

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-003
PETITION OF MIDWEST)
GENERATION, LLC FOR AN)
ADJUSTED STANDARD FROM) (Adjusted Standard)
845.740(a) AND FINDING OF)
INAPPLICABILITY OF PART 845 FOR)
THE WAUKEGAN STATION)

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Petitioner Midwest Generation, LLC's Post-hearing Brief, a copy of which is herewith served upon you.

Dated: May 14, 2024

MIDWEST GENERATION, LLC

By: /s/Kristen L. Gale

Kristen L. Gale
Susan M. Franzetti
Genevieve J. Essig
NIJMAN FRANZETTI LLP
10 South LaSalle Street Suite 3400
Chicago, IL 60603
(312) 251-5590
kg@nijmanfranzetti.com
sf@nijmanfranzetti.com
ge@nijmanfranzetti.com

SERVICE LIST

Don Brown, Clerk of the Board
Brad Halloran
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
don.brown@illinois.gov
Brad.Halloran@illinois.gov

Stefanie Diers
Sara Terranova
Charles Gunnarson
Rebecca Strauss
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Stefanie.Diers@illinois.gov
Sara.terranova@illinois.gov
Charles.Gunnarson@illinois.gov
Rebecca.Strauss@illinois.gov

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Petitioner Midwest Generation, LLC's Post-Hearing Brief was electronically filed on May 14, 2024 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
don.brown@illinois.gov

and that copies were sent via e-mail on May 14, 2024 to the parties on the service list.

Dated: May 14, 2024

/s/Kristen L. Gale

Kristen L Gale
Susan M. Franzetti
Genevieve J. Essig
Nijman Franzetti LLP
10 S. LaSalle Street, Suite 3400
Chicago, IL 60603
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kg@nijmanfranzetti.com
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ge@nijmanfranzetti.com

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PETITIONER MIDWEST GENERATION, LLC'S POST-HEARING BRIEF

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MIDWEST GENERATION, LLC'S POST-HEARING BRIEF

I. EXECUTIVE SUMMARY

Midwest Generation's ("MWG") Petition addresses an approximately 10-acre flat, grass-covered area to the west of the East and West Ash Ponds at the MWG Station in Waukegan, IL ("Station"). Well before Illinois' adoption of the coal combustion residual ("CCR") rules, MWG identified this area as the "Grassy Field".¹ It never called it a "pond." Post-CCR rules, the Illinois Environmental Protection Agency ("IEPA" or "Agency") created the name "Old Pond" for the Grassy Field, apparently in an effort to buttress its position that it is a CCR surface impoundment. The name "Old Pond" does not appear in any Agency permit records for the Waukegan Station. 2/13/24 Tr., p. 258-259. The Grassy Field is simply a field of grass that does not, and was never designed to, "hold liquids", like a pond would.

The determinative legal issue here is whether the Grassy Field meets the three-part definition of a CCR surface impoundment under Section 3.143 of the Illinois Environmental Protection Act ("Act"). The Act provides three criteria that must be satisfied to qualify as a CCR surface impoundment:

- 1) the unit is a natural topographic depression, man-made excavation, or diked area,
- 2) the unit is designed to hold an accumulation of CCR and liquids, and
- 3) the unit treats, stores, or disposes of CCR.

415 ILCS 5/3.143. If an area does not meet each of the three criteria, it is not a CCR surface impoundment.

The Grassy Field is not a CCR surface impoundment because it has never satisfied the second criteria: it was not "designed to hold an accumulation of CCR and liquids." MWG's expert, professional engineer Thomas Dehlin, applied his experience in the design, operation, and closure of CCR surface impoundments to conduct an in-depth investigation of the Grassy Field to determine whether it met the statutory criteria. He found that the Grassy Field was originally part of a large slag field created decades ago ("Original Slag Field"). The Station consistently managed the Original Slag Field to actively promote the drainage of liquid away from the area as efficiently as possible, by infiltration through its natural sand floor and the ditches excavated to channel liquid away from it. Because the Original Slag Field was designed to separate liquid from CCR by draining the liquid out of it, the area clearly was not designed to "hold" an accumulation of liquid.

¹ The Station has also used the terms "Former Slag Area" and "Fly Ash Storage Area," or even simply "Grassy Area" to refer to the Grassy Field.

In the early 1970s, the Station built a CCR surface impoundment (the “Original Ash Pond”) on the eastern two thirds of the Original Slag Field.² Building the Original Ash Pond cut off the western third of the Original Slag Field from the CCR management process. The Station graded the western third so that it continued to drain liquids, and seeded the area, hence the name “Grassy Field.” Fundamentally, the Grassy Field is, as it always has been, an area of unconsolidated CCR fill—structurally and functionally distinct from an ash settling pond that “holds” liquid.

The Agency’s contrary position lacks both factual and legal support. At the hearing, the Agency admitted that its evaluation of the Grassy Field began with the conclusion that it was a CCR surface impoundment (the “Old Pond”), based on nothing but recent aerial photographs. To shore up its conclusion, the Agency took words in the permit record out of context and ignoring the history of the Station operations. Indeed, the Agency’s witnesses admitted that they could not interpret nor identify the features depicted in the aerial photographs it relied upon in its Recommendation. The Agency provided no other factual evidence to support its position.

Instead, the Agency resorts to a strained and equally unsupported interpretation of the statutory definition of a CCR surface impoundment. It asserts that the words “hold” and “accumulation” are satisfied if, for not more than a millisecond, the Grassy Field held liquids in it. The Agency’s interpretation renders both words meaningless, contrary to established rules of statutory construction. Even a “sieve” would satisfy the Agency’s interpretation, leading to an absurd and wholly unintended regulation of CCR areas that bear no resemblance to a “pond” designed to “hold liquids.”

Although the Grassy Field is not a CCR surface impoundment, it still will be regulated in a manner that protects human health and the environment. There are federal regulation of areas like the Grassy Field called “coal combustion residual management units” or “CCRMUs.” See *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments*, Final Rule, EPA–HQ–OLEM–2020–0107, 89 Fed. Reg. 38950 (May 8, 2024) (“CCRMU Rule”). CCRMUs are “any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit.” *Id.* at 39100. This definition squarely fits the Grassy Field. And USEPA agrees. In the preamble of the CCRMU Rule, USEPA identified the Waukegan Station as an example of CCRMUs in the United States. If Illinois instead classifies the Grassy Field as a CCR

² Ultimately, the East and West Ponds were built within the footprint of the Original Ash Pond.

surface impoundment, it will create a conflict with federal law. It will also create an unintended legal quagmire for MWG, which will have to achieve compliance with two distinct and potentially inconsistent rules.

This absurd result is completely unnecessary from a public policy perspective. The Grassy Field poses no risk to human health or the environment. MWG's expert, professional geologist Doug Dorgan, who has decades of experience addressing industrial properties impacted by historic practices including through the Illinois Site Remediation Program ("Illinois SRP"),³ analyzed groundwater conditions at the Waukegan Station. He found that groundwater posed little to no risk to human health or the surrounding environment. Mr. Dorgan confirmed the absence of potable wells downgradient of the Station. In fact, the City of Waukegan has reassured its constituents that the City's drinking water from the intake about a mile away in Lake Michigan, is safe and meets all USEPA and state drinking water health standards. MWG Ex. 44.

There is a technically feasible, economically reasonable, and consistent path forward for managing the Grassy Field under its proper classification—but that path does not include shoe-horning the Grassy Field into the definition of CCR surface impoundment. The Board should grant MWG's proposed adjusted standard and find that the Grassy Field is not a CCR surface impoundment as defined in the Act. Instead, per the recently passed federal rule, the Grassy Field is a CCRMU and will be investigated and closed as required by the federal rule.

II. BACKGROUND

On May 11, 2021, MWG filed its original Petition for an Adjusted Standard ("Petition"), which sought an adjusted standard from the closure by removal requirements to allow the reuse of the HDPE liner in one of its two ash ponds, as well as an adjusted standard seeking a finding of inapplicability of Part 845 to the Grassy Field. Since filing its original Petition, MWG has withdrawn its request to reuse the HDPE liner. Therefore, MWG's Petition now only seeks an adjusted standard and finding that Part 845 of the Board rules is inapplicable to the Grassy Field.

³ The Grassy Field (along with the Station's CCR surface impoundments, the East and West Ash Ponds) is also the subject of an enforcement action pending before the Board, *Sierra Club et al. v. Midwest Generation, LLC*, PCB 13-15. The enforcement action alleges violations of the Act and Part 620 of the Board rules and is unrelated to MWG's request for Part 845 regulatory relief. However, evidence admitted in the *Sierra Club* matter, including Mr. Dorgan's expert report and testimony, is relevant to the instant matter insofar as it pertains to the Grassy Field. See MWG's Motion to Incorporate Certain Exhibits and Testimony, 7/28/23, granted 8/10/23.

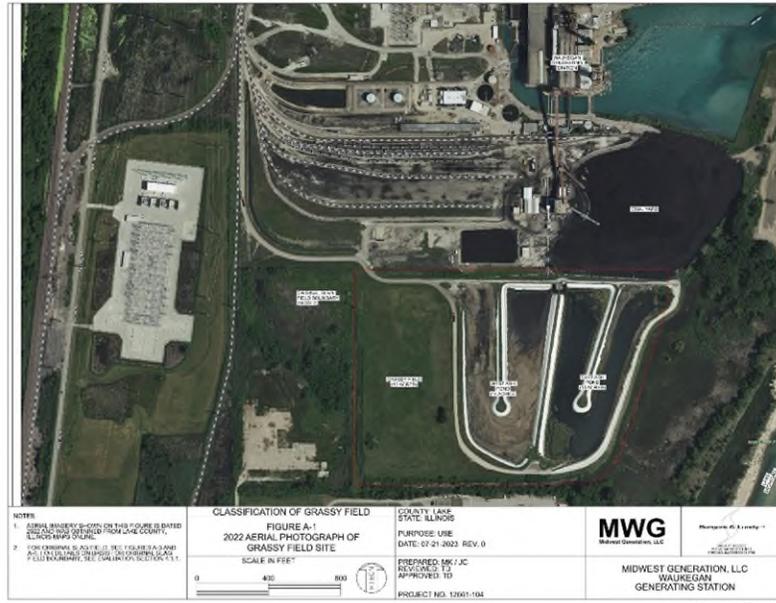
A. General Station Background

The Station began operations in about 1923 and has been operating as a power plant ever since. MWG Ex. 27, p. 2-1; 2/13/24 Tr., p. 18, 32, 102. MWG began operating the Station in 1999 after acquiring it from Commonwealth Edison. 2/13/24 Tr., p. 19, 102. The Station stopped burning coal to generate electricity in mid-2022, but continues to operate peaking units that do not use coal. MWG Ex. 27, p. 2-1; 2/13/24 Tr., p. 19, 32, 102. The Station also plans to install battery storage units to store electricity. When there is excess electricity, they support renewable energy resource usage. 2/13/24 Tr., p. 20, 32-33.

The surrounding area is generally industrial, and has been since the Station began operating. 2/13/24 Tr., p. 18, 33. To the north is the active Johns-Manville Corp. Superfund Site, and to the south is the North Shore Sanitary District wastewater treatment facility. 2/13/24 Tr., p. 33-34, 102. The Griess-Pfleger Tannery and the former General Boiler sites (collectively “Tannery Site”) are to the west. 2/13/24 Tr., p. 33, 102. There is soil and groundwater contamination on the Tannery Site based upon the historic uses of the properties and it is being remediated under the Illinois SRP. 2/13/24 Tr., p. 64, 109-110; 125-126; 238. As part of the risk-based closure allowed under the SRP, the Tannery Site owners established an Environmental Land Use Control (“ELUC”) on the western portion of MWG’s property, and installed approximately six groundwater wells on MWG’s property. 2/13/24 Tr., p. 64-65, 110-111, 114. The ELUC on the western side of MWG’s property limits the use of the groundwater and restricts disturbance of soils. 2/13/24 Tr., p. 110-111, 125-127. Groundwater containing contamination exceeding the Illinois Class I standards continues to migrate from the Tannery Site onto the Waukegan Station. 2/13/24 Tr., p. 110, 238.

B. History of the Grassy Field

The Grassy Field sits in the southern portion of the Station property, directly west of the Station’s two regulated CCR surface impoundments, the East and West Ash Ponds. 2/14/24 Tr. p. 22.



MWG Ex. 41, p. 2.⁴ Together, the Grassy Field, West Ash Pond, and East Ash Pond occupy a combined area of approximately 40 acres (collectively called the “Site” or “Area”). MWG Ex. 27, p. 2-1; MWG Ex. 37, Fig. 4. Within this Area, the Grassy Field occupies the westernmost approximately 12 acres. MWG Ex., p. 2-1; 2/14/24 Tr., p. 22.

The operational history of the Site consists of three distinct phases:

- Phase 1 (~1946-1970): used as a slag field (“Original Slag Field);
- Phase 2 (~1970-1978): an ash settling pond (“Original Ash Pond”) is created (later to become the East and West Ash Ponds), with the remainder unused (“Inactive Slag Field); and
- Phase 3 (~1978-present): the East and West Ash Ponds are constructed within the boundaries of the Original Ash Pond, and the Inactive Slag Field is regraded and seeded, creating the “Grassy Field.”

Phase 1: Original Slag Field (~1946-1970): Beginning at least in 1946, the Station sluiced CCR to the Original Slag Field. MWG Ex. 27, p. 4-1-4-2; 2/14/24 Tr., p. 38.⁵ The underlying land consisted of sand dunes, as evidenced by a 1939 aerial photograph of the Station. MWG Ex. 27,

⁴ To assist the Board in its review, MWG has attached Mr. Dehlin’s Presentation (MWG Ex. 41) as Appendix A.

⁵ See also MWG Ex. 41, p. 5, showing the Station’s property boundaries as of approximately 1950. 2/14/24 Tr., p. 30-31. It also shows a “slag field”. MWG Ex. 41 at 5; 2/14/24 Tr., p. 30-31. A development plan prepared around the same time also references a “slag field,” located just below the proposed new boundary for the expanded the coal yard. MWG Ex. 41, p. 7; 2/14/24 Tr., p. 35. This development plan further shows a fence line dividing the coal yard from the slag area—representing the northern boundary of the slag area—as well as the existence of a slag line. MWG Ex. 41, p. 7, 9; 2/14/24 Tr., p. 37-39.

Fig. A-2; MWG Ex. 41, p. 6; 2/14/24 Tr., p. 32-33. Aerial photographs show that the core operation of the area involved sluiced CCR conveyed by pipe from the Station's boilers to the Original Slag Field, where the sand separated the CCR from the liquid by filtering the liquid through the natural sand floor. To promote drainage, liquid was also directed into the ditch along the Station's southern property line (the "South Ditch"). MWG Ex. 27, p. 4-3; 2/14/24 Tr., p. 39-40; 82. The South Ditch is a permanent and key feature throughout the history of the Site, and is still present and used to manage stormwater run-off today. MWG Ex., p. 4-3; 2/14/24 Tr., p. 41.



MWG Ex. 41, p. 8.

Phase 2: Original Ash Pond and Inactive Slag Field (~1970-1978): By 1970, the Station began constructing the first ash-settling pond, the Original Ash Pond, within approximately the easternmost two-thirds of the Original Slag Field. MWG Ex. 27, p. 4-4.



MWG Ex. 41, p. 11. The 1970 aerial photo shows the Station in the process of construction of an embankment at the western edge of the Original Ash Pond. 2/14/24 Tr., p. 46; MWG Ex. 41, p. 11. The fully diked area did not include the western third of the Original Slag Field (the “Inactive Slag Field”). MWG Ex. 27, p. 4-4, Fig. A-5 and A-6; Agency Exhibit 4; 2/14/24 Tr., p. 45-46; MWG Exhibit 41, p. 11, 13. The Station graded the Inactive Slag Field so that it continued to drain liquid (*i.e.*, precipitation) and direct the liquid to a ditch on the western property boundary and the South Ditch. MWG Ex. 27, p. 4-8; 2/14/24 Tr., p. 46-47.

Phase 3: East Ash Pond, West Ash Pond, and Grassy Field (~1978-present): In April 1975, the Station began plans to improve the existing wastewater pollution control facilities, including installation of a liner to prevent seepage of liquid into the groundwater. MWG Ex. 27, p. 4-6-4-7. On March 30, 1977, ComEd submitted a permit application to construct and operate new wastewater treatment facilities, which included splitting the Original Ash Pond into two separate, lined ponds – the present day East and West Ponds. MWG Ex. 27, p. 4-7; MWG Ex. 41 at 16-17; 2/14/24 Tr., p. 60-61. The Inactive Slag Field was graded and seeded, becoming the present day “Grassy Field.” MWG Ex. 27, p. 4-8; 2/14/24 Tr., p. 61-63.

Since MWG has operated the Station, it has not used the Grassy Field for any purpose and it is not a part of the Station’s ash management system in any way. 2/13/24 Tr., p. 41-42. MWG has never directed or sluiced CCR and liquid to the Grassy Field, has never used the Grassy Field to

accumulate and hold water or other liquid, and has not designed the Grassy Field to receive and hold an accumulation of CCR or liquid. *Id.*

On December 16, 2019, MWG received an invoice from IEPA for the initial fees associated with three alleged CCR surface impoundment at the Station: “East Pond,” “West Pond,” and “Old Pond”(i.e., the Grassy Field). MWG Exhibit 28; 2/13/24 Tr., p. 38-39. Before issuing the invoice, IEPA did not discuss with or request any information from MWG concerning the Grassy Field. 2/13/24 Tr. p. 40, 75-76. MWG did not recognize or understand the term “Old Pond” on the invoice. 2/13/24 Tr., p. 40-41. No one at the Station had ever used that term, and no Station documents identified it. 2/13/24 Tr., p. 40. The only two CCR surface impoundments at the Station were the East and West Ash Ponds. 2/13/24 Tr., p. 24, 34-35.

III. THE GRASSY FIELD IS NOT A CCR SURFACE IMPOUNDMENT

The Grassy Field is not a CCR surface impoundment because it was not and never has been designed to hold an accumulation of CCR and liquid, nor even held accumulation, a key criterion in the CCR surface impoundment definition. Thomas Dehlin, a licensed professional engineer, was qualified by the Hearing Officer as an expert in CCR management, including historical practices of management, design, and operation, and closure of CCR surface impoundments without objection. 2/14/24 Tr., p. 11. Mr. Dehlin conducted an extensive, scientific investigation into the three operational phases of the area now known as the Grassy Field.

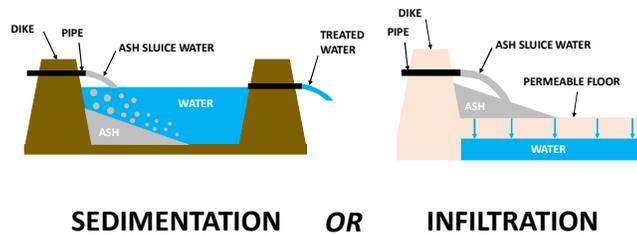
Mr. Dehlin’s investigation began with gathering all available information, including design drawings, permit records, and historical aerial photographs, on the Grassy Field. MWG Ex. 27, p. 3-1; MWG Ex. 41 at 3; 2/14/24 Tr., p. 23-24, 71-72. He delineated a detailed history of the area to determine if the Grassy Field fit within the Act’s three-part CCR surface impoundment definition. MWG Ex. 27, p. 3-1; MWG Ex. 41, p. 3; 2/14/24, Tr. 24, 71-72. Mr. Dehlin’s investigation determined that during all three operational phases, the Grassy Field failed to satisfy the second part of the definition. MWG Ex. 27, p. 6-1; 2/14/24 Tr., p. 64-65; 415 ILCS 5/3.143. As Mr. Dehlin testified:

The Grassy Field is not a CCR surface impoundment because it was never intended to accumulate liquids. In fact, the exact opposite. The station continually took measures to drain or infiltrate water out of that area. It wasn’t until 1970 with the construction of the Original Ash Pond do we see the first intended use of an area to accumulate liquids and CCR for purposes of treating CCR sluice water.

2/14/24 Tr., p. 64-65. Because the Grassy Field was not and is not a CCR surface impoundment, it also is not an *inactive* CCR surface impoundment because it must first have been a CCR surface impoundment. 2/14/24 Tr., p. 73, 120; 35 Ill. Admin. Code 845.120.⁶ Instead, Mr. Dehlin concluded that the Grassy Field is more properly characterized as “non-containerized CCR fill.” 2/14/24 Tr., p. 65.

A. The Ability to Accumulate Liquid is Essential to the Definition of a CCR Surface Impoundment.

The ability to accumulate liquid is critical to the definition of a CCR surface impoundment. Accumulation of liquid has a functional effect—it *does* something that un-impounded water does not: it settles out the solids suspended in liquid. “An accumulation of water is important for a CCR surface impoundment because a CCR surface impoundment is used as a settling basin or sedimentation basin to promote the settling of CCR particles in ash sluice water within the pond area prior to that water being discharged to some other place, whether it be a water source or something else.” 2/14/24 Tr., p. 26-27. “Accumulate” means “[t]o increase in quantity of something.” 2/14/24 Tr., p. 25-26.



MWG Ex. 41, p. 4. As shown above and as Mr. Dehlin explained, sedimentation and infiltration are opposing operations from an engineering standpoint. For sedimentation, “You have to have a volume of water that allows for sedimentation.” 2/14/24 Tr., p. 26:9-11. Sedimentation also requires gravity and time to allow the CCR particles to settle out and the separation process to happen. 2/14/24, p. 27. Another critical requirement for accumulation is that the unit is “designed

⁶ “‘Inactive CCR surface impoundment’ means a CCR surface impoundment in which CCR was placed before but not after October 19, 2015 and still contains CCR on or after October 19, 2015.” 35 Ill. Adm. Code 845.120 (emphasis added).

to hold an accumulation” by having a barrier at the bottom of the unit that holds the liquid and material, allowing for the sedimentation to take effect. 2/14/24 Tr., p. 28.

In contrast, infiltration, which instead relies on the passage of water through a permeable barrier that leaves particles behind, does not have an accumulation (*i.e.*, gravity/volume, time) requirement. 2/14/24 Tr. p. 26-28. For infiltration or filtering, which relies on the movement of liquids rather than the retention of liquids, the base of the unit must be permeable to promote the flow of liquid through the base while retaining material. 2/14/24 Tr., p. 28. It is designed not to hold an accumulation of liquid but rather allows the liquid to filter through.

Indeed, the Agency agreed that:

- infiltration is distinct from sedimentation (2/13/24 Tr., p. 308);
- sedimentation is a process by which solids are removed from liquid by “gravity and time,” after which water is decanted off the top while trying not to disturb the sediments at the bottom. (2/13/24 Tr., p. 305); and
- filtration (*i.e.*, infiltration) means a process by which water passes through a filtering medium of some kind and leaves the solids behind. (2/13/24 Tr., p. 305).

B. The Original Slag Field was Designed for the Liquid to Infiltrate Out of the Area without Accumulation.

The purpose of the Original Slag Field, including the portion that became the Grassy Field, was always infiltration, or filtering, rather than sedimentation. 2/14/24 Tr., p. 81. The purpose of the Original Slag Field was to receive CCR and “remove water as efficiently as possible, whether that be through infiltration through the sandy floor,” or via the ditches installed by the Station. 2/14/24 Tr., p. 39-40; *see also* 2/13/24 Tr., p. 275 (Agency stating: “the water would infiltrate in a relatively short time...given the nature of sand and the CCR would be left behind.”)

The historic design drawings for the Station simply showed a pipeline from the Station to the Site, which was generally described as the “Slag Field.” MWG Ex. 41, p. 5, 7, 9; 2/14/24 Tr., p. 30-31, 35, 37-39, 40. There were no engineering design features in the historic design drawings that further described or depicted the Slag Field. 2/14/24 Tr., p. 40. This meant that the Station sluiced the liquid and CCR “out to the sandy floor, understanding that [the] water was going to infiltrate through the sand floor, the sand would filter out the CCR, keep[ing] that on top.” 2/14/24 Tr., p. 40. In Mr. Dehlin’s experience reviewing power plant design drawings, he had never seen the term “slag field” used when referring to an area that ponds water. 2/14/24 Tr., p. 35-36. Instead, stations typically used terms like “pond, basin, something like that.” *Id.* Thus, the use of the term “slag field” is further evidence that the Station did not use the area to pond water. *Id.*

Mr. Dehlin overlaid the historic design drawing with the 1946 aerial photograph to help identify the Site features, including the northern boundary and the South Ditch. 2/14/24 Tr., p. 38-39.



MWG Ex. 41, p. 9. The South Ditch was a critical feature in each of the aerial photos and historic documents. It is shown in the earliest aerial photograph (1939) on the southern end to receive any potential runoff that would make its way to the southern end of the property and to prevent water from flowing onto its neighbor to the south. 2/14/24 Tr., p. 34-35, 40; MWG Ex. 27, p. 4-3 - 4-4; MWG Ex. 41, p. 6. Mr. Dehlin did not “see any other design or intent to accumulate certain liquids.... The intent was just to drain the liquids as fast as possible out of this area.” 2/14/24 Tr., p. 40-41. Indeed, the Agency stated in its Recommendation that “Old Pond was never lined and is located on beach sand, allowing *rapid infiltration of liquids...*” Rec. ¶30 (emphasis added). Mr. Dunaway also described how, at the Original Slag Field, sluice water “would infiltrate in a relatively short time” through the sand, “[a]ll the way through.” 2/13/24 Tr., p. 275, 279.

