

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

REPORT OF THE PROCEEDINGS held in the  
above entitled cause before Hearing Officer  
Vanessa Horton, called by the Illinois Pollution  
Control Board, taken by Steven Brickey, CSR, RMR,  
for the State of Illinois, 1021 North Grand Avenue  
East, Springfield, Illinois, on the 12th day of  
August, 2020, commencing at the hour of 8:01 a.m.

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E X H I B I T S

Marked for  
Identification

21 Exhibit No. 7..... 63  
 22 Exhibit No. 8..... 137  
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1 HEARING OFFICER HORTON: Good  
2 morning, everybody. Bright and early. We're here  
3 for day two. We forgot to press record. Okay.  
4 Good morning. We're here for day two of R20-19  
5 and where we left off yesterday was with questions  
6 from Kiana Courtney to the Agency on Section 240.

7 Ms. Bugel, do you know if she  
8 was planning on continuing?

9 MS. BUGEL: I believe she was  
10 planning on continuing. We can see if we have  
11 her.

12 HEARING OFFICER HORTON: Sure. No  
13 problem. Ms. Courtney, are you on the line? I  
14 know it's just 8:02 right now. So we still have  
15 some people signing in. Perhaps we'll go to our  
16 next section.

17 MS. BROWN: This is Melissa Brown  
18 with IERG.

19 HEARING OFFICER HORTON: Yes.

20 MS. BROWN: We do have some  
21 follow-up questions on 845.240 if you'd like us to  
22 ask those now.

23 HEARING OFFICER HORTON: Yes, if  
24 that's okay. We'll --

1 MS. ZEIVEL: We haven't --

2 HEARING OFFICER HORTON: I'm sorry,  
3 Ms. Brown. I think we were just starting on 240.  
4 So that would have been the first set of  
5 questioners.

6 MS. BROWN: I apologize.

7 HEARING OFFICER HORTON: No problem  
8 and we'll get to you in the order.

9 MS. BROWN: Sounds great. Thank  
10 you.

11 HEARING OFFICER HORTON: I believe,  
12 Ms. Courtney, you're on the line now?

13 MS. COURTNEY: Yes. It was telling  
14 me the meeting hadn't started yet and I had to  
15 refresh.

16 HEARING OFFICER HORTON: Okay. No  
17 problem. All right.

18 So we begin again with you. We  
19 were at Section 240 with your questions to the  
20 Agency. You can go ahead whenever you're ready.

21 MS. COURTNEY: Good morning. This  
22 is Kiana Courtney with Environmental Law and  
23 Policy Center. I want to turn your attention to  
24 Page 96, Question 10(a) -- or 10(a)(1). If you

1 can let me know when you're there.

2 MR. DUNAWAY: Yes, we got it.

3 MS. COURTNEY: Great. So in  
4 10(a)(1), you stated that meaningful involvement  
5 means that potentially affected community  
6 residents have an opportunity to participate in  
7 decisions about a proposed activity that will  
8 affect their environment and/or health, right?

9 MR. DUNAWAY: Yes, in part.

10 HEARING OFFICER HORTON: Sorry.

11 MS. COURTNEY: And the participants  
12 involved --

13 HEARING OFFICER HORTON: Hi. I'm  
14 sorry to butt in. Could the Agency say who is  
15 responding and, I'm sorry, could you just ask the  
16 question once more?

17 MS. COURTNEY: The first question?

18 HEARING OFFICER HORTON: Yes,  
19 please.

20 MS. COURTNEY: In 10(a), you stated  
21 that the meaningful -- meaningful involvement  
22 means that potentially affected community  
23 residents have an appropriate opportunity to  
24 participate in decisions about a proposed activity



1 that will affect their environment and/or health,  
2 right?

3 MR. LECRONE: Darin Lecrone. In  
4 part, yes.

5 MS. COURTNEY: And the concerns of  
6 all participants involved would be considered in  
7 the decisionmaking process, right?

8 MR. LECRONE: Darin Lecrone. Yes.

9 MS. COURTNEY: And the  
10 decisionmakers seek out and facilitate the  
11 involvement of those potentially affected, right?

12 MR. LECRONE: Darin Lecrone. Yes.

13 MS. COURTNEY: So my question, in  
14 part, is, is the pre-application meeting a part of  
15 that decisionmaking process?

16 MR. LECRONE: Darin Lecrone. It is  
17 part of the public participation that leads to the  
18 final Agency decision on the permitting process.

19 MS. COURTNEY: My next question is  
20 related to -- my next question is also related to  
21 this section.

22 Do the rules require the  
23 owner/operator to consider feedback provided by  
24 the public at a public meeting?

1 MR. LECRONE: Darin Lecrone. No,  
2 the rules are silent on that.

3 MS. COURTNEY: Given the need for  
4 participation to be meaningful, does the Agency  
5 oppose provisions requiring the owner or operator  
6 to consider feedback at the public meeting?

7 MR. LECRONE: Darin Lecrone. The  
8 Agency would not oppose that.

9 MS. COURTNEY: Thank you. Would it  
10 harm the Agency's ability to execute this program  
11 if a demonstration of that consideration of  
12 feedback from the public were to be included in  
13 the documentation that public meetings were held?  
14 So referring to Section 845.800(b)(2) where there  
15 has to be documentation that the -- that there was  
16 a public meeting.

17 MR. LECRONE: No, that would not  
18 harm us. Darin Lecrone. Sorry.

19 MS. COURTNEY: Thank you. Those are  
20 my questions for 240. I may have follow-up  
21 questions.

22 HEARING OFFICER HORTON: All right.  
23 Thank you, Ms. Courtney.

24 Okay. So we move on to Midwest

1 Generation for Section 240. Do you have any  
2 questions?

3 MS. GALE: No questions for now, but  
4 I may have some follow-up questions.

5 HEARING OFFICER HORTON: Certainly.  
6 And next, City of Springfield, any questions on  
7 240?

8 MS. WILLIAMS: Deborah Williams.  
9 Yes, I have a few questions. I think I want to  
10 start my questions at a very high level in terms  
11 of understanding what is the meaning -- well, the  
12 first place you start right when you're going to  
13 have a public meeting that involves meaningful  
14 participation is you scheduled the meeting, I  
15 guess, and you write up the notice and in the  
16 notice you're going to be saying what is the  
17 decision to be made that you're seeking meaningful  
18 public input on.

19 It doesn't make any sense to  
20 have public outreach and participation. You know,  
21 you can't get to meaningful participation unless  
22 there's an understanding of what is the decision  
23 that input is being sought on. So what I'd like  
24 some feedback and understanding from the Agency is

1 is this meeting -- under the federal rule, I  
2 understand what the decisions are that the meeting  
3 is for and that is primarily public input on the  
4 corrective action alternatives selected and then  
5 under -- certainly under Senate Bill 9 we'd also  
6 be looking at the alternatives analysis that was  
7 done to select the closure alternative.

8           It sounds like Section -- in  
9 Section 240, the Agency envisioned something  
10 broader. So could the Agency give some guidance  
11 on what is the determination that the public  
12 meeting is seeking meaningful input on?

13           MR. LECRONE: Darin Lecrone. The  
14 Agency proposed Section 240 apply -- or 845.240  
15 apply to any construction permit application. We  
16 thought that was the best way to implement the  
17 requirement for meaningful public participation.

18           MS. WILLIAMS: And this is a pretty  
19 new idea, right? I mean, there are other programs  
20 where you can point to a similar type of public  
21 meeting at this place?

22           MR. LECRONE: This is Darin Lecrone.  
23 This is the only one I'm aware of for the Bureau  
24 of Water. I don't know about other agency

1 bureaus.

2 MS. WILLIAMS: So I don't hear you  
3 saying that it's about the construction project.  
4 So it's not the decision. So if we were going to,  
5 I don't know, I think one of the examples you gave  
6 yesterday was building a wet -- treatment wetland  
7 or something. If we were going to build the  
8 treatment wetland, I can envision you're having a  
9 public meeting about the decision to build a  
10 wetland.

11 But I think what you're saying  
12 is the public meeting is about the decision to  
13 complete a construction permit application and so  
14 does that mean that everything -- first of all,  
15 does that mean the construction application needs  
16 to be prepared in final form before you're ready  
17 to have a meeting?

18 MR. LECRONE: This is Darin Lecrone.  
19 I think our intent is for this to involve the  
20 public in what is going to be constructed and why  
21 and what the purpose of it is prior to filing the  
22 application. So I don't see necessarily a  
23 complete application would need to be ready, but  
24 the documentation that led to the decision that

1 the owner/operator has made as far as  
2 construction.

3                   It could be, like you mentioned,  
4 a constructive wetland, it could be a replacement  
5 impoundment or a landfill or whatever the case may  
6 be -- I covered landfills, but any type of a  
7 construction project and why you're building what  
8 you're proposing to build and what the decision  
9 process was that led up to choosing that and the  
10 information that you intend to file with the  
11 Agency concerning that and give the public input  
12 on that.

13                   MS. WILLIAMS: Would the Agency  
14 object to some suggested tweaks to this section  
15 that would clarify that the meaning is about the  
16 project as opposed to the application?

17                   MR. LECRONE: I'm sorry. Could you  
18 repeat that?

19                   MS. WILLIAMS: What I'm looking  
20 at -- I mean, first of all, where this is coming  
21 from is obviously if you're still seeking  
22 meaningful input on your projects, you know, it  
23 would make sense for your application to be done  
24 and ready to go if -- you can't really be taking

1 meaningful input if you've finished your  
2 application. So I would like to propose some  
3 changes that clarify that the meaning is on the  
4 projects -- sorry.

5 HEARING OFFICER HORTON: One second.  
6 We should be good.

7 MS. WILLIAMS: Sorry. If I need to  
8 repeat, I will.

9 HEARING OFFICER HORTON: Go ahead.

10 MS. WILLIAMS: I just wanted  
11 clarification on whether you -- the Agency would  
12 object to some clarifying language to make sure  
13 that it's the project versus the application that  
14 the meeting is being held on?

15 MR. LECRONE: In 845.240(f), it  
16 describes that the owner/operator must outline its  
17 decisionmaking process.

18 MS. WILLIAMS: For the construction  
19 permit?

20 MR. LECRONE: Which results in the  
21 permit application. So I guess we're not opposed  
22 to some clarification there, but I think --  
23 personally, I think it's clear that we're talking  
24 about discussion of the decisionmaking process

1 itself that is leading to filing this application  
2 or proposing to file this application, but I guess  
3 we're not opposed to suggestions.

4 MS. WILLIAMS: Thank you.

5 HEARING OFFICER HORTON: And before  
6 I call on the next set of questioners, I'll just  
7 remind everyone to please mute.

8 MS. WILLIAMS: I --

9 HEARING OFFICER HORTON: Are we  
10 done?

11 MS. WILLIAMS: I'm not done.

12 HEARING OFFICER HORTON: So sorry.  
13 Just everyone upon entry please mute yourself and  
14 apologies, Ms. Williams. Please continue.

15 MS. WILLIAMS: I may be wrong. So  
16 we've decided about what we think we want to do,  
17 we've picked the date and we've found the place,  
18 we've written up the public notice, now we need to  
19 make sure that people who are concerned and  
20 interested about the project know about the  
21 meaning.

22 I'd like to understand -- so  
23 there is three things that we have to do. None of  
24 which are typically -- well, one of which is --



1 typically, I've done a lot of these meetings and  
2 some of these things we typically do, but the  
3 first one definitely would not be typical. Mail  
4 or hand deliver the notice to the Agency and all  
5 residents within a one mile radius of the facility  
6 boundary.

7 Can the Agency clarify when they  
8 say residents, do they mean -- what that term is  
9 thought to mean as persons who are living in  
10 buildings or do they mean property owners and also  
11 do they mean only individual residents and not  
12 commercial, agricultural, et cetera?

13 MR. LECRONE: This is Darin Lecrone.  
14 The Agency meant residents in the broadest sense  
15 in that, you know, the attempt to get into as many  
16 people's -- potentially affected people's hands as  
17 possible.

18 So while we didn't really define  
19 residents, we do intend it to mean in the broadest  
20 sense. So it can be, you know, whatever efforts  
21 you can make to get it in to individual's hands to  
22 kind of aid in that meaningful, public  
23 participation.

24 MS. WILLIAMS: Does the Agency have

1 a recommended source or resource that we would use  
2 to -- to find that list and document that we've  
3 done it properly?

4 MR. LECRONE: This is Darin Lecrone.  
5 It's kind of up to -- the Agency isn't going to  
6 dictate how it has to be done exactly, but some  
7 examples like for the City of Springfield they  
8 could start with utility billing addresses and  
9 send mailings to those. There are commercial  
10 companies that can glean mailing lists using GIS  
11 data.

12 The Agency has used that in the  
13 past. I haven't personally. I don't have any  
14 experience with it, but I know the Agency has. So  
15 those are some examples of how you might generate  
16 those mailing lists.

17 MS. WILLIAMS: Thank you. Now,  
18 let's say -- I am not one of those people with any  
19 expertise in this at all. So I certainly can  
20 consult with people that are and I don't know how  
21 much these things cost, but if I was going to go  
22 back and do it tomorrow I know I could find  
23 somebody that works at the city that could draw me  
24 the one mile and then I know that we can look at

1 all the data -- now, because this one mile is not  
2 just going to be people that are in the city and  
3 CWLP customers necessarily, but some might be, but  
4 we can look at tax records and find, you know, the  
5 owners and mail to them.

6           Okay. So if we did that,  
7 presumably, we would not be following the rule  
8 because that wouldn't be making sure we got to  
9 residents. That would just be property owners.  
10 Somebody could live there that isn't an owner, is  
11 a renter, whatever. If we did it that way and it  
12 was wrong, is that something that is appellable  
13 and at what point in the process would that be  
14 appealed?

15           MR. LECRONE: This is Darin Lecrone.  
16 I think -- I don't know about it being appealable,  
17 but the reason we have three methods of  
18 notification is understanding that there could  
19 potentially be some gaps in any one of these by  
20 itself. So using the mail or hand delivery,  
21 posting the notice of media outlets and -- and  
22 other public postings of it is with the hope of  
23 getting as many people notified as possible.

24           You know, if there is some issue

1 with it, you know, people can let the Agency know,  
2 but with using multiple methods of public  
3 notification, we think that's the best way to get,  
4 you know, the outreach to as many people as  
5 possible.

6 MS. WILLIAMS: So you're saying the  
7 Agency isn't concerned if any one of these methods  
8 are somehow imperfectly carried out, just that a  
9 good faith attempt is made to use all the forms of  
10 media that you could?

11 MR. LECRONE: This is Darin Lecrone.  
12 The expectation is for the owner/operators to do  
13 their due diligence, make their best faith effort  
14 to -- to do this all correctly and allow the  
15 multiple levels of notification to hopefully catch  
16 any gaps.

17 MS. WILLIAMS: Okay. That's very  
18 helpful. So the same would apply, you know, to  
19 No. 2, right? So CWLP has social media outlets, I  
20 have every faith that our communications person  
21 will want to put this up on all those outlets,  
22 that's how we do it, but I don't know what the  
23 mayor will do.

24 You know, the City of

1 Springfield has -- the police department has a  
2 social media outlet and the fire department has a  
3 social media outlet and the mayor has a social  
4 media outlet and I don't have any control over --  
5 only certain people can be in charge of those,  
6 right, and I don't have any control whether that  
7 can be included.

8                   Are you saying the Agency would  
9 have a good faith -- you know, as long as we made  
10 sure we had it up on all the commonly used CWLP  
11 social media outlets that would be okay? Because  
12 it does say all.

13                   MR. LECRONE: This is Darin Lecrone.  
14 Yes. Basically, the best job you can do to get to  
15 as many of those social media outlets as possible  
16 recognizing that, you know, you can't control all  
17 of them within the city government sector.

18                   MS. WILLIAMS: Okay. Just quickly  
19 then with No. 3. So when I read No. 3 I have --  
20 which I guess, for the record, is post the notice  
21 in conspicuous locations throughout villages,  
22 towns or cities within ten miles of the facility  
23 and then it continues after that.

24                   I had this image in my mind

1 which may show my age. I don't even know if it  
2 shows my age. So it tells me it really shows my  
3 age of being in college, having these little  
4 flyers that you put the tape around and you put it  
5 on the ground and up on the -- you know, when I  
6 hear conspicuous locations throughout villages and  
7 towns, that's kind of what I picture like a little  
8 leafletting team. I can't imagine that's really  
9 what the Agency has in mind.

10 Can you give a little bit more  
11 guidance on what you have in mind with this?

12 MR. LECRONE: This is Darin Lecrone.  
13 Yes, we don't necessarily envision an army of  
14 college kids putting notices on telephone poles,  
15 but something along the lines of, you know,  
16 starting with the municipal clerks postings, you  
17 know, some public buildings and stores have notice  
18 boards, that sort of thing. You know, any --  
19 anything like that without, you know, it being to  
20 the point of like we saw in college where, you  
21 know, every -- every pole, every sign, every flat  
22 surface had a notice on it.

23 MS. WILLIAMS: When you --

24 MR. LECRONE: Again, it's the good

1 faith effort to get that notification out on  
2 public messaging boards or whatever public  
3 locations as best you can.

4 MS. WILLIAMS: But when you say  
5 everything -- when you say anything like that, do  
6 you mean everything like that? So obviously  
7 you're saying the clerk's office which is where  
8 people in their town -- I'm used to posting at the  
9 clerk's office, everyone is used to posting at the  
10 clerk's office, this would just mean reaching out  
11 to some additional clerks to do that, but that's  
12 clearly not adequate, is that correct?

13 MR. LECRONE: Well, it's do the best  
14 you can. Sorry. This is Darin Lecrone again.

15 Do the best you can. You know,  
16 there's nothing in here -- there is no intent for  
17 us to say there must be a minimum of a hundred  
18 postings, you know, every X number of square miles  
19 or feet or whatever, but do the best you can to  
20 judge your -- your -- every owner/operator is  
21 going to have to look at their surrounding area  
22 and what is the most likely locations where a  
23 notice like that would be seen and where the  
24 highest number of people might be exposed to it

1 and be able to see it, but you can also use  
2 broadcast media also. So it doesn't have to be a  
3 one size fits all solution.

4 MS. WILLIAMS: Okay. Thank you. I  
5 think that is all I have at this time.

6 HEARING OFFICER HORTON: Okay. Let  
7 me get my list. Okay. Next would be Dynegy.

8 MR. GRANHOLM: Good morning. This  
9 is Ryan Granholm on behalf of the Dynegy entities.  
10 I'd like to direct the Agency to Exhibit 3, Page  
11 7. That's the response to Midwest Generation's  
12 questions.

13 HEARING OFFICER HORTON: So the  
14 second set of Agency answers?

15 MR. GRANHOLM: That's correct.  
16 Specifically, I'll be asking you about the  
17 response to Question 11 which appears on the  
18 bottom of Page 7.

19 In that response, the Agency  
20 notes that the federal program requires one public  
21 meeting to discuss corrective action alternatives,  
22 correct?

23 MR. LECRONE: This is Darin Lecrone.  
24 Correct.



1 MR. GRANHOLM: Wouldn't holding one  
2 pre-application public meeting under Part 845,  
3 therefore, be as protective as the federal  
4 program?

5 MR. LECRONE: Darin Lecrone. Yes,  
6 it would be as protective.

7 MR. GRANHOLM: I'd like to follow up  
8 to Ms. Courtney's questions to the Agency about  
9 revising the rule to require an owner or operator  
10 to respond to public comments.

11 Isn't it true that the closure  
12 alternatives analysis under Section 710(b)  
13 requires an owner to examine how the proposed  
14 activity will address the concerns of residents?

15 MR. LECRONE: Darin Lecrone. Yes,  
16 that's correct.

17 MR. GRANHOLM: And an analogous  
18 provision exists in the corrective action  
19 alternatives analysis under Section 670(e),  
20 correct?

21 MR. LECRONE: Darin Lecrone. Yes,  
22 that's correct.

23 MR. GRANHOLM: Thank you. Nothing  
24 further.

1 HEARING OFFICER HORTON: Okay.

2 Thank you. And, Ms. Brown, from Illinois  
3 Environmental Regulatory Group, I know you said  
4 you had a few questions on 240.

5 MS. BROWN: Yes. Thank you. I  
6 guess going first from some of the City of  
7 Springfield's questions regarding impacts if some  
8 of the public participation procedures in 240, you  
9 know, weren't followed to a T. It's a general  
10 question first for the Agency.

11 Has the Agency experienced  
12 situations where individuals or members of the  
13 public have alleged that it did not appropriately  
14 or adequately provide notice of public meetings or  
15 other Agency actions in a permit transaction?

16 MR. LECRONE: This is Darin Lecrone.  
17 The Agency has, yes, occasionally gotten those  
18 comments.

19 MS. BROWN: And what -- what in  
20 those situations where those comments were  
21 received, what was the result of receiving that  
22 comment?

23 MR. LECRONE: This is Darin Lecrone.  
24 To answer your question in that instance where the

1 Agency has received a comment that there was not  
2 adequate public notice or whatever, in my  
3 experience it's been with the NPDES program and  
4 with the NPDES public notice period we have gotten  
5 comments, you know, that they weren't aware of it  
6 until close to the end of the comment period and  
7 generally what they would do is request a public  
8 hearing.

9 So there is an existing program,  
10 and, in this one, kind of multiple layers of  
11 opportunity for participation and so, you know,  
12 that's one example. I don't know what the other  
13 bureaus have run into, but that's the best example  
14 I've got.

15 MS. BROWN: Okay. I guess following  
16 up on City of Springfield's questions and, you  
17 know, the Agency alluded that some of these public  
18 participation measures in 240 from the  
19 owner/operator, you know, to give best efforts  
20 basically to comply with these measures, you know,  
21 for example, posting on all social media, but if  
22 one of these measures were not followed, what  
23 would the impact be on the permit application?

24 MR. LECRONE: This is Darin Lecrone.

1 Part 240 is requirements for the owner/operator to  
2 have these public meetings to get public  
3 involvement in that decisionmaking process, you  
4 know, prior to filing the application.

5 You know, if -- if they don't do  
6 that, they may have missed an opportunity to  
7 address the public's concerns, but the public will  
8 have another opportunity to comment during the  
9 Agency's public notice process and so kind of  
10 failure to adequately involve the public in that  
11 pre-application meeting will likely result in more  
12 comments and questions during the public notice  
13 process that could have been addressed prior.

14 So it's one of those that is in  
15 the company's best interest to make sure that they  
16 make a good faith effort to comply with 240 in the  
17 most meaningful way possible, recognize that the  
18 public is going to get another crack at it when it  
19 goes to public notice and there's the opportunity  
20 for comment and public hearing there as well.

21 MS. BROWN: Got it. So it's in the  
22 owner/operators best interest for 240, but, you  
23 know, if they did not comply with one of the  
24 specific requirements in 240, that wouldn't be

1 grounds for denial of the permit by the Agency,  
2 correct?

3 MR. LECRONE: This is Darin Lecrone.  
4 In 845.220(a)(9), I believe, it requires with the  
5 construction permit application that certification  
6 of the owner/operator that the CCR surface  
7 impoundment completed the public notification and  
8 public meetings required pursuant to 845.240.

9 A summary of the issues raised  
10 by the public and a list of interested persons in  
11 attendance would like to be added to the Agency's  
12 list serve for the facility so that the applicant  
13 is going to have to certify that they completed  
14 and complied with 240. So if they certified that  
15 and didn't, they could be subject to enforcement,  
16 but we're not going to process an application that  
17 doesn't include that certification that they  
18 complied with 240.

19 MS. BROWN: Okay. Thank you. So  
20 switching gears a little bit to kind of the  
21 general concept of meaningful public participation  
22 and that's 845.240 is there to implement the  
23 requirement of meaningful public participation.

24 I think you may have touched on

1 this a little bit, but would it be correct to say  
2 that as proposed in Part 845 that the public  
3 participation requirements are more robust than in  
4 other permitting programs under the Agency, to  
5 your knowledge?

6 MR. LECRONE: This is Darin Lecrone.  
7 I can't speak to other bureaus' permitting  
8 programs. I have only been involved with Bureau  
9 of Water programs, but this is similar to the  
10 NPDES process with the exception of these public  
11 meetings prior to the application being filed.  
12 That's the one thing that is a little bit  
13 different than other Bureau of Water programs, but  
14 the public notice, public hearing opportunity is  
15 the same as in the NPDES process.

16 MS. BROWN: And can you just  
17 briefly -- I know you alluded to it, but can you  
18 just briefly describe the public comment  
19 participation measures for a typical NPDES  
20 permitting transaction under Part 309?

21 MR. LECRONE: This is Darin Lecrone.  
22 The way an NPDES public notice process works is  
23 very similar to what is outlined here. It's kind  
24 of where we started with it. It -- once a draft

1 permit goes to 30-day public notice, it's posted  
2 on the Agency's website. It's sent to the  
3 municipal clerk. It's -- the applicant or the  
4 permittee is required to post it on their premises  
5 and the public has 30 days to comment and/or  
6 request a public hearing.

7           The Agency then evaluates those  
8 comments or hearing requests and, if justified,  
9 the Agency will schedule a public hearing. The  
10 public hearing is noticed for 45 days prior to  
11 holding the public hearing and then the hearing  
12 record is open for 30 days after that usually and  
13 then the Agency has to prepare a written response  
14 for all the comments when it reaches its final  
15 decision.

16           MS. BROWN: Okay. So other than the  
17 requirements described for the applicant to post  
18 it at their facility, the other measures that you  
19 just described those are all the responsibility of  
20 the Agency, correct?

21           MR. LECRONE: Yes, that's correct.  
22 Well, we send it to the municipal clerk and it's  
23 up to them to post it. They respond to us whether  
24 they're going to be posting it or not, but yes.

1 MS. BROWN: Right. So would you  
2 agree with the characterization that the  
3 additional public participation measures in Part  
4 845 and, in particular, like you mentioned 845.240  
5 are the responsibility of the owner/operator and  
6 not the Agency, correct?

7 MR. LECRONE: Correct. Part 240 --  
8 845.240 is the responsibility of the  
9 owner/operator.

10 MS. BROWN: Does Section 22.59 of  
11 the act specify who is responsible for  
12 undertaking, you know, the more robust meaningful  
13 public participation measures?

