

ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB,)
ENVIRONMENTAL LAW AND)
POLICY CENTER, PRAIRIE)
RIVERS NETWORK, and)
CITIZENS AGAINST RUINING)
THE ENVIRONMENT,)
Complainants,)
vs.) No. PCB 13-15
MIDWEST GENERATION,)
Defendant.)

TRANSCRIPT FROM DAY FOUR of the PROCEEDINGS
taken before HEARING OFFICER BRADLEY HALLORAN at
the Michael M. Bilandic Building, Room N-505,
Chicago, Illinois, on the 18th day of May, 2023,
A.D., at 9:00 o'clock a.m.

Reported by: Kari Wiedenhaupt, CSR

License No.: 084-004725

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I N D E X

WITNESS	EXAMINATION
RICHARD GNAT	
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E X H I B I T S

NUMBER	MARKED FOR ID
COMPLAINANTS' EXHIBIT	
No. 1330 (previously)	124
No. 1331	8
No. 1332	69
No. 1400	148
No. 1401	200
No. 1402	233
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No. 1407	305

1 MWG EXHIBIT (previously marked)

2 No. 626 197

3 No. 636 177

4 No. 647 184

5 No. 656 194

6

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ADMITTED INTO EVIDENCE

8 COMPLAINANTS' EXHIBIT

9 No. 1331 68

10 No. 1332 107

11 No. 1401 232

12 No. 1402 246

13 No. 1403 263

14 No. 1406 305

15 No. 1407 317

16

17 OFFER OF PROOF

18 COMPLAINANTS' EXHIBIT

19 No. 1405 290-294,

20 295-298

21

22

23

24

1 HEARING OFFICER HALLORAN: All
2 right. We are on the record. Good morning,
3 everybody. My name is Bradley Halloran, a hearing
4 officer at the Illinois Pollution Control Board.
5 We are in Day 4 of this PCB 13-15 remedy hearing,
6 and it has been continued on record from
7 yesterday.

8 Before I move on, I want to
9 note, for the record, that Environmental Scientist
10 Anand Rao is here. We have staff attorney Vanessa
11 Horton and Chloe Salk as well.

12 With that said, you know, it's
13 been a while since we introduced people.
14 Environmental groups, if you'd just take, you
15 know, your turn and just introduce yourself for
16 the record.

17 MR. WANNIER: Yeah, sure. I will
18 start on this end. Greg Wannier, counsel for --
19 at the Sierra Club, representing the Sierra Club.

20 MS. WACHSPRESS: Megan Wachspress at
21 the Sierra Club, representing the Sierra Club.

22 MS. BUGEL: Faith Bugel, Attorney At
23 Law, representing Sierra Club.

24 MR. RUSS: Abel Russ, Environmental

1 Integrity Project on behalf of Prairie Rivers
2 Network.

3 MS. GALE: Kristen Gale, with my
4 partners, Jennifer Nijman and Drew Nishioka, on
5 behalf of Midwest Generation, LLC.

6 HEARING OFFICER HALLORAN: All
7 right. Thank you. I think we left off yesterday,
8 Mr. Russ is doing an adverse direct on Mr. Gnat.

9 And at this point, Mr. Gnat, if
10 you could raise your right hand again just in case
11 the oath wore off somehow and the court reporter
12 will swear you in.

13 (Whereupon, the witness was duly
14 sworn.)

15 HEARING OFFICER HALLORAN: Okay.
16 Thank you. Mr. Russ. You may proceed.

17 MR. RUSS: Thank you, your Honor.

18 Just as background, we conferred
19 with opposing counsel and tried to seek a
20 compromise, and we offered to try to admit
21 excerpts. They would still like us to read
22 through the document and establish relevance for
23 various sections and subsections. So that's what
24 we are going to do.

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Starting with Exhibit 1331.
(Whereupon, Complainants'
Exhibit No. 1331 was previously
marked for identification.)

HEARING OFFICER HALLORAN: And this
is the one I admitted under the relaxed Standard
101.626, but I indicated it yesterday I may revise
my ruling, but you may proceed.

MR. RUSS: Yeah, actually, could I
ask for clarification? I thought you had
revisited your ruling, but I guess it doesn't
really matter, but is the ruling still on the
record for now?

HEARING OFFICER HALLORAN: The
ruling, it's in as of now.

MR. RUSS: Okay.

HEARING OFFICER HALLORAN: But I can
revise my ruling.

1 WHEREUPON:

2 R I C H A R D G N A T

3 called as an adverse witness herein, pursuant to
4 Section 1-01.624 of procedural rules of the
5 Illinois Pollution Control Board, having been
6 first duly sworn, deposeseth and saith as follows:

7 C R O S S E X A M I N A T I O N C O N T ' D

8 by Mr. Russ

9 Q. Good morning, Mr. Gnat.

10 A. Good morning.

11 Q. Do you have Exhibit 1331 in front of
12 you?

13 A. I do.

14 Q. And apologies for -- this might be a
15 little tedious, but could you turn to the table of
16 contents again? I think we did this yesterday.

17 THE COURT REPORTER: Would you speak
18 up a little bit?

19 BY MR. RUSS:

20 Q. Yeah. I think we did this
21 yesterday, but I just want to look at the table of
22 contents one more time.

23 A. Yes. I have it in front of me.

24 Q. Great. Thank you.

1 **Now, I believe yesterday you**
2 **said that you -- you were responsible for writing**
3 **Section 9 of the report; is that right?**

4 A. That is correct, yes.

5 **Q. And does that include Attachment 9?**

6 A. Yes.

7 **Q. And figures that start with 9?**

8 A. Yes.

9 **Q. And tables that start with 9?**

10 A. Yes.

11 **Q. Okay. Thank you.**

12 **And I think you also said that**
13 **you -- that KPRG played a role in drafting some of**
14 **the texts associated with Section -- Sections 1**
15 **and 2?**

16 A. Correct.

17 **Q. And 10, 11, and 12?**

18 A. 12? I'm not sure who wrote 12, if
19 it -- if KPRG was involved. I was not involved in
20 that. One of our engineers would be. I do not
21 know if Section 12 was a KPRG section or if that
22 was one of the other consultants pulling other
23 parts of this plan together.

24 **Q. Okay. Is it possible that it was**

1 **KPRG?**

2 A. I believe I just said I don't know.
3 It is possible, but it may not be. I --

4 **Q. Right.**

5 A. I don't know.

6 **Q. Okay. Thank you.**

7 **And Section 13, I believe you**
8 **said you worked on that, or KPRG worked on that?**

9 A. That is correct, yes.

10 **Q. And Section 20?**

11 A. I believe so. I was not involved in
12 that. So, again, I believe we went over that.
13 There are two parts to that, that I -- I'm aware
14 of, but I know that the -- when they checked the
15 website there, I was not part of that, I don't
16 know.

17 **Q. Okay. And for the -- for just the**
18 **text part of the report, which starts on page --**
19 **the introduction starts on page 110637?**

20 A. Yes.

21 **Q. This is a narrative text that goes**
22 **for, I can't remember, 20 pages or something like**
23 **that.**

24 **When KPRG compiled it, did KPRG**

1 **review and edit the text?**

2 A. Well, certainly text is reviewed and
3 edited as it's being pulled together in a report,
4 and a lot of this is basically a compendium of,
5 you know, historical information, so --

6 **Q. Right.**

7 A. So, yes, it's -- things are reviewed
8 and edited, but did I review and edit everything
9 personally? No.

10 **Q. Understood. Thank you.**

11 **Turning to Section 9 of the**
12 **text, which -- bear with me -- begins on page**
13 **110647.**

14 A. Okay.

15 **Q. Can you describe what a**
16 **hydrogeologic site characterization entails?**

17 A. Sure. It's -- it's basically a
18 compiling of all of the available -- that there
19 was a lot of already available information, and
20 basically compiled it to provide a synopsis and an
21 understanding of -- a conceptual model type
22 understanding of the geology and hydrogeologic
23 conditions of the site, understand which way the
24 groundwater is flowing, the gradient, and so on.

1 **Q. Okay. Does this include evaluating**
2 **groundwater levels in the various monitoring wells**
3 **that we've talked about in specific?**

4 A. That is part of the development of
5 the groundwater flow in that, yes.

6 HEARING OFFICER HALLORAN: Mr. Russ,
7 keep your voice up, please.

8 MR. RUSS: Sure.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 BY MR. RUSS:

12 **Q. And does that include characterizing**
13 **the presence of ash and soil borings?**

14 A. I don't know if specifically it goes
15 into that within the section. I would have to go
16 back and reread some of the specifics, but
17 certainly all the boring logs are provided in
18 here, and I know that the boring logs that are
19 included within my attachment, we went through --
20 almost individually during the previous hearing
21 and specifically in regards to their content and
22 the question of ash.

23 **Q. Right. Thank you.**

24 **Now, turning to page 110651.**

1 There is a section of texts entitled, "Groundwater
2 Monitoring System Design and Construction Plans;"
3 is that right?

4 A. Yes.

5 Q. The first sentence says, "A
6 comprehensive monitoring well network in the
7 vicinity of the east and west ash ponds was
8 established in 2010, the CCA, as well as other
9 work in the area (e.g. the ELUC wells installed as
10 part of the Giess-Pfleger tannery site
11 investigation/remediation located immediately west
12 of the Waukegan Generation Station.)"

13 My only question about this is,
14 does this section encompass monitoring wells that
15 are included as part of CCA compliance and also
16 other monitoring wells?

17 A. Correct. We used all the
18 information possible to provide the overall
19 understanding of the site, yes.

20 Q. And is it safe to say that, for
21 example, groundwater flow and groundwater quality
22 on the east side of the site is affected by
23 groundwater flow and groundwater quality on the
24 west side of the site?

1 A. Yes, it is. Groundwater flows from
2 west to east, yes.

3 Q. Thank you.

4 Turning to page 110656. There
5 is a section entitled, "Quality Assurance and
6 Quality Control Laboratory."

7 A. Yes.

8 Q. Which laboratory did you use?

9 A. Midwest Generation has a contract
10 with Eurofins laboratory. Test America --
11 formerly Test America, and now it's called
12 Eurofins, and their main local presence here is in
13 University Park, Illinois.

14 Q. Now, turning to the -- I think it's
15 the next page, 110657.

16 A. Yes.

17 Q. There is a section about the
18 groundwater monitoring program section?

19 A. Yes.

20 Q. And it lists three upgradient wells
21 and three downgradient wells?

22 A. Actually, five downgradient, 1
23 through 4 and MW-16. So that would be five.

24 Q. I'm sorry, right. Thank you for the

1 correction.