Mr. Dehlin observed that, while water would have infiltrated through the porous natural dune sand floor quickly, the buildup of ash over time would have increased the potential for liquid to accumulate. 2/14/24 Tr., p. 135-136; MWG Ex. 41, p. 10. To drain the liquid faster, the Station excavated ditches to ensure liquids were efficiently removed from the Area. 2/14/24 Tr., p. 135-136. Indeed, by 1961, the Station had additionally excavated an approximately 30-foot-wide ditch beginning in the northwest quadrant of the slag field, proceeding south through the field, and

ultimately tying into the South Ditch. MWG Ex. 27, p. 4-4 & Fig. A-4; MWG Ex. 41, p. 10; Agency Ex. 3; 2/14/24 Tr., p. 41, 136.



MWG Ex. 27, Fig. A-4; MWG Ex. 41, p. 10. The location and consistent shape of this inner ditch indicate that the excavation was man-made specifically to drain water from the slag field into the South Ditch, as opposed to the more organic form that a natural drainage path created over time by flowing water would take. MWG Ex. 27, p. 4-4. Mr. Dehlin specifically identified “within the western area of the Original Slag Field, you see a ditch that has been excavated starting in the northwest corner heading about straight south...before turning diagonally into the south ditch.” 2/14/24 Tr., p. 41; MWG Ex. 27, Fig. A-4; MWG Ex. 41, p. 10. Mr. Dehlin outlined the feature in blue that “would have been excavated to ensure water would drain from the area that they’re sluicing out to the South Ditch out to Lake Michigan.” 2/14/24 Tr., p. 42; MWG Ex. 41, p. 10. Mr. Dehlin knew that the feature was a ditch based upon the presence of the South Ditch and that the feature “is tied into the South Ditch and it’s a very narrow path. Using all of that evidence, it follows...that feature is a ditch.” *Id.* He explained that tying into the South Ditch shows that the Station was “trying to drain water from the north and anywhere I guess adjacent to that ditch into the South Ditch. You’re trying to remove water as efficiently as possible.” *Id.* Indeed, the core purpose of a ditch is to convey water from an area. 2/14/24 Tr., p. 63. The presence of these excavated features demonstrates that the Station designed the area so that any liquids that reached

the area—sluice water from Station operations and stormwater runoff from the area—would either percolate through the natural sand floor or flow into the South Ditch. MWG Ex. 27, p. 4-3 to 4-4.

Additionally, the Agency's statements confirm that the area was used to filter out CCR from the liquid. In its Recommendation, the Agency stated that "[a]s the CCR sluice water flowed into the depressions, the naturally sandy conditions allowed the water to slow down and infiltrate into the ground." Rec. ¶19. The Agency further stated that the Original Slag Field was not lined and was "located on beach sand, allowing rapid infiltration of liquids...." Rec. ¶30. At hearing, the Agency testified that once the ash and the water got into the sand, it infiltrated "[a]ll the way through" the sand and the ash stayed on top." 2/13/24 Tr., p. 279. The Agency also testified that CCR and liquid "was sluiced out into the sand dunes and the water would have separated and infiltrated through the sand". 2/13/24 Tr., p. 315.

C. The Station Modifications to the Slag Field and CCR Management Further Demonstrates that the Grassy Field did not Accumulate Liquid.

Beginning in 1970, the Station began significant modifications to the Original Slag Field to manage the CCR in a single ash pond, and ultimately two smaller ash ponds on the eastern two thirds of the Original Slag Field. Throughout the construction and modifications, the Station intentionally modified the western third of the Original Slag Field (where the Grassy Field is located) so that it did not accumulate liquid.

i. The Construction of the Original Ash Pond Excluded the Grassy Field

In 1970, the Station modified the Original Slag Field and built an ash pond that Mr. Dehlin called the "Original Ash Pond" on the eastern two thirds of the Original Slag Field. A 1970 aerial photograph (below) shows the Station had begun construction of embankments at the western, southern, and eastern sides of the Original Ash Pond. 2/14/24 Tr., 43-46; MWG Ex. 41, p. 11. The fully diked area did not include the Inactive Slag Field (which became the Grassy Field), which lay to the west, beyond the newly constructed western embankment of the Original Ash Pond. MWG Ex. 27, 4-4, Fig. A-5 & A-6; 2/14/24 Tr., p. 45-46; MWG Ex. 41, p. at 11.

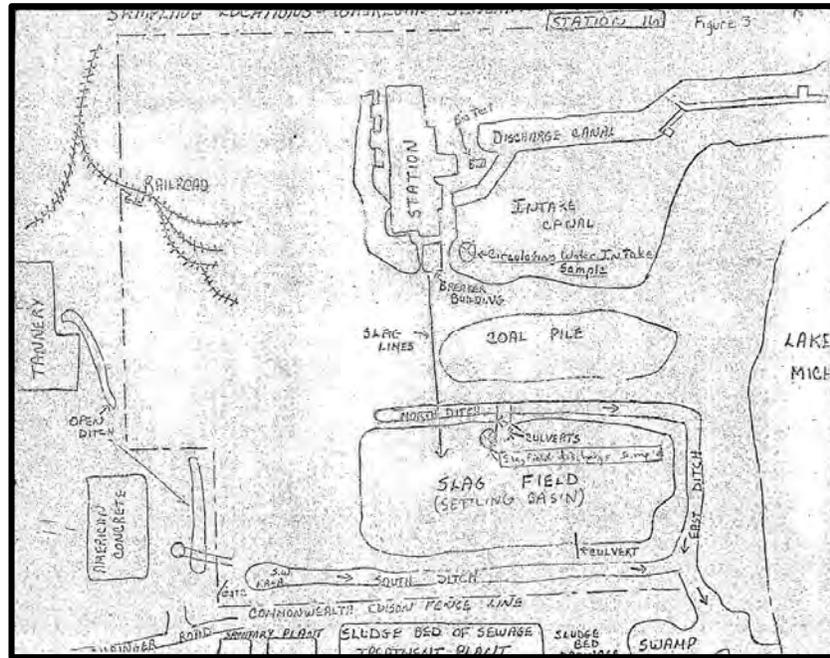


MWG Ex. 27, Fig. A-5; MWG Ex. 41, p. 11. The western embankment of the Original Ash Pond, clearly visible in the 1974 aerial photo of the Station (below), was designed and intended both to hold an accumulation of water within it to allow for settlement to occur and to ensure that the sluice water in the Original Ash Pond would not go into the Inactive Slag Field area. 2/14/24 Tr., p. 52-54; MWG Ex. 27, Fig. A-6.



MWG Ex. 27, Fig. A-6; MWG Ex. 41, p. 13.

A sketch included in the Station's 1972 Water Pollution Control Permit application depicts the Original Ash Pond, the first settling basin that appears at the site. 2/14/24 Tr., p. 48-49; MWG Ex. 41, p. 12.⁷



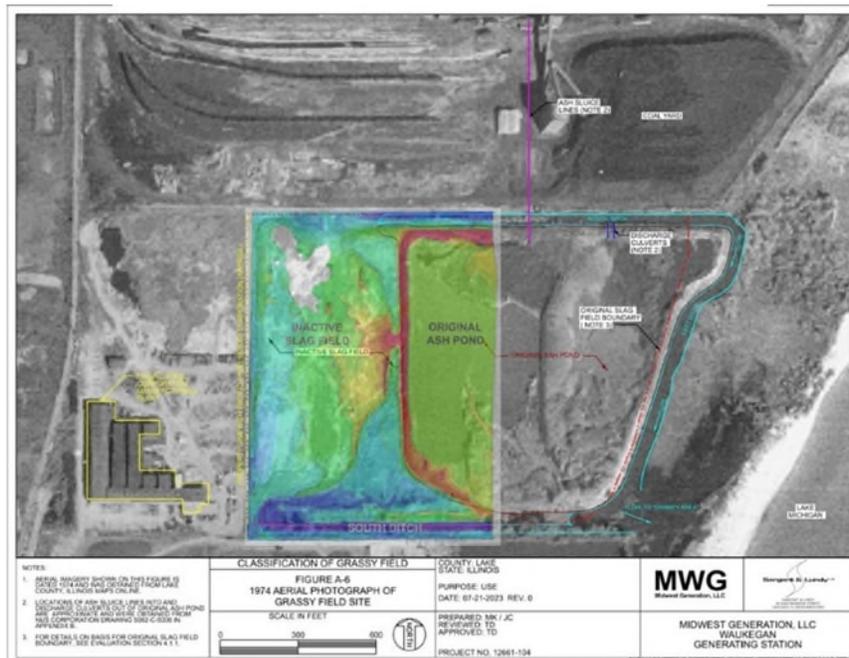
MWG Ex. 22, p. 11; MWG Ex. 41, p. 12; Agency Ex. 32, p. 17. The drawing also indicates that the Inactive Slag Area/Grassy Field was not part of the Original Ash Pond settling basin. *Id.* The drawing clearly shows the South Ditch extending all the way to the western property line, and also a distinct open area between the western edge of the Original Ash Pond and the western property line. 2/13/24 Tr., p. 51.⁸ Even though the open area is not labeled, comparison against the 1970 aerial photo of the Site shows it represented the Inactive Slag Area, later to become the Grassy Field. MWG Ex. 27, Fig. A-5; 2/14/24 Tr., p. 48-49, 50-51. The sketch shows an enclosed loop around the area labeled “slag field (settling basin)” that was meant to represent the diked area encircling the Original Ash Pond. This area did not include the Inactive Slag Field/Grassy Field. 2/14/24 Tr., p. 88-89. Responding to the Agency’s questioning on the sketch’s reliability, Mr. Dehlin testified that because both the property line and the Original Ash Pond boundary are shown, if the Original Ash Pond had in fact extended to the west property line, it would have been drawn as extending to the western property line. 2/14/24 Tr., p. 132. Data from a 1974 topographic survey

⁷ Mr. Dehlin said an engineer likely drew the sketch to more easily communicate the area’s features to the Agency, because “sometimes it is faster to just sketch something.” 2/14/24 Tr., p. 137.

⁸ The drawing also depicts the culverts that would have been used to discharge the treated water from the Original Ash Pond/settling basin once sedimentation was complete. 2/14/24 Tr., p. 49.

of the area also confirms there was clearly impounded water in this Original Ash Pond area and none in the Inactive Slag Area. MWG Ex. 27, App. B; 2/14/24 Tr., p. 54-56.

To prevent storm water accumulation in the Inactive Slag Field, the Station excavated CCR from it to promote drainage to the west and south toward the South Ditch. MWG Ex. 27, 4-5 - 4-6; 2/14/24 Tr., p. 47. Mr. Dehlin prepared a colored “heat map” (below) representing the 1974 topographic data to visually show how, through the combination of raised embankments and excavated ditches, the Station ensured that rainwater falling on the area would drain away and not accumulate. MWG Ex. 27, Fig. 4-1; 2/14/24 Tr., p. 56-58.



MWG Ex. 27, Fig. 4-1; MWG Ex. 41, p. 15. The heat map was created using the 1974 topographic data; the above figure shows the heat map layered over a 1974 aerial photograph of the Station. MWG Ex. 27, p. 4-6; 2/14/24 Tr., p. 56; MWG Ex. 41, p. 15. The heat map shows areas of higher elevation in warm colors and areas of lower elevation in cold colors, following the order of the rainbow, making red the highest elevation and purple the lowest elevation. 2/14/24 Tr., p. 56. Thus, the red areas of the map show the embankment for the Original Ash Pond, which was the highest elevation. 2/14/24 Tr., p. 57. The South Ditch is in purple, representing the lowest point because its purpose was to drain everything out of the area. *Id.* As one moves west from the Original Ash Pond embankment and over the Inactive Slag Field/Grassy Field, the colors become increasingly cooler, representing decreasing elevations through which runoff drained, primarily east to west and then south, with some areas in the north portion draining in the north ditch. *Id.* The heat map shows

that the design “was to ensure that [the Inactive Slag Field] did not accumulate liquids, that when rain fell in [the Inactive Slag Field] it would drain predominantly south; or if it fell in a northern area, it would drain north.” 2/14/24 Tr., p. 58.

The heat map also contains one area without any color. Mr. Dehlin explained that this area was excluded from the heat map because of a lack of appropriate topographic data. 2/14/24, Tr., p. 58-59. The area is labeled “piles” on underlying documents, suggesting that this area consisted of piles of ash from which water would drain away, like the rest of the area. *Id.* Based on a recent site visit, Mr. Dehlin confirmed that these piles no longer exist. *Id.*; *see also* MWG Ex. 17.

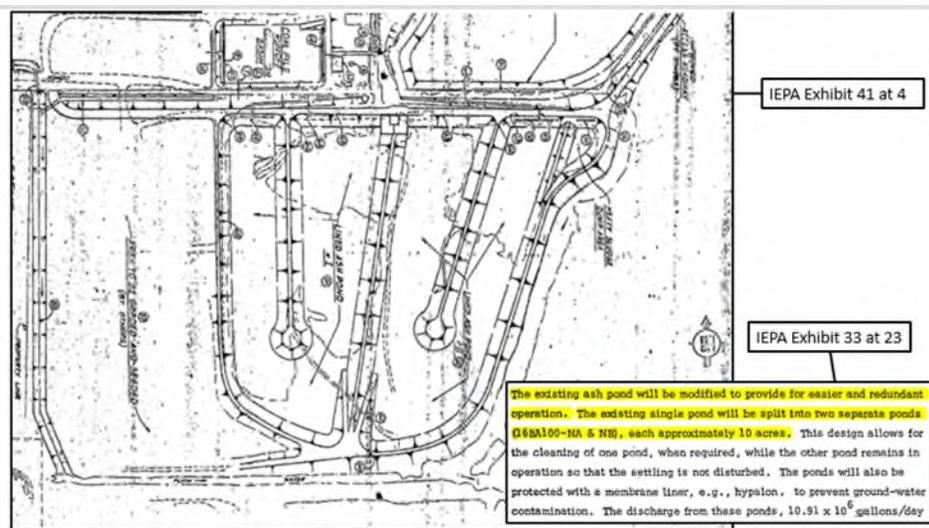
ii. The East and West Pond Construction Documents Demonstrate that the Grassy Field did not become a Pond.

In the mid-1970’s, the Station began plans to construct and operate new wastewater treatment facilities, including modifications to the Station’s bottom ash-handling system by splitting the Original Ash Pond into two separate, lined ponds. MWG Ex. 27, p. 4-6-4-7; MWG Ex 41, p. 16-17; 2/14/24 Tr., p. 60-62. The design was described as follows:

The existing ash pond will be modified to provide for easier and redundant operation. The existing single pond will be split into two separate ponds...each approximately 10 acres. This design allows for the cleaning of one pond, when required, while the other pond remains in operation so that settling is not disturbed. The ponds will also be protected with a membrane liner, e.g., hypalon, to prevent ground-water contamination.

MWG Ex. 27, p. 4-7; MWG Ex. 41, p. 16-17; Agency Ex. 33 at 23. This design was depicted in a drawing in Agency Exhibit 41 (below).⁹ MWG Ex. 41, p. 16-17. The drawing showed that two lined ash ponds were to be constructed within the footprint of the Original Ash Pond. MWG Ex. 27, p. 4-7; 2/14/24 Tr., p. 60; MWG Ex. 41, p. 17.

⁹ Mr. Dehlin explained that Agency Exhibits 33 and 41 were from the same NPDES permit record for the Station, 1977 EB 3699. 2/13/24 Tr., p. 59-60; MWG Ex. 41, p. 16.



Clearly, the “existing single pond” described in the design plan was the “Original Ash Pond.” 2/14/24 Tr., p. 60; MWG Ex. 41, p. 17. The East and West Ash Ponds each occupy approximately 14 acres, with the actual impoundment areas being about 10 acres each. 2/14/24 Tr., p. 22-23. Because the “existing single pond” was to be “split” into “two” separate ponds, “each approximately 10 acres,” by mathematical operation, the design was clearly addressing only the Original Ash Pond. 2/13/24 Tr., p. 61, 100-101. As Mr. Dehlin testified, “...the Grassy Field is not included in this operation to split the single settling pond into two water [pollution] control facilities.” 2/14/24 Tr., p. 100, MWG Ex. 41, p. 17.

Indeed, the project to build the East and West Ponds included regrading and seeding of the Inactive Slag Field, creating the present-day Grassy Field. MWG Ex. 27, p. 4-8; 2/14/24 Tr., p. 61-62; MWG Ex. 41, p. 17. The regrading sloped the area from a high point along the new dike constructed for the West Ash Pond towards a new drainage ditch constructed along the Station’s western property line, designated “Overflow Ditch No. 1.” MWG Ex. 27, p. 4-8. Thus, the regrading of the Grassy Field was designed to promote the drainage of stormwater runoff into the site’s drainage ditch system. *Id.*; 2/14/24 Tr., p. 62-63.

The design of the Grassy Field has not changed. *Id.*; 2/14/24 Tr., p. 64. Mr. Dehlin explained that the 2015 site survey located in the History of Construction at Agency Exhibit 45 shows topographic data consistent with the 1974 topographic survey information. 2/14/24 Tr. p. 63-65; MWG Ex. 27, App. B.

D. The Agency's Position Lacks any Factual Support and Violates Basic Canons of Statutory Construction.

There is no factual support for the Agency's contention that the Grassy Field meets the definition of CCR surface impoundment. Rather, the Agency's flawed analysis of the Grassy Field was not scientific. The Agency prejudged that the Grassy Field was a CCR surface impoundment, and then went about selectively misinterpreting documents to support that presumption. In fact, the Agency admits it fabricated the term "Old Pond," and none of its documentary evidence contains this term. 2/13/24 Tr., p. 258-259. It amounts to pure speculation by the Agency.

Given the lack of factual support for the Agency's contention that the Grassy Field was a "pond", the Agency is interpreting the Act's definition of CCR surface impoundment in a manner inconsistent with its plain meaning, contravening generally accepted canons of construction, and common logic. Under the Agency's interpretation, words are rendered a nullity, their context is ignored, and the results would be absurd.

i. The Agency Jumped to a Conclusion that it Admits the Evidence does not Support.

The Agency approached the classification of the Grassy Field backwards. Mr. Dunaway admitted that when he created the list of Waukegan CCR surface impoundments and included the "Old Pond," he only considered the proximity to the Station's ponds and recent aerial photographs ("sometime in the 2000s"). 2/13/24 Tr., p. 267. He did not review historic aerial photographs, nor any other documents. 2/13/24 Tr., p. 267-268. He conceded that the aerial photographs he reviewed did not show an accumulation of liquid in the Grassy Field. 2/13/24 Tr., p. 268-269. Based upon the information he had, he agreed the Grassy Field could have been a landfill. 2/13/24 Tr., p. 268-269.¹⁰ The Agency admitted it made up the term "Old Pond" and that the term was not "in any Illinois EPA permitting records for the Waukegan Station." 2/13/24 Tr., p. 258-259. In fact, none of the Agency's historical documents cited and used as Exhibits in its Recommendation use the term "Old Pond," other than a handful of aerial photographs on which the Agency itself affixed the label "Old Pond".¹¹ Rather, the first time the Agency described the Grassy Field area as the

¹⁰ Mr. Dunaway testified:

Q. In fact, the area could have been a landfill, right?

A. From what I knew at that point in time, it could have been.

2/13/24 Tr., p. 269:3-6.

¹¹ Unfortunately, others have adopted the use of this made-up term, including the environmental groups ("Environmental Groups") that have submitted public comments with respect to this proceeding. The groups continue to perpetuate the term, including through pin-citing conclusory statements in the Agency's Recommendation as though

“Old Pond” was when it attempted to charge MWG for a CCR surface impoundment fee in the December 16, 2019 CCR invoice. MWG Ex. 28.

After hearing how the Agency went about classifying the Grassy Field, Mr. Dehlin observed that the Agency “started with a conclusion, and then, looking through the evidence, looked at what fit that conclusion.” 2/14/24 Tr., p. 71. In Mr. Dehlin’s expert opinion, starting with a conclusion is not a scientific method to answer a question. *Id.*¹² A scientific method “[starts] with all the inputs, outlining a methodology that is logical, and then reaching a conclusion based on what the inputs and the accepted methodology for whatever the problem is leads [one] to.” 2/14/24 Tr., p. 71-72. Because the Agency’s conclusion was not scientific, Mr. Dehlin concluded that the Agency’s claim that the area is an “Old Pond” “is not based on any evidence.” 2/14/24 Tr., p. 69-70.

The Agency’s flawed methodology permeates its Recommendation with factual inaccuracies and general imprecision concerning the Station’s history and use. Lauren Hunt created the eighteen aerial photographs with various labels attached as Exhibits 1-5 and 13-26 of the Agency Recommendations. 2/13/24 Tr., p. 283. She admitted that the only basis for their creation was a single map from the History of Construction for the East and West Ash Ponds. *Id.*, p. 283-284, 286-287. She did not rely on any of the other the Illinois EPA permit documents or other documentary exhibits attached to the Recommendation (Exhibits 32-42, 43-44, 46, 48-49). 2/13/24 Tr., p. 285. She was not even sure that the History of Construction attached as Agency Exhibit 45 was the same document she reviewed. *Id.*, p. 287-288.

Moreover, the Agency witnesses admitted they could not discern the features in these historic aerial photographs, despite relying upon them to conclude the Grassy Field was a CCR surface impoundment. Ms. Hunt did not “do any aerial photo interpretation” and could not say what was depicted in the 1939 and 1946 aerial photographs (Agency Exs. 1 & 2). 2/13/24 Tr., p. 289. She could not tell whether the linear features in the 1961 and 1974 aerial photographs were features that had been dug out or built up. 2/13/24 Tr., p. 289-91. Mr. Dunaway agreed. He also could not tell whether lines on the 1961 aerial photograph (Agency Ex. 3) were berms or a ditch, or what they were. 2/13/24 Tr., p. 269-271. Similarly, Agency witness Mr. LeCrone could not identify the

they are verified fact evidence. See, *e.g.*, Environmental Groups’ Comments in Response to Midwest Generation’s Response to Illinois Environmental Protection Agency’s Recommendation P.C. # 9 (11/1/23) (“EG Comment”), p. 4.
¹² Notably, Mr. Dehlin and Mr. Dorgan were the only witnesses qualified as experts. 2/13/24 Tr., p. 89-90; 2/14/24 Tr., p. 11. Illinois EPA did not present nor qualify any of their witnesses as experts.

linear features in the aerial photographs and also could not tell whether any liquid was present in the 1946 aerial photograph (Agency Ex. 2). 2/13/24 Tr. p. 310-313.

The remaining documents attached as Agency exhibits are equally unresponsive of their claims related to the Grassy Field. The exhibits include the NPDES permit applications for the Station, and the earliest document is from 1972. 2/14/24 Tr. p. 79. None described the operations of the Grassy Field before then. As Mr. Dehlin explained, because the earliest document is from 1972, when the documents refer to an “ash pond” or “settling basin”, the document is referring to the Original Ash Pond that occupied the eastern two-thirds of the Site. *Id.*

ii. MWG’s Expert Specified Each Inaccuracy in the Agency Recommendation.

Mr. Dehlin performed a detailed paragraph by paragraph review of the inaccuracies in the Agency Recommendation and showed how each of the Agency’s exhibits did not support its claims. He described how the Agency’s interpretations of the aerial photographs were wrong and how the permit records the Agency relies do not show that the Grassy Field is a CCR surface impoundment.

Starting with paragraph 9 of the Agency’s Recommendation, Mr. Dehlin explained that Agency Exhibit 2 did not support the Agency’s claim that “well before the Grassy Field was graded and seeded...a CCR surface impoundment, Old Pond, existed and operated in this area.” Agency Exhibit 2 is an aerial photo of the Station from 1946, which shows the area when it was the Original Slag Field. There are no observable features in the photograph that suggest there was any “Old Pond” there. 2/14/24 Tr. p. 74. Rather, it shows just the opposite – the South Ditch and the original dune sand beneath areas of ash, meaning liquids sluiced to this area would have infiltrated through the sand floor in addition to running off via the South Ditch. 2/14/24 Tr., p. 73-75. The Agency also claimed that the entire area of the Grassy Field, East Pond and West Pond is an inactive CCR surface impoundment based solely on Agency Exhibit 5. But, as Mr. Dehlin explained, Agency Exhibit 5 does not show nor even include a description of an inactive CCR surface impoundment. 2/14/24 Tr., p. 75. Instead, Agency Exhibit 5 is a present-day aerial photo of the Station showing the Grassy Field, East Pond, and West Pond. 2/14/24 Tr., p. 75-76.