14 MR. LECRONE: This is Darin Lecrone.  
15 22.59(g)(6) just specifies that meaningful public  
16 participation procedures for the issuance  
17 basically must be part of the rules. It doesn't  
18 specify how it is to be done. It's kind of left  
19 up to the rulemaking process.

20 MS. BROWN: Okay. Thank you.  
21 That's all the questions I have right now.

22 HEARING OFFICER HORTON: Okay.  
23 Thank you. We're moving on to Ameren, do you have  
24 any questions on Section 240?



1 MS. MANNING: I don't know why --

2 HEARING OFFICER HORTON: We can hear  
3 you.

4 MS. MANNING: I can't hear anything.

5 HEARING OFFICER HORTON: We are able  
6 to hear you, Ms. Manning. Okay. We can hear you.  
7 Can you hear us, Ms. Manning?

8 MS. MANNING: I could not. We have  
9 no questions on this section. Thank you.

10 HEARING OFFICER HORTON: Okay. No  
11 problem.

12 MS. MANNING: Sorry.

13 HEARING OFFICER HORTON: Just got  
14 the bug figured out for the first question.

15 MS. MANNING: Thank you. I'm sorry.

16 HEARING OFFICER HORTON: No problem.  
17 Moving on to the AG's Office, do you have any  
18 questions on 240?

19 MR. SYLVESTER: This is Steve  
20 Sylvester. We don't have any questions at this  
21 time.

22 HEARING OFFICER HORTON: Thank you.  
23 Moving on to Mr. Rao at the Board, any questions  
24 on 240?

1 MR. RAO: Yes, I have a question on  
2 240. This is in regards to the Agency's response  
3 to Board's Question 25. It's on 845.240(f) on  
4 Page 158 of Exhibit 2.

5 In response to Board's questions  
6 about public comment, the Agency stated that while  
7 the section does not explicitly require the  
8 company to accept public comments, a discussion of  
9 the proposed construction implies a back and forth  
10 interaction between the public and the company to  
11 the extent feasible are reasonable.

12 My question is should the rule  
13 specify that, you know, public comments are  
14 allowed so public could submit comments to the  
15 company based on the information that the company  
16 puts out for the information hearing and also  
17 whether the company should respond to those  
18 comments?

19 MR. LECRONE: This is Darin Lecrone.  
20 As was kind of mentioned earlier like in 845.670  
21 under the corrective action, they're supposed to  
22 include in an application to us or in that  
23 analysis the degree to which community concerns  
24 are addressed by a potential remedy. I believe

1 there was a similar one in 700 something or  
2 another. However, the Agency would not be opposed  
3 to such a revision if the Board deemed it  
4 appropriate.

5 MR. RAO: So will the Agency propose  
6 any language or, I mean, to the Board to add  
7 language to the effect that public comments should  
8 be allowed and responded to the application  
9 meeting?

10 MR. LECRONE: This is Darin Lecrone.  
11 The Agency thinks the language that we've got is  
12 adequate. However, if the Board asked us to  
13 provide some language, we will.

14 MR. RAO: I think we would  
15 appreciate if the Agency provides some language  
16 that reflects the intent.

17 MS. ZEIVEL: This is Christine  
18 Zeivel. We acknowledge the Board's request.

19 MR. RAO: Thank you. That's all I  
20 have.

21 HEARING OFFICER HORTON: Okay.  
22 Thanks, Mr. Rao.

23 Any follow-up questions?

24 Thanks, Mr. Rao. Any follow-up questions on 240

1 in the room?

2 MS. WILLIAMS: I have a follow-up.

3 HEARING OFFICER HORTON: I see

4 Ms. Williams from City of Springfield.

5 MS. WILLIAMS: Yes. You're calling  
6 on me?

7 HEARING OFFICER HORTON: Yes,  
8 please. Go ahead.

9 MS. WILLIAMS: Deborah Williams. I  
10 just have a follow up on Mr. Rao's request for the  
11 new language with the Agency. So assuming that  
12 the proposal is changed to require public comments  
13 to come in, permittees to review them and, you  
14 know, not to consider them in the general sense of  
15 we're in a meeting, people are commenting, old  
16 people don't like this route we're taking, we're  
17 going to be changing it, but specifically respond  
18 to comments, can the Agency give some guidance on  
19 how long it typically takes the Agency in man  
20 hours or days or months or however you'd like to  
21 determine it to perform similar response to public  
22 comments with regard to ash pond closure projects?

23 MR. LECRONE: This is Darin Lecrone.  
24 The timeframe it takes the Agency to respond to

1 public comments is highly variable. Some it  
2 doesn't make much time at all and some it takes  
3 quite a bit of time. So it's really a  
4 case-by-case thing depending on the  
5 characteristics of a particular location.

6 MS. WILLIAMS: Would the Agency  
7 agree that adding this language will significantly  
8 impact the tightness of the deadlines that we have  
9 been discussing for the permit applications?

10 MR. LECRONE: Darin Lecrone. Yes.

11 MS. WILLIAMS: Thank you.

12 HEARING OFFICER HORTON: Ms. Gale,  
13 you had a follow-up question?

14 MS. GALE: Yes. Yes, this is  
15 Kristen Gale on behalf of Midwest Generation.  
16 Just following up on what the city said.

17 Will the Agency agree that many  
18 of the power plants with ash ponds here are  
19 located in dense areas, so the power plant could  
20 receive hundreds of comments?

21 MR. LECRONE: This is Darin Lecrone.  
22 They may.

23 MS. GALE: So the Agency would agree  
24 that those hundreds of comments could

1 significantly impact the ability for a power plant  
2 to submit its application in a timely basis?

3 MR. LECRONE: Darin Lecrone. It  
4 could potentially have an impact on the  
5 timeframes.

6 MS. GALE: Would the Agency consider  
7 allowing -- considering this pre-application area  
8 and we've already acknowledged that there are  
9 other areas of the rules that allow for  
10 consideration of comments, would the Agency  
11 consider that if it were to present new -- as the  
12 Board requested new -- language to allow the  
13 response to the comments if there is a significant  
14 volume to be more general response?

15 MR. LECRONE: This is Darin Lecrone.  
16 The Agency would not be opposed to the grouping of  
17 similar comments for similar responses.

18 MS. GALE: Thank you. Nothing  
19 further.

20 HEARING OFFICER HORTON: Any further  
21 follow-up questions? Mr. More from Dynegy.

22 MR. MORE: Would the Agency be  
23 opposed to presenting language that requires that  
24 comments be considered as opposed to responded to

1 which connotes the idea of each and every response  
2 be provided a response -- a specific response even  
3 though you could group them, especially in light  
4 of the fact as you point out in 670 and 710 we  
5 have to consider these very comments in our  
6 application to the Agency for the construction  
7 project. We already have this requirement.

8 MR. LECRONE: Darin Lecrone. We  
9 will be proposing language as requested by the  
10 Board to require response to comments.

11 MR. MORE: Would the Agency be open  
12 to proposing language that would allow an  
13 extension of a deadline to submit an application  
14 in the event that the comments received are  
15 extensive requiring additional time to respond to?

16 MR. LECRONE: This is Darin Lecrone.  
17 No.

18 MR. MORE: Does the Agency envision  
19 any scenario where a comment may force to properly  
20 respond additional evaluations being required,  
21 groundwater modeling, for example?

22 MR. LECRONE: This is Darin Lecrone.  
23 Possibly. It's hard to speculate on what might be  
24 in the comments and what kind of timeframes may be

1 necessary to address them.

2 MR. MORE: And some of that work can  
3 require months to perform, right?

4 MR. LECRONE: This is Darin Lecrone.  
5 Maybe. I don't know. It's impossible for me to  
6 say.

7 MR. MORE: Okay.

8 HEARING OFFICER HORTON: Any further  
9 follow-up questions on 240 from anyone on Webex?

10 MS. COURTNEY: Kiana Courtney left a  
11 note that she had a follow up.

12 HEARING OFFICER HORTON: Ms.  
13 Courtney.

14 MS. COURTNEY: Here we go. Can you  
15 hear me?

16 HEARING OFFICER HORTON: Yes.

17 MS. COURTNEY: A few follow-up  
18 questions.

19 Understanding that there are  
20 some gaps in public notice, is it possible that  
21 someone from the public doesn't see the notice  
22 until, say, seven days before the public meeting?

23 MR. LECRONE: This is Darin Lecrone.  
24 It is possible, yes.



1 MS. COURTNEY: Okay. My next  
2 question is if feedback is only individually  
3 without others -- without others hearing, doesn't  
4 that limit the input because they're not hearing a  
5 response to others and that could lead to an  
6 inefficient back and forth questions and I'm  
7 talking about in the context of a public meeting  
8 specifically being at that public meeting?

9 MR. LECRONE: Could you clarify what  
10 you're asking exactly?

11 MS. COURTNEY: Sure. So at a public  
12 meeting where the public was present and the  
13 owner/operator is part of the decisionmaking  
14 process and hearing the comments of the public, so  
15 if feedback were individually, say, like a science  
16 fair without others hearing that process, doesn't  
17 that limit the public's input because they're not  
18 hearing the owner/operator's responses to other  
19 individuals and wouldn't that lead to inefficient  
20 feedback and more questions?

21 MR. LECRONE: This is Darin Lecrone.  
22 This is -- this public participation process --  
23 you know, nothing is ever perfect, but it's the  
24 best faith effort on the part of the

1 owner/operator to inform the members of the  
2 public, you know, what they're proposing and why  
3 and gather as many comments and public input on  
4 that decision as possible prior to them filing an  
5 application.

6 So, you know, this public --  
7 pre-application public meeting is not the only  
8 opportunity for the public to be involved in the  
9 permitting process. It's that first step where  
10 they're going to, you know, be able to learn about  
11 the project, learn what the reasoning is, how it  
12 might potentially impact them and that could lead  
13 to more questions later during the public notice  
14 process, but they will have that opportunity.

15 MS. COURTNEY: A follow-up question  
16 to that. So could the owner/operator address the  
17 public in a large gathering as a whole and give  
18 them the opportunity to hear one another just as  
19 they would in a meeting held by the Agency?

20 MR. LECRONE: This is Darin Lecrone.  
21 The one thing to remember this is kind of an  
22 informal public meeting, informational meeting.  
23 It's not intended to be a formal public hearing  
24 like what the Agency would conduct. It's meant to

1 inform the public and allow them to, you know, ask  
2 questions or whatever in probably a large formal  
3 setting, but it is an informational meeting and  
4 not a public hearing.

5 MS. COURTNEY: Right. To clarify, I  
6 said public by meeting instead --

7 HEARING OFFICER HORTON: Ms.  
8 Courtney, this is Vanessa Horton. Could you  
9 repeat that? You cut out a little bit.

10 MS. COURTNEY: I stated that -- or I  
11 was clarifying that in my question the word  
12 meeting instead of hearing just to signify that I  
13 meant something less formal than what we are  
14 currently in.

15 So this is a hearing, but the  
16 Agency held a meeting similar, for example, the  
17 stakeholder meetings that were happening at the  
18 beginning of this process where the public had the  
19 opportunity to comment.

20 MR. LECRONE: These are  
21 informational meetings to be held by the  
22 owner/operator to inform the public. It's not an  
23 Agency process. You know, they're going to have  
24 another chance to comment and to request a hearing

1 if necessary during the Agency's public notice  
2 process. You know, the purpose of this is, you  
3 know, I can envision them asking questions, you  
4 know, kind of a back and forth to the extent  
5 feasible, but, you know, it's not a formal Agency  
6 process.

7 MS. COURTNEY: Okay. And then my  
8 next question is so regarding Section 845.670, the  
9 owner/operator application.

10 HEARING OFFICER HORTON: Ms.  
11 Courtney, sorry. Once again, it was --

12 MS. COURTNEY: 670(e)(4). So the  
13 owner/operator must generally show what the  
14 proposed corrective action -- at least the  
15 owner/operator must look at community list serves  
16 that are addressed making the public meeting  
17 required. So feedback would be necessary in order  
18 for the company or the owner/operator to do that,  
19 right?

20 MR. LECRONE: I would say yes. This  
21 is Darin Lecrone.

22 MS. COURTNEY: And my last follow-up  
23 question. The idea of public participation  
24 throughout this process is to make it meaningful,

1 right?

2 MR. LECRONE: This is Darin Lecrone.  
3 It is intended to be meaningful public  
4 participation, yes.

5 MS. COURTNEY: Thank you. Those are  
6 my follow-up questions.

7 HEARING OFFICER HORTON: Ms.  
8 Courtney, it's Vanessa Horton. There is a  
9 function in Webex to switch your audio from either  
10 the computer to have it call a cellphone or  
11 telephone. You might want to try to switch that.  
12 We're having a little bit of trouble with you  
13 breaking up.

14 MS. COURTNEY: Do I need to repeat  
15 anything?

16 HEARING OFFICER HORTON: Mr. Court  
17 Reporter, would you need anything repeated?

18 THE COURT REPORTER: I don't know.  
19 At this point I don't know.

20 HEARING OFFICER HORTON: For your  
21 next questions, just switch whatever audio input  
22 you're using.

23 MS. COURTNEY: Thank you. I will do  
24 that.

1 HEARING OFFICER HORTON: Okay. And  
2 are there any other follow-up questions on Section  
3 240? Hearing none and seeing none, we move to  
4 Section 250 Tentative Determination and Draft  
5 Permit.

6 So our first set of questioners  
7 would be Little Village Environmental Justice,  
8 Environmental Law and Policy Center, Prairie  
9 Rivers Network and Sierra Club.

10 Do you have any questions on  
11 Section 250?

12 MS. BUGEL: Ms. Courtney would be  
13 asking questions for us.

14 HEARING OFFICER HORTON: It would be  
15 Ms. Courtney.

16 MS. COURTNEY: I do not have --  
17 Kiana Courtney for the Environmental Law and  
18 Policy Center. I do not have questions for  
19 Section 845.250 at the moment, but will likely  
20 have follow up.

21 HEARING OFFICER HORTON: Okay.  
22 Great. Thank you. Moving on to Midwest  
23 Generation.

24 MS. GALE: No questions.

1 HEARING OFFICER HORTON: No

2 questions. City of Springfield?

3 MS. WILLIAMS: No questions.

4 HEARING OFFICER HORTON: No

5 questions. Dynegy?

6 MR. GRANHOLM: This is Ryan

7 Granholm. We have no further questions -- no

8 further affirmative questions on the remainder of

9 Subpart B. So that's all of the 200's, but we

10 reserve the right to ask follow-up questions.

11 HEARING OFFICER HORTON: I'll skip

12 you. IERG, Section 250?

13 MS. BROWN: Melissa Brown. No

14 questions at this time.

15 HEARING OFFICER HORTON: Thank you.

16 Ameren, Section 250?

17 MS. MANNING: Claire Manning. No

18 questions.

19 HEARING OFFICER HORTON: Okay. AG's

20 Office, Section 250?

21 MR. SYLVESTER: Steve Sylvester. No

22 questions.

23 HEARING OFFICER HORTON: Okay.

24 Mr. Rao from the Board, Section 250?

1 MR. RAO: I have no questions.

2 HEARING OFFICER HORTON: Okay. And  
3 I will assume no follow-up questions to those no  
4 questions.

5 Section 260 is Draft Permit  
6 Public Notice and Participation. We'll begin  
7 again with Ms. Courtney.

8 MS. COURTNEY: I still haven't had a  
9 chance to switch my audio yet, but can you hear  
10 me?

11 HEARING OFFICER HORTON: Yes.

12 MS. COURTNEY: Okay. So my first  
13 question is in reference to Board Question 27 on  
14 Page 159. If you can let me know when you're  
15 there.

16 MR. LECRONE: We've got it.

17 MS. COURTNEY: So regarding the  
18 Agency's list serve that are referred to in  
19 Section 845.260(a), how will the parties be able  
20 to notify the Agency of the -- to be included in  
21 the list serve for public. Sorry.

22 HEARING OFFICER HORTON: Ms.  
23 Courtney, I'm so sorry to interrupt again. Could  
24 we skip you possibly and you can try and get your



1 audio input and we'll get back to you at the end  
2 of the section?

3 MS. COURTNEY: It should only take  
4 me a minute to switch to audio. So if I can go  
5 after the next person or whichever you prefer.

6 HEARING OFFICER HORTON: Yeah, we'll  
7 skip and then move -- call on you after this round  
8 if that's okay.

9 MS. COURTNEY: Okay. Thank you.

10 HEARING OFFICER HORTON: Okay.

11 Midwest Generation, Section 260?

12 MS. GALE: No questions, and I don't  
13 have any further questions for the 200's.

14 HEARING OFFICER HORTON: Okay. Skip  
15 you as well. City of Springfield?

16 MS. WILLIAMS: No questions.

17 HEARING OFFICER HORTON: We're  
18 skipping Dynegy. IERG?

19 MS. BROWN: Melissa Brown. No  
20 questions.

21 HEARING OFFICER HORTON: Ameren?

22 MS. MANNING: No questions and, like  
23 Dynegy, we don't anticipate any further questions  
24 on this part, this subpart.

1 HEARING OFFICER HORTON: Okay.

2 Sounds good. AG's Office?

3 MR. SYLVESTER: Steve Sylvester. No  
4 further questions.

5 HEARING OFFICER HORTON: Mr. Rao,  
6 Section 260?

7 MR. RAO: I have a question on 260.  
8 This is in regard to Agency's response to our  
9 Question 28.

10 I'd like the Agency to clarify  
11 whether interested parties seeking a copy of the  
12 permit application or related documents under  
13 Section 845.260(b)(2)(f) have to file a request  
14 under Freedom of Information Act to get those  
15 documents?

16 MR. LECRONE: This is Darin Lecrone.  
17 In being consistent with existing Agency  
18 processes, they would be required to file a FOIA  
19 request, but that could be done electronically via  
20 the Agency's website.

21 MR. RAO: And is that the standard  
22 procedure in the NPDES program, is that what you  
23 mentioned in --

24 MR. LECRONE: This is Darin Lecrone.

1 It is, yes.

2 MR. RAO: So if they file a FOIA to  
3 get the permit application and related documents,  
4 how long will it take for the Agency to turn  
5 around and provide this information?

6 MR. LECRONE: By law, the Agency has  
7 five working days unless an extension is granted.

8 MR. RAO: Will the Agency provide  
9 the information electronically via e-mail or does  
10 it have to be done by U.S. Mail?

11 MR. LECRONE: This is Darin Lecrone.  
12 I think most of it is done electronically by  
13 e-mail if it's a small enough document or via a  
14 file transfer site.

15 MR. RAO: Okay. Thank you. That's  
16 all I have.

17 HEARING OFFICER HORTON: Okay. At  
18 this point, we'll return back to Ms. Courtney.  
19 We'll also be taking a break at --

20 MS. ESSENCE BROWN: Excuse me. I  
21 have a couple questions. This is Essence Brown  
22 with the Board.

23 HEARING OFFICER HORTON: Certainly,  
24 Ms. Brown. We'll take a break in about four or

1 five minutes just because the main TV in this room  
2 is telling us it needs to update in nine minutes.  
3 So we'll turn it off and then we'll come back in  
4 about ten minutes after that. So please go ahead,  
5 Essence.

6 MS. ESSENCE BROWN: So in response  
7 to questions -- response to 16(a), is it possible  
8 to request for hearing without the recent  
9 requirement? The recent component may stop some  
10 people from making the request. Would that affect  
11 the hearing process with the Agency?

12 HEARING OFFICER HORTON: Essence,  
13 Ms. Brown, could you possibly repeat the question?  
14 It just cut out in the beginning.

15 MS. ESSENCE BROWN: Okay. I  
16 apologize. So regarding Little Village's  
17 response -- Agency's response to Little Village's  
18 Question 16(a), is it possible to still have the  
19 request for hearing without the reasoning  
20 requirement? The reasoning component may  
21 intimidate some people from making the request.

22 MR. LECRONE: This is Darin Lecrone.  
23 At the -- like the NPDES process, the Agency  
24 requests that -- expects their request for hearing

1 include a reason that they are requesting the  
2 hearing. You know, the Agency evaluates a hearing  
3 request to determine if, in fact, the hearing will  
4 be held and what issues they are that need  
5 addressing. So the Agency would like those  
6 requests to contain a reasoning or justification.

7 MS. ESSENCE BROWN: Okay. And I  
8 just have one more question.

9 For clarity, are all comments,  
10 answers, responses and actions of the hearing  
11 public record and, if so, where would they be  
12 posted?

13 MR. LECRONE: All comments,  
14 questions, anything like that received during the  
15 permit issuance process is part of the permit  
16 record and is held with the Agency. Existing  
17 practice for NPDES permits is the Agency responds  
18 to anybody that sends written comments in during  
19 the notice process if a public hearing is not  
20 held, but, yeah, all those comments will be  
21 contained in the permit record that is with the  
22 Agency.

23 MS. ESSENCE BROWN: Okay. Thank  
24 you. I have no further questions.

1 HEARING OFFICER HORTON: At this  
2 time, we're going to take a break. We will return  
3 with Ms. Courtney's questions and then follow-up  
4 questions. If we can return at -- we'll take a  
5 15-minute break, just because we have to reboot  
6 the computer, to 9:40. Thanks very much.

7 (Whereupon, a break was taken  
8 after which the following  
9 proceedings were had.)

10 HEARING OFFICER HORTON: Okay. This  
11 is the Sangamon Room here in Springfield. Our  
12 computer has rebooted. We're back in business.  
13 It's about 8:42 and we'll restart. So I believe  
14 we were going back to Ms. Courtney for her  
15 questions.

16 Ms. Courtney, are you ready for  
17 your questions on Section 250, I believe, or are  
18 we on 260?

19 MR. GRANHOLM: 260.

20 HEARING OFFICER HORTON: 260.

21 MS. COURTNEY: Yes. Can you hear me  
22 now?

23 HEARING OFFICER HORTON: Yes.

24 MS. COURTNEY: Can you hear me?

1 HEARING OFFICER HORTON: Yes. I  
2 believe I was muted, but, yes, we can hear you.

3 MS. COURTNEY: Okay. So my first  
4 question is about Board Question 27 on Page 159.

5 Regarding the Agency's list  
6 serve referred to Section 845.260(a), how will  
7 parties be able to notify the Agency of their  
8 desire to be included on the list serve for a  
9 particular facility?

10 MR. LECRONE: There are interested  
11 parties that get copies of all public notices or  
12 certain ones in certain regions. That sort of  
13 thing. So as of right now --

14 HEARING OFFICER HORTON: I'm sorry.  
15 This is Vanessa Horton. Is that Mr. Lecrone?

16 MR. LECRONE: Yes. I'm sorry.  
17 Darin Lecrone.

18 So one -- you know, right now  
19 they can contact the permit section or community  
20 relations or in this particular case for the  
21 construction permit pre-application meetings, the  
22 owner/operator is required to provide the Agency  
23 with that certification and list of interested  
24 parties that wish to be added to the list serve

1 for those public meetings.

2 MS. COURTNEY: So will the Agency  
3 conduct any outreach to communities about the  
4 ability to sign up for the list serve?

5 MR. LECRONE: This is Darin Lecrone.  
6 The Agency intends to put a link on our CCR page  
7 on the Agency's website. That will be one way the  
8 folks can do that.

9 MS. COURTNEY: Okay. My next set of  
10 questions is about Board Question 28, also on Page  
11 159.

12 HEARING OFFICER HORTON: In your --  
13 we lost audio. Can you restart audio? Your audio  
14 was off for the first part of that question.

15 MS. COURTNEY: Can you hear me now?

16 MS. ZEIVEL: Yes.

17 MS. COURTNEY: Should I start the  
18 question over?

19 MS. ZEIVEL: If you wouldn't mind.

20 MS. COURTNEY: In your pre-filed  
21 answer in response to a question posed by the  
22 Board about digital access to permit applications,  
23 it was stated that the Agency does not make NPDES  
24 permit applications available online.



1 Does the Agency have the  
2 capability to post permit applications on its  
3 website for the public to download?

4 MR. LECRONE: This is Darin Lecrone.  
5 The Agency currently does not have the ability to  
6 post these types of applications on its website  
7 for public download.

8 MS. COURTNEY: Is it possible that  
9 the Agency could?

10 MR. LECRONE: This is Darin Lecrone.  
11 I can't answer that today. It's not up to me and  
12 there is multiple pieces of the puzzle. So I'm  
13 not able to answer that question.

14 MS. COURTNEY: Will there be any  
15 follow up if the answer is not the same?

16 MR. LECRONE: This is Darin Lecrone.  
17 We can't commit to that because it involves staff  
18 and resources outside our Agency to be able to do  
19 that and we have no way of being able to commit to  
20 that.

21 MS. COURTNEY: So your pre-filed  
22 answer stated that applications need to -- will  
23 need to be screened via Freedom of Information Act  
24 guidelines, so FOIA guidelines.

1                   If the Agency screens the  
2 applications once and posted them online, would  
3 that avoid the need to screen it multiple times in  
4 response to multiple Freedom of Information Act  
5 requests for the same application?

6                   MR. LECRONE: This is Darin Lecrone.  
7 No, once it's screened by the FOIA group here,  
8 then that's it. It is only screened one time.

9                   MS. COURTNEY: Follow-up question to  
10 one of the Board questions from earlier. If the  
11 documents from a FOIA request aren't received by  
12 the end of the public comment period, will the  
13 Board consider extending the comment period for  
14 the Agency? Sorry.

15                   MR. LECRONE: This is Darin Lecrone.  
16 Existing Agency practice like for the NPDES  
17 program, for instance, has been to extend the  
18 comment period in those instances where we were  
19 unable to get materials out in time or something  
20 like that or there was some problem with doing so.

21                   Existing Agency practice, like I  
22 said, has been to extend the notice period, if  
23 necessary, to allow time for review of those  
24 materials.

1 MS. COURTNEY: And by how much is  
2 that period usually extended?

3 MR. LECRONE: It -- it -- this is  
4 Darin Lecrone. It varies. It is really a  
5 case-by-case, site specific kind of consideration.

6 MS. COURTNEY: My next set of  
7 questions goes towards the public comment period.  
8 I want to turn you back to the response to our  
9 Question 10(a)(1) at Page 96 about what makes  
10 public participation meaningful.

11 MR. LECRONE: Okay. I have it.

12 MS. COURTNEY: So potentially  
13 affected community residents have an appropriate  
14 opportunity to participate in decisions about a  
15 proposed activity that -- that will affect their  
16 environment or health, right?