2 And it says "subject unit."

3 What is the subject unit here?

4 A. The subject unit here would be the
5 regulated unit that's actually both the ponds --
6 the east pond and the west pond combined.

7 Q. Okay. And were these upgradient
8 wells equivalent to background wells?

9 A. That is correct. I identified three
10 wells in which I was going to try to use the
11 groundwater quality from those wells to try and
12 establish a background for the site, correct.

13 Q. And I believe yesterday you
14 testified that for some purposes you want
15 background wells that might be located where these
16 are. For other purposes, you might want
17 background wells that are located more immediately
18 adjacent to the subject unit; is that right?

19 A. That is correct, yes.

20 Q. Okay. Thank you.

21 Turning to page 110658. That's
22 where Section 10 starts, right?

23 A. 110658, yes, at the bottom of that
24 page.

1 **Q. And I believe yesterday when**
2 **Ms. Bugel was asking the questions, she asked**
3 **about whether this closure plan is still current,**
4 **and your response was that you weren't sure. You**
5 **didn't know; is that correct?**

6 **A. That is correct. You know, I did**
7 **not review exactly what was in here, and**
8 **obviously, some time has passed, but I believe**
9 **it's still actually -- as I reviewed it a little**
10 **bit last night there -- that it was correct.**

11 **Q. Okay. Thank you.**

12 **Section 11, Post-Closure Plan,**
13 **did you have anything to do with that section?**

14 **A. No, I did not.**

15 **Q. Okay.**

16 **A. Well, KPRG did. Generally, just**
17 **like Section 10, KPRG was part of that, but I did**
18 **not develop that.**

19 **Q. Okay. And I believe I already asked**
20 **about Section 12. Sections 13 through 19, I think**
21 **you stated that KPRG was not involved in those**
22 **sections?**

23 **A. Well, Section 13, I -- KPRG was, and**
24 **I was involved actually in that as well. That**

1 basically is just a summary of some of the
2 information that's already out in previous reports
3 as to what we know or some of what might be some
4 exceedances under the proposed -- what our
5 proposed groundwater protection standards are and
6 so on.

7 Q. Okay.

8 A. And it's basically just a summary of
9 that information that's already out there.

10 Q. Okay. And Section 14, Financial
11 Assurance, did you have any involvement in that
12 section?

13 A. No, I did not.

14 Q. Skipping ahead quite a bit, I would
15 like to -- oh, wait, I'm sorry. Not quite a bit.

16 Can we just go to where the
17 tables start, which is, I think, on page 110663?
18 That's the section header for Operating Permit
19 Tables, I think?

20 A. Yes.

21 Q. The first table is actually called
22 Table 2, correct?

23 A. Correct.

24 Q. Can you explain what this shows?

1 A. That is a -- basically just a -- the
2 parameter list for the CCR chemical constituents,
3 and I believe this is an ash sample result that
4 was collected on July 1st, 2021.

5 **Q. Okay. Thank you. Do you recognize**
6 **any coal ash indicators in this list?**

7 A. Sure. This is the list of Appendix
8 3, Appendix 4 parameters from the federal rule, as
9 well as the same parameters generally that are
10 identified in the state rule as well.

11 **Q. Okay. Thank you. The next table is**
12 **called Table 9-1; is that right?**

13 A. Correct.

14 **Q. And this shows average monthly**
15 **precipitation at Waukegan?**

16 A. Yes.

17 **Q. This is presumably the precipitation**
18 **that would be blocked by a cap over the former**
19 **slag and flash area, correct?**

20 A. Correct. This is the average
21 monthly precipitation. I believe it's from the
22 Waukegan airport area, if I remember correct.

23 **Q. Okay. Thank you.**

24 **Now, the next table is Table**

1 **9-2. Can you explain what this shows?**

2 A. 9-2 is a summary of groundwater
3 elevations collected over time from 2015 through
4 May of '21, 2021, for the monitoring wells
5 specified in the groundwater network, monitoring
6 network.

7 Q. And on page -- thank you.

8 On page 110667, can you look at
9 the bottom section of that from Monitoring Well
10 11?

11 A. Yes.

12 Q. Is -- am I reading this right? Does
13 this show depth to groundwater ranging between
14 five and seven feet?

15 A. That Monitoring Well 11, that is
16 correct. And that is up on THE upgradient
17 property boundary off of the tannery site,
18 correct.

19 Q. Right. Thank you. Okay.

20 A. And that is also relative to ground
21 elevation at that point.

22 Q. Absolutely, yep. Thanks for the
23 clarification.

24 Can you now turn to Table 9-3,

1 **which is on page 110669?**

2 A. Yes.

3 **Q. Can you explain what seepage**
4 **velocity means?**

5 A. Sure. This is a calculation that's
6 required by the both the federal and the state
7 rule, and seepage velocity is the estimated
8 velocity of groundwater movement through the
9 aquifer matrix.

10 **Q. Okay. And do you remember -- were**
11 **you here when Mr. Quarles was testifying?**

12 A. Yes, I was.

13 **Q. Do you remember there was a**
14 **discussion about whether the groundwater velocity**
15 **would change after de-watering of an impoundment?**

16 A. I -- I don't remember exactly what
17 he might have said, but relative to this, the
18 ground -- the impoundment itself is isolated from
19 the groundwater flow system. So I believe if you
20 would de-water the east pond and the west pond,
21 our groundwater flow direction would not be
22 affected.

23 **Q. I agree. I'm actually wondering**
24 **more about the former slag and fly ash area. If**

1 **Midwest Generation were to put a cap over that**
2 **area, could it change the groundwater velocity**
3 **underneath it?**

4 MS. NIJMAN: Objection to asking an
5 opinion of this witness. It's an expert opinion.
6 He can ask that of Weaver when they are
7 testifying, but --

8 HEARING OFFICER HALLORAN: Mr. Russ?

9 MR. RUSS: I can rephrase.

10 HEARING OFFICER HALLORAN: That
11 would be great. Thanks.

12 BY MR. RUSS:

13 **Q. Have you had the opportunity to**
14 **review groundwater estimates under different**
15 **scenarios at this site?**

16 A. Under different scenarios? We did
17 do some under the construction permit application.
18 We did do some modeling on contaminant transport
19 primarily. We weren't specifically evaluating the
20 associated flow impacts with that, but, I guess,
21 in answer to your question, I really think,
22 especially in this forum, the answer to that is
23 you would really have to establish a model to test
24 it and see once you put the cap on, what is that

1 effect, and how might that be projected, rather
2 than trying to speculate on that.

3 **Q. And in your capacity as a principal**
4 **at KPRG, do you use models to estimate groundwater**
5 **flow?**

6 A. Well, just standard, you know,
7 analytical solutions in two dimensional flow when
8 you do your flow maps. You know, that's basically
9 on -- based on water levels and the -- the aerial
10 distribution of those water levels, and you
11 contour them out.

12 If we need to get a little more
13 quantitative on something, we do -- we do
14 additional analytical solutions, but we also will
15 then look at potentially doing three-dimensional
16 numerical models.

17 Now, numerical modeling is a
18 very specialized field within our -- a very big
19 niche within groundwater, within hydrogeology. I
20 personally am not a groundwater modeler. I know
21 enough to -- to help direct it and understand it
22 and help interpret the results, but establishing
23 the model, running the model, calibrating it? We
24 do use an associate firm that specializes in this

1 called BAS Groundwater Consulting out of
2 Evergreen, Colorado.

3 Q. Okay. Thank you.

4 And is one of the models that's
5 used for this called MODFLOW?

6 A. That is correct. That is a very
7 well-known USGS-based model for numerical
8 modeling, yes.

9 Q. Okay. And would the information in
10 this table be used as an input?

11 A. Certainly some of this information
12 would be used as an input, as well as other
13 information, yes.

14 Q. Thank you. The next page includes a
15 very fine print table, and I don't necessarily
16 think there is any need to look at the details,
17 but can you explain what this table is on page
18 110670?

19 A. Sure. This is a summary table of
20 groundwater analytical results for the Waukegan
21 station, and this is CCR data. It includes our
22 background -- eight rounds of the background
23 sampling, as well as subsequent sampling. It is
24 a -- basically a summary of data that's already

1 been out there in various other reports and that
2 we have covered in various of these other
3 documents. So it's obviously just a documentation
4 in support of what we are discussing.

5 **Q. Right. Can you turn to page 110673?**

6 **A. Okay.**

7 **Q. Can you explain what this table**
8 **shows?**

9 **A. Sure. This is some supplemental**
10 **groundwater information that's required under the**
11 **state rule, but not under the federal rule. The**
12 **state has required turbidity measurements with**
13 **each round of sampling, and so since we didn't**
14 **have any available data at this point for**
15 **turbidity under the federal rule, these are our**
16 **initial rounds of turbidity measurements starting**
17 **in March of '21 and ending in September of '21.**

18 **Q. Okay. Thank you. I was actually on**
19 **a different page, but I'm glad you mentioned that.**

20 **Since this information you said**
21 **was not available pursuant to the CCR federal**
22 **rule, is this information available on the federal**
23 **CCR rule website?**

24 **A. Not on the federal website. It is**

1 on the state.

2 Q. Okay. And the next page, 110673, is
3 called Table 9-6, and it says, summary of sample
4 bottles preservation holding time, and so on. Do
5 you see that?

6 A. Yes, I do.

7 Q. Can you explain what this table is?

8 A. This table is -- when you put
9 together a sampling plan which is required as part
10 of our permit application, you also identify what
11 the lab requirements are going to be in terms of
12 container types and so on by -- by parameter. And
13 so this table summarizes for each parameter that
14 we are going to be analyzing them for, the
15 analytical method the lab is going to be using,
16 the container type for collection, the
17 preservation method, the hold time that is allowed
18 for by the lab, and the method detection limit
19 that we are shooting for the lab to achieve, and
20 then the last column includes the 8 -- Section
21 845.600(a) standards.

22 Q. Thank you. Can you explain what the
23 method detection limit is?

24 A. Sure. That is the detection limit

1 that the -- the analytical method that the lab
2 will be using. That is the statistically
3 identified limit of detection that above that
4 limit, they are within all of the required
5 statistical accuracies, so to speak, and you start
6 dropping below that limit, they are outside of the
7 window, and it's no longer -- they will usually
8 flag it with a J-value, which says it's an
9 estimated value.

10 Q. All right. Thank you.

11 Is that -- is the method
12 detection limit the same as a reporting limit?

13 A. I believe so. I believe so. I
14 might misspeak on that.

15 Q. Okay. I'm also confused about that,
16 too.

17 Now, Table 9-7 on page 110674?

18 A. Yes.

19 Q. These proposed groundwater
20 protection standards in the far right column?

21 A. Yes.

22 Q. Is that what that is? Are these the
23 same as the groundwater protection standards under
24 the federal CCR rule?

1 A. Not necessarily, no.

2 **Q. Can you explain the difference?**

3 A. Sure. It is a slight difference. I
4 believe I am using the same wells; however, under
5 the federal -- so when you calculate the proposed
6 groundwater protection standards, you first
7 calculate your background, and your interwell
8 background, and that's where there could be a
9 slight difference.

