

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:) No. R14-10
)
COAL COMBUSTION WASTE (CCW)) (Rulemaking-Water)
SURFACE IMPOUNDMENTS AT POWER)
GENERATING FACILITIES:)
PROPOSED)
NEW 35 ILL. ADM. CODE 841.)

TRANSCRIPT FROM THE PROCEEDINGS

taken before HEARING OFFICER TIMOTHY J. FOX by Carla
J. Boehl, CSR, at the Illinois Environmental
Protection Agency, Sangamon Room, 1021 North Grand
Avenue West, North Entrance, Springfield, Illinois,
on the 27th day of February 2014, at 10:00 a.m.

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PROCEEDINGS

HEARING OFFICER FOX: Good morning and welcome to day two of this Illinois Pollution Control Board hearing entitled Coal Combustion Waste (CCW) and Surface Impoundments at Power Generating Facilities: Proposed New 35 Illinois Administrative Code 841, docketed by the Board as R14-10.

We are, of course, in our second day of the first hearing. When we broke yesterday, Mr. Armstrong was asking follow-up to the Agency based on their written responses to the questions of the Environmental Groups and in a moment we can return to him to resume those.

The final order of business, of course, today is to turn to the Board's follow-up questions and clarifications to the Agency's written responses to the Board's questions.

First of all, I do want to note that I had placed at the entrance to the room a sheet on which persons could indicate that they would like to offer a public comment to the Board today as they had done at the top of the day yesterday. I see our public information officer indicating that those sheets remain blank. However, if anyone appears

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1 before we adjourn later today, we can make every
2 effort to accommodate them and allow them an
3 opportunity to offer a public comment.

4 I do want to note, I believe Ms. Shaw is
5 still here. As she had indicated yesterday that she
6 did not after all wish to offer a comment, I don't
7 want to move on without offering her another
8 opportunity.

9 MS. SHAW: No, thank you.

10 HEARING OFFICER FOX: Very good. Since she is
11 not wishing to offer a public comment at this point,
12 Ms. Olson, I believe we can move to swear the
13 Agency's witnesses in quickly and resume follow-up
14 questions on the part of Mr. Armstrong for the
15 Environmental Groups.

16 MS. OLSON: Sounds good.

17 HEARING OFFICER FOX: Very good. If the court
18 reporter can swear in the four witnesses, we can get
19 underway.

20 (Whereupon the witnesses were
21 duly sworn by the Reporter.)

22 HEARING OFFICER FOX: Very good. Ms. Olson,
23 anything to begin with or can we turn to the
24 questions of the Environmental Groups?

1 MS. OLSON: We don't have anything at this
2 time.

3 HEARING OFFICER FOX: Very good. Thank you so
4 much.

5 Mr. Armstrong, when we concluded
6 yesterday, my recollection is that we were on the
7 Environmental Groups Question Number 20 that had been
8 posed to Richard Cobb, but that Ms. Olson had
9 indicated that other members of the panel may assist
10 in answering.

11 Is that a fair assessment, Ms. Olson?

12 MS. OLSON: Yes.

13 HEARING OFFICER FOX: Very good. If you would
14 begin again, Mr. Armstrong, we are set to start.

15 MR. ARMSTRONG: Thank you. Andrew Armstrong
16 on behalf of the Environmental Law and Policy Center.

17 Our Prefiled Question Number 20 was,
18 "With respect to groundwater management zones, does
19 the Agency typically require source removal actions?"

20 The Agency's response was, "There is no
21 typical GMZ because each GMZ depends on site specific
22 factors, including source, soil and hydrogeology.
23 The Agency does not always require source removal
24 actions for CCW surface impoundments."

1 My first of all question is, when you
2 used the phrase "source removal actions," what type
3 of actions is the Agency referring to?

4 MR. COBB: I am going to have to use an
5 example, and the example I am going to use is Ash
6 Pond D at Hutsonville. The source removal would be
7 to dig all of the ash up and remove that from Ash
8 Pond D versus capping it and leaving it in place.

9 MR. ARMSTRONG: So in the case of a coal ash
10 impoundment, source removal action would encompass
11 removing the coal ash from the impoundment?

12 MR. COBB: Yes.

13 MR. ARMSTRONG: Okay. Thank you. I would
14 like to ask you about a document entitled
15 Establishing a Groundwater Management Zone at
16 Critical Facilities that I am going to be handing out
17 right now.

18 So this document is entitled Establishing
19 a Groundwater Management Zone at Critical facilities,
20 and I would move to enter that as Exhibit 12.

21 MS. OLSON: We have no objection.

22 HEARING OFFICER FOX: Ms. Olson has indicated
23 that the Agency has no objection to the admission of
24 this as Exhibit Number 12. Does anyone else wish to

1 lodge an objection?

2 (No response.)

3 All right. Neither seeing nor hearing
4 any, Mr. Armstrong, it will be marked and admitted as
5 Exhibit Number 12. Thank you.

6 (Whereupon Exhibit Number 12 was
7 admitted into evidence.)

8 MR. ARMSTRONG: So the question to Mr. Cobb,
9 as I think you answered the previous question, have
10 you seen this document before?

11 MR. COBB: No.

12 MR. ARMSTRONG: It does appear to be posted
13 from the Illinois Environmental Protection Agency's
14 website, is that correct?

15 MR. COBB: It appears to be -- it appears to
16 have been developed by the Bureau of Land.

17 MR. ARMSTRONG: Could you please read aloud
18 the second sentence under the second section,
19 Procedures? I am sorry, could you please read the
20 first two sentences under the second section,
21 Procedures?

22 MR. COBB: Can you please repeat that? You
23 confused me with your clarification.

24 MR. ARMSTRONG: Could you please read the

1 first two sentences under the second section, heading
2 Procedures?

3 MR. COBB: Okay. "For a GMZ to be
4 established, the groundwater within the proposed GMZ
5 must be managed to mitigate impairment caused by a
6 release from the site. Source removal actions to
7 prevent additional contamination from reaching
8 groundwater must occur along with groundwater
9 management. Groundwater management to mitigate
10 impairment can use various combinations of
11 technology."

12 MR. ARMSTRONG: That's enough. So do you have
13 an understanding as to why the Agency would have this
14 document on their site, stating that source removal
15 actions to prevent additional contamination from
16 reaching groundwater must occur along with
17 groundwater management?

18 MR. COBB: No, I don't, because there are
19 multiple programs out there. In Part 620 the
20 groundwater management zones don't require that. The
21 solid waste landfill regulations and hazardous
22 wasteland, those don't require that. LUST doesn't
23 require that. SRP doesn't. Site remediation program
24 doesn't require that. So I am not exactly sure where

1 this is flowing from, if it is flowing from some RCRA
2 statute or something that I am not aware of.

3 But in terms of a GMZ under the Part 620,
4 in fact, in Hutsonville the modeling that was done --
5 I'll go back to the example -- modeling was done to
6 show, if we just recharge with a cap and then there
7 is a pump and treat system, that showed how the plume
8 would shrink over time and clean up. So basically
9 the goals of the GMZs are to restore groundwater to
10 the applicable standards or the alternative
11 restoration standards.

12 In some cases, in the example of the
13 Hutsonville example, that ash pond had been there for
14 decades and, in essence, the groundwater there was in
15 equilibrium. And let me explain that. Let's say you
16 took --

17 MR. ARMSTRONG: You know what, I think we are
18 kind of going -- let's go for my original question
19 there.

20 MS. OLSON: I have a follow-up question.
21 Rick, are you familiar with the LUST program?

22 MR. COBB: Yes.

23 MS. OLSON: Can you tell us what LUST stands
24 for?

1 MR. COBB: Leaking Underground Storage Tanks.

2 MS. OLSON: Can you have a GMZ for a LUST

3 site?

4 MR. COBB: You can.

5 MS. OLSON: If you had a GMZ for a LUST site,

6 would it be expected that the source would be

7 removed?

8 MR. COBB: You would clean up the tank and you

9 could do some soil cleanup. But you wouldn't have

10 to -- you could do modeling to see how much you could

11 leave in place to achieve the groundwater standard at

12 any known receptors off-site.

13 MS. OLSON: Do you know if LUST, Leaking

14 Underground Storage Tanks, are commonly removed when

15 there is a cleanup program?

16 MR. COBB: Yes.

17 MS. OLSON: Is it possible that that could be

18 what this is referring to when it says "source

19 removal actions to prevent additional groundwater

20 contamination from reaching the groundwater occur"?

21 MR. COBB: Under RCRA, I don't believe

22 petroleum products are regulated under RCRA. So, no,

23 I don't think so.

24 MR. ARMSTRONG: Just a follow-up question, is

1 there anything in this document that refers to the
2 LUST program?

3 MS. OLSON: I don't think he has had enough
4 time to review this entire document. If you want to
5 give him a few minutes, I think we can answer that
6 question.

7 MR. ARMSTRONG: We will just move on. The
8 document speaks for itself.

9 HEARING OFFICER FOX: If you could hold on one
10 moment. Sir, you have a question, if you could
11 identify yourself for the court reporter?

12 MR. KING: My name is Gary King. I am with
13 Arcadis, here on behalf of Ameren.

14 Mr. Cobb, when you use the term -- you
15 gave an example of a source removal action at a coal
16 combustion waste facility that was a complete
17 removal. Wouldn't it also be true that source
18 removal actions could comprise all sorts of
19 activities, for instance, including a partial removal
20 of some sort?

21 MR. COBB: Absolutely.

22 HEARING OFFICER FOX: Any additional
23 questions, Mr. King?

24 MR. KING: No.

1 HEARING OFFICER FOX: Very good, thank you.

2 Mr. Armstrong, I think we are back to
3 you.

4 MS. FRANZETTI: I'm sorry. I have one.

5 HEARING OFFICER FOX: Let's turn to
6 Ms. Franzetti. Go ahead.

7 MS. FRANZETTI: Still with respect to Exhibit
8 12, Mr. Cobb, this exhibit refers to RCRA facilities.
9 Would you agree that that would have to at least be
10 dealing with a solid waste under RCRA and/or a
11 hazardous waste under RCRA?

12 MR. COBB: Yes.

13 MS. FRANZETTI: And with respect to CCW units
14 where there is still the capability of utilizing some
15 of the ash that's in the unit for beneficial use,
16 isn't it correct that that material does not
17 constitute a solid waste?

18 MR. COBB: Yes, a solid waste that can be in
19 many cases beneficially reused.

20 MS. FRANZETTI: And, accordingly, this
21 guidance document with respect to RCRA facilities
22 wouldn't apply to such a CCW unit, is that correct?

23 MR. COBB: That's correct.

24 MS. FRANZETTI: That's all.

1 HEARING OFFICER FOX: The gentleman toward the
2 rear has a question. If you would also identify
3 yourself and anyone you may be representing, sir.

4 MR. SYLVESTER: Sure. Stephen Sylvester with
5 the Attorney General's Office.

6 Mr. Cobb, Ms. Franzetti just asked you
7 about the beneficial use of coal combustion waste. I
8 was just wondering, when does it become beneficially
9 reusable? When it is laying in a landfill or when it
10 actually gets used?

11 MR. COBB: When it actually has -- it has the
12 potential to be beneficially reused because it's not
13 considered a waste. It could be used, you know, in a
14 road bed or various situations and then -- but I
15 think your question is beyond the potential of
16 beneficial use; when is it beneficial use.

17 MR. SYLVESTER: Let me clarify. The question
18 is, when it is still in the unit, is it being
19 beneficially reused?

20 MR. COBB: No.

21 MR. SYLVESTER: And if it is not being
22 beneficially reused, is it a solid waste?

23 MR. COBB: No.

24 MR. SYLVESTER: Why is that?

1 MR. COBB: It's not a landfill. It is not
2 subject to the solid waste landfill requirements
3 under Board regulations.

4 MR. SYLVESTER: So your position is that coal
5 combustion waste under all circumstances is solid
6 waste?

7 MR. COBB: My position is that, under the
8 Board solid waste landfill regulations, that the coal
9 combustion that is a landfill is not a coal
10 combustion -- does not include coal combustion waste
11 surface impoundments.

12 MR. SYLVESTER: I don't know that that
13 answered the question. I didn't ask you whether
14 there was a landfill. I asked you whether this could
15 be considered solid waste.

16 MS. FRANZETTI: I will object. I think he is
17 arguing with the witness at this point.

18 MR. SYLVESTER: You asked him a legal question
19 so I am trying to get the legal response from him.
20 And since he went down that road, the door seems to
21 be open.

22 HEARING OFFICER FOX: Mr. Sylvester, let's
23 have you restate your question, if you would, please,
24 and if one of the Agency's panel is in a position to

1 answer that, we will ask them to do so.

2 MR. SYLVESTER: Sure. The question is
3 straight forward. With the coal combustion, is there
4 circumstances where it could be a solid waste?

5 MR. COBB: Mr. Sylvester, the only answer I
6 can give is, when we are referring to coal combustion
7 waste, we are referring to the definition that we
8 included in the proposal. That's my answer.

9 HEARING OFFICER FOX: Anything further,
10 Mr. Sylvester?

11 MR. SYLVESTER: Not at this time.

12 HEARING OFFICER FOX: I am sorry, did I hear
13 you say not at this time?

14 MR. SYLVESTER: Not at this time.

15 HEARING OFFICER FOX: Thank you for
16 clarifying.

17 Mr. Armstrong, I believe we are back to
18 you.

19 MR. ARMSTRONG: Yes, I have no follow-up
20 questions on Prefiled Question 21. I do have a
21 question on Prefiled Question 22 and his answer.

22 Question 22, "With respect to the
23 proposed Section 841.105(b) (4), are each of the
24 subsections (A), (B) and (C) necessary preconditions

1 to the exemption of a surface impoundment from the
2 rule? Could you please identify all CCW impoundments
3 this exemption would apply to?"

4 The Agency answer was, "Yes," with
5 respect to the first part, I assume, that each of
6 those three subsections are necessary preconditions
7 to the exemption. Is that correct?

8 MR. COBB: Yes.

9 MR. ARMSTRONG: Okay. Further, "The Agency is
10 unable to identify all CCW impoundments that this
11 exemption may apply to because some units were
12 constructed prior to the establishment of the Agency,
13 and the Agency cannot predict how many of these units
14 will be in operation on the effective date of the
15 proposed rule."

16 First, what do you mean that the Agency
17 is unable to identify exempted impoundments, quote,
18 because some units were constructed prior to the
19 establishment of the Agency?

20 MR. COBB: Well, our best means of trying to
21 evaluate that question was for me to go and talk to
22 the people that under Part 309(b) Other Permits, safe
23 construction and operating permits, may have permits
24 to construct and operate these units. So that was my

1 best way to -- you know, we have a general list that
2 you have seen that's an exhibit. Do we know when
3 these were permitted or are they permitted? And in
4 most cases they could not answer those questions.
5 That's only where -- the only way that I could have
6 evaluated that. And they said the same thing; many
7 of these were in place and operating prior to the
8 Agency, so.

9 MR. ARMSTRONG: Let me try another avenue. In
10 your answer to the Board's questions, the Agency
11 identified 91 surface impoundments in the state. Are
12 there any impoundments, other than those 91 surface
13 impoundments, that would be impacted by this
14 exemption?

15 MR. COBB: Bill, I am going to turn to you on
16 the statistics.

17 MR. BUSCHER: Repeat the question.

18 MR. ARMSTRONG: The Agency in its response to
19 the Board's questions identified 91 surface
20 impoundments in the state of Illinois.

21 MR. BUSCHER: Yes, sir.

22 MR. ARMSTRONG: Good. This exemption would --
23 are there other impoundments, other than those 91
24 impoundments, that this exemption might apply to?

1 MR. BUSCHER: I can't -- there may be ones
2 that I am not familiar with.

3 MS. OLSON: Can I ask a follow-up?

4 MR. ARMSTRONG: Sure.

5 MS. OLSON: When you came up with the 91, were
6 you looking for impoundments that would be otherwise
7 exempt under these rules to include in that list or
8 were you just looking for impoundments?

