

ILLINOIS POLLUTION CONTROL BOARD

MIDWEST GENERATION, LLC )  
 (Will County Station) )  
 )  
 Petitioner, )  
 )  
 -vs- ) PCB No. 21-108  
 ) (Variance - Land)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

REPORT OF THE PROCEEDINGS held in the above  
entitled cause before HEARING OFFICER CAROL WEBB,  
called by the Illinois Pollution Control Board, taken  
by Pamela L. Cosentino, Certified Shorthand Reporter  
for the State of Illinois, at the Will County Office  
Building, County Board Room, 2nd floor, 302 N. Chicago  
Street, Joliet, Illinois, on the 27th day of July,  
2021, commencing at the hour of 9:30 a.m.

Reported by: Pamela L. Cosentino, CSR  
License No.: 084-003601

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

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1 HEARING OFFICER WEBB: Let's go ahead and  
2 begin.

3 Good morning. My name is Carol Webb, and  
4 this is the hearing for PCB 21-108, Midwest  
5 Generation's Will County Station, seeking a variance  
6 from 35 Ill. Adm. Code Part 845. The decision  
7 deadline is September 9th.

8 Joining me today is board member Cynthia  
9 Santos, the board's chief scientist Anand Rao, and  
10 senior attorney Tim Fox. We also have a Pollution  
11 Control Board intern with us today, welcome. And  
12 welcome to everyone else who's here.

13 It is July 27th. We are beginning at  
14 9:30 a.m. Are there any members of the public here  
15 who plan to make a public comment? I do not see  
16 anyone.

17 Written public comment may be filed with the  
18 board's clerk by August 3rd.

19 The Pollution Control Board members will make  
20 the final decision in this case. My purpose is to  
21 conduct the hearing in a neutral and orderly manner so  
22 that we have a clear record of the proceeding.

23 This hearing was noticed pursuant to the Act  
24 and the board's rules and will be conducted pursuant

1 to the board's procedural rules at 35 Ill. Adm. Code  
2 101 Subpart F and 104 Subpart B.

3 At this time I'll ask the parties to please  
4 make their appearances on the record.

5 MS. GALE: Kristen Gale and Molly Snittjer on  
6 behalf of Midwest Generation LLC.

7 MS. ZEIVEL: Christine Zeivel and Clayton  
8 Ankney on behalf of the Illinois EPA.

9 HEARING OFFICER WEBB: Thank you.

10 Are there any preliminary matters to discuss  
11 on the record?

12 MS. GALE: Not from me.

13 MS. ZEIVEL: Not from the Agency.

14 HEARING OFFICER WEBB: Would Petitioner like  
15 to make an opening statement?

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

17 O P E N I N G S T A T E M E N T

18 BY MS. GALE:

19 Good morning. Madam Hearing Officer, Madam  
20 Santos, Mr. Fox, Mr. Rao.

21 As I said, my name is Kristen Gale and with  
22 me is Molly Snittjer, and we are here on behalf of  
23 Midwest Generation, LLC. We are here on Midwest  
24 Generation's petition for a variance for a brief

1 extension of time on certain deadlines in the recently  
2 adopted Illinois Coal Combustion Residual Rule, also  
3 known as the CCR rule.

4 The extension is only for two of the inactive  
5 surface impoundments at the Will County Station in  
6 Romeoville, Illinois. They're called Ponds 1N and 1S.

7 Specifically, Midwest Generation is  
8 requesting an extension of four deadlines: An  
9 extension of the deadline to complete the groundwater  
10 sampling analysis under Section 845.650(b)(1); an  
11 extension of the deadline to submit the operating  
12 permit application for the Ponds 1N and 1S under  
13 Section 845.230; an extension of the deadline to  
14 submit the category designation of Ponds 1N and 1S  
15 closure prioritization under Section 845.700; and an  
16 extension of the deadline to submit the construction  
17 permit application under Section 845.700(h).

18 We are here because Ponds 1N and 1S are not  
19 federal CCR surface impoundments. Both ponds ceased  
20 receiving ash and liquid in 2010. In other words,  
21 Midwest Generation does not direct any liquid or other  
22 material to the pond, to either of the ponds.

23 In 2013, Midwest Generation installed a  
24 dewatering system that drained all of the water,

1 including any rainwater that may fall into the ponds.  
2 Because the ponds are not federal CCR surface  
3 impoundments, they do not have all of the groundwater  
4 data, structural information, historical information,  
5 and the other information required by the CCR rule  
6 that the other federal CCR surface impoundments have.

7           It is important to note here that Midwest  
8 Generation is not requesting a variance from any of  
9 the work or corrective actions required under the  
10 CCR rule. Midwest Generation is working diligently to  
11 conduct all the work required under that rule.

12           Instead, we're here and only asking for a  
13 brief extension of the immediate deadlines to  
14 accurately collect all of the requisite information  
15 required by the extensive operating permit application  
16 and the even more extensive construction permit  
17 application. And by "brief," I mean less than a year.

18           Attached to Midwest Generation's petition  
19 were three affidavits by Sharene Shealey,  
20 environmental director; Mr. Bradley Castle,  
21 Will County's former operations manager; and Richard  
22 Gnat of KPRG & Associates, our hydrogeologist.  
23 Mr. Castle and Mr. Gnat will be providing additional  
24 testimony in support of our petition, and all three

1 are available for questions from the Agency and the  
2 Board.

3 I described Mr. Castle as "former" because he  
4 very recently, as in a week ago, moved to a new  
5 position with a new company. But he graciously agreed  
6 to join us this morning in support of his affidavit  
7 and Midwest Generation's petition.

8 The Agency filed a recommendation in this  
9 proceeding, and they stated that they do not object to  
10 Midwest Generation's request for an extension of the  
11 deadlines for collecting and analyzing and  
12 statistically evaluating the eight independent  
13 samples, submitting the operating permit application,  
14 submitting the category designation for both ponds,  
15 and submitting the construction permit application  
16 should it be determined that the ponds are a  
17 Category 4.

18 The Agency did object to Midwest Generation's  
19 request to extend deadlines to complete two plans:  
20 The initial emergency action plan and the Fugitive  
21 Dust Plan; and in response, Midwest Generation has  
22 withdrawn that request.

23 There are certain other misstatements of fact  
24 and law that were contained in the Agency's

1 recommendation which Midwest Generation will address  
2 in this hearing today. While we do not believe that  
3 these misstatements are material to the Board's  
4 decision to grant the requested variance, we believe  
5 it's important to correct the record.

6 With that said, we're here asking for the  
7 variance and we're ready to proceed.

8 HEARING OFFICER WEBB: Would the Agency like  
9 to make an opening statement?

10 MS. ZEIVEL: Yes.

11 O P E N I N G S T A T E M E N T

12 BY MS. ZEIVEL:

13 Just briefly, the Illinois EPA is here with  
14 their witnesses that signed affidavits in support of  
15 the written recommendation that was filed. The Agency  
16 stands by its written recommendation. As Ms. Gale  
17 pointed out, the Agency neither objects nor supports  
18 Midwest Generation's request for the four extensions  
19 that Ms. Gale referenced.

20 We have with us today Melinda Shaw and  
21 Darren LeCrone as witnesses. The Agency will present  
22 them to provide the opportunity to Midwest Generation  
23 or the Board to ask any questions relevant to our  
24 written recommendation. But otherwise we stand by

1 that recommendation.

2 HEARING OFFICER WEBB: Thank you.

3 All right. The Petitioner may call their  
4 first witness.

5 MS. SNITTJER: Midwest Generation calls  
6 Bradley Castle.

7 HEARING OFFICER WEBB: Mr. Castle, would you  
8 come sit right here by me, and would the court  
9 reporter please swear in the witness.

10 (Witness duly sworn.)

11 BRADLEY A. CASTLE,  
12 having been first duly sworn, called as a witness  
13 herein, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SNITTJER:

16 Q. Good morning, Mr. Castle.

17 A. Good morning.

18 Q. Can you please state your name for the  
19 record.

20 A. Bradley A. Castle.

21 Q. Mr. Castle, until recently, you were the  
22 operations manager at Midwest Generation Will County  
23 Station, correct?

24 A. That is correct.

1 Q. And when did you leave Midwest Generation?

2 A. My last workday was last Friday, July 16th.

3 Q. When you were still with Midwest Generation,  
4 you signed an affidavit in support of Midwest  
5 Generation's petition for a variance for Ponds 1N and  
6 1S; is that correct?

7 A. Yes.

8 Q. Because of that, you took some time away from  
9 your current position to come testify today, right?

10 A. Yes.

11 Q. And even though you're no longer with Midwest  
12 Generation, you're familiar with the historical and  
13 current operations of the Will County Station,  
14 correct?

15 A. Yes, I am.

16 Q. Can you please briefly describe your duties  
17 as operations manager?

18 A. Mainly day-to-day operations of the operating  
19 department, doing lottos, making decisions to safely  
20 make electricity; and in addition to that, being a  
21 manager level, I was involved with maintenance,  
22 engineering, and administration to make decisions for  
23 the longevity of the plant.

24 Q. How long were you in that role?

1           A.     From 2016 until last week.

2           **Q.     Were you with the Will County Station prior**  
3 **to that?**

4           A.     Yes.  I've been employed there since the  
5 mid '80s.  Previous to the operation manager position,  
6 I spent seven years as the operating planner, which  
7 was -- involved in a lot of these decisions working  
8 with contractors and stuff like that.

9           **Q.     As we talked about earlier, you signed an**  
10 **affidavit that was attached to Midwest Generation's**  
11 **variance petition.  Have you reviewed that affidavit**  
12 **recently?**

13          A.     Yes, I have.

14          **Q.     And are the facts stated in your affidavit**  
15 **true today?**

16          A.     Yes.

17          **Q.     And just as a preliminary question, the**  
18 **address of the Will County Station is 529 East Romeo**  
19 **Road in Romeoville, Illinois, correct?**

20          A.     Correct.

21                 MS. SNITTJER:  And that responds to the  
22 Board's Question Number 1.

23          By MS. SNITTJER:

24          **Q.     Mr. Castle, Ponds 1N and 1S are not part of**

1 **the current operations at Will County Station,**  
2 **correct?**

3 A. Yes. Correct.

4 **Q. And they were removed from service in 2010?**

5 A. Yes.

6 **Q. And they don't receive any ash or liquid as**  
7 **part of the station's operations, correct?**

8 A. That is correct.

9 **Q. So they're inactive CCR surface impoundments?**

10 A. Yes.

11 MS. ZEIVEL: Objection. Who's testifying? I  
12 feel like the facts are coming from the witness -- I'm  
13 sorry -- the facts are coming from the attorney. The  
14 witness should be testifying.

15 MS. SNITTJER: We're just -- I mean, this is  
16 mostly -- almost all of this was in the petition.  
17 We're just trying to move through this pretty quickly,  
18 so.

19 HEARING OFFICER WEBB: I mean, I'm okay with  
20 moving this forward as long as the witness is  
21 obviously agreeing with the statements.

22 MS. SNITTJER: Thank you.

23 BY MS. SNITTJER:

24 **Q. And Ponds 1N and 1S have a dew watering**

1 **system, correct?**

2 A. Yes.

3 **Q. Can you describe that dew watering system?**

4 A. It's a simple low-point drain basically that  
5 has rip rock to keep impurities out, and any rainwater  
6 which would fall into the pond would flow into an  
7 underground system as part of our wet well and our  
8 recycle system.

9 **Q. So Ponds 1N and 1S do not accumulate or store**  
10 **liquid, correct?**

11 A. Just rainwater is all that would enter the  
12 pond.

13 MS. SNITTJER: I'm going to hand out a  
14 variance petition, Exhibit F.

15 BY MS. SNITTJER:

16 **Q. This is a copy of the engineering drawings**  
17 **prepared by Patrick Engineering in 2013 for pond 1S**  
18 **and 1N modifications, correct?**

19 A. Yes.

20 **Q. And are you familiar with these drawings?**

21 A. Yes.

22 **Q. And is the modification that these drawings**  
23 **are showing the dewatering system in Ponds 1N and 1S?**

24 A. Yes. It's along the western edge of the

1 pond.

2 **Q. So turning to page C-3, what is this? What**  
3 **is this photo?**

4 A. That's just an aerial view of the ponds and  
5 it shows the U-shaped rip rock that is on the one pond  
6 that's on the southwest corner, the other one is on  
7 the northwest corner, that allows the rainwater to  
8 potentially drain into our recycle system.

9 **Q. Can you describe for us where the water**  
10 **drains out of the ponds in this photo?**

11 You can hold it up and show if that would be  
12 helpful.

13 A. It's up here on 1 North, over here on  
14 1 South, and it goes into an underground culvert  
15 system.

16 **Q. Turning to page C-4, what is this drawing?**

17 A. This is a construction drawing showing  
18 elevations and how the water levels would -- how it  
19 enters into the underground system and then back.

20 **Q. Ponds 1N and 1S are constructed in the same**  
21 **way, correct?**

22 A. Yes.

23 **Q. Can you explain on this drawing, under Ponds**  
24 **1N and 1S, the outlet reconfiguration at the bottom**

1 **center of this drawing, can you explain where the**  
2 **water drains out on this photo?**

3 A. On the left side under the ponds and outlet  
4 with the -- you could see the rock which would  
5 gravity-feed down into the trench system, which is  
6 awfully small. And then it would flow towards the  
7 right, which is how they make entry into the culvert  
8 system, which would flow to our active recycle system.  
9 That's how we contain, treat, maintain levels in the  
10 recycle system.

11 **Q. So the water drains out of the bottom of the**  
12 **pond, correct?**

13 A. Any water would, yes, gravity-feed drain out  
14 the bottom, go through the rip rock, into the culvert.  
15 Yes.

16 **Q. And then it drains into the wastewater**  
17 **treatment plant, correct?**

18 A. It enters into that system, yes.

19 **Q. So if there's no water flowing into these**  
20 **ponds, why do they need a dewatering system?**

21 A. It was strictly put in for potential  
22 rainwater.

23 **Q. Is that because the ponds are open-air ponds?**

24 A. They're open to the atmosphere, yes

1           **Q.    But neither of these ponds would hold or**  
2 **retain 12 inches of water, correct?**

3           A.    No.  I've never seen any water in these ponds  
4 since they've installed these systems.  Operations  
5 makes rounds daily.

6           **Q.    And it's only rainwater that enters these**  
7 **ponds?**

8           A.    Yes.

9           **Q.    Does Midwest Generation measure the amount of**  
10 **water that -- rainwater that flows out of the pond?**

11          A.    We do not.

12          **Q.    So Midwest Generation does not know how much**  
13 **liquid is drained out from these ponds into the**  
14 **wastewater treatment plant on an annual basis?**

15          A.    Correct.  We have no idea.

16          **Q.    And why don't we know that?**

17          A.    It's not required by the permit, to my  
18 knowledge.

19                MS. SNITTJER:  And that responds to Board's  
20 Question Number 3.

21                MR. RAO:  Just to clarify, in the petition it  
22 was stated that the drainage system has been installed  
23 to prevent accumulation of a liquid beyond one foot on  
24 the bottom of the ponds.

