'm asking is whether you**
9 **know if any publicly available information concerning**
10 **the sale or provision of coal combustion by-products**
11 **in Illinois has been reported or if you've looked at**
12 **those reports?**

13 A. That's outside the data within my testimony.

14 **Q. So you have not looked at or for any such**
15 **reports?**

16 A. Again, that data is outside my testimony. My
17 answer remains.

18 **Q. As part of your testimony, did you look into**
19 **whether any such reports exist?**

20 A. I did not look into specific state reports.
21 I used the data that was provided under the federal
22 CCR rules.

23 **Q. Okay. Thank you.**

24 **Moving now to the Environmental Group**

1 Question 6-A, which is on Pages 6 to 7 of your
2 pre-filed answers, as well 6-B on Page 7.

3 A. Okay.

4 Q. You noted that there were 13 units above
5 3 million cubic yards, which I believe you have
6 abbreviated as "NCY" -- excuse me -- 13 units with
7 over 3 million cubic yards of CCR closed by removal,
8 in part, because they were influenced by a State
9 regulation or regulatory directive; is that correct?

10 A. Correct.

11 Q. Sir, I'm curious to see if some of your
12 regulatory directives are similar to those that we've
13 seen. I'd like, if I could, to ask for us to take a
14 look at Exhibit 5 that the Environmental Groups filed
15 yesterday morning with their -- with the pre-filed
16 exhibits.

17 This is Virginia Senate Bill 1355.

18 And, Hearing Officer, if possible, I'd like
19 to ask to move that into evidence.

20 HEARING OFFICER HORTON: Okay. One second.
21 Let me find it.

22 MS. CASSEL: Sorry.

23 HEARING OFFICER HORTON: Okay. I have got
24 it. It says this was Exhibit 5, filed on September 28

1 and it will become Exhibit 44.

2 MS. CASSEL: Wonderful.

3 (Whereupon, Exhibit No. 44 was
4 marked for identification.)

5 BY MS. CASSEL:

6 **Q. Sir, are you familiar with this bill --**
7 **excuse me -- this statute?**

8 A. I am familiar with the contents, but the
9 specific details is not something I have captured in
10 my testimony. Yes.

11 **Q. So this was one of the regulatory -- excuse**
12 **me -- units that you had looked at or regulatory**
13 **efforts affecting units that you discussed?**

14 A. Correct.

15 **Q. Great.**

16 MS. CASSEL: Similarly, with Exhibit, I
17 believe it's 6 that was filed on September 28th,
18 likewise, I'd like to ask to move that into evidence,
19 Hearing Officer, once you are able to find it.

20 HEARING OFFICER HORTON: I've got it, and
21 it's going to be Exhibit 45.

22 MS. CASSEL: Great.

23 (Whereupon, Exhibit No. 45 was
24 marked for identification.)

1 BY MS. CASSEL:

2 Q. Are you familiar, sir, with this regulatory
3 action, this statute?

4 A. Give me one moment to take a look at it to
5 make sure I'm finding it.

6 You said this was Exhibit 6?

7 Q. Of the Environmental Group's exhibits filed
8 on September 28th, correct.

9 A. Yes, I am.

10 Q. Great.

11 Was this one that you took into consideration
12 in your testimony, sir?

13 A. It was.

14 Q. Okay. Thank you.

15 Similarly, I'd like you to, if you would,
16 direct your attention to pre-filed Exhibit 3 filed on
17 September 28th by the Environmental Group. I'll wait
18 for you to get there.

19 A. Okay. I'm there.

20 Q. Great.

21 MS. CASSEL: Hearing Officer, could we also
22 enter that into evidence?

23 HEARING OFFICER HORTON: Okay. That will be
24 Exhibit 46.

1 (Whereupon, Exhibit No. 46 was
2 marked for identification.)

3 BY MS. CASSEL:

4 Q. Okay. Sir, are you familiar with this
5 particular regulatory proceeding in Indiana, are you
6 familiar with that?

7 A. So this particular document is not part of my
8 testimony.

9 Q. Are you familiar with the regulatory
10 settlement related to the A.B. Brown -- section
11 A.B. Brown ash pond in Indiana?

12 A. Yes, sir. Allow me one moment to point you
13 to something.

14 So within my testimony under Section 4.5,
15 which is Opinion 5, I make reference to the A.B. Brown
16 facility. And rather than referencing the document
17 that you have in your exhibit, I reference a publicly
18 available document as well, it was a news release,
19 entitled, "Vectren finalizes plans for beneficial
20 reuse for coal ash pond excavation and recycling."

21 The basis of my testimony uses that document
22 as noted within the testimony.

23 Q. Mr. Rokoff, I have to apologize, my call
24 dropped while you were providing your answer. You

1 **said that you have made reference to A.B. Brown in**
2 **your testimony. If you could possibly restate quickly**
3 **the remainder of your answer, that would be very**
4 **appreciative. I don't know why my call dropped.**

5 A. No problem.

6 So within my testimony under Section --
7 actually, I believe it is 4.4.2.

8 **Q. Okay.**

9 A. -- there's a section in there that indicates
10 the discussion around A.B. Brown facility. And the
11 footnote on that page references a document or
12 website, rather, an article, entitled, "Vectren
13 finalizes plan for beneficial reuse for coal ash pond
14 excavation and recycling."

15 That is the source of the information
16 presented within my testimony as noted.

17 **Q. I'll move to the next exhibit in that case.**

18 **I'm sorry. The next one I want to ask you to refer to**
19 **is Environmental Group's Exhibit 1 filed on the 28th**
20 **of September.**

21 A. I'm looking at the same thing you are. This
22 is consent order.

23 **Q. That's correct. That's correct.**

24 A. Yes.

1 MS. CASSEL: Hearing Officer, if you found
2 it, I'd like to also move to enter this exhibit into
3 evidence.

4 HEARING OFFICER HORTON: Okay. That will be
5 Exhibit 47.

6 (Whereupon, Exhibit No. 47 was
7 marked for identification.)

8 BY MS. CASSEL:

9 Q. Mr. Rokoff, is this consent order also one of
10 the regulatory actions that you were considering in
11 your discussion in your testimony?

12 A. Yes.

13 Q. Great. And this pertains to a number of
14 different coal ash impoundments in North Carolina; is
15 that correct?

16 A. Correct.

17 Q. And that several of those are over 5 million
18 cubic yards in size, to your recollection?

19 A. Are you referring to 3 million cubic yards?

20 Q. We can start with 3 million cubic yards. Or
21 I can try to clarify --

22 A. The reason I asked, for clarification, is
23 that in my report, in my testimony, I bound it by
24 1 and 3. Not 5. And so I'm asking did you mean 3.

1 Q. Sorry to interrupt. Let's go with 3 then.

2 Does this consent decree relate to a number
3 of North Carolina impoundments that are over cases
4 well over 3 --

5 (Reporter clarification.)

6 HEARING OFFICER HORTON: I'm sorry. This is
7 Vanessa Horton. Could you repeat that, Ms. Cassel,
8 for our court reporter.

9 BY MS. CASSEL:

10 Q. I believe I asked does this consent decree
11 refer to a number of impoundments that were over or,
12 in some cases, well over 3 million cubic yards of coal
13 ash?

14 A. And the answer is yes.

15 Q. Finally with the exhibits, I wanted to direct
16 your attention to Exhibit 2 of the Environmental
17 Group's exhibit filed on the 28th.

18 MS. CASSEL: Hearing Officer, when you locate
19 that, I'd like to move that into evidence as well.

20 THE WITNESS: I'm there.

21 HEARING OFFICER HORTON: Okay. That will be
22 Exhibit 48.

23 (Whereupon, Exhibit No. 48 was
24 marked for identification.)

1 BY MS. CASSEL:

2 Q. Sir, this is a press release; is that
3 correct?

4 A. It appears that way, yes.

5 Q. Is this a press release that you reviewed
6 while you were investigating sites that had been
7 required to close by removal by regulatory action?

8 A. This particular press release is not
9 something that I've seen or is not part of the
10 testimony that I provided. The contents appear to be
11 consistent with the understanding that I have.

12 Q. Excellent. Thank you. I'll move on from
13 there.

14 Sir, moving to your answer to Environmental
15 Group's Question 9-A, which is on, I believe, Page 9
16 of your pre-filed answers.

17 A. Yes.

18 Q. You noted that:

19 "Options or methods would not necessarily be
20 excluded through application of cost and ability to
21 satisfy regulatory timelines."

22 Is that correct?

23 A. Yes, that is my -- that was my response.

24 Q. Mr. Rokoff, are you aware of instances in

1 **which an owner or operator determines how to move**
2 **forward with a particular closure method based on**
3 **cost?**

4 A. So my experience says that there's lots of
5 reasons and factors why a closure method is selected.
6 Cost is one of those methods and it usually is not one
7 item -- it is unlikely that it is one criteria that
8 provides a final decision as to why one method is
9 selected or is not, but, rather, a collection of
10 criteria.

11 **Q. Are you aware of instances in which an owner**
12 **or operator's decision not to move forward with a**
13 **closure method was based primarily on cost?**

14 A. As I look back at my experience, cost is,
15 again, one of many factors. So it's unfair for me to
16 say that that's the primary factor but, rather, one of
17 many primary factors that aid the final selection.

18 I will note that my testimony does indicate
19 that cost is an important factor, as we've seen by the
20 charts. As a matter of fact, in states that don't
21 have cost recovery, 1 percent of the volume of cost of
22 material is currently identified as closure by
23 removal.

24 **Q. And when you say "currently identified,"**

1 that's based on what was provided in the closure plan
2 posted on the federal website; is that correct?

3 A. Correct. So that's based on the dataset
4 that's provided to me based on the data that was
5 publicly available as well as the other factors that
6 I've noted within my testimony.

7 Q. Okay. Now, sir, one final question. Your
8 response to Environmental Group which relates to your
9 response to Environmental Group's Question 7-C, which
10 is on Page 8.

11 A. Yes.

12 Q. You state -- okay. I'm sorry. I may have
13 the wrong question. Let me make sure. Yes.

14 So in response to the question:

15 "Please identify any circumstances under
16 which closure in place would not be an appropriate
17 solution," you responded that:

18 "A solution that would not be appropriate
19 would be one that is not compliant with the stated
20 performance standards, (based on stability, water
21 management considerations, et cetera,) as provided
22 within the federal CCR rules."

23 Is that correct?

24 A. That is correct.

1 **Q. Can you elaborate on the stability concerns**
2 **that you referenced in this answer, 7-C, answer to**
3 **Question 7-C?**

4 A. I can. So the federal CCR rules provide the
5 requirement for stability to be demonstrated, both
6 seismic and other slope stabilizations -- I'm sorry --
7 slope stability criteria. It's found within
8 Section 257.73. It has its own stability report. So
9 it's compliant that those facilities and that the site
10 is, in fact, stable. That's what I'm referring to.

11 Stability can also be referenced due to the
12 settlement potential of the cap, which is also part of
13 the design criteria.

14 **Q. Thank you very much.**

15 MS. CASSEL: That concludes my questions for
16 now, but I'll reserve the right for follow-up. Thank
17 you.

18 HEARING OFFICER HORTON: Thank you.

19 Moving onto to Midwest Generation, Ms. Gale,
20 any questions for this witness?

21 MS. GALE: No questions. Thank you.

22 HEARING OFFICER HORTON: City of Springfield,
23 Ms. Williams, any questions?

24 MS. WILLIAMS: How is my audio today?

1 HEARING OFFICER HORTON: Sounds good.

2 EXAMINATION

3 BY MS. WILLIAMS:

4 Q. So I would like to ask one follow-up. This
5 is Deborah Williams on behalf of the City of
6 Springfield. Good morning.

7 A. Good morning.

8 Q. Ms. Cassel entered several exhibits, public
9 utility rate cases, lawsuit since statutes, and just
10 to make sure I understand your testimony, that when
11 you are describing external factors that influence
12 removal choice decisions, those are the type of
13 external factors you're referring to?

14 A. Well, not exclusive, yes. Those are examples
15 of external factors.

16 Q. And you want to remind us of some others?

17 A. So the other large one that doesn't fall
18 within that would be cost recovery and rate recovery
19 and the option for beneficial use. There are some
20 utilities that have determined to select proactively a
21 beneficial use alternative that may not result from a
22 regulatory and/or legislative decision.

23 Q. Do you have an opinion on whether utilities,
24 when beneficial use options present themselves, prefer

1 to take them or not?

2 A. I'm sorry, Ms. Williams. Can you repeat the
3 last part of your question?

4 Q. Let me rephrase a little bit. I just want to
5 see if you have an opinion on whether utilities seek
6 out beneficial use opportunities or take advantage of
7 them when they're technologically feasible and
8 available?

9 A. It's my experience that there are a lot of
10 factors that go into whether or not beneficial use is
11 a viable option, and I'm just going to cite four of
12 them, as I've already stated in my testimony, but just
13 to make sure.

14 The market demand; the proximity to source;
15 the ability to remove or de-water the material and
16 then convey it to a site; and the quality of both the
17 pre- and final contents of the CCR within the pond.

18 It's my experience that beneficial use is
19 something that utilities or owners or operators do
20 consider to see whether or not it's feasible or it
21 makes sense.

22 But a lot of factors, as I've already
23 mentioned, have to align and it is often the case it
24 is unlikely that they always line and, quite honestly,

1 seldom do they line.

2 **Q. So when we talked about the external factor**
3 **of the availability of rate recovery, I know it may be**
4 **obvious to most people reviewing your testimony, but I**
5 **guess I would like you to state clearly for the**
6 **record, this is not a coincidence, is it?**

7 **Explain why cost recovery is a factor that's**
8 **relevant here.**

9 A. No problem. The ability to recover their
10 cost is an important factor. It is not a coincidence.
11 The ability to recover cost, generally speaking,
12 closure by removal -- and, again, cost is an important
13 factor that needs to be part of the decision process.

14 Closure by removal can be more costly and
15 oftentimes may be more costly than closure in place,
16 and that when looking at the ability to do a cost
17 recovery, whatever the option is, that cost is a
18 deciding factor or a notable factor in the overall
19 selection process.

20 I'm not sure if I was able to answer your
21 question completely. I hope so.

22 **Q. And let me ask this last follow-up to maybe**
23 **bring it together. In addition to it not being a**
24 **coincidence that states with cost recovery are places**

1 where large facilities use closure by removal, you
2 also did not find a connection, a correlation, between
3 environmental triggers, such as location restrictions
4 and groundwater protection standard violations and the
5 choice of closure by removal; is that correct?

6 A. To be clear, so environmental standards,
7 groundwater protection standards, we didn't look at
8 that and study that specifically in the testimony.

9 What I would note is that if you look at
10 Opinion Number 3, that I tried to look at, for
11 example, where there was some sort of indication to
12 see whether an environmental factor led to a certain
13 type of closure. So, for example, failure to comply
14 with groundwater protection standards, the US EPA and
15 the federal CCR rule did not require a certain type of
16 closure method. I went back to see whether or not a
17 certain type of closure method was preferred or
18 selected, and it did not seem to present one.

19 What presented itself was that closure in
20 place was still a widely accepted closure option for
21 those situations.

22 Q. Well, thank you. This was helpful to me. I
23 appreciate it.

24 A. No problem.

1 HEARING OFFICER HORTON: Moving on to the
2 Illinois Environmental Regulatory Group, Ms. Brown,
3 any questions for this witness?

4 MS. MELISSA BROWN: No questions for this
5 witness. Thank you.

6 HEARING OFFICER HORTON: Moving to Ameren,
7 Ms. Manning, any questions for this witness?

8 MS. MANNING: No questions for this witness.
9 Thank you.

10 HEARING OFFICER HORTON: Moving to the
11 Attorney General's office, Mr. Sylvester, any
12 questions?

13 MR. SYLVESTER: No questions at this time.
14 Thank you.

15 HEARING OFFICER HORTON: Moving to the
16 Pollution Control Board Technical Unit, Mr. Rao, any
17 questions?

18 MR. RAO: No questions. Thank you.

19 HEARING OFFICER HORTON: Okay. Any follow-up
20 questions for Mr. Rokoff?

21 MS. CASSEL: Hi, this is Ms. Cassel with
22 EarthJustice. I have one follow-up questions to
23 Ms. Williams' questions.

24 HEARING OFFICER HORTON: Please proceed.

FURTHER EXAMINATION

1
2 BY MS. CASSEL:

3 Q. Mr. Rokoff, you noted that closure in place
4 was chosen frequently in your review of other plans
5 and other data available; is that correct?

6 A. I did.

7 Q. And would you say that that was less the case
8 in states where there's a regulatory structure in
9 place, where regulators are evaluating the closure
10 method of the particular coal ash pond?

11 A. Can you rephrase your question or restate it?
12 I'm sorry.

13 Q. Sure.

14 In states where there was regulatory body
15 overseeing or making decisions about the closure
16 methods of coal ash ponds, would you say closure in
17 place was less common or less frequent than in states
18 where there was no regulatory body making such
19 decisions?

20 A. I do look at that as part of my testimony.
21 Again, we use the basis of the federal CCR rules. Not
22 individual state regulatory. As I am sure you're
23 aware, there are limited states that currently have
24 state programs that supersede the federal or are in

1 compliance with the act, as mentioned earlier, that
2 have such state regulatory programs in place.

3 **Q. Okay. Thank you, sir.**

4 MS. DIERS: This is Ms. Diers. I have one
5 question that I probably should have asked earlier.
6 Is it okay if I proceed?

7 HEARING OFFICER HORTON: Yes, please proceed.

8 MS. DIERS: Thank you.

9 EXAMINATION

10 BY MS. DIERS:

11 **Q. Good morning. My name is Stephanie Diers.**
12 **I'm asking a question on behalf of Illinois EPA.**

13 **Does your study of pond size versus closure**
14 **type have a minimum pond size?**

15 A. It did not.

16 MS. DIERS: Thank you.

17 HEARING OFFICER HORTON: Okay. Any other
18 follow-up questions for this witness?

19 All right. Hearing none.

20 Thank you, Mr. Rokoff. You are dismissed.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 HEARING OFFICER HORTON: Moving on to Sharene
24 Shealey. Are you on the line?

1 MS. GALE: She's in the room with us.

2 HEARING OFFICER HORTON: Great.

3 Ms. Court Reporter, could you please swear in
4 this witness.

5 (Witness duly sworn.)

6 HEARING OFFICER HORTON: Ms. Gale, would you
7 like to enter Ms. Shealey's pre-filed testimony as an
8 exhibit.

9 MS. GALE: Yes, I would.

10 HEARING OFFICER HORTON: That will be
11 Exhibit 49.

12 (Whereupon, Exhibit No. 49 was
13 marked for identification.)

14 HEARING OFFICER HORTON: And would you like
15 to enter Ms. Shealey's pre-filed answers as an
16 exhibit?

17 MS. GALE: Our answers were one document, so
18 I think we can just make Midwest Generation's answers
19 as the next exhibit, and that can be then for Mr. Gnat
20 and Mr. Nielson afterward.

21 HEARING OFFICER HORTON: That's correct.
22 Sorry about that.

23 So Midwest Generation pre-filed answers will
24 be Exhibit 50.

1 (Whereupon, Exhibit No. 50 was
2 marked for identification.)

3 HEARING OFFICER HORTON: Ms. Shealey, do you
4 have an opening statement or a summary that you'd like
5 to present?

6 THE WITNESS: Yes.

7 HEARING OFFICER HORTON: Okay. You are
8 limited to five minutes. Please proceed.

9 THE WITNESS: Thank you.

10 My name is Sharene Shealey, and I'm employed
11 as a director with NRG Energy, which, in turn,
12 indirectly owns the mid shares of Midwest Generation,
13 LLC.

14 I would also add that I'm a resident of Will
15 County, and where I live is captured within the
16 ten-mile radius requirement described in the proposal.

17 Midwest Generation appreciates the hard work
18 that both the Illinois Environmental Protection Agency
19 and the Illinois Pollution Control Board have done to
20 expedite the Rulemaking process on an extremely tight
21 schedule.

22 As stated in my testimony, Midwest Generation
23 agrees with certain aspects of the proposed rule.
24 Specifically, Midwest Generation supports the sections

1 that closely follow the U.S. Environmental Protection
2 Agency's 2015 Rule, Disposal of Coal Ash Residuals
3 from Electric Utilities, codified at 40 CFR 250, part
4 257.

5 However, we do recommend some changes, as
6 described in my testimony and in the testimony of
7 Midwest generation's other witnesses, Mr. Richard Gnat
8 of KPRG and Mr. David Nielson of Sargent & Lundy.

9 Mr. Gnat is our hydrogeologist with KPRG &
10 Associates, and his testimony is related to suggested
11 modifications for the groundwater monitoring and
12 assessment of corrective measure in Sections 845.600
13 through 845.660.

14 Mr. Nielson is a professional engineer with
15 Sargent & Lundy, and his testimony is related to
16 suggested modifications in Sections 845.420, the
17 Leachate Collection and Removal System section, and
18 Section 845.770, the Retrofitting section.

19 Thank you for giving us the opportunity to
20 speak today, and I look forward to answering any
21 questions that you may have. Thank you very much.

22 HEARING OFFICER HORTON: Thank you,
23 Ms. Shealey.

24 We will move on to questions. Illinois EPA,

1 any questions for this witness?

2 MS. DIERS: Yes, we do. Thank you.

3 EXAMINATION

4 BY MS. DIERS:

5 Q. Good morning, Ms. Shealey. My name is
6 Stephanie Diers, and I will be asking questions on
7 behalf of Illinois EPA.

8 This is a followup in response to board
9 Question 17. I believe that's on Page 1. Let me know
10 when you're there, please.

11 A. Sorry.

12 Q. Thanks, okay. Take your time.

13 A. Okay. I got it. Thank you.

14 Q. No problem.

15 You agree to the board's suggested language
16 which would limit removal of liners to liners that are
17 contaminated.

18 How would Midwest Generation or other owner
19 or operators determine whether a liner is contaminated
20 or not?

21 And then also I'd like to ask, how would a
22 owner or operator demonstrate that a liner is not
23 contaminated?

24 A. As started in my testimony, that -- or

1 actually David Nielson's testimony -- that probably is
2 a better question for him.

3 Q. Okay. I could ask him that question. Thank
4 you.

5 The next question is with respect to the
6 Environmental Group Question 9-B, as in boy. It's on
7 Page 9.

8 A. I'm there.

9 Q. All right. In your description of coal
10 transfer and potential difficulties of CCR transfer,
11 you state that a dock or port located on the opposite
12 side of the a power station can make it infeasible to
13 transfer CCR to a barge.

14 Did you consider the possibility of mobile
15 conveyor belt systems that could be loaded directly
16 from the CCR surface impoundment to a conveyor system
17 that leads to a rail line or barge dock in the
18 instances where either is available on-site?

19 A. Yes, I think so. Yes. As I said in my
20 testimony, yes.

21 Mobile conveyor systems can be used in
22 instances such as that as you've described. But our
23 experience is that the facilities, they're not --

24 (Reporter clarification.)

1 HEARING OFFICER HORTON: Ms. Shealey, this is
2 Vanessa Horton. We didn't catch the last sentence.
3 They're not totally monitored?

4 THE WITNESS: It was not monitored. They're
5 not -- our impoundments and my -- as stated in my
6 testimony, impoundments and rail lines or docks or
7 barges -- barge locations are not necessarily closely
8 situated, and so a mobile conveyor system could be
9 substantial, meaning very, very long.

10 BY MS. DIERS:

11 Q. So it would be difficult but not impossible?

12 A. It would require -- it would not be
13 impossible, but, as stated in my testimony, it would
14 require additional permitting outside of this
15 permitting.

16 Q. All right. Thank you.

17 My next question is, this is in regards to
18 Environmental Group's Question 14-A, as in apple, on
19 Page 14.

20 A. I'm there. Thank you.

21 Q. In your pre-filed testimony in which you
22 state:

23 "While Midwest Gen doesn't object to
24 financial assurance, the increased cost must be

1 properly accounted for in an analysis of the economic
2 impact to the people of Illinois."

3 My question is, does Section 22.55 -- I'm
4 sorry -- 22.59(f), as in frank, of the Act require
5 financial assurance?

6 A. It appears to, yes.

7 Q. Would you agree that the purpose of financial
8 assurance is to prevent the people of Illinois from
9 having to bear the cost of cleanup where an owner or
10 operator fails to properly remediate a pollution
11 source and/or resulting contamination?

12 A. Could you say -- would I agree? Would I
13 agree what?

14 Q. I can repeat it. I'll go a little bit
15 slower. Sorry.

16 Would you agree that the purpose of financial
17 assurance is to prevent the people of Illinois from
18 bearing the cost of cleanup where an owner or operator
19 fails to properly remediate a pollution source and/or
20 resulting contamination?

21 A. I would agree that that's the intent of it,
22 yes.

23 Q. Thank you.

24 My last question is a follow-up to Agency

1 Question 1-D, as in dog, on Page 15.

2 A. Okay.

3 Q. And your response to Agency's Question 1-C,
4 as in cat, you state that:

5 "Generally, a removal of free liquid is
6 accomplished by draining a water by gravity flow."

7 And your response to agency Question 1-D, as
8 in dog, you state:

9 "The length of time to remove the CCR and
10 water depends upon the size of the impoundment, the
11 amount of water and CCR to be removed, which could be
12 left in all of either water or CCR contained within
13 the impoundment and also the amount of precipitation
14 that occurs during the removal process."

15 So when liquids are gravity-drained, is it
16 typical for some water and some CCR to be left in the
17 surface impoundments after a routine removal?

18 A. Yes.

19 MS. DIERS: I have no further questions.

20 Thank you.

21 HEARING OFFICER HORTON: Thank you.

22 Turning to the Environmental Group?

23 MS. BUGEL: Yes, I have questions.

24 Did you want me to move up there, or do you

1 just want to turn the camera?

2 HEARING OFFICER HORTON: I'll turn it. I
3 think that will work fine.

4 EXAMINATION

5 BY MS. BUGEL:

6 Q. Good morning, Ms. Shealey. Can you tell me,
7 first, can you hear me okay?

8 A. You're slightly muffled, but I think I can.

9 Q. Okay. Please let me know then if you have
10 any trouble hearing my questions. I don't want to
11 take my mask off because of the number of people in
12 the room here.

13 My first question is following up on a
14 question that Ms. Diers just asked you about mobile
15 conveyor systems.

16 Does Midwest Generation have a conveyor that
17 crosses the river in Joliet?

18 A. Not a functional one.

19 Q. Do you know when it was last functional?

20 A. Prior to ceasing burning -- or when we
21 stopped burning coal.

22 Q. And can you tell me when you stopped burning
23 coal there?

24 A. I would only be guessing because I did not

1 prepare that. I believe it was in 2016.

2 Q. Can you tell me what river it crosses in
3 Joliet?

4 A. The Des Plaines.

5 Q. And do you have any idea how long that
6 conveyor is?

7 A. No, I have no idea.

8 Q. I am going to turn to your responses to
9 pre-filed questions starting on Page 3, Question 1-G,
10 as in girl.

11 A. Actually, I'm sorry. Can I add a
12 clarification?

13 Q. Yes.

14 A. I don't have a good estimate of how long that
15 conveyor is, but that conveyor is not mobile, just to
16 be clear. I'm not certain whether it still exists as
17 a conveyor; I don't believe it does. But our
18 conveyors are not mobile, just to be clear. Thank
19 you.

20 Q. For the benefit of the board and others here,
21 do you know what the difference between a mobile
22 conveyor is and a not mobile conveyor?

23 A. I'm aware of some differences. I do not know
24 the full conveyor. But a mobile conveyor generally

1 means it can be moved from a location to a different
2 location. And permanent conveyors -- that's not
3 really a word -- but permanently installed conveyors
4 cannot be moved. They're like sort of bounded in a
5 place similar to a house or a building that they're
6 not movable.

7 **Q. And would that lead to any differences in how**
8 **long a conveyor could be if it's mobile versus not**
9 **mobile?**

10 A. I would believe that is well outside of my
11 expertise.

12 **Q. Okay. Thank you for your follow-up on that.**
13 **So I now will turn to Question 1-G on Page 3.**

14 A. I'm sorry, Ms. Bugel, G, as in great?

15 **Q. G, as in great.**

16 A. Thank you.

17 **Q. And there was an objection to this question,**
18 **so you did not answer it. I would like to re-raise**
19 **this question again and respond to the objection.**

20 MS. BUGEL: Kristen, do you want to
21 articulate the objection, or do you want me to read it
22 into the record?

23 MS. GALE: Yes. The objection is that that
24 question is not relevant to this proceeding. And I

1 guess we can ask -- you can ask the witness to explain
2 why it's not relevant.

3 MS. BUGEL: Well, I'd like to respond with an
4 argument on relevance.

5 First, I would say that -- and the question,
6 for the record, is: Has Midwest Generation installed
7 dry sorbent injection, DSI, on any of its plants?

8 And our response to the objection is that,
9 first of all, Midwest Generation has opened the door
10 to this line of questions through the testimony of two
11 different witnesses. One is Richard Gnat, who
12 testifies that a change in items, such as coal
13 feedstock, combustion processes, and/or CCR material
14 handling, could affect monitoring and require
15 re-evaluation of a monitoring program that he
16 recommends.

17 Second, Mr. Nielson testifies that flue-gas
18 desulfurization, which dry sorbent injection is a type
19 of, he testifies that flue-gas desulfurization could
20 foul the filter layer which could affect the ability
21 to use a leachate collection system above or below the
22 liner, so that Midwest Gen opens the door to the
23 relevance of the use of FGD and DSI.

24 Third, the Environmental Group's content that

1 this has an effect on where you need to sample pour
2 water in an impoundment.

3 So for at least three reasons this is
4 relevant.

5 MS. GALE: Hearing Officer, may I have an
6 opportunity to respond to those three points?

7 HEARING OFFICER HORTON: Yes. Go ahead.

8 MS. GALE: All right. Mr. Gnat's testimony
9 and Mr. Nielson's testimony does not discuss DSI. In
10 fact, DSI is not related to flue gas. And Mr. Gnat's
11 testimony was a general basis. He's not a chemist.
12 It's not -- his testimony was about how coal ash is
13 generated. It's general and had nothing to do with
14 DSI.

15 The question was related specifically to
16 Midwest Generation's operations, not in a general
17 sense. So if the question is related to a general
18 sense throughout the state, how DSI may get to surface
19 impoundment, then it may be relevant.

20 But the question here was about Midwest
21 Generation use of DSI, and that was our objection.

22 I'm also going to object that we're getting
23 into specifics of how Midwest Generation's plants
24 operate and, as we said often in our answers, any

1 specific testimony we will be objecting to because of
2 the general Rulemaking.

3 But I did suggest that she might ask why it's
4 not relevant.

5 HEARING OFFICER HORTON: Go ahead.

6 MS. BUGEL: It's my decision what questions I
7 want to ask and not Ms. Gale's.

8 MS. GALE: Okay.

9 MS. BUGEL: And, you know, I'm happy to
10 withdraw the question I included in the pre-filed
11 questions about which plants and when, but I still
12 think that Midwest Gen has raised dry sorbent
13 injection, it is a type of flue-gas desulfurization,
14 and Mr. Gnat raises coal feedstock combustion
15 processes and CCR material handling -- combustion --
16 this goes to combustion processes.