9 MR. BUSCHER: I was looking for impoundments
10 that we had in our permit system. I wasn't making
11 any distinction one way or the other whether there
12 would be -- whether this would -- whether this
13 exemption would apply or not apply.

14 MR. COBB: Well, this exemption didn't exist.
15 We hadn't even developed it yet, so.

16 MS. OLSON: So let me ask another question.
17 Of the 91 impoundments, do you know of any of the
18 impoundments that would contain more than 25 cubic
19 yards of coal combustion waste?

20 MR. BUSCHER: I would say most of them
21 probably do.

22 BOARD MEMBER RAO: Just to clarify the Board's
23 question, we had asked for the number of CCW surface
24 impoundments and the power generating facilities, and

1 your response was there were 91 of these CCW surface
2 impoundments. So I am assuming that, by your
3 response, that the 91 impoundments contained CCW in
4 it or leachates.

5 MR. BUSCHER: Yes, sir, that's correct.

6 MS. OLSON: Is it possible that there could be
7 more surface impoundments than the 91 that would fall
8 under the exemptions in the proposed rule?

9 MR. BUSCHER: Not that I am aware of, no.

10 HEARING OFFICER FOX: Anything further,
11 Ms. Olson?

12 MS. OLSON: No.

13 HEARING OFFICER FOX: Thank you.

14 Mr. Armstrong?

15 MR. ARMSTRONG: If the rule went into effect
16 today, which impoundments would this exemption apply
17 to?

18 MR. BUSCHER: I can't answer that. I don't
19 know the specifics of the impoundments. My
20 expectation would be -- but, again, you are forcing
21 me to speculate. But, by and large, these things
22 contain more than the 25 cubic yards.

23 MR. ARMSTRONG: So I've heard "by and large"
24 and "mostly." Could you put a range on that? More

1 than 10, more than 20? If you don't know, that's
2 valid.

3 MR. BUSCHER: I would have to get back with
4 you with specifics. I am sure it is greater than
5 ten. You know, I am forced to speculate here.

6 MR. ARMSTRONG: Okay. We are just trying to
7 get an understanding of the size of the exemption.
8 So if it is possible to provide that information, we
9 would appreciate it.

10 MS. OLSON: Can I ask a follow-up question?

11 MR. ARMSTRONG: Go ahead.

12 MS. OLSON: Bill, do you recall why we
13 developed this exemption or does anyone on the panel
14 recall why we developed this exemption?

15 MR. COBB: We did a regulatory development
16 outreach session with a number of different
17 stakeholders, and a number of stakeholders
18 recommended the exemption. And it really wasn't that
19 long ago. It was during 2013. I am not aware that
20 we have evaluated any of the units relative to this
21 exemption yet.

22 MS. OLSON: Do you remember the concern that
23 the interested parties raised when they brought this
24 exemption up?

1 MR. COBB: Yes, they were just trying not to
2 include de minimus types of units that would not
3 represent a threat to groundwater.

4 MS. OLSON: Can you give us an example of a de
5 minimus type of unit that would fall under this
6 exemption?

7 MR. COBB: Sure. We did a multi-barrier
8 approach where you had to have at least three
9 barriers, which was the cubic yardage, the
10 impermeable liner and -- do you remember the third?

11 MS. FRANZETTI: Removal within a year.

12 MR. COBB: Removal within a year. Thank you.

13 MS. OLSON: Do you recall if someone brought
14 up an example of a sump station possibly falling
15 under these rules because the definition of surface
16 impoundment is so broad?

17 MR. COBB: Yes, I did.

18 MS. OLSON: So was part of the reason the
19 Agency developed this exemption was to exclude those
20 types of impoundments that were small and used just
21 to move the coal combustion waste to the final
22 resting place -- or the surface impoundment?

23 MR. COBB: Yes.

24 MS. OLSON: So when the Agency developed this

1 rule, did it contemplate including those types of
2 units?

3 MR. COBB: Not at the very beginning. But
4 during the outreach section as we got additional
5 input, we felt that that was appropriate to include a
6 de minimus category.

7 MS. OLSON: So can the Agency right now
8 identify all places that have potential self-type
9 surface impoundments that are small and not designed
10 to be holding places for coal combustion waste?

11 MR. COBB: No, we weren't out there trying to
12 find de minimus impoundments. We were out there
13 trying to find impoundments that were either causing,
14 threatening or allowing a violation of the
15 Environmental Protection Act and Board rules.

16 MS. OLSON: That's all I have.

17 MR. ARMSTRONG: Just one further question
18 about one of the barriers you mentioned, the
19 temporary residence of ash with the impoundment.

20 MR. COBB: Yes.

21 MR. ARMSTRONG: Just to get a better
22 understanding of that, under the exemption then you
23 could have ash in the impoundment, for example, 364
24 days a year, drag it one day, and then have ash 364

1 days a year the next year, hypothetically, is that
2 correct?

3 MR. COBB: You have to have more than that
4 removal or that amount to get the exemption. It is
5 not just one exemption. So yes to your answer. It
6 is not exempt. You still have to have a liner.

7 MR. ARMSTRONG: Correct. Just on that one
8 barrier, that one element.

9 MR. COBB: Yeah. So there is other barriers
10 there that would still prevent.

11 MR. ARMSTRONG: Okay. So could you explain
12 how having ash 364 out of 365 days a year is more
13 protective than having ash 365 days of the year in an
14 impoundment?

15 MR. COBB: In and of itself you can't explain
16 that. But when you have two other barriers there
17 that will be protective of groundwater, you have to
18 read them in combination. The rule isn't just based
19 on one factor.

20 MR. ARMSTRONG: So just then -- again, under
21 this one aspect of the exemption, this could be
22 chained together for decades where you've got almost
23 constant ash contaminate, ash CCW presence, in the
24 pond, in the impoundment, is that correct?

1 MR. COBB: Yes, where you have two other
2 barriers of protection. For example, we have
3 designed new impoundments like Havana East that has a
4 synthetic liner, and all the groundwater monitoring
5 shows that it is still in compliance with background
6 concentration. So, yes, we feel that technology
7 controls, when employed, are protective of
8 groundwater.

9 MR. ARMSTRONG: That wasn't my question, but
10 it does sound like the answer to the aspect of it
11 being chained together for decades.

12 BOARD MEMBER RAO: I have a follow-up to your
13 response, Mr. Cobb.

14 Mr. Cobb said in response to a series of
15 questions that Ms. Olson had about these exempt
16 facilities, you mentioned that you were not looking
17 for the small impoundments when you did your survey
18 with the power generating facilities. So based on
19 information you gathered, would it be reasonable to
20 assume that these 91 facilities are not these small
21 facilities that fall under the exemption?

22 MR. COBB: Correct.

23 BOARD MEMBER RAO: And that they may be
24 subject to the proposed rules depending on --

1 MR. COBB: They may be, depending on the final
2 outcome of the rule possibly.

3 MS. OLSON: When you say they may be subject,
4 are you referring to the 91 or --

5 BOARD MEMBER RAO: 91, yeah.

6 MR. COBB: Yes.

7 BOARD MEMBER RAO: Thank you.

8 MR. COBB: And, quite frankly, for the
9 Attachments 2 through 14 of my prefiled testimony, it
10 is pretty easy to spot the impoundments that are
11 there on the visual area photographs.

12 BOARD MEMBER RAO: Yeah, for some of them you
13 have provided a grade which pretty much tells us the
14 site of those facilities.

15 MR. COBB: And they also showed monitoring
16 wells.

17 BOARD MEMBER RAO: So I wondered, if there
18 were existing facilities which are impacting
19 groundwater, you can read them and find out how many
20 of these are power.

21 HEARING OFFICER FOX: Anything else, Mr. Rao?

22 BOARD MEMBER RAO: No, thank you.

23 MR. ARMSTRONG: Moving on to Question 23 which
24 was, "With respect to proposed Section 841.105(b) (5),

1 does this exemption apply to impoundments that store
2 coal combustion waste (other than storm water
3 runoff)? Could you please identify all CCW
4 impoundments this exemption would apply to?"

5 The answer was, "Please see the Agency
6 answer to Board Question 18." So I will wait for
7 that aspect of it.

8 But with respect to the CCW impoundments
9 this exemption would apply to, the same question as
10 before, if this rule went into effect today, which
11 impoundments would this exemption apply to?

12 MR. COBB: Same answer as before.

13 MR. ARMSTRONG: Which was?

14 MR. COBB: I can't answer the -- I can't tell
15 you which small units are going to meet these de
16 minimus criteria that we are proposing.

17 MS. OLSON: Can I ask a follow-up?

18 MR. ARMSTRONG: Yes.

19 MS. OLSON: And this is for anyone on the
20 panel. Would the exemption under proposed Section
21 841.105(b)(5), which involves storm water runoff,
22 apply throughout the state to any power generating
23 facility that had a storm water pond that does not
24 have leachate and coal combustion waste also placed

1 in that pond?

2 MR. DUNAWAY: That's our intention from that
3 section, subsection.

4 HEARING OFFICER FOX: Anything else,
5 Ms. Olson?

6 MS. OLSON: No.

7 HEARING OFFICER FOX: Mr. Armstrong?

8 MR. ARMSTRONG: Once the rule is in place,
9 will the Agency require owners and operators to make
10 a demonstration that specific impoundments are -- do
11 qualify for this exemption?

12 MR. COBB: No.

13 MR. ARMSTRONG: Thank you. I will move on to
14 Question 24.

15 HEARING OFFICER FOX: I believe Ms. Olson has
16 a follow-up she would like to pose. Ms. Olson?

17 MS. OLSON: Can you explain why we are not
18 going to have a demonstration be made, we are not
19 proposing that a demonstrate be made?

20 MR. COBB: Well, first off, the majority of
21 these sites, for example, the impoundments that were
22 listed in Attachments 2 through 14 of my prefiled
23 testimony, are way beyond the exemption. They have
24 violation notices and are either implementing

1 corrective actions or will be subject to corrective
2 actions and/or closure, so.

3 MS. OLSON: Does the Agency anticipate using
4 enforcement under the Act to pursue entities that are
5 otherwise subject to this proposed part, once it
6 becomes adopted, that fail to comply?

7 MR. COBB: We are not -- we certainly have
8 that authority, yes.

9 MS. OLSON: And is that part of the basis of
10 why the Agency does not believe a demonstration would
11 be required?

12 MR. COBB: That is correct. Those are the
13 rulings; you follow them. If you don't, just like
14 most rules, then there is an inspection. And if we
15 find out that you are not in compliance with the
16 rule, it is just like any other Agency program.

17 HEARING OFFICER FOX: Thank you, Ms. Olson.

18 Mr. Armstrong?

19 BOARD MEMBER RAO: May I have a follow-up, Mr.
20 Fox?

21 HEARING OFFICER FOX: Please go ahead.

22 BOARD MEMBER RAO: Does the rule require these
23 facilities to maintain any kind of documentation to
24 show that they are complying with the proposed

1 requirements, especially the one that deals with, I
2 think it is, Section 841.105(b)(4)(B) which states
3 "Coal combustion waste or leachate from coal
4 combustion waste remains in the unit for no longer
5 than one year." So would it be advantageous for a
6 facility to have some documentation to show that the
7 waste is being moved?

8 MR. COBB: I think you add a good point that
9 maybe record keeping should be added, and possibly
10 that helps with --

11 BOARD MEMBER RAO: Thank you.

12 MR. ARMSTRONG: Thank you. I have no further
13 questions on that prefiled question. So moving on to
14 Question 25 -- I am sorry, Question 24.

15 With respect to the definition of
16 "compliance point" in proposed 841.110, we had
17 suggested a rephrase definition. The Agency
18 references answers to the Board's questions.

19 Yesterday I understood the Agency to
20 testify that "whichever is less," that language
21 within that proposed section, means whichever is
22 closer to the outer edge of the unit. Is that an
23 accurate interpretation?

24 MR. DUNAWAY: Okay. Can you repeat that

1 question for me, please?

2 MR. ARMSTRONG: Yes. Turning to 841.110 in
3 the proposed rules, in the definition of "compliance
4 point," it states that "compliance point is any point
5 in groundwater designated at a lateral distance of 25
6 feet from the outer edge of the unit or property
7 boundary, whichever is less, and a depth of 15 feet
8 from the bottom of the unit." And I know that -- I
9 believe there is some modification of that one in
10 response to Board questions.

11 But what I understood yesterday is that
12 the Agency testified that the phrase "whichever is
13 less" means whichever is closer to the outer edge of
14 the unit. Is that an accurate interpretation?

15 MR. DUNAWAY: Yes.

16 MR. ARMSTRONG: Thank you.

17 Moving on to Question 25 which regarded
18 proposed Section 841.155, we asked about the
19 Construction Quality Assurance Program and we asked,
20 "Did the Agency consider including criteria that
21 would need to be met for closure by removal of CCW?"

22 In response, the Agency stated, "The
23 Agency did consider requiring a Construction Quality
24 Assurance policy for closure by removal of CCW and

1 included the components of construction that may
2 arise in any removal projects. These components
3 include construction of dewatering equipment, ponds,
4 ditches, lagoons and berms. The Agency, however,
5 would not object to adding a new subsection (a)(5)
6 that specifically lists removal, but leaves this to
7 the discretion of the Board."

8 Would the EPA be willing to propose
9 language on this point?

10 MR. COBB: I don't have a problem with it. I
11 think we could do that. We were struggling a little
12 bit with, you know, deconstruction, you know, how do
13 you run the backhoe, and so we can look at that.

14 MS. OLSON: Can you explain what you mean when
15 you said "we struggled with deconstruction" versus
16 "this is for a Construction Quality Assurance
17 Program"?

18 MR. COBB: Yeah. In essence we included, for
19 the components that include the things I have listed
20 for capping, things that are constructed, but the
21 deconstruction is actually for removal. It is
22 actually the reverse of constructing things. So
23 that's why I say we struggled a little bit.

24 MS. OLSON: Is the intention of the

1 Construction Quality Assurance Program to insure that
2 the things that are being constructed are constructed
3 well and properly?

4 MR. COBB: Yes.

5 MS. OLSON: So is that why we are having a
6 problem figuring out how to deconstruct something
7 properly?

8 MR. COBB: Yes.

9 HEARING OFFICER FOX: Anything further,
10 Ms. Olson?

11 Very good. Mr. Armstrong?

12 MR. ARMSTRONG: With respect to Question 26 we
13 asked, "With respect to the proposed Section 841.200,
14 what information would the Agency view as necessary
15 for inclusion within the required hydrogeologic site
16 characterization?"

17 And part of the Agency's response, the
18 Agency stated in the last two sentences, "Examples of
19 the types of information needed would include:
20 identification of geologic and hydrogeologic
21 materials present at the site (i.e. geologic well
22 logs, geologic cross-sections), static water
23 elevation levels from any preliminary monitoring
24 conducted, any background groundwater quality data

1 available, hydrogeologic parameter measurements for
2 aquifers/aquitards at the site (porosity, hydraulic
3 conductivity, etc.), identification of pumping wells
4 in the area (potable and non-potable), identification
5 of surface water bodies near the site, and
6 identification of potential migration pathways. This
7 list is not all inclusive."

8 Would the Agency be willing to propose
9 language that includes these required materials
10 within the hydrogeologic site characterization?

11 MS. ZIMMER: Okay. Yeah, sure, we can
12 consider that.

13 MR. ARMSTRONG: Thank you. I don't have any
14 questions until prefiled Question 30.

15 HEARING OFFICER FOX: Mr. Armstrong, why don't
16 we briefly see whether the Questions 27, 28 or 29
17 generate any follow-ups or clarification?

18 (No response.)

19 Neither seeing nor hearing any, anyone
20 interested in posing those, please go ahead with
21 Number 30, Mr. Armstrong.