Similarly, the Agency’s Paragraph 10 is equally flawed. It states, “Old Pond, has also been referred to in various permit documents as the ‘Slag-ash Field’ or ‘Settling Basin,’ or ‘ash Pond,’” citing several Agency Exhibits (with pin cites in an associated footnote). But each of the cited references are from 1970s permit documents for the Original Ash Pond, after the Station separated the Grassy Field from ash management. 2/14/24 Tr. p. 77-78. As Mr. Dehlin explained, because

the earliest document was from 1972, any reference to an “ash pond” or “settling basin” or similar “would be referring to the Original Ash Pond that occupied the eastern two-thirds of the site,” not the Grassy Field. *Id.* 2/14/24 Tr., p. 79

Finally, the Agency’s Paragraph 19 is also glaringly inaccurate. The Agency claimed that the Station “treated” sluiced wastewater by “settling out” the CCR, citing Agency Exhibit 2 (1946 aerial photograph). Mr. Dehlin explained that was incorrect because in 1946 the Station was not treating sluiced wastewater. It was sluicing wastewater to the Original Slag Field, which would then infiltrate through the sand floor or run off into Lake Michigan via the South Ditch, leaving CCR solids behind. 2/14/24 Tr., p. 82. Indeed, in the same paragraph 19, the Agency itself correctly describes the activity: “As the CCR sluice water flowed into the depressions, the naturally sandy conditions allowed the water to slow down and infiltrate into the ground.” *Recom.* ¶ 19; 2/14/24 Tr. 83-84. Because the water is infiltrating into the ground, there is no accumulation of water. 2/14/24 Tr., p. 83-84. Mr. Dehlin concluded:

The Agency is incorrectly concluding that ash sluice water being sent to this area makes it a CCR surface impoundment. But because we have infiltration and not accumulation—specifically accumulation to allow for sedimentation to occur—this site is not being operated, and certainly was not designed to operate, as a CCR surface impoundment.

2/14/24 Tr., p. 84. In 1946, the Original Slag Field was not designed to accumulate both CCR and liquids as required under the definition in Section 3.143 of the Act. 415 ILCS 3.143; 2/14/24 Tr., p. 84:22-85:5.

At the hearing, Mr. Dehlin continued to identify each of the flaws and false implications throughout the Agency’s Recommendations and described how the information it relied upon did not support the Agency’s claim that the Grassy Field is a CCR surface impoundment. To aid the Board in identifying each of the inaccuracies, MWG has attached as Appendix B, a paragraph-by-paragraph summary of Mr. Dehlin’s descriptions of each inaccuracy. Notably, the Agency did not offer a single rebuttal to Mr. Dehlin’s criticisms.

iii. The Agency’s Interpretation of the Definition of CCR Surface Impoundment is not Founded in Fact or Law and Contravenes Basic Canons of Construction.

The Agency resorts to an unscientific and illogical interpretation of the phrase “designed to hold an accumulation,” to account for its lack of evidentiary support. 415 ILCS 5/3.143. The Agency’s interpretation is inconsistent with the plain meaning of the words, renders the phrase a nullity, ignores context, and leads to absurd results.

a. Ignoring the Temporal Element of the Terms “Hold” and “Accumulation” Nullifies their Meaning.

The Agency asserts that the words “hold” and “accumulation,” are not associated with any particular amount of time, and, therefore, “hold an accumulation of CCR and liquid” need involve only the fleeting presence of liquid. Rec., ¶30. At hearing, the Agency stated that this “temporary condition” can be met in a very “short time”—even hours, minutes, or seconds. 2/13/24 Tr., p.272-273, 277-278, 280, 319. The Agency’s interpretation is beyond the plain language and leads to absurd results.

It is axiomatic that the literal words of a statute must be given their plain, usual, and ordinary meaning, and if the provision is not ambiguous, there is no occasion to apply rules of construction. *Chicago Coke Company v. IEPA*, PCB 10-75, 2013 Ill. ENV LEXIS 224 (July 25, 2013) at *14, citing *Town & Country Utilities, Inc. v. IPCB*, 225 Ill.2d 103, 866 N.E.2d 227 (2007). If a term is ambiguous, then the Board “must give the ambiguous term a construction that is reasonable and that will avoid absurd, unjust, or unreasonable results, which the legislature could not have intended.” *Sutter Sanitation, Inc. and Lavonne Haker v. IEPA*, PCB 4-187, 2004 Ill. ENV LEXIS 519 (Sept. 16, 2004) at 43, referencing *County Collector of DuPage County v. ATI Carriage House, Inc.*, 187 Ill. 2d 326, 332, 718 N.E.2d 164, 168 (1999). Also, when interpreting a statute a court should “give effect to each paragraph, sentence, clause, and word...so that no term is rendered superfluous or meaningless.” *Allen McAfee v. IEPA*, PCB 15-84, 2015 Ill. ENV LEXIS 110 (March 5, 2015) at 39-40, citing *People v. Lutz*, 73 Ill.2d 204, 212, 383 N.E.2d 171 (1978), and *Hernon v. E.W. Corrigan Construction Co.*, 149 Ill.2d 190, 195, 595 N.E.2d 561 (1992).

Here, the plain meaning of “hold” and “accumulation” demonstrates that when considering a CCR surface impoundment, the Agency’s interpretation is incorrect. As described at length by Mr. Dehlin, accumulation is a concept associated with sedimentation (as in a settling pond) to separate a material from a liquid. 2/14/24 Tr. p. 27; MWG Ex. 41, p. 4. In short, for CCR surface impoundments, time matters. It is this context that the Agency ignores. For the settling mechanism to occur in a CCR surface impoundment, time is required, and settling can only occur if there is “an accumulation of water that allows for ash particles to be settled out.” 2/14/24 Tr. p. 27. Importantly, Mr. Dehlin emphasized that, while there is technically no time frame specified with respect to the word “hold,” there is an implied one: to obtain this required volume of liquids for a CCR surface impoundment to function how it is intended to function, there has to be enough time

to accumulate it. 2/14/24 Tr., p. 134. The Agency's Mr. LeCrone agreed at hearing that sedimentation requires "gravity and time" to function. 2/13/24 Tr., p. 305.¹³

An alternative mechanism to separate a material from liquid is infiltration, in which water must move through a permeable material and not be contained. 2/14/24 Tr., p. 27-28, 105-108; MWG Ex. 41, p. 4. Mr. LeCrone agreed, stating that "infiltration in and of itself is a separate...activity from sedimentation." 2/13/24 Tr, p. 308. The Original Slag Field used infiltration to separate the ash from the water, using the sandy floor as a filter, to filter out the ash as the water infiltrated through the bottom. 2/14/24 Tr., p. 28. The Agency agreed in its Recommendation that the permeable sand floor allowed "rapid infiltration of liquids..." Rec. ¶30.

Because there is an inherent minimum temporal element for both "hold" and "accumulation," the Agency's interpretation would nullify this element and render both words meaningless. An interpretation that "hold an accumulation" is any moment, regardless of its length, would negate the difference between a situation in which material stops in an area (*i.e.* – "accumulation") from one in which the material passes right through (*i.e.* – "infiltration"). It is only by ignoring the plain meaning of these terms that the Agency arrived at the absurd conclusion that pouring a mixture of cooked pasta and boiling water through a sieve is an "accumulation" of liquid stating: "It's an accumulation of pasta and liquid when you pour it into the colander, which would be the equivalent of a manmade excavation" because the colander holds liquids "[f]or a short time." 2/13/24 Tr., p. 280. No reasonable person would agree with that conclusion. "[T]he whole purpose of a sieve...is to get water out and keep the cooked pasta in..." 2/14/24 Tr., p. 85. Common sense and the canons of statutory construction to give words their plain meaning dictates that holding an accumulation of CCR and liquid, means that the liquid remained for a period of time sufficient to allow sedimentation. Because liquid in the Original Slag Field infiltrated through the sand floor and the ditches, that liquid was not "held" or "accumulated."

b. The Agency Wrongly Disregards the Term "Design," Rendering it Meaningless.

The Agency also disregards the term "designed" in the CCR surface impoundment definition of "designed to hold an accumulation," rendering it meaningless. In its Recommendation, the Agency repeats the term often, but interprets the term in a way that defies all logic. For example, in its Recommendation Paragraph 25, the Agency states that original operations used the "natural

¹³ With respect to the concept of accumulation, Mr. LeCrone similarly remarked, "It's a matter...in reference of time." 2/13/24 Tr., p. 315.

topographic depression design within the dune field to hold an accumulation of CCR...” Rec. ¶25. The Agency provides no explanation how a naturally occurring depression in a dune field could be “designed” to hold CCR. The only conclusion one can make from the Agency’s claim is that any depression anywhere could be “designed” to hold an accumulation regardless of whether there was an intent or plan to do so. The Agency’s expansive interpretation of “designed” violates the canons of statutory interpretation and should be rejected.

“Design” is not defined in the Act. Its dictionary definition is “to create, fashion, execute, or construct according to plan”; “to conceive and plan out in the mind”; and “to devise for a specific function or end.” MWG Ex. 27, cover letter. Mr. Dehlin explained that when one “designs” something, the designer “intend[s] it to have a specific function.” 2/14/24 Tr., p. 29-30. He further stated: “There’s a common phrase, form follows function. The way that you design something to be, to operate, it’s for a specific purpose. There’s intent behind it.” 2/14/24 Tr., p. 30. He used a ditch as an example stating that a ditch is designed to convey water, not hold it, even though water may be present in it for some length of time. 2/14/24 Tr., p. 136. As applied to a CCR surface impoundment, Mr. Dehlin stated that use of the term “designed” means “[y]ou are intending this area to hold an accumulation of CCR and liquids to promote sedimentation,” concluding: “That is the primary function of a CCR surface impoundment.” 2/14/24 Tr., p. 30.

Here, there is no evidence that the Station “designed” the natural sand dune topography to hold an accumulation of CCR and liquid. If anything, the opposite is true. While the original sand dune was not “designed” with intent, the Station took advantage of the sand to act as a permeable floor to filter the ash from the water. 2/14/24 Tr., p. 28, 40. To promote drainage of the liquids, the Station designed and installed strategically placed excavations and ditches. 2/14/24 Tr., p. 28, 40-41. Mr. Dehlin specifically stated that he did not “see any other design or intent to accumulate certain liquids”; rather, “[t]he intent was just to drain the liquids as fast as possible out of this area.” 2/14/24 Tr., p. 40-41.

The Agency also attempts to use an excerpt from a 2018 USWAG decision in support, but that also fails, because of a distinct difference – the Slag Field was never “designed” in the first place. Rec. ¶ 29, citing *Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 438-42 (D.C. Cir. 2018). In the 2018 USWAG decision, the CCR had been disposed of in the past and continued to be present at the sites. Thus, the court held that the phrase “is disposed of” applied to CCR disposal that “took place at some prior time.” *Id.* Here, the Slag Field was *never* designed to accumulate

liquids. 2/14/24 Tr., p. 104-105. Because the Slag Field was not designed to accumulate liquids at a “prior time,” the 2018 USWAG decision is inapplicable.

Because the Agency’s interpretation ignores the plain meaning and context of the Act’s definitional terms, the Board would have to impermissibly ignore both legislative intent and established canons of statutory construction to adopt it. The Slag Field is not a CCR surface impoundment within the meaning of the Act.

E. No Other Considerations Are Relevant to Determining Whether the Grassy Field is a CCR Surface Impoundment.

In its Recommendation, the Agency raised other issues, including the engineering mechanism used by the Station to move the CCR and liquid, and the environmental conditions at the Station, which have nothing to do with whether the Grassy Field is a CCR surface impoundment. The only relevant factors are those provided in the Act’s definition. The Agency’s other issues are irrelevant to the Board’s decision here.

First, the Agency agrees that the “definition of CCR surface impoundment does not include the terms groundwater, contamination, pollution, sluice, or any mechanism by which CCR and liquid would be placed in a CCR surface impoundment.” 2/13/24 Tr., p. 259. The Agency’s witnesses testified to the same. *See, e.g.*, Mr. Dunaway’s testimony that the sluicing of CCR to an area does not make it a CCR surface impoundment. 2/13/24 Tr., p. 264-65. This clarification is important because the Agency’s Recommendation might otherwise be interpreted to mean that because the CCR and liquid was “sluiced” to the Slag Field, the area was a CCR surface impoundment. Rec. ¶¶19-25. As the parties stipulated, this is not correct.

Second, the Agency also stipulated that “[t]he groundwater sampling and the analytical results at the Waukegan Station have no bearing or relevance as to whether the Grassy Field is a CCR surface impoundment.” 2/13/24 Tr., p. 259.¹⁴ Based on the absence of the terms “groundwater,” “pollution,” and “contamination” from the definition of CCR surface impoundment, MWG’s Mr. Dehlin also opined that “the location of groundwater within an area” and the “presence of pollution or contamination in an area” “has no bearing on whether that area is a CCR surface impoundment.”

¹⁴ The Environmental Groups agree with MWG that “groundwater pollution is not a component of the definition of a CCR surface impoundment.” EG Comment at 8.

2/14/24 Tr., p. 25. The Agency's review of the Station's groundwater data in its Recommendation is not relevant to the Board's determination.¹⁵

IV. APPROPRIATELY MANAGING THE GRASSY FIELD DOES NOT REQUIRE IMPROPERLY CHARACTERIZING IT AS A CCR SURFACE IMPOUNDMENT

MWG has emphasized repeatedly that a determination that the Grassy Field is not a CCR surface impoundment, does not mean it will not be managed in a manner that protects human health and the environment. On May 8, 2024, USEPA's published its rule to regulate areas like the Grassy Field, creating a new term "CCR Management Unit" or "CCRMU". Because the Grassy Field is a CCRMU, MWG has begun the process of complying with the extensive rule, as it stated it would at the hearing. But classifying the Grassy Field as an Illinois CCR surface impoundment would result in a "logistical nightmare."

Also, even though the Parties agree that the condition of the groundwater has nothing to do with whether the Grassy Field is a CCR surface impoundment, in consideration of the concern over the groundwater, MWG demonstrated that there is minimal risk of harm to offsite receptors from the Grassy Field. Mr. Dorgan, an expert in site remediation and groundwater evaluation, testified that there was no risk to drinking water and to Lake Michigan from the groundwater conditions at the Station. Because there is no risk (immediate or otherwise) to receptors as MWG implements the CCRMU requirements, there is no need to regulate the Grassy Field as a CCR surface impoundment to protect human health and the environment.

A. The Federal CCR Management Unit Rule Applies and will Appropriately Manage the Grassy Field.

On May 8, 2024, USEPA published the final regulations that directly address areas like the Grassy Field, which do not fit the definition of CCR surface impoundment due to their structural and functional differences. "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments," 89 Fed. Reg. 38950 (May 8, 2024) ("CCRMU Rule").¹⁶ Under the CCRMU Rule, USEPA established a new category of regulated units called CCRMUs, defined as "any area of land on which any

¹⁵ The Board requested the groundwater data questions 5 and 6 of its Pre-Hearing Questions. On April 3, 2024, MWG filed the groundwater data as requested, but noted that the Parties stipulated that the groundwater data was not relevant. Additionally, to assist the Board, MWG has attached a summary of the answers to the Board's Pre-Hearing Questions which were answered at the hearing as Appendix C.

¹⁶ The CCRMU Rule can be found at <https://www.federalregister.gov/documents/2024/05/08/2024-09157/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric>. (Last accessed 5/10/24).

noncontainerized accumulation of CCR is received, is placed, or is otherwise managed, that is not a regulated CCR unit.” *Id.* at 39100.¹⁷ There is little doubt that the Grassy Field is a CCRMU. During the only time the Grassy Field received CCR, it was part of the larger Original Slag Field that received sluiced CCR onto the open ground, after which, rather than being containerized, the CCR remained on the ground and the sluice liquid either infiltrated the sandy soil or ran off into ditches and other excavations. *See supra* §III. Mr. Dehlin provided his expert opinion that the Grassy Field was a CCRMU.¹⁸ 2/14/24 Tr., p. 66-68.

USEPA included as part of its finalization of the CCRMU Rule an updated list of known CCRMUs, dated April 2024, which is attached in Appendix D.¹⁹ MWG presented the proposed list of CCRMUs at the hearing, which identified two areas at the Waukegan Station: an “Old Pond” and “Historic Fill.” MWG Ex. 26. The updated list of CCRMUs attached as Appendix D includes the same two areas.” Given that USEPA specifically includes the Grassy Field on this list, USEPA clearly does not consider the Grassy Field to be regulated as a CCR surface impoundment.

In the CCRMU Rule’s Preamble, USEPA concurs with the differences between a CCR surface impoundment and a CCRMU that MWG identified in its Petition to demonstrate that the Grassy Field is not a CCR surface impoundment. Significantly, USEPA explains that units that do not contain liquids are different from those that do, requiring a separate definition and requirements. 89 Fed. Reg. 38950 at 38986; *see also* 88 Fed. Reg. 31982 at 31993; MWG’s Petition, pp. 10-12. In the rule, USEPA “establishe[d] a new category of CCR units that would be subject to a set of requirements tailored to the characteristics of such units and the risks that they present.” *Id.* at 39035. USEPA further stated that it is “extending only a subset of the existing requirements in part 257, subpart D to CCRMU” because “[t]he other existing requirements in 40 CFR part 257, subpart D are not necessary for CCRMU,” 89 Fed. Reg. 38950 at 39052, 39059. For example, “since

¹⁷ As MWG’s Environmental Director, Sharene Shealey, observed at hearing, USEPA’s use of the word “noncontainerized” in the CCRMU definition indicates that USEPA perceives a material difference between CCRMUs and CCR surface impoundments, in that CCR surface impoundments have an element of design that CCRMUs do not. 2/13/24 Tr., p. 51.

¹⁸ In contrast, Mr. Dehlin confirmed that the Grassy Field does not qualify as a Legacy CCR surface impoundment. The USEPA defines a Legacy CCR surface impoundment as “a CCR surface impoundment that no longer receives CCR but contained both CCR and liquids on or after October 19, 2015, and that is located at an inactive electric utility or independent power producer,” 89 Fed. Reg. 38950 at 39100. The Grassy Field is not a Legacy CCR surface impoundment because the Grassy Field never was a CCR surface impoundment and because it is located at an active electric utility. 2/14/24 Tr., p. 66.

¹⁹ Available at: https://www.epa.gov/system/files/documents/2024-04/copy-of-universe-of-ccr-management-units.-april-2024_0.pdf. (Last accessed 5/10/24).

CCRMU should not contain sufficient liquids to create a hydraulic head or to otherwise cause the conditions that might lead to a structural failure, the structural stability requirements are not appropriate.” *Id.* at 39059. In other words, USEPA determined that the federal CCR rule, and thus by implication also the similar Illinois CCR Rule, do not apply to areas like the Grassy Field because both rules require that the unit be designed to hold liquids, which the Grassy Field was (and is) not.²⁰

Now that the CCRMU Rule is final, if the Board classifies the Grassy Field as a CCR surface impoundment under the Illinois Part 845 CCR Rule, MWG will find itself with a significant compliance challenge, as it will be faced with figuring out how to comply with two distinct and potentially inconsistent rules. As MWG’s Environmental Director, Sharene Shealey, testified, dealing with two sets of regulations for a single unit that are related but not the same is a very complicated compliance task and “double regulations for the exact same unit would leave [MWG] at risk of noncompliance.” 2/13/24 Tr., p. 63. If there is an inconsistency between the rules, MWG would have to seek regulatory relief from USEPA or IEPA, which would not be practical. 2/13/24 Tr., p. 62-64. Ultimately, Ms. Shealey stated that it was not practical for the Grassy Field to be regulated by two different rules. *Id.*

MWG’s expert Mr. Dehlin similarly testified that, if the Board were to classify the Grassy Field as a CCR surface impoundment and the Grassy Field is regulated as a CCRMU, MWG would be faced with a “logistical nightmare.” 2/14/24 Tr., p. 68. MWG would have to figure out how to comply with two sets of regulations that treat the same area differently. *Id.* Mr. Dehlin pointed out that the “USEPA makes it clear that there are specific regulations that do not apply to CCR

²⁰ Similarly, in support of its decision to open a subdocket to evaluate new rules to regulate historic areas of ash, the Board relied upon information showing the Grassy Field was not a CCR surface impoundment. *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, PCB R2020-019, Order* (February 4, 2021), at 12. As has been discussed (*see, e.g.*, MWG’s Response to the Agency’s Recommendation, 7/28/23, at 4-5), the Board opened a subdocket to support the possible promulgation of rules to address areas of unconsolidated coal ash fill like the Grassy Field that do not fit within the existing Illinois CCR rule framework pertaining to CCR surface impoundments. The Board had opined that areas like the Grassy Field “do not fit the definition of ‘CCR surface impoundments’ and would therefore not be regulated by Part 845, nor were they included in the mandate of Section 22.59(g).” *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845, PCB R2020-019, Order* (February 4, 2021), at 12. The Board found “that regulation of these unconsolidated coal ash fills and piles is beyond the scope of Section 22.59(g)...” the statute for regulated CCR surface impoundment (415 ILCS 5/22.59(g)). *Id.* Concluding that it did not have sufficient information regarding the unconsolidated fill areas and piles, the Board ordered the Clerk to open a subdocket (PCB20-19(A)) to “solicit more information and evidence, as well as proposed rules, on... [h]istoric, unconsolidated coal ash fill in the State...” PCB R2020-019, Order (February 4, 2021), at 105. Clearly, the Board correctly believed that the Grassy Field was not already regulated by the Illinois CCR Rule and the Agency’s Recommendation does not provide any basis to alter that belief.

management units that do apply to CCR surface impoundments.” *Id.* For example, there would also be difficulties associated with compliance timeframes: The federal CCRMU rule will impose particular timelines for various activities, including closure, and the Illinois CCR surface impoundment rule imposes its own timeline for required activities, so “it is very possible that you have a federal timeline and a state timeline that do not match. And that’s going to cause problems for Midwest Generation.”²¹ 2/14/24 Tr., p. 69.

B. Absent the CCRMU Rule, the Illinois Site Remediation Program Applies to Manage the Grass Field

Even if the USEPA had not finalized the CCRMU Rule, MWG established that Illinois EPA has other existing programs designed to facilitate corrective actions at areas of historic industrial use like the Grassy Field. One of the most effective of these is the Illinois SRP, in which entities conduct corrective actions to eliminate the potential risks posed by environmental conditions. The Illinois SRP relies on a risk-based approach laid out by the Illinois Tiered Approach to Corrective Action Objectives (“TACO”) essentially involving assessment of three primary components: source, impact that could pose a risk, and pathway (*i.e.*, how the contamination may move and eventually come in contact with a receptor); the absence of any of these would indicate there is not a risk. 2/13/24 Tr., p. 83-85. The entire Illinois SRP framework is geared towards ensuring that off-site receptors are protected, and not trying to identify 100% of potential sources. Mr. Dorgan, a professional geologist with decades of experience addressing industrial properties impacted by historic practices, including through the Illinois SRP program, testified that it is an “exceptional program” that has been “extremely beneficial for addressing properties in Illinois oftentimes that are undergoing some sort of redevelopment where there is no other framework that would apply.” 2/13/24 Tr., p. 87.

MWG had proposed at least twice to enter the Grassy Field into the Illinois SRP and work with the Agency to complete a remediation plan. 2/13/24 Tr., p. 65; 67-68. However, on each occasion, the Agency hardly entertained the idea, essentially ignoring MWG’s proposals. 2/13/24 Tr., p. 65; 67-68. The Agency’s claim in paragraph 51 of its Recommendation that MWG has not voluntarily

²¹ If the Board finds that the Grassy Field is a CCR surface impoundment under the Illinois CCR rule, MWG could also find itself in a challenging position with respect to potentially conflicting regulatory requirements relating to the Board’s subdocket pertaining to unconsolidated ash fill, PCB 20-19(A).

initiated any action at the Grassy Field is disingenuous at best.²² MWG has characterized the area and tried to move forward, but MWG cannot reasonably take and obtain closure of that action without Agency agreement. 2/13/24 Tr., p. 70. As Mr. Dorgan testified, "...the more dialogue, the more engagement, the more successful the process flows and the more successful the outcomes," but, just as importantly, Agency concurrence upfront in any remedial action, including through the Illinois SRP, is critical to minimizing the likelihood of costly rework, supplementation, or other changes down the road. 2/13/24 Tr., p. 85-87. Ms. Shealey testified that, due to these concerns, she would "[n]ever, ever" recommend initiating voluntary action without Agency concurrence because MWG has done that before and suffers "to this day" from having that work rendered either insignificant or incomplete as a result. 2/13/24 Tr., p. 68.

C. The Grassy Field Poses No Risk to Human Health or the Environment

As established above, the environmental conditions in and around the Grassy Field do not bear on whether the Grassy Field is a CCR surface impoundment. And even if they did, MWG has demonstrated that the Grassy Field poses no risk to human health or the environment, including through drinking water.

MWG's expert Doug Dorgan recently testified as an expert in front of the Board in another matter, *Sierra Club et al. v. Midwest Generation, LLC*, PCB13-15, which relates to four of MWG's Illinois power generating stations, including Waukegan.²³ As a part of his analysis in the *Sierra Club* matter, he analyzed the groundwater conditions at the Waukegan Station, and concluded that the groundwater posed little to no risk to human health or the surrounding environment.