17 So Midwest Gen has opened the door.

18 HEARING OFFICER HORTON: This is Vanessa
19 Horton.

20 As I have decided in previous days of this
21 hearing, I'd ask that, Ms. Bugel, you limit your
22 question to a generality only and not to a specific
23 plant or facility. So if you could do that in this
24 instance, you can proceed.

1 BY MS. BUGEL:

2 Q. Okay. Without referencing any specific
3 facilities, has Midwest Generation installed dry
4 sorbent injection on any plants in Illinois?

5 MS. GALE: Wait. I think -- I think that's
6 still specific. So I will continue objecting. If
7 it's general to Rulemaking and general to stations,
8 then we will not object. But that question was
9 Midwest Generation-specific.

10 I guess I didn't understand the Hearing
11 Officer's ruling.

12 MS. BUGEL: I'm not raising specific
13 facilities. I'm not saying which one or when. I'm
14 just asking generally at any of its facilities.

15 And I think this goes to how the rules will
16 function, and the way they're written is very much
17 related to how they'll function. And this is true for
18 some of the questions I have going forward, the rules
19 need to be informed by what is happening in Illinois,
20 and I'm saying generally, not a specific plant.

21 So I think my argument still stands.

22 HEARING OFFICER HORTON: I'll decide in favor
23 of Ms. Bugel. If the witness chooses to not answer
24 the question, then that is fine. But she may be

1 allowed to ask this question as a generality.

2 THE WITNESS: So I'm sorry. Could you give
3 me the outstanding question?

4 BY MS. BUGEL:

5 Q. Sure.

6 Has Midwest Generation installed dry sorbent
7 injection on any of its plants in Illinois?

8 A. Yes, and that is a matter of public record;
9 they all have air permits issued by the Agency.

10 Q. And has CCR that was generated after the
11 installation of dry sorbent injection been commingled
12 with CCR before the use of dry sorbent injection at
13 any surface impoundments at Midwest Gen's facilities
14 in Illinois?

15 A. No, and that's why it's not relevant to this
16 conversation, from our perspective. DSI, dry sorbent
17 injection, is a coal-combustion technology and it does
18 not go to impoundments for us. It's dry-handled. Any
19 ash that comes in contact with dry sorbent is
20 dry-handled in our situations.

21 I can't speak for every installation of DSI
22 across the nation, but we don't have sorbent in our
23 impoundments, because they are coal combustion
24 technology and not related to combustion and,

1 therefore, not related to our ash in this bin.

2 Q. Okay. Going on to Question 1-H on Page 3,
3 this question is, has Midwest Gen installed activated
4 carbon injection at any of its plants in Illinois?

5 A. Yes, and my answer is similarly. It's a
6 matter of public record the systems have air permits
7 that activate a carbon. It's a post-combustion
8 control technology, and, therefore, is not in
9 wet-handled ash and not in our impoundment.

10 Again, I cannot speak for the universe of
11 activated carbon systems. I don't have that
12 knowledge.

13 Q. And I realize that this was probably before
14 you were working in your current position, but Midwest
15 Generation switched from high-sulfur coal to
16 low-sulfur coal at its plants in Illinois; is that
17 correct?

18 A. That's my understanding. That predates me,
19 but that is my understanding.

20 Q. And do you know if CCR generated from the
21 burning of high-sulfur coal was mixed with CCR
22 generated from the burning of low-sulfur coal at any
23 of Midwest Gen's surface impoundments?

24 A. I cannot say that with certainty. I would

1 say that I think, as stated in my testimony or maybe
2 it was in a response -- I think, actually, I'm sorry,
3 it was probably in a response to the questions from
4 the Agency, our practice has been to routinely remove
5 CCR from most of our surface impoundments.

6 So it could have happened when they
7 transitioned. I just wasn't around. I don't know the
8 details of how they transitioned from high-sulfur to
9 low-sulfur coal.

10 Q. Okay. Turning to Page 8 of your responses, I
11 am looking at your response to Question 8-C, as in
12 cat.

13 A. Yes. I'm sorry. I'm there.

14 Q. Okay. And you have a response here that
15 generally says Midwest Gen does not agree that air
16 monitoring will significantly assist in determining
17 whether fugitive dust controls are effective.

18 Your answer goes on. I'm not going to read
19 the whole thing.

20 But do you see that answer?

21 A. Yes.

22 Q. Do you have expertise in air monitoring?

23 A. That is relative. I am probably more
24 knowledgeable than the average person, but, no, it is

1 not my area of expertise. But air is my area of
2 expert -- is generally my area of expertise.

3 **Q. How about fugitive dust?**

4 A. Air, generally, is my area of expertise.

5 **Q. And when you say "air, generally," I'm trying**
6 **to understand whether you include fugitive dust in**
7 **that or not?**

8 A. Oh, I'm sorry. I think I've stated on one of
9 the responses to a question, and I don't have this all
10 memorized so forgive me. But we have fugitive dust
11 plants at our stations through the air program.

12 So, yes, fugitive dust is, through our
13 Title 5 permit, issued by the Agency or other permits
14 issued by the Agency, air permits.

15 So, yes, fugitive dust is considered, and for
16 me, an air issue, in my opinion. Actually, it is an
17 air issue, is my opinion.

18 **Q. Thank you for clarifying.**

19 **Have you reviewed the other testimony in this**
20 **proceeding?**

21 A. No.

22 **Q. So to confirm, you have not reviewed Andrew**
23 **Rehn's testimony?**

24 A. Ms. Bugel, I cannot tell you what I've read

1 in the past three weeks. I cannot. I cannot confirm
2 anything -- any specific testimony, other than mine.

3 Q. So are you familiar with the terminology
4 "confounding factors"?

5 A. Yes.

6 Q. Okay.

7 A. As a Merriam-Webster term.
8 Could you define it?

9 Q. So I'm trying to understand. You raised a
10 concern about fugitive dust controls and questioned
11 whether they could be effective because of other
12 industries nearby --

13 A. Excuse me.

14 MS. GALE: Ms. Bugel, I would object to your
15 mischaracterization of her testimony. I think you
16 misspoke. You said we had a concern about fugitive
17 dust control and whether they would be effective.

18 What she testified to was whether air
19 monitoring would be significantly effective.

20 MS. BUGEL: Thank you for correcting that.

21 BY MS. BUGEL:

22 Q. So generally your concern is about whether
23 air monitoring could be effective because of other
24 industries nearby and their -- the fugitive dust

1 emissions that may be coming from those other
2 industries. I --

3 A. That is --

4 Q. Go ahead.

5 A. I'm sorry. I was interrupting you.

6 I was going to say that is a correct
7 characterization of the concern expressed.

8 Q. Okay. Very good.

9 And I was going to use the terminology
10 "confounding factors," which I believe is air
11 monitoring terminology. Those other fugitive dust
12 emissions could be confounding factors?

13 A. Correct.

14 Q. Is that fair?

15 A. Correct.

16 Q. Have you ever heard of pre-project air
17 quality monitoring?

18 A. I'm aware of what that is. I'm not sure that
19 I've ever used that term or had that term -- used that
20 term. But, yes.

21 Q. Is it fair to say that the purpose of
22 pre-project monitoring is to obtain a baseline?

23 A. Yes.

24 Q. So going back to your concerns, is one option

1 **doing pre-project monitoring in order to obtain a**
2 **baseline of existing fugitive dust emissions?**

3 A. I would guess that it is possible. But the
4 timelines associated -- again, I'm not a monitoring
5 expert -- but there are timelines that you have to
6 establish for your baseline, and the timelines
7 established under the proposed rule is really tight,
8 and I'm not confident that you could get a good
9 baseline for a project in this circumstance.

10 **Q. Okay. Have you ever heard of upwind and**
11 **downwind monitors being used across a project area?**

12 A. Ever? Absolutely. But not in a case of a
13 CCR surface impoundment, no.

14 **Q. Okay. Could they be used across a working**
15 **area where CCR is being remediated?**

16 A. It would have to be a huge impoundment -- or
17 it would have to be over a sizable impoundment, in my
18 opinion.

19 The impoundments, for example, that I am
20 picturing in my head are small and you would see the
21 same things on both sides. That's how small some of
22 impoundments are. It wouldn't distinguish, in my
23 opinion. Never did. So I don't know.

24 **Q. And just to confirm, in your opinion, if you**

1 had an impoundment of sufficient size, you could use
2 upwind and downwind monitors to measure the
3 incremental dust from remediation activities?

4 A. It would have to be very -- my
5 understanding -- or the only times where I saw that
6 use or that I'm aware of that use is at a Superfund
7 site, which are generally gigantic. And relatively
8 gigantic, it's comparable to an entire footprint of a
9 power plant.

10 I've never seen it done when you're measuring
11 distances of a thousand feet or -- it's just too
12 small. I don't -- I don't understand how that could
13 happen. But, again, I'm not the expert of that. But
14 I don't think it's reasonable or feasible.

15 Q. Are you familiar with fixed monitors being
16 located along roadways?

17 MS. GALE: I'm sorry, you cut out. Could you
18 try that again?

19 MS. BUGEL: Okay.

20 BY MS. BUGEL:

21 Q. Are you familiar with fixed monitors being
22 used along roadways?

23 A. No.

24 Q. Just from what you know about monitoring,

1 **could the impact from fugitive dust from a passing**
2 **haul truck be detected as a spike if you had a monitor**
3 **located along a roadway?**

4 A. Again, I'm not familiar with how those
5 monitors work. I mean, that would be a fine tune
6 because the monitors probably being ducked from a
7 roadway. I just don't have the expertise in that to
8 understand.

9 But the regulations require that trucks that
10 are carrying materials, fugitive materials -- and the
11 air program requires, trucks that carry these
12 materials be tarped. So you should not see those
13 spikes, you should not be able to measure it. That's
14 the purpose of tarping.

15 **Q. And last question about the monitoring. Do**
16 **you know if monitor filters can be tested for metals,**
17 **specific metals, in order to identify indicator**
18 **pollutants from a certain source?**

19 A. Monitors is a very broad term in that
20 context. I can't -- I don't know what you're -- could
21 you help me? Could you narrow it a little?

22 **Q. Sure. Again, going back to fugitive dust**
23 **monitoring and various industries being located in an**
24 **area, is it possible in that circumstance to test a**

1 filter from a fugitive dust monitor and to identify
2 different metals that would be indicator constituents
3 from different sources?

4 A. That is outside my expertise, so I do not
5 know.

6 Q. Okay. I am going to turn to Page 14,
7 Question 14-A.

8 A. I'm there.

9 Q. And your response here -- well, I want to
10 refer back to -- let's see, the quote -- this question
11 quotes Page 9 from your testimony and it says:

12 "While MWG," -- M as in Midwest Generation --
13 "does not object to financial assurance, the increased
14 cost must be properly accounted for in an analysis of
15 the economic impact to the people of Illinois."

16 And then we went on to ask "what does
17 properly accounted for in an analysis of the economic
18 impact to the people of Illinois" mean.

19 And you indicated -- oh, I'm sorry. I've
20 got -- I read the wrong question.

21 I'm going to turn to 14-B. I apologize.

22 So our question there was:

23 "Do you offer a methodology on how to
24 properly account" -- missing a word, but it should say

1 "for the cost of financial assurance and its impact on
2 the people of Illinois. If yes, how did you arrive at
3 that methodology?"

4 And your answer was:

5 "Yes, the general rule of thumb for the costs
6 of financial assurance is that each \$1,000 of
7 financial assurance costs \$10."

8 After I corrected that, did I read it
9 correctly?

10 A. I believe so, yes.

11 Q. Okay. So then my question is: Is the cost
12 of financial assurance, \$10 per \$1,000, the same as
13 the economic impact to the people of Illinois?

14 A. No. It's a piece of it, as stated in my
15 testimony.

16 Q. So if it is only a piece of the economic
17 impact to the people of Illinois, how do you -- in
18 your opinion, how do you analyze the economic impact
19 to the people of Illinois?

20 A. I'm sorry, Ms. Bugel. Could you repeat the
21 last portion of your question?

22 Q. My question is, how do you analyze the
23 economic impact to the people of Illinois?

24 A. As stated in my testimony, we were not

1 attempting to account for every cost that the
2 regulations were --

3 THE COURT REPORTER: Can you ask her to
4 repeat that?

5 HEARING OFFICER HORTON: Vanessa Horton. Can
6 you please repeat? We didn't catch your --

7 THE WITNESS: I can't repeat it. I can try
8 rephrasing.

9 As stated in my testimony, our attempt was
10 not to provide a summation of the cost of this
11 regulation, but, instead, to make the board aware that
12 the regulation has associated costs to the people of
13 Illinois. Yes.

14 BY MS. BUGEL:

15 Q. Same page. I want to follow up on
16 questions -- your responses to Question 15-B, C, and
17 D, which are at the bottom of that page, and in
18 response to our question: "Would a leachate
19 collection system placed above the composite liner
20 minimize the hydraulic head on the composite liner?
21 If not, why not?" You pointed to David Nielson's
22 testimony. Right?

23 A. Correct, in part.

24 Q. In particular, David Nielson's testimony is

1 **about damage cases and industry standards generally,**
2 **right?**

3 A. That is not -- I would not characterize
4 that's what his testimony is about. That was a broad,
5 sweeping statement about his testimony --

6 **Q. Fair enough.**

7 A. -- that I would not use.

8 **Q. The part of his testimony that you pointed to**
9 **for your answer was about damage cases and industry**
10 **standards. Is that fair?**

11 A. The part that I point to is a quote directly
12 from Mr. Nielson's testimony. And if you would like,
13 I could read it directly to remove any ambiguity.

14 **Q. Why don't you go ahead and do that so the**
15 **record is clear.**

16 A. The question is:

17 "Would a leachate collection system placed
18 above the composite liner minimize the hydraulic head
19 on the composite liner? If not, why not?"

20 Answer: "As stated in the testimony of
21 David Nielson, US EPA's risk assessment did not
22 identify any damage cases for composite-lined CCR
23 surface impoundments."

24 Mr. Nielson's pre-filed testimony reference

1 that I will not read, if that's okay.

2 Mr. Nielson further testified that collection
3 and removal of leachate from a CCR surface impoundment
4 is, "not an industry standard because it is not
5 practical given the inherent operation of a surface
6 impoundment."

7 With a reference to his testimony and a
8 reference to "see his answers to questions supplied by
9 the Illinois EPA."

10 **Q. And I don't believe your answer answered my**
11 **question, so I am going to re-ask the question.**

12 **Would a leachate collection system placed**
13 **above the composite liner minimize the hydraulic head**
14 **on the composite liner?**

15 A. I'm not an expert in those things. You would
16 have to direct it to Mr. Nielson, as I answered in
17 your question. Is that fair? Yeah, it's
18 Mr. Nielson's question, please.

19 **Q. And if I re-asked questions 15-B, as in boy,**
20 **and 15-C, would you also direct me to Nielson?**

21 A. Yes. Yes, as I did in my answer to the
22 question. Mr. Nielson is a professional engineer who
23 is skilled at these things much more than I am, and so
24 I think he would be better able to answer your

1 question.

2 Q. Okay. I am turning the page, Page 15,
3 following up on your answer to Question 16-A, as in
4 apple, small Roman ii.

5 And my question is, while you refer four of
6 these responses, all these responses, you refer back
7 to your answer 5-D, D, as in dog, and 5-D, the latter
8 part or the end of -- the last two sentences of 5-D
9 indicate that:

10 "Midwest Gen installed groundwater monitoring
11 wells around its CCR surface impoundments in 2010 and
12 since 2010 has conducted groundwater sampling on a
13 quarterly basis.

14 "Additionally in 2015, MWG, Midwest Gen,
15 began conducting groundwater sampling pursuant to the
16 federal CCR rule then with a citation."

17 Again, I don't believe this answered my
18 question, which I will re-ask in a slightly different
19 form here: Could that existing monitoring system be
20 used to at least partially comply with the proposed
21 rules requirements, the proposed rules monitoring
22 requirements, that we are discussing here in this
23 proceeding?

24 A. That question is better -- Mr. Gnat, who is

1 also testifying on the behalf of Midwest Generation,
2 would probably be better to answer that question.

3 My general answer is, at least in part, I
4 believe it can. So Mr. Gnat is the expert, not me.

5 Q. Thank you.

6 And is Midwest Gen's existing groundwater
7 monitoring system conducted according to a
8 scientifically sound groundwater monitoring program?

9 A. Yes. We're following the requirements of the
10 federal rule, which we believe to be based on science.
11 It is based on science, actually. So, yes.

12 Q. I don't know if we should get started on
13 science after watching last night's debate, but...

14 Okay. And now I am turning to Page 12.
15 We're going back a little bit. Question 12-B, as in
16 boy. And my question here was:

17 "Have you asked members of Environmental
18 Justice communities whether such considerations are
19 critical to them?"

20 I am going to stop there and not ask the
21 second part of that question because I understand at
22 least some of this garnered an objection.

23 But I am going to turn to your answer after
24 the objection, which is, generally, MWG has been and

1 continues to be in contact with residents who live
2 near its power stations and response to comments or
3 questions by residents that live near its power
4 stations to the extent that it is able.

5 And, again, I would re-ask the first question
6 because I don't believe this answer responded to the
7 question.

8 For the record, I'll read that in:

9 "Have you asked members of Environmental
10 Justice communities whether such considerations are
11 critical to them?"

12 A. I'm sorry, Ms. Bugel. Let me go back to what
13 considerations were. Let me just be clear. You
14 discussed considerations.

15 Yeah, this is all paraphrased from my
16 testimony. I actually need to make sure that I have
17 the full context and the question.

18 Q. This is referring back to Page 7 of your
19 testimony.

20 A. Okay. Now that I have context, please re-ask
21 your question.

22 Q. My question is:

23 "Have you asked members of Environmental
24 Justice communities whether such considerations are

1 **critical to them?"**

2 A. That's a really interesting question. I
3 would actually believe the answer is yes, but I
4 can't -- because these types of considerations are
5 things that are spoken with -- are things that we
6 would communicate with our neighbors or the impact.
7 When we believe we are going to have an impact on our
8 neighbor, it is our practice to communicate with our
9 neighbor. Okay.

10 **Q. Do you know which of Midwest Generation's --**
11 **and again, this is just a "do you know"; I'm not**
12 **asking you to identify. But do you know which of**
13 **Midwest Gen's CCR surface impoundments are located in**
14 **Environmental Justice communities?**

15 A. "In" is an interesting word in this context.
16 I am familiar with Environmental Justice
17 communities, that some of our operations are adjacent
18 or in Environmental Justice communities, yes.

19 **Q. Bear with me. I'm trying to jump around on**
20 **some pages here.**

21 **So my next question is specifically about**
22 **Lincoln Stone Quarry, and I had some questions at 12-C**
23 **is -- this is Question 12-C from your pre-filed**
24 **answers. The question was:**

1 **"Is Lincoln Stone Quarry located in an**
2 **Environmental Justice community?"**

3 **That garnered an objection.**

4 MS. BUGEL: Hearing Officer, I would like to
5 re-ask that question.

6 Kristen, do you want to read your objection
7 into the record or restate it?

8 MS. GALE: Yeah. I have a continuing
9 objection to that question because it's asking for
10 site-specific information. I believe it's been made
11 clear by the Hearing Officer and requested by other
12 parties that this Rulemaking is a general Rulemaking,
13 about general rules throughout the State of Illinois,
14 and is not appropriate to discuss specific sites,
15 specifically, as been mentioned plenty of times, this
16 Rulemaking identified how each thing is site-specific.

17 So to be a general Rulemaking, we should keep
18 the questions general.

19 MS. BUGEL: And, Hearing Officer Horton, I do
20 have specific questions about Lincoln Stone Quarry.
21 My questions do not go to the proposed rules
22 applicability or not to Lincoln Stone Quarry. There
23 was a public meeting around Lincoln Stone Quarry that
24 raised very serious concerns for the environmental

1 groups.

2 Our concerns go to public participation,
3 responding to comments, which is actually something
4 that IEPA has raised earlier in this proceeding, and
5 the dialogue between industry and the community and
6 the public.

7 And I think this is a really important
8 example because it is indicative of how these meetings
9 are currently handled under the federal rule and gaps
10 in the federal rule.

11 In this Rulemaking, Illinois EPA and the
12 Pollution Control Board have an opportunity to respond
13 to how public participation was being handled and has
14 an opportunity to fill the gaps in the federal rule.

15 I honestly -- there's no way of doing this in
16 a general way. And we have six exhibits that are
17 examples -- that raise the examples of our concerns.
18 So I would ask if we can go forward with these
19 questions about Lincoln Stone Quarry.

20 HEARING OFFICER HORTON: I'm going to sustain
21 -- Ms. Gale, I'm going to sustain your objection.

22 MS. GALE: Thank you.

23 HEARING OFFICER HORTON: I understand your
24 concern, Ms. Bugel, and I will allow you to enter the

1 exhibits into the record if they have not been already
2 and you could perhaps --

3 MS. GALE: I have an objection -- hang on.
4 I'm sorry, Ms. Hearing Officer. They were not entered
5 on Monday morning, if they're what I think they are.

6 MS. BUGEL: The exhibits were actually
7 attached to our pre-filed questions, and my
8 understanding is that once they were attached to
9 pre-filed questions, we did not need to resubmit them
10 again.

11 It's the exhibits you already received that
12 were attached to our pre-filed questions. They were
13 filed way before Monday morning.

14 HEARING OFFICER HORTON: We have proceeded in
15 that manner with other attachments. So if you like --

16 MS. GALE: Okay.

17 HEARING OFFICER HORTON: So if you would like
18 to move to enter into those exhibits if they have not
19 been already?

20 MS. BUGEL: Yes. I would move to enter
21 Attachments 1 through 6 that were filed as attachments
22 to the Environmental Group's pre-filed questions for
23 Ms. Shealey.

24 MS. GALE: And I would just file an objection

1 to their entry. These exhibits are unrelated to the
2 State's Rulemaking. These are related to a public
3 meeting or a public discussion pursuant to the federal
4 rule, and they are not indicative of anything about if
5 the Rulemaking should go forward.

6 As everyone here knows, coal ash rule has
7 specific requirements for public meetings which are a
8 part of the proposed rule that we're discussing here.

9 What was done under the federal Rulemaking is
10 wholly unrelated to what will likely be done here.

11 And so I don't think it should be used as an example
12 or even deemed relevant to today's -- this Rulemaking.

13 HEARING OFFICER HORTON: I note your
14 objection, Ms. Gale, but I will allow the exhibits to
15 be entered, and they will be Exhibit 51.

16 MS. BUGEL: All six attachments will be one
17 exhibit, 51?

18 HEARING OFFICER HORTON: Let's do that. I
19 think that would be easier.

20 MS. BUGEL: Perfect.

21 HEARING OFFICER HORTON: So Exhibit 51 will
22 be attachments 1 through 6 inclusive.

23 MS. BUGEL: Yes.
24

1 (Whereupon, Exhibit No. 51 was
2 marked for identification.)

3 MS. BUGEL: With that, I have no further
4 questions.

5 HEARING OFFICER HORTON: Okay. Thank you.

6 Moving on to City of Springfield, do you have
7 any questions for Ms. Shealey?

8 MS. WILLIAMS: No questions.

9 HEARING OFFICER HORTON: Dynegy, Mr. More,
10 any questions for Ms. Shealey?

11 MR. MORE: Yes, I have one question.

12 HEARING OFFICER HORTON: Okay.

13 EXAMINATION

14 BY MR. MORE:

15 Q. Ms. Shealey, do you consider yourself an
16 expert on fugitive dust monitoring?

17 A. No.

18 Q. One more. Ms. Bugel asked you a number of
19 questions regarding a potential placement of air
20 monitors.

21 Would you normally rely upon experts to
22 assist you in identifying whether those monitors
23 should be placed and, if so, where they should be
24 placed?

1 A. Mr. More, "normally" is too soft of a term,
2 always. It would be the experts who would
3 recommend -- we would rely on experts to map out
4 locations for monitors, always.

5 **Q. Thank you.**

6 MR. MORE: I have no further questions.

7 HEARING OFFICER HORTON: Okay. Illinois
8 Environmental Regulatory Group, Ms. Brown, any
9 questions?

10 MS. MELISSA BROWN: No questions for this
11 witness. Thank you.

12 HEARING OFFICER HORTON: Ameren, Ms. Manning,
13 any questions?

14 MS. MANNING: No questions for this witness.
15 Thank you.

16 HEARING OFFICER HORTON: Attorney General's
17 office, Mr. Sylvester, any questions?

18 MR. SYLVESTER: No questions. Thank you.

19 HEARING OFFICER HORTON: Pollution Control
20 Board Technical Unit, Mr. Rao, any questions?

21 MR. RAO: No questions. Thank you.

22 HEARING OFFICER HORTON: Okay. Any follow-up
23 questions?

24 MS. BUGEL: I have no further questions.

1 HEARING OFFICER HORTON: Seeing none, we will
2 dismiss Ms. Shealey. Thank you very much.

3 THE WITNESS: Thank you, Hearing Officer.

4 (Witness excused.)

5 HEARING OFFICER HORTON: Just a brief note on
6 the process for today. We're going to start with
7 Mr. Gnat, and then we'll take a break for lunch a
8 little bit early, at 11:15. We'll break for
9 45 minutes, then come back at noon for public
10 comments.

11 So we'll start with Mr. Gnat here and see how
12 far we can get. And then we pick up back with him if
13 we don't finish at the end of the public comment
14 section.

15 MS. GALE: I'm sorry. I heard the timeframe.
16 I just want to warn everybody, we are at a station,
17 and I can't quite remember but there is a routine
18 alarm that goes off sometime between 11:00 and 12:00,
19 so we may have to take a minute break.

20 HEARING OFFICER HORTON: No problem.

21 So, Mr. Gnat, are you ready to be sworn in?

22 THE WITNESS: Yes, I am.

23 (Witness duly sworn.)

24 HEARING OFFICER HORTON: Ms. Gale, would you

1 like to enter Mr. Gnat's pre-filed testimony as an
2 exhibit?

3 MS. GALE: Yes, I would. Thank you.

4 HEARING OFFICER HORTON: Okay. So that would
5 be Exhibit Number 52.

6 (Whereupon, Exhibit No. 52 was
7 marked for identification.)

8 HEARING OFFICER HORTON: Mr. Gnat, do you
9 have a summary that you would like to present?

10 MS. GALE: Mr. Gnat does not have a summary,
11 but he's ready for everyone's questions.

12 HEARING OFFICER HORTON: Okay. Great.

13 Move to Illinois EPA, do you have any
14 questions for this witness?

15 MS. DIERS: We have no questions.

16 HEARING OFFICER HORTON: To the Environmental
17 Groups, any questions for this witness?

18 MS. BUGEL: Yes, we do have questions for
19 Mr. Gnat.

20 EXAMINATION

21 BY MS. BUGEL:

22 Q. Hello, Mr. Gnat. Can you hear me okay?

23 A. Yes, I can.

24 Q. If we can just hold one moment, I think we

1 are relocating the microphone so it's a little closer.

2 Mr. Gnat, did you hear the questioning of
3 Ms. Shealey?

4 A. Yes, I could.

5 Q. Okay. I wanted to follow up with you on one
6 question that I asked Ms. Shealey and she identified
7 you being the best person to answer it, and that
8 question is: Could the existing groundwater
9 monitoring at Midwest Generation's surface
10 impoundments be used, at least partially, to comply
11 with the proposed rules requirements?

12 A. Yes, that's our full intent, is to be able to
13 use as much of the information that we generated since
14 the start of monitoring. And as far as coming into
15 compliance with the federal CCR rule, we use as much
16 of that to be in compliance with the new rule when it
17 gets passed.

18 Q. And you said use as much of the information.
19 I want to follow up specifically about the actual
20 system that's been installed, the monitors that have
21 been installed.

22 Same question but as to those monitors, could
23 those existing monitors be used to at least partially
24 comply with the proposed rules and requirements?

1 A. I believe if you're meaning the monitoring
2 wells that were installed as part of the groundwater
3 monitoring systems, yes, the intent is to use the
4 existing wells as -- whatever we need to do to be in
5 compliance with the state rule.

6 **Q. Yes. Thank you. I was referring to the**
7 **wells. Thank you for clarifying that.**

8 **And, in your opinion, is the existing**
9 **groundwater monitoring conducted according to a**
10 **scientifically sound groundwater monitoring program?**

11 A. The groundwater monitoring program that's
12 been established for the impoundments is in compliance
13 with the federal CCR rule, and we're also under
14 compliance with the agreement as well, we do
15 monitoring for that as well.

16 And all of that has been -- US EPA monitoring
17 is in accordance with IEPA requirements and
18 negotiations at the time and the federal monitoring
19 programs in accordance with the federal CCR rule.

20 **Q. My question, though, was whether you believe**
21 **it's done in a scientifically sound manner.**

22 A. I'm not sure I understand the lead of that
23 question. We are fulfilling the requirements of the
24 CCR rule, and that rule was developed based on sound

1 science practices.

2 Q. I would like to turn to your pre-filed
3 answers. And I am looking first at Pages 23 to 24.

4 A. Okay. I have them in front of me.

5 Q. And I'm going to start with question -- a
6 follow-up to Question 2, subpart D, as in dog, E, as
7 in elephant, and F, as in frank.

8 MS. BUGEL: And there was an objection,
9 again, as to these questions being site-specific.

10 Kristen, do you want to repeat your
11 objection.

12 MS. GALE: Yeah. These questions were
13 site-specific and this is a general Rulemaking about
14 how rules would generally be followed throughout the
15 State of Illinois, and we shouldn't be discussing
16 specific sites.

17 MS. BUGEL: And this -- Hearing Officer,
18 these questions are about an alternate source
19 demonstration that was submitted under the federal CCR
20 rule for the Midwest Generation's Powerton Station.

21 Again, my questions, we ask about that
22 alternate source demonstration because it's an example
23 of a concern that we have with alternate source
24 demonstrations, and it goes again to a gap in the

1 federal rule that we believe Illinois can fill in this
2 proposed rule.

3 HEARING OFFICER HORTON: I will sustain
4 Ms. Gale's objection to this line of questioning.

5 MS. BUGEL: Okay.

6 And now I am looking -- and maybe some of my
7 co-counsel can help me. I'm trying to figure out here
8 in these questions if I had submitted -- yes.

9 These questions were about groundwater
10 monitoring and corrective action report and
11 an alternate -- part of which was the alternate source
12 demonstration. It was attached to our pre-filed
13 questions for Mr. Gnat. And I would ask that our
14 attachments to those pre-filed questions be admitted
15 into the record of this proceeding.

16 HEARING OFFICER HORTON: Okay.

17 MS. GALE: And, Hearing Officer, I would
18 object to that, again, because this is a general
19 Rulemaking. So that's my objection.

20 HEARING OFFICER HORTON: So I'll overrule
21 your objection, and we'll make the attachments to
22 Mr. Gnat's -- the Environmental Group's questions --
23 all of the Environmental Group's questions to Mr. Gnat
24 as Exhibit 53.

1 (Whereupon, Exhibit No. 53 was
2 marked for identification.)

3 MS. BUGEL: Very good. Thank you.

4 HEARING OFFICER HORTON: Do you know if there
5 is just one attachment or --

6 MS. BUGEL: I would need to check or maybe my
7 co-counsel knows. I would need to pull that up. I
8 could -- on our next break I could check and let you
9 know.