22 MR. ARMSTRONG: Question 30, "Proposed Section
23 841.400(c)(1) would require the owner or operator to,
24 quote, eliminate free liquids by removing liquid

1 waste or solidifying the remaining waste residues,
2 end quote. What methods does the Agency expect to be
3 used to remove and dispose of free liquids? Would
4 the Agency propose to require any tracking and
5 accountability measures for disposal of liquid
6 waste?"

7 Skipping to the last sentence of the
8 Agency's response, the Agency responded "The Agency
9 does not anticipate requiring any tracking or
10 accountability measures for the disposal of liquid
11 waste beyond those that already exist."

12 What do you mean by "those that already
13 exist"?

14 MS. ZIMMER: Generally, and I am just saying
15 very generally, when liquid waste is removed or
16 collected on the impoundment, there is some kind
17 of -- a lot of these go through an NYPDES discharge.
18 So the discharge is required to meet an NYPDES
19 permit. So any kind of tracking would be whatever is
20 associated with the permit process.

21 MR. ARMSTRONG: Okay. Thank you.

22 MS. ZIMMER: I would want to add one more
23 thing. If anything were to go to a landfill, there
24 are a mass of regulations that track that.

1 MR. ARMSTRONG: On to prefiled Question 31,
2 "Do the proposed rules allow for further use of CCW
3 impoundments that are causing violations of
4 groundwater and/or surface water standards?"

5 The Agency's response with respect to
6 groundwater was that "In regard to groundwater, the
7 proposed rules require, depending on the contaminant
8 concentration, either a preventive response or an
9 Agency-approved corrective action plan. If an owner
10 or operator is implementing a preventive response or
11 is implementing an Agency-approved corrective action
12 plan to mitigate impairment to groundwater, then
13 there is no violation of the groundwater standard."

14 Have you reviewed EPA's subtitled new
15 proposal for coal ash impoundments?

16 MR. COBB: In very general terms.

17 MR. ARMSTRONG: Well, I would like to refer to
18 a couple of provisions in that proposal, the
19 subtitled New Proposal. The first would be -- and
20 this is Attachment E, the Statement of Reasons. The
21 first would be CFR 257.71.

22 MS. OLSON: Can you give us a page number?

23 MR. ARMSTRONG: Sure. It is 35244 in the
24 Volume 75 of the title. I am specifically referring

1 to Subsection (g).

2 MS. OLSON: Can you say the section again? Is
3 it 257.72?

4 MR. ARMSTRONG: 257.71(g). So the language of
5 that subsection is "CCR surface impoundments shall be
6 dredged of CCRs and lined with a composite liner
7 system, as defined in paragraph (d)(2) of this
8 section by (date five years after the effective date
9 of the final rule) or closed in accordance with
10 Section 257.100."

11 Did the Agency consider a similar
12 requirement for this rule?

13 MR. BUSCHER: Yes, we did, but we rejected
14 that approach.

15 MR. ARMSTRONG: And why did the Agency reject
16 that approach?

17 MR. BUSCHER: If we had facilities that
18 weren't violating groundwater quality standards, we
19 didn't elect to force them to close or to include
20 liners.

21 MR. ARMSTRONG: So the second section I had
22 referenced is 257.65, Closure of Existing CCR
23 Landfills and Surface Impoundments. I am referring
24 to Paragraph A, "Existing CCR landfills and surface

1 impoundments that could not make the demonstration
2 specified in Section 257.64(a), pertaining to
3 unstable areas, must close by (date five years after
4 the effective date of the final rule) in accordance
5 with 257.100 and without post-closure activities in
6 accordance with 257.101." And the reference to
7 257.64 is that "Owners and operators of new and
8 existing CCR landfills, new or existing CCR surface
9 impoundments and lateral extensions located in an
10 unstable area must demonstrate that engineering
11 measures have been incorporated into the landfill
12 surface impoundment or lateral extension design,
13 insuring the integrity of the structural components
14 of the landfill or surface impoundment will not be
15 disrupted."

16 Did the Agency consider a similar
17 requirement to Section 257.65(a) in the proposed
18 rules in this hearing?

19 MR. BUSCHER: We didn't take that under
20 consideration because the structural stability of
21 these facilities is handled by DNR, Illinois
22 Department of Natural Resources, Office of Water
23 Resources.

24 MR. ARMSTRONG: So you don't believe that this

1 rule of general applicability for the closure of coal
2 impoundments in Illinois should take into account
3 structural integrity issues, is that correct?

4 MR. BUSCHER: I believe structural integrity
5 issues should be carried out by the applicable
6 regulatory authority.

7 MR. COBB: Just one addition, I believe the
8 Department of Natural Resources is currently working
9 on revising the rules to include some of the new
10 USEPA classifications, just for information, in
11 response to some of USEPA's concerns after their
12 study after the Tennessee Valley Authority issue.

13 BOARD MEMBER RAO: Have you had any
14 discussions with the DNR about this proposal and what
15 they are doing?

16 MR. BUSCHER: We have had some discussions
17 with DNR about this proposal. They made it clear
18 that they wanted to regulate what they had their
19 authority to regulate. We had one instance where we
20 were working on a project and it took an extremely
21 long time for the owner-operator to get the approval
22 from DNR. That seems to have stimulated some further
23 consideration of further rulemaking specific to ash
24 impoundments.

1 MS. OLSON: I have a follow-up question.

2 HEARING OFFICER FOX: Please go ahead.

3 MS. OLSON: Did the Agency ask DNR about
4 including a cross reference to dam safety regulations
5 in these proposed rules?

6 MR. BUSCHER: We did, and they rejected that
7 approach.

8 HEARING OFFICER FOX: Anything further,
9 Ms. Olson?

10 Mr. Armstrong, to you?

11 MR. ARMSTRONG: Does the Agency have any
12 information about the structural integrity of the
13 impoundments in Illinois?

14 MR. BUSCHER: We may. I may or may not be
15 aware of the information.

16 MR. COBB: Well, we do have the report that
17 the USEPA developed in regard to that assessment and,
18 of course, the appropriate agency has that. And I
19 think that's probably why they are revising the
20 rules.

21 MR. ARMSTRONG: Well, I would like to present,
22 I believe, that report right now. It's an August 13,
23 2013, letter from USEPA to Director Bonnett of the
24 Illinois Environment Protection Agency and I believe

1 we have included it as Exhibit 13, I believe.

2 HEARING OFFICER FOX: That's the correct
3 number, Mr. Armstrong.

4 The Environmental Groups has distributed
5 copies of this exhibit. Is there any objection to
6 Mr. Armstrong's motion to admit it into the record in
7 this proceeding?

8 (No response.)

9 Neither seeing nor hearing any objection,
10 Mr. Armstrong, it will be marked and admitted as
11 Exhibit Number 13.

12 (Whereupon Exhibit Number 13 was
13 admitted into evidence.)

14 MR. ARMSTRONG: So I will come back to this
15 exhibit in a little bit. But first I wanted to go
16 back over some of the information that we have gotten
17 regarding the comments in Illinois from various
18 sources, and in addition I would like to add some
19 information to that.

20 Do you recognize this document?

21 MS. OLSON: Are you going to put this in the
22 record as Exhibit 14?

23 MR. ARMSTRONG: Yeah, I will move to have this
24 admitted as Exhibit 14.

1 HEARING OFFICER FOX: The participants have
2 received copies and is there any objection to the
3 admission of this document as Exhibit Number 14?

4 MS. FRANZETTI: Mr. Fox, Susan Franzetti for
5 Midwest Generation. Not an objection but could you
6 explain a little more what this exhibit contains?

7 MR. ARMSTRONG: Sure. Right, and I think my
8 questions will be probative of that to the Agency.

9 MS. FRANZETTI: Well, I just basically -- did
10 you put this together?

11 MR. ARMSTRONG: No, no. We received this
12 document in response to a FOIA request to the Agency.

13 MS. FRANZETTI: Thank you. That was the basic
14 clarification. I couldn't tell whether it was
15 something that was prepared by the Environmental Law
16 and Policy Center or came out of the Agency's files.
17 Thank you.

18 HEARING OFFICER FOX: Anything further,
19 Ms. Franzetti?

20 MS. FRANZETTI: No.

21 HEARING OFFICER FOX: Very good.

22 Mr. Armstrong?

23 MR. ARMSTRONG: Does the Agency recognize this
24 document?

1 MR. BUSCHER: Yes.

2 MR. ARMSTRONG: Was it prepared by anybody in
3 the room today?

4 MR. BUSHCER: It was put together by the
5 industrial permit section, and I've got a few notes
6 on it.

7 MS. OLSON: When you say industrial permit
8 section, is that anyone on the panel?

9 MR. BUSCHER: No.

10 MR. ARMSTRONG: Is it accurate in all
11 respects?

12 MR. BUSCHER: I can't speak to that. It was
13 produced some time ago.

14 MR. ARMSTRONG: Are there any specific pieces
15 of information in the chart that you know to be
16 inaccurate?

17 MS. OLSON: I think we are going to need a
18 little bit of time to review this document before we
19 respond.

20 MR. ARMSTRONG: Okay. Would the Agency be
21 willing to respond after having time to review it?

22 MR. BUSCHER: Yeah.

23 HEARING OFFICER FOX: Mr. Armstrong, did you
24 wish to proceed to move to admit this into the record

1 or did you wish to move on?

2 MR. ARMSTRONG: Yes. I would move to admit it
3 as Exhibit 14.

4 HEARING OFFICER FOX: Very good.

5 Ms. Franzetti, you had posed some questions in terms
6 of not having an objection, but I want to give you
7 and anyone else a chance to object to the admission
8 of this document as Exhibit 14.

9 (No response.)

10 Neither seeing nor hearing any objection,
11 it will be so marked, Mr. Armstrong, and admitted
12 into the record.

13 (Whereupon Exhibit 14 was
14 admitted into evidence.)

15 MR. ARMSTRONG: So just recapping some of the
16 information that is available now from these various
17 information sources, to give an example, of the
18 Hennepin Station, let's take a look at Exhibit N,
19 page 2 of 4, and that exhibit states that there was a
20 groundwater management zone established for Hennepin
21 Station in 1996 for Ponds 1, 2, 3 and. Those ponds
22 1, 2, 3 and 4 have no liner, is that correct?

23 MR. DUNAWAY: Okay. What's your question?

24 MR. ARMSTRONG: Turn to Exhibit N, page 2 of

1 4.

2 MR. DUNAWAY: Okay.

3 MR. ARMSTRONG: I just want to establish that
4 exhibit states that the Hennepin Station has a
5 groundwater management zone that was established in
6 1996, is that correct?

7 MR. DUNAWAY: That's what it says here.

8 MR. ARMSTRONG: Ponds 1 through 4 have no
9 liner, is that correct?

10 MR. DUNAWAY: That's what it says.

11 MR. ARMSTRONG: Turning to Exhibit 14, looking
12 at -- this is the spreadsheet that came from Illinois
13 EPA. Turning to Exhibit 14, assuming that this
14 exhibit is accurate, it states that the Hennepin
15 Station has two inactive impoundments with four
16 cells. And because there are no inactive lining
17 cells, we can conclude that these are unlined, is
18 that accurate?

19 MS. OLSON: I am going to object to this
20 question. We have not validated the authenticity of
21 this information. The question itself assumes that
22 these are in fact true, and I am going to object on
23 the basis of speculation. And then maybe we can find
24 the question and you can continue after the Agency

1 has had time to confirm whether or not the
2 information is correct.

3 HEARING OFFICER FOX: Without addressing this
4 as an objection to your motion, Mr. Armstrong, the
5 Agency has committed to reviewing this and
6 determining its sources and the accuracy of the
7 elements, and I am confident we can rely upon them to
8 do that.

9 MR. ARMSTRONG: I agree with that. And just
10 finally then, turning to Exhibit 13, on page 5, and I
11 should clarify it is not marked on the document as
12 page 5 but it is rather page 5 of the document or the
13 fifth page of the document.

14 There is a listing for Dynegy and
15 Midwestern Generation's Hennepin Energy complex in
16 which the USEPA has given its final report of the
17 condition of the impoundment is poor for all seven
18 listed impoundments. And so just to tie this up,
19 under IEPA's proposed rules, these ash ponds at
20 Hennepin would have no required date for closure, is
21 that correct?

22 MR. DUNAWAY: That's correct.

23 MR. ARMSTRONG: Thank you. Just one more
24 follow-up on this line of questioning. Is the Agency

1 familiar with the coal ash spill on the Dan River in
2 North Carolina earlier this month?

3 MR. DUNAWAY: I am not familiar with it.

4 MR. ARMSTRONG: Okay. I will submit some
5 exhibits then about that ash spill. Actually, I have
6 several documents here.

7 So I am presenting three documents.
8 First is a document from the United States
9 Environmental Protection Agency, Information Update
10 on the Eden, North Carolina, Ash Spill. The second
11 is a transcript of a public hearing. I move to
12 introduce the first document as Exhibit 15.

13 HEARING OFFICER FOX: Mr. Armstrong, just as a
14 clarification, this is a single page single-sided
15 copy, is that correct?

16 MR. ARMSTRONG: That is correct.

17 HEARING OFFICER FOX: Very good. The
18 Environmental Groups have distributed copies of a
19 document entitled USEPA Information Update on the
20 Eden, North Carolina, Ash Spill, and Mr. Armstrong
21 has moved to admit it into the record as Exhibit
22 Number 15. Is there any objection to the motion?

23 (No response.)

24 Neither seeing nor hearing any,

1 Mr. Armstrong, it will be marked as Exhibit Number 15
2 and admitted.

3 (Whereupon Exhibit Number 15 was
4 admitted into evidence.)

5 MR. ARMSTRONG: The second document is a
6 hearing transcript of a public hearing involving the
7 North Carolina Department of Environmental and
8 Natural Resources and that's being distributed right
9 now. I would move to introduce this exhibit as
10 Exhibit 16.

11 MS. OLSON: I would just like to note that
12 there is no authenticity of this document. We have
13 no way of knowing if this was produced or how it was
14 produced, when it was produced or any of those other
15 things. But with that note the Agency has no
16 objection.

17 HEARING OFFICER FOX: So noted, Ms. Olson.
18 The participants have heard Mr. Armstrong's motion to
19 admit the document entitled ERC Hearing Transcript
20 February 17, 2014, into the record. Is there any
21 objection?

22 (No response.)

23 Neither hearing nor seeing any,
24 Mr. Armstrong, it will be marked as Exhibit Number 16

1 and admitted. Please go ahead.

2 (Whereupon Exhibit Number 16 was
3 admitted into evidence.)

4 MR. ARMSTRONG: And the third and final
5 document is entitled Coal Combustion Residue -
6 Surface Impoundments with High Hazard Potential
7 Ratings. It is from the United States Environmental
8 Protection Agency website, and I would move this in
9 as Exhibit 17.

10 HEARING OFFICER FOX: That would be the
11 correct number, Mr. Armstrong. The Environmental
12 Groups have circulated copies of what Mr. Armstrong
13 has moved to admit into the record as Exhibit Number
14 17, the USEPA Coal Combustion Residue document. Is
15 there any objection to the admission?

16 (No response.)

17 Neither seeing nor hearing any, Mr.
18 Armstrong, it will be marked as Exhibit Number 17 and
19 admitted into the record.

20 (Whereupon Exhibit Number 17 was
21 admitted into evidence.)

22 MR. ARMSTRONG: Thank you. Since the Agency
23 is not familiar with this, I won't ask any detailed
24 questions about it.

1 But I just would note the first sentence
2 of the USEPA Information Update reads "On February 2,
3 2014, Duke Energy identified that coal ash and ash
4 pond water were leaking from a broken storm water
5 management line into the Dan River in Rockingham,
6 North Carolina." Is the Agency aware of how many
7 impoundments in Illinois have been sited adjacent to
8 a storm water management line?