10 The actual groundwater
11 protection standard is a comparison between the
12 statistical background that is calculated versus
13 what the Section 845.600 standard is, and whatever
14 the higher value is would be the proposed
15 groundwater protection standard. So doing the
16 interwell background, that's where a little bit of
17 the difference can come in.

18 And that's simply because under
19 the federal rule, you are looking at -- for
20 development of groundwater protection standards,
21 you are only looking at the Appendix 4 parameters,
22 not the Appendix 3 parameters, and initially
23 upfront, you're -- you can be on a semi-annual
24 monitoring. So you have got a smaller number of

1 parameters being analyzed for a smaller frequency,
2 and that affects the statistical calculations.

3 So I could then take the same
4 well, but under the state standard, I now am
5 analyzing -- for development of groundwater
6 protection standards, I am analyzing a larger
7 analytical dataset, and I'm doing it quarterly, so
8 four times a year, and so statistically in order
9 to -- there's -- within the calculations, and we
10 use a program called Sonitus to assist with the
11 calculations.

12 There is some additional air
13 factor, if you want to call it, to facilitate the
14 not having false positives, to protect against
15 false positives, and so since you are increasing
16 the number of constituents and the frequency of
17 the comparison, that statistical background value
18 can change a little bit. That is correct.

19 **Q. Okay. And, now, for boron on this**
20 **table, there is a groundwater protection standard**
21 **of 5.965 milligrams per liter; is that right?**

22 A. That is correct, yes.

23 **Q. Is there a groundwater protection**
24 **standard under the federal CCR rule for boron?**

1 A. Under the federal? Yes. I would
2 have to go back and take a look at what number we
3 used for that. It's probably pretty close.

4 **Q. Is boron an Appendix 4 constituent**
5 **in this federal CCR rule?**

6 A. Oh, I'm sorry. No. You are
7 correct. It's an Appendix 3 parameter, and you
8 don't necessarily have to generate the groundwater
9 protection standard for that.

10 **Q. And is it -- my understanding is**
11 **that under the federal CCR rule, boron because**
12 **it's on Appendix 3, is compared to background, but**
13 **without a standard?**

14 A. That is correct, yes.

15 **Q. So is it possible that some of the**
16 **boron in the downgradient wells at Waukegan would**
17 **exceed background for purposes of the federal CCR,**
18 **but not exceed the proposed groundwater protection**
19 **standards found here?**

20 MS. GALE: Objection. Again, it
21 calls for an opinion. He just proposed a
22 hypothetical to him.

23 HEARING OFFICER HALLORAN: He can
24 answer, if you are able, Mr. Gnat.

1 BY THE WITNESS:

2 A. Can you restate that?

3 BY MR. RUSS:

4 Q. Sure.

5 A. Or say it again just so I can
6 follow?

7 Q. Let me -- I can ask a couple
8 preliminary questions.

9 For the federal CCR rule, do you
10 use the same background wells?

11 A. Yes, we do.

12 Q. And -- okay. That actually -- that
13 probably answers my question better than anything.
14 So I will just take another quick look at this.

15 Now, this table shows the
16 groundwater protection standard for turbidity,
17 right?

18 A. Yes, it does.

19 Q. Is that something that's analyzed
20 under the federal CCR rule?

21 A. No, it's not.

22 Q. Okay. Thank you.

23 A. And turbidity, in and of itself, is
24 not a number that would trigger to -- any type of

1 action. It's to get an understanding of how much
2 sediment may be within that water sample, which
3 can affect some of the data interpretations as
4 that sample is placed on an acidic preservative,
5 and/or it can also help you to determine if you
6 are seeing that your turbidity in a particular
7 well is going up and up, you may want to take a
8 look at having to redevelop that well because of
9 sediment accumulation is getting too close to the
10 pump or whatnot.

11 So that, I think, is more of an
12 operational -- system operational in assistance of
13 data evaluation, as opposed to an action trigger.

14 **Q. Right. Okay. Thank you.**

15 **Now, the next page, 110675, is**
16 **where the figures begin; is that right?**

17 **A. That is correct, yes.**

18 **Q. And the first figure on my PDF, it's**
19 **all black, but I think in the print copy it's**
20 **probably white, the background.**

21 **MS. GALE: It's black.**

22 **BY MR. RUSS:**

23 **Q. Do you have the black on the printed**
24 **copy, too?**

1 A. Yes.

2 **Q. So this has the name of your company**
3 **on the bottom, correct?**

4 A. That is correct. I was not involved
5 in this. This is part of an engineering
6 evaluation. I was not involved in this. I really
7 can't speak to it.

8 **Q. Do you know what type of information**
9 **this is displaying?**

10 A. I can read the title of -- it's an
11 east ash basin area capacity curve, and this has
12 some notes here, but again, as to -- and then it
13 also says the area capacity curve created by
14 Geosyntec --

15 **Q. Okay.**

16 A. -- as part of completing. So,
17 again, this is information pulled into the permit
18 generated by another consultant.

19 **Q. Okay. Thank you for that.**

20 **I'm going to turn to Figure 9-1,**
21 **which is on page 110678?**

22 A. Yes.

23 **Q. Is this something you are familiar**
24 **with?**

1 A. Yes, I am.

2 **Q. Did you develop this?**

3 A. KPRG did, yes, and at my direction,
4 yes.

5 **Q. And earlier you were talking about**
6 **MW-11, where the depth to groundwater was five to**
7 **seven feet. Can you find that on this map?**

8 A. MW-11 is the furthest well to the
9 northwest along the western property boundary
10 downgradient of the tannery. The old tannery site
11 was to the west of here.

12 **Q. Okay. Now, you said it's**
13 **downgradient to the tannery site. Why is that**
14 **significant?**

15 A. You know, as part of -- an important
16 part of evaluating what's eventually required
17 under the rule, the evaluation is, is whether or
18 not the regulated units are leaking. And that's
19 where, you know, kind of my discussion yesterday
20 went.

21 You know, we have to somehow
22 identify some wells, assuming there -- we can
23 practically locate them or find them in an area
24 that we feel should be generally unaffected by the

1 regulated units. We did that, but then it also
2 provides us an understanding especially in heavily
3 industrial areas, which this is within, that we've
4 got an industrial property to our west, which is
5 impacting groundwater quality on our site. Ground
6 water is flowing from that site onto ours, but not
7 only just affecting our water quality, but by some
8 of the same parameters in which our regulated
9 units may be.

10 And those parameters include
11 arsenic, they include boron, and borax is a very
12 common thing used in tannery. So you have got
13 some parameters that are similar to what we are
14 going to be looking at. So one of the -- when you
15 have to do an evaluation as to whether or not what
16 you're seeing in your downgradient wells might be
17 associated with your impoundments, it's important
18 to know what's coming onto our property from
19 off-site in an industrial area.

20 And then, of course, within my
21 alternate source demonstrations, Well 5, which is
22 immediately upgradient of the ash ponds here, and
23 we have identified it's not necessarily being used
24 as a CCR well, well, we will look at the water

1 quality from that well to help us understand
2 what's going on downgradient, simply because
3 that's the closest that we can get to the unit
4 prior to water passing beneath the unit.

5 Q. Great. Okay. Great. Thank you.

6 Now, turning to the next page, I
7 think on my screen it's rotated, but it's Figure
8 9-2?

9 A. Yes.

10 Q. On page 110679 maybe? The Bates
11 pages are cut across with a horizontal line, but I
12 think that's right. Do you recognize this figure?

13 A. Yes, I do.

14 Q. Can you explain what this shows?

15 A. It's -- a part of the requirements
16 of the permit is to provide a -- a cross section
17 of the vicinity of the ash ponds and the
18 monitoring well network. And so we have a series
19 of cross sections that go from north to south and
20 east to west, east -- north to south and along
21 both sides of the regulated units and east to west
22 beneath or through the regulated unit area.

23 Q. Thank you. And there is an icon --
24 there is a box labeled "A" in the legend that's --

1 describes fill that may include ash, black cinder,
2 slag, and occasional coal and wood. Do you see
3 that?

4 A. Yes.

5 Q. And in the figure, that pattern, is
6 depicted beneath and west and east of the ash
7 ponds; is that right?

8 A. Yes, it is.

9 Q. And with -- yeah, go ahead.

10 A. I'm sorry. With the understanding
11 that we have got fill across that whole area, but
12 again, within the description, it's -- the fill is
13 brown and black, fine to medium sand, with some
14 gravel and silt seams, and it may include oc- --
15 this black cinder, slag, occasional coal ash.

16 So I -- I would have to go back
17 and look at the individual boring logs for these
18 wells to see which wells -- certainly I know Well
19 5 had some ash and cinders in it. I -- I would
20 have to look at Well 3. I believe that did as
21 well, so -- and Well 6, I -- I don't think it did,
22 but that might just be fill without ash and
23 cinder.

24 So just with that caveat, that

1 specifically on this figure you would have to go
2 back to an individual boring log to verify whether
3 or not it had the cinders and slag and so on.

4 **Q. Okay. Now, the figure -- the figure**
5 **on the lower, right inset, that shows the cross**
6 **sections, correct, where they are located?**

7 A. That is correct. So this is Cross
8 Section A - A', and that's highlighted in red in
9 that -- on that figure.

10 **Q. Yeah. And it also shows the**
11 **monitoring wells for reference?**

12 A. That is correct, yes.

13 **Q. And those are the same monitoring**
14 **wells that are discussed in the text of the**
15 **report?**

16 A. Correct.

17 **Q. Now, where is the water level on**
18 **this figure relative to the fill material?**

19 A. The water level depicted on this
20 figure is the water level measured in the well.
21 This is the actual water table. So any transient
22 water that may be in the fill above there is
23 certainly not -- not -- is not representative of
24 the water table. It's not fully saturated. It's

1 basically a wetting front if you have
2 precipitation moving through -- through the fill,
3 through the unsaturated fill.

4 And so, I mean, those water
5 levels depending on the precipitation and so on,
6 you know, could be different. This actually --
7 this is the water table. So below that line is
8 where we are interpreting everything is saturated.
9 That is the top of the water table.

10 **Q. Okay. And can you just explain**
11 **where that water table is relative to the**
12 **fill that -- the fill that's shown in Icon A in**
13 **legend?**

14 A. It's -- basically, it looks in some
15 parts coincident with the base and in other parts
16 slightly below the base of that fill.