Mr. Dorgan recommended in the *Sierra Club* matter, and continues to recommend, that MWG install an engineered cap over the Grassy Field to eliminate infiltration by precipitation (*i.e.*, rainwater pulling constituents from residual ash material in the soil down with it into the

²² Even at the time of this filing, MWG has a proposal before the Board in the *Sierra Club* matter to cap the Grassy Field. 2/13/24 Tr. p. 234-235. Weaver has estimated the cost to install the cap as ranging from \$1.9 to \$3.3 million. 2/13/24 Tr., p. 236-37; Weaver Report, MWG Exhibit 37, at 53.

²³ As an expert witness in the *Sierra Club* case, Mr. Dorgan prepared an expert report as a part of that proceeding, which has been submitted in the present proceeding as MWG Exhibit 37 (Weaver Report, Exhibit 1701 in the *Sierra Club* matter). The *Sierra Club* matter involved four of the MWG sites, of which Waukegan was one, so there is information presented in the report that is relevant to the Grassy Field. 2/13/24 Tr., p. 90-91. This includes certain information contained in an expert report prepared in the matter by John Seymour, who had been retained by MWG in an earlier phase of the matter, as well as certain testimony given by Mr. Seymour in the matter. 2/13/24 Tr., p. 91-92. Mr. Dorgan also prepared a presentation to support his testimony regarding the report at the *Sierra Club* hearing, which has been submitted in the present matter as MWG Exhibit 38 (*Sierra* Exhibit 1702). 2/13/24 Tr., p. 93. On August 10, 2023, the Hearing Officer granted MWG's Motion to Incorporate the expert reports and testimony from the *Sierra Club* matter.

groundwater) which will support ongoing monitored attenuation processes in the groundwater. An engineered cap is an accepted and effective tool for managing fill areas such as the Grassy Field and effectively eliminates future risks to human health and the environment. 2/13/24 Tr., p. 141. Mr. Dorgan's expert opinion has further advised that MWG obtain the Agency's concurrence prior to proceeding to construct the engineered cap because the absence of Agency concurrence could result in significant wasted efforts and resources, should, for example, the Agency later decline to accept the cap as an effective remedy.

i. There is No Known Risk to the City's Drinking Water Sources.

The Grassy Field poses no risk to the City of Waukegan's drinking water, nor any other potable water sources. The City of Waukegan has specifically tested and affirmed to its residents that its drinking water is safe. In its recent City of Waukegan 2023 Annual Water Quality Report, the City states: "Your tap water met all USEPA and state drinking water health standards. We are pleased to report that our system had no violation of a contaminant level." MWG Exhibit 44, p. 1. The City confirms that the City's water is "tested and monitored onsite at the treatment plant every day, 24/7, 365 days a year." *Id.* It also notes that "since the water supply's intake is 6,200 feet into the lake there is low susceptibility to shoreline contaminants due to mixing and dilution." *Id.*; *see also* 2/14/24 Tr., p. 17. As Mr. Dehlin opined, this means that any potential contaminants associated with the Station's shoreline, including potentially any groundwater coming from the Station, pose little risk to the City's drinking water supply. 2/14/24 Tr., p. 18.

Multiple studies have confirmed that there are no potable wells downgradient from or even in the immediate vicinity of the Grassy Field (2/13/24 Tr., p. 127)—and the Agency has stipulated that it is not aware of any potable wells downgradient of the Grassy Field. 2/13/24 Tr., p. 259. In addition, the ELUCs at the Station ensure that none will be constructed on the property in the future until groundwater restoration is complete. 2/13/24 Tr., p. 110-111; 126; 239-240. As Mr. Dorgan testified, the lack of potable groundwater wells onsite and the ELUCs' prevention of the construction of any future potable wells onsite eliminate the risk to potential receptors through drinking water. *Id.*

ii. There is No Known Risk to Offsite Receptors

Mr. Dorgan conducted a robust analysis of the substantial data collected for decades at the Station, including conducting a trend analysis and a risk analysis of the groundwater. 2/13/24 Tr., p. 99-101, 106; MWG Ex. 38, p. 73-81. Groundwater monitoring had been ongoing for some time at the Station, which provided a database of information that allowed him to evaluate the

groundwater conditions over time and forecast future conditions. *Id.* Available data and other background information and statistical analysis also was used to evaluate potential offsite migration of any contaminants and exposures to humans or ecological receptors, such as through drinking water. 2/13/24 Tr., p. 100; MWG Ex. 38, pp. 84-87. Based on its analysis of this substantial data, Mr. Dorgan found there was no risk from the groundwater conditions at the Station to Lake Michigan because the concentrations were below the lake's water quality standards. 2/13/24 Tr., p. 135-138, 140; MWG Ex. 37, p. 45, 47; MWG Ex. 38, pp. 86-88.

D. Public Comments Should be Given Less Weight.

MWG appreciates the time the public took to provide public comments to the Board and understands its interest in the future of MWG's property. Nevertheless, under Section 101.110 of the Board Rules, while the Board encourages public participation, the extent of participation varies depending on the proceeding, the status of the person, and the rules governing that proceeding. 35 Ill. Adm. Code 101.110(a). In an adjudicatory proceeding, such as this adjusted standard petition, a person who wishes to participate and is not a party (*i.e.*, a "participant") only has the rights specifically provided for in the rules. 35 Ill. Adm. Code 101.110(b).²⁴ Participants may serve comments on the parties, which the Board will consider as time and the law allow. 35 Ill. Adm. Code 101.304(f). Participants may provide written or oral statements, which subject them to cross-examination, or provide oral or written comments. 35 Ill. Adm. Code 101.628. The oral or written comments must present arguments or comments based on evidence in the record. 35 Ill. Adm. Code 101.628(c)(2).

The Board gives public comments less weight than evidence subject to cross-examination. 35 Ill. Adm. Code 101.628(b); *James Fiser v. James Meador and Henry's Double K, LLC*, PCB 18-084 (Jan. 21, 2021), FN 2. In *ExxonMobil Oil Corporation v. Illinois EPA*, PCB 11-086 (Dec. 1, 2011), the Board discussed in detail the weight to be given to filings by parties and participants, including those who file written public comments. "[T]he Board has consistently held that testimony provided under oath and subject to cross-examination is afforded more weight than public comments." *Id.* at 27. Public comment "opinions and beliefs are afforded lesser weight than evidence and statements that are subject to cross-examination. See 35 Ill. Adm. Code 101.628(b)."

²⁴ The Board Rules state that "participant" means "any person, not including the Board or its staff, who takes part in an adjudicatory proceeding but is not a party, or who takes part in a regulatory or other quasi-legislative proceeding or a time-limited water quality standard proceeding before the Board." 35 Ill. Adm. Code 101.202.

Id. See also *Landfill 33, LTD., v. Effingham County Board and Sutter Sanitation Services*, PCB 03-43 (Feb. 20, 2003), at 9 (“...[P]ublic comments are not entitled to the same weight as expert testimony submitted under oath and subject to cross-examination. Public comments receive a lesser weight.”); *CDT Landfill Corporation v. City of Joliet*, PCB 98-60 (Mar. 05, 1998), at 6 (same); *City of Geneva v. Waste Management Inc.*, PCB 94-58 (July 21, 1994), at 17-18; (same).

Here, the public comments are not by parties but rather participants. As such, their comment is not subject to cross-examination. Accordingly, the Board should give the public comments less weight for the same reasons given in and consistent with its prior opinions.

i. Correction of Certain Factual Inaccuracies Stated by the Public

While factual statements in the public comments are not evidence, certain inaccurate statements are prejudicial and inflammatory, meriting correction here. 35 Ill. Adm. Code 101.110(d)(3). One commenter at the hearing voiced a concern that the “hazard assessment” showed that the embankments of the Station’s surface impoundments at the Station could fail and allow CCR to flow into Lake Michigan. Mr. Dehlin surmised that the commenter was likely making reference to the 2023 Hazard Potential Classification Assessment for the ponds. 2/14/24 Tr., p. 11-12. However, such assessments have nothing to do with the likelihood of whether a structure could fail. Rather the Hazard Potential Classification Assessment is an evaluation of the severity of the consequences that would occur *if* a dike for a surface impoundment were to fail. *Id.* Instead, if a person were concerned with the stability of the eastern dike at the Waukegan Station, Mr. Dehlin directed them to the Annual Safety Factor Assessment, which states that “the east dike is stable in accordance with recognized engineering guidelines promulgated by FEMA.” 2/14/24 Tr. p. 14.

Another commenter referenced the Environmental Law and Policy Center’s “Rising Waters” study relating to possible impacts of climate change on Lake Michigan shoreline communities, expressing a concern that rising Lake Michigan water levels could flood the Station’s property and cause environmental impacts. However, the Rising Waters study itself shows that neither Waukegan’s East and West Ash Ponds nor the Grassy Field area are at risk for such flooding. 2/14/24 Tr. 14-16.

ii. Both Earthjustice and Sierra Club have Repeatedly Stated to USEPA that the Grassy Field is a CCRMU (not a CCR Surface Impoundment).

The Environmental Groups' comment that Part 257 regulates the Grassy Field is undermined by both Earthjustice's and Sierra Club's comments to USEPA that influenced USEPA to include the Grassy Field on its updated its list of CCR management areas ("CCRMUs").

Earthjustice and Sierra Club (in addition to others), submitted a comment on USEPA's proposed rule for Legacy Surface Impoundments and CCRMUs ("Proposed CCRMU Rule"). Comments of Earthjustice *et al.*, on "Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy CCR Surface Impoundments," EPA-HQ-OLEM-2020-0107-0368. In the appendices to its comment, Earthjustice and Sierra Club repeatedly called the Grassy Field a CCRMU. *See id.*, Appendix I at 2; Appendix II at 8. They commented that there is *no* evidence of Legacy Ponds at the Waukegan Station, but there is evidence of a CCRMU; that such evidence pertains to a potential CCRMU Landfill and *not* a potential CCRMU Pond; and that the Station is already identified by USEPA as a site with "CCRMU Only." *Id.*, Appendix III, Plant-Level Summary, Row 403, Columns M, O, P, R, & U. They identified areas at "the Waukegan Station property that meet the definition of CCRMUs and would therefore be covered by the Proposed 2023 CCR Rule..." including the "Former Slag and Fly Ash Area." *Id.*, Appendix VI at 36.

The Environmental Groups have also consistently stated to the Board that the Grassy Field is a landfilled area, distinct from the two CCR surface impoundments at the Waukegan Station. The Board identified the Grassy Field as one of the historic, unconsolidated coal ash fills outside the scope of the rulemaking in its Part 845 order, primarily based upon the Environmental Groups' comment in the rulemaking. *In the matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm. Code 845*, PCB20-19, Order (Feb. 4, 2021), p. 11-12. In its 2021 Order, the Board repeatedly cited the Environmental Groups' comment describing the CCR landfills and piles in Illinois that were outside the scope of Part 845. *Id.* The Board noted that the Environmental Groups urged the Board to either broaden the scope of the rule to include those areas or open a subdocket. *Id.* In their comment on the rulemaking, the Environmental Groups specifically identified "the historic coal ash areas and coal ash in the fill areas at the Waukegan Station are contributing to exceedances of groundwater quality standards at the Station." Environmental Groups' Final Post-Hearing Comments, *In the matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill.*

Adm. Code 845, PCB20-19, P.C. #124, p. 51. In support of this statement, the Environmental Groups cited the Board's *Sierra Club v. Midwest Generation, LLC* 2019 interim opinion, in which it had described the Grassy Field and distinguished it from the Station's CCR surface impoundments. *Id.*, citing *Sierra Club et. al. v. Midwest Generation, LLC*, PCB 13-15 (June 20, 2019), pp. 66-68. The Board's description of the Grassy Field in its 2019 order was based upon the arguments presented by Sierra Club and Prairie Rivers Network in that proceeding. *See Environmental Groups Post-Hearing Brief, Sierra Club et. al. v. Midwest Generation, LLC*, PCB13-15 (July 20, 2018), p. 54. The Environmental Groups' current assertion that the Grassy Field is somehow a CCR surface impoundment is contrary to and inconsistent with all of their prior positions on this issue. Accordingly, it should not be given any weight by the Board.

V. CONCLUSION

MWG is ready and willing to address the Grassy Field but shoehorning it into the definition of a CCR surface impoundment is not appropriate because the Grassy Field is not and never was designed to hold an accumulation of liquid within the meaning of the Act's definition of a CCR surface impoundment. Instead, "[i]t is an area that contains ash." 2/13/24 Tr., p. 68-69. As Ms. Shealey testified: "[MWG] would love to close the [Grassy Field]. We are just looking for the appropriate regulatory path to do so." 2/13/24 Tr., p. 71.

There is an appropriate regulatory path forward for managing the Grassy Field, one that is technically feasible, economically reasonable, and consistent with its proper classification – as a CCRMU. Because the Grassy Field is a CCRMU, MWG asks that the Board grant MWG's adjusted standard by finding that the Grassy Field is not a CCR surface impoundment as that term is defined in the Act. MWG asks that the Board enter an order granting the Adjusted Standard using the following proposed language:

Part 845 of the Illinois Pollution Control Board Regulations does not apply to the 10-acre area west of the West Pond known as the Grassy Field (a/k/a FS Area) located at the MWG Waukegan Generating Station, 401 East Greenwood Ave, Waukegan, IL 60087 because it is an unconsolidated fill area. MWG will continue to conduct quarterly groundwater monitoring of each monitoring well at the Waukegan Station for the constituents listed in 35 Ill. Adm. Code 620.410(a), with the exception of perchlorate, in the addition of field pH and static water elevation. MWG will report the analytical results and field measurements to the Agency quarterly. Two copies of the quarterly reports shall be submitted to:

Groundwater Section
Illinois Environmental Protection Agency Division of Public Water
Supplies MC #13 1021 North Grand Avenue East Springfield, IL 62794-9276

Additionally, in the event the federal proposed rules for CCRMUs are not passed by April 2025, or twelve months after the Board's final order in *Sierra Club et al. v. Midwest Generation, LLC*, PCB13-15, coordinate with IEPA to discuss installing an engineered cap over the FS Area at the Waukegan Station, or taking other appropriate action as deemed necessary, taking into consideration the status of the federal CCR management unit rule and/or the Board's subdocket in PCB20-19(A).

Respectfully submitted,

MIDWEST GENERATION, LLC

Petitioner,

By: /s/ Kristen L. Gale
 One of its Attorneys

Dated: May 14, 2024

Kristen L. Gale
Susan M. Franzetti
Genevieve J. Essig
NIJMAN FRANZETTI LLP
10 South LaSalle Street, Suite 3400
Chicago, IL 60603
(312) 251-5590
kg@nijmanfranzetti.com
sf@nijmanfranzetti.com
ge@nijmanfranzetti.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	AS 2021-003
PETITION OF MIDWEST)	
GENERATION, LLC FOR AN)	
ADJUSTED STANDARD FROM)	(Adjusted Standard)
845.740(a) AND FINDING OF)	
INAPPLICABILITY OF PART 845)	

APPENDIX A

CCR Surface Impoundment Definition

“CCR surface impoundment” means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

415 ILCS 5/3.143

"Inactive CCR surface impoundment" means a CCR surface impoundment in which CCR was placed before but not after October 19, 2015 and still contains CCR on or after October 19, 2015.”

35 Ill. Adm. Code 845.120



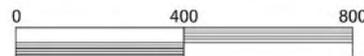
NOTES:

1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 2022 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE.
2. FOR ORIGINAL SLAG FIELD, SEE FIGURES A-3 AND A-4. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1.

CLASSIFICATION OF GRASSY FIELD

FIGURE A-1
2022 AERIAL PHOTOGRAPH OF
GRASSY FIELD SITE

SCALE IN FEET



COUNTY: LAKE
STATE: ILLINOIS

PURPOSE: USE
DATE: 07-21-2023 REV. 0

PREPARED: MK / JC
REVIEWED: TD
APPROVED: TD

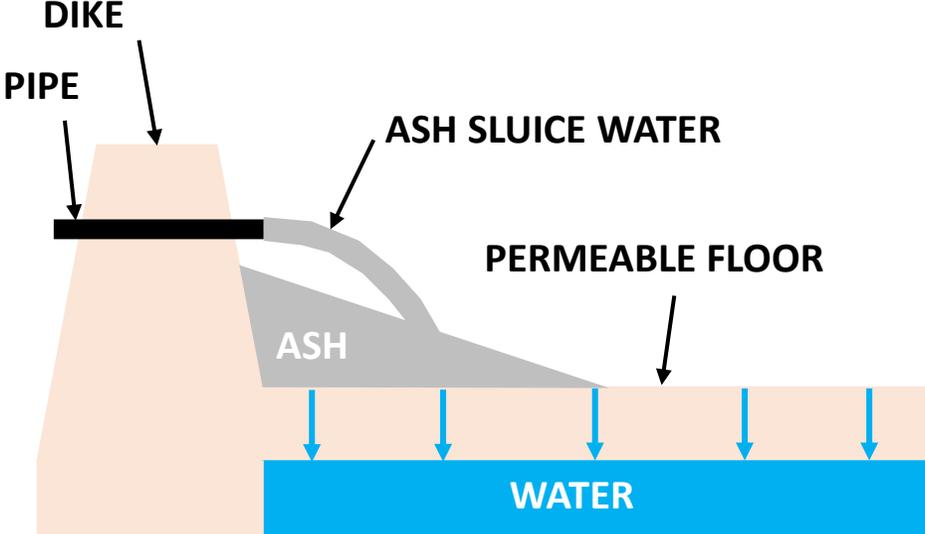
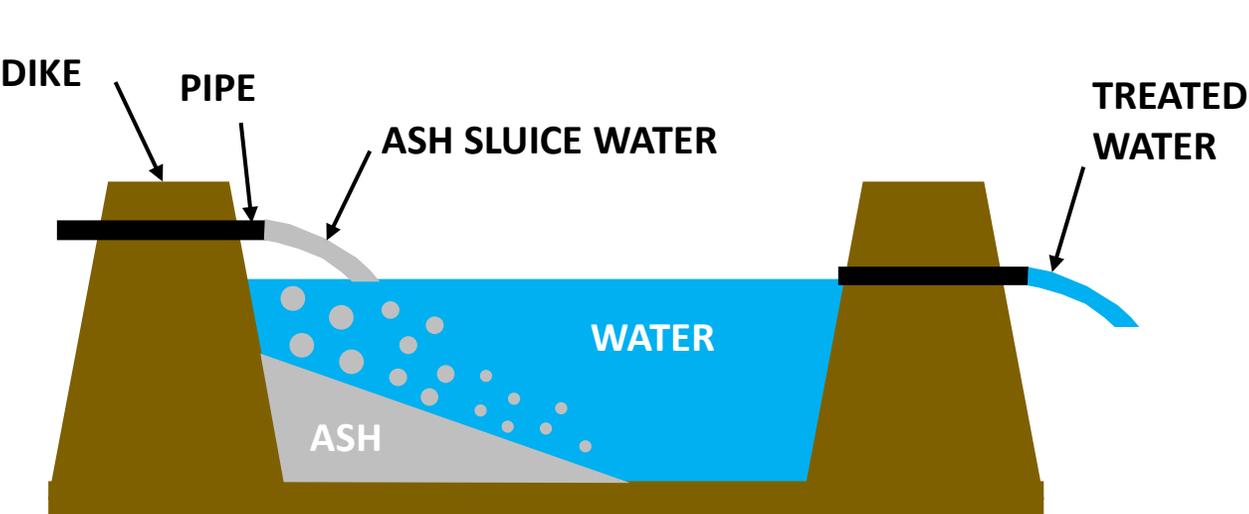
PROJECT NO. 12661-104



MIDWEST GENERATION, LLC
WAUKEGAN
GENERATING STATION

Methodology to Assess the Grassy Field

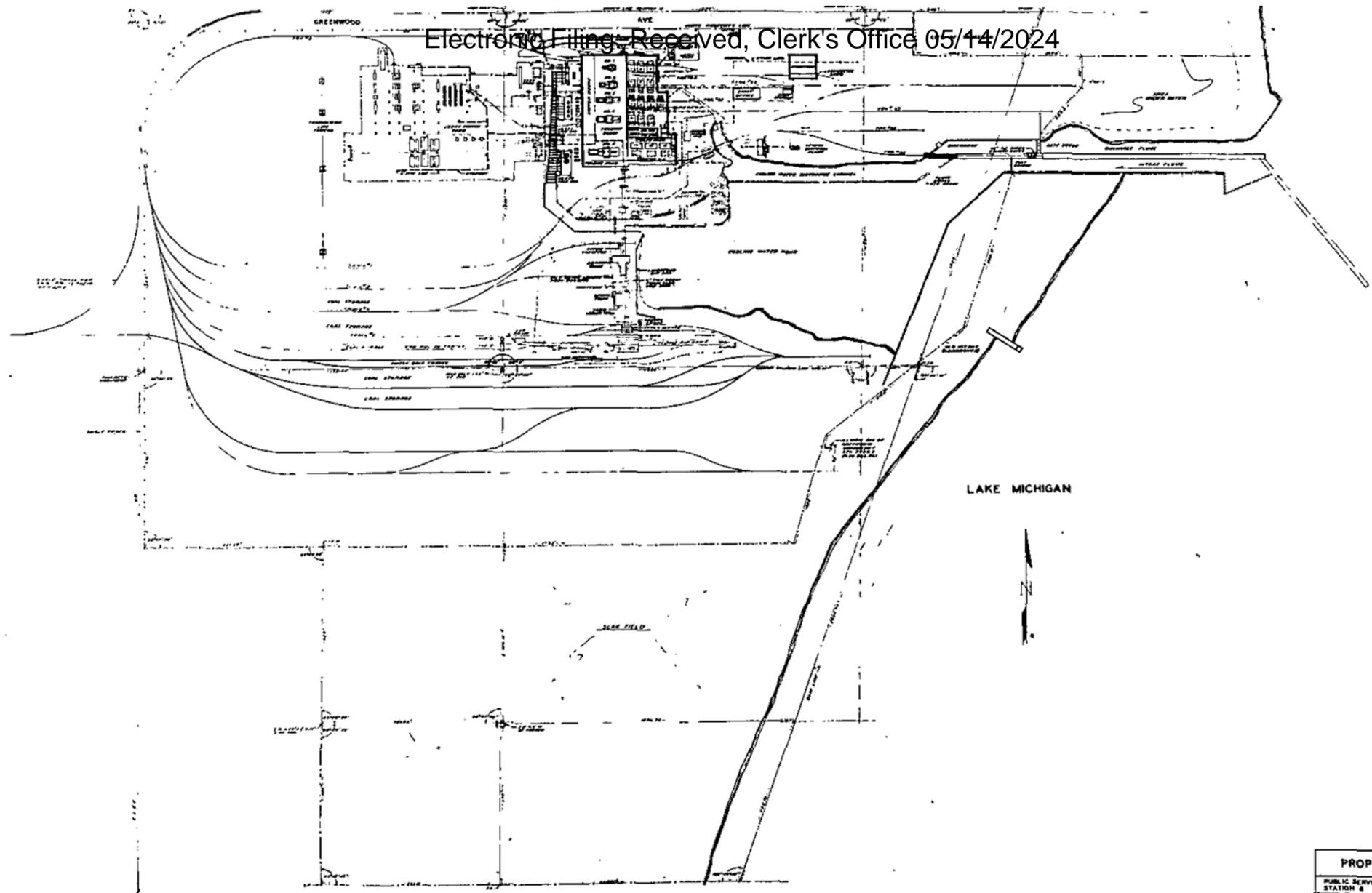
- A. Gather all the documents and information available related to the Grassy Field
- B. Evaluate the History and determine if it fits the three part CCR surface impoundment definition:
 1. A natural topographic depression, man-made excavation, or diked area, which is
 2. designed to hold an accumulation of CCR and liquids, and
 3. Used to treat, store, or dispose of CCR.



