

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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IN THE MATTER OF:

Petition of Midwest)
Generation for an Adjusted) AS 2021-003
Standard from 845.740(a))
and a Finding of) (Adjusted Standard)
Inapplicability of Part 845)
(Waukegan Station))

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PROCEEDINGS

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TAKEN AT: Waukegan City Hall
LOCATED AT: 100 North MLK, Jr Avenue
Waukegan, Illinois

February 13, 2024

9:15 a.m. to 4:55 p.m.

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BEFORE:

Hearing Officer - Brad Halloran
Vanessa Horton - Legal Advisor for the IPCB
Essence Brown - Technical Unit, IPCB
Jennifer Van Wie - Board Member, IPCB

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E X H I B I T S

MIDWEST GEN	FOR IDENTIFICATION	IN EVIDENCE
No. 42	299	304
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1 P R O C E E D I N G S

2 (Time Noted: 9:09 a.m.)

3 HEARING OFFICER HALLORAN: We are on
4 the record. Good morning, everyone. We
5 appreciate you being here. My name is Bradley
6 Halloran. I am the hearing officer with the
7 Illinois Pollution Control Board. I am also
8 assigned to this matter.

9 The Adjusted Standard 21-3. I am
10 reading from the October 5, 2023 order. It's in
11 the matter of petition Midwest Generation, LLC,
12 for an adjusted standard from 35 Illinois
13 Administrative Code 845.740(a) and finding of
14 inapplicability of 35 Illinois Administrative
15 Code 845.

16 What we are doing today here is I don't
17 make the ultimate decision. That's up to the
18 Board members; and while I am at it, I am
19 privileged to have member Jennifer Van Wie, to
20 my left and I have staff attorney Vanessa
21 Horton, and Essence Brown from our Technical
22 Unit.

23 In any event, what I do is take the
24 transcript, the record, I give it to the Board.

1 They take a look at that, the post hearing
2 transcripts, the post hearing briefs, and any
3 public comments render their decision.

4 Today is February 13, 2023. (Sic.)
5 It's approximately 9:09 a.m., and I think
6 Midwest, Ms. Gale, could you introduce your
7 group and then we will go over to the Agency and
8 they can introduce themselves and then you can
9 do your opening.

10 MS. GALE: Sounds good.

11 HEARING OFFICER HALLORAN: Thank you.

12 MS. GALE: Yep. My name is Kristen
13 Gale. I am here with my co-counsel Genevieve
14 Essig; and we are on behalf of Midwestern
15 Generation, LLC.

16 HEARING OFFICER HALLORAN: Thank you,
17 Ms. Gale. Mr. Gunnarson?

18 MR. GUNNARSON: Mr. Halloran, my name
19 is Charles Gunnarson. I am here with my
20 co-counsel Rebecca Strauss. We are here on
21 behalf of Illinois EPA.

22 HEARING OFFICER HALLORAN: Thank you so
23 much. Ms. Gale, do you want to give an opening?

24 MS. GALE: I do. Thank you. This

1 matter is about the application of the
2 definition of a CCR surface impoundment which is
3 defined in the Illinois Environmental Protection
4 Act as: A natural topographic depression,
5 man-made excavation or diked area which is
6 designed to hold an accumulation of CCR and
7 liquids and the unit treats, stores, or disposes
8 of CCR.

9 If an area does not qualify for each of
10 the three distinct parts of the definition, it's
11 not a CCR surface impoundment. Here, we are
12 talking about the grassy field which is an area
13 located west of the west pond at the Midwest
14 Generation Waukegan Station.

15 Midwest Generation will demonstrate
16 that the grassy field does not fall within the
17 definition of a CCR surface impoundment because
18 it does not meet the second part of the
19 definition. It is not and never was designed to
20 hold an accumulation of CRR and liquids.

21 The area that is now the grassy field
22 was part of the large slag made by the station
23 decades ago which was an acceptable practice at
24 that time. Midwest Generation will present Tom

1 Dehlin, a professional engineer with Sargent &
2 Lundy, who will demonstrate that for management
3 of the CCR in the slag field, the station
4 promoted drainage of the liquid water with the
5 intent to remove the water from the slag field
6 as efficiently as possible. The opposite of
7 holding an accumulation of liquid.

8 Mr. Dehlin will also show that at some
9 point in the early 1970s the station separated
10 the grassy field area from its CCR management
11 and limited the CRR management to the eastern
12 two-thirds of the area south of the station,
13 which is now where the west and east ponds are
14 located.

15 After the station separated the grassy
16 field from the eastern two-thirds of the area,
17 the grassy field did not receive CCR but was
18 graded and seeded, hence its name.

19 It's important to note that the Board
20 will hear that the term "old pond" is not in any
21 Illinois EPA permitting records for the Waukegan
22 Station. In fact, the Agency created that term.

23 It is also important to note that the
24 subjects -- excuse me. It is also important to

1 note the subjects that are not a part of
2 consideration of whether the grassy field is a
3 CRR surface impoundment.

4 How the CCR liquid is sent to an area
5 is not the part of the definition of the CCR
6 surface impoundment. Additionally, the
7 condition of the groundwater around the area or
8 whether there is contamination present is not
9 relevant to consideration of whether it's a CCR
10 surface impoundment.

11 Fundamentally, the grassy field is an
12 area of CCR fill from historic operations at the
13 station and does not fall within the definition
14 of CCR surface impoundment.

15 Now, just because it is not a CCR
16 surface impoundment does not mean that nothing
17 will be done with it. Right now, there is a
18 USEPA proposed regulation that addresses areas
19 just like the grassy field. The USEPA calls the
20 areas CCR management units or CCRMUs. And there
21 is no doubt that this grassy field falls within
22 that definition.

23 In fact, USEPA used the Waukegan
24 Station as one of its main examples of the

1 presence of CCRMUs in the United States. The
2 USEPA has set a deadline to finalize the rule by
3 April 2024 and unlike other proposed
4 regulations, there is little doubt that this
5 rule will be finalized.

6 The deadline was established in part on
7 a -- based upon a Federal consent decree. When
8 USEPA finalizes the CCRMU rule and if the Board
9 finds that the grassy field is somehow a CCR
10 surface impoundment, then, as will be explained
11 today, Midwest General will be in a legal
12 quagmire, attempting to comply with two distinct
13 and potentially inconsistent rules.

14 Even if in the unlikely event the
15 Federal CCRMU -- excuse me.

16 Even if in the unlikely event the
17 Federal CCRMU rule is not finalized, Illinois
18 EPA has other programs to conduct corrective
19 actions in areas that have historic industrial
20 uses like the grassy field.

21 One of the most effective is the
22 Illinois Site Remediation Program; otherwise
23 known as the SRP program.

24 Midwest Generation will present Doug

1 Dorgan, a professional geologist with Weaver
2 Consultants, who has decades of experience
3 working with Illinois EPA SRP program to conduct
4 corrective actions to remove and eliminate
5 potential risks posed by environmental
6 conditions at industrial properties.

7 Mr. Dorgan just recently testified as
8 an expert in front of the Board in another
9 matter, Sierra Club versus Midwest Generation,
10 PCB13-15. For that matter, which you will hear
11 about today, Mr. Dorgan analyzed the groundwater
12 conditions at the Waukegan Station and found
13 that the groundwater posed little to no risk to
14 human health or the surrounding environment.

15 Even in the absence of the off-site
16 risks, Mr. Dorgan recommended that Midwest
17 Generation install an engineered cap over the
18 grassy field to eliminate infiltration from
19 precipitation.

20 He will testify that an engineered cap
21 is an accepted and effective tool to manage
22 areas such as the grassy field and practically
23 eliminates the risks to human health and the
24 environment.

1 You will also hear Mr. Dorgan state
2 that while he recommends Midwest Generation
3 install an engineered cap, he does not recommend
4 Midwest Gen do it alone. Instead, he recommends
5 that Midwest Generation get Illinois EPA's
6 agreement before taking any action.

7 You will also hear from Ms. Sharene
8 Shealey, Midwest Generation's Environmental
9 director that Midwest Generation has approached
10 Illinois EPA multiple times to address the
11 grassy field and Midwest Generation's approaches
12 have been declined.

13 There is a path to manage the grassy
14 field that is technically feasible, economically
15 reasonable, and consistent with its proper
16 classification. But that path is not by
17 shoehorning the grassy field into a CCE surface
18 impoundment definition.

19 Instead, we ask that the Board grant
20 Midwest Generation's proposed adjusted standard
21 and find that the grass city field is not a CCR
22 surface impoundment as that term is defined in
23 the Act.

24 Continue conducting the groundwater

1 monitoring that is being conducted and has been
2 conducted for over a decade. And in the event
3 that the Federal proposed rule for CCRMUs are
4 not passed by April 2025 or 12 months after the
5 Board's final order in the Sierra Club matter,
6 coordinate with Illinois EPA to discuss
7 installing an engineered cap over the grassy
8 field or taking other appropriate actions as
9 deemed necessary, taking into consideration the
10 status of the Federal CCR management rule, as
11 well as the Board's own rule in the subdocket
12 PCB20-19(a). Thank you.

13 HEARING OFFICER HALLORAN: Thank you,
14 Ms. Gale. Before Mr. Gunnarson starts, I should
15 have said this earlier but there has been some
16 interest in as far as recording this and it's my
17 understanding the City is recording now and
18 that's fine under our Rules 101.606 as long as
19 it doesn't interfere with the hearing.

20 However, a witness cannot be compelled
21 to if in fact the recording is on and that not
22 only goes for the City's recording, anybody in
23 the audience, they got to turn their recording
24 devices, phones off, photographs, while the

1 witness testifies if he or she chooses not to be
2 recorded.

3 So with that said, thank you.

4 Mr. Gunnarson.

5 MR. GUNNARSON: Thank you, Mr. Hearing
6 Officer. As noted earlier, Mr. Hearing Officer,
7 Counsel, my name is Charles Gunnarson, with my
8 co-counsel Rebecca Strauss. We are here on
9 behalf of Illinois Environmental Protection
10 Agency and this adjusted standard proceeding
11 today.

12 Pursuant to the Illinois Pollution
13 Control Board's rules, the Illinois EPA must
14 provide the Board with its recommendation on the
15 requested relief of any adjusted standard
16 petition to the Board for considering or when
17 rendering its decision.

18 The Illinois EPA has recommended in
19 this matter that the relief requested by
20 petitioners be denied. Basically that the
21 requirements of the Part 845 with the Board's
22 rules not be applied to the area referenced as
23 the grassy field at the Waukegan Station site.

24 Technical staff from the Illinois EPA

1 is available for questioning today regarding the
2 Agency's recommendation on this matter. Thank
3 you.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mr. Gunnarson. Ms. Gale, first witness?

6 MS. GALE: Yes. We call
7 Mr. Christopher Lux.

8 HEARING OFFICER HALLORAN: And,
9 Mr. Lux? You are okay with the recording?

10 MR. LUX: I would rather not. I am not
11 okay with it.

12 HEARING OFFICER HALLORAN: Okay. All
13 right. Let's pause here for a minute. I am
14 going to have to ask the City to turn off
15 their -- and I would ask the people in the
16 audience to turn off their recording devices, if
17 they are on.

18 Thank you. All right. If you can
19 raise your right hand and Paula will swear you
20 in, please.

21 (Witness sworn.)

22 HEARING OFFICER HALLORAN: Thank you.
23 You may have a seat.

24

1 CHRISTOPHER LUX,
2 witness herein, called by Midwest Generation,
3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ESSIG:

7 Q. Good morning. Could you please state
8 your name for the record?

9 A. My name is Christopher Lux.

10 Q. Mr. Lux, if you could open the binder
11 in front of you to Exhibit 1 of the Midwest
12 Generation's petition entitled Affidavit of
13 Christopher Lux, dated May 10, 2021. Thank you.

14 Do you recognize this document?

15 A. I do.

16 Q. Is this document an accurate copy of
17 the affidavit you signed on May 10, 2021?

18 A. It appears to be.

19 Q. But it's been two years, right? So
20 there may be some updates and changes?

21 A. That is correct.

22 Q. So what is your current place of
23 employment?

24 A. Midwest Generation Waukegan Station.

1 Q. And where is the Waukegan Station
2 located?

3 A. 401 East Greenwood Avenue, Waukegan
4 Avenue. Right here on the lakefront.

5 Q. And how long have you worked at
6 Waukegan Station?

7 A. Approximately 32 years.

8 Q. And what position do you currently hold
9 at the station?

10 A. I am currently the Operations and
11 Maintenance Manager at Waukegan Station.

12 Q. What are your duties as Operations and
13 Maintenance Manager at the station?

14 A. Well, I have overall responsibility to
15 my plant manager, but I have overall site
16 responsibility of Waukegan Station both for the
17 remaining operations of the power-generating
18 units there as well as the maintenance of the
19 site and those units.

20 Q. Do your duties as Operations and
21 Maintenance Manager include an understanding of
22 past as well as current operations of the CCR
23 surface impoundments at the station?

24 A. They do.

1 Q. For about how far back?

2 A. I have been involved with the CCR
3 impoundments almost 30 years.

4 Q. Sir, you don't need to have the
5 microphone in front of you by the way if it's
6 easier.

7 So what is the nature of Waukegan
8 Station's operations?

9 A. Well, currently, we are a
10 power-generating station. We have jet-driven
11 turbines and generators that generate power.

12 Q. And approximately how old is the
13 station overall?

14 A. A hundred years old.

15 Q. And how would you describe the area
16 around the station?

17 A. It's mostly an industrial area. I
18 mean, there has been a lot of changes over the
19 time; but, generally speaking, it's an
20 industrial area.

21 Q. About how long has it been of this
22 character, industrial?

23 A. Since the beginning, 1920s.

24 Q. What entity currently operates the

1 Waukegan Station?

2 A. I'm not sure I know what you mean.

3 Q. So in this matter, you know, Midwest
4 Generation is if anyone wanted to know if that
5 is the current operator?

6 A. Yes. That's correct. Midwest
7 Generation is the operator of the station.

8 Q. When did Midwest Generation begin
9 operating the station?

10 A. It was around late 1999, early 2000.

11 Q. And what kind of fuel did the station
12 use to generate electricity when it was
13 originally built?

14 A. Generally coal was the fuel.

15 Q. And does the station still use coal to
16 generate electricity?

17 A. No. We no longer use coal.

18 Q. And when did they stop using coal?

19 A. We retired the last two coal units in I
20 believe it was June of 2021 -- 2022, excuse me.

21 Q. Okay. How does the station generate
22 power now?

23 A. We have what's called peaking units
24 that are run with No. 1 diesel fuel.

1 Q. Are you aware of any future plans with
2 respect to the generation of electricity at the
3 station?

4 A. I know there are outlooks for
5 benefit -- or for battery storage on the site
6 that would also provide generating power to the
7 grid as necessary.

8 Q. When the station was operating as a
9 coal-fired electric generation station, it
10 created ash, correct?

11 A. Correct.

12 Q. And now that's also called coal
13 combustion residuals or CCR?

14 A. That's correct.

15 Q. What types of coal ash were generated
16 by the station?

17 A. So I am familiar with two types of coal
18 ash. You have fly ash which is your lighter
19 particles that generally burn off and are
20 collected by our precipitators.

21 And then you have what I call bottom
22 ash which is larger materials that don't burn
23 off. They'll end up in the bottom of the boiler
24 in the slag tanks.

1 Q. And how was the bottom ash collected
2 and handled?

3 A. So once it's collected in the slag
4 tanks, it was sluiced out in piping to the said
5 ash ponds.

6 Q. If we could pull up this -- Or what are
7 those -- What do you call those ponds where they
8 were sluiced the bottom ash?

9 A. The common name is the east and west
10 ash ponds.

11 Q. Okay. If you could turn to the map
12 that's the next page after that affidavit there,
13 we are going to try to pull it up on the screen
14 so everyone can see. For the record, this is
15 Figure 4 of the Weaver expert report that was
16 Exhibit 37 of Midwest Generation's petition.
17 Mr. Doug Dorgan will be discussing this map
18 further later in the hearing.

19 HEARING OFFICER HALLORAN: Thank you.

20 BY MS. ESSIG:

21 Q. Mr. Lux, what does this map show?

22 A. Generally the property of Waukegan
23 Station.

24 Q. Of any particular time frame?

1 A. It looks like it's rather relatively
2 recent. I would say within the last 5 to
3 10 years.

4 Q. You mentioned the east and the west
5 ponds. Where are these ponds located on this
6 map?

7 A. They are the purple-colored areas near
8 the bottom of the map. One is the east and one
9 is the west.

10 Q. What was the function and operation of
11 these ponds with respect to the station's CCR?

12 A. So the bottom ash would get collected
13 in those ponds and stored there, eventually
14 decanted, and we had a vendor who would come in
15 and remove the bottom ash for beneficial reuse.

16 Q. What was -- What happened to the water
17 that -- after it went into the ponds?

18 A. So the water was recycled and reused
19 for continued sluicing if more bottom ash was
20 needed.

21 Q. So just to clarify, once the -- after
22 the CCR was in the ponds, what happened to it?
23 Did it stay there indefinitely?

24 A. No. Generally, it would be about a

1 year and then the pond would be full enough
2 where we would take one of the two ponds out of
3 service, drain it, decant it, while the other
4 one was in operation; and that's the time we
5 would hire a vendor to come in and dredge and/or
6 clean out the out-of-service pond.

7 Q. What happened to the CCR after it was
8 taken from the station?

9 A. As I know it, the vendor was using it
10 for beneficial reuse.

11 Q. Were the east pond and west pond
12 operated under any permits?

13 A. Yes.

14 Q. What kinds of permits?

15 A. I believe our MPD -- MPDES permit.

16 Q. And are the east pond and west pond
17 currently operating in any manner?

18 A. The west pond is not. The east pond is
19 still operating under the MPDES permit.

20 Q. And what's it being used for?

21 A. Wastewater basically.

22 Q. And just to clarify, what do you mean
23 by wastewater?

24 A. Stormwater runoff in the area.

1 Q. And is any CCR sluiced to those ponds?

2 A. No.

3 Q. Does the station have any CCR surface
4 impoundments other than the east pond and the
5 west pond?

6 A. Not to my knowledge.

7 Q. Looking at the map again, could you
8 describe the area of the station located
9 immediately west of the west pond?

10 A. It's a slightly sloped grassy area.

11 Q. And approximately what size is the
12 area?

13 A. Approximately ten acres.

14 Q. I am going to ask you to turn to Tab 17
15 in the binder now. You'll see it has two
16 photographs which were attached to Midwest
17 Generation's petition as Exhibit 17. Do you
18 recognize these photographs?

19 A. I do.

20 Q. And are you familiar with what's
21 depicted in the photographs?

22 A. I am.

23 Q. And who took the photographs?

24 A. I did.

1 Q. About when did you take the
2 photographs?

3 A. I think it was about five years ago,
4 four years ago, somewhere in there. I don't
5 remember exactly.

6 Q. And to your knowledge, did the
7 photographs as represented here fairly and
8 accurately show what is depicted in the
9 photographs at the time you took them?

10 A. Yes.

11 Q. And what did the photographs show?

12 A. Well, this particular photograph beyond
13 the pond in the foreground is the grassy area.

14 Q. If you could advance to the next photo.
15 And what does this photograph show?

16 A. This is a closer-up view of the grassy
17 area looking to the south.

18 Q. So does Midwest Generation currently
19 use the grassy field in any way?

20 A. Not really. There is a path around it
21 for security to view the fence line perimeter
22 for security purposes but other than that, it's
23 not really used for anything.

24 Q. And has Midwest Generation used the

1 grassy field -- What has Midwest Generation used
2 the grassy field for in the past?

3 A. I recall we used it as a helicopter
4 landing area at one time for equipment
5 preparation for installation purposes.

6 Q. Has Midwest Generation ever directed
7 CCR or liquid to the grassy field including as a
8 part of any sluicing activities?

9 A. Not to my knowledge, no.

10 Q. Has Midwest Generation ever used the
11 grassy field to accumulate water or other types
12 of liquid?

13 A. No.

14 Q. Did Midwest Generation design the
15 grassy field to receive or accumulate CCR or
16 water or other liquid?

17 A. No.

18 Q. Is the grassy field a part of the
19 station's ash management system in any way?

20 A. No.

21 Q. Since you began working at the station,
22 has CCR been sluiced to the grassy field?

23 A. No.

24 Q. And since you have been working at the

1 station, what has the area west of the west pond
2 looked like?

3 A. As the pictures depict, a grassy area.

4 MS. ESSIG: Thank you. I have nothing
5 further.

6 HEARING OFFICER HALLORAN: Thank you,
7 Ms. Essig. Mr. Gunnarson, do you have any
8 cross?

9 MR. GUNNARSON: Yes. Just a quick one
10 or two.

11 CROSS-EXAMINATION

12 BY MR. GUNNARSON:

13 Q. Mr. Lux, you said you worked at the
14 station approximately 32 years; is that correct?

15 A. That's correct.

16 Q. Okay. So approximately 1992, sir?

17 A. That's correct.

18 Q. That's the year I started my job, too,
19 so it rang a bell with me. Just to be clear,
20 you have never seen the grassy field in any
21 state other than what's depicted in these
22 photos; is that correct?

23 A. That's correct.

24 Q. Okay. And when you started the station

1 in 1992, do you recollect that the grassy field
2 area had the same general appearance as it does
3 in the photos?

4 A. Yes, it did.

5 HEARING OFFICER HALLORAN: Thank you,
6 Mr. Gunnarson. Ms. Essig, do you have any
7 redirect?

8 MS. ESSIG: No nothing further.

9 HEARING OFFICER HALLORAN: Thank you,
10 Mr. Lux. You may step aside.

11 THE WITNESS: Thank you.

12 HEARING OFFICER HALLORAN: Thank you.
13 You may call your second witness.

14 MS. GALE: Yes. We call Ms. Sharene
15 Shealey.

16 HEARING OFFICER HALLORAN: Good
17 morning, Ms. Shealey. I am not sure if you were
18 here earlier about the recording.

19 MS. SHEALEY: No, please.

20 HEARING OFFICER HALLORAN: You do not
21 want the recording? We will keep the recording
22 off and everybody out there in the audience, no
23 recording, please. Thank you. If you can raise
24 your right hand and Paula will swear you in.

1 (Witness sworn.)

2 HEARING OFFICER HALLORAN: You may
3 proceed.

4 MS. GALE: Oh, thank you.

5 SHARENE SHEALEY,
6 witness herein, called by Midwest Generation,
7 having been first duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MS. GALE:

11 Q. Good morning.

12 A. Good morning.

13 Q. Can you please give us your full name?

14 A. Sharene Shealey, S-H-A-R-E-N-E,
15 S-H-E-A-L-E-Y.

16 Q. And, Ms. Shealey, what is your title?

17 A. Director, Environmental.

18 Q. For whom? I'm sorry.

19 A. Or Environmental Director.

20 Q. I'm sorry. For whom?

21 A. Midwest Generation, LLC.

22 Q. And how long have you been with Midwest
23 Generation, LLC, approximately?

24 A. I think it's nine years. Yes. About

1 nine years.

2 Q. And as the Environmental Director, what
3 do you do?

4 A. I support operations -- the plant
5 operations -- the Midwest Generation plant
6 operations for environmental compliance,
7 permitting, regulatory interpretations, and any
8 other environmental issues they may have.

9 Q. And you said environmental compliance.
10 Does that include CCR surface impoundments?

11 A. Absolutely.

12 Q. And so what -- Related to CCR surface
13 impoundments, what are your environmental
14 compliance responsibilities?

15 A. So as a team, groundwater monitoring,
16 certifications for -- certifications necessary,
17 permit application, just continued compliance
18 activities ensuring inspections are done.

19 Q. And that's for following the current
20 rules, right?

21 A. Correct.

22 Q. So what other responsibilities re CCR
23 surface impoundment or CCR for that matter in
24 addition to the current rules do you do?

1 A. I look at -- I monitor future
2 regulations as they might apply to any of the
3 Midwest Gen plants.

4 Q. So pending regulations that are issued
5 by regulatory agencies?

6 A. Yes.

7 HEARING OFFICER HALLORAN: Is that mic
8 on?

9 THE WITNESS: It doesn't feel like it
10 is.

11 MS. GALE: We are still not being
12 recorded, right?

13 HEARING OFFICER HALLORAN: No. We are
14 not recording. That's my understanding. Sorry.

15 BY MS. GALE:

16 Q. Okay. And, again, as part of your
17 environmental compliance responsibilities, does
18 that include familiarity with this petition?

19 A. Absolutely.

20 Q. And for the record, just please
21 describe your educational background, please?

22 A. I have a BS in chemical engineering
23 from Howard University and an MS in chemical
24 engineering from Carnegie Mellon University.

1 Q. Ms. Shealey, are you familiar with the
2 Waukegan Generating Station?

3 A. Yes, I am.

4 Q. Have you visited the station?

5 A. Yes.

6 Q. And what are its current operations?

7 A. They have oil fired peaking units that
8 generate electricity.

9 Q. And historically what did the station
10 do?

11 A. Generate electricity with coal fired
12 units.

13 Q. And approximately when did the station
14 first start operating?

15 A. In the 1920s. 1920 or 1923, I think.

16 Q. And you said that historically it
17 burned coal. When did it cease burning coal?

18 A. In the second or third quarter of 2022.

19 Q. And what are the future plans for the
20 Waukegan Station?

21 A. Battery storage projects or a battery
22 storage project.

23 Q. And what is a battery storage project
24 then generally speaking?

1 A. Batteries are ways to help promote less
2 fuel burning to generate electricity. They
3 store electricity off the grid when there is
4 excess electricity to use for times when there
5 is not. They are a good compliment for
6 renewables.

7 Q. And how would you describe the area
8 around the Waukegan Station?

9 A. Industrial.

10 Q. And, generally speaking, so we will
11 sort of give an example, what, to your
12 recollection, is to the south of the station?

13 A. South. Give me a second.

14 Q. Do you need a map?

15 A. No. I have it. It's in my head.
16 Wastewater treatment plant. A municipal -- I
17 think it's the municipal wastewater treatment
18 plant.

19 Q. And to your recollection, what is to
20 the west of the station?

21 A. A common switchover (phonetic) but also
22 a former tannery site, a former general boiler
23 site, and that's it.

24 Q. And to the north of the station, to

1 your recollection, what's up there?

2 A. A Superfund site called Johns-Manville
3 Asbestos Superfund Site.

4 Q. I want to put the same map that we saw
5 with Mr. Lux on the screen, and it's in your
6 binder as well as 1A; but I can look on the
7 screen and we saw Mr. Lux describe -- Well, I
8 will ask you this, do you recognize this?

9 A. Absolutely. Yes.

10 Q. Yeah. So what do you see on the south
11 end? That's in color.

12 A. The two ash ponds.

13 Q. And we call them the east ash pond and
14 the west ash pond?

15 A. Yes.

16 Q. And what specific regulations related
17 to CRR are these ash ponds regulated under
18 currently federally?

19 A. So it's Part 257 of the Federal CCR
20 rule that they are regulated under.

21 Q. And in Illinois, do we have similar
22 rules?

23 A. Yep. Part 845 Illinois CRR rule.

24 Q. And under the Illinois CRR rule, are

1 there permit requirements?

2 A. Yes.

3 Q. What kind?

4 A. Operating and construction permits and
5 corrective action which is a basically type of
6 construction this permit.

7 Q. And has Midwest Generation submitted an
8 operating permit application for the east and
9 west pond?

10 A. Yes.

11 Q. Do you recall approximately when it was
12 submitted?

13 A. I absolutely do. October 31, 2021 or
14 plus or minus two days. I think that was a
15 Sunday.

16 Q. And has Illinois EPA issued an
17 operating permit for either the east or west
18 pond?

19 A. No.

20 Q. Similarly, has Midwest Gen submitted a
21 construction permit application for the east and
22 west ponds?

23 A. Yes, we have.

24 Q. And what was the construction

1 application for?

2 A. Closure. Actually, it was for
3 closure -- It was for closure of one pond and
4 reuse of the other as a low volume space pond,
5 non-CCR pond.

6 Q. Right. Do you recall when the
7 construction permit application was submitted to
8 Illinois EPA?

9 A. I absolutely do.

10 Q. What date was that?

11 A. February 1, 2022 plus or minus two
12 days. I think that was a Sunday, too.

13 Q. And has Illinois EPA issued a
14 construction permit for the east pond?

15 A. No.

16 Q. Same question about the west pond?

17 A. No.

18 Q. As part of your role as Midwest
19 Generation's environmental director, well, what
20 websites on Illinois EPA's websites related to
21 CRR are you aware of?

22 A. The Agency has -- Well, on the Agency's
23 website there are several CCR pages. The ones I
24 frequent most are public notices and list the

1 permit applications or other company -- and
2 there is a list of websites on that permit --
3 companies' websites for permit applications I
4 think on that same...

5 Q. Right. So the one, the list of permit
6 applications that has what on it?

7 A. The applications that the Agency has
8 received or at least notice of it.

9 Q. Right. Have you re- -- excuse me.
10 Have you reviewed the list of permit
11 applications on the Agency's website recently?

12 A. Yes.

13 Q. And what does Illinois EPA's website
14 about permit applications show as to the status
15 of any CCR surface impoundment operating
16 application they received.

17 MR. GUNNARSON: Mr. Hearing Officer, I
18 am going to object I don't understand the
19 relevancy of this question as it relates to the
20 Waukegan station and the matter we are here on
21 today.

22 HEARING OFFICER HALLORAN: You know, I
23 will allow it. She may answer if she is able.
24 Overruled.

1 THE WITNESS: I think you asked it. It
2 shows that the permit wasn't issued or even
3 drafted.

4 BY MS. GALE:

5 Q. And that was for operating permit
6 applications?

7 A. Yes.

8 Q. So same question for construction
9 permit applications. What have you seen?

10 A. No drafts issued, no permits issued in
11 the state.

12 Q. Ms. Shealey, I want to turn in your
13 binder to Exhibit 28. I'm sorry. That's wrong.
14 That's right. 28. And we can put it on the
15 screen.

16 Do you recognize this?

17 A. Yes.

18 Q. What is it?

19 A. The invoice we received for the initial
20 impoundment fees that were required under the
21 Act.

22 Q. And who sent the invoice?

23 A. The Agency.

24 Q. And what date was it sent?

1 A. It is dated December 16, 2019.

2 Q. And I think you said the invoice you
3 received for CCR surface impoundments, is that
4 what you said?

5 A. Correct.

6 Q. So on this -- and this was for Waukegan
7 Station, right?

8 A. Yes.

9 Q. So on this invoice, what -- what is the
10 Agency invoicing?

11 A. They invoiced us for the east pond, the
12 west pond, and something they described as the
13 old pond.

14 Q. Well, is this invoice accurate?

15 A. Not from my -- No.

16 Q. Why?

17 A. There is no such thing as the old pond.
18 I just don't --

19 HEARING OFFICER HALLORAN: I'm sorry,
20 Ms. Shealey. Could you speak up? I am having a
21 hard time. You are trailing off at the end.

22 Thank you.

23 THE WITNESS: There is no such thing as
24 an old pond.

1 MS. GALE: Can we go off the record for
2 a second?

3 (Whereupon, a discussion was had
4 off the record.)

5 HEARING OFFICER HALLORAN: All right.
6 We are back on the record, Paula.

7 BY MS. GALE:

8 Q. Before you received this invoice from
9 the Agency, did you -- did the Agency inquire
10 with you about what CCR surface impoundments
11 were at Waukegan?

12 A. No.

13 Q. When you received this invoice, what
14 did you think of the term "old pond"?

15 A. I was probably confused I would guess
16 this is a long time ago, but I definitely was
17 not familiar with an old pond at the Waukegan
18 Station.

19 Q. Had you heard that term used by the
20 Waukegan Station before?

21 A. No. And it is not used today.

22 Q. And to your knowledge, do any documents
23 of the Station contain that term?

24 A. Not to my knowledge.

1 Q. And when you received this invoice, did
2 you know what the Agency was talking about?

3 A. No, I did not.

4 Q. I want to go back to the Map 1A,
5 looking at the area west of the west pond, what
6 is that area called?

7 A. That's the grassy area and I'm sorry.
8 Does it say FS area on the map?

9 Q. Yes. It says -- We call it the grassy
10 area here and Mr. Dorgan explained it's also
11 called the FS area. And is the grassy field
12 used by the Station?

13 A. No.

14 Q. And as far as you know, what does
15 Midwest Generation use the grassy field for?

16 A. Nothing.

17 Q. Has Midwest Generation ever directed
18 CRR liquid to the grassy field?

19 A. No.

20 Q. Are any sluicing activity directed to
21 the grassy field?

22 A. None.

23 Q. Has Midwest Generation ever used the
24 grassy field to accumulate water or other

1 liquid?

2 A. No.

3 Q. Did Midwest Generation design the
4 grassy field to receive an accumulation of CCR
5 or liquid?

6 A. No.

7 Q. Is the grassy field part of the
8 Station's ash management system in any way?

9 A. No. It is not.

10 Q. So we talked earlier about the
11 operating permit applications for the east and
12 west pond. Generally speaking, are you familiar
13 with some of the requirements for the operating
14 permit applications?

15 A. Yes.

16 Q. Off the top of your head, what type of
17 information is required?

18 A. History of construction, location.
19 There are five location restrictions that have
20 to be certified. A fugitive dust plan. And
21 that is off the top -- Oh,
22 groundwater-monitoring network. That is off the
23 top of my head list.

24 Q. What about the CRR that will be placed

1 in an impoundment? What information is about
2 that?

3 A. You have to provide an analysis of CCR
4 that was to -- that is to be placed, I think is
5 the language, in the surface impoundment.

6 Q. Similarly what about the waste streams
7 into the impoundment?

8 A. And all waste streams, yeah. So those
9 would be liquid streams in case, yes.

10 Q. And those waste streams what are they
11 also called? Are they also called inflows?

12 A. Yes.

13 Q. So what do you have to do about
14 inflows?

15 A. You have to do an inflow design flood
16 plan.

17 Q. Now for the grassy field, can analysis
18 of CCR that will be placed into the grassy field
19 be conducted?

20 A. No.

21 Q. What about an analysis of the chemical
22 constituents of all waste streams going into the
23 CCR surface impoundment?

24 A. There are no waste streams going into

1 the grassy field. We do not use it.

2 Q. How about a fugitive dust plan?

3 What -- Is that -- Is that possible?

4 A. I guess everything is possible, but it
5 would be of little impact. It's a grassy field
6 so it has a grass cover which would suppress any
7 fugitive dust potential.

8 Q. And how about the inflow design plan
9 for the inflow for CRR surface impoundment?

10 A. That is -- It just doesn't make sense
11 because it's not a CCR surface impoundment.

12 It's a generally flat area of land.

13 Q. Well, in any event, if it were found
14 that the CCR surface impoundment -- Excuse me.
15 Strike that.

16 In any event, if the grassy field was
17 found to be CCR surface impoundment,
18 approximately how much would it cost to prepare
19 and submit an operating permit application?

20 A. Probably at least a hundred thousand
21 dollars, on the order of.

22 Q. And are you familiar with some of the
23 requirements for a construction permit
24 application?

1 A. Yes, I am.

2 Q. And generally speaking, off the top of
3 your head what types of information is required?

4 A. Similar to operating permit
5 applications. In addition, you have to include
6 your design drawings, your design plans, and
7 certifications around the design, closure plan,
8 so on and so forth.

9 Q. Does information on its construction,
10 is that required?

11 A. Yes, it is.

12 Q. And what type of information, if you
13 recall, that is?

14 A. Original design documents I believe is
15 the thing that comes to mind. That's the thing
16 that comes to mind, but the original design.

17 Q. Right. On those original design
18 documents are dates?

19 A. Yes.

20 Q. And what -- In those original design
21 documents, what sort of things are described in
22 there? Like, the materials it's made of?