17 MR. LECRONE: That's what it says,  
18 yes. This is Darin Lecrone.

19 MS. COURTNEY: And we mentioned  
20 before that construction permit applications  
21 include complex technical documents and analysis,  
22 right?

23 MR. LECRONE: This is Darin Lecrone.  
24 That is correct.

1 MS. COURTNEY: Is it possible that  
2 there will be more -- more information or changed  
3 information since the pre-application meeting as  
4 required by Section 845.240?

5 MR. LECRONE: I'm sorry. Could you  
6 rephrase that or just repeat it?

7 MS. COURTNEY: Is it possible that  
8 there will be -- so the owner or operator posts  
9 some of the information on it, on a publicly  
10 available website prior to the pre-application  
11 public meeting, is it possible that there will be  
12 more information or changed information since that  
13 meeting takes place?

14 MR. LECRONE: That is possible, yes.  
15 Sorry. It's Darin Lecrone.

16 MS. COURTNEY: Could construction  
17 permit applications be better understood with the  
18 help of technical experts to fully make sense and  
19 evaluate applications and questions for the  
20 public?

21 MR. LECRONE: This is Darin Lecrone.  
22 Yes, they may be.

23 MS. COURTNEY: So then would it aid  
24 the public to be more informed about a proposed

1 activity that would affect the environment or  
2 their health if the public had 45 days to review  
3 the draft permit application instead of 30 days?

4 MR. LECRONE: Thirty days has been  
5 our standard practice and it's the public notice  
6 timeframe in the NPDES program and we think it's  
7 adequate.

8 MS. COURTNEY: Are you aware or is  
9 the Agency aware that U.S. EPA would provide under  
10 the federal permitting rules, so its  
11 decisionmaking rule on permits, that a minimum of  
12 45 days for public comment on individual  
13 permits -- or is required for individual permits?  
14 So this would be under 40 CFR 124.10(b) and this  
15 is in reference to RCRA permits.

16 MR. LECRONE: This is Darin Lecrone.  
17 I'm not familiar with those requirements under  
18 RCRA.

19 MS. COURTNEY: All right. My next  
20 set of questions is in relation to 260(a) and (e),  
21 the public notice of the draft permit and the  
22 public hearing, and it's related to LVEJO's  
23 Question 18(a) at Page 11.

24 MR. LECRONE: We have it.

1 MS. COURTNEY: So in response to  
2 LVEJO Question 18(a), you state that the Agency  
3 public engagement notification publication will be  
4 conducted pursuant to Illinois EPA EJ public  
5 participation policy, right?

6 MR. LECRONE: That's what it states,  
7 yes.

8 MS. COURTNEY: I'd like to point you  
9 to the environmental groups, ELPC, Prairie Rivers  
10 Network and Sierra Club's Exhibit 2.

11 HEARING OFFICER HORTON: Ms.  
12 Courtney, this would be the exhibits -- this is  
13 Vanessa Horton. These are the exhibits filed by  
14 Ms. Cassel?

15 MS. COURTNEY: Yes.

16 HEARING OFFICER HORTON: So it would  
17 be -- within that, it would be Exhibit 2?

18 MS. COURTNEY: Yes.

19 HEARING OFFICER HORTON: Okay. I  
20 don't believe we've entered these into the record  
21 yet. Would you like to do so?

22 MS. COURTNEY: Right. Yes, I was  
23 asking them to pull it up and I was going to ask  
24 them to -- to include it.

1 HEARING OFFICER HORTON: My  
2 apologies. So we'll enter Exhibit 2 as Exhibit 7.  
3 You can continue. Sorry.

4 (Document marked as Hearing  
5 Exhibit No. 7 for  
6 identification.)

7 MS. COURTNEY: Thank you. Are  
8 you -- are you familiar with this document?

9 MS. ZEIVEL: Ms. Courtney, can you  
10 direct your question to a person when you ask "Are  
11 you aware?"

12 MS. COURTNEY: Sorry. Is the  
13 Agency -- these questions were originally directed  
14 to Chris Pressnall in LVEJO's questions.

15 MR. PRESSNALL: This is Chris  
16 Pressnall with the Illinois EPA. Yes, I am  
17 familiar with the public participation policy.

18 MS. COURTNEY: So on Page 3 under  
19 community outreach procedures, the first procedure  
20 is that there be an effective public participation  
21 strategy that emphasizes early and meaningful  
22 public involvement throughout the permitting  
23 process or other Illinois EPA activities, right?

24 MR. PRESSNALL: This is Chris

1 Pressnall. Yes, that's correct.

2 MS. COURTNEY: And then on Page 5 in  
3 Part (b)(2)(b)(2) procedures so --

4 HEARING OFFICER HORTON: Hold on.  
5 Okay. Ms. Courtney, sorry about that. I think  
6 you can continue.

7 MS. COURTNEY: Thank you. So the  
8 policy states on Page 5, Part (b)(2)(b)(2) of  
9 those procedures the Illinois EPA will make a good  
10 faith effort to provide a translator when it is  
11 known that residents cannot speak English very  
12 well or when the Illinois EPA receives a request  
13 for a translator within two weeks of any public  
14 hearing or meeting and when the need for a  
15 translator is adequately justified, right?

16 MR. PRESSNALL: This is Chris  
17 Pressnall. Yes, that's correct.

18 MS. COURTNEY: How will the Agency  
19 determine if the area has non-speaking residents?

20 MR. PRESSNALL: This is Chris  
21 Pressnall. We use a variety of tools to determine  
22 that, one of which is using various mapping  
23 technologies such as the U.S. EPA EJ screen that  
24 would allow us to do a demographic analysis. We



1 also, as is contemplated on this policy, rely on  
2 feedback from various community members and  
3 community groups that represent those members.

4 So it gives us a variety of  
5 tools, plus on the ground knowledge, past  
6 experience that the Illinois EPA has in working  
7 with various communities are, I guess,  
8 institutional knowledge of the demographic makeup  
9 of those communities.

10 MS. COURTNEY: Okay. And on Page 4,  
11 Part (2)(a)(2) -- sorry. This is Page 5. It  
12 says, "Public notices will be written in  
13 terminology and languages easily understood by the  
14 majority of readers except where public notice  
15 language is otherwise required. When required,  
16 notices will be placed in legal notice sections or  
17 other sections of public -- sorry -- of local  
18 publication."

19 Could understood by the majority  
20 of readers mean English?

21 MR. PRESSNALL: This is Chris  
22 Pressnall. When that was originally written and  
23 contemplated, it was referring the Board to taking  
24 complex technical language that might appear in

1 any number of Agency programs be it air, water or  
2 land, taking complex descriptions of projects and  
3 making it into a terminology that is hopefully  
4 easily understood by persons receiving or reading  
5 the public notice.

6 MS. COURTNEY: So is there then  
7 anything in this policy that requires notice to be  
8 translated?

9 MR. PRESSNALL: This is Chris  
10 Pressnall. I don't know. I don't know if I can  
11 point to anything specifically in this public --  
12 EJ public participation policy that would require  
13 notifications to be translated. Certainly that is  
14 Agency practice that when it's known the  
15 demographic -- there is a significant portion of  
16 non-English speaking residents in an area that you  
17 need to translate public notices.

18 MS. COURTNEY: I understand that it  
19 is the Agency's practice, but is that required or  
20 written anywhere?

21 MR. PRESSNALL: This is Chris  
22 Pressnall. I'm guessing in asking whether it's  
23 required that being that this is an environmental  
24 justice public participation policy by its very

1 nature, it's just a policy. It's not a  
2 requirement, per se, such as a statute or  
3 regulation and I guess it doesn't explicitly spell  
4 out within this policy when they will be  
5 translated -- when public notices will or will not  
6 and really reflects the fact that there will be a  
7 variety of factors taken into account when the  
8 Agency determines whether they're going to proceed  
9 with translation of a public notice.

10 MS. COURTNEY: So given that the  
11 policy provides for a translator for meetings or  
12 hearings and for translation of the fact sheet,  
13 but does not mention translation of the notice,  
14 how will people know to ask for a translator if  
15 the notice is in a non-English -- if the notice is  
16 not in a non-English language?

17 MR. PRESSNALL: This is Chris  
18 Pressnall. As far as your question goes, I don't  
19 think I said anything to suggest that something  
20 would not be translated. So, you know, I don't  
21 really know how to answer that. Your question is  
22 presupposing that we're not going to translate it  
23 and that's not what we're saying.

24 MS. COURTNEY: So is the Agency

1 opposed to precluding a provision where there is a  
2 significantly -- significant portion of  
3 non-English speakers that there is a translation  
4 of the notice as well just as there is a  
5 translation or are there other translation  
6 requirements in the rule?

7 MR. PRESSNALL: This is Chris  
8 Pressnall. No, we would not -- the Agency would  
9 not oppose that.

10 MS. COURTNEY: Thank you. My next  
11 question is again -- or set of questions is  
12 related to 845. -- 845.260(d) of the public  
13 hearing and these questions were originally  
14 directed to Lynn Dunaway by LVEJO.

15 So the Coal Ash Pollution  
16 Prevention Act states that meaningful  
17 participation of state residents, especially  
18 vulnerable populations who may be affected by  
19 regulatory actions, is critical to ensure that  
20 environmental justice considerations are  
21 incorporated in the development of and  
22 decisionmaking related to and implementation of  
23 the environmental laws and rulemaking. So I'm  
24 referring to 22.59(a) of the Coal Ash Pollution

1 Prevention Act.

2 In your answer to LVEJO,  
3 Question 3(e) on Page 13, the response is that  
4 IEPA did not propose findings in identifying  
5 vulnerable populations. Why do the rules not  
6 mention vulnerable population in addition to areas  
7 of EJ concern when the legislative mandate stated  
8 that meaningful public participation of those  
9 vulnerable populations was critical?

10 MR. PRESSNALL: Ms. Courtney, this  
11 is Chris Pressnall with Illinois EPA. Could you  
12 please repeat the question?

13 MS. COURTNEY: Including the lead up  
14 to the question or just the question itself?

15 MR. PRESSNALL: Just the question  
16 itself.

17 MS. COURTNEY: Why do the rules not  
18 mention vulnerable populations in addition to  
19 areas of EJ concern, or environmental justice  
20 concern, when the legislative mandate stated that  
21 meaningful public participation of those  
22 vulnerable populations was critical?

23 MR. PRESSNALL: This is Chris  
24 Pressnall. As we reflected -- as the Agency

1 reflected in its answer to LVEJO Question's 3(a),  
2 B and C we're proposing to use our demographic  
3 screening tool to identify areas of EJ concern.

4 Section 22.59(a)(5) of the  
5 legislative findings, we interpreted them to be  
6 just that, legislative findings, not a mandate to  
7 necessarily include vulnerable populations and the  
8 Illinois EPA doesn't currently incorporate and use  
9 that terminology within its environmental justice  
10 program. And we do feel that our -- that the --  
11 utilizing the current GIS screening tool, which we  
12 call EJ Start, sufficiently captures those same  
13 populations that are referred to in 22.59(a)(5).

14 MS. COURTNEY: So now I will point  
15 you to LVEJO Question 16 at Page 10 through 11. I  
16 think we're picking up somebody's typing. There  
17 was feedback.

18 HEARING OFFICER HORTON: I think we  
19 got it. I think we got it. You should be able to  
20 proceed.

21 MS. COURTNEY: So IEPA states that  
22 "Public participation procedures for permits,  
23 including proposed -- or including proposed Part  
24 845 mandates that members of the public who

1 request a hearing include reasons why a hearing is  
2 warranted and that the Agency may hold a public  
3 hearing are based on NPDES permitting program.  
4 IEPA also states that a significant degree of  
5 public interest is something that the Agency looks  
6 at only on a case-by-case situation.

7 On what case-by-case basis has  
8 the Agency denied requests for hearing in the  
9 past?

10 MR. LECRONE: This is Darin Lecrone.  
11 In recent memory, the Agency has not denied a  
12 request for hearing. Usually we kind of err on  
13 the side of caution and if we get a request, we'll  
14 look at that request and we tend to have a public  
15 hearing. I can't think of a recent example where  
16 we have denied anyone. For NPDES, I should say.  
17 That's what my experience is in is the NPDES  
18 hearing process. So I can't think of a recent  
19 memory a case where we've denied an NPDES hearing.

20 MS. COURTNEY: Do the proposed Part  
21 845 rules include any limitations on when the  
22 Agency can deny a request for a hearing?

23 MR. LECRONE: This is Darin Lecrone.  
24 Not specifically.

1 MS. COURTNEY: Is there any part  
2 where it generally does so?

3 MR. LECRONE: This is Darin Lecrone.  
4 Only if there is not a significant degree of  
5 public interest.

6 MS. COURTNEY: Would residents being  
7 concerned about pollution because they live in the  
8 area be reason enough to request a public hearing?

9 MR. LECRONE: Darin Lecrone.  
10 Generally, yes.

11 MS. COURTNEY: My next set of  
12 questions is in relation to Part B of that  
13 question. So LVEJO 16(c).

14 The Agency also states that if a  
15 public hearing is not held, the Agency will still  
16 prepare a written response to comments received  
17 during the public notice process.

18 If there are any public comments  
19 to the draft permit, is that demonstrative of a  
20 significant public interest so that there should  
21 be a public hearing?

22 MR. LECRONE: This is Darin Lecrone.  
23 The commentators have to request a hearing. If they  
24 just wish to file comments, but not request a



1 public hearing, they can do so and like using the  
2 NPDES process as an example again, that happens  
3 quite often. Commentors file comments, but don't  
4 request a hearing.

5 MS. COURTNEY: Do the proposed Part  
6 845 rules specify that a response to comments will  
7 be prepared even if no public hearing is held as  
8 the Agency states in its answer to this question?  
9 And, if so, where?

10 MR. LECRONE: The proposed  
11 regulation does not require the Agency to respond,  
12 but it's existing Agency practice in the NPDES  
13 program to respond to those comments even if no  
14 hearing is held.

15 MS. COURTNEY: Does the Agency  
16 oppose an inclusion of a provision explicitly  
17 stating that it will respond to comments or  
18 provide a response to comments?

19 MR. LECRONE: This is Darin Lecrone.  
20 The Agency prefers to remain consistent with the  
21 existing Agency program, such as the NPDES  
22 program, on which it's based.

23 MS. COURTNEY: Does it adversely  
24 affect the Agency to include such a provision?

1 MR. LECRONE: This is Darin Lecrone.  
2 I can't speculate without, you know, seeing  
3 specifics in front of me on that particular case.

4 MS. COURTNEY: That was my last  
5 question. Thank you.

6 HEARING OFFICER HORTON: Okay.  
7 Thank you. I believe the -- are there any other  
8 follow-ups in the room for questions on that  
9 section? Anyone on Webex have follow-up questions  
10 for Section 260? Hearing none and seeing none, we  
11 move to Section 270 and we'll begin again with --  
12 will it be, Ms. Courtney, do you have questions on  
13 Section 270?

14 MS. COURTNEY: Here we go. We do  
15 not have any additional questions for Subpart B.  
16 However, we may have follow-up questions.

17 HEARING OFFICER HORTON: Certainly.  
18 Midwest Generation has no questions for here.  
19 City of Springfield and Dynegy, no more questions  
20 for this section. I'm sorry.

21 I believe Ms. Cassel has  
22 follow-up questions for Section 260, but is having  
23 trouble connecting. She just popped up.  
24 Ms. Cassel?

1 MS. CASSEL: Can you hear me now?

2 HEARING OFFICER HORTON: Yes.

3 MS. CASSEL: Okay. Great. Very  
4 quick follow up. I was curious is there any  
5 requirement that the Agency -- I'm sorry.

6 Are there any requirements in  
7 the proposed rule that -- this is Jenny Cassel  
8 with Earthjustice -- to submit the application  
9 electronically?

10 MR. LECRONE: This is Darin Lecrone.  
11 There is no requirement in the rule as drafted  
12 that requires submittal of the application  
13 electronically.

14 MS. CASSEL: Are they generally  
15 submitted electronically at this point?

16 MR. LECRONE: This is Darin Lecrone.  
17 A majority of existing water pollution  
18 applications are submitted in hardcopy. The only  
19 ones that aren't are the one or two-page notices  
20 of intent for stormwater. All existing other  
21 NPDES applications and construction and operating  
22 permit applications are submitted hardcopy.

23 MS. CASSEL: Is there any reason --

24 MR. LECRONE: I should say --

1 MS. CASSEL: I'm sorry.

2 MR. LECRONE: I should say right now  
3 we're accepting PDF's solely because of the  
4 COVID-19 issue, but they still have to follow up  
5 with hardcopy.

6 MS. CASSEL: Is there any reason  
7 that the applications required by Part 845 could  
8 not be submitted electronically?

9 MR. LECRONE: This is Darin Lecrone.  
10 Right now, part of the issue is the electronic  
11 signature process. They require right now  
12 original signatures. We don't have any way for  
13 the electronic signatures or electronic  
14 professional engineering stamps.

15 MS. CASSEL: Would it be possible to  
16 submit the remainder of the application  
17 electronically and submit those signatures by  
18 hardcopy?

19 MR. LECRONE: Yeah, right now and  
20 consistent with other Agency programs, we're not  
21 able to do that. We don't have the infrastructure  
22 in place to be able to handle electronic  
23 applications.

24 MS. CASSEL: Would it be possible to

1 require applicants to provide their application  
2 electronically to folks on the notice list? Would  
3 you oppose a requirement like that?

4 MR. LECRONE: Okay. This is Darin  
5 Lecrone. At this point, we'd prefer to be  
6 consistent with current programs. We aren't  
7 really setup to handle electronic applications at  
8 the moment.

9 MS. CASSEL: Would it harm the  
10 Agency's ability to administer this if it simply  
11 required the applicant to directly send the  
12 application to the notice list without the Agency  
13 needing to receive it or, you know, accept it  
14 directly electronically?

15 MR. LECRONE: This is Darin Lecrone.  
16 It would not harm the Agency to require that of  
17 the owner/operator.

18 MS. CASSEL: To the extent that such  
19 a provision did not get included in the rules,  
20 what would be the Agency's proposal to make sure  
21 that the public actually has a full 30 days of  
22 public comment, if not more, with the full permit  
23 and application at hand to review before the  
24 comment deadline?

1 MR. LECRONE: The Agency chose the  
2 existing 30-day public notice timeframe and  
3 procedures to be consistent with existing  
4 programs. It's the same timeframe we currently  
5 have for other similar permit programs.

6 MS. CASSEL: Thank you. I  
7 appreciate that. However, what I'm asking is in  
8 order for the public to make meaningful comments,  
9 they would need to be able to review not only the  
10 draft permit, but the materials in which it is  
11 based.

12 So how would the Agency make  
13 sure that the public has access -- not only access  
14 to, but actually has those documents available to  
15 it for the full extent of the 30-day public  
16 comment period if it's not extended longer than  
17 that?

18 MR. LECRONE: This is Darin Lecrone.  
19 The Agency is not proposing a full 30 days to  
20 review everything. It may be a 30-day comment  
21 period. If unique circumstances require the  
22 Agency to extend the comment period, we can, but  
23 our existing practice for other programs follows  
24 the same procedure and some of those applications

1 are very complex as well. So we prefer to remain  
2 consistent.

3 MS. CASSEL: So is it the Agency's  
4 position that it is fine for the public to not  
5 receive the materials, the application materials,  
6 until several days before the end of the comment  
7 period and -- and leave it at that?

8 MS. ZEIVEL: Objection. That  
9 question presupposes a response in an answer that  
10 the Agency did not provide.

11 MS. CASSEL: That's right. I'm  
12 asking for an answer. I'm not presupposing that's  
13 the assumption. I'm just asking if that's the  
14 Agency's position if they're comfortable with  
15 that.

16 HEARING OFFICER HORTON: Would you  
17 rephrase, Ms. Cassel?

18 MS. CASSEL: Sure. I guess what I'm  
19 hearing is a member of the public could have the  
20 draft permit, but not have the actual application  
21 available to it because it's not online or because  
22 a FOIA request wasn't able to be provided right  
23 away or because they didn't know about the notice  
24 and so it sounds like they might have a situation

1 where the application isn't, in fact, available to  
2 be reviewed until, say, five days before the end  
3 of the public comment period and I'm curious if  
4 the Agency is comfortable with that -- with those  
5 circumstances or if that's a realistic scenario?

6 MR. LECRONE: This is Darin Lecrone.  
7 You know, the way we handle the same/similar  
8 scenario in the NPDES program is some of those  
9 applications are very complex as well and it takes  
10 a while to get FOIA screening done.

11 So without speculating on what  
12 we do -- what we might do on some individual case,  
13 the way we currently handle it is if we're unable  
14 to get application material for requested  
15 documents to someone soon enough to complete their  
16 review, we have in those -- some of those cases  
17 extended the public comment period to allow  
18 additional time for folks to review those  
19 materials.

20 We understand that some  
21 applications are much more complex than others.  
22 We understand sometimes that there is issues with  
23 getting these complex applications screened by  
24 FOIA and getting everything to the requester



1 quickly and so in those instances where that has  
2 occurred on that site specific basis or  
3 case-by-case basis, we have allowed an extension  
4 of the public notice period.

5 MS. CASSEL: Would you agree it  
6 would hinder public participation if the  
7 application materials were not available to only,  
8 say, five days prior to the deadline for comment?

9 MR. LECRONE: This is Darin Lecrone.  
10 I would say it would depend on the complexity of  
11 the application.

12 MS. CASSEL: For a closure  
13 application, construction permit application, use  
14 that as an example as a proposed hearing.

15 MR. BUSCHER: Again, that's going to  
16 require me to speculate on what that closure  
17 application contains and what it is for and  
18 when -- what are the specifics of the case. You  
19 know, like I said, though, in general, if the  
20 complex nature of an application prevents us from  
21 getting that material to a commentor before -- you  
22 know, close to the end of the comment period, we  
23 would probably consider that a reasonable  
24 justification for extending that comment period

1 and we have done so in existing programs.

2 MS. CASSEL: Thank you. That  
3 concludes my question.

4 HEARING OFFICER HORTON: Thank you.  
5 So those are all the follow-up questions for 260.

6 Mr. Granholm from Dynegy, you  
7 had a follow-up question?

8 MR. GRANHOLM: Just a couple of  
9 quick questions. Ryan Granholm on behalf of  
10 Dynegy.

11 In follow up to Ms. Cassel's  
12 questions and some of the other questions, isn't  
13 it correct that proposed 845.210(h) requires that  
14 all applications must be placed in the facility's  
15 operating record?

16 MR. LECRONE: This is Darin Lecrone.  
17 That is correct.

18 MR. GRANHOLM: And materials placed  
19 in the operating record will be made available on  
20 the owner/operator's public website under Section  
21 810, correct?

22 MR. LECRONE: This is Darin Lecrone.  
23 Yes, that's correct.

24 MR. GRANHOLM: Thank you. Nothing

1 further.

2 HEARING OFFICER HORTON: Okay. We  
3 shall move on to Section 270 Final Permit  
4 Determination and Appeal.

5 MS. ZEIVEL: Excuse me. Ms. Cassel  
6 is trying to ask a follow-up question it looks  
7 like, but you're muted, Jenny.

8 MS. CASSEL: I'm using my phone and  
9 I shouldn't be muted.

10 MS. ZEIVEL: I can hear you now.

11 HEARING OFFICER HORTON: This is  
12 Vanessa Horton. If you press Star 6, that will  
13 unmute yourself on the phone.

14 MS. CASSEL: Are you able to hear me  
15 now?

16 HEARING OFFICER HORTON: Yes.

17 MS. CASSEL: My apologies. I just  
18 have a single follow up to Mr. Granholm's question  
19 which is just whether under the proposed rules the  
20 application materials that are required to be  
21 posted on the permittee -- permit applicant's  
22 website, excuse me, are required to be posted  
23 there by the time of the beginning of the public  
24 comment period?

1 MR. LECRONE: No, it requires it to  
2 be placed there within 30 days of placement in the  
3 operating record.

4 MS. CASSEL: Is there -- I'm sorry.  
5 Can you explain a little bit between that and the  
6 comment period?

7 MR. LECRONE: This is Darin Lecrone.  
8 The regulations don't specifically require that it  
9 be placed in the operating record prior to a  
10 public notice. However, it requires that it be on  
11 the website 30 days after the operating record,  
12 but from a practical standpoint I don't see us  
13 having to draft -- prepare for public notice  
14 before that information would be on the website,  
15 but the regulation does not specifically state  
16 that.

17 MS. CASSEL: Would the Agency be  
18 opposed to including a provision that does  
19 specifically state that the materials need to be  
20 posted by the time the public comment period  
21 begins?

22 MR. LECRONE: This is Darin Lecrone.  
23 We would not be opposed to it in concept, but we  
24 would want to see any suggested language.

1 MS. CASSEL: Okay. Thank you very  
2 much.

3 HEARING OFFICER HORTON: Okay.  
4 Moving on to Section 270. I believe we were at  
5 IERG, do you have any questions on Section 270?

6 MS. BROWN: Melissa Brown. Not at  
7 this time.

8 HEARING OFFICER HORTON: Okay.  
9 Ameren said they did not have any questions for  
10 this section. So I'm moving to the AG's Office.  
11 Any questions on 270?

12 MR. SYLVESTER: This is Steve  
13 Sylvester. We don't have any questions on this  
14 subpart either.

15 HEARING OFFICER HORTON: Okay.  
16 Mr. Rao, Ms. Brown from the Board, any questions  
17 on 270?

18 MR. RAO: I don't have any  
19 questions.

20 MS. GALE: Ms. Hearing Officer, I  
21 know I said I didn't have any questions, but I  
22 actually have a follow-up question on 270, just a  
23 clarification.

24 HEARING OFFICER HORTON: No problem.

1 So Ms. Gale.

2 MS. GALE: This is Kristen Gale on  
3 behalf of Midwest Generation. The Agency turned  
4 to Exhibit 3, Page 13. It's their answers to  
5 Midwest Generation. It's just a clarification  
6 question.

7 I'm looking at the Agency's  
8 answer to Question 29. The Agency proposed new  
9 language in light of the comment to have it be --  
10 comport with Section 40 of the act and if the  
11 Agency flips to Page 9 of its answers, it's  
12 actually the answers on Page 9, but the question  
13 was on Page 8. It's related to Page 210(e) and  
14 the answer is "Please see response to Question  
15 29."