17 **Q. Okay. And when was the -- when were**
18 **these water levels taken?**

19 A. I would have to go back and take a
20 look at which water levels were being used for
21 this map. Oh, it says, water level date May '21.

22 **Q. Thank you. And can you now scroll**
23 **down -- scroll. I'm sorry -- flip a couple of**
24 **pages to Bates page 110683?**

1 A. Okay.

2 **Q. Does this show water levels at**
3 **various times in various wells?**

4 A. Right. This is a hydrograph of the
5 monitoring wells in the -- in the network, in the
6 proposed network, and water levels from
7 November '15 through May '21.

8 **Q. Are you able to identify the water**
9 **levels on May 2021?**

10 A. I -- you know, roughly, yes. I
11 haven't --

12 **Q. Have they ever been higher than they**
13 **were on that date in this chart?**

14 A. Yes. They have been.

15 **Q. How much higher?**

16 A. Depending on the well, at Well --
17 specific well, I don't know -- 9, it's been up at
18 584, and at Well 16, it's been as high as roughly
19 584. At Well 1 on the downgradient side, it's
20 been as high as, say, 586.

21 **Q. Okay. And so the water levels**
22 **fluctuate?**

23 A. Right. And some wells certainly
24 more than others.

1 Q. And if the -- you were saying before
2 that the water level is coincident with the ash in
3 some places in the diagram we were looking at
4 previously?

5 A. Yes.

6 Q. And so that means, I guess, if the
7 water level of MW -- if the water level in May
8 2021 was lower than it had been at other times
9 historically, the water level will at times rise
10 up into the area marked as fill?

11 A. The water level will fluctuate,
12 correct.

13 Q. Okay. Thank you. And turning back
14 to this water level chart, Figure -- I'm sorry.
15 I'm having trouble scrolling here. The water
16 level chart we were looking at before is Figure
17 9-6.

18 MS. BUGEL: Bates 110683.

19 BY MR. RUSS:

20 Q. Yeah, Bates 110683. For MW-3, what
21 is the maximum water elevation for that well?

22 A. A little hard to tell on this. It
23 somewhat ties up with the thing, but it looks like
24 perhaps around 584, just slightly over.

1 Q. Okay. Thank you.

2 Now, can you turn to the next

3 figure, figure 9-7, on page 110684?

4 A. Yes.

5 Q. Can you explain what this shows?

6 A. This is a groundwater flow map from
7 water levels collected in August of 2020.

8 Q. Is this something that changes from
9 date to date? If you were to draw this same image
10 on a different date, would you see a slightly
11 different set of contours?

12 A. There will be some changes,
13 certainly, but the general flow that we've seen
14 over the time of our monitoring beneath --
15 relative to the ponds beneath the ponds itself is
16 generally in an east/southeasterly direction,
17 clearly consistent.

18 Q. Okay. Thank you.

19 And, now, the next image is
20 another contour map similar to the one before, but
21 slightly different as you were just describing?

22 A. Correct.

23 Q. And if you look at monitoring wells
24 MW-08, I recognize that it's hard to see because

1 of the pink font, but if you look at MW-08, and
2 then you look at MW-07, do you see where those
3 wells are located?

4 A. Yes.

5 Q. What direction is groundwater
6 flowing from MW-08 towards MW-07?

7 A. From MW-08 to MW-07, in a
8 southeasterly direction.

9 Q. And then the next one is another
10 contour map from a different date, again, similar
11 but slightly different, correct?

12 A. Correct.

13 MS. GALE: I'm sorry. Which one are
14 we on? We keep saying "next one."

15 MR. RUSS: I'm looking at now Figure
16 9-9 on Bates page 110686.

17 MS. GALE: And not to belabor the
18 point, but the next figure, 9-10, 110687, this is
19 another contour map, again, generally similar, but
20 slightly different; is that correct?

21 A. Correct.

22 Q. And can you now turn to page 110689?
23 Can you explain what this one shows?

24 A. Is this our Figure 9-2? I can't see

1 the Bates numbers, yeah. This is the 2500-foot
2 radius around the regulated units that was used as
3 part of the potable well evaluation required under
4 the permit --

5 **Q. Okay.**

6 A. -- in the application.

7 **Q. So the requirement, as you**
8 **understood it, was to look within this radius to**
9 **see if there are any potable wells?**

10 A. Correct.

11 **Q. And did you identify any?**

12 A. There were two wells identified.
13 One there where the former foundry was, and that's
14 now an electric substation, and there was another
15 one identified here as well. These are
16 upgradient, obviously, of our units, groundwater
17 flow being from west to east. And I would have to
18 go back to the text for any further discussion as
19 to what we dug up on the information on these
20 wells.

21 **Q. Okay. Is this information discussed**
22 **in the text of Section 9?**

23 A. If it's not in the text of Section
24 9, it's somewhere else within the permit, and I

1 believe so, yes.

2 Q. Okay. Now, I'm going to --

3 A. I believe it is actually Section 9,
4 yes.

5 Q. Okay. Great. Thank you.

6 I'm going to skip way ahead, if
7 I can, to Attachment 9, and I -- because I'm
8 scrolling on a computer, it's going to take me a
9 little longer than it takes you to get there.
10 It's on Bates page 110855 is where it starts.

11 A. Okay.

12 Q. And now, the first attachment, 9-1,
13 can you explain what this shows?

14 A. Sure. As part of getting a
15 larger -- part of the requirement under the permit
16 application relative to the geology, hydrogeology,
17 is to also discuss the geology of the -- and
18 hydrogeology of the larger region, which then
19 allows you to focus in and understand the local as
20 well.

21 So this is a survey of well logs
22 that we obtained from the vicinity of the -- of
23 the station, which allowed us to get a better
24 understanding of the larger scale regional

1 stratigraphy.

2 Q. Okay. And the Well Count column
3 there -- well, can you explain what the ID column
4 is and what the Well Count column is?

5 A. Okay. So the ID column is -- it
6 goes by identification. And, you know, we are
7 identifying specific units in here, and so well
8 log -- the well -- Well Count, one. So the first
9 well we looked at had eight -- eight entries for
10 the stratigraphy in there, eight layers that they
11 identified, and so the well count is the number of
12 wells, and then those are the various layers that
13 are identified in Well 2.

14 So in Well 2 we had one, two,
15 three, four, five, six, seven eight -- nine layers
16 called out in the boring log and those -- the
17 descriptions of those nine layers are provided in
18 the right-hand column, the description, and the
19 depth range of those layers is provided in
20 between.

21 Q. And is it safe to say that the
22 different layers are separated not with a fixed
23 interval, but based on differences in the material
24 that you encountered?

1 A. Right. These are from the drill --
2 from the drill logs of -- you know, obviously
3 somebody else installed these wells. So this is
4 just direct information from those.

5 **Q. And this shows in Well 2 in the top**
6 **layer, black cinders fill, correct?**

7 A. That is correct, but I -- you know,
8 without taking a look at where Well 2 is located
9 relative to -- to our site -- I mean, certainly
10 black cinders aren't exclusive to power plants.
11 You can have other types of industry and
12 foundries. You will go into a foundry and drill,
13 you will find black cinders.

14 **Q. Understood. Thank you.**

15 **And then there is another -- the**
16 **third layer down, it goes from four and a half to**
17 **seven feet. It says, very loose brown cinders**
18 **fill; is that right?**

19 A. Yeah, but with the same caveat. I
20 have no -- without taking a look at the map, I do
21 not have a reference point to where this well is
22 located. It's probably and possibly located
23 nowhere near our property.

24 So, again, talking about our

1 sites and the implications on cinders as they
2 relate to our site, it's very -- I can tell you
3 what it says, but it has no meaning without
4 understanding where this well is located.

5 **Q. Okay. And this is not MW-2 as**
6 **depicted in the --**

7 A. No, no. This is Well 2 from the
8 survey from this larger survey that we did.
9 Clearly this goes to 60 -- 69 wells that we looked
10 at from around the area.

11 **Q. Okay.**

12 A. Now, our wells, what you see here in
13 the well ID column?

14 **Q. Yeah.**

15 A. That's the -- the state ID number
16 for that well. So that's tied to the well
17 location.

18 **Q. Okay.**

19 A. But if you go further down in the
20 table and look at -- starting at well number -- at
21 number 63, line ID number 282, that starts MW-01.

22 **Q. Okay.**

23 A. That's one of our wells.

24 **Q. Okay. Thank you.**

1 A. And so our wells are from that point
2 down.

3 Q. Okay. Thank you for the
4 clarification. That makes it much clearer.

5 And you said that the well ID
6 number is something that you could use to identify
7 the location?

8 A. That is correct. It's a state well
9 number, and it provides it on a map, and it shows
10 where that point is.

11 Q. Okay. Great. Thank you.

12 And you said there were 60
13 something of these wells in this table?

14 A. You know, including our wells, we
15 have 69 wells in which we drew stratigraphic
16 information from boring logs, correct.

17 Q. Okay. And it says, "Local Well
18 Stratigraphy Information" for Waukegan is the
19 title of the attachment, correct?

20 A. Right. Local being that area, not
21 local to, you know, on the plant or immediately.
22 It's -- it was a fairly large area we were trying
23 to get an understanding of the overall, since it's
24 a requirement of the permit.

1 **Q. Okay. Would this allow you to**
2 **compare soil characteristics onsite and off-site?**

3 A. In a general sense, yes.

4 **Q. Okay. Thank you. Attachment 9-2**
5 **starts on page 110861, correct?**

6 A. Correct.

7 **Q. And this includes boring logs?**

8 A. Yeah. These are boring logs that
9 have been included in probably a number of -- of
10 exhibits that have gone into the record over the
11 years, and I believe these are the same logs that
12 we went through in fair detail during the previous
13 hearing. So it's information that has certainly
14 been out there in at least one, probably several
15 exhibits.

16 **Q. Do you know sitting here today**
17 **whether all of these boring logs have been**
18 **introduced already?**

19 A. I believe so, yes.

20 **Q. Okay. I'm just going to scan**
21 **through. I'm seeing MW-1, MW-2, MW-3, and if you**
22 **just flip through with me, I will get to the end**
23 **and see where we have gotten. It looks like it**
24 **goes from MW-5, MW-6, which has a different -- can**

1 you explain the difference between MW-5, and MW-6?
2 They look different visually. Is that just
3 because they were taken at different times and
4 created with different software?

5 A. MW -- Wells MW-1 through MW-5 were
6 installed by Patrick Engineering.

7 Q. Uh-huh.

8 A. And MW-6, 7, 8, 9 were -- and 10
9 were installed -- 8 and 9 were installed --
10 monitoring wells installed by KPRG. So we have a
11 slightly different boring log program and well
12 construction summary program. And then Wells 11,
13 12, 14, 15 were actually installed as part of the
14 ELUC by other consultants.