SEDIMENTATION

OR

INFILTRATION

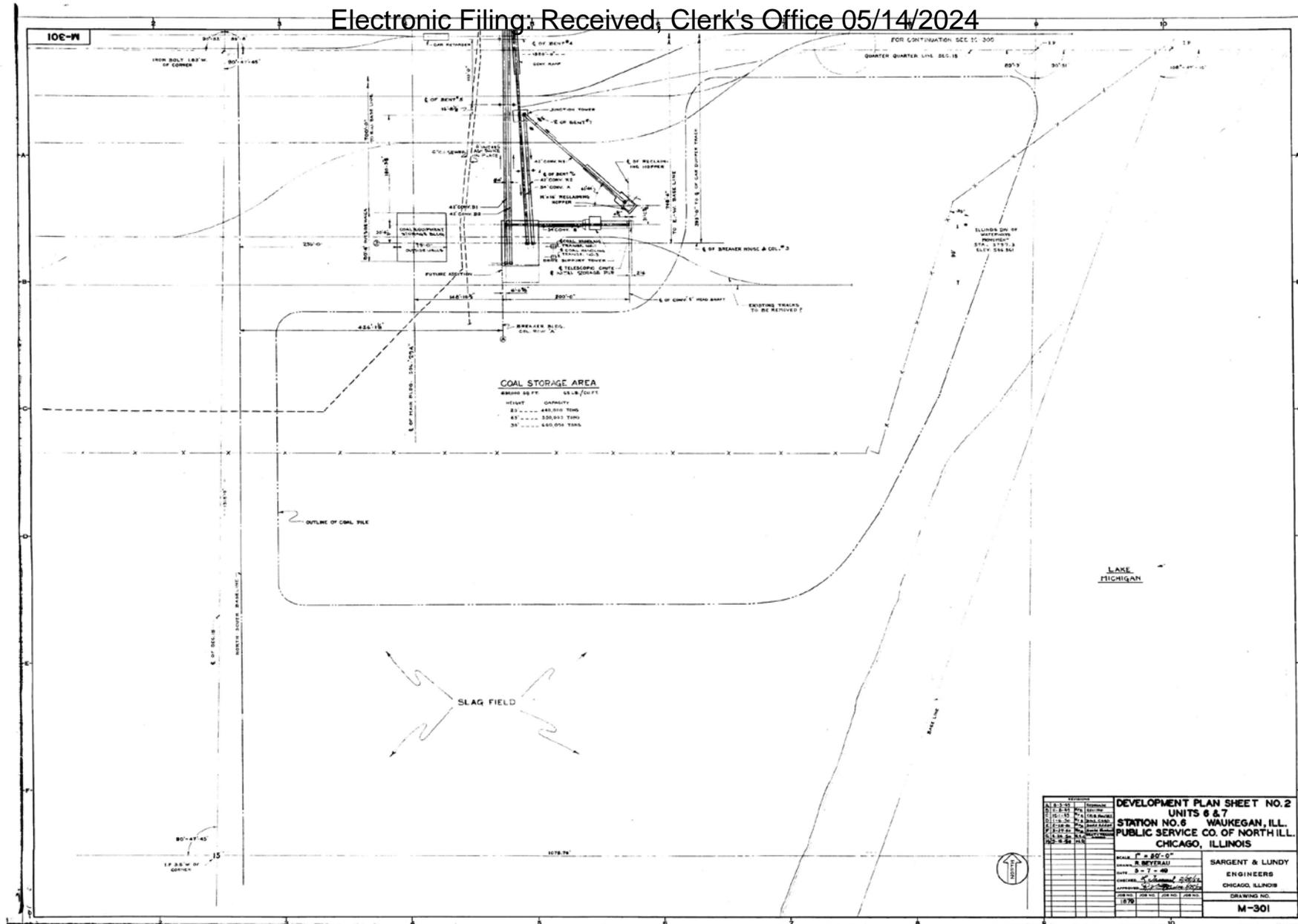


PROPERTY PLAT	
PUBLIC SERVICE CO. OF NORTHERN ILL.	
STATION 8 WILKINSON ILL.	
DATE	FILE NO.
BY	SCALE
CHECKED	APPROVED
DATE	DATE

Handwritten notes and scribbles at the bottom left of the page.



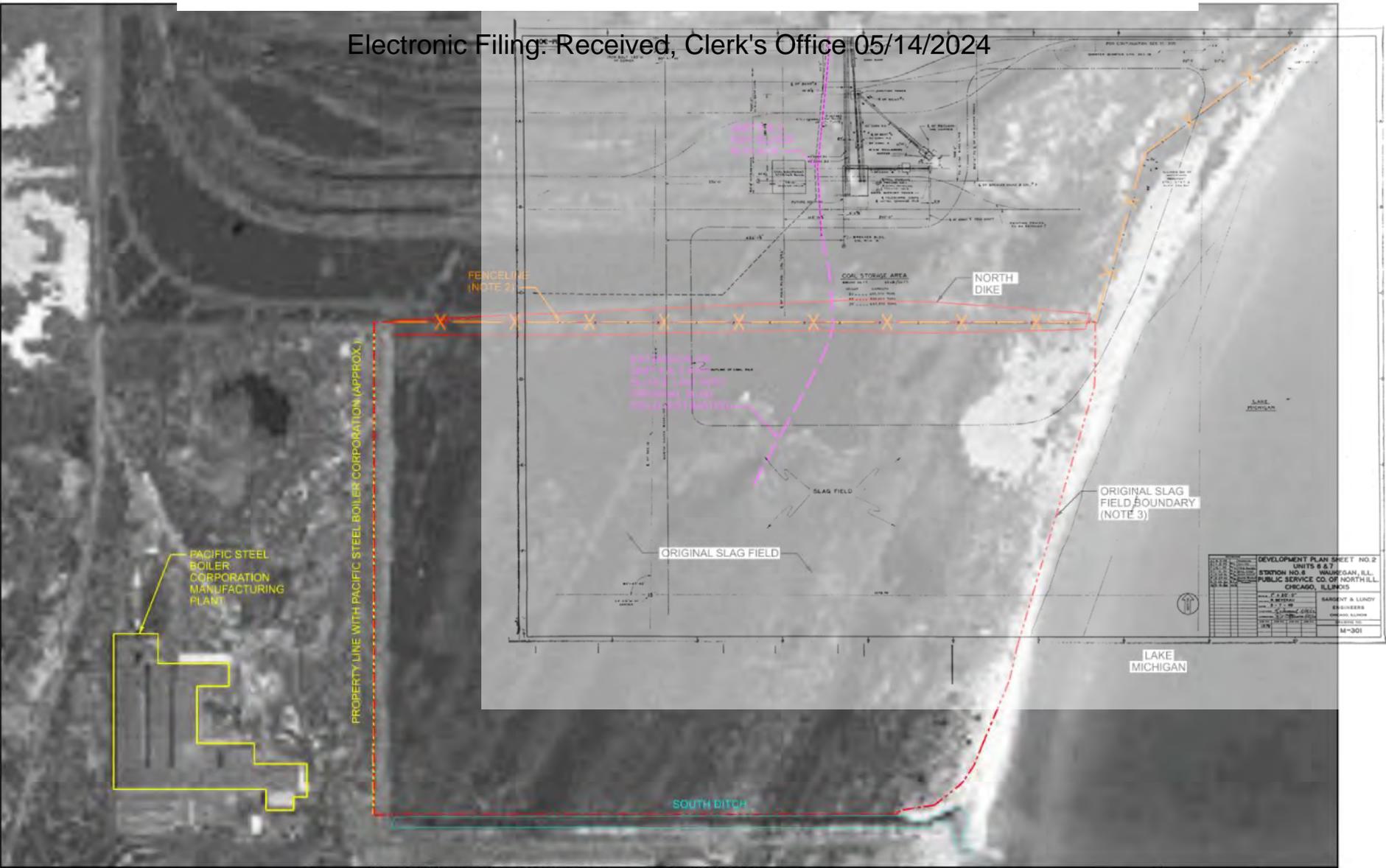
<p>NOTES:</p> <ol style="list-style-type: none"> 1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1939 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE. 2. FENCELINE LOCATION IS APPROXIMATE AND WAS OBTAINED FROM S&L DRAWING M-301 (REV. H, 09-13-1954) IN APPENDIX B. 3. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1. 	<p>CLASSIFICATION OF GRASSY FIELD</p>	<p>COUNTY: LAKE STATE: ILLINOIS</p>	<p>MWG Midwest Generation, LLC</p> <p><i>Sargent & Lundy</i> SARGENT & LUNDY 35 EAST MONROE STREET CHICAGO, ILLINOIS 60601-3978</p>
	<p>FIGURE A-2 1939 AERIAL PHOTOGRAPH OF GRASSY FIELD SITE</p>	<p>PURPOSE: USE DATE: 07-21-2023 REV. 0</p>	
	<p>SCALE IN FEET</p> <p>0 400 800</p> <p>NORTH</p>	<p>PREPARED: MK / JC REVIEWED: TD APPROVED: TD</p> <p>PROJECT NO. 12661-104</p>	
<p>MIDWEST GENERATION, LLC WAUKEGAN GENERATING STATION</p>			



DEVELOPMENT PLAN SHEET NO. 2 UNITS 6 & 7 STATION NO. 6 PUBLIC SERVICE CO. OF NORTH ILL. CHICAGO, ILLINOIS	
SCALE: 1" = 80'-0" DRAWN BY: S. BEYERAU DATE: 3-7-49 CHECKED BY: J. J. [Signature] APPROVED BY: [Signature]	SARGENT & LUNDY ENGINEERS CHICAGO, ILLINOIS DRAWING NO. M-301



<p>NOTES:</p> <ol style="list-style-type: none"> AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1946 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE. LOCATIONS OF FENCELINE AND ASH SLUICE LINE FROM UNITS 4 AND 5 ARE APPROXIMATE AND WERE OBTAINED FROM S&L DRAWING M-301 (REV. H, 09-13-1954) IN APPENDIX B. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1. 	<p>CLASSIFICATION GRASSY FIELD</p>	<p>COUNTY: LAKE STATE: ILLINOIS</p>	<p>MWG Midwest Generation, LLC</p> <p>Sargent & Lundy <small>SARGENT & LUNDY 35 EAST MONROE STREET CHICAGO, ILLINOIS 60601-3978</small></p>
	<p>FIGURE A-3 1946 AERIAL PHOTOGRAPH OF GRASSY FIELD SITE</p>	<p>PURPOSE: USE DATE: 07-21-2023 REV. 0</p>	
	<p>SCALE IN FEET</p> <p>0 300 600</p> <p></p>	<p>PREPARED: MK / JC REVIEWED: TD APPROVED: TD</p> <p>PROJECT NO. 12661-104</p>	
<p>MIDWEST GENERATION, LLC WAUKEGAN GENERATING STATION</p>			



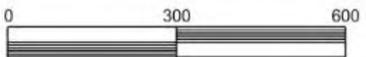
NOTES:

1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1946 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE
2. LOCATIONS OF FENCELINE AND ASH SLUICE LINE FROM UNITS 4 AND 5 ARE APPROXIMATE AND WERE OBTAINED FROM S&L DRAWING M-301 (REV. H, 09-13-1954) IN APPENDIX B.
3. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1.

CLASSIFICATION GRASSY FIELD

FIGURE A-3
1946 AERIAL PHOTOGRAPH OF
GRASSY FIELD SITE

SCALE IN FEET



COUNTY: LAKE
STATE: ILLINOIS

PURPOSE: USE
DATE: 07-21-2023 REV. 0

PREPARED: MK / JC
REVIEWED: TD
APPROVED: TD

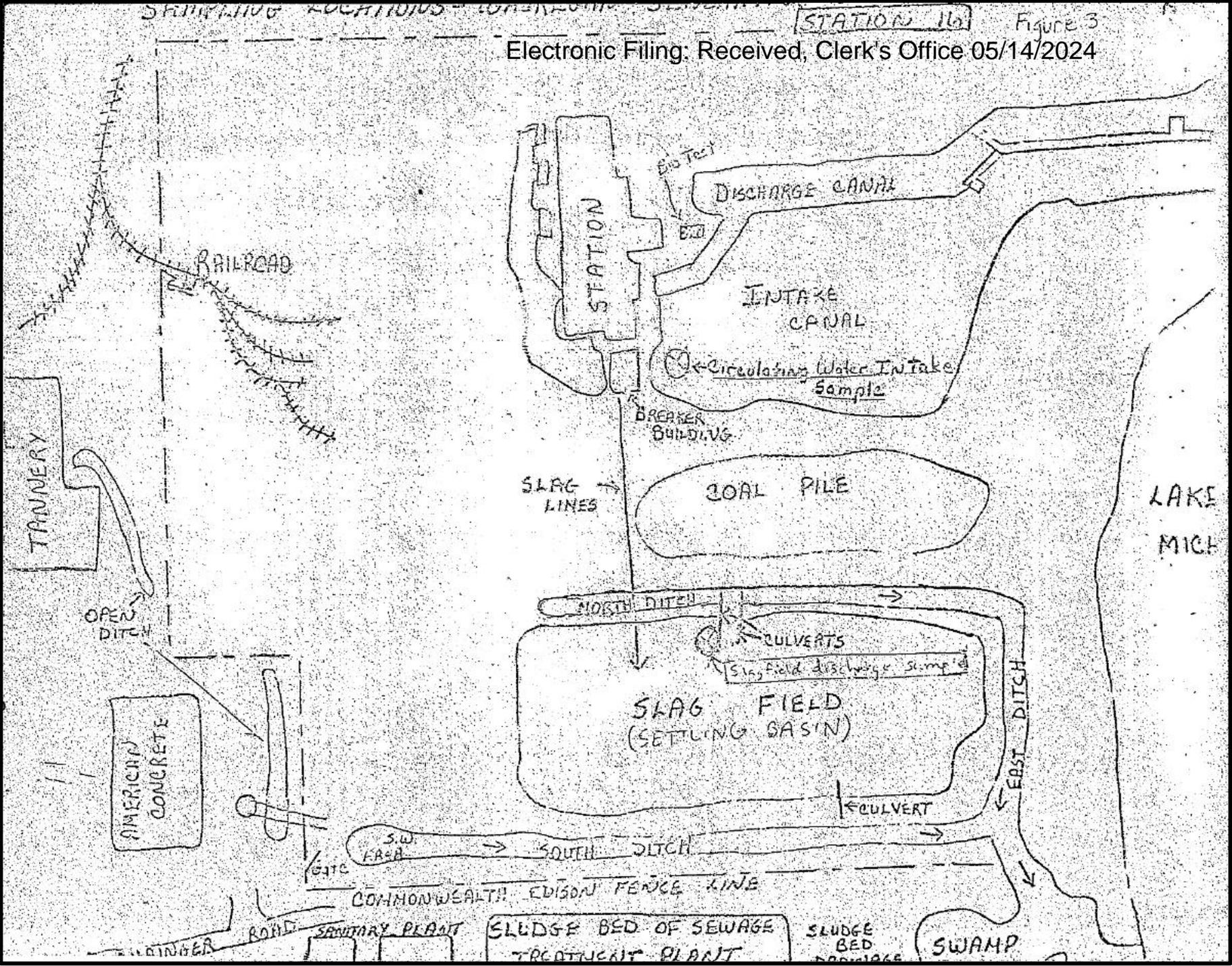
PROJECT NO. 12661-104



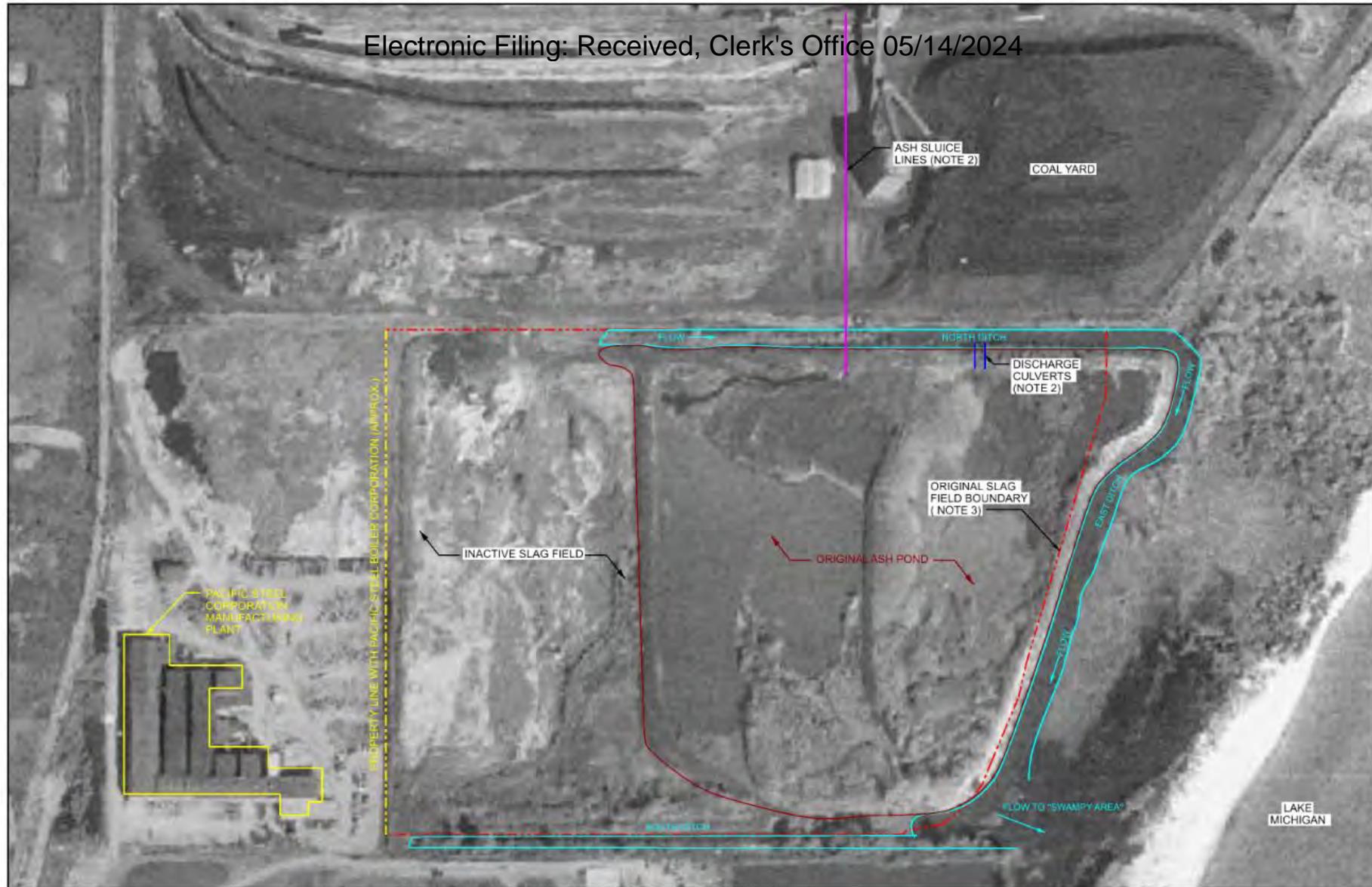
MIDWEST GENERATION, LLC
WAUKEGAN
GENERATING STATION



<p>NOTES:</p> <ol style="list-style-type: none"> 1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1961 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE. 2. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1. 	<p>CLASSIFICATION OF GRASSY FIELD</p>	<p>COUNTY: LAKE STATE: ILLINOIS</p>	<p>MWG Midwest Generation, LLC</p> <p>Sargent & Lundy <small>SARGENT & LUNDY 35 EAST MONROE STREET CHICAGO, ILLINOIS 60601-3978</small></p>
	<p>FIGURE A-4 1961 AERIAL PHOTOGRAPH OF GRASSY FIELD SITE</p>	<p>PURPOSE: USE DATE: 07-21-2023 REV. 0</p>	
	<p>SCALE IN FEET</p> <p>0 300 600</p>	<p>PREPARED: MK / JC REVIEWED: TD APPROVED: TD</p> <p>PROJECT NO. 12661-104</p>	
<p>MIDWEST GENERATION, LLC WAUKEGAN GENERATING STATION</p>			



MWG Exhibit 22 at 11
IEPA Exhibit 32 at 17



NOTES:

1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1974 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE.
2. LOCATIONS OF ASH SLUICE LINES INTO AND DISCHARGE CULVERTS OUT OF ORIGINAL ASH POND ARE APPROXIMATE AND WERE OBTAINED FROM NUS CORPORATION DRAWING 5082-C-5006 IN APPENDIX B.
3. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1.

CLASSIFICATION OF GRASSY FIELD

FIGURE A-6
1974 AERIAL PHOTOGRAPH OF GRASSY FIELD SITE

SCALE IN FEET

0 300 600

COUNTY: LAKE
STATE: ILLINOIS

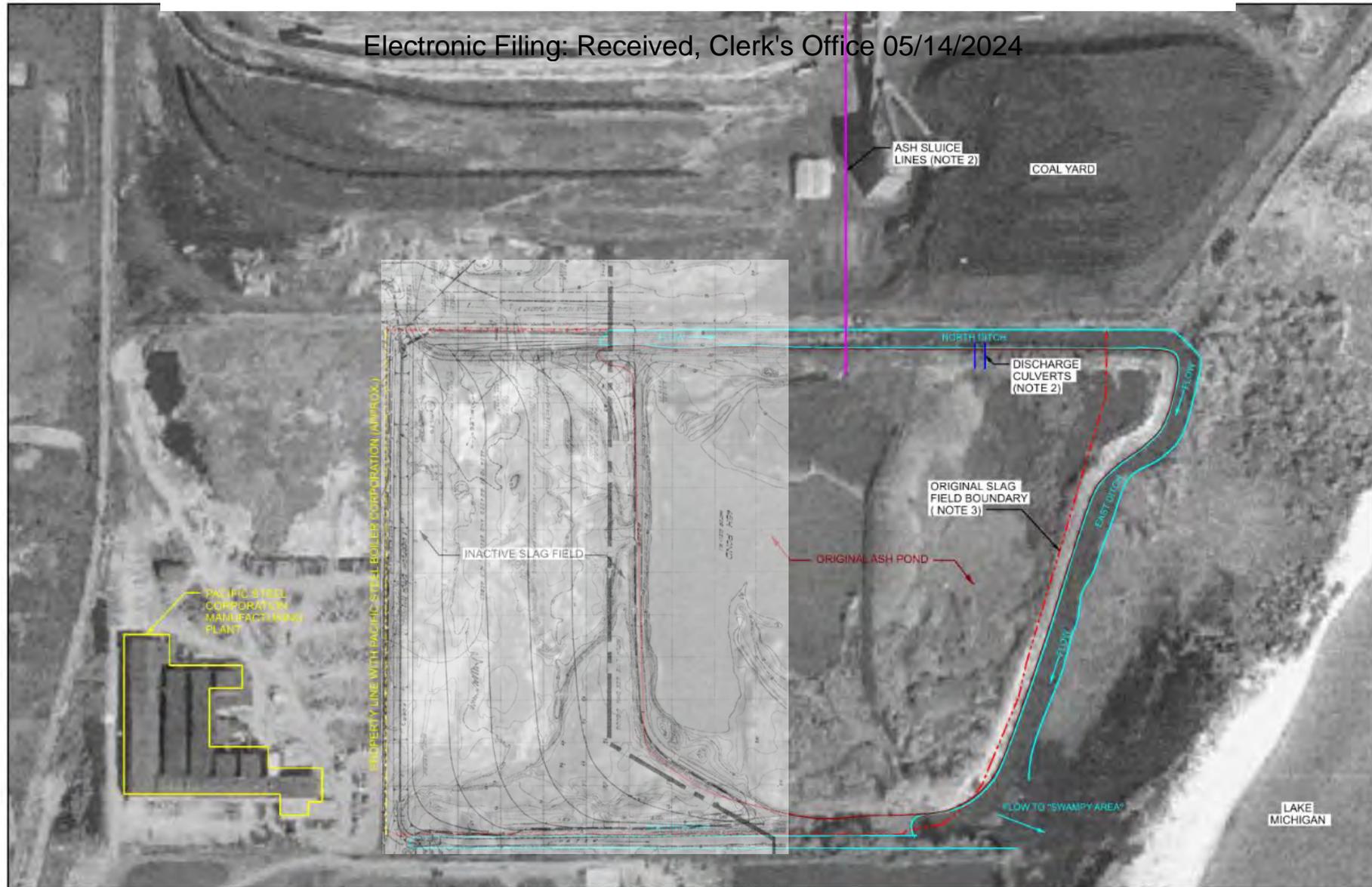
PURPOSE: USE
DATE: 07-21-2023 REV. 0

PREPARED: MK / JC
REVIEWED: TD
APPROVED: TD

PROJECT NO. 12661-104



MIDWEST GENERATION, LLC
WAUKEGAN
GENERATING STATION



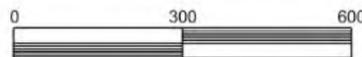
NOTES:

1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1974 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE.
2. LOCATIONS OF ASH SLUICE LINES INTO AND DISCHARGE CULVERTS OUT OF ORIGINAL ASH POND ARE APPROXIMATE AND WERE OBTAINED FROM NUS CORPORATION DRAWING 5082-C-5006 IN APPENDIX B.
3. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1.