10 HEARING OFFICER HORTON: Okay.

11 MS. BUGEL: Okay. Very good.

12 BY MS. BUGEL:

13 Q. I'm going to turn to Page 26, and I'm looking
14 at Question 3-H, as in happy, on Page 26. Let me know
15 when you're there.

16 A. I have it in front of me. Thank you.

17 Q. And I'm looking at the last sentence of your
18 response and you say:

19 "I would agree with the questioner that the
20 deadlines for the groundwater monitoring program in
21 the final rule should be extended to allow for
22 accurate data collection and analysis."

23 And just Question H, do you see in question H
24 anything that says explicitly the deadlines for the

1 **groundwater monitoring program in the final rule**
2 **should be extended?**

3 A. My understanding, when I read and responded
4 to Question H, in context, it was a discussion on the
5 time frames in which I had concerns with of being able
6 to turn around the data, tabulation, analysis, and
7 report submittal, assuming that you have to go back
8 out and do a second resampling and so on.

9 And then the question then was asked, is
10 there anything that extends this delay of analysis if
11 the analysis is unusually complex, if not, why not.

12 So my response was, as I wrote in my
13 responses there, is that I did not see anything in the
14 Rulemaking, proposed Rulemaking, that would allow for
15 an extension of this time frame.

16 And so, therefore, I agree that, you know, if
17 not -- I don't know why it's not there, but I fully
18 agree that there should be a mechanism at which that
19 gets extended.

20 **Q. I just want to confirm that that's your**
21 **interpretation and your argument and not -- and is**
22 **something you just infer from the question.**

23 A. That is correct.

24 **Q. And I'm going to turn to Page 27. Question**

1 4-A, as in apple, and in response, the very last
2 sentence of your response, it says:

3 "If a subsequent numerical groundwater
4 modeling is necessary" -- I think the "a" was included
5 by accident, and you may have meant to say if
6 subsequent numerical modeling is necessary.

7 I want to see if my interpretation that the
8 "a" was an accident is correct?

9 A. That is correct.

10 Q. Okay. So I'm going to read it as:

11 "If subsequent numerical groundwater modeling
12 is necessary, the development of that model and
13 subsequent testing of that model will determine the
14 need, if any, for additional, more detailed,
15 site-specific chemical or physical characterization
16 requirements."

17 Do you see where it says that?

18 A. Yes, I do.

19 Q. So my question is: What provisions in the
20 rule assure that information will get developed to
21 support modeling when needed?

22 A. I think in order to answer that question and
23 to put it into context of my answer, within the rule,
24 the first step -- and what I'm referring to is in the

1 hydrogeologic characterization -- the first step
2 requires to develop a conceptual model for the site
3 and establish a groundwater monitoring network for the
4 site to get a good understanding of those flow
5 conditions. That's the initial phrase of that
6 hydrogeologic evaluation.

7 Once that's done, the conceptual model for
8 the site is established, and when the -- that
9 conceptual model is then used as a basis for the
10 development of -- for the numerical model.

11 Now, I'm not a groundwater modeler, so the
12 groundwater modeling expertise then comes in,
13 determines how are they going to set up the model in
14 accordance with the conceptual model developed by this
15 initial hydrogeologic characterization.

16 And then depending on the site-specific
17 conditions, the complexity of the issues, the
18 complexity of the geology, there may be certain
19 parameters within that model that haven't been
20 generated yet site-specific, that, based on their
21 sensitivity analysis, based on calibration runs, that
22 become very important for that specific site.

23 Then they turn back and say, "You know what?
24 In order for this model to be most effective for us as

1 a predictive tool and so on, we're going to need to
2 really focus in on this additional hand-pulled,
3 site-specific data."

4 And so then we would go and generate a
5 program to develop that site-specific data, implement
6 it, collect it, tabulate it, and get it over to the
7 modeler so that he can continue with his further
8 calibration and sensitivity analysis for use of that
9 model. So it's kind of a two-step process.

10 **Q. And my question is, are there provisions in**
11 **the rule that assure that information will get**
12 **developed to support the modeling when it is needed?**

13 A. As the rule currently -- the way the rule is
14 currently set up, so you'll have sites that have a lot
15 of information already available, but under the
16 current proposed rule, there are new impoundments that
17 haven't been necessarily considered as surface
18 impoundments under the federal rule that might not
19 even have a monitoring network. So at that point, you
20 have to develop that initial hydrogeologic
21 characterization and so on.

22 So once that's input and the groundwater
23 modelers start developing their model, and, again,
24 that model has to be developed based on a

1 site-conceptual model, not the other way around, so
2 once then the modelers start developing it and they
3 determine they might need something additional
4 site-specific, you go out and collect that additional
5 site-specific.

6 **Q. But what I'm asking is, does the rule**
7 **provide -- you said if the modeler determines they**
8 **need something, they go out and they develop it. And**
9 **I'm asking: If the rule has provisions that support**
10 **that instance where the modeler determines they need**
11 **something, they can go out and get it?**

12 **A.** I believe that it does. I mean, it's a
13 standard process of any hydrogeologic characterization
14 and subsequent modeling. I don't know how much
15 specificity you would need to put into the rule that
16 you're trying to get into, but that's kind of a
17 process that I've been involved with numerous times,
18 and so I'm not quite sure I -- certainly, the way the
19 rule is written, my testimony was going towards some
20 of the general terminology in that initial development
21 of the hydrogeologic characterization for the
22 development of the site-conceptual model, that that --
23 you know, the way it's written right now can be
24 evaluated as a very broad requirement or as a very

1 specific one.

2 And so I just tried to, in my testimony,
3 suggest that there might be some clarification as to
4 the fact that this initial study is more on the larger
5 sense of developing the site-conceptual model, and
6 then some of the additional characterizations that are
7 required within the proposal --

8 (Audio issue.)

9 THE WITNESS: Going towards either
10 groundwater model development or towards remedy
11 evaluations by the engineers.

12 BY MS. BUGEL:

13 **Q. Our audio and our conferencing system froze**
14 **up for a second. Can you repeat just the very last**
15 **sentence? I know that was a long answer, and you**
16 **don't have to start the whole thing over, but the very**
17 **end of it.**

18 A. Sure. I believe the last sentence was that
19 the rule, as drafted right now, then also has that
20 next step, that some additional characterization might
21 be necessary in support of the development for the
22 groundwater models and in support of any corrective
23 measure studies or remedial studies being done, the
24 engineers may have some additional requirements.

1 Q. Okay. Thank you. I am just reviewing -- I
2 think you answered some of my next questions, so I'm
3 just doing a quick review.

4 I am going to turn to Page 28 and a follow-up
5 to Question 5-E, as in elephant, and your answer
6 starting with the purpose of your testimony -- well,
7 I'll read the whole thing -- I'll read the whole
8 question and answer.

9 The question was whether the exception in
10 Section 620.420 applies to groundwater more than ten
11 feet beneath the fill material.

12 And you say:

13 "No, it does not. However, the purpose of my
14 testimony was that there are currently other existing
15 regulations which cover groundwater impacts associated
16 with historic fill materials. And, therefore, this
17 issue is sufficiently addressed outside the scope of
18 this proposed draft Section 845 rule."

19 Do you see that?

20 A. Yes, I do.

21 Q. Does your testimony site to anything besides
22 620.420 and Section 12 of the Environmental Protection
23 Act to demonstrate that rules and regulations apply to
24 on-site coal ash landfills?

1 A. I think that just mischaracterized my answer
2 a little bit. The answer -- the question was: Does
3 this exception, the 620.420, apply to groundwater more
4 than ten feet below -- or beneath fill material.

5 And my answer to that, and it's in accordance
6 with my testimony, is no, it doesn't. And groundwater
7 impacts at a site -- at sites, in general, groundwater
8 impacts are covered under 620.

9 You establish the standards and you exceed
10 those standards. And there are other rules within
11 Illinois EPA that are followed to address those
12 that -- these sites in general.

13 The proposed rule here, my understanding, is
14 specifically for surface impoundments, and impacts on
15 the site that may be on-site may not be -- that aren't
16 associated with surface impoundments are covered under
17 other aspects of the current regulations, and it's not
18 necessarily part of the impoundment proposed rule,
19 which is what the purpose of my review was and my
20 testimony.

21 **Q. And my question is: Aside from -- I'll**
22 **broaden it to part 620 and Section 12 of the**
23 **Environmental Protection Act, do you site in your**
24 **testimony to any other rules or regulations that apply**

1 **to on-site coal ash landfills?**

2 A. I have, in some of my testimony and I believe
3 in some of my responses, referred over to the direct
4 approach to corrective action objectives, rules under
5 Illinois EPA response. So, yes, I believe I have.

6 **Q. Do you know of any rule that explicitly**
7 **requires groundwater monitoring of on-site coal ash**
8 **landfills?**

9 MS. GALE: Objection. It's outside the scope
10 of this Rulemaking. It's about CCR surface
11 impoundments.

12 MS. BUGEL: And Mr. Gnat ventured into the
13 territory of coal ash landfills in opining that the
14 existing regulations are sufficient to cover coal ash
15 landfills, and I'm following up on that line of
16 testimony.

17 THE WITNESS: I think that that
18 mischaracterized there. I did not say coal ash -- you
19 had said coal ash landfills, and I tried to clarify
20 that my statement here didn't say coal ash landfills.
21 The question was simply groundwater more than ten feet
22 beneath fill material.

23 I never did not say coal ash landfills. That
24 was what you had insinuated there. And when I reread

1 the question, it says "beneath fill material." And
2 then I further tried to clarify that there are other
3 rules within Illinois EPA that cover groundwater that
4 are impacted on sites and that specifically this
5 Rulemaking is for surface impoundments.

6 BY MS. BUGEL:

7 **Q. Okay. Thank you for the clarification.**

8 **I will rephrase my question and ask: Do you**
9 **know of any rules that explicitly requires groundwater**
10 **monitoring of groundwater within fill material?**

11 A. I'm not quite sure I understand the question.
12 But, no, I do not -- I believe I do not know of
13 anything specific.

14 **Q. And do you know of any rule that explicitly**
15 **lays out liner requirements for fill ash or slag above**
16 **Class 1 groundwater?**

17 A. I'm sorry. What was the question? Regarding
18 liner requirements?

19 **Q. Yes, liner requirements.**

20 MS. GALE: And, again, I would object, that
21 is outside the scope of his testimony. His testimony
22 was related to groundwater monitoring and the
23 groundwater program. He did not testify to anything
24 about liner requirements.

1 MR. MORE: I'm going to further object to the
2 line of questioning going to whether or not additional
3 regulation of fill material is warranted. We treaded
4 this ground in connection with a similar line of
5 questioning to the IEPA in the first hearing, and I
6 believe the Hearing Officer ruled on those objections,
7 and we moved off of this question, what additional
8 regulatory requirements may or may not be needed to
9 govern CCR fill material or CCR landfills.

10 MS. BUGEL: And I honestly do not remember,
11 Hearing Officer, how you ruled on those objections?

12 HEARING OFFICER HORTON: I believe I
13 sustained those objections, so...

14 MS. BUGEL: Understood.

15 HEARING OFFICER HORTON: I will do so here.

16 MS. BUGEL: I will move on.

17 BY MS. BUGEL:

18 Q. Question Page 31, I'm looking at
19 Question 9-F, and this refers back to your testimony
20 regarding the flow system on Page 16 of your
21 testimony. I'm seeing that in your answer to this
22 question.

23 Specifically, I want to follow up on your
24 testimony that, in your experience, the first -- "In

1 the first few years of monitoring" -- and I'm
2 quoting now -- "In the first few years of monitoring,
3 generally stable conditions are documented, and the
4 groundwater flow system beneath the regulated unit is
5 sufficiently understood."

6 And then your answer goes on.

7 So my question about this is: Does your --
8 well, let me just lay a foundation.

9 This is in regards to your opinion that you
10 can terminate monthly measurements of water elevations
11 if you meet those criteria of first few years of
12 monitoring, you see generally stable conditions,
13 correct?

14 A. That is correct.

15 Q. Okay. Does your position on terminating
16 monthly measurement of water elevations depend on
17 stable conditions remaining stable?

18 MS. GALE: I'm sorry. Can you repeat that
19 question?

20 MS. BUGEL: Sure.

21 BY MS. BUGEL:

22 Q. Mr. Gnat, does your position on terminating
23 monthly measurement of water elevations depend on the
24 assumption that stable conditions will remain stable?

1 A. That is correct.

2 **Q. So in this scenario, if after a few years of**
3 **monitoring, stable conditions are documented, do you**
4 **believe any measurement of water elevations is**
5 **necessary?**

6 A. A portion of water measurements is a standard
7 requirement and a standard practice with groundwater
8 monitoring events. In this particular case, the
9 groundwater monitoring events are on a quarterly
10 basis.

11 And in context of my testimony was that the
12 current proposed rule requirement is to have monthly
13 groundwater measurements, period, that would be
14 throughout the operating life and then throughout the
15 30-plus years of postclosure monitoring.

16 I've never encountered a groundwater
17 monitoring requirement that detailed on a monthly
18 basis for any type of monitoring we've done.

19 And, in general, I agree that upfront, you
20 know, we want to get a good understanding of the flow
21 system, so monthly measurements may be appropriate.
22 But after two or three years of those, you would have
23 a sufficient understanding of the flow system. And if
24 over time something happens that suggests that your

1 flow system has been impacted and changed in some way,
2 then, yeah, you go back you may need to collect some
3 more frequent groundwater measurements to get a better
4 understanding of what had occurred, and once you have
5 that, you revert back to the standard of
6 groundwater -- what the measurements are on a
7 quarterly basis or for a sampling event.

8 But to have that monthly requirement for the
9 operational life of the impoundment plus 30 years of
10 postclosure, plus potentially after that, depending on
11 what the current status of groundwater conditions are,
12 I've never encountered a requirement such as that;
13 hence, I provided that in my testimony.

14 **Q. Okay. And just to confirm a couple things,**
15 **is it your understanding that groundwater flow systems**
16 **are affected by periods of flooding?**

17 A. That is correct, yes. I mean, that's a
18 standard understanding, that there is an interaction
19 between the surface water discharge boundary and
20 groundwater next to the river.

21 **Q. And is it your understanding that periods of**
22 **flooding are affected by storms?**

23 A. Yes, periods of flooding can be affected by
24 storms, yes.

1 **Q. And the last question about this, did you**
2 **account for climate change in forming your position?**

3 MS. GALE: Objection. Outside the scope of
4 his opinions.

5 MS. BUGEL: So we would argue climate change
6 has effects on storms and flooding, which have been
7 inputs to his consideration or his position. So these
8 are all related, and it goes -- it's simply asking him
9 if he's considered all the relevant factors in forming
10 his position.

11 HEARING OFFICER HORTON: I'll allow the
12 question.

13 THE WITNESS: As to the interest in question,
14 and I've heard a lot of -- you know, in some of the
15 discussions yesterday, some theoretical concepts and
16 so on, I'm not quite sure how I would account for the
17 general terminology of climate changes in that,
18 recognizing that it does -- that some of the flood
19 events may be coming a little bit more frequent than
20 what was anticipated or known, and that could be
21 changed certainly to climate change.

22 However, stepping back a little bit,
23 recognizing that numerical modeling is part of this
24 required process within the system, that numerical

1 model was set up as a predictive tool to help
2 understand the flow system, to use that as a tool for
3 subsequent engineering evaluations, overlay
4 engineering evaluations.

5 That's also a tool that helps you identify
6 that once that model is well-calibrated and so on, it
7 helps predict, okay, you know, maybe our water level
8 measurements didn't capture the 80-year flood or
9 100-year flood. However, the model -- we did capture,
10 several, three, four, five, flood events over the
11 course of that monitoring, and that model calibrates
12 well and it can replicate the water levels that were
13 seen in the wells with the river stage and that model
14 becomes a good predictive tool, that model can help
15 understand what happens with the flow system when you
16 have a slightly larger flood.

17 And, again, recognizing if you have a larger
18 event or something that truly affects -- looks like
19 it's affecting your flow system and some of your
20 assumptions, which you see, based on your water levels
21 from your quarterly monitoring, then you might need to
22 go back in and take a closer look again for a while.

23 But to have that continual requirement,
24 again, I've never encountered it in any other

1 monitoring program I've been involved with.

2 HEARING OFFICER HORTON: This is Vanessa
3 Horton. It's 11:15 right now, so let's pause with
4 questions for Mr. Gnat, and then we'll resume at noon
5 for public comment and we'll resume with Mr. Gnat at
6 around 1:45. Thanks very much everyone.

7 (Whereupon, at 11:16 a.m., a
8 luncheon recess was taken to
9 1:00 p.m.)

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1 AFTERNOON SESSION

2 HEARING OFFICER HORTON: Good afternoon,
3 everyone. Welcome to this Illinois Pollution Control
4 Board hearing. My name is Vanessa Horton, and I am
5 the Hearing Officer for this Rulemaking.

6 This proceeding is entitled, Rulemaking for
7 Proposed New 35 Illinois Administrative Code 845,
8 Standards for the Disposal of Coal Combustion
9 Residuals in Surface Impoundments.

10 The board docket number for this Rulemaking
11 is R20-19.

12 Also present from the Board are two of our
13 board members, Board Member Anastasia Palivos and
14 Board Member Jennifer Van Wie. They are both
15 appearing via video.

16 Welcome to the Public Comment portion of the
17 second set of hearings in this matter. During the
18 first set of hearings in August, we welcomed oral
19 public comments in person, via Webex, and via
20 telephone. We do the same today. The way this will
21 work is as follows:

22 For everyone who had submitted their request
23 to make a public comment, I have broken those
24 individuals up into 15-minute segments. I will call

1 on the individuals to make a comment. When I do so,
2 please unmute yourself by pressing the microphone
3 button on the bottom of your screen if you are
4 participating via video or by pressing star 6 if
5 you're calling in by phone.

6 If I call on someone and they aren't on the
7 line yet, I will circle back to them at the end of the
8 15-minute segment. If there is time remaining at the
9 end of the Public Comment section, I will call on
10 individuals who have not signed up for a time slot in
11 advance.

12 Due to the number of people making comments
13 today, please limit yourself to a two-minute comment.
14 I will, unfortunately, have to cut you off at the
15 two-minute mark in order to let everyone have a chance
16 to speak today.

17 In accordance with Board Rule 101.606, please
18 be advised that this Public Comment portion is being
19 recorded by the Board to assist the court reporter in
20 getting an accurate record. The Public Section
21 portion is also being livestreamed via Facebook on the
22 Sierra Club Facebook's page.

23 Participant Prairie Rivers has requested a
24 Spanish language interpreter to be present for these

1 public comments. He is here physically in the
2 Thompson Center here today. So if anyone would need
3 their comment translated from Spanish into English to
4 be recorded by our court reporter, please let me know
5 at the start of your comment.

6 Please be advised as well that the board
7 gives equal weight to both oral and written public
8 comments.

9 With all that said, we will begin.

10 First up, Mr. Bob Jorgensen. If you would
11 like to give --

12 MR. JORGENSEN: Good afternoon. I appreciate
13 the chance to comment and your attention to my
14 comments. My name Bob Jorgensen. I live at 212
15 Sunnybrook Drive, East Peoria, Illinois. I have been
16 an environmentalist for most of my 71 years. I am
17 currently chairperson of the Heart of Illinois groups
18 Sierra Club and president and founder of East Peoria
19 Green.

20 I am concerned about the poisonous remains of
21 the coal that has been burned in the coal-fired power
22 plants in Illinois. It hurts me that these toxic
23 residuals are left next to rivers and aquifers that
24 provide drinking water for our communities. In many

1 locations they are seeping into our water systems
2 right now. We can't allow this threat to the health
3 of Illinoisans to continue.

4 The Illinois Pollution Control Board must
5 strengthen its standards to protect my health, my
6 daughter's health, and the long-term health of my
7 grandsons, Oliver, 5, and Aaron, 7.

8 If Oliver and Aaron are being poisoned now,
9 how will their health be when they get to be married?
10 How will it be if they raise their children to
11 adulthood? Will they have a chance to enjoy a healthy
12 retirement? You must make a commitment not to do an
13 ineffective job of just capping these remains in place
14 where the heavy metals can pollute our water supplies.

15 You must commit to doing a top-notch job of
16 protecting everyone's health by hauling all of the
17 toxic materials from the vicinity of our rivers and
18 aquifers and entombing them in a dry, stable location
19 where they won't threaten our health. You owe to this
20 my grandsons and your own grandchildren. Thank you.

21 HEARING OFFICER HORTON: Thank you.

22 Next up is Alex Rosen.

23 Okay. I'll circle back at the end of the
24 15 minutes.

1 Ann Baskerville?

2 MS. BASKERVILLE: Hello. Good afternoon
3 everyone. Thank you for this opportunity to comment.
4 My name is Ann Baskerville. I live in Will County,
5 which is home to many coal ash ponds and the coal ash
6 landfill and an old quarry in Joliet. While an old
7 quarry may be a convenient place to dump coal ash,
8 it's also a place where you see ash sitting in water.

9 Last summer, residents from the neighborhood
10 right next to the query gathered to express concerns
11 about coal ash toxins leaching into their underground
12 water supplies. Those fears are not unfounded. In
13 the past, documentation has shown groundwater flowed
14 from the quarry containing the coal ash further south
15 along Brandon Road near residential wells.

16 What is to say the flow of coal ash
17 contaminants will change? Active quarrying in the
18 area could impact groundwater flow.

19 Furthermore, people fish the nearby
20 Des Plaines River.

21 We need strong coal ash rules that will
22 protect both underground and surface water supplies.
23 My understanding is the operator is currently running
24 pumps to keep water in the Joliet Quarry. What is the

1 plan for when those pumps stop? How will water pumped
2 into the Des Plaines River be monitored both now and
3 in the long-term.

4 Finally, concerns about cumulative
5 environmental impacts must be incorporated into the
6 rules.

7 At the meeting last summer, residents in
8 Joliet described multiple sources of harmful pollution
9 in their neighborhood and noted experiences of family
10 and friends dying of cancer.

11 These rules must take these cumulative
12 impacts into account. Thank you.

13 HEARING OFFICER HORTON: Thank you.

14 Next up is Annie Dude? Annie Dude? We'll
15 circle back at 12:15.

16 Next up Basel Al-Aswad.

17 MR. AL-ASWAD: Hello. Thank you, members of
18 the Illinois Pollution Control Board. My name is
19 Basel Al-Aswad and I'm a 74-year-old semi-retired
20 orthopedic surgeon who works part-time in Lawndale
21 Christian Health Center in Lawndale, in Chicago, in an
22 underserved area. I live downtown Chicago, and I've
23 been in the Chicagoland area for 50 years, and I'm
24 proud to be a Chicagoan and an Illinoisan. I also

1 have a second home in Bloomington-Normal.

2 I'm a good fan of the outdoors. But more
3 important, I have a daughter and two beautiful
4 granddaughters, one and three years old. I believe I
5 am their voice, too. I'm a member of the Sierra Club,
6 and I'm concerned about global environmental issues.
7 But here in Illinois, I'm very concerned about the
8 toxic effects of coal ash to water quality and human
9 health.

10 As a physician, Illinoisan, and grandparent,
11 it is not enough to pass the Coal Ash Prevention Act,
12 as great as that was. It is imperative that it is
13 followed by strong rules to enforce it. The cleanup
14 has to be done properly with no wet ash and clear
15 closure standards of the coal ash impoundments. There
16 has to be proper corrective actions and no coal
17 ash-contaminated background wells.

18 Environmental justice has to be a
19 consideration and the effects on vulnerable
20 disadvantaged communities and how to remedy them.

21 Finally, there has to be a meaningful public
22 and agency oversight by making sure that all key
23 documents be available for viewer comment as you go to
24 a convenient place and sufficient time. Public input

1 is integral to the process, in my opinion.

2 Thank you very much for giving me the
3 opportunity to express my comments and concerns
4 related to the coal ash pollution in Illinois, and
5 hopefully you will make the rules strict. Thank you.

6 HEARING OFFICER HORTON: Next is Blair Janis.

7 MS. JANIS: Hi. Thank you for this
8 opportunity to speak to you today and for encouraging
9 public comment on this extremely important issue.

10 My name is Blair Janis. I'm a proud
11 Illinoisan resident. I've been studying environmental
12 justice, specifically the impacts of exposure to heavy
13 metals in children and the long -- lasting impacts on
14 their health and well-being.

15 I know that you've heard from plenty of
16 experts highly more qualified than me today, so today
17 I'm speaking to you as a resident of Illinois and,
18 honestly, as a person who has a lot of other things to
19 worry about. In fact, I think the last thing on a
20 list of everyday worries or even keep-you-up-at-night
21 level worries for most people is the highly technical
22 rules of managing coal ash waste in our state. And
23 honestly, that's how it should be, because you are
24 charged with restoring and protecting the environment,

1 including the many ways that the environment directly
2 impacts our public health.

3 I'm here to ask that today you take your
4 responsibility and your role as individuals within
5 this body with the great level of seriousness and the
6 full weight of responsibility that this issue and the
7 Rulemaking process deserve.

8 My mom's entire family is from Naplate, a
9 surrounding rural area, right on the Illinois River,
10 downstream from Will County Generating Station and
11 upstream from the Hennepin Power and Energy Plant.
12 Naplate is a wonderful place with many beautiful
13 people and places, but also a lot of heavy industry.

14 Among other issues, it has groundwater and
15 soil that was found to have elevated levels of arsenic
16 nearly 18 years ago that have yet to be cleaned up.

17 I'm here today because my mom and nearly all
18 of my grandparents died prematurely of cancer. So if
19 you've cared for someone or you haven't cared for
20 someone who has been healthy and then rapidly
21 progressed and died of cancer or helped someone as
22 they took their last breath, I sincerely hope that you
23 never have to. I have too many times, and then I've
24 sat up at night reading about forever chemicals and

1 wondering if the people that I love could and should
2 have been better protected. But if I'm worrying about
3 all of life's everyday challenges, that they didn't
4 have the time, energy, or access to information to
5 know about the risks that have surrounded them.

6 So if you have loved and lost someone, I hope
7 that you pause to consider that experience and how
8 it's connected to what we're talking about here today
9 and that you consider how you felt or how you would
10 feel, that you try your hardest to make sure that
11 people are not unknowingly and unnecessarily exposed
12 to toxins that could devastate them and their loved
13 ones.

14 We know that coal ash is a toxic combination
15 of carcinogens, neurotoxins, and poisons that cause
16 cancer, heart damage, lung and kidney disease, birth
17 defects, and premature death, and that they don't
18 dissipate in the environment but persist for
19 generations to come.

20 I'm here to ask that you worry enough about
21 this issue so that the people most directly impacted
22 by it don't have to lay up at night wondering if the
23 place that they live and love to call home is going to
24 make them or their loved ones sick or if their

1 environment, workplace, or community is not as safe as
2 it should be.

3 We must take immediate action to protect
4 families and water and our environment from these
5 dangerous dumps.

6 Thank you for your time today, and, again,
7 ask that you take your role as individuals with a
8 great level of seriousness and the weight of the
9 responsibility because those who are most directly
10 impacted can't always be here to advocate for
11 themselves or have reliable wifi access in the middle
12 of the workday or maybe because they, too, are trying
13 to care for a loved one dying of a disease as a result
14 of toxic exposure while working full time like I have
15 been before. I care about this and appreciate your
16 time today. Thank you very much.

17 HEARING OFFICER HORTON: Thank you very much.

18 We'll move on to Brandyn DeCecco?

19 And we have a limit. Everyone's comments is
20 two minutes due to the volume of comments today.

21 Brandyn DeCecco?

22 Next is Brittney Coats?

23 MS. COATS: Good afternoon, board members.

24 Thank you so much for hearing from me today. I am

1 Dr. Brittney Coats. I am a resident of Chicago as
2 well as a professor of biomedical science.

3 Given that fresh water is less than
4 one percent of our entire planet, it is vital that
5 this board consider the seriousness of the rules that
6 will be implemented this year, of course going into
7 next year. Not only must these rules apply to water
8 impoundments, but we must ensure that coal ash
9 landfills and scatter ash sites are included in these
10 vital rules to come.

11 It is clear from Waukegan and across the
12 nation's data that coal ash landfills pose a serious
13 threat to not only our groundwater, but, in Illinois,
14 to our environment. Several ash ponds and landfills
15 more directly threaten our rivers as well as Lake
16 Michigan.

17 Board members, please take into account how
18 serious not only the impoundments that are directly in
19 contact with our water, but the coal ash landfills and
20 scatter plots. We need more than simply traps on
21 these coal ash sites; we need direct removal in dry
22 locations.

23 Thank you so much for your time today, board
24 members. Have a great day.

1 HEARING OFFICER HORTON: Thank you.

2 Alex Rosen? Annie Dude? Brandyn DeCecco?

3 Moving on. Carol Juen? Carol Juen?

4 Next, Cheryl Sommer?

5 Again, if you're participating via video, you
6 could unmute yourself by pressing the microphone
7 button or the space bar. If you're on the phone, you
8 can press star 6 to unmute yourself.

9 MS. SOMMER: I'm Cheryl Sommer. Can you hear
10 me?

11 HEARING OFFICER HORTON: Yes. Please
12 proceed.

13 MS. SOMMER: Okay. Thank you.

14 I'm from O'Fallon, Illinois. I'm president
15 of United Congregations of Metro East, a faith-based
16 organization of over 30 congregations and
17 organizations in Madison and St. Clair counties.

18 Since our inception in 2000, one of our
19 constant priorities has been the creation and
20 protection of good-paying jobs so that our people can
21 have dignified lives. The Prairie State Clean Coal
22 Plant in Marissa was presented to us as a provider of
23 those good-paying jobs. The congregations have
24 members and neighbors who are workers at this plant.

1 Now, our public officials tell us that the
2 jobs there must be protected, but while we're told
3 that the jobs must be protected, are our workers
4 protected there? I contend that the answer is no, our
5 workers aren't as protected as they should be,
6 according to the current rules.

7 Removing coal ash responsibly requires worker
8 protections, death restrictions, and rules about where
9 the ash can go. The draft rules include some strong
10 on-site worker protections, but there are major gaps
11 that must be filled. I raise three:

12 Dust protection. We need increased
13 monitoring of coal ash dust, so to protect workers and
14 the communities.

15 Safety and health protection plans. These
16 must contain all and not just some of the needed
17 safety and health measures to limit workers' exposure
18 to ash. What good is it to have a good-paying job if
19 you're hurting your health?

20 Safe transportation. All transportation
21 alternatives for coal ash removal must be considered,
22 including barge, rail, and very-low polluting trucks,
23 such as electric ones.

24 Planning to protect jobs without strongly

1 protecting the workers is a hollow slogan. So please
2 add strong rules to protect our workers' health.

3 HEARING OFFICER HORTON: Thank you. Next is
4 Connie Schmidt.

5 MS. SCHMIDT: Hello. My name is Connie
6 Schmidt. I am the chair of the Illinois chapter of
7 Sierra Club. We have nearly 40,000 paid members here
8 in Illinois. However, with our supporters who signed
9 petitions and action alerts, that number soars to
10 300,000. Illinois is one of only three states
11 (inaudible). 500 of us were in the house and we
12 celebrated with Senator Bennett on the Capitol steps.
13 Now it is time to ensure that the intent of that law
14 is kept intact with the Rulemaking.