23 A. Yes. Depths in construction and
24 dimensions in this plan, too. Length and width

1 and depths so a lot of dimensions, dimensions
2 and materials of construction and so on.

3 Q. And for the grassy field, is that
4 information available?

5 A. No, it is not. It was not constructed.

6 Q. And but in any case, if it were found
7 that the grassy field was a CRR surface
8 impoundment, approximately how much would it
9 cost to prepare and submit a construction permit
10 application?

11 A. I am not certain, but I think it's
12 close to double so more like \$200,000 so that's
13 300, right?

14 Q. Ms. Shealey, earlier you stated that as
15 part of your role as environmental director, you
16 monitor updates on pending and -- regulations.
17 Do you recall that testimony?

18 A. Yes.

19 Q. And that includes for CCR regulations,
20 right?

21 A. Yes, it does.

22 Q. And as we discussed there is a Federal
23 rule for the CCR surface impoundments, right?

24 A. Correct.

1 Q. Are you aware of any proposed Federal
2 rule for other areas of CCR?

3 A. Yes.

4 Q. What is that rule for?

5 MR. GUNNARSON: Mr. Halloran, I am
6 going to object to this question again. The
7 line of question is going beyond what the
8 purpose of this hearing is for to determine
9 applicability of Part 845.

10 THE COURT: Ms. Gale?

11 MS. GALE: Mr. Hearing Officer, not
12 only is it to determine applicability of Part
13 845 of Midwest Generation, it also is to
14 demonstrate how it will be -- how it is not
15 causing harm to the environment, so including a
16 description of the pending Federal rule and what
17 requirements -- what will be in the Federal rule
18 are relevant to this proceeding.

19 Additionally, it's also relevant -- we
20 think it's relevant to the Board that there is a
21 real possibility of conflict with a Federal rule
22 for the State rule.

23 HEARING OFFICER HALLORAN: Yeah. I am
24 kind of on board with you, Ms. Gale.

1 Mr. Gunnarson, any...

2 MR. GUNNARSON: Yes. Basically we are
3 talking about a rule that doesn't even exist
4 yet; and so, to me, to bring up this issue right
5 now, it doesn't even exist at this point. If it
6 at some point in the future it becomes an issue,
7 that's fine.

8 But for the purpose of this case we are
9 talking about Part 845 which we know is
10 applicable right now and that's the discussion
11 today. We are talking about a rule that we
12 don't even know if it's going to -- what form
13 it's going to be, if it's even going to be
14 promulgated. We don't know.

15 HEARING OFFICER HALLORAN: It is kind
16 of -- I will let you ask a couple questions.
17 You have already asked a couple so a couple
18 more.

19 MS. GALE: I'm sorry. May I respond,
20 Mr. Hearing Officer?

21 HEARING OFFICER HALLORAN: I'm sorry?

22 MS. GALE: May I respond, to Mr. --

23 HEARING OFFICER HALLORAN: Sure.

24 MS. GALE: Thank you. It does exist.

1 It's proposed. So it's not like it's that
2 speculative.

3 HEARING OFFICER HALLORAN: So it does
4 exist, Mr. Gunnarson.

5 MR. GUNNARSON: Well, it exists as a
6 proposed rule. It has no legal effect, right?
7 So that's my point.

8 HEARING OFFICER HALLORAN: Overruled.
9 You may continue. Thank you.

10 MS. GALE: Thank you.

11 THE WITNESS: I lost the question.
12 Could you please repeat it?

13 BY MS. GALE:

14 Q. Yeah. I need to revisit, too. I think
15 you are aware of the proposed Federal rule for
16 the areas of CCR?

17 A. Yes, I am.

18 Q. And what is that rule for?

19 A. It is for what they call Legacy CCR
20 Impoundment and they created -- the Federal EPA
21 created a new category called CCR Management
22 Units.

23 Q. And when the Agency proposes a rule,
24 where is it proposed?

1 A. In the Federal register and it has an
2 associated docket at Illinois.gov.

3 Q. If you can turn to Exhibit 39 in your
4 binder. We can put it on the screen. What is
5 Exhibit 39?

6 A. It is the proposed rule. Hazardous and
7 Solid Waste Management System Disposal of Coal
8 Combustion Residuals from Electric Utilities,
9 Legacy CCR Surface Impoundments.

10 Q. And what is the date?

11 A. It was published on May 18, 2023.

12 Q. And have you had a chance to review the
13 rule?

14 A. Yes, I have.

15 Q. Let's turn to Page 32034. If you can
16 put that on the screen, and we are going to -- I
17 want you to look at the left-hand column about
18 halfway down. Do you see a definition for CCR
19 Management Unit?

20 A. I do.

21 Q. What is the proposed definition of a
22 CCR Management Unit?

23 A. CCR Management Unit means any area of
24 land on which any non-containerized accumulation

1 of CCR is received, placed, or otherwise managed
2 at any time that is not a CCR unit. This
3 includes inactive CCR landfills and CCR units
4 that closed prior to October 17, 2015.

5 Q. And below that definition, do you see
6 the definition of CCR unit?

7 A. Yes.

8 Q. And I don't need you to read the entire
9 definition, but what is -- in that definition
10 the first sentence, what is considered a CCR
11 unit?

12 A. A land -- a CCR landfill surface
13 impoundment.

14 Q. So based on these definitions, what's
15 your understanding of USEPA's distinction in the
16 areas?

17 A. It's not here. Sorry. I am not sure
18 how to answer your question correctly, but CCR
19 surface impoundments have an element of design
20 that CCR Management Units do not and that is
21 from the use of the word non-containerized.

22 Q. So they treat them differently?

23 A. Yes, they do.

24 Q. All right. I want to go back to

1 Page 32015. The left-hand column, do you see
2 the Heading C?

3 A. Yes.

4 Q. What is that heading?

5 A. Examples of CCRMU With Identified SSIs.

6 Q. Okay. And if you turn to the second --
7 excuse me. Sorry. Right under there, second
8 sentence where it says, Through ASD reviews...

9 A. Uh-huh.

10 Q. So it's about ten lines down.

11 A. Uh-huh.

12 Q. What does EPA say about through ASD
13 reviews? What did they identify?

14 A. EPA identified several areas at active
15 facilities where CCR was managed outside of a
16 regulated unit and was identified as a source of
17 one or more Appendix 3 SSIs.

18 Q. So next sentence, what are they calling
19 these areas?

20 A. Oh, I'm sorry. As such, any
21 groundwater contamination from these potential
22 CCRMU have not been investigated under existing
23 Federal CCR regulations.

24 Q. Thank you. Let's turn to the next

1 page, 32016. And do you see on the right-hand
2 column there is a heading. What does that
3 heading state?

4 A. Waukegan Generating Station - Illinois.

5 Q. And in the first sentence what does
6 USEPA say with the Waukegan Generating Station?

7 A. An example of CCR used as fill on site,
8 is Midwest Generation's Waukegan generating
9 station in Waukegan, Illinois. There are two
10 CCR surface impoundments named the east pond --
11 east ash pond and west ash pond which were used
12 interchangeably during the facility's
13 operational history and have a multi-unit
14 groundwater monitoring system.

15 Q. Great.

16 A. Keep going?

17 Q. Nope. And in this -- and you had a
18 chance to review this section?

19 A. Uh-huh. Yes. I'm sorry.

20 Q. And what is USEPA generally stating
21 about the Waukegan Station?

22 A. That there are two CCR surface
23 impoundments, the east pond and the west pond
24 and that there is at least one CCRMU at Waukegan

1 Station.

2 Q. When you said you are familiar with the
3 proposed rule, you mentioned a docket. Do you
4 recall that?

5 A. Yes.

6 Q. And where do you go to find that
7 document?

8 A. Regs.gov, R-E-G-S dot G-O-V, I'm pretty
9 sure.

10 Q. And what sort of information is on the
11 USEPA's docket generally speaking?

12 A. Any information that they would use to
13 develop their proposal and comments, backup
14 data, things of that nature.

15 Q. And did you review the docket?

16 A. Not in its entirety. I would guess
17 that the docket has more than a thousand
18 documents. It has hundreds of documents in it.
19 I have reviewed specific portions in detail.

20 Q. So let's flip to Exhibit 26 in your
21 binder. Are you there?

22 A. Yeah. I am there. Sorry. Yes.

23 Q. Well, what is Exhibit 26 showing?

24 A. It is the -- It's from the docket for

1 this matter for -- I'm sorry. For the Federal
2 proposed rule and this specifically is the
3 potential CCR Management Unit Universe.

4 Q. And attached -- So we see there on the
5 first page it says download file underneath.
6 There is an X, blue X.

7 A. Oh. I see. Yes. Yes. I do see that.

8 Q. So what does that indicate?

9 A. That a file was downloaded or that you
10 can download a file.

11 Q. And so -- and, well, turning the page,
12 what would be the file that could be downloaded?

13 A. It is --

14 Q. I'm sorry. Turning the page to the
15 charts that are attached.

16 A. This is the USEPA's list of potential
17 CCRMUS.

18 Q. And looking at the first page towards
19 the bottom do you see Waukegan on the first
20 page?

21 A. I do.

22 Q. What does it say about the Waukegan
23 Station?

24 A. That it has potentially two CCR

1 Management Units.

2 Q. And what are they called?

3 A. Old pond and historic field.

4 Q. And, Ms. Shealey, do you know which is
5 which?

6 A. No.

7 Q. Do you have -- Based upon your
8 experience and your understanding, do you have a
9 speculation or thought?

10 A. I do. I do.

11 Q. What's that?

12 MR. GUNNARSON: Your Honor, this calls
13 for speculation at this point. She doesn't know
14 what's on there. I mean, this is just a list
15 that USEPA put together. We don't know where
16 this information came from.

17 THE WITNESS: It tells me there.

18 HEARING OFFICER HALLORAN: I'm sorry?
19 I'm sorry, Ms. Shealey?

20 THE WITNESS: It tells me where it came
21 from.

22 HEARING OFFICER HALLORAN: I can't
23 hear. Ms. Gale, your response?

24 MS. GALE: Well, certainly we can

1 address his concerns about we don't know where
2 this information came from and I can have
3 Ms. Shealey describe it.

4 HEARING OFFICER HALLORAN: Yeah.

5 Mr. Gunnarson?

6 MR. GUNNARSON: If she can describe if
7 she has independent knowledge of it, all right.

8 HEARING OFFICER HALLORAN: All right.

9 We will see. Continue.

10 BY MS. GALE:

11 Q. Yeah. Ms. Shealey, could you please
12 look at the chart again?

13 A. Uh-huh.

14 Q. And do you see Waukegan?

15 A. Yes.

16 Q. At the bottom, and it's fifth and sixth
17 line up from the bottom.

18 A. Uh-huh.

19 Q. And nine columns over, do you see it
20 says Sources at the top?

21 A. It does.

22 Q. So looking at the Waukegan Station,
23 what's the source for the old pond?

24 A. ANPRM Comments.

1 Q. Okay. And looking at the second
2 source, what's the source for the historic fill?

3 A. Illinois EPA documents.

4 Q. So, again, based upon your
5 understanding of these comments and documents,
6 what would be your interpretation of old pond
7 and historic fill?

8 A. The historic --

9 MR. GUNNARSON: Your Honor, again, I am
10 going to object. I understand it says where is
11 this information sourced from but the question
12 is has the witness actually looked at the
13 information? I don't know what ANPRM documents
14 are. I don't know what Illinois EPA documents,
15 I don't think anybody does based on what's on
16 this piece of paper.

17 HEARING OFFICER HALLORAN: I think I
18 will overrule. I think the Board can weigh it
19 accordingly to weight. I kind of agree with
20 Mr. Gunnarson but the Board will take a look at
21 it and decide. You may proceed.

22 THE WITNESS: Old pond is likely or it
23 could be the area that is underneath the current
24 ash ponds.

1 HEARING OFFICER HALLORAN: If you could
2 take your hands away from your face, that would
3 be great. Thanks.

4 THE WITNESS: I'm sorry. The old pond
5 is the area or could be the area underneath the
6 current east and west ash ponds and the historic
7 fill is probably the grassy area or vice versa.

8 BY MS. GALE:

9 Q. So based upon Exhibit 39, which is the
10 proposed rule, and Exhibit 26, which is the
11 chart, what's your takeaway about the grassy
12 field as is defined in this rule?

13 A. It will be regulated by this rule.

14 Q. And so what would it be?

15 A. A CCR Management Unit.

16 Q. Thank you. Let's turn to Exhibit 40 in
17 here. Ms. Shealey, what is Exhibit 40 showing?

18 A. It's another document from the USEPA's
19 docket, Summary Potential Universe Comments
20 Related TO CCRMU NODA, N-O-D-A, October 23 --
21 2023.

22 Q. To your knowledge, what is a NODA?

23 A. Notice of Data Availability.

24 Q. And what is that used by USEPA for?

1 A. To make the public aware that there is
2 additional information placed into the docket.

3 Q. And I think you said what is the date
4 of this document?

5 A. October 2023. Oh. It was posted on
6 November 13, 2023.

7 Q. Sure. And, well, attached to this
8 document, what is it?

9 A. The table -- another table of potential
10 CCR Management Units and Legacy Units in a
11 different form.

12 Q. And have you had a chance to review
13 this chart?

14 A. I have.

15 Q. I want you to go to -- It's in
16 alphabetical order, so I want you to go to the
17 W's which is on Page 20.

18 A. I am here.

19 Q. Okay. Ms. Shealey, what do the
20 headings state?

21 A. It is the USEPA region, the state, the
22 plant name, whether a unit is Legacy surface
23 impoundment or CCR Management Unit, the docket
24 document, and the docket ID and commentary.

1 Q. And you see towards the bottom --

2 Actually, I take that back.

3 In the middle thereabouts are four rows
4 for Waukegan?

5 A. Correct. Yes. I do see that.

6 Q. What does USEPA identify for the
7 Waukegan Station? What type of unit? Legacy
8 surface impoundment or CCR Management Units?

9 A. Four CCR Management Units, CCRMUs.

10 Q. And have you had an opportunity to
11 delve into the information, the docket
12 documents, that they cite here?

13 A. Yes.

14 Q. And what did you find as related to the
15 grassy field?

16 A. It is one of these four identified
17 units.

18 Q. And, Ms. Shealey, when is the proposed
19 rule scheduled to be finalized?

20 A. I think -- I don't remember the exact
21 date but it's early May of 2024. USEPA signed a
22 consent decree that requires that. No longer
23 than May 2024.

24 Q. So you said USEPA signed a consent

1 decree that says they have to finalize. What do
2 you think of that?

3 A. That they would finalize this rule and
4 as anecdotally, they put it out for comment and
5 the comment period -- I think it was to 60-day
6 comment period which was a very -- I can't
7 remember the exact comment period day, but it
8 was a very short comment period because they
9 have to analyze the comments and publish and
10 rule in a short amount of time.

11 Q. And you know that because why?

12 A. I watch it. It's part of my job.

13 Q. And when -- if and when the rule is
14 finalized, what would Midwest Generation do with
15 the grassy field?

16 A. Comply.

17 Q. And what does that mean?

18 A. The rule initially requires
19 investigation. After investigation, it will
20 require closure.

21 Q. So, Ms. Shealey, if the grassy field is
22 an Illinois CCR surface impoundment and a
23 Federal CCRMU, how does that work for Midwest
24 Generation? And I'd like you to take your hands

1 away from your mouth.

2 A. It actually -- Any -- Again, I think I
3 said this earlier. Anything is possible but
4 that is extremely -- Dealing with two sets of
5 regulations for a single unit that are related
6 but not the same is a very complicated
7 compliance task and so double regulations for
8 the exact same unit would leave us at risk of
9 noncompliance.

10 Q. And by risk of noncompliance, does that
11 mean -- What do you mean by that?

12 A. For example, CCR -- We -- I don't --
13 I'm sorry. Sorry. I can't even fathom how we
14 do it in history construction for this area.
15 How we pulled -- We can't pull design documents.
16 We have none. It just doesn't fit the CCR
17 surface impoundment scheme.

18 Q. And what happens if the rules are
19 inconsistent?

20 A. We do our best to -- It depends on the
21 inconsistency, but we do our best to comply with
22 both. If not, we would have to seek regulatory
23 relief from either USEPA or Illinois EPA.

24 Q. Is that practical?

1 A. No.

2 Q. Ms. Shealey, are you familiar with the
3 Illinois Site Remediation Program?

4 A. Yes.

5 Q. Generally speaking, what do you think
6 it is?

7 A. It's for remediating contamination to a
8 certain level of standards based on what your
9 end use of that land or waterway or whatever is,
10 your end use, based on your end use.

11 Q. I believe earlier you mentioned the
12 tannery site to the west of the Midwest
13 Generation Station. Do you recall that?

14 A. Yes.

15 Q. To your knowledge, what program was the
16 tannery site in?

17 A. In the Site Remediation Program.

18 Q. And as part of that program, what did
19 the owners of the tannery site ask of Midwest
20 Generation?

21 A. To place an environmental land use
22 control on Midwest Gen property -- Midwest
23 Generation property.

24 Q. And do we call those ELUCs?

1 A. Yes. ELUCs.

2 Q. ELUC. What is ELUC?

3 A. It is a deed restriction that depending
4 on what you are restricting but generally in our
5 case it restricts the groundwater use or in the
6 case of a tannery as an ELUC, it restricts the
7 groundwater use in the ELUC area.

8 Q. And in this matter, as it relates to
9 the grassy field, has Midwest Generation
10 proposed anything to the Agency?

11 A. Yes.

12 Q. What was a proposal?

13 A. To enter the grassy field into the Site
14 Remediation Program and come to a conclusion of
15 its best remediation plan with Agency support
16 and guidance.

17 Q. And about how many times has Midwest
18 Generation proposed it?

19 A. At least two.

20 Q. And what was the Agency's response?

21 A. They -- No. It wasn't an overt no,
22 more like we are not looking at any of this, so
23 I don't think that they entertained our offer.

24 Q. And as part of Midwest Generation's

1 originally proposed adjusted standard, Midwest
2 Generation proposed the grassy field was not a
3 CCR surface impoundment and also what did it
4 propose to do?

5 A. Place a fiber cover system on it.

6 Q. That's the most recent one. We also
7 proposed to --

8 A. I don't remember. Enter into the SRP?

9 Q. Monitor the groundwater?

10 A. Oh. Yeah. We will monitor groundwater
11 at Waukegan Station, yes.

12 Q. And to your recollection do you recall
13 the approximate annual cost to continue the
14 groundwater monitoring?

15 A. My guess is it's on the order of
16 \$100,000 per year, 100,000 per year.

17 Q. That's been about. Yeah. And then as
18 you just said Midwest Generation proposed in
19 addition to its adjusted standard, do you recall
20 that? And can we put that on the screen?
21 Scroll to the I think the fourth page, fourth or
22 fifth page. It's an underlined section. Keep
23 going. One more. Two more. There you go. The
24 underlined section.

1 So what are the additional terms
2 Midwest Generation is proposing?

3 A. So if the Federal CCR Management Unit
4 regulation is not passed, that we would
5 coordinate with the Agency to install either a
6 cover system for the grassy area or take other
7 appropriate action as deemed necessary.

8 Q. I want to turn next to and he is going
9 to put it on the screen because you don't have
10 it in front of you Paragraph 51 of the Agency
11 recommendation. It might take a minute.

12 HEARING OFFICER HALLORAN: Ms. Gale,
13 what is this again?

14 MS. GALE: There is the Illinois EPA's
15 recommendation that they filed on October 31,
16 2022.

17 HEARING OFFICER HALLORAN: Okay. Thank
18 you.

19 BY MS. GALE:

20 Q. And I want to go to Paragraph 51 which
21 is on Page 18, and six lines down where it
22 starts with, To date. To date, the Agency --
23 There we -- Yep. Six lines down where it says,
24 To date the Agency is not aware of any actions

1 voluntarily initiated by Midwest Generation to
2 mitigate the releases of contaminants from the
3 grassy field.

4 Do you see that there?

5 A. Yes.

6 Q. What is your reaction to that
7 statement?

8 A. We offered at least twice to enter into
9 the SRP program and the Agency from my
10 perspective essentially ignored our request.

11 Q. And, well, as the environmental
12 director, would you voluntarily initiate an
13 action without Agency agreement?

14 A. Never, ever. Never. We -- Midwest Gen
15 did that and I am living the pains of it to this
16 day.

17 Q. Right. So what do you want to do?
18 What do we want to do?

19 A. I'm sorry. All we -- We want to solve
20 the issue. We want to do it in a way that is
21 appropriate, though. We want to remediate the
22 grassy area but treating it as a CCR surface
23 impoundment is not appropriate for that piece of
24 land because it's never been one. It never will

1 be one. It is an area that contains ash.

2 Q. So actually along those lines, I want
3 to turn to the Board questions that we received
4 last week.

5 HEARING OFFICER HALLORAN: Thank you.

6 MS. GALE: And, Mr. Hearing Officer, my
7 intent is to read the Board question to the rule
8 and ask her to answer it.

9 HEARING OFFICER HALLORAN: Very well.

10 BY MS. GALE:

11 Q. So Board Question No. 1: Is Midwest
12 Generation aware of any closure activities
13 conducted on the old pond?

14 And the first question is: What is
15 your reaction to old pond?

16 A. I don't know what it is.

17 Q. What do you think they are talking
18 about?

19 A. The grassy area.

20 Q. Okay. So assuming we are talking about
21 the grassy area, are you aware of any closure
22 activities conducted at the grassy area?

23 A. Kind of, yes. I guess it depends on
24 your definition of closure activities.

1 Q. Well, what is your definition?

2 A. My definition is complete, but to get
3 to completion of closure you have to basically
4 characterize the land and so we have
5 characterized that area.

6 MS. GALE: And for the record,
7 Mr. Hearing Officer, that information will also
8 be entered by Mr. Dorgan later, so to fill in
9 the blank of what she is talking about.

10 BY MS. GALE:

11 Q. Okay. But you characterize the land
12 but nothing else, right?

13 A. We have offered to enter into the SRP.

14 Q. Why nothing else?

15 A. Because, again, we won't take an action
16 without Agency approval and, in fact, with this
17 adjusted standard out here, it would not be
18 prudent for us to move to closure of that area
19 and then find out the -- and then have the Board
20 decide that it's a CCR surface impoundment. We
21 would just be in a pickle for lack of a better
22 description.

23 Q. So, again, for the record Question 1A:
24 If so, can Midwest Generation provide that

1 documentation? That documentation will be
2 presented by Mr. Doug Dorgan later today.

3 And so I think you have answered this,
4 but I am going to ask it anyway and you can
5 repeat yourself. Question 1C: If not, other
6 than the investigation, are there plans to close
7 the old pond in the future?

8 A. We would love to close the grassy area.
9 We are just looking for the appropriate
10 regulatory path to do so. We disagree
11 vehemently that to -- that closing it as a CCR
12 surface impoundment is appropriate.

13 MS. GALE: Give me a moment, sir.
14 Nothing further for now.

15 HEARING OFFICER HALLORAN: Thank you.
16 Mr. Gunnarson, do you want to take time before
17 you start your cross or would you like to keep
18 going?

19 MR. GUNNARSON: It's up to you,
20 Mr. Hearing Officer. If you feel we need a
21 break, I can go either way.

22 HEARING OFFICER HALLORAN: Okay. Let's
23 continue.

24 MR. GUNNARSON: That's fine.

1 CROSS-EXAMINATION

2 BY MR. GUNNARSON:

3 Q. Ms. Shealey, you are not aware of any
4 requirements in Part 845 of the Agency to reach
5 out to the -- to a prospective facility
6 that's -- that might be under that rule for any
7 sort of specific information or anything, are
8 you?

9 A. Not a specific requirement. I think
10 set throughout Part 845 it mentions that the
11 Agency could ask --

12 Q. But there is no requirement that we
13 have to reach out to an applicant for --

14 A. Not that I am aware.

15 Q. Thank you. And earlier I think you
16 testified that you have various degrees in
17 engineering is your background?

18 A. Yes.

19 Q. Are you an attorney?

20 A. No.

21 Q. And are you involved at all with work
22 with the consentor that we mentioned earlier
23 related to the Federal rule that we discussed
24 earlier or proposed Federal rule?

1 A. Not personally. I am -- I guess I am a
2 receiver of that rule.

3 Q. I guess I am asking you were you on the
4 team that did anything with the consentor? Did
5 you represent a defendant or anything of the
6 consentor?

7 A. No. No.

8 Q. You are not involved as a technical
9 advisor or anybody like that?

10 A. No.

11 Q. USEPA or others.

12 A. Correct.

13 Q. Okay. You are aware that the tannery
14 site that you mentioned in the -- in your
15 discussion earlier is not a coal-fired power
16 plant?

17 A. Yes. I am aware.

18 Q. So thus Part 845 wouldn't be applicable
19 to them and wouldn't be a means to resolve any
20 sort of environmental concerns at that facility?

21 A. No. It would not.

22 Q. Okay. And has Midwest Gen ever
23 submitted an application for the Waukegan site
24 to enter into the SRP?

1 A. No. We have not.

2 Q. And you are also aware that entering
3 into an ELUC or the effect of an ELUC does not
4 address remediation of a contaminate source in
5 groundwater?

6 A. I do not intend to play semantics but I
7 think that ELUC was a result of their
8 contamination and it was for monitoring.

9 Q. But it doesn't -- What I am asking you
10 is does that compel or address any sort of
11 remediation of a contaminant source in
12 groundwater? In fact, isn't ELUC just a
13 mechanism by which individuals are prevented
14 from using a source because it is contaminated?

15 A. I agree. Yes. Thank you. Yep.

16 MR. GUNNARSON: I don't have anything
17 further at this point, your Honor.

18 HEARING OFFICER HALLORAN: Okay. Thank
19 you. Ms. Gale?

20 REDIRECT EXAMINATION

21 BY MS. GALE:

22 Q. Just a factual thing. Going back to
23 the invoice which was Exhibit 28 in your binder,
24 what's -- The date is 2019, right?

1 A. Correct.

2 Q. Do you recall when Part 845 was passed?

3 A. I absolutely do, Ms. Gale. It was
4 April 21st I think specifically of 2019. Wait
5 part 845 was 2021. Part 845 was 2021. The Act
6 was passed in 2019.

7 Q. So any requirements of the Agency in
8 Part 845 --

9 A. Wouldn't have happened at this point.
10 I will stop there. Yeah. There was no Part 845
11 when we got this invoice.

12 Q. And but it was from the Act, right?

13 A. It was from the Act, yeah.

14 Q. Yeah. And as environmental director,
15 what would you expect the Agency to do when they
16 need information on your station?

17 A. Either use the internet or place a
18 phone call. We have a Federal CCR website that
19 lists our Federal CCR units. I actually
20 expected that the Agency to base these invoices
21 off of that. That is not what the Agency did.
22 They could have called or they could
23 have looked on our website. Maybe they did look
24 at our website. I can't prove that, but they

1 did not make a call to us. There was no
2 discussion. It was just a bill.

3 MS. GALE: Nothing further.

4 HEARING OFFICER HALLORAN: Thank you.
5 Mr. Gunnarson?

6 MR. GUNNARSON: Yes. Just a couple.

7 RE-CROSS-EXAMINATION

8 BY MR. GUNNARSON:

9 Q. You are not aware of anything in the
10 Act that requires the Agency to reach out
11 regarding the billing process to any facility,
12 are you?

13 A. No. I am not aware of that.

14 MR. GUNNARSON: Thank you. That's all.

15 HEARING OFFICER HALLORAN: Before I
16 release you, Ms. Shealey, Member Van Wie, do you
17 have any questions?

18 BOARD MEMBER VAN WIE: No.

19 MS. HORTON: I have one clarification
20 question on this invoice Exhibit 28, the address
21 where it was sent was the Will County Generating
22 Station. Is that your place of work,
23 Ms. Shealey?

24 THE WITNESS: At the time it was. It

1 is not today.

2 MS. HORTON: I am just wondering. It's
3 related to the Waukegan station, but it was sent
4 to the Will County station.

5 THE WITNESS: Yes. So I will receive
6 mail at either Will County station or Waukegan
7 station.

8 THE COURT: Ms. Brown, any questions?

9 MS. BROWN: None.

10 HEARING OFFICER HALLORAN: You may step
11 down, Ms. Shealey. Let's take ten minutes.

12 (Whereupon, a short recess was
13 taken.)

14 HEARING OFFICER HALLORAN: All right.
15 We are back on the record. It's approximately
16 10:37 a.m. Ms. Gale may be calling her third
17 witness.

18 MS. GALE: Yes. We call Mr. Doug
19 Dorgan, please.

20 HEARING OFFICER HALLORAN: Thank you.
21 Mr. Dorgan, do you mind being taped, or you
22 prefer not to?

23 MR. DORGAN: I prefer not to.

24 HEARING OFFICER HALLORAN: Okay.

1 Ms. Horton, make sure they are not. And that
2 goes for the people in the seats, audience, no
3 recording, please.

4 Raise your right hand and Paula will
5 swear you in.

6 (Witness sworn.)

7 DOUGLAS G. DORGAN, JR.

8 witness herein, called by Midwest Generation,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. GALE:

13 Q. Mr. Dorgan, can you please state your
14 full name?

15 A. Douglas G. Dorgan, Jr.

16 Q. Okay. And who do you work for?

17 A. I am with Weaver Consultants Group,
18 LLC.

19 Q. And can you turn in that binder towards
20 the end? Now the binder, to explain for the
21 record, is not in numerical order. It's in
22 order by which these documents are presented
23 today. They are identified as an exhibit as
24 they are presented in our petition. That's why

1 they are numbered that way I should say. Sorry.

2 HEARING OFFICER HALLORAN: Which
3 petition? Does it matter?

4 MS. GALE: At the front of the binder,
5 there is an index of all of them so it points
6 out which petition each document is attached to.

7 HEARING OFFICER HALLORAN: Perfect.
8 Thank you.

9 MS. GALE: And, Mr. Hearing Officer, at
10 the end of this Midwest Generation will then
11 prepare a final exhibit list for you which will
12 identify where they are attached as well.

13 HEARING OFFICER HALLORAN: Thanks.

14 MS. GALE: Thank you, Mr. Dorgan.

15 BY MS. GALE:

16 Q. Mr. Dorgan, I would like you to turn to
17 Exhibit 37 which -- and I want to turn to
18 Appendix A of Exhibit 37 which is your CV.

19 A. Yes. I am there.

20 Q. Is your employment history and
21 education history as this CV -- as on this CV
22 still correct?

23 A. Yes, it is.

24 Q. I want to turn to the field of

1 expertise in the left-hand column --

2 A. With one clarification first however.

3 It does list me here with the title of

4 co-president and principal. As of this

5 January 1st, I stepped down as the co-president

6 as part of a succession plan for our company as

7 a whole. So currently I still serve as a

8 principal but no longer serve as the

9 co-president. That would be the only change.

10 Q. Thank you for that. So on the

11 left-hand side of your CV, you see a box Fields

12 of Expertise?

13 A. I see that.

14 Q. Starting with Brown Fields

15 Redevelopment, second line can you describe that

16 to me? Tell us more about that.

17 A. Brown fields are generally

18 characterized as existing or former industrial

19 facilities mostly. They can be commercial as

20 well where oftentimes they are being managed

21 from an environmental perspective in order to

22 support a future development or a redevelopment

23 of the facility.

24 So in a traditional brown field, we

1 will come in and investigate the property,
2 assess risks related to any legacy environmental
3 issues, and then integrate management of those
4 issues into the development plan so that the
5 property can be redeveloped responsibly.

6 Q. And then next on your list, you have
7 remediation design and cost modeling. Can you
8 please describe that for us, please?

9 A. So in this case, if we are in a Brown
10 Fields Redevelopment scenario as an example,
11 there may be environmental Legacy issues that
12 have to be remediated or managed in some manner,
13 so we will evaluate what are the appropriate
14 alternatives and what is the appropriate
15 remediation approach.

16 We can then design that remediation.
17 We can also then do all of the planning for the
18 remediation including the cost modeling which is
19 to develop estimates of what it's going to cost
20 to implement the various steps we are going to
21 take.

22 Q. Tell me about the different media you
23 evaluate in your work.

24 A. Most often it's going to be soils,

1 sediments, groundwater, the air, surface waters.

2 Q. And do you have any experience in
3 Illinois?

4 A. I do.

5 Q. How much?

6 A. My technical experience I would say
7 well over half of it has been in Illinois, but I
8 have also done projects all over the country.

9 Q. And approximately how many remedial
10 design projects have you worked on in your
11 career?

12 A. Hundreds.

13 Q. In your list you have on there on your
14 CV, you have Groundwater Impact Assessments.
15 Please explain that.

16 A. So as you probably see these all
17 dovetail together in one way or another, but
18 groundwater impact assessments are typically
19 looking at groundwater conditions at a site.
20 What are the groundwaters? What type of
21 stratigraphy are you dealing with? Are there
22 impacts to the groundwater? What is the
23 condition of the plume? Is it migrating?
24 What's the size of it?

1 And then oftentimes assessing potential
2 receptors if there are groundwater impacts as
3 part of your risk assessment.

4 Q. So let's talk about a risk assessment,
5 or I guess never mind. Let's go to the next
6 area of expertise is Risk-based Corrective
7 Action. Can you please describe that?

8 A. So a risk-based corrective action is
9 actually a Federal guideline for how to approach
10 evaluating sites with respect to determining
11 what type of remediation would be appropriate.

12 As it suggests, it takes a risk-base
13 approach, so the key there is understanding what
14 your risks are to a receptor so that you can
15 then develop the appropriate remediation for
16 whatever your media might be that would be
17 protective of those receptors.

18 Q. Now I think I heard you in another
19 matter that you talk about the risk triangle.
20 He does that follow here?

21 A. That's an element of it. The risk --
22 The risk triangle is basically anytime you are
23 evaluating risk, you are kind of primarily
24 looking at three things. You have to have a

1 source, you have to have an impact of some sort
2 that could pose a risk. Then you have to have a
3 pathway where the contamination may move and
4 eventually come in contact with a receptor.

5 And the receptor would be somebody that
6 might if it's contaminated soil, they might
7 encounter and work within the contaminated soil.
8 If it's contaminated groundwater, they might
9 drink the contaminated groundwater, and so we
10 are looking at each of those conditions. Do
11 they exist? And in the absence of any one of
12 them we can say with confidence that there is no
13 risk.

14 Q. And you said that this concept was a
15 Federal concept. Is it also in Illinois?

16 A. Yes. The Illinois Tiered Approach To
17 Corrective Action Objectives, also known as
18 TACO, has a very similar type of strategy to it.

19 Q. And in your experience, how is TACO --
20 typically how is TACO administered in Illinois?

21 A. TACO is a component to the SR -- the
22 Illinois Site Remediation Program, the SRP, so
23 they kind of go hand in hand. The SRP describes
24 how to do it. TACO gives you the guidance in

1 terms of how to evaluate risk.

2 Q. And have -- Well, have you worked in
3 the Illinois SRP program?

4 A. I have many times.

5 Q. And generally speaking, how does the
6 Illinois SRP program work?

7 A. Well, typically, you would enter into
8 the program. We, as a history of the way that
9 we operate, will typically have some dialog with
10 the Agency in advance of doing that. We will
11 then submit the application. We will be then
12 enrolled into the program, and then we follow
13 the guidelines.

14 They are fairly step by step. We seek
15 to have a lot of Agency involvement in that
16 process so that we can try to minimize doing
17 things that we later on have to go back and
18 backtrack on so we try to get their concurrence
19 with our approach, whether it's a scope of work
20 that's a strategy.

21 And then once you have implemented your
22 work, there are various milestone submittals you
23 have to make. You make those submittals.

24 Generally there is one around with

1 comments where they are seeking questions or
2 clarifications. Occasionally they ask for
3 something more to be done. You address those
4 questions or requests, and then you resubmit and
5 then eventually you drive towards development of
6 a remedial action plan.