9 MS. FRANZETTI: I am sorry, I couldn't hear
10 the very end. Storm water management...

11 MR. ARMSTRONG: Line, L-I-N-E.

12 MS. FRANZETTI: Line, oh, okay.

13 MS. OLSON: When you say "sited," do you mean
14 next to?

15 MR. ARMSTRONG: Yes, adjacent to.

16 MR. BUSCHER: I can't -- I don't have the
17 information, I don't think. I am not aware that
18 there are any; I am not aware that there are not.

19 BOARD MEMBER O'LEARY: I have a clarification
20 on that. I believe that particular piping system was
21 underneath the impoundment.

22 MR. ARMSTRONG: That's correct.

23 BOARD MEMBER O'LEARY: Not adjacent to.

24 MR. ARMSTRONG: So I guess my intent was, any

1 impoundment that was located near a pipe but would --
2 if my question was are you aware of any impoundments
3 that was built over a pipe, would your answer be
4 different?

5 MR. BUSCHER: No.

6 MR. ARMSTRONG: Thank you. I have no further
7 questions until prefiled Question Number 34.

8 Question 34 is, "What requirements in the
9 proposed rule would assure that owners and operators
10 of CCW impoundments will have the resources needed to
11 responsibly close impoundments and address
12 groundwater contamination?"

13 The response is "These rules do not
14 propose financial assurance requirements."

15 My follow-up question is, if an operator
16 does not have the financial ability to cover closure,
17 post-closure care or corrective action costs at an
18 impoundment, who would bear the costs?

19 MR. COBB: I don't know.

20 MR. ARMSTRONG: Would it be the state of
21 Illinois?

22 MS. OLSON: He just said he didn't know.

23 MR. COBB: I don't know.

24 HEARING OFFICER FOX: Member Burke has a

1 question. Please go ahead.

2 BOARD MEMBER BURKE: These proposed Part 841
3 rules are brought under the authority of the
4 Groundwater Protection Act, and is there any
5 authority in the Groundwater Protection Act to
6 require financial assurances on these types of
7 facilities?

8 MR. COBB: No, and that was the struggle that
9 we had with financial assurance. We heard some
10 testimony earlier about how there is financial
11 assurance for closing landfills. Of course, that
12 authority flows from the federal statute that
13 includes the authorization of such regulations, and
14 that's where we did an evaluation of statutes that
15 give us such authority and I don't think we saw that
16 authority.

17 BOARD MEMBER BURKE: And does the Agency have
18 an opinion on whether there is authority anywhere
19 else in the Illinois statute for financial assurance?

20 MR. COBB: That's what I meant when I just
21 said no. I don't see anything. Our attorneys
22 looked.

23 BOARD MEMBER BURKE: Thank you.

24 HEARING OFFICER FOX: Ms. Olson, were you

1 indicating that you had a follow-up?

2 MS. OLSON: No, it's been covered.

3 HEARING OFFICER FOX: Very good. Mr. King, we
4 will go to you for a follow-up question.

5 MR. KING: Yes. Would it be true that if an
6 owner or operator of a CCW impoundment was purporting
7 that it did not have the resources to do the closure,
8 that the Agency still would be able to take
9 enforcement action to force them to obtain those
10 resources to complete closure?

11 MR. COBB: Yes, we hear that many times when
12 we then go the route of pursuing an enforcement, that
13 we don't have the resources to do whatever. We are,
14 indeed, precluded from pursuing enforcement.

15 HEARING OFFICER FOX: Mr. King, did you have
16 any further questions?

17 MR. KING: No, I do not.

18 HEARING OFFICER FOX: Mr. Armstrong, I believe
19 we are back to you.

20 Oh, I am sorry. Would you please
21 identify yourself for the record and who you may be
22 representing, sir?

23 MR. GIGNAC: Yes. My name is James Gignac,
24 last name spelled G-I-G-N-A-C. I am with the

1 Attorney General's Office. I wanted to follow up on
2 Member Burke's question.

3 The Agency's response to ELPC's Question
4 34 states that the rules do not propose financial
5 assurance requirements. In response to Member
6 Burke's question, is it the Agency's position that it
7 would lack authority to include financial assurance
8 requirements in this rulemaking?

9 MR. COBB: Are you asking me? Okay. Yes, I
10 don't -- our attorneys have evaluated whether we feel
11 that we have the statutory authority to include such
12 a provision and that's the input that I have gotten,
13 is that we lack that authority.

14 MR. GIGNAC: I would note that the Board
15 Question, I believe, Number 56 also regarded such
16 financial assurance. Would the Agency and the Board
17 consider a submittal of a proposal for such financial
18 assurance requirements in the state of Illinois?

19 MR. COBB: Yes.

20 MS. OLSON: Did you say in this rulemaking?

21 MR. GIGNAC: Yes.

22 MR. COBB: I still have to go with my initial
23 response that we don't feel we have the authority to
24 do that. Things that we propose to the Board usually

1 flow from some sort of statute. We don't see any
2 such statute here. I mean, we considered it; that's
3 what I mean by, yes, we looked at it. But we did not
4 propose anything because we are not sure what to base
5 such proposals on.

6 HEARING OFFICER FOX: Any additional
7 questions, sir?

8 MR. SYLVESTER: To follow up last time, you
9 know, one of the questions that -- obviously, this is
10 a prefiled question, what Mr. Cobb seems to be
11 talking about is a reasonable kind of question. I
12 suppose in the public comments or the post-hearing
13 comments, we will be given the chance to give the
14 basis or what we thought was the basis for making
15 such a proposal to the Board.

16 HEARING OFFICER FOX: And we certainly will
17 address, Mr. Sylvester, post-hearing comments and
18 first notice comments in the event that the Board
19 proceeds to that step. We also have scheduled a
20 second hearing, of course, beginning on May 14 with a
21 deadline to prefile testimony current yet. So to the
22 extent that there are issues pertaining to the
23 Agency's proposal, there are certainly procedural
24 avenues to address that.

1 MR. SYLVESTER: Thank you.

2 HEARING OFFICER FOX: Surely. Any further
3 questions, Mr. Sylvester and Mr. Gignac?

4 MR. GIGNAC: No, thank you.

5 HEARING OFFICER FOX: Sure. Mr. Sylvester, we
6 are back to you.

7 MR. ARMSTRONG: Armstrong.

8 HEARING OFFICER FOX: I can't even remember
9 what I called you. Sorry.

10 MR. ARMSTRONG: Moving on, I have no further
11 questions for Mr. Cobb. So moving on to the
12 questions for Mr. Buscher.

13 HEARING OFFICER FOX: If we may take one
14 second, though, there were a couple of questions that
15 Mr. Armstrong proposed no further clarification on.
16 Did anyone else, any other participant, wish to
17 address, for instance, his Questions Number 35 and
18 36?

19 (No response.)

20 I am neither seeing nor hearing any
21 indication of such, Mr. Armstrong. Please, sorry for
22 the interruption. Go ahead.

23 MR. ARMSTRONG: No problem. Question Number
24 1, "On page 5 of your prefiled testimony, you state

1 that 'The discharge of wastewater from groundwater
2 collection systems must be handled properly. In some
3 instances, the owner or operator may have a permit to
4 discharge treated wastewater to waters of the United
5 States. This permit would need to be modified in
6 order to receive the wastewater from a groundwater
7 collection system.' At what point relative to the
8 correct action process must an NPDES permit be
9 modified or obtained?"

10 The Agency's response was "An NPDES
11 permit would need to be modified or obtained prior to
12 the discharge of the wastewater from the groundwater
13 collection system to waters of the United States."

14 My follow-up question is, I understood
15 from your testimony yesterday that if an NPDES permit
16 cannot be obtained or modified, then -- for the new
17 discharge from the corrective action plan -- then the
18 corrective action plan would need to be redone, is
19 that accurate?

20 MR. COBB: I believe that's what I said, yes.

21 MR. ARMSTRONG: Would the Agency consider an
22 amendment to these regulations that makes that point
23 clear?

24 MR. COBB: I think it is very clear that, if

1 modifications are needed to the corrective action
2 plan, that they have to come back and get approval
3 from the Agency.

4 MR. ARMSTRONG: So now you are not willing --

5 MR. COBB: If you can't do the cleanup as
6 proposed, then you have got to come back with another
7 proposal.

8 MR. ARMSTRONG: I have one question. So, no,
9 you would not be willing to propose such language?

10 MS. OLSON: I think there might be a
11 miscommunication. Are you referring to proposed
12 language that would say that the NPDES permit had to
13 be modified or are you saying that the Board language
14 of the corrective action plan would have to be
15 modified?

16 MR. ARMSTRONG: That if the NPDES permit
17 cannot be modified or issued, then the corrective
18 action plan must be modified.

19 MR. COBB: We can look at that. I think it
20 already applies; it is implicit. But you are asking
21 for it to be explicit?

22 MR. ARMSTRONG: Yes.

23 Moving on to Question Number 2 --
24 actually, I don't have a follow-up question on

1 Question Number 2. Going to skip Question 3.

2 On Question Number 4, "On page 7 of your
3 prefiled testimony you state that 'Prioritization of
4 the work to be completed at these units is necessary
5 due to the large number of existing impoundments.
6 The Agency anticipates that significant capital
7 resources will be required to address issues at these
8 units.' How did the Agency calculate the amount of
9 capital resources necessary to address CCW issues?"

10 The Agency's response was "The amount of
11 capital resources necessary to address CCW issues was
12 not calculated. This statement is based on the cost
13 of the significant amount of earth materials which
14 need to be moved in order to close an impoundment and
15 build an alternative disposal structure, the
16 potential cost of replacing a water supply, the cost
17 of evaluating designing and implementing a corrective
18 action, and completing post-closure requirements."

19 Does the Agency have an estimate as to
20 any of these specific costs on a unit basis, for
21 example, per acre?

22 MR. BUSCHER: I don't have that information.

23 MR. ARMSTRONG: Okay. Question Number 5, "Has
24 the Agency considered requiring every owner or

1 operator of a CCW impoundment to submit a closure
2 plan at the inception of the rules, to provide
3 information regarding the costs of closure and
4 post-closure activities?"

5 The answer was "Yes, but the Agency
6 decided not to require a closure plan at inception of
7 the proposed rules because there are too many
8 uncertainties at that time to properly develop a
9 closure plan. Specifically, the volume of ash and,
10 therefore, the final size of the impoundment may not
11 be known at that time. Some facilities periodically
12 remove ash for beneficial reuse that is market
13 dependent. Therefore, some facilities may decide to
14 close by removal as opposed to in-place closure, but
15 due to the market fluctuations, this may not be known
16 until close to closure."

17 So it appears to be from the answer that
18 there are two uncertainties, the final size of the
19 impoundment and whether the closure will be by
20 removal or in-place closure. So, first, it is true,
21 is it not, that the maximum size of a coal ash
22 impoundment could be ascertainable for any
23 impoundment upfront? When I say maximum size,
24 perhaps I should say the maximum volume of any coal

1 ash impoundment is ascertainable at any point.

2 MR. BUSCHER: The thing is, you have a maximum
3 value, you don't know on these things whether they
4 are going to go to completion. You know, it's
5 difficult to -- and, in addition, there may be
6 expansions. So it's not clear what we would be
7 dealing with at the time one of these places decides
8 to close at this point in time.

9 MR. ARMSTRONG: But just to establish, it
10 would be possible for an operator or the Agency, for
11 a given impoundment, to calculate the maximum volume
12 of CCW that can be deposited at the site?

13 MR. BUSCHER: That could be done.

14 MR. JENNINGS: I have a follow-up question
15 unless you have anything else.

16 MR. ARMSTRONG: Yes, you may.

17 MR. JENNINGS: Bill, could the size of a
18 surface impoundment change during its life?

19 MR. BUSCHER: The size of a surface
20 impoundment could change. And if they so elected,
21 they could increase the height of the berms.

22 MR. JENNINGS: And would that change affect
23 the total volume of coal ash that could be deposited
24 there?

1 MR. BUSCHER: Yes, it could.

2 MR. JENNINGS: And would that also impact the
3 potential costs of closure or corrective action?

4 MR. BUSCHER: There is going to be more side
5 slope area, so yes.

6 MR. JENNINGS: And are those things that could
7 all be anticipated at the inception of the rules?

8 MR. BUSCHER: I can't anticipate them.

9 MR. JENNINGS: I don't have anything else.

10 MR. ARMSTRONG: And speaking of volumes --
11 this raised another question -- where volumes are
12 used in the rule, do they refer to the volume of the
13 impoundment or the volume of the coal ash that's
14 actually in the impoundment?

15 MR. BUSCHER: Can you specify where in the
16 rule you are referring to?

17 MR. ARMSTRONG: Sure. For example, in the
18 exemption Section 841.105(b)(4)(E), the provision is
19 that TDS maximum volume is no more than 25 cubic
20 yards. Would that refer to the maximum capacity of
21 an impoundment to store CCW or any other --

22 MR. BUSCHER: I believe that's a design volume
23 for the CCW itself.

24 HEARING OFFICER FOX: Mr. Sylvester, you had

1 indicated that you had a question. Did you wish to
2 raise that?

3 MR. SYLVESTER: I did. I just had a brief
4 follow-up question for Mr. Buscher.

5 When you said that -- you testified that
6 there is a possibility that some of these units may
7 expand down the road, maybe decades, and this is for
8 the sake of argument only, if Illinois did require
9 closure plans upfront, couldn't the regulated entity
10 submit an amended closure plan when they expanded the
11 unit?

12 MR. BUSCHER: I suppose they could amend it.

13 MR. SYLVESTER: Nothing further.

14 HEARING OFFICER FOX: Thank you, Mr.
15 Sylvester.

16 Mr. Armstrong?

17 MR. ARMSTRONG: Just to follow up on one
18 additional point on your answer, so the volume
19 specified in Exemption 841.105 is the designed volume
20 of an impoundment, is that correct?

21 MR. BUSCHER: The unit's maximum volume is no
22 more than 25 cubic yards. That's what the regulation
23 states, and I think it speaks for itself.

24 MS. OLSON: Can I ask a follow-up question?

1 MR. ARMSTRONG: Sure.

2 MS. OLSON: This says the maximum volume is no
3 more than 25 cubic yards. If you had a surface
4 impoundment with design capacity of 50 cubic yards,
5 would that fall under the exemption under the
6 proposed Section 841.105(a)(b)(4)(C).

7 MR. BUSCHER: It would appear not to.

8 MS. OLSON: And is that because it could in
9 fact include more than 25 cubic yards?

10 MR. BUSCHER: Yes.

11 HEARING OFFICER FOX: Anything further,
12 Ms. Olson?

13 Thank you.

14 MR. ARMSTRONG: I have no further questions of
15 Question 6.

16 Our prefiled Question 7, "Which CCW
17 impoundments would be placed in each of the
18 categories (I, II, III, and IV) for closure
19 prioritization outlined in proposed Section 841.405?"

20 Actually, I am sorry, I don't have a
21 follow-up question on that question.

22 "On page 9 of your prefiled testimony you
23 discuss the steps in a closure plan in which the CCW
24 remains in place. Under what conditions does the

1 Agency envision that a closure plan would need to
2 include removal of the CCW from the impoundment?"

3 The Agency's response is that "The
4 proposed closure regulations do not require the
5 removal of the CCW from an impoundment. The decision
6 to require ash to be removed would be based upon
7 site-specific conditions and would need to be
8 technically feasible and economically reasonable.
9 The Agency cannot speculate when removal would be
10 required. A closure plan could include removal of
11 the CCW from an impoundment would be where the
12 material can be marketed for beneficial use. In
13 addition, it is expected that the facilities which
14 currently remove ash from their impoundments on a
15 regular basis to complete closure by removal.
16 Another instance would be where the volume of ash in
17 the impoundment is small."

18 Could you specify what you mean by
19 stating that the decision to require ash to be
20 removed would be based upon site specific conditions
21 and would need to be, quote, technically feasible?