15 This is an era of closure for coal plants.
16 With the future of Energy Jobs Act passed in 2016 and
17 the clean energy jobs that are in discussion right now
18 with the governor's working groups, we are poised for
19 a clean energy era and the closure of dirty polluting
20 coal plants.

21 In fact, just yesterday, September 29th,
22 Vistra announced the closure of five more plants here
23 in Illinois between now and 2027. Will these plants
24 be allowed to leave a trail of dirty pollution in

1 their way after they have made incredible profits and
2 been given subsidiaries by the federal government?

3 The people of Illinois are desperately
4 concerned about groundwater contamination caused by
5 toxic coal ash disposal at Illinois sites. These
6 impoundments or pounds pollute surface water,
7 groundwater, and aquifers that connect to rivers and
8 lakes, many being the source of drinking water for our
9 Illinois citizens.

10 Experts have testified to the arsenal of
11 pollutants that threaten the health and safety of our
12 citizens and the ecosystems upon which they depend.

13 As you work to develop regulations, to
14 implement the intent of SB9, please remember the
15 charge of the Illinois Pollution Control Board to
16 restore, protect, and enhance the quality of the
17 environment in our state. Speaking for average
18 citizens of the Sierra Club and residents across
19 Illinois, I implore you to remember this charge as you
20 (inaudible) requiring coal companies to remove their
21 coal ash responsibly.

22 Thank you so much for the opportunity to
23 address you.

24 HEARING OFFICER HORTON: Thank you.

1 Next is Douglas Ower?

2 MR. OWER: Good afternoon, and thank you for
3 the opportunity to speak today. My name is Douglas
4 Ower and I'm a lifelong resident of Zion, Illinois.
5 I'm also the group chair of the local Woods & Wetlands
6 Group of Sierra Club, which covers Lake County,
7 Illinois.

8 Zion is a neighboring community to Waukegan,
9 and both of these communities are on the shores of
10 Lake Michigan. I am especially concerned about
11 proposed rules that would impact coal ash at the NRG
12 Coal Plant in Waukegan. The Waukegan site and other
13 NRG-owned sites have old coal ash dumps and coal ash
14 fills on-site. The Pollution Control Board has ruled
15 that coal ash dumps and fills are contributing to
16 water pollution (inaudible) of Illinois groundwater
17 quality standards. However, the draft rules only
18 address impoundments and do not include coal ash
19 dumps, fills, and landfills. These coal ash dumps,
20 fills, and landfills also need to be included in the
21 rules and not just the impoundments. After all, these
22 are leaking into Lake Michigan, which is the water
23 supply for millions of people.

24 Waukegan is an environmental justice

1 community. It has five Superfund sites, the most in
2 Illinois. There are two facilities that are currently
3 emitting ethylene oxide on nearby Waukegan. Ethylene
4 oxide is a carcinogen. And just a few miles away in
5 Zion, there are spent nuclear fuels stored in 65 dry
6 casks. The proposed rules need to take into account
7 cumulative impacts from all of these multiple
8 pollution sources.

9 The proposed rules should require that the
10 US EPA's environmental justice green be used to
11 identify EJ communities and should be used to include
12 cumulative impacts.

13 Many of these Superfund sites and pollution
14 sources are directly on Lake Michigan shores,
15 including the Waukegan Coal Plant. This shoreline has
16 seen a rapid escalation of storm damage and erosion
17 due to historic high lake levels and more frequent and
18 intense storms due to climate change.

19 My wife and I often walk along the shoreline
20 between our communities and can see the loss of the
21 lakefront. Changing lake water Michigan levels should
22 also be taken in account with rules addressing CCR
23 impoundments. The Waukegan community needs strong
24 rules, especially due to these cumulative impacts of

1 pollution.

2 Thank you very much for the opportunity to
3 speak.

4 HEARING OFFICER HORTON: Thank you.

5 And next is Edna Brass.

6 MS. BRASS: Good afternoon. I am a resident
7 of Illinois, but I'm also a resident who resides in an
8 area where chemical plants stored in their warehouses
9 have negatively impacted the quality of life of
10 residents, some of them for several decades. My
11 personal experience has been that the companies have
12 not held up to their promises, procedures, and
13 processes in regards to keeping the residents and
14 workers safe and healthy. I have witnessed residents
15 die or suffer from chronic, debilitating illnesses.

16 Although, companies would deny the claim,
17 research and input from medical professionals who
18 treat these residents show a correlation between them
19 and the fact that they directly reside within the
20 boundaries of some of these entities.

21 Therefore, I have a very difficult time
22 trusting claims from anyone to do what is best
23 regarding the cleanup of the ash dump and seal,
24 increased worker and community protection,

1 environmental justice, and meaningful public and
2 agency oversight, and that there will be no rollback.

3 But it is essential that you respect human
4 life in regards to health, safety, and quality of
5 life. I would ask that this board do a better job and
6 be more efficient of doing what is right for both the
7 workers and the members of the community.

8 Thank you for this time.

9 HEARING OFFICER HORTON: Thank you.

10 Next is Frederick Petit?

11 Ms. Drogan? Charlotte Drogan? Please keep
12 yourself muted.

13 If everyone can be muted until I call on you,
14 that would be wonderful.

15 Mr. Petite, please go ahead.

16 MR. PETIT: Ladies and gentlemen, my name is
17 Frederic Petit and I'm back home from Northern Europe,
18 France. When I came to this country almost 25 years
19 ago to improve my green space, I also discovered that
20 you have established areas where humans cannot go and
21 nature (inaudible) from all basically you are.

22 THE COURT REPORTER: I don't know what he's
23 saying.

24 MR. PETIT: But one of the (inaudible) we put

1 there are (inaudible) as well. For not opening
2 sooner, it is dumping coal ash anywhere. I hope you
3 know about where one day the burned coal waste in the
4 form of coal mine, which, not surprisingly, could fire
5 and keep burning to this day. They even had to
6 evacuate the village, as it is way too dangerous to
7 live there. Sometimes I'm wondering what those people
8 who dump ashes in river may be thinking. Why don't
9 they dump those ashes in their backyard? Don't they
10 go for a walk along the river they have polluted and
11 swim in them?

12 In saying that it's a normal consequence of
13 burning coal and they should not be criticizing what a
14 benefit (inaudible). I learn in this country that
15 more than anywhere else in the world, when you face an
16 issue, you ask for help and assistance. There is no
17 shame.

18 I work in IT, and when (inaudible) coals of
19 American miner and some today apparently want to make
20 American miner die again. Coal mining, there's
21 conflict in coal mining accident by making miner sick
22 to death. Coal-fired development of third world
23 countries, but today we have (inaudible). Don't dump
24 ashes where eventually there will contaminate the

1 water, attack my daughter, pushing this under the rug,
2 making them sick.

3 Here I think and more people do and there
4 won't be time, in their judgment, about how to ash
5 dumpsters have been treating us. Be smart. Don't
6 dump, don't hide, face the issue, and fix it.

7 (Inaudible.) Also, take your ashes to your backyard
8 and make them held accountable.

9 Thank you for listening.

10 HEARING OFFICER HORTON: Thank you very much.

11 Circling back to Carol Juen?

12 MS. JUEN: Hello. Thank you for letting me
13 speak and for listening to the public. I had some
14 technical difficulties with my computer. That's why I
15 was late. I am 65. I'm a lifelong member of
16 Illinois. Live here. I'll probably die here. My
17 children are here. This is family for me. And I have
18 grandchildren here.

19 So I think that these rules that we're
20 writing today should be viewed as a social document, a
21 social contract, with the people that live in Illinois
22 and says that our government and we, as supporters or
23 writers of our government, will not sacrifice the
24 health of our residents on the alter of profit any

1 longer, because that's what we've been doing. All
2 this coal ash and everything is about how the
3 corporations could make the profit.

4 And Illinois needs to be -- I think Illinois,
5 we're working, we're moving forward as a leader in
6 clean energy, and to be known as a state that cares
7 about the people that live here and that we will put
8 them first. This includes people in our marginalized
9 communities, that they're already having burdened the
10 industry and the pollution from the industry more than
11 other parts of the state.

12 I think that this -- the people that say that
13 including more regulations on the coal companies and
14 everything will hurt our economy and move people out.
15 I think that putting these kind of rules in place is
16 an investment in our state because it will draw here
17 when companies -- the kind of companies and the
18 businesses that we want to come are people that see
19 that we care about our environment, we have places to
20 raise families healthy where they have clean water and
21 clean energy. And that is what we need to be known
22 for, and that's what we need to stand for. We need
23 stricter rules than what Federal EPA has because, as
24 we've seen under this administration, that can be

1 swayed by dollars.

2 So that is just what I would like you to
3 consider how important this is and it shows what we
4 stand for with the people in Illinois. Thank you.

5 HEARING OFFICER HORTON: Thank you.

6 We'll move on to the 12:30 session. And just
7 as a reminder, everyone is limited to a two-minute
8 comment today due to the volume of people who are
9 commenting.

10 First up is Helen Gesell.

11 MS. GESELL: Hi. This is Helen Gesell. I'm
12 a resident of Oak Lawn, Illinois. I am also a scout
13 leader. I take kids out, and we do all sorts of
14 thing, or I did before COVID. One of the issues that
15 I have is clean water, clean ground water. When
16 you're camping, we need to know that this is safe for
17 all kids.

18 Another issue I have is the protection. We
19 need to protect all people, not just the wealthy
20 areas, but the poor areas. And most of the coal ash
21 problems are in areas where the communities do not
22 have the ability to get heard or for work put in or
23 even to be recognized as having this issue.

24 We, as the United States, need to make

1 sure -- and as Illinois -- need to make sure that we
2 are first in putting our residents ahead and keeping
3 them safe.

4 So thank you for letting me speak, and I am
5 so appreciative of hearing everything that people are
6 saying. Thank you.

7 HEARING OFFICER HORTON: Thank you.

8 Next is J. Gruber.

9 MS. GRUBER: Hello. I'm a CPA. I have had a
10 career in Illinois, in Central Illinois, and I'm very
11 grateful for this hearing. I want you to know that I
12 have two kids who are basically grown-up; they're in
13 their 20s now. And my kids have enjoyed hiking here
14 in Central Illinois.

15 My dad was the son of a coal miner, and my
16 grandfather had terrible black lung and so did all of
17 his compatriots in coal mining. I notice that now my
18 dad was able to get himself and I was able to not go
19 be a coal miner too. Of course I happen to be female.
20 But it's still, the history of coal mining is
21 associated with coal ash, and it is so important
22 that we move beyond that type of economy that is a
23 fossil fuel-based economy. And Illinois deserves
24 clean water. My kids deserve to be able to hike and

1 enjoy it. And I want it to be that they can come
2 visit when they come back home. And I want it to be a
3 great place to live in Illinois with a good economy
4 and one that is not based on fossil fuels.

5 Coal ash is a side effect of the coal
6 economy, but I must say that it's very important that
7 we move forward into the future and be who Illinois
8 needs to be. We're in the center of states that do
9 not put the environment first. And I want it to be an
10 attractive place to be, here in Illinois, with a great
11 environment.

12 Thank you for hearing our comments. We need
13 all of Illinois' waters to be cleaned. It's too
14 beautiful. Thank you so much. Have a great day.

15 HEARING OFFICER HORTON: Thank you.

16 Next is Jackie McGrath.

17 MS. MCGRATH: Hi. I'm Jackie McGrath. I'm a
18 Barrington resident and a member of the League of
19 Women Voters of the Palatine area. The League of
20 Women Voters, a nonpartisan political organization,
21 supports protection of water, land, air, and the
22 safest management of waste products. Coal ash is a
23 waste product from coal power plants and contains
24 deadly chemicals such as arsenic, lead, mercury

1 thallium, chromium, and other chemicals. These
2 chemicals are known to be dangerous to human and
3 animal health and have no place in our water sources.
4 Coal ash ponds are dangerous when wet or become wet,
5 as the chemicals will contaminate water sources.

6 The rules must be very clear that the ash is
7 not left in a place which can become wet, and many
8 current sites are at risk from increased flooding.
9 The most stringent rules need to be put in place to
10 clean up current sites, including ash ponds,
11 landfills, dumps, and impoundments.

12 The League of Women Voters supports that
13 existing coal ash be required to be removed from
14 locations that are close to groundwater, rivers, or
15 lakes, or may be impacted by flooding. We do not
16 support coal ash to be capped.

17 Additionally, groundwater around any coal ash
18 ponds should be monitored until safe water results are
19 achieved and not terminated by a specific end date.
20 The League of Women Voters Illinois believes that the
21 investment and prevention of danger, such as collapse
22 of coal ash pond or leakage of dangerous chemicals
23 into groundwater, rivers, streams, or lakes, is the
24 responsible and safe approach in order to protect our

1 water, land, and the health of our communities.

2 Thank you for this time to speak.

3 HEARING OFFICER HORTON: Thank you.

4 Next is James Sullivan.

5 MR. SULLIVAN: Hi. My name is James
6 Sullivan. I live in Chicago, Illinois. And I support
7 the strongest regulation for coal ash and any sort of
8 pollution. For too long, corporations have been just
9 burying stuff under the rug like coal ash. We all
10 know the dangers of it. We don't have to keep on
11 repeating that there's arsenic, mercury, and all the
12 rest of that stuff in there.

13 We need to have them pay for it and not to
14 have the consumers or the taxpayers pay for it. They
15 know how dangerous it is, and it has to cut into their
16 profit. They have to make a plan. And we have to
17 make a plan, and we have to be proactive about it.

18 That's all I have to say. Thank you very
19 much for your time.

20 HEARING OFFICER HORTON: Thank you.

21 Next is Jane Cogie.

22 MS. COGIE: Thank you so much. Can you hear
23 me?

24 HEARING OFFICER HORTON: Yes.

1 MS. COGIE: Thank you.

2 I'm glad to have the opportunity to comment
3 before the Illinois Pollution Board on the IEPA rules
4 for implementing Coal Ash Pollution Protection Act. I
5 speak as the chair of the Shawnee Group of the Sierra
6 Club, but also as a 30-year resident of Southern
7 Illinois, the Carbondale area, concerned that coal ash
8 rules, when finalized, indeed stop the harm caused by
9 toxic waste left carelessly by coal companies to
10 poison our state's waters and nearby communities and
11 natural habitats.

12 Given the range of toxins in coal ash from
13 carcinogens to neurotoxins to poisons, the public to
14 whom our state's waters belong have the right to
15 expect that rules detail with precision how these
16 toxins will be reined in. I'll limit my comments to
17 two areas where the rules, as currently drafted, allow
18 the toxic impacts of coal ash to continue.

19 First, greater specificity is needed in rules
20 surrounding how and where coal ash is stored,
21 specifically to assure that it stays dries. Others
22 have commented on that. It's when the coal ash
23 becomes wet, its toxins seep into the groundwater and
24 beyond. I believe the experts will specify the

1 precise conditions needed to achieve that assurance.
2 The recommendations include not stirring coal ash on a
3 flood plain and storing it at a sufficient height
4 above the highest groundwater elevation. One
5 recommendation cites a distance of at least five feet.

6 A second point relates to unconsolidated coal
7 ash, such as in piles and landfills that exist at many
8 coal plants. Groundwater monitored at the Illinois
9 CCR landfills were found to contain unsafe levels of
10 toxins, including lead, arsenic, lithium, and
11 chromium, that leaks in from the coal ash piles and
12 landfills. Thus, rules for administering the Coal Ash
13 Pollution Protection Act, to keep it true to its name,
14 must be revised to explicitly address these issues.

15 Before closing, I want to appreciate -- to
16 voice my appreciation for a few of the water
17 monitoring rules drafted by the IEPA that indeed
18 strengthen the comparable federal rule. One of these
19 rules requires more frequent groundwater monitoring;
20 another requires continued care of contaminated sites
21 by the industry until the groundwater quality meets
22 groundwater protection standards.

23 In closing, I want to urge the Illinois
24 Pollution Control Board to further strengthen the

1 Agency's drafted rules through filling these and other
2 gaps and bring to a full stop the contamination of our
3 waters, our communities, and surrounding natural
4 habitats.

5 Thank you so much for your time. I
6 appreciate it greatly.

7 HEARING OFFICER HORTON: Thank you.

8 Next is Kaitlyne Loyola? Kaitlyne Loyola?
9 Okay. I'll circle bark.

10 Next is Karen Long MacLeod.

11 MS. LONG MACLEOD: Hello.

12 HEARING OFFICER HORTON: Please proceed.

13 MS. LONG MACLEOD: Good afternoon. My name
14 is Karen Long MacLeod. I am commenting as an impacted
15 resident of Waukegan who lives about two miles from
16 NRG Coal Plant. Thanks to this Board's June 2019
17 ruling on a CR lawsuit, we know coal ash is causing
18 persistent exceedences at the Waukegan coal plant. We
19 know NRG consciously did nothing to stop or even
20 identify the specific source. No further
21 investigation of historic areas, no additional
22 monitoring wells, no further inspection of ash ponds
23 or land around the ash ponds in the locations that
24 show persistent exceedences.

1 15 months later, we're still waiting for
2 action to make NRG clean up Waukegan's front yard. We
3 are tired of waiting for decisive, meaningful action,
4 but we're counting on the strongest possible roles to
5 ensure long-term protection of our water environment.

6 One, the rules must be clear that coal ash
7 impoundments not be closed in place, so corrective
8 action completed if coal ash remains in contact with
9 the water.

10 Two, the rules must not allow closure in
11 place of coal ash impoundments in locations where
12 stability is jeopardized.

13 Three, the rules should address a major
14 source of coal ash pollution, historic landfills, and
15 unconsolidated coal ash fill.

16 Finally, I urge this board and the Illinois
17 EPA to recognize Waukegan as a priority closure
18 cleanup site. Waukegan is the largest, most densely
19 populated community impacted by coal ash impoundments
20 in Illinois. Waukegan residents have been
21 disproportionately burdened with pollution from this
22 coal plant and five EPA Superfund sites for years. We
23 deserve better.

24 Thank you for your time.

1 HEARING OFFICER HORTON: Thank you.

2 Next is Karyn Grace? Karyn Grace?

3 Kaitlyne Loyola? Kaitlyne Loyola?

4 Okay. We'll move onto the 12:45 section.

5 Next is Kathleen MacKay? Kathleen MacKay?

6 MS. MACKAY: Yes. Is there a way to connect?

7 I must be busy.

8 HEARING OFFICER HORTON: We hear you. You
9 can go.

10 MS. MACKAY: All I see is -- so I am being
11 heard?

12 HEARING OFFICER HORTON: Yes.

13 MS. MACKAY: Thank you.

14 My name is Kathleen MacKay. I live in
15 Chicago. I'm a lawyer. And right now I'm a Ph.D.
16 candidate in moral theology at the University of
17 Notre Dame.

18 It is my belief that the government has a
19 moral obligation, through the Rulemaking process you
20 are doing right now, to protect the citizens of
21 Illinois from the effects of environmental damage and
22 injury caused by industrial projects, in this case,
23 the damage to water systems caused by the improper
24 disposal of coal ash. The burden of this cleanup

1 should fall upon the polluters, not the citizenry.
2 This moral obligation extends to people living now and
3 to future generations.

4 I am writing my dissertation on the ethical
5 framework behind the Great Lakes Compact. As you
6 undoubtedly know, this legislation is concerned with
7 preserving the integrity of the Great Lakes ecosystem.
8 It has come to my attention that large landfills in
9 Waukegan that are currently storing coal ash generated
10 by power plants are not covered under the rules you
11 are proposing.

12 As I am sure you know, hydrologic systems are
13 formed by a combination of groundwater and surface
14 water. Water percolating up and down through coal ash
15 landfills contaminate groundwater systems that are
16 directly connected to Lake Michigan.

17 The protection of the water in Lake Michigan,
18 our revered Great Lake, is a paramount responsibility
19 of lawmakers and government workers in Illinois.
20 Landfills should be cleaned up just as more
21 conventional storage ponds will be. It makes
22 absolutely no sense to exclude them.

23 Thank you for your time.

24 HEARING OFFICER HORTON: Thank you.

1 Next is Kathleen Regan?

2 I'll circle back.

3 Kayla Jacobs?

4 MS. JACOBS: Hi. Can you hear me?

5 HEARING OFFICER HORTON: Yes. Please
6 proceed.

7 MS. JACOBS: Hello. My name is Kayla Jacobs.
8 I am the director of programs for the Catholic Diocese
9 of Joliet's Laudato Si' Ministry. That is our
10 environmental ministry.

11 The objective of our ministry is to protect
12 God's creation and ensure the common good of all
13 creatures, especially the most poor and vulnerable.
14 Because of this, we support strong rules for coal ash
15 in Illinois that protect human and environmental
16 health.

17 Our diocese consists of 125 churches and over
18 600,000 parishioners. The hub of our diocese is
19 Joliet, which is also the home to the Lincoln Stone
20 Quarry. We were recently informed that the Lincoln
21 Stone Quarry has tried to contend that these rules do
22 not apply to them because they are considered a
23 landfill by the Illinois EPA.

24 We are in strong favor of these rules

1 applying to the Lincoln Stone Quarry and that these
2 rules do not provide a loophole for coal ash landfills
3 or ducts.

4 We know that the quarry had leach
5 contaminants in our water in past. Strong
6 measurements must be put in place to make sure it
7 doesn't happen again in the future. Joliet already
8 has other water issues of concern, including an
9 inadequate supply. We cannot afford to take a risk to
10 damage the supply that we do have.

11 Additionally, there's other fear that there
12 will be rollbacks of these protections on the federal
13 level. Illinois should set a higher bar, and even if
14 the federal level eases their regulations, we should
15 maintain the strongest protections possible for public
16 health, water, safety, and good air quality.

17 Thank you.

18 HEARING OFFICER HORTON: Thank you.

19 Next is Kelly McGinnis. Kelly McGinnis?

20 Okay. I'll circle back.

21 Kristen Ahern.

22 MS. AHERN: Hello. My name is Kristen Ahern
23 and I am a Chicago artist and designer. I work to
24 educate and advocate for labor, climate, and

1 environmental issues around the arts, including more
2 work on the national and international level.

3 Artists are some of the most passionate,
4 involved, hard-working people I've ever met. And I'm
5 not an expert in coal ash, but I am an expert in
6 collaboration and fair labor. One thing I've learned
7 in this collaborative work is the importance of a
8 clear definition of terms for the best creative
9 outcome. This applies to environmental protections
10 also. And I ask that the board ensure that the
11 Rulemaking prevents possible loopholes that
12 profiteering corporations could use to avoid
13 accountability for the pollution that impacts our
14 communities.

15 Your mission to establish coherent rulings
16 and workable environmental standards that restore,
17 protect, and enhance the quality of Illinois
18 environment. Coherent means that terms such as
19 "temporary" or "removal" have clear, measurable
20 definitions and timelines. Landfills must be added to
21 consideration in addition to impoundments for this
22 ruling for best coherent rulings.

23 Also of great importance is the protection of
24 workers who are removing and storing. As we have

1 learned this year in particular, our essential workers
2 are most at risk when regulations are vague. As
3 someone who sews, I've been forced to become an expert
4 on PPE this year, as I constructed and donated cloth
5 masks to underserved communities.

6 We know the impact that toxins have on
7 groundwater and direct contact. The Rulemaking needs
8 to ensure specific guidelines for worker protections
9 that polluting corporations provide comprehensive PPE
10 for all workers. Again, clear definitions are
11 essential to protect communities and workers. The
12 companies that profited from this pollution must pay
13 to remove their waste and protect the workers. The
14 Illinois Pollution Control Board is responsible for
15 setting these rules, as corporations will choose when
16 it's profit, not people.

17 Thank you for your time.

18 HEARING OFFICER HORTON: Thank you.

19 Next is Lali Watt.

20 MS. WATT: Hi. My name is Lali Watt, and I'm
21 a member of both the Sierra Club and the League of
22 Women Voters of Illinois, and I serve on the National
23 Board of the League of Women Voters. But today I'd
24 like to speak for myself as an immigrant, as an

1 activist, and as someone who, back when I was not
2 retired, I was a CPA, and I worked for a Fortune 200
3 company, one of my responsibilities was setting the
4 on-sheet liabilities for cleanup of Brownfield sites.
5 So I can come at this from both sides.

6 (Audio interference.)

7 We had an opportunity to do something that we
8 can be proud of. And I think without fear of
9 contradiction, I can say that this year has been a
10 pretty terrible year for pretty much everybody. So it
11 would be nice if we could get something right and do
12 something beyond the minimum that we can get away
13 with.

14 There are people who are suffering from
15 environmental injustice, from healthcare injustice,
16 from education injustice, from economic injustice, and
17 they are really struggling to keep their heads above
18 water.

19 They may not be able to be present at events
20 like this to speak for themselves. So I hope that
21 those of you who make these rules and who can afford
22 to do something on their behalf will look at them as
23 your family members, as your friends, as your
24 children, as your grandchildren, as your neighbors,

1 and I hope you will think about what you will be
2 considering 20 years from you when you look back and
3 you say, way back then, when I was making these rules,
4 did I do my best to do the best that we know how to
5 do.

6 People have a tendency to say, well, we did
7 the best we could, but we didn't know any better.
8 Well, we do know better. Let's not go to the lowest
9 common denominator. Let us make sure we are applying
10 the very best thinking that is available, the very
11 best science that is available, the most thoughtful
12 that we can be to actually do the right thing to
13 protect not only our environment but our people and
14 our sense of community.

15 So I urge you to do the right thing. It
16 isn't enough -- we aren't even allowing like a lot of
17 people to have interpreters or have translations of
18 things, and I urge for those specific things. But I
19 think beyond those specific things, it isn't enough to
20 check the box saying, yeah, we had a translator
21 available. It is important to check the box that
22 says, I did the very best I knew how to do, and I did
23 my very best for the most vulnerable people in our
24 state.

1 So thank you for giving me a chance to speak
2 today.

3 HEARING OFFICER HORTON: Thank you.

4 Next is Larry Evans? Larry Evans?

5 MR. EVANS: Hello? Can you hear me?

6 HEARING OFFICER HORTON: Yes. Please
7 proceed.

8 MR. EVANS: My name is Larry Evans. I am a
9 member of United Congregations of Metro East in
10 Madison and St. Clair County. I am on the board. I'm
11 also second vice-president of Gamale (phonetic) of
12 Illinois and Iowa, which involved sister affiliates in
13 Springfield, Moline, and the Chicago Metro area. I
14 live in Glen Carbon, Madison County, Illinois, and I
15 grew up in Northern Illinois near Wood River Creek.
16 Wood River Creek enters the Mississippi River at the
17 East Alton Power Plant location. I hiked, swam, and
18 ice-skated up and down Wood River Creek from farmland
19 upstream to the Dynegy spill reservoir for the power
20 plant. I observed pollution flowing into the water
21 system from raw home sewage to industrial waste
22 seepage, from saturated soil and powering out of
23 pipes. Even as a child, I knew this was unnatural and
24 dangerous.

1 I was introduced at that time to the human
2 problem: How do we humans live safely in the midst of
3 the pollution we create in the business of living? It
4 is with this personal life experience that I address
5 you today. You must ensure long-term protection of
6 our waterways and groundwater by drafting rules which
7 clearly prevent coal ash from ever getting wet, from
8 rain above or groundwater below. Rules must clearly
9 state that coal ash cannot be closed in place if the
10 ash is or will remain wet. Rules must clearly state
11 that cleanup shall not be complete until coal ash
12 cannot be exposed to water.

13 Finally, rules must state clearly that
14 industries shall not be allowed to install background
15 wells in coal ash-impacted areas.

16 Thank you very much.

17 HEARING OFFICER HORTON: Thank you.

18 I'm circling back to Kathleen Regan?

19 Kathleen Regan?

20 Next, Kelly McGinnis? Kelly McGinnis?

21 We'll move onto the next section. Laurette
22 Hasbrook.

23 MS. HASBROOK: Yes. Thank you so much. I'm
24 a member of the Sierra Club, which is how I have been

1 learning, very belatedly, I'm ashamed to say, about
2 the issue of coal ash pollution in our state. I'm
3 horrified by what I have been learning. I'm a
4 resident of Chicago. I am overlooking Lake Michigan
5 as I speak. And to know that throughout our state
6 there are these horrendous pits of coal ash that are
7 polluting our groundwater is of deep concern to me.

8 I think we all are aware that our earth is --
9 and our country is at an extremely dangerous point.
10 We need to make tremendous changes if we are to save
11 our earth. I think this is a chance for Illinois to
12 be in the forefront in an environmental issue that is
13 basic and extremely important for the residents of our
14 state at a time when we see nationally environmental
15 protections are being gutted.

16 I've been listening to the other speakers. I
17 don't need to repeat what they said. It's important
18 for these rules. I echo that last speaker and the
19 speaker before him. Exactly that, we need very strong
20 rules in this spill. We need a continued voice for
21 the public, permanent protections, and a guarantee the
22 industry will take the responsibility, which is
23 theirs, to clean up these sites and make sure that
24 this kind of degradation does not happen again.

1 Thank you so much. I really appreciate the
2 opportunity to be part of this and to be learning.
3 Very much appreciate the work of all the groups that
4 are tirelessly advocating for an environment for
5 generations to come, a sustainable, clean environment.
6 Thank you.

7 HEARING OFFICER HORTON: Thank you.

8 Next is Lois Kain.

9 MS. KAIN: (Inaudible) -- that were held
10 leading up to the passage of SB9. I expressed my
11 concerns about the Trump EPA rolling back and even
12 gutting the Clean Water Rule and the coal ash rules
13 set by the Obama Administration in 2015. While these
14 rules were compromised, as with industries, they
15 weren't perfect. They protected more isolated waters,
16 smaller tributaries of streams, wetlands, ponds,
17 lakes, people, and our greater environment. But even
18 these rules were too much for the industry-friendly
19 Trump Administration.

20 SB9 does not allow the Illinois rule to be
21 weaker than the federal rule. And now with these
22 federal rollbacks, it won't take much to be stronger,
23 leaving coal ash in ponds for years longer,
24 contaminating our water and land.

1 I don't live directly in the shot of a
2 coal-burning power plant or leaking coal ash pond, but
3 I do live downstream, and we all live downstream. In
4 2011, I went on a tour of Central Illinois Coal
5 Country. We saw mines, mounds of coal ash, power
6 plants, I saw the pollution and contamination and
7 misery created by unregulated coal-burning waste. Our
8 own Middle Fork River is being threatened with massive
9 ruin by rainstorms, flooding, and collapse of the coal
10 ash ponds that line the river.

11 You're being called on right now to make
12 Illinois, the Land of Lincoln, the leader in the
13 country in how to regulate and clean up these poisons
14 and radioactive substances left in the wake of coal
15 burning. Fresh clean water is precious, and we are
16 running out of it. We cannot wait any longer.
17 Illinois can do this.

18 Thank you so much for your time today.

19 HEARING OFFICER HORTON: Thank you.

20 Next is Maria Peterson?

21 MS. PETERSON: Yes, I'm here. Thank you.

22 My name is Maria Peterson and I am a citizen
23 of Lake County and a former U.S. Department of Labor
24 attorney. During my time as a labor lawyer, I

1 assisted "black lung" claimants obtain their "black
2 lung" benefits from their employers who were
3 coal-mining company owners.

4 I am making a comment today because I believe
5 in a clean environment and industry accountability,
6 including strong safeguards against coal ash dust
7 pollution to protect workers to avoid a threat to
8 their health.