16 My question is, does the Agency  
17 want the language proposed in its answer to  
18 Question 29 to be included in 845.210(e)?

19 MS. ZEIVEL: This is Cristine  
20 Zeivel. Just give us a minute to get there,  
21 please.

22 MS. GALE: Sorry. Sure. I'm happy  
23 to restate the question.

24 MR. LECRONE: This is Darin Lecrone.

1 The Agency doesn't believe that 210(e) needs to be  
2 revised. We believe that the place for that  
3 suggested language is in 270(e).

4 MS. GALE: Okay. So I guess then  
5 that the answer on Page 13 isn't the Agency's  
6 answer to Question 29, isn't the Agency's answer  
7 to Question 15?

8 MR. LECRONE: Can you repeat that,  
9 please?

10 MS. GALE: I guess I'm confused and  
11 I'm happy for an explanation. Question 15 asked  
12 about 210(e) and why -- what was the Agency's  
13 basis for making the final action the date the  
14 decision was placed in the mail.

15 And this is actually coming from  
16 what is currently going on with U.S. Postal  
17 Service seeing the news and the delay it takes and  
18 the Agency response was "See response to No. 27."

19 Actually, maybe I got a mistake  
20 here. I -- "See response to 29" and then the  
21 answer to No. 29 is "The Agency suggests to change  
22 the language." So I guess my question is what  
23 happens to the Agency's answer to Question 15?

24 MR. LECRONE: This is Darin Lecrone.

1 The answer to 15 is we don't believe 210(e) is  
2 inconsistent with Section 40 of the act. 210(e)  
3 is just stating when the final action is deemed to  
4 have taken place. 270(e) as we're proposing to  
5 revise it just defines or clarifies when the  
6 appeal period begins.

7 MS. GALE: Okay. So just so I  
8 understand. 210(e) isn't dictating when the  
9 appeal period starts, is that what you're saying?

10 MR. LECRONE: Correct. That's  
11 correct. This is Darin Lecrone. That's correct.

12 MS. GALE: Got it. Thank you much.

13 MR. LECRONE: 210(e) is the final  
14 Agency decision. 270(e) would be the final appeal  
15 period.

16 MS. GALE: And just again for my  
17 clarification, and I realize this is kind of going  
18 off, but the Agency has answered in another  
19 section that the certain decision is -- you know  
20 what, I'll wait for that time. Nevermind. I'm  
21 done. Thank you.

22 HEARING OFFICER HORTON: Okay.  
23 Moving on to Section 280 Transfer Modification and  
24 Renewal. We'll begin with our first set of



1 questioners. Little Village Environmental, ELPC,  
2 Prairie Rivers, Sierra Club. Any questions?

3 MS. COURTNEY: We don't have any  
4 questions about 280 at this time.

5 HEARING OFFICER HORTON: And that  
6 was Ms. Courtney?

7 MS. COURTNEY: Yes, that was Kiana  
8 Courtney, Environmental Law and Policy Center.

9 HEARING OFFICER HORTON: And I'm  
10 skipping over Midwest Generation. City of  
11 Springfield?

12 MS. WILLIAMS: (Negative nod.)

13 HEARING OFFICER HORTON: None.  
14 Dynegy, I'm skipping. Illinois Environmental  
15 Regulatory Group?

16 MS. BROWN: Melissa Brown. None at  
17 this time.

18 HEARING OFFICER HORTON: Skipping  
19 over Ameren and going to the AG's Office. Any  
20 questions on 280?

21 MR. SYLVESTER: Steve Sylvester. No  
22 questions at this time.

23 HEARING OFFICER HORTON: And,  
24 Mr. Rao, Ms. Brown of the Board?

1 MS. ESSENCE BROWN: I have no  
2 questions at this time.

3 HEARING OFFICER HORTON: Certainly.  
4 Okay. We move on to Section 290 Construction  
5 Quality Assurance Program.

6 Beginning at the top, Little  
7 Village, ELPC, Prairie Rivers, Sierra Club?

8 MS. COURTNEY: Kiana Courtney for  
9 the Environmental Law and Policy Center. We do  
10 not have any questions for 290 at this time.

11 HEARING OFFICER HORTON: Thank you.  
12 Skipping over Midwest Generation. City of  
13 Springfield, any questions?

14 MS. WILLIAMS: None.

15 HEARING OFFICER HORTON: None.  
16 Skipping over Dynegy. IERG, any questions?

17 MS. BROWN: Melissa Brown. None at  
18 this time.

19 HEARING OFFICER HORTON: Skipping  
20 over Ameren. AG's Office, any questions?

21 MR. SYLVESTER: Steve Sylvester.  
22 None at this time.

23 HEARING OFFICER HORTON: Mr. Rao,  
24 Ms. Brown of the Board, any questions?

1 MR. RAO: No questions.

2 HEARING OFFICER HORTON: Thank you.

3 Okay. Moving on to Subpart C Location  
4 Restrictions. We begin at 845.300 Placement Above  
5 the Uppermost Aquifer.

6 We'll begin with our first set  
7 of questioners; Little Village, ELPC, Prairie  
8 Rivers, Sierra Club.

9 MS. BUGEL: Jenny Cassel will be  
10 asking questions for those groups.

11 HEARING OFFICER HORTON: Okay.  
12 Ms. Cassel, do you have questions on Section 300?

13 MS. CASSEL: I do. Thank you. One  
14 question specific to Section 300 which is directed  
15 towards Melinda Shaw based on her response to our  
16 question ELPC, PRN and Sierra Club Question 1. I  
17 believe it says Exhibit 2.

18 Ms. Shaw, you testified that the  
19 Agency "Does not yet have information" about the  
20 impoundments -- excuse me -- about which CCR  
21 surface impoundments do not meet location  
22 standards.

23 Did the Agency review the  
24 filings concerning location restrictions posted on

1 the public CCR website of the ash ponds that are  
2 subject to the -- or that has been providing  
3 documentation under the federal CCR rule in  
4 developing this proposal?

5 MS. SHAW: Melinda Shaw. No.

6 HEARING OFFICER HORTON: One second.  
7 Could everyone please mute themselves?

8 MS. CASSEL: Okay. Thank you. I  
9 believe that's all my questions for Part 300.

10 HEARING OFFICER HORTON: Okay.  
11 Thank you. Moving on to Midwest Generation  
12 Section 300?

13 MS. GALE: No questions and I have  
14 no questions for all of Part C. I may have  
15 follow-up questions.

16 HEARING OFFICER HORTON: Okay. I'll  
17 be skipping over you. City of Springfield,  
18 Section 300?

19 MS. WILLIAMS: No.

20 HEARING OFFICER HORTON: Okay.  
21 Dynegy, Section 300?

22 MR. GRANHOLM: Ryan Granholm. We  
23 also have no questions for Part C, but reserve the  
24 right to ask follow-ups.

1 HEARING OFFICER HORTON: Certainly.  
2 Melissa Brown, Illinois Environmental Regulatory  
3 Group?

4 MS. BROWN: No questions at this  
5 time.

6 HEARING OFFICER HORTON: Ameren,  
7 Section 300?

8 MS. MANNING: Claire Manning. We  
9 have no questions for Section 300.

10 HEARING OFFICER HORTON: Certainly.

11 MS. MANNING: Thank you.

12 HEARING OFFICER HORTON: AG's  
13 Office, Section 300?

14 MR. ARMSTRONG: Andrew Armstrong for  
15 the Illinois Attorney General's Office. We have  
16 no questions on Subpart C, but reserve the right  
17 to ask follow-up questions.

18 HEARING OFFICER HORTON: Okay. I'll  
19 be skipping over you.

20 Mr. Rao and Ms. Brown for  
21 Section 300?

22 MR. RAO: Yes, we have questions  
23 related to this section. In response to Board  
24 Question 32 on Page 161 of Exhibit 2, the

1 Agency -- the owners or operators approximately 30  
2 of the 73 CCR surface impoundment are --

3 HEARING OFFICER HORTON: Anand,  
4 we're having a little trouble hearing you. Could  
5 you repeat the question?

6 MR. RAO: Someone may not be muted.  
7 Can you hear me now?

8 MS. ZEIVEL: That is much better on  
9 this end.

10 HEARING OFFICER HORTON: You can  
11 continue. Thanks.

12 MR. RAO: Where was I? This is the  
13 Agency response to Question 32 on 161 of Exhibit  
14 2. The Agency stated that approximately 30 of the  
15 73 CCR surface impoundments are disputing whether  
16 their facilities meet the definition of -- the  
17 proposed definition of CCR under 845.110(d).

18 So are any of these disputed  
19 facilities currently regulated as surface  
20 impoundments under the NPDES permit program?

21 MR. LECRONE: Have him repeat the  
22 question first.

23 MS. ZEIVEL: Could you repeat the  
24 question, please?

1 MR. RAO: Yes, I can. Agency in  
2 Board Question 32 stated that 30 of the 73 surface  
3 impoundments are disputing whether their facility  
4 meets the definition of CCR surface impoundment.

5 My question is whether any of  
6 these disputed facilities are currently regulated  
7 as surface impoundments under NPDES permit  
8 programs?

9 MR. LECRONE: Yes, many of the --

10 MS. ZEIVEL: Identify yourself.

11 MR. LECRONE: Sorry. This is Darin  
12 Lecrone.

13 The impoundments that are still  
14 active are regulated as wastewater treatment units  
15 under the NPDES permit program.

16 MR. RAO: So can you explain what is  
17 the dispute here, you know, why these facilities  
18 think they are not surface impoundments?

19 MR. LECRONE: The Agency can't  
20 speculate on the -- on the reasons or arguments  
21 behind the owner/operators.

22 MR. RAO: So I'm not asking you to  
23 speculate. Do you have any information from the  
24 owners or operators as to why they think they

1 should not be regulated as surface impoundments?

2 MS. ZEIVEL: This is Christine  
3 Zeivel. The Agency does have information.  
4 However, some of the disputes involve pending  
5 litigation. So the Agency doesn't feel  
6 comfortable speaking to the perspectives of --

7 HEARING OFFICER HORTON: This is  
8 Vanessa Horton. Sorry to interrupt, but we didn't  
9 hear the last bit of what you said, Ms. Zeivel.

10 MR. RAO: Pardon me?

11 MS. ZEIVEL: I will repeat what I  
12 stated which is that the Agency does have  
13 information as to the basis for some of the  
14 disputes regarding the definition of what is a  
15 surface impoundment.

16 However, there is pending  
17 litigation regarding a number of those disputes  
18 and so the Agency does not feel that it should  
19 provide party -- possible party admissions or  
20 other statements regarding the positions taken in  
21 by litigants in those matters.

22 MR. RAO: So any resolution of these  
23 disputes virtually happen after the litigation is  
24 over?



1 MS. ZEIVEL: This is Christine  
2 Zeivel. Those disputes are being handled through  
3 ongoing enforcement and/or litigation and I -- the  
4 Agency can't speculate as to when resolution will  
5 occur.

6 MR. RAO: Can the Agency comment on  
7 whether dispute is about the facilities are  
8 landfills instead of surface impoundments or  
9 they're just -- the disputes are that they should  
10 not be regulated as a landfill or a surface  
11 impoundment?

12 HEARING OFFICER HORTON: Mr. Rao,  
13 can you please repeat?

14 MR. RAO: Yeah. I want to know if  
15 the Agency can at least comment on what the  
16 disputes are about whether the owners or operators  
17 are arguing these facilities are landfills and not  
18 surface impoundments or are they arguing they are  
19 some sort of treatment units that should not be  
20 regulated under either landfill regulations or the  
21 proposed rules.

22 MR. DUNAWAY: This is Lynn Dunaway.  
23 The disputes are over the assessment and fees that  
24 the Agency has invoiced owners and operators for

1 CCR surface impoundments pursuant to 22.59 of the  
2 act.

3 MR. RAO: Okay. Thank you very  
4 much.

5 Ms. Brown has a question on Part  
6 C as well. So I'm going to let her ask her  
7 question now.

8 MS. ESSENCE BROWN: For Ms. Shaw,  
9 can the Agency describe under what conditions  
10 would shelter in place be permissible when the  
11 impoundment is less than five feet above the  
12 aquifer?

13 HEARING OFFICER HORTON: Ms. Brown,  
14 can you repeat a little bit slower for our court  
15 reporter?

16 MS. ESSENCE BROWN: Okay. Ms. Shaw,  
17 can the Agency describe under what conditions  
18 would shelter in place be permissible when the  
19 impoundment is less than five feet above the  
20 aquifer?

21 MS. SHAW: This is Melinda Shaw.  
22 Did you mean close in place?

23 MS. ESSENCE BROWN: Yes, I apologize  
24 for misspeaking.

1 MS. SHAW: This is Melinda Shaw.  
2 Closure in place is going to be a site specific  
3 determination and the location restrictions are  
4 one part of that.

5 MS. ESSENCE BROWN: Okay. No  
6 further questions on this subpart.

7 HEARING OFFICER HORTON: Okay.  
8 Thank you. Any follow-up questions on 300?  
9 Seeing none, we move to -- sorry. Go ahead.

10 MS. MANNING: Madam Hearing Officer,  
11 this is Claire Manning. I have a bit of follow up  
12 on the questioning from Mr. Rao as it relates to  
13 the question of surface impoundment. We admitted  
14 a public comment in response to the Attorney  
15 General's public comment which explains, at least  
16 from Ameren's prospective, what its dispute is  
17 related to the definition of surface impoundments.

18 I would also ask Ms. Zeivel that  
19 the question of the enforcement action that is  
20 referred to, correct me if I'm wrong, Ms. Zeivel,  
21 but for those companies that disagreed with the  
22 Agency's determination as to whether something is  
23 a surface impoundment for purposes of fees and,  
24 therefore, is disputing fees because they're

1 disputing the definition of surface impoundment  
2 have all been sent violation notices, is that  
3 correct.

4 MR. DUNAWAY: This is Lynn Dunaway.  
5 All of the CCR surface impoundments which have  
6 disputed fees have been sent violation notices by  
7 the Agency.

8 MS. MANNING: Thank you.

9 MR. RAO: Thank you, Ms. Manning,  
10 for the clarification.

11 Would it be possible for the  
12 Agency to enter the notification of violation into  
13 the record so we know which facilities we are  
14 dealing with here that are disputing the  
15 definition of surface impoundments as they apply  
16 to their facility?

17 MS. ZEIVEL: Mr. Rao, this is  
18 Christine Zeivel. We would have to speak with our  
19 Enforcement -- Division of Legal Counsel  
20 Enforcement attorneys regarding that question.  
21 The fee disputes are deemed by the Agency at this  
22 point. The position is that they are outside the  
23 scope of this proposed rulemaking since the fee  
24 mandate was within the statute passed by the

1 legislature on -- directed by the Agency.

2 I have noted your question and  
3 we will certainly circle back with our enforcement  
4 division to see whether inclusion of the violation  
5 notices in this rulemaking record is agreeable to  
6 the Agency.

7 MR. RAO: If not, it would be  
8 helpful if you can identify those facilities which  
9 are in dispute if you don't want to file a notice  
10 of violation into the record.

11 MS. ZEIVEL: This is Christine  
12 Zeivel. We can absolutely provide a list in the  
13 Agency's post-hearing comments.

14 MR. RAO: Thank you. That's all I  
15 have.

16 HEARING OFFICER HORTON: Okay.  
17 Moving on -- sorry. Moving on to 310 Wetlands.

18 Our first set of questioners  
19 Little Village, ELPC, Prairie Rivers and Sierra  
20 Club.

21 MS. BUGEL: Ms. Cassel will be  
22 asking questions.

23 HEARING OFFICER HORTON: Ms. Cassel,  
24 did you have any questions on 310?

1 MS. CASSEL: I do. Thank you. I  
2 wanted to refer to Exhibit 2 as the Agency's  
3 response to Question 11(b), which is on Page 20.  
4 Let me know when you're there, please. I  
5 apologize. It looks like I may have the wrong --  
6 the wrong exhibit or page number. No, I'm looking  
7 at the wrong thing. My apologies. Does the  
8 Agency have it?

9 MS. ZEIVEL: Yes. Can we have the  
10 question?

11 MS. CASSEL: Okay. Great. Thank  
12 you. Ms. Shaw, in your response to ELPC, PRN and  
13 Sierra Club Question 11(b), you state that  
14 structural stability needs to be maintained during  
15 the active, closed and postclosure care period to  
16 protect human health and the environment.

17 Can you tell us why structural  
18 stability must be maintained throughout those  
19 periods to protect health and the environment?

20 MS. SHAW: This is Melinda Shaw.  
21 Ms. Cassel, I believe we are -- I thought we were  
22 answering questions pursuant to wetlands. I think  
23 this is for seismic.

24 MS. CASSEL: Well, it relates to

1 various different stability questions which also  
2 pertains to the wetlands designation, but it also  
3 relates to issues both within 310, 320, 330 and  
4 340.

5 MS. SHAW: Melinda Shaw. The Agency  
6 thinks it's important to keep the residuals and  
7 any liquid within the impoundment.

8 MS. CASSEL: Why does the Agency  
9 believe that's important?

10 MS. SHAW: This is Melinda Shaw.  
11 The Agency believes that keeping the CCR and any  
12 liquid that may be present within the impoundment  
13 would be to protect the environment and health of  
14 people.

15 MS. CASSEL: Can you tell me what  
16 risks would be posed if structural stability of  
17 the impoundments is not -- is not maintained?

18 MR. LECRONE: This is Darin Lecrone.  
19 The structural stability and maintaining that  
20 structural stability can be a physical safety  
21 issue as well as protective of human health and  
22 the environmental conditions if those berms were  
23 to fail.

24 MS. CASSEL: Can you elaborate a

1 little, Mr. Lecrone, if you would, or Ms. Shaw  
2 about what kinds of impacts it could have to  
3 physical safety or health or the environment  
4 should they fail, should a berm fail?

5 MR. LECRONE: This is Darin Lecrone.  
6 It would be very site specific depending on the  
7 exact location and construction methods of that  
8 impoundment whether it's above grade, below grade,  
9 more of a valley type construction or something,  
10 but, in general, you know, like any other kind  
11 of -- of -- like anything that is behind a dam or  
12 any kind of structure, you don't want it to fail.  
13 You put people at risk downstream. Those risks  
14 are going to be site specific. The risks of  
15 failure for any given impoundment or berms are  
16 going to be very site specific as well.

17 MS. CASSEL: Has the Agency taken a  
18 look at any circumstances where CCR impoundment  
19 berms in the past have failed to see what risks --  
20 sorry -- what harms occurred in those  
21 circumstances?

22 MR. LECRONE: The Agency does not do  
23 structural stability analysis of these  
24 impoundments. Sorry. That was Darin Lecrone.



1 MS. CASSEL: I appreciate the  
2 answer. I'm still curious if the Agency is  
3 familiar with any of the -- I apologize. I don't  
4 know who to direct the question to. It could be  
5 Mr. Lecrone or others, if the Agency is familiar  
6 with the circumstances of other instances where  
7 CCR surface impoundment berms have failed and the  
8 impacts of that such as health and the environment  
9 whether in Illinois or elsewhere?

10 MR. LECRONE: This is Darin Lecrone.  
11 We are aware of impoundment failures in other  
12 states. We do not have any experience with any  
13 such structural failures here.

14 MS. CASSEL: And when you say you  
15 don't have any experience, does that mean there  
16 never has been any or you aren't aware of any?

17 MR. LECRONE: This is Darin Lecrone  
18 again. I am not aware of any structural failures  
19 at any of these impoundments.

20 MS. CASSEL: So turning back to  
21 answers provided to our pre-filed questions. Can  
22 I get some clarification from the Hearing Officer.  
23 I have basically the same question for multiple  
24 answers that pertain to several subparts of this

1 subsection. I'm sorry. I should be closer to the  
2 phone. Is it permissible for me to ask that  
3 question across several subsections so I don't  
4 repeat the same question?

5 HEARING OFFICER HORTON: For the  
6 sake of repetition, let's proceed with each  
7 section and then if you have a similar question,  
8 you can ask that within that sub- -- within that  
9 section.

10 MS. CASSEL: So you would like me to  
11 repeat the same question in multiple subsections?

12 HEARING OFFICER HORTON: Yes, let's  
13 do 310 and then 320 and 330 and so forth.

14 MS. CASSEL: I apologize then. So  
15 in Ms. Shaw's answer to Environmental Law and  
16 Policy Center, Prairie Rivers Network and Sierra  
17 Club, Question 5 on 5(b) on Page 18, you state  
18 that an owner or operator -- I'm sorry. Excuse  
19 me. Let me start earlier.

20 In Subpart C, I quote the word  
21 stability is in reference to soils and wetlands.  
22 An owner/operator will need to make the  
23 determination based on site specific information  
24 and have a professional engineer certify that all

1 of the requirements in Subpart B are met and then,  
2 let's see, in response to Subsection D of that  
3 question, so 5(d) also on Page 18 of Exhibit 2,  
4 Ms. Shaw, you state that the Agency will have an  
5 appropriate number of personnel to review  
6 demonstrations as required to administer Part 845.  
7 The Agency intends to consult with IDNR as-needed.

8 Can you tell me which Agency  
9 personnel that will review permit applications for  
10 coal ash surface impoundments are professional  
11 engineers?

12 MR. LECRONE: This is Darin Lecrone.  
13 We can't name specific people, but it would be the  
14 Division of Water Pollution Control Permit Section  
15 staff.

16 MS. CASSEL: Are there currently  
17 members on staff of that section that are  
18 professional engineers, Mr. Lecrone?

19 MR. LECRONE: Yes.

20 MS. CASSEL: How many engineers does  
21 the Agency have available to it to review these  
22 permits?

23 MR. LECRONE: This is Darin Lecrone.  
24 We don't know yet. We're actually still trying to

1 hire a few more people so I don't have an exact  
2 count on how many staff will be available for  
3 reviewing these.

4 MR. DUNAWAY: And they're not under  
5 review.

6 MS. CASSEL: Can you give me an  
7 estimate of how many -- well, I'm sorry. Scratch  
8 that.

9 Can you tell me how many  
10 positions are currently being -- are currently  
11 open for engineers to help with the review of CCR  
12 permits among other things?

13 MR. LECRONE: Yeah, this is Darin  
14 Lecrone. I don't honestly know how many staff are  
15 going to be allocated. I know there are two  
16 positions currently open in my group, but their  
17 sole responsibilities will not be -- it will not  
18 be solely for coal ash disposal.

19 So I'm not sure what the final  
20 head count would be. You know, we've got a little  
21 bit of time between now and then. So the staffing  
22 decisions will be made by upper management.

23 MS. CASSEL: I'm sorry. Were you  
24 able to tell me how many engineers are presently

1 on staff in addition to those that are being  
2 sought for?

3 MR. LECRONE: This is Darin Lecrone.  
4 Currently in my unit of the permit section, we  
5 have seven engineers plus myself.

6 MS. CASSEL: And, Mr. Lecrone,  
7 you're also an engineer?

8 MR. LECRONE: I am, yes.

9 MS. CASSEL: And will it be your  
10 division that is the sole division responsible for  
11 reviewing the permits for CCR surface  
12 impoundments?

13 MR. LECRONE: This is Darin Lecrone.  
14 My unit will be processing the applications.  
15 Other Agency staff will be involved in reviewing  
16 portions of those applications, but my staff will  
17 be the ones responsible for the drafting and  
18 noticing of the draft permits.

19 MS. CASSEL: Do you know whether  
20 there will be engineers from other sections or  
21 divisions, I apologize I don't know the full  
22 hierarchy, who will be also involved in reviewing  
23 the permit applications?

24 MR. LECRONE: This is Darin Lecrone.

1 Maybe. We don't know for sure at this time.

2 MS. CASSEL: Ms. Shaw mentioned the  
3 intention -- the Agency's intention to consult  
4 with IDNR as-needed.

5 Does the Agency have any formal  
6 agreement in place with IDNR to consult with IDNR  
7 staff in the review of these applications?

8 MS. ZEIVEL: This is Christine  
9 Zeivel. Just a point of clarification. There are  
10 a number of these responses that are noted as  
11 Agency response. Ms. Cassel keeps referring to  
12 them as Melinda Shaw's responses.

13 As indicated where it's an  
14 Agency response, it wasn't necessarily that  
15 particular witness that is providing the answer.

16 MS. CASSEL: My apologies for the  
17 mischaracterization.

18 MR. LECRONE: This is Darryl  
19 Lecrone. No, we do not have a formal agreement  
20 with IDNR.

21 MS. CASSEL: Does the Agency intend  
22 to develop any such agreement?

23 MR. LECRONE: Darin Lecrone. That  
24 will have to be a policy decision by upper

1 management. I don't know what the plans are for  
2 that.

3 MS. CASSEL: How will the Agency  
4 handle it if IDNR engineers are not available to  
5 consult with IEPA in the review of permit  
6 applications?

7 MR. LECRONE: This is Darin Lecrone.  
8 We don't know yet. We haven't worked out all the  
9 details of how this is going to work just yet.

10 MS. CASSEL: Does the Agency ever  
11 hire third-party or non-staff professionals to  
12 review -- to assist with the review of  
13 applications?

14 MR. LECRONE: This is Darin Lecrone.  
15 In the Bureau of Water, we have never hired  
16 contractors or third-parties to do part of any  
17 permit reviews or anything like that.

18 MS. CASSEL: Is that contemplated  
19 for these permit applications?

20 MR. LECRONE: This is Darin Lecrone.  
21 Not at this time that I'm aware of.

22 MS. CASSEL: Thank you. That's all  
23 my questions for this section -- subsection, I  
24 should say. Thanks.

1 HEARING OFFICER HORTON: Okay.

2 We're on 310 Wetlands.

3 So Midwest Generation, no  
4 questions. City of Springfield, any questions?

5 MS. WILLIAMS: Nothing. No.

6 HEARING OFFICER HORTON: No.

7 Dynegy, no questions. IERG, any questions?

8 MS. BROWN: Melissa Brown. No  
9 questions.

10 HEARING OFFICER HORTON: I believe  
11 Ameren had said no questions on this subpart.

12 MS. MANNING: That's correct, Madam  
13 Hearing Officer. No -- no questions on Subpart C  
14 at this point.

15 HEARING OFFICER HORTON: Okay.  
16 Thank you. I believe the AG's Office said no  
17 questions on Subpart C, but just checking.