15 However, we were not able to
16 find boring logs for those wells, and even though
17 we believe those wells -- since we believe those
18 wells are pertinent, and we used certainly Wells
19 11 and 14 as part of our groundwater monitoring
20 network, we went out and did soil borings
21 immediately adjacent to those existing wells so
22 that we can develop that data gap and develop the
23 stratigraphy for those wells to provide that as
24 in -- in the operating permit. And then Well 16

1 was previously installed by KPRG.

2 Q. Okay. And looking at MW -- the
3 boring log for MW-11, which is on page 110877 --
4 are you on there? Okay.

5 A. Yes.

6 Q. What's the date of this boring log?

7 A. The date of this boring log is
8 9/2/21. So the logs for the ELUC wells, that is
9 correct, those were not in previous discussions.
10 Those were logs that we generated to be able to
11 qualify using those wells in our -- in our
12 submittal.

13 Q. Thank you. So this -- we wouldn't
14 have had this boring log at the hearing in 2017?

15 A. That is correct, yes.

16 Q. And similarly, on the preceding
17 page, 110876, what's the date of that boring log?

18 A. Same. September of -- 2nd, '21.

19 Q. Okay. Now, going the other
20 direction. I'm sorry to do this. 110878, Bates
21 page?

22 A. The 78, the same for MW-12.

23 Q. Okay.

24 A. September of '21.

1 Q. And MW-14, same date?

2 A. Same date, correct.

3 Q. And MW-15?

4 A. Same date, correct.

5 Q. And as you've said before, MW-16 is
6 an earlier date. That's one that you did earlier?

7 A. Correct. And that one should be in
8 the record, yes.

9 Q. Okay. Thank you.

10 Now, can you turn to page

11 110884?

12 A. Yes.

13 Q. I'm actually not necessarily going
14 to ask you about the content of this page. I'm
15 just curious about the fact that it says appendix.

16 A. This is a copy of Appendix A from
17 the Phase II environmental site assessment that
18 was performed for Commonwealth Edison dated
19 December 7th, 1998. That is, I believe, the ENSR
20 report, and these are ENSR boring logs.

21 Q. Okay. This is still part of
22 Attachment 9- -- I'm sorry. Bear with me. PDF
23 problems again. I'm trying to flip through the
24 end of the ENSR boring logs.

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This was all part of Attachment 9-2; is that right?

A. That is correct, yes.

Q. And then following Attachment 9-2, you get to Bates page 110907; is that right?

A. Yes.

Q. And this is historical CCA groundwater data?

A. That is correct.

Q. And this was cited in the text of the report, presumably?

A. Yes, as part of just background information, so -- and I believe I had said yesterday during my testimony that this historic -- the CCA data, even though it's collected slightly different from CCR data, it's filtered rather than not filtered, so dissolved rather than total. During previous hearings it was determined that there is really not much difference between the two, despite the collection difference.

So there is some difference, but not necessarily much difference. So having had much more -- a much longer sampling timeframe -- I

1 mean, the CCA sampling started back in -- you
2 know, it includes all the way back to 2011. You
3 know, we included this as -- just as thoroughness
4 of all of the historical information for water
5 quality. And, again, this -- there is nothing on
6 these data tables that isn't in several other
7 exhibits that we were talking about already.

8 **Q. Right. And the difference is that**
9 **the CCA -- I think you testified yesterday that**
10 **CCA data are field filtered so that you have a**
11 **dissolved total?**

12 A. Right. A dissolved metal, and, you
13 know, if you really compare the two, which was
14 some of the discussions that were done in the
15 earlier hearings, for our site, there isn't much
16 difference between the total and dissolved.

17 **Q. But I believe you testified**
18 **yesterday that occasionally you'll see a**
19 **difference?**

20 A. Yeah, occasionally, sure. Yeah.

21 **Q. Can you explain what Attachment 9-4**
22 **is?**

23 A. Sure. This is a certification
24 that's required under the rule, that's required in

1 the permit as a stamp-off by a certified and
2 licensed Illinois professional engineer that the
3 information provided in the previous section and
4 in support of the development of the groundwater
5 monitoring network is that the network being
6 proposed is sufficient based on the following
7 reasons, and this is a requirement by the -- by
8 the rule.

9 **Q. Do you know why it's required?**

10 MS. GALE: Objection, calls for a
11 legal opinion.

12 HEARING OFFICER HALLORAN:

13 Sustained.

14 BY MR. RUSS:

15 **Q. Is this -- in your field, is this**
16 **something you are frequently asked to prepare?**

17 A. To stamp off on a monitoring
18 network, quite honestly, the first time I
19 encountered it was under the CCR rules.

20 **Q. Okay. Interesting.**

21 **But what was -- what would be**
22 **the implications, I guess, of there being**
23 **misrepresentations in this document and having**
24 **your stamp on it?**

1 MS. GALE: Objection. Calls for a
2 legal conclusion. That's not his stamp. We are
3 actually getting far beyond --

4 HEARING OFFICER HALLORAN: I'm not
5 worried about the legal conclusion. You want to
6 rephrase, Mr. Russ, or otherwise move on?

7 BY MR. RUSS:

8 Q. Sure, yeah.

9 The engineer that stamped this
10 is a KPRG employee, correct?

11 A. Correct.

12 Q. And is it fair to say that this is a
13 way of the KPRG employee certifying that the
14 information in the document is correct, to the
15 best of his knowledge?

16 A. That is right.

17 Q. Okay. Thank you. Now, Attachment
18 9-5, it starts on page 110924. Excuse me just a
19 second.

20 Your Honor, if I may, I believe
21 there is a copy of -- a paper copy of this that
22 was placed for the Board over there. Would I be
23 able to refer to that?

24 HEARING OFFICER HALLORAN: Yeah.

1 Let's go off the record for a second.

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

4 HEARING OFFICER HALLORAN: Back on
5 the record. Thank you.

6 BY MR. RUSS:

7 Q. Can you explain what this attachment
8 is?

9 A. Sure. It's entitled, "Illinois
10 State CCR Rule Compliance Statistical Approach For
11 Groundwater Data Evaluation" dated August 23,
12 2021.

13 Q. Is this an attachment that was
14 discussed in the text of the report?

15 A. It was referred to, yes.

16 Q. Okay. This is something that KPRG
17 prepared because it's required by the state CCR
18 rule?

19 A. That is correct.

20 Q. Is this the same statistical package
21 that you prepared for the federal CCR rule?

22 A. Basically the same, yes.

23 Q. When you say basically the same,
24 what are the differences?

1 A. I would have to go back, and, you
2 know, again, I don't want to misspeak in this
3 forum. It should be primarily the same. I
4 believe in -- it should be the same. The federal
5 rule where a detection -- you know, we are doing
6 semi-annual monitoring. Here we are doing
7 quarterly monitoring. So I was just checking to
8 see if I had any specific items here, you know,
9 referencing quarterly versus semi-annual, but it
10 should basically be the same, yes.

11 Q. Okay. Now, turning down to page
12 110929. Do you see there is a section on that
13 page that's called "Trend Testing"?

14 A. Yes.

15 Q. It says, "As discussed above, it is
16 intended to expand the initial background dataset
17 collected under the federal CCR rule, which
18 consisted of eight rounds of quarterly sampling
19 with any additional data collected for a specific
20 well since that time."

21 A. Uh-huh.

22 Q. Does that mean that this would be a
23 larger dataset than you used?

24 A. That's correct. So whenever I do

1 statistics or background statistics, ideally you
2 want to use as much representative data as
3 possible. The more data you have, the more
4 reliable or robust your estimate is going to be.
5 And so now we are several years past already the
6 federal CCR rule.

7 **Q. Sorry. You're okay?**

8 A. You know, now we are several years
9 already past the CCR rule. We have got a lot of
10 additional data for the exact same parameters
11 being collected, the same -- same method, and so
12 we have got this larger dataset available.

13 So to see if I can bring those
14 two datasets together since the last evaluation we
15 did, you know, we do some trend testing in this
16 data. If I combine these two datasets, is there a
17 trend now in that well? If there is, I really
18 shouldn't be combining it. Then we will take a
19 look at spacial varia- -- the variability. Not
20 spacial -- but the variability between these two
21 datasets. If there is a statistically significant
22 difference in the variability, you shouldn't be
23 pooling them.

24 But if you do these various

1 tests, and you see these two datasets from before,
2 you know, everything we generated before, as well
3 as what we are having now, they correspond, we can
4 pool this data, and it gives us a much better
5 dataset, and you do this by parameter.

6 **Q. Okay. And if the trend -- if you**
7 **did see a significant trend in one of these wells,**
8 **how would that affect your use of the data?**

9 A. And that's somewhat discussed. So
10 this is kind of the approach, and then we have got
11 a discussion now, this is how we implemented it,
12 and that's how we say, these values we were able
13 to pool for background, and these we weren't.

14 So if we have two datasets that
15 we want to pool, but they are statistically
16 different from the -- too variable from each other
17 from the specific constituent, we are not going to
18 pool them.

19 **Q. Right. Okay.**

20 A. So that's --

21 **Q. And then not to -- I don't want to**
22 **read a fragment of a sentence, but I will just say**
23 **it. On the fourth line of this paragraph, you**
24 **refer to subsequent interwell and, if necessary,**

1 **intrawell prediction limits. Can you explain the**
2 **difference between those?**

3 A. You establish your background
4 statistics, and your interwell will be the value
5 that you would -- you would compare downgradient
6 wells to the background generated based on
7 upgradient water quality. If you want to over
8 time, say, make sure that your upgradient well is
9 still providing good data, you might want to take
10 a look at the intrawell.

11 How is this well behaving over
12 time in and of itself statistically? And you can
13 also use an intrawell comparison -- you know, you
14 are having some issues. You are trying to
15 evaluate something that you might be seeing
16 downgradient. You might want to also look at that
17 well individually by itself, how is it behaving,
18 and that's -- you would look at the intrawell,
19 which is strictly the statistical behavior of the
20 water quality in that well from your initial eight
21 rounds, versus maybe you're two years, three years
22 down the road, how is this doing that?

23 So that intrawell comparison is
24 really a tool to help you understand some of the

1 larger pictures.

2 Q. Okay. Thank you.

3 And when I was reading through
4 this, I saw mainly interwell comparisons. Do you
5 recall using any intrawell for this analysis?

6 A. No, no. These are interwell.

7 Q. Okay. Thank you.

8 Now, I think I am going to skip
9 to section -- Attachment 10, if I can. Now, I
10 believe Ms. Bugel was asking you about the text in
11 Section 10 that corresponds to this attachment
12 yesterday. Do you remember that?