1           So you're saying that there's no -- you're  
2 not maintaining a one-foot head on the bottom of the  
3 pond, right?

4           THE WITNESS: Correct.

5           MR. RAO: So as far as you know, if there's  
6 any precipitation even, it just drains off, there's no  
7 accumulation of rainwater?

8           THE WITNESS: Correct. I personally have  
9 never seen any water sitting/standing in the ponds,  
10 no.

11          MR. RAO: Thank you.

12 BY MS. SNITTJER:

13          **Q. And you said that the liquid would drain into**  
14 **the wastewater treatment plant at the station. Is**  
15 **that permitted by the NPDES permit?**

16          A. If we're required to discharge, yes, it's  
17 under NPDES requirements, the sample.

18          **Q. Could this water also be recycled throughout**  
19 **the facility?**

20          A. Yes. The reason for the underground system  
21 itself is part of a closed loop so that when we use it  
22 to operate the plant on the active ponds and the one  
23 remaining unit, it all feeds into the common, it's  
24 called wet wells, and we can maintain that level. We

1 call it treating when we discharge. That's how we  
2 maintain a consistent level.

3 **Q. And Ponds 1N and 1S are lined, correct?**

4 A. Yes, with a Poz-o-Pac, basically like a  
5 concrete.

6 **Q. Are you aware of any cracks in the pond 1N or**  
7 **1S liners?**

8 A. I am not.

9 **Q. Does Will County Station have a Fugitive Dust**  
10 **Plan?**

11 A. Yes, we do.

12 (Whereupon, Petitioner's Hearing  
13 Exhibit R was marked for  
14 identification.)

15 BY MS. SNITTJER:

16 **Q. Handing you what will be Petitioner's**  
17 **Exhibit R, Mr. Castle, what is this document?**

18 A. This is our Fugitive Dust Plan that was  
19 submitted by our previous plant manager which just  
20 lays out the guidelines and expectations of  
21 controlling fugitive dust at Will County Station.

22 **Q. Was the Fugitive Dust Plan developed and**  
23 **stored in the ordinary course of business?**

24 A. Yes.

1 Q. And are you familiar with the contents of  
2 this Fugitive Dust Plan?

3 A. Yes.

4 Q. So this Fugitive Dust Plan applies to the  
5 entire station, correct?

6 A. Correct.

7 Q. So any fugitive dust at Ponds 1N and 1S would  
8 be monitored and managed according to this plan,  
9 correct?

10 A. Yes.

11 Q. And the purpose of this plan is to ensure  
12 fugitive dust does not leave the station, right?

13 A. Correct.

14 Q. Are you aware that there's a separate  
15 Fugitive Dust Plan for CCR surface impoundments at the  
16 station?

17 A. Yes.

18 Q. Currently that only applies to Ponds 2S and  
19 3S, correct?

20 A. Correct.

21 Q. And it does not include Ponds 1N and 1S at  
22 this time, right?

23 A. Correct.

24 Q. Are you aware that the deadline in Illinois

1 CCR rule to incorporate Ponds 1N and 1S into this  
2 separate Fugitive Dust Plan is October 31, 2021?

3 A. Yes.

4 Q. And Midwest Generation is no longer  
5 requesting an extension of the deadline to incorporate  
6 Ponds 1N and 1S into this separate Fugitive Dust Plan,  
7 correct?

8 A. Correct.

9 Q. So by the October 31st deadline, Ponds 1N and  
10 1S will be covered by both of these Fugitive Dust  
11 Plans, the CCR surface impoundment plan as well as the  
12 facility Fugitive Dust Plan?

13 A. Yes.

14 Q. How do you manage dust at Ponds 1N and 1S  
15 under the facility Fugitive Dust Plan?

16 A. We monitor it and we apply water in areas  
17 where it's required to knock the dust down if we found  
18 some water applications with a truck.

19 Q. Is the process to manage the dust at Ponds 1N  
20 and 1S expected to change once it's incorporated into  
21 the new Fugitive Dust Plan?

22 A. No.

23 Q. I'm handing you what will be marked as  
24 Petitioner's Hearing Exhibit S, Mr. Castle what is

1 **this document?**

2 A. This is the air monitoring network open for  
3 public viewing registered with the IEPA, I believe.

4 (Whereupon, Petitioner's Hearing  
5 Exhibit S was marked for  
6 identification.)

7 BY MS. SNITTJER:

8 Q. **And this is a publicly available document on**  
9 **the Illinois EPA's website, correct?**

10 A. Yes.

11 Q. **Have you reviewed this document?**

12 A. I have.

13 Q. **And according to this document, where is the**  
14 **closest air monitoring station to Will County Station?**

15 A. Joliet, at an elementary school.

16 Q. **Is it a PM2.5 monitor?**

17 A. Yes.

18 Q. **And can Illinois EPA's air monitoring station**  
19 **in Joliet detect fugitive dust from the Will County**  
20 **Station?**

21 A. No. Fugitive dust, we keep it from leaving  
22 the property.

23 Q. **And that's the purpose of the Fugitive Dust**  
24 **Plan, right?**

1           A.     Correct.

2                     MS. SNITTJER:   And that answers Board's  
3 Question Number 2.

4 BY MS. SNITTJER:

5           **Q.     Just a couple final questions.  For Will**  
6 **County Station, Midwest Generation intends to comply**  
7 **with all of the technical requirements of the Illinois**  
8 **CCR rule, correct?**

9           A.     Yes.

10          **Q.     And Ponds 1N and 1S are going to be closed in**  
11 **compliance with all of the technical requirements of**  
12 **the Illinois CCR rule?**

13          A.     Correct.

14                     MS. ZEIVEL:  Objection.  This witness no  
15 longer works for Midwest Generation and cannot attest  
16 to what they will do in the future.

17                     HEARING OFFICER WEBB:  Well, sustained, I  
18 suppose.

19                     MS. GALE:  We will have Sharene Shealey on  
20 the stand to say this.

21 BY MS. SNITTJER:

22          **Q.     What is Midwest Generation asking for in this**  
23 **petition?**

24          A.     They're asking for a little bit longer to

1 give us time to get our plans together for corrective  
2 actions to meet the requirements.

3 Q. And up until a week ago when you left Midwest  
4 Generation, did Midwest Generation intend to comply  
5 with all of the technical requirements of the Illinois  
6 CCR rule?

7 A. Yes, we did.

8 Q. And did Midwest Generation intend to close  
9 Ponds 1N and 1S in accordance with all the technical  
10 requirements under the Illinois CCR rule?

11 A. Yes.

12 MS. SNITTJER: Thank you. That's all.

13 HEARING OFFICER WEBB: Ms. Zeivel, do you  
14 have any questions for the witness?

15 MS. ZEIVEL: I do.

16 CROSS-EXAMINATION

17 BY MS. ZEIVEL:

18 Q. I'm looking at Petitioner's Exhibit F which  
19 has the pictures that you were referring to.

20 A. Okay.

21 Q. I think this is from, it says, the 2013  
22 Modification Plan. Do you know when these pictures  
23 that were included in that plan, do you know when  
24 these pictures are from?

1           A.    I do not.

2           **Q.    You attested that the ponds have not received**  
3 **sluiced water and ash since 2010. I just want to**  
4 **understand what I'm looking at in these pictures.**

5                    **Within these ponds, at the time these**  
6 **pictures were taken, which we don't know when that**  
7 **was, can you describe what the coloring is within the**  
8 **pond? What do you understand to be in the ponds at**  
9 **the time that these pictures were taken?**

10          A.    I would be speculating, but I would say  
11 vegetation.

12                   MR. RAO: Ms. Zeivel, you're referencing to  
13 C-3?

14                   MS. ZEIVEL: C-3, the figure he was  
15 referencing earlier, yes.

16 BY MS. ZEIVEL:

17          **Q.    So, to your knowledge, there is vegetation**  
18 **within these ponds, these impoundments?**

19          A.    Yes, there's some grass that has grown in  
20 there over the years.

21          **Q.    So can you see the bottom of the impoundments**  
22 **visually?**

23          A.    The bottom where --

24          **Q.    I mean, if there's no CCR and there's no**

1 liquid, what do you see in the ponds when you look at  
2 them?

3 A. Just basically dirt, vegetation, weeds.

4 Q. So when you say that you never see any water  
5 in the ponds, is it possible that there's water in  
6 those impoundments that you don't visibly see because  
7 your visual observations are impeded by all the  
8 materials that have accumulated in the ponds?

9 A. Possibly some -- a little bit of water. But  
10 to say running rivers, standing water 8, 10, 12 inches  
11 deep, I would say no.

12 Q. To your knowledge, does vegetation need water  
13 to grow?

14 A. Sure.

15 Q. Can we move to the C-4 figure?

16 A. Okay.

17 Q. You're describing that the drainage system is  
18 at the bottom of the impoundments. Does that mean  
19 that -- I'm visualizing a bathtub with a drain at the  
20 very bottom.

21 A. Okay.

22 Q. Is this drainage system physically at the  
23 bottom of the impoundment or is it on the side located  
24 near the bottom?

1           A.    It's on the side near the bottom.

2           **Q.    Do you know how far above the physical bottom**  
3 **of the impoundment that drain is located on the side?**

4           A.    I have not measured it.  When you look at it,  
5 it is sloped down to where it meets the culvert  
6 system.  I could not give you a number.

7           **Q.    So this figure -- and I'm asking out of**  
8 **ignorance, but this figure doesn't tell us how far**  
9 **above the bottom of the impoundment that**  
10 **gravity-driven inlet is located?**

11          A.    If I had a magnifying glass where I could  
12 study this a little better I might be able to answer  
13 it.  I can't really read it, to be honest with you,  
14 even with the best of my bifocals that I'm trying to  
15 focus with.

16          **Q.    Okay.  That's fine.  I'm just trying to**  
17 **understand the system.**

18                **So if this gravity-driven inlet is located on**  
19 **the side of the impoundment near to the bottom but not**  
20 **on the bottom, then any precipitation or water**  
21 **accumulation that enters the pond below the inlet,**  
22 **where does that go?**

23          A.    I don't understand how it could enter below  
24 the inlet as the inlet is on a low point.

1           **Q.    But it's not on the bottom?**

2           A.    No, not like a bathtub drain, to your  
3 analogy.  But it is on a low point on the side of it  
4 that the pond is kind of angling towards so that water  
5 would come to that point.

6           **Q.    I guess I'm trying to understand, if the  
7 inlet is not on the bottom, at the physical bottom of  
8 the impoundment, how you are testifying that there is  
9 zero water accumulation in the water impoundment if  
10 there is a downward slope of the impoundment that's  
11 located beneath the gravity-driven inlet?**

12          A.    I don't believe it's below it.  I would make  
13 the analogy of your home, your ground anything, if you  
14 get rain, the water will naturally find its course to  
15 the lowest spot, would be -- if I'm trying to help you  
16 understand or paint a picture.

17          **Q.    So it's your testimony that the inlet is  
18 located at the lowest spot of the these CCR surface  
19 impoundments?**

20          A.    That's the way it was designed; and for my  
21 eye to look at it, that's what I see.  To say that I  
22 had a surveyor and I could testify to that, no.  I  
23 just have seen the function of it over the years.

24          **Q.    So I think you testified that you're not**

1 **measuring the amount of water that flows out?**

2 A. Correct. Yes.

3 **Q. But are you aware of how often that happens**  
4 **or how often your other system is receiving this pond**  
5 **water?**

6 A. When it rains. That would be the only source  
7 of water that can enter the pond.

8 **Q. Is that based on your visual observation of**  
9 **the operation or just your working knowledge of how**  
10 **the system is intended to work?**

11 A. That would be working knowledge. There is no  
12 plant operations that would put water in the pond, it  
13 would only be rain.

14 MS. ZEIVEL: Thank you, Mr. Castle. I don't  
15 have anymore questions.

16 MR. RAO: I just have follow-up to your  
17 answer to Question Number 1. You provided the address  
18 of the facility. And we'd also ask for you to  
19 describe the area impacted by the facility during --

20 MS. GALE: I'm --

21 MR. RAO: Are you? Oh, okay. Got it.  
22 You're off the hook.

23 HEARING OFFICER WEBB: Any redirect?

24 MS. SNITTJER: No. We're good.

1 HEARING OFFICER WEBB: Now you're done.

2 Thank you.

3 (Witness excused.)

4 HEARING OFFICER WEBB: The Petitioner may  
5 call her next witness.

6 MS. GALE: Yes. Midwest Generation calls  
7 Mr. Richard Gnat.

8 HEARING OFFICER WEBB: Would the court  
9 reporter please swear in the witness.

10 (Witness duly sworn.)

11 RICHARD GNAT,  
12 having been first duly sworn, called as a witness  
13 herein, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. GALE:

16 Q. Good morning, Mr. Gnat. Can you please state  
17 your name.

18 A. Richard Gnat, G-n-a-t.

19 Q. Who do you work for?

20 A. KPRG & Associates.

21 Q. What's your position?

22 A. I'm a principal of the company, part owner,  
23 and by trade I'm a hydrogeologist.

24 Q. Can you just briefly describe for us what you

1 **do for KPRG?**

2 A. I run the Wisconsin office and I direct and  
3 manage the various technical aspects of our work  
4 primarily associated with soil and groundwater  
5 impacts.

6 **Q. In this case, what is KPRG doing for Midwest**  
7 **Generation at the Will County Station, generally**  
8 **speaking?**

9 A. We've done a number of different projects at  
10 the Will County Station. However, most recently most  
11 of our work is dealing with the groundwater monitoring  
12 networks around the ash ponds at the station as well  
13 as assisting with some of the permit preparation  
14 ongoing currently.

15 **Q. And, generally speaking, you are familiar**  
16 **with the requirements in the Illinois CCR rule for the**  
17 **operating permit application and the construction**  
18 **permit application?**

19 A. Yes, I am.

20 **Q. How are you familiar? What's your experience**  
21 **with those requirements?**

22 A. I was involved with sitting in and assisting  
23 Midwest Generation on evaluation of the proposed rule,  
24 not just the State rule but also the Federal Rules

1 when they were coming out. So I sat in on most of the  
2 hearings and I reviewed the drafts and provided some  
3 thoughts.

4 **Q. And, generally speaking, in part of your**  
5 **position at KPRG, you participated in preparing**  
6 **groundwater models, right?**

7 A. Yes. I'm not a groundwater modeler; however,  
8 I have directed and helped develop some groundwater  
9 models, correct.

10 **Q. And you have significant experience in**  
11 **establishing groundwater monitoring programs, right?**

12 A. Yes, I do.

13 **Q. Can you describe that for us generally?**

14 A. Yeah. I was involved in developing  
15 groundwater monitoring networks for landfills for  
16 various RCRA units as RCRA was first kicking in, as  
17 well as assisting with the groundwater evaluations  
18 around the impoundments at the various stations.