9 There must be the requirement of a safety and
10 health plan to protect workers by providing the
11 appropriate PPE for dust and worker protection. When
12 transporting the toxic ash, safe transportation modes
13 must also be within the safety and health plan, to
14 protect the workers transporting this ash and the
15 communities said ash will be traveling through. The
16 safety and health plan must protect workers above and
17 beyond the federal rule.

18 The companies that own these plants are all
19 headquartered out of state and clearly do not see
20 firsthand the effects coal ash has on the workers
21 responsible for cleaning up and removing the coal ash.

22 Think back to 9-11. How many first
23 responders have died from complications of breathing
24 dust created by the collapsing towers in New York

1 City? Further, think how many were denied benefits to
2 pay for their illnesses relating to breathing this
3 toxic dust.

4 I take pride living here in Illinois, having
5 J.B. Pritzker as our governor. His reliance on
6 science and his quick action to prevent the spread of
7 COVID has kept Illinois COVID cases low. We can and
8 must do the same when protecting the workers who are
9 front and center in removing, transporting, and
10 storing coal ash.

11 I would also like to remind all of you that
12 this, too, falls under Environmental Justice. We know
13 that 22 of 24 coal ash sites have unsafe
14 concentrations of toxic coal ash pollutants that
15 exceed levels that are safe for occupants.

16 Providing these workers with the appropriate
17 and safest equipment to protect their lives and the
18 lives of their families will showcase Illinois, once
19 again, on how we take care of our people. Please keep
20 in mind that these workers are often unskilled and
21 come from minority and low-income communities, the
22 same communities these coal ash plants are located in:
23 Waukegan, Marion, Hennepin, Alton, and so on.

24 Men and women may apply to do this work

1 because they need to work and they want to work. But
2 it is up to the Board to insure they are working in a
3 safe environment.

4 I would like to offer the following reminder:
5 "The true measure of any society can be found in how
6 it treats its most valuable members," by Gandhi. I
7 pray that the Board will create a safety and health
8 plan stricter and more robust than that of the federal
9 rule to protect the workers who will be front and
10 center of the cleanup, moving, and storage of coal
11 ash. Thank you.

12 HEARING OFFICER HORTON: Thank you.

13 Moving next to Mark Lundholm? Mark Lundholm?
14 I'll circle back.

15 Next is Mary Browning Smith? Mary Browning
16 Smith?

17 MS. BROWNING SMITH: Can you hear me? I'm
18 sorry. I was not -- can you hear me now?

19 HEARING OFFICER HORTON: Yes. Please
20 proceed.

21 MS. BROWNING SMITH: Okay. My name is Mary
22 Browning Smith and I live in Palatine Illinois. I was
23 born in Pennsylvania. And in 1959, my mother died of
24 breast cancer. The doctors told my father the cause

1 was environmental. At that time, they based this on
2 information about visits my mother and father had made
3 to various sites as part of his career as a scientist.
4 But, additionally, my doctor's, through the years,
5 agreed due to the fact that my mother's identical twin
6 lived to almost 90 with no cancer.

7 One of my mother's last trips was to come to
8 Illinois and pick out the house we would move to with
9 my father. My family has lived in Illinois for
10 60 years. My children, nieces, nephews, great-nieces,
11 and great-nephews have, thus far, chosen to stay in
12 Illinois. I am proud to be a resident of Illinois. I
13 have also thought of Illinoisans as having common
14 sense, caring, and doing the right thing. I think our
15 leaders in Illinois have shown these qualities during
16 the COVID-19 response.

17 So what I want in your Rulemaking is to show
18 true leadership, common sense, and caring. I want to
19 know that you're going to recommend doing the right
20 thing, not taking the path of least resistance or
21 greed.

22 Doing the right thing means making sure that
23 coal ash is not allowed to be wet or in contact with
24 groundwater at all. Caring is defining detailed,

1 clear policies for workers' safety. During 9-11,
2 those first responders didn't have time to get what
3 they needed to stay safe. We have time and the
4 know-how.

5 I believe that transparency and oversight is
6 common sense, but it also leads to trust, something
7 that is in short supply these days.

8 I want to know you are doing more than what
9 is adequate. I'm not confident that the rollbacks to
10 weaker regulations relate to the health of people or
11 are even based on science. Including coal ash
12 landfills and dumps, in addition to impoundments,
13 makes sense. By leaving them out of the Rulemaking,
14 we are only solving part of the problem.

15 I'm asking you to show leadership and do
16 what's right. I don't want my daughter to leave her
17 children motherless because we didn't take care of
18 something we know is dangerous.

19 Thank you.

20 HEARING OFFICER HORTON: Thank you. Next is
21 Mary Burnitz? Mary Burnitz?

22 I'll circle back.

23 Next is Meredith West?

24 MS. WEST: Hello. Thank you for giving me

1 this opportunity to comment on your Rulemaking for
2 coal ash. My name is Meredith West. I am a mother of
3 two teenagers. We live in Chicago just one mile north
4 of the United Center. My family works hard to live in
5 a zero-waste lifestyle. We have an electric car. Our
6 energy supplier is a solar and wind power reseller.
7 We have a garden on our back deck, as we don't have a
8 yard. We have a rain catcher. And we compost. We
9 all became vegetarians when we found out that by doing
10 so would reduce our carbon footprint by a third.

11 So, in short, we reduce, reuse, and recycle
12 in every way possible. We can take all these actions
13 and put forth all kinds of effort, but without your
14 writing and enforcing good, environmentally healthy
15 rules, none of it will keep our water clean.

16 As a citizen who's doing all I can to protect
17 the earth, I implore you to make the strictest of
18 rules. If you do not ensure that coal ash management
19 and cleanup is done right, our family's water is at
20 toxic risk and so is yours.

21 Please rule that all coal ash deposits be
22 lined to prevent from leaching into the ground. It's
23 not enough to simply cover the ponds if they are not
24 lined. Please rule that when cleanup happens, the

1 surrounding areas, back wells, and landfills are
2 tested and all pollutants are removed. It's not
3 enough to remove the coal ash and leave the water
4 polluted. It's not enough to remove the coal ash and
5 endanger the health of those doing the hard labor.

6 Rules for the removal of coal ash need to
7 include worker protections, safe and complete
8 containment, and deadlines. It's not enough to tell a
9 company they must safely remove the containments and
10 leave it to their own discretion and timelines.

11 Please be exacting as possible when writing
12 these rules and listen to the scientists who advocate
13 for the water and earth's well-being over a company's
14 profits. Please make rules that exceed the federal
15 requirements, and make sure my family and yours has a
16 healthy environment.

17 Thank you for your time.

18 HEARING OFFICER HORTON: Thank you.

19 Next is Michael Atty.

20 MR. ATTY: Yes. My name is Reverend Michael
21 Atty. I am the central director of United
22 Congregations of Metro East here in southern Illinois,
23 in Madison and St. Clair Counties, and we represent
24 congregations of people of faith, of various faiths,

1 across both counties.

2 I'm on the call today to implore the
3 committee to do what is right. That those who have
4 power have a responsibility to use that power wisely
5 for the benefit of all people, for the benefit of the
6 poorest among us, the least among us, those who can't
7 afford to get connected on a Wednesday afternoon and
8 comment because they have to work, because they have
9 to do the things to provide for their families.

10 And so those who are in power have a
11 responsibility to make sure that the working people,
12 the people who do the jobs that many of us can't do or
13 don't want to do, that they are represented, that they
14 are taken care of, that their children and our
15 children have clean drinking water and that they can
16 play in the fields, in the streams of Illinois,
17 without the threat of being contaminated with toxins
18 from coal ash.

19 So I'm not going to be before you long
20 because many people have already stated the scientific
21 evidence. They stated their own personal experience.
22 But as a person of faith and as representing people of
23 faith, we often draw from our Holy Scriptures and our
24 holy risk to inform what is just and what is God's

1 justice and what does God require of humanity, as
2 caretakers of the earth and keepers of our brothers
3 and our sisters and to watch over each other.

4 And so I wanted to leave you this afternoon
5 with this one scripture from the Book of Isaiah. And
6 Isaiah was known as the weeping prophet because Isaiah
7 constantly mourned because of the things that Isaiah
8 witnessed that those in power were doing. And in the
9 Book of Isaiah, Chapter 10, it reads -- and I'll be
10 done after this -- "Doom to those who pronounce wicked
11 decrees, and keep writing harmful laws to deprive the
12 needy of their rights and to rob the poor among my
13 people of justice; to make widows their loot; and to
14 steal from orphans."

15 So to the committee, I implore you once again
16 to do what is right. Don't make widows your loot, and
17 don't steal from orphans, and don't steal the clean
18 air and clean water from those who can least afford to
19 have it done.

20 Thank you for this opportunity. And I
21 faithfully hope that you will make the right decision
22 and keep these rules as stringent as possible. Thank
23 you.

24 HEARING OFFICER HORTON: Thank you.

1 Circling back to Mark Lundholm? Mark
2 Lundholm?

3 Then Mary Burnitz? Mary Burnitz? We think
4 you're on the line, but we are not able to hear you.
5 If you turn on the audio on your computer.

6 I'll circle back to you at the end, and I'll
7 move on to the 1:15 section.

8 Mildred Leonard?

9 MS. LEONARD: Hi.

10 HEARING OFFICER HORTON: Yes. We can hear
11 you.

12 MS. LEONARD: I'm from Waukegan, Illinois,
13 and we have a coal-burning power plant here, and the
14 coal ash needs to be removed. I understand there's
15 five ponds, and I'm upset to learn that two of those
16 ponds aren't even lined. That facility, that power
17 plant, has been there for a hundred years.

18 Now, there has to be literally tons and tons
19 of coal ash, and that stuff causes heart problems,
20 carcinogens. And I know, because I've lived up here
21 now for 26 years -- I'm retired from the IBEW
22 Local 134 -- that this stuff literally poisons people
23 for generations. I've had neighbors with exposure to
24 asbestos and PCBs. I'm 74. They're my age. Their

1 fathers work in these plants. They marry people who
2 worked in these plants. And guess what? Their
3 children and grandchildren have carcinogens.

4 This stuff has to be removed; it has to be
5 removed carefully. And, in my opinion, the workforce
6 needs all of the protective equipment that's
7 necessary. There should be penalties for any foreman
8 or manager who tells them it's okay, you don't have to
9 use it, or we don't have your size today.

10 My background is union. I would strongly
11 suggest that they participate in something. I don't
12 care if it's the Teamsters or United or the IBEW;
13 someone is going to have to protect them.

14 And how this stuff is removed, when it's made
15 back into a powder form and they take out the water,
16 how is it going to be transported from the plant? Are
17 they going to just throw it in a truck with a tarp
18 over it and expose everybody again?

19 I'm extremely concerned about the safety of
20 the workforce and the population. It has to be
21 removed safely. There has to be penalties because the
22 people who created this for a hundred years obviously
23 didn't care about the workforce.

24 And the other thing about the law which is

1 difficult, if you refuse the direct order from a
2 foreman or a manager, you can be fired. You can say,
3 hey, you're supposed to give me the mask. But guess
4 what? The law says that danger must be imminent. In
5 other words, if you pick up a 600-volt line that's not
6 properly grounded, you're going to get killed that
7 day. But this stuff doesn't kill you that day. It
8 kills you and your family over a period of 20, 30, 40,
9 50, maybe even 70 years. That's three generations of
10 people exposed to carcinogens.

11 There has to be a penalty through law, and
12 it's my opinion, we're a very diverse population here;
13 the people should get paid good money; they should be
14 in some kind of organization that will protect their
15 safety. If they're not in an organization to protect
16 their safety, they're going to get leaned on by these
17 foremen and managers. They're going to be told, oh,
18 it's okay, we don't have your size, we don't have
19 those gloves, we ran out of the -- it's not okay. And
20 if you disobey them, they're going to fire you.

21 There has to be somebody to fight for you and
22 to protect you and your children, because the danger
23 isn't imminent. I assure you I know people who have
24 been suffering from cancer and stuff for two and three

1 generations and it's terrible.

2 The good thing is, if these people have union
3 safety committees, they can protect each other from a
4 danger. I used to be a steelworker before I was IBEW
5 and built the St. Louis Arch, and not one steelworker
6 died building that arch. They told us they had put in
7 a factor about how many people were going to die, and
8 they added it to the bottom line. And we said, oh, we
9 want a safety committee. (Inaudible) I assure you we
10 built the St. Louis Arch back in the '60s and not one
11 steelworker died doing that.

12 So that's my point here, is this stuff is
13 very dangerous. We saw it here for generations. It's
14 outrageous. And the people who created this mess have
15 to be forced to account for it, to pay for it, and to
16 see that it's removed.

17 Thank you.

18 HEARING OFFICER HORTON: Thank you.

19 Moving on to Miriam Scott? Miriam Scott?

20 Next, Nancy Long?

21 Miriam, you are there?

22 MS. SCOTT: Yes.

23 HEARING OFFICER HORTON: Go ahead, Ms. Scott.

24 We can hear you no problem. You can proceed.

1 MS. SCOTT: Okay. Great. Thank you.

2 My name is Miriam Scott. I'm a long-time
3 Buffalo Grove resident. I'm also a long-time resident
4 of Chicago South Loop, living within walking distance
5 of Lake Michigan and the Chicago Rivers. As you can
6 imagine, those bodies of water are very important to
7 us. And also, as you know, we, in the Chicago area,
8 get our drinking water from Lake Michigan.

9 I'm concerned about the potential long-term
10 effect of toxic chemicals which seeps into our water
11 from improperly secured coal ash deposits.

12 I'm a cancer survivor and have lost many
13 friends to cancer, a much younger friend who hailed
14 from Chicago's southeast side, a long-time dumping
15 ground for landfills, filled with toxic chemicals.
16 Lost her parents and siblings to cancer, no doubt, due
17 to the toxic waste that more affluent and influential
18 communities would not tolerate.

19 My health, the health of my family, and the
20 health of my community, while all over our State of
21 Illinois, is ultimately more valuable than any
22 financial benefit claimed by corporations or even
23 government.

24 When we poison our environment, the cost to

1 our body for damaged health and lost lives must exceed
2 any financial gain that corporations and our
3 government might claim.

4 Therefore, I strongly urge you to adopt the
5 strongest rules possible to assure safe removal of all
6 coal ash, including for landfills, to secure
7 repositories within a reasonable and prompt set
8 schedule.

9 Thank you for this opportunity to comment on
10 this issue of assuring safe coal ash removal and
11 disposal. Thank you.

12 HEARING OFFICER HORTON: Thank you.

13 Next would be Nancy Long? Nancy Long?

14 Next is Nathan Griffith? Nathan Griffith?

15 I'll circle back.

16 Next is Nicole Jack?

17 MS. JACK: Hello.

18 HEARING OFFICER HORTON: Yes. We can hear
19 you. Please proceed.

20 MS. JACK: My family and I live in Waukegan,
21 and we are nine miles from the NRG Waukegan Generating
22 Station. The Illinois Pollution Control Board agreed
23 with the environmental groups in their lawsuit against
24 the Midwest Generation. The IEP CV agreed with the

1 assessment that the coal ash at the power plants have
2 arsenic, boron, sulfate, and other chemicals that
3 exceed the water quality standards. I am grateful
4 that the Board was able to see through these polluters
5 who only care about the short term making profit, not
6 considering the impact on the environment and future
7 generations.

8 I truly hope that the Illinois Pollution
9 Control Board will make NRG remove the coal ash dumps
10 and they will be properly stored in safe facilities.
11 It is very concerning that these dumps will not be
12 covered, by the Illinois EPA (inaudible).

13 And a bit of a side note, but with --
14 (inaudible) water supply due to said potential
15 scarcity of water, we should do everything possible to
16 protect our fresh water.

17 Thank you.

18 HEARING OFFICER HORTON: Thank you.

19 Next is Rebecca Ratliff.

20 MS. RATLIFF: Hello. My name is Rebecca
21 Ratliff. As a resident of Chicago, during my six
22 years in Illinois, I have been fortunate to not
23 experience the most direct effects of the pollution
24 caused by coal ash. Unlike many of the others here, I

1 do not have a personal story of how it has affected my
2 life or those of my loved ones. However, I cannot
3 stand by while I know that so many of my fellow
4 Illinoisans are being directly hardened by the
5 reckless and myopic storage of coal ash that is
6 infiltrating our groundwater and poisoning the soil.

7 For too long our energy feed has been
8 obtained with little thought to the damage that the
9 waste will cause, whether the waste is in the form of
10 excess carbon dioxide in our air or coal ash seeping
11 into the ground.

12 As we continue to phase out the use of coal
13 in Illinois and for these plans which are still
14 operating, we must have rules in place that ensure the
15 waste product of this energy does not do any more
16 damage to our land and water.

17 I will be explicit in my message that a cap
18 over these ponds, which are usually not properly
19 lined, is not enough. And as we work to transfer the
20 coal ash out of these ponds, the workers responsible
21 for doing this must be protected. I understand that
22 this is not necessarily an easy task, but it is a
23 necessary one.

24 I was excited when I learned of the passage

1 of the Coal Ash Pollution Prevention Act. It was a
2 long time coming, and I know how hard all the
3 environmental champions worked to get this done.

4 So I ask that in this process of Rulemaking,
5 these rules be strong and comprehensive when it comes
6 to protecting our communities all across Illinois. I
7 call on the Board to remember and uphold their stated
8 mission, which is to restore and protect the
9 environment.

10 Thank you.

11 HEARING OFFICER HORTON: Thank you.

12 Nathan Griffith? Nathan Griffith?

13 Moving on to the 1:30 section. Samantha
14 Himegarner? Samantha Himegarner?

15 Next, Sheila Voss. Sheila Voss?

16 I'll circle back.

17 Next, Stephanie Juen? Stephanie Juen?

18 Next, Susan Pastin? Susan Pastin?

19 Next, Thomas Kelly?

20 MR. KELLY: Hello?

21 HEARING OFFICER HORTON: We can hear you.
22 Please proceed.

23 MR. KELLY: Thanks for this opportunity to
24 express my opinions and support in fixing the coal ash

1 problem in Illinois. I am a former state development
2 officer for the American Red Cross, which is a fancy
3 title for fundraiser. I came in contact with
4 contaminated water almost every time I went to work on
5 a job, whether it be a flood, a Texas hurricane, or a
6 sewer backup in Matteson, Illinois. Natural disasters
7 occur, but they can be mitigated.

8 The mission of the Sierra Club is
9 essentially, as far as the environment is concerned,
10 to protect us from us. We know that coal ash from
11 coal power plants which has threatened our water
12 supply. Coal ash is toxic. (Inaudible) access to our
13 water supply. We see how it adversely affects our
14 community, health, and well-being. Clean water is the
15 goal. Encouraging power plants and even our own
16 government warrants regulation to keep us safe.

17 Something I didn't realize was that Illinois
18 imports coal ash from other states and leads the
19 country in coal ash damage court cases. The
20 encouraging thing is that we are presently cracking
21 down on pollution in Illinois, thanks to our state
22 government, organizations like Sierra Club, which I
23 support.

24 Our responsibility requires a comprehensive

1 plan, public transparency, and enforceable
2 regulations, which it appears is what you're doing
3 today.

4 Thank you.

5 HEARING OFFICER HORTON: Thank you.

6 Next is Virginia Husting?

7 MS. HUSTING: Hello. Hi. I'm Dr. Virginia
8 Husting. I'm a professor of sociology. I'm from
9 Champaign, Illinois. Thank you, Pollution Control
10 Board, for listening to the Illinois public. As
11 Lali Watts said earlier and others have, we can get
12 this one right. How this process goes will directly
13 affect who stays in Illinois, who our voter base is,
14 who our tax base is.

15 My family and my friends in this area are
16 just waking up to what's literally encircling us.
17 People like us all over Illinois are waking up. There
18 will be more and more of us over the coming weeks and
19 months. We're, frankly, scared at the threat to life
20 and land that literally surrounds us from Waukegan to
21 Marion, from Prairie State to Duck Creek. The one
22 closest to me is Dynegy's retired coal plant. As we
23 speak, it's leaking sulfate and boron into the middle
24 fork of the Vermilion River. You can see the ash

1 pollution in the groundwater there. And this is
2 Illinois' only national scenic river.

3 We're watching. We're concerned. And so I'm
4 voicing here what others are pointing to, and we speak
5 on behalf of colleagues who are working right now,
6 family and friends who are involved in daycare and
7 child care for their children.

8 But what we want is no wet ash. We want
9 groundwater monitoring with no time limit. We want
10 safe removal and storage. We want public
11 transparency, clear measurable standards, benchmarks,
12 outcomes, processes. Companies must share their
13 documentation so we can see what's going on and what
14 has gone on. We need protection for workers. We need
15 rules, processes, remediations stronger than the
16 federal standards. Corporations can't just pollute
17 and walk away. We don't have these right now.

18 Our stewardship in this, frankly, amazing
19 state -- and we rarely talk about it -- calls us in
20 this work. No pollution of our rural communities, our
21 water, and our ecosystems. They're invaluable and
22 irreplaceable.

23 Thank you for the opportunity to speak.

24 HEARING OFFICER HORTON: Thank you.

1 Next is Virginia Woulfe-Beile.

2 MS. WOULFE-BEILE: Hello. Thank you. My
3 name is Virginia Woulfe-Beile, and I live in Godfrey,
4 Illinois, and I'm thanking you now for the
5 opportunity, as public process is an important part of
6 Rulemaking as it's an important part of our democracy.

7 I commend the Illinois EPA for including
8 protections beyond the federal rule in the manner of
9 more frequent groundwater monitoring beyond the
10 30 years and a health and safety plan for workers.
11 But Illinois can do better.

12 I live in a transitioning coal community.
13 The Wood River Dynegy plant closed in 2016. There was
14 no industry-led transparency for workers or the
15 community. So this was during the closure or the
16 demolition stage with commercial liability partners.

17 So I am part of an advocacy group that has
18 been meeting since 2014 imploring Dynegy and then CLP
19 for transparency and public process. We had no
20 success.

21 Workers, municipalities, and entities
22 benefiting from the taxing implications were left high
23 and dry. I wish I could say the same thing for the
24 coal ash impoundments.

1 So these impoundments have been threatened by
2 flood waters several times in the past ten years, as
3 they are adjacent to the Mississippi River and
4 Wood River Creek. Coal ash should not be in flood
5 plains and that just makes sense. No cleanup is
6 complete until the ash is no longer exposed to water.
7 And baseline wells for groundwater monitoring must be
8 placed outside of impacted areas because only clean
9 water can establish a baseline.

10 Coal ash fill and dump sites as well as
11 impoundments must be included in the rule, otherwise,
12 the problem is not solved. Workers must be protected
13 by limiting exposure to coal ash during handling and
14 transportation. The need to access to proper PPE and
15 dust monitoring must be in place. Also, rail barge
16 and electric or hybrid trucks need to be considered
17 for the transportation of ash.

18 We must use the US EPA's EJ screen with the
19 clean power plant to identify vulnerable communities.
20 Then interpreters must be provided at meetings, and
21 literature must be translated for non-English-speaking
22 communities. And a 30-day review is needed for the
23 supporting documents because 14 days is just not ample
24 time.

1 Power plants are being closed all over the
2 state, and we need strong rules that keep everyone
3 safe and holds corporations accountable. I don't want
4 to see a repeat of what happened at the Wood River
5 plant. Independent oversight and financial assurances
6 that stay with the property is the only way that we
7 can make polluters pay.

8 So Illinois needs to be a leader in coal ash
9 protections and not cave to federal rollbacks. So
10 thank you very much for this opportunity to speak.

11 HEARING OFFICER HORTON: Thank you.

12 Next is William Koehl? William Koehl?

13 MR. KOEHL: It's William Koehl. Thank you.

14 HEARING OFFICER HORTON: Sorry. Please
15 proceed.

16 MR. KOEHL: Can you hear me now?

17 HEARING OFFICER HORTON: Yes. Please
18 proceed.

19 MR. KOEHL: All right. Thank you. My name
20 is William Koehl. I live in Geneva. I'm with the
21 League of Women Voters of Illinois. I was born in
22 Joliet and I raised my family there. I knew we had a
23 power plant and I thought I knew what it did, but I
24 only knew part of the story. It created a lot of

1 electricity, but it also created a lot of coal ash. I
2 had no idea about what that would mean, at least not
3 until 2008, in Tennessee at the Kingston Plant.

4 Now the whole world knows what a disaster
5 coal ash could be. But still, I had no idea how toxic
6 it could be even if it was just sitting still. I
7 believed the word is "leachate." Coal ash plus water
8 from anywhere, from above, from below, from around the
9 bend: Leachate.

10 Like most states, I thought that with both
11 federal and state laws this would be taken care of. I
12 did not know it was going to be dependent on just how
13 well the rules were written. I believe that there's
14 some serious shortcomings with the current draft, and
15 these have been detailed extensively in earlier
16 testimony today and last week.

17 I'm here today on behalf of all the rest of
18 the citizens of Illinois who do not yet know anything
19 about coal ash, how toxic it can be, how much of it
20 there is, for how long this will be a problem.

21 I'm asking you to write the strongest rules
22 possible, and to cover coal ash in all forms, no
23 matter where it's hiding or what it's called, to
24 protect workers who have been living with this toxic

1 mess until it's been cleaned up, for communities who
2 have been and will be living in with this until it's
3 been thoroughly contained. And most importantly, the
4 strongest rules possible for our children and our
5 grandchildren and for their children, for their
6 grandchildren, for decades and centuries to come. It
7 is necessary to enact the strongest possible rules in
8 every instance, and it looks now like the only thing
9 that can make this happen is the valiant work of the
10 members of the Illinois Pollution Control Board.

11 Now, when I wrote that last line, I looked
12 for an alternate to the word "valiant"; it seems a
13 little old-fashioned. Guess what I found?
14 Fire-eating. Seems appropriate given the topic. So
15 let me restate: The only thing that can make this
16 happy is the fire-eating work of the board members of
17 the Illinois Pollution Control Board.

18 Thank you, and good luck with your efforts.
19 Thank you for letting me speak here today.

20 HEARING OFFICER HORTON: Thank you.

21 Next is Criage Lynette Alrhage.

22 MS. ALRHAGE: Hi. It's Criage. I'm a trans
23 woman, so it's confusing.

24 HEARING OFFICER HORTON: Apologies.

1 MS. ALRHAGE: I don't live very close to any
2 such facility that I know of. I live close --
3 relatively close to Little Village, which had a coal
4 plant which was disassembled. But I don't know what
5 lies beneath the ground. Who knows.

6 I know that coal ash contains several
7 horrible things: Mercury, cadmium, and arsenic, as
8 well as it's been found to have radioactive properties
9 to it which can cause as much damage as nuclear waste.
10 And I have heard where they have tried to use coal ash
11 as a landscaping landfill, which is a ridiculous thing
12 that seems to be inviting something like a Love
13 Island. And whether that's happening in Illinois, I
14 am unsure.

15 But certainly the EPA and this board need to
16 be aware and we need strong controls to make the coal
17 companies to be financially responsible for all of
18 this. I don't whether I trust them to actually enact
19 the safety measures themselves because corporate
20 oversight is usually lacking. So I think this has to
21 be done by government employees with full protection,
22 as it's been mentioned before.

23 I think what happens often where this is
24 stored is close to communities of color, whether

1 that's Little Village, Pilsen where there was a coal
2 plant. And I think there are also barges that
3 contain -- that are just, you know, held up at dock
4 around the Chicago River that contain some of this,
5 and it's still a threat, whether it's there. Some of
6 it has been uncovered, so rain can probably leachate
7 or, you know, have that runoff into the river.

8 Whatever the case is actually, true or not,
9 we don't have safe measures right now and we need
10 those safe measures, and I call upon you guys to enact
11 them. And that's it.

12 HEARING OFFICER HORTON: Thank you very much.

13 Next is Megan Dutton? Megan Dutton?

14 Next is Virginia Wojtkowski.

15 MS. WOJTKOWSKI: My name is Virginia
16 Wojtkowski I'm a retired special education teacher.
17 My husband and I live in rural Washington County near
18 Venedy, Illinois. We used to live very near the
19 Prairie State Energy Campus. The coal ash pit and
20 landfill that was built on the PSG campus adds more
21 coal ash each year than some impoundments do over an
22 entire lifetime. It is now the second largest coal
23 ash landfill in Illinois, and it's only been in
24 operation for ten years. How much more will there be

1 by the time that plant is retired?

2 Illinois has over 80 individual coal ash dump
3 sites and landfills. Most of them are unlined.
4 Almost all of them are located near rivers and lakes
5 to simply make life easier and cheaper for the power
6 plant facility.

7 The Kaskaskia, one of the longest rivers in
8 this area, is quickly becoming the river with the most
9 coal ash, as there are over four coal ash ponds and
10 other pits at Baldwin and there's a rapidly filling
11 coal ash landfill at Prairie State.

12 And, of course the Kaskaskia is not the only
13 one of the rivers and streams that are impacted. We
14 are a water-rich state and we are poisoning our water
15 and thereby our land, and thus we grow our food. Thus
16 we poison ourselves and our children and our
17 grandchildren.

18 How much poorer will our crops and water
19 supply become over the years if we do not fix this
20 problem? And we need to fix it without loopholes. We
21 cannot depend on the energy companies to take care of
22 the problem. Past actions have shown unequivocally
23 that facilities cannot be taken at their word or
24 trusted to fully comply. The companies themselves

1 will not last as long as the pollutants that are being
2 stockpiled and invading soil and water.

3 We have to require owners to set aside money
4 for cleanup and rehabilitation of impacted lands and
5 waters and to clean up old sites that are no longer in
6 use. And now that I heard it here, we have to get
7 them to stop importing it. If we don't, the taxpayers
8 will pay for it in economic growth, increased taxes,
9 and money loss to major health crises.

10 Thank you for the time.

11 HEARING OFFICER HORTON: Thank you.

12 And the last person I'll call on today is
13 Sheila Voss.

14 MS. VOSS: Great. Thank you very much for
15 the opportunity.

16 So my name is Sheila Voss and I'm a resident
17 of Edwardsville, Illinois. Specifically, I live on
18 the outskirts of Edwardsville in unincorporated
19 Madison County on the periphery of Wood River. So
20 even more specifically, my home is exactly nine miles
21 from the 100-plus acres of coal ash impoundments in
22 Alton, a residual impact left behind by the Wood River
23 Power Plant that had its closure in 2016.

24 I know I have less than three minutes today.

1 I will not duplicate what has already been well
2 covered in these hearings. The data is clear; the
3 science is clear; the math is clear; the engineering
4 and technology solutions are clear; any place where
5 coal ash is stored improperly is a direct threat to
6 public health, a direct threat to environmental
7 health, a direct threat to the economic recovery and
8 revitalization of communities. The very same
9 communities that were left behind and abandoned by the
10 companies that produced the coal ash waste in the
11 first place.

12 I will dedicate the remaining time that I
13 have to a story that reinforces a simple invasive
14 message applicable to each and every one of us today.
15 Specifically, I'm really directing this message of
16 this story to the individual members of the Illinois
17 Pollution Control Board. You, of course, are not a
18 nameless, faceless body. You're real life humans and
19 citizens just like everyone on this call. So I'm
20 directing this and sharing this with you.

21 And basically, the simple and basic
22 message/story shares a theme that resonates today and
23 every day. To paraphrase Maya Angelou, "When you know
24 better, do better."