7 You get that approved. You implement
8 the remedial action plan. And then you submit a
9 remedial action completion report which
10 documents what you have done, shows that you
11 have done it in accordance with the plan that
12 they have approved.

13 If everybody is in agreement that
14 that's been the case, you'll end up receiving a
15 no further remediation letter from the Agency
16 indicating that you have taken the proper steps
17 to responsibly address your site conditions and
18 that they are in agreement that the risks are
19 properly managed.

20 Q. And I think you said early on you said
21 you reach out to the Agency. So when you have a
22 site, a new site, is your -- what is your
23 first -- what is typically your first step?

24 A. Typically, we would often reach out to

1 the IPA letting them know we have a new site,
2 what it is, where it is, our general strategy
3 sometimes.

4 A good example is the program doesn't
5 require that you submit a site investigation
6 work plan, but a lot of times we like to try to
7 get some feedback on what we are intending to do
8 with respect to the site investigation. So we
9 avoid rework or having to go back and supplement
10 it with additional information.

11 So we try to -- We are -- Our feeling
12 has been the more dialog, the more engagement,
13 the more successful the process flows and the
14 more successive the outcomes.

15 Q. And in your experience, you know, well,
16 what do you think of the SRP program?

17 A. It's an exceptional program. It's been
18 extremely beneficial for addressing properties
19 in Illinois oftentimes that are undergoing some
20 sort of redevelopment where there is no other
21 framework that would apply.

22 Q. Okay. I am going to take a turn. Are
23 you familiar with coal combustion residuals?

24 A. I am.

1 Q. And what -- Do you also call it CCR,
2 right?

3 A. That's correct.

4 Q. How are you familiar with CCR?

5 A. In any number of ways. Through my
6 career, I have done CCR surface impoundment
7 closures. I have been involved in CCR Monofill
8 Landfill both closures and remediation. I have
9 been involved in CCR materials that make up part
10 of a matrix that is being evaluated and
11 remediated.

12 It may not necessarily be the entire
13 matrix but part of the matrix, so it shows up
14 pretty frequently in a number of sites that we
15 work on.

16 Q. And what is your understanding of the
17 definition of CCR surface impoundment?

18 A. Well, I think the primary thing is that
19 it's looking for ash that's being sluiced in
20 water into a pond where the pond is going to
21 contain it. The water is going to be decanted,
22 recycled, reused.

23 At some point the ash will be dried
24 out. It will be removed for whatever intended

1 reuse or management, and then the pond will be
2 put back into operation and that process will
3 repeat itself.

4 Q. I want to go back to your CV. I think
5 you already answered this question, along the
6 updates. Any other updates in your CV?

7 A. Only that the CV was prepared a number
8 of years ago, so I have had other project work
9 that wouldn't necessarily be represented in this
10 document, and this document doesn't necessarily
11 capture all of my work. It's an example of the
12 work that I have done.

13 Q. And you have served as an expert
14 witness in the past?

15 A. Yes, I have.

16 Q. Have your opinions ever been rejected
17 by a judicial body?

18 A. Not that I am aware of.

19 MS. GALE: Mr. Hearing Officer, I move
20 to qualify Mr. Dorgan as an expert in site
21 remediation and groundwater evaluation.

22 HEARING OFFICER HALLORAN:

23 Mr. Gunnarson?

24 MR. GUNNARSON: No objection.

1 HEARING OFFICER HALLORAN: So granted.

2 MS. GALE: Thank you.

3 BY MS. GALE:

4 Q. Mr. Dorgan, when was your most recent
5 experience serving as an expert witness?

6 A. Just this past year.

7 Q. Yeah. What was that case about?

8 A. That was a Sierra Club and other
9 environmental groups brought a matter against
10 Midwest Generation.

11 Q. And did you testify in that matter?

12 A. Yes, I did.

13 Q. And for that matter, what did you
14 prepare?

15 A. I prepared an expert report.

16 Q. And is that the expert report that is
17 this Exhibit 37?

18 A. Yes, it is.

19 Q. So this Exhibit 37 is actually marked
20 as Exhibit 1701 for the Sierra Club matter. Do
21 you see that?

22 A. I see that.

23 Q. So are there certain parts of this
24 opinion that are not applicable to the grassy

1 field?

2 A. There are. And that particular matter
3 involved four of the Midwest Generation sites of
4 which Waukegan was one of them. So there is
5 information presented in this report that is
6 specific to those three other stations, but it
7 captures Waukegan as well.

8 Q. Great. I want to turn to Appendix B of
9 your expert report which is after Appendix A
10 which is after your CV. It's entitled List of
11 References?

12 A. Yep. I have that.

13 Q. And I want you to look at the last
14 page. Are you there?

15 A. Yes, I am.

16 Q. And do you see you list Seymour Report,
17 2015?

18 A. I see that.

19 Q. Who was Mr. Seymour?

20 A. Mr. Seymour was, as I understand it, an
21 expert that had been retained by Midwest
22 Generation in an earlier phase of the matter
23 that I later testified in.

24 Q. And it says here that the list of

1 references. What aspects of Mr. Seymour's
2 report were relevant to you specifically as it
3 relates to the Waukegan Station?

4 A. Well, his expert report in general was
5 relevant. I think there were several aspects of
6 it that were particularly helpful. Initially it
7 was just acclimating ourselves to the history of
8 stations including Waukegan. A lot of
9 information about background on the station,
10 what had been done there previously, their
11 history, and then there were a number of
12 technical presentations that Mr. Seymour made
13 that we evaluated and in some instances later
14 built on, so including his risk assessments,
15 some of his trend testing, a number of other
16 items as well.

17 Q. I want to turn to Page 3 of your
18 references. And you see at the bottom of Page 3
19 it's actually Bates No. MWG13-15_81499.

20 A. I see that.

21 Q. You also refer to certain testimony
22 here. Where is that testimony -- What is that
23 testimony from?

24 A. This would have been testimony as

1 recorded from the earlier phase of the hearings
2 in the Midwest Gen matter that I referenced.

3 Q. And that would include Mr. Seymour's
4 testimony?

5 A. That's correct.

6 Q. And then the next thing -- the next
7 page Exhibit 38, the next tab after your report,
8 what is this?

9 A. So this was a presentation, a
10 PowerPoint, that we had had created to support
11 our testimony at the hearing. It largely
12 followed the outline of our expert report but
13 was designed to help provide perhaps more of a
14 visual representation of our report to help
15 support the testimony during the hearing.

16 Q. And you see on the cover page it was
17 Exhibit 1702 of the Sierra Club matter, right?

18 A. That's correct.

19 Q. Now, here we are for the petition for
20 adjusted standard for the grassy field, right?

21 A. That's correct.

22 Q. So generally speaking, at a high level,
23 how does your opinion in the Sierra Club matter
24 support Midwest Generation's petition for

1 adjusted standard as it relates to the grassy
2 field?

3 A. Well, first I would just qualify that
4 again this presentation addresses all four
5 sites, but it does include Waukegan, so there is
6 useful information there.

7 I would say in general, our opinion
8 hasn't changed at all about what's reasonable
9 and appropriate for how to manage the grassy
10 field or the former slag area in Waukegan.

11 We think in the absence of any other
12 regulatory program which was the -- our
13 understanding and our approach that we took that
14 the right and reasonable one would have been
15 Site Remediation Program, so we patterned our
16 approach as though he we were doing it within
17 the Site Remediation Program.

18 We think that the outcome of our risk
19 assessment was appropriate for evaluating risks
20 posed by the conditions that had been observed
21 at the former slag area, and that our evaluation
22 of receptors and being sure that what we were
23 proposing would be protective of human health
24 and the environment, those are all things that

1 we concluded and testified to in the earlier
2 hearing; and we would believe it's relevant
3 today.

4 Q. So I want to get into Exhibit 38 which
5 was Exhibit 1702 of the Sierra Club matter. And
6 I believe you stated that this was prepared in
7 preparation for that to help your testimony. Is
8 that similar here, it's to help your testimony?

9 A. That's correct.

10 Q. Okay. Let's go to the next slide,
11 slide -- Well, General Approach. We will go to
12 Slide 3. And you can turn to Page 5 of your
13 expert report of Exhibit 37.

14 We see here on the first bullet
15 Regulatory Framework. Why is a regulatory
16 background important?

17 A. We were looking at the four stations
18 including Waukegan and looking at initially all
19 of their units and understanding which were
20 being covered under the Federal and/or State CCR
21 surface impoundment requirements and those that
22 fell outside of those requirements were more
23 legacy fill areas which is what we have referred
24 to here on the slide as a square fill area.

1 So whether we were already in a program
2 and going to be following those program
3 requirements or we were outside of one of those
4 programs and had to formulate our own approach
5 on how to address and manage those areas.

6 Q. And I want you to turn to Page 7 of
7 your expert report, second to the last
8 paragraph. And so here, you know, looking at
9 one, regulatory framework, historic fill areas.
10 You also discuss certain historic fill areas in
11 your report.

12 How would you define that?

13 A. So we looked at areas where ash was
14 present. Those were typically unconsolidated
15 coal ash. They had simply been placed and left.
16 More historical in nature. They had been there
17 for some period of time generally predating the
18 Board ruling or the CCR rules at either a
19 Federal or State level.

20 And we also were aware and referenced
21 in this particular paragraph the fact that there
22 was some document being open to the CCR rules to
23 try to capture -- to create a regulatory
24 framework for these unconsolidated coal ash

1 areas, and we felt that those would likely be
2 applicable when they were officially
3 promulgated.

4 Q. And we heard -- You were here for
5 Ms. Shealey's testimony?

6 A. Yes, I was.

7 Q. So you heard her discuss the proposed
8 Federal CCR MU rule?

9 A. I did.

10 Q. Do you have any concerns in your review
11 of the proposed Federal rule in the state
12 proposed -- excuse me -- proposed state historic
13 rule as it relates to the grassy field?

14 A. I don't know that I have any concerns
15 with the two proposed rules; other than,
16 whatever we do at the grassy field area is going
17 to need to be done in accordance with the rule
18 once it's promulgated.

19 And to the extent we have identified a
20 course of action that we believe is appropriate
21 to take now, if it's later found that the rules
22 would change that approach or strategy or scope,
23 then obviously that creates certain risks for
24 Midwest Generation in terms of moving forward.

1 Q. In the absence of a specific CCR
2 regulation, though, I think you already
3 mentioned this but what regulatory framework
4 would you agree to historic areas, like the
5 grassy field?

6 A. We looked at the Site Remediation
7 Program as the right way to go. We have done
8 other similar types of materials at SRP sites
9 that we have closed in the past, so we are very
10 familiar with its requirements and felt that in
11 the absence of these other frame works, that
12 that would be the right one. It would be one
13 available to us that we could apply in terms of
14 how we evaluated the site and proposed a remedy
15 that was required to be identified as the
16 subject of that hearing.

17 Q. I want to look at Section 3.2 of your
18 report, which is on Page 23. And here you talk
19 about CCA's. What are CCA's?

20 A. A CCA is a Compliance Commitment
21 Agreement. This is a -- This is negotiated
22 between an owner and the Agency on a voluntary
23 basis. It lays out a series of actions that the
24 owner needs to take to evaluate conditions at a

1 site in order to address any concerns that they
2 might have with the presence of remediation --
3 or presence of environmental contamination.

4 Q. And here, why was that relevant to your
5 opinions?

6 A. Well, in the case of Waukegan, there
7 was a CCA that had already been negotiated and
8 agreed upon and executed. That CCA had started
9 the process of evaluating the site conditions
10 with respect to the CCR and there were a series
11 of 9, 10, 11 specific actions that Midwest Gen
12 had to take, including the initiation of
13 groundwater monitoring conditions, as well as an
14 initiation of groundwater monitoring that began
15 at the time that CCA was executed.

16 Q. And how was that groundwater monitoring
17 relevant to your opinions?

18 A. Well, it's created a database that
19 evaluates the groundwater of conditions at the
20 site over a long period of time, and so it
21 allows us to evaluate the groundwater conditions
22 as they were, as they are now, how they might
23 have changed, and some measure will allow us to
24 forecast what the groundwater may do into the

1 future.

2 Q. And looking at No. 2 on your
3 presentation on Slide 3, what types of
4 background information did you did review as you
5 came up with your opinion?

6 A. So we obviously had looked at the
7 extent of the data that was viable, tried to
8 look at it wholistically. One of the things we
9 did was try to identify what exposures may exist
10 to humans or to ecological receptors.

11 Are there potable wells where people
12 are drinking the groundwater? Are there surface
13 water bodies that may be impacted? We then
14 looked at what was happening with the
15 groundwater over time and any trends that may
16 exist within the groundwater dataset.

17 We did that by running some statistical
18 analysis that's fairly typical and commercially
19 acceptable. And then we looked at the
20 groundwater data specifically in the
21 down-gradient wells to, again, assess whether we
22 had conditions that might pose a risk to
23 off-site migration where a receptor could come
24 in contact with the contamination.

1 Q. And then No. 3, remedial assessment,
2 what are you looking at here? I think you
3 already touched upon it but...

4 A. Yeah. So we looked at obviously for
5 those regulated units what the CCR regulations
6 said they needed to be and where they were in
7 that process.

8 But then we also considered, again, as
9 I kind of just mentioned the primary focus was
10 on risk trends within the datasets and then
11 comparisons to some of the standards that would
12 be relevant to helping us understand the risks.

13 Q. Let's go to the next slide and for the
14 record the slide number is No. 70 because the
15 other slides in between them are for the other
16 stations. This is an excerpt of his entire
17 presentation that was presented in June.

18 So this is Slide 70, and this is the
19 cover slide for the Waukegan Station, right?

20 A. Yes, it is.

21 Q. So let's to go to the next slide, Slide
22 71. Well, Background and Setting, keeping your
23 expert report out and you can turn to Page 18,
24 and looking at the slide, please describe.

1 A. This is just intended to be a very
2 high-level overview of some history about the
3 site and the setting in which the site exists.

4 Earlier testimony indicated that the
5 site began -- the operations of the power
6 station began in the early 1920s. Midwest Gen
7 acquired the station in 1999. As earlier
8 testified coal was no longer used as the fuel
9 source as of June of 2022.

10 And then it's always helpful to
11 understand your surrounding land uses, what kind
12 of setting that you are in. In this case we are
13 primarily in an industrial setting. We have got
14 the Johns-Manville Superfund site just across
15 Greenwood Avenue to the north. Couple former
16 industrial facilities. The Giess-Pfleger
17 tannery and the former general boiler site just
18 to the west, and then we have a sewage plant
19 that's located just to the south and to the east
20 we have Lake Michigan.

21 Q. And, you know, you said it's always
22 important to know the surrounding areas and the
23 background. Why is it important to know?

24 A. It helps us assess what kind of

1 receptors that we would be evaluating with
2 respect to the risk assessment.

3 Q. And looking at the map highlighted in
4 purple, what are those?

5 A. Those are the two regulated CCR surface
6 impoundments, the east ash pond and the west ash
7 pond.

8 Q. And you said that they are regulated
9 CCR surface impoundments under. How do you know
10 they are CCR surface impoundments. Why do you
11 think that?

12 A. The record consistently refers to them
13 as regulated CCR surface impoundments up until
14 they stopped burning coal. They were receiving
15 sluiced ash. They were being maintained in
16 accordance with their operation and maintenance
17 plan.

18 So I think there is quite a bit of
19 information indicating that to be the case.

20 Q. Let's go to the next slide, Slide 72,
21 and on this slide, what does it show?

22 A. This is a blowup of a smaller area or
23 of an area from the previous map. This shows
24 basically the former slag area, also referred to

1 here as the grassy field with the west ash pond
2 located just to its east.

3 Q. Have you been to the Waukegan Station?

4 A. Yes, I have.

5 Q. Did you observe the grassy field?

6 A. I have.

7 Q. What did it look like?

8 A. Much like the pictures we saw earlier.
9 It's a grassy field. Modestly sloped,
10 relatively flat. Fairly nondescript.

11 Q. And why -- For this matter, why did you
12 look at this area?

13 A. Is was -- There is a monitoring well
14 located just on the eastern periphery of the
15 area of gradient of the west ash pond that has
16 exhibited some concentrations of CCR materials,
17 and we were aware that this historical fill area
18 existed, so we were specifically calling that
19 out.

20 Q. And but, Mr. Dorgan, you have reviewed
21 the definition of CCR surface impoundment,
22 right?

23 A. I have.

24 Q. In your opinion, is the Waukegan grassy

1 field or FS area a CCR surface impoundment?

2 A. I don't believe so.

3 Q. Why not?

4 A. Because it's an unconsolidated ash fill
5 area. It has -- To the best of my knowledge and
6 as testified earlier, hadn't received sluiced
7 coal ash and been operated as a CCR surface
8 impoundment.

9 The origin and source of the materials
10 is nondescript. It's been there for many, many
11 years and so, yeah. We did not and based upon
12 other aspects of the record treat it as a CCR
13 surface impoundment.

14 Q. Let's go to the next slide, Slide 73.
15 Okay. So Slide 73, Investigation Locations and
16 this is of course more tailored to your overall
17 opinion for the Sierra Club matter; but
18 generally speaking, what does this slide show?

19 A. Well, this slide shows obviously the
20 Station itself and the property boundaries for
21 the Station and then the individual locations
22 are specific investigation points from a series
23 of past investigations that have taken place.

24 We are just here trying to represent on

1 one figure the scope of the historical
2 investigations that have been -- had been
3 performed, and they are all keyed on the left
4 side in terms of what type of sample was
5 collected, when it was done, for what purpose.

6 Q. And, well, how would you describe the
7 investigations on this property? Generally
8 speaking how would you describe it?

9 A. It just showed us that there had been
10 quite a bit of past investigation that had been
11 performed, so you weren't coming in cold. We
12 had a pretty good dataset that we could review
13 and get a fairly good characterization of the
14 environmental conditions at the site as a whole.

15 Q. Let's go to the next slide, Slide 74 of
16 Exhibit 37. Does this -- Well, what does this
17 reflect?

18 A. So this is just a summary of the four
19 investigations that had been previously
20 implemented which are partially represented on
21 the figure that we just looked at.

22 Q. Okay. Slide 75, starting with the 1998
23 Phase 2 ESA. Remind me, what's ESA?

24 A. Environmental Site Assessment.

1 Q. Thank you. Why was that relevant to
2 your opinion?

3 A. Well, this was an investigation or site
4 assessment that was undertaken as Midwest Gen
5 was considering acquiring the plant. Their
6 consultant came in and performed a number of
7 soil borings in '22 as it references there.
8 They installed five wells. They collected 13
9 surface samples, surface soil samples and then
10 six sediment samples.

11 Q. And on Slide 75, you refer to boring
12 22, the northern portion of the FS area. Do you
13 see that there?

14 A. I do.

15 Q. What was found there?

16 A. Well, they characterize materials it
17 encountered at that area as being coal and ash.
18 And then it was sampled and the metals which is
19 what were sampled for at the time were below the
20 TACO Tiered 1 soil remediation objectives.

21 Those are the most conservative in fact what we
22 refer to as lookup values.

23 However, there was one concentration
24 for one of the metals arsenic which is on that

1 list of metals, that had a reported detection of
2 14 milligrams per kilogram and the TACO soil
3 remediation objective is set at 13 which is
4 predicated on the area background value for
5 arsenic and soils in the Chicago metropolitan
6 area.

7 Q. And the bullet under -- the next two
8 bullets related to groundwater adjusted
9 industrial land use, what are you saying there?

10 A. Well, the conclusions from the
11 consultant that implemented this study felt that
12 with the data that they did collect from their
13 five wells that they were not concerned that
14 there was a groundwater ingestion risk since
15 their study concluded that there were no potable
16 wells on site.

17 They also saw the land use as having
18 been, continued to be and would likely be into
19 the foreseeable future industrial. And as a
20 result they were -- they considered that to be a
21 low potential for human exposure to the
22 constituents that were identified.

23 And their ultimate conclusion was that
24 under Environmental -- Illinois Environmental

1 law, that there wasn't any obligation to further
2 investigate or remediate the property at that
3 time.

4 Q. Let's go to the next slide, Slide 76.
5 And I can also refer you to Page 41 of your
6 expert report. What are you referencing in this
7 map?

8 A. So this is, again, a cull out from the
9 larger site exhibit that we had previously.
10 This is capturing the southern part of the
11 Midwest Generation facility but captures also
12 the two adjoining properties, the former tannery
13 site and the general boiler.

14 The tannery site is the one that has
15 the oblong yellow circle around it, and then the
16 former general boiler site is just to the east
17 of that; and then as you move further east, you
18 go onto the Midwest Gen property and you can see
19 the former slag area and the two CCR ponds.

20 Q. And, well, we call it up-gradient
21 sources. What do you mean by that?

22 A. So there have been previous SRP
23 activities at these sites. There was
24 groundwater contamination that was observed as

1 part of that process. The groundwater
2 contamination is flowing in an easterly
3 direction towards the Midwest Gen property.

4 The groundwater conditions exceeded the
5 groundwater quality criteria, so they had a
6 migration of the contaminant off-site and a
7 concentration above standard and that -- that
8 migration continues to this day.

9 Q. And you say that migration continues to
10 this day. Why is that important to your
11 opinion?

12 A. It's a complicating variable. We have
13 to manage for the constituents that we believe
14 originate from the former slag area, but we are
15 also dealing with contaminated groundwater
16 that's migrating onto the property.

17 I think it was mentioned earlier we
18 have the ELUCs in place, the Environmental Land
19 Use Controls, that were done.

20 Typically what will happen is the
21 owner, the adjacent property owner, will come to
22 the impacted property owner and say, Would you
23 agree to allow us to place an ELUC on your land
24 that allows the contamination to remain in place

1 and ensures that there won't be future
2 receptors, where they are now restricted from
3 being able to install groundwater -- potable
4 groundwater wells in those areas.

5 So, again, that goes back to this
6 concept of receptors and risk. If we don't have
7 a receptor, we don't have a risk.

8 Q. Let's go to Slide 77, which is the 2005
9 Geotechnical Investigation. What's going on
10 here? Please explain.

11 A. My understanding is that Midwest Gen
12 initiated this investigation as they were are
13 considering modifications to their ash ponds and
14 so the consultant KPRG went out and installed
15 the borings that are shown on this figure to
16 collect samples for physical characterization,
17 not an environmental characterization.

18 Q. If we turn to Slide 78. Okay. And
19 this is the 2010 HydroGeoLogic investigation.
20 What does this slide show?

21 A. So this is showing you the scope of the
22 investigation implemented in 2010. My
23 understanding was this was done in response to
24 the compliance commitment agreement to look at

1 groundwater. It was done voluntarily by Midwest
2 Gen prior to the CCR regulations coming out.
3 They installed a total of five wells and
4 collected samples from those wells.

5 The samples were analyzed for the 14
6 potential CCR analytes that were not detected.
7 There were antimony, arsenic, and boron that
8 were detected in one of the wells that were
9 above the Class 1 groundwater quality standards
10 in one of the down-gradient wells, but only
11 during one sampling event.

12 And then the up-gradient concentrations
13 for a number of constituents listed here, boron,
14 magnesium sulfate, and total dissolved solids, a
15 stated Class 1 groundwater quality standard in
16 the up-gradient well which on this figure would
17 be represented by MW-5 which is just to the west
18 of the west ash pond.

19 Q. So I think we have our timing wrong so
20 I want to correct something. You said this was
21 part of the CCAs. Can I direct you to Page 23
22 of your report? And you see it's the 2012 CCAs
23 under 93.2?

24 A. Yes.

1 Q. Right. So what was -- If you look at
2 the first bullet, what was this investigation?

3 A. It would have been a voluntary
4 investigation that kind of led up to the CCAs.
5 It was kind of a precursor to getting there but
6 the CCAs hadn't been actually executed at that
7 point.

8 Q. Thank you. So let's continue to Slide
9 79 and this is a continuation of the
10 HydroGeoLogic investigation. What is this
11 showing?

12 A. This kind of transitions from a
13 description of the chemistry findings from the
14 groundwater sampling. This is more looking at
15 the soil and groundwater itself. They found
16 that the soils were predominantly sands and
17 silts which were underlaid by sands and gravels
18 which would have been expected given its
19 location and proximity to the lake.

20 The uppermost groundwater unit was
21 encountering at depths ranging from 22 to 23
22 feet below ground surface.

23 The groundwater flow direction is to
24 the southeast. That's represented on the figure

1 by the contour line which are in yellow and then
2 the blue line which is hard to see but it's
3 actually an arrow that kind of points in an area
4 that groundwater will be flowing based upon the
5 interpretation of the contour lines, so that's
6 where we concluded and they concluded that the
7 groundwater is flowing in a southeast direction
8 at least for this monitoring event.

9 And then they -- I think an important
10 part of that study was another water well search
11 to be sure there weren't any potable water wells
12 on the property or in any of the surrounding
13 properties and they found -- they did not find
14 any potable wells within a 2500-foot radius of
15 the site.

16 Q. Well, and we will probably see later
17 but subsequent to this 2010 investigation, have
18 additional wells been installed?

19 A. There have been a number of wells
20 installed around the site including additional
21 upgrading of wells and there are now some wells
22 that have been installed to help monitor what's
23 going on with the groundwater plume coming from
24 the adjacent properties.

1 Q. Let's turn to Slide 80 which is titled
2 the 2020 FS Area Investigation. And I can refer
3 you to the bottom of your Page 41 of your expert
4 report. What are you describing here?

5 A. So I mentioned previously MW-5 which is
6 shown on the callout map on the top right.
7 That's the well that's immediately west of the
8 west ash pond. It would be on the eastern
9 perimeter of the former slag area.

10 Based upon what they were seeing in
11 that well, at least partially, they selected to
12 undertake further evaluation of the former slag
13 area so they initiated this investigation which
14 was apprised of 40 probes that are depicted on
15 the callout to the left which was in a gridded
16 pattern to across the FS area for approximately
17 a thousand by 400-foot grid.

18 Their findings indicated that they were
19 finding coal ash anywhere from near the ground
20 surface to bearing from 7 to 17 feet below
21 ground surface. They did some leach testing of
22 the materials as part of that study, and they
23 found that the concentrations were generally
24 below the Class 1 groundwater quality standards,

1 but they did have several exceptions to that
2 which are referenced boron at three locations
3 and arsenic at one.

4 Q. Okay. I have another answer to Board
5 Question No. 7, so I will read it into the
6 record and then you can answer it. Board
7 Question No. 7: Can Midwest Generation provide
8 any information regarding the characteristics of
9 the CCR that the old pond contained?

10 Mr. Dorgan, what is your first reaction
11 to that question?

12 A. The old pond is an issue of confusion
13 obviously. We have looked at the former slag
14 area as part of our evaluation, and I think it's
15 being referred to as the grassy field in this
16 matter.

17 Q. But to your knowledge, is there data
18 about the grassy field?

19 A. Yes. That would be this data, I
20 believe, would be responsive to that request;
21 and that summary of that report or that data is
22 included in our expert report from the earlier
23 matter.

24 MS. GALE: And, Mr. Hearing Officer, we

1 have that data here if the Board would like it
2 or we can file it. How best would you like it?

3 HEARING OFFICER HALLORAN: I would
4 prefer you file it.

5 MS. GALE: Okay. Yeah.

6 HEARING OFFICER HALLORAN: Yeah. That
7 would be good.

8 MS. GALE: And, I mean, for the record
9 it's the same data that's been submitted in the
10 Sierra Club matter so we can file it as well
11 here.

12 HEARING OFFICER HALLORAN: Okay. Yes.

13 MS. GALE: Actually, I am going to hand
14 it to Mr. Dorgan just so you can describe it
15 before we file it.

16 HEARING OFFICER HALLORAN: Okay.

17 MS. GALE: I am going to hand you what
18 we will mark as Exhibit 43. I will hand you
19 another copy.

20 HEARING OFFICER HALLORAN: I guess I
21 should ask Mr. Gunnarson if he has an objection
22 to it.

23 MR. GUNNARSON: We are reviewing it
24 right now, Mr. Hearing Officer.

1 HEARING OFFICER HALLORAN: Take your
2 time, sir.

3 MR. GUNNARSON: Mr. Hearing Officer,
4 we'd like to reserve our right to object based
5 on what testimony Mr. Dorgan can give relating
6 to the data and its sources and things like
7 that.

8 HEARING OFFICER HALLORAN: Very good.
9 Thank you.

10 BY MS. GALE:

11 Q. Mr. Dorgan, looking at that pile of
12 data in front of you, what's the first thing in
13 that binder clip that I have handed in front of
14 you? The first document, not in your report but
15 in the binder clip. What is it first showing?
16 What are those?

17 A. So the data -- The package that was
18 just given to me basically have two elements to
19 it. One is the boring logs of the borings that
20 were performed; and then after that, are the
21 laboratory analytical reports for the samples
22 that were collected.

23 I would just point out that our report
24 includes a summary of the investigation and a

1 description of the findings and includes summary
2 tables and other information that consolidates
3 that he was included in this package.

4 Q. And where is that in your report?

5 A. It begins at the bottom Page 42 under
6 Section 4.2.4, and then continues on -- or
7 excuse me -- at the bottom of Page 41 and then
8 continues at the top of 42.

9 Q. Thank you.

10 HEARING OFFICER HALLORAN: Ms. Gale, do
11 you have a copy I can just take a look at
12 Exhibit 43?

13 MS. GALE: Yes, sir.

14 HEARING OFFICER HALLORAN: Thank you.

15 MS. GALE: Good to go?

16 HEARING OFFICER HALLORAN: Yes, you
17 may.

18 MS. GALE: Okay.

19 BY MS. GALE:

20 Q. And you said this data is described in
21 your report on Pages 41 through 42. Generally,
22 what are your conclusions based upon this data?

23 A. Well, it told us that there are ash
24 materials that exhibit characteristics that may

1 or are likely leaching typical CCR constituents
2 into the groundwater that is being detected in
3 the adjacent MW5, and it formed the basis of our
4 conclusion regarding how to best manage those
5 conditions in an effort to basically interrupt
6 that leaching and prevent continued contribution
7 to the groundwater, so that eventually the
8 monitoring and natural attenuation mechanisms
9 would -- which are already demonstrated to be
10 occurring but would continue to occur and so
11 that led to our proposal for installation of an
12 engineered low permeable barrier on top of the
13 former slag area.

14 Q. I want to turn to the next Board
15 Question No. 8, and I will read it into the
16 record, The ultimate -- excuse me. Strike that.

17 The Alternative Source Demonstration,
18 (ASD) included as Exhibit 15 hypothesizes that
19 the source of contamination is up-gradient of
20 MW-05.

21 Have there been any further
22 investigations into the source of the
23 contamination?

24 And so, Mr. Dorgan, answer that first

1 question.

2 A. I would think the data and the study
3 that we have just been referencing would be
4 responsive to that.

5 Q. And so Question A: Has the grassy
6 field or the old pond been ruled out as
7 possibilities of sources of contamination?

8 A. The grassy field is identified as a
9 potential source for the contamination under
10 MW-5 which is why we proposed the remedy that we
11 have.

12 Q. Okay. And then I actually I think this
13 is a good opportunity to quickly get to the
14 agent -- the questions directed to the Agency
15 related to their Exhibit 34, Table 2 about
16 groundwater events with different detection
17 limits. Do you recall this discussion?

18 A. Yes.

19 Q. I will read it into the record and then
20 we have answered that question. In agency
21 Exhibit 34, Table 2 groundwater analytical
22 results Midwest Generation, LLC, Waukegan
23 Station Illinois, there are sampling events with
24 different detection limits between events and

1 some detection limits are above the standard.

2 Is Illinois EPA aware of the reason for
3 this? Some examples include 1(a) for MW-05, the
4 boron results from August 17, 2020 through
5 February 9, 2022 have a detection limit of 5.0
6 milligrams per liter when the boron standard
7 under 845.600(a)(1) is 2.0 milligram per liter.

8 Mr. Dorgan, do you need to look at
9 Exhibit 34 to help you answer that first
10 question?

11 A. I could, but I recall having looked at
12 it relatively recently and can probably answer
13 in terms of my observations from looking at that
14 data.

15 In that particular instance, as I
16 recall, the detected concentrations were all
17 above the detection limit and, in fact, in each
18 instance they were above the standard that was
19 being referenced; and so that's a very common
20 occurrence in groundwater data.

21 Your detection limit is a function of
22 your matrix and the sample itself, it can vary
23 from time to time. You try to achieve a minimum
24 but it's a function of the sample itself.

1 So in that case, all of the detected
2 data was above the above the standard already.
3 So the fact that it was above the varying
4 detection limit really wasn't relevant.

5 Q. Okay. Any question 1(b): For MW-07,
6 the sulfate results from April 2022 -- excuse
7 me -- the sulfate results from April 22, 2020
8 have a detection limit of 500 milligrams per
9 liter when the sulfate standard under
10 485.600(a)(1) is 400 milligrams per liter.

11 Mr. Dorgan, did you investigate that
12 question?

13 A. I did.

14 Q. And what was the result of your
15 investigation?

16 A. So that was a little bit different.
17 The observation that the detection limit was
18 higher was correct. That was in the one
19 monitoring event, the very first one, referenced
20 on the table.

21 After that, the detection limits all
22 were lower and below the standard from that
23 point going forward, so there was one instance
24 where the detection limit did exceed.

1 I think what I understand to be the
2 circumstances there is the laboratory that was
3 being used at the time had an instrument that
4 they ended up replacing and the newer instrument
5 was able to achieve lower detection limits, so
6 they had the old instrument in place for that
7 one sampling event and the new one for the
8 subsequent sampling events and as a result, they
9 were able to achieve lower detection limits
10 which fell below the standard that was being
11 applied.

12 Q. And then Question 1(c): Were different
13 methods used to analyze groundwater between
14 sampling events and/or wells?

15 A. Not different methods, no.

16 Q. Thank you. I am going to turn back to
17 your presentation. Let's go to Slide 81,
18 please. So of Slide 81 Ongoing Groundwater
19 Monitoring. Why include this in your analysis?

20 A. Again, it's an element of the data
21 record that's being created for the site that
22 informs evaluation of appropriate remedy.

23 We are just summarizing that there are
24 12 monitoring wells that are part of this

1 monitoring network that continue to be
2 monitored. It's a relatively extensive list
3 since they are doing both the detection
4 parameters under Appendix 3 and assessment
5 parameters under Appendix 4.

6 The constituents required by the
7 Illinois CCR rules are being picked up and that
8 they have been doing quarterly monitoring of the
9 network since the CCAs were implemented in 2012.

10 And then, finally, at present, with the
11 number of wells that are out there, they have 34
12 constituents that are being collected four times
13 a year for 12 wells so that's quite a bit of
14 data on an annual basis.

15 Q. Let's turn to the next slide, Slide 82.
16 Mr. Dorgan, what is being depicted in Slide 82?

17 A. So this, again, this is the site with
18 the facility boundaries referenced, and then we
19 are showing the two environment land use control
20 areas that exist for the site. The one to the
21 west is the one that's in place to address the
22 groundwater that is impacted that's flowing onto
23 the Com -- or onto the Midwest Generation site
24 from what's now Commonwealth Ed property which

1 had been the former tannery, and then there was
2 an ELUC that was established as part of the CCA
3 in 2012. That is basically the area to the east
4 that captures the ponds, and the property
5 between the ponds and the lakeshore.

6 Q. And an ELUC, is it a remedy?

7 A. It's not a remedy. It's done in
8 support of a remedy.

9 Q. And I am going back to your risk
10 triangle. How does it fit into that risk
11 triangle?

12 A. It eliminates the potential for a
13 receptor so nobody can come in and put a
14 groundwater well in this area of the property
15 and run the risk of being exposed to
16 contaminating groundwater.

17 Q. You mean a potable groundwater well?

18 A. Potable groundwater, one meant for
19 drinking water.

20 Q. Let's go to Slide 83, please.

21 Generally speaking, what are the potential
22 receptors?

23 A. Well, outside of what I referenced
24 previously we started by just assessing the

1 surrounding land use, and I kind of covered that
2 already I believe.