CLASSIFICATION OF GRASSY FIELD

FIGURE A-6
1974 AERIAL PHOTOGRAPH OF
GRASSY FIELD SITE

SCALE IN FEET



COUNTY: LAKE
STATE: ILLINOIS

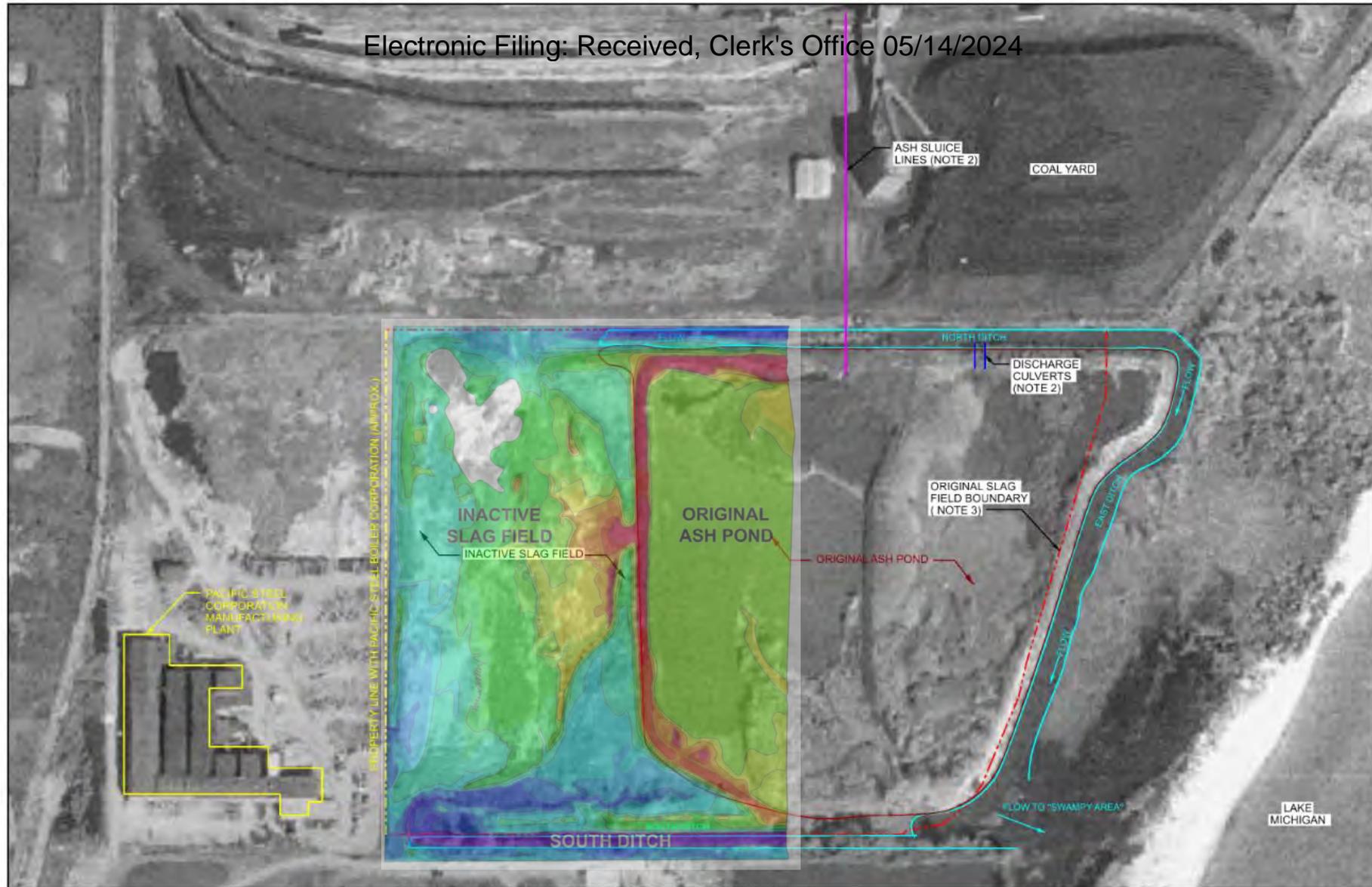
PURPOSE: USE
DATE: 07-21-2023 REV. 0

PREPARED: MK / JC
REVIEWED: TD
APPROVED: TD

PROJECT NO. 12661-104



MIDWEST GENERATION, LLC
WAUKEGAN
GENERATING STATION



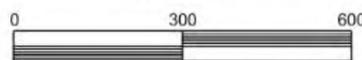
NOTES:

1. AERIAL IMAGERY SHOWN ON THIS FIGURE IS DATED 1974 AND WAS OBTAINED FROM LAKE COUNTY, ILLINOIS MAPS ONLINE.
2. LOCATIONS OF ASH SLUICE LINES INTO AND DISCHARGE CULVERTS OUT OF ORIGINAL ASH POND ARE APPROXIMATE AND WERE OBTAINED FROM NUS CORPORATION DRAWING 5082-C-5006 IN APPENDIX B.
3. FOR DETAILS ON BASIS FOR ORIGINAL SLAG FIELD BOUNDARY, SEE EVALUATION SECTION 4.1.1.

CLASSIFICATION OF GRASSY FIELD

FIGURE A-6
1974 AERIAL PHOTOGRAPH OF
GRASSY FIELD SITE

SCALE IN FEET



COUNTY: LAKE
STATE: ILLINOIS

PURPOSE: USE
DATE: 07-21-2023 REV. 0

PREPARED: MK / JC
REVIEWED: TD
APPROVED: TD

PROJECT NO. 12661-104

MWG
Midwest Generation, LLC



MIDWEST GENERATION, LLC
WAUKEGAN
GENERATING STATION

Permit Record Documents

Exhibit
33

W0971900500A COM ED-WAUK NON THERMAL DISC [S] 03 1977EB3699 1

3699-17

ENGINEER'S SYSTEM DESCRIPTION SUPPLEMENT

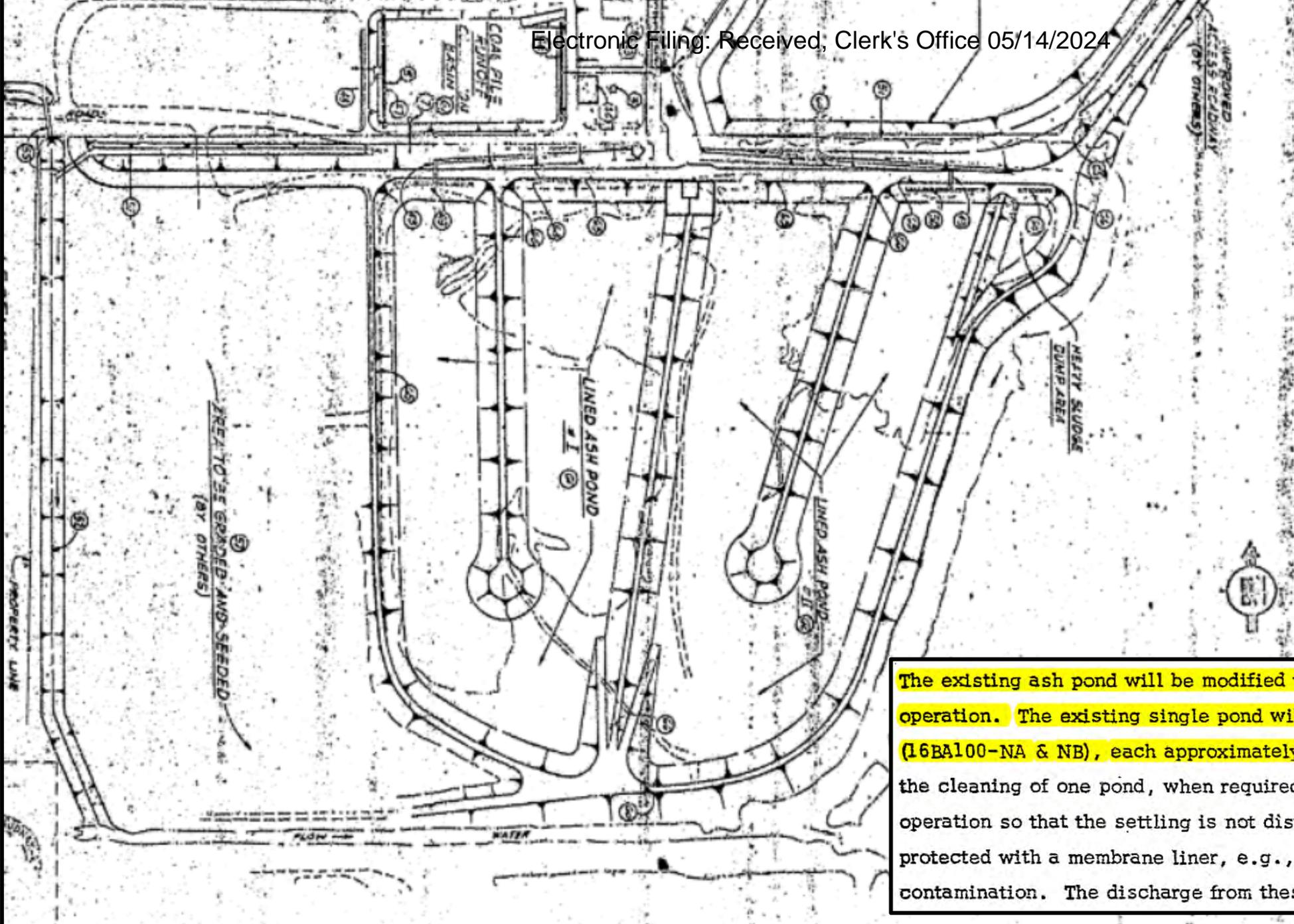
CONSTRUCTION PERMIT APPLICATION **RECEIVED**
FOR PROPOSED WASTEWATER TREATMENT FACILITIES MAR 30 1977

COMMONWEALTH EDISON COMPANY ENVIRONMENTAL PROTECTION AGENCY
Waukegan Power Station DIV. OF WATER POLLUTION CONTROL
LEDSBURG, MO. 64701 - SPRINGFIELD
STATE OF MISSOURI

BASIS OF DESIGN

Exhibit
41

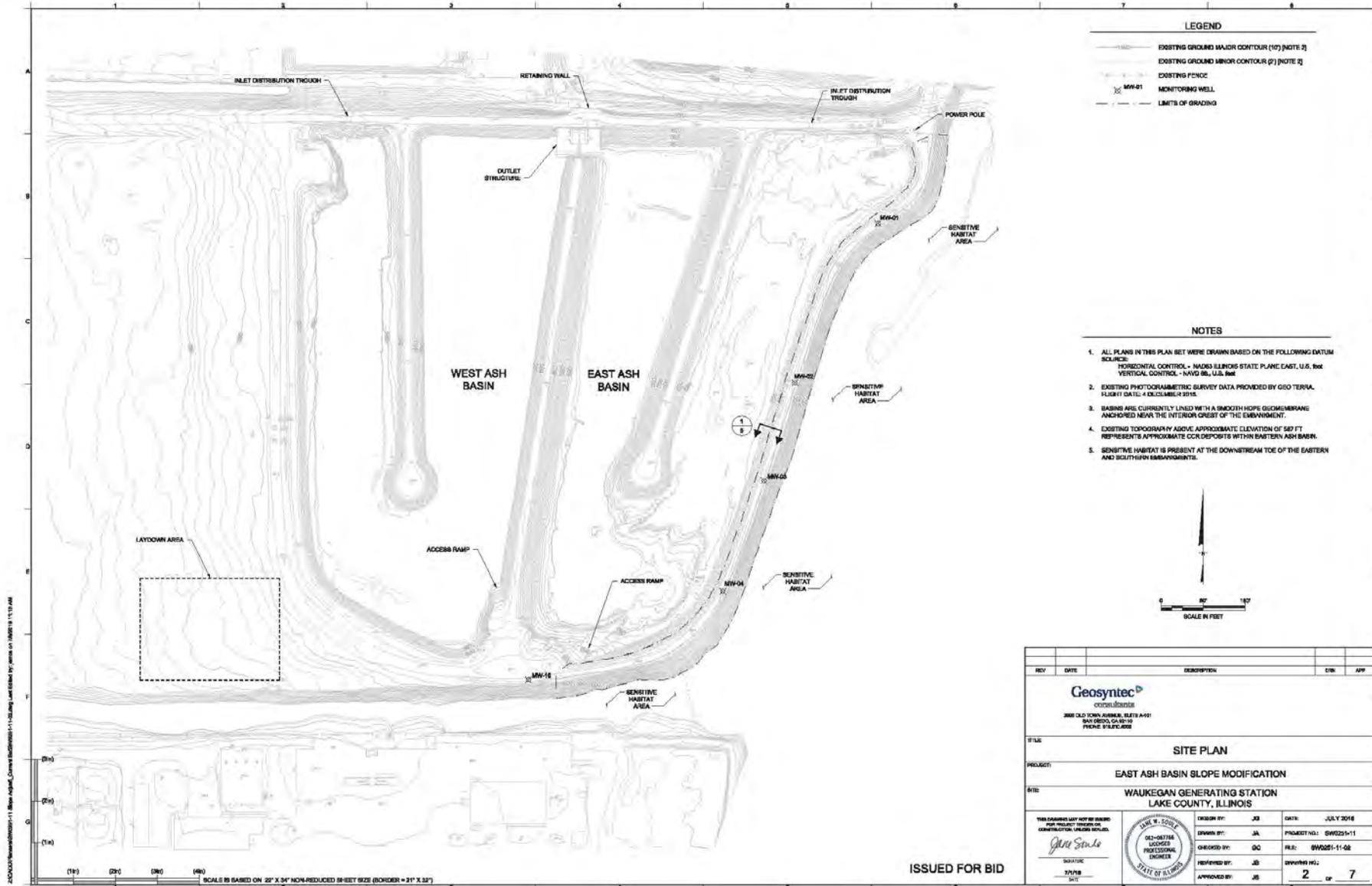
W0971900500A COMMONWEALTH ED-WAUKEGAN/AS BUILT 04 1977EB3699 1



IEPA Exhibit 41 at 4

IEPA Exhibit 33 at 23

The existing ash pond will be modified to provide for easier and redundant operation. The existing single pond will be split into two separate ponds (16BA100-NA & NB), each approximately 10 acres. This design allows for the cleaning of one pond, when required, while the other pond remains in operation so that the settling is not disturbed. The ponds will also be protected with a membrane liner, e.g., hypalon, to prevent ground-water contamination. The discharge from these ponds, 10.91×10^6 gallons/day



REV	DATE	DESCRIPTION	DN	APP
<p>Geosyntec consultants 2000 OLD JOHN JARVIS, SUITE 400 MAY GLEN, CA 94065 PHONE 916.751.8000</p>				
TITLE				
SITE PLAN				
PROJECT:				
EAST ASH BASIN SLOPE MODIFICATION				
SITE:				
WAUKEGAN GENERATING STATION LAKE COUNTY, ILLINOIS				
<small>THIS DRAWING MAY NOT BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM GEOSYNTEC CONSULTANTS.</small>			<small>DESIGN BY:</small> JS <small>DESIGN BY:</small> JA <small>CHECKED BY:</small> DC <small>REVIEWED BY:</small> JS <small>APPROVED BY:</small> JS	<small>DATE:</small> JULY 2018 <small>PROJECT NO.:</small> 090225-11 <small>FILE:</small> 090225-11-08 <small>DRAWING NO.:</small> 2 of 7

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	AS 2021-003
PETITION OF MIDWEST)	
GENERATION, LLC FOR AN)	
ADJUSTED STANDARD FROM)	(Adjusted Standard)
845.740(a) AND FINDING OF)	
INAPPLICABILITY OF PART 845)	

Appendix B

Summary of Thomas Dehlin's Rebuttal of the Illinois EPA's Recommendation

At the hearing, MWG's expert Thomas Dehlin, P.E., walked through the Illinois Environmental Protection Agency's ("Agency" or "Illinois EPA") Recommendation paragraph by paragraph, describing the inaccuracies in each. To aid the Illinois Pollution Control Board ("Board") in identifying each of the inaccuracies about the area south of the Station that is comprised of the Grassy Field, East Pond, and West Pond (collectively the "Site"), MWG has summarized Mr. Dehlin's rebuttal, including how the documents the Agency relied upon do not support its position that the Grassy Field is a CCR surface impoundment.

Response to All Paragraphs that Include the Term "Old Pond"

One of the major inaccuracies in practically all of the paragraphs is the Agency's use of the term "Old Pond." As stipulated by the Agency: "The Illinois Environmental Protection Agency ...created the term 'Old Pond.' The term Old Pond is not in any Illinois EPA permitting records for the Waukegan Station." 2/13/24 Tr., p. 258-259.

Response to Agency Recommendation Paragraph 9

Mr. Dehlin explained that the Agency's Exhibit 2 did not support the Agency's claim in Paragraph 9 that "well before the Grassy Field was graded and seeded...a CCR surface impoundment, Old Pond, existed and operated in this area." As Mr. Dehlin explained, Agency Exhibit 2 is an aerial photo of the Station from 1946, which shows the area when it was the Original Slag Field, and there are no observable features in the photograph that suggest there was any "Old Pond" here. 2/14/24 Tr., p. 73-75. Rather, the photograph demonstrates just the opposite: Agency Ex. 2 shows the ditch the Station excavated along the southern property line ("South Ditch") to convey liquid away from the area. Exhibit 2 also shows the original sand dune beneath areas of ash, meaning liquids sluiced to this area would have infiltrated through the sand floor in addition to running off via the South Ditch. 2/14/24 Tr., p. 73-75.

The Agency also claimed in Paragraph 9 that the entire area of the Grassy Field, East Pond and West Pond is an inactive CCR surface impoundment, based solely on Agency Exhibit 5. But, as Mr. Dehlin explained, Agency Exhibit 5 does not show nor even include a description of an inactive CCR surface impoundment. 2/14/24 Tr., p. 75. Instead, Agency Exhibit 5 is a 1980 aerial photo of the Station showing the Grassy Field, East Pond, and West Pond, which merely lie in the area of the Original Slag Field, which was not a CCR surface impoundment. 2/14/24 Tr., p. 75-76.

Response to Agency Recommendation Paragraph 10

Paragraph 10 states, “Old Pond, has also been referred to in various permit documents as the ‘Slag-ash Field’ or ‘Settling Basin,’ or ‘ash Pond,’” citing several Agency Exhibits that are permit documents for the Station (with pin cites in an associated footnote). But the earliest permit document is from 1972 – which is after the Station had created the Original Ash Pond on the eastern two-thirds of the Site. 2/14/24 Tr., p. 79:5-12. Accordingly, the permit records the Agency attached as exhibits pertain to the Original Ash Pond located on the eastern two-thirds of the southern area of the Station, and not the Grassy Field. 2/14/24 Tr., p. 77-78.

Response to Agency Recommendation Paragraph 11

In Agency Recommendation Paragraph 11, the Agency incorrectly claims that the 1939 aerial photo of the Station (Agency Ex. 1) shows that liquid and CCR were deposited over the Site. Mr. Dehlin explained that was not true. Instead, the photo shows the Site as it was originally and naturally, sand dunes, predating any use of the area by the Station to dispose of CCR. 2/14/24 Hearing Tr. at 79-81.

Response to Agency Recommendation Paragraph 18

Similarly, the Agency’s claim in Paragraph 18 that “Old Pond is a settling pond,” is incorrect, primarily because the Agency invented the term “Old Pond.” 2/13/24 Tr., p. 258-259. Also, as Mr. Dehlin testified, the only mechanism that was occurring in the Original Slag Field until 1970, when the Original Ash Pond was constructed, was infiltration, not settling. 2/14/24 Tr., p. 81. He further explained that the exhibits cited by the Agency are permit documents submitted after the Station constructed the Original Ash Pond, which occupied the eastern two-thirds of the site and did not include the Grassy Field. 2/14/24 Tr., p. 81-82.

Response to Agency Recommendation Paragraph 19

The Agency’s Paragraph 19 is also inaccurate. The Agency claimed that the Station “treated” sluiced wastewater by “settling out” the CCR, citing Agency Exhibit 2 (1946 aerial photograph). Mr. Dehlin explained that was incorrect because, in 1946, the Station was not treating sluiced wastewater. It was sluicing wastewater to a slag field, which would then infiltrate through the sand floor or run off into the South Ditch, leaving CCR solids behind. 2/14/24 Tr., p. 82. Indeed, in the same Paragraph 19, the Agency itself correctly describes the activity: “As the CCR sluice water flowed into the depressions, the naturally sandy conditions allowed the water to slow down and infiltrate into the ground.” Recom. ¶ 19; 2/14/24 Tr., p. 83-84. However, Mr. Dehlin points out that because the water is infiltrating into the ground, there is no accumulation of water. 2/14/24 Tr., p. 83-84. Mr. Dehlin concludes:

The Agency is incorrectly concluding that ash sluice water being sent to this area makes it a CCR surface impoundment. But because we have infiltration and not accumulation—specifically accumulation to allow for sedimentation to occur—this site is not being operated, and certainly was not designed to operate, as a CCR surface impoundment.

2/14/24 Tr., p. 84:14-21. He further clarified that in 1946, the area was not designed to accumulate both CCR and liquids as required under the definition in Section 3.143 of the Act. 415 ILCS 3.143; 2/14/24 Tr., p. 84:22-85:5.

Response to Agency Recommendation Paragraph 20

In Paragraph 20, the Agency incorrectly asserts that in 1974 the Site was used to “settle” CCR from the sluice water. 2/14/24 Tr., p. 86:10-24. Rather, as Mr. Dehlin explained, the mechanism of settling CCR was only occurring in the diked portion in the eastern two-thirds of the area built in 1970. *Id.* Mr. Dehlin further explained that the 1974 aerial photo (Agency Ex. 4) shows the embankment around the eastern two-thirds of the area, and specifically shows that the western embankment of the diked area stops at the Grassy Field, confirming that the Grassy Field is not being used as a settling basin. 2/14/24 Tr., p. 87. Mr. Dehlin referred back to slide 15 of his presentation, which overlaid a topographic heat map over the 1974 aerial photograph, and showed that, rather than retaining water to enable settling action, the Grassy Field was maintained to ensure drainage of liquid into the surrounding ditches. 2/14/24 Tr., p. 87:15-88:3. Mr. Dehlin also stated that the Agency’s reliance on an engineer’s sketch of the area from a 1974 NPDES permit record (Agency Exhibit 32) to support its claim in Paragraph 20 was wrong. Rather, the sketch shows an enclosed loop that represents the diked area (*i.e.*, the Original Ash Pond), “and specifically excludes the area containing the Grassy Field between the western embankment of the Original Ash Pond and the western property line.” 2/14/24 Tr., p. 88-89.

Response to Agency Recommendation Paragraph 21

The Agency’s discussion in their Paragraph 21 of a “pond” as a CCR surface impoundment is also wrong. As Mr. Dehlin explained, the berms the Agency identified in Exhibit 4 (1974 aerial photo of the Station) and Exhibit 32 at 17 (engineer’s drawing of the area from a 1974 NPDES permit), are the berms for the Original Ash Pond, which only occupied the eastern two-thirds of the site and did not include the Grassy Field. 3/14/24 Tr., p. 89-90. Mr. Dehlin further explained that through the Agency’s repeated use of the imprecise term “Old Pond,” the Agency “is trying to imply that the entire area functioned as an ash settling pond at this time, when it did not.” 2/14/24 Tr., p. 90. Instead, in Paragraph 21, the Agency was describing the Original Ash Pond that occupied the eastern two-thirds of the site.

Response to Agency Recommendation Paragraph 22

In Agency Recommendation Paragraph 22, the Agency states that “Old Pond received CCR that had been sluiced,” again citing Exhibit 32 (1974 NPDES permit). As Mr. Dehlin testified, while this statement would be correct if the term “Old Pond” referred to the Original Slag Field, which did receive sluiced CCR, the Agency appears to be implying here, in this context of other statements being made by the Agency about how CCR surface impoundments are used, that the fact that an area received sluiced CCR makes the area a CCR surface impoundment. However, the method by which materials reach an area, including by sluicing, is not a part of the definition of CCR surface impoundment, as the Agency has stipulated. 2/13/24 Tr., p. 259, 264-265; 2/14/24 Tr., p. 91-92.

Response to Agency Recommendation Paragraph 23

In Agency Recommendation Paragraph 23, the Agency states that “[b]y 1946, Old Pond was receiving CCR that had been sluiced to the dune field,” citing Agency Exhibit 2 (1946 aerial photograph of the site), and goes on to describe a “delta” it claims is visible in the photograph, which the Agency asserts supports its claim that the area was a CCR surface impoundment. As Mr. Dehlin testified, however, this delta in fact would represent CCR being contained in the area, not liquid, with liquid flowing away into the surrounding ditches. 2/14/24 Tr., p. 92-93. In

addition, Agency Water Pollution Control Division Permit Section Manager Darin LeCrone testified that he could not tell from looking at the 1946 photo whether there is any liquid present. 2/13/24 Tr., p. 310.

Response to Agency Recommendation Paragraph 24

In Agency Recommendation Paragraph 24, the Agency describes how, by 1974, the area continued to receive sluiced CCR, citing the 1974 NPDES application at Agency Exhibit 36. Again, however, as Mr. Dehlin testified, by 1974 the Original Ash Pond had been built in the eastern two-thirds of the site, excluding the Grassy Field, and was the area receiving any sluiced CCR. Further, once again, as the Agency has stipulated, whether material is sluiced to an area is not a part of the definition of CCR surface impoundment and is not relevant to the evaluation of whether the Grassy Field or any other area is a CCR surface impoundment. 2/13/24 Tr., p. 259; 2/14/24 Tr., p. 93-94.