22 MR. BUSCHER: Whether or not the wherewithal
23 is there to actually remove the material.

24 MR. ARMSTRONG: Whose wherewithal?

1 MR. BUSCHER: The owner-operator.

2 MR. ARMSTRONG: And what -- what would the
3 wherewithal consist of?

4 MR. BUSCHER: Well, if they are going to
5 remove it, it needs to go somewhere.

6 MR. ARMSTRONG: Correct.

7 MR. BUSCHER: So it would have to be properly
8 disposed. So that's what I meant.

9 MR. ARMSTRONG: Can you give an example of any
10 case where removal would be technically infeasible?

11 MS. OLSON: Did you say infeasible or
12 feasible?

13 MR. ARMSTRONG: Technically infeasible.

14 MR. COBB: I can give an example of where we
15 were concerned that the removal would make
16 groundwater contamination worse.

17 MR. ARMSTRONG: Okay.

18 MR. COBB: Since -- and, in fact, in the
19 Hutsonville site-specific rulemaking, modeling showed
20 and continued monitoring showed that capping it with
21 a collection system around it where you have an
22 off-site plume would clean up over time to meet the
23 standards.

24 What we were concerned about is that pile

1 has been there a long time and was under an
2 equilibrium condition, and let me explain that. The
3 best way I can explain it is you take that ash in
4 that impoundment, take it home at night, put it in a
5 blender and let everything settle out. You wake up
6 in the morning and that is in an equally verdant
7 condition.

8 Then you start digging into it, turn the
9 blender on, and that's what we are afraid might
10 happen, is that that process would change that
11 equilibrium, possibly force more contaminants in.
12 The whole time that it was uncovered, taking I don't
13 know how many truck loads over how many decades to
14 somewhere that we don't know where or where not, may
15 not want to take that ash, it is up to the landfill
16 whether they allow that to be taken in there.

17 So the whole time that the hole was open
18 with no cap on it, it could continue to get
19 recharged. We were concerned that, in that instance,
20 that that would be technically and feasibly and
21 economically feasible not a good thing to do. But
22 our main concern was the groundwater itself. Leaving
23 it in place, all the modeling showed that it was
24 going to meet the Board's applicable standards.

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1 MR. ARMSTRONG: Are you aware -- I'm sorry,
2 actually, I am going to present a document first,
3 then ask a question following up. The document is an
4 expert -- I am sorry, the document is a news article
5 from www.wral.com posted February 19 entitled Expert:
6 Concerns about Moving Ash Ponds 'Pure Speculation'.

7 MS. OLSON: Can you tell us who www.wral.com
8 is?

9 MR. ARMSTRONG: It's a news station in the
10 North Carolina area and there has been a great deal
11 of coverage about the Dan River spill in North
12 Carolina.

13 MR. COBB: Who is the expert?

14 MR. ARMSTRONG: Well, first, could I move to
15 enter this as Exhibit 18?

16 HEARING OFFICER FOX: The Environmental Groups
17 have distributed a copy of this document and
18 Mr. Armstrong has moved to admit it as number --
19 Exhibit Number 18. Is there any objection?

20 (No response.)

21 Neither seeing nor hearing any, it will
22 be marked and admitted, Mr. Armstrong.

23 (Whereupon Exhibit Number 18 was
24 admitted into evidence.)

1 MR. ARMSTRONG: So in response to the
2 statement from Mr. Cobb, the expert is Dr. Avner,
3 A-V-N-E-R, Vengosh, V-E-N-G-O-S-H, of Duke's Nicholas
4 School of the Environment. The article reads "Avner
5 Vengosh of Duke's Nicholas School of the Environment
6 has published multiple studies on the 2008 TVA coal
7 ash spill in Kingston, Tennessee, and its aftermath.
8 Vengosh has also published several peer-reviewed
9 studies on contaminations from North Carolina coal
10 ash sites in at least 11 lakes and rivers. His team
11 has been sampling water all over the state, including
12 downstream from the Dan River spill. Told about
13 Skvarla's comments" -- Skvarla is identified as the
14 secretary of the North Carolina Department of
15 Environmental Natural Resources in the article --
16 "Vengosh says there is no published study that casts
17 any doubt on whether moving coal ash out of leaking
18 landfills is the best move for the environment."
19 'What are they talking about? Of course, not,'
20 Vengosh said in the phone interview with WRAL News.
21 'If there is evidence of groundwater contamination
22 and surface water contamination at the coal ash pond,
23 then leaving it as is obviously isn't an option if
24 the environment is something you care about," he

1 said. 'You don't need to be Joe Chemist to figure
2 that out.'"

3 So my only follow-up question is, are you
4 aware of any academic literature supporting the
5 conclusion that it could be less environmentally
6 protective to remove coal ash than close in place?

7 MS. OLSON: I am going to tender an objection
8 to this line of questioning. These experts that are
9 quoted in this document are not present here today.
10 They are not here to entertain questions on behalf of
11 the Agency. We do not know exactly the context of
12 these quotes. When he says "leaving coal ash in
13 place" is he entertaining the possibility of a cap or
14 any other sort of Agency-approved action? There is
15 too much speculation here for the Agency to respond
16 to this document.

17 HEARING OFFICER FOX: Ms. Olson, understanding
18 all the points you made, I heard a question asking
19 whether the witness is aware of any academic studies
20 without reference to the exhibit and if any of the
21 witnesses on the panel can answer that question about
22 the availability of any academic studies, I'll ask
23 them to respond to it, please.

24 MR. DUNAWAY: I am not aware of any.

1 MR. BUSCHER: I am not aware of any.

2 MR. COBB: I am not aware of any, other than I
3 am aware of the Hutsonville case which -- and I would
4 be interested what this expert would say, given that
5 all the scientific evidence shows that leaving it in
6 place is going to clean up, and that was the basis of
7 the Board's site-specific rulemaking.

8 BOARD MEMBER RAO: I have a follow-up
9 question. Mr. Cobb, do you recall if any scientific
10 evidence was submitted to the Board in the
11 Hutsonville rulemaking to support the contention that
12 digging up the lake could cause greater environmental
13 harm?

14 MR. COBB: Absolutely.

15 BOARD MEMBER RAO: Can you look into the
16 record and see if there are any papers or any
17 technological diagnoses as to what the Agency
18 speculated?

19 MR. COBB: No, the record is replete with what
20 the experts on behalf of Ameren submitted. They
21 had -- they did groundwater flow monitoring. They
22 did --

23 BOARD MEMBER RAO: No, what I am saying is, if
24 you dig up the waste, things could change. That's

1 what you are saying, and I am wondering if that
2 information was submitted. I heard the testimony in
3 that rulemaking. I don't recall any technical
4 papers.

5 MR. COBB: No, that's just my professional
6 opinion, knowing that that groundwater is in a state
7 of equilibrium. And I also know that it's getting --
8 you are going to have to haul that somewhere. So
9 just basic hydrogeology, the whole time that it is
10 going to be open, recharge is going to be flowing
11 through the waste, moving waste to the water table,
12 continuing to contaminate groundwater. Because you
13 are not going to remove that overnight. I don't --

14 BOARD MEMBER RAO: So that's what I thought,
15 that there is more to it than just digging up the
16 dirt.

17 MR. COBB: Yeah, that's a professional opinion
18 on my part.

19 HEARING OFFICER FOX: Ms. Franzetti, you have
20 a question.

21 MS. FRANZETTI: Not a question. I just had
22 one additional comment for the record, and I am
23 sorry, I forgot what exhibit number this.

24 HEARING OFFICER FOX: The most recent is

1 Number 18.

2 MS. FRANZETTI: Number 18. I just for the
3 record object to any statement that the person quoted
4 in here is in fact an expert. Because all this is,
5 is WRAL News saying he is an expert and I think that
6 we need a lot more than that before someone is deemed
7 for the record to be an expert on this issue.

8 MS. OLSON: The Agency seconds that objection.

9 HEARING OFFICER FOX: So noted, Ms. Franzetti
10 and Ms. Olson.

11 Mr. Rao, did you have any follow-up
12 questions pertaining to the Hutsonville case?

13 BOARD MEMBER RAO: No.

14 HEARING OFFICER FOX: I believe,
15 Mr. Armstrong, we are ready to return to you on that
16 issue or the next, if you are prepared to go to it.

17 MR. ARMSTRONG: I am ready to move on to
18 prefiled Question Number 9, "How did the Agency
19 arrive at the proposed post-closure care period of
20 ten years?"

21 "The Agency notes that ten years is the
22 minimum post-closure care period. A closed unit will
23 first have to meet groundwater standards before the
24 post-closure care period ends. It has been the

1 Agency's experience that, once a unit stops receiving
2 CCW and dewaterers, chemical constituent concentrations
3 begin to reduce."

4 Did the Agency consider the USEPA's
5 proposal of a 30-year post-closure care period in its
6 proposed rules, for example, in proposed Section
7 257.101?

8 MR. DUNAWAY: We discussed various time frames
9 and we decided to go with ten years as a minimum
10 because that would be if there is compliance with
11 groundwater standards at the beginning. So we would
12 have ten years of continual compliance being shown by
13 monitoring. We felt that was adequate.

14 MR. ARMSTRONG: Did you consider, though,
15 USEPA's specific proposal and reject it?

16 MR. DUNAWAY: Not their specific proposal.

17 MS. OLSON: Can I ask a follow-up question?

18 HEARING OFFICER FOX: Please go ahead.

19 MS. OLSON: But, Lynn, didn't the Agency
20 consider a 30-year period when drafting these rules
21 for the post-closure care period?

22 MR. DUNAWAY: We considered lots of different
23 time periods.

24 MS. OLSON: And did one of them include 30

1 years?

2 MR. DUNAWAY: Yes.

3 HEARING OFFICER FOX: Anything further,
4 Ms. Olson?

5 Okay, thank you.

6 MR. ARMSTRONG: I will move on to the last two
7 questions from the Environmental Groups, questions to
8 Amy L. Zimmer.

9 HEARING OFFICER FOX: Let me confirm, Mr.
10 Armstrong, if I may, you had filed a few questions
11 directed specifically to Mr. Dunaway and you did not
12 have any follow-up questions to those, am I correct?

13 MR. ARMSTRONG: That's correct.

14 HEARING OFFICER FOX: Very good. Let me check
15 to make sure whether any other participant had any
16 clarification they wanted to seek from Mr. Dunaway or
17 any follow-up questions to pose to him.

18 (No response.)

19 Neither seeing nor hearing any,
20 Mr. Armstrong, thank you for the interruption and
21 please go ahead when you are ready.

22 MR. ARMSTRONG: And, actually, looking at the
23 final two questions, I don't believe I have any
24 follow-up questions either for those, so.

1 HEARING OFFICER FOX: Very good. But before
2 we do those, let me just verify quickly, Ms. Zimmer,
3 you appear to be about to be let off the hook but let
4 me check whether anyone else did wish to ask a
5 follow-up question for clarification from her.

6 (No response.)

7 Neither seeing nor hearing any, you are
8 off the hook and that wraps up the follow-up
9 questions by the Environmental Groups based on the
10 written responses to their questions.

11 Mr. Sylvester, please go ahead.

12 MR. SYLVESTER: Yeah, just a question, was
13 there written clarification questions for the record?

14 HEARING OFFICER FOX: Exhibit Number 5
15 consists of the Agency's written responses which
16 recapitulate each of the questions that were posed.
17 So that's correct, that's the best way to answer your
18 question, if that makes sense.

19 MR. SYLVESTER: Thank you very much.

20 HEARING OFFICER FOX: I believe the Agency, by
21 the way, has made available many copies of Exhibit
22 Number 5 on the round table at the rear. At the
23 beginning of the hearing there were still some of
24 those available, if you would like to grab one.

1 MR. SYLVESTER: Thank you.

2 HEARING OFFICER FOX: Surely. We have been
3 under way for nearly two hours. I do have some
4 follow-up Board questions. Why don't we take a quick
5 break and resume here at five to eleven, and we will
6 see you then. Thank you.

7 (Whereupon the hearing was in a
8 short recess.)

9 HEARING OFFICER FOX: And we are back on the
10 record. Just before the break Mr. Armstrong had
11 indicated that he had exhausted the follow-up
12 clarifications that he had sought to make to the
13 written responses to the Environmental Groups'
14 questions. I am not seeing any disagreement from
15 them on that point.

16 The Board, of course, had prefiled
17 questions as an attachment to a Hearing Officer
18 order. The Agency, of course, had provided written
19 answers to those questions, as to all of the other
20 sets of questions that had been posed to them. At
21 this point I will -- in just a moment I will turn
22 this over to Mr. Rao who has some follow-up questions
23 for the Agency's witnesses based on the answers that
24 they have submitted. Of course, to the extent other

1 participants have follow-up questions, we can
2 certainly -- follow-up questions, we can certainly
3 entertain those.

4 And with that, Mr. Rao, we will turn it
5 over to you to begin posing questions on behalf of
6 the Board.

7 BOARD MEMBER RAO: I'd like to thank the
8 Agency for presenting these prefiled answers. They
9 were very helpful and most of our questions were
10 answered, but we do have some follow-up.

11 I am not going to go through all of the
12 questions. I will just go to the question where we
13 have a follow-up. Is that okay, Tim?

14 HEARING OFFICER FOX: Yes, I think that makes
15 good sense.

16 BOARD MEMBER RAO: Question Number 1, Subpart
17 C, we had asked a question about how many of the
18 impoundments that the Agency had mentioned -- there
19 were like 89 surface impoundments -- and how many of
20 these impoundments were still receiving CCW waste,
21 and the Agency responded, based on their review, that
22 58 of these impoundments can receive CCWs. Could you
23 clarify what you mean by saying "can receive CCWs"?
24 Does that mean that 36 other impoundments are closed

1 or they are not going to receive any more waste?

2 MR. BUSCHER: When I put that number together,
3 I went through our records. And if the information I
4 had indicated that the impoundment could receive
5 waste, I included it. Now, there are a couple of
6 instances where we have got facilities that are
7 closed. So if they were closed and not operating,
8 that was the -- they were not included.

9 BOARD MEMBER RAO: Okay. So when you say
10 there are a couple of these impoundments that are
11 closed, just by doing the math, it to me seems like
12 there were like 36 impoundments which cannot receive
13 waste. So that's what I wanted to get clarification
14 on.

15 MR. BUSCHER: That is the best of my
16 knowledge, yes, correct. Some of those exist but
17 have not been used, so they are closed.

18 BOARD MEMBER RAO: And on the next question.
19 1(d), we asked "How many of these impoundments would
20 be subject to the proposed regulations?"

21 The Agency responded that "Under Section
22 841.105 all surface impoundments containing CCW or
23 leachate from CCW, operated on or after effective
24 date of these rules, would be subject to the proposed

1 regulations. In addition, the Agency intends these
2 rules to apply to surface impoundments containing CCW
3 or leachate from CCW that are no longer in operation
4 if the CCW or leachate from CCW causes or contributes
5 to an exceedence of the groundwater quality
6 standards."

7 The follow-up to this question was, are
8 all CCW impoundments that are no longer in operation
9 are required -- are they required to monitor
10 groundwater even if they are impacting groundwater?

11 MR. BUSCHER: No.

12 BOARD MEMBER RAO: How would they determine if
13 they are impacting groundwater to see whether they
14 are subject to these regulations?

15 MR. BUSCHER: They would have to install
16 groundwater -- there are instances where there are
17 not groundwater monitoring wells for old
18 impoundments. So if that were the case, they would
19 have to install a monitor well to make that
20 determination.

21 BOARD MEMBER RAO: Okay. I think one of
22 the -- Mr. O'Leary has a follow-up question later to
23 get into this a little bit more. So I am going to
24 wait until --

1 HEARING OFFICER FOX: Ms. Olson, I believe you
2 have a follow-up question.

3 MS. OLSON: So, we were talking about the 36
4 impoundments, and the question was how do we know if
5 they have groundwater contamination. Do some of
6 those 36 impoundments have monitoring wells into
7 place?