3 But, again, at least two studies were
4 implemented where they did a search for water
5 wells and none were identified either on-site or
6 within a fairly significant distance from the
7 site.

8 And then as a result, since we don't
9 have groundwater being used, we really kind of
10 concentrated then on Lake Michigan as a
11 potential ecological receptor with respect to
12 site groundwater conditions.

13 Q. Let's turn to the next Slide 84. And,
14 you know, this is an assessment of groundwater
15 trend testing it says at the top. I want to
16 step back with some background.

17 What kind of trend testing did you
18 conduct for the groundwater at the Station?

19 A. So we subjected the groundwater data
20 set to the Mann-Kendall trend for test which is
21 a very typical EPA reference but IEPA accepted
22 test methodology.

23 Q. And how does it asses groundwater
24 trends?

1 A. What it's doing is it's looking within
2 a well at the pattern of change in groundwater
3 chemistry over time. So it's looking -- It's
4 fairly complicated, but it considers the change
5 up and down from one event to the next and then
6 spins a statistical model on those changes to
7 assess whether you have statistically
8 significant upward or statistically significant
9 downward trends within the data.

10 So you are basically starting at the
11 beginning of the data, looking at the most
12 recent data point, and you might be able to step
13 back and look at it; but this does it more
14 technically and runs it through an actual
15 statistical model to determine whether there is
16 a true trend or not.

17 Q. So I think you said you might be
18 stepping back a little bit. So in my mind, you
19 can have a graph with a line heading up or down
20 and then like an eyeball, right?

21 A. That's correct.

22 Q. And what is this more like?

23 A. This is looking at similarly but
24 running the statistical model, not just relying

1 on the visual observation.

2 Q. I want to turn to Page 43 of your
3 expert report. In the top -- So and you state
4 that wells were not necessarily located at
5 down-gradient property boundaries. How is that
6 important?

7 A. In many instances, not all, but in many
8 instances, we would be looking at the
9 down-gradient property boundary conditions to
10 assess whether we have impacts exceeding
11 standards that are migrating off-site.

12 We ended up using the four wells that
13 are down-gradient of the ash ponds that are
14 being used as part of the ongoing monitoring
15 program which will provide us with a more
16 conservative evaluation because we have a lot of
17 additional change that can occur as the
18 groundwater migrates further to the east towards
19 the lake. There is about a 700-foot distance as
20 I recall, and so this would be a more in our
21 mind more conservative approach towards looking
22 at groundwater and assessing the risk.

23 Q. So to your recollection, I believe you
24 can look on Page 43, what wells did you look at

1 at the Waukegan Station for the trend testing?

2 A. MW-2 and MW-1 -- or MW-1, MW-2, MW-3,
3 and MW-4.

4 Q. And on Page 44 of your report, it also
5 discusses situations of no trend. What does no
6 trend mean?

7 A. So previously we discussed this concept
8 of detection limits, and what will happen is
9 oftentimes you will receive data back where the
10 data consistently is being recorded at or below
11 the detection level.

12 So you may have the exact same
13 concentration reported over the historical
14 record which means it's basically a flat line
15 and that there will be no trend in that
16 instance. There can be instances where you do
17 have detections and the detections might be
18 either at one event, they are not there the
19 next, but, again, when you look at it over time,
20 there is no observable or statistically derived
21 trends of the data. It's basically flat for
22 lack of a better description.

23 Q. All right. So looking at -- Thank you
24 for that. Let's talk about the trend analysis

1 at the Waukegan Station.

2 What does this graph show and I can
3 refer you to Pages 43 and 44 of your expert
4 report.

5 A. So what we have here are three
6 additional representations of our findings. At
7 a high level, the pie graph on the left is for,
8 this is again an example, this was the data that
9 showed for MW-2, we had the predominant result
10 was no trends. That's the gray part of the pie
11 graph.

12 But then we had a result of 19 percent
13 of the time we are seeing a downward trend and
14 an upward trend 21 percent of the time. So
15 those relatively evenly distribute between
16 downward and upward trends but the vast majority
17 of the results showed no trend.

18 Q. So how did this trend -- I'm sorry.
19 Did you want --

20 A. Yes. Yeah. I didn't finish by
21 summarizing what you are seeing on the right
22 side of that.

23 Q. Oh, yeah.

24 A. So on the right side the top one are

1 the results of the downward or what would be
2 detected as downward trends; and in that
3 instance you can see, again, the pie chart says
4 21 percent. On the Y axis, you can see the
5 percentages.

6 What we had was an allocation between
7 what was not statistically significant and what
8 was statistically significant. So the dark blue
9 shows of the downward trends, the percentage
10 breakdown of what was statistically significant
11 versus not statistically significant.

12 And the same is true on the bottom for
13 the upward trends, and what it shows there is
14 even when a trend was observed, they weren't
15 typically observed at a high frequency of
16 statistically significant trends.

17 Q. And so how is this trend analysis
18 relevant to your opinion -- your remedy opinion
19 at the Waukegan Station?

20 A. I think there were several -- several
21 things that this brought to our attention. One,
22 this was a rare instance where the number of
23 upward trends was larger than the number of
24 downward trends because we looked at the four

1 stations as a whole, so these weren't specific
2 just to Waukegan.

3 And so that was showed us -- told us
4 something about the current condition of the
5 groundwater and what we might expect to see with
6 the groundwater going forward which was why we
7 want to see that flip to more downward trends
8 rather than upward trends, and a way to do that
9 was to implemented the remedy that we proposed.

10 Q. Yeah. And the remedy you propose is
11 what?

12 A. Is the low permeability engineered
13 barrier that we would also consider to be a cap.
14 There is a cap of sorts. The grassy field is a
15 grassy field because there is a vegetative cover
16 layer that allows the grass to grow; but as the
17 data that are in these boron log show it's not
18 particularly big. It's not engineered. It's
19 not acting as a barrier to infiltration of
20 rainwater.

21 Our cap that we propose would basically
22 eliminate infiltration of surface water,
23 rainwaters, from percolating down through the
24 ash that's present in this area that's in the

1 vadose zone which is that area above the
2 groundwater table.

3 So right now you have rainfall falls on
4 the grassy field, percolates down through the
5 ash and eventually reaches the groundwater. We
6 want to stop that.

7 Q. Great. Let's go to the next slide,
8 Page 85. So what are you showing on this map?

9 A. This is just, again, a high-level
10 representation of our site with the
11 down-gradient wells east of the east ash pond
12 and with the lake located further to the east.

13 Q. And it's -- We have potential
14 groundwater impact to surface water analysis.
15 What -- We have been calling it something else,
16 right?

17 A. Yeah. We have been talking about the
18 risk evaluation and going to the lack of potable
19 groundwater wells on-site which eliminates that
20 risk. We turned our focus to the proximity to
21 the nearby lake and the surface waters with
22 respect to the site groundwater conditions.

23 Q. Let's turn to Page 45 of your expert
24 report. Excuse me. I want you to turn to

1 Page 45 of your expert report. Section 4.4, and
2 is this your discussion about risk?

3 A. Yes, it is. Risk to off-site
4 receptors.

5 Q. Right. And the heading says there is
6 no unacceptable risk to off-site receptors.
7 What do you mean by "unacceptable"?

8 A. Well, it's difficult to ever say with
9 100 percent certainty that there is absolutely
10 no risk. It's to within a reasonable degree of
11 scientific certainty.

12 It is taking a look at, again, we are
13 looking at the pathways, we are looking at the
14 source concentrations, we are looking at the
15 receptors, and we are comparing the results from
16 the wells to in this case the water quality
17 criteria to see if there would be an
18 unacceptable risk to the surface water and the
19 ecological receptors in the surface water.

20 Q. And so evaluating the risk to the
21 surface water, what did you -- what did you --
22 What did you compare the groundwater data to for
23 surface water?

24 A. Well, on the next slide we summarized

1 that.

2 Q. Let's go to the next slide. Sorry.
3 There you go.

4 A. And so the last bullet point there is
5 specifically referencing the water quality
6 criteria that we evaluated and created tables
7 with the water quality criterion. We looked at
8 the data over time and did an averaging using
9 another software package that's referenced there
10 in the first bullet point, SANITAS. Again,
11 another standard methodology.

12 And so we used -- we compared those
13 average concentrations over time to the
14 standards to see if there was instances where we
15 were seeing those criterion.

16 Q. And what -- and I can refer you to
17 Page 47 of the report, what were your findings
18 of the risk assessment for the Waukegan Station?

19 A. So we found that we did not have
20 exceedances for the water quality standards with
21 one exception. At one of the wells we had a pH
22 result, a field indicator parameter that's
23 collected at the time the samples are collected.
24 That came in slightly above the standard. That

1 was at 9.74 and the standard is -- ranges from 6
2 and a half to 9.

3 So that was -- that was one instance
4 where there was an exceedance but, again, that
5 was fairly above the standard and it was over
6 700 feet west of the surface water to land
7 interface; and so we feel that the MNA
8 activities, the natural degradation,
9 characteristics of the aquifer as far as
10 absorption, dispersion, effusion, would have
11 dropped that concentration below that standard
12 before it came even close to the surface water.

13 Q. And I see on Page 45 you mention
14 Mr. Seymour's report again in the second
15 paragraph. Do you see that there? Second
16 paragraph.

17 A. Page 45?

18 Q. I'm sorry. 47 would be a better page.
19 Second paragraph.

20 A. Yes. That basically is just saying we
21 felt that our results of our evaluation were the
22 same as Mr. Seymour's. He had performed a
23 similar type of an evaluation as part of his
24 expert report and expert opinions in the earlier

1 phases of the Midwest Gen matter.

2 Q. Let's go to the next slide, Slide 87.
3 So what is -- What are you describing here?

4 A. So, again, this is being used as an
5 example. It's not all of the data. This is
6 looking at one constituent boron in the four
7 down-gradient wells, and it's looking at the
8 average concentration that was calculated from
9 that evaluation I had previously referenced.

10 It's showing in the dark blue the
11 dissolved boron, the total boron in the lighter
12 blue for each of the wells as you move from the
13 left to the right the concentrations are
14 referenced and then the blue bar towards the top
15 of the graph would be the standard that we were
16 comparing to.

17 And so it's just a visual
18 representation to show that there is quite a gap
19 between the average concentrations and the
20 standard.

21 Q. Let's turn to Slide 88. All right.
22 Here is a summary; and so based upon all that we
23 have gone through, what is your opinion as to
24 the remedy for the Waukegan Station? And you

1 touched upon it earlier, but I'd like you to
2 touch upon it again.

3 A. Yeah. This just summarizes kind of the
4 high-level takeaway from the evaluation that we
5 had undertaken and summarizes our evaluation of
6 the well network, what's going on with
7 groundwater, the groundwater flow direction,
8 considering what's happening with the regulated
9 CCR units themselves, and then it summarizes
10 the, again, the trend testing that we had done
11 relative to the groundwater quality indicator
12 parameters and, again, showing that we had
13 slightly more upward trends than we did
14 downward.

15 That, in our opinion, wasn't
16 necessarily unusual or unexpected and that we
17 did feel as though given these unique
18 circumstances, that a remedy for the former slag
19 area was appropriate. And that would be the low
20 permeability engineered cap barrier that we
21 would install.

22 As part of that, there would be a
23 groundwater management zone that would be
24 implemented. The groundwater management zone

1 would give us time to evaluate the effectiveness
2 of the cap, allow the monitored natural
3 attenuation processes to take place that would
4 allow us then to demonstrate the groundwater
5 quality in the down-gradient wells as returning
6 to and in the well down-gradient in this area to
7 a condition consistent with the groundwater
8 standards.

9 Q. Let's go to the next -- Well, one last
10 thing the last bullet there, what are you saying
11 there in that last bullet?

12 A. Again, it just summarizes what we have
13 spoken to previously which is we didn't feel
14 there was an unacceptable risk to either on-site
15 or off-site potential receptors given the risk
16 assessment that was performed.

17 Q. Go to the next slide, Slide 90. Here
18 we are continuing on with the summary of
19 Waukegan, but I want to focus on the fourth
20 bullet where you say "presumptive remedy." What
21 do you mean by that?

22 A. Presumptive remedy is what would
23 generally be considered a very typical strategy
24 and approach for dealing with similar types of

1 conditions. Caps and engineered barriers have
2 been found to be very effective at helping to
3 manage groundwater conditions instances where
4 you have these types of unconsolidated fills
5 present.

6 So the engineered barrier in our
7 opinion would be considered a presumptive
8 remedy. There would be other remedies
9 potentially that could be considered, but this
10 would be the most appropriate given the
11 technical conditions of the economic
12 reasonableness.

13 Q. I think you said a cap is a common
14 remedial measure, right? Is that what you said?

15 A. I did.

16 Q. How many times have you been involved
17 with that remedial approach?

18 A. Many times.

19 Q. Can you give me an example or two?

20 A. An example or two? We have had
21 engineered barriers that we put on landfills, on
22 solid waste management units at Resource
23 Conservation Recovery Act sites, Superfund
24 sites, many SRP projects that we have done have

1 relied on engineered barriers as an element of a
2 remediation strategy to address risks, so it's
3 very common in many different areas of managing
4 these types of situations.

5 Q. And, Mr. Dorgan, is a cap precluded or
6 barred if you have waste materials in the
7 groundwater?

8 A. No.

9 Q. Do you have examples of that?

10 A. I do.

11 Q. Give me one or two examples.

12 A. I can -- There is a former solid waste
13 management unit that we closed a site in -- just
14 in northwest Indiana, not far from here. It was
15 one of the steel mills and there had been steel
16 mill-related waste that had been accumulated in
17 an area over time.

18 After going through the investigation
19 process, we concluded that capping it in place
20 was the appropriate remedy. We implemented that
21 cap. We continued to monitor, to assess the
22 groundwater conditions over time.

23 The groundwater conditions improved to
24 the point that the Regulatory Agency eventually

1 let us discontinue the groundwater monitoring.
2 So that's a very similar type of condition to
3 what we have at this Waukegan site.

4 Q. I want to turn back to the Board's
5 first question.

6 MS. GALE: I should say, Mr. Hearing
7 Officer, it is noon, and I know we have public
8 statements at 1:00. I don't know whether you
9 want to take -- if you want to take a brief
10 break.

11 HEARING OFFICER HALLORAN: Right now
12 would probably be a good time unless
13 Mr. Gunnarson and Ms. Strauss, I will defer to
14 you. But we have to be back here at 1:00 sharp
15 if not a few minutes earlier for public comment.

16 MS. GALE: Yes.

17 BOARD MEMBER VAN WIE: What time?

18 HEARING OFFICER HALLORAN: 1:00 o'clock
19 to 2:00.

20 BOARD MEMBER VAN WIE: And then we will
21 continue?

22 HEARING OFFICER HALLORAN: Correct.

23 All right. Please be back here at 1:00 o'clock
24 sharp. Please be back here. Thank you so much.

1 Paula, we are off the record.

2 (Whereupon, a lunch recess was
3 taken at 12:00 p.m.)

4 HEARING OFFICER HALLORAN: All right.
5 We are on the record now.

6 MR. RUKSTALES: I hope the Waukegan TV
7 is on, right?

8 HEARING OFFICER HALLORAN: I have no
9 control over that, sir.

10 MR. RUKSTALES: Well, you cut it off,
11 so...

12 HEARING OFFICER HALLORAN: I didn't cut
13 it off, sir. You can state your name for the
14 transcript.

15 MR. RUKSTALES: Yes. My name is Chuck
16 Rukstales. I am a Waukegan resident. I would
17 just say for the record that I have dealt with
18 utilities for 25 years consulting, and my
19 background certainly has been consulting to the
20 utility industry and understanding the
21 techniques, and they'd rather pay fines than
22 implement solutions.

23 So I think this Board should certainly
24 look at, you know, what they have said, the

1 groundwater contamination and the like, and I
2 would just say that I have got some experience,
3 not only with utilities over 25 years, but I was
4 a seventh ward alderman here in the '80s. We
5 wrote the zoning ordinance. We probably need to
6 update land use so we don't have these toxic
7 chemicals with the Home Rule capabilities of the
8 City of Waukegan, not totally rely on the EPA or
9 Federal or State EPA to do this.

10 I would think that NRG as the parent
11 company, you know, their profits in 2022 were \$4
12 billion, so I am sure they can afford to clean
13 up the mess that they made.

14 I would just say that -- For the
15 record, I would just say please don't give them
16 a free pass in Waukegan. Midwest Generation is
17 part of NRG. NRG has many places they
18 decommissioned in the past. We should find out
19 the track record there. And the whatever you
20 are calling the ten acres old coal ash or FS,
21 whatever the FS area is called, it is a CCR
22 surface impoundment that should be removed and
23 regulated by the Illinois Coal Ash Rules.

24 I would just say the coal ash from all

1 three ponds causes groundwater contamination and
2 must be regulated by Illinois Coal Ash Rules and
3 the ponds completely removed, not capped in
4 place and run away from the problem.

5 We have Yeoman Creek, Manville, we have
6 Outboard Marine. We have enough dumping grounds
7 in Waukegan that we don't need another Superfund
8 site set up when NRG leaves this facility.

9 We need someone to make sure that they
10 pay for the damage they did. You know, if
11 somebody puts garbage on your next-door
12 neighbor's property, the City forces them to
13 clean up and, you know, fines them.

14 So my take on this is this exemption
15 for this because it has grass on it doesn't mean
16 it's not a CCR impounded facility. So that's
17 all I have.

18 HEARING OFFICER HALLORAN: Thank you
19 very much, sir. I appreciate your comment.
20 Mayor Ann Taylor, I see you are in the audience.
21 Please --

22 THE REPORTER: Mr. Hearing Officer, may
23 I have the witness's spelling of his last name?

24 HEARING OFFICER HALLORAN: Yes. I'm

1 sorry.

2 MR. RUKSTALES: Rukstales,
3 R-U-K-S-T-A-L-E-S.

4 HEARING OFFICER HALLORAN: Thank you,
5 sir.

6 MAYOR TAYLOR: Thank you. Good
7 afternoon. For those of you who don't know me,
8 I am the Waukegan Mayor Ann Taylor.

9 The city of Waukegan is home to just
10 under 90,000 people but we service 125 to
11 127,000 residents every day, and I am here today
12 to speak on their behalf.

13 I want to thank you-all for allowing me
14 to make a brief statement today, and I want to
15 thank the dedicated members of this Board for
16 all the work that they do to restore, protect,
17 and enhance the quality of Illinois environment.

18 The coal plant operated by Midwest
19 Generation in Waukegan had adverse effects on
20 the City's residents while it was still
21 operating and these impacts persist even after
22 it ceased coal-fired operations. Unlike many
23 other areas, Waukegan's coal plant is near Lake
24 Michigan, right next to the Waukegan municipal

1 beach and the City's water treatment plant.
2 Moreover, our residents, both young and old,
3 experience higher rates of asthma, and other
4 respiratory issues.

5 Midwest Generation has not cooperated
6 effectively with the City. And despite the
7 City's repeated requests, Midwest Generation has
8 refused to clean up all the toxic coal ash from
9 the coal ponds within the city limits and other
10 surface coal ash areas.

11 This has happened even as Midwest
12 Generation's own hazard assessment states, A
13 hypothetical failure of their coal ash ponds,
14 quote, "has the potential to flow directly into
15 Lake Michigan and cause off-site environmental
16 effects," end quote.

17 Despite extensive public input,
18 strongly advocating for the complete removal of
19 all coal ash from the site during the public
20 closure hearings, Midwest Generation has
21 maintained its initial decision to leave unlined
22 coal ash at this location.

23 The company aims to do the bare legal
24 minimum rather than prioritizing what's right or

1 best for the residents of Waukegan. The
2 scientists and experts contracted by energy have
3 documented alarmingly high concentrations of
4 toxic metals in the groundwater surrounding the
5 Waukegan plant.

6 Groundwater analysis conducted at the
7 site reveal staggering levels of contamination.
8 Arsenic passes safe thresholds in the monitoring
9 wells by over 2,000 times. Boron levels exceed
10 Illinois drinking water standards by more than
11 16 times, and chromium passes safe levels by
12 more than 480 times.

13 Additionally, lithium alum and sulfate
14 also register levels far beyond safe limits.
15 These toxic metals are linked to cancer,
16 neurological impairment, and congenital
17 disabilities and can inflict damage on the
18 liver, kidneys, stomach, and reproductive
19 systems.

20 Waukegan is already burdened with five
21 EPA Superfund sites. The residents of Waukegan
22 cannot bear the financial cost of yet another
23 environmental catastrophe caused by a private
24 company. This company has reported a net income

1 of \$1.2 billion last year and is failing to
2 address its environmental mess adequately.

3 I urge every member of the Board to
4 consider, Would you tolerate a company
5 inflicting this alarm on your family and your
6 neighbors?

7 Waukeganites deserve better. They
8 deserve to be listened to. They deserve clean
9 air and safe water, and they deserve not to have
10 to worry about what happens to unaddressed coal
11 ash and how it will impact their children and
12 grandchildren in the years to come.

13 I want to mention that Waukegan is a
14 low to moderate income community, with hard
15 working residents. Remember, during COVID,
16 these were the people who we were crying for
17 that we didn't have people to do our service
18 industries anymore, to run our small businesses.
19 And yet they are the backbone of our economy and
20 the people we are turning our backs on today.
21 So I ask you to please consider the residents of
22 Waukegan and the impact that it will have on
23 this community.

24 And I want you to know I am going to

1 fight tooth and nail for these residents because
2 I believe in this community, and I believe in
3 our people. Thank you.

4 HEARING OFFICER HALLORAN: Thank you,
5 Mayor. Next? Thank you. Just sit there or
6 stand there. Are you next? Do you have a
7 comment?

8 MR. PENCE: I can go.

9 HEARING OFFICER HALLORAN: That would
10 be great. Just state your name for the record.

11 MR. PENCE: Okay. All right. So my
12 name is Frank Pence. I am an organizer with
13 Clean Power Lake County. I am a Waukeganite, a
14 proud Waukeganite, and I will say my
15 grandparents both were share croppers in
16 Mississippi Delta, came to Waukegan in the early
17 1950s. They settled a swampland along the
18 Waukegan River. This place they called Frog
19 Island became home to many southern Black
20 refugees.

21 My grandparents along with other
22 inhabitants of Frog Island grew gardens that
23 help sustain them through hard times. When
24 neighbors had nothing else to give or barter

1 with, they gave vegetables from their gardens
2 and fish caught nearby. The land and its
3 rewards were held as common resources to be
4 shared equitably but by the time they arrived in
5 the 1950s, the threat of polluting Waukegan's
6 natural spaces and places was already well
7 underway.

8 The Yeoman Creek landfill, now a strong
9 and Superfund site, with no bottom liner like
10 the old pond or grassy field that's been
11 discussed, began operating just upstream from my
12 old neighborhood in 1958. A subterranean tunnel
13 was installed and the river was paved over and
14 with it my family's relationship to their
15 environment began to change.

16 No more gardening, no more vegetables,
17 no more fish from the stream. But every rainy
18 season, the tunnel would overflow and the river
19 would reappear when all of our basements in the
20 neighborhood would flood and be polluted and
21 flooded with that polluted water. I still
22 remember splashing around in it.

23 Polluting the environment is polluting
24 each other. Exploiting nature is exploiting

1 ourselves, and there has been a trend in
2 Waukegan to exploit nature to take as much as
3 you want and then to leave it in its current
4 state polluting it all.

5 In Lake County being Black or brown and
6 poor is a serious health hazard. We die
7 younger. Data from the Brushwood Center's
8 Health Equity and Nature Report shows a 15-year
9 gap in life expectancy between the residents of
10 North Chicago and those of Lake Forest, just
11 five miles apart from each other.

12 I see this trend of premature death in
13 my own family. I never knew my grandmother who
14 died at age 50. Her two daughters also died
15 young. Aunt Sheila who had lupus died of
16 meningitis at 16. Auntie Diane from breast
17 cancer in her 50s.

18 Leaving this coal ash in the sandy soil
19 on our lakefront is like leaving cancer under
20 our mother's skin. It will be her sickness for
21 hundreds or thousands of years, and it will be
22 ours, too.

23 I think the question that we are
24 thinking through here are at this hearing is are

1 Black people, are Latinos, are Indigenous,
2 working-class people, poor people deserving of
3 investment into our future. Are we deserving of
4 clean energy and a healthy nature?

5 For many decades the heads of industry
6 and of government decided that we were not and
7 the scars of their decisions are visible all
8 around us and in us.

9 We, the people, demand no free passes,
10 no exemptions for NRG Energy. We want all of
11 the coal ash removed from our lakefront. We
12 want to reclaim our sacred spaces and our
13 relationship to nature. Thank you.

14 HEARING OFFICER HALLORAN: Thank you,
15 Mr. Pence. I know you have more that you may
16 want to read if we have time, but thank you.
17 All right next, please. And thank you for
18 holding at three minutes and under.

19 Just tell the court reporter your name
20 and spell it, please. Thank you.

21 MS. ABBOUD: Dani Abboud. D-A-N-I,
22 A-B-B-O-U-D. Good afternoon. My name is Dani
23 Abboud; and in addition to being a concerned
24 Illinois resident and an avid drinker of Lake

1 Michigan water, I serve as senior program
2 director at Brushwood Center, a nonprofit
3 organization that works closely with many
4 organizations, institutions, and families in and
5 around Waukegan.

6 Our mission centers on improving
7 health, equity, and access to nature through
8 partnerships, community action, and the arts.
9 Waukegan is full of beautiful history both past
10 and present. Arts and culture, incredible
11 people, beautiful parks, and a gorgeous
12 lakefront.

13 But this lakefront has been abused and
14 exploited by companies who leave our incredible
15 Waukegan residents to bear the burden of their
16 waste as they rake in millions that never get
17 reinvested properly into this town.

18 This past summer as mentioned,
19 Brushwood Center released a report, the Health
20 Equity and Nature Report which showcased that
21 northwestern Lake County including Waukegan is
22 the most overburdened by both environmental and
23 health inequities in our region.

24 Not only are Black and brown

1 communities like Waukegan facing higher
2 environmental burdens, but they are also facing
3 terrifying health disparities, including the
4 decades-long difference in life expectancy as
5 Frank mentioned earlier.

6 And this decades-long life expectancy
7 difference is in comparison to wealthier, whiter
8 communities only a few miles away who noticeably
9 do not have coal ash ponds in their
10 neighborhood.

11 This comes as no surprise when one
12 considers the concentration of these
13 environmental hazards including the five out of
14 the Illinois eight Superfund sites in Lake
15 County. NRG's toxic coal ash ponds all located
16 in and around Waukegan.

17 Just because we have allowed polluters
18 to get away with this devastation in the past
19 does not mean that we can ignore NRG's,
20 responsibility now. Addressing these issues is
21 even more important in the context of our
22 changing climate.

23 Average temperatures in Lake County
24 have already increased more than one degree

1 Farenheit since the 1800s and we also have seen
2 an increase of more than one inch of rainfall
3 for large parts since the '70s.

4 This warmer weather climate has direct
5 implications on health, and rising lake levels
6 could lead to disastrous contamination of the
7 largest freshwater system for over 30 million
8 people. Almost 7 million alone in the state of
9 Illinois according to the Illinois EPA.

10 The current groundwater monitoring at
11 the NRG site fails to meet the requirements of
12 the Illinois Coal Ash Rules. Coal ash in the
13 Waukegan coal plant is sitting on the shores of
14 Lake Michigan up to 15 feet thick in some
15 places, and it has been left unlined and sitting
16 in groundwater.

17 This is inevitably causing groundwater
18 contamination and must be regulated under the
19 Illinois Coal Ash Rules and removed. Leaving
20 the ash in place will lead to ongoing
21 groundwater contamination at the lakefront site
22 indefinitely.

23 NRG must comply with the Illinois Coal
24 Ash Rules of Waukegan and the rules must be

1 applied specifically to all of the ponds,
2 including the grassy ash pond. Waukegan has
3 suffered the environmental consequences of
4 polluters' wealth for far too long, and NRG must
5 be held accountable.

6 If the price of cleanup is too high,
7 NRG shouldn't have taken responsibility for the
8 site and profited off of it in the first place.
9 It is up to the Illinois Pollution Control Board
10 to in protect citizens' health and safety now
11 and for future generations by saying no to
12 another free pass for polluters like NRG. Thank
13 you.

14 HEARING OFFICER HALLORAN: Thank you so
15 much. You can just come up. There is not a
16 whole lot of people on the list.

17 MS. MAY: Good afternoon. And thank
18 you for the opportunity to address the Board.
19 My name is Lisa May. I am a lifelong resident
20 of Waukegan, a former alderman, and currently
21 employed by the City of Waukegan working
22 exclusively on lakefront projects. I stand here
23 on my own volition to plead for the cleanup of
24 not only the contaminated land referred to as

1 the "grassy field" but all of the coal ash
2 depositors present at the NRG site on our
3 lakefront. East pond, west pond, grassy field,
4 all of these areas known to us as well as areas
5 yet to be uncovered should not be allowed to
6 remain under any conditions.

7 Waukegan cannot afford to continue to
8 be the dumping ground of these monstrous
9 corporations that have polluted our lakefront
10 for decades.

11 While the health concerns surrounding
12 our groundwater and potential contamination of
13 Lake Michigan are obviously the most important
14 issues at hand, you cannot ignore the great
15 economic injury this situation will continue to
16 inflict upon our community.

17 It took decades for our hard work to
18 become decontaminated, but we are still strapped
19 with cap-in-place solutions that cause future
20 development to be complicated and compromised.
21 We struggle with the regional reputation of a
22 dirty lakefront even though we have beautiful
23 clean beaches and a lovely marina and harbor.

24 Allowing anything short of a total

1 cleanup of the ash sites will be another slap in
2 the face for the citizens of Waukegan. One
3 cannot help but wonder if Midwest Generation's
4 request would even be considered in the affluent
5 communities just to the south of us.

6 Waukegan is and always has been a
7 hard-working integrated community. NRG
8 continues to delay cleanup and avoid rules
9 through tactics funded by their deep pockets.
10 Their David versus Goliath situation is not
11 stable for our city.

12 We need the State to hear our cry and
13 hold the polluters responsible for restoration
14 of these properties. Our residents deserve
15 clean land, clean water, and clean air. Our
16 city deserves a fighting chance to restore and
17 redevelop our treasured lakefront.

18 Please allow us this opportunity and
19 hold Midwest Generation accountable for the
20 proper cleanup and complete removal of coal ash
21 on their property. Thank you.

22 HEARING OFFICER HALLORAN: Thank you.

23 MR. PENCE: Diane Ower.

24 HEARING OFFICER HALLORAN: Good

1 afternoon. Just state your name and spell it
2 for the record, please.

3 MS. OWER: Hi. I am Diane Ower,
4 O-W-E-R. I am a resident of Lake County, and I
5 used to live between two smokestacks; and we
6 have more than 60 dry caps on our lakefront in
7 Zion for the nuclear plant, so that's where I am
8 coming from.

9 I worked in Waukegan, and I had to show
10 the lady at the Globe store my money before she
11 would allow me to buy this because she didn't
12 think I had the money for a hundred dollars for
13 this, and I had to show her my money.

14 And so I have had this for a long time.
15 It's more than what I paid for when I was
16 wearing my wedding ensemble. It didn't cost
17 that much, so...

18 Anyway, I taught at Waukegan schools
19 for 20 years. When I started, I was surprised
20 when I had a nurse come to my room and say you
21 have a student that will have an inhaler at the
22 school because they have asthma, and I was
23 surprised. I was like, oh, okay.

24 After teaching there for 20 years, the

1 number of how many students had inhalers was
2 more than half of my class on some years. And
3 one time I was called down to the office and I
4 was panicking because I could hear my student
5 gasping. I had never seen an asthma attack in
6 real life, never have seen it. It's awful.

7 And this little second grader was
8 trying to calm me down even though she couldn't
9 breathe to tell me, it's okay. My inhaler is
10 somewhere in this locked cabinet. You know, it
11 should have my name on it, but probably you can
12 give me any of these inhalers and there were a
13 lot of them spilling out onto the floor, and I
14 still remember that.

15 And that child is out of high school
16 now, probably going to college, but it's scary.
17 And my own personal children ran track, ran
18 cross country, ran soccer fields on days we had
19 F quality air and I sat there as a parent going
20 when is this hammer going to drop? When is it
21 going to drop?

22 And personally I have lost students
23 before they graduated from Waukegan High School
24 where the parents put their gown on a chair

1 because they didn't make it. Do I blame for
2 sure NRG and Midwest? Kind of, kind of I do.

3 So it is a very personal story when you
4 have people come up and say there is a 15-year
5 difference in the average ages between where
6 your ZIP code is, and we do take it personally.

7 Please make them clean up the mess, all
8 of it. The next war is going to be over water.
9 I am sure we will all be pushed out from our
10 wonderful water in Lake Michigan by the same
11 people who are polluting it now but water is the
12 next war. Thank you.

13 HEARING OFFICER HALLORAN: Thank you.

14 MR. PENCE: Mr. Cass O'Keefe.

15 HEARING OFFICER HALLORAN: Just state
16 your name for the court reporter, please, and
17 spell it.

18 MR. O'KEEFE: My name is Cass, C-A-S-S,
19 O'Keefe, O-'K-E-E-F-E. Good afternoon. Thank
20 you for giving me the opportunity to speak. My
21 name is Cass O'Keefe. And I live in Waukegan
22 within a mile of the coal plant.

23 So here we go again. Toxins from the
24 NRG power plant are poisoning our air and water

1 and, once again, NRG is trying to delay cleanup
2 and skirt pollution rules. I have lost count of
3 the number of times we have been called upon to
4 appear at hearings, testify about the effects of
5 this toxic mess on the citizens of Waukegan and
6 plead with officials to enforce rules already in
7 place to protect our health and environment.

8 NRG is responsible for cleaning up the
9 old ash pond. It does meet the regulatory
10 definition of a coal ash pond. I am pleading
11 with the members of the Illinois Pollution
12 Control Board to find that the old ash pond is
13 covered by the Illinois Coal Ash Rules and that
14 NRG is responsible for cleaning it up.

15 If NRG spent as much money on cleaning
16 up their mess as they spend on legal fees,
17 trying to dodge their responsibility, perhaps we
18 wouldn't have to keep coming to these hearings
19 and the cleanup could begin. Thank you.

20 HEARING OFFICER HALLORAN: Thank you.

21 MR. PENCE: Pat O'Keefe.

22 THE COURT: Just state your name and
23 spell it, please. Thank you.

24 MR. O'KEEFE: Patrick O'Keefe,

1 O-'K-E-E-F-E. I am a Waukegan resident, not a
2 pirate. I just got a little eye problem there.
3 And I live, as my wife does, within a mile of
4 the coal ash ponds, the three coal ash ponds.

5 And let's be real, the so-called field
6 that's just east of the other two ponds for
7 generation after generation received the
8 wastewater with coal ash. It's still there.
9 Water is still there. If I had a polluted ditch
10 and I planted some flowers in there, I couldn't
11 legitimately rename it a garden. It would still
12 be a ditch. It would still be a pollution
13 source, and these are three adjoining point
14 sources of toxic pollution, particularly now a
15 concern is of the groundwater.

16 And there is no sealant on this third
17 pond that is erroneously called a field or
18 grass, I don't know, prairie or something, there
19 is still toxins leaching out of there into the
20 groundwater.

21 These three ponds are also adjacent to
22 Lake Michigan, our drinking water source, and
23 one of the world's greatest sources of
24 freshwater.

1 The oldest coal ash pond is polluting
2 the groundwater. It's poisoning the community,
3 and it will continue to do so generation after
4 generation.

5 I do volunteer work with preschool
6 children throughout Lake County including
7 Waukegan and adjoining communities like Park
8 City and North Chicago and Zion. These are
9 children who will grow up suffering from this
10 pollution, and it's going to go on forever
11 unless it gets cleaned up.