19 **Q. And does that monitoring program include**  
20 **statistical analysis?**

21 A. Not in all cases, but in many cases, yes.

22 **Q. And what kind of statistical analysis are you**  
23 **familiar with?**

24 A. For groundwater monitoring, you generally

1 have to develop a background dataset, and once you  
2 have sufficient number of background data points, you  
3 evaluate them for distribution: Is it a normal  
4 distribution? Not a normal distribution? Then what  
5 is the best way then to develop a statistical  
6 background so that you can compare the downgradient  
7 concentrations to the upgradient concentrations. And  
8 then sometimes you also have to look at the well  
9 itself and is there any treading over time.

10 **Q. Mr. Gnat, you signed an affidavit for Midwest**  
11 **Generation's petition for a variance for Ponds 1N and**  
12 **1S, correct?**

13 A. Correct.

14 **Q. Have you reviewed that affidavit recently?**

15 A. Yes, I have.

16 **Q. Are the facts stated in your affidavit true**  
17 **today?**

18 A. Yes, they are.

19 **Q. Excellent.**

20 **Mr. Gnat, handing you -- well, we realized**  
21 **yesterday that Petitioner's Exhibit G did not have all**  
22 **of the figures. So this has all of the figures. It's**  
23 **the same exhibit as G except all the figures**  
24 **referenced in the exhibit. But it has -- the ones**

1 attached has Will County's figures. So we'll call  
2 it -- well, I guess we should probably call it  
3 Petitioner's Exhibit T just to make the record  
4 correct. Other than having more figures, it's  
5 identical to what was filed.

6 (Whereupon, Petitioner's Hearing  
7 Exhibit T was marked for  
8 identification.)

9 BY MS. GALE:

10 Q. So, Mr. Gnat, what is Petitioner's Exhibit,  
11 now, T?

12 A. This is a letter from Midwest Generation to  
13 Illinois EPA dated July 15, 2009, and this is in  
14 regards to groundwater use in the vicinity of the  
15 various impoundments at the various stations, and I  
16 believe some of the background work that's referenced  
17 within this Midwest Generation letter was developed by  
18 a company called Natural Resources Technologies, NRT.

19 Q. Can you turn to -- and it's actually page --  
20 well, the last page is blank -- but page 13 which is  
21 the figure for the Will County Station.

22 A. Yes.

23 Q. Mr. Gnat, what does this show?

24 A. This is kind of a typical figure for somebody

1 that's looking at potable water wells around the area  
2 that's of interest, which, in this case, are the ash  
3 ponds, and it's, I believe, a 2500-foot radius, which  
4 is kind of the standard search radius being used in  
5 Illinois and other states as well.

6 **Q. And regarding the potable wells, where are**  
7 **the potable wells in relation to the Will County**  
8 **Station?**

9 A. There are some wells. The yellow dots on  
10 this figure -- and it doesn't come out quite well  
11 here -- there are some yellow dots on the figure, and  
12 those are the potable water wells. And there are  
13 several dots within the radius here and there are two  
14 within the station area, one to the east -- I'm  
15 sorry -- one to the north of where the ponds are, kind  
16 of by Romeo Road, and then one to the south, some to  
17 the south of the ponds there.

18 There are a couple other dots on here, too,  
19 and I believe those were -- I did not put together but  
20 having read the document -- sometimes from the  
21 databases you plot a well based on the coordinates  
22 that are provided in the database, but you really got  
23 to field-truth them a little bit as well. There are  
24 some coordinates that plop in the middle of the river

1 or whatnot, and those tend to be incorrectly within  
2 the database itself, incorrectly located. So you got  
3 to do some field-truthing.

4 And my understanding is that we really have  
5 two potable water wells within this area, one to the  
6 north of the impoundments, one to the south of the --  
7 I'm sorry -- to the east of the impoundments. Both of  
8 those are production wells owned by Midwest  
9 Generation, and the construction on those is  
10 approximately 1500 feet deep.

11 **Q. Right.**

12 **So there is a yellow dot to the south of**  
13 **pond 3S, and your understanding is there's not**  
14 **actually a potable well there, correct?**

15 A. No. That's correct. That's actually a  
16 surface impoundment there, so there's certainly no  
17 well. Those are surface impoundments.

18 **Q. Thank you.**

19 **And looking at the same figure, what are the**  
20 **surface waters nearby?**

21 A. You've got the Chicago Sanitary and Ship  
22 Canal which borders the station to the east and then  
23 the Des Plaines River, which borders the station to  
24 the west.

1 Q. And the station's permitted outfall goes to  
2 the Chicago Sanitary and Ship Canal? Say that four  
3 times. Right?

4 A. I believe that's correct, yes.

5 Q. Thank you.

6 And the groundwater flow at the station, can  
7 you, at least around the ponds -- we certainly don't  
8 have the entire station -- can you generally describe  
9 the groundwater flow around the ponds?

10 A. Sure. The vicinity of -- the groundwater  
11 flow in the vicinity of the ponds is to the west.

12 Q. I want to turn to the operating permit  
13 application. You and your firm are conducting the  
14 groundwater monitoring for Midwest Generation at the  
15 stations for the Federal CCR rule, correct?

16 A. Yes.

17 Q. And you're also conducting the groundwater  
18 monitoring for the Illinois CCR rule, right?

19 A. Yes, we are.

20 Q. Ponds 1N and 1S, though, are not covered by  
21 the Federal CCR rule, right?

22 A. That is correct.

23 Q. So what have you had to do since Illinois CCR  
24 rule was passed?

1           A.     Since the Ponds 1N and 1S were determined to  
2 be included under the State rule, we had to  
3 re-evaluate the monitoring well system that was around  
4 those two particular ponds. And we needed to add --  
5 we added three additional monitoring wells on the  
6 downgradient side of the two ponds.

7           **Q.     And describe how you did -- what you had to**  
8 **do to install those wells?**

9           A.     The first thing we needed to do was to move  
10 some fence that was currently right at the western  
11 side of the access road there in order to be able to  
12 locate the wells in an area that will be out of  
13 traffic. And so we just basically had to push the  
14 fence line back in several locations to provide the  
15 access and pull up a little bit of a drilling path for  
16 the drilling.

17           **Q.     And so when were the wells actually**  
18 **installed?**

19           A.     The wells were installed in April.

20           **Q.     But were you able to sample in April?**

21           A.     No. Once the wells were installed, we need  
22 to know how deep the wells are, the geometry of that  
23 well, and what we do is -- all of our other wells have  
24 dedicated sampling systems, bladder pump systems, and

1 we need to provide what the geometry of the well is to  
2 the manufacturer and they cut the systems to order for  
3 each well specifically.

4 So once we set the wells and knew what the  
5 geometry was, we got that information over to QED,  
6 which is the firm that we use for our pump systems,  
7 and they needed a couple of weeks to get the materials  
8 and get us those pumps.

9 **Q. And that's unusual actually, right? Usually**  
10 **it's pretty quick, but there's delays?**

11 A. Right. Usually we can get a week to ten-day  
12 turn. This was a little bit more like two weeks or a  
13 little more.

14 **Q. When were the dedicated pumps installed?**

15 A. They were installed at the end of April,  
16 beginning of May.

17 **Q. And when was the first sample taken?**

18 A. I believe it was in the first week of May.

19 **Q. And you and your firm are preparing the**  
20 **operating permit applications for the Midwest Gen**  
21 **stations, correct?**

22 A. Yes, we are.

23 **Q. And that's five stations total, right?**

24 A. Yes.

1           **Q. And for all five stations, there are a total**  
2 **of nine Federal CCR surface impoundments, right?**

3           A. I believe that's correct, yes.

4           **Q. Approximately how many people at KPRG are**  
5 **working on the operating permit application?**

6           A. Currently we have five people working on  
7 various parts of the applications, and then as we need  
8 additional personnel to help with some foot work,  
9 looking some things up or tables or whatnot we --

10           THE COURT REPORTER: Can you keep your voice  
11 up, please?

12           THE WITNESS: We can draw on several other  
13 people as well to assist in items like doing some foot  
14 work for looking some things up, for tables, figures,  
15 and so on.

16 BY MS. GALE:

17           **Q. Okay. The operating permit applications**  
18 **generally, to your recollection, what sort of**  
19 **information is involved?**

20           A. Well, upfront you need to develop a fairly  
21 good history of the particular pond, when it was  
22 built, any initial drawings on the initial  
23 construction, any subsequent modifications to the  
24 ponds, get an understanding of what might have been

1 put into those ponds over time, as well as what the  
2 most recent use of the ponds were. So kind of develop  
3 that overall history of the pond.

4 **Q. And -- I'm sorry. Go on.**

5 A. And then also there are various other things.  
6 Obviously we need to develop a groundwater monitoring  
7 program for it. We have to develop a preliminary  
8 closure plan as part of the operating permit. So a  
9 number of things that go into it. Develop some  
10 understanding of what the chemistry of the ash is as  
11 well and so on.

12 **Q. Even for the Federal CCR units that have this**  
13 **information, approximately how many hours will it take**  
14 **to prepare the operating permit application?**

15 A. We're estimating for operating permits  
16 approximately 600 hours of time.

17 **Q. And then for those CCR surface impoundments**  
18 **such as Ponds 1N and 1S that do not have that**  
19 **information, approximately how many hours would it**  
20 **take to complete all that work?**

21 A. Right. For the ponds that weren't included  
22 under the federal rule where we didn't have some of  
23 this information already generated, that's going to  
24 take substantially longer, couple hundred hours more.

1 You've got to go out and establish the background  
2 groundwater quality. And so a number of eight rounds  
3 of background samples, so on and so forth. There's a  
4 whole additional amount of work that needs to be done  
5 on these impoundments that weren't part of the Federal  
6 rule that we have already in place for the other  
7 impoundments.

8 **Q. So the eight rounds, eight independent rounds**  
9 **of sampling that you just mentioned, once that's**  
10 **completed, what has to be done?**

11 A. Once you get your eight rounds of background  
12 data, you have to do the statistical evaluations to  
13 determine what your actual background concentration  
14 is, and then you develop your -- whatever you decide  
15 is going to be your comparison value, prediction  
16 limit, tolerance limit, whatever in terms of  
17 statistically, you develop that, and that's when you  
18 can compare downgradient to -- yeah, downgradient to  
19 the upgradient background.

20 But when we develop our systems as well, we  
21 usually try and have more than one upgradient point.  
22 And so what becomes an important part of that is, with  
23 any statistics, the more data you have, the better  
24 your evaluation is.

1           So with each parameter, with each of these  
2 ponds we have two upgradient wells, and for each  
3 parameter then we take a look at what the distribution  
4 is in each of the ungradient wells, and then we also  
5 compare two upgradient wells to each other and see if  
6 there's a statistically significance variance for that  
7 particular parameter. If there isn't, then we can  
8 pull the data, so instead of having eight sets of  
9 data, eight rounds of data, we actually have 16 data  
10 points.

11           Then in some cases there is a variance  
12 between the two, so then we have to determine which  
13 wells they best represent for the evaluations, what  
14 the background will be for that particular  
15 constituent.

16           **Q. So, Mr. Gnat, the steps for the statistical**  
17 **analysis, it starts with the data, but then what**  
18 **happens? You put it into a computer?**

19           A. Right. We use a program called Sanitas,  
20 which was actually developed for groundwater purposes  
21 under RCRA and which is very similar program in many  
22 facets. And the first thing we have to do is take the  
23 data that we get from the lab and convert those into  
24 flat files and feed those into the program. Then if

1 you run a series of quick sample calculations, say,  
2 for example, averages or variances just to make sure  
3 that the program is picking up all the data points  
4 that you put in, and if not, you have to go back in,  
5 see which data points it's not picking up, and correct  
6 that. And once you get a good comfort level that it's  
7 picking up all of the data properly, then you can  
8 initiate the actual statistical calculations for the  
9 program.

10 **Q. So, Mr. Gnat, the Board asked Board**  
11 **Question 4(a), and I'll just read it: "Please clarify**  
12 **whether statistical procedures for evaluating**  
13 **groundwater data is selected only after the data**  
14 **collection is completed."**

15 **Can you just answer that question for the**  
16 **Board, please?**

17 A. Sure. So what can be done prior to getting a  
18 full set of data, and I think perhaps that the word  
19 "procedure" is where some of the confusion becomes.  
20 We can lay out -- as part of our operating permits,  
21 we're going to lay out or provide what our proposed  
22 statistical approach is. This is kind of the  
23 procedure we're going to use as a company to evaluate  
24 this data. And this lays out a whole series of steps

1 and kind of decision tree as to, depending on how your  
2 data looks, which way you may go, which method you may  
3 use. But you can't decide which path you're going to  
4 take or which actual method you're going to use until  
5 you have that full dataset.

6 So you can have an idea of what the approach  
7 is that you're going to use and have your decision  
8 tree all ready to use, but you can't do it until you  
9 have all eight rounds of data.

10 **Q. And the next question, board question, we'll**  
11 **get to, but I think it requires some background first.**

12 **There are groundwater monitoring wells around**  
13 **Ponds 1N and 1S, correct?**

14 A. Yes, there are. There were originally a  
15 handful that were put in as part of a voluntary  
16 hydrogeologic evaluation and groundwater monitoring  
17 program that I believe was initiated in the fourth  
18 quarter of 2010. But once it was determined that  
19 these ponds were going to be covered under the State  
20 rule, when we looked at that monitoring network, it  
21 wouldn't fulfill the requirements of the rule, so we  
22 expanded that monitoring network.

23 Currently, under the current network that  
24 we're sampling to meet State rule, we have nine

1 monitoring wells.

2 Q. Right. Before there was only one  
3 downgradient well for each pond, correct?

4 A. Correct.

5 Q. And under that other program, you were  
6 sampling in a different method, right?

7 A. That's correct. Under the other program,  
8 which we call the CCA, Compliance Commitment Agreement  
9 program at this point, that was for dissolved  
10 constituents. The Federal rule and the State rule  
11 required total, which is -- and the difference is, for  
12 dissolved, you filter the sample in the field prior to  
13 sending it to the lab for analysis. And under total  
14 constituents, you don't do that filtering step; you  
15 just collect the sample and send that off to the lab  
16 for analysis.

17 Q. So Board Question 4(b): "Please comment on  
18 whether the statistical procedures could be chosen on  
19 the basis of the existing groundwater monitoring  
20 data."

21 I'm presuming the Board means existing CCA  
22 data. So with that presumption -- and correct me if  
23 I'm wrong -- can those procedures be chosen with that  
24 data?

1           A.    No.  Again, that data, the CCA data is  
2 dissolved constituents, and even though in other work  
3 that we've done in looking at the dissolved and the  
4 totals, they are pretty similar but they're not the  
5 same.  And not the same can be very important in  
6 statistics.

7                        So you can get an idea and it helps you  
8 perhaps choose or develop that decision tree that I  
9 was talking about.  But to make the actual  
10 determination as to how you're going to evaluate this  
11 specific dataset, statistically you have to wait for  
12 the eight rounds of total analyses.

13           **Q.    Thank you.**

14                        **Mr. Gnat, this statistical analysis that**  
15 **you've been discussing, how much time does that take?**

16           A.    Even though we're using a computer program,  
17 which certainly speeds up the process, the calculation  
18 process itself, let's first consider we got nine  
19 wells, 22 parameters each well, and you potentially  
20 have to look at each well individually as well for  
21 each parameter.  That's 198 calculations separately,  
22 if I remember my math correct.