1 This past year, my 14-year-old daughter,
2 along with a fellow girl scout from Girl Scout
3 Troop 110 here in Edwardsville, embarked on their
4 Silver Project together. The name of their product:
5 "Streams Need Love Too." They chose a nearby
6 first-order stream in their neighborhood, an unnamed
7 stream, but one that flows into nearby Cahokia Creek
8 and ultimately the Mississippi River. They closely
9 studied this stream over multiple seasons. They
10 documented wildlife in this stream, pollutants in this
11 stream; they did trash cleanups along this stream.
12 These two 14-year-olds surveyed 30 separate landowners
13 along this stream, documenting their current awareness
14 and practices as it relates to this fairly
15 unremarkable stream, sometimes called a ditch,
16 sometimes that has a lot going on underneath the
17 ground that you can't really see. But this stream
18 that flows through their properties and that flows
19 alongside other different streams that ultimately
20 joins up with the Mighty Mississippi.

21 They have been researching this, these girls,
22 as well as reaching out to subject matter experts in
23 stream ecology and land and water conservation. They
24 have learned much throughout this process. They are

1 doing their best to share what they've learned with
2 local landowners with the intent to change homeowner
3 behaviors such that it lessens damaging runoff and
4 other inputs into this stream so that they're reduced
5 or eliminated.

6 They're also currently organizing
7 neighborhood outreach and action days dedicated to
8 stream restoration, including native plantings,
9 surveys, and, yes, recruiting landowners themselves to
10 participate in creek cleanups.

11 All I'm asking of the adults in the room
12 today is to follow the lead of these young women.
13 Thanks to good science and publicly available data,
14 like what has been compiled in the Cap and Run Report
15 released in 2018, we know better now about the impacts
16 of our fossil fuel-based energy choices. Clearly we
17 know better. The Illinois EPA knows better. The
18 Illinois Pollution Control Board knows better. Vistra
19 Energy Corporation and other industry players know
20 better. Citizens know better.

21 All I'm asking is that we follow the lead of
22 Girl Scout Troop 110 and do the right thing. Step up,
23 take responsibility, and get this done right. The
24 hard work to pass SB9, while impressive and a

1 milestone for the State of Illinois, was not enough.
2 The problem of coal ash is not yet solved. The
3 problem of coal ash is, at this very moment, polluting
4 local lands and waters.

5 Closing and cleaning up coal ash the right
6 way now lies squarely in the hands of the humans and
7 fellow citizens that serve on the Illinois Pollution
8 Control Board, the members of which must adopt, as
9 multiple speakers already said, the strongest rules
10 possible to protect our public waters.

11 None of us can turn back the clock and undo
12 our dirty energy past, but each of us, however, can do
13 what we can to clean up our mistakes the right way, as
14 we should, to a clean energy future, a future that our
15 generations ahead of us deserve.

16 Thank you so much for the time.

17 HEARING OFFICER HORTON: Thank you.

18 And thanks to everyone who participated today
19 at this Public Comment portion of the hearing. We
20 will have another tomorrow, October 1st, from 5:30 to
21 7:00 p.m., the same format, but it will be via WebEx
22 only.

23 On behalf of the Board, especially on behalf
24 of the Board Members, Chair Barbara Flynn Curie,

1 Member Anastasia Palivos, Member Cynthia Santos, and
2 Member Jennifer Van Wie, we thank all the members of
3 the public who have given their comments here today.

4 MS. BUGEL: Can I interrupt? I did learn
5 that Mary Burnitz has been trying this whole time to
6 get in. She's having technical difficulties.

7 HEARING OFFICER HORTON: Can she try again
8 tomorrow during the evening?

9 MS. BUGEL: I will ask. Before we completely
10 close today, I wanted to make sure we've done
11 everything we can.

12 HEARING OFFICER HORTON: I know. I called on
13 her several times and she wasn't able to get in.
14 She's certainly welcome to go on tomorrow.

15 MS. BUGEL: And I apologize for interrupting.

16 HEARING OFFICER HORTON: But thanks to
17 everyone, and we'll pause here for a brief break, and
18 we'll begin again with Richard Gnat's testimony.

19 Thank you.

20 (Whereupon, a break was taken,
21 after which the following
22 proceedings were had:)

23 HEARING OFFICER HORTON: Hello. We're back.
24 This is Vanessa Horton in the Thompson Center. Before

1 we begin with Richard Gnat, Faith Bugel here had a
2 point to raise about one of the exhibits.

3 MS. BUGEL: Yes. Thank you, Hearing Officer.

4 In the course of questioning Mr. Gnat, I
5 referenced an attachment to our pre-filed questions,
6 which I believe was an annual groundwater monitoring
7 report that had an alternate source demonstration
8 attached to it for Powerton.

9 I have since discovered that, when we filed
10 our pre-filed questions, that attachment was missing.
11 So I would like to resolve that by simply asking for
12 leave to submit that, file that late, and make sure
13 that that gets into the record consistent with it
14 already being admitted earlier today.

15 HEARING OFFICER HORTON: And I think in
16 situations like this -- and let me confer with Marie
17 when she gets back -- that we -- if something has been
18 submitted to the clerk after the 24-hour period, then
19 that becomes a public comment and not an exhibit.

20 But if I could defer my decision on this
21 until after perhaps the break this afternoon and then
22 I can get back to you on that.

23 MS. BUGEL: Okay. Very good. Thank you.

24 HEARING OFFICER HORTON: Mr. Gnat, are you

1 there and ready?

2 THE WITNESS: Yes, I am.

3 HEARING OFFICER HORTON: Okay. Great.

4 So we'll pick up again with you and
5 Ms. Bugel's questions to you.

6 THE WITNESS: Okay.

7 BY MS. BUGEL:

8 Q. Mr. Gnat, you're not showing up big on our
9 screen yet. Wait a minute. I see you there.

10 Where we left off questioning this morning, I
11 believe we were talking about measurements of
12 groundwater elevations, and you had mentioned a larger
13 flood event in responding to one of my questions.

14 Do you remember that discussion?

15 A. Yes, I do.

16 Q. So my question is, if there were a larger
17 flood event but it did not coincide with the timing of
18 a quarterly groundwater elevation measurement, how
19 would you know that you need to consider it in terms
20 of its effect on groundwater flow?

21 A. I believe I also stated in my previous
22 discussion that, at that point, if the initial
23 measurements were used and you've got a good
24 groundwater model established, that groundwater model

1 can be used to provide some good predictions as to
2 what the impact surrounding the groundwater system.

3 But also, if you had a larger flood event and
4 you look at your groundwater monitoring data and you
5 see some anomalies or some changes in that, that you
6 look closer and evaluate what that impact might be and
7 determine what needs to happen from there.

8 **Q. With -- you referenced anomalies in that**
9 **response. Can you explain more what those anomalies**
10 **would look like?**

11 A. Sure. Part of when we look at groundwater
12 data, quite honestly, it's not just looking at
13 statistics and individual parameters, which are used
14 as the triggers here, but you also look at time
15 trends, the detection of the constituents that you're
16 seeing on a particular well, are they consistent with
17 what you've been seeing historically. You know, just
18 kind of looking at the trends and the street of
19 parameters that you're seeing.

20 **Q. Okay. Let me rephrase.**

21 **Off-site pumping can have an effect on**
22 **groundwater elevations at a site; is that right?**

23 A. That is correct.

24 **Q. So could a change in off-site pumping lead to**

1 a change in groundwater elevations at a site?

2 A. Yes, it can.

3 Q. I'm sorry. I'm having a hard time reading my
4 own notes here because I've scribbled in the margins.

5 Can groundwater elevations be affected by
6 liquid escaping a pond?

7 A. I'm sorry. I couldn't understand the last
8 part of your question. Can you repeat it, please?

9 Q. Yes.

10 Can groundwater elevations be affected by
11 liquid escaping a pond?

12 A. If I heard you right, you're asking can
13 groundwater elevations be affected by liquid escaping
14 a pond?

15 Q. Yes.

16 A. They may be.

17 Q. So if there were damage to a liner such that
18 you had a leaky liner, that could affect groundwater
19 elevations; is that right?

20 A. It may affect groundwater elevations, but I
21 would imagine we would also see it in groundwater
22 chemistry.

23 Q. Okay. I think I'm done with that line of
24 questions. We can move on. I just need to follow my

1 own notes here.

2 I'd like to turn to page -- I think we were
3 still on Page 31. People still may have it open or
4 not. Following up on Question 10-A, as in apple?

5 A. Yes, I have it in front of me.

6 Q. And I'm looking at your response where you --
7 right in the middle of your response, you have a
8 sentence that begins: "My testimony is not suggesting
9 removing the primary signature suit of CCR
10 constituents."

11 Should that read "suite"?

12 A. Yes.

13 Q. So can you tell me what, in your view, is the
14 signature suite of CCR constituents?

15 A. I believe in my testimony, we had it
16 footnoted as the Appendix 3 parameters and the federal
17 CCR Rule.

18 I take it back. It's on Page 21 of my
19 answers to questions.

20 Q. Got it.

21 So can you tell me then, if you stop
22 monitoring for other constituents beyond the
23 Appendix 3 parameters from the federal rule, and then
24 there is a release, how do you determine the

1 **constituents that may be part of that release?**

2 A. In terms of a release, can you define
3 release? A release from the impoundment?

4 **Q. A release by impoundment?**

5 **And by "release," I mean leaking or leaching**
6 **from the impoundment.**

7 A. Sure. First off, I'm not proposing to
8 eliminate all the other parameters that are not in
9 Appendix 3. Within any particular site, there may be
10 a handful of them, two, three or four, five, who
11 knows, a handful that, if you do a waste
12 characterization, as I suggested in my testimony as
13 perhaps a part of developing an appropriate monitoring
14 program, well over the course of four or five years of
15 monitoring, those are consistently non-detects, that
16 there may be a mechanic of which you can reduce that.
17 So I'm not certainly suggesting that everything gets
18 eliminated except Appendix 3 parameters.

19 But if there is a release, a hypothetical
20 release from an impoundment, I believe there are
21 several things that are going to happen. The first
22 thing, we're not just going to -- we will see evidence
23 of the release within some of those Appendix 3
24 parameters themselves, possibly within some of the

1 other parameters that we'd also be monitoring for, and
2 once a release, say, is determined that it has
3 occurred, then you're kicking into assessments, and,
4 yes, then you analyze again, then go back in and
5 analyze for that full suite, make sure nothing else
6 was missed, and move from there.

7 But then at that point, you're, again,
8 looking at that full suite and starting that process
9 from there and evaluating the nature, extent of that
10 release, and then the engineers, of course, take over
11 with their corrective measure study.

12 Q. And I'd like to follow up on Question 10-C,
13 and that's on Page 32. That's C as in cat.

14 A. Yes, I have it in front of me.

15 Q. Your response, starting about a line and a
16 half down, says: "If there's a change in items such
17 as coal feedstock, combustion processes, and/or CCR
18 material handling, then the monitoring program would
19 need to be re-evaluated to take any potential changes
20 in chemistry into account within the monitoring
21 system."

22 And what I wanted to ask is, does the
23 proposed rule, in its current form, have --

24 (Audio interference.)

1 MS. GALE: Can you start that again? Last I
2 heard was: "Does the proposed rule."

3 BY MS. BUGEL:

4 Q. Does the proposed rule, in its current form,
5 provide the -- does it have requirements that provide
6 for this to be taken into account the way Mr. Gnat
7 proposes?

8 A. In its current form, it hasn't -- there's a
9 section in the current proposed rule which suggests to
10 take some leachate characterization and analysis into
11 account for engineering and corrective measures
12 purposes.

13 Within my testimony, I suggested that that's
14 actually a good idea that that can also be used for
15 evaluating the list of parameters that you're
16 analyzing in your groundwater monitoring program. So
17 that that can be very useful in streamlining that as
18 well.

19 So in that sense, yes, there is some language
20 within the rule that will facilitate that. One of the
21 things that I suggested within my testimony is that
22 waste characterization actually put in a rule as
23 being allowed, if a particular operation chooses to do
24 so, to be able to establish their groundwater

1 monitoring parameter list based on waste
2 characterization of the leachate within the
3 impoundment that's being monitored.

4 So that was certainly within my testimony and
5 one of the suggestions that I had in allowing some of
6 that leeway in developing a groundwater monitoring
7 program as opposed to just a one-size-fits-all for all
8 30-plus years.

9 **Q. Moving on to 10-F, as in frank, on Page 32,**
10 **you indicated that the benefit -- and this is the last**
11 **two lines on this page -- the benefit to streamlining**
12 **a groundwater monitoring program is in reliable**
13 **detection of any actual release from a CCR surface**
14 **impoundment.**

15 **Can you explain how streamlining would**
16 **accomplish this?**

17 A. Sure. One of the examples I gave in my
18 testimony and in my answers, rather, to questions on
19 my testimony were, you're analyzing for all the
20 parameters for 30-plus years. There's a handful of
21 them that you never detect. And all of a sudden you
22 have a parameter that was not detected, say, for
23 12 years at a particular monitoring point, it's never
24 been detected before. You don't -- if it's a waste

1 characterization, say it wasn't in the waste. But all
2 of a sudden you get a detection of that parameter.
3 That detection automatically, since it's a non-detect,
4 becomes a statistically significant increase.

5 It then triggers -- under the current
6 proposed rule, you have 90 days in which to start an
7 assessment of the evaluation of the nature and extent
8 of that release. You may or may not choose to do an
9 alternate source demonstration, and within 90 days,
10 you're looking at a corrective measure study, all
11 because of that one detection.

12 Within the current proposed rule, you don't
13 have the ability to wait and do another quarter of
14 sampling to make sure that that was a valid detection
15 even if it showed up again in confirmation sampling.
16 And I believe there's a -- even within the unified
17 guidance that covers situations like that, indicates
18 that, I believe it's called "duplicate
19 quantification," where the next quarter you go out and
20 you resample that again and you do another
21 verification sampling again. Right now under the
22 current rule, that doesn't happen.

23 So under that particular instance, you've
24 triggered a lot of actions for something that you have

1 no other way to deal with except for initiating all of
2 these additional actions.

3 So that's what I refer to as streamlining the
4 program to try and not be in that situation.

5 **Q. Would your proposal streamline the program in**
6 **the opposite respect? And by that I mean a**
7 **hypothetical where you have non-detects at a time when**
8 **there might be a constituent that is appearing in the**
9 **groundwater?**

10 A. I'm not sure I follow your question. Can you
11 restate it or rephrase it?

12 **Q. I guess the example you just gave was the**
13 **example of a false positive; is that fair?**

14 A. Yes.

15 **Q. Does your streamlining also protect against**
16 **false negatives?**

17 A. Yes, I believe it does because you're
18 analyzing for all the other parameters which are
19 constituents of that ash, and if you're not seeing any
20 increases in any of those other parameters and/or look
21 at them and there are no increasing trends of those
22 parameters regardless of whether or not we had a
23 statistical increase or not, but if you look at
24 trends, you're not seeing all those. You know, you

1 have to look at the dataset as a whole and you can't
2 just get focused in on one constituent.

3 **Q. Can constituents be attenuated in the aquifer**
4 **slowing their movement toward a monitoring well?**

5 A. They can. However, the current regulation as
6 written our monitoring wells are installed at the
7 waste boundary.

8 **Q. Can contaminants be transported in the**
9 **groundwater at different speeds depending on their**
10 **chemical-specific characteristics?**

11 A. They may be.

12 **Q. Can chemical-specific characteristics affect**
13 **absorption?**

14 A. They can.

15 MS. BUGEL: And I think that is all the
16 questions that I have. Thank you.

17 HEARING OFFICER HORTON: Okay. Moving on,
18 we'll go to City of Springfield. Did you have any
19 questions for Mr. Gnat?

20 MS. WILLIAMS: I do not.

21 HEARING OFFICER HORTON: Mr. More, any
22 questions for Mr. Gnat?

23 MR. MORE: I do not.

24 HEARING OFFICER HORTON: Ms. Brown, any

1 questions?

2 MS. MELISSA BROWN: Not at this time. Thank
3 you.

4 HEARING OFFICER HORTON: Ms. Manning, any
5 questions?

6 Ameren? Ms. Manning, any questions for this
7 witness.

8 MS. MANNING: I do not. Thank you.

9 Attorney General's Office, Mr. Armstrong, any
10 questions?

11 MR. ARMSTRONG: No questions. Thank you.

12 HEARING OFFICER HORTON: Pollution Control
13 Board Technical Unit, any questions, Mr. Rao?

14 MR. RAO: No questions. Thank you.

15 HEARING OFFICER HORTON: Any follow-up
16 questions for Mr. Gnat?

17 Hearing none, thank you, Mr. Gnat. You are
18 dismissed.

19 THE WITNESS: Thank you very much.

20 (Witness excused.)

21 HEARING OFFICER HORTON: Then we'll move on
22 to David Nielson.

23 MS. GALE: Mr. Nielson is appearing remotely.

24 THE WITNESS: Am I connected?

1 HEARING OFFICER HORTON: Yes. We can hear
2 you.

3 THE WITNESS: Wonderful.

4 HEARING OFFICER HORTON: Mr. Nielson, our
5 court reporter will swear you in.

6 (Witness duly sworn.)

7 HEARING OFFICER HORTON: Thank you.

8 Do you have a summary or a statement you'd
9 like to make to begin?

10 THE WITNESS: Yes, I would.

11 HEARING OFFICER HORTON: You're limited to
12 five minutes.

13 THE WITNESS: Good afternoon. I'm Dave
14 Nielson. I'm a professional engineer with Sargent &
15 Lundy, a Chicago-based engineering firm. My education
16 and over 30 years of professional practice has been in
17 the field of geotechnical and civil engineering.

18 At the request of Midwest Generation, I am
19 here to answer your questions regarding two opinions.
20 First, based on the operation and the quantified risks
21 associated with composite-lined CCR surface
22 impoundment, it is my opinion that leachate collection
23 and recovery systems should not be required in new or
24 retrofitted CCR impoundments in the State of Illinois.

1 It is also my opinion that decontaminated
2 geometric liners should be available for reuse as part
3 of a retrofit program for surface impoundment so that
4 they can provide environmental protections beyond what
5 is required in the federal CCR Rule.

6 Regarding my first opinion, we need to
7 understand a little bit about composite liners. Both
8 the federal rule and the state-proposed rule requires
9 composite liners for all new and retrofitted CCR
10 impoundment. The composite liner consists of two feet
11 of very well-compacted, low-permeability clay with a
12 hydraulic conductivity no greater than 1 times 10 to
13 the minus 7 centimeters per second.

14 This clay liner is then overlaid with a very
15 low-permeability geomembrane liner that form a
16 composite liner.

17 Prior to mandating the composite liners would
18 be required for new and retrofitted CCR surface
19 impoundments. The US EPA performed a risk assessment.
20 One of the conclusions was that the risks for
21 composite-lined CCR impoundments were far below all
22 cancer and non-cancer criteria.

23 The proposed Illinois rule that went beyond
24 that and proposed or regulated requiring a leachate

1 collection and recovery system. And if a leachate
2 collection and recovery system is required, this would
3 be an extension beyond what is mandated under the
4 federal rule and what is required based on the science
5 of the risk assessment.

6 Because CCR impoundments are used to store
7 both CCR and transport water -- to me, transport water
8 is the same as leachate, the term we're using in this
9 Rulemaking section.

10 Installing and operating a leachate
11 collection and removal system will cause significant
12 operational challenges for power plant operators.

13 To maintain the closure of CCR transport
14 water which is recycled numerous times, the
15 installation of a collection system would require this
16 transport water to be stored in large on-site tanks.

17 Additionally, for bottom ash ponds, it would
18 be very likely that the ponds would be dry or
19 substantially dry given the nature of bottom ash, and
20 there is a risk of fugitive dust emissions.

21 And I do point out that it is not required by
22 the US EPA and -- to operate these systems. There's
23 no requirement to operate the leachate collection
24 system. I do think it is reasonable -- excuse me.

1 Let me start over.

2 I do not think it is reasonable to require
3 the installation of high-capacity drainage systems to
4 debase a pond that likely will never be used.

5 Instead, based on my knowledge of the design
6 and operation of CCR surface impoundments, I
7 respectfully suggest to the Illinois Pollution Control
8 Board that the proposed requirement to install
9 leachate collection removal system and new and
10 retrofitted surface impoundments be deleted from the
11 final rule.

12 If not deleted, I would suggest that the
13 board allows owners, operators, and competent design
14 professionals to present alternative designs, such as
15 Figure 2 in my pre-filed testimony, which I consider
16 to be equally protective of the CCR impoundment and
17 allow it to operate.

18 Quickly, the rule requires that all liners be
19 removed when a CCR impoundment is retrofitted. If an
20 existing geomembrane liner is in place, it can be
21 decontaminated and still required to be removed. I
22 don't think it's reasonable to require the removal of
23 a competent system, as backed up by groundwater data,
24 that does not appear to be damaged in any way that

1 could be used as a supplemental system to add to the
2 composite liner which required the rules.

3 So in short, I do agree with the Pollution
4 Control Board's suggested modification of the language
5 in Section 845.770(a)(1), to require the removal of
6 all contaminated liners.

7 Thank you. I look forward to your questions.

8 HEARING OFFICER HORTON: Thank you.

9 Ms. Gale, would you like to enter
10 Mr. Nielson's pre-filed testimony as an exhibit?

11 MS. GALE: Yes, I would. Thank you.

12 HEARING OFFICER HORTON: Okay. That will be
13 Exhibit Number 54.

14 (Whereupon, Exhibit No. 54 was
15 marked for identification.)

16 HEARING OFFICER HORTON: And we'll move on to
17 questions. Illinois EPA, Ms. Diers, do you have any
18 questions for this witness?

19 MS. DIERS: Yes, I do.

20 EXAMINATION

21 BY MS. DIERS:

22 Q. Good afternoon, Mr. Nielson. My name is
23 Stephanie Diers and I will be asking a few questions
24 on behalf of Illinois EPA.

1 I would like to turn your attention to
2 Page 44 of your pre-filed answers, and I'm looking at
3 agency Question 14, and just let me know when you get
4 there, please.

5 A. Okay. That will be just a moment. What
6 question on 44?

7 Q. It's on Page 44, I'm sorry, and it's
8 Question 14.

9 A. Go ahead.

10 Q. Agency Question 14 has a series of subparts
11 that ask about your testimony regarding the
12 decontamination of liners. As part of your response
13 to 14-G, as in girl, you state that you have the
14 opportunity to review the board's suggested language
15 revision, the Section 845.770(a), as in apple, (1),
16 which limits removal of liners to the removal of
17 contaminated liners.

18 How would Midwest Gen or other owner or
19 operators determine whether a liner is contaminated or
20 not?

21 A. That's an interesting question. I'd note
22 that in a clean closure or closure by removal process,
23 the area must be decontaminated. For clean closure
24 work I've done in other states, some states have used

1 a visual clarification, visual classification, in
2 particular, to remove.

3 I think it would be reasonable for the Agency
4 to consider visual. I think it would be reasonable
5 for the Agency to require a swab, an occasional swab
6 test to be submitted for analytical testing.

7 But these are very low-permeability plastic
8 products that are nonabsorptive, and I'm confident
9 that the professionals of the Agency and the
10 professionals working for industry can come to a
11 reasonable meeting of the mind during the permitting
12 process.

13 **Q. And you say some states use visual. Can you**
14 **name those states for me that you are aware of?**

15 A. The very first clean closure I did following
16 the implementation of the CCR Rules in Minnesota and
17 visual was the criteria.

18 **Q. Is Minnesota the only one that comes to mind?**

19 A. I can think of two others, but since there's
20 a question on one, I'm going to hold off. So
21 Minnesota is the one I'm willing to share.

22 **Q. All right. Thank you.**

23 **How would an owner or operator demonstrate**
24 **that a liner is not contaminated?**

1 A. Well, I think we just talked about that. We
2 could do visual, we could do swab testing, and
3 analytical testing.

4 **Q. Moving on, I'm going to go to Page 33, and**
5 **this is in regard to your response to Board**
6 **Question 18-B, as in boy.**

7 A. Uh-huh. Go ahead.

8 **Q. You state you relied on the US EPA Risk**
9 **Assessment completed in December of 2014 to support**
10 **your opinion that leachate collection and removal**
11 **systems are not necessary for a new CCR surface**
12 **impoundment with the composite liners.**

13 **Did the model scenario in the risk assessment**
14 **which you referred to with a composite liner include a**
15 **leachate collection system?**

16 A. There's mixed information on this. At one
17 point -- and I believe I cited it in my response to
18 your question -- the US EPA Risk Assessment does
19 indicate leachate collection was considered for
20 composite liners. That's one occurrence.

21 However, the remainder of the 1200-page
22 document, there are numerous occurrences on the
23 discussion that ponds can leak more because they have
24 more head on the liner. And so when they start

1 discussing head on the liner, that's indicative to me
2 that a leachate collection system is not installed nor
3 operating.

4 Moreover, the final proof in the pudding is
5 the actual wording of the Agency. The Agency does not
6 require leachate collection in final Rulemaking -- the
7 federal EPA I should say.

8 And I think Exhibit 5 -- and I wish I would
9 have thought about this for the six or eight years the
10 US EPA had when they were writing their rule. But I
11 think the US EPA states it clearly and effectively on
12 Page 213.70 of the federal rule, which I think has
13 been entered as Exhibit 5. And I'll slowly read it
14 for the court reporter:

15 "The composite liner system installed at
16 either CCR landfill or CCR surface impoundment
17 provides an effective hydraulic barrier by combining
18 the complimentary properties of the two liner
19 components. The geomembrane provides a highly
20 impermeable layer that can maximize leachate
21 collection and removal in CCR landfills or minimize
22 infiltration in the CCR surface impoundment."

23 And that sentence is very clear that the
24 Agency, A, does not consider landfills or impoundments

1 to be the same animal; and, two, the purpose of the
2 geomembrane liner in impoundments is to prevent leaks.

3 I think the bottom line, it's clear that it
4 was not included.

5 Q. Thank you.

6 Is this modeling scenario -- I'm sorry.

7 For purposes of modeling assumptions, when
8 the period of the use of the CCR surface impoundment
9 in the model was completed, was the CCR removed from
10 the impoundment?

11 A. No, because they very specifically talk about
12 the removal of head at the completion of closure
13 through the de-watering process removes the risk.

14 So they considered it my opinion that the CCR
15 would be present at time of closure.

16 Q. And this modeling scenario representative of
17 a CCR surface impoundment which was not constructed
18 with a leachate collection and removal system and did
19 not have CCR removed -- let me strike that question.
20 Let's start again.

21 Is this modeling scenario representative of a
22 CCR surface impoundment which was not constructed with
23 a leachate collection and removal system and did not
24 have CCR removed at the time of closure?

1 A. The modeling included both. But as
2 importantly as modeling, they feel modeling is very
3 important to the engineering practice, but you have to
4 ground-troop your model. And the US EPA
5 ground-trooped their model by going back and looking
6 at proven and potential damage cases for CCR
7 impoundments.

8 And since, as we've heard from other
9 witnesses and as stated in the CCR preamble on the
10 federal rule, the predominant method of closure has
11 been removal or -- excuse me -- closure in place. So
12 I think it's very clear that they did consider closure
13 in place.

14 **Q. Moving on, this is on Page 55, and this is**
15 **going to be in response to ELPC Question 9-B.**

16 A. It will be just a moment.

17 **Q. Take your time.**

18 A. Go ahead.

19 **Q. In response to ELPC's Question 9-B, as in**
20 **boy, you provided the following statement:**

21 **"When a leachate collection and removal**
22 **system is installed, it is essentially a drain on the**
23 **impoundment floor which functions to remove hydraulic**
24 **head from the liner system and thus remove the water**

1 from the impoundment. Since the impoundment is
2 continuously drained, the impoundment and
3 functionality as the CCR transport storage is negated.

4 "It is likely plants would then need to
5 construct numerous very large tanks to function as a
6 transport water storage."

7 Does Part 845 as drafted require the
8 impoundment to be continually drained?

9 A. That's interesting. As drafted and as
10 indicated by agency staff, operational of the leachate
11 control system is not required. So that is -- that
12 statement is what leachate collection systems are
13 installed and, in hindsight, I should say, and
14 operated. So the operation is what drains the pond,
15 not the installation.

16 Q. So if not, would plants need to construct
17 numerous very large tanks to function as transport
18 water storage?

19 A. Only if the system is to be operated while
20 the plant is transporting CCR via this loose drain.

21 Q. Could the leachate be routed back to the
22 power plant boiler?

23 A. Now, there are multiple streams of water in a
24 boiler, so I'm going to assume you mean brought it

1 back to the boiler house to transport additional CCR
2 to the impoundment, yes.

3 **Q. Yes.**

4 MS. DIERS: I have nothing further, but I
5 reserve the right to ask follow-up.

6 HEARING OFFICER HORTON: Okay. Thank you.

7 Moving on to the Environmental Groups, any
8 questions for Mr. Nielson?

9 MR. HAMMONS: Yes. Can you hear me?

10 HEARING OFFICER HORTON: Yes.

11 MR. HAMMONS: Great.

12
13 EXAMINATION

14 BY MR. HAMMONS:

15 **Q. This is Jeffrey Hammons from the**
16 **Environmental Law & Policy Center.**

17 During my colleague Faith Bugel's questioning
18 of Midwest Generation witness Sharene Shealey, there
19 were a couple of questions posed that Sharene noted
20 would be better addressed to you, Mr. Nielson.

21 So before I get to my questions, I'm just
22 going to get to those real quick so we can get them
23 out of the way.

24 Are you familiar with the leachate collection

1 **system that's being proposed by the Illinois EPA in**
2 **this Rulemaking?**

3 A. Yes.

4 **Q. And if that leachate collection system is**
5 **being operated, would it minimize or reduce the**
6 **hydraulic head on a composite liner?**

7 A. It may, depending upon the pumping flow rate.

8 **Q. Can you elaborate a little bit on that?**

9 A. Certainly. To operate, I could put a
10 half-gallon-per-minute pump in and call it operation.
11 If the mandate came down to limit the head to one foot
12 as is required in other CCR units, would be completely
13 different by design and by nature, that would limit
14 the head.

15 So it depends on the precise regulatory limit
16 and permit requirement.

17 **Q. And correct me if I am wrong, but it sounds**
18 **like it also requires when pumps are installed and**
19 **their capacity?**

20 A. Certainly.

21 **Q. And so if an owner or operator that wanted to**
22 **operate leachate collection systems installed the**
23 **correct and appropriately sized pumps, they could**
24 **reduce or minimize the hydraulic head on a composite**

1 **liner?**

2 A. Yes.

3 **Q. Would minimizing the head on that composite**
4 **liner decrease potential for the movement of fluids**
5 **through the liner?**

6 A. It would not reduce it from above to below
7 the acceptance criteria established for the protection
8 of human health on the environment. There's been a
9 lot of questions on this, so I'm going to try a
10 different direction here.

11 Instead of -- let's say we're designing a
12 concrete building and have concrete columns and all
13 the science and engineering say I can get away with an
14 18-inch column and have more than adequate safety
15 factor and seismic and wind loads and all these other
16 loads. If I, as an engineer, decide to use maybe
17 36-inch square columns, I'm going to use a lot more
18 Portland cement, a lot more aggregate, I'm going to
19 have to have heavier columns below.