12 So, please, I beg you on behalf of
13 those children as well as us adults and their
14 children and their grandchildren and generations
15 to come, to judge this not as some wonderful
16 field to frolic through but the pollution source
17 that it is.

18 This is a matter of life and death. We
19 don't have any figures on how many people have
20 suffered death, but we do know the incidents of
21 pollution-related diseases in a community like
22 Waukegan, an environmental justice community, is
23 much higher than the communities nearby that
24 don't have coal ash ponds polluting their

1 environment. Not to mention again, Lake
2 Michigan.

3 So I beg of you to do the right thing
4 for the people here and thanks very much for
5 letting me speak.

6 HEARING OFFICER HALLORAN: Thank you,
7 sir. And thank you everyone for trying to keep
8 it under three minutes. Appreciate it.

9 MR. PENCE: Miss Pierre.

10 HEARING OFFICER HALLORAN: Just state
11 your name and spell it for the record, please.

12 MS. PIERRE: Yes. Miss Pierre,
13 P-I-E-R-R-E. So I am going to be the mean
14 person and say to everyone, NRG, the Illinois
15 EPA, and the Pollution Control Board, frankly
16 this is disrespectful.

17 It's disrespectful because obviously
18 there is pollution, there is contamination that
19 is to the detriment of 40 million people last I
20 was told by my state representative Rita
21 Mayfield and that means that that pollution gets
22 into the water, people in Illinois, people in
23 Wisconsin, people in Michigan and Indiana won't
24 be able to drink the water.

1 So what I would ask or rather I would
2 demand, because I think it's pitiful to make
3 human beings who live on the planet with you
4 come here and ask to make you do your job. We
5 can read and we can count and you disrespecting
6 us. It's not right.

7 So my demand at this point, which will
8 probably never happen, just come out and say you
9 practice racism, just come on, come say it.
10 Because this ain't the first time that it
11 happened. Did we forget about British
12 Petroleum, you know, in the southeast Louisiana?
13 It's all connected. Exxon Valdez. We have
14 Cancer Alley in the gulf coast. We have Peabody
15 Refinery out in Navajo country.

16 So white people get to practice racism
17 through environmental racism and economics to
18 call it business but we know better. We know
19 better.

20 So to the EPA, just stand to the toes,
21 do your job. Make these people clean it up.
22 Stop playing games because words are words.
23 Actions are actions. And if you don't want them
24 to clean it up, well, then empower the people

1 here to clean it up or face two realities.

2 This pollution gets in the water, there
3 is going to be civil unrest and that civil
4 unrest is going to lead to people excurting out
5 of this area and I got a question for you. You
6 going to let them live with you? You going to
7 let us come in your house?

8 HEARING OFFICER HALLORAN: Thank you.

9 MR. PENCE: Aurora Flores.

10 HEARING OFFICER HALLORAN: State your
11 name for the record and spell it. Thank you.

12 MS. FLORES-GAYTAN: My name is Aurora
13 Flores-Gaytan, A-U-R-O-R-A, F-L-O-R-E-S hyphen
14 G-A-Y-T-A-N.

15 My name is Aurora originally from
16 Mexico. I have been a resident of Waukegan for
17 the majority of my life for my family sought
18 refuge similarly to many other families in this
19 town. But our sanctuary is under siege by the
20 callous disregard of corporations like NRG.

21 Although many of us came here legalized
22 by manmade borders, we have a deeper connection
23 and care for this land that goes beyond mere
24 ownership. The land which we are in, we feel

1 the land's pain spiritually and physically as
2 its sickness reverberates through our bonds.

3 NRG's coal plant isn't just a facility.
4 It's a Grimm Reaper. Waukegan's residents are
5 often the ones criminalized, but our community
6 is not a threat to me. The coal plant that
7 claimed 19 lives a year is a threat to me. The
8 coal plant that caused a 11 heart attacks and
9 over 600 asthma attacks a year is a threat to
10 me. It's criminal in that we are mere
11 collateral damage in the pursuit of profit.

12 It's no coincidence that the pollution
13 falls upon the shoulders of Black, Indigenous,
14 and people of color. They come as a large
15 polluter taking years off our lives is the harsh
16 truth of the environmental racism.

17 The predominantly white in origin
18 nationally have an average life span of 79
19 years, while North Chicago's drops to 64 and
20 Waukegan's to 68. I think of my grandpa who
21 just hit 67, a year short of that.

22 My own family's story as a medical
23 cause leading to a larger tragedy isn't only in
24 Waukegan. My grandparents who have lived in the

1 shadows of NRG's coal ash pond for over two
2 decades less than a two-mile distance are paying
3 the price with their health. Their ailments
4 from high blood pressure, liver issues are
5 directly linked to toxics seeping from these
6 ponds.

7 With no health care and the health
8 risks they face, they have no choice but to plan
9 to leave the country they have made home.
10 Pollution is waste, people.

11 The official only is estimated by the
12 elevated water levels we face and the climate
13 crisis. How many more people will be forced to
14 put their lives through a safety course that
15 surrounds us? What catastrophic event are we
16 waiting for?

17 For many of us this is already a
18 catastrophe, as the deadly consequences of
19 inaction consume our lives. It's a human race
20 issue when we are still slowly, painfully
21 killed. It's a reproductive issue when our
22 fertility is being prognatized (phonetic) and
23 daily needs. It's an educational issue when
24 students risk developmental issues from

1 maturity. It's a mental health issue when we
2 risk depression or the ability to euthymia. The
3 list goes on.

4 We are not asking for heroics, but we
5 are demanding humanity. It's dehumanizing to
6 think of offering my community three minutes
7 with the hope of convincing you we are worthy of
8 life. We are. The time for accountability is
9 now, and I am urging you to say no giving NRG
10 another free pass at the expense of our lives
11 and future. Thank you.

12 HEARING OFFICER HALLORAN: Thank you.

13 MR. PENCE: Ms. Giselle Thompson.

14 HEARING OFFICER HALLORAN: State your
15 name, please, and then spell it for the court
16 reporter.

17 MS. THOMPSON: Giselle Thompson,
18 G-I-S-E-L-L-E, T-H-O-M-P-S-O-N.

19 Hello. My name is Giselle. As someone
20 who lived in Waukegan my whole life and grew up
21 less than five miles from Lake Michigan, I have
22 always heard about the power plants along the
23 city shores that have constantly polluted the
24 air and the water and the land. And every time

1 I learn something new about how polluted our
2 city becomes from these plants, I also learn
3 about how our government allows them to continue
4 to disparage our community by not enforcing
5 environmental laws or not passing strict laws at
6 all, or not cleaning up coal ash ponds because
7 of semantics and the loopholes.

8 I have permanently witnessed long-term
9 effects of what breathing our polluted air does
10 to the body and imagine ingesting toxic water
11 would have equally, if not worse effects on
12 someone.

13 I am not this too well-versed on the
14 science just yet, but I am sure having toxic
15 coal ash contaminating groundwater is going to
16 be a direct cause for some severe and deadly
17 illnesses in the near future.

18 Illinois has allowed these Superfund
19 sites to get away with disproportionately
20 harming diverse lower income areas for too long.
21 And the Pollution Control Board has allowed NRG
22 to continue to harm us and make Waukegan one of
23 the worse affected areas in Lake County.

24 I am here to urge them to stop and help

1 us and not give NRG yet another pass to ignore
2 the rules. Thank you.

3 MR. PENCE: Sara Avalos.

4 HEARING OFFICER HALLORAN: Just state
5 your name, please, and spell it for the court
6 reporter.

7 MS. AVALOS: My name is Sara Avalos
8 S-A-R-A, A-V-A-L-O-S. So the Waukegan Beach is
9 somewhere families go to gather. The community
10 gathers. Children go to play and it's a place
11 where we as a community spend a lot of time.

12 As someone who was born and raised
13 here, I have so many memories. Some of my first
14 memories are there learning how to swim, going
15 there for 4th of July, having high school
16 bonfires there. And it's sad to know that the
17 shores of our lake are contaminated with toxic
18 chemicals that put our lives at risk, put
19 children's, our future lives at risk and they
20 allowed -- the government has allowed for these
21 companies to put our lands at risk.

22 So that's why we demand for this --
23 these toxic chemicals to be removed and be
24 properly disposed of. I am a little nervous. I

1 want to say, you know, no free pass to NRG and
2 demand for the chemicals to be removed. Thank
3 you.

4 HEARING OFFICER HALLORAN: Thank you.

5 MR. PENCE: Jordan Esparza-Kelley.

6 HEARING OFFICER HALLORAN: Just tell
7 the court reporter your name and spell it,
8 please. Thank you.

9 MR. ESPARZA-KELLEY: Yes, sir. My name
10 is Jordan Esparza-Kelley. That's J-O-R-D-A-N,
11 E-S-P-A-R-Z-A hyphen K-E-L-L-E-Y.

12 I have been a lifelong Waukegan
13 resident, and here we deserve to live in a
14 healthy environment. As a city and as a people
15 we must not be afraid to hold corporations
16 accountable.

17 First and foremost, humans deserve
18 clean water. Beyond that, Waukegan's water is
19 essential to our economy as we sell water to the
20 county and sell water bottles. The pollution in
21 this area spreads to the rest of the county
22 through these water sales. Clean Waukegan,
23 clean the county.

24 Whether it is the neglect of our own

1 city government by wanting to get rid of our
2 trees or the neglect and violence by NRG,
3 economies should never come at the expense of
4 our community. Thank you.

5 HEARING OFFICER HALLORAN: Thank you,
6 sir.

7 MR. PENCE: Adriana Gonzalez.

8 HEARING OFFICER HALLORAN: State your
9 name and spell it for the record, please.

10 MS. GONZALEZ: Yes. My name is
11 Adriana, A-D-R-I-A-N-A, Gonzalez,
12 G-O-N-Z-A-L-E-Z. Can I start?

13 HEARING OFFICER HALLORAN: Oh, yes.

14 MS. GONZALEZ: Hello, Illinois
15 Pollution Control Board members and community
16 members. My name is Adriana Gonzalez and don't
17 be fooled, I am 27 years old. I was raised in
18 Waukegan three miles from the coal plant and I
19 have recently become a homeowner not far from
20 here either.

21 I am speaking today in support of our
22 elders, leaders from Clean Power Lake County,
23 and other local organizations all who continue
24 to advocate for our lakefront to be safe,

1 accessible and clean throughout the years.

2 Visiting the harbor with my family and
3 playing sports on the beach with friends have
4 been some of the sweetest memories I have made
5 in Waukegan. However, mentally pushing aside
6 the fact that our water is unsafe and at risk of
7 further pollution is something that I can no
8 longer do when I understand that the health
9 risks more deeply.

10 I want to lead into this conversation
11 first by emphasizing that I took time from work
12 to be here today. Many other people, especially
13 concerned parents in the city, don't have the
14 luxury to claim one or two benefit days to stand
15 before you for a cause as important as this.

16 So I want to reiterate that while many
17 more people would want to be here, they can't.
18 Unfortunately, others have yet to learn about
19 the state of our lake as well.

20 Secondly, I want to share that I am a
21 member of the Waukegan District's 60 School
22 Board, although today I act in my individual
23 capacity and opinion. I care about young
24 leaders, and I care about securing a sustainable

1 future for myself and people younger than
2 myself.

3 That mission is inextricably linked to
4 our environment and how we treat it. Many of
5 our families go out into the lake and -- in the
6 summer and many community members struggle with
7 health concerns like asthma, as has already been
8 mentioned, which impacts how they learn and how
9 they connect with the people around them and
10 makes their families particularly vulnerable as
11 medical assistance is costly.

12 I understand that NRG is requesting to
13 waive responsibility to clean up all of the coal
14 that they have contributed to on our lakefront.
15 I urge you-all to say no to their exemptions.
16 Waukegan wants all of the coal ash removed from
17 our lakefront. Our residents deserve to enjoy
18 our freshwater resource without fear that our
19 groundwater becomes yet another example of an
20 environmental catastrophe.

21 In principle, I believe that if you own
22 something, you have the responsibility to care
23 for it. I also believe that if you do
24 something, you should do it well. To ensure the

1 company is abides by our rules and regulations
2 in, my opinion the argument this against the law
3 is null and they must clean the three ash ponds
4 on the lake.

5 Picking and choosing definitions of an
6 ash pond to consider the bare minimal
7 responsibility is not good enough for our
8 community. Disregarding the most dangerous pond
9 is counterintuitive if the cleanup crew will be
10 out there working either way.

11 We deserve a total cleanup of the
12 contaminated land that this NRG produced over
13 and the responsibility is the cost of conducting
14 business. As others have mentioned, Waukegan
15 residents bear disproportionate environmental
16 harm to some of our neighbors. We are a working
17 class community who understands that our lake is
18 a general resource and Waukegan is the heart of
19 Lake County.

20 NRG must respect the demand, adhere to
21 the coal ash laws, and care for this resource by
22 removing all their ash waste.

23 HEARING OFFICER HALLORAN: Thank you.

24 MR. PENCE: Rick Riddle.

1 HEARING OFFICER HALLORAN: State your
2 name and spell it for the record, please.

3 MR. RIDDLE: Yes. My name is Richard
4 Riddle. Richard, R-I-C-H-A-R-D, Riddle,
5 R-I-D-D-L-E.

6 I just want to say that, you know, all
7 of the people that have spoken so far are very
8 concerned about what we see on our lakefront. I
9 am a life-long resident of Waukegan. I have
10 lived here. My children have gone through
11 Waukegan schools and lived here. I have three
12 grandchildren who live in Waukegan and two that
13 live in Lake Bluff.

14 I think it's -- it's fitting that, you
15 know, people have mentioned equity demands that
16 the people of Waukegan deserve the same
17 treatment that the families in Lake Bluff
18 deserve. This room would be packed to the hilt
19 if this was Lake Bluff and they were going to
20 endure a possibly partial cleanup of a
21 lakefront, their lakefront.

22 I think equity demands that this Board
23 and EPA take serious action and take the action
24 that all of us demand and that is make sure that

1 land is cleaned up. We are learning so much.

2 You know, over the years, I had read
3 and I work in service for the public. I have
4 worked for the sheriff's office for 33 years. I
5 also am on the school board. I believe that our
6 children deserve better than this.

7 We are learning that the earth is a
8 sacred place, and that industry no longer can
9 just reap benefits from destroying our land and
10 just leaving waste products where they -- where
11 they no longer need them and we have to clean
12 them up.

13 The asbestos dump out there took
14 20 years to clean up. The harbor took many,
15 many years and that depended on government, and
16 I think that government no longer -- it must
17 demand that the industries that reap benefits
18 must now clean this land up and make it pristine
19 like it once was.

20 We are learning from our native
21 population who respected the earth. We have --
22 We need to now understand and respect our earth
23 and take -- do what it takes to clean it up.

24 So thank you for everyone who spoke

1 today, and I am sure that the Board will do the
2 right thing and demand that NRG clean this up
3 before they leave that land and put it back the
4 way it should be for our future generation, for
5 our children, and their children. Thank you
6 very much.

7 HEARING OFFICER HALLORAN: Thank you.

8 MR. PENCE: Douglas Ower.

9 HEARING OFFICER HALLORAN: Good
10 afternoon, sir. State your name and spell it
11 for the record, please.

12 MR. OWER: Thank you. My name is
13 Douglas Ower. It's D-O-U-G-L-A-S, O-W-E-R. I
14 am a lifelong Zion resident which is just a few
15 miles away from Waukegan, and I have spent over
16 10 years working at Clean Power Lake County and
17 to be on the coal campaign. First time just
18 transitioning for the closure of the coal plant
19 and now here we are dealing with all the delays
20 by NRG and coal ash because they don't want to
21 clean it up.

22 So I want to comment on a few things
23 that we heard in the testimony this morning.
24 One of the comments by the consultant was that

1 this well between the west pond and the old pond
2 is showing contamination and it's coming from
3 the old pond.

4 Also, that that particular well is
5 showing upward trends and, again, that's due to
6 the old pond. Now, also there was testimony
7 from someone that worked there 30 years that it
8 has been a grassy field but he doesn't know what
9 was there for the 70 years before that and what
10 were the environmental regulations like in 1920?

11 So it's very likely that this old pond
12 preceded both the east and west pond, so it
13 absolutely must be considered a CCR surface site
14 and it should be cleaned up as the east and west
15 ponds.

16 The other comment was that they want to
17 just cap it and the reason why to cap it,
18 economic reasonableness. What's that mean? NRG
19 saves money by leaving toxins in Waukegan.

20 It needs to be removed. All the coal
21 ash should be removed from Waukegan. You know,
22 there was insinuations that because there is
23 other industrial sites around it, that
24 apparently it's okay just to leave toxins there,

1 and Waukegan deserves better than that. Thank
2 you.

3 MR. PENCE: Verena Owen.

4 HEARING OFFICER HALLORAN: Thank you,
5 sir. Good afternoon. Will you state your name
6 and spell it for the record? Thanks.

7 MS. OWEN: Yes. My name is Verena
8 Owen. That's V-E-R-E-N-A, O-W-E-N, and good
9 afternoon.

10 HEARING OFFICER HALLORAN: Good
11 afternoon.

12 MS. OWEN: We moved our young family
13 into the area in the late 1980s. My husband was
14 a teacher in Waukegan for many decades and we
15 lived in Waukegan and then moved to Zion, and we
16 now live in Winthrop Harbor always under the
17 plume of the power plant and always drinking the
18 water of Lake Michigan.

19 I am going to share, I wasn't sure that
20 I would, but I am going to share something
21 personal. When you hear testimony about
22 pollution causes premature death and disease and
23 people are impacted by it, it is not just the
24 person impacted, it is their entire family and

1 their friends.

2 Just before I came here today, I
3 received my 24th radiation treatment for cancer,
4 and let me tell you, I think we all need to do
5 whatever we can to get pollution that causes
6 harm to people out of our environment.

7 That said, I think I will take you on a
8 bit of a history talk about the plant because I
9 have been doing this for a long time. I started
10 working on fossil fuel issues about 1995, and
11 the Clean Air Act Amendment of the 1990s
12 actually required large polluters to have an
13 operating permit, and by 1995, they was supposed
14 to submit the application and everybody expected
15 those permits to come out.

16 However, the Waukegan coal plant didn't
17 get a permit until 2006. That was the initial
18 operating permit that took ten years to get
19 there. Unfortunately, the company then decided
20 to appeal the permit and appealed it at the
21 Pollution Control Board, and the Pollution
22 Control Board granted them not only the stay of
23 the contested conditions in the permit but an
24 entire stay of the permit, and it took us

1 10 years, 10 years to get that permit out of
2 Pollution Control Board to have a valid
3 operating permit for the plant.

4 In 2012, the company did hit
5 bankruptcy. During bankruptcy, as you may know
6 but maybe not everybody, all the lawsuits are
7 stayed normally. They don't move forward until
8 the bankruptcy is resolved. If you petition the
9 bankruptcy judge to allow this lawsuit to move
10 forward because there was imminent danger to the
11 health and welfare of the people and in a rare
12 decision, she sided with us. I think that is
13 very noteworthy.

14 In 2014 and while this company was in
15 bankruptcy, NRG decided to buy it. This was
16 probably the time when lots of details about the
17 operations were part of the proceedings in the
18 bankruptcy court but NRG bought it. They knew
19 exactly what they are buying. They were buying
20 a plant that was polluting. They were a plant
21 that had coal ash issues.

22 They paid \$2.6 billion for four coal
23 plants. I think that was a bargain price. It
24 was probably not -- it was well -- I will not --

1 I won't -- I will move on. What I am trying to
2 point out here is there has been a pattern, a
3 pattern that goes back to 2006, if not before, a
4 pattern of delay. A pattern of trying to ask
5 for and asking for extension and, frankly, a
6 pattern of -- no, a failure of the system to
7 hold this company accountable. A failure by EPA
8 and I am afraid a failure here by the Pollution
9 Control Board by allowing these ten-year gaps
10 between actions to happen to finally bring them
11 to a resolution.

12 I think you have not only the legal
13 obligation, but you also have the moral
14 obligation to end this circle. Thank you.

15 HEARING OFFICER HALLORAN: Thank you.

16 MR. PENCE: Karen Longmacleod.

17 HEARING OFFICER HALLORAN: Please state
18 your name and spell it for the record. Thank
19 you.

20 MS. LONGMACLEOD: Good afternoon. My
21 name is Karen Longmacleod, K-A-R-E-N,
22 L-O-N-G-M-A-C-L-E-O-D. I am commenting as an
23 impacted resident of Waukegan who lives about
24 two miles from the Midwest Generation Energy

1 coal plant. I am also a longtime Clean Power
2 Lake County volunteer.

3 For years and years Midwest Generation
4 NRG has exploited every possible loophole that
5 to evade pollution rules that would safeguard
6 Waukegan and its residents. Today, they are
7 arguing that Illinois Coal Ash Rules do not
8 apply to the old coal ash -- the old ash pond.
9 They are saying the old ash pond does not meet
10 the regulatory definition of a quote "combustion
11 residual CCR surface impoundment," however NRG
12 is wrong.

13 The Illinois EPA has presented
14 extensive evidence that the old ash pond was
15 historically part of one large ash pond that
16 covered a large portion of the site and received
17 sluiced coal ash for four years or more.

18 This very Board in 2019 found that the
19 old ash pond had contributed to 163 exceedances
20 of Illinois groundwater quality standards at
21 Waukegan.

22 Current groundwater monitoring at the
23 site shows that boron, sulfate, and other
24 pollutants exceed Illinois Coal Ash Rule

1 standards. NRG calls it a grassy field to
2 downplay the dangers. They aren't fooling
3 anybody. We know the old ash pond is a
4 dangerous unlined CCR surface impoundment that
5 should be fully remediated under the law.

6 I implore you do not give NRG a free
7 pass. NRG must follow the Illinois Coal Ash
8 Rules at Waukegan. The rules must be applied to
9 the old ash pond. The rules must be applied
10 without delay.

11 Waukegan is still fighting to overcome
12 the devastating legacy of pollution left by
13 industrial businesses on our lakefront. Please
14 ensure NRG cleans up its coal ash messes as soon
15 as possible so residents of Waukegan get the
16 fighting chance we deserve. Thank you.

17 HEARING OFFICER HALLORAN: Thank you.

18 MR. PENCE: Sam Greene.

19 HEARING OFFICER HALLORAN: Good
20 afternoon, sir. Please state your name and
21 spell for the record?

22 MR. GREENE: Yes. It's Sam Greene
23 S-A-M, G-R-E-E-N-E.

24 Good afternoon. I sit here

1 representing myself as one of more than a
2 125,000, Waukegan state that population, and one
3 of more than 30 million that rely on the Great
4 Lakes for clean, safe drinking water. I
5 appreciate the opportunity to speak today to the
6 Illinois Pollution Control Board and the Agency
7 founded in 1970 by the Environmental Disastrous
8 Suppression Act.

9 Actually, it's the Environmental
10 Protection Act but you wouldn't know that
11 because Waukegan is a place where historically
12 the EPA has not been an agency of protection.
13 Rather, it has been one that tries to remedy a
14 history of environmental injustice. These
15 injustices have created five Superfund sites
16 within our city.

17 Four of which are on the shores of our
18 great lake, rendering hundreds of acres
19 inaccessible even to passive recreation.
20 Allowing NRG to leave coal ash here is a
21 continuation of these injustices. So why does
22 this matter?

23 According to the New York Times, 150
24 million people live on land that will be below

1 sea level in 2050 and in that same year,
2 according to the United Nations, 5 billion
3 people one-month shortages of water. That is
4 two-thirds of the world population.

5 The Great Lakes are one of the largest
6 sources of freshwater in the world. Waukegan,
7 which is above sea level and has critical access
8 to the Great Lakes, is an important factor in
9 our population's future, yet coal ash is already
10 in our groundwater.

11 Any kind of liner or thing would
12 continue to leach into the groundwater. Coal
13 ash will be in the lake. And our Superfund
14 sites showed that removing is far more difficult
15 than making sure it never enters in the first
16 place, protection. For this reason, it must be
17 removed.

18 Look, I know that you are all in these
19 seats because you care about protecting and
20 preserving Illinois environment and natural
21 resources so they can be enjoyed by future
22 generations. That's their mission statement.
23 But by being in this seat, you also have the
24 power to stop these injustices and protect our

1 constitutional right to clean environment.

2 I implore you to use your seat to
3 advocate for the people of Waukegan for
4 environmental justice and for protection over
5 disastrous suppression.

6 For the sake of our city, please
7 require the full removal of all CCR from our
8 lakefront. Thank you.

9 HEARING OFFICER HALLORAN: Thank you.
10 Mr. Pence, how many more folks do you have
11 signed in because I can, you know, go over a
12 couple minutes; but I am only kind of as time
13 allows the public comment. And if we have some
14 time at the end of the hearing, we can maybe
15 follow up with that.

16 AUDIENCE MEMBER: How many -- Yeah.
17 Because I still have to go and I took time off.
18 So how many people, Frank?

19 MR. PENCE: Yeah. We have 14 still on
20 the list.

21 HEARING OFFICER HALLORAN: That will be
22 about another like half hour. I think we can do
23 it if we keep it moving along, and by all means
24 I don't want to abbreviate your comment but

1 let's go for another 20 minutes and see where we
2 are.

3 And, again, you can file the written
4 comments. If you have them, I can take them and
5 file them with the Board when I hit the office
6 so whoever is next.

7 MR. PENCE: Sam Cunningham.

8 HEARING OFFICER HALLORAN: Good
9 afternoon. State your name and spell it for the
10 record. Thanks.

11 MR. CUNNINGHAM: Thank you. Sam,
12 S-A-M, Cunningham, C-U-N-N-I-N-G-H-A-M. I am
13 going to be brief. I come to you as a longtime
14 resident of the City of Waukegan, a public
15 servant and certainly a mayor, but there is
16 another hat I don't think people know that I was
17 and I was the inaugural chairman of the Mayor's
18 Great Lakes-St. Lawrence Initiatives. What does
19 that mean?

20 We had the responsibility of monitoring
21 our Great Lakes. Most people don't know our
22 Great Lakes is 20 percent of the world
23 freshwater. Roughly 80 to 90 percent of our
24 United States freshwater. What does that mean

1 as it relates to what NRG probably on a
2 practical standpoint should be doing?

3 Protecting. It should be protecting the
4 greatest resource probably in the world.

5 We have the opportunity to have it
6 right here in Waukegan along this shoreline.
7 Some called it environmental injustice. Some
8 say they are preying on Blacks and Latinos, low
9 income, working class. I say you have a
10 professional corporate responsibility to make
11 sure that anything you have done to harm this,
12 to get rid of it. Practical people do those
13 things.

14 I would have never thought I would be
15 here today speaking; and for those who are
16 against this, I personally probably have had
17 them against me at times. We disagree. In the
18 society that we live in, that is what we do; but
19 on this issue here, this very issue, about
20 drinking water, one of the most precious aspects
21 of the world, there shouldn't be a debate.
22 There shouldn't be an argument whether it be
23 from the company who is there or the citizens
24 who are here. It should all be one unified

1 every effort and what is that? To remove.

2 Remove these things. Get them off your
3 plate so you can move on to running and
4 operating your corporation. That's why we are
5 here today. I think the young lady -- two of
6 the young ladies said that you, this Pollution
7 Board, you are here -- the judges, you are in
8 the middle. The ERA has spoken, certainly the
9 community has spoken. Now it is up to you.

10 What do practical people do, not
11 politicians not corporate riggers but practical
12 people who sit on these boards? They do what's
13 in the best interest of our city, county,
14 country, and then we move on.

15 So I ask you along with the Illinois
16 Environmental Protection Agency, certainly one
17 of the advocates for here Clean Air, but more
18 importantly, the residents, business, and other
19 business community that live in this city, it is
20 time to do what all of you will do from a
21 practical standpoint. I trust that your
22 decision will be in favor not just of Waukegan
23 but of this great state.

24 As always, thank you for your service

1 and thank you to all of those who have come here
2 today to express your high interest in what is
3 in the best interest of our state, county, and
4 city and protecting the most valuable resource
5 on the face of this earth and that's water.
6 Take care. God bless.

7 HEARING OFFICER HALLORAN: Thank you.

8 MR. PENCE: We will move a little bit
9 quicker so we have Tyler Williams, followed by
10 Chris Geiselhart and then Eric Gonzalez after
11 that.

12 HEARING OFFICER HALLORAN: Good
13 afternoon, sir. Can you state your name for the
14 record and spell it?

15 MR. WILLIAMS: Good afternoon. My name
16 is Tyler Williams, T-Y-L-E-R, W-I-L-L-I-A-M-S.

17 Good afternoon. Thank you for having
18 me. I come before you as a resident, lifelong
19 resident and currently employee of the City of
20 Waukegan. I think it's been touched on enough
21 that, you know, the pollution in this community
22 is out of control. So one thing that I think is
23 important to touch on is just the development
24 aspect of what these coal ponds mean -- coal ash

1 ponds mean for the city of Waukegan.

2 As a city planner, one of my main roles
3 was trying to bring development into the city of
4 Waukegan, and we have heard, you know, countless
5 times that the environmental impact of the
6 lakeshore is just not feasible for a lot of
7 development companies to come in and try to
8 bring in a new residential, new commercial use,
9 anything like that.

10 And, you know, it just dawned on me,
11 you know, who wants to live across from a coal
12 ash pond or who wants to have athletic fields
13 across from coal ash ponds breathing in these
14 toxic chemicals, and so that's something I
15 really want to leave with you today as you make
16 your decision.

17 You know, just think about the
18 community aspect, everything you heard today,
19 and I know it's been touched on as well; but I
20 do want to say that 1:00 o'clock on a Tuesday is
21 a terrible time for a public comment section.
22 We would have a lot more people here if it was
23 at night.

24 You know, Waukegan is a historical

1 working community, blue collar, a lot of people
2 are at work. A lot of people can't get off.
3 The only reason I am here is because I work in
4 the building so, yeah. That's my time.

5 MR. PENCE: All right. Chris
6 Geiselhart, followed by Alec Gonzalez, followed
7 by Mary Mathews.

8 HEARING OFFICER HALLORAN: Good
9 afternoon, ma'am. State your name and spell it
10 for the record, please.

11 MS. GEISELHART: Good afternoon. My
12 name is Chris, C-H-R-I-S, Geiselhart,
13 G-E-I-S-E-L-H-A-R-T.

14 Thank you for this opportunity to speak
15 today. Pardon my soft voice but I got farther
16 with a soft voice as a teacher than I did by
17 yelling, so here we go.

18 I am a member of the Lake County
19 Audubon Society Board. I am on the Leadership
20 Committee for Audubon Great Lakes. Of course
21 their name says what the concerns are, and also
22 I was part of the CAG, Citizens Advisory Group
23 at the very beginning of the '90s when it all
24 started up to clean up Lake Michigan.

1 So I listened intently to the other
2 speakers and decided to cut back on what I am
3 going to say but -- because I would be repeating
4 what they said to you already and I agree with
5 everything you have heard. So I'd like to do
6 just bullet points and name some things that I
7 have heard but not so much just to impress on
8 the record.

9 First of all, the environmental law in
10 policy center, which is highly refuted, it's
11 reported that Midwest Generation has one of ten
12 areas of high risk of concern for high water.
13 Waukegan is built on Lake Michigan obviously and
14 in coal ash deposit, it's included in one of
15 those above-mentioned on the list of ten.

16 We have heard that the groundwater is
17 already being contaminated by the coal ash and
18 that contamination of the lake for those who get
19 some of their diet from fish is a big concern,
20 and you have probably seen if you have gone down
21 by the lake, you have probably seen the posters
22 that require that children's contests not to eat
23 the fish, not to -- if you go fishing, not to
24 eat what you catch. And not to mention the

1 water that millions of people are using for
2 drinking.

3 So getting back to this idea that the
4 area is for risk for high water -- high risk for
5 high water, just watch the patterns of flooding
6 as the climate changes continue to create higher
7 lake levels as well as surface flooding at the
8 site.

9 My concern is when there is a flood in
10 the area, the way that Midwest Gen is set up
11 that I can see that the water could come flying
12 down that hill above it and just wash right into
13 that pond of coal ash. And I have seen from
14 multiple stories high, looked down on it and
15 seen that right there and thought what would
16 happen if that was just washed into the lake. I
17 don't know if anybody has addressed that.

18 Midwest Generation has not been a good
19 neighbor in managing the waste, the coal ash,
20 that it's created over time including inputting
21 emissions into the air, destroying the -- ash on
22 the surface and in ponds and leaking
23 contamination into the groundwater.

24 I would like to leave you with one last

1 point that I haven't heard. I did say it when I
2 spoke to the EPA last summer when they provided
3 an opportunity like this.

4 Yes. The coal ash must be safely
5 removed to a safe place, safely removed, safe
6 place and possibly stored for future use as a
7 source of rare earth minerals. It can be used
8 in technology that's developing at this time,
9 and this is being researched as we sit here and
10 talk to each other.

11 So I would like to leave you with that
12 point as a must do. Thank you.

13 HEARING OFFICER HALLORAN: Thank you.

14 MR. PENCE: We have Eric Gonzalez, Mary
15 Mathews, followed by Anthony Vega and Dwayne
16 Springs.

17 AUDIENCE SPEAKER: Eric had to leave
18 for work.

19 MR. PENCE: So we have Mary Mathews
20 Anthony Vega, then Dwayne Springs.

21 HEARING OFFICER HALLORAN: Is it
22 Mr. Penny?

23 MR. PENCE: Pence.

24 HEARING OFFICER HALLORAN: Thanks for

1 doing this.

2 BOARD MEMBER VAN WIE: Very much.

3 Thank you.

4 HEARING OFFICER HALLORAN: Good
5 afternoon. If you can state your name and spell
6 it for the record.

7 MS. MATHEWS: Okay. Good afternoon.
8 My name is Mary Mathews, M-A-R-Y, M-A-T-H-E-W-S.

9 On behalf of the Legal Women Voters of
10 Lake County, I am addressing coal ash pollution
11 here in Waukegan as I did on February 16, 2016
12 and August 12, 2020. I hope I don't have to
13 come back again.

14 Legal Women Voters of Lake County
15 supports protecting water quality by strict
16 adherence to environmental regulations. The
17 league supports regulations of pollution sources
18 by control and penalties, inspection and
19 monitoring, full disclosure of pollution data,
20 vigorous enforcement mechanisms, and substantial
21 fines for noncompliance.

22 Monitoring reports have documented the
23 coal ash found on NRG site in Waukegan still is
24 contaminating our water. In spite of notices

1 and orders, NRG continues to fight complying
2 with coal ash rules.

3 In the meantime, surface water,
4 groundwater, Lake Michigan water, are polluted
5 with heavy metals endangering the environment
6 and the health of millions of people in the
7 region. Some of the heavy metals are arsenic,
8 boron, lithium, which cause an increase of
9 cancer risk and cardiovascular problem.
10 Radioactive substances like uranium and radon
11 also are found in coal ash.

12 For decades area residents have been
13 and continue to be forced to endure an
14 unreasonable hardship due to these is toxic
15 chemicals. The hardest hit are the residents of
16 Waukegan, an environmental justice community
17 already overrun with other air, water, and
18 ground pollutants.

19 The Legal Women Voters of Lake County
20 strongly advocates on behalf of its members in
21 Waukegan and throughout Lake County that the
22 Illinois Pollution Control Board enforce the
23 Illinois coal ash rules and deny all continued
24 efforts by NRG to avoid compliance.

1 All coal ash from the east pond, west
2 pond, old pond, grassy field, former slag area,
3 and scattered fill at the Waukegan site must be
4 removed safely and future water contamination
5 from coal ash on the site must be prevented.

6 Appropriate monitoring of the whole
7 site will warrant of remaining coal ash
8 contamination and the need for additional steps.
9 Thank you.