13 A. Attachment 10, the written closure
14 plan, yes.

15 HEARING OFFICER HALLORAN: What page
16 is that?

17 MR. RUSS: Oh, I'm sorry. It begins
18 on Bates page 111162.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 BY MR. RUSS:

22 Q. Did you -- have you reviewed this
23 closure plan?

24 A. The closure plan is written by

1 Sargent & Lundy. So it's one of the other
2 consultants that is doing work for Midwest
3 Generation, and we brought it into this document.
4 I perused it, but, again, I did not write it, and
5 it's written by another consultant.

6 Q. Sure. Understood.

7 But this is the closure plan
8 that's discussed in the text of Section 10 of the
9 report?

10 A. I would imagine so, yes.

11 Q. I just have to clarify for the
12 record. Thank you.

13 Okay. And then Attachment 11
14 begins on page -- oh, Attachment 10-2, you've got
15 to get through that, and then get to Attachment 11
16 on Bates page 111185. Do you see that?

17 A. Yes.

18 Q. What -- can you describe what this
19 attachment includes?

20 A. This is the post-closure plan, the
21 post-closure care plan for the site.

22 Q. And I believe you testified that you
23 did not participate in this section or this
24 attachment?

1 A. That is correct. This section was
2 generated by Sargent & Lundy.

3 Q. And then flipping down to Section
4 12. Attachment -- I'm sorry. Attachment 12.
5 It's on Bates page 111192. Are you familiar with
6 this attachment?

7 A. I don't know if it was a KPRG
8 engineer, or a Sargent & Lundy or perhaps it -- I
9 do not know who generated this -- this attachment.

10 Q. Okay. If you turn to page 111193?

11 A. Yes.

12 Q. Do you see the row that says, "Upper
13 Liner Component"?

14 A. On the pond profile?

15 Q. Yes, under the pond profile.

16 A. Yes.

17 Q. And if you go over towards the third
18 column from the right there is a column that says
19 "layer thickness (inch)"?

20 A. Layer thickness (inch).

21 Q. And this shows that the layer was
22 0.06 inches thick, right?

23 A. That's what is in the table. Again,
24 I did not generate this table. I -- you know, I'm

1 not quite sure what -- yes. That's what it says
2 in the table.

3 Q. Okay. All right. I mean, have you
4 worked with HDPE liners before?

5 A. Have I worked with them?

6 Q. As part of your -- you know, in your
7 professional experience, do you use HDPE liners?

8 A. Well, I know that the engineering
9 groups specify HDPE liners for liner components,
10 absolutely. Do I know the specifications of an
11 HDPE liner? I do not have a PE behind my name.

12 Q. Okay. Thank you. That's all I have
13 on that attachment.

14 And I think I would now move to
15 admit this exhibit, 1131 -- 1331. Sorry. That's
16 a mistake we made yesterday.

17 HEARING OFFICER HALLORAN: Ms. Gale?

18 MS. GALE: I would request a
19 clarification. I thought the understanding was it
20 was an excerpt that we were moving to admit.

21 MR. RUSS: Yeah, we can do it that
22 way.

23 MS. GALE: Okay.

24 MR. RUSS: So I would move to admit

1 Bates pages --

2 HEARING OFFICER HALLORAN: Well, you
3 know, I don't know how many Bates pages we have.
4 My -- to make this cleaner and quicker, and I
5 think it will just be just as good, I would direct
6 the Board to take note of Mr. Gnat's testimony and
7 what he has knowledge of and what he can speak to
8 and disregard the remainder of this exhibit.

9 MR. RUSS: Okay.

10 MS. GALE: Mr. Hearing Officer,
11 actually, we just have one more request of caution
12 for the Board. As Mr. Gnat testified, there is
13 certain pieces of information here that were
14 admitted as part of the earlier hearing, including
15 the data and some of -- many of the boring logs.
16 I think you identified five or six that were new.
17 And we would just request that you also direct the
18 Board to similarly, as you did before, to not
19 consider the --

20 HEARING OFFICER HALLORAN:
21 Duplicative.

22 MS. GALE: -- duplication. Right.

23 HEARING OFFICER HALLORAN: Yes.

24 That's on the record. And I would ask the Board

1 to disregard any kind of duplicative or cumulative
2 information in Exhibit 1331.

3 So 1331 is admitted. Thank you.

4 (Whereupon, Complainants'

5 Exhibit No. 1331 was admitted

6 into evidence.)

7 HEARING OFFICER HALLORAN: I was
8 planning to take a break about five until 11:00.
9 Is that too late for anybody, or do you want to
10 sneak out now for five?

11 MR. RUSS: I could probably -- I
12 have a proposal that might streamline it, and give
13 us an opportunity to take a break.

14 HEARING OFFICER HALLORAN: We're off
15 the record.

16 (Whereupon, a discussion was had
17 off the record.)

18 HEARING OFFICER HALLORAN: Let's go
19 back on the record. Again, Exhibit 1331 is
20 admitted subject to my directives to the Board and
21 requests, I guess I should say.

22 And Mr. Russ is going to address
23 Exhibit 1332. And you are on.

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(Whereupon, Complainants'
Exhibit No. 1332 was marked for
identification.)

BY MR. RUSS:

**Q. Thank you. Mr. Gnat, do you have
Exhibit 1332 in front of you?**

A. Yes, I do.

**Q. Can you turn to the table of
contents, which begin on page -- Bates page
125617?**

A. Okay.

**Q. Did KPRG have any involvement in
writing Section 1 of this report?**

A. Yes. We would have involvement in
some of these sections, and some of these were
written by other consultants and brought --
brought into the document.

**Q. Okay. Thank you. And I really
apologize for the tedious nature of the questions.
I'm going to have to ask about every section.**

**Did KPRG have any involvement in
writing Section 2 of this report?**

A. Possibly, yes.

Q. Section 3?

1 A. Possibly, yes.

2 Q. Section 4?

3 A. Some sections by KPRG and others by
4 other consultants.

5 Q. Okay. Section 5?

6 A. Yes.

7 Q. Section 6?

8 A. Probably not.

9 Q. Section 7?

10 A. Yes.

11 Q. Section 8?

12 A. Yes.

13 Q. Section 9?

14 A. Yes.

15 Q. Section 10?

16 A. I would have to take a look within
17 this plan, if this was a closure plan developed by
18 KPRG or by another consultant.

19 Q. Okay.

20 A. Depending on the site, you know.

21 MS. GALE: Mr. Hearing Officer, if I
22 may interrupt. We've had a lot of discussion
23 about what the Board will -- can look at. If we
24 are just going to go through the table of contents

1 and identify the things that they looked at,
2 again, I would object to relevancy.

3 What we're interested in is, is
4 the content. So we can just skip the table of
5 contents and go to the various areas that they are
6 interested in.

7 HEARING OFFICER HALLORAN: Mr. Russ?

8 MR. RUSS: Can I respond.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 MR. RUSS: The problem I'm having is
12 that if we are splitting the document up, and the
13 Board is directed to look at parts of it and not
14 other parts of it, I feel like I have an
15 obligation to establish how the parts are
16 connected so that the Board is aware of what they
17 are looking at when the text cites an attachment
18 and the attachment has a table and it's discussed
19 in the table.

20 HEARING OFFICER HALLORAN: It might
21 be better that way since we're here now.

22 So you may proceed, Mr. Russ.

23 BY MR. RUSS:

24 Q. Thank you.

1 **Mr. Gnat, did KPRG have any**
2 **involvement in Section 11?**

3 A. Again, possibly. I would have to
4 take a look back there and see if -- who developed
5 the closure -- the post-closure plan.

6 **Q. And Section 12?**

7 A. Don't know.

8 **Q. Section 13, I believe for the other**
9 **site you were involved?**

10 A. Yes, that's correct.

11 **Q. And I believe Sections 14 through 19**
12 **you were not involved in, based on your response**
13 **for the prior site?**

14 A. That is correct.

15 **Q. But Section 20 KPRG may have been**
16 **involved in?**

17 A. Yes. And when you say -- you know,
18 when you are referring to "you," it may not be me
19 personally.

20 **Q. Right. Thank you for that**
21 **clarification.**

22 **Now, the tables here all**
23 **begin -- there is Table 2, but other than that,**
24 **everything begins table 9-something, correct?**

1 A. Correct.

2 Q. And that means they are associated
3 with Section 9?

4 A. Yes.

5 Q. Which KPRG wrote?

6 A. Yes.

7 Q. And similarly, the figures, there
8 are two that start 1-something, and then the
9 remainder are 9-something, correct?

10 A. Correct.

11 Q. And that means they are associated
12 with Section 9?

13 A. Yes.

14 Q. And KPRG would have been involved in
15 preparing them?

16 A. Yes.

17 Q. Thank you.

18 Now, I'm going to turn to
19 Section 9 of the text, which begins on page --
20 Bates page 9- -- 9.0 begins on Bates page 125628?

21 A. Yes.

22 Q. In your prior testimony you
23 described the hydrogeologic site characterization
24 for the Waukegan site. This is a similar

1 **characterization for the Will County site,**
2 **correct?**

3 A. That is correct, yes.

4 Q. **And it describes the geology and**
5 **hydrogeology of the site is what it says?**

6 A. Yes, it does.

7 Q. **So that means the soil and**
8 **groundwater conditions and things like that?**

9 A. Correct.

10 Q. **Can you describe on page -- Bates**
11 **page 125627 what Section 6 is about?**

12 A. Well, the title of Section 6 is,
13 "Incised/Slope Protection Documentation," and I
14 believe this is one of the sections that I had
15 indicated that I do not believe that KPRG wrote,
16 and I believe this might have been another
17 consultant, and we brought in the information.
18 But I was not involved. If Josh, who was the
19 senior engineer assigned to write some of the
20 engineering sections, but also pool everything, I
21 don't know. I can't speak to that section.

22 Q. **Okay. That's fair. Thank you.**

23 **You said you were involved in**
24 **the fugitive dust control plan that begins on the**

1 same page?

2 A. KPRG was, yes.

3 Q. Right. And on the prior section we
4 were just talking about, you mentioned someone
5 named Josh. Is he a KPRG employee?

6 A. Joshua Davenport is the -- is a
7 senior engineer at the Wisconsin office, correct.

8 Q. Turning to -- does he report to you?
9 Does Josh report to you?

10 A. Yes, he does.

11 Q. Okay. Turning to page 17, which is
12 Bates page 125632. There is a description of the
13 "Groundwater Monitoring System Design and
14 Construction Plans"?