20 There are a lot of unintended consequences
21 from excessively conservative design. And I think the
22 risk assessment done by the US EPA has been very
23 explicit, as has the preamble of the U.S. rule that
24 the system is not needed.

1 **Q. So it's funny that you bring up explicit**
2 **because my next question actually was whether or not**
3 **that EPA risk the assessment --**

4 THE COURT REPORTER: Could you have him slow
5 down?

6 HEARING OFFICER HORTON: Excuse me,
7 Mr. Hammons. This is Vanessa Horton. Can you repeat
8 that slower for our court reporter?

9 BY MR. HAMMONS:

10 **Q. Did the US EPA risk assessment explicitly**
11 **evaluate whether a leachate collection system was or**
12 **was not necessary for a CCR surface impoundment to be**
13 **protective of human health or the environment?**

14 A. Yes. If evaluated, as I discussed earlier,
15 the ground-trooping process of looking at proven and
16 potential damage cases, those damage cases did not
17 include leachate collection. I've never seen it
18 installed in a CCR impoundment.

19 And so with the US EPA system, there were no
20 cases with composite liners that exceeded the
21 criteria. That is inclusion of non -- impoundments
22 that do not include leachate collections.

23 **Q. All right. Can I turn your attention to**
24 **Page 34 of the Answers document, particularly, the**

1 question that the Board proposed, the Illinois
2 Pollution Control Board Question 18?

3 A. Uh-huh.

4 Q. So Part B, as in bravo, and your answer?

5 A. Okay.

6 Q. In your answer did you state: "The risk
7 assessment is not explicitly clear if the surface
8 impoundments modeled contain leachate collection and
9 removal systems"?

10 A. And for those modeled, it is not. But for
11 the draft troops it is.

12 Q. Okay. Nevertheless, it's still your opinion
13 that the risk assessment explicitly evaluated whether
14 a leachate collection system was or was not necessary
15 for a CCR surface impoundment to be protective of
16 human health or the environment?

17 A. Could you repeat the question?

18 Q. Yes. It's actually the first question I
19 asked.

20 Did the US EPA risk assessment explicitly
21 evaluate whether a leachate collection system was or
22 was not necessary for a CCR surface impoundment to be
23 protective of human health or the environment in light
24 of your answer to Question 18-B posed by the Board

1 where you state:

2 "A risk assessment is not explicitly clear
3 that the surface impoundments modeled contained
4 leachate collection and removal systems."

5 A. I think that's the same question that I've
6 already answered. I was trying to differentiate the
7 difference in the questions. And other than the word
8 count, I think that's the same question.

9 Q. All right. So my next question has to do
10 with filterable layers and whether or not a filterable
11 layer placed above the leachate collection system
12 would reduce the amount of leachate that would reach
13 the collection system?

14 MS. GALE: I'm sorry. Is this related to a
15 question or is it just a -- I don't know what you're
16 talking about?

17 MR. HAMMONS: This is another one of the
18 questions that my colleague, Faith Bugel, originally
19 had asked Sharene Shealey but was directed to
20 Mr. Nielson.

21 MS. GALE: Great. Thank you.

22 Sorry. You might have to repeat it again.
23 He might have missed it.

24 BY MR. HAMMONS:

1 **Q. Would having a filterable layer placed above**
2 **the leachate collection system reduce the amount of**
3 **leachate that would reach the leachate collection**
4 **system?**

5 A. It entirely depends upon the design. And I'm
6 going to quickly turn to the proposed rules so I don't
7 misquote.

8 The filter layer in the rule does not have a
9 minimum thickness or a maximum thickness. And if an
10 owner or operator wanted a 7-foot thick randomly,
11 hypothetically selected liner -- or filter thickness,
12 that would reduce the flow.

13 The only requirements, as I review the rule,
14 that it has to be above the composite liner system,
15 and it has to have a hydraulic conductivity no less
16 than 1 times 10 to the minus 5, although I would never
17 design it, I suspect the material in your window
18 screens would meet that criteria. And I would design
19 a better filter system personally.

20 But as the rule is written, window screen
21 could be that filter material. And I don't think
22 that's what the Agency intends.

23 **Q. Moving on, this is on Page 55 of the answers.**
24 **It's in follow-up to your response to the**

1 **Environmental Group's Question 9-B, as in bravo?**

2 A. Okay. Go ahead.

3 **Q. Can you read for the record the last two**
4 **sentences of your answer?**

5 A. Of B?

6 **Q. Yes.**

7 A. The final paragraph that should already be on
8 the record is: "If a leachate collection system is
9 installed, the surface impoundment is not designed to
10 hold or accumulate water. Thus, it would not meet the
11 strict definition of a CCR impoundment."

12 Is that your two sentences?

13 **Q. Yes.**

14 A. End quote.

15 **Q. Thank you.**

16 **Are you a licensed attorney in the State of**
17 **Illinois?**

18 A. I am not. I'm not a licensed attorney in any
19 state.

20 **Q. Thank you.**

21 MR. HAMMONS: Miss Hearing Officer, I would
22 like to move for an order on the record directing that
23 any of the opinions expressed by Mr. Nielson on the
24 definition of a CCR impoundment and whether or not one

1 with a leachate collection system meets that
2 definition be considered a public comment for purposes
3 of weight that the board gives.

4 THE WITNESS: Madam Hearing Officer, if I
5 could speak before you rule?

6 MS. GALE: Wait. Let me speak first.

7 Madam Hearing Officer, he's not giving a
8 legal opinion here. But certainly we're all
9 interpreting language that goes into regulations. And
10 he's interpreting what he, as an engineer, reads this
11 definition. This is not a legal opinion or a legal
12 conclusion, but in looking at language used by
13 engineers and us all to understand what we're
14 discussing here.

15 So I would object to the striking of his
16 answer as somehow being some sort of legal definition.

17 HEARING OFFICER HORTON: Mr. Hammons?

18 MR. HAMMONS: For the record, Hearing
19 Officer, I'm not seeking to strike it; I'm seeking for
20 the board to consider it public comment and not
21 testimony, acknowledging that the Board more heavily
22 weighs testimony for purposes of making its decision
23 than it weighs public comment.

24 HEARING OFFICER HORTON: Mr. Hammons, this is

1 Vanessa Horton. I'm going to deny your request. So
2 you can move on to the next question.

3 BY MR. HAMMONS:

4 Q. All right. Can you explain, Mr. Nielson, why
5 a CCR surface impoundment with a leachate collection
6 system does not meet the definition of a CCR surface
7 impoundment as proposed by the Agency?

8 A. Certainly. So the three places we could
9 turn, but the easiest one is my responses to
10 questions. In Section 257.53 of the federal CCR Rule,
11 the tarp surface impoundment is defined and it's also
12 defined in Section 845.120 of the proposed Illinois
13 rule, and I quote:

14 "CCR surface impoundment or impoundments
15 means a natural topographic depression, man-made
16 excavation, or diked area which is designed to hold
17 and accumulate -- excuse me -- hold an accumulation of
18 CCR and liquids" -- let me go back to the beginning of
19 that.

20 -- "which is designed to hold an accumulation
21 of CCR liquids and the surface impoundment treats,
22 stores, or disposes of CCR."

23 So to hold an accumulation of liquid, you
24 can't have a drain system in the bottom. To me, hold

1 means retain. That means contain and retain. It
2 doesn't mean, oh, and we have to design a system to
3 pump out what we're supposed to be holding.

4 **Q. Thank you.**

5 **Quick question. Do you have a sink in your**
6 **kitchen?**

7 A. Absolutely.

8 **Q. Would you say that that sink is designed to**
9 **hold an accumulation of water?**

10 A. No.

11 **Q. When you put a stopper in your sink drain,**
12 **would you say it's designed to hold an accumulation of**
13 **water?**

14 A. Is the stopper subjected to a CQA plan, a
15 Construction Quality Assurance plan, to verify that
16 it's constructed right, installed right, and it's
17 secured properly?

18 Mine does not. I don't know about yours.

19 **Q. Either?**

20 A. In the absence of quality assurance and a
21 legitimate design to make sure that it is a permanent
22 system, I don't think you can say it's designed to
23 hold water. Actually, my wife gets rather aggravated
24 when our sink does hold water unanticipated.

1 Q. Thank you. I'm going to move to Page 65 of
2 your answers -- well, actually it's Midwest Generation
3 answers, but it's Page 65.

4 So the question actually appears on Page 65,
5 but the answer is on Page 66. This is Question 17-C.

6 A. Okay.

7 Q. In your answer, you refer to practical
8 considerations. Can you explain what some of those
9 practical considerations are?

10 A. If a rail bridge or rail access to a site
11 hasn't been maintained in many years because it's no
12 longer used, I don't think it's practical to consider
13 sending loaded rail cars, as you can imagine, over a
14 public roadway on a bridge that hasn't been
15 maintained. That could be a possibility.

16 It would also be a practical consideration of
17 if the waste -- excuse me -- if the gravel was to be
18 loaded on trains, but the most appropriate gravel pit
19 doesn't have rail access -- and, frankly, I don't know
20 very many that do -- I'm going to have to handle the
21 material when I mine it, truck it to a rail head, load
22 it onto a railcar, possibly transport it near the
23 site.

24 But most power plant designers didn't put

1 rail spurs out to the CCR impoundments because rail
2 spurs were either to deliver coal or deliver equipment
3 to the power plant. So then I'm going to have to
4 unload it, reload it on trucks, and haul it to the CCR
5 impoundment.

6 So I've increased the numbering of handling,
7 and I consider it impractical to handle a material
8 that many times if it's not required if it's not --
9 minimum work provides the least impact and the least
10 footprint.

11 **Q. Thank you.**

12 **If the gravel is delivered via rail rather**
13 **than trucking, could you also use a conveyer system to**
14 **take the gravel from the train to the impoundment?**

15 A. Mr. Hammons, I'm thinking of specific power
16 plant general arrangements and the installation of a
17 conveyor system. In some cases, well in excess of a
18 half mile, most portable conveyor systems are
19 absolutely not designed for quarter- mile or half-mile
20 type runs without numerous transfer stations.
21 Anything is possible, quite frankly, with enough
22 money. But is it the intent to build a Saturn-fired
23 rocket if a bottle rocket will do. That may be a bad
24 example.

1 **Q. Thank you.**

2 MR. HAMMONS: No further questions.

3 HEARING OFFICER HORTON: Okay. Thank you.

4 Moving on to City of Springfield, any
5 questions for Mr. Nielson?

6 MS. WILLIAMS: This is Deborah Williams. I
7 don't have any questions for this witness.

8 HEARING OFFICER HORTON: Okay.

9 Dynergy, Mr. More, any questions?

10 MR. MORE: No questions.

11 HEARING OFFICER HORTON: Illinois
12 Environmental Regulatory Group, Ms. Brown, any
13 questions?

14 MS. MELISSA BROWN: No questions for this
15 witness.

16 HEARING OFFICER HORTON: Ameren, Ms. Manning,
17 any questions?

18 MS. MANNING: No questions for this witness.
19 Thank you.

20 HEARING OFFICER HORTON: Attorney General's
21 Office, Mr. Armstrong, any questions?

22 MR. ARMSTRONG: No questions. Thank you.

23 HEARING OFFICER HORTON: Pollution Control
24 Board Technical Unit, Mr. Rao, any questions?

1 MR. RAO: I have no questions. Thank you.

2 HEARING OFFICER HORTON: Any follow-up
3 questions for Mr. Nielson?

4 MS. DIERS: Yes. This is Ms. Diers. I have
5 one follow-up.

6 FURTHER EXAMINATION

7 BY MS. DIERS:

8 Q. Mr. Nielson, you and I talked earlier bout
9 the risk assessment, and I asked you if the model
10 scenario in the risk assessment which you referred to
11 with the composite liner included a leachate
12 collection system?

13 And I believe you answered it was mixed
14 information in the risk assessment; would that be
15 correct?

16 A. Yes. For the model system, yes.

17 Q. So when I look at the risk assessment --

18 MS. DIERS: And, Hearing Officer, I'm not
19 sure if the whole risk assessment has been entered
20 into the record or parts of it, based with his
21 testimony.

22 But when I look at Page 2-3 -- and I don't
23 know. Do you have the risk assessment with you,
24 Mr. Nielson?

1 THE WITNESS: Absolutely. Give me just a
2 moment and I'll be there.

3 HEARING OFFICER HORTON: Ms. Diers, this is
4 Vanessa. What exhibit number is that?

5 MS. DIERS: I'm sorry, what? I didn't hear
6 you.

7 HEARING OFFICER HORTON: What exhibit number
8 is the risk assessment?

9 MS. DIERS: It's 9? Is that what someone
10 said?

11 MS. GALE: No. We attached -- because it's
12 1200 pages, we only attached specific pages that he's
13 referring to, but it was not fully attached.

14 So Page Number 2-1 I believe you said is not
15 in the record. It is a publicly available document
16 though.

17 MS. DIERS: We're looking for 2-3 and 4-9,
18 and I don't know if that was included.

19 MS. GALE: No. Well, 4-9 may have. Hang on.

20 MS. DIERS: Okay. Thank you.

21 MS. GALE: Yes. 4-9 is attached to his
22 answers, attached to Midwest Generation's answers, but
23 not 2-1.

24 BY MS. DIERS:

1 Q. When I look at 4-9, it appears to me, based
2 on the model, that there was included a leachate
3 collection system. So I'm confused on the mixed
4 information. If you could explain that, please.

5 A. Certainly. On 4-8 and 4-9, it does
6 explicitly say a leachate collection system is assumed
7 to exist between the waste and the system. That, to
8 me, is a very clear sentence, and this is the reason I
9 say it's a little ambiguous.

10 Because in addition to that, and I don't know
11 if this is possible -- and the Hearing Officer may
12 give me some guidance.

13 Could I refer to pages of the publicly
14 available risk assessment that are not entered in as
15 an exhibit?

16 HEARING OFFICER HORTON: Yes. But, Ms. Gale,
17 could you please enter them into the record? File
18 them with the clerk and the public comment after?

19 MS. GALE: Yes. No problem.

20 HEARING OFFICER HORTON: Okay. Thank you.

21 THE WITNESS: Okay. Give me just a moment,
22 please.

23 I'm going to go to page K-1 in the risk
24 assessment. So if anybody has it close by, I will

1 certainly read the quotation once I get there.

2 BY MS. DIERS:

3 Q. Can you tell me again what page you're
4 reading from, Mr. Nielson?

5 A. K, as in kilo, one.

6 Q. Thank you.

7 A. K-1 is in an attachment. I believe the
8 attachment is identified Uncertainty Analysis. So
9 Appendix K is uncertainty analysis. On page K-1,
10 under Section K.2.1, kilo .2.1, Technical Approach,
11 starting six lines down, I believe, quoting:

12 "During operation, free liquids that are
13 deposited in the impoundment create a strong hydraulic
14 head that acts to increase infiltration through the
15 base of the impoundment."

16 And, to me, if there is an increased
17 hydraulic head, there is not an operating leachate
18 collection system.

19 And it goes on, and if I go to the second
20 paragraph on Section K.2.1, and it's the 8th line
21 which starts "Transformational Products," there's a
22 sentence that starts: "Liquid waste and impoundment
23 are assumed to be replenished over the operational
24 life to maintain a constant level of liquid in the

1 unit with constant constituent concentrations."

2 Again, in response to Illinois EPA's
3 question, I think those two cases are indicative of
4 the pond contains water, and an operating leachate
5 collection system would not contain water.

6 That's the end of my response.

7 **Q. Just a moment.**

8 **Do you know how the pond was modeled after**
9 **the CCR was removed?**

10 A. I've read it and I'm trying to think of the
11 exact citation. I didn't commit all 1200 pages.

12 After closure -- could you repeat the
13 question to make sure I'm answering the right
14 question?

15 **Q. How was it modeled after the CCR was removed?**

16 A. I apologize. I'm not thinking of the exact
17 citation, but -- so I can't point to the chapter and
18 page. But actually, let me try a quick search here.

19 I do know that it was based on -- the pond --
20 it was modeled in a dry condition. I just can't put
21 my finger on the reference.

22 MS. GALE: Mr. Nielson, can we offer to admit
23 it as a public comment later instead of you trying to
24 find it now?

1 THE WITNESS: I think that would be a grand
2 suggestion.

3 MS. GALE: Would that be acceptable to the
4 Agency?

5 MS. DIERS: I'm fine with that, unless he
6 wants to go -- I think he might be able to find the
7 information on 2-3.

8 MS. GALE: Okay.

9 THE WITNESS: On Page 2-3 -- thank you for
10 the lead. I'm glad the Agency is now using this risk
11 assessment. Section 2.2.1, the last sentence in the
12 first full paragraph:

13 "Closed surface impoundments are assumed to
14 behave the same as closed landfill units depicted in
15 the cross-section below."

16 And it goes on to say -- does that answer
17 your question, ma'am?

18 BY MS. DIERS:

19 **Q. So based on what you just read, has the CCR**
20 **been removed?**

21 **A.** The CCR has not been removed.

22 It is assumed that all waste is removed from
23 most units prior to closure.

24 So by using all waste in most units, you

1 cannot conclude that they're all clean closed. And
2 then it goes on to say, however, in some instances,
3 it's left in place.

4 So it sounds like the correct answer is they
5 modeled some clean closed or closure by removal, in
6 regulatory language, and some as closure in place.

7 MS. DIERS: I have nothing further. Thank
8 you, Mr. Nielson.

9 HEARING OFFICER HORTON: All right. Any
10 further follow-up questions for Mr. Nielson?

11 MR. RAO: I have follow-up questions. This
12 Anand Rao.

13 HEARING OFFICER HORTON: Go ahead.

14 THE WITNESS: Hello, sir.

15 EXAMINATION

16 BY MR. RAO:

17 Q. Mr. Nielson, in response to the Agency's
18 question, you mentioned that it's your opinion that
19 there's no operating leachate collection system in the
20 model impoundment because if there was a leachate
21 collection system, you said there would be no water in
22 the impoundment.

23 Can a leachate collection system be used to
24 maintain a particular head on the liner instead of

1 **just completely draining it?**

2 A. It could. It could have a level indicator.

3 **Q. And you can still operate when getting a**
4 **particular head over the liner?**

5 A. It would depend on the level mandated. If
6 the head was mandated to be one foot, I wouldn't have
7 the storage of transport water for the recycled loop
8 that's required for the operation of the system. So
9 if that was the mandate, it would not work.

10 If I have a -- this is not an impoundment in
11 the State of Illinois, but I'm thinking of several
12 impoundments along the Ohio River that are in excess
13 of 150 feet deep. If those were limited to, say,
14 60 feet of depth, you could certainly operate the
15 system. It would take some -- a revised head boards,
16 but it could be done.

17 **Q. Are you familiar with impoundments in**
18 **Illinois in terms of what depth most of them are**
19 **operating at?**

20 A. Illinois has been very fortunate. When the
21 glaciers came through with their bulldozer blades down
22 and generally leveled the land and created a good and
23 permeable glacial till in that area, it turns out that
24 most of the impoundments are relatively shallow, at

1 least on the stations that I've reviewed, relative to
2 the several hundred-foot depth in some of the more
3 enhanced terrain.

4 So I would say, on average, they're less than
5 30 or 40 feet, but that is sure speculation, not
6 backed by study.

7 **Q. So if they are around 30 to 40 feet, could**
8 **the rules require a leachate collection system where**
9 **the heads are mandated not at one foot like landfills**
10 **but at a much higher depth, and would there be any**
11 **benefit to that?**

12 A. Well, I struggle with that because per the
13 risk assessment, there would not be a reduction for
14 unacceptable risk to acceptable risk. It would be
15 going from an acceptable risk to a more acceptable
16 risk by reducing the head.

17 The operational system that I'm imagining we
18 retrofitted an impoundment or we construct a new
19 impoundment, the first few years it's in operation, as
20 the delta formation of solids is building and moving
21 across the impoundment, it would be very easy and a
22 well-designed unit.

23 However, as the unit approaches its design
24 capacity, for me to fully fill an impoundment and

1 store the volume of CCR that it's designed for, I need
2 to have the water level at or above that for
3 sedimentation to happen.

4 If I -- I apologize. This is my section.
5 Hopefully that's showing up. And this was where I
6 intended to storage, but my water level is limited to
7 here, this ends up being dead storage that I could
8 never fill in my impoundment.

9 So it would be a case-by-case operational
10 requirement that I don't think I could generalize for
11 your Rulemaking activities.

12 MR. RAO: Thank you for that clarification.
13 Thanks.

14 THE WITNESS: Thank you sir.

15 HEARING OFFICER HORTON:

16 MR. RAO: That's all I have.

17 THE WITNESS: Thank you, sir.

18 MS. DIERS: I have one more question. I'm
19 sorry. And it was just a follow-up to what Mr. Rao
20 was asking.

21 HEARING OFFICER HORTON: Go ahead.

22 FURTHER EXAMINATION

23 BY MS. DIERS:

24 **Q. Mr. Nielson, can you move the pipe around?**

1 A. In some circumstances you can relocate the
2 discharge pipe of the sluice line, yes.

3 **Q. Would it then operate as designed?**

4 A. Well, it's hard for sedimentation to happen
5 if the CCR falls out of the water. Let me get my
6 thought back.

7 If this is my water level, it's hard for the
8 CCR to settle into this storage volume if this is my
9 maximum water level. I can build a delta somewhat
10 above the water level depending on what material I'm
11 sluicing.

12 But relying on that in an engineering design
13 I think would be a real risky assumption.

14 MS. DIERS: Thank you.

15 HEARING OFFICER HORTON: Any further
16 follow-up questions for Mr. Nielson?

17 MR. HAMMONS: Yes, Hearing Officer. Jeff
18 Hammons, Environmental Law & Policy Center. I just
19 had one following up on the previous questioning.

20 FURTHER EXAMINATION

21 BY MR. HAMMONS:

22 **Q. If you have an impoundment with a leachate**
23 **collection system installed, Mr. Nielson, and it's not**
24 **operating, is it holding an accumulation of water as**

1 **transport water is being poured into it?**

2 A. Without pumps installed, yes, I can say that.

3 **Q. Pumps installed not operating?**

4 A. Pumps installed not operating, it would hold
5 water. But it's unclear to me why we would use those
6 natural resources to build this system that we're not
7 going to operate -- that I do not understand.

8 MR. HAMMONS: Thank you. No further
9 questions.

10 HEARING OFFICER HORTON: As long as there are
11 no further follow-up questions for Mr. Nielson, thank
12 you, Mr. Nielson, you are dismissed.

13 THE WITNESS: Thank you. Have a wonderful
14 day, all.

15 (Witness excused.)

16 HEARING OFFICER HORTON: Moving to Ameren's
17 first witness, Mr. Gary King.

18 MS. MANNING: Good afternoon, Madam Hearing
19 Officer.

20 Before we start with Gary King, I would just
21 ask the Hearing Officer if you would have both
22 witnesses sworn in, in the event Mr. King decided to
23 defer a question that's more specific in nature to
24 Mr. Wagstaff who is here already, recognizing that

1 those specific question, pre-filed questions were
2 asked of Mr. Wagstaff. We just think it might be more
3 expedient in the event Mr. King wants to defer some
4 specific information to Mr. Wagstaff.

5 HEARING OFFICER HORTON: That's fine. That
6 would be the same way we handled Mr. Even Magruder and
7 Scott Payne yesterday.

8 MS. MANNING: Thank you.

9 HEARING OFFICER HORTON: Ms. Court Reporter,
10 could you --

11 MS. MANNING: Would you like me to move the
12 exhibits now or would you like me to do that after
13 they are questioned?

14 HEARING OFFICER HORTON: Let's swear them in
15 and then we'll enter the exhibits.

16 MS. MANNING: Thank you.

17 (Witnesses duly sworn.)

18 HEARING OFFICER HORTON: Sir, could you
19 identify yourselves so we know who's who.

20 MR. KING: My name is Gary King.

21 MR. WAGSTAFF: I'm Mike Wagstaff.

22 HEARING OFFICER HORTON: Okay. Thank you.

23 Then, Ms. Manning, you'd like to enter an
24 exhibit?

1 MS. MANNING: Yes. I'm not sure what number
2 we're on, but I would enter into as an exhibit the
3 pre-filed testimony of Gary King and the pre-filed
4 testimony of Mike Wagstaff and the pre-filed answers
5 of Gary King.

6 HEARING OFFICER HORTON: Okay. So Exhibit 55
7 will be the pre-filed testimony of Gary King.
8 Exhibit 56 will be the pre-filed testimony of Michael
9 Wagstaff. And then Exhibit 57 will be the pre-filed
10 answers of Gary King.

11 (Whereupon, Exhibits 55, 56 & 57
12 was marked for identification.)

13 MS. MANNING: And I'm also prepared to enter
14 into evidence the exhibits that we filed, that we
15 pre-filed on Monday. If Madam Hearing Officer would
16 like me to introduce those exhibits at this time, I
17 will do so.

18 HEARING OFFICER HORTON: Yes. Would you like
19 to enter them as one exhibit?

20 MS. MANNING: That would be fine. One
21 exhibit would probably be easier.

22 HEARING OFFICER HORTON: That's the way they
23 showed up when filed in COOL. So we can just call
24 them Exhibit 58.

1 MS. MANNING: Okay.

2 HEARING OFFICER HORTON: So that will be
3 Ameren's pre-filed exhibit that was filed on
4 September 28th.

5 MS. MANNING: Thank you.

6 (Whereupon, Exhibit No. 28 was
7 marked for identification.)

8 MS. MANNING: Would you like me to further
9 identify those exhibits, or are we ready for
10 testimony?

11 HEARING OFFICER HORTON: Sure. Go ahead.

12 MS. MANNING: The exhibits that Ameren filed
13 are -- basically the first 16 exhibits are documents
14 that are in the Agency's files that are public
15 documents, the first being the closure plan for
16 Hutsonville on A, B, C, and the bottom ash pond, dated
17 October 2014.

18 The second document is the IEPA approval
19 letter of the closure plan for Hutsonville ponds A and
20 C and the bottom ash pond issued in 2015, approving
21 the closure plan.

22 The third document is the closure plan for
23 Hutsonville Pond D issued by the Agency on July 2011
24 immediately following the board's decision on

1 Hutsonville Pond D that was issued in January 2011.

2 The fourth is the IEPA approval letter of the
3 closure plan for Hutsonville Pond dated April 2012.

4 The fifth is the closure plan for Maradocia
5 fly ash and bottom ash pond dated August 2016.

6 The sixth is the IEPA approval letter of the
7 closure plan for Maradocia fly bash and bottom ash
8 pond dated March 2017.

9 The seventh is the closure plan for Venice
10 North and South Ash Ponds dated February 2011.

11 The eighth is the IEPA approval letter of the
12 closure plan for Venice North and South Ash Pond dated
13 May 2011.

14 The ninth is the Construction Quality
15 Assurance report, also known as CQA, for Hutsonville
16 Ponds A, B, C, and the bottom ash pond. These CQAs
17 are required by the closure plan, demonstrating that
18 the closure was done in conformity with the closure
19 documents. That is dated November 2016.

20 Number 10 is the CQA for Hutsonville Pond D
21 dated November 2012.

22 Eleven is the Construction Quality Assurance
23 report, again, the CQA, for Maradocia fly ash and
24 bottom ash pond dated January 2019.

1 The twelfth is the Construction Quality
2 Assurance report for Venice North and South Ash Ponds
3 dated November 2012.

4 The thirteenth is the Annual Report, and it's
5 the 2019 Annual Report for Hutsonville Pond A.

6 This would be a description of all of the
7 groundwater monitoring results annually reported to
8 the Agency.

9 The fourteenth -- and this would be the last
10 report reported to the agency.

11 The fourteenth, end of number 14, would be
12 the 2019 annual report for Hutsonville Pond C.

13 Number 15 is the 2019 annual report for
14 Maradocia Power Station.

15 Number 16 is the 2019 annual report for the
16 former Venice Power Plant.

17 All of those annual reports would have been
18 filed early in 2020.

19 The final three documents are all responses
20 to questions asked of Gary King related to Old
21 Maradocia.

22 The first, number 17, is the liquefaction
23 analysis for the Maradocia fly ash and closed ash pond
24 which was submitted to the Illinois Department of

1 Natural Resources.

2 Number eighteen is an elevation rendering of
3 the Maradocia Coal Ash Pond.

4 And Number Nineteen is an April 12, 2019,
5 letter from the Illinois Department of Natural
6 Resources to AmerenEnergy and Dyna Valley Cogan LLC
7 regarding Maradocia Ash Ponds. And that particular
8 letter is quoted in the responses to questions asked
9 of Mr. King.

10 With that, I'll turn over Mr. King for
11 questioning.

12 HEARING OFFICER HORTON: One question. Will
13 Mr. King or Mr. Wagstaff be providing a summary of
14 their testimony?

15 MS. MANNING: Mr. King will be providing a
16 summary of his summary; Mr. Wagstaff will not.

17 HEARING OFFICER HORTON: Okay. Please go
18 ahead. You're limited to five minutes.

19 MR. KING: Thank you. My name is Gary King.
20 I am employed with the consulting firm Arcadis US,
21 which is a global environmental consulting firm. The
22 vast bulk of my professional career has been about
23 34 years. I was an employee of the Illinois EPA.

24 My expertise is somewhat different from the

1 previous witnesses in this proceeding. My expertise
2 has been in the development of regulatory programs at
3 Illinois EPA related to remediation and closure of
4 environmentally impacted sites.

5 These programs have included the volunteer
6 site remediation program, the leaking underground
7 storage bin program, the solid waste landfill program,
8 tier approach to corrective action objectives, acronym
9 is TACO, T-A-C-O, and implementation of CERCLA.

10 CERCLA is an acronym.

11 THE COURT REPORTER: Can he repeat that last
12 part, what it stands for, after TACO.

13 HEARING OFFICER HORTON: Our court reporter
14 would like you to start over from TACO.

15 MR. KING: Taco is the implementation of
16 CERCLA. That's C-E-R-C-L-A. That's in Illinois.

17 I serve as the lead agency spokesperson in
18 most of these programs and have appeared numerous
19 times in front of the board as an agency regulatory
20 proponent and witness and more recent years, as
21 consultant to Ameren related to its initiatives
22 related to regulatory proposals for the board
23 concerning closure of its coal ash ponds.

24 I'm familiar with the functioning of the

1 board's landfill rules, the board's underground
2 storage tank rules, the board's TACO rules, the
3 board's site modification program rules, the board's
4 groundwater rules of the Environmental Protection Act,
5 as well as the Agency's program.

6 Ameren stands in a much different position
7 than other regulated entities in this proceeding for
8 two significance reasons. First: Ameren stopped
9 generating electricity for the burning of coal at its
10 three facilities, Maradocia, Hutsonville, and Venice,
11 by 2011, which was several years before the effective
12 date of March 2007.

13 Second, there were ten impoundments at these
14 facilities. Nine of those impoundments were closed
15 after obtaining approvals from Illinois. Ten unit
16 year old ash pond at Maradocia was closed in the early
17 '70s, long before IEPA had an oversight program for
18 closure of coal ash surface impoundments.

19 Even though the federal 257 rules were not
20 applicable, Ameren sought and achieved closure
21 approval through the Illinois EPA and its existing
22 regulatory structures, particularly the board's
23 groundwater rules, and in the case of Hutsonville
24 Pond D, the board cites specifically parts.