10 HEARING OFFICER HALLORAN: Thank you.

11 MR. PENCE: Anthony Vega, Dwayne
12 Springs, Jessica Klinge.

13 HEARING OFFICER HALLORAN: Good
14 afternoon, sir. State your name and spell it
15 for the record.

16 MR. VEGA: Anthony, A-N-T-H-O-N-Y,
17 Vega, V-E-G-A.

18 Thank you for having me. I come to you
19 as a public servant. I am the county clerk of
20 Lake County, but I am also here as someone who
21 came to Lake County to work on the environmental
22 issues working alongside the very people that
23 have organized for years before I came here and
24 who continue this fight today.

1 Not to belabor the point, we have
2 already seen the extraordinary amount of
3 evidence of the continuing pollution and the
4 detrimental impacts to Waukegan.

5 As clerk, these people that live in
6 Waukegan are my constituents. I work alongside
7 them. I, you know, socialize with them. I
8 serve them. And so I am here to lend my voice
9 to do what they say is hold NRG accountable.

10 And I'd also like to point out that as
11 a governmental leader, as a governmental body,
12 it may be inconvenient to have multiple people
13 come up and say the same thing, but we owe it to
14 our constituents to hear every word that they
15 have to say. It is our duty as public servants
16 to not try hurrying the process along.

17 You have extraordinary responsibility
18 here, and -- but we owe it to our constituents
19 to hear them and to listen and to act and what
20 the people of Waukegan are saying is hold NRG
21 accountable. Thank you.

22 HEARING OFFICER HALLORAN: Thank you.

23 MR. PENCE: We got Dwayne Springs,
24 Jessica Klinge, and Brotha Blanks.

1 HEARING OFFICER HALLORAN: State your
2 name and spell it for the record.

3 MR. SPRINGS: Good morning. Dwayne
4 Springs, D-W-A-Y-N-E, Springs, S-P-R-I--G-S.

5 I am a longtime Waukegan resident,
6 community activist, coach, and mentor.

7 When you study the history being this
8 is Black History month, you study the history.
9 A lot of times people miss studying COINTELPRO,
10 and there is no way to study Black History and
11 not study COINTELPRO.

12 Because when you know COINTELPRO, you
13 know that conspiracy theories are not theories.
14 They were conspiracies to destroy Black
15 organizations, to kill Black leaders for the
16 destruction of the Black community.

17 So when you think about conspiracies in
18 Waukegan, I remember coming here 42 years ago
19 and Waukegan looking nothing like it looks now.
20 I remember playing baseball in fields in
21 Waukegan that we thought was a nice baseball
22 field, that that field later oh, you can't go
23 over there anymore. Why? Because it's a toxic
24 waste field. That wasn't dumb luck someone knew

1 that.

2 How did Waukegan change from looking
3 like this room now that looks nothing like
4 Waukegan, how did that happen that all those
5 people moved west or north or south? Was it in
6 a conspiracy theory or did someone know that
7 hey, you should move away from here. You going
8 to die if you stay there. If you stay there
9 your children are going to die.

10 So this ain't no plea. This is get it
11 done. Quit -- Don't tell them what they already
12 know. They know. They have known. This is not
13 new. And our community must know but our
14 community is fighting so much so easy to take
15 advantage of someone that's dealing with a gun
16 to their head literally.

17 Do your job.

18 MR. PENCE: We got Jessica Klinge,
19 Brotha Blanks, and Jennell Williams.

20 THE COURT: Good afternoon. State your
21 name and spell it for the record. Thank you.

22 MS. KLINGE: Jessica Klinge,
23 K-L-I-N-G-E. So I am a veteran program
24 coordinator at Brushwood Center, and while I am

1 also a Lake County resident and North Chicago
2 high school alumni, I am really here to speak on
3 behalf of our participants.

4 So many are women veterans and women
5 veterans of color that live here in Waukegan and
6 really are some of the best people that I know,
7 work hard. One of our veterans on the advisory
8 board, she is a volunteer for Pro Life Veterans
9 of America and the Rotary Club and does so much
10 work in the community and think about her -- all
11 the air water in her -- you know, the air and
12 water in her home is polluted is really
13 devastating.

14 We have so many women veterans that
15 live in Waukegan and it's so critical that the
16 VA and the government has spent all of this
17 effort on protecting their health but, you know,
18 the air and water in their homes are polluted.
19 And like right now we are creating this event
20 focused on how to improve personal health and
21 nature but, you know, how can you really even
22 speak to that in an honest way when their air
23 and water is polluted?

24 So really I think it's like, you know,

1 society talks about you care about veterans'
2 health and, like, protecting our veterans. You
3 know, unless you live in a certain place, that's
4 not cared about as much. Really that's how it
5 feels like to me.

6 So NRG needs to comply with Illinois
7 Coal Ash Rules, and I thank you for your time.

8 HEARING OFFICER HALLORAN: Thank you.

9 MR. PENCE: We got Brotha Blanks, then
10 we got Robert Marshall and Sylvia Romero.

11 HEARING OFFICER HALLORAN: Good
12 afternoon, sir. State your name and spell it
13 for the record.

14 BROTHA BLANKS: Yeah. Brotha Chris
15 Blanks. Founding chief president of Black
16 Abolition Movement For the Mind as well as I'm
17 here also as representing vice president of
18 Union Local 152 Retiree Council. I'm also a
19 vet.

20 And when we look at -- I spoke with the
21 representative Mr. Nicholson Melvin which is a
22 representative of NRG this summer. So when I
23 spoke with him, he was talking about the various
24 job opportunities that would come of building a

1 new facility. Myself being a retiree from Union
2 Local 152, I am always for more jobs and more
3 opportunities particularly, you know, looking at
4 the inequities when you ride up and down the
5 expressways and you just don't see the Black
6 presence out there on these jobsites.

7 Now, I was speaking with them they was
8 talking about perhaps building a new facility at
9 the location where the coal ash plant is. And I
10 am all for, as I said, more job opportunities
11 because what that does, myself being retired
12 25 years from Union Local 152, it definitely add
13 to my quality of life.

14 However, now, if we are talking about
15 billing a coal ash plant on top of -- if we are
16 building a new facility, if you will, on top of
17 the present coal ash plant, now I think if we do
18 something like that, we can make all the money
19 in the world as union construction workers that
20 add to the quality of life, speaking for myself
21 and those who work union construction.

22 But if it comes at the expense of
23 taking away on the long-term basis of the
24 quality of life in poor health and -- poor

1 health and astronomical medical bills that is
2 something that we cannot afford to trade off and
3 it's just something that we will -- we can't
4 accept that. You know, we can't trade one for
5 the other.

6 So I am saying right now as a union
7 construction worker, as a veteran and working
8 with the youth here in this community at Black
9 Abolition Movement For The Mind, we have to look
10 at the long-term effect. A few dollars on the
11 quality of jobs for the economic and quality
12 expense, we can't trade that off.

13 So I am saying right now, we have to do
14 the job. We want the jobs but we do not want
15 the long-term health and the astronomical
16 medical bills that come with that so we have to
17 get that out of here so everybody can benefit
18 economically but more importantly healthwise
19 without long-term medical bills and expenses
20 that take away.

21 Let's make them do the right thing.

22 Thank you.

23 MR. PENCE: Robert Marshall. Robert
24 Marshall. So we have Sylvia Romero, Joe

1 Kopsick, and then Anton Williams.

2 HEARING OFFICER HALLORAN: Good
3 afternoon.

4 MS. ROMERO: Good afternoon everyone.

5 HEARING OFFICER HALLORAN: State your
6 name and spell it for the record. Thank you.

7 MS. ROMERO: Sylvia Romero, S-Y-L-V-I-A
8 Romero, R-O-M-E-R-O.

9 Well, as a fifth generation person
10 living -- continuing to live here in Waukegan, I
11 am here today to seek environmental justice for
12 the systemic inequities caused by the
13 groundwater pollution at Waukegan Station.

14 Our community which is composed
15 predominantly of Latino immigrant, Black, and
16 people of color have a difficult time coming
17 from 1:00 to 2:00 given that this is a
18 working-class community and according to most of
19 our hierarchy of needs, we have to take care of
20 food and shelter before we go towards
21 self-actualization here.

22 The coal plant and NRG Energy have a
23 long history of contamination. Waukegan Station
24 has one of the worst environmental -- it's one

1 of the worst environmental justice offenders in
2 the nation. The current groundwater monitoring
3 at old ash ponds failed to meet the requirements
4 of the Illinois Coal Ash Rules. The old ash
5 pond is polluting the groundwater on the
6 Waukegan lakefront. NRG must comply with the
7 Illinois Coal Ash Rules at Waukegan. All the
8 coal ash must be regulated and removed.

9 Existing monitoring has shown that the
10 following pollutants exceed the Illinois Coal
11 Ash Rule standards. Boron, which is causing a
12 lot of developmental issues and low birth
13 weight. Sulfate, which is irritating our eyes,
14 our skin, our lungs, it's causing cancer in
15 laboratory animals. Chromium harms the liver
16 and the blood and it causes stomach cancer.

17 Thallium is messing with the
18 reproductive and developmental risk. Lead is
19 causing neurological damage, and it's also a
20 probable carcinogen. Arsenic is causing all
21 sorts of cancers and neurological damage.

22 In my intact family alone, half have
23 had, because they are deceased now, or are
24 fighting cancer. Every generation, all five,

1 are suffering from lung cancers, asthma, skin
2 infections and a lot of autoimmune disorders.

3 Our community really needs NRG to
4 comply with Illinois Coal Ash Rules at Waukegan
5 and don't give them a pass. Clean it up. Thank
6 you.

7 HEARING OFFICER HALLORAN: Thank you.

8 MR. PENCE: Then we have Joe Kopsick,
9 Anton Mathews, and Celeste Flores.

10 HEARING OFFICER HALLORAN: Good
11 afternoon, sir. Could you state your name and
12 spell it for the record? Thank you.

13 MR. KOPSICK: Hey. My name is Joe
14 Kopsick, K-O-P-S-I-C-K.

15 I grew up in Lake Bluff. I have been
16 living in Waukegan for about seven years and I'm
17 the chairman of the Lake County Green Party. I
18 just want to talk about the importance of
19 holding Midwest Generation NRG accountable can't
20 be overstated because of how many other
21 pollutant sites there are in Lake County and
22 potentially is polluted sites.

23 There is NRG. There is Zion Nuclear
24 Generating Station where there is nuclear

1 materials still being stored on-site. There is
2 ETO being emitted from Medline smokestacks.
3 There is several Abbott and AbbVie-related sites
4 that have broken environmental laws in the late
5 '90s, early 2000s, dumping sewage into the lake
6 and polluting the air.

7 Baxter, there was anhydrous ammonia gas
8 explosion in Beach Park in 2019. AB Specialty
9 Silicon plant explosion in Waukegan. Several
10 rock-crushing companies, Sterigenics, Vantage,
11 Specialty Chemicals in Gurnee, Grayslake County
12 landfill, Foxconn in southeast which is
13 Wisconsin part of the -- part of the area that
14 their water drains into Lake County, so that
15 does affect us even though it's in another
16 state.

17 I just wanted to explain there is 19
18 sites. There is NRG, there is the five
19 Superfund sites, which include two landfills
20 that are polluting Lake County so I think we
21 should use this as an opportunity to kind of
22 coordinate and see if we can make this list any
23 bigger. Make a map of it. Find out what radius
24 and kind of exposure and potential danger there

1 is to people so we can take out an advertisement
2 and a newspaper and somehow alert the county,
3 maybe get some billboards, alert the county to
4 how many polluted sites there are and let them
5 know that they might be living in these areas.

6 We need to relocate these facilities.
7 They are potentially dangerous to lower
8 population areas where the community is okay
9 with having it. We need to have any smokestacks
10 emitting ETO, they need to be shorter so they
11 don't disperse in such a large area and affect a
12 large number of people.

13 And we need to be watchful about our
14 politicians taking money from sites that are
15 polluting like Abbott, AbbVie, Medline, Baxter.
16 There is a lot of push to accept what these
17 companies bring to our community just because
18 they provide jobs however temporary and provide
19 energy sources, but we need to make sure that
20 economy and ecology are aligned and that people
21 get compensated based on the risk of them -- of
22 their health suffering based on working at or
23 living near these companies.

24 And I also want to invite everyone

1 there is a woman who spoke about the difficulty
2 of complying with State and Federal
3 environmental regulations. I want everyone to
4 use this as an opportunity just to invite you to
5 think about what level of government you'd like
6 environment to be regulated on. Like, if you
7 had to pick one local, State, or Federal. We
8 might have to choose one.

9 I think it should be simple for
10 companies to be able to comply and be -- have a
11 way to, you know, quickly be able to move
12 these -- move these sites if they approve
13 polluting. So please contact me if you want to
14 help build that list and get this information
15 out. There is at least 19, 20 sites polluting
16 in addition to NRG and Superfund sites. Thank
17 you.

18 MR. PENCE: We are almost at the bottom
19 of the list. Okay. So we have Anton Mathews.
20 Then we have Celeste Flores, Eddie Flores, and
21 then Rachel Canti is our last sign-up.

22 HEARING OFFICER HALLORAN: Again, I
23 appreciate you keeping your comments three
24 minutes or under. And again, you can file

1 public comments and give them to me and the
2 Board will receive it today or tomorrow. Thank
3 you. You may state your name and spell it for
4 the record.

5 MR. MATHEWS: Thank you, Chairman.
6 Anton Mathews. A-N-T-O-N, M-A-T-H-E-W-S.
7 Thankful for the opportunity to speak for the
8 Board today. Eighth ward resident of the great
9 city of Waukegan. I am here to -- Give me a
10 second as I get my points. I don't want to
11 belabor the point but to tell NRG that -- I'm
12 sorry. Tell the IPCB Board that NRG must comply
13 with the Illinois Coal Ash rules here in
14 Waukegan.

15 The rules must be applied to old ash
16 pond. The old ash pond is an active CCR surface
17 impoundment that must be regulated under the
18 Illinois Coal Ash Rules.

19 Current groundwater monitoring at the
20 site fails to meet the requirements of the
21 Illinois Coal Ash Rules. Coal ash from the
22 Waukegan coal plant is sitting on the shores of
23 Lake Michigan causing groundwater contamination
24 and must be regulated under the Illinois Coal

1 Ash Rules and removed.

2 And I will briefly state as I speak to
3 a close that conducting a meeting in a
4 working-class community at this time probably
5 wasn't a good idea. So I would hope that in the
6 future when we have this meaningful dialog and
7 conversation that it would be conducted in a
8 time that is conducive for our entire community
9 to come participate. I appreciate the time
10 today. Thank you.

11 MR. PENCE: Okay. So we have Celeste
12 Flores, Rachel Canti, and Victor Felix.

13 HEARING OFFICER HALLORAN: Good
14 afternoon. State your name and spell it for the
15 record.

16 MS. FLORES: Good afternoon. Celeste
17 Flores, C-E-L-E-S-T-E, F-L-O-R-E-S. Thanks so
18 much for your time. I am Celeste Flores, and I
19 will belabor my points because I had worked on
20 this last night so I will be reading my
21 statements.

22 I'm the co-chair of Clean Power Lake
23 County. I was born and raised in Lake County,
24 and I have been volunteering with CPLC since

1 2014.

2 It wasn't until 2014 that I questioned
3 my access to clean air, clean water, and healthy
4 soil. Waukegan is a community made up of
5 immigrants, low-income, and working-class
6 families. As we all know, African Americans and
7 Latino communities are disproportionately
8 affected by corporate polluters and Waukegan is
9 no different.

10 We have retired coal fired plant Units
11 7 and 8 with active coal ash ponds in the
12 Waukegan lakefront which was the largest air
13 polluter in Lake County until its retirement in
14 June of 2022.

15 At the time of the retirement
16 announcement in June of 2021, Waukegan
17 generation station was the second worst
18 environmental justice offender in the nation
19 according to NAACP Coal Blooded report. There
20 are also five Superfund sites and the community
21 is currently dealing with ETO being omitted into
22 our air by two facilities, Medline in Waukegan
23 and Vantage in Gurnee. The health effects of
24 all this pollution is detrimental.

1 A report showed that in Waukegan one in
2 three children have asthma or had asthma-like
3 symptoms which is well above the national
4 average. The EPS risk assessment reports stated
5 that living near a wet coal ash pond like the
6 ones in our lakefront is more dangerous than
7 smoking a pack of cigarettes a day.

8 Coal ash from the Waukegan coal plant
9 is sitting on our shores of Lake Michigan
10 causing groundwater contamination and must be
11 removed responsibly. We know from groundwater
12 data that the grassy ash pond site is a more
13 significant contributor to groundwater
14 contamination that has been going on since 2010.

15 This ash site is up to 15 feet in some
16 places and has been left unlined. Leaving the
17 coal ash in place would almost guarantee ongoing
18 groundwater contamination at the lakefront site
19 indefinitely. The coal ash must be removed and
20 put into a properly permitted landfill
21 significantly above groundwater.

22 Do not allow NRG to not be held
23 responsible for the coal ash produced by the
24 coal plant. NRG had purchased Midwest

1 Generation and now they must address all the
2 coal ash on the property.

3 The community for the last ten years
4 has been very clear that the best course of
5 action is removal. Please think not only about
6 Waukegan community members but every community
7 that gets its drinking water from Lake Michigan.

8 We need this Board to hold NRG
9 accountable. We need this Board to ensure safe
10 drinking water to be enjoyed by future
11 generations of Illinoisans. We need this Board
12 to ensure and protect and preservation of
13 Illinois environment and natural resources
14 located here in Waukegan.

15 This community has envisioned a
16 lakefront without a coal fired plant, without
17 active coal ash ponds. Help us bring this
18 vision into reality. Thank you for your time.

19 HEARING OFFICER HALLORAN: Thank you.

20 MR. PENCE: We have Eddie Flores,
21 Rachel Canti, and Victor Felix.

22 HEARING OFFICER HALLORAN: So three?

23 MR. PENCE: Three more. Yes, sir.

24 HEARING OFFICER HALLORAN: All right.

1 Thank you. Then we will take a five-minute
2 break and continue with direct. Good afternoon
3 state your name and spell it for the record.

4 MR. FLORES: Eddie Flores. E-D-D-I-E,
5 F-L-O-R-E-S.

6 Hello. My name is Eddie Flores, and I
7 come here as a co-chair of Clean Power Lake
8 County, an environmental justice organization,
9 as an informal educator teaching about
10 environmental justice issues like these coal ash
11 ponds. And as a native of Waukeganite, I have
12 been living with these coal ash ponds in my town
13 my whole life.

14 I first want to thank you for coming to
15 Waukegan and for having this hearing on the
16 legacy ash pond; but second, I am disappointed
17 that the hour for this hearing is taking place
18 during the working day. Waukegan is a
19 working-class community. While this meeting may
20 be convenient for you, it sure isn't for the
21 people that are living with these coal ash ponds
22 in their community.

23 I urge you to have public comments
24 during the evening next time and to extend the

1 time so it's not just one hour. I understand
2 that I have a lot of privilege by being able to
3 come here and take some time out of my day that
4 a lot of my rest of my community cannot.

5 I ask that IPCB not give NRG a free
6 pass and to make them clean up the legacy ash
7 pond as well as the rest of the coal ash.

8 Over the past five years of my life, I
9 have given up a lot of time to address the
10 environmental justice issues in my community. I
11 have skipped class on numerous occasions, spent
12 many nights drafting public comments like this
13 one, spending my late teen years and now my
14 early 20s to try to do my best to right the
15 injustices that giant corporations have caused
16 in my community.

17 Giant corporations and these polluters
18 who have put their profits before my community.
19 Corporations who have decided that they don't
20 care if our air, water, and land is polluted.
21 Corporations who would rather have more money in
22 their product than doing the right thing and
23 cleaning up the mess that they made.

24 My community knows this story very

1 well, as can be seen by the five Superfund sites
2 in Waukegan. Four of those being along our
3 lakefront. Please don't let us have a sixth
4 Superfund site.

5 We know that the legacy ash pond site
6 is actively sitting in contact with groundwater.
7 This is where the majority of our groundwater
8 contamination is, a 15-foot deep pond where the
9 majority of our groundwater contamination is
10 occurring.

11 In 2021 there was a study that showed
12 contaminants found in coal ash were in our
13 drinking water, our drinking water. The legacy
14 ash ponds need to be cleaned up. NRG needs to
15 be held accountable.

16 They have filed dozens of exemptions
17 and loopholes to avoid having to abide by the
18 regulations to clean up the coal ash ponds that
19 they have made. It's clear that NRG does not
20 want to clean up the mess.

21 This past summer the Brushwood Center
22 came out with a report on climate change as it
23 affects Lake County specifically. What we saw
24 in that report was that northeastern Lake County

1 was the most overburdened by pollution and had
2 the least access to clean air, water, and land.

3 The figure that really hit me the
4 hardest was the average age death. Waukegan and
5 North Chicago and Park City had a life
6 expectancy of about 64 to 68 compared to areas
7 like Lake Forest and Lincolnshire where the life
8 expectancy was 79 and 82, communities 15 minutes
9 away. This is about a 15-year life expectancy
10 difference.

11 I am currently 21. This means that
12 based on the trends that we have seen, I am
13 about a third of the way done with my life
14 compared to a fourth of the way through if I
15 were living in southern eastern Lake County. A
16 third of the way done with my life instead of a
17 fourth. This is due to the cumulative impacts
18 of having all these toxic sites in one
19 community.

20 We know that things don't happen in a
21 vacuum. We have been exposed to contamination
22 from all these different sites that have been
23 affecting our overall health and livelihoods.

24 It was just yesterday that I was giving

1 a water pollution demonstration with elementary
2 school students. They understood the concepts
3 of cleaning up our environment. They understood
4 that we should take care of our only planet, our
5 precious water source. At the end of the
6 activities, they understood that they needed to
7 clean up their stations.

8 How is it that elementary school
9 students are able to understand such a basic
10 concept and a giant corporation cannot. NRG
11 needs to be held accountable, and they need to
12 remove all of the coal ash off of our lakefront.

13 How do I as an informal educator but
14 also an -- as an informed educator but also an
15 informed community member share the heavy news
16 to my sister? To my family? To my neighbors?
17 To my fellow community members? To kids that
18 our life expectancies are decreased compared to
19 others. That our water isn't clean.

20 A part of my heart breaks every time I
21 have to share this information. I want to just
22 scream into the world. I have to be strong when
23 sharing these traumatizing facts. I have to
24 cushion it with the fact that we have a lot of

1 passionate people fighting for Waukegan's
2 cleanup. A lot of people wanting to do the
3 right thing.

4 I have a lot of faith in my support
5 system which includes the Clean Power Lake
6 County and organizations like Brushwood and
7 Sierra Club, as well as my community. But that
8 faith and hope recesses every time when people
9 like you who have the power to decide whether or
10 not pollution continues to occur in Waukegan,
11 people who decide that our health continues to
12 be harmed.

13 Please hold NRG accountable. Make them
14 clean up all of the coal ash. I should not be
15 up here right now. I should be studying for my
16 classes right now but instead I'm here begging
17 you to protect Waukegan, our water, our
18 environment, the environment that future
19 generations will be inheriting.

20 I'm here because I really care, but
21 also because I understand a lot of my community
22 cannot. Please make the right decision. Thank
23 you.

24 MR. PENCE: We have last two. We have

1 Rachel Canti and Victor Felix.

2 HEARING OFFICER HALLORAN: Good
3 afternoon. State your name and spell it for the
4 record. Thank you.

5 MS. CANTI: Rachel Canti. R-A-C-H-E-L,
6 C-A-N-T-I. Thank you for the opportunity to
7 speak today.

8 I have been working in the city of
9 Waukegan for a little over a year now. In my
10 short time here I have experienced an incredible
11 vibrant community despite the injustice,
12 disinvestment, and pollution that this community
13 has experienced.

14 Waukegan has been overburdened by
15 pollution and other environmental injustices for
16 years and years. Continuing to allow coal ash
17 ponds to exist alongside our lakefront will
18 continue the cycle of environmental racism, but
19 it will continue the cycle of disinvestment and
20 continue the cycle of public health crisis.

21 This community sits upon the shores of
22 Lake Michigan. I can see the lake from my
23 conference room. This lake is life. You cannot
24 allow NRG to poison our safe drinking water of

1 not just this community but of millions of
2 people spanning across multiple states.

3 Our world and environmental systems are
4 so interconnected, so if you don't care about
5 Waukegan, if you don't care about this
6 working-class Black and brown community then at
7 least think about how this will have an impact
8 on the rest of the region and the country. This
9 is bigger than just us.

10 A previous speaker spoke eloquently on
11 the veterans in this area and I can speak to
12 that with personal experience. I currently
13 serve as a corporal in the Illinois National
14 Guard and receive most of my healthcare here.

15 I have met many veterans that live in
16 this area and moved here just so that they can
17 receive medical help from the VA. I joined the
18 army to help people. I went into planning and
19 sustainability because I want to help people.

20 You have a moral obligation to help our
21 veterans, our people, and our community.
22 Anything short of a total cleanup is
23 unacceptable.

24 We are taught as children that if you

1 make a mess or knowingly purchase a mess, you
2 should clean it up. You don't leave it for
3 someone else to deal with the repercussions.

4 I ask you to please hold NRG
5 accountable and to make them clean up their
6 mess, fully, so that this community does not
7 have to experience more injustice. Thank you
8 for your time.

9 HEARING OFFICER HALLORAN: Thank you.
10 Good afternoon. State your name and spell it.

11 MR. FELIX: Hello. I'm Victor Felix.
12 V-I-C-T-O-R, F-E-L-I-X. I will make this pretty
13 short because throughout this whole time I have
14 heard a lot of concerns that frankly a lot of
15 our community has and some of those that could
16 not come, I thank everyone and speaking for
17 those that could not come today because of work
18 and other issues.

19 The impact on coal ash in our
20 community's health cannot be understated. It's
21 evident that coal ash ponds cause a significant
22 detriment not only in health but also in
23 Waukegan's development as you heard the
24 planners.

1 Our community is crying out for the
2 removal of this threat from our lands. We are,
3 as you can see, committed to persisting until
4 it's eradicated from our lives, from our city,
5 and our concerns altogether.

6 We will continue to advocate until the
7 voices are heard and action is taken. We ask
8 the Illinois Pollution Control Board to hear our
9 voices and help us keep our community safe.
10 Thank you.

11 HEARING OFFICER HALLORAN: Thank you,
12 sir. All right. That appears to be it for now
13 and I encourage people pursuant to our
14 Procedural Rules 101.628, you can submit public
15 written comment to the Board. I haven't set a
16 date yet for that but to be on the safe side,
17 I'd say by February 29th.

18 The reason I haven't set a date yet is
19 because we haven't gotten to the end of the
20 hearing where the attorneys talk about the
21 timing of the post hearing briefs, but you can
22 find that on the Board -- the due date for
23 public comment but, again, to be on the safe
24 side, February 29th will be the due date for

1 public comment.

2 I would -- I would like to take a
3 five-minute break now. Thank you.

4 (Whereupon, a short recess was
5 taken.)

6 HEARING OFFICER HALLORAN: All right.
7 We are back on the record. The court reporter
8 will start transcribing, and we have Mr. Dorgan
9 on the stand, and he is reminded he is still
10 under oath. You may proceed. Thank you,
11 Ms. Gale.

12 MS. GALE: And we are no longer on
13 film, right?

14 HEARING OFFICER HALLORAN: That's what
15 she is doing.

16 MS. GALE: Thank you, sir. I
17 appreciate that.

18 CONT'D DIRECT EXAMINATION

19 BY MS. GALE:

20 Q. Mr. Dorgan, before we get back into it,
21 I want to ask you a couple of other questions.

22 Are you familiar with Superfund sites?

23 A. Yes, I am.

24 Q. And is that part of your job? How are

1 you familiar with them?

2 A. I have worked on Superfund sites,
3 different states, throughout my career.

4 Q. And what regulation or what statute is
5 it related to?

6 A. Superfund falls under Comprehensive
7 Environmental Response, Compensation, and
8 Liability Act. It's a mechanism by which sites
9 are evaluated, scored, and then cleaned up
10 either through an enforcement action with
11 potentially responsible parties or through the
12 use of Superfund dollars that the EPA would
13 administer.

14 Q. And is the grassy area a Superfund
15 site?

16 A. It is not.

17 Q. It is a CERCLA site?

18 A. It is not.

19 Q. And I will just ask because we heard
20 comments, are the CCR surface impoundment area
21 is that a Superfund site?

22 A. No, they are not.

23 Q. Thank you. I want to turn to and build
24 upon Ms. Shealey's answers to Board question

1 No. 1 which, again, the question is: Is Midwest
2 Generation aware of any closure activities
3 conducted on the old pond?

4 And first, again, what is your initial
5 reaction to that question?

6 A. Well, closure activities there has been
7 ongoing environmental monitoring that's taken
8 place. Groundwater monitoring has been ongoing
9 there for many years. There -- For the CCR
10 regulated impoundments, there has been closure
11 plans submitted; but as far as an active
12 corrective action at the grassy field, that has
13 not occurred yet but it is proposed.

14 Q. And so right -- The Board said the old
15 pond but you understand them to mean the grassy
16 field, right?

17 A. And I refer to the grassy field. There
18 is not any great deal of clarity on what the old
19 pond is.

20 Q. Right. I guess we should clarify. In
21 your report it's actually the FS area, right?

22 A. The former slag area which is what it's
23 been referred to in previous phases of this --
24 of the other matter.

1 Q. And you talked about the sampling that
2 was done in the FS area or grassy field as we
3 discussed earlier, right?

4 A. That's correct.

5 Q. So in relation to the Board's questions
6 about corrective actions or closure activities,
7 how is that sampling relevant to that?

8 A. Well, we -- as I think I testified
9 previously, we evaluated, looked at the data
10 that was collected from that investigation to
11 help inform our approach towards how we would
12 implement corrective action for the site.

13 So from that perspective, investigation
14 that would lead to our remedial design has been
15 implemented and we consider those results in the
16 approach that we took towards addressing the
17 former slag area.

18 Q. And, actually, I cannot the remember
19 the page number of your report, but do you
20 recall you took an estimate of the cost of the
21 cap, to install at that cap, right?

22 A. Yes. It's in the report I believe it
23 was on the order of 1.9 to 3 or 3.1 million.
24 Something on that nature.

1 Q. It's on Page 53. Page 53 of Exhibit 37
2 of your report.

3 A. Appearing in the middle of that page,
4 the estimate that was provided was 1.9 to 3.3
5 million.

6 Q. And in your expert opinion, once a cap
7 is installed -- Actually, if we could -- If we
8 could actually put on the screen his
9 presentation and go to Slide 91 or 90. Yes.
10 This is exactly what I am talking about.

11 Mr. Dorgan, in your opinion once a cap
12 is installed, what would you expect to happen to
13 the concentrations of groundwater under the
14 grassy field and particularly at MW-5?

15 A. Our evaluation would be after the cap
16 is installed, we will see continued improvement
17 in the groundwater chemistry as we eliminate the
18 infiltration of rain water through the
19 unsaturated ash materials, and we -- as this
20 slide summarizes, we did some modeling, a very
21 common model that used to evaluate caps such as
22 what we have proposed and it shows nearly a
23 hundred percent reduction in the amount of
24 infiltration from rainwater.

1 Q. And that modeling, what is it called?

2 A. The HELP model, the HydroGeoLogic -- or
3 Hydrologic Evaluation of Landfill Performance.

4 Q. And you said it's a common model. Is
5 it used by regulatory agencies?

6 A. Yes, it is.

7 Q. Okay. We talked earlier about the
8 tannery site and the general border site to the
9 west of the Midwest Gen station?

10 A. Yes, we did.

11 Q. And I think you already answered this,
12 but I am going to ask the question again: Will
13 groundwater continue to be impacted by this
14 off-site source?

15 A. Groundwater that is being impacted by
16 the off-site source will continue to migrate
17 onto the Midwest Generation property.

18 Q. Well, how does this contamination from
19 an off-site source migrating onto the Waukegan
20 station factor in the remedy assessment you have
21 done here?

22 A. We will we have considered the
23 constituents related to CCR materials and our
24 remedy will help to address those constituents,

1 but of course we are primarily interested in
2 what's happening down-gradient as a whole so
3 that we can be sure we are being protective of
4 off-site properties which is the approach that
5 we have taken.

6 Q. I think earlier, and we can go to
7 Page 53 of your report, earlier you mentioned a
8 groundwater management zone. Do you recall
9 that?

10 A. Yes, I do.

11 Q. Can you just remind us what a
12 groundwater management zone is?

13 A. So groundwater management zone is
14 generally coupled with an ELUC, environmental
15 land use control. The groundwater management
16 zone simply acknowledges that there is an
17 exceedance of groundwater standards in the
18 groundwater; and that while a corrective action
19 is ongoing, the exceedances don't constitute an
20 ongoing violation of state standards and
21 allowing for there to be time for the corrective
22 action to have its intended benefit.

23 Q. And the groundwater management zone,
24 who reviews and approves it?

1 A. The IEPA.

2 Q. Now we talked about installing a cap
3 over the grassy field. Well, I'm sorry. And
4 how does the groundwater management zone -- I
5 think you answered this, so never mind. I take
6 it back.

7 But -- Never mind. Let's say it again.
8 How does a groundwater management zone here fit
9 within your analysis of the cap?

10 A. The groundwater management zone would,
11 again, just provide an additional layer of
12 protection from there being potable groundwater
13 wells installed at the site and, again, would
14 just be a fairly significant variable in the
15 risk assessment and allow us to be confident
16 that there aren't receptors that would be
17 ingesting the groundwater that's been impacted.

18 Q. So we talked about installing a cap
19 over the grassy field. Can Midwest Generation
20 install the cap without regulatory oversight?

21 A. They could, but it wouldn't be
22 advisable.

23 Q. Why not?

24 A. Because the Agency may disagree with

1 the approach taken. They could agree with the
2 performance standards of the cap itself that
3 could lead to further disagreement and arguments
4 and ultimately potentially having to redo or
5 reconstruct or add to the original cap.

6 Q. And we talked about the SRP program
7 earlier. Do you remember that?

8 A. Yes, I do.

9 Q. And in fact you modeled your opinion
10 based on that program, right?

11 A. I did.

12 Q. And you stated earlier that you worked
13 on sites in the Illinois SRP program?

14 A. Yes, I have.

15 Q. Generally, how did the investigation
16 and corrective actions proceed at those sites
17 temporally timewise?

18 A. Well, as you can imagine, sites can
19 vary in terms of how much time it takes. More
20 straightforward sites can be done in a matter of
21 months if you are fortunate. I have seen others
22 go multiple years if they are more complex, more
23 issues that are being evaluated, more remedial
24 measures that are needed.

1 So typically if you try to move through
2 the earlier phases of the SRP process and get to
3 the point where you have an approved remedial
4 action plan or you have some certainty about
5 what the path forward looks like.

6 Q. And you were here for Ms. Shealey's
7 testimony, right?

8 A. I was.

9 Q. And you heard her state that EPA has
10 not granted a construction permit for any CCR
11 surface impoundments in Illinois, correct?

12 A. That's what I heard.

13 Q. And for Waukegan Station, those
14 construction permits have been pending for how
15 long?

16 A. Several years, I believe.

17 Q. Two years? In your experience with the
18 Illinois SRP program, if a site like the grassy
19 field were in the Illinois SRP for two years,
20 where would it be?

21 MR. GUNNARSON: Objection. Calls for
22 speculation.

23 MS. GALE: He is an expert. He is
24 entitled to give his opinion.

1 HEARING OFFICER HALLORAN: He has been
2 around a lot. He can answer. Overruled.

3 THE WITNESS: You can't say with a
4 hundred percent certainty what the timeline
5 would look like, but this is not a particularly
6 complicated site. It's fairly well defined.
7 The groundwater chemistry is not particularly
8 complicated. The groundwater conditions are not
9 particularly complicated.