15 A. Yes.

16 Q. This section describes wells that
17 include MW-1 through MW-9, and it cites Figure
18 9-1, correct?

19 A. Yes.

20 Q. And then it goes on a few lines down
21 to discuss other wells, including MW-13, MW-14,
22 MW-15 and so on; is that correct?

23 A. Correct.

24 Q. And it says Wells MW-13 through

1 **MW-15 were installed by KPRG in April of 2021; is**
2 **that right?**

3 A. That is correct, yes.

4 **Q. So we would not have been discussing**
5 **these wells in the 2017 hearing, correct?**

6 A. Those three wells, no. They were
7 just recently installed to support the permit
8 requirements -- state permit requirements for
9 Ponds 1 North and 1 South, which were not included
10 under the federal CCR rule.

11 **Q. Okay. And how did those wells**
12 **relate to those ponds?**

13 A. Those are downgradient wells, and in
14 order to meet the minimum well number standard
15 issued in the rule, we needed to augment the wells
16 that were there.

17 **Q. Okay. Thank you.**

18 **And then further down on this**
19 **page, page 18, which is Bates page 125633, it goes**
20 **into the "Groundwater Sampling and Analysis**
21 **Program." Similar to the program you discussed**
22 **for the Waukegan site, this is the one for the**
23 **Will County site; is that right?**

24 A. That is correct.

1 Q. And this includes quarterly
2 groundwater monitoring, as opposed to the federal
3 program, which is semi-annual; is that right?

4 A. Correct, quarterly groundwater
5 monitoring specified in the state rule.

6 Q. And this sampling program includes
7 turbidity like the one in Waukegan did?

8 A. Yes, it does.

9 Q. Turning to page 125637. Section
10 9.3.6 describes the analytical methods, and it
11 cites Table 9-6; is that right?

12 A. Yes.

13 Q. And this, similar to what we were
14 talking about with Waukegan, gets into the ability
15 of various analytical methods to detect individual
16 constituents and what their detection limits would
17 be and so on?

18 A. Correct.

19 HEARING OFFICER HALLORAN: Keep your
20 voice up, please.

21 MR. RUSS: Sorry.

22 HEARING OFFICER HALLORAN: Thank
23 you, Mr. Russ.

24 BY MR. RUSS:

1 Q. Thank you. Now, turning to page
2 125638, at the top there is a series of bullets
3 with well numbers. And I think you were just
4 describing what we are seeing here, which is that
5 these ponds aren't covered by the federal CCR
6 rule, or at least Midwest Generation is not
7 applying the federal CCR rule to these ponds; is
8 that correct?

9 A. My understanding is that they do not
10 qualify for regulation under the federal CCR rule.
11 That is correct.

12 Q. Okay. And so this data is specific
13 to the state CCR rule?

14 A. Yes.

15 Q. Okay. Now, turning to Section 10 of
16 this report, on page 24, it says, "Pond 1N and
17 Pond 1S will be closed with CCR remaining in place
18 and topped with a final cover system," correct?

19 A. That is what it states there, yes.

20 Q. Do you know whether that closure
21 plan is still current or whether it has changed?

22 A. My understanding, it is still
23 current.

24 Q. Okay. Thank you.

1 **And the post-closure plan**
2 **discussed in Section 11, are you familiar with**
3 **that post-closure plan?**

4 A. Somewhat. You know, again, I didn't
5 write it. I am familiar with the post-closure
6 care plan, yes.

7 **Q. Okay. Section 12, Liner**
8 **Certification, discusses Poz-O-Pac. Do you see**
9 **that?**

10 A. Yes, I do.

11 **Q. Are you familiar with that material?**

12 A. I am familiar with what Poz-O-Pac
13 is, yes.

14 **Q. Can you describe what it is?**

15 A. You know, again, a non-engineering
16 description, it is a composite that hardens like a
17 cement. It was historically used and accepted as
18 liner type material. It's -- it is a combination
19 of various components that are -- that they
20 chemically react and form this cement-like
21 substance. It was not just used historically for
22 liners. It was also used as -- for road
23 construction, various engineering purposes, not
24 just for liners, but quite honestly, across the

1 country at that time.

2 Q. Right. Thank you.

3 And this paragraph describes the
4 liner as having 12 inches of Poz-O-Pac followed by
5 12 inches of fill and then 12 more inches of
6 Poz-O-Pac; is that right?

7 A. That is correct. That's -- that's
8 what it states here, yes.

9 Q. Has KPRG had any opportunity to
10 investigate this condition of that liner?

11 A. I believe that historically there
12 was a core taken of one of the Poz-O-Pac liners at
13 Will County, and that was certainly discussed in
14 the previous hearing.

15 Q. Do you recall whether that core
16 showed what is described here, with 12 inches of
17 Poz-O-Pac, 12 inches of fill, 12 inches of
18 Poz-O-Pac?

19 A. I don't remember offhand, no.

20 Q. Okay. And then I guess it's just --
21 sorry to belabor this, but down at the bottom
22 there is a new paragraph that starts with the
23 upper liner component for Pond 1S, and it
24 describes a similar liner as the one for Pond 1N;

1 is that right?

2 A. That is correct, yes.

3 Q. Okay. Thank you. And then turning
4 to Section 13 on page 25, which is Bates page
5 125640. There is a history of known exceedances.
6 I believe you stated that KPRG prepared that
7 section?

8 A. That is correct. It's kind of a
9 summary of what has been already provided out in a
10 public arena with some of our previous monitoring
11 submittals at both the state and federal level, I
12 believe.

13 Q. Okay. Now, turning to Bates page
14 12566 -- I'm sorry. Let me start over.

15 125644. This is the first table
16 in the section of Operating Permit Tables,
17 correct?

18 A. Correct.

19 Q. And like for Waukegan, this shows
20 the results of a sample of the material in a pond;
21 in this case, Pond 2S?

22 A. Yes, it does.

23 Q. And it says that -- in the notes,
24 these are in units of milligrams per kilogram; is

1 **that right?**

2 A. Correct.

3 **Q. So that's a solid concentration?**

4 A. Yes.

5 **Q. And do you know whether there was a**
6 **similar sample taken from pond -- the other pond?**
7 **Actually, is this one of the two ponds that are --**
8 **this document on page -- Bates page 125639 talks**
9 **about Ponds 1N and 1S, correct?**

10 A. That is correct, yes.

11 **Q. And this is -- this sample is from a**
12 **different pond, right?**

13 A. This is from Pond 2 South. That is
14 the information that was available at the time of
15 preparing this -- this document. That's my
16 understanding, yes.

17 **Q. So is this presented here to be**
18 **representative of the material in Ponds 1N and 1S?**

19 A. Yes. Yes, it was. And I can add a
20 caveat. I believe that in preparation of the
21 construction permit, which is a follow-on document
22 application, that actually samples from 1S -- 1
23 North and 1 South were then also collected to
24 augment this data with more -- potentially more

1 representative of the units themselves.

2 Q. Right. And I believe you testified
3 yesterday that those may not have been finalized
4 yet, the construction permits you just mentioned?

5 A. I don't remember if they were
6 already submitted. I know that the public
7 hearings are being scheduled, so I would imagine
8 those have been posted.

9 Q. Okay. The next page, Table 9-1 on
10 Bates page 125645?

11 A. Yes.

12 Q. This includes precipitation data
13 that's intended to be representative of the Will
14 County station area; is that correct?

15 A. That is correct, yes.

16 Q. And this is relevant to the site,
17 because this precipitation will presumably fall on
18 all the areas that are discussed in the site -- in
19 the report?

20 A. Right. And, you know, again, to --
21 part of the requirement is to provide a general
22 understanding of the climate in the area as well,
23 and that's part of that, yes.

24 Q. Okay. And turning to the next page,

1 **Bates page 125646. Again, no need to look at the**
2 **fine print. I just want to confirm that this is**
3 **groundwater elevations?**

4 A. Right, the groundwater depths and
5 the elevations, correct.

6 Q. **And this includes Wells MW-1 through**
7 **MW-15, correct?**

8 A. That is correct, yes.

9 Q. **And just looking at Wells MW-13, 14,**
10 **and 15 on Bates page 125649, those water**
11 **elevations start on May 24th, 2021. You have a**
12 **magnifying glass? Okay.**

13 A. Yes, I do.

14 Q. **Is that right? They start on May**
15 **24th, 2021?**

16 A. Yes.

17 Q. **Why is that?**

18 A. These are the three new monitoring
19 wells that were installed downgradient of Ponds 1
20 North, 1 South to further fulfill the requirements
21 as they are specified in the state -- state rules.

22 So we have to augment the system
23 that was downgradient, and those are the three new
24 wells, and then once the wells are installed,

1 developed, and stabilized, we started collection
2 of groundwater levels.

3 Q. Okay. And now, the far right column
4 says, "depth to groundwater." Do you see that?

5 A. Yes.

6 Q. And the results for MW-11 seem to be
7 in excess of 500 feet; is that accurate?

8 A. No. Those columns are switched
9 around. So the 5 -- for example, let's take
10 MW-13, May 24th, 2021. The second, the 10.92,
11 should be in the third column depth to
12 groundwater, and the 581.88 should be in the
13 groundwater elevation column. There is a
14 flip-flop on this table.

15 Q. Okay. And thanks for pointing that
16 out.

17 And it looks like that might be
18 true for MW-11 through MW-15. Does that look
19 right to you?

20 A. That is correct.

21 Q. Okay. Thank you.

22 Now, Bates page 125650 shows
23 groundwater flow direction and seepage velocity.
24 Similar to what we talked about for Waukegan; is

1 that right?

2 A. Correct.

3 Q. And this describes groundwater
4 flowing to the west?

5 A. Yes, it does.

6 Q. And it shows how fast the
7 groundwater is flowing?

8 A. That's the seepage velocity
9 estimate, yes.

10 Q. Okay. Thank you.

11 And then the next set of -- the
12 next table is very, very fine print, but it
13 appears to be groundwater monitoring --
14 groundwater quality data for MW-1 through -- well,
15 for a subset of the wells at the site; is that
16 right?

17 A. That is correct. These are the
18 wells associated with the monitoring well network
19 for Ponds 1 North and 1 South specifically.

20 Q. Okay. Thank you. And this includes
21 the new wells you mentioned?

22 A. Yes.

23 Q. Bates pages 125652 and 125653. This
24 includes turbidity data, right?

1 A. Yes, it does.

2 Q. Which is not included as part of the
3 federal CCR monitoring reporting?

4 A. That is correct.

5 Q. And Table 9-7 on Bates page 125655,
6 this includes the background prediction limits and
7 proposed groundwater protection standards for Pond
8 1N; is that right?

9 A. For Pond 1N, correct.

10 Q. As you were describing with
11 Waukegan, you calculated the prediction limit by
12 pooling two upgradient wells in this case?