18 MR. ARMSTRONG: That's correct.  
19 Andrew Armstrong.

20 HEARING OFFICER HORTON: Thanks.  
21 Mr. Rao, Ms. Brown, any questions on 310?

22 MR. RAO: Yes. I have a question  
23 that relates to 310.

24 In response to Board's Question



1 34, the Agency stated that the provisions in the  
2 Section 845.310(a)(1) through (a)(5) protection  
3 of -- I wanted to ask the Agency if they can  
4 comment on whether --

5 HEARING OFFICER HORTON: Anand, this  
6 is Vanessa. Sorry to interrupt again. You're  
7 cutting out a little bit. Our court reporter  
8 didn't catch the numbers --

9 THE COURT REPORTER: After (a)(5).

10 HEARING OFFICER HORTON: -- you're  
11 referring to.

12 THE COURT REPORTER: No, I got the  
13 numbers. It's after (a)(5).

14 HEARING OFFICER HORTON: After 85.

15 THE COURT REPORTER: (A)(5).

16 MR. RAO: (a)(5) and -- (a)(1)  
17 through (a)(5). Along the same lines, please  
18 comment on whether provisions similar to (a)(1)  
19 through (a)(5) should be proposed to ensure  
20 protection of Class 3 special resource groundwater  
21 if CCR surface impoundments are located in the  
22 vicinity of such groundwater?

23 MS. ZEIVEL: Mr. Rao, this is  
24 Christine Zeivel. Would you mind repeating your

1 question?

2 MR. RAO: Sure. Basically, I'm  
3 asking you whether provisions similar to  
4 845.310(a)(1) through (a)(5) should be proposed to  
5 protect Class 3 special resource groundwater from  
6 potential impacts of any existing or new CCR  
7 surface impoundments?

8 MR. DUNAWAY: This is Lynn Dunaway.  
9 The groundwater protection standards in 845 would  
10 be applied first and Class 3 groundwater  
11 standards, which are Part 620, would still be  
12 applicable for any constituent that is not -- not  
13 listed in Part 845.600.

14 So I don't believe a limit would  
15 be necessary because it would still -- those  
16 regulations would be applied to the staff-wide  
17 order that first the requirements of 845 would  
18 have to be met and then any remaining requirements  
19 of 623.10 would have to be met.

20 MR. RAO: Is the Agency aware of any  
21 of these facilities being located in the vicinity  
22 of designated Class 3 groundwaters?

23 MR. DUNAWAY: Lynn Dunaway. I don't  
24 believe any of them are in designated Class 3

1 groundwater areas, but I'm not absolutely  
2 positive. We can follow up and confirm that.

3 MR. RAO: Yeah, that would be  
4 helpful and also if there is any need for special  
5 consideration of the -- if there are any  
6 facilities located near or on Class 3 groundwaters  
7 if you can take a look at it and get back to us.

8 MR. DUNAWAY: Certainly.

9 MR. RAO: Thank you. That's all I  
10 have.

11 HEARING OFFICER HORTON: Okay. Any  
12 follow-up questions on Section 310? Okay. We'll  
13 move on to 320 Fault Areas.

14 Our first set of questioners.  
15 Ms. Cassel, did you have any questions on Section  
16 320?

17 MS. CASSEL: I do. Thank you. I'm  
18 making sure to find the right one. So turning  
19 your attention, please, to Agency's answer to  
20 Prairie Rivers Network, ELPC and Sierra Club's  
21 Question 8(c) on Page 19 of Exhibit 2.

22 The Agency -- I'll give you all  
23 a second. The Agency states that it is "accepting  
24 those certifications by a qualified professional

1 engineer and will ensure the certification has  
2 been submitted and stamped."

3 And this question was in  
4 response to a question about whether an owner or  
5 operator may locate a CCR surface impoundment in a  
6 fault area only if it can demonstrate that no  
7 structural damage to a CCR surface impoundment  
8 will result with additions of less than 200 feet?  
9 So pertaining to fault areas.

10 What does the Agency mean by "is  
11 accepting the certification of the qualified  
12 professional engineer?"

13 MR. LECRONE: This is Darin Lecrone.  
14 It means that the Agency is not conducting its own  
15 review. It's accepting the certification made by  
16 another qualified engineer.

17 MS. CASSEL: So the Agency would  
18 rely entirely on the certification of this  
19 engineer submitting the document rather than  
20 conducting any other independent review?

21 MR. LECRONE: This is Darin Lecrone.  
22 That's the intent of the rule as drafted.

23 MS. CASSEL: Okay. I believe that's  
24 all my questions for Subpart 320. I think that's

1 what we're on. Thank you.

2 HEARING OFFICER HORTON: Okay. So  
3 for 320, we are skipping Midwest Generation.

4 City of Springfield, any  
5 questions?

6 MS. WILLIAMS: No.

7 HEARING OFFICER HORTON: No.  
8 Skipping Dynegy.

9 IERG, any questions on 320?

10 MS. BROWN: Melissa Brown. No  
11 questions.

12 HEARING OFFICER HORTON: Skipping  
13 Ameren, skipping the AG's Office and then back to  
14 Mr. Rao.

15 Any questions on 320? Mr. Rao,  
16 can you hear us?

17 MR. RAO: Can you hear me?

18 HEARING OFFICER HORTON: Yes.

19 MR. RAO: I don't have any  
20 questions.

21 HEARING OFFICER HORTON: Okay.  
22 Great. Moving on -- any follow-up questions on  
23 320? Okay. Moving on to 330 Seismic Impact  
24 Zones.

1 Ms. Cassel, any questions on  
2 330?

3 MS. CASSEL: Yes, ma'am. I had  
4 basically the same question, which is that the  
5 Agency similarly responded to ELPC, PRN and Sierra  
6 Club's Question 13(c) on Page 21 of Exhibit 2 that  
7 "The Agency is accepting the certification by the  
8 qualified professional engineer" with regard to  
9 the -- excuse me -- site specific seismic risk  
10 assessment to determine the maximum horizontal  
11 acceleration at the CCR surface impoundments  
12 sites.

13 So does that accepting the  
14 certification response mean that the Agency, again  
15 here, intends to provide no or intends to conduct  
16 no independent review of the underlying assessment  
17 for seismic --

18 MR. LECRONE: This is Darin Lecrone.  
19 Yes, it would be the same -- the same responses we  
20 had for the certifications for fault areas.

21 MS. CASSEL: Thank you. Okay. I  
22 believe that was all I had for 330.

23 HEARING OFFICER HORTON: Okay. For  
24 330, we'll be skipping Midwest Generation.

1 City of Springfield I'll come  
2 back to, is not in the room right now. Skipping  
3 Dynegy.

4 IERG, any questions on 330?

5 MS. BROWN: Melissa Brown. No  
6 questions.

7 HEARING OFFICER HORTON: Okay.  
8 Skipping Ameren. Skipping the AG's Office.

9 Mr. Rao, any questions on 330?  
10 Mr. Rao, Ms. Brown, any questions on 330?

11 MR. RAO: I have no questions.

12 HEARING OFFICER HORTON: Could you  
13 repeat that, Mr. Rao? No questions until when?

14 MR. RAO: 845.400.

15 HEARING OFFICER HORTON: Sounds  
16 good. 400. Okay. Sounds good. Moving on to 340  
17 Unstable Areas.

18 Ms. Cassel, any questions on  
19 Section 340?

20 MS. CASSEL: Yes, I do. Thank you.  
21 This is -- excuse me -- similarly on page --  
22 sorry. I'm trying to find the right one. On Page  
23 23 of Exhibit 2, which is the Agency's response to  
24 the environmental groups LVEJO Question 18(e), I

1 believe, or maybe, excuse me, 19(e), does the  
2 Agency similarly state that the Agency is  
3 "Accepting the certification by a qualified  
4 professional engineer and will ensure the  
5 certifications have been submitted and stamped"  
6 and this relates to the certification that the CCR  
7 surface impoundment if located in an unstable area  
8 is designed and engineered to ensure the integrity  
9 of structural components. Same question as  
10 before.

11 Does the Agency intend to  
12 conduct any independent review of that  
13 certification or the underlying assessment?

14 MR. LECRONE: This is Darin Lecrone.  
15 No.

16 MS. CASSEL: And then also on the  
17 same page, Page 23, the Agency answered the  
18 question of whether there are any circumstances in  
19 which an impoundment cannot be designed and  
20 engineered to ensure structural integrity with the  
21 answer that "Potentially it is possible that an  
22 impoundment cannot meet the location restrictions  
23 even with engineering design."

24 Could you provide an example of



1 a circumstance or examples of circumstances where  
2 an impoundment may not be able to be designed and  
3 engineered to ensure structural integrity?

4 MR. LECRONE: This is Darin Lecrone.  
5 I can't speculate to the point of being able to  
6 answer that question. That type of consideration  
7 is -- is so site specific that I can't give an  
8 example.

9 MS. CASSEL: Over what time horizon  
10 will the Agency be evaluating whether an  
11 impoundment can be designed and engineered to  
12 ensure structural integrity?

13 MR. LECRONE: Could you clarify what  
14 you're asking? I'm not sure I quite understand  
15 the question.

16 MS. CASSEL: Sure. Well, you know,  
17 there may be a circumstance in which an  
18 impoundment could demonstrate it could be designed  
19 and engineered to ensure structural integrity for,  
20 say, 20 years, but not beyond that. Thirty years,  
21 but not beyond that. So then the time horizon I'm  
22 asking about --

23 MR. LECRONE: This is Darin Lecrone.  
24 Kind of our charge is regulating these through

1 postclosure care, whatever time that would be  
2 based on the site specific circumstances, and we  
3 don't have any hard timeframes or deadlines beyond  
4 that.

5 MS. CASSEL: Is the Agency asking  
6 applicants or set times -- any time horizon over  
7 which they should evaluate the unstable area  
8 evaluation whether it can be designed and  
9 engineered to ensure structural stability over  
10 that timeframe?

11 MR. LECRONE: This is Darin Lecrone.  
12 They would have to provide us that type of  
13 long-term stability or protective nature of it as  
14 part of their closure alternatives analysis. That  
15 would be part of that submittal.

16 MS. CASSEL: And what does the  
17 Agency understand by long-term?

18 MR. LECRONE: This is Darin Lecrone.  
19 The Agency does not have a definition for  
20 long-term.

21 MS. CASSEL: If a CCR surface  
22 impoundment could not meet the unstable area  
23 location restriction, that is it cannot be  
24 designed and engineered to ensure structural

1 integrity, does the Agency agree that the  
2 impoundment may not be closed in place?

3 MR. LECRONE: This is Darin Lecrone.  
4 That's going to have to be looked at and  
5 determined on a case-by-case basis as part of that  
6 closures alternatives analysis.

7 MS. CASSEL: Would it hamper --  
8 would the Agency impose a provision -- excuse me.  
9 Let me start over.

10 Would the Agency oppose a  
11 provision providing that if a surface impoundment  
12 could not ensure the structural integrity that it  
13 can be designed and engineered to ensure  
14 structural integrity that it may not close in  
15 place?

16 MR. LECRONE: Hold on. This is  
17 Darin Lecrone. The Agency neither supports nor  
18 opposes that because the nature of the issue is  
19 complex enough that it's going to take the site  
20 specific analysis of the closure alternatives  
21 analysis to look at the various risks associated  
22 with that location to determine the best path  
23 forward.

24 So I don't think it's quite as

1 simple as yes or no, we oppose or support that  
2 type of a -- of a process. I think it's got to be  
3 looked at on a site-by-site basis using that  
4 closure alternatives analysis, which is going to  
5 consider the risks of various options.

6 HEARING OFFICER HORTON: This is  
7 Hearing Officer Horton. Let's stop right now for  
8 lunch. It's nearly 12:00, about 11:56. So let's  
9 come back at 1:00 and we'll resume -- Ms. Cassel,  
10 do you have further questions on 340?

11 MS. CASSEL: I do.

12 HEARING OFFICER HORTON: Okay. So  
13 we'll resume with your questions on 340 and then  
14 move from there. All right. Thanks very much.

15 MS. CASSEL: Thank you.

16 (Whereupon, a break was taken  
17 after which the following  
18 proceedings were had.)

19 HEARING OFFICER HORTON: Okay.  
20 Welcome back. It's about 1:03. We're resuming  
21 the afternoon portion of the second day of the  
22 hearings in R20-19 and just as a general note I'd  
23 like to say that we're now halfway through our --  
24 we're halfway through our hearing, so three days

1 of hearings, and I'd like to try for everyone to  
2 speed it up a little bit.

3 We're -- if we're not finished  
4 by the end of tomorrow, by 4:00 p.m. tomorrow,  
5 we're going to have to come up with dates for  
6 continuing the rest of the hearing so that we can  
7 get through all of the proposed rules. We've  
8 spoken to the Agency attorneys over lunch and they  
9 will do their best to possibly shorten the time --  
10 the response time to questions, but I'd also like  
11 to ask all questioners to limit their questions to  
12 true follow-ups.

13 The Agency has done significant  
14 work already answering a thousand plus questions.  
15 So if there is a true follow up to questions that  
16 you have, please, of course, ask them, but if you  
17 are repeating questions that have already been  
18 asked, please do not do so and keep in mind at the  
19 end of tomorrow we'll be looking for dates to  
20 continue this hearing. So please figure those out  
21 and we'll come up with ones that work for  
22 everybody.

23 Okay. Ms. Bilbruck just told  
24 me -- I believe -- let's begin. I know we left

1 off with Ms. Cassel, but I believe the Agency has  
2 a follow-up question that Mr. Rao of the Board  
3 asked.

4 So if you have that, please  
5 proceed. In the Agency room, can you hear us?

6 MR. CARTER: Vanessa, I think you're  
7 on mute.

8 MS. TIPSORD: The speaker has been  
9 moved.

10 HEARING OFFICER HORTON: Okay. So  
11 on Webex was I on mute all this time.

12 MS. ZEIVEL: No, we were able to  
13 hear you.

14 HEARING OFFICER HORTON: Okay.  
15 Agency, did you have a follow up to Mr. Rao's  
16 question, is that correct?

17 MS. ZEIVEL: Yes.

18 MR. DUNAWAY: This is Lynn Dunaway.  
19 In relation to Mr. Rao's question regarding the  
20 proximity of CCR surface impoundments and Class 3  
21 groundwater areas, I looked over lunch and the  
22 nearest CCR surface impoundment for a Class 3 area  
23 is four-tenths of a mile away and it was in a down  
24 gradient direction, not an up gradient direction.

1 THE COURT REPORTER: Down gradient  
2 direction what?

3 HEARING OFFICER HORTON: It was in a  
4 down gradient direction.

5 MR. DUNAWAY: Yes, the impoundment  
6 was down gradient of the Class 3 area.

7 MR. RAO: So there should be no  
8 concern about impacts to the surface impoundments?

9 MR. DUNAWAY: That's correct.

10 MR. RAO: Okay.

11 MS. ZEIVEL: That's the only follow  
12 up we had. You can proceed with Ms. Cassel's  
13 questions.

14 HEARING OFFICER HORTON: Okay.  
15 Thank you. Ms. Cassel, we were on 340 still,  
16 right, I believe.

17 MS. CASSEL: That's right. You  
18 know, I took another look at my questions and I  
19 think they actually may fit better under Subpart  
20 F. So I'll go ahead and pass for the remainder of  
21 340. Thank you.

22 HEARING OFFICER HORTON: Okay.  
23 Great. And I believe the rest of the members have  
24 passed on 350. So Mr. --

1 MR. MORE: I'm sorry.

2 HEARING OFFICER HORTON: I'm sorry.

3 MR. MORE: I just have a follow up  
4 to a question that Ms. Cassel asked in connection  
5 with 340 and an answer that the Agency gave.

6 HEARING OFFICER HORTON: Certainly.  
7 So, Mr. More, for Dynegy.

8 MR. MORE: Thank you. So, in  
9 particular, I want to revisit the Agency's  
10 response to questions regarding closure by removal  
11 when a unit fails to meet the requirements of  
12 845.340 and the Agency's position to neither  
13 oppose nor support the addition of such provision  
14 and I'd like to start with the Agency's response  
15 to Dynegy Question 71 on Page 53 of Exhibit 4.

16 I'd like to just read the  
17 Agency's -- the first sentence there in that  
18 response and ask a follow-up question of the  
19 Agency.

20 Yes, the Agency believes Section  
21 841 -- 845.710 is sufficient to assess and ensure  
22 that closures are protective of human health and  
23 the environment. Does that remain a true  
24 statement.



1 MR. DUNAWAY: Lynn Dunaway. Yes.

2 MR. MORE: Okay. And would the  
3 risks associated with closing an impoundment in  
4 place that fails to meet -- Strike that.

5 Would the risks associated with  
6 closing an impoundment that fails to meet the  
7 requirements of 845.340 be accounted for in the  
8 closure alternative analysis set forth in proposed  
9 845.710?

10 MR. DUNAWAY: Lynn Dunaway. Yes,  
11 the analysis would be sufficient.

12 MR. MORE: As a result of that, is  
13 an amendment requiring closure by removal when a  
14 unit fails to meet the requirements of Section  
15 845.340 necessary to ensure protection of human  
16 health and the environment?

17 MR. DUNAWAY: Lynn Dunaway. Such an  
18 amendment would not be necessary.

19 MR. MORE: I have no further  
20 questions.

21 HEARING OFFICER HORTON: Okay.  
22 Moving on to the last of the 300's. 350 Failure  
23 to Meet Location Standards.

24 Ms. Cassel, did you have any

1 questions on 350?

2 MS. CASSEL: Not on 350. Thank you.

3 HEARING OFFICER HORTON: Okay. I  
4 believe all the other questioners do not have  
5 questions on 350. So unless there are any follow  
6 up on 300, we'll move on to Subpart G Design  
7 Criteria.

8 Okay. Hearing none, 845.400  
9 Liner Design Criteria for Existing CCR Surface  
10 Impoundments.

11 Ms. Bugel, would Ms. Cassel be  
12 asking questions in this section?

13 MS. BUGEL: I have confirmation from  
14 the other groups. I do not believe we have any  
15 questions for this subpart.

16 HEARING OFFICER HORTON: Okay. I'll  
17 move on to Midwest Generation.

18 MS. GALE: I have no questions at  
19 this time.

20 HEARING OFFICER HORTON: Okay. City  
21 of Springfield?

22 MS. WILLIAMS: No questions.

23 HEARING OFFICER HORTON: Dynegy?

24 MR. MORE: None.

1 HEARING OFFICER HORTON: IERG, any  
2 questions on Section 400?

3 MS. BROWN: Melissa Brown. No  
4 questions.

5 HEARING OFFICER HORTON: Ameren, any  
6 questions on 400?

7 MS. MANNING: No questions.

8 HEARING OFFICER HORTON: AG's  
9 Office?

10 MR. SYLVESTER: Steve Sylvester. No  
11 questions.

12 HEARING OFFICER HORTON: Mr. Rao,  
13 Ms. Brown, any questions on Section 400?

14 MR. RAO: Yes, I have a question. I  
15 have a question regarding the Agency's response to  
16 Board Question 37 on Page 162. The Agency stated  
17 that design and construction of new CCR surface  
18 impoundments called a retrofit of existing surface  
19 impoundments is not subject to groundwater impact  
20 assessment, which is generally for non-hazardous  
21 space landfills under Part 811.

22 I wanted the Agency to explain  
23 why such an assessment is not required, especially  
24 for surface impoundments closed with CCR in place.

1 I wanted to know what is done to ensure protection  
2 of groundwater in the long-term that went beyond  
3 the 30 years care?

4 HEARING OFFICER HORTON: Mr. Rao.

5 MR. RAO: I have a few questions  
6 along these lines. I was wondering if the Agency  
7 could elaborate on that?

8 HEARING OFFICER HORTON: Anand,  
9 could you repeat. Sorry. Our court reporter  
10 didn't catch some of that.

11 MR. RAO: Whole question or part?

12 HEARING OFFICER HORTON: The whole  
13 question.

14 MR. RAO: I'd like the Agency to  
15 explain why groundwater impact assessment is not  
16 required for CCR surface impoundment to ensure  
17 protection of groundwater on a long-term basis  
18 beyond the 30-year postclosure care, especially  
19 for impoundments where they are closed with CCR in  
20 place.

21 MR. LECRONE: Just for clarification  
22 purposes Question 37 refers to design and  
23 construction of new surface impoundments or  
24 retrofit of existing.

1 MR. RAO: Yes.

2 MR. LECRONE: Our regulations are --  
3 are based on 257 which basically had a closure  
4 period and a postclosure period of 30 years. We  
5 did not require the assessment that you're  
6 referring to. That's done under the landfill  
7 program. The answer is we based our program on  
8 257.

9 MR. RAO: Are there any mechanisms  
10 under Part 257 potential long-term protection of  
11 groundwater or once the 30-year postclosure care  
12 is completed that's when the responsibility ends?

13 MR. BUSCHER: Once postclosure care  
14 is completed and they are meeting groundwater  
15 protection standards, that is basically the end of  
16 our regulating those, but they -- at that point,  
17 they're still subject to 620, Part 620.

18 HEARING OFFICER HORTON: Is that  
19 Mr. Buscher?

20 MR. BUSCHER: That is Mr. Buscher.  
21 Excuse me.

22 MR. RAO: So at the end of the  
23 30-year postclosure period the facility is not  
24 meeting the groundwater protection standards, then

1 the postclosure care period will be extended until  
2 such a time to comply?

3 MR. BUSCHER: That is correct.

4 MR. RAO: Okay. Thank you for the  
5 clarification.

6 HEARING OFFICER HORTON: Okay.  
7 Moving on. Okay. Moving on to Section 410 Liner  
8 Design Criteria for New CCR Surface Impoundments  
9 and Any Lateral Expansion of a CCR Surface  
10 Impoundment.

11 Ms. Bugel, you said no questions  
12 on this subpart just to clarify?

13 MS. BUGEL: That is correct.

14 HEARING OFFICER HORTON: Okay.  
15 Midwest Generation?

16 MS. GALE: Not on this section.

17 HEARING OFFICER HORTON: City of  
18 Springfield?

19 MS. WILLIAMS: None on this section  
20 for sure.

21 HEARING OFFICER HORTON: Okay.  
22 Dynegy?

23 MR. MORE: In an effort to expedite,  
24 we have no questions, opening questions, on

1 Subpart D and reserve obviously the right to ask  
2 follow-up questions.

3 HEARING OFFICER HORTON: IERG?

4 MS. BROWN: Melissa Brown. No  
5 questions.

6 HEARING OFFICER HORTON: Okay.  
7 Ameren?

8 MS. MANNING: Claire Manning. No  
9 questions on this subpart and we reserve the right  
10 to ask questions as follow up.

11 HEARING OFFICER HORTON: Certainly.  
12 Thank you. AG's Office?

13 MR. SYLVESTER: Steve Sylvester.  
14 Same thing. No questions on this subpart.

15 HEARING OFFICER HORTON: Okay.  
16 Certainly.

17 Mr. Rao, 410? Mr. Rao,  
18 Ms. Brown, did you have any questions on 410?

19 MS. BROWN: I have no questions.

20 HEARING OFFICER HORTON: Thank you,  
21 Ms. Brown. Okay. Moving on.

22 420 Leachate Collection and  
23 Removal System. I'll skip through Midwest  
24 Generation.

1 MS. GALE: Yes, I have questions. I  
2 need a microphone.

3 HEARING OFFICER HORTON: Okay.  
4 Ms. Gale.

5 MS. GALE: Kristen Gale on behalf of  
6 Midwest Generation.

7 I guess I'm going to start with  
8 some framework questions. The Agency agrees that  
9 CCR landfills and CCR surface impoundments operate  
10 differently, right?

11 MR. BUSCHER: Bill Buscher. They  
12 are operating differently.

13 MS. GALE: Okay. And the Agency  
14 agrees that the federal CCR rule treats CCR  
15 landfills and CCR surface impoundments  
16 differently, right?

17 MR. BUSCHER: Yes, but we don't  
18 agree with that particular treatment.

19 MS. GALE: Okay. Then, yeah, let's  
20 get into that. So I have actually another preface  
21 question. If you can turn to Page 13 of Exhibit  
22 3, which is -- wait. Back up. One last question.

23 But you do agree they're treated  
24 differently and just to clarify under the Federal



1 Rules the design criteria for new CCR landfills is  
2 257.70, right, and you can look -- in fact, why  
3 don't I just do that right now. Dynege Exhibit 4,  
4 which, Ms. Horton, I'd like to move to admit it as  
5 the current federal CCR rule.

6 HEARING OFFICER HORTON: Certainly.  
7 So in Dynege's exhibits, their Exhibit 4 will be  
8 Exhibit 8.

9 (Document marked as Hearing  
10 Exhibit No. 8 for  
11 identification.)

12 MR. BUSCHER: This is Bill Buscher.  
13 257.70 indicates design criteria for new CCR  
14 landfill lateral expansion of a CCR landfill.

15 MS. GALE: Thank you. And then if  
16 you -- so you're on Page 450 and if you turn the  
17 page 257.71 is a design criteria for existing CCR  
18 and surface impoundments, right?

19 MR. BUSCHER: I have design criteria  
20 for existing CCR surface impoundments, yes, ma'am.

21 MS. GALE: Thank you and thanks for  
22 the ma'am.

23 So Question 32 this, again, is  
24 just a clarification question. The Agency states

1 in its answer that CCR transfer water is similar  
2 to leachate from a typical solid waste landfill  
3 containing CCR, but I want to clarify in the  
4 Agency's statement of reasons the Agency stated  
5 the system is similar to leachate collection  
6 systems required for solid waste landfills.

7 So my question is the Agency  
8 agrees that leachate from solid waste landfill,  
9 which I would call a municipal solid waste  
10 landfill, is different from CCR transfer water,  
11 right?

12 MR. BUSCHER: Due to the nature --  
13 the disposal material I would believe that to be  
14 correct.

15 MS. GALE: Okay. Has the Agency --  
16 so I guess another sort of broad question. So  
17 when you -- in answer to this question, you were  
18 really comparing CCR transfer water to leachate  
19 from a CCR landfill, right?

20 MR. BUSCHER: Which question are we  
21 on?

22 MS. GALE: Question 32.

23 MR. BUSCHER: Thirty-two, what page?

24 MS. GALE: Page 13 of Exhibit 3.

1 MR. BUSCHER: They both have liquids  
2 in them, they both contaminate groundwater if not  
3 properly built and engineered, they have a  
4 different characteristic of waste in them.