8 MR. BUSCHER: Yes, some of them do.

9 BOARD MEMBER RAO: Okay. Do you know which
10 ones have groundwater monitors?

11 MR. BUSCHER: We could get back with you.

12 BOARD MEMBER RAO: Yeah, that's right. If you
13 can go back and check on it, that would be helpful.

14 The next question we have a follow-up on
15 is Question Number 2. This question dealt with an
16 issue of CCW containing constituents in CCW wastes.
17 And we had asked if the Agency could comment on
18 whether any testing had been done by power generating
19 facilities to show that organic compounds are not a
20 concern with disposal of CCW wastes.

21 And the Agency responded that Joliet 29
22 has recently tested for benzene and BETX, which is
23 spelled B-E-T-X. And you noted that these tests did
24 not detect any exceedences. And you also noted that

1 Crawford and Southern Illinois Power Corporation -
2 Marion have also tested for benzene, toluene and
3 ethylbenzene, and all results have been non-detects.

4 Would it be possible for the Agency to
5 submit the test results into the record if you have
6 them?

7 MR. BUSCHER: Yeah, we can follow up on that.

8 BOARD MEMBER RAO: Thank you.

9 The next question we have a follow-up on
10 is on Question Number 3, Subsection (b). You were
11 asked how many of the facilities identified on the
12 Agency's surface impoundment strategy were already
13 monitoring groundwater and how many facilities
14 installed groundwater monitoring wells to comply with
15 the Agency strategy.

16 The Agency's response was "Seven of the
17 facilities identified under the Agency's strategy
18 were already monitoring groundwater. Seventeen
19 facilities installed groundwater monitoring wells to
20 comply with the Agency's strategy."

21 This response indicates that now 24
22 facilities have groundwater monitoring. Do these
23 represent 24 power generating facilities?

24 MR. BUSCHER: Yes, sir.

1 BOARD MEMBER RAO: So, if these 24 facilities
2 have groundwater monitoring, do they address all the
3 91 impoundments in those 24 facilities?

4 MR. BUSCHER: When we started this
5 investigation, it was an investigation, and there may
6 be instances where on a site-specific basis we may
7 need more information for a particular impoundment.

8 BOARD MEMBER RAO: Okay. And does the record
9 include groundwater monitoring data from all these 24
10 power generating facilities?

11 MR. COBB: I can -- the groundwater monitoring
12 data that we included is for the facilities that,
13 during the monitoring assessment process, were found
14 to have violations of groundwater quality standards.
15 So if there was sampling and others that didn't have
16 ground water quality standards under that assessment,
17 we did not include those in the record.

18 BOARD MEMBER RAO: But your evaluation did
19 consider groundwater monitoring for all?

20 MR. COBB: If we knew about the impoundments,
21 as I said there is always some uncertainty of the
22 exact number, but in most cases we have identified
23 the impoundments. Monitoring wells are established,
24 and of most importance are the ones that have the

1 violation.

2 MR. ARMSTRONG: I have a follow-up question,
3 if possible.

4 HEARING OFFICER FOX: Please go ahead, Mr.
5 Armstrong.

6 MR. ARMSTRONG: Thank you.

7 Would it be possible for the Agency to
8 identify which sites they believe that more
9 confirmation sampling is needed on a site-specific
10 basis?

11 MR. BUSCHER: Yeah, we can follow up on that.

12 MR. ARMSTRONG: Thank you.

13 BOARD MEMBER RAO: All right. The next one we
14 have follow-up is on Question 4(a). We had asked the
15 Agency to comment on whether compliance commitment
16 agreements for Dynegy and Ameren facilities have been
17 finalized since the filing of this rulemaking.

18 And the Agency indicated that two Dynegy
19 facilities and four Ameren facilities were issued
20 notices of intent to pursue legal action on February
21 13, 2013. Is that a typo? Should that be 2014 or
22 was it issued on February 13, 2013?

23 MS. ZIMMER: I think that's true, but we will
24 double check.

1 BOARD MEMBER RAO: Okay. Thanks.

2 The next question we have in follow-up is
3 on Question 9.

4 HEARING OFFICER FOX: Mr. Rao, if I may
5 interrupt just a moment, we will be -- by going to
6 Number 9, we will be passing over a number of the
7 written responses. Do any of the participants wish
8 to raise any question about the Agency's responses to
9 Questions Number 4 through 8 before we move on?

10 Ms. Zeman, it appears you have a
11 question.

12 MS. ZEMAN: Thank you. Christine Zeman, CWLP.

13 In your response to 4(a) you state "The
14 compliance commitment agreements for the Dynegy and
15 Ameren facilities were not finalized." And then you
16 say "Two Dynegy facilities and four Ameren facilities
17 were issued Notices of Intent to Pursue Legal
18 Action."

19 Were the compliance commitment agreements
20 deemed inadequate and, therefore, the notices were
21 issued or were there other reasons for the notices?

22 MR. COBB: Yes, the compliance commitment
23 agreements were rejected as required under Section 31
24 before proceeding to a Notice of Intent to Pursue

1 Legal Action.

2 MS. ZEMAN: Thank you.

3 HEARING OFFICER FOX: Anything further,
4 Ms. Zeman?

5 MS. ZEMAN: No, thank you.

6 HEARING OFFICER FOX: Thanks very much. Did
7 anyone else wish to address Questions 4 through 8
8 before we go on?

9 (No response.)

10 Neither seeing nor hearing any, Mr. Rao,
11 sorry for the interruption.

12 BOARD MEMBER RAO: No, no problem.

13 So, going back to Question 9 this
14 question answered why the Agency did not include
15 sections similar to what the USEPA proposed for
16 design criteria for surface impoundments, and I have
17 a follow-up for your response to 9(a). We had asked
18 a question why it did not include design criteria for
19 CCR -- existing CCR surface impoundments, and you had
20 indicated that some of these requirements are covered
21 by the Department of Natural Resources dam safety
22 regulations.

23 Would it be possible for you to provide
24 the citations to the DNR regulations?

1 MS. OLSON: I believe they are attached as an
2 exhibit.

3 BOARD MEMBER RAO: Oh, they are attached as an
4 exhibit? Okay. Sorry, if we missed that.

5 MS. OLSON: Let me double check.

6 MR. COBB: Yes, it's Exhibit I.

7 MS. OLSON: I have a follow-up question for
8 the Board so it is easy to understand how to proceed
9 on the design criteria.

10 The Agency had responded that it is not
11 prepared to propose design criteria right now. We
12 would like to do -- we would like to do all these
13 other things. So I guess we are curious if we should
14 start working on that. I mean, is that -- I don't
15 even know if that is an appropriate question to ask.
16 But we would be happy to work on it, if that's
17 something the Board would like us to do. If not,
18 then we will move on. And if in any way possible the
19 Board could address that in a future order or
20 something along those lines, it would be appreciated.

21 HEARING OFFICER FOX: Ms. Olson, perhaps the
22 best way to answer that question is to put it in
23 procedural terms. Certainly, this docket is open, of
24 course, and that is why we are here and there is

1 every opportunity to develop testimony or to draft a
2 motion to amend the proposal if the Agency in its
3 judgment wishes to do so in the course of this
4 proceeding.

5 The Act, of course, allows rulemaking
6 proposals to be introduced before the Board very
7 broadly, certainly by entities including the Agency.
8 If they wish to have a process such as you described
9 briefly in your answer to Question 7(g), if you wish
10 to have that process run its course and propose
11 amendments to Part 841 rules that were adopted in the
12 course of this proceeding, that certainly would be
13 another procedural avenue to do so.

14 The correct answer or best answer, so to
15 speak, is largely I think in the discretion of the
16 Agency and its use of resources and any other
17 obligations it has under the Environmental Protection
18 Act or any other statute. So to a great extent that
19 will -- the question about how to proceed with that
20 issue would lie within the discretion of the Agency.
21 And we appreciate your acknowledgment. But to the
22 extent those may be proposed and adopted, that it
23 perhaps makes sense to reserve specific subparts of a
24 proposed Part 841 to do so.

1 And I'm sorry, Mr. Rao, back to you.

2 BOARD MEMBER RAO: No, I do have a follow-up
3 to what Ms. Olson was asking the Board.

4 These design criteria that are being
5 proposed by USEPA, are they mainly to do with the
6 design of a new surface impoundment or also does it
7 apply to existing surface impoundments?

8 MR. COBB: The design criteria that you see
9 there, you know, it is actually not super-detailed.
10 It is a double liner with a leachate collection
11 system.

12 Oh, I have been told they apply to both.
13 I think what that means is that you have to -- and
14 she is right -- you have to close out an existing
15 impoundment to meet the liner requirement under the
16 USEPA proposal. Our proposal is if, you know, we
17 have the oversight of the liner, that our process
18 that we have been doing is recommending liners and
19 then doing monitoring. And if you don't have
20 exceedence, you know, you are in compliance with
21 background, then you don't have to close those.

22 BOARD MEMBER RAO: Have you ever had any
23 requests or have you had any idea of any new
24 impoundments, you know, coming down the pipeline

1 where some of these design requirements would be
2 helpful?

3 MR. COBB: I am going to defer to the panel on
4 that.

5 MR. DUNAWAY: There have been a few CCW
6 impoundments and leachate impoundments in the last
7 few years, but I am not aware of any being designed
8 right now.

9 BOARD MEMBER RAO: And one last question on
10 this issue, you have mentioned some of the design
11 issues are under the DNR regulations. When I say
12 design criteria, I am talking about what the USEPA
13 has proposed for the berms and the dams. You said
14 that is with DNR. So the design criteria that the
15 Agency deals with pertains mainly to the liner, is
16 that correct?

17 MR. COBB: Our focus has been technology
18 control within the unit to protect groundwater, not
19 that there couldn't be -- well, if the whole thing
20 failed, that could be a threat, too. But there is
21 still provisions under their rules that deal with
22 that, and we try to include at least inspection
23 requirements related to that, not the structural
24 integrity, that could represent a threat to waters of

1 the state.

2 There are also surface -- there are also
3 surface water components that are evaluated by the
4 water pollution control permit program. We are
5 focusing on groundwater here.

6 BOARD MEMBER RAO: Would there be any other
7 location criteria that may apply for new facilities
8 because they have to be on site of a kind of
9 inspected in terms of the application and location
10 criteria?

11 MR. COBB: We'll have to take a look at that.
12 Yeah, I mean, when you are dealing with a power
13 generation facility, it's part of the waste water
14 treatment process.

15 BOARD MEMBER RAO: Okay. Thank you very much.

16 MR. ARMSTRONG: I have got one follow-up
17 question.

18 HEARING OFFICER FOX: Please go ahead.

19 MR. ARMSTRONG: Actually, two follow-up
20 questions.

21 On the issue of new impoundments, I just
22 wanted to flag that in Exhibit 14, which was the
23 document that we just submitted which we received
24 from a FOIA request, FOIA response from the Agency,

1 there are locations at the end of the chart.

2 Specifically, it states that at Coffeen
3 Station a double synthetic-lined impoundment along
4 with a synthetic-lined ash and recycle pond is
5 currently under construction. At Duck Creek, Duck
6 Creek is currently constructing a double
7 synthetic-lined gypsum impounding, a synthetic-lined
8 gypsum recycle pond and a synthetic and
9 concrete-lined bottom ash pond.

10 So I realize that the Agency has reviewed
11 the documents in turn exactly. I just wanted to flag
12 those new impoundments, and hopefully that can be
13 confirmed or --

14 MS. OLSON: Can I ask a follow-up question to
15 clarify this now?

16 BOARD MEMBER RAO: Yeah.

17 MS. OLSON: So, Amy, have you looked at
18 Exhibit 14?

19 MS. ZIMMER: Yes.

20 MS. OLSON: And specifically the reference to
21 the Coffeen Station on page two?

22 MS. ZIMMER: Yes.

23 MS. OLSON: And can you tell us whether or not
24 that pond has been built?

1 MS. ZIMMER: My understanding from talking
2 with colleagues is that active -- that is currently
3 built and active.

4 MS. OLSON: Mr. Buscher, can you testify on
5 whether or not the impoundment at Duck Creek has been
6 built?

7 MR. BUSCHER: My understanding is that it has
8 been constructed.

9 HEARING OFFICER FOX: Anything further,
10 Ms. Olson?

11 MS. OLSON: No.

12 HEARING OFFICER FOX: Mr. Armstrong?

13 MR. ARMSTRONG: Just two more follow-up
14 questions.

15 Does the Agency know as it sits here
16 today when those impoundments were built?

17 MR. BUSCHER: I don't have the specific date,
18 but we can get back with you.

19 MR. ARMSTRONG: Okay. And just one other
20 question on the issue of the lining. I apologize, I
21 was curious about following up on one of the four
22 questions which was 7(c) about the liners. This
23 refers to the Agency's policy since the early 1990s
24 that new ash ponds have been required to be lined,

1 and permit conditions require low permeable liners
2 and groundwater monitoring. The Board asked in
3 Question 7(c) "How do the liners compare to those in
4 USEPA's proposed rule at 40 CFR 257.72(a) or
5 264.1306(b)?"

6 The Agency's response was "The USEPA
7 proposals require CCW surface impoundments to install
8 a double liner system which is more complex than the
9 single liner system this the Agency has been
10 requiring since the early 1990s, which is described
11 in answer 7(a)."

12 I just also wondered, too, whether
13 USEPA's proposed double liner system would also have
14 a lower groundwater conductivity than the single
15 liner system the Agency has been requiring since the
16 early 1990s?

17 MR. DUNAWAY: My understanding is the federal
18 regulations specify two feet of clay, then with a
19 synthetic over the top, and it actually also requires
20 leachate collection. So that is going to be more
21 protective than just two feet of clay.

22 However, the federal regulations also
23 indicate, and they ask for consideration, that states
24 be able to look at what's existing and make a

1 determination -- not existing, but alternatives is
2 what is a better way to describe it. The federal
3 regulations considered and asked for comment on
4 whether or not on a site-specific basis a
5 professional could use an alternate design and
6 whether or not it would be considered. I mean, there
7 is an opportunity for something other than what's
8 specified there, depending on what the regulation
9 ends up being, is my point.

10 MR. ARMSTRONG: Thank you. No further
11 follow-ups.

12 HEARING OFFICER FOX: That wraps up the
13 Board's clarifications.

14 MR. DUNAWAY: I'd like to make a further
15 clarification on this response. That for 7(c), a
16 reference to 7(b) is probably better than 7(a).

17 HEARING OFFICER FOX: Very good. Mr. Dunaway,
18 thank you for that clarification.

19 Mr. Armstrong, you have indicated that
20 you have wrapped up your questions with regard to
21 Board Question Number 7. Mr. Rao, do we need to go
22 back to Board Question Number 9 for any follow-up on
23 your part?

24 BOARD MEMBER RAO: I just have one more

1 follow-up.

2 Based on the information in this Exhibit
3 14, it appears that some newer impoundments are
4 installing liners. And are they installing these
5 liners because the Agency required them to do so or
6 are they voluntarily installing these liners?

7 MR. COBB: I would defer to the staff on that.

8 MR. BUSCHER: We have been involved, as in the
9 groundwater section has been involved, with reviewing
10 new impoundment installations through the industrial
11 permit unit. And through that process we have
12 requested that they provide liners and then there is
13 specifications in -- Rick, is it 370?

14 MR. COBB: The -- and we, I think, answered
15 this in other places, under Part 309 Subpart B, Other
16 Permits, there is a review, general review, authority
17 that permits issued under that part must comply with
18 the Act and Board regs. So our permit section in the
19 Division of Water Pollution Control uses that as
20 authority to require protective measures.

21 Their logic has been, although they don't
22 specifically apply, there is a Part 370 that applies
23 for waste stabilization and aeration lagoons, which
24 if you are familiar with those terms, that's a

1 biological treatment. However, their professional
2 judgment tells them that the technology controls for
3 those types of units would also be -- would work for
4 these types of contaminants.