10 So in a two-year period of time, I
11 would like to think that you can be at a point
12 where you can have a remedial action plan
13 well-developed, perhaps approved and ready to be
14 implemented, so that wouldn't be unreasonable.

15 BY MS. GALE:

16 Q. Okay. We have already talked about the
17 proposed Federal rule on historic areas and CCR.
18 Do you recall that testimony?

19 A. Yes, I do.

20 Q. And, similarly, we have touched upon
21 the pending rules with the Board about historic
22 areas of ash. Do you recall that?

23 A. Yes.

24 Q. In your expert opinion because of those

1 pending rules, what do you recommend to be done
2 at the grassy field?

3 A. I think given the conditions that exist
4 at the site and the risks that have been
5 demonstrated, right now, while there is a great
6 deal of uncertainty about what those rules are
7 going to look like as they go through the
8 promulgation process, they are tracked to be
9 approved in relatively short order.

10 My opinion is the best thing to do
11 would be to wait to see what those look like and
12 then comply with them once they come out.

13 Q. Mr. Dorgan, have your opinions today
14 been given with a reasonable degree of
15 scientific certainty?

16 A. Yes, they have.

17 MS. GALE: I have nothing further.

18 HEARING OFFICER HALLORAN: Thank you.

19 Mr. Gunnarson, do you need a break?

20 MR. GUNNARSON: Just for a moment,
21 Judge. I think I am ready.

22 HEARING OFFICER HALLORAN: Okay. Thank
23 you. We are back on the record if we were off.
24 Go ahead, Mr. Gunnarson.

1 MR. GUNNARSON: Thank you.

2 CROSS-EXAMINATION

3 BY MR. GUNNARSON:

4 Q. Mr. Dorgan, is it your understanding --

5 Or let me start again.

6 You are familiar with the Part 845

7 rules?

8 A. Yes, I am.

9 Q. And your understanding of those can we

10 agree that those rules are not based on a

11 risk-based corrective action but rather mandate

12 compliance that groundwater protected standards

13 are in place in the state of Illinois?

14 A. That's my understanding.

15 Q. And your testimony earlier was that you

16 believe the SRP is appropriate wherein there is

17 no other framework that would apply; is that

18 correct?

19 A. Yes. That's my testimony.

20 Q. Okay. I just want to confirm with you

21 you understand that CCR has been sluiced or was

22 previously sluiced and CCR has been found

23 throughout the area I guess you want to call it

24 the ash slag field, old ash pond, whatever you

1 want to call it, basically the entire 30-acre
2 site in the past?

3 A. I understand that there is the ash
4 ponds, and I understand ash has been found in
5 the area and around the area of the former slag
6 field; but beyond that, I am not sure what you
7 would be referring to.

8 Q. So I am asking of how ash -- Do you
9 understand that ash was sluiced to the area
10 that's considered now the grassy field?

11 A. My -- I don't understand that. I am
12 not certain exactly how the ash was placed where
13 it's at now. I know that the way in which the
14 current ponds operate, it's sluiced. It's
15 through water and a mixture of ash that's then
16 deposited into the ponds that were constructed
17 for the purposes of containing those ash
18 materials.

19 But in terms of how the specifics of
20 how the ash sits in the former slag area, got
21 there, I think there is a great deal of
22 uncertainty around that.

23 Q. So basically you don't know how the
24 ash -- You can't say today how the ash got there

1 in that area?

2 A. Not specifically.

3 Q. Earlier you were testifying as to your
4 analysis of sort of the trend -- trend analysis
5 I will call it relating to Wells 1 through 4 at
6 the site; is that correct?

7 A. That's correct.

8 Q. Okay. And there is also the Wells 5
9 and 7 at the site, correct?

10 A. That's correct.

11 Q. And those are near or around the I
12 guess grassy field area we called it today?

13 A. I think that's fair.

14 Q. Okay. Generally how does groundwater
15 flow at the site? Is it a southeasterly
16 direction? Is it an easterly direction? What
17 would you say?

18 A. Well, it varies just a little bit but
19 it's primarily southeasterly to it can vary to
20 more of an easterly/southeasterly. It depends
21 on the particular monitoring event and the
22 measurements recorded at that time.

23 Q. Okay. And the ELUCs that are in place
24 that you are aware of, do those extend beyond to

1 the south, beyond Midwest Gen's plant site?

2 A. They do not extend past the southern
3 boundary of the Midwest Gen property.

4 Q. Okay. And Wells 5 and 7 are probably
5 some of the most westernmost wells on the site
6 you are aware of, monitoring wells?

7 A. That's not really accurate. There are
8 additional wells further to the west and further
9 up-gradient that are part of the monitoring
10 network.

11 Q. Okay. But they are -- I think the
12 grassy field area is indeed on the western edge
13 of the Midwest Gen property, correct?

14 A. I know it's not a contiguous, just a
15 square box, but, yeah. Yeah. In terms of the
16 orientation of the two ponds and the FS area,
17 the FS area is furthest to the west and is most
18 proximal to the western property boundary.

19 Q. Okay. You testified earlier that there
20 was a compliance agreement or CCA --

21 THE REPORTER: I'm sorry. Mr. Hearing
22 Officer, could I trouble you to ask counsel to
23 speak up just a little bit? Thank you.

24 HEARING OFFICER HALLORAN: Feel free to

1 yell at me and I will yell at you. She can't
2 hear you.

3 MR. GUNNARSON: Sure. Again -- I will
4 try to use my outside voice.

5 BY MR. GUNNARSON:

6 Q. You were aware that there is a CCA --
7 You testified there was a CCA entered regarding
8 the site I believe around 2012; is that correct?

9 A. That's correct.

10 Q. Okay. And also the Part 257 rules
11 related to coal ash, CCR at the sites the
12 Federal government has, those came into effect
13 in 2015; is that correct?

14 A. I believe that's correct.

15 Q. And the legislation related to coal ash
16 ponds in Illinois I think it's Part 22.59 came
17 into -- were passed in 2019, does that sound
18 right?

19 A. That's about right, yes.

20 Q. And then shortly thereafter I believe
21 in 2021 -- I think it was early 2021 the
22 Part 845 rules came into effect, right?

23 A. I believe that's partly correct, yes.

24 Q. And at the point of 2012, the second

1 remediation program did exist with the state of
2 Illinois; is that correct?

3 A. Yes, it did.

4 Q. Okay. Do you have any reason to know
5 why Midwest Gen didn't apply to the SRP at that
6 point to deal with the issue?

7 A. I can't say. I am just aware from the
8 past testimony that there were outreach efforts
9 to the IEPA about options for an SRP-type
10 approach, but why there hadn't been an
11 application at that particular time, I am not
12 certain.

13 Q. But those outreach issues came well
14 beyond 2012, correct, based on the testimony?

15 A. It was after 2012 but exactly when I
16 don't recall.

17 MR. GUNNARSON: Nothing further at this
18 time point, Mr. Hearing Officer.

19 HEARING OFFICER HALLORAN: Thank,
20 Mr. Gunnarson. Ms. Gale?

21 MS. GALE: Just one question.

22

23

24

1 REDIRECT EXAMINATION

2 BY MS. GALE:

3 Q. Mr. Gunnarson asked you about the ELUCs
4 and their southern boundary, right?

5 A. Yes.

6 Q. And they stop at the Midwest Gen
7 boundary line, correct?

8 A. That's correct.

9 Q. Because where are those attached?
10 Where are the ELUCs attached?

11 A. To the Property E.

12 Q. And what is south of the Midwest
13 Generation property?

14 A. A public treatment plant for
15 wastewater.

16 Q. And to your knowledge, are they potable
17 waters over there?

18 A. No. Not according to the past research
19 that's been done.

20 Q. So he was asking about dates in 2012,
21 the CCAs in 2012?

22 A. Yes.

23 Q. And we talked about how you were the
24 expert in the Sierra Club versus Midwest

1 Generation lawsuit?

2 A. Yes.

3 Q. Do you recall what year that was filed?

4 A. 2017.

5 Q. That was the trial.

6 A. Okay. So I don't recall specifically.

7 Q. Does 2012 sound familiar?

8 A. I will stipulate that that's correct,
9 but I don't recall personally.

10 MS. GALE: That's good enough. Thank
11 you. Nothing further.

12 HEARING OFFICER HALLORAN: Thank you.
13 Mr. Gunnarson, do you have any recross?

14 MR. GUNNARSON: Yes. Just one
15 question, Mr. Hearing Officer.

16 RE-CROSS-EXAMINATION

17 BY MR. GUNNARSON:

18 Q. To your knowledge, there would have
19 been nothing stopping MWG from filing an
20 application for the SRP just because there has
21 been a lawsuit filed against them by somebody
22 else?

23 A. There are acceptance conditions within
24 the SRP relative to whether there is an ongoing

1 enforcement matters, so whether that would have
2 been a variable I couldn't say with certainty;
3 but there would have been nothing that would
4 have impeded at least inquiry and potentially
5 submitting an application.

6 MR. GUNNARSON: Nothing further.

7 HEARING OFFICER HALLORAN: Okay. Thank
8 you, Mr. Dorgan. You may step down.

9 BOARD MEMBER VAN WIE: I have a
10 question.

11 HEARING OFFICER HALLORAN: Oh, I'm
12 sorry. Yes.

13 BOARD MEMBER VAN WIE: That's all
14 right.

15 EXAMINATION

16 BY BOARD MEMBER VAN WIE:

17 Q. Mr. Dorgan, did the CCA -- Do you know
18 if the CCA included all the areas identified as
19 the east pond, west pond, and grassy field?

20 A. Yes, I believe it did.

21 Q. Okay. And when -- and I guess I will
22 talk just more generally here, but when you
23 investigate whether there are any potable water
24 wells within a certain area, do you also look at

1 whether there is any potable water intakes along
2 Lake Michigan?

3 A. No. The well search that would have
4 been done would have been for public records of
5 actual water recovery wells that would have been
6 used for potable purposes.

7 Q. Do you know if there is any potable
8 water intakes along Lake Michigan near the area
9 of the Midwest Gen facility?

10 A. I am not specifically familiar with the
11 location of any potable water intakes near the
12 Midwest Gen facility.

13 Q. To your knowledge, has there been any
14 sampling of the sediment along the eastern edge
15 of the Midwest Gen property along Lake Michigan
16 for any CCR constituents?

17 A. I am -- Can you clarify which sediments
18 you would be referring to having been sampled?
19 Are we --

20 Q. Well, just any -- So it looks to me
21 like the property abuts Lake Michigan,
22 correct --

23 A. Yes.

24 Q. -- on the east side. So along the

1 boundary of where Lake Michigan meets the
2 property line, have there been any are kind of
3 sediment -- any sampling of the sediment in that
4 area?

5 A. Well, there has been soil sampling.

6 Q. Okay.

7 A. So would you have soil up until you hit
8 the water boundary?

9 Q. Right.

10 A. And then past the water boundary, you
11 potentially have sediments that would be part of
12 the lake bottom. I am not aware that there has
13 been a lake bottom sample collect, but there
14 have been soil samples collected on the site.

15 Q. On the eastern edge -- There has been
16 soil samples on the eastern edge of the property
17 with Lake Michigan?

18 A. Not all the way to the eastern edge,
19 but further west of that towards the ash ponds
20 there have been.

21 Q. Okay. Do both the east pond and west
22 pond have liners?

23 A. Yes, they do.

24 Q. They both do. Okay. And is it your

1 opinion that the coal ash present on the grassy
2 area is not causing or contributing to any
3 groundwater exceedance at the down-gradient
4 monitoring wells located to the east of the east
5 pond?

6 A. That is my opinion.

7 BOARD MEMBER VAN WIE: Okay. Thank
8 you.

9 HEARING OFFICER HALLORAN: Thank you.
10 Anybody?

11 MS. GALE: I'm sorry, Mr. Hearing
12 Officer. Can I just ask a clarifying
13 questioning?

14 HEARING OFFICER HALLORAN: Yes, you
15 may.

16 REDIRECT EXAMINATION

17 BY MS. GALE:

18 Q. So I think we got property boundaries
19 and pond boundaries a little mixed up.

20 How far is the east berm of the east
21 pond from Lake Michigan?

22 A. Approximately 700 feet.

23 Q. Okay. So in your opinion could
24 sediment get that 700 feet from the east pond to

1 Lake Michigan? Could CCR affect -- get all the
2 way over there?

3 A. Again, it's unclear what sediment we
4 are referring to. Are we talking about
5 sediments in the pond?

6 Q. I think her question was directed at
7 testing the sediment in Lake Michigan. In your
8 opinion based upon the distance of the berm, the
9 east pond berm from Lake Michigan, is it
10 necessary to test for sediment -- the sediments
11 in Lake Michigan for CCR constituents?

12 A. We don't believe so based on the
13 testing that has been done on-site and of the
14 groundwater and other soil testing that's been
15 done.

16 Q. And a follow-up question, and you may
17 not know this, and so if you don't, that's okay.
18 Do you know how far the intake pipe is for the
19 Waukegan from the --

20 A. Into the generating station?

21 Q. No. No. No. I'm sorry. Intake for
22 the city of Waukegan's drinking water?

23 A. I am not familiar with that.

24 Q. That's fine. Somebody else does.

1 HEARING OFFICER HALLORAN: Any
2 follow-up, Mr. Gunnarson?

3 MR. GUNNARSON: No.

4 HEARING OFFICER HALLORAN: Any more,
5 Ms. Van Wie?

6 BOARD MEMBER VAN WIE: No. I am good.
7 Thank you.

8 HEARING OFFICER HALLORAN: You may step
9 down, Mr. Dorgan.

10 MS. GALE: Mr. Hearing Officer, we have
11 a few stipulations that we are prepared to read
12 into the record.

13 HEARING OFFICER HALLORAN: Okay. And
14 we are still on the record.

15 MS. GALE: Yes. Sorry. We have a few
16 stipulations that we are prepared to read into
17 the record, and then I will be calling the
18 Illinois EPA staff adversely. I just wanted to
19 give you a heads-up what the plan was.

20 HEARING OFFICER HALLORAN: Thank you.

21 MS. GALE: Okay. Stipulations as
22 agreed to by the parties: The Illinois
23 Environmental Protection Agency, which we will
24 call Illinois EPA or Agency, created the term

1 "old pond." The term old pond is not in any
2 Illinois EPA permitting records for the Waukegan
3 station. The definition of CCR surface
4 impoundment does not include the terms
5 groundwater, contamination, pollution, sluice,
6 or any mechanism by which CCR and liquid would
7 be placed in a CCR surface impoundment.

8 Illinois EPA has no knowledge that CCR
9 was sent to the grassy field after 1999.
10 Illinois EPA has no knowledge that CCR has been
11 sent to the grassy field since approximately the
12 1970s. Illinois EPA is not aware of any potable
13 wells down-gradient of the grassy field.

14 The groundwater sampling and the
15 analytical results at the Waukegan Station have
16 no bearing or relevance as to whether the grassy
17 field is a CCR surface impoundment.

18 Illinois EPA did not rely on Agency
19 Exhibits 37, 40, 42, 43, 44, and 50 in support
20 of its recommendation and the exhibits are not
21 relevant to consideration of Midwest
22 Generation's petition for --

23 (Audience cough.)

24 THE REPORTER: I'm sorry?

1 MS. GALE: Petition for adjusted
2 standard.

3 THE REPORTER: Thank you.

4 MS. GALE: You're welcome. The
5 description NRG's petition for adjusted standard
6 and a finding of inapplicability for the grassy
7 field on Exhibits 1 through 5 and 13 through 26
8 is inaccurate and should state: Midwest
9 Generation's petition for adjusted standard and
10 finding of inapplicability for the grassy field.

11 Lauren Hunt is an environmental
12 protection geologist with Illinois EPA. Lauren
13 Hunt prepared the Exhibits 1 through 5, 13
14 through 26 and 50 including inserting the
15 non-NRG Waukegan Station reference pins in the
16 aerial photos and descriptions adjacent to the
17 pins. The pins referencing NRG Waukegan Station
18 were already part of the downloaded Google Earth
19 maps.

20 HEARING OFFICER HALLORAN: Is that it?
21 Okay.

22 MS. GALE: Yes. That's it. Thank you.

23 HEARING OFFICER HALLORAN: Okay. Thank
24 you. You may call your fourth witness and it's

1 IEPA's?

2 MS. GALE: Yes. Mr. Lynn Dunaway,
3 please.

4 MR. GUNNARSON: Are we going to call
5 Lauren?

6 MS. GALE: Lynn will be real quick and
7 then I will call Lauren.

8 MR. GUNNARSON: Okay. Because I
9 thought you indicated you were going to call
10 Lauren first from our group.

11 MS. GALE: Not in my e-mail to you.

12 MR. GUNNARSON: No, but today you did.

13 MS. GALE: That was inadvertent. My
14 e-mail to you is what it was supposed to be.

15 HEARING OFFICER HALLORAN: All right.
16 You know the drill. Raise your right hand and
17 the court reporter will swear you in.

18 (Witness sworn.)

19 LYNN E. DUNAWAY,
20 witness herein, called by Midwest Generation,
21 having been first duly sworn, was examined and
22 testified as follows:

23

24

1 DIRECT EXAMINATION

2 BY MS. GALE:

3 Q. Mr. Dunaway, who do you work for?

4 A. I work for the Illinois EPA.

5 Q. And what is your current role?

6 A. My current role is a contract employee.

7 Q. And as a contract employee, what types
8 of projects do you work on?

9 A. Some of the projects I work on are CCR
10 related such as this adjusted standard. I also
11 work on some new training for transitioning
12 after my retirement, train some people on some
13 things, various groundwater protection programs,
14 and how -- how to track information on those.

15 Q. And, well, before you were a contract
16 employee, what did you do?

17 A. Before I was a contract employee, I was
18 an environmental protection specialist also in
19 the Bureau of Water and I worked on CCR
20 programs, other -- as a geologist, I provided
21 input related to mining programs and other
22 industrial unit sites, municipal-permitted sites
23 for Bureau of Water. In addition public water
24 supplies. In addition, there are Underground

1 Tanking Act Federal regulations that I was
2 involved with compliance enforcement for those
3 also.

4 HEARING OFFICER HALLORAN: Can we stop
5 here a minute? Ms. Gale, it just dawned on me,
6 Mr. Dunaway, do you object for your portion
7 being filmed by the City?

8 THE WITNESS: Yes.

9 HEARING OFFICER HALLORAN: You do
10 object? Okay. I'm sorry, Ms. Gale.

11 MS. GALE: Should I wait or -- Should I
12 wait?

13 HEARING OFFICER HALLORAN: Yes, please.

14 MS. HORTON: It is not.

15 HEARING OFFICER HALLORAN: Okay. Thank
16 you, Vanessa.

17 BY MS. GALE:

18 Q. You just told us what you did and you
19 were -- what section were you in at the Illinois
20 EPA?

21 A. Groundwater section.

22 Q. And when did you start working for the
23 Illinois EPA?

24 A. February of 1998.

1 Q. And you are here in support of the
2 Agency's recommendation on Midwest Generation's
3 petition for adjusted standard?

4 A. Yes.

5 MS. GALE: Mr. Hearing Officer, we move
6 to treat Mr. Dunaway as an adverse witness under
7 Rule 101.624.

8 HEARING OFFICER HALLORAN:

9 Mr. Gunnarson?

10 MR. GUNNARSON: No objection.

11 HEARING OFFICER HALLORAN: So granted.

12 BY MS. GALE:

13 Q. Mr. Dunaway, you are familiar with coal
14 combustion residuals?

15 A. Yes.

16 Q. And we commonly call them CCR, right?

17 A. Correct.

18 Q. And you agree it is not a hazardous
19 waste, correct?

20 A. It's not a hazardous waste.

21 Q. And you are familiar with the
22 definition of CCR surface impoundment?

23 A. Yes.

24 Q. And you agree that CCR sluiced to an

1 area does not make it a CCR surface impoundment,
2 right?

3 A. Correct.

4 Q. And this matter we are discussing with
5 the Board is the Midwest Generation's petition
6 for adjusted standard for the Waukegan Station,
7 correct?

8 A. Yes.

9 Q. And you agree that no other company is
10 party to this matter, right?

11 A. None that I am aware of.

12 Q. And for the Agency recommendation,
13 there are aerial photos attached to the Agency
14 recommendation, right?

15 A. Yes.

16 Q. And Ms. Hunt prepared those aerial
17 photos?

18 A. Yes.

19 Q. And did you not make those aerial
20 photos?

21 A. No.

22 Q. And did you not review Ms. Hunt's work
23 on the aerial photos to confirm they were
24 correct, right?

1 A. No. I did not.

2 Q. Thank you. And you did not tell
3 Ms. Hunt to make any changes to the aerial
4 photos, correct?

5 A. I did not.

6 Q. So let's talk about the grassy field,
7 you agree that Midwest Generation's petition is
8 regarding the area west of the west pond that we
9 have been calling the grassy field, right?

10 A. Yes.

11 Q. There is a binder in front of you. If
12 you could turn to Exhibit 28 which is the
13 Illinois EPA invoice. And tell me when you are
14 there.

15 A. I am there.

16 Q. All right. And this is the invoice
17 that was sent to Midwest Generation for the
18 Waukegan Station, correct?

19 A. Yes.

20 Q. And it's dated December 16, 2019,
21 correct?

22 A. Yes.

23 Q. And you have provided the list of CCR
24 surface impoundments at Waukegan Station to

1 create this invoice, correct?

2 A. Yes. I provided it to our fiscal
3 department.

4 Q. And in December of 2019 and perhaps
5 somewhat before, you knew there was a west ash
6 pond at the Waukegan Station, right?

7 A. Yes.

8 Q. And then you also knew there was an
9 east ash pond at the Waukegan Station, right?

10 A. Yes.

11 Q. And the invoice says old pond, right?

12 A. Yes.

13 Q. And when identifying the old pond at
14 the Waukegan Station in 2019, you considered the
15 area's proximity to the east and west pond,
16 correct?

17 A. Yes.

18 Q. And you considered -- You looked at
19 current area photos, right?

20 A. Yes. They were -- I believe I
21 testified that I don't know the date but they
22 were sometime in the 2000s.

23 Q. Fair enough. Thank you. But you did
24 not look at historic aerial photographs in

1 preparing the -- in identifying the old pond,
2 right?

3 A. That's correct.

4 Q. And you looked at no other documents,
5 correct?

6 A. Not that I recall.

7 Q. And in the current -- in the aerial
8 photo that you looked at sometime in the 2000s,
9 you did not see an accumulation of liquid in the
10 grassy field, right?

11 A. I did not see one, no.

12 Q. But you considered it an abandoned
13 pond, correct?

14 A. Yes.

15 Q. But you do not know if it was an
16 abandoned pond or landfill, right?

17 A. At that time, I didn't know; however,
18 since then, I have reviewed Exhibit 37 which
19 states that based on -- that Midwest Generation
20 had determined there are no landfills at any of
21 their sites.

22 Q. But at that time you didn't know it was
23 an abandoned pond and not an abandoned landfill,
24 right?

1 A. I had no specific information either
2 way.

3 Q. In fact, the area could have been a
4 landfill, right?

5 A. From what I knew at that point in time,
6 it could have been.

7 Q. Okay. We are going to put on the
8 screen Agency Exhibit 3 from the Illinois EPA's
9 recommendation which is dated October 31, 2022,
10 and this is Agency Exhibit No. 3 and this is the
11 1961 aerial photograph attached to this Agency's
12 recommendation. Do you see that there?

13 A. Yes.

14 Q. And looking at the photo in Exhibit --
15 Agency Exhibit 3 -- excuse me -- you see the
16 coal pile to the southeast of the power plant,
17 right?

18 A. Yes.

19 Q. And you see the slag field south of the
20 coal pile at the power station, correct?

21 A. Yes.

22 Q. And then looking at the slag field --
23 BOARD MEMBER VAN WIE: Can you point
24 out what you are talking about?

1 MS. GALE: I will. I'm sorry. I
2 stopped talking so I will do my best. Yeah. If
3 we can zoom in on the area that is south of the
4 power station that would be helpful.

5 BY MS. GALE:

6 Q. Okay. So I want to start at the
7 northeast corner of the -- Well, excuse me, the
8 southeast corner of the coal pile. You see
9 there is a line running south along what appears
10 to be the slag field, right? That looks to
11 be --

12 A. Yes.

13 Q. And it could be a berm or a ditch,
14 right?

15 A. On the east side?

16 Q. On the east side, yeah.

17 A. Yes.

18 Q. Okay. And then -- and then if you want
19 to get to the southeast corner of the slag
20 field, that -- there is a white curve that then
21 runs directly west. Do you see that?

22 A. Yes.

23 Q. And that is a straight line that runs
24 directly west approximately two-thirds of the

1 way down, right?

2 A. It appears to be, yes.

3 Q. Okay. Thank you. And that could be a
4 berm or a ditch, right?

5 A. I would expect it's a berm.

6 Q. Okay. But you don't know?

7 A. Oh, I wasn't there in 1961, so, no. I
8 don't know.

9 Q. And then looking in the slag field on
10 the western side, so we are at the line on the
11 south end that's heading west and then it takes
12 a turn to the northwest. Do you see that?

13 A. Yes.

14 Q. And that could be a ditch, right?

15 A. It could be a ditch or a berm.

16 Q. Yeah. You don't know what that line
17 is, right?

18 A. No.

19 MS. GALE: I have nothing further.

20 HEARING OFFICER HALLORAN:

21 Mr. Gunnarson?

22

23

24

1 CROSS-EXAMINATION

2 BY MR. GUNNARSON:

3 Q. Mr. Dunaway, you were asked about your
4 understanding of the definition of a CCR surface
5 impoundment. Do you recall that?

6 A. Yes.

7 Q. Okay. Does -- I know -- I will read it
8 to you and you can tell me if you think this is
9 accurate: CCR surface impoundment means a
10 natural topographic depression, manmade
11 excavation, or diked area which is designed to
12 hold an accumulation of CCR and liquids and the
13 unit treats, stores, or disposes of CCR. Does
14 that sound accurate?

15 A. Yes, it does.

16 Q. Okay. In that definition is there
17 anything that discusses the amount of time
18 related to any of those activities that needs to
19 occur?

20 A. No.

21 Q. No. So an accumulation could happen in
22 five years?

23 A. It could be five years.

24 Q. Five hours?

1 A. Five hours.

2 Q. Five minutes?

3 A. Yes.

4 Q. Okay.

5 A. Any of those.

6 Q. But there is nothing in there that
7 defines what that time is, correct?

8 A. There is not.

9 Q. Okay. You were shown just now Agency
10 Exhibit 30 from the recommendation which was a
11 1961 photo of the site. Do you recall that?

12 A. Yes.

13 Q. Okay. Can you put that back up on the
14 screen, please? In your review of the
15 photographs, including this one, that we
16 mentioned earlier that were part of the Agency's
17 recommendation, what did you know about the area
18 known as old slag field or the slag field or I
19 guess what's designated there as old pond?
20 Geologically, what was there?

21 A. Well, geologically prior to the
22 existence of what's shown here in the 1961
23 aerial photo and the Agency's exhibits, there is
24 a 1939 aerial photo that showed a dune field, no

1 apparent slag or any sort of ash in it.

2 Q. And by dune field, what do you -- what
3 do you mean by that?

4 A. A series of sand dunes that would be
5 composed of a series of ridges and valleys.

6 Q. I see. And it's your understanding
7 that at that time, ash from the power
8 generating -- power-generating activities at the
9 site was disposed of in that area, that sand
10 dune area?

11 A. Based on a later aerial photo of 1946,
12 I believe, showed evidence that CCR material had
13 begun to be disposed there at some point in
14 time.

15 Q. I see. So material -- you noted CCR
16 material being collected there?

17 A. Yes.

18 Q. And how did that material get there?
19 Do you know?

20 A. Based on previous discussions,
21 questions from counsel, there were slag lines
22 that ran out there which would have indicated
23 and based on documents I read indicated that the
24 material was sluiced out there.

1 Q. And what does sluicing mean?

2 A. Sluicing is when you take ash, mix it
3 with water, and send it someplace via pipeline
4 together.

5 Q. It's a means to transport the ash?

6 A. Yes, it is.

7 Q. Okay. And at the end of the pipe,
8 presumably what happens to the ash and the
9 water?

10 A. Well, it all comes out together and
11 then as friction takes over, the water moves in
12 the area to continue transporting the ash and
13 then they would separate. You would then have
14 that accumulation of ash and water that came out
15 of the pipe would begin to separate, forming --
16 making a treatment system and in this case with
17 sand dunes, the water would infiltrate in a
18 relatively short time, I would expect, given the
19 nature of sand and the CCR would be left behind.

20 Q. I see. And you noted earlier that in
21 the I believe you said 1946 photo, where was ash
22 apparent in that area, the old ash pond?

23 A. In 1946, it was concentrated primarily
24 in the northern -- northern third of the area.

1 Q. Later on in the 1960s, how far had it
2 extended, if at all?

3 A. It had extended to the point where you
4 can no longer see any differentiation in sand
5 dunes, the ridges, or valleys that would be
6 apparent.

7 Q. In the 1961 photo you see up there, do
8 you have an idea what is the area -- Do you see
9 where the term "old pond" is?

10 A. Yes.

11 Q. If you look directly above that, there
12 is some light fluffy things. I don't know if
13 those are clouds. I don't know what they are.
14 There is sort of a dark area there. It's sort
15 of like a V shape. What is that? Do you know?

16 A. I would imagine that's probably a pool
17 of water.

18 Q. Okay. And for ash to move within the
19 old pond or slag field area, it would have to be
20 carried by water presumably?

21 A. It could be carried by water. It's
22 possible it could be moved by machinery;
23 however, in the photo, I don't see evidence of
24 movement by machinery, but I do see markings,

1 for instance, just above the word "old pond"
2 that would appear -- it has the appearance of
3 water movement. It's sort of a draining
4 pattern.

5 Q. So water -- sluiced water when it came
6 out of the pipe would flow within the area
7 causing ash?

8 A. Yes. Yes.

9 Q. In your review of these photos and what
10 was going on at the site in terms of how they
11 were handling the ash, did you believe that an
12 accumulation of CCR and liquid was occurring?

13 A. Yes, I do.

14 Q. What makes you think that?

15 A. Well, because the ash that was being
16 sluiced was already an accumulation of CCR and
17 liquids and the fact that that accumulation of
18 CCR and liquids were deposited into the natural
19 topographic depressions between the ridges of
20 the sand dunes fits the definition of CCR
21 surface impoundment because it's a natural
22 topographic depression that has -- that contains
23 an accumulation of CCR and water even if that
24 accumulation of water lasted only for a short

1 time.

2 Q. And by contained, you would also
3 describe it as hold?

4 A. Yes.

5 Q. And by short time, we don't -- Do you
6 have an idea of what that short time is?

7 A. I don't know how long in terms or hours
8 or days it would have been, but I have seen -- I
9 have seen it rain on the beach before and it
10 infiltrates fairly quickly.

11 Q. So based on your testimony today, would
12 there be that even if there isn't a berm or some
13 sort of structure, manmade structure holding or
14 in place, could still have a holding of
15 material, CCR liquid material, at an ash pond?

16 A. Yes because it could be held in a
17 natural topographic depression.

18 MR. GUNNARSON: I have nothing further.

19 HEARING OFFICER HALLORAN: Thank you,
20 Mr. Gunnarson. Ms. Gale?

21 REDIRECT EXAMINATION

22 BY MS. GALE:

23 Q. So you testified that as the water and
24 ash -- so I just want to clarify something

1 because I want to make sure I understand.

2 You said as the ash is being sluiced,
3 so in the pipe, there was an accumulation of CCR
4 and liquid?

5 A. It was.

6 Q. But you are not suggesting the pipe was
7 a CCR surface impoundment, are you?

8 A. No.

9 Q. Once the ash and the water got into the
10 sand, it infiltrated through the sand, right?

11 A. It did.

12 Q. It did.

13 A. The water did, not the ash.

14 Q. Right. The water infiltrated through
15 the sand, you are right. The ash stayed on top.
16 The water infiltrated through the sand, right,
17 all the way through?

18 A. All the way through.

19 Q. And it continued on probably to Lake
20 Michigan, right?

21 A. Eventually I would assume that's where
22 water would end up.

23 Q. Yep. So I want to understand this
24 temporal element that you are talking about and

1 I want to use an example.

2 You've cooked pasta before, right?

3 A. I have.

4 Q. You cook it in water and heat up the
5 water and you mix the pasta with the water in
6 the pot, right?

7 A. Yes.

8 Q. And then when the pasta is ready to go,
9 you pour the pasta and the water through a sieve
10 or colander, right?

11 A. Yes.

12 Q. And so when the pasta passes through
13 the sieve or colander with the liquid, is that
14 an accumulation of pasta and liquid?

15 A. It's an accumulation of pasta and
16 liquid when you pour it into the colander, which
17 would be the equivalent of a manmade excavation.
18 The size of the holes dictates how quickly it
19 would --

20 Q. Right. So do you think the colander
21 holds liquids?

22 A. For a short time.

23 Q. Okay. And you are not a professional
24 engineer, are you?

1 A. No.

2 Q. And you don't have a degree in
3 engineering, correct?

4 A. No.

5 MS. GALE: Nothing for me.

6 HEARING OFFICER HALLORAN: Thank you.
7 Mr. Gunnarson?

8 MR. GUNNARSON: Nothing further.

9 HEARING OFFICER HALLORAN: All right.
10 Ms, Van Wie, any questions?

11 BOARD MEMBER VAN WIE: No.

12 HEARING OFFICER HALLORAN: Okay. You
13 may step down, Mr. Dunaway. Thank you.

14 MS. GALE. Ms. Hunt, please if she is
15 available excellent.

16 HEARING OFFICER HALLORAN: Raise your
17 right hand and Paula will swear you in.

18 (Witness sworn.)

19 LAUREN HUNT,
20 witness herein, called by Midwest Generation,
21 having been first duly sworn, was examined and
22 testified as follows:

23

24

1 DIRECT EXAMINATION

2 BY MS. GALE:

3 Q. Ms. Hunt, who do you work for?

4 A. The Illinois Environmental Protection
5 Agency.

6 Q. And it was in the stipulations but just
7 for fun, what is your title?

8 A. Environmental Protection Geologist 3.

9 Q. And when did you join the Agency?

10 A. February of 2020.

11 Q. And in what section do you work?

12 A. Groundwater section.

13 Q. And generally not -- generally
14 speaking, what are your responsibilities?

15 A. Review and comment on reports and work
16 plans, et cetera, regarding the CCR mines,
17 public water supply, groundwater issues, a
18 number of other things I am sure Mr. Dunaway
19 summarized as well.

20 Q. Fair enough. And you are here in
21 support of the Agency's recommendation on
22 Midwest Generation's petition for adjusted
23 standard?

24 A. Yes.

1 MS. GALE: Mr. Hearing officer, we move
2 to treat Ms. Hunt as an adverse witness under
3 Rule 101.624.

4 HEARING OFFICER HALLORAN:

5 Mr. Gunnarson?

6 MR. GUNNARSON: No objection.

7 HEARING OFFICER HALLORAN: Granted.

8 BY MS. GALE:

9 Q. Ms. Hunt, you are familiar with coal
10 combustion residuals?

11 A. Yes.

12 Q. Commonly called CCR?

13 A. Yes.

14 Q. And you prepared Agency exhibits -- the
15 aerial photos, Agency Exhibits 1 through 5 and
16 13 through 26, right?

17 A. Yes.

18 Q. And you inserted the pins in aerials
19 and descriptions adjacent sent to the pins that
20 were not from the Google Earth photo, right?

21 A. Correct.

22 Q. And in inserting those pins and
23 descriptions in the aerial photographs that were
24 not from Google Earth, you relied on Midwest

1 Generation's history of construction, right?

2 A. From the Federal rule postings, yes.

3 Q. You went to the Federal rule website?

4 A. Correct.

5 Q. And you treat the history of the
6 construction -- yeah.

7 And I want to -- We have copies of the
8 Agency's recommendation that I want to give to
9 you and everybody without that don't have the
10 attachments because we are going to go over some
11 things there.