5 MS. GALE: Mr. Buscher, when you say  
6 they, what do you -- just for clarification, what  
7 do you mean they?

8 MR. BUSCHER: Well, the question  
9 referred to the --

10 MS. GALE: I'm sorry. My follow-up  
11 question is I just wanted clarification in this  
12 question, in your answer, you meant -- when --  
13 your statement in the statement of reasons, you  
14 meant leachate from a solid waste landfill that  
15 contains CCR?

16 MR. BUSCHER: That's the subject of  
17 what is in a -- now, I mean -- well, yes, because  
18 that's the subject of 257 landfills, yes.

19 MS. GALE: Great. I'm not trying to  
20 trip you up here. I'm just trying to get it  
21 clear.

22 MR. BUSCHER: Okay.

23 MS. GALE: Has the Agency reviewed  
24 or relied upon any chemistry for CCR transfer

1 water to conclude that a leachate collection  
2 system is necessary?

3 MR. BUSCHER: I think we might -- I  
4 think it would be prudent to rely upon the data  
5 indicating that there is contamination coming from  
6 many of the existing impoundments.

7 MS. GALE: Okay. But not any -- but  
8 not an official sort of study of that water in  
9 comparison? That is what I'm looking for.

10 MR. BUSCHER: It's an official study  
11 when that water is analyzed.

12 MS. GALE: Okay. All right. So  
13 turning to Page 14, Question 33. We're referring  
14 to your statement that the system will reduce the  
15 head on a CCR liner system and then we made some  
16 further statements and a question about your  
17 answer. The third sentence "Allowed head on the  
18 liner and pump capacity to remove the water from  
19 the CCR surface impoundment are very important  
20 design criteria considerations."

21 What do you mean by allowed head  
22 on the liner?

23 MR. BUSCHER: Very similar to a  
24 solid waste landfill containing CCR which limits

1 the amount of head -- do you know what head is,  
2 ma'am?

3 MS. GALE: I do. I'm familiar with  
4 it. Thank you. You can explain it for anybody  
5 else.

6 MR. BUSCHER: The solid -- the solid  
7 waste landfill regulations for CCR limit the  
8 extent of head build up on the liner to 30  
9 centimeters.

10 MS. GALE: I'm sorry. I missed  
11 that. To 30 what?

12 MR. BUSCHER: Thirty centimeters.  
13 Approximately a foot give or take a couple tenths  
14 of an inch.

15 MS. GALE: So are you saying that  
16 under these rules the head should be limited to 30  
17 centimeters?

18 MR. BUSCHER: Well, you know, it  
19 sure makes -- no, I don't think that can be done  
20 because it's an operational consideration of the  
21 CCR impoundment. I think that that might not  
22 allow the owner or operator of a CCR impoundment  
23 the flexibility they would need to properly  
24 operate the impoundment.

1 MS. GALE: Okay. Agreed. So what  
2 would the Agency consider for an operation of a  
3 CCR surface impoundment to be allowed on the head?

4 MR. BUSCHER: Well, you know, that's  
5 really specific to each particular location and  
6 the type of material that they are -- are putting  
7 in the impoundment, whether or not it is highly  
8 transmissive, whether or not it's --

9 HEARING OFFICER HORTON: One second.  
10 Sorry about that.

11 MS. GALE: So we heard -- the last  
12 thing we heard was whether or not it was highly  
13 transmissive.

14 MR. BUSCHER: Right. Or whether it  
15 was like fly ash where it might setup, have  
16 pozzolanic characteristics. I think -- I think  
17 the endpoint in this would be that it's important  
18 that once that impoundment has utilized its useful  
19 life that it is able to be dewatered because --  
20 and in that effect, it would be very similar to a  
21 CCR solid waste landfill and it would seem that  
22 the particular potential for movement of material  
23 through the liner is -- has a direct correlation  
24 to the depth of water on top of the impoundment --

1 on top of the liner. Excuse me. Depth of water  
2 in the impoundment on top of the liner.

3 MS. GALE: So I understand what head  
4 is. I'm not an engineer. It's a -- what I'm  
5 hearing you say is the allowed head on the liner  
6 is a case-by-case analysis based upon what is  
7 going into the pond and how the pond is operating?

8 MR. BUSCHER: Yes. Because of the  
9 nature of having a leachate collection system in  
10 effect what is under what I would kind of -- what  
11 could be described as a leachate basin that water  
12 is in the basin and contact with that material.

13 So -- and it's a little  
14 different situation than material being put in dry  
15 like in a landfill, but the head that is on that  
16 liner is very important in that even though you  
17 have a composite liner, the top part of that liner  
18 the ability for it to impede flow is really based  
19 upon how well it has been constructed and you run  
20 the same potential risk with a CCR impoundment  
21 that you do with a CCR landfill relative to head  
22 on the liner.

23 MS. GALE: So I guess I'm going back  
24 to your answer to Question 31 on Page 13 of

1 Exhibit 3. You said "The leachate collection  
2 system provides the owner/operator the ability to  
3 reduce the amount of head on the liner."

4 Is the Agency saying that it is  
5 the operator's ability and that there is no limit  
6 on the head of the liner?

7 MR. BUSCHER: Excuse me. What  
8 number are you referring to?

9 MS. GALE: Question 31 on Page 13 of  
10 Exhibit 3.

11 MR. BUSCHER: Okay.

12 MS. GALE: So you said the leachate  
13 collection system provides the owner or operator  
14 the ability to reduce the amount of head on the  
15 liner and so is the --

16 MR. BUSCHER: Yes.

17 MS. GALE: And so is the Agency  
18 saying that it is the operator's ability to reduce  
19 the head and there is no limit on the head of the  
20 liner?

21 MR. BUSCHER: There is -- there is  
22 no limit on the head of the liner, but it would be  
23 a prudent operation of the facility to minimize  
24 that. That's the purpose of -- of having a



1 leachate collection system and it would also  
2 further the closure of the impoundment because  
3 once that impoundment is -- is full if it is left  
4 in place machinery needs to get out and work on  
5 that to put on a final cover and there have been  
6 instances where that material is not at all  
7 workable and it needs to be dewatered first. So  
8 that would be another advantage to having this  
9 leachate collection system in the bottom of -- or  
10 on top of the liner in the CCR surface  
11 impoundment.

12 MS. GALE: So you keep on  
13 referencing when its closure -- and I believe I  
14 understand you're referencing closure in place.  
15 What if the intent is closure by removal and so  
16 the leachate collection system doesn't need to  
17 serve that purpose because I've --

18 MR. BUSCHER: I think --

19 MS. GALE: Sorry. Let me finish.  
20 I'm using an example of a pond that is  
21 routinely -- where the ash is routinely removed  
22 and that pond is routinely emptied.

23 So how does for closure -- if  
24 closure by removal does -- how does the leachate

1 collection system further your purpose?

2 MR. BUSCHER: Well, it -- a prudent  
3 operation in the system would minimize the head on  
4 the liner throughout the operational life of the  
5 impoundment.

6 MS. GALE: Okay.

7 MR. BUSCHER: In addition, the CCR  
8 does need -- the CCR material does need to be  
9 dewatered when that material has to be removed.

10 MS. GALE: Sure. But has the  
11 Agency -- does the Agency have any information  
12 that in prior dewaterings there's been an issue of  
13 getting that material -- getting that material  
14 sufficiently dewatered to remove it?

15 MR. BUSCHER: Can you repeat the  
16 question?

17 MS. GALE: The follow up was that it  
18 would be helpful even dewatering a removal and my  
19 follow up to that follow up is that in prior  
20 removals it is dewatered and what does the Agency  
21 or excuse me -- Strike that.

22 Does the Agency have any  
23 information that that dewatering, without a  
24 leachate collection system, does -- has not worked

1 well?

2 MR. BUSCHER: I'm not aware of that  
3 instance.

4 MS. GALE: Turning to Question  
5 34(a). Page --

6 MR. BUSCHER: Can I just give a  
7 follow up there?

8 MS. GALE: Sure.

9 MR. BUSCHER: We don't have any  
10 information on impoundments that have a composite  
11 liner that had been -- that had removal done on  
12 them.

13 MS. GALE: Okay. What about -- do  
14 you think, though, with the composite liner a  
15 leachate collection system -- Strike that.

16 Does the Agency believe a  
17 composite liner removal would be more difficult?

18 MR. BUSCHER: That's a site specific  
19 question. If the impoundment was built with a  
20 surface that one could work on in the bottom, that  
21 would be easier. If the impoundment doesn't have  
22 a good working surface on the bottom, it could be  
23 problematic.

24 MS. GALE: Okay. I'm sorry. Is

1 that finished? Are we done? I don't want to cut  
2 you off.

3 MR. BUSCHER: Go ahead.

4 MS. GALE: Question 34(a) on Page 14  
5 of Exhibit 3.

6 MR. BUSCHER: Mm-hmm.

7 MS. GALE: So the Agency's answer is  
8 the basis -- excuse me.

9 Midwest Gen asked for EPA's  
10 determination that a more rigorous standard was --  
11 what was the basis for the Agency's determination  
12 that a more rigorous standard was appropriate and  
13 the Agency answered that the basis for the  
14 Agency's determination is a recognition of the  
15 fundamental flaw in Part 257. That's an Agency  
16 determination of the fundamental flaw?

17 MR. BUSCHER: Well, once again, head  
18 is the driver in these cases and if you're allowed  
19 one foot of head on a liner you've basically got  
20 0.43 pounds per square inch of force, liquid  
21 force, on that liner. If you have ten feet of  
22 head, you have 4.3 feet of head. It's a common --  
23 my understanding is that head is the driving force  
24 and so if you have more water on the liner,

1 regardless of how well it was put in, any  
2 imperfections there are going to transmit water.

3           There's a reason why CCR  
4 landfills are limited to 30 centimeters of head.  
5 It reduces the potential for contaminates to  
6 migrate through the liner. I do not see a great  
7 difference in a landfill and a CCR surface  
8 impoundment relative to the threat of groundwater.  
9 It is the owner/operator's prerogative to utilize  
10 whatever one they want. However, I stand by this  
11 statement in that more head on a liner provides  
12 more potential for contaminate migration.

13           MS. GALE: Okay. But we also agree  
14 that CCR landfills and CCR surface impoundments  
15 operate differently, right?

16           MR. BUSCHER: Yes, they do.

17           MS. GALE: Okay. So you threw out  
18 some numbers there about head and I guess I'll  
19 say -- and the pressures and the volumes, is that  
20 the Agency's scientific basis for requiring a  
21 leachate collection system in a CCR surface  
22 impoundment?

23           MR. BUSCHER: It's parallel with the  
24 Agency's basis and 257's basis for requiring a

1 leachate collection system and a solid waste  
2 landfill.

3 MS. GALE: Right. 257 requires a  
4 leachate collection system and a solid waste  
5 landfill, but does not require a leachate  
6 collection system in a CCR surface impoundment,  
7 right?

8 MR. BUSCHER: That is correct.

9 MS. GALE: And the Agency thinks  
10 that's a fundamental flaw with Part 257?

11 MR. BUSCHER: I'll repeat. The  
12 pressure that is exerted on the impoundment liner  
13 is the same pressure that is on a liner in a  
14 landfill. The landfill is limited to 30  
15 centimeters. There's a reason for that. It  
16 limits the pressure on the liner and the Agency is  
17 of -- our position is that same amount of head  
18 should be strived for in a CCR surface  
19 impoundment. However, due to operational  
20 concerns, they need flexibility on how they  
21 operate one.

22 MS. GALE: Does the Agency have any  
23 evidence of a composite liner having leakage in a  
24 CCR surface impoundment or a CCR landfill?

1 MR. BUSCHER: I have no personal  
2 knowledge at this point in time. We would --  
3 well, I'll just -- I don't have any personal  
4 knowledge.

5 MS. GALE: So, Mr. Buscher, you have  
6 no personal knowledge. I guess I'll expand it.

7 Does the Agency have any  
8 evidence of a composite liner -- excuse me -- of  
9 leakage through a composite liner in a CCR pond or  
10 CCR landfill?

11 MR. BUSCHER: I would just have to  
12 go back to, you know -- well, I rest my -- I'm  
13 done.

14 MS. GALE: Okay. I'll take -- okay.  
15 Turn the page to Page 15. One last question.

16 Has the Agency shared its  
17 concerns of Part 257 in what it calls a  
18 fundamental flaw with the U.S. EPA?

19 MR. BUSCHER: Yes, indeed, we have.

20 MS. GALE: What did --

21 MR. BUSCHER: At the very onset in  
22 2015 I contacted U.S. EPA and I expressed my  
23 concerns and the response if you -- if you go into  
24 the Federal Register, they discuss this and --

1 MS. GALE: Are you looking at --

2 MR. BUSCHER: I think --

3 MS. GALE: Go ahead. Sorry.

4 MR. BUSCHER: In effect, what is in  
5 the Federal Register, and I have to find you the  
6 citing, but when they were discussing putting in  
7 leachate collection their first thought was to put  
8 it between the -- the synthetic and the clay and  
9 it states in the Federal Register that they  
10 considered that, but they didn't want to disturb  
11 that intimate contact between those two layers  
12 and, with that, they -- they just didn't go any  
13 further.

14 When asked why they didn't go  
15 any further, I did not get an explanation that  
16 satisfied my curiosity. It just went there. So  
17 they considered this and it's my opinion that they  
18 considered it, but they didn't really think about  
19 it enough to realize how important reducing head  
20 is.

21 MS. GALE: And so I guess this is  
22 a -- would you -- were you supportive of having a  
23 leachate collection system between the two layers  
24 or was that your position?



1 MR. BUSCHER: No, ma'am.

2 MS. GALE: Okay. Do you recall who  
3 you spoke with at the U.S. EPA about that?

4 MR. BUSCHER: I do not.

5 MS. GALE: Okay. Thanks. Okay. So  
6 34(b) on Page 15 Exhibit 3. Actually, I think  
7 this is a typo.

8 The third sentence says, "40  
9 257.70(d) requires CCR surface impoundments and  
10 CCR landfills to be constructed using the same  
11 composite liner systems." Do you mean 257.70(b),  
12 right, and I can -- go back to Page 450 of Exhibit  
13 8.

14 HEARING OFFICER HORTON: So Exhibit  
15 8 is Dynegy's 40 CFR Chapter 1 Subpart D?

16 MR. BUSCHER: Just a second.

17 HEARING OFFICER HORTON: What page  
18 in that exhibit, Ms. Gale?

19 MS. GALE: Four-fifty. And I don't  
20 mean to trip anybody up. It's just I'm looking at  
21 257.70(b) is a composite liner whereas D is the  
22 leachate collection system.

23 MR. BUSCHER: Yes, that is an error.  
24 I was referring to the composite liner.

1 MS. GALE: Yeah. Okay. Great. And  
2 following that Midwest Gen asked for real-life  
3 examples that supports the conclusion that water  
4 can seep through composite liners and your  
5 response was 257.70(d). Now, that's the federal  
6 rule. I guess I'll ask what --

7 MR. BUSCHER: Right.

8 MS. GALE: Right. What -- do you  
9 know of any CCR surface impoundments that require  
10 leachate collection systems?

11 MR. BUSCHER: Well, I think that  
12 there is a parallel between a surface impoundment  
13 and a landfill containing CCR and it seems to me  
14 that them requiring reduction of head in a  
15 landfill which is over the same liner that you  
16 have an impoundment in and of itself indicates  
17 that there are issues with head buildup on liners.

18 MS. GALE: Okay. But drawing a  
19 parallel between landfills and CCR surface  
20 impoundments and we've agreed that they're  
21 different and you would agree that one of the  
22 reasons they are operated differently is landfills  
23 collect the ash dry by trucks, right, typically  
24 trucks?

1 MR. BUSCHER: Right.

2 MS. GALE: And CCR surface  
3 impoundments collect ash through a wet sluice,  
4 correct?

5 MR. BUSCHER: Yes.

6 MS. GALE: So the volume of water  
7 coming to a CCR surface impoundment is  
8 significantly more, right?

9 MR. BUSCHER: That's correct.

10 MS. GALE: Okay. So that's what I  
11 mean by operate differently. A CCR surface  
12 impoundment typically has water on the top of the  
13 CCR, right?

14 MR. BUSCHER: Correct.

15 MS. GALE: And actually that water  
16 acts as a dust suppressant, doesn't it?

17 MR. BUSCHER: In some cases, yes.

18 MS. GALE: I'm sorry. I guess when  
19 does water not act as a dust suppressant?

20 MR. BUSCHER: When there's a delta  
21 built up and it's just damp.

22 MS. GALE: Okay. Okay. That's  
23 great. All right. Question 41. So that's on  
24 Page 17 of Exhibit 3. Midwest Gen asked for other

1 jurisdiction that you're aware of that require  
2 leachate collection and removal system above a  
3 composite liner for non-hazardous waste  
4 impoundments and I'm just asking again since I  
5 don't see it in this answer, do you know of any  
6 other jurisdictions?

7 MR. BUSCHER: What is the question  
8 again?

9 MS. GALE: What, if any, other  
10 jurisdictions --

11 MR. BUSCHER: Maybe --

12 MS. GALE: Sorry. What, if any,  
13 other jurisdictions do you know of? I didn't see  
14 a jurisdiction in your response. So I'm just  
15 following up. Do you know --

16 MR. BUSCHER: I'm referring to the  
17 jurisdiction of U.S. EPA.

18 MS. GALE: For the design criteria  
19 of a CCR landfill.

20 MR. BUSCHER: Yes, ma'am.

21 MS. GALE: Right. My question is  
22 for I -- but -- okay. That's fine.

23 In drafting the section about  
24 leachate collection systems, did the Agency

1 consider the federal effluent limitation  
2 guidelines commonly called ELG's, which are in  
3 Part 423 of the federal environmental regulations?

4 MR. BUSCHER: Yes.

5 MS. GALE: How did the Agency  
6 consider it?

7 MR. BUSCHER: This water as  
8 leachate?

9 MS. GALE: Yes, but is the Agency  
10 aware that the ELG standards require zero  
11 discharge and thus anything collected through the  
12 leachate system will need to be returned to the  
13 same pond.

14 MR. BUSCHER: I mean, a leachate  
15 collection system is a little different. There is  
16 the potential for it to be recirculated into the  
17 impoundment. So over time one could draw down the  
18 material and through evaporation be able to dispel  
19 the fluid.

20 MS. GALE: I'm sorry. I couldn't --  
21 I didn't understand your answer. You're aware  
22 that the ELG standards require zero discharge and  
23 anything collected in the system needs to be  
24 returned to the same pond under the federal ELG

1 standards, right?

2 MR. BUSCHER: Right.

3 MS. GALE: Okay. So, you know,  
4 because we agree that the ELG standards require a  
5 return to the same pond, is the EPA -- I mean,  
6 what is the purpose of the leachate collection  
7 system that always recycles back to the  
8 originating pond?

9 MR. BUSCHER: Well, depending on --  
10 once again, it's an operational call by the  
11 owner/operator. One could reduce the water level,  
12 place that back on top through a spray system and  
13 not have to discharge anything over time just due  
14 to evaporation.

15 MS. GALE: Is the Agency aware of  
16 the volume of water in these surface impoundments  
17 or did it consider the volume of water?

18 MR. BUSCHER: Yes.

19 MS. GALE: Okay. So if you draw it  
20 down, if I understand you correctly, we drawn down  
21 and we put -- and then sprinkle it over on top.  
22 Sprinkle is not the right word, but I can't think  
23 of the right word right now.

24 Is the Agency concerned about

1 drying out that CCR such that it becomes a  
2 fugitive dust?

3 MR. BUSCHER: There is always that  
4 concern. Once again, that's an operational  
5 consideration that needs to be taken into account  
6 by the owner/operator.

7 MS. GALE: To be clear, the Agency  
8 is not proposing landfill -- regulation of  
9 landfills in this rule, right?

10 MR. BUSCHER: Not to my knowledge.

11 MS. GALE: Would somebody else know?

12 MR. BUSCHER: No.

13 MS. GALE: Okay. And the Agency  
14 understands that often landfill liners are -- you  
15 know, they're under different forces, right, such  
16 as they are exposed to freezing temperatures and  
17 generally ponds are not?

18 MR. BUSCHER: It would depend on the  
19 depth of the water in the pond.

20 MS. GALE: Would that be a part of  
21 the consideration of maintaining of the head?

22 MR. BUSCHER: Freezing.

23 MS. GALE: Yeah. Or, yeah, well --

24 MR. BUSCHER: It's an operational

1 consideration.

2 MS. GALE: Okay. Same thing. The  
3 Agency understands that landfill liners are  
4 typically exposed to trucks driving over them and  
5 compaction compared to CCR surface impoundments  
6 where that doesn't occur?

7 MR. BUSCHER: Well, there is still a  
8 static weight by the material above them?

9 MS. GALE: Okay. And I'm about  
10 finished.

11 Does the Agency have any intent  
12 or methodology to regulate the depth of water  
13 above a liner in a pond?

14 MR. BUSCHER: No, that's strictly an  
15 operational concern of the owner/operator and it's  
16 really a side-by-side basis depending on the type  
17 of geometry and so on of the impoundment.

18 MS. GALE: All right. I have  
19 nothing further for now, but I might have a follow  
20 up.

21 HEARING OFFICER HORTON: Thank you,  
22 Ms. Gale. City of Springfield, anything on 420?

23 MS. WILLIAMS: No.

24 HEARING OFFICER HORTON: Skipping



1 over the others who said they did not have  
2 questions on 400. IERG?

3 MS. BROWN: Melissa Brown. We have  
4 no questions. We also have no questions on the  
5 remaining 400, but reserve the right for follow  
6 up.

7 HEARING OFFICER HORTON: Any  
8 follow-ups on 420, Ms. Bugel?

9 MS. BUGEL: Yes, I have follow ups  
10 to Ms. Gale's line of questions.

11 Mr. Buscher, there are CCR  
12 landfills located in Illinois, correct?

13 MR. BUSCHER: I believe there --  
14 well, I'm sure that there are some CCR landfills  
15 in Illinois.

16 MS. BUGEL: Are there ones that  
17 don't have composite liners that meet the  
18 requirements of proposed 845?

19 MR. BUSCHER: Well, if they didn't  
20 have a composite liner, they wouldn't meet the  
21 proposed regulation.

22 MS. BUGEL: Let me rephrase that.  
23 Are there ones that don't have the composite  
24 liners that meet the requirements of the federal

1 rule, the federal CCR rule?

2 MR. BUSCHER: I'm not certain.

3 MS. BUGEL: Are you aware of any CCR  
4 landfills in Illinois that are not permitted under  
5 Illinois landfill operations?

6 MR. BUSCHER: The onsite landfills  
7 in Illinois are permit exempt.

8 MS. BUGEL: So would that mean that  
9 they do not have permits under Illinois landfill  
10 regulations?

11 MR. BUSCHER: That's a case-by-case  
12 basis that I don't have knowledge to answer.

13 MS. BUGEL: Do any of the IEPA  
14 witnesses on the panel have knowledge to answer  
15 the question?

16 MR. BUSCHER: I don't work in the  
17 Bureau of Land. It's my understanding that both  
18 onsite and offsite landfills have to meet the same  
19 requirements.

20 MS. BUGEL: Hearing Officer, I'd  
21 like to refer to the environmental groups Exhibit  
22 4 and I don't believe that has been entered into  
23 the record yet.

24 HEARING OFFICER HORTON: One second.

1 MS. ZEIVEL: Can you repeat which  
2 exhibit you're referring to?

3 MS. BUGEL: Environmental Group  
4 Exhibit 4.

5 HEARING OFFICER HORTON: Okay.  
6 Environmental Groups Exhibit 4 appears to be a  
7 Board order from June 20th, 2019?

8 MS. BUGEL: Correct.

9 HEARING OFFICER HORTON: So we'll  
10 enter -- would you like that entered?

11 MS. BUGEL: I would like that  
12 entered into the record, please.

13 HEARING OFFICER HORTON: We'll enter  
14 that as Exhibit 9.

15 (Document marked as Hearing  
16 Exhibit No. 9 for  
17 identification.)

18 MS. BUGEL: Thank you. Referring to  
19 what is now Exhibit 9, are any of the EPA  
20 witnesses familiar with this decision from the  
21 Board?

22 MR. MORE: I would like to lodge an  
23 objection, especially in light of the statement  
24 the Hearing Officer made earlier which is that

1 we're trying to move forward with this proceeding  
2 which governs the regulations of CCR surface  
3 impoundments.

4 Ms. Gale's questions went to the  
5 liner requirements and a whole discussion  
6 comparing the liner requirements between a  
7 landfill and a CCR surface impoundment. We appear  
8 to now be getting into questions of how landfills  
9 in general are regulated and it seems to be beyond  
10 the scope of this rulemaking and now we're getting  
11 into discussions about a Board order in a pending  
12 enforcement matter and I would ask that the Board  
13 ask the examiner to confine the questions to the  
14 topic at hand which is the liner requirements.

15 MS. GALE: I second that objection.

16 HEARING OFFICER HORTON: Objection  
17 noted. Ms. Bugel, if you can ask your question  
18 and we'll see where you're going with this and  
19 continue on from there and you can raise the  
20 objection again after the question.

21 MS. BUGEL: My questions are short  
22 and I will not respond to Mr. More now, but if the  
23 objection is raised again, I would like the  
24 opportunity to respond.

1                   So my question was whether IEPA  
2 witnesses are aware of the decision that is now  
3 Exhibit 9?

4                   MR. DUNAWAY: This is Lynn Dunaway.  
5 I am aware of that decision.

6                   MS. BUGEL: And --

7                   MR. BUSCHER: I am also aware of  
8 that decision. This is Bill Buscher.

9                   MS. BUGEL: Thank you. So are you  
10 aware of the landfills covered by -- the CCR  
11 landfills covered by that decision?

12                   MS. GALE: I would object to the  
13 mischaracterization of what the Board found in  
14 this interim opinion. So they were not  
15 considered -- the Board did not find them to be  
16 landfills.

17                   MS. BUGEL: Okay. I would disagree  
18 regarding the Board's findings and I can also --  
19 but I am willing to rephrase the question.

20                   Are you aware of historic fill  
21 areas covered by that decision with those fill  
22 areas that contain CCR?