5 So it's basically a general authority of
6 -- not detailed specs, but.

7 BOARD MEMBER RAO: Do you think it would be
8 helpful to have these specs in the rule?

9 MR. COBB: Yes.

10 BOARD MEMBER RAO: The next follow-up we have
11 is on Question Number 13, so.

12 BOARD MEMBER O'LEARY: Question 13 and this is
13 (b), "Please clarify whether the owner or operator of
14 CCW surface impoundments that are not operated after
15 the effective date of the proposed regulations must
16 demonstrate that coal combustion waste or leachate
17 from coal combustion waste contained in the
18 impoundment is not causing or contributing to an
19 exceedence of the groundwater quality standards,
20 being not subject to the proposed regulations."

21 And the Agency's response is "Such a
22 demonstration is not required."

23 If a demonstration that a CCW or leachate
24 contained in an impoundment is not impacting

1 groundwater and is not required to hold with this
2 provision to be implemented, would the Agency conduct
3 groundwater monitoring to insure that groundwater is
4 not being impacted by the impoundments that are not
5 operated after the effective date of the proposed
6 rules?

7 MR. DUNAWAY: No, we are not going to conduct.

8 MR. COBB: Board Member O'Leary, we always are
9 hesitant to sort of be the consultants making
10 compliance determinations. Because if we err, then
11 -- so we try to avoid doing -- we sometimes do
12 confirmation sampling or side by side. But just for
13 clarity, we try not to put ourselves in the place of
14 being the regulating entity, so.

15 BOARD MEMBER O'LEARY: Okay.

16 BOARD MEMBER RAO: So when these rules go
17 into effect, are all impoundments -- you know, do
18 they have to monitor groundwater and determine
19 whether they are subject to these rules or not or --
20 the rules don't require them to do it, right? You
21 don't need a demonstration from them to say, yeah, we
22 are not impacting the groundwater so we are not
23 subject to these rules?

24 MR. COBB: Correct.

1 BOARD MEMBER RAO: That's not needed.

2 MR. COBB: That's something we do like, as we
3 discussed earlier, the idea of the record keeping. I
4 mean, I think that's -- you suggested that earlier.

5 One thing to keep in mind, a lot of these
6 facilities already have groundwater monitoring
7 systems and are well beyond kind of the preventive
8 stage and are into corrective actions. So we are
9 dealing with a universe of not only new activities
10 but a bunch of existing activities that have been
11 assessed and you'll see the monitoring wells at the
12 units that are monitoring right now, a different
13 situation.

14 BOARD MEMBER RAO: So those facilities which
15 do not have groundwater issues right now, would they
16 still continue to monitor groundwater as long as they
17 are operating?

18 MR. COBB: I can say that with assurance, that
19 if we were involved in the construction of a new
20 unit, or the groundwater section was involved, we
21 have a requirement that monitoring be conducted to
22 show the effectiveness of the technology controls
23 and, yes, those would be continued.

24 MS. OLSON: In your opinion, would it be a

1 good idea for the regulating entity to keep records
2 to show that they are not causing groundwater
3 contamination so as to provide evidence to the Agency
4 that they are not subject to these rules?

5 MR. COBB: Yes.

6 MS. OLSON: And are you also aware of the
7 Agency's authority to request regulated entities to
8 perform sampling?

9 MR. COBB: Yes, Section 4(b) is --

10 BOARD MEMBER RAO: Does the Agency have a
11 problem codifying all of the requirements in the
12 rule, that they monitor groundwater and keep records?

13 MR. COBB: We will think about it.

14 BOARD MEMBER RAO: I have a couple follow-ups
15 on Question 14, on Subsections (a) and (b), the two
16 questions we had concerning CCW surface impoundments
17 that are currently operating under solid waste
18 landfill permits.

19 In response, the Agency stated that it is
20 not aware of any CCW surface impoundments that are
21 currently operating under solid waste landfill
22 permits. The Agency also said that the rules
23 governing solid waste landfills specifically excludes
24 surface impoundments from the definition of a

1 landfill. And that the Agency does not expect the
2 number of CCW units operating under a landfill permit
3 to change.

4 If that's the case, is there any need for
5 the two exemptions that you have under Section
6 841.105 Subsection (b), (b)(1) which says this part
7 does not apply to surface impoundment units operated
8 under solid waste landfill permits issued by the
9 Agency?

10 And the second one deals with surface
11 impoundments operated pursuant to procedural
12 requirements for landfills exempt from permits under
13 35 Ill. Admin. Code 815.

14 MR. COBB: The answer is technically no
15 because they are not required. However, during the
16 stakeholder outreach process, that was the input that
17 we got from stakeholders, to make that explicit.

18 BOARD MEMBER RAO: Okay. The next question we
19 have a follow-up on is Question 39.

20 HEARING OFFICER FOX: That's passing a few,
21 which seems to have disappointed no one. But that
22 leaves us moving past Questions 15 through 38, am I
23 correct, Mr. Rao?

24 BOARD MEMBER RAO: Yes.

1 HEARING OFFICER FOX: And if any participant
2 has a follow-up -- Ms. Franzetti, we will turn to you
3 in just a moment -- on any of the questions that we
4 would be prepared to move past, i.e. 15 through 38,
5 we are certainly in order to take those.

6 Ms. Franzetti, I saw your hand first.
7 Why don't we begin with you? If you are ready, if
8 you would tell us where your question lies.

9 MS. FRANZETTI: Right, it is at Question 22.
10 So if someone has one before then, then let them
11 raise their hand and I will defer to them.

12 HEARING OFFICER FOX: Seeing no hands raised,
13 Ms. Franzetti, please go ahead.

14 MS. FRANZETTI: The question in 22(a), "Should
15 the reference to the GMZ in the proposed definition
16 include a citation to 35 IAC 620.201(b) and 622.50
17 for designating and establishing groundwater as a
18 GMZ?"

19 And the Agency agreed that the reference
20 to GMZ should include a citation to 622.50 but not
21 the reference to 620.201(b).

22 And I just would appreciate a little
23 clarification, why does the Agency feel there was not
24 a need to also specifically reference 620.201(b). If

1 you recall, I am at a little disadvantage because I
2 don't have that section of the regs in front of me.

3 MR. DUNAWAY: The reason we didn't feel that
4 was necessary is because 622.01(b) states a
5 groundwater management zone in accordance with
6 Section 622.50, and we felt that was just redundant.

7 MS. FRANZETTI: Redundant, thank you.

8 A question, a follow-up on Question 23.

9 MS. DEXTER: Mine is on the 14(a) question.

10 MS. FRANZETTI: Yeah, you go.

11 MS. DEXTER: So this is related to 14(a) that
12 we talked about just a few moments ago, about the
13 relationship between the landfill permit, the
14 landfill permitted units.

15 Are you or is anyone on the panel aware
16 of the Lincoln Stone Quarry near Joliet?

17 MR. COBB: Yes.

18 MS. DEXTER: Is that facility considered a
19 surface impoundment under the rule?

20 MR. COBB: No, it is a landfill. It is
21 permitted under the landfill regulations. It is not
22 a surface impoundment.

23 MS. DEXTER: But would it meet the definition
24 of an impoundment?

1 MR. COBB: No, because under the applicability
2 section, we excluded landfills.

3 MS. DEXTER: I am asking doesn't it meet the
4 definition of a surface impoundment under the rules?
5 I apologize, under the rules now in 841.110 it says
6 "Surface impoundment means a natural topographical
7 depression, manmade excavation or diked area where
8 earthen materials provide structural support for the
9 containment of liquid wastes or wastes containing
10 free liquids.

11 MR. COBB: It does appear to meet the
12 definition, but the landfill definition and surface
13 impoundment definitions don't include one another.
14 They are mutually exclusive of one another.

15 MS. DEXTER: Wait. So you just said they are
16 mutually exclusive --

17 MR. COBB: Landfill regulations, the landfill
18 -- oh, I'm sorry.

19 MS. OLSON: Can you state your question again?

20 MS. DEXTER: I am just trying to clarify the
21 last point. You just said the definition of
22 "landfill" and the definition of "surface
23 impoundment" are mutually exclusive?

24 MR. COBB: Correct.

1 MS. DEXTER: But you also just said that this
2 stone quarry landfill meets the definition of a
3 surface impoundment. I don't understand that.

4 MR. COBB: Well, the Lincoln Stone Quarry is a
5 landfill and those regulations specifically say that
6 landfills are not surface impoundments. That unit is
7 subject to the landfill regulations if it is operated
8 under a landfill permit. If you just look at the
9 definition independent of that, without that
10 analysis, you can conclude that it might meet that
11 definition.

12 MS. DEXTER: It meets the -- I'm just trying
13 to -- you have to go through the operation here, so
14 it meets the definition of a landfill. I'm sorry, it
15 meets the applicability requirements, but the
16 definition comes first. And so if it meets the
17 definition of a surface impoundment -- I'm trying to
18 -- so the response to Question 14(a) is the Agency is
19 not aware of any CCW surface impoundments that are
20 currently operating under solid waste landfill
21 permits, which appears to be what we are describing?

22 MR. COBB: Let me do a little bit of an
23 analysis. If the definitions come first, let me look
24 at the definition of a landfill.

1 MS. DEXTER: I think you can take my word for
2 it. You don't have to define something before you
3 can then apply it.

4 MS. OLSON: I think we can look at the
5 definition of a landfill under the Act. If you can
6 let him do that for a second, before you respond.

7 MS. DEXTER: Yep.

8 MR. COBB: We will take a look at that. We
9 thought it was clear, but we may need to look at that
10 definition and clarify that.

11 MS. DEXTER: To clarify the definition of
12 surface impoundment?

13 MR. COBB: Yes.

14 MS. DEXTER: Would you say that, as it is
15 written right now, that the Question 14(a) includes a
16 surface impoundment that is currently lasting
17 operating under a solid waste landfill permit?

18 MR. COBB: Possibly, yes.

19 MS. FRANZETTI: And just to close the loop,
20 and so under your proposed rules in 841.105(b)(1),
21 the Lincoln Stone Quarry landfill that's being
22 discussed in these questions and answers would be
23 excluded from these rules because it is operated
24 under a solid waste landfill permit issued by the

1 Agency, correct?

2 MR. COBB: Correct.

3 HEARING OFFICER FOX: Anything further,
4 Ms. Franzetti?

5 MS. FRANZETTI: Not on 14. I am going to go
6 back to 20.

7 HEARING OFFICER FOX: I think we had one more
8 question that Ms. Dexter wished to pose on Question
9 Number 14, or did I misunderstand?

10 MS. DEXTER: No, I am done.

11 HEARING OFFICER FOX: Very good. Please
12 continue, Ms. Franzetti.

13 MS. FRANZETTI: On Question 23 the Agency was
14 responding to a question regarding clarification of
15 the definition of "compliance point" and whether that
16 definition should also indicate that such a point be
17 located down-gradient of the CCW unit with respect to
18 the direction of groundwater flow.

19 And as part of its response the Agency
20 stated that "The compliance points per unit are
21 independent of groundwater flow direction and exist
22 in all directions, regardless of the direction of
23 groundwater flow."

24 And I have a question with regard to when

1 a well is solely a down-gradient well and it is not
2 also an up-gradient well -- well, let me restate
3 this.

4 I am having trouble understanding when a
5 compliance point would exist in an up-gradient well
6 that is solely an up-gradient well; it is not also a
7 down-gradient well because of location of another
8 unit in close proximity. Is there ever a well that
9 is solely an up-gradient well and, hence, would not
10 be a compliance point?

11 MR. BUSCHER: As long as that well is
12 appropriately placed such that it is not being
13 influenced by flow from the unit, far enough
14 up-gradient so that this radial flow would not be
15 impacting it, then it would be an up-gradient well
16 which one would look to for background water quality.

17 MS. FRANZETTI: Thank you. My next follow-up
18 is on 28(b), specifically, with respect to the
19 Agency's response that the deadline for submission of
20 a groundwater monitoring plan should be one year from
21 the effective date of this part and the deadline for
22 obtaining approval of that groundwater monitoring
23 plan should be two years from the effective date of
24 this part.

1 It's that second part of the answer that
2 I have a question on. How does the applicant, which
3 would be the owner-operator of the CCW unit, control
4 getting the Agency's approval of its groundwater
5 monitoring plan within two years?

6 I understand it is within their control
7 to submit the plan within one year from the effective
8 date. But obtaining a proposal then within no longer
9 than another year, I am confused how the applicant
10 can control that. It would seem to be within the
11 Agency's sole control how long it takes to review and
12 decide whether to approve a groundwater monitoring
13 plan.

14 MS. ZIMMER: The Agency has 90 days to review
15 and approve or disapprove. It is up to the applicant
16 if it is disapproved to rectify the conditions for
17 which it was disapproved, work with the Agency. And
18 then once another submittal is brought in, I would
19 suggest doing it quickly, because there is up to
20 another 90 days for Agency review of modifications of
21 that first disapproved plan.

22 MS. FRANZETTI: And if the Agency is getting
23 close to the two-year mark and it hasn't finished
24 reviewing fully that plan, will it just simply

1 disapprove it at that point?

2 MS. ZIMMER: You have raised a good point. I
3 think we are going to have to go back to look and
4 redraft possibly.

5 MS. FRANZETTI: I would ask you to just
6 consider that absolute two-year deadline.

7 MS. ZIMMER: Okay.

8 MS. FRANZETTI: My next question was on
9 Question 38. And this was the question I started to
10 mistakenly describe in my two questions ago. So this
11 time hopefully I will get it right.

12 The Agency responded that "Background
13 values must be established for all monitoring wells
14 because compliance applies individually at each
15 monitoring well at each regulated unit."

16 For solely -- for a well that is solely a
17 down-gradient well, not up-gradient of another unit,
18 why do you need to establish background values for
19 that purely down-gradient well right up front before
20 there is any exceedence of a groundwater standard
21 detected?

22 MR. DUNAWAY: Well, in the scenario you
23 described, I believe that is the same question that
24 you presented yesterday, and I think that's something

1 that we are going to have to look at.

2 MS. FRANZETTI: All right. Thank you.

3 My next question is a follow-up to 46.

4 HEARING OFFICER FOX: Could we, Ms. Franzetti,
5 if you wouldn't mind the interruption, address the
6 Board's follow-up on Question 39?

7 MS. FRANZETTI: Oh, I'm sorry.

8 HEARING OFFICER FOX: No apologies necessary.

9 MS. FRANZETTI: I went past the number. I am
10 sorry.

11 HEARING OFFICER FOX: We will turn to you in
12 just a moment and I am sure you will let me know if I
13 forget you.

14 Mr. Armstrong has a question.

15 MR. ARMSTRONG: I actually had a question on
16 Question 36 very quickly, and I just wanted to
17 understand the interplay between proposed Section
18 841.125 on groundwater quality standards and 841.130
19 on compliance.

20 And I won't go though the whole Board
21 question. But just in the response from the Agency,
22 the Agency states that "Compliance with the
23 groundwater quality standards in Part 620 must be
24 achieved at all times as Part 620 is currently in

1 full force and effect. The Agency believes proposed
2 Part 841 adequately specifies how compliance is
3 demonstrated. Proposed Section 841.125 provides that
4 the groundwater quality standards of Part 620 apply
5 and proposed Section 841.130 states when compliance
6 with the groundwater quality standards must be
7 achieved." And then 841.130 refers to a compliance
8 period that begins up to one year after the effective
9 date of this rule.

10 Just to clarify, would it be accurate to
11 say that compliance with the groundwater quality
12 standards must be achieved at all times, not just
13 within the compliance period?

14 MR. COBB: Sorry, can you repeat the question?

15 MR. ARMSTRONG: Would it be accurate to say
16 that Part 620 requires that compliance with the
17 groundwater quality standards be achieved at all
18 times, regardless of the compliance period?

19 MR. COBB: Absolutely.

20 MR. ARMSTRONG: Okay. I just wanted to
21 clarify the answer then.

22 Would the Agency be opposed to amending
23 Section 841.125 to state that the owner or operator
24 shall comply at all times with the groundwater

1 standards, adding the language "at all times"?