1 HEARING OFFICER HORTON: Mr. King, you cut
2 out that last bit.

3 MR. KING: David Hagen and other witnesses
4 presented evidence that although there are extreme
5 groundwater exceedences at some monitoring wells at
6 Ameren sites, those exceedences are statistically
7 decreasing, which is what is expected and required in
8 Ameren's agency-approved full disclosure process.

9 Mr. Hagen identified that this information is
10 publicly available. That's because Ameren monitors
11 groundwater and approved groundwater management and
12 annually reports to the Agency.

13 I concur with the opinion expressed by
14 Mr. Hagen that closure in place and surface
15 impoundments coupled within that groundwater
16 distraction has been effective at controlling and
17 mitigating groundwater contaminant.

18 In addition in response to questions
19 regarding --

20 HEARING OFFICER HORTON: This is Vanessa
21 Horton. I'm going to have to cut you off there,
22 Mr. King. We went a little bit over five minutes.
23 And I know I interrupted you twice to clarify, so
24 that's why I gave you a little bit of extra time. So

1 we'll end your summary there and we'll move onto
2 questions.

3 But before we do, is there a way to rearrange
4 the microphone in your room, Ms. Manning? It's a
5 little bit difficult for us to hear Mr. King.

6 MS. MANNING: There may be.

7 HEARING OFFICER HORTON: While you're
8 arranging yourself, we will begin with questions.

9 Ms. Diers, Illinois EPA, do you have any
10 questions for Mr. King?

11 MS. DIERS: We do not. Thank you.

12 HEARING OFFICER HORTON: So I'm going to go
13 through Mr. King first and then I'll circle back to
14 Mr. Wagstaff, with the understanding that I understand
15 that the both of you are -- might confer on answers,
16 but that's how I'll proceed.

17 So for the Environmental Groups, any
18 questions for Mr. King?

19 EXAMINATION

20 BY MR. HAMMONS:

21 **Q. Yes. This is Jeffrey Hammons, Environmental**
22 **Law & Policy Center.**

23 **For my first question, Mr. King, can I direct**
24 **you to your answer, the pre-filed answers at Page 9.**

1 **And, in particular, it's Question 12-A, as in alpha,**
2 **and 12-B as in beta.**

3 A. I'm looking at those questions.

4 **Q. Is the Illinois EPA proposing to regulate**
5 **Hutsonville Pond D?**

6 A. Under Part 845?

7 **Q. Yes.**

8 A. Yes.

9 **Q. Has the Illinois EPA issued any notice of**
10 **violation for failure to pay any fees for Hutsonville**
11 **Pond D?**

12 MS. MANNING: I'm going to object to that
13 question in that there was an objection to that
14 question to begin with. If we want to argue about
15 this issue, I'm happy to do so. But we were precluded
16 from doing so at the beginning of this proceeding.

17 MS. DIERS: This is Ms. Diers, and I'm also
18 going to object. We have stated before on the record
19 that we did not want that issue brought into this
20 Rulemaking. You are just looking at 845, and this is
21 not part of 845.

22 HEARING OFFICER HORTON: The objection is
23 sustained.

24 MR. HAMMONS: I would like to move to strike

1 all of the witness's testimony as to the applicability
2 of these rules to Hutsonville D if I can't ask any
3 questions about it. I don't understand why it can
4 still get in through testimony and pre-filed answers.

5 HEARING OFFICER HORTON: That's not what I
6 ruled. I ruled that questions about fees for a
7 particular site was not to be asked about. Certainly
8 you could ask about the testimony that Mr. King has
9 presented.

10 MR. HAMMONS: Thank you.

11 BY MR. HAMMONS:

12 **Q. So in your response to Question 12-B that**
13 **asks about your alleged conflict between different**
14 **regulatory programs, are you providing your legal**
15 **opinion?**

16 A. Well, I was doing a comparison between the
17 two sets of rules.

18 **Q. Okay. And your testimony today said you**
19 **found that there was a conflict between the two sets**
20 **of rules?**

21 A. Right.

22 **Q. Can you explain the conflict?**

23 A. I can identify some of them. I think I did
24 that later in the testimony, that I gave an example of

1 one of those.

2 If you look on Page 14, this was in
3 response -- part of the response to Question 21-B. I
4 made the statement that requirements for a response to
5 a groundwater exceedence under Section 840.116(a) is
6 substantially different from the requirements under
7 proposed Section 845.170.

8 **Q. Are you using the word "substantially"**
9 **different as analogous to conflict?**

10 A. Yes.

11 **Q. Can you describe the differences between**
12 **those two rules?**

13 A. Well, I mean, I could read. Are you
14 suggesting I should read the two rules?

15 **Q. Whatever you need to do to describe the**
16 **conflict between them?**

17 I assume you would identify it because you
18 identified it in your pre-filed answers.

19 A. So I'm going to read the entirety of
20 840.116(a). It begins:

21 "On-site, prior to the completion of the
22 post-closure care period, the applicable groundwater
23 quality standards at the Hutsonville site for
24 concentrations of contaminants from Ash Pond D are the

1 concentrations as determined by groundwater
2 monitoring, if those concentrations exceed the numeric
3 standards for Class I: Potable Resource Groundwater
4 set forth in 35 Ill. Admin. Code 620.410. After
5 completion of the post-closure care period the on-site
6 concentrations of contaminants from Ash Pond D as
7 determined by groundwater monitoring, if those
8 concentrations exceed the numeric standards for
9 Class I: Potable Resource Groundwater set forth in
10 35 Ill. Admin. Code 620.410, are the applicable
11 groundwater standards at Hutsonville if: Now there's
12 three subsections:

13 1) To the extent practical, the exceedence
14 has been minimized and beneficial use is appropriate
15 for the class of groundwater has been returned
16 on-site.

17 2) any threat to human health or the
18 environment on-site has been minimized; and

19 3) an institutional control prohibiting
20 potable uses of groundwater is placed on the
21 Hutsonville site in accordance with the Uniform
22 Uniform Covenants Act [765 ILCS 122] or an alternative
23 instrument authorized for environmental uses under
24 Illinois law and approved by the Agency. Existing

1 potable uses of groundwater may be preserved as long
2 as those uses remain fit for human consumption in
3 accordance with accepted waters supply principles."

4 Now, the standard in 845.170, the standard
5 there is related to the same subject matter is
6 contained in 845.170(b) and (c). I'll read both of
7 those:

8 "When a prior release from an inactive closed
9 CCR surface impoundment has caused an exceedence from
10 the groundwater quality standards in 35 Ill. Admin.
11 Code Part 620 and the owner or operator has not
12 completed remediation of the release before completing
13 closure, the owner or operator must initiate or
14 continue corrective action on the operating permit
15 issued pursuant to this part."

16 Then it says: "When a release from an
17 inactive closed CCR surface impoundment causes an
18 exceedence of the groundwater quality standards in
19 Ill. Admin. Code Part 620, the Agency has not
20 concurred with an alternative source demonstration,
21 the owner or operator of an inactive closed CCR
22 surface impoundment must initiate an assessment of
23 corrective measures that prevents further releases,
24 remediates any releases, and restores the affected

1 area. The owner or operator of the inactive closed
2 CCR surface impoundment shall develop a corrective
3 action plan and obtain a construction permit
4 consistent with subsection A-2 of this section before
5 performing any corrective action to remediate and to
6 release this and to restore the affected area,
7 included but not limited to the final cover system,
8 groundwater monitoring system, groundwater collection
9 trench, extraction wells, slurry walls, or any
10 construction related to a corrective action."

11 That's the end of that section.

12 **Q. Can you identify the conflict between those**
13 **two?**

14 A. Well, they're just different. They're
15 different. And for Ameren to have to choose between
16 doing one or the other, since both would be required,
17 that would be a conflict.

18 **Q. Would it be impossible to do both?**

19 A. Well, I think we talked about -- we talked
20 about that as a standard in response to one of the
21 other questions and that the possibility is really not
22 an appropriate standard for making decisions.

23 **Q. I'm going to direct you to Page 12 of your**
24 **answers, which is Question 18 and its subparts and**

1 **your answers to those.**

2 A. I'm on Page 12. What's the -- which
3 question?

4 **Q. Question 18?**

5 A. It's on Page 11.

6 **Q. Sorry. It's subpart C?**

7 A. I've got subpart C.

8 **Q. Is your opinion that the board's proposal**
9 **retroactively applied state law to create new**
10 **liability on the owners or operators of ash ponds**
11 **for such conduct?**

12 A. You confuse me because you said the board's
13 proposal.

14 **Q. I'm sorry. The Agency's proposal?**

15 A. So could you repeat the question then,
16 please.

17 **Q. Yes. I'm just confirming that your opinion**
18 **is that the Agency's proposal treats something as if**
19 **it is not closed, that it is, in fact, closed, and**
20 **that the justification retroactively applied state law**
21 **to create new liability on the owners and operators of**
22 **ash ponds for that conduct?**

23 **(Reporter clarification.)**

24 HEARING OFFICER HORTON: Mr. Hammons, this is

1 Vanessa Horton. You'll have to go a lot slower.
2 You're reading very quickly and our court reporter
3 can't keep up. So please repeat much slower.

4 MR. HAMMONS: It might just be easier if
5 Mr. King reads his answer.

6 (Reporter clarification.)

7 BY MR. HAMMONS:

8 Q. I'm just asking to confirm Mr. King's opinion
9 that "The Agency's proposal treats something as if it
10 is not closed, that is, in fact, closed, and as a
11 justification, retroactively applied state law to
12 create new liability on the owners and operators of
13 ash ponds for past conduct"?

14 A. That's almost my entire statement. You left
15 off a little bit of it. But that's almost my entire
16 statement.

17 Q. Thank you.

18 And is it fair to characterize it as your
19 legal opinion?

20 A. I think so, yes.

21 Q. Thank you.

22 MR. HAMMONS: Hearing Officer, I would like
23 to move for an order directing that any legal opinion
24 provided by the witness be treated as public comment

1 for the purpose of the weight that the board assigns
2 it and not as testimony.

3 HEARING OFFICER HORTON: Ms. Manning, any
4 response?

5 MS. MANNING: I would object to that.
6 Mr. King is a lawyer. He's a regulatory lawyer. He
7 has worked at the Agency for many years. He is
8 certainly qualified to determine whether a law --
9 whether a regulation that is being proposed before the
10 board is retroactively being applied.

11 Certainly he has probably more experience
12 than many lawyers in this state in terms of bringing
13 proposals to the board on behalf of the Illinois EPA.
14 His background indicates how he worked with the
15 Illinois Division of Legal Counsel for many years as
16 well as the Land Division, as manager of the Land
17 Division. So I think he's wholly qualified to make
18 the opinion that he made.

19 HEARING OFFICER HORTON: I'll deny Mr.
20 Hammons' request and sustain Ms. Manning's objection.

21 BY MR. HAMMONS:

22 **Q. Mr. King, were you retained by Ameren as an**
23 **attorney in this matter?**

24 **A. No. Ms. Manning is their attorney.**

1 MR. HAMMONS: Can I, Madam Hearing Officer,
2 just request a clarification of your ruling? Is it
3 permissible for an attorney to submit testimony to the
4 board that contains legal opinion and have that
5 testimony be provided the weight that testimony
6 ordinarily be provided, even though, ordinarily, legal
7 opinions of parties are provided in post-hearing
8 comments?

9 I'm just trying to understand the scope of
10 your order.

11 HEARING OFFICER HORTON: One second. Let me
12 confer with Ms. Tipsord.

13 MS. MANNING: If I may, Madam Hearing
14 Officer, I would just interject as well. In board
15 regulatory proceedings, attorneys and regulatory
16 counsel, and Gary King is very expertly placed in
17 terms of his background to offer that opinion.
18 Certainly we will be arguing this is a brief and
19 providing case law and those kinds of things later.

20 But I think that the Hearing Officer ruling
21 ought to stand related to his opinion being a legal
22 opinion as an expert regulatory person who has a law
23 degree, who is very familiar with this regulatory
24 structure.

1 HEARING OFFICER HORTON: Okay. Attorneys
2 have in the past given testimony in Rulemaking
3 hearings, so I will -- my rulings will stand. The
4 board obviously will weigh -- give the appropriate
5 weight to each and every expert witness who's provided
6 testimony yesterday and today, and we understand and
7 are aware of the qualifications and the experiences of
8 each of these witnesses, and we will give them the
9 appropriate weight.

10 Please continue with your questions,
11 Mr. Hammons.

12 MR. HAMMONS: Thank you.

13 BY MR. HAMMONS:

14 Q. I would like to direct you to Page 18 and, in
15 particular, your response to Question 30-D, as in
16 Delta?

17 A. Yes. I am looking at it.

18 Q. So in your response -- well, your response,
19 which is "yes" to the question of: "Are there other
20 programs at Illinois EPA that have the same
21 recordkeeping requirements as the site remediation
22 program?"

23 So my question is: What are the other
24 programs that have the same recordkeeping requirements

1 **as the site remediation program?**

2 A. Well, let me give you at least one example.
3 I talked earlier about my involvement in the
4 management of CERCLA state-laid sites in Illinois.
5 For those CERCLA sites, under that program, they also
6 have to maintain site specific that is similar to what
7 is contained in the site remediation program.

8 **Q. And does CERCLA assess fees in the same way**
9 **that the Coal Ash Pollution Prevention Act does?**

10 A. No, it does not.

11 **Q. Are there any other programs other than the**
12 **site remediation program and the CERCLA program that**
13 **have the same recordkeeping requirements as the site**
14 **remediation program?**

15 A. I would classify the Illinois EPA does
16 relative to Department of Defense sites where those
17 same kind of records are kept there as well.

18 **Q. I'm sorry. I don't understand. Can you**
19 **rephrase?**

20 A. Yes. I will explain a little more. Well,
21 there's various sites in Illinois that the Department
22 of Defense has responsibility for remediation, and the
23 Illinois EPA plays a role in reviewing documents that
24 the defense department submits to the Agency for

1 review. The Agency contains records relative to the
2 time we spent on those projects.

3 **Q. In those programs you identified, is the**
4 **purpose of recordkeeping so that the Agency can seek**
5 **reimbursement of the costs that they incur for the**
6 **services that they provide?**

7 A. Yes, that's correct.

8 **Q. In the proposed implementation of Part 845,**
9 **is the Agency seeking cost reimbursement of regulated**
10 **facilities with surface impoundments?**

11 A. I believe I answered that question. Let me
12 find where I answered.

13 I think the question that you just asked is
14 similar to the question that's asked by the Agency own
15 Page 26.

16 **Q. I'm there.**

17 A. I think E is the -- answer E is addressing
18 the kind of question that you're asking.

19 **Q. Thank you.**

20 **So under the proposed Part 845 rules, is the**
21 **Agency authorized to seek cost reimbursement from**
22 **regulated facilities with surface impoundments in**
23 **Illinois?**

24 A. As proposed by the Agency?

1 Q. Yes.

2 A. No, they're not.

3 Q. Thank you. That was actually one of my
4 questions. So thank you for hurrying that along.

5 So I'm going to go back to Page 19, which is
6 Question 31-A or your response to Question 31-A on
7 Page 19.

8 A. Okay.

9 Q. And this question had to do with the five
10 categories of costs incurred by the Agency that Ameren
11 proposes to add as a new subpart J.

12 And the question was: "What's the basis for
13 these categories of costs?"

14 And your response was: "These are categories
15 of cost for which the Agency maintains information."

16 My follow-up is if you can explain that a
17 little bit more what you mean?

18 A. Yeah. I was talking earlier about the site
19 remediation program, and then I talked about the
20 CERCLA program and the DOD program. In each of those
21 areas, there will be -- the Agency will be maintaining
22 records relative to costs that are incurred by the
23 Agency under those programs, and those costs are
24 broken out into different categories, five categories

1 of cost.

2 Q. And the purpose of recording those categories
3 of cost is to seek reimbursement from the facilities
4 and the site remediation program or the CERCLA program
5 or the DOD program you referred?

6 A. Right. It's to make sure that there's a full
7 cost accounting so that when the Agency goes to seek
8 payment from those entities, it's a complete list of
9 services and costs.

10 Q. Thank you.

11 My next question is follow-up to your
12 response on Page 19. This is the next page -- this is
13 Question 32, subpart A, as in alpha.

14 A. Yes.

15 Q. This question asks about review of services.
16 In your experience in a site remediation
17 program, what does review of services entail?

18 A. What it entails is, once a document comes
19 into the Agency and it reaches the project manager's
20 desk, then time spent by that project manager
21 reviewing that document or those documents constitutes
22 the review of services.

23 Q. And then they can seek -- "they," as in the
24 Agency, can seek reimbursement for the costs incurred

1 for those review of services?

2 A. Yes, that's correct.

3 Q. Thank you.

4 So the next question actually is a follow-up
5 to some of your answers to IEPA's questions, and we've
6 already gone over one of them. But there was another
7 one, it's on Page 27 of your answers, and this is
8 IEPA Question 6, subpart G, as in giraffe?

9 A. Yes.

10 Q. In your response, you mentioned Section 5-F.
11 Are you referring to Section 5-F of the Illinois
12 Environmental Protection Act?

13 A. That's correct.

14 Q. Does section 5-F limit the powers of the
15 Illinois legislature?

16 A. That's within the powers of the Illinois
17 legislature to adopt to do things and pass
18 legislation.

19 Q. Sorry. I heard like a train or some sort of
20 noise rolling by when you were answering, so I didn't
21 hear anything?

22 A. Maybe you could clarify a little bit. Are
23 you saying -- are you asking whether Section 5-F is
24 some kind of limitation by the legislature's authority

1 to adopt legislation? Is that what you're asking?

2 Q. Yes.

3 A. No, it does not.

4 Q. And my next question is on actually the
5 previous page, 26. This is in response to -- let me
6 find the subpart. Sorry.

7 This is subpart -- your response to subpart B
8 of Question 6 by the Illinois EPA. You noted that
9 you're not aware of any legislative record/information
10 that demonstrates how the fees were determined.

11 Were you involved with the passage of the
12 Coal Ash Pollution Prevention Act?

13 A. No, I was not.

14 MR. HAMMONS: Thank you. Those are all my
15 questions.

16 HEARING OFFICER HORTON: Okay. I see it's
17 4:00, so for the sake of our court reporter and for us
18 in the room, let's take a quick break, and then we'll
19 continue with questions for Mr. King. So let's return
20 at 4:10. Thanks.

21 (Whereupon, a break was taken,
22 after which the following
23 proceedings were had:)

24 HEARING OFFICER HORTON: It's 4:10. We'll

1 start up again. This is Vanessa Horton in Chicago.

2 So we'll continue with questions for
3 Mr. King.

4 Midwest Generation, Ms. Gale, any questions
5 for Mr. King?

6 MS. GALE: I have no questions. Thank you.

7 HEARING OFFICER HORTON: City of Springfield,
8 Ms. Williams, any questions for Mr. King?

9 MS. WILLIAMS: I have no questions.

10 HEARING OFFICER HORTON: Dynegy, Mr. More,
11 any questions?

12 MR. MORE: No questions.

13 HEARING OFFICER HORTON: Illinois
14 Environmental Regulatory Group, Ms. Brown, any
15 questions?

16 MS. MELISSA BROWN: No questions. Thank you.

17 HEARING OFFICER HORTON: Attorney General's
18 Office, Mr. Armstrong, any questions?

19 MR. ARMSTRONG: I do have a few follow-up
20 questions.

21 HEARING OFFICER HORTON: Go ahead.

22 EXAMINATION

23 BY MR. ARMSTRONG:

24 **Q. Good afternoon, Mr. King. Can you hear me?**

1 A. Yes. Can you hear me? We changed our audio
2 system a little bit here. Can you hear me okay?

3 Q. It sounds good. Thank you.

4 So I just have a few questions, but I'm going
5 to direct you to two different spots and the first one
6 is on Page 12 of your pre-filed responses,
7 specifically your response to Environmental Group's
8 Question 19-A, as in alpha. And the second spot is
9 Page 18 of your pre-filed testimony.

10 So let me know when you're ready with both of
11 those documents.

12 A. Let me just kind of dog ear the one and flip
13 to the other one so I can -- the first one was
14 Page 12, 19-A; is that correct?

15 Q. Yes.

16 A. And then the second one was, please, again?

17 Q. Page 18 of your pre-filed testimony.

18 A. Okay. I have that.

19 Q. And what I'm going to do is, in the
20 Question 19-A, it's a quotation from one sentence of
21 your pre-filed testimony, I'm just going to go ahead
22 and read that sentence before it for additional
23 context. So I'm going to read Environmental Group's
24 Question 19-A, inserting the additional sentence from

1 your pre-filed testimony on Page 12.

2 A. Okay.

3 Q. So Question 19-A, on Page 18 you state: "In
4 USWAG, the court held that the US EPA acted
5 arbitrarily in not including legacy ponds in Part 257
6 which became effective on October 19, 2015. In its
7 decision, the court was referring to ponds that
8 continued to pose a serious risk of failure and were
9 unaddressed by the federal rule."

10 The question from the Environmental Group's
11 was: "What statements by the courts support your
12 interpretation of the court's decision?"

13 And your response was: "The court's
14 discussion of the unique confluence of risks posed by
15 legacy ponds."

16 And then citations of the USWAG decision,
17 utility solid waste, activities group versus
18 Environmental Protection Agency.

19 So my questions are about the actual holding
20 of the USWAG decision. First, would you agree that
21 the DC circuit in USWAG held that US EPA acted
22 arbitrarily and capriciously and contrary to RCRA in
23 exempting inactive surface impoundments and inactive
24 power plants from Part 257 when it promulgated the

1 **rule in 2015?**

2 MS. MANNING: You know, I'm going to, at this
3 point, interject an objection and state that
4 Mr. King's legal opinions that he -- the answers to
5 the questions that he posed in relation to the
6 question asked are the extent of the legal opinion
7 he's going to offer in this proceeding; and that other
8 issues related to the debate over what the USWAG
9 decision did or did not do, Mr. Armstrong, we can save
10 for our briefs and our post-hearing comments.

11 But to engage Mr. King at this point in a
12 regulatory hearing with a banter about what USWAG did
13 or did not hold, in the context of limited testimony
14 in answer to the questions that were posed in
15 specific, I would object to that and suggest that we
16 save that for the briefs.

17 MR. ARMSTRONG: I'm not engaging in banter.
18 Your witness testified regarding the holding of USWAG.
19 He offered a needle opinion about the meaning of
20 USWAG, and I want to ask him a few questions about his
21 understanding of the court's holding in that case.

22 If he would like to withdraw his testimony
23 regarding USWAG, I believe your objection would be
24 better taken.

1 But if he's going to testify regarding USWAG,
2 he should be asked questions about it.

3 HEARING OFFICER HORTON: This is Vanessa
4 Horton. Ms. Manning's objection is overruled. And
5 Mr. King will provide his response to Mr. Armstrong's
6 question.

7 MR. KING: Would you give me the page number
8 you're referencing as far as that holding statement?

9 BY MR. ARMSTRONG:

10 **Q. The page number of the USWAG decision?**

11 A. Yeah. The page number within it that states
12 the holding.

13 **Q. 901 F.3d at 449 to 450.**

14 A. Can you give me the page number relative to
15 attachment C?

16 **Q. I don't have attachment C in front of me.**

17 **One second, please.**

18 **What I'm referring to is in the conclusion**
19 **section of the opinion, the second paragraph.**

20 A. This is Section 5 of the decision; is that
21 correct?

22 **Q. Yes.**

23 A. So this is on Page 62 of the attachment C.
24 And you're referring to which paragraph now?

1 **Q. The second paragraph.**

2 A. It begins with the phrase, "On the claims
3 raised by environmental petitioners"?

4 **Q. Yes.**

5 A. Okay.

6 **Q. I'm sorry. Please?**

7 A. I don't know what the question is now, now
8 that we're on the same page.

9 **Q. Would you agree that the DC circuit held that
10 US EPA acted arbitrarily and capriciously and contrary
11 to RCRA in exempting inactive surface impoundments at
12 inactive power plants from Part 257 when US EPA
13 promulgated the rule in 2015?**

14 A. Well, that's not what it says. I mean,
15 you're kind of -- it looks like you're using some
16 different language than what's in the decision
17 document.

18 **Q. Would you agree that the DC circuit vacated
19 and remanded to US EPA the provisions of Part 257 that
20 exempted inactive impoundments at inactive facilities
21 from regulation?**

22 A. Is this the sentence that begins, "We,
23 therefore, vacate and remand the provisions of the
24 final rule."

1 Is that the sentence you're talking about?

2 Q. That sentence does contain the holding I'm
3 referring to.

4 A. So are you asking me whether I agree with
5 that sentence?

6 I'm not sure what you're asking.

7 Q. You testified that in the USWAG decision, the
8 court held that US EPA acted arbitrarily in not
9 including --

10 (Reporter clarification.)

11 HEARING OFFICER HORTON: Mr. Armstrong, can
12 you repeat for our court reporter?

13 MR. ARMSTRONG: Yes. Sure.

14 BY MR. ARMSTRONG:

15 Q. In your pre-filed testimony, you stated that
16 in USWAG, the court held that the US EPA acted
17 arbitrarily in not including legacy ponds in Part 257
18 which became effective on October 19, 2015. In its
19 decision" --

20 A. Was that --

21 Q. Let me finish my question, sir.

22 "In its decision, the court was referring to
23 ponds that continue to pose a serious risk of failure
24 and were unaddressed by the federal rule."

1 So my question for you is: Did the DC
2 circuit vacate and remand to US EPA the provisions of
3 Part 257 that exempted inactive impoundments at
4 inactive facilities from regulation?

5 A. Yes, that's correct.

6 Q. And that vacatur included 40 CFR 257, did it
7 not?

8 A. Yes, that's correct.

9 Q. In your legal opinion, did the DC circuit
10 vacatur of Section 40 CFR 257.50(e) have any
11 retroactive effect?

12 A. Would you restate the question, please?

13 Q. In your legal opinion, when the DC circuit
14 vacated and remanded to US EPA Section 40 CFR
15 257.50(E), did the court's order have any retroactive
16 effect?

17 A. No, I don't think it did.

18 MR. ARMSTRONG: Thank you. No further
19 questions.

20 HEARING OFFICER HORTON: Okay. The Pollution
21 Control Board Technical Unit, Mr. Rao, any questions
22 for Mr. King?

23 MR. RAO: I have no questions. Thank you.

24 HEARING OFFICER HORTON: Any follow-up

1 questions for Mr. King?

2 MR. HAMMONS: I have one, Madam Hearing
3 Officer. This is Jeff Hammons, Environmental Law &
4 Policy Center.

5 FURTHER EXAMINATION

6 BY MR. HAMMONS:

7 Q. Mr. King, in the preparation for today's
8 hearing, did Ameren provide you any insight into the
9 answers you should provide to any questions you might
10 be posed today?

11 A. Meaning did I consult with them in the
12 preparation of testimony?

13 Q. Yes.

14 A. Yes, I consulted with them.

15 Q. Were there any things they told you that you
16 were not allowed to say?

17 A. No.

18 Q. In your preparation of your pre-filed
19 answers, did you write your answers, or did Ameren
20 have any input in the writing of those answers?

21 A. I consulted with them on those answers, yes.

22 Q. Did Ameren provide any feedback on your
23 answers?

24 A. Yes.

1 Q. Did you incorporate any of that feedback in
2 your answers?

3 A. Yes.

4 Q. In the preparation of your pre-filed
5 testimony, did you consult with Ameren?

6 A. Yes.

7 Q. Did you draft your testimony or did Ameren?

8 A. I drafted my testimony.

9 Q. Did Ameren provide feedback on your
10 testimony?

11 A. Yes.

12 Q. Did you incorporate any of that feedback?

13 A. Yes.

14 Q. Did any of the feedback they provide include
15 their opinions on the legal applicability of these
16 rules?

17 A. No.

18 MR. HAMMONS: Thank you. No further
19 questions.

20 HEARING OFFICER HORTON: Any further
21 questions for Mr. King?

22 All right. Hearing none, Mr. King, I'll not
23 say you're dismissed since you said that you'd like to
24 consult -- or Mr. Wagstaff and you would be testifying

1 jointly. So we'll move on to Mr. Wagstaff who has
2 already been sworn in. And so we'll start with
3 questions for
4 Mr. Wagstaff.

5 Illinois EPA, Ms. Diers, any questions for
6 Mr. Wagstaff?

7 MS. DIERS: No questions. Thank you.

8 HEARING OFFICER HORTON: Environmental
9 Groups, any questions for Mr. Wagstaff?

10 MS. BUGEL: We have no questions. Thank you.

11 HEARING OFFICER HORTON: Thank you,
12 Ms. Bugel.

13 Midwest Generation, any questions for
14 Mr. Wagstaff?

15 MS. GALE: We have no questions. Thank you.

16 HEARING OFFICER HORTON: City of Springfield,
17 Ms. Williams, any questions?

18 MS. WILLIAMS: No questions.

19 HEARING OFFICER HORTON: Dynegy, Mr. More,
20 any questions?

21 MR. MORE: No questions.

22 HEARING OFFICER HORTON: Illinois
23 Environmental Regulatory Group, any questions,
24 Ms. Brown?

1 MS. MELISSA BROWN: No questions. Thank you.

2 HEARING OFFICER HORTON: Attorney General's
3 Office, Mr. Armstrong, any questions?

4 MR. ARMSTRONG: No questions. Thank you.

5 HEARING OFFICER HORTON: Pollution Control
6 Board Technical Unit, Mr. Rao, any questions?

7 MR. RAO: No questions. Thank you.

8 HEARING OFFICER HORTON: At this point I will
9 dismiss Mr. King and Mr. Wagstaff. Thank you.

10 (Witnesses excused.)

11 HEARING OFFICER HORTON: Ms. Court Reporter,
12 I'd like to go off the record for a minute to discuss
13 procedural matters.

14 (Whereupon, a discussion was had
15 off the record.)

16 HEARING OFFICER HORTON: We're back on the
17 record.

18 We paused briefly to discuss procedural
19 matters. We return now, and we had the following
20 dates: October 30th the record will close in this
21 matter. We will have comments due -- substantive
22 comments will be due on October 23rd, and then
23 responses will be due October 30th. Comments from
24 members of the public will be due by October 30th.

1 And returning to Ms. Bugel's question from
2 earlier about an exhibit, you may file the exhibit as
3 a public comment with the clerk and it can be
4 referenced in your comment and responses.

5 MS. BUGEL: Okay. Very good. Thank you.

6 HEARING OFFICER HORTON: With that, we'll end
7 for today and we will continue, though, tomorrow from
8 5:30 to 7:00 with comments from members of the public.

9 Thank you, everyone.

10 (Whereupon, at 4:40 p.m., the
11 above-entitled cause was
12 adjourned to October 1, 2020,
13 at 5:30 p.m.)

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 I, PAMELA L. COSENTINO, being first duly
5 sworn on oath says that she is a court reporter doing
6 business in the City of Chicago; that she reported in
7 shorthand the proceedings given at the taking of said
8 hearing and that the foregoing is a true and correct
9 transcript of her shorthand notes so taken as
10 aforesaid and contains all the proceedings given at
11 said hearing.

12 IN TESTIMONY WHEREOF: I have hereunto set my
13 verified digital signature this 22nd day of October,
14 2020.

15
16
17 _____
18 PAMELA L. COSENTINO, CSR
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