23                   MS. GALE: I have a continuing  
24 objection again. This is beyond the scope of this

1 rulemaking.

2 HEARING OFFICER HORTON: Ms. Bugel,  
3 a response.

4 MS. ZEIVEL: The Agency would also  
5 like to object to beyond the scope.

6 MS. BUGEL: The environmental groups  
7 have consistently taken the position in the  
8 proceedings leading up to this rulemaking and in  
9 our pre-filed comments -- prehearing comments  
10 filed in this rulemaking that it should cover CCR  
11 landfills and some of Mr. Buscher's testimony did  
12 open the door to that subject.

13 HEARING OFFICER HORTON: I agree  
14 that, yes, the environmental groups have made  
15 that -- and their public comments have stated  
16 that. If you could limit yourself to just one or  
17 two questions on this and we'll move forward.

18 MS. ZEIVEL: Given that, Ms. Bugel,  
19 can you please restate your question?

20 MS. BUGEL: Okay. Are IEPA's  
21 witnesses aware of fill areas that contain CCR as  
22 discussed in Exhibit 9?

23 MR. DUNAWAY: Lynn Dunaway. I'm not  
24 familiar enough with that decision to answer that

1 question.

2 MS. BUGEL: Is any other witness  
3 familiar enough with that decision to answer that  
4 question?

5 MS. ZEIVEL: This is Christine  
6 Zeivel. The collective answer is no.

7 MS. BUGEL: Okay. I have no further  
8 questions. Thank you.

9 HEARING OFFICER HORTON: Thanks,  
10 Ms. Bugel.

11 MS. GALE: One follow-up question  
12 just to an earlier question. I could be wrong,  
13 but I think I heard the Agency say that it wasn't  
14 aware of a CCR landfill that was permitted by the  
15 Bureau of Land and I just want -- I want to be  
16 clear. I believe the Agency is aware of a  
17 landfill permitted by the Bureau of Land --  
18 permitted by the Bureau of Land for 40 years, the  
19 Lincoln Stone Quarry.

20 MS. ZEIVEL: This is Christine  
21 Zeivel. That misstates the statements made by the  
22 Agency.

23 MS. GALE: Okay. Great. Thank you.

24 HEARING OFFICER HORTON: Okay.

1 We're moving on to 430 Slope Maintenance and --  
2 okay.

3 So going forward with the  
4 participants who said they do not have questions  
5 on 400 subject to follow-up questions. Midwest  
6 Generation, any questions on 430?

7 MS. GALE: I'll pass for now. I  
8 need to find my stuff.

9 HEARING OFFICER HORTON: No problem.  
10 City of Springfield?

11 MS. WILLIAMS: No questions. I  
12 confirmed I don't have questions for the rest of  
13 the 400's either. The one I thought I might have  
14 can wait until the 500's.

15 HEARING OFFICER HORTON: Certainly.  
16 I think just to clarify for everyone I think  
17 Midwest Generation is the only one who stated they  
18 might have questions for the entirety of this  
19 subpart.

20 MS. GALE: I have one question.  
21 430(b)(4). It's just a simple question.

22 The Agency said that "Would  
23 vegetation greater than a half inch must be  
24 removed?"



1 I guess the question is, how is  
2 that diameter determined to be created, what was  
3 it the Agency that gave us to pick one-half inch?

4 MS. ZEIVEL: This is Christine  
5 Zeivel. At the time, we believe we will have to  
6 spend some time finding citations and we're not  
7 sure the Board would like us to take that time  
8 right now. This may be something we'll have to  
9 follow back up on post-hearing unless you would  
10 like to give us some more minutes.

11 MS. GALE: That's fine. I'm sorry.  
12 I shouldn't answer for you. It's not up to me.

13 HEARING OFFICER HORTON: That is  
14 fine. So unless I've mischaracterized it I  
15 believe that no one else -- no other participants  
16 have questions on this subpart and we can move on  
17 to Subpart E Operating Criteria.

18 Okay. All right. We'll begin  
19 with 845.500 Air Criteria and just to let  
20 everybody know I'm planning on taking a break at  
21 2:30 until about 2:40, but we'll continue on with  
22 845.500 Air Criteria.

23 Starting with Little Village,  
24 ELPC, Prairie Rivers and Sierra Club, do you have

1 any questions on Section 500?

2 MS. BUGEL: Yes, Melissa Legge is  
3 going to ask questions on the environmental  
4 groups.

5 HEARING OFFICER HORTON: Ms. Legge?

6 MS. LEGGE: Yes, it's Legge with  
7 Earthjustice.

8 HEARING OFFICER HORTON: Sorry.

9 MS. LEGGE: That's okay. With  
10 Earthjustice on behalf of Prairie Rivers Network.

11 HEARING OFFICER HORTON: Please go  
12 ahead.

13 MS. LEGGE: Can you hear me okay?  
14 Is the audio okay?

15 MS. ZEIVEL: The Agency can hear  
16 you.

17 MS. LEGGE: Okay. So my questions  
18 refer to the testimony and pre-filed answers of  
19 Lauren Martin, although I understand that any  
20 Agency witness can respond to the question.

21 So we'll begin with Exhibit 2.  
22 Lauren Martin pre-filed responses on Page 105.  
23 Let me know when I can proceed.

24 MS. MARTIN: We're there. Lauren

1 Martin. We're there.

2 MS. LEGGE: Okay. So, thank you.  
3 Our Question 2(a) referred to a reference on Page  
4 2 of your pre-filed testimony to the preamble to  
5 Part 257 and you provided the citation to that  
6 reference. Your testimony stated that this  
7 preamble states that the fugitive dust should be  
8 limited to 35 micrograms per cubic meter for a  
9 24-hour period or an alternative standard  
10 established under a State Implementation Plan.

11 So if we could turn to Exhibit  
12 5, which is the Exhibit 5 of the environmental  
13 groups pre-filed exhibits, I think that should be  
14 the source that you cited in your testimony, is  
15 that correct?

16 MS. MARTIN: Lauren Martin. That is  
17 correct.

18 MS. LEGGE: And if you turn to Page  
19 21386, which is --

20 HEARING OFFICER HORTON: Ms. Legge,  
21 this is Vanessa Horton. So you're referring to  
22 the environmental groups Exhibit 5?

23 MS. LEGGE: Yes, and I believe it  
24 was moved into the record yesterday as Exhibit 5.

1 HEARING OFFICER HORTON: I don't  
2 think so. I think we moved Exhibit 1 of the  
3 environmental groups as Exhibit 5. So we can  
4 move -- if I'm incorrect --

5 MR. GRANHOLM: We have this as  
6 Exhibit 5 as well.

7 HEARING OFFICER HORTON: My  
8 apologies. It's Exhibit 5. Please continue.

9 MS. LEGGE: Can you please turn to  
10 Page 21386 of Exhibit 5, which is Page 186 of the  
11 PDF, and on the left-hand column under the heading  
12 F Operating Criteria Air Criteria, the second  
13 sentence in that paragraph, is that the sentence  
14 that your testimony refers to?

15 MS. MARTIN: Lauren Martin. Yes,  
16 that is correct.

17 MS. LEGGE: And it states  
18 specifically EPA proposed that facilities must  
19 ensure that fugitive dust either not exceed the  
20 standard of 35 micrograms per cubic meter  
21 established as the level of the 24-hour National  
22 Ambient Air Quality Standard, NAAQS for fine  
23 particulate matter PM 2.5 or any alternative  
24 standard pursuant to applicable requirements

1 developed under a State Implementation Plan, SIP,  
2 approved or promulgated by the administer pursuant  
3 to Section 110 of the CAA.

4 So does this sentence refer to a  
5 standard under the Clean Air Act?

6 MS. MARTIN: I do not know.

7 MS. LEGGE: Does this refer to a  
8 standard related to the National Ambient Air  
9 Quality Standard?

10 MS. MARTIN: Yes, that is correct.

11 MS. LEGGE: And that is a program of  
12 the Clean Air Act?

13 MS. MARTIN: Yes.

14 MS. LEGGE: And does the proposed  
15 rule -- the Agency's proposed Part 845.500, does  
16 it purport to establish this 35 micrograms per  
17 cubic meter standard?

18 MS. ZEIVEL: This is Christine  
19 Zeivel. Lauren Martin gave an answer, but it  
20 seems it was not heard.

21 MS. LEGGE: No, we did not hear an  
22 answer.

23 MS. MARTIN: Sorry. No, the 35  
24 micrograms per liter is not part of the fugitive

1 dust control plan or air criteria.

2 MS. LEGGE: And neither is the  
3 alternative standard established pursuant to an  
4 applicable SIP from Section 110 of the Clean Air  
5 Act?

6 MS. MARTIN: No, it is not.

7 MS. LEGGE: Okay. Turning to your  
8 response to Question 2(b). In your pre-filed  
9 answer, it states that the rule directed owners  
10 and workers to abide by established worker safety  
11 regulations found in 29 CFR 1910 and 29 CFR 1926.  
12 Those are OSHA standards, correct?

13 MS. MARTIN: Yes, that is correct.

14 MS. LEGGE: And the language in  
15 proposed Section 500(c) states that the  
16 requirements -- the requirements to establish a  
17 CCR fugitive dust control plan applies in addition  
18 to, not in place of, any applicable standards  
19 under the Occupational Safety and Health Act, is  
20 that correct?

21 MS. MARTIN: Yes, that is correct.

22 MS. LEGGE: In other words, Section  
23 845.500 creates requirements for control of  
24 fugitive dust that are separate from and in

1 addition to the OSHA standard, is that correct?

2 MS. MARTIN: Yes, that's correct.

3 MS. LEGGE: Next, your response to  
4 Question 4(a). When your testimony on Page 2 and  
5 3 states that Illinois EPA is addressing specific  
6 hazardous substances in the proposed rule, did you  
7 mean that IEPA incorporates the OSHA standards for  
8 those hazardous substances by reference?

9 MS. MARTIN: Lauren Martin. We are  
10 referring to them, but we are not incorporating  
11 them by reference.

12 MS. LEGGE: Does the proposed rule  
13 address those hazards in any other way?

14 MS. MARTIN: Lauren Martin here. It  
15 does not specifically, but it does in general  
16 mention fugitive dust control.

17 MS. LEGGE: My next questions refer  
18 to our pre-filed Question's 5 through 7.

19 Are the OSHA standards for  
20 arsenic, beryllium, lead, cadmium and silica to  
21 which you refer in your testimony enforceable  
22 requirements of Part 845?

23 MS. ZEIVEL: She is referring to  
24 your pre-filed testimony.

1 MS. MARTIN: Yes, but it's also in  
2 here in B.

3 MS. WILLIAMS: You guys aren't on  
4 mute.

5 MS. BUGEL: Just for the record, the  
6 cat's name is Olive.

7 MS. LEGGE: Olive will be very  
8 pleased to have made an appearance on the record  
9 at an IPCB hearing.

10 MR. MORE: This is Josh More. Could  
11 Ms. Legge repeat the question? I'm sorry. I lost  
12 it.

13 MS. LEGGE: I can repeat the  
14 question.

15 MR. MORE: Thank you.

16 MS. LEGGE: Are the OSHA standards  
17 for arsenic, beryllium, lead, cadmium and silica  
18 to which you refer in your testimony enforceable  
19 requirements of Part 845? And to answer a  
20 question that I think came from the Agency room  
21 they are referred to both in the pre-filed  
22 testimony and then Question's 5 through 7 refer at  
23 least to arsenic, beryllium and lead, I believe.

24 MR. MORE: Thank you.



1 MS. MARTIN: Lauren Martin. In the  
2 context of 500, no, they are not.

3 MS. LEGGE: Are they enforceable in  
4 other context in the proposed rule?

5 MS. MARTIN: Yes.

6 MS. LEGGE: Can you state  
7 specifically where?

8 MS. MARTIN: Lauren Martin. 530(b).  
9 Safety Data -- no. Yes. Correct.

10 MS. LEGGE: Are they enforceable by  
11 IEPA or we can address that when we get to Part  
12 530 if you prefer.

13 MS. MARTIN: Lauren Martin here. So  
14 under 530(b) for Safety Data Sheets, it would be a  
15 qualification of presence of those chemicals in  
16 the CCR material.

17 MS. LEGGE: Can you repeat your  
18 answer? I'm sorry. I didn't catch it.

19 MS. MARTIN: Sorry. Lauren Martin.  
20 So 530(b) for Safety Data Sheets, it would be a  
21 qualification of whether the chemicals are there  
22 present or not.

23 MS. LEGGE: And what is the Agency's  
24 rule in that?

1 MS. MARTIN: Verification I guess of  
2 the characterization of the material for the  
3 Safety Data Sheets and that they provided that  
4 information with their safety plans.

5 MS. LEGGE: So the Agency will  
6 certify that they have the relevant Material  
7 Safety Data Sheets, is that correct, or am I  
8 misunderstanding?

9 MS. MARTIN: There is no  
10 certification.

11 MS. LEGGE: So the Agency's role is  
12 what again?

13 MS. MARTIN: The Agency's role is to  
14 enforce the Board regulation.

15 MS. LEGGE: Specifically with  
16 regards to the Material Safety Data Sheets?

17 MS. MARTIN: Specifically that they  
18 have provided Safety Data Sheets.

19 MS. LEGGE: I think I have more  
20 questions about the Safety Data Sheets, but I  
21 think we can save them for Section -- for Section  
22 530. So returning to Question 5 to 7 here.

23 Do the proposed rules require  
24 IEPA to take any action to ensure the OSHA

1 standards that you mentioned for arsenic,  
2 beryllium, lead, cadmium and silica are  
3 implemented?

4 MS. MARTIN: Lauren Martin. No, it  
5 does not require that.

6 MS. LEGGE: So IEPA is relying on  
7 OSHA and the Illinois Department of Labor to  
8 ensure that those requirements are met?

9 MS. MARTIN: Yes.

10 MS. LEGGE: Moving to Question 9,  
11 which is on Page 110 of Exhibit 2. Your response  
12 to our Question 9 states that members of the  
13 public will be provided meaningful opportunities  
14 to provide public input during the construction  
15 and/or operating permit process.

16 Will members of the public be  
17 able to see the fugitive dust plans during the  
18 permitting process?

19 MS. MARTIN: Can you repeat your  
20 question, please?

21 MS. LEGGE: Yes. Will members of  
22 the public be able to see the fugitive dust plans  
23 during the permitting process?

24 MS. MARTIN: Lauren Martin. So the

1 fugitive dust control plans will be a part of the  
2 new construction permitting process and will  
3 otherwise be available as part of the public  
4 record online, the operating permit.

5 HEARING OFFICER HORTON: Ms. Legge,  
6 this is Vanessa Horton. I'll pause here and we'll  
7 take a ten-minute break.

8 Ms. Legge, do you have further  
9 questions on this section?

10 MS. LEGGE: I do, yes.

11 HEARING OFFICER HORTON: So we'll  
12 pick up with you. It's 2:32. So we'll go to,  
13 let's say, 2:42.

14 (Whereupon, a break was taken  
15 after which the following  
16 proceedings were had.)

17 HEARING OFFICER HORTON: Hello,  
18 everyone. Vanessa Horton in the hearing room  
19 resuming after a little bit of a longer break.  
20 I'd like to go on the record and just talk timing  
21 for the rest of the hearing.

22 Today obviously we'll be  
23 stopping at right about 4:00 for dinner and then  
24 resuming at 5:00, going to 7:30 for public

1 comments and then tomorrow I'd like to ask the  
2 Agency what their availability might be for  
3 starting at 8:00 a.m. tomorrow with the  
4 understanding that tomorrow -- we will have a  
5 Board meeting.

6 So we'll be stopping the hearing  
7 at around 10:50 for lunch and the Board will  
8 convene for their meeting at 11:00 and we'll  
9 resume the hearing at noon with public comments  
10 continuing to 1:30 and then planning to stop  
11 around 5:00, but wanted to check with what the  
12 availability of the Agency witnesses might be  
13 around that time.

14 If we were close to the end of  
15 the proposed regulations at around 4:30, would the  
16 Agency be willing to stay a little bit later to  
17 finish rather than having a second hearing date  
18 later on?

19 MS. ZEIVEL: This is Christine. We  
20 would prefer to go longer and be done.

21 HEARING OFFICER HORTON: Okay. All  
22 right. One little hiccup is that we have the  
23 microphones here until 5:00. So we would have the  
24 questioners here in the room walk up closer to the

1 TV to ask their questions, which is where the  
2 internal microphone is. So we'll figure that out  
3 tomorrow then, but, yeah, that sounds great.

4 Okay. Moving on I believe we  
5 were at 510 with Ms. Legge.

6 MS. LEGGE: Five-hundred.

7 HEARING OFFICER HORTON: I'm so  
8 sorry. Were we at 500? Sorry. Please continue.

9 MS. LEGGE: Thank you. Melissa  
10 Legge for Earthjustice for Prairie Rivers Network.

11 So we were discussing Question  
12 9. So are the fugitive dust plans required to be  
13 posted on the owner/operator's website or anywhere  
14 else by the time the public comment period starts  
15 for operating permit applications?

16 MS. ZEIVEL: The Agency believes we  
17 have answered this question in the pre-filed  
18 questions and answers.

19 MS. LEGGE: Can you state where?

20 MS. ZEIVEL: We can. However, the  
21 Board has spoken to us about time constraints and  
22 if we already responded to a question, that would  
23 take the additional time of having to locate it.

24 MS. LEGGE: I don't believe that I

1 have seen an answer to that question in the  
2 pre-filed questions and answers.

3 MS. ZEIVEL: Well, then our earlier  
4 question and answer regarding the emergency action  
5 plan and whether that would be available and what  
6 time in regards to the permit application would  
7 similarly apply.

8 MS. LEGGE: Okay. Are members of  
9 the public able to comment on fugitive dust plans?

10 MS. ZEIVEL: Ms. Legge, can you  
11 please repeat?

12 MS. LEGGE: Are members of the  
13 public able to comment on proposed fugitive dust  
14 plans?

15 MS. ZEIVEL: This is Christine  
16 Zeivel. The same response given by Darin Lecrone  
17 earlier today regarding the availability of the  
18 EAP during the comment period would apply here.

19 MS. LEGGE: To the fugitive dust  
20 plan as well?

21 MS. ZEIVEL: I believe that was the  
22 subject of your question.

23 MS. LEGGE: Okay. Moving on to the  
24 response to our pre-filed Question 10. Here, I'd

1 like to correct a typo. There was a typo both in  
2 our original question as asked, but it's also not  
3 fully reproduced in the Agency's -- in the  
4 Agency's pre-filed responses.

5 So our question was for  
6 facilities applying for operating permits only the  
7 first time that the Agency will see a facility's  
8 fugitive dust control plan is when the, a typo, it  
9 is placed in the facility's operating record as  
10 required by Section 845.800(b)(7), is that  
11 correct?

12 MS. ZEIVEL: This is Christine  
13 Zeivel. The Agency responded to written Question  
14 10 with a response in writing.

15 MS. LEGGE: But it responded not to  
16 our Question 10. It responded to a question that  
17 stated the first time the Agency will see a  
18 facility's operating record as required by Section  
19 845. So it's missing part of the question.

20 We asked about when is the first  
21 time that the Agency will see a facility's  
22 fugitive dust control plan if when it is placed in  
23 the operating record. Excuse me.

24 MS. MARTIN: Lauren Martin. Yes.



1 MS. LEGGE: Okay. Your answer  
2 states that the proposed rules require that  
3 information in the operating record to be posted  
4 to the owner/operator's website, but do not  
5 require the operating record to be submitted to  
6 the Agency.

7 If the operating record is not  
8 required to be submitted to the Agency, is it  
9 possible that the fugitive dust plan is never  
10 submitted to the Agency? And if the answer is the  
11 same as EAP, feel free to testify to that.

12 MR. LECRONE: This is Darin Lecrone.  
13 The rules do not require the Agency owner -- be  
14 submitted to the Agency for the operating permits  
15 only. However, the Agency intends to review the  
16 fugitive dust control plans.

17 MS. LEGGE: When does the Agency  
18 intend to do that?

19 MR. LECRONE: During the permitting  
20 process.

21 MS. LEGGE: Specifically for the  
22 construction permits?

23 MR. LECRONE: Construction and  
24 operation permits.

1 MS. LEGGE: Even though the  
2 operating permit application does not require  
3 submission of the fugitive dust plan?

4 MR. LECRONE: Yes.

5 MS. LEGGE: How will the Agency do  
6 that?

7 MR. LECRONE: This is Darin Lecrone.  
8 What do you mean how is the Agency going to do  
9 that?

10 MS. LEGGE: How will the Agency  
11 review the fugitive dust plan for operating  
12 permits if the plan is not required to be  
13 submitted to the Agency with their application?

14 MR. LECRONE: It's available -- it  
15 will be on the owner/operator's website or we can  
16 ask for it.

17 MS. LEGGE: Is there a deadline in  
18 the rule for when it is posted to the  
19 owner/operator's website?

20 MR. LECRONE: This is Darin Lecrone.  
21 Thirty days after placement in the operating  
22 record.

23 MS. LEGGE: Is it possible that  
24 might be after the end of the permitting period?

1 MR. LECRONE: From a practical  
2 matter, no. Yeah, it -- the length of time it  
3 takes to process an application, go through the  
4 notice process, that information will be in the  
5 operating record well before final Agency  
6 decision.

7 MS. LEGGE: Would the Agency be  
8 amenable to an amendment to the rule that requires  
9 that?

10 MR. LECRONE: Darin Lecrone. The  
11 Agency would not object.

12 MS. LEGGE: Moving on to Question  
13 11. In 11(a), you state that the Agency has  
14 personnel on staff who are qualified to evaluate  
15 fugitive dust control plans and in response to  
16 11(b) you state that appropriately credentialed  
17 staff will be chosen for review.

18 What credentials does the Agency  
19 consider to be appropriate for reviewing fugitive  
20 dust plans?

21 MR. LECRONE: This is Darin Lecrone.  
22 Agency technical and field staff will be  
23 responsible for reviewing them.

24 MS. LEGGE: Is there any particular

1 training you would look for or any other area of  
2 expertise more specific than technical and field?

3 MR. LECRONE: Darin Lecrone. The  
4 answer is no.

5 MS. LEGGE: Does the Agency already  
6 have appropriately credentialed staff available to  
7 review the fugitive dust plan? Are they already  
8 on staff?

9 MR. LECRONE: Yes.

10 MS. LEGGE: How many staff does the  
11 Agency already have who are credentialed to review  
12 these plans?

13 MR. LECRONE: In addition to the  
14 Bureau of Water staff I discussed earlier, the  
15 Bureau of Air also has staff that are responsible  
16 for fugitive dust.

17 MS. LEGGE: Moving on to your  
18 response to 11(e). You state that if the fugitive  
19 dust plans do not meet regulatory, quote,  
20 requirements, unquote, approval will not be  
21 provided until deficiencies are addressed,  
22 unquote.

23 Approval of what are you  
24 referring to there?

1 MR. LECRONE: This is Darin Lecrone.  
2 Any requirement of this that is going to be part  
3 of the permitting process whether it's a fugitive  
4 dust plan or anything else, if it's deficient, the  
5 Agency will not be issuing a permit until those  
6 deficiencies are corrected.

7 MS. LEGGE: So the Agency will not  
8 issue a permit unless there is an adequate  
9 fugitive dust plan, correct?

10 MR. LECRONE: The Agency will be  
11 ensuring that the plans meet the requirements of  
12 845.

13 MS. LEGGE: Moving slightly back to  
14 Question 11(c). You state that the Agency will  
15 review fugitive dust plans during Agency  
16 inspections and investigations.

17 How often does the Agency plan  
18 to conduct inspections?

19 MR. LECRONE: Darin Lecrone. The  
20 Agency does not have a planned inspection schedule  
21 at this point.

22 MS. LEGGE: Is the same true for  
23 investigations?

24 MR. LECRONE: This is Darryl

1 Lecrone. I'm not sure what you mean by  
2 investigation versus inspection.

3 MS. LEGGE: I'm using the  
4 Agency's -- I'm quoting from the Agency's  
5 pre-filed responses. So I was going to ask you  
6 that question.

7 MR. LECRONE: For our usage and  
8 investigation is an inspection based on receipt of  
9 the complaint.

10 MS. LEGGE: But an investigation is  
11 an inspection based upon receiving a complaint and  
12 an inspection does not depend on receiving a  
13 complaint first, is that correct?

14 MR. LECRONE: Not necessarily, but,  
15 in general, that is correct.

16 MS. LEGGE: Moving on to Question  
17 12. Your response states enforcement will be on a  
18 case-by-case basis. Use 35 IAC 31A process.

19 Can you please provide a  
20 citation for the 35 IAC 31A process? Is it  
21 possible you meant Section 31 of the Illinois  
22 Environmental Protection Act instead?

23 MR. LECRONE: Yes, that is correct.

24 MS. LEGGE: It's correct that you

1 referred to Section 31 of the Illinois  
2 Environmental Protection Act?

3 MR. LECRONE: Yes, that's correct.

4 MS. LEGGE: Referring to Question  
5 13. The response to 13(a) you say that minimized  
6 CCR from becoming airborne at a facility means,  
7 "Use of dust suppression methods for -- per 29 CFR  
8 1910 and 29 CFR 1926."

9 Does it say that in the rules?

10 MS. MARTIN: Lauren Martin. In  
11 500(b)(1), these are examples of currently  
12 accepted practices. According to -- 29 CFR 1910  
13 and 29 CFR 1926 are more vague and allow for --

14 HEARING OFFICER HORTON: Ms. Martin,  
15 Ms. Martin. This is Vanessa Horton. The court  
16 reporter didn't quite pick that up.

17 THE COURT REPORTER: Too fast.

18 HEARING OFFICER HORTON: You're  
19 going a little too fast for him.

20 MS. MARTIN: Okay. All right. So  
21 500(b)(1) provides examples of acceptable dust  
22 suppression methods used now. However, 29 CFR  
23 1910 and 29 CFR 1926 are written in a more vague  
24 manner to allow for development of new

1 technologies. So we would expect that new  
2 technologies could be used as they are effective  
3 given the site conditions of each CCR impoundment.

4 MS. LEGGE: Also referring to  
5 Question 13. Once a facility is operating, how  
6 will the Agency ensure that the measures selected  
7 in the fugitive dust plan are actually minimizing  
8 fugitive dust at the facility?