13 A. Well, it depends on the parameters.

14 Q. Right, right.

15 A. Let's take, for example, antimony.
16 Based on the various statistical tests that I did
17 to determine whether or not I can pool that
18 data -- in this case, I was able to pool the data
19 from both upgradient Wells 1 and 2 -- for
20 antimony specifically, I calculated the background
21 prediction limit, and that prediction limits comes
22 in at 0.033, which is below what the drinking
23 water standard is. So -- or what the 845.600
24 standard is, which is the same as the 620 standard

1 in this case.

2 So the proposed groundwater
3 protection standard becomes the higher of those
4 two numbers.

5 **Q. Right.**

6 A. And arsenic, for example, I was not
7 able to pool the data from the -- from Wells 1 and
8 2, because it failed one of my statistical tests,
9 and so, therefore, we used the arsenic from Well
10 1. And note that the interwell background is an
11 order of magnitude lower than what the drinking
12 water standard is, and so the proposed groundwater
13 protection standard is at the 845.600 standard.

14 **Q. Okay. And now for lithium,**
15 **scrolling down the table to lithium, MW-2, you**
16 **didn't pool the data, right?**

17 A. That is correct.

18 **Q. And somewhere in the statistical**
19 **package it includes a statistical comparison of**
20 **data from MW-1 and MW-2 and shows that they are**
21 **not sufficiently similar to be pooled; is that**
22 **right?**

23 A. That is correct, yes.

24 **Q. You can say no to this, but do you**

1 **happen to know where in this statistical package**
2 **that would be?**

3 A. Sure. If you give me a moment --

4 **Q. Yep.**

5 A. -- I will try and find my way.

6 All right. It would be in
7 Attachment 9-6. That would be starting on your
8 Bates page number 125820.

9 **Q. Okay.**

10 A. And Attachment 6 provides what
11 that -- the various tests and analyses that we
12 did, and then on page 1 -- Bates page 125824. So
13 let's take a look at Pond 1N, and it discusses,
14 the third bullet, background Well MW-2 parameters
15 were used to for boron, calcium, chloride, total
16 dissolved solids, TDS, lithium, molybdenum, and
17 combined radium. For these compounds, with the
18 exception of boron, there were no statistically
19 significant outliers, and for all of the datasets,
20 there were no statistically significant trends, so
21 on and so forth. So it provides the reasoning as
22 to how we are selecting what and --

23 **Q. And it goes on to say that maybe one**
24 **of the reasons you didn't pool, MW-1 had a**

1 **statistically significant trend?**

2 A. Correct.

3 **Q. And that would be found later in the**
4 **statistical package as well?**

5 A. Right. That would be discussed a
6 little bit earlier in the trends analysis, Bates
7 page 125822, under Pond 1N. MW-1, a statistically
8 significant trend was noted in boron. At MW-02, a
9 statistically significant trend was noted in
10 arsenic.

11 So if you notice, for arsenic,
12 when we did our background calculation, I limited
13 it to Well 1, because Well 2 had a trend, and in
14 this case, visa versa. So that's kind of -- all
15 of that reasoning and discussion is provided here
16 for the basis of our selections.

17 **Q. Yep. Thank you.**

18 **And then the details of the**
19 **trend analysis and the outlier analysis, and all**
20 **of that is found in later pages of this**
21 **attachment, correct?**

22 A. That is correct. All of my
23 background, you know, all the runs and the Sonitus
24 printouts are included here.

1 Q. Okay. So now I'm going to flip back
2 to the -- where we were before, which is -- bear
3 with me for a second here -- Bates page -- we were
4 on Bates page 125655. And then the next page is
5 the same information we were talking about for
6 Pond 1N, but in this case for Pond 1S, which so
7 now I am on 125656?

8 A. Yes.

9 Q. Okay. Thank you.

10 And now, flipping to the
11 figures, Figure 9-1 on Bates page 12 -- it's hard
12 to read that. I think it's 125 -- 125660, Figure
13 9-1 dated January 18th, 2022?

14 A. Yes.

15 Q. This shows the wells we were talking
16 about, the new wells downgradient is Ponds 1N and
17 1S; is that correct?

18 A. That is correct.

19 Q. Now, the next figure is called
20 Figure 9-2. It's on Bates page 125661. And this
21 is similar to what we were talking about at
22 Waukegan. It shows fill consisting of various
23 materials that may include coal and black cinders
24 and slag; is that right?

1 A. That is correct. Not necessarily at
2 all locations, but as a general description, that
3 is correct.

4 **Q. And it shows the water level as of**
5 **May 2021?**

6 A. Yes.

7 **Q. And, actually, you know, it might be**
8 **more helpful to turn to a couple pages ahead. So**
9 **Figure 9-4, which is Bates page 125663, it shows**
10 **the same information, but it's zoomed in to focus**
11 **on Pond 1N, correct?**

12 A. Well, it's a different cross
13 section, and the other cross sections were going
14 north-south. I believe this is an east-west cross
15 section that goes beneath Pond 1N and actually
16 goes northwest -- northwest to southeast through
17 that pond, which is -- one of the requirements
18 under the state rule is to have cross sections
19 that go -- transect the pond as well.

20 **Q. Okay. Thank you for that**
21 **clarification.**

22 **And this shows the water level**
23 **overlapping with the fill; is that right?**

24 A. Yes, it does.

1 **Q. And the date of this water level is**
2 **different. This is November 2021; is that right?**

3 A. That's -- that's what it -- it has
4 here on the figure. And whether or not that might
5 be a typo, I don't know.

6 **Q. Okay. And now turning to Bates page**
7 **125665. Same sort of questions I had for**
8 **Waukegan. This shows the groundwater elevation at**
9 **the various wells over time, correct?**

10 A. Yes.

11 **Q. And is it -- November 2021, it isn't**
12 **clear on the table, but it's one of the last few**
13 **data points here?**

14 A. Yes.

15 **Q. And is it fair to say that for most**
16 **of these wells, that's not the highest that the**
17 **groundwater has ever been in this period of**
18 **record?**

19 A. For some of them, certainly. I have
20 got a lot of lines on this figure, so --

21 **Q. Fair enough.**

22 A. But, yes, there are higher water
23 levels at some of the wells.

24 **Q. Okay. Thank you.**

1 And, now, just to save a little
2 time, I will just ask you to scan through the next
3 few figures, 9-7 through 9-11, which is on Bates
4 pages 125666 through 125670.

5 And similar to Waukegan, these
6 show the potentiometric contours that were drawn
7 on different dates; is that right?

8 A. That is correct, yes.

9 Q. And so they generally show
10 groundwater flow from east to west, but there are
11 slight differences from date to date?

12 A. Yes.

13 Q. Can you turn to page -- Figure 10 on
14 page 125669? And if you are able, sort of look at
15 it side by side with the preceding Figure 9-9 on
16 125688?

17 A. Yes.

18 Q. I noticed that between Ponds 1S and
19 2S, the potentiometric contour veers sharply to
20 the west in Figure 9-10 in a way that it doesn't
21 in Figure 9-9. Can you explain what that might
22 signify?

23 A. Based on the water levels, the --
24 the water level in Well 4 -- Well 5 and Well 3

1 appear to have gone down a little bit. Well 4
2 hadn't, and Well 13 it went down a little bit. So
3 we had to pull the contour around over to be
4 reflective of the water level at the time.

5 **Q. Okay.**

6 A. Just -- yeah. So some variants, I
7 have seen some of that on previous flow maps as
8 well.

9 **Q. Right. Thank you. Yeah. And**
10 **that's all I was really looking for is just that**
11 **it does change a little bit from time to time.**

12 HEARING OFFICER HALLORAN: You know,
13 I'm sorry, Mr. Russ. Let's -- let's go off the
14 record. Let's take a break now and be back at, I
15 don't know, 11:05.

16 MR. RUSS: Sure.

17 HEARING OFFICER HALLORAN: Okay.
18 Thank you.

19 (Whereupon, a discussion was had
20 off the record.)

21 HEARING OFFICER HALLORAN: I have
22 been remiss that other personnel from Board have
23 been here: Member Michelle Gibson and Member Van
24 Wie, and I think Essence Brown. They all came in

1 right after the hearing started. Thank you. Off
2 the record.

3 (Whereupon, a short break was
4 taken.)

5 HEARING OFFICER HALLORAN: All
6 right. We are back on the record at
7 approximately, what, 11:05? Thank you. You may
8 continue, Mr. Russ.

9 BY MR. RUSS:

10 Q. Thank you.

11 Mr. Gnat, can you turn to Bates
12 page 125778, which is where Attachment 9 begins?

13 A. 1257 --

14 Q. I'm sorry. 125778.

15 A. Got it.

16 Q. This is the attachment that supports
17 Section 9 of the text, correct?

18 A. Correct.

19 Q. Now, the first table that starts on
20 page -- Bates page 125780, similar to what we saw
21 at Waukegan, this include a series of, in this
22 case, 45 different borings from the vicinity of
23 the Will County station?

24 A. Right, from water wells installed in

1 the area and pulling drillers' logs and then the
2 wells installed in the area, and then the --
3 starting at the number 34 there, those are from
4 our site wells, the logs.

5 Q. Right. Thank you.

6 And as you said before for the
7 Waukegan site, the Well ID column provides a
8 number that you could use to identify the location
9 of each boring?

10 A. Yes.

11 Q. And like we talked about with
12 Waukegan, the different layers aren't at fixed
13 intervals, but instead they correspond to
14 differences in the material that you encountered
15 in the borings or that were encountered in the
16 borings?

17 A. Yes.

18 Q. And then for MW-01, if you can read
19 it, the first line there says, "Fill: Black coal
20 cinders, fine gravel, cobbles, crushed." And then
21 it looks like it cuts off, correct?

22 A. Yes, it does.

23 Q. So there may be more information
24 there that we can't see?

1 A. That is correct.

2 Q. Okay. And then flipping over to
3 page -- Bates page 125783, we get into a series of
4 boring logs again like we did with Waukegan. And
5 this includes boring logs for Wells MW-1 through
6 MW-12; is that right?

7 A. That is correct. It appears that
8 the boring logs for 13, 14, and 15 for some reason
9 are not included here.

10 Q. Okay. They're presumably included
11 somewhere. Maybe they -- I won't ask. I would
12 just be speculating, but maybe they would appear
13 in the construction permit applications you
14 discussed earlier?

15 A. Yes, and if not, they inadvertently
16 were omitted and can be provided.

17 Q. Okay. Thank you. And then starting
18 on Bates page 125805, like we discussed with
19 Waukegan, this provides -- and like we have
20 already discussed for this site as well