Response to Agency Recommendation Paragraph 25

In Agency Recommendation Paragraph 25, the Agency cites to a portion of USEPA's 2015 CCR surface impoundment rule describing how a settling pond receiving sluiced CCR would meet the definition of CCR surface impoundment and stating that the USEPA's scenario was applicable because "Old Pond was a settling pond receiving sluiced CCR from ComEd." However, as Mr. Dehlin testified, the Agency's term "Old Pond" refers to the Original Slag Field area encompassing the entire present day area occupied by Grassy Field, East Pond, and West Pond, so this assertion is incorrect, as the only settling pond at the site—the Original Ash Pond predating the East Pond and West Pond—occupied only the eastern two-thirds of the site, to the exclusion of the Grassy Field area. 2/14/24 Tr., p. 95-96. Further, once again, as the Agency has stipulated, whether material is sluiced to an area is not a part of the definition of CCR surface impoundment and is not material at all to the evaluation of whether the Grassy Field or any other area is a CCR surface impoundment. 2/13/24 Tr., p. 259; 2/14/24 Tr., p. 95-96.

In Paragraph 25, the Agency also states: "Old Pond met the definition of a CCR surface impoundment because it utilized the natural topographic depression design within the dune field to hold an accumulation of CCR (directly sluiced CCR from ComEd)." As Mr. Dehlin testified, this assertion is missing the term "liquids." 2/14/24 Tr., p. 96. The definition of CCR surface impoundment requires that an area be designed to hold an accumulation of both CCR and liquids, so the Agency's assertion here that the area holds an accumulation of CCR, not liquids, in fact supports that the Original Slag Field was not a CCR surface impoundment. 2/14/24 Tr., p. 96-97.

Further in Paragraph 25, the Agency states that the Station "also engaged in the treatment of CCR through its settling operation as a settling pond," citing Agency Exhibit 2 (1946 aerial photograph of the area). As Mr. Dehlin testified, this assertion is incorrect because, in 1946, the mechanism of separating ash from water would have been through infiltration, a mechanism that does not involve an accumulation of liquids, as opposed to sedimentation or settling. 2/14/24 Tr., p. 97-98. In addition, Agency Water Pollution Control Division Permit Section Manager Darin LeCrone testified that he could not tell from looking at the 1946 photo whether there is any liquid present. 2/13/24 Tr., p. 310.

Finally, in Paragraph 25, the Agency states that, by 1961 and 1974, "Old pond designed man-made excavations and dikes (berms) within the dune field to settle CCR from sluice water..." citing Agency Exhibits 4 (1974 aerial photograph) and 32 (1974 NPDES permit record). As Mr.

Dehlin testified, in addition to the fact that neither of these cited exhibits, being created in 1974, provide any information as to 1961 operations, the excavations and dikes/berms described by the Agency and in these exhibits are located in the eastern two-thirds of the area, the location of the Original Ash Pond, which did not encompass the Grassy Field. 2/14/24 Tr., p. 98-99.

Response to Agency Recommendation Paragraph 27

In Agency Recommendation Paragraph 27, the Agency states, “ComEd was issued a permit stating ComEd would construct and operate two water pollution control facilities to replace the single settling basin (Old Pond) that existed previously,” citing Agency Exhibit 33 (a 1977 NPDES permit record) at 23. As Mr. Dehlin testified, through this citation the Agency appears to be referring to the following statement in the permit record: “The existing ash pond will be modified to provide for easier and redundant operation. The existing single pond will be split into two separate ponds...each approximately 10 acres.” MWG Ex. 41, p. 17. Mr. Dehlin described the Agency’s statement as “accurate, but not precise” because the permit record is referring to the settling pond (Original Ash Pond) that occupied only the eastern two-thirds of the area, to the exclusion of the Grassy Field, and not the entire area, as implied by the Agency’s term Old Pond. 2/14/24 Tr., p. 99-100. Accordingly, the Grassy Field was not included in this operation to split the settling pond into two water pollution control facilities. 2/14/24 Tr., p. 99-100.

The Agency’s statement in the next sentence of Paragraph 27 - that the permit established that “Old Pond,” *i.e.*, the entire Original Slag Field area, would be split into the three present areas (citing Agency Exhibit 45 at 13¹) - conflicts with the Agency’s prior statement in which the Agency states that “Old Pond” would be replaced by two water pollution control facilities. 2/14/24 Tr., p. 100-103. In other words, the Agency contradicts itself in this attempt to argue that the “existing pond” referenced in Agency Exhibit 33 is the same as the “Old Pond,” *i.e.*, the entire Original Slag Field, when, in fact, that “existing pond” was really the Original Ash Pond that occupied only a portion of the area and was later split into the present-day East and West Ash Ponds—and not the Grassy Field. 2/14/24 Tr., p. 100-103. Mr. Dehlin concluded that neither Exhibit 33 nor Exhibit 45 supported the Agency’s contention that the Grassy Field was a CCR surface impoundment because both exhibits refer to only the eastern two-thirds of the Site, excluding the Grassy Field. 2/14/24 Tr., p. 103.

Response to Agency Recommendation Paragraph 28

The Agency stated in Paragraph 28 that “Old Pond was a depression or excavation, was designed to hold an accumulation of CCR and liquids and the CCR surface impoundment stores or disposes of CCR.” Mr. Dehlin pointed out at the Agency did not cite to a single document or exhibit to support that claim. 2/14/24 Tr., p. 104. Mr. Dehlin stated that the Agency’s claim that the Original Slag Field was a CCR surface impoundment was not correct because the “area was not designed to hold an accumulation of CCR and liquids.” 2/14/24 Tr., p. 104.

¹ The drawing at Agency Exhibit 45 (History of Construction) page 13, which shows the modifications that were to be made to the site as part of the wastewater treatment facilities project, is essentially the same as the drawing found at Agency Exhibit 41 page 4 (1977 Permit Record). 2/14/24 Tr., p. 102. These drawings show that the Original Ash Pond/“settling basin,” which was going to be split into the present-day East and West Ash Ponds, only occupied the eastern two-thirds of the site, and the Grassy Field was not a part of it. 2/14/24 Tr., p. 102-103.

Response to Agency Recommendation Paragraph 29

The Agency claimed in Paragraph 29 that an excerpt from a 2018 USWAG decision supports its interpretation of “is designed to hold.” (*Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 438-42 (D.C. Cir. 2018)). But Mr. Dehlin explained that the Agency’s interpretation is wrong, because of a distinct difference: the Original Slag Field was never “designed” in the first place. 2/14/24 Tr., p. 104-105. In the USWAG decision, the CCR had been disposed of in the past and continued to be present at the Sites. Thus, the court held that the phrase “is disposed of” applied to CCR disposal that “took place at some prior time.” *USWAG* at 438-42. Here, as Mr. Dehlin stated, the Original Slag Field was *never* designed to accumulate liquids. 2/14/24 Tr., p. 104-105. Because the Original Slag Field was not designed to accumulate liquids at a “prior time,” the 2018 USWAG decision does not support the claim that the Original Slag Field falls within the definition of a CCR surface impoundment.

Response to Agency Recommendation Paragraph 30

The Agency stated in Paragraph 30: “Old Pond was never lined and is located on beach sand, allowing rapid infiltration of liquids from the impoundment.” As Mr. Dehlin testified, in his expert opinion “rapid infiltration” does not meet the Agency’s proffered definition of “to enclose” and “keep in a container” or “within bounds.” 2/14/24 Tr., p. 105-106. Instead, “By infiltration, rapid infiltration, water is leaving that area. You are not allowing liquids to accumulate.” *Id.* Mr. Dehlin further stated that the Agency’s claim that the act of keeping or retaining could be a temporary condition was wrong in the context of a CCR surface impoundment. *Id.*, p. 107. He explained that for a CCR surface impoundment to operate there must be an accumulation of liquids because the depth and volume of water allows for the ash particles to settle to the pond floor. *Id.* In comparison, for infiltration, water is not contained or retained; it is “leaving out through the pond or sand floor.” *Id.*, p. 108. Mr. Dehlin concluded that the Agency’s definition of “hold” is “the opposite of infiltration.” *Id.* Instead, as he stated:

If you have an opening anywhere in that container, whether it be the sides or through the floor, you’re not holding anything. It’s either infiltrating out through the bottom -- even if you just consider like one side of the container open, it’s -- the water’s going to move out through that open opening. It’s a ditch, right? A ditch can contain water within its area, but the purpose of a ditch isn’t to hold it, it’s to convey it.”

2/14/24 Tr., p. 108.

Response to Agency Recommendation Paragraphs 32 and 33

In Agency Recommendation Paragraphs 32 and 33, the Agency attempts to refute certain alleged arguments by MWG that discharges from an area preclude an area’s regulation under Part 845 or indicate that an area did not accumulate liquids, citing Station NPDES permitting documentation. However, as Mr. Dehlin testified, the NPDES documentation for the Station pertains to the actual ash ponds that existed at the Station in 1972, which was the Original Ash Pond. 2/14/24 Tr., p. 108-109. The Original Ash Pond only occupied the eastern two-thirds of the area, excluding the Grassy Field area, and ultimately became the East and West Ash Ponds. *Id.* Therefore, Mr. Dehlin concluded that the NPDES permitting documentation (Exhibits 32 and 33) has no applicability to the Grassy Field. 2/14/24 Tr., p. 108-109.

Response to Agency Recommendation Paragraph 35

In Agency Recommendation Paragraph 35, the Agency states: “Grassy Field is a CCR surface impoundment that stopped receiving CCR by 1980 when East and West Ponds were constructed on top of the eastern two thirds of Old Pond,” citing Agency Exhibit 45 (History of Construction) at 13 and Agency Exhibit 5 (1980 aerial photograph of the site). Mr. Dehlin stated that several corrections to this statement were necessary: 1) The Grassy Field is not a CCR surface impoundment; 2) The Grassy Field area, which was originally part of the Original Slag Field, stopped receiving CCR at the same time the Original Slag Field did, which was around 1970, not 1980; 3) The Original Slag Field did not function as a pond, and the original pond that was in the area occupied the eastern two thirds of the area and did not include the Grassy Field area. 2/14/24 Tr., p. 109-110. With respect to the exhibits relied upon by the Agency, Mr. Dehlin added that while Agency Exhibit 45 at page 13 supports that the East and West Ponds were constructed on top of the eastern two-thirds of the Original Slag Field area, it does not support that the Grassy Field is a CCR surface impoundment; and neither does Agency Exhibit 5, which is a photograph taken in 1980, after the area was graded to drain storm water to the west and seeded. 2/14/24 Tr., p. 109-111.

Response to Agency Recommendation Paragraph 36

In Agency Recommendation Paragraph 36, the Agency discusses the lack of evidence that “CCR materials were removed or covered in a manner that would prevent infiltration” and that the area had not been closed. However, as Mr. Dehlin testifies, the closure status of an area is not relevant to whether the area qualifies as a CCR surface impoundment under the definition. 2/14/24 Tr., p. 112. The CCR surface impoundment definition requires that an area be designed to hold an accumulation of CCR and liquid, and the purpose of that requirement is to promote sedimentation. *Id.* As Mr. Dehlin testified, “An area that is still allowing for infiltration, regardless of whether or not it’s been closed, is not going to be classified as a CCR surface impoundment under the statutory definition.” 2/14/24 Tr., p. 112. Mr. Dehlin also observed, speaking to the Agency’s apparent concern that there be a cover to “prevent infiltration” in the area, that, as both Ms. Sheeley and Mr. Dorgan testified, MWG has in fact already proposed to the Agency installing an engineered cover over the Grassy Field, which would preclude the infiltration of rainwater into the CCR in the area. 2/14/24 Tr., p. 113.

Response to Agency Recommendation Paragraph 43

In Agency Recommendation Paragraph 43, the Agency attempts to refute MWG’s characterization of the Grassy Field as an area of historic unconsolidated fill by asserting that “aerial photos from 1946, 1961, and 1974 and the 1974 NPDES permit application demonstrate the Grassy Field received sluiced CCR when it was part of the larger Old Pond,” citing Agency Exhibits 2 (1947 aerial photograph), 3 (1961 aerial photograph), and 36 (1974 NPDES permit records) at 28. However, as Mr. Dehlin testified, there are several problems with the Agency’s argument here. 2/14/24 Tr., p. 114. First, again, as the Agency has stipulated, the manner in which an area received CCR, whether by sluicing or otherwise, has no bearing on whether the area is classified as a CCR surface impoundment under the statutory definition. 2/13/24 Tr., p. 259; 2/14/24 Tr., p. 114. Secondly, understanding “the larger Old Pond” to mean the Original Slag Field, it is accurate that the area received sluiced CCR in 1946 and 1961 when the Original Slag Field was operating, but, by 1974, the eastern two-thirds had been converted into a settling

basin, the Original Ash Pond, and the Grassy Field area no longer received CCR. 2/14/24 Tr., p. 114-115. The Grassy Field was never part of an old pond. 2/14/24 Tr., p. 115.

Response to Agency Recommendation Paragraph 44

In Agency Recommendation Paragraph 44, the Agency states: “The Old Pond was operated in the same location as the West Pond and East Pond in addition to the 10-acre Grassy Field area to the west of the West Pond,” citing Agency Exhibit 45 (History of Construction) at 13 and Agency Exhibit 33 (1977 NPDES permit record) at 23. As Mr. Dehlin testified, the Agency is relying on the language in Agency Exhibit 33 describing how the Station’s “existing [single] ash pond” will be “split into two separate ponds,” “each approximately 10 acres.” 2/14/24 Tr., p. 115-118. But this reference only relates to how the Original Ash Pond would be split into two, the East and West Ash Ponds, and does not involve a third area, *i.e.*, the Grassy Field. 2/14/24 Tr., p. 115-118. In addition, Agency Exhibit 45 at 13 does not support the Agency’s statement that the Old Pond comprised all three areas at the site because it is a drawing that clearly shows that the Original Ash Pond at the site only occupied the area currently occupied by the West Pond and the East Pond. Further, this drawing shows the original outlines of the Original Ash Pond that existed in the area, confirming that the extent of the Original Ash Pond only occupied the eastern two-thirds of the area and excluded the Grassy Field—*i.e.*, the Grassy Field is not included in the Original Ash Pond boundary. 2/14/24 Tr., p. 115-118.

Response to Agency Recommendation Paragraph 45

In Agency Recommendation Paragraph 45, the Agency states, “The Agency has found no information indicating that the bottom of Old Pond was lined, including the Grassy Field portion.” As Mr. Dehlin testified, this statement is flawed because the Grassy Field was not part of the Original Ash Pond that existed at the site—the Original Ash Pond occupied the eastern two-thirds of the site, to the exclusion of the Grassy Field. 2/14/24 Tr., p. 118-119.

The Agency further states: “The Grassy Field remains an unlined, inactive CCR surface impoundment as defined by 35 Ill. Adm. Code 845.120.” As Mr. Dehlin testified, this statement is inaccurate because, to be an inactive CCR surface impoundment under the cited definition, it must first be a CCR surface impoundment, which the Grassy Field is not. 2/14/24 Tr., p. 119.

Response to Agency Recommendation Paragraph 46

In Agency Recommendation Paragraph 46, the Agency states, “As described above, Grassy Field originated from Old Pond.” As Mr. Dehlin testified, this statement is inaccurate because the Grassy Field was not part of the Original Ash Pond that existed at the site—the Original Ash Pond occupied the eastern two-thirds of the site, to the exclusion of the Grassy Field. 2/14/24 Tr., p. 119-120.

Further, the Agency again states, “Old Pond is an inactive CCR surface impoundment.” Again, Mr. Dehlin testified that the Old Pond cannot be considered an inactive CCR surface impoundment if one is referring to the Original Slag Field area because the Original Slag Field area was not a CCR surface impoundment. 2/14/24 Tr., p. 120.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-003
PETITION OF MIDWEST)
GENERATION, LLC FOR AN)
ADJUSTED STANDARD FROM) (Adjusted Standard)
845.740(a) AND FINDING OF)
INAPPLICABILITY OF PART 845)

Appendix C

Midwest Generation, LLC's Responses to the Board's Pre-Filed Questions for the Waukegan Station Petition for Adjusted Standard

Midwest Generation, LLC ("MWG") responded to the Illinois Pollution Control Board's ("Board") pre-filed questions via testimony at the February 13 and 14, 2024, hearing for the Petition for Adjusted Standard at the Waukegan Station. MWG further filed certain data requested by the Board pertaining to Board Questions 5 and 6 on April 3, 2024. The responses presented at the hearing and filed at a later date are summarized below.

Questions Directed to MWG

Board Question 1: Is Midwest Generation aware of any closure activities conducted on the Old Pond?

- a. If so, can Midwest Generation provide documentation?
- b. What were the nature of these activities?
- c. If not, are there plans to close the Old Pond in the future?

Summary of MWG's Response:

Answer to No. 1: MWG presumes that by "Old Pond" the Board meant the Grassy Field because the Illinois Environmental Protection Agency ("Agency") stipulated that it "created the term 'Old Pond'", and the term "is not in any Illinois EPA permitting records for the Waukegan Station." 2/13/24 Tr., p. 258:23-259:3.

Investigations that would lead to a remedial design have been implemented, and MWG's expert Mr. Dorgan used that information to present his recommended remedial approach of a cap. 2/13/24 Tr., p. 236:8-17. MWG collected soil borings and soil samples throughout the Grassy Field (see answer to 1(a)) and offered to enter it into the Illinois Site Remediation Program ("SRP"). 2/13/24 Tr., p. 69-71. MWG has also conducted groundwater monitoring for many years. 2/13/24 Tr., p. 235:6-13. However, MWG could not take any other action without Agency approval, and as Sharene Shealey testified: "...it would not be prudent for us to move to closure of that area and then...have the Board decide that [the Grassy Field is] a CCR surface impoundment. We would just be in a pickle for lack of a better description." 2/13/24 Tr., p. 70:15-22.

Answer to No. 1(a): MWG presented at the hearing and filed with the Board MWG Exhibit 43 consisting of boring logs and laboratory analytical reports collected from the Grassy Field in 2020. 2/13/24 Tr., p. 116-118.

Answer to No. 1(b): In addition to MWG Ex. 43, the Weaver Report, MWG Exhibit 37, at pages 41-42, contains a summary of the nature of the activities including investigation and a description of the findings, along with summary tables and other information consolidating the data in this package. A description of the activities is included in MWG Ex. 38, pp. 73-81. Mr. Dorgan explained this data at the hearing. 2/13/24 Tr., pp. 105-125.

Board Question 2: Was the CCR from the western third of the Old Pond removed before the construction of the Grassy Field?

Summary of MWG's Response: MWG presumes that by "Old Pond" the Board meant the Inactive Slag Field portion of the Original Slag Field because the Agency stipulated that it "created the term 'Old Pond'", and the term "is not in any Illinois EPA permitting records for the Waukegan Station." 2/13/24 Tr., p. 258:23-259:3.

Mr. Dehlin explained at hearing that the 1970 aerial photograph of the Station (MWG Exhibit 41, p. 11) shows visible cuts within the CCR in the Inactive Slag Field area, which indicates that at least some CCR was removed from the Inactive Slag Field before the area was converted into the Grassy Field. 2/14/24 Tr., p. 47-48.

Board Question 3: Are there better-quality versions of the chart/diagrams on pages 9-10 of Exhibit 22? It is difficult to decipher.

Summary of MWG's Response: MWG advised the Board at hearing that the images provided were the best available, given the historic nature of the documents, but Agency Exhibit 32 may contain at least clearer scans of these pages. 2/14/24 Tr., p. 49-50.

Board Question 4: If the Grassy Field is/has been used for the storage of "unconsolidated fill" what is the status of these piles?

Summary of MWG's Response: Mr. Dehlin confirmed at hearing that there are no piles of CCR on the Grassy Field. 2/14/24 Tr., p. 67:20-21. Instead, Mr. Dehlin clarified that the Grassy Field contains non-containerized fill that was placed on land but is not exposed and is not "piles." Instead, the area is graded and seeded, and there is no ash visible: "This ash was graded and provided vegetative cover in the 1970s and has remained that way since." 2/14/24 Tr., p. 67:14-16. Mr. Dehlin also pointed to MWG Ex. 17, which consists of pictures of the Grassy Field that do not show piles of CCR. 2/14/24 Tr., p. 67.

Board Question 5: Is there any groundwater data available from monitoring wells upgradient and downgradient of the Grassy Field?

- a. If it is available, please provide the data from those monitoring wells.

Summary of MWG's Response: At the hearing, MWG sought clarity from the Board on this request, and the Board confirmed that it was seeking total metals groundwater data from 2015 to present. 2/13/24 Tr., p. 295:7-8. On April 3, 2024, MWG filed the total metals groundwater data from 2015 to present as requested by the Board's Pre-Filed Questions 5 and 6. However, it is important to note that the Agency stipulated that: "The groundwater sampling and the analytical results at the Waukegan Station have no bearing or relevance as to whether the grassy field is a CCR surface impoundment." 2/13/24 Tr., p. 259:14-17.

Board Question 6: Does Midwest Generation have any available data on levels of the constituents listed in 845.600(a)(1) not included in the CCA? Such as:

- a. Lithium
- b. Molybdenum.

Summary of MWG's Response: Please see answer to Question No. 5

Board Question 7: Can Midwest Generation provide any information regarding the characteristics of the CCR that the Old Pond contained?

Summary of MWG's Response: MWG presumes that by "Old Pond" the Board meant the Grassy Field because the Agency stipulated that it "created the term 'Old Pond'", and the term "is not in any Illinois EPA permitting records for the Waukegan Station." 2/13/24 Tr., p. 258:23-259:3.

MWG introduced at the hearing and filed with the Board MWG Exhibit 43 consisting of boring logs and laboratory analytical reports collected during Mr. Dorgan's 2020 investigation of the Grassy Field. 2/13/24 Tr., p. 116-118.

Board Question 8: The Alternative Source Demonstration (ASD) included as Exhibit 15 hypothesizes that the source of contamination is upgradient of MW-05. Have there been any further investigations into the source of contamination?

- a. Has the Grassy Field or the Old Pond been ruled out as possibilities as sources of the contamination?
- b. If not, would a new ASD be useful in determining whether the Grassy Field or the former Old Pond are the source of contamination?

Summary of MWG's Response:

Answer to 8: Mr. Dorgan stated that there have been further investigations into the source of the contamination at MW-05, including the investigation of the Grassy Field (MWG Ex. 43). 2/13/24 Tr., p. 119:20-121:4. However, as stated above, the Agency stipulated that: "The groundwater sampling and the analytical results at the Waukegan Station have no bearing or relevance as to whether the grassy field is a CCR surface impoundment." 2/13/24 Tr., p. 259:14-17.

Answer to 8(a): Mr. Dorgan stated that the Grassy Field is identified as a potential source of the contamination under MW-5, which is the reason he proposed a remedy for the area. 2/13/24 Tr., p. 121:5-11. Another source is the Griess-Pfleger Tannery and the former General Boiler sites (collectively “Tannery Site”) to the west and upgradient. 2/13/24 Tr., p. 33, 102, 109-110; 125-126; 238. There is soil and groundwater contamination on the Tannery Site based upon the historic uses of the properties. 2/13/24 Tr., p. 109-110; 125-126; 238. It is being remediated under the SRP. 2/13/24 Tr., p. 64, 109. As part of the risk-based closure allowed under the SRP, the Tannery Site owners established an Environmental Land Use Control (“ELUC”) on the western portion of MWG’s property, and installed approximately six groundwater wells on MWG’s property. 2/13/24 Tr., p. 64-65, 110-111, 114. The ELUC on the western side of MWG’s property limits the use of the groundwater and restricts disturbance of soils. 2/13/24 Tr., p. 110-111, 125-127. Groundwater containing contamination exceeding the Illinois Class I standards continues to migrate from the Tannery Site onto the Waukegan Station. 2/13/24 Tr., p. 110, 238.

Answer to 8(b): MWG presumes that by “Old Pond” the Board meant the Grassy Field because the Agency stipulated that it “created the term ‘Old Pond’”, and the term “is not in any Illinois EPA permitting records for the Waukegan Station.” 2/13/24 Tr., p. 258:23-259:3. Because other potential sources have been identified, MWG understands from the Board that no additional response is required.

Questions Directed to IEPA

Board Question 1: In Agency Exhibit 34 *Table 2: Groundwater Analytical Results – Midwest Generation LLC, Waukegan Station, IL*, there are sampling events with different detection limits between events and some detection limits are above the standard. Is IEPA aware of the reason for this? Some examples include:

- a. For MW-05, the boron results from August 17, 2020, through February 9, 2022 have a detection limit of 5.0 mg/L when the boron standard under 845.600(a)(1) is 2.0 mg/L.
- b. For MW-07, the sulfate results from April 22, 2020, have a detection limit of 4500 mg/L when the sulfate standard under 845.600(a)(1) is 400 mg/L.
- c. Were different methods used to analyze groundwater between sampling events and/or wells?

Summary of MWG’s Response: Illinois EPA provided answers to this question stating that it reviewed “several of Petitioner’s quarterly submissions similar to Exhibit 34,” and that “it appears as though the sampling methods have been consistent. The Agency believes the dilution of samples to complete the analyses explains the variable reporting limits.” Illinois EPA’s Response to the Board’s Questions (2/9/24), p. 2. MWG also provided additional answers to the question, however, it is important to note that the Agency stipulated that: “The groundwater sampling and the analytical results at the Waukegan Station have no bearing or relevance as to whether the grassy field is a CCR surface impoundment.” 2/13/24 Tr., p. 259:14-17.