12 So this is the Agency's recommendation
13 without the attachments, so it's the narrative
14 with their table on the exhibits.

15 HEARING OFFICER HALLORAN: Okay.

16 BY MS. GALE:

17 Q. I want you to turn to Page 38 of the
18 39-page document. Okay. And so looking at the
19 Agency listed exhibit I am going to try to do
20 this quickly. If we need to do this slowly,
21 that's fine.

22 Exhibits 32, 33, 34, 35, 36, 37, 38,
23 39, 40, 41, 42, 48, and 49 are all Illinois EPA
24 permit documents, right?

1 A. That is correct.

2 Q. And you did not rely on Exhibits 32,
3 33, I'm sorry, 35, 36, 37, 38, 39, 40, 41, 42,
4 48, and 49 in your review in preparation of the
5 aerial photos that are in the attached Agency's
6 recommendation, correct?

7 A. Correct.

8 Q. And then if you look at Exhibit 34 is
9 the 2022 groundwater monitoring report?

10 A. Yes.

11 Q. And did you not rely upon that in your
12 preparation of the exhibit, right?

13 A. No.

14 Q. And Exhibits 43 and 44, you did not
15 rely upon those two exhibits either?

16 A. No.

17 Q. And you did not rely upon Exhibit 46?

18 A. No.

19 Q. No, you did not rely upon it?

20 A. No. That's correct.

21 Q. Okay. Thank you. Sorry. I think I
22 remember you testifying if you look at
23 Exhibit 47, the KPRG 2005 Geotechnical
24 Investigation you are not sure if you relied

1 upon that, right?

2 A. Correct.

3 Q. Okay. So I want to turn to Agency's
4 Exhibit 45 which is the history of construction.
5 And if we can put it on the screen. There we
6 are.

7 This is a document you think you relied
8 upon, right?

9 A. That is correct.

10 Q. So let's turn to Appendix A1 of Agency
11 recommendation. Specifically, I want to turn to
12 the map you relied upon. Do you recall relying
13 on the map in the Agency construction?

14 A. Correct.

15 Q. So if we can get to it looks like PDF
16 Page 94. There we go. If we can turn that over
17 and this is the figure you recall looking at in
18 preparation of your aerial photos, right?

19 A. Yes.

20 Q. And then you pointed out to me the
21 second page. The second page -- the next page
22 over and 94, yep, this is also one of the
23 diagrams you looked at, right?

24 A. Yes.

1 Q. And to your recollection you don't
2 recall looking at any other page in the history
3 of construction, right?

4 A. No. During my deposition, I was shown
5 a mixture of the details, construction details,
6 but it was to -- it was not printed at the
7 resolution or at the size that a regular
8 construction details would have been printed at
9 so I could not determine whether or not I used
10 that.

11 Q. Okay. But at this time, you don't
12 recall looking at anything other than these two
13 map -- maps, right?

14 A. I went back and looked, and I looked at
15 the details diagram as well in the regular size
16 on my computer screen, too.

17 Q. And they could have been the same as
18 these, you just can't tell?

19 A. I was able to tell on my computer, just
20 not during the deposition because I didn't have
21 that resolution.

22 Q. Understood. And but -- So you actually
23 don't know if Exhibit 45 that is attached to the
24 Agency's recommendation is the same thing you

1 looked at in your aerial photos, do you?

2 A. Given that there was a previous
3 discrepancy between the Federal rule and the
4 Illinois rule postings by Midwest Generation on
5 their websites between January 29th, the text
6 was physically changed, I could not verify that
7 the one in the Illinois EPA recommendation
8 wasn't the exact one that was submitted on their
9 Federal website.

10 Q. Right. So you don't know that the
11 Exhibit 45 attached to the Agency's
12 recommendation is what you looked at in support
13 of your aerial photos, correct?

14 A. I was not involved in the writing or
15 accumulating of the actual recommendation, so I
16 would not know if it was directly from the
17 Federal website or not or if that had been
18 changed between the Illinois and the Federal
19 website postings.

20 Q. Right. You don't know, right?

21 A. Correct.

22 Q. Thank you. Let's look at Agency
23 Exhibit 1 of the recommendation, the 1939 photo.
24 This is a document you prepared, right?

1 A. Correct.

2 Q. And you inserted the pin for old
3 pond/slag field, right?

4 A. Yes.

5 Q. But you cannot speculate what's
6 depicted in this aerial photo, correct?

7 A. Correct.

8 Q. Let's turn to Agency Exhibit 2. And
9 you answer inserted the words "old pond/slag
10 field" on this exhibit, correct?

11 A. Correct.

12 Q. But you cannot speculate what's
13 depicted on the aerial photo in Agency
14 Exhibit 2, correct?

15 A. I didn't do any aerial photo
16 interpretation for this recommendation, no.

17 Q. Right. So you cannot speculate to
18 what's depicted in the aerial photo of Exhibit
19 2?

20 A. No. Correct.

21 Q. Thank you. Let's turn to Exhibit 3.
22 This is a 1916 aerial photo, and you inserted
23 the words "old pond" and the pin is this photo,
24 correct?

1 A. Correct.

2 Q. And do you see the linear features in
3 Exhibit 3 where the old pond is described?

4 A. I do.

5 Q. But you cannot tell whether linear
6 features -- excuse me. Strike that.

7 You cannot tell whether the linear
8 features were dug out or build up, right?

9 A. Correct.

10 Q. Let's turn to Exhibit 4, 1994 aerial
11 photo and, again, on Exhibit 4 you inserted the
12 words east pond, west pond, and grassy field,
13 right?

14 A. Correct.

15 Q. And looking at Exhibit 4 if we can
16 actually get it blown up a bit just where that
17 area is, that would be helpful. Perfect. Thank
18 you.

19 Looking at the photo in Exhibit 4, you
20 believe there is a berm on the east side of the
21 east pond because of the proximity in time it
22 takes to construction and proximity to the lake,
23 right?

24 A. Correct.

1 Q. But looking at the west side of what is
2 now the west pond, you cannot tell what that
3 linear feature is right, right?

4 A. Correct.

5 MS. GALE: Okay. Nothing further.

6 HEARING OFFICER HALLORAN: Thank you.
7 Mr. Gunnarson?

8 MR. GUNNARSON: Yes, just a few.

9 CROSS-EXAMINATION

10 BY MR. GUNNARSON:

11 Q. Ms. Hunt, did you participate at all in
12 the drafting of the recommendation in this
13 matter that was filed by Illinois EPA on
14 October 31, 2022?

15 A. No.

16 Q. Were you asked to consult on it or do
17 anything regarding the findings in there or
18 anything, any statements that were made?

19 A. No.

20 Q. Your only role regarding what is in the
21 Agency recommendation is you pulled photographs
22 off of either the Lake County site or Google
23 Earth maps and placed some pins in there that we
24 noted in the earlier stipulation, correct?

1 A. That is correct.

2 MR. GUNNARSON: Nothing further.

3 HEARING OFFICER HALLORAN: Thank you,
4 Ms. Gale?

5 MS. GALE: No.

6 HEARING OFFICER HALLORAN: Any
7 questions from the panel? Thank you, Ms. Hunt.

8 THE REPORTER: Excuse me. Mr. Hearing
9 Officer, could I get the witness's full name,
10 please?

11 HEARING OFFICER HALLORAN: Yes. I will
12 realized --

13 THE WITNESS: Sorry. Lauren Hunt,
14 L-A-U-R-E-N, H-U-N-T.

15 THE REPORTER: Thank you.

16 HEARING OFFICER HALLORAN: Thank you.

17 MS. GALE: Can we go off the record for
18 a moment?

19 HEARING OFFICER HALLORAN: Yes. We are
20 off the record.

21 (Whereupon, a short recess was
22 taken.)

23 HEARING OFFICER HALLORAN: All right.
24 We are back on the record.

1 MS. GALE: Yeah. We are back on the
2 record. The Board issued Questions 5 and 6 to
3 Midwest Generation. Question 5 was: Is there
4 any groundwater data available for monitoring
5 wells up-gradient and down-gradient of the
6 grassy field and Question 6 is: Does Midwest
7 Generation have any available data on levels of
8 the constituents listed in 845.600(a)(1) not
9 included in the CCA? And these are -- I treat
10 these as similar because the answer to the
11 questions is there is a lot of groundwater data
12 and the reason I wanted a clarification is
13 because it is voluminous and because the
14 Waukegan station -- Midwest Generation has been
15 sampling the groundwater. There was groundwater
16 sampling in 2010 and it was dissolved -- for
17 dissolved metals that is how it was sampled.

18 And then in 2015 when the Federal rule
19 was passed, it was for total metals but then
20 they still sampled for dissolved metals. So
21 starting in 2015, we have two levels of
22 groundwater results and it's a lot.

23 So my question is: Does the Board want
24 all of those results and that's thousands and

1 thousands of pages. I am happy to collect it
2 for you. I just don't know if that's something
3 you want in your files.

4 MS. BROWN: Can you repeat your
5 question? I'm sorry.

6 MS. GALE: Sure. My question is
7 what -- so there is a -- there is a lot of
8 groundwater data from this station that we have
9 been submitting to the Agency on a quarterly
10 basis since 2010.

11 From 2010 and -- from 2010 to 2017, we
12 have groundwater data that is dissolved metals
13 because that's how it started in 2010 and then
14 2015 we added groundwater data for total metals.
15 So from 2015 to 2017 there are now two types of
16 data, dissolved metals, total metals; and then
17 2017, a construction permit was issued that
18 converted it to all total metals.

19 So from 2017 to present it's quarterly
20 data on total metals and -- but still for the
21 permit, it doesn't have the lithium aluminum but
22 for the Federal rule and now the state rule it
23 has lithium aluminum, so there is a lot of data.

24 And so my question is -- I would like

1 -- I can give you what you want and so
2 what -- I can give you the thousands and
3 thousands of pages of data if that's what you
4 want; but if there is a better -- if there is --
5 what are you looking for and I can help you find
6 that.

7 MS. BROWN: Total metals from 2015
8 onward would be nice.

9 MS. GALE: Okay. That's still going to
10 be a lot of data so if that's okay, that's okay.

11 MS. BROWN: Yep.

12 MS. GALE: Okay. And I will add it
13 could take me some time to collect it. So we
14 can -- Is there a time frame that you need it
15 by?

16 MS. BROWN: I am open to a time frame
17 depending on how long you think it will take
18 you.

19 MS. GALE: Then I will look into it and
20 I will get back to you, how does that sound?
21 And we will think about it as we think about the
22 briefing schedule. Perhaps we will incorporate
23 that in there.

24 HEARING OFFICER HALLORAN: Perfect.

1 Thank you.

2 MS. GALE: Just so I understand I am
3 going to write this down, total metals from 2015
4 to present?

5 MS. BROWN: Yes.

6 MS. GALE: Thank you very much. Okay.
7 Midwest Generation now calls Mr. Darin LeCrome.

8 HEARING OFFICER HALLORAN: Raise your
9 right hand and Paula will swear you in.

10 (Witness sworn.)

11 DARIN LeCROME,
12 witness herein, called by Midwest Generation,
13 having been first duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. GALE:

17 Q. I failed to do this with your
18 compatriots, but Mr. LeCrome, what is your full
19 name?

20 A. Darin LeCrome, D-A-R-I-N, L-E capital
21 C-R-O-M-E.

22 Q. And, Mr. LeCrome, where do you work?

23 A. I work for the Illinois Environmental
24 Protection Agency.

1 Q. What is your title?

2 A. I am the permit section manager for our
3 division of water pollution control.

4 Q. And aren't you also another permit
5 manager?

6 A. Well, my old job was as the industrial
7 unit manager, and I still retained those duties
8 when I got the promotion in my current position.
9 We have not yet backfilled that.

10 Q. Congratulations?

11 A. Yeah.

12 Q. And as the manager, what do you do?

13 A. My responsibility is to oversee all of
14 our various permitting programs. It's either 10
15 or 11, I can't remember if that's counting the
16 CCR, for various types of industrial, ag,
17 mining, and municipal wastewater sources.

18 Q. And you sign the final permits, right?

19 A. The majority of them, yes.

20 Q. How long have you worked for the
21 Agency?

22 A. I started in May of '92.

23 Q. And what professional licenses do you
24 hold?

1 A. I am a licensed professional engineer
2 in Illinois.

3 Q. And does that mean you have an engineer
4 degree?

5 A. I do. I have a bachelor's in
6 mechanical engineering from SIU Carbondale.

7 Q. And I think in the permit program, I
8 might have missed it so forgive me, that
9 includes the CCR surface impoundment permitting
10 program?

11 A. It does.

12 Q. And you are here in support of the
13 Agency's recommendation on Midwest Generation's
14 petition for adjusted standard, right?

15 A. Correct.

16 MS. GALE: Mr. Hearing Officer, we move
17 to treat Mr. Dunaway as an adverse witness under
18 Rule 101.624.

19 HEARING OFFICER HALLORAN:
20 Mr. Gunnarson?

21 MR. GUNNARSON: I would just note that
22 are you seeking Mr. LeCrome or Mr. Dunaway?

23 MS. GALE: Shoot. I would say that
24 again. Thank you. It's 4:17. So, Mr. Hearing

1 Officer, I move to treat Mr. LeCrome as an
2 adverse witness under Section 101.624.

3 MR. GUNNARSON: No objection.

4 HEARING OFFICER HALLORAN: Granted.

5 Thank you.

6 MS. GALE: Thank you.

7 BY MS. GALE:

8 Q. Mr. LeCrome, part of the permitting
9 process I believe you said was NPDES permitting,
10 right?

11 A. It is, yes.

12 Q. And I should say that somewhat slowly.
13 NPDES permitting. And as part of NPDES
14 permitting, the Agency receives public comments,
15 right?

16 A. We do.

17 Q. Okay. We are going to hand out Midwest
18 Gen Exhibit 42 and this is a news article about
19 a public hearing for the Pond Creek Coal Mine
20 Permit, right?

21 A. It is.

22 Q. And it's dated November 7, 2019?

23 A. Yes.

24 Q. And you are familiar with the Pond

1 Creek Coal Mine Permit, correct?

2 A. I am.

3 Q. Actually, I think you signed the
4 permit, right?

5 A. I did.

6 Q. So you were part of the permitting
7 process for the Pond Creek Coal Mine Permit,
8 right?

9 A. Yes.

10 MR. GUNNARSON: Mr. Hearing Officer, I
11 am going to object to the line of questioning
12 here and using this exhibit. I don't see what
13 the relevance is to this particular action here
14 about permit that actually happened five years
15 ago.

16 HEARING OFFICER HALLORAN: Ms. Gale.

17 MS. GALE: Mr. Hearing Officer, this
18 will ultimately be an admission party opponent.
19 We intend to use this as part of -- well, it
20 will be clear as I go through how this is
21 important as it relates to public comments.

22 HEARING OFFICER HALLORAN: You may
23 continue. I will reserve the ruling.

24

1 BY MS. GALE:

2 Q. Okay. Mr. LeCrome, looking at this
3 article, fifth paragraph down, do you see your
4 name?

5 A. I do.

6 Q. And it states that for you the types of
7 public comments that actually have bearing on
8 Illinois EPA's decision-making process are about
9 science, not feelings.

10 You would agree with that statement,
11 right?

12 A. That's what it says. I don't remember
13 stating that, but apparently I did.

14 MR. GUNNARSON: Again, Mr. Hearing
15 Officer, renew the objection. I don't
16 understand what this has to do with our
17 particular action. There isn't any allegation
18 that there is any sort of looking at this thing
19 in an emotional way or anything like that.

20 HEARING OFFICER HALLORAN: Yeah.
21 Ms. Gale, I am a little confused myself.

22 MS. GALE: Well, Mr. Hearing Officer,
23 we just had two hours of public comments about
24 this issue so I wanted to -- and there will be

1 public comments being submitted perhaps for
2 Midwest Generation, and I want to make clear
3 that for the Agency, public comments are about
4 science, not feelings.

5 And so when the Agency reviews public
6 comments in its reviewing process, that is
7 what's important to it.

8 HEARING OFFICER HALLORAN:

9 Mr. Gunnarson?

10 MR. GUNNARSON: Mr. Hearing Officer, I
11 think that brings the implication that somehow
12 there is something else besides what's in the
13 Act and the things that legally the IEPA is
14 required to look at for the permitting process.
15 There has been no allegation here there has been
16 something beyond that. There is not even a
17 permit here at issue. So, again, I would object
18 on this.

19 HEARING OFFICER HALLORAN: Yes. I
20 think at this time I am going to sustain
21 Mr. Gunnarson's objection. You may continue as
22 an offer of proof.

23 MS. GALE: Okay. Thank you.

24

1 BY MS. GALE:

2 Q. And continuing on the next paragraph
3 down where it says Ms. Biggs, do you see that
4 there?

5 A. Yes.

6 Q. And Ms. Biggs is the media
7 representative for IEPA, right?

8 A. Yes. She is our public information
9 officer.

10 Q. And she commented the public input
11 portion of the permitting process is not a
12 popularity vote, right?

13 A. Yes, that's what it says.

14 Q. And then next paragraph it states that,
15 Even if there are scores of people adamantly
16 against a given project and they voice those
17 concerns at a meeting or through written
18 comments, if the comments aren't rooted in
19 science or law, the EPA cannot deny the
20 proposal.

21 You would agree with that statement,
22 right?

23 A. Yes.

24 MS. GALE: Well, I will do it now I

1 guess. Mr. Hearing Officer, we move to admit
2 Midwest Gen Exhibit No. 42.

3 HEARING OFFICER HALLORAN: As I ruled
4 before, the IEPA had an objection and I will
5 agree with them, but I will take it as an offer
6 of proof.

7 (Midwest Generation Exhibit No. 42
8 admitted as an offer of proof.)

9 BY MS. GALE:

10 Q. Mr. LeCrome, as it relates to the CCR
11 surface impoundment permittings, the Agency has
12 not issued an initial operating permit for any
13 CCR surface impoundment in Illinois, right?

14 A. We have not.

15 Q. And the Agency has not issued a
16 construction permit for any CCR surface
17 impoundment in Illinois, correct?

18 A. Correct.

19 Q. And in permitting, I believe you are
20 involved and at the Agency includes permitting
21 for wastewater treatment plants, right?

22 A. Yes.

23 Q. And so you are familiar with various
24 mechanisms to treat wastewater such as

1 filtering, for example?

2 A. I am.

3 Q. And you would agree that filtering or
4 filtration means a process by which water passes
5 through a filtering medium of some kind and
6 leaves the solids behind?

7 A. Yes.

8 Q. And you are familiar with the term
9 "sedimentation," right?

10 A. Yes.

11 Q. And would you agree that sedimentation
12 is a process by which solids are removed from
13 liquid by gravity in a basic -- right?

14 A. Gravity and time, correct.

15 Q. Right. Gravity and time. And then the
16 water is decanted off the top while trying to
17 not to disturb the sediments at the bottom,
18 right?

19 A. Typically, yes.

20 Q. And the term "accumulation" is not
21 defined in Part 845, correct?

22 A. I'm sorry. Can you repeat?

23 Q. I'm sorry. That was my fault. The
24 term "accumulation" is not defined in Part 845,

1 correct?

2 A. It is not. I don't believe it is.

3 Q. But you agree that accumulation means
4 the act or state of accumulating, right?

5 A. Yes.

6 Q. And accumulating or to accumulate means
7 to gather or heap a mass or steadily increase in
8 quantity, right?

9 A. In general. That sounds like a
10 dictionary definition, but yeah.

11 Q. And another term "infiltrate," we agree
12 that means liquid soaking into the ground,
13 right?

14 A. It could be, yeah.

15 Q. And we agree that infiltration in and
16 of itself is a separate activity from
17 sedimentation, right?

18 A. It could be.

19 Q. Is it typically a separate activity
20 from sedimentation?

21 A. Well, it depends. Sedimentation would
22 be the act of the solids settling to the bottom.
23 You could have infiltration as a separate step
24 for instance.

1 Q. You took a deposition, right?

2 A. Yeah.

3 Q. Yep. It was in an office down in
4 Springfield, correct?

5 A. Yes.

6 Q. I was asking you questions?

7 A. Yes.

8 Q. You were under oath?

9 A. I was.

10 Q. I am going to hand you a copy of your
11 deposition. I want you to turn to Page 55.

12 A. I'm sorry. Did you say 55?

13 Q. We are going to start on Page 55.

14 A. Okay.

15 Q. Question: And so you would agree that
16 that's not sedimentation, right?

17 Answer: It could be a combination with
18 it. It would depend on where it is at in the --
19 whatever we are calling the dunes we are talking
20 about, but infiltration in and of itself is a
21 separate typically activity from sedimentation.

22 That's what it says, right?

23 A. I haven't found where you are at yet.

24 Q. I'm sorry. It's on 55, Line 23 and it

1 will carry over to 56.

2 A. Oh. I got you. Okay.

3 Q. So I will read it again: Question:

4 And so you would agree that that's not

5 sedimentation, right?

6 Answer, top of Page 56: It could be in
7 combination with it. It could depend on where
8 at -- in the -- whatever we are calling the
9 dunes we are talking about, but infiltration in
10 and of itself is a separate typically activity
11 from sedimentation.

12 That's what it says, right?

13 A. Yes.

14 Q. Okay. You can put that aside. And we
15 agree that active infiltration is not
16 accumulating liquid, right?

17 A. The act of infiltration?

18 Q. I'm sorry. I spoke too quickly. We
19 agree that active infiltration is not
20 accumulating liquid, right?

21 A. Active infiltration would be separate
22 from active accumulation.

23 Q. Of liquid?

24 A. Of liquid.

1 Q. All right. Let's talk about the grassy
2 field. You agree that Midwest Generation's
3 petition is regarding the area west of the west
4 pond which we are calling the grassy field,
5 right?

6 A. Yes.

7 Q. Let's turn to Agency -- if we can turn
8 to Agency recommendation Exhibit 2 and put it on
9 the screen. It's -- Excuse me. It's a 1946
10 aerial photo of the Waukegan Station. Do you
11 see that there?

12 A. I do.

13 Q. All right. Let's orient ourselves. Do
14 you see the power station on the top of the
15 photo?

16 A. Yes.

17 Q. And then the coal pile to the southeast
18 of the building, right? Yeah. It's actually go
19 out again, too close. I guess it's not a coal
20 pile. Well, never mind. I have the wrong one.

21 And south of the power station is a
22 darkly colored area where the pin is right in
23 the middle?

24 A. Yes.

1 Q. And it's identified in the photo with
2 the terms old pond/slag field, right?

3 A. Yes.

4 Q. Can you see?

5 A. I can see better on that one.

6 Q. And up until a little before today or,
7 you know, you did not know who inserted the
8 words and pins in that photo, right?

9 A. I did not. Not at the time of the
10 deposition, I did not.

11 Q. Thank you. And the deposition was two
12 weeks ago?

13 A. About that, yeah.

14 Q. I think three weeks ago. Forgive me.
15 And looking at the photo in Agency Exhibit 2,
16 you cannot tell from looking at this photo
17 whether there is any liquid present, right?

18 A. From this photo, it's very difficult to
19 tell.

20 Q. Let's turn to Agency Exhibit 3, and
21 this is the 1961 aerial photo of the Waukegan
22 Station, right?

23 A. Yes.

24 Q. And this is the coal pile I was talking

1 about. Do you see on the east side of the
2 station you see the coal pile north of the slag
3 field?

4 A. Yes.

5 Q. And you see the linear feature on the
6 east side of the slag field that heads north,
7 south?

8 A. I do.

9 Q. Yep. And you cannot tell from looking
10 at this photo whether that line is a berm or a
11 ditch, right?

12 A. I cannot.

13 Q. And then you see where the line gets to
14 the southeast corner of the area that we are
15 calling the slag field as it curves to the west
16 along the southern boundary of the station?

17 A. Yes.

18 Q. And you cannot tell whether that line
19 is a berm or a ditch, correct?

20 A. Not with a hundred percent certainty.

21 Q. Well, you cannot tell if the line is a
22 berm or a ditch, right?

23 A. It looks more than like a berm than a
24 ditch, but I can't tell for sure what it is

1 exactly.

2 Q. And -- All right. Again, I want you to
3 turn to Page 59 of your deposition. Again, this
4 is the same deposition that was taken on
5 January 31, 2024.

6 A. Yeah.

7 Q. Do you recall that? And I asked you
8 questions and your attorney was there, right?

9 A. Yep.

10 Q. So Page 59, Line 1: And then you get
11 to the southwest -- excuse me -- southeast
12 corner of that line. It curves to the west and
13 heads west on presumably the southern boundary
14 of the station and, again, we don't know if
15 that's a berm or a ditch, right?

16 Answer: I don't know if it's a berm or
17 a ditch, no.

18 That is what it says, right?

19 A. It is. I still agree with that.

20 Q. Sorry. And then still in the southern
21 boundary of the slag field, towards the western
22 side, you see it bends northwest and then
23 continues directly north, right?

24 A. Yes.

1 Q. And you cannot tell from looking at
2 this photo whether the line bending to the
3 northwest then to the north is a berm or a
4 ditch, correct?

5 A. I cannot.

6 Q. And you are familiar with the Illinois
7 Site Remediation Program?

8 A. I -- Somewhat.

9 Q. And you know that the -- We call it the
10 SRP program, it addresses contaminated
11 properties in Illinois, right?

12 A. It does.

13 Q. And those properties addressed by the
14 SRP include contamination from historic uses at
15 industrial sites, right?

16 A. Typically. That program is not one of
17 my regulatory responsibilities, but, in general,
18 I understand that to be the purpose.

19 Q. And, in general, your understanding is
20 it's a risk-based analysis relating to the
21 current and potential future uses of the --

22 A. That is my understanding, yes.

23 MS. GALE: Thank you. Nothing further.

24 HEARING OFFICER HALLORAN: Thank you.

1 Mr. Gunnarson?

2 MR. GUNNARSON: Sure.

3 CROSS-EXAMINATION

4 BY MR. GUNNARSON:

5 Q. Mr. LeCrome, you are a professional
6 engineer you have testified before?

7 A. I'm sorry?

8 Q. You are a professional engineer as you
9 testified before?

10 A. Yes.

11 Q. And you are familiar with filtration
12 systems and how they operate generally?

13 A. I am.

14 Q. Obviously it may depend upon the filter
15 media that's used and other factors, but does
16 the -- when a material, a liquid that has a
17 substance in it that you are wanting to filter
18 out, does that liquid when it hits the filter
19 immediately disappear through the filtration
20 system?

21 Let me ask you this: Would it
22 accumulate at all while it's filtering?

23 A. Well, I guess it would depend on the
24 type of filter whether it's a -- well, whether

1 it's a type of filter that's like a contained
2 sand filter where you are forcing it through
3 pressure, you may consider it to be temporary;
4 otherwise, all may not be considered to be an
5 accumulation on the surface -- It's a matter I
6 guess in reference of time.

7 Q. Sure.

8 A. It could be a very, very short period
9 of time I suppose but...

10 Q. Okay. At the site here, are you -- is
11 it your understanding that sand was being used
12 to eventually filter out water from deposited
13 CCR from the sluicing process?

14 A. It's my understanding, yeah, that it
15 was sluiced out into the sand dunes and the
16 water would have separated and infiltrated
17 through the sand.

18 Q. And looking at the sluice material in
19 combination with the CCR and the water, could
20 you necessarily tell how much water was there,
21 water was filtering, things like that as you
22 looked at it?

23 A. In a particular photograph or are you
24 talking --

1 Q. Well, let's ask a particular
2 photograph?

3 MS. GALE: I only object as to
4 speculation. He has not been qualified as an
5 expert.

6 HEARING OFFICER HALLORAN: I will allow
7 him to answer if he is able.

8 THE WITNESS: Can you kind of rephrase
9 it a little bit?

10 BY MR. GUNNARSON:

11 Q. When -- You are aware that ash is being
12 sluiced from the power plant here?

13 A. Yes. Right.

14 Q. And when it's deposited into the site
15 or container whatever you want to call it where
16 the sluice is being sent, here being the ash
17 slag field, and it sits in the ground, would you
18 be able to tell there was a water and ash
19 component at the same time or would it appear to
20 be mixed together?

21 A. Well, it would kind of depend on -- I
22 mean, if it's actively sluicing, you would see
23 the water and ash mixture entering the area
24 where it's being sluiced to. The ash would fall

1 out as the velocity drops and the ash would
2 settle out and the water would move to some
3 distance either to -- until it hits the sand or
4 whatever that infiltrate, but the speed of that
5 infiltration would depend on the grain size and
6 all the rest.

7 Q. Would the ash material that have been
8 sluiced would it automatically or
9 instantaneously dry out once it hit the --

10 A. Not immediately. I mean, it would
11 retain some moisture. For how much and how
12 long, I can't say.

13 Q. I see. And your understanding of the
14 definition of a CCR surface impoundment doesn't
15 include any sort of time factor to it regarding
16 accumulation of liquid and solids?

17 A. It does not define a time associated
18 with the act of accumulating.

19 HEARING OFFICER HALLORAN: Counsel,
20 your voice is slipping. Thanks.

21 MR. GUNNARSON: Sorry. Thank you for
22 reminding me.

23 BY MR. GUNNARSON:

24 Q. And you had also -- I think you

1 testified earlier that accumulation is not
2 defined in the Act; is that correct?

3 A. Not to my knowledge, no.

4 Q. Okay. And would you agree that in this
5 situation, the water -- the sluiced water
6 containing ash once it left the pipe was being
7 held within the old ash -- ash slag area when it
8 was deposited for some period of time?

9 A. At least for some period of time. I
10 don't know how long, but, yes.

11 Q. Mr. LeCrome, is there any time deadline
12 in which the Agency is to issue construction or
13 operating permits under Part 845 once an
14 application is received?

15 A. No. Under Part 845, there is not a
16 statutory deadline for review.

17 MR. GUNNARSON: I have nothing further.

18 HEARING OFFICER HALLORAN: Thank you.

19 Ms. Gale?

20 REDIRECT EXAMINATION

21 BY MS. GALE:

22 Q. Well, I think we said accumulate, we
23 agreed, it means -- Let me get my notes, and you
24 agreed it means to gather, heap, amass, or

1 steadily increase in quantity. Did we agree to
2 that earlier today?

3 A. In general, yes.

4 Q. In general, yes. Okay. So we are
5 talking about the slag field and a sandy bottom,
6 right?

7 A. Yes.

8 Q. And there wasn't anything -- a liner
9 underneath, correct?

10 A. That is my understanding, yes.

11 Q. And the water infiltrated through the
12 sand and left the CCR, right?

13 A. That is my understanding.

14 Q. And so -- Okay. Then -- and I want --
15 So, but that's holding water?

16 A. For some period of time. I mean, the
17 water doesn't immediately separate and
18 infiltrate. It's a matter of time frame I
19 guess. Whether it's seconds, days, I don't know
20 how long it took.

21 Q. So you have cooked pasta, right?

22 A. I'm sorry.

23 Q. You have cooked pasta, right?

24 A. Yes.

1 Q. Yes. In water, correct?

2 A. Correct.

3 Q. And once the pasta is ready, you pour
4 it into a sieve or a colander, right?

5 A. Yes.

6 Q. And are you telling me that the sieve
7 or colander is holding an accumulation of water?

8 A. Not for very long but for a very short
9 period of time until it separates, yeah.

10 Q. Is that something you learned as a
11 professional engineer?

12 A. No.

13 Q. Okay. That's not something they taught
14 you in engineering school?

15 A. They didn't talk a lot about pasta.

16 Q. They talked about accumulation, though,
17 right?

18 A. I don't remember specific conversations
19 about accumulation.

20 Q. Okay. But you understood what
21 filtering was, right?

22 A. Yes.

23 Q. Yes. So and filter means to separate a
24 material from a liquid, right?

1 A. Yes.

2 Q. Which means it passes through whether
3 it be sand --

4 A. The liquid passes through a media of
5 some sort, correct.

6 Q. Right. So liquid is not held by the
7 filter, right?

8 A. Not for very long. It can slow down
9 its flow and create back pressure but it doesn't
10 hold it in the sense of holding in a vessel
11 necessarily.

12 MS. GALE: Thank you. Nothing further.

13 HEARING OFFICER HALLORAN:

14 Mr. Gunnarson?

15 MR. GUNNARSON: Just two things.

16 RE-CROSS-EXAMINATION

17 BY MR. GUNNARSON:

18 Q. One, as far as you know, filtering at
19 the Waukegan site was not done through a pasta
20 sieve?

21 A. Not to my knowledge, no.

22 Q. That was done through sand, right?

23 A. That is my understanding.

24 Q. And basically, maybe you know, but I

1 assume periodically ash is sluiced from the
2 power-generating facility out to the old slag
3 field, ponds, whatever it was, that were at the
4 time we are talking about here on a relatively
5 constant or a regular basis?

6 A. On a regular basis. I don't know what
7 frequency the sluicing occurred.

8 Q. Right. So basically there was a I
9 would say probably periodic at least -- would
10 you agree that there would be a periodic -- at
11 least a periodic discharge of sluiced material
12 into the old slag field, old pond area, wherever
13 that was?

14 A. That's what I would expect, yes.

15 Q. When sluice water would enter the slag
16 field area, would it be gathered there for some
17 period of time?

18 A. For some period. I mean, it would
19 enter that slag field as the slurry and for
20 however long it took to separate.

21 Q. So there would be some measure of
22 accumulation before any sort of infiltration
23 would happen?

24 A. I would interpret it as that, yeah.

1 Q. Not necessarily all of the water but
2 some water would be --

3 A. Some, yeah, and it's a matter of how
4 long that it took for that separation to occur.

5 MR. GUNNARSON: Okay. Nothing further.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Gunnarson. Ms. Gale?

8 MS. GALE: No. I beat the horse to
9 death.

10 HEARING OFFICER HALLORAN: Any
11 questions from the panel? Member Van Wie?

12 MS. VAN WIE: Now I want spaghetti for
13 dinner.

14 HEARING OFFICER HALLORAN: You may step
15 down. Thank you. Let's go off the record for a
16 minute.

17 (Whereupon, a discussion was had
18 off the record.)

19 HEARING OFFICER HALLORAN: Let's go
20 back on the record, please. This exhibit
21 Mr. Gunnarson was going to reserve his comment
22 on was Exhibit 43 whether he was going to object
23 or not. I think it was documents pulled from
24 the '13, '15...

1 MR. GUNNARSON: Yeah. We don't have an
2 objection.

3 HEARING OFFICER HALLORAN: Okay. So
4 Midwest Generation Exhibit 43 is admitted.

5 (Whereupon, Midwest Generation
6 Exhibit No. 43 was admitted into
7 evidence.)

8 HEARING OFFICER HALLORAN: If we have
9 nothing else to talk about, thank you, all, and
10 I will see you tomorrow morning at 9:00 a.m.
11 That's it.

12 MS. GALE: I will have -- I was going
13 to do a bulk motion of exhibits at the end of
14 this. I just want to make sure you understand
15 those aren't our two only exhibits.

16 HEARING OFFICER HALLORAN: Oh, I got
17 that. Thank you. Off the record.

18 (Whereupon, proceedings were
19 adjourned at 4:50 p.m. as indicated
20 herein.)

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CERTIFICATE

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This is to certify that I, PAULA ANN ERICKSON, CSR, RPR, CLR and Notary Public, do hereby certify that I reported in machine shorthand the proceedings held in the In Re: Midwest Generation, LLC hearing, on February 13, 2024, before the Illinois Pollution Control Board and that this transcript is a true and accurate transcription of my machine shorthand notes so taken to the best of my ability.

Paula Erickson

PAULA ERICKSON, CSR, RPR

License No. 084-003899

Dated this 5th day
of March 2024.



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