9 MS. MARTIN: Lauren Martin. Our  
10 intent is to follow up on complaints.

11 MS. LEGGE: Complaints that are  
12 directed to the Agency or complaints that are  
13 directed elsewhere?

14 MS. MARTIN: Lauren Martin. Any  
15 that we become aware of.

16 MS. LEGGE: Moving on to the subject  
17 of complaints. Question 14. In follow up to  
18 Question 14(c), if a person does not have to be a  
19 citizen to make a citizen complaint, would you  
20 agree that the name citizen complaint is  
21 misleading?

22 MS. MARTIN: Lauren Martin. It is a  
23 common used phrase in environmental policy at this  
24 time.



1 MS. LEGGE: Would the Agency be  
2 amenable to replacing a word citizen complaint  
3 with complaint from a member of the public in  
4 845.500(b)(2).

5 HEARING OFFICER HORTON: Just --  
6 this is Vanessa. Ms. Martin, your last response  
7 was it's a commonly used phrase in environmental  
8 and then we didn't --

9 MS. MARTIN: Policy.

10 HEARING OFFICER HORTON: Thank you.  
11 Please go ahead, Ms. Legge.

12 MS. LEGGE: I'll restate my  
13 question.

14 Would the Agency be amenable to  
15 replacing the word -- the term citizen complaint  
16 in 845.500(b)(2) with complaints from a member of  
17 the public?

18 MS. MARTIN: Lauren Martin. We  
19 would not object.

20 MS. LEGGE: Moving on to your  
21 responses 14(d), E and F. If a citizen or member  
22 of the public suspects the fugitive dust plan is  
23 being violated and makes a complaint, the company  
24 is only required to report the complaint in a log

1 and then report it to the Agency in the annual  
2 fugitive dust control report, is that correct?

3 MS. MARTIN: Lauren Martin. That is  
4 correct.

5 MS. LEGGE: And the Agency will only  
6 receive the log of citizen complaints once a year  
7 in the annual fugitive dust report, is that  
8 correct?

9 MS. MARTIN: Yes, that's correct.

10 MS. LEGGE: Is the Agency required  
11 to investigate those citizen complaints received  
12 in the log?

13 MS. MARTIN: Lauren Martin. No.

14 MS. LEGGE: Is anyone required to?

15 MS. MARTIN: Lauren Martin. They  
16 are not required to do anything, but they do need  
17 to summarize any corrective measurements that they  
18 needed to take in the annual dust control report.

19 MS. LEGGE: And if they were to say  
20 the complaint was unfounded, no action necessary,  
21 is that -- is the Agency able to sort of take  
22 their word on that one?

23 MS. MARTIN: Lauren Martin. If the  
24 owner/operator doesn't take any measures that are

1 satisfactory to the citizens or members of the  
2 public, they can always complain to the Agency.

3 MS. LEGGE: Do you think creating an  
4 avenue for citizen complaints could create an  
5 expectation for community members that someone  
6 will look into their complaint?

7 MS. MARTIN: Lauren Martin. That  
8 requires us to speculate. We're not going to be  
9 able to answer that.

10 MS. LEGGE: Fair. If the log is  
11 submitted to the Agency only once a year, would  
12 you agree that the Agency might not learn about  
13 long-term violations of the fugitive dust plan for  
14 many months?

15 MS. MARTIN: Lauren Martin. If  
16 members of the public do not report it to the  
17 Agency, that is possible, yes.

18 MS. LEGGE: Are there provisions for  
19 complaints to the Agency regarding fugitive dust  
20 that are in the proposed rules?

21 MS. MARTIN: Lauren Martin. The  
22 Agency has an online tool to log all citizen  
23 complaints, not just using your best --

24 MS. LEGGE: Where -- where is that

1 located?

2 MS. MARTIN: Lauren Martin. On the  
3 Agency's website.

4 MS. LEGGE: Can you describe more  
5 specific --

6 MS. ZEIVEL: Christine Zeivel. It's  
7 been answered. We don't have the exact link right  
8 now and I don't believe the Board would like us to  
9 spend the time to find it.

10 MS. LEGGE: Okay. Can community --  
11 in your response to 14(f), Roman numeral 1, you  
12 stated that citizens or individuals can bring  
13 complaints to OSHA.

14 Can community members who are  
15 not workers make complaints to OSHA?

16 MS. MARTIN: Lauren Martin. Anyone  
17 can make a complaint online to OSHA. They have an  
18 anonymous online tool for complaints.

19 MS. LEGGE: Moving on to Question  
20 15. We asked about the proposed rule in this  
21 question, but it appears that all of your answers  
22 refer to OSHA standards. So I would like to ask  
23 these questions and then direct your answer to the  
24 proposed rule.

1 Do the proposed rules require  
2 any air monitoring to ensure that the fugitive  
3 dust plan is actually working to minimize dust?

4 MS. MARTIN: Lauren Martin. No, it  
5 would be visual emissions across the property  
6 line.

7 MS. LEGGE: Does that require an  
8 Agency -- that person to visually observe the  
9 emissions themselves or is that something that can  
10 be recorded in the absence of an Agency staff  
11 person?

12 MS. MARTIN: Lauren Martin. Any  
13 evidence provided would be a basis for follow up  
14 by the Agency.

15 MS. LEGGE: And what do you mean by  
16 follow up?

17 MS. MARTIN: Lauren Martin. It's a  
18 case-by-case basis depending on the evidence, the  
19 site.

20 MS. LEGGE: Could you name some of  
21 the actions that the Agency would take in follow  
22 up?

23 MS. MARTIN: Lauren Martin. For  
24 example, we can do a site inspection.

1 MS. LEGGE: Your answer to No. 15  
2 states that OSHA in 29 CFR 1910 Subpart B, the  
3 OSHA standards, do require air monitoring.

4 Would the Agency have access to  
5 air monitoring data from OSHA?

6 MS. MARTIN: Lauren Martin. No.

7 MS. LEGGE: I take it then that the  
8 public does not have access to that data either?

9 MS. MARTIN: No.

10 MS. LEGGE: My last question refers  
11 to Exhibit 3, the Agency response to Dynegy.  
12 Question 49, which is on Page 8 -- Page 48, excuse  
13 me, of Exhibit 3. Let me know when you're there.  
14 I believe I mislabeled this question. Maybe it's  
15 Exhibit 4. Let me find this question and I'll ask  
16 it in follow up. We can let one of the other  
17 attorneys go at this point.

18 HEARING OFFICER HORTON: Okay.  
19 Moving on we are on Section 500.

20 Midwest Generation, any  
21 questions?

22 MS. GALE: No, and I have no  
23 affirmative questions for this part, but I may  
24 have follow up.

1 HEARING OFFICER HORTON: For the  
2 entire subpart?

3 MS. GALE: For the entire subpart.  
4 All of 500.

5 HEARING OFFICER HORTON: City of  
6 Springfield?

7 MS. WILLIAMS: You know, I really  
8 hate to take more time on this topic, but there  
9 was some questions that the Agency answered saying  
10 that no change was necessary, but then they said  
11 they wouldn't object to a change. So I do feel  
12 that it makes me have to follow up a little bit.

13 When you discuss -- I believe  
14 the Agency discussed the reasons they didn't think  
15 it was necessary to add language requiring  
16 submittal of the fugitive dust plan that had been  
17 placed in the operating record, but they wouldn't  
18 object.

19 I just want to clarify for the  
20 record for most of these facilities generally  
21 doesn't either the Clean Air Act or the federal  
22 CCR rule already require them to have a fugitive  
23 dust plan onsite? Is it working?

24 MS. MARTIN: Lauren Martin. Not

1 necessarily.

2 MS. WILLIAMS: I couldn't hear what  
3 you said, but I thought you said not necessarily.

4 MS. MARTIN: That is correct.

5 MS. WILLIAMS: Okay. So I guess  
6 you're answering my question by saying that  
7 someone might not have a fugitive dust plan  
8 onsite, but I think really what I was really  
9 trying to get to is do many of these facilities  
10 already have them onsite so we can talk about how  
11 they're handled now, is that correct, or do you  
12 disagree? Not whether everyone has to have one,  
13 but do any facilities already have one?

14 MS. MARTIN: We don't know which  
15 facilities are necessarily required to have one,  
16 but we suspect that they do.

17 MS. WILLIAMS: So maybe there aren't  
18 any Agency witnesses that can answer this next  
19 question either, but I will ask it as a follow up.

20 Would the Agency agree that when  
21 an Agency inspector arrives at the facilities that  
22 I'm thinking of, I guess I'll speak for myself,  
23 but I think most regulated facilities have this  
24 plan already required.



1                   When the inspector from the  
2 Agency shows up, is not one of the first things  
3 that they want to ask to look at and ensure is  
4 compliance with a fugitive dust plan? And if no  
5 one is here to answer that, that's fine.

6                   MS. MARTIN: Lauren Martin. It  
7 depends on the nature of the inspection for the  
8 reason that the Agency personnel are onsite.

9                   MS. WILLIAMS: So would you -- would  
10 you -- so you're saying sometimes an inspector  
11 would come and they wouldn't ask to see if they  
12 have a fugitive dust plan if one is required?  
13 They come and they just wouldn't ask about that if  
14 they're inspecting a site that is required to have  
15 one?

16                   I'm not going to waste any more  
17 time on this issue. I just wanted to try to make  
18 the point this has been going on for a long time  
19 and it's been working well and I was hoping the  
20 Agency could present testimony that would explain  
21 why it's not necessary to worry about submitting  
22 to the permit section a plan that will primarily  
23 be utilized by inspectors in the field when they  
24 go to make sure it's being done properly in the

1 field.

2 MS. ZEIVEL: That's noted by the  
3 Agency. This is Christine Zeivel. We believe the  
4 question asked has already been answered.

5 HEARING OFFICER HORTON: Any further  
6 questions?

7 MS. WILLIAMS: No.

8 HEARING OFFICER HORTON: Okay. So,  
9 Dynegy, questions on Section 500?

10 MR. MORE: We have no affirmative  
11 questions on Subpart E.

12 HEARING OFFICER HORTON: Okay.

13 MR. MORE: We reserve the right for  
14 follow up.

15 HEARING OFFICER HORTON: Certainly.  
16 IERG, questions on Section 500?

17 MS. BROWN: This is Melissa Brown.  
18 No questions on this section.

19 HEARING OFFICER HORTON: Okay.  
20 Ameren, questions on --

21 MS. MANNING: This is Claire  
22 Manning. No questions on this subpart.

23 HEARING OFFICER HORTON: Certainly.  
24 AG's Office, questions on 500?

1 MR. ARMSTRONG: Andrew Armstrong.

2 We have no questions on this subpart. Thank you.

3 HEARING OFFICER HORTON: Okay.

4 Mr. Rao, Ms. Brown, questions on Section 500?

5 MR. RAO: Can you hear me?

6 HEARING OFFICER HORTON: Mr. Rao?

7 MR. RAO: Yes.

8 HEARING OFFICER HORTON: We can hear  
9 you.

10 MR. RAO: I have no questions until  
11 845.600.

12 HEARING OFFICER HORTON: 600. Okay.  
13 Circling back then to Ms. Legge. I believe you  
14 had one final question.

15 MS. LEGGE: I did have one follow-up  
16 question. Thank you.

17 So this is actually -- I -- this  
18 is a question from Midwest Generation for  
19 Ms. Martin Question 49, which is on Page 18 of  
20 Exhibit 3.

21 MS. MARTIN: All right. We're  
22 there.

23 MS. LEGGE: Thank you. Is this the  
24 Agency's position that keeping ash wet in an

1 impoundment without more could be sufficient to  
2 control fugitive dust?

3 MS. MARTIN: Lauren Martin. It only  
4 needs to be damp. It does not need to be fully  
5 saturated.

6 MS. LEGGE: So is that a yes or a  
7 no?

8 MS. ZEIVEL: The question has been  
9 answered.

10 MS. LEGGE: Is all coal ash in an  
11 impoundment wet or damp?

12 MS. MARTIN: Lauren Martin. It  
13 depends on the water level in the impoundment.

14 MS. LEGGE: So there are instances  
15 where ash might be piled higher than the water  
16 level in the impoundment?

17 MS. MARTIN: Yes, certainly. This  
18 is Lauren Martin. Yes, it could be higher than  
19 where the water level is in the impoundment.  
20 However, that doesn't change the fact that it  
21 could be damp and that would be sufficient to stop  
22 dust or control dust.

23 MS. LEGGE: Could it also be dry?

24 MS. MARTIN: Yes.

1 MS. LEGGE: Which would not be  
2 sufficient to control dust?

3 MS. MARTIN: No.

4 MS. LEGGE: Thank you. That's all  
5 of my questions on 500.

6 HEARING OFFICER HORTON: Okay. Any  
7 follow-up questions on 500? Okay. Moving on to  
8 510. Hydraulic -- Hydrologic and Hydraulic  
9 Capacity Requirements for CCR Surface  
10 Impoundments.

11 We'll begin at the start.  
12 Ms. Legge, do you have questions of 510?

13 MS. LEGGE: I do not have any  
14 questions on 510, but Ms. Bugel might.

15 HEARING OFFICER HORTON: Sorry.

16 MS. BUGEL: That's okay. We're  
17 bouncing back and forth. We don't have questions  
18 on 510.

19 HEARING OFFICER HORTON: Okay. So  
20 moving to City of Springfield.

21 MS. WILLIAMS: One very quick  
22 question following up on the question I asked  
23 about this section in the pre-filed questions. So  
24 that would be CWLP Question 3. I just want to

1 make sure that in the answer to 3(e) there wasn't  
2 any confusion in the question that you were  
3 answering and I was asking the same question.

4           So the Agency's answer that a  
5 power plant could bring online a new unit  
6 requiring an increase in the volume of liquids and  
7 CCR going to an impoundment that that is an  
8 example of a change that would not require an  
9 amendment to the plan, it would just be included  
10 in an annual update, but would not require the  
11 plan to be amended in between annual updates, is  
12 that what the Agency's testimony was in that  
13 answer?

14           MS. ZEIVEL: Ms. Williams, can you  
15 restate your question? Are you asking if we stand  
16 by our answer?

17           MS. WILLIAMS: I'm trying to make  
18 sure you understood the question and that you  
19 answered it -- that you meant to answer it the way  
20 that you did.

21           I can build a new unit and start  
22 sending waste to the ash pond, but I wouldn't have  
23 to amend the plan and that's the answer and I'm  
24 fine with that answer. I just want to make sure

1 that I'm not -- that that's -- that, yes, you  
2 still stand by the answer understanding the  
3 question now. It occurred to me the question may  
4 be worded confusingly. So I just wanted to give  
5 you that opportunity.

6 MR. BUSCHER: With regard to that,  
7 it would require consideration, but it may not  
8 require a change in the plan.

9 MS. WILLIAMS: Okay. Thank you.  
10 That's all I needed.

11 HEARING OFFICER HORTON: Was that  
12 Mr. Buscher?

13 MR. BUSCHER: Yes. Mr. Buscher.

14 HEARING OFFICER HORTON: Unless I'm  
15 mistaken, no other questions for 510. Any  
16 follow-up questions on 510? Okay. Moving on to  
17 520 Emergency Action Plan.

18 Ms. Legge or Ms. Bugel, any  
19 questions on 520?

20 MS. BUGEL: No questions.

21 HEARING OFFICER HORTON: City of  
22 Springfield?

23 MS. WILLIAMS: No.

24 HEARING OFFICER HORTON: IERG, any

1 questions on 520?

2 MS. BROWN: Melissa Brown. None for  
3 520.

4 HEARING OFFICER HORTON: Okay.  
5 Moving on to 520 Safety and Health Plan.

6 Ms. Legge or Ms. Bugel, any  
7 questions on 530?

8 MS. BUGEL: I believe Ms. Legge has  
9 questions for us.

10 HEARING OFFICER HORTON: Okay.  
11 Ms. Legge, 530 any questions?

12 MS. LEGGE: I do have some questions  
13 on 530. So turning to Exhibit 2 beginning on Page  
14 115. Let me turn there myself. This is the  
15 pre-filed answers from questions directed to  
16 Ms. Martin.

17 On Question 18, it refers to  
18 Material Safety Data Sheets. We already discussed  
19 that in Section 500. One follow-up question. You  
20 stated that the Agency plans to enforce the  
21 requirement. Will the Agency review the Material  
22 Safety Data Sheets for sufficiency and adequacy or  
23 will they review just to say they have them?

24 MS. MARTIN: Lauren Martin. We will



1 be reviewing that they have them, not for  
2 sufficiency.

3 MS. LEGGE: And is there ways for  
4 members of the public to get access to the  
5 Material Safety Data Sheets?

6 MS. MARTIN: Lauren Martin. The  
7 Agency believes the Safety Data Sheets are part of  
8 the safety and health plan, which would be posted  
9 to the operating record and online for the public  
10 to see.

11 MS. LEGGE: Moving on to Question  
12 19(a), which asks about changing the word  
13 implement to the word consider in proposed Section  
14 845.530(b).

15 How will the Agency enforce --  
16 reword. Will the Agency enforce this provision  
17 that requires that the NIOSH pocket guide be  
18 considered?

19 MS. MARTIN: Lauren Martin. Can you  
20 clarify what is different about the question  
21 you're asking than the question that was already  
22 asked?

23 MS. LEGGE: The question that was  
24 already asked in the pre-filed questions asked why

1 did the Agency change the word implement to  
2 consider?

3 Now, I'm asking does the Agency  
4 plan to enforce the requirements that the NIOSH  
5 pocket guide be considered. Your response says  
6 it's meant for consideration and should be  
7 considered.

8 Is that something the Agency  
9 will enforce?

10 MR. LECRONE: No.

11 MS. LEGGE: Is that an answer?

12 MS. MARTIN: Lauren Martin. No, it  
13 is not part of the federal regulation.

14 MS. LEGGE: Is it part of -- is it  
15 an enforceable requirement of Part 845?

16 MS. MARTIN: Lauren Martin. NIOSH  
17 is a recommendation. It is not the position of  
18 the Agency that we are going to enforce the  
19 recommendation.

20 MS. LEGGE: And not enforce the  
21 requirement to consider it either?

22 MS. MARTIN: Lauren Martin. No.

23 HEARING OFFICER HORTON: This is  
24 Vanessa Horton in the hearing room. I note that

1 it is 4:47 -- I'm sorry. 3:47 and we'll be ending  
2 the hearing at 4:00.

3 Ms. Legge, would it be possible  
4 for you to conclude your questions on the entirety  
5 of Section 500 before then? I'd like to begin  
6 with Subpart F tomorrow.

7 MS. LEGGE: I can try.

8 HEARING OFFICER HORTON: All right.  
9 Let's try.

10 MS. LEGGE: Okay. In your answer to  
11 19(b), the last sentence of your answer you state  
12 the Agency is just pointing out the two ways in  
13 which to comply with the federal regulation.

14 Can you please clarify which two  
15 ways that sentence is referring?

16 MS. MARTIN: All right. Lauren  
17 Martin here. The OSHA regulation for -- that  
18 covers the RCRA is 29 CFR 1910.120. So there --  
19 but to follow up on that 29 CFR 1910.1200(c)  
20 says --

21 HEARING OFFICER HORTON: Ms. Martin,  
22 sorry. Slow down a little bit on the numbers.

23 MS. MARTIN: Sorry about that. So  
24 120 under 1910 is your OSHA hazardous waste reg

1 for work under RCRA-related work. Okay. So with  
2 that in mind, then you go to 29 CFR 1910.1200,  
3 which is your hazard communication reg and  
4 hazardous waste is defined, I believe, under 120  
5 and then they're hazards that don't actually fall  
6 within hazardous waste, but we were saying we want  
7 to be clear that these should be defined as well  
8 under this if that makes sense.

9 MS. LEGGE: In your response to  
10 Question 22(b), you state that at times of review  
11 the Agency will compare the safety and health plan  
12 to requirements outlined in Part 845.

13 Does the Agency -- does the  
14 Agency intend to review safety and health plans  
15 and, if so, when?

16 MS. MARTIN: Lauren Martin. If we  
17 were to receive complaints, we would review the  
18 health and safety plan. Otherwise, there is not a  
19 plan to review the health and safety plans.

20 MS. LEGGE: In your response to  
21 Question 23, you stated that the Agency has no  
22 safety experts on staff. If it does not have  
23 safety experts on staff, how will it review the  
24 plan in those times that you mentioned?

1 MS. MARTIN: Lauren Martin. So  
2 safety experts -- let's clarify. That would be  
3 somebody with a certified industrial hygienist  
4 certification or certified safety professional.  
5 However, we do have a number of staff that have a  
6 good deal of field experience. So that may in a  
7 site for site basis be used.

8 MS. LEGGE: Would the Agency plan to  
9 collaborate with OSHA or Department of Labor  
10 regarding a review of health and safety plans?

11 MS. MARTIN: Lauren Martin. No.

12 MS. LEGGE: Okay. That concludes my  
13 questions. Thank you.

14 HEARING OFFICER HORTON: Okay.  
15 Thanks very much, Ms. Legge.

16 Any further questions on Section  
17 500, any of the parts, in the room?

18 MS. WILLIAMS: Any of the parts for  
19 this section?

20 HEARING OFFICER HORTON: I'm sorry.  
21 We'll go ahead and we were on Section 530. So  
22 we're now on Section 540.

23 Any questions on inspection  
24 requirements for CCR surface impoundments?

1 MS. WILLIAMS: I have one quick  
2 follow up.

3 HEARING OFFICER HORTON: Sure. Go  
4 ahead.

5 MS. WILLIAMS: I want to ask the  
6 Agency has proposed some new language for the  
7 section in response to a Board question. So I do  
8 want to clarify it. I'm sorry. I don't want to  
9 slow things down.

10 HEARING OFFICER HORTON: No problem.

11 MS. WILLIAMS: Okay.

12 HEARING OFFICER HORTON: Let's have  
13 this be the last question of the day then.

14 MS. WILLIAMS: This is Question 44  
15 of the Board's questions and the Agency has  
16 suggested new language for new Subsection  
17 450(a)(1)(e). So I thought I understood what this  
18 section meant in the practical terms. The  
19 facility as it was written before. Now, I'm a  
20 little more confused or I find it may be a little  
21 more difficult to comply with.

22 So what it says now intervals  
23 not exceeding 7 days and after each 25-year  
24 24-hour storm inspect for the following. So in

1 the real world, maybe you cannot be paying  
2 attention to the storm, per se. You just tell the  
3 staff "You know you have to get out there every  
4 seven days and, man, if there's a big rain, you  
5 better get out there and do another inspection."

6 Okay. I haven't spent a lot of  
7 time looking up the 25-year 24-hour storm, right?  
8 Is it a big rain? Then you're covered. But  
9 correctly the Agency says you can look this up.  
10 You can find out for your spot how many inches of  
11 rain over a 24-hour period would qualify and the  
12 Agency says the owner would only need a rain gauge  
13 at their location to know that.

14 Now, isn't it correct that you  
15 need more than just to know how much rain fell?  
16 You would have to know when the rain started and  
17 when the rain stopped within a 24-hour period to  
18 determine if a 25-year 24-hour storm has occurred,  
19 is that correct?

20 MR. DUNAWAY: Lynn Dunaway. You  
21 would have to check your gauge every 24 hours to  
22 see if that volume had fallen.

23 MS. WILLIAMS: And you would have to  
24 empty it and start over, is that what you're

1 saying?

2 MR. DUNAWAY: Correct, for 24 hours.

3 MS. WILLIAMS: What if it is raining  
4 at that point? What is your 24-hour start -- it  
5 starts with the rain, right? So do you go out  
6 when it starts to rain and make sure it's been  
7 emptied? I guess I'm just suggesting that this is  
8 an attempt to make it clearer to everyone and more  
9 specific, but I think it may actually make it much  
10 more difficult to follow and enforce than it may  
11 appear.

12 So I just want the Agency to  
13 think about that before they include this language  
14 in suggestions that they're going to recommend  
15 that the Board adopt if that's okay.

16 MR. DUNAWAY: Lynn Dunaway. Duly  
17 noted.

18 HEARING OFFICER HORTON: Okay.

19 MR. DUNAWAY: The issue raised by  
20 the Board, however, was if that rain falls with --  
21 how soon after that large rain falls must an  
22 inspection be done. So we were trying to clarify  
23 that.

24 The Agency would obviously



1 welcome any amendment or suggestions that your  
2 Board could also approve to actually make this  
3 more clear, but our intent was to distinguish  
4 between the weekly requirement and any --

5 HEARING OFFICER HORTON: Any what  
6 requirement, the last bit?

7 MR. DUNAWAY: Any large rainfall  
8 that occurred between the weekly inspections.

9 MS. WILLIAMS: I understand. I  
10 understood the Board's point, too, but I think  
11 obviously if you go out right after the rain it's  
12 going to alter your weekly schedule. So I think  
13 that it's pretty clear you're supposed to go out  
14 no more than seven days apart and after a rain,  
15 but we can look at maybe something else that might  
16 address it. Thank you.

17 HEARING OFFICER HORTON: Okay. That  
18 was Section 540. Any questions on 550?

19 MS. BUGEL: Hearing Officer, I have  
20 questions on 550.

21 HEARING OFFICER HORTON: Let's hold  
22 them until tomorrow actually because we're right  
23 at 4:00. So we'll begin tomorrow with 550 with  
24 Ms. Bugel --

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MS. BUGEL: Yes.

HEARING OFFICER HORTON: -- and  
carry on from there. So we're adjourned for now  
and we'll return here at 5:00 for comments from  
members of the public. Thank you.

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2  
3           I, Steven Brickey, Certified Shorthand  
4 Reporter, do hereby certify that I reported in  
5 shorthand the proceedings had at the trial  
6 aforesaid, and that the foregoing is a true,  
7 complete and correct transcript of the proceedings  
8 of said trial as appears from my stenographic  
9 notes so taken and transcribed under my personal  
10 direction.

11           Witness my official signature in and for  
12 Cook County, Illinois, on this \_\_\_\_\_ day of  
13 \_\_\_\_\_, A.D., 2020.

14  
15  
16  
17  
18           \_\_\_\_\_  
19 STEVEN BRICKEY, CSR, RMR  
20 8 West Monroe Street  
21 Suite 2007  
22 Chicago, Illinois 60603  
23 Phone: (312) 419-9292  
24 CSR No. 084-004675

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