2 MR. COBB: We will look at it. Good point.

3 MR. ARMSTRONG: Thank you. No further
4 questions.

5 BOARD MEMBER RAO: I had a follow-up on the
6 same question.

7 In your response on the second paragraph
8 you state that "For above-stated reasons, the Agency
9 does not believe proposed Subpart B should not
10 contain a distinct section on compliance
11 determination." In your response there appears to be
12 a double negative. Could you take a look and clarify
13 your answer?

14 It must have been a long day that time.

15 MR. COBB: Yeah, that needs to be fixed. It
16 was a mistake.

17 BOARD MEMBER RAO: All right. Thank you.

18 Are we ready for 39?

19 HEARING OFFICER FOX: 39, it sounds like we
20 are ready for that one, Mr. Rao.

21 BOARD MEMBER RAO: In Question 39 we had asked
22 if Subsection (a) of 841.225 required that "when
23 determining background values and when conducting
24 compliance or assessment monitoring, that the owner

1 or operator must establish statistical methods." And
2 we had asked the Agency to explain the difference
3 between compliance and assessment monitoring.

4 And in your response you explained what
5 the differences are and you also added that
6 "Assessment monitoring is additional monitoring which
7 may be at a higher frequency than for compliance
8 monitoring and could include monitoring at additional
9 wells to evaluate an apparent exceedence of one or
10 more groundwater quality standards."

11 Could you clarify where advance
12 assessment monitoring would be performed?

13 MR. DUNAWAY: If there were an exceedence of a
14 groundwater quality standard, there may be additional
15 monitoring required to, for instance, if the
16 owner-operator wanted to make a demonstration of an
17 alternate source clause, they may well have to
18 install additional wells at other spots to make that
19 demonstration. Also, there would be an assessment
20 required if they were looking at comparison to
21 background and we were looking at the non-degradation
22 issues. There is additional assessment required
23 there, in which case they may need to make -- do
24 additional sampling and evaluation in order to

1 properly assess that.

2 BOARD MEMBER RAO: Does the rule itself
3 require assessment monitoring in any of the proposed
4 sections or is it going to be part of a corrective
5 action plan or this alternative demonstration that
6 the owner or operator can include in the plan?

7 MR. DUNAWAY: Yeah, that term is not
8 specifically used in the rule.

9 BOARD MEMBER RAO: Thank you.

10 HEARING OFFICER FOX: Ms. Franzetti, I believe
11 you said you had a follow-up question on Number 46,
12 is that right?

13 MS. FRANZETTI: Boy, you are good. Yes, you
14 are right.

15 HEARING OFFICER FOX: No, I am lucky. That
16 would skip us past Questions Number 40 through 45 and
17 if you will give me a moment, I will see if anyone,
18 any of the participants, had a follow-up question
19 based on the Agency's responses to Board Questions 40
20 through 45.

21 (No response.)

22 I am not seeing or hearing any.

23 Ms. Franzetti, please go ahead.

24 MS. FRANZETTI: It is just a question as to

1 whether or not the proposed language here with
2 respect to further clarification of the meaning of
3 institutional controls, that the Agency's response
4 indicates it agrees with, I was just concerned that
5 the language might be a little too narrow in not
6 encompassing the possibility of local groundwater
7 ordinances used as institutional controls, because I
8 just don't see a reference here to ordinance and I am
9 not certain the reference to an alternative
10 instrument to a Uniform Environmental Covenant Act
11 institutional control is broad enough to encompass a
12 local ordinance.

13 So I was just wondering if the Agency has
14 considered that issue at all and, if not, would it
15 consider looking at this suggested language by the
16 Board, again, to see whether or not it should
17 expressly reference ordinances.

18 MR. COBB: I think we need to look at it
19 again, and we specifically need to go check with our
20 colleagues in the Bureau of Land on that. I want to
21 find out what their stance is on restricted use
22 ordinances versus Uniform Environmental Covenants.

23 HEARING OFFICER FOX: Member Burke has a
24 question.

1 BOARD MEMBER BURKE: Are you done?

2 MS. FRANZETTI: I am done, yes.

3 BOARD MEMBER BURKE: I am still struggling
4 with getting my arms around how the proposal
5 interacts with TACO as well as institutional control.
6 Yesterday Midwest Generation asked a question about
7 both, and I am still trying to understand it.

8 On the TACO, very simply TACO, the
9 Agency's position yesterday was that TACO is not
10 available to the facilities covered by proposed Part
11 840, 841. And I am wondering if the Agency would be
12 willing to take a look at some of the applicability
13 language that we already have, either in Section 58.1
14 of the Act or in Part 742 of the Rules, to take a
15 closer look at whether that language currently
16 impacts whether or not these facilities would be able
17 to avail themselves of the TACO process.

18 MR. COBB: I looked at that this mornings, at
19 Section 58.1(a)(1). And, basically, the
20 applicability applies to hazardous substances,
21 pesticides and petroleum, which does not include coal
22 combustion waste.

23 So my original response that it is not
24 for every program that I have yesterday to Ms.

1 Franzetti, I still stay with that. I only give more
2 specificity that coal combustion waste is not
3 included in Section 58.1, Subsection (a)(1) of the
4 Act. I talked to the Bureau of Land attorneys this
5 morning with regard to that.

6 BOARD MEMBER BURKE: And then going back also
7 to the discussion yesterday on institutional
8 controls, the questions were about whether or not
9 ELUC, the environmental and land use controls, would
10 be available and institutional controls.

11 And the Agency responded that they could
12 be used under Section 58.17, as authorized under
13 58.17 of the Act.

14 So I was wondering whether, because that
15 section falls under the same title that the
16 applicability language you just read also falls
17 under, whether or not, you know, there is a conflict.

18 MR. COBB: We will get back to you on that.

19 BOARD MEMBER BURKE: Thank you.

20 HEARING OFFICER FOX: Ms. Franzetti, did you
21 have any further follow-up on Question Number 46?

22 MS. FRANZETTI: No.

23 HEARING OFFICER FOX: Very good. Was there
24 any other participant who had a question on that?

1 (No response.)

2 Very well. Mr. Rao, we are ready to turn
3 to you on Question 47, is that correct?

4 BOARD MEMBER RAO: Yes. We asked the Agency
5 to clarify whether the annual progress report
6 required under subsection (g) of Section 841.310
7 would be reviewed by the Agency in accordance with
8 Subpart E.

9 And the Agency's response was that
10 "Annual progress reports are not subject to Subpart
11 E. This report is not listed in proposed Section
12 841.505."

13 So my follow-up is should this report be
14 listed in 841.505 and also can you explain why the
15 annual progress report should not be reviewed under
16 Subpart E.

17 MR. COBB: Well, we will review a progress
18 report, but it is not like we disapprove of it. I
19 mean, it is what it is. It is going to tell us where
20 they are at. I mean --

21 BOARD MEMBER RAO: So are you saying --

22 MR. COBB: It is like we are seeing what they
23 are doing. If they are not meeting their plans under
24 their approved corrective action plan, that's a

1 different thing, I mean, if they are not meeting
2 what's been required. The progress report, we are
3 not really giving a passing or a failing grade to.
4 It's -- obviously, if they are not doing what they
5 are supposed to be doing under the corrective action
6 plan, then we would keep looking at that and ask for
7 amendments to the plan, if necessary.

8 So we are just looking at the progress
9 report as just reviewing the report, and then --

10 BOARD MEMBER RAO: So anything that's listed
11 in Subpart E are where an Agency determination
12 follows submission of those?

13 MR. COBB: Yeah, it's a final Agency
14 determination.

15 BOARD MEMBER RAO: All right.

16 MR. BUSCHER: Just to go further, there is a
17 certification form for a completion of corrective
18 action. I know that will be looked at closely.

19 BOARD MEMBER RAO: I think that completes our
20 follow-up on the prefiled questions, and we had one
21 question relating to Section 841.165 Public Notice.
22 I feel this relates to our Question 31, 31(b).

23 The Agency in its response states that
24 "The Agency believes any interested parties have an

1 obligation to periodically check its web page" to see
2 if there is notice placed on the Agency's website,
3 and it is an obligation of the interested person to
4 check their web page.

5 We were thinking if the web page is
6 checked once per month by some entity or a person,
7 you know, you cannot expect them to check your
8 website everyday. If they do it once a month, the
9 30-day comment period, you know, they may miss a
10 title, there is a possibility they will not see it or
11 see it in 60 days.

12 So would the Agency be willing to accept
13 written comments for a longer period of time, say 45
14 or 60 days instead of 30 days?

15 MR. COBB: We will look at that.

16 HEARING OFFICER FOX: Mr. Rao, did you have
17 any more questions?

18 BOARD MEMBER RAO: No more.

19 HEARING OFFICER FOX: Ms. Franzetti, were you
20 indicating you had a question?

21 MS. FRANZETTI: Yeah.

22 HEARING OFFICER FOX: Please go ahead.

23 MS. FRANZETTI: This regards -- and,
24 Mr. Buscher, you made reference to it in the prior

1 answer. It is Exhibit J to the draft documents that
2 were provided by the Agency in response to the
3 Board's request in Question 48. And I just want to
4 get a better understanding.

5 Is the Agency intending that it might
6 make these draft documents actual appendices to the
7 proposed Part 841 rules or was it merely responding
8 to the Board's question or you don't know yet?

9 MR. BUSCHER: I believe that in the regulation
10 it indicated that there would be forms put together
11 by the Agency.

12 MS. FRANZETTI: Right. But, Mr. Buscher, I am
13 actually questioning whether you would actually
14 attach these forms to the rules, not just that you
15 would have forms available to applicants at the
16 Agency.

17 MR. BUSCHER: We haven't decided that.

18 MS. FRANZETTI: Then I will just ask you to
19 consider it. Because if you do consider it and you
20 are thinking of maybe attaching them to the rules,
21 then with respect to the one that is a Draft
22 Certification of Surface Impoundment Corrective
23 Action, I would encourage you in number 2 there on
24 Corrective Action Type, indicate the type of

1 corrective action, and you have got there are only
2 three types listed, I would suggest that you not list
3 only three and that instead you not list any and
4 allow the applicant to propose any and all
5 appropriate corrective action types, which could
6 include things beyond just the three that you have
7 identified here. And I think it is better, given the
8 fact that groundwater remediation technology is
9 developing all the time to identify new approaches,
10 that that section not specify the corrective action
11 type.

12 MR. BUSCHER: We could include like "Other"
13 also, would be one way to approach that.

14 BOARD MEMBER RAO: And just for the
15 clarification, in the past the Joint Committee on
16 Administrative Rules has asked the Board to include
17 those forms in our rules, especially for
18 certification, and we have done so.

19 MS. FRANZETTI: Right. That's why I am
20 raising it, because I could see it going in that
21 direction.

22 MR. BUSCHER: We will take that under
23 consideration then.

24 MS. FRANZETTI: Thank you.

1 MR. BUSCHER: Duly noted.

2 HEARING OFFICER FOX: Anything further, Mr.

3 Rao?

4 BOARD MEMBER RAO: No.

5 HEARING OFFICER FOX: Very good.

6 BOARD MEMBER RAO: Thank you very much.

7 HEARING OFFICER FOX: The Board had a number
8 of later-numbered questions, 48 through 60, that we
9 did not have specific follow-up questions on. Is
10 there any -- does any of the participants wish to
11 raise follow-up questions or seek clarification on
12 any of those?

13 I will start with you, Ms. Franzetti.
14 Another chance to clarify any answers to the Board's
15 questions?

16 MS. FRANZETTI: No, thank you.

17 HEARING OFFICER FOX: Very well.

18 Mr. Armstrong, on behalf of the Environmental
19 Coalition and Environmental Groups?

20 MR. ARMSTRONG: No further questions.

21 HEARING OFFICER FOX: Very good. Do any of
22 the Board members wish to raise any follow-up
23 questions at this time?

24 (No response.)

1 Very good. Then we have come to a point
2 where I think we can wrap up a couple of specific
3 issues and procedural steps very quickly. I am going
4 to ask our public information officer if the sheets
5 on which anyone might indicate that they wish to
6 comment have any names on them at this point.

7 She has plainly indicated that they do
8 not, so we do not have any persons wishing to offer
9 comments today on the Agency's proposal.

10 Secondly, we do have the issue of the
11 Department of Commerce and Economic Opportunity and
12 the Board's request which is required under Section
13 27(b) of the Environmental Protection Act. The
14 request is required that the Board ask the DCEO to
15 conduct an economic impact study of the proposed
16 rules before the Board adopts them.

17 The Board then must make either the study
18 itself or the Department's explanation for not
19 conducting one available to the public at least 20
20 days before a public hearing. In a letter dated
21 November 18, 2013, the Board's Chairman, Dr. Deanna
22 Glosser, did request the DCEO to conduct an economic
23 impact study of this precise rulemaking proposal, and
24 the letter specifically requested a response no later

1 than January 31 of 2014.

2 To date, the Board has received no
3 response from DCEO to this request. Is there anyone
4 present who would like to testify regarding either
5 the Board's request for a study or the response from
6 DCEO?

7 (No response.)

8 Neither seeing nor hearing any, we have a
9 brief procedural issue that we can address, and if we
10 could go off the record to do that.

11 (Whereupon there was then had an
12 off-the-record discussion.)

13 HEARING OFFICER FOX: The second hearing in
14 this docket has, of course, been scheduled to begin
15 on Wednesday, May 14, beginning at 10:00 a.m. in
16 Chicago. In going off the record with the
17 participants a moment ago, we discussed the
18 procedural issue of filing deadlines for that second
19 hearing in preparation of it.

20 The participants have agreed that the
21 deadline for the Agency to file its response to the
22 questions and issues that have arisen here today is
23 Tuesday, March 25, 2014, and we do appreciate the
24 Agency's willingness to respond to those questions,

1 which we certainly acknowledge to be numerous.

2 The prefiled testimony for the second
3 hearing will be due on April 9, 2014. The prefiled
4 questions, based specifically on the prefiled
5 testimony that is filed for that hearing, will be due
6 on April 30 of 2014 and I will issue a Hearing
7 Officer Order encompassing these changed deadlines
8 and also allowing participants to file questions
9 based upon the Agency's filing that is due on March
10 25, to file those questions by April 30, 2014, with a
11 hope that it may assist the Agency's witnesses at the
12 second hearing to respond to those questions.

13 I do expect the copy of the transcript of
14 this hearing to be available no later than Tuesday,
15 March 11 at 2014. As soon as the Board does receive
16 that transcript, it will be placed on the Clerk's
17 Office online through the Board's web page through
18 which that transcript can be downloaded and printed.

19 I also want to note that anyone can file
20 written public comments in this rulemaking addressing
21 the Agency's proposal. Those may be filed with the
22 Board's clerk and may be filed electronically through
23 COOL, and any questions about those electronic filing
24 procedures can be directed to the Clerk's Office.

1 Does anyone have any questions about the
2 procedural aspects of this rulemaking, the schedule
3 or any of the deadlines?

4 (No response.)

5 Any other questions before we adjourn?

6 (No response.)

7 Before we do so, we certainly appreciate
8 the contributions of the Agency and its witnesses,
9 those of you present who have asked questions to
10 clarify that. And if there are no other questions or
11 other steps for us to take today, we are adjourned.
12 Thank you.

13 HEARING ADJOURNED AT 12:27 p.m.

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1 STATE OF ILLINOIS)

2) SS

3 COUNTY OF MACOUPIN)

4
5 C E R T I F I C A T E

6 I, Carla J. Boehl, a Certified Shorthand
7 Reporter and Notary Public in and for said County and
8 State, do hereby certify that the foregoing
9 transcript contains a true and accurate translation
10 of my shorthand notes referred to.

11 Given under my hand and seal this 9th day of
12 March, A.D., 2014.

13 My commission expires April 13, 2015.
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15
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17
18

19 Carla J. Boehl

20 Certified Shorthand Reporter

21 Lic. # 084-002710

22 Notary Public
23
24

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