23                        As you're doing this, even though you're  
24 using a computer program and you're running it and

1 you're doing several days' worth of work and you're  
2 looking at all these printouts coming out, you have to  
3 make sure that the stuff coming out of the program is  
4 making sense from a technical standpoint, and that  
5 takes human time.

6 And just from experience on doing a lot of  
7 these types of evaluations, every once in awhile,  
8 after staring at numbers and at different runs for  
9 three, four days, you have to get up and walk away and  
10 come back two, three days later and take a look at the  
11 same thing with a fresh set of eyes just to make sure  
12 that you haven't lost the forest for the trees and  
13 that you come to the same conclusion and if not what  
14 was the difference.

15 So there is that human process that's  
16 involved here. Otherwise, you're getting a computer  
17 print-out and you're going to assume the computer is  
18 correct in all other type of interpretations.

19 **Q. And then this statistical analysis and the**  
20 **statistical method chosen that you've been discussing,**  
21 **that must be submitted in the operating permit**  
22 **application, right?**

23 A. That is correct.

24 **Q. And that's for the Agency's review and**

1 **approval, correct?**

2 A. Yes, it is.

3 **Q. So when you submit all this information, the**  
4 **groundwater -- I'm sorry -- and that includes the**  
5 **proposed groundwater protection standards, correct?**

6 A. That is correct. So once we develop what we  
7 believe is an appropriate background for a particular  
8 constituent for a pond, then we take a look at that  
9 background calculation, that background value versus  
10 the standard which is provided in 845.600, and the  
11 higher of the two values is the proposed groundwater  
12 protection standard.

13 And so our operating permit will have a table  
14 showing what all the -- what the calculated background  
15 value is, what the proposed or what the 845.600 value  
16 is, and then the higher of the two is the proposed  
17 groundwater protection standard. And that would be  
18 the value then that they're using for comparison  
19 purposes.

20 **Q. And you use the term "proposed" here. What**  
21 **do you mean by proposed? What do you think that**  
22 **means?**

23 A. This is -- until the Agency reviews it and  
24 agrees with our evaluation and our analysis, which we

1 would hope they do, however the Agency may look and  
2 say, no, we don't agree with you on this particular  
3 parameter, the way you approached this, or the  
4 statistical evaluation on that particular parameter.  
5 They may not agree.

6 So then that would have to be addressed in  
7 kind of a back-and-forth comment/response type session  
8 with IEPA until we get to an agreement. Then that  
9 becomes the approved one. Once the Agency approves  
10 those values, those are the approved values as opposed  
11 to proposed.

12 **Q. So, Mr. Gnat, until we have eight rounds of**  
13 **independent sampling and the statistical analysis**  
14 **we've been discussing and a chosen of the groundwater**  
15 **protection standards, can it be determined whether**  
16 **Ponds 1N or 1S are causing groundwater contamination?**

17 A. Not with any level of certainty. Certainly  
18 we'll say we've got a lot of the CCA data and so on,  
19 and, yeah, we can make an educated guess. At the end  
20 of the day an educated guess is still a guess, which  
21 I've said that before.

22 And I know that there was -- in one of the  
23 Board questions, there was a question in regards to a  
24 couple parameters, either boron -- I'll wait until

1 that question --

2 Q. So today, in your opinion, is there enough  
3 information available to know whether the ponds are a  
4 Category 4 or a Category 6?

5 A. Not with any certainty, no.

6 Q. I want to turn to the construction permit  
7 applications. You're also preparing the construction  
8 permit applications for the Illinois CCR rule for  
9 Midwest Generation, correct?

10 A. Yes.

11 Q. And how many construction permit applications  
12 are you preparing for submission to the Agency by  
13 February 1, 2022?

14 A. By February 1st, I believe there are four,  
15 five.

16 Q. Four sounds about right?

17 A. Yes.

18 Q. Mr. Gnat, when do those applications need to  
19 be done?

20 A. Well, the February 1st date is the hard date  
21 for submittal after 60 days of public comment and  
22 participation.

23 So 60 days prior to that, which would be  
24 roughly, say, December 1st, December 2nd time frame.

1 That's when a draft has, and it's got to be a fairly  
2 good draft of that permit, needs to be posted online  
3 for public consumption. And then within 30 days of  
4 the February 1st date I believe there has to be a  
5 public meeting and go through that and then  
6 incorporate any of the public issues on that. And  
7 then the final gets submitted on February 1st. So  
8 it's really February 1st minus 60 days.

9 **Q. Thank you.**

10 **And, Mr. Gnat, what is required to be**  
11 **included in a construction permit application, to your**  
12 **recollection?**

13 A. There is a lot of information that's somewhat  
14 similar to what's in the operating permit, but then  
15 there's some other specific items in there on the  
16 structural stability analysis needs to be performed  
17 for that, for the berms. There's a numerical  
18 groundwater model that's required under the  
19 construction permit, which is a fairly large task in  
20 and of itself. There's an evaluation of engineering  
21 alternatives for either closure or corrective action.  
22 And then each of those four or five preferred  
23 alternatives, one of which has to be evaluating  
24 whether or not a full excavation of the material is

1 reasonable.

2 All those evaluations then also get fed back  
3 into that groundwater model to allow for some  
4 predictions on long-term items that also have to be  
5 considered, short-term effects, long-term effects of  
6 the various options.

7 **Q. Okay.**

8 A. Then the closure and post-closure plan in  
9 fair detail.

10 **Q. Right. So you mentioned groundwater**  
11 **modeling. Can you just give a general description of**  
12 **what is involved with that?**

13 A. Sure. What's required under the regulation  
14 is a numerical groundwater model, which is a  
15 three-dimensional mathematical simulation of the  
16 groundwater flow conditions beneath the site. So the  
17 first part of that exercise is developing -- is taking  
18 the stratigraphy of the site and developing the  
19 conceptual model and then building your computer model  
20 around that and then calibrating it so that you use  
21 all the water levels that you have obtained over time  
22 and you calibrate the models so that it's recreating  
23 the current groundwater flow system.

24 Once that's done and you're comfortable that

1 the model is giving you a good idea from a  
2 hydrogeologic standpoint on how things are behaving,  
3 then you can prep what's called the Contaminant  
4 Transport portion of it, which is a separate plug-in  
5 to the model, so to speak, which then allows you to  
6 develop what the current spread on the chemistry that  
7 we're seeing in the groundwater.

8           Once you have that baseline set that's  
9 providing information and a picture that's pretty darn  
10 close to what you're seeing in the field, you have  
11 some confidence then as you overlay subsequent  
12 engineering evaluations, you can predict in the future  
13 what that scenario will assist with groundwater  
14 quality.

15           **Q. And that's a pretty time-consuming operation,**  
16 **right?**

17           A. Yes. I believe the groundwater models are  
18 estimated at about 400 hours in developing that base  
19 model. And then for engineering, evaluating  
20 individual engineering options once you have that  
21 base model set up, three, four days per option-type.  
22 And then the engineers tweak it a little bit and then  
23 you rerun it. But each run is probably three days or  
24 so.

1           **Q.    And then, Mr. Gnat, you mentioned a closure**  
2 **alternatives analysis.  What is that?**

3           A.    That's where the engineering side of the  
4 house takes a look at what all the different potential  
5 engineering options are for either closing of the unit  
6 or corrective action as necessary, retrofitting,  
7 whatever.  What are all the different engineering  
8 options, one of which it specifies you have to  
9 evaluate complete excavation.

10           Then basically, to really get an idea of how  
11 these might work, you need to take your three, four,  
12 five best options, which you believe are the best  
13 options, and you really have to come up with about a  
14 30 percent design so that you've got a pretty good  
15 idea as to how this option is really going to play  
16 out, and that's what gets fed into the groundwater  
17 model.

18           And then within each option you might have  
19 several sub options.  So, for example, with  
20 transportation issues, you can load trucks; you might  
21 be able to bring rail in, you might be able to load  
22 barges.  You have to evaluate each of those subparts  
23 of a particular evaluation of what a particular option  
24 might be as well.

1           **Q.    So you have the closure alternatives**  
2 **analysis; you have the modeling; then you mentioned a**  
3 **closure plan.  What is that closure plan; what's that**  
4 **supposed to look like?**

5           A.    The closure plan is basically what we  
6 anticipate is going to be the selected option for  
7 either closure or corrective action, and that lays  
8 out, in fair detail, what you intend to do or what  
9 you're proposing to do.  And doing the step from the  
10 corrective measures or from the engineering and  
11 evaluation of alternatives and the modeling, you  
12 already have about a 30 percent design.

13                So once you decide -- you know roughly what  
14 you want to do, take that step to developing enough --  
15 putting more meat onto it for the closure plan so it  
16 also meets the requirements under the permit --  
17 construction permit requirements.  So that's probably  
18 an additional two, three weeks of work, engineering  
19 work on that one option.

20           **Q.    And can you make a closure plan before the**  
21 **closure alternatives analysis?**

22           A.    No.

23           **Q.    Why?**

24           A.    Well, just you have to go through the process

1 of determining what all your options are before you  
2 can provide your justifications as to the option that  
3 you're choosing. You might be able to, again, take an  
4 educated guess, but it would be a guess.

5 Q. And I think you gave a bunch of estimates of  
6 time, 400 hours for the modeling and then a few more  
7 days to adjust the modeling, and if I -- I don't  
8 remember -- how long did you say it was going to take  
9 to do an alternative analysis?

10 A. The alternatives analysis is probably four to  
11 six weeks' worth of work.

12 Q. And then a closure plan I think you said  
13 about five weeks of work.

14 All of those estimates are based upon  
15 assuming nothing goes wrong. Right?

16 A. Correct.

17 Q. Mr. Gnat, I want to go back to the operating  
18 permit application because of Board Question 7. The  
19 Board asks, 7(a): "Please clarify if Midwest  
20 Generation plans to submit the location restriction  
21 demonstration with the initial operating permit  
22 application on the proposed deadline of March 31,  
23 2022."

24 Could you please answer that question?

1           A.    I believe so, yes.

2           Q.    So Midwest Generation will submit the  
3 location demonstration on March 31, 2022, right?

4           A.    Yes.

5           Q.    Thank you.

6                    And Board Question 6, the Board identifies  
7 Midwest Generation's statement that, "there's no harm  
8 caused by waiting a mere five months to collect the  
9 requisite data to accurately identify the Category  
10 designation for the basins."

11                   Mr. Gnat, can you clarify whether causation  
12 of "harm" in that statement refers to adverse  
13 environmental impact; and can you tell us whether  
14 there's an adverse environmental impact to the  
15 extension of the deadlines to designate the closure  
16 prioritization?

17           A.    Well, when I hear that, in terms of the harm  
18 causation, I usually think of that as "Is this  
19 particular unit causing an immediate threat to human  
20 health and the environment?"

21                   And knowing that we don't have any potable  
22 water wells downgradient of these units, no other  
23 receptors in the area, human receptors, then I do not  
24 see any harm there.

1 Q. Any adverse impact?

2 A. Any adverse impact.

3 Q. Right.

4 And then the Agency Board Question 6(e), the  
5 Agency identified alleged exceedances of Class 1  
6 groundwater standards for boron, chloride, sulfate,  
7 and TDS.

8 Can you just comment on any implications of  
9 extending the deadline for submitting the construction  
10 permit application for those potentially migrating  
11 groundwater constituents?

12 A. Sure. When I looked at that question, I  
13 quickly looked back at the data, and the data that I'd  
14 imagine that was being looked at is the CCA data for  
15 resolved metals. Like I said, obviously they're very  
16 similar to totals but not exactly the same.

17 But I took a look at those particular  
18 constituents as well, and the one thing to note is  
19 that the upgradient wells had exceedances of those  
20 parameters as well as downgradient wells and in some  
21 cases the upgradient wells had higher impacts than the  
22 downgradient wells.

23 There was one I believe, chloride, that was  
24 identified was one of them that I scratched my head on

1 a little bit in that the downgradient well 7, which is  
2 downgradient to Pond 1S, I looked through the data  
3 through the end of 2020, so fourth quarter 2010 to the  
4 end of 2020, quarterly sampling for chloride had only  
5 one exceedence above what the standard was for  
6 chloride, and that was just a couple years ago.  
7 Chloride is also -- could be seasonal depending on  
8 salting and so on.

9           Some of the other parameters is why I didn't  
10 quite take a look at all of the different things.  
11 But, again, there are some impacts, absolutely. But,  
12 like I said, upgradient wells are impacted as well as  
13 downgradient wells.

14           So relative to the unit itself, I don't think  
15 you can say that there's an adverse effect or that  
16 there's going to be any adverse issue associated with  
17 extending a deadline for at least a short-term on this  
18 particular site.

19           **Q. Thank you.**

20           MS. GALE: Thank you. No further questions.

21           HEARING OFFICER WEBB: Does the Agency have  
22 any questions of the witness?

23           MS. ZEIVEL: I do. Can I have just a moment,  
24 please?

1 HEARING OFFICER WEBB: Sure.

2 MS. ZEIVEL: Thank you.

3 CROSS-EXAMINATION

4 BY MS. ZEIVEL:

5 Q. Mr. Gnat I'd like to start with the potable  
6 wells discussion. For the Agency's information, you  
7 said that the wells were 1500 feet in depth. Were the  
8 two potable wells that you referenced, can you give us  
9 the distance from the CCR surface impoundments, how  
10 close the closest CCR surface impoundment is to the  
11 nearest potable well?

12 A. You know, I'd have to take a look at the  
13 scale here. And the one to the east, maybe on the  
14 order of 1200 feet; and to the north, a little less,  
15 maybe 600, 800 feet. Again, that's just quickly  
16 looking at this. I can probably get you a fairly more  
17 accurate number.

18 Q. You said that those wells will need to be  
19 field-truthed. Have you done that?

20 A. When I said "field-truthing," so when you do  
21 a database search for wells, within that database  
22 those wells have a latitude and longitude associated  
23 with them, and so you can plot a well from that  
24 database that plots somewhere, and when I say

1 field-truthing, go out, is there really a well in that  
2 area.

3 For example, like I said, one well that was  
4 in that database that was apparently looked at here by  
5 NRT plots in the middle of the stormwater basin. So I  
6 don't think that that latitude and longitude that they  
7 pulled off the database is actually correct.

8 And so when you're field-truthing, it's not  
9 going to pull a sample. It's you go out and just say  
10 does this make sense, is there actually a well there,  
11 is this in the middle of a farm field, is there a well  
12 there? No, there isn't. So that's not an accurate  
13 location.

14 So my understanding is that there are two  
15 wells on property; they're both owned by Midwest  
16 Generation; and that they're from boring logs that are  
17 available online as well; that those are about  
18 1500 feet deep.

19 **Q. So you have confirmed the physical presence**  
20 **of the wells on-site. Did this field-truthing or**  
21 **review of the physical wells, did you evaluate the**  
22 **setback zone from these CCR surface impoundments and**  
23 **whether these potable wells are located within or**  
24 **outside of the applicable setback zone?**

1           A.    No, I did not field-truths these right now.  
2    I mean, this is -- I was basically presenting what the  
3    NRT did.  We're certainly going to be doing a similar  
4    presentation as part of the operating permit, see if  
5    it's something we can take a look at.