Answer to Question 8(a): Mr. Dorgan explained that the detection limit is a function of the sample itself and can vary from time to time. 2/13/24 Tr., p. 122:21-24. For the boron results in

MW-05, the detected concentrations were above the detection limit of 5.0 mg/l and above the Class I groundwater standard. 2/13/24 Tr., p. 122:15-20. Because the boron results were above the detection limit of 5.0 mg/l and the standard, the fact that the detection limit was above the standard was not relevant. 2/13/24 Tr., p. 123:1-4.

Answer to Question 8(b): Mr. Dorgan noted that the elevated detection limit for sulfate only occurred in the first monitoring event on the table, and the remaining detection limits were below the Class I groundwater standard. 2/13/24 Tr., p. 123:16-24. Mr. Dorgan investigated the elevated detection limit for sulfate and found that the laboratory had an old instrument in place for that one sampling event, which it replaced with a newer instrument that had lower detection limits below the Class I groundwater standard. 2/13/24 Tr., p. 124:1-11.

Answer to Question 8(c): The analytical methods for both sampling events were not different. 2/13/24 Tr., p. 124:12-15.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	AS 2021-003
PETITION OF MIDWEST)	
GENERATION, LLC FOR AN)	
ADJUSTED STANDARD FROM)	(Adjusted Standard)
845.740(a) AND FINDING OF)	
INAPPLICABILITY OF PART 845)	

APPENDIX D

Region	State	Plant Name	Unit Name	CCR Weblink	In Proposal?
5	IN	AES Petersburg	Ash Pond D	http://ccr-petersburg.com/Home/default.aspx	Yes
5	IN	AES Petersburg	Ash pond B	http://ccr-petersburg.com/Home/default.aspx	Yes
2	NY	Albany Steam Power Station (Bethlehem Energy Center)	Beacon Island	(not regulated)	No
8	ND	Antelope Valley	Landfill	https://www.basinelectric.com/environment/coal-combustion-residuals-ccr-rule-compliance-data-and-information/	No
8	CO	Arapahoe	Discharge Pond	https://www.xcelenergy.com/stateselector?stateSelected=true&goto=%2Fcoal_ash_management	Yes
8	CO	Arapahoe	Emergency Pond	https://www.xcelenergy.com/stateselector?stateSelected=true&goto=%2Fcoal_ash_management	Yes
8	CO	Arapahoe	Ash Pump Pond	https://www.xcelenergy.com/coal_ash_management	No
8	CO	Arapahoe	South Storm Water/Process Water Pond	https://www.xcelenergy.com/coal_ash_management	No
8	CO	Arapahoe	North Storm Water/Process Water Pond	https://www.xcelenergy.com/coal_ash_management	No
5	MN	Austin Northeast	Solid waste disposal area	https://www.austinutilities.com/pages/CCRRule/	Yes
5	MI	B C Cobb	CCR disposed below Bottom Ash Pond	https://merg-ccrrule.com/	Yes
5	MI	B C Cobb	CCR disposed below Ponds 0-8	https://merg-ccrrule.com/	Yes
5	IL	Baldwin Energy Complex	Secondary Pond	https://www.luminant.com/ccr/	Yes
5	IL	Baldwin Energy Complex	Tertiary Pond	https://www.luminant.com/ccr/	Yes
5	MI	Belle River	ash landfill pond	https://www.dteenergy.com/us/en/residential/community-and-news/environment/coal-combustion-residual-rule-compliance-data-and-information.html	No
5	MN	Black Dog	Legacy On site Ash Basin	https://www.xcelenergy.com/coal_ash_management	Yes
8	UT	Bonanza	Historical unit	https://apps.deseretpower.com/apex/f?p=400:40:15000612199970::NO::	Yes
4	GA	Bowen	Impoundment	https://www.georgiapower.com/company/environmental-compliance/plant-list/plant-bowen.html	No
5	IN	Breed	Landfill	(not regulated)	Yes
3	PA	Brunner Island	Ash Basin 5	https://www.talenenergy.com/generation/fossil-fuels/ccr-brunner-island	Yes
4	TN	Bull Run	Bottom Ash Disposal Area 1	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Bull Run	BRF/KIF Regional Landfill	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Bull Run	Dry Fly Ash Disposal Area	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Bull Run	East/West Dredge Cell	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Bull Run	Gypsum Disposal Area 2A	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	KY	Cane Run	Legacy landfill	https://lge-ku.com/CCR	Yes
5	IN	Cayuga (IN)	Historical Ash Ponds	https://www.duke-energy.com/environment/reports/ccr-compliance.asp	Yes
2	NY	Cayuga (NY)	Landfill Phase 1	scoc1.weebly.com	Yes
2	NY	Cayuga (NY)	Landfill Phase 2	scoc1.weebly.com	Yes
3	VA	Chesapeake	Historical Pond	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
3	VA	Chesapeake	Lined Landfill	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
5	MN	Clay Boswell	Closed Fly Ash Pond	http://mp-ccr.azurewebsites.net/Boswell	Yes
5	IN	Clifty Creek	Type III Landfill	http://www.ovec.com/CCRClify.php	Yes
3	VA	Clinch River	Ash Pond 2	https://www.aep.com/about/codeofconduct/CCRRule/	Yes
8	ND	Coal Creek	CCR disposed below Upstream Raise 91 impoundment	http://ccr.greatriverenergy.com/	Yes
8	ND	Coal Creek	Landfill 1	https://ccr.rainbowenergycenter.com/	No
8	ND	Coal Creek	Landfill 2	https://ccr.rainbowenergycenter.com/	No
8	ND	Coal Creek	Landfill 3	https://ccr.rainbowenergycenter.com/	No
8	ND	Coal Creek	Landfill 4	https://ccr.rainbowenergycenter.com/	No
8	ND	Coal Creek	Landfill 5	https://ccr.rainbowenergycenter.com/	No
5	IL	Coffeen	Fly Ash Landfill & FGD Reclaim Pond	https://www.luminant.com/ccr/#coffeen	No
4	AL	Colbert	#5 Dry Stack (fly ash)	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	AL	Colbert	#5 Inactive Ash Pond	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	AL	Colbert	#5 Stilling Pond	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	AL	Colbert	Copper Pond / Ash Pond 4	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	AL	Colbert	Old #1 Ash Pond	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
8	MT	Colstrip Energy LP	Landfill 1	https://www.talenenergy.com/ccr-colstrip/	No
8	MT	Colstrip Energy LP	Landfill 2	https://www.talenenergy.com/ccr-colstrip/	No
8	MT	Colstrip Energy LP	1 & 2 A Pond	https://www.talenenergy.com/ccr-colstrip/	Yes
8	MT	Colstrip Energy LP	Former 1&2 Bottom Ash Pond	https://www.talenenergy.com/ccr-colstrip/	Yes
8	MT	Colstrip Energy LP	1&2 Step B Cell	https://www.talenenergy.com/ccr-colstrip/	Yes
8	MT	Colstrip Energy LP	Stage 1 Evap Pond	https://www.talenenergy.com/ccr-colstrip/	Yes
8	MT	Colstrip Energy LP	A Cell	https://www.talenenergy.com/ccr-colstrip/	Yes
5	WI	Columbia (WI)	Closed Ash Ponds Landfill	http://ccr.alliantenergy.com/	Yes
5	OH	Conesville	Historical Ash Pond	https://conesvilleindustrialpark.com/	Yes
5	OH	Conesville	Pozzotec Landfill	https://conesvilleindustrialpark.com/	Yes
4	KY	Cooper	Former surface impoundment	https://www2.ekpc.coop/CCR_Rule_Compliance_Data_and_Information.html	Yes
4	SC	Cope	Landfill Leachate Pond	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
4	SC	Cope	Class II Landfill	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
9	AZ	Coronado	Retired LF	https://ccr.srpnet.com/	No
8	ND	Coyote	Landfill 1	http://www.ccr-cs.net/	No
8	ND	Coyote	Landfill 2	http://www.ccr-cs.net/	No
8	ND	Coyote	Landfill 3	http://www.ccr-cs.net/	No
5	IL	Crawford Generating Station	Coal Ash Fill	(not regulated)	No
5	MI	Dan E Karn	Underlying fill	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals#de-karn	Yes
5	MI	Dan E Karn	Bottom Ash Pond	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals#de-karn	Yes
4	NC	Dan River	Former Ash Stack 1	http://www.duke-energy.com/environment/reports/ccr-compliance.asp	Yes

3	MD	Dickerson	Cell C	https://www.genon.com/ccr-rule-compliance	Yes
4	KY	E W Brown	Main Ash Pond	https://lge-ku.com/CCR	Yes
5	IN	Eagle Valley	Exempt Pond D	http://ccr-eaglevalley.com/Home/default.aspx	Yes
5	IN	Eagle Valley	Exempt Pond E	http://ccr-eaglevalley.com/Home/default.aspx	Yes
5	WI	Edgewater	Ash Disposal Facility	http://ccr.alliantenergy.com/	Yes
5	WI	Edgewater	Original CCR surface impoundment	http://ccr.alliantenergy.com/	Yes
5	MI	Erickson Station	Impoundment system	http://www.lbw.com/CCR-Rule-Compliance-Data-and-Information/	Yes
3	WV	FirstEnergy Pleasants Power Station	Downstream portion of impoundment dam	http://ccrdocs.firstenergycorp.com/	Yes
9	NM	Four Corners	Fill around CWPT	https://www.aps.com/en/Utility/Regulatory-and-Legal/Environmental-Compliance	Yes
4	TN	Gallatin	Fly ash sluicing stream	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	Yes
5	OH	General James M Gavin	Bottom Ash Pond	http://gavinpowerccr.com/	No
7	NE	Gerald Gentleman	Historically placed CCR	https://www.nppd.com/ccr-rule-compliance	Yes
5	IN	Gibson	Aggregate Landfill (26-02)	https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data	No
5	IN	Gibson	East Pond #1	https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data	No
5	IN	Gibson	East Pond #2	https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data	No
5	IN	Gibson	East Pond #3	https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data	No
5	OH	Gorsuch	Landfill	(not regulated)	Yes
4	GA	Hammond	Ash Pond 4	https://www.georgiapower.com/company/environmental-compliance/plant-list/plant-hammond.html	No
5	IN	Harding Street	Former Pond 2	http://ccr-hardingstreet.com/Home/default.aspx	Yes
5	IN	Harding Street	Former Pond 4A	http://ccr-hardingstreet.com/Home/default.aspx	Yes
5	IN	Harding Street	Former Pond 4B	http://ccr-hardingstreet.com/Home/default.aspx	Yes
5	IN	Harding Street	Former Pond 4	http://ccr-hardingstreet.com/Home/default.aspx	Yes
3	PA	Hatfields Ferry Power Station	Unidentified Cobalt Source (likely the Leachate Storage Impoundment)	http://ccrdocs.firstenergycorp.com/	Yes
10	AK	Healy	Historical Ash Handling Area	https://www.gvea.com/ccr-rule-compliance/?doing_wp_cron=1613578909.1270420551300048828125	Yes
5	IL	Hennepin Power Station	Ash Pond No. 4	https://www.luminant.com/ccr/#hennepin	Yes
3	PA	Homer City Generating Station	Subsurface Mixing Cells	http://www.homercitygenerationccr.com/	Yes
3	PA	Homer City Generating Station	Leachate Mixing Pond	http://www.homercitygenerationccr.com/	Yes
3	PA	Homer City Generating Station	Leachate Polishing Pond	http://www.homercitygenerationccr.com/	Yes
8	UT	Huntington	Old Landfill	http://www.berkshirehathawayenergyco.com/ccr/ppw.html	Yes
8	UT	Huntington	Historic Landfills	http://www.berkshirehathawayenergyco.com/ccr/ppw.html	Yes
5	AR	Independence Steam Electric Station	CADL Cells 1-11	http://www.entergy-arkansas.com/ccr/indy/	Yes
6	AR	Independence Steam Electric Station	CADL Roadbed BU	http://www.entergy-arkansas.com/ccr/indy/	Yes
5	MI	J B Sims	Ash and waste fill materials	https://ghblp.org/about-us/reports/ccr-rule-compliance-data-and-information/	Yes
5	MI	J B Sims	CCR Disposed below Unit 3 Impoundment	https://ghblp.org/about-us/reports/ccr-rule-compliance-data-and-information/	Yes
5	MI	J H Campbell	Pond B	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond C	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond D (North, Mid, Mid south, and South)	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond F	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond G (G1 and G2)	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond H	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	MI	J H Campbell	Pond K	https://www.consumersenergy.com/community/sustainability/environment/waste-management/coal-combustion-residuals	Yes
5	OH	J M Stuart	Former Pond 8	https://ccrstuart.com/	Yes
8	MT	J. E. Corette	Landfill 1	(not regulated)	No
4	TN	John Sevier Coal Fired Fossil Plant	Ash Disposal Area J	https://www.tva.com/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	Yes
4	TN	John Sevier Coal Fired Fossil Plant	Dry Fly Ash Stack	https://www.tva.com/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	Yes
4	TN	Johnsonville	Ash Sluice Pond	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Johnsonville	DuPont Dredge Cell	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Johnsonville	Retired Ash Pond / Ash Disposal Area 1	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
4	TN	Johnsonville	South Rail Loop	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	No
5	IL	Joliet 29	Landfill	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Joliet 29	Ash Pond 1	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Joliet 29	Ash Pond 3	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Joppa	West Pond 1	https://www.luminant.com/ccr/#joppa	Yes
4	TN	Kingston	Sluice Trench	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	Yes
5	OH	Kyger Creek	North Fly Ash Pond	http://www.ovec.com/CCRKyger.php	Yes
7	IA	Lansing	Original CCR surface impoundment	http://ccr.alliantenergy.com/Lansing/index.htm	Yes
8	ND	Leland Olds	Landfill 1	https://www.basinelectric.com/environment/coal-combustion-residuals-ccr-rule-compliance-data-and-information/	No
8	MT	Lewis & Clark	Landfill 1	https://www.montana-dakota.com/energy-efficiency/ccr-rule/lewis-clark-station/	No
8	MT	Lewis & Clark	Landfill 2	https://www.montana-dakota.com/energy-efficiency/ccr-rule/lewis-clark-station/	No
6	TX	Limestone	Unit BACP	http://www.nrg.com/legal/coal-combustion-residuals/	Yes
5	IL	Lincoln Generating Facility	West Filled Area	http://www.nrg.com/legal/coal-combustion-residuals/	Yes
7	MO	Meramec	Surface Impoundment MOPF	https://www.ameren.com/Environment/ccr-rule-compliance	Yes
7	MO	Meramec	Surface Impoundment MOPG	https://www.ameren.com/Environment/ccr-rule-compliance	Yes

7	MO	Meramec	Surface Impoundment MOPH	https://www.ameren.com/Environment/ccr-rule-compliance	Yes
7	MO	Meramec	Surface Impoundment MOPI	https://www.ameren.com/Environment/ccr-rule-compliance	Yes
5	OH	Miami Fort	FGD Runoff Pond	https://www.luminant.com/ccr/#miami-fort	No
5	OH	Miami Fort	Landfill Sedimentation Pond	https://www.luminant.com/ccr/#miami-fort	No
5	OH	Miami Fort	Miamiview Road Ash Landfill	https://www.luminant.com/ccr/#miami-fort	No
5	IN	Michigan City	Historical fill under ash ponds	https://www.nipsco.com/about-us/ccr-rule-compliance-data-information	Yes
5	IN	Michigan City	Coal Ash Storage	https://www.nipsco.com/our-company/about-us/our-environment/ccr-rule-compliance	No
8	ND	Milton R Young	Cell 1	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	Yes
8	ND	Milton R Young	Landfill 1	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 2	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 3	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 4	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 5	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 6	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
8	ND	Milton R Young	Landfill 7	https://www.minnkota.com/minnkota-website/our-power/ccr-rule-compliance	No
6	TX	Monticello	A Ash Area	https://ccrmonitcello.com/	Yes
6	TX	Monticello	Inactive Scrubber Pond	https://ccrmonitcello.com/	Yes
6	TX	Monticello	Scrubber Sludge Decant Area	https://ccrmonitcello.com/	Yes
8	WY	Naughton	Landfill 1	https://www.brkenenergy.com/ccr/ppw.html	No
5	WI	Nelson Dewey	Fly Ash Landfill (Former Ash Setting Pond)	http://ccr.alliantenergy.com/	Yes
3	PA	New Castle Plant	Plant Landfill - older portions	https://www.genon.com/ccr-rule-compliance	Yes
3	PA	New Castle Plant	South Ash Pond	https://www.genon.com/ccr-rule-compliance	Yes
5	IL	Newton	Secondary Ash Pond	https://www.luminant.com/ccr/#newton	Yes
5	IL	Newton	Landfill 1	https://www.luminant.com/ccr/#newton	Yes
5	IN	Noblesville	Ash Disposal Site	(not regulated)	Yes
7	NE	North Omaha	Structural Fill	http://www.oppd.com/environment/environmental-reports/ccr-rule-compliance/ccr-rule-compliance-north-omaha-power-station/	Yes
8	WY	Osage	Landfill 1	(not regulated)	No
8	WY	Osage	Landfill 2	(not regulated)	No
4	KY	Paradise	Jacob's Creek Ash Pond	https://www.tva.gov/Environment/Environmental-Stewardship/Coal-Combustion-Residuals	Yes
7	NE	Platte	Phase 1 Landfill	https://www.giud.com/about-us/electric-generation/platte-generating-station/ccr-rule-compliance-data-and-information	Yes
5	IL	Powerton	Ash Fill	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Powerton	East Yard Runoff Basin	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Powerton	Limestone Runoff Basin	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Powerton	Metal Cleaning Basin	https://www.nrg.com/legal/coal-combustion-residuals.html	No
5	IL	Powerton	Secondary Ash Settling Basin	https://www.nrg.com/legal/coal-combustion-residuals.html	No
7	IA	Prairie Creek	Former Hydrated Fly Ash Storage Pile	https://ccr.alliantenergy.com/PrairieCreek?utm_source=WS&utm_campaign=PrairieCreek	Yes
5	MI	Presque Isle	PIP Landfill #2	http://www.we-energies.com/environmental/coal-combustion.htm	Yes
5	MI	Presque Isle	PIP Landfill #1	http://www.we-energies.com/environmental/coal-combustion.htm	Yes
5	IN	R M Schahfer	Landfill Phases 1 and 2	https://www.nipsco.com/about-us/ccr-rule-compliance-data-information	Yes
5	IN	R M Schahfer	Berm around Phased landfill	https://www.nipsco.com/about-us/ccr-rule-compliance-data-information	Yes
3	WV	R Paul Smith	Landfill	(not regulated)	No
8	ND	RM Heskett	Landfill 1	https://www.montana-dakota.com/energy-efficiency/ccr-rule/r-m-heskett-station/	No
3	PA	Shawville	Ash Landfill	(not regulated)	Yes
5	MN	Sherburne County	Pond #1	https://www.xcelenergy.com/coal_ash_management	Yes
5	MN	Sherburne County	Pond #2	https://www.xcelenergy.com/coal_ash_management	Yes
5	MN	Sherburne County	Bottom Ash pond #2	https://www.xcelenergy.com/coal_ash_management	Yes
8	ND	Stanton	Landfill 1	https://oucccr.com/	No
8	ND	Stanton	Landfill 2	https://oucccr.com/	No
4	FL	Stanton Energy Center	Landfill	https://oucccr.com/	No
5	IN	Tanners Creek	Landfill	(not regulated)	No
5	IN	Tanners Creek	Area 1	(not regulated)	No
5	IN	Tanners Creek	Area 2	(not regulated)	No
5	IN	Tanners Creek	Old Ash Area	(not regulated)	No
7	KS	Tecumseh Energy Center	Final Ash Pond	https://www.evergy.com/ccr	No
4	SC	Urquhart	Urquhart-3 (LF)	(not regulated)	No
8	CO	Valmont	Closed Valmont Station ADF	https://www.xcelenergy.com/coal_ash_management	No
4	SC	Wateree	Ash Pond 2	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
5	IL	Waukegan	Old Pond	https://www.nrg.com/legal/coal-combustion-residuals.html	Yes
5	IL	Waukegan	Historic Fill	https://www.nrg.com/legal/coal-combustion-residuals.html	Yes
6	AR	White Bluff	CADL Historical Section	http://www.entergy-arkansas.com/ccr/WB/	Yes
5	IL	Will County	Pond 1 North	https://www.nrg.com/legal/coal-combustion-residuals.html	Yes
5	IL	Will County	Pond 1 South	https://www.nrg.com/legal/coal-combustion-residuals.html	Yes
4	SC	Williams	Williams Highway 17A Class II Landfill	https://www.dominionenergy.com/projects-and-facilities/electric-projects/coal-ash/ccr-rule-compliance-data-and-information	Yes
5	IL	Wood River	Secondary East Polishing Pond	https://ccrwoodriver.com/	Yes
8	WY	Wyodak	Landfill 1	(not regulated)	No
6	TX	Calaveras - J T Deely	J T Deely-1	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No
6	TX	Calaveras - J T Deely	J T Deely-2	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No
6	TX	Calaveras - J T Deely	J T Deely-3	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No
6	TX	Calaveras - J T Deely	J T Deely-4	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No

6	TX	Calaveras - J T Deely	J T Deely-5	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No
6	TX	Calaveras - J T Deely	J T Deely-6	https://www.cpsenergy.com/en/about-us/environment/coal-combustion-residuals.html	No

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) AS 2021-003
 PETITION OF MIDWEST)
 GENERATION, LLC FOR AN)
 ADJUSTED STANDARD FROM) (Adjusted Standard)
 845.740(a) AND FINDING OF)
 INAPPLICABILITY OF PART 845)

Appendix E

Midwest Generation, LLC's Exhibits Introduced at Hearing on February 13 and 14, 2024

MWG Exhibit	Description	Reference
Exhibit 1	Affidavit of Christopher Lux	Attached to MWG Petition (May 11, 2021) – PDF 36
Exhibit 17	Pictures of the Grassy Field taken by Christopher Lux	Attached to MWG Petition (May 11, 2021) – PDF 826
Exhibit 26	“Potential CCR Management Unit Universe”, EPA-HQ-OLEM-2020-0107-0155, 88 Fed. Reg. 31982 (May 18, 2023), <i>Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Legacy Surface Impoundments</i>	Attached to MWG Response – PDF 32
Exhibit 27	Sargent & Lundy – Midwest Generation, LLC Waukegan Generation Station: Classification of Grassy Field (July 21, 2023)	Attached to MWG Response – PDF 41
Exhibit 28	Illinois EPA invoice for the Waukegan Station	Attached to MWG Response – PDF 80
Exhibit 29	Transcript of February 1, 2018, hearing from <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG’s 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 30	Transcript of February 2, 2018, hearing from <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG’s 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).

Exhibit 31	Transcript of June 12, 2023, hearing from <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 32	Transcript of June 13, 2023, hearing from <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 33	Transcript of June 14, 2023, hearing from <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 34	Expert Presentation of John Seymour, P.E. Geosyntec Consultants, MWG Exhibit 901 in <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 35	Expert Report of John Seymour, P.E. Geosyntec Consultants (Nov. 2, 2015), MWG Exhibit 903 in <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 36	Updated Appendix B to Expert Report of John Seymour, P.E. Geosyntec Consultants (Nov. 2, 2015) MWG Exhibit 907 in <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).

Exhibit 37	Expert Report on Relief and Remedy, Douglas Dorgan, P.G. and Michael Maxwell, P.G., Weaver Consultants Group (April 22, 2021) MWG Exhibit 1701 in <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 38	Expert Presentation: "Remedy Assessment: Midwest Generation" of Weaver Consultants Group MWG Exhibit 1702 in <i>Sierra Club et al. v. Midwest Generation, LLC</i> , PCB 13-15	Attached to MWG's 7/28/23 Mot. to Incorporate Motion to Incorporate Certain Exhibits and Testimony from PCB 13-15 into the AS 21-3 docket (<i>Granted by H.O. Order 8/10/23</i>).
Exhibit 39	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities: Legacy CCR Surface Impoundments, Proposed Rule, 88 Fed. Reg. 31982 (May 18, 2023) [Docket #: EPA-HQ-OLEM-2020-0107]	Admitted at Hearing, February 13-14, 2024
Exhibit 40	Summary of Potential Universe Comments for Legacy CCRMU NODA, October 2023 (Nov. 13, 2023) [Docket #: EPA-HQ-OLEM-2020-0107-0892]	Admitted at Hearing, February 13-14, 2024
Exhibit 41	Thomas Dehlin Expert Presentation	Admitted at Hearing, February 13-14, 2024
Exhibit 42	MiningConnection.com article, "Illinois EPA Schedules December Public Hearing for Pond Creek Coal Mine Permit" (Nov. 7, 2019)	Accepted as an Offer of Proof, February 13-14, 2024
Exhibit 43	Boring Logs and Soil Samples collected from the Grassy Field (Response to Board Question 7)	Admitted at Hearing, February 13-14, 2024
Exhibit 44	City of Waukegan 2023 Annual Water Quality Report	Admitted at Hearing, February 13-14, 2024