6           **Q.    Thank you.**

7                   **You mentioned the voluntary monitoring**  
8    **network that was implemented in 2010 and an associated**  
9    **hydrogeological assessment.**

10                   **Do you know why Midwest Generation decided to**  
11    **voluntarily start this monitoring network in 2010?**

12                   MS. GALE:  Objection.  Calls for  
13    attorney-client privilege.

14                   MS. ZEIVEL:  I will rephrase the question.

15                   BY MS. ZEIVEL:

16                   **Q.    Did Illinois EPA request that Midwest**  
17    **Generation implement a monitoring network and perform**  
18    **a hydrogeological assessment in 2010?**

19                   A.    I believe they did; however, I was not part  
20    of those conversations.

21                   **Q.    Okay.  Thank you.**

22                           **I asked you a few questions at our hearing**  
23    **last week so they may be repetitive, but I just want**  
24    **to ensure that I have a clear understanding and we**

1 have a clear record.

2 So you testified today that prior to data  
3 collection, it would be standard procedure to lay out  
4 a proposed statistical approach first, then collect  
5 data, then choose a statistical method that would be  
6 appropriate following collection of the data. Is that  
7 right?

8 A. Correct.

9 Q. The Agency's interpretation of 845.230(d),  
10 the initial operating permit application requirement,  
11 is that statistical procedures have to be included in  
12 that initial operating permit application.

13 Is that something that KPRG would be capable  
14 of doing with an initial operating permit application  
15 if that were required prior to the establishment of  
16 background? Could these statistical approaches or  
17 procedures be described and included in an initial  
18 operating permit application?

19 A. Yes, and I believe I stated that as well.

20 MS. ZEIVEL: The Agency has no more questions  
21 for Mr. Gnat. Thank you.

22 HEARING OFFICER WEBB: Any redirect?

23 MS. GALE: Just a follow-up.  
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REDIRECT EXAMINATION

BY MS. GALE:

**Q. You stated, right, that the procedures could be presented, but those are options, right?**

A. Correct. That's kind of a decision tree; this is the approach.

**Q. Right. It's not -- you haven't picked the method, right?**

A. That is correct. Until you know what your distributions are and so on, you can't pick the actual method that you're going to use. Correct.

**Q. Thank you.**

MS. GALE: Nothing further.

MS. ZEIVEL: Nothing further.

HEARING OFFICER WEBB: Mr. Rao?

MR. RAO: I just have a clarification. I think you answered this question. But the Board's Question Number 5, I just wanted to make sure, you didn't mention the answer or not. But I think Mr. Gnat did talk about the closure plan and the impact that the categorization of the surface impoundments would have. But he could not specifically answer so I just wanted to make sure.

MS. GALE: Well, Mr. Gnat could certainly

1 answer that question. I was planning on answering  
2 because I thought it calls for a legal conclusion. So  
3 if it's okay with you, I was going to just answer it.

4 MR. RAO: That's fine.

5 Anything else for him?

6 MR. RAO: No.

7 HEARING OFFICER WEBB: Okay. Thank you, sir.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 MS. GALE: Midwest Generation calls Sharene  
11 Shealey, please.

12 (Witness duly sworn.)

13 SHARENE SHEALEY,  
14 having been first duly sworn, called as a witness  
15 herein, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. GALE:

18 Q. Good morning, Ms. Shealey. How are you?

19 A. I'm wonderful. Thank you.

20 Q. Can you, for the record, please state your  
21 name?

22 A. Sharene Shealey.

23 Q. Can you please tell us what your position is?

24 A. I am a director of environmental with NRG.

1 Q. And so that includes compliance with the  
2 Illinois CCR rule, correct?

3 A. Correct.

4 Q. Ms. Shealey, you were here and you heard  
5 Mr. Castle testify?

6 A. Yes.

7 Q. And we understand that Mr. Castle just  
8 recently left Midwest Generation, right?

9 A. Correct.

10 Q. So we were asking questions, but you're still  
11 working with Midwest Generation, correct?

12 A. Yes.

13 Q. For the Will County Station, what are Midwest  
14 Generation's intentions with regards to the technical  
15 requirements of the Illinois CCR rule?

16 A. To comply.

17 Q. To comply with all the technical  
18 requirements, right?

19 A. With each and every one.

20 Q. For Ponds 1N and 1S, how are those going to  
21 be -- for Ponds 1N and 1S, are those ponds going to be  
22 closed in compliance with all the technical  
23 requirements of the Illinois CCR rule?

24 A. That is our intent, yes.



1           A.     Simply put, NRG signs my paycheck, but my  
2 work is for Midwest Generation.

3           **Q.     So how long have you been associated with the**  
4 **Will County Station or aware of its operation?**

5           A.     Since 2014. I've actually relocated to  
6 Illinois in 2015. So I have been in support,  
7 environmental support, for the Midwest Generation's  
8 assets since sometime in 2014.

9           **Q.     We've heard testimony today that Ponds 1N and**  
10 **1S have not intentionally received water or CCR**  
11 **material since 2010.**

12                    You have been associated in some capacity  
13 with the Will County Station since 2014 or 2015.

14                    Can you tell us why, if those impoundments  
15 have been inactive for ten years, why they have not  
16 been closed prior to this time?

17           A.     I cannot speak to why they were not closed  
18 prior to 2014. I don't think that closing those  
19 impoundments -- or I'm unaware that closure of those  
20 impoundments was required under regulation since the  
21 station was still in operation until now.

22           **Q.     So, to your knowledge, Midwest Generation was**  
23 **not utilizing these impoundments that are open to the**  
24 **environment and capable of receiving precipitation,**

1 **but other than there was no requirement to close them?**

2 **They haven't been utilized, but we didn't**  
3 **have to close them is what I'm understanding?**

4 A. Yeah. My knowledge of the process of Will  
5 County Station gives me certainty that there has not  
6 been material placed in those impoundments since the  
7 date Mr. Castle said earlier, which I cannot remember  
8 exactly, forgive me. So they have not been used.

9 And I'm not aware of, until now, a regulatory  
10 or legal reason to be required to close those units.

11 **Q. Understood.**

12 MS. ZEIVEL: Thank you very much.

13 HEARING OFFICER WEBB: Any redirect?

14 MS. GALE: No.

15 HEARING OFFICER WEBB: Mr. Rao?

16 MR. RAO: No.

17 HEARING OFFICER WEBB: Thank you, ma'am.

18 THE WITNESS: You're welcome.

19 (Witness excused.)

20 HEARING OFFICER WEBB: Does the Petitioner  
21 have anything else they would like to present?

22 MS. GALE: Yes. I have an answer to Board  
23 Question 4(c). I have Petitioner's Exhibit U,  
24 Petitioner's Exhibit U. And then in answer to Board

1 Question 5, I'll be providing the answer.

2 (Whereupon, Petitioner's Hearing  
3 Exhibit U was marked for  
4 identification.)

5 MS. GALE: In response to Board Question 5(a)  
6 and 5(b), Midwest Generation contends that while the  
7 rule may allow Midwest Generation to re-designate the  
8 ponds as Category 6, if new data supports that, it is  
9 unreasonable to require Midwest Generation to make a  
10 designation of Category 4 before we have CCR  
11 groundwater data.

12 A designation of Category 4, now, would have  
13 significant adverse effect on Midwest Generation with  
14 little benefit to the environment and would not hasten  
15 the closure of the ponds.

16 As Mr. Gnat testified, Midwest Generation is  
17 currently preparing five operating permit applications  
18 for nine CCR surface impoundments, for submittal by  
19 October 31, 2020.

20 At the same time, Midwest Generation is also  
21 preparing construction permit applications for four  
22 CCR surface impoundments so that they are ready, at  
23 the latest, by December 1, 2021.

24 We heard from Mr. Gnat that preparing the

1 construction permit applications is a large endeavor  
2 and it really is an iterative or domino effect. It's  
3 an exercise that builds upon itself. You have the  
4 groundwater data, which establishes the background  
5 data and the groundwater protection standards; then  
6 you create a groundwater model based upon that data;  
7 and upon having that groundwater model, you conduct an  
8 alternatives closure analysis which include an  
9 evaluation of the best closure method, in part, based  
10 upon the model and the inputs put into that model.

11 Finally, after you've conducted the  
12 alternatives closure analysis, you prepare a closure  
13 plan and a post-closure plan.

14 If Ponds 1N and 1S are designated as  
15 Category 4 now, before we have any information,  
16 Midwest Generation would have to begin working on the  
17 construction permit application now with incomplete  
18 information, meaning Midwest Generation would likely  
19 create data and information that would have to be  
20 revised later or even duplicated. One change in the  
21 groundwater information will affect modeling, which  
22 could affect the alternatives analysis, which could  
23 ultimately affect what kind of closure we're talking  
24 about here.

1 Midwest Generation, again, we said this  
2 before, we're going to say it again, is not asking for  
3 relief from any technical requirements or any  
4 technical evaluation. In fact, Midwest Generation is  
5 already working at 110 percent to comply with the  
6 various requirements of this brand new rule for all of  
7 its CCR surface impoundments.

8 All Midwest Generation is asking for is a  
9 little more time, and Midwest Generation contends that  
10 the better way is to allow the data to develop so that  
11 we can submit an accurate Category designation.

12 Nothing further.

13 MR. RAO: Do you need to be sworn?

14 MS. GALE: Excuse me? I didn't hear you.

15 MR. RAO: Is this like --

16 HEARING OFFICER WEBB: This isn't testimony.

17 MS. GALE: It's not testimony, no. It's  
18 argument.

19 But as an attorney, I'm obligated to say the  
20 truth all the time.

21 HEARING OFFICER WEBB: Okay. Anything else  
22 Petitioner would like to present?

23 MS. GALE: Nothing further. Thank you.

24 HEARING OFFICER WEBB: Your exhibits, unlike

1 what I said last week, the exhibits that have  
2 previously been filed are already part of the record  
3 unless anybody formally objects. So you don't have to  
4 worry about that.

5 Do you want to introduce the exhibits that  
6 you -- were these R, S, T, U?

7 MS. GALE: Yes. We move to enter exhibits R,  
8 S, T, U into evidence.

9 And you just said I don't need to move the  
10 rest of them?

11 HEARING OFFICER WEBB: No.

12 MS. GALE: Thank you.

13 MS. ZEIVEL: Agency has no objection.

14 HEARING OFFICER WEBB: Petitioner Exhibits R,  
15 S, T, U are admitted.

16 (Whereupon, Petitioner's Exhibits  
17 R, S, T & U were received into  
18 evidence as of 7-27-21.)

19 HEARING OFFICER WEBB: And you have nothing  
20 further?

21 MS. GALE: I have nothing further for now.  
22 Thank you.

23 HEARING OFFICER WEBB: Would you like to take  
24 a five-minute break?

1 MS. ZEIVEL: Carol, can we please have ten  
2 minutes?

3 HEARING OFFICER WEBB: Yes.

4 (Whereupon, a break was taken,  
5 after which the following  
6 proceedings were had:)

7 HEARING OFFICER WEBB: We'll go back on the  
8 record.

9 Before we start with the EPA's first witness,  
10 the Board has a follow-up question for Mr. Castle.

11 MS. GALE: So we can recall Mr. Castle.

12 HEARING OFFICER WEBB: Mr. Castle, you're  
13 still under oath.

14 THE WITNESS: Understood.

15 (Witness previously sworn.)

16 HEARING OFFICER WEBB: Member Santos has a  
17 question.

18 MS. SANTOS: For the record, I am board  
19 member Cynthia Santos, S-a-n-t-o-s.

20 It's a twofold question, Mr. Castle.

21 THE WITNESS: Okay.

22 MS. SANTOS: During the occurrence of a  
23 100-year storm or say we get two inches of rainfall  
24 within an hour, there's significant rush of rain, how

1 quickly does that water drain from the pond?

2 THE WITNESS: I would be speculating. As I  
3 stated earlier, I have not seen standing water in it.  
4 I would say a day or two.

5 MS. SANTOS: So it wouldn't be immediate?  
6 There's no way it could possibly be immediate?

7 THE WITNESS: The 100-year rain analogy as  
8 the median, I would reference like your storm sewers  
9 or something like that.

10 MS. SANTOS: Right. Well, I have some  
11 experience with that from being with the Water  
12 Reclamation.

13 And the other part, the vegetation growing in  
14 there, what would be the source to promote growth?  
15 Would it be soil residue that's in there? Could it be  
16 a crack in the lining? What do you -- I know you  
17 probably don't know without inspecting it, but --

18 THE WITNESS: Here, again, speculation would  
19 just be debris, dirt, et cetera, in the air. Where  
20 you see a construction site, you could reference  
21 Chernobyl, if you've seen pictures. It's just Mother  
22 Nature starts to take over when things are inactive.

23 MS. SANTOS: So how would one determine the  
24 source of the vegetation? Would they have to go into

1 there and inspect?

2 THE WITNESS: I would guess you would have to  
3 do a pull of vegetation and analyze it and see what it  
4 is. There's wildlife. There's different ways that  
5 things can get into the pond.

6 MS. SANTOS: Thank you. Nothing further.

7 MR. RAO: Just a follow-up?

8 MS. GALE: Sure.

9 MR. RAO: How extensive is the vegetation  
10 that's growing in the pond?

11 THE WITNESS: I would just say it's like  
12 large weeds. I mean, that's what it looks like to me.  
13 It comes in the spring, stays in the summer, dies in  
14 the winter.

15 MR. RAO: Does it cover the whole surface of  
16 the pond, the bottom surface of the pond?

17 THE WITNESS: Majority of it, yes.

18 MR. RAO: Thank you.

19 HEARING OFFICER WEBB: Does anyone else have  
20 anything further for this witness?

21 Okay. Thank you, Mr. Castle.

22 THE WITNESS: You're welcome.

23 (Witness excused.)

24 HEARING OFFICER WEBB: Now we're ready for

1 the Agency to call their first witness.

2 MS. ZEIVEL: Illinois EPA calls Darin  
3 LeCrone.

4 HEARING OFFICER WEBB: Mr. LeCrone, you can  
5 have a seat right next to Mr. Rao.

6 Would the court reporter please swear the  
7 witness.

8 (Witness duly sworn.)

9 DARIN LECRONE,  
10 having been first duly sworn, called as a witness  
11 herein, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ZEIVEL:

14 **Q. Can you state your name and spell your last**  
15 **name for the record, please.**

16 A. Sure. My name is Darin LeCrone. Last name  
17 L-e-C-r-o-n-e.

18 **Q. Can you state your employer and position**  
19 **title?**

20 A. Yes. I am employed by the Illinois  
21 Environmental Protection Agency. I am the Permit  
22 Section Manager in the Agency's division of Water  
23 Pollution Control.

24 **Q. And how long have you been in that position?**

1           A.    As the manager of the permit section, a  
2 couple months. I was the Industrial Unit Manager  
3 since 2010, and I've been with the Agency since '92.

4           **Q.    Did you execute an affidavit in support of**  
5 **the Agency's recommendation in this matter?**

6           A.    I did, yes.

7           **Q.    Have you recently reviewed that affidavit?**

8           A.    I did, yes.

9           **Q.    To your knowledge, are the facts attested to**  
10 **in that affidavit still true today?**

11          A.    To the best of my knowledge, yes.

12                   MS. ZEIVEL: The Agency has no questions for  
13 Mr. LeCrone, but he's here and available for any  
14 questions from Midwest Generation or the Board.

15                   MS. GALE: Yes.

16                                   CROSS-EXAMINATION

17           BY MS. GALE:

18           **Q.    Mr. LeCrone, you mentioned you're the manager**  
19 **of the permit section of the Agency's Division of**  
20 **Water, right?**

21           A.    Correct.

22           **Q.    So you'll be managing the permit review and**  
23 **the issuance of the operating and construction permits**  
24 **pursuant to the new Illinois CCR rule, right?**



1 A. I do.

2 Q. So based upon this list, and you can count if  
3 I'm right, I calculated that there are approximately  
4 20 stations identified in that list that have CCR  
5 surface impoundments, right?

6 A. That sounds correct, yeah. That's what it  
7 looks like.

8 Q. In your expectation, you could receive at  
9 least 20 applications for an operating permit on  
10 October, correct?

11 A. Correct.

12 Q. But you could feasibly receive more, correct?

13 A. It could be more than that if an  
14 owner-operator chose to file more than one application  
15 for different impoundments, that would be their  
16 choice.

17 Q. And even if it's for one station, looking at  
18 that list, generally speaking, most of those stations  
19 have more than one CCR surface impoundment, right?

20 A. Most do, correct.

21 Q. And we heard Mr. Gnat discuss what's in these  
22 operating permit applications. They include numerous  
23 technical reports, right?

24 A. Correct.

1           **Q. Including a groundwater monitoring program**  
2 **that establishes, presumably, the background for each**  
3 **of the CCR surface impoundments, right?**

4           A. Yeah. Groundwater monitoring will be part of  
5 the permit application, that's correct.

6           **Q. And a statistical evaluation, correct?**

7           A. I believe all that's part of it. My permit  
8 staff won't -- they don't review the groundwater  
9 information. The groundwater section does. But  
10 that's generally part of the applications, correct.  
11 There's different divisions of labor once it's all  
12 received.

13           **Q. But your permitting staff is issuing that**  
14 **permit, right?**

15           A. Correct.

16           **Q. And the Agency will conduct a detailed review**  
17 **of the information, all the information submitted.**  
18 **Right?**

19           A. We will, yes.

20           **Q. And that will take some type, right?**

21           A. It will.

22           **Q. And it could involve following up with the**  
23 **applicants for additional questions, right?**

24           A. Most applications do, yes. There is

1 generally a back-and-forth between the signed permit  
2 engineer and the applicants and staff.

3 Q. And there is no deadline in the Illinois CCR  
4 rule for the Agency to grant or deny an operating  
5 permit application, is there?

6 A. There's not a deadline on a final  
7 determination decision by the Agency, that's correct.

8 Q. Thank you.

9 Similarly, the construction permit  
10 applications for the CCR surface impoundments, for the  
11 Categories that are 1, 2, 3, and 4, those are due to  
12 the Agency on February 1, 2022, correct?

13 A. I believe that's correct, yes.

14 Q. And looking at Petitioner's Exhibit V again,  
15 just looking at the column entitled Environmental  
16 Justice, those Environmental Justice are Category 3  
17 surface impoundments, correct?

18 A. I don't remember. I think that's correct.  
19 But one of those categories I think is.

20 Q. We know the Environmental Justice CCR surface  
21 impoundments are due in the first round of  
22 construction permit applications?

23 A. Yes, that's correct.

24 Q. And that first round is due February 1, 2022?

1           A.    Correct.

2           Q.    And looking at that chart, and, again, you  
3 can sit and count if you want, I estimate that you're  
4 likely to receive at least eight applications for  
5 construction permits for the CCR surface impoundments  
6 that are in EJ areas.  Would you agree with that?

7           A.    That looks about right.  Yeah, plus or minus  
8 one.

9           Q.    Sure.  Great.  Yeah, I could have counted  
10 wrong.

11                        So at least -- so let's just say at least  
12 seven or eight?

13           A.    Right.

14           Q.    You could receive more because there were  
15 other categories, right?

16           A.    We could.

17           Q.    And these construction permit applications  
18 will contain even more information than the operating  
19 permit applications, right?

20           A.    I would expect so, yes.

21           Q.    They contain the proposed groundwater model,  
22 correct?

23           A.    Correct.

24           Q.    And an alternatives closure analysis,

1 correct?

2 A. Correct.

3 Q. And a robust closure plan, right?

4 A. Correct.

5 Q. And similar to the operating permit  
6 applications, the Agency will conduct a thorough  
7 review of each of these applications, right?

8 A. Yes, we will.

9 Q. And, again, there is no deadline in this  
10 Illinois CCR rule for the Agency to grant or deny a  
11 construction permit application, is there?

12 A. That's correct, there's no deadline on the  
13 Agency.

14 Q. Thank you.

15 MS. GALE: I have nothing further.

16 HEARING OFFICER WEBB: Anything else?

17 REDIRECT EXAMINATION

18 BY MS. ZEIVEL:

19 Q. Mr. LeCrone, are you generally aware that the  
20 Illinois EPA has received a number of petitions for  
21 regulatory relief from 845?

22 A. Yes.

23 Q. If I told you that there were 11 petitions  
24 covering between 20 and 25 CCR surface impoundments,

1 **does that sound about right to you?**

2 A. That sounds about right to me.

3 **Q. To your knowledge, are any of those petitions**  
4 **included in CCR surface impoundments in Environmental**  
5 **Justice areas?**

6 A. I have not read all of the petitions yet, but  
7 I would expect several at least would be.

8 **Q. So, to your knowledge, there are factors**  
9 **outside of this list that may impede or prevent the**  
10 **number of applications coming in that Ms. Gale is**  
11 **quantifying?**

12 A. It could potentially depending on the outcome  
13 of those petitions.

14 MS. ZEIVEL: I have no further questions.  
15 Thank you.

16 RE CROSS-EXAMINATION

17 BY MS. GALE:

18 **Q. Just to piggyback on that, I believe**  
19 **Ms. Zeivel said 20 or 25 CCR surface impoundments.**

20 **There's 73 listed in that list, right?**  
21 **There's a number on the far left column?**

22 A. Yes. Correct.

23 **Q. So doing math, 73 minus 25, 48 CCR surface**  
24 **impoundments, correct?**

1 A. Yes. Correct.

2 Q. And that's a conservative number, right?

3 Because it could be 20 to 25, right?

4 A. Correct.

5 Q. Okay.

6 MS. GALE: Nothing further.

7 HEARING OFFICER WEBB: Anything else?

8 MS. ZEIVEL: Nothing.

9 HEARING OFFICER WEBB: Mr. Rao?

10 MR. RAO: No.

11 HEARING OFFICER WEBB: Are you introducing  
12 Exhibit U?

13 MS. GALE: Yes, I move to introduce  
14 Petitioner's Exhibit V. Thank you.

15 HEARING OFFICER WEBB: Exhibit V is admitted.

16 (Whereupon, Petitioner's Exhibit V  
17 was received into evidence as of  
18 7-27-21.)

19 HEARING OFFICER WEBB: Thank you,  
20 Mr. LeCrone.

21 (Witness excused.)

22 HEARING OFFICER WEBB: The Agency may call  
23 its next witness.

24 MS. ZEIVEL: The Agency calls Melinda Shaw.

1 HEARING OFFICER WEBB: Would the court  
2 reporter please swear in the witness.

3 (Witness duly sworn.)

4 MELINDA SHAW,  
5 having been first duly sworn, called as a witness  
6 herein, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ZEIVEL:

9 Q. Ms. Shaw, can you state your name spell your  
10 last name for the record, please?

11 A. Melinda Shaw, S-h-a-w.

12 Q. And can you state your employer and position,  
13 current position title?

14 A. I work for the Illinois Environmental  
15 Protection Agency. I'm an environmental protection  
16 geologist in the Bureau of Water, Groundwater Section.

17 Q. How long have you worked for Illinois EPA?

18 A. Cumulatively, I've worked for Illinois EPA  
19 for eight years.

20 Q. So prior to the Bureau of Water, you were  
21 employed elsewhere within the Agency?

22 A. Yes.

23 Q. And where was that?

24 A. In the Bureau of Land, their permit section,

1 and also their Super Fund Unit.

2 Q. Did you execute an affidavit in support of  
3 Illinois EPA's recommendation that was filed in this  
4 matter?

5 A. Yes.

6 Q. Have you recently reviewed that affidavit?

7 A. Yes.

8 Q. Are the facts as you attested to them still  
9 true today?

10 A. Yes.

11 Q. I'd like to point you to Part 845 of the  
12 rules, if you have a copy of those rules in front of  
13 you?

14 A. I do.

15 Q. If you could turn to Section 845.230(d),  
16 which speaks to the initial operating permit for  
17 Existing, Inactive, and Inactive Closed Impoundments.  
18 I'd like you to look at Subpart, so it's (d)(2)(I),  
19 which speaks to the groundwater monitoring information  
20 to be included in the initial operating permit  
21 application.

22 Can you please read for the record (iii)  
23 three, please?

24 A. "A groundwater sampling and analysis program

1 that includes selection of the statistical procedures  
2 to be used for evaluating groundwater monitoring data  
3 (see Section 845.640); and"

4 **Q. Before we move to 640, which we will, can you**  
5 **please read (iv)?**

6 A. "Proposed groundwater monitoring program that  
7 includes a minimum of eight independent samples for  
8 each background and downgradient well (see Section  
9 845.650(b))"

10 **Q. So I would like us to turn to 845.640(f)(3),**  
11 **which speaks to the Statistical Methods and Selection**  
12 **of Statistical Methods.**

13 **Can you please read Subpart 3 along with (A)**  
14 **and (B)?**

15 A. "The owner or operator of the CCR surface  
16 impoundment must submit the following to the Agency in  
17 an operating permit application: (A) Documentation of  
18 the statistical method chosen; and (B) The qualified  
19 professional engineer certification required by  
20 subsection (f)(2)."

21 **Q. Does Subpart (f)(3) say that the**  
22 **documentation of the statistical method chosen needs**  
23 **to be in an initial operating permit application?**

24 A. No.

1 Q. You read 230 earlier, Subpart (iii) that  
2 referred to statistical procedures and a proposed  
3 groundwater monitoring program.

4 (f)(3) that you just read that requires  
5 documentation of a statistical method chosen in an  
6 operating permit application, do you see those two as  
7 being inconsistent, requiring proposed procedures in  
8 an initial operating permit application and then  
9 requiring documentation of a chosen method?

10 A. They're not inconsistent. They provide an  
11 order of operations.

12 Q. So if we were to go with the Agency's  
13 interpretation of 230 and the initial operating permit  
14 application, which, in the Agency's recommendation, we  
15 stated we believe the initial operating permit  
16 application requires the proposed groundwater  
17 monitoring program as well as the statistical  
18 procedures.

19 When would you expect to see the statistical  
20 method chosen for Agency review? How would that  
21 process work for a CCR surface impoundment such as  
22 1N and 1S that don't already have groundwater  
23 background -- background groundwater quality data?

24 A. If a unit facility did not already have the

1 groundwater -- the background groundwater quality data  
2 calculated, then what we would expect to see first  
3 would be a proposal of the methods that they plan to  
4 use. Those typically would follow the USEPA's unified  
5 guidance, which provides a blueprint of statistical  
6 procedures that could be used.

7 Then we would expect to see that plan  
8 proposed in the initial permit -- operating permit  
9 application. That would undergo some review. And  
10 then once that is actually chosen, which method is  
11 actually chosen based on that data, we would then  
12 expect to see that either in -- it could be in a  
13 modified operating permit application or an addendum.  
14 We could also see it in any subsequent groundwater  
15 monitoring report that's required.

16 **Q. But certainly at the time of the renewal**  
17 **operating permit application, would you expect these**  
18 **such impoundments that don't have background**  
19 **groundwater quality established at the time of the**  
20 **application, would you expect to see a statistical**  
21 **method chosen at the time of the renewal of the**  
22 **operating permit application?**

23 A. Yes.

24 **Q. We heard Petitioner testify that they plan**

1 to -- that it plans to submit the initial operating  
2 permit application in March and that with that initial  
3 operating permit application would come the  
4 appropriate category for closure.

5 Can you speak to what implication submission  
6 of a category in March of 2022 may possibly have?

7 A. Yes. For the Agency, it would effectively  
8 limit the Agency's ability to recategorize that  
9 surface impoundment as a Category 2.

10 Q. I believe you're referring to 700(g) which  
11 gives the Agency the authority to provide a different  
12 category, specifically a Category 2 designation, where  
13 a CCR surface impoundment has shown a failure to  
14 comply with location restriction; is that correct?

15 A. 700(g)(5) says: "The Agency may designate a  
16 CCR surface impoundment as a Category 2 surface  
17 impoundment when" -- there's a number of things.

18 One of those is: "The CCR surface  
19 impoundment has not demonstrated compliance with  
20 location restrictions in Subpart C."

21 Q. What is the construction permit application  
22 deadline for a Category 2 CCR surface impoundment?

23 A. February 1, 2022.

24 Q. So if the Agency does not receive the

1 location restriction demonstrations until March  
2 of 2022, is there -- based on your understanding of  
3 the rules, is there any opportunity for the Agency to  
4 re-designate as a Category 2 CCR surface impoundment?

5 A. Not effectively.

6 Q. Ms. Shaw, were you involved in the Part 845  
7 Rulemaking process?

8 A. Yes.

9 Q. Were you involved in the Agency -- the  
10 preparation of the Agency's pre-filed answers to  
11 questions received as part of that rulemaking?

12 A. Yes.

13 Q. I'm going to hand you what's been marked as  
14 Petitioner's Exhibit U, which is the Illinois EPA's  
15 pre-filed answers. There's a cover page and then a  
16 page of answers provided by petitioner for the record  
17 in this matter.

18 Petitioner's response document states that  
19 Illinois EPA's CCR Rulemaking testimony states that  
20 the groundwater monitoring data and statistical  
21 procedures must be submitted with the operating  
22 permit.

23 I just gave you my copy. So it's Answer  
24 Number 23. Looking at Question and Answer Number 23,

1 can you tell me from the Agency's answers where it  
2 states that in Illinois EPA's response that  
3 statistical procedures or methods must be submitted  
4 with the operating permit application?

5 A. It does not specifically state statistical  
6 information in the answer.

7 Q. So nowhere in the response to Answer 23 that  
8 Petitioner has cited for the basis of its statement  
9 that Illinois EPA's Rulemaking testimony requires  
10 statistical procedures or methods to be included in  
11 the initial operating permit application, you don't  
12 see that anywhere in that response?

13 A. Correct.

14 Q. Thank you, Ms. Shaw.

15 MS. ZEIVEL: I don't have anymore more  
16 questions of Ms. Shaw, but she's available for Midwest  
17 Generation or the Board to ask any questions.

18 HEARING OFFICER WEBB: Does petitioner have  
19 any questions?

20 MS. GALE: Yes.

21 CROSS-EXAMINATION

22 BY MS. GALE:

23 Q. Ms. Shaw, going back to Petitioner's  
24 Exhibit -- I don't have it marked -- U, it's the

1 questions we were just discussing. I'm going to read  
2 the Board's question, at least the initial part.

3 The proposed subsections 845.230(d)(2)(H)(i)  
4 through (iv), through Roman Numeral iv, specify  
5 detailed groundwater monitoring information that must  
6 be submitted for initial operating permit for  
7 existing, inactive, and inactive closed CCR surface  
8 impoundments. Do you agree that's what that states?

9 A. That's correct.

10 Q. And then the Agency responds with "The  
11 groundwater monitoring data" -- and then the Board  
12 asks a question on whether similar information is not  
13 required for construction permit applications.

14 The Agency responds with: "The groundwater  
15 monitoring data required by this subsection is  
16 necessary to determine the current site  
17 characteristics and compliance status for existing CCR  
18 surface impoundments"; isn't that correct?

19 A. That's correct.

20 Q. So the Agency didn't say some of this data  
21 could be submitted at a later date, did they, in this  
22 answer?

23 A. No.

24 Q. And the Agency goes further and states that

1 "this data will be used to determine the operational  
2 conditions or corrective actions which might be  
3 necessary under the rule for these existing  
4 facilities."

5 Is that what you said?

6 A. That's what the answer says.

7 Q. You're right. That is what the Agency  
8 answered.

9 And, again, the Agency didn't say that these  
10 terminations could be done at a later date, correct?

11 A. That's correct.

12 Q. And the Agency didn't correct the Board and  
13 say this information doesn't need to be submitted or  
14 clarify to the Board that some information did need to  
15 be submitted with the initial operating permit, did  
16 it?

17 A. It did not say that.

18 Q. I want to ask about this Category 2  
19 designation because I'm legitimately confused.

20 Midwest Generation, we agree Midwest  
21 Generation is asking for an extension of the  
22 designation of the categories for the these two ponds,  
23 right?

24 A. Yes.

1 Q. And so on March 31st we'll have a better  
2 understanding of the location restriction, right,  
3 because that's when we'll have the operating permit  
4 application submitted?

5 A. I can't -- I don't know when Midwest  
6 Generation is going to be aware of its own location.

7 Q. Well, you heard Mr. Gnat say that's going to  
8 be a part of its operating permit application,  
9 correct?

10 A. Yes.

11 Q. So assuming he's stating truthfully, it will  
12 be part of their initial operating permit application,  
13 right?

14 A. Yes.

15 Q. So we'll know then its location restriction,  
16 right?

17 A. Yes.

18 Q. And we'll know presumably at least some  
19 groundwater information, correct?

20 A. Yes.

21 Q. And we'll have information to make a  
22 designation on whether it's a Category 4 or a  
23 Category 6; and then the Agency at that time would  
24 have an option to designate it as a Category 2, right?

1 A. Yes.

2 Q. So the Agency could, in April if it wanted  
3 to, Category 2, but it doesn't have to, does it?

4 A. It doesn't have to.

5 Q. And the Agency has already stated it's not  
6 objecting to submitting the construction permit  
7 application if the ponds are determined to be  
8 Category 4, correct?

9 A. Could you repeat your question? I'm sorry.

10 Q. The Agency has already agreed -- excuse me.  
11 The Agency has already stated in its  
12 recommendation that if ponds are Category 4, they are  
13 not objecting to an extension of the deadline to  
14 submit the construction permit application, correct?

15 A. That's correct.

16 Q. And a Category 4 and Category 2 ponds have  
17 the same construction permit application deadlines,  
18 correct?

19 A. Yes.

20 Q. I want to go to your discussion about -- oh,  
21 one more thing. Never mind.

22 Your affidavit, which is Agency's Exhibit D,  
23 do you have that in front of you?

24 A. I have it with me, yes.

1 Q. Could you turn to Page 7 of your affidavit?  
2 I'm looking at Paragraph 28.

3 A. I'm there.

4 Q. So you conducted a potable well survey,  
5 correct?

6 A. Based on the Source Water Protection Program  
7 website.

8 Q. Right. It says -- you wrote, "I conducted a  
9 potable well survey." Correct?

10 The first sentence, "I conducted a potable  
11 well survey using the Source Water Assessment  
12 Protection Program." Right?

13 A. Yes.

14 Q. And according to that, there's no potable  
15 wells downgradient of the -- in the downgradient  
16 direction, and I presume you mean of the Ponds 1N and  
17 1S, correct?

18 A. Yes.

19 Q. And you agree that the pond -- the potable  
20 wells identified by Midwest Generation are  
21 noncommunity water supply wells, right?

22 A. Yes.

23 Q. And you also state that, "Due to the depth  
24 of" -- now you say NTNCWS wells, those are the wells

1 on Midwest Generation ponds, right?

2 A. Yes.

3 Q. And you say, "Due to the depth of the NTNCWS  
4 wells and the existence of a confining layer."

5 By "confining layer," do you mean there's an  
6 aquifer -- excuse me -- a layer of geological material  
7 that separates the lower groundwaters and the upper  
8 groundwater, right?

9 I'm not a hydrogeologist, so I'm not trying  
10 to trick you. I just want to know what that means.

11 A. Of course.

12 That is what it means, and according to  
13 Midwest Generation's information submitted in their  
14 petition, that is where that information came from.

15 Q. And you have no reason to think that's wrong,  
16 right?

17 A. No.

18 Q. And so you state, "Due to the depth and the  
19 existence of this confining layer the likelihood of  
20 impact from the Will County CCR surface impoundments  
21 is low." Right?

22 A. Yes.

23 Q. So we had some discussion about what the  
24 rules state and the interpretation of the rule. And I

1 believe the Agency's position, and correct me if I'm  
2 wrong, is that not all the information is required in  
3 an initial operating permit application, right?

4 You just stated the statistical methods  
5 chosen don't need to be in that initial operating  
6 permit application, correct?

7 A. If it's not available.

8 Q. So let's go to that section. Let's just  
9 start right there but we'll go backward to 640(f)(3).  
10 And (f)(3) doesn't -- there's no qualifier "only if  
11 available or if not available," correct?

12 A. That's correct.

13 Q. And let's go to 230. I'm sorry. Am I right?  
14 I could be wrong.

15 Yes, 230(d)(2)(I)(iii). There's no reference  
16 in Roman Numeral (iii) or (iv) of "if available."  
17 Correct?

18 A. That's correct.

19 Q. Then let's look at under Operating Permit  
20 Application. So we have 230(a). You would agree that  
21 230(a) is initial operating permit for a new CCR  
22 surface impoundment and any lateral extensions, right?

23 A. That's correct.

24 Q. And then (b) is the Renewal Operating Permit

1     **Application?**

2           A.     Correct.

3           **Q.     (c) is the Post-Closure Care Operating Permit**  
4     **Application?**

5           A.     Correct.

6           **Q.     And (d) is the Initial Operating Permit**  
7     **application for existing units.    Correct?**

8           A.     Yes.

9           **Q.     Then (e) it just states that "Operating**  
10    **permits must be issued for fixed terms not to exceed**  
11    **five years."**

12                   **Those are the four types of applications**  
13    **described here, right?**

14           A.     Those are the types, yes.

15           **Q.     There isn't in here an option for a modified**  
16    **permit application, is there, or a supplemental permit**  
17    **application, is there?**

18           A.     There's not.

19           **Q.     Let's look at the renewal.    So 230(b), the**  
20    **requirement of 230(b).    I believe you said you could**  
21    **put in there the chosen method in a renewal**  
22    **application, didn't you?**

23           A.     Yes, you could.

24           **Q.     And it says here in (d) that the**

1 applications -- renewal application, I think, if I'm  
2 doing my math correctly, has to be submitted probably,  
3 let's just say, four years after the initial permit is  
4 approved, right?

5 A. Yes.

6 Q. Let's go to (b) and let's look at (b)(5).

7 (b)(5) says, "A statement that the groundwater  
8 monitoring has been conducted under an Agency-approved  
9 groundwater monitoring program."

10 Do you see that there?

11 A. Yes.

12 Q. So the Agency-approved groundwater monitoring  
13 program would presumably include an approval of the  
14 chosen methods, right?

15 A. Yes.

16 Q. So it doesn't state here that you could also  
17 submit the statistical methods chosen in your renewal  
18 operating permit application, does it?

19 A. It doesn't state that, no.

20 Q. Let's look at 610, 845.610. I want to go to  
21 (e), the Annual Current Groundwater Monitoring and  
22 Corrective Action Report. Ready?

23 A. Yes.

24 Q. I believe you said the statistical methods

1 chosen could be submitted in an annual report; is that  
2 right?

3 A. That's what I said, yes.

4 Q. So can you point to me in (e) where it states  
5 that the statistical method chosen, if they weren't  
6 available for the initial operating permit, could be  
7 submitted in an annual report permit?

8 A. Could you repeat your question now that I've  
9 read it again?

10 Q. Sure.

11 Can you point out to me in (e), which is the  
12 Annual Groundwater Monitoring Report required, where  
13 it states that an owner-operator could submit the  
14 statistical methods chosen in the annual report?

15 A. It doesn't specifically say about their  
16 statistical method chosen to be submitted.

17 Q. And let's look at (e)(4)(C). Actually I'll  
18 go back to (e)(4).

19 (e)(4) states: "A section at the beginning  
20 of the annual report must provide an overview of the  
21 current status of groundwater monitoring program and  
22 corrective action plan for the CCR surface  
23 impoundment. At a minimum, the summary must:"

24 Do you agree with what that states?

1 A. Yes.

2 Q. (c), "Specify whether there have been any  
3 exceedances of the groundwater protection standards  
4 for one or more constituents listed in  
5 Section 845-600."

6 Do you agree with that?

7 A. Yes.

8 Q. So let's back up. The statistical methods  
9 chosen assist with preparing the -- identifying the  
10 groundwater protection standards; isn't that correct?

11 A. That's correct.

12 Q. So we can't identify the groundwater  
13 protection standards until we choose statistical  
14 method, right?

15 A. Yes. For 845, that's true.

16 Q. So under 845(c) -- excuse me --  
17 845.610(e)(4)(C), this says we have to identify the  
18 exceedances of the groundwater protection standards.  
19 This assumes that we already know what the groundwater  
20 protection standards already are, doesn't it?

21 A. You would have to know what the groundwater  
22 protection standards are before you could state  
23 whether there's been any exceedances.

24 Q. And it doesn't state in this paragraph "if

1 available," does it?

2 A. It does not.

3 Q. Similarly, 845.610(e)(4)(D), it states:  
4 "Identify those constituents with exceedances of  
5 groundwater protection standards in Section 845.600  
6 and the names of the monitoring wells associated with  
7 the exceedance."

8 Would you agree it states that?

9 A. That's what it says, yes.

10 Q. Again, it states it requires the applicant --  
11 excuse me -- the operator or owner to identify the  
12 exceedances of the groundwater protection standards,  
13 which assumes that you know what those groundwater  
14 protection standards are, doesn't it?

15 A. Yes.

16 Q. And it doesn't state "if available," does it?

17 A. It does not.

18 MS. GALE: Nothing further. Thank you.

19 HEARING OFFICER WEBB: Ms. Zeivel?

20 MS. ZEIVEL: Yes.

21 RECROSS-EXAMINATION

22 BY MS. ZEIVEL:

23 Q. Ms. Shaw, I'd like to direct you to  
24 Section 845.280 entitled, Transfer, Modification and

1 **Renewal. And can you please read, when you get there,**  
2 **Subpart C?**

3 A. 845.280(c) says, "The owner or operator of a  
4 CCR surface impoundment may initiate modification to  
5 its permit by application submittal to the Agency at  
6 any time after the permit is approved and before the  
7 permit expires."

8 Q. So even though a Modification Permit section  
9 is not included in the earlier types of operating  
10 permit applications, based on your understanding of  
11 the rules and as you read 845.280, can an owner or  
12 operator of a CCR surface impoundment initiate  
13 modification and submit an application for a modified  
14 permit application at any time?

15 A. Yes.

16 Q. Going back to 845.230(d)(2)(I), the super  
17 star of this dialogue, I had you read earlier little  
18 (iii) and (iv) or Roman Numeral (iii) and (iv).

19 Roman Numeral (iii) says that the sampling  
20 and analysis program needs to be included. That  
21 includes a selection of the statistical procedures.

22 Based on your understanding, is there a  
23 difference between statistical procedures and  
24 statistical methods?

1           A.    Yes.  The procedure is what you anticipate  
2           that you will be using or following.  And then the  
3           method is selected after your data shows you what is  
4           the most appropriate method to follow.

5           **Q.    Were you here when Mr. Gnat testified**  
6           **earlier?**

7           A.    Yes.

8           **Q.    Does that answer align with Mr. Gnat's**  
9           **testimony as to the difference between procedures and**  
10          **methods?**

11          A.    Yes.

12          **Q.    Does Subpart (iii) here, when speaking about**  
13          **statistical procedures to be used, implicate a future**  
14          **tense?**

15          A.    Yes.

16          **Q.    Subpart (iv), speaking about the groundwater**  
17          **monitoring program, it states the word "proposed"**  
18          **monitoring program.**

19                 **Mr. Gnat testified earlier that, in his**  
20          **experience, it may be possible that the Agency, even**  
21          **if they've completed their groundwater monitoring to**  
22          **establish background groundwater quality, that, in**  
23          **essence, anything in an operating permit application**  
24          **is proposed in that the Agency could very well come**

1 back and say that Illinois EPA would like another  
2 monitoring well or we don't like your procedures or we  
3 don't like your method, and deny or request those be  
4 changed.

5 Is that your experience working in the permit  
6 section for both Bureau of Land and Bureau of Water?

7 A. Yes.

8 Q. So even for federal -- what are treated as  
9 Federal CCR surface impoundments under Part 257, have  
10 those groundwater monitoring programs for those  
11 "Federal Impoundments" been reviewed and approved by  
12 USEPA, to your knowledge?

13 A. Not to my knowledge.

14 Q. So as Illinois EPA is receiving the many  
15 number of operating permit applications in the next  
16 six months, will that be the first time, to your  
17 knowledge, that any of these groundwater monitoring  
18 programs will receive either Federal or State  
19 government review and approval?

20 A. Yes.

21 Q. I imagine in your position with the Agency,  
22 both in land and water, that you received and reviewed  
23 a number of quarterly or annual reports speaking to  
24 groundwater monitoring, results and analysis; is that

1 right?

2 A. Yes.

3 Q. When you received those kinds of reports,  
4 what kind of statistical information is included?

5 A. It depends on which facility you're asking  
6 about. It really -- it depends on the facility, it  
7 depends on the program to which the facility is  
8 reporting under.

9 Do you want to be more specific?

10 Q. No. That's fine.

11 But it can be site-specific depending on the  
12 type of impoundment and the type of facility and the  
13 type of data available at the time of submission?

14 A. Yes.

15 Q. In your experience with receiving those kinds  
16 of reports, have you ever come across something that  
17 either didn't look right or you didn't agree with or  
18 you had questions about upon receipt?

19 A. Yes.

20 Q. Is it normal course of business to engage  
21 with a permittee about those kinds of reports, either  
22 the sufficiency or insufficiency of those reports as  
23 they come in?

24 A. Yes.

1 Q. So even if there's not a formal review and  
2 approval at that time, it won't be four years before  
3 the Agency would see groundwater monitoring  
4 information and statistical information if it were not  
5 included in the initial operating permit application?

6 A. That's correct.

7 Q. You spoke to Section 845.610. Can you tell  
8 me what the title of that section is, of 845.610?

9 A. 845.610, the title is General Requirements.

10 Q. To your knowledge, Part 845 was written and  
11 intended as a rule of general applicability; is that  
12 right?

13 A. That's correct.

14 Q. You testified as to the requirements for an  
15 annual groundwater monitoring report.

16 Would an owner-operator have to submit an  
17 annual report whether or not -- let's say they just  
18 didn't comply and they failed to comply with the  
19 requirement to establish their groundwater protection  
20 standards, would that noncompliance excuse them from  
21 submitting an annual report under these 845.610  
22 general requirements?

23 A. No.

24 Q. I'm going to move on to a slightly different

1 topic. You spoke about location restrictions and the  
2 fact that Midwest Generation intends to submit those  
3 demonstrations with their initial operating permit  
4 application.

5 To your knowledge, based on your review of  
6 the file and Agency records and publicly available  
7 records, to the best of your knowledge, do you believe  
8 that Midwest Generation currently has information that  
9 could be used to determine the location of Ponds 1N  
10 and 1S in relation to the aquifer?

11 A. Yes.

12 MS. ZEIVEL: I have no questions.

13 HEARING OFFICER WEBB: Ms. Gale?

14 RECROSS-EXAMINATION

15 BY MS. GALE:

16 Q. First of all, let's go to -- Ms. Zeivel  
17 pointed you to the Modification Section, 280. So  
18 let's go back to 845.280(c).

19 A. Okay.

20 Q. So 208 says, "An owner or operator of any CCR  
21 surface impoundment may initiate modification of its  
22 permit by application submitted to the Agency at any  
23 time after the permit is approved and before the  
24 permit expires." Correct?

1 A. Correct.

2 Q. So this doesn't state before the permit is  
3 issued, does it?

4 A. It does not say that.

5 Q. And there's nothing in here that states after  
6 submission of the application but before issuance of  
7 the permit an applicant may submit a modification,  
8 does it?

9 A. It doesn't say that.

10 Q. And Ms. Zeivel asked you some questions about  
11 the -- if I remember correctly -- and I should have  
12 taken notes -- let's say a hypothetical that an owner  
13 or operator blew off these rules, didn't come up with  
14 groundwater protection standards, and they'd still  
15 have to do an annual report, right?

16 A. There was a question, yes, along those lines.

17 Q. Yes. We're on the same page.

18 When the Agency wrote these rules, they wrote  
19 them as general applicability, I think you said that.  
20 Right?

21 A. Yes.

22 Q. And when the Agency wrote these rules, they  
23 presumed people would follow their rules, didn't it?

24 A. They were certainly written with the intent

1 that people would follow them, yes.

2 Q. Yes. Thank you.

3 So the Agency's certainly not sitting here  
4 today assuming that all the owner or operators that  
5 are in Petitioner's Exhibit V will not be following  
6 the rules, is it?

7 A. No, I don't believe so.

8 Q. And the Agency is certainly expecting to  
9 receive, on October 31st, quite a few applications,  
10 isn't it?

11 A. Yes.

12 MS. GALE: Nothing further.

13 MS. ZEIVEL: Nothing further for Ms. Shaw.

14 HEARING OFFICER WEBB: Mr. Rao?

15 MR. RAO: No thanks.

16 HEARING OFFICER WEBB: All right. Thank you,  
17 Ms. Shaw.

18 (Witness excused.)

19 MS. ZEIVEL: The Agency would like to recall  
20 Mr. LeCrone in light of the questioning about the  
21 permitting process.

22 HEARING OFFICER WEBB: Okay.

23 Mr. LeCrone, you're still under oath. Have a  
24 seat.

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(Witness previously sworn.)

DARIN LECRONE,

having been previously duly sworn, called as a witness herein, was examined and testified further as follows:

FURTHER REDIRECT EXAMINATION

BY MS. ZEIVEL:

**Q. Thank you for coming back.**

**A. Happy to do it.**

**Q. There's been a lot of back-and-forth about the initial operating permit application, a renewal application, possible modification of either a permit or an application.**

**In your experience as permit manager both for the Industrial Permit section as well as generally for Bureau of Water, is it commonplace to receive either an amendment or a supplement to a pending permit application?**

**A. It is. And that type of supplement can come in many forms either at the request of the Agency or at the request of an applicant.**

**Q. Is it commonplace for permit applications to stay pending with the Agency for a number of years at some points?**

**A. Yes. I wish that didn't happen any more than**

1 it does. But, yeah, applications vary greatly in  
2 complexity, and sometimes the complex nature of an  
3 application will require the Agency to request  
4 additional information that may or may not require a  
5 permittee to take additional time to gather that  
6 information prior to submittal. The permit process  
7 could result in an applicant deciding to make changes  
8 to their proposal based on Agency comments during the  
9 issuance process, that sort of thing.

10 So, yeah, the time frame can be extended for  
11 years depending on very site-specific circumstances.

12 **Q. Are there any programs that you're aware of**  
13 **within the Bureau of Water where amendment or revision**  
14 **to a pending permit application by an applicant is**  
15 **forbidden or not allowed after submission of a**  
16 **permit?**

17 A. No, there's no prohibition on submittal of  
18 additional information during the issuance process.  
19 It's pretty routine. Like I said earlier, it could  
20 either be at the request of the applicant or very  
21 frequently the Agency has questions that require  
22 submittal of additional information to supplement an  
23 application.

24 MS. ZEIVEL: I have no further questions for

1 Mr. LeCrone.

2 HEARING OFFICER WEBB: Ms. Gale?

3 FURTHER RECROSS-EXAMINATION

4 BY MS. GALE:

5 Q. Mr. LeCrone, you assisted in preparing the  
6 recommendation submitted by the Agency, correct?

7 A. Yes.

8 Q. And do you recall in Paragraph 64 of the  
9 Agency's recommendation on Page 22, I'll read it:  
10 "There is public and environmental benefit to having  
11 pollution sources under enforceable operating permits.  
12 As stated by the legislature and evidenced by the  
13 passage of the Coal Ash Prevention Pollution Act" --

14 And then I'll skip to the end. Final  
15 sentence --

16 "Nevertheless, delaying the permitting  
17 closure of CCR surface impoundments does have  
18 implications to the public and the environment."

19 Do you remember saying that?

20 Or do you have a general understanding that's  
21 what the Agency stated?

22 A. That's my general understanding, yes. I  
23 don't have it in front of me.

24 Q. So you just said that it could take years to

1 get a permit application issued, didn't you?

2 A. It could.

3 Q. And it varies upon complexity, et cetera, and  
4 questions that are had. Right?

5 A. Correct.

6 Q. And in this case, I think we agreed earlier,  
7 that these permit applications are pretty complex,  
8 didn't we?

9 A. They will be, yes.

10 Q. So these applications review will take a  
11 significant amount of time, won't it?

12 A. They will vary from site to site, I'm sure,  
13 but it will be a significant undertaking for sure.

14 Q. It could take years?

15 A. I hope not, but it's possible.

16 Q. And we agree Midwest Generation's only asking  
17 for a -- let's see -- from October 31st to March 31st,  
18 that's five months, right?

19 A. That's my understanding, yes.

20 Q. For the operating permit application, that's  
21 what I'm talking?

22 A. Uh-huh.

23 Q. And only Midwest Generation is only asking  
24 for an additional, I want to say, five months if the

1 pond is a Category 4, let's say, four or five months?

2 I can't quite remember off the top of my head.

3 A. Something in that time frame, yes.

4 Q. And during that time, starting on  
5 November 1st, the Agency is going to start looking at  
6 all of the permit applications that it gets, right?

7 A. Yes. Once we've taken inventory of all the  
8 applications received, they'll be assigned to staff  
9 engineers both in the permit section and groundwater  
10 section staff to begin the review process.

11 Q. Which could take years, right?

12 A. We won't know until we get the applications.  
13 It will be a factor of how complete they are. We're  
14 assuming they'll be complete. But there's always  
15 questions that staff will have, and they do have a  
16 public notice process which is always a big unknown  
17 time factor.

18 Many times applications like this -- such as  
19 our NPS program, which is kind of what this process  
20 was modeled after, the public participation process  
21 can add significant time to it. If there's no public  
22 hearing, that sort of thing, the time frame is  
23 generally considerably shorter. If there is a public  
24 hearing, it could extend for quite some time.

1 Q. Thank you.

2 You said that you prefer them to be complete;  
3 isn't that accurate?

4 A. The applications?

5 Q. Yes.

6 A. Yes.

7 Q. And by that it means all the information, the  
8 Agency needs to review it, right?

9 A. Right.

10 Q. And so if they're not complete, it's more of  
11 a challenge, it takes longer for the Agency to review?

12 A. Right. I mean, the definition of "complete,"  
13 you can follow along whatever the regulation says is  
14 required in an application detail, additional detail  
15 on some of those points that were submitted, may be  
16 necessary. We're going to have questions. And so  
17 it's hard to define "complete." But substantially  
18 complete is how I would -- yeah.

19 Q. And if it's not complete, you're going to go  
20 back for more information, right?

21 A. Correct.

22 Q. But, generally speaking, as a regulator who's  
23 been with the Agency for --

24 A. 29.

1 Q. -- 29 years, 30 years, thank you, you expect  
2 the regulated community to submit the information  
3 required by the regulation in the application,  
4 correct?

5 A. We do expect an application to have all those  
6 components that are required by the regulations.

7 MS. GALE: Thank you. Nothing further.

8 MS. ZEIVEL: I also have nothing further.

9 HEARING OFFICER WEBB: Mr. Rao?

10 MR. RAO: No.

11 HEARING OFFICER WEBB: Thank you,  
12 Mr. LeCrone.

13 (Witness excused.)

14 HEARING OFFICER WEBB: Does the Agency have  
15 anything else to present?

16 MS. ZEIVEL: No. And since we haven't  
17 introduced any new exhibits during the hearing, we're  
18 going with your previous statement of they're already  
19 entered into the record. So we don't have anything  
20 further.

21 HEARING OFFICER WEBB: Okay. Great. Would  
22 petitioner like to make a closing statement?

23 MS. GALE: Sure. Yes. It's 12:15. I know  
24 we're hungry, so I'll be brief.

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C L O S I N G   A R G U M E N T

BY MS. GALE:

Thank you for being here. Thank you for your attention.

As has been said repeatedly, Midwest Generation is asking for a short extension of the deadlines. And by "short," five months for the operative permitting applications; four to five months for the construction permit applications.

And one of the things to remember here is the Agency has to identify any potential harm that we caused; and the only harm they identified, as I could see in the recommendation, was that they prefer these units to be permitted.

Well, Mr. LeCrone just testified that the permitting process is going to take some time, could take upwards of a year. So from our perspective, there is no harm to give Midwest Generation five months, additional months, while the Agency is reviewing its other significant permit applications, to submit a complete permit application.

And that's literally what it boils down to for us is the absence of harm by giving this brief extension compared to the hardship that Midwest

1 Generation has established in submitting these permits  
2 on a timely basis without all of the sufficient  
3 information.

4           Again, the Agency is not objecting to Midwest  
5 Generation's variance. Certainly we disagree on  
6 certain things, the elements. But fundamentally  
7 there's no objection. The harm is little. And,  
8 therefore, Midwest Generation asks for these  
9 variances -- excuse me -- these extensions to these  
10 short deadlines in the Illinois CCR rule.

11           HEARING OFFICER WEBB: Thank you. Are you  
12 done?

13           MS. GALE: Yes. I'm sorry. Thank you.

14           HEARING OFFICER WEBB: Would the Agency like  
15 to make a closing statement?

16           MS. ZEIVEL: Yes, just briefly.

17           C L O S I N G   A R G U M E N T

18           BY MS. ZEIVEL:

19           Ms. Gale did accurately summarize the  
20 Agency's position taken in our written recommendation.  
21 We do not support nor object to the four primary  
22 requests for extension.

23           The Agency had certain things that were  
24 important to Illinois EPA throughout this process.

1 First is ensuring that our written recommendation  
2 complied with the regulatory requirements. Regardless  
3 of whether Midwest Generation found them to be  
4 material to the ultimate decision or whatever the  
5 factors were, it was important to the Illinois EPA  
6 that we included everything and discussed everything  
7 that was required of us through the Board's  
8 regulations. We feel that we've met that burden.

9 The second piece is to ensure that the Board  
10 understands the Agency's interpretation of Part 845 as  
11 it was proposed at the Rulemaking and that that  
12 position, we believe, is consistent with what was  
13 stated at the time of the Rulemaking hearing and now  
14 that we're in the implementation phase.

15 The Agency believes that the position that it  
16 has put forth at the Rulemaking as well as in these  
17 variance proceedings is consistent. And it was  
18 important to us that the Board understand -- better  
19 understand the Agency's position relative to the  
20 Rulemaking.

21 That is why Illinois EPA took the time  
22 through this hearing procedure to ask questions and  
23 provide additional information, because at the end of  
24 the day ultimately, we don't object. However, we

1 object for the reasons behind it. We don't believe  
2 that based on the reading of the regulation that an  
3 extension to an operator permit application deadline  
4 is necessary.

5           However, we don't believe Midwest  
6 Generation's request is unreasonable. And it's their  
7 burden to show hardship. And it is up to the Board to  
8 determine whether they've met that burden in response  
9 to the proposed potential environmental harm and what  
10 that ultimate outcome is.

11           I believe that the Agency has met its  
12 regulatory requirements under Board regulations. I  
13 believe that we have presented as much information as  
14 we believe the Board would need to make a  
15 well-informed, justifiable, defensible decision; and  
16 that was our ultimate goal. So we appreciate your  
17 time today.

18           HEARING OFFICER WEBB: Thank you.

19           All right. The expedited transcript will be  
20 available by Friday, July 30th, and will be posted on  
21 the Board's website. The Public Comment deadline is  
22 August 3rd. Public comment must be filed in  
23 accordance with Statute 111.628 of the Board's  
24 procedural rules.



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I, PAMELA L. COSENTINO, being first duly sworn on oath says that she is a court reporter doing business in the City of Chicago; that she reported in shorthand the proceedings given at the taking of said meeting and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid and contains all the proceedings given at said meeting.

IN TESTIMONY WHEREOF: I have hereunto set my verified digital signature this 30th day of July, 2021.

\_\_\_\_\_  
 PAMELA L. COSENTINO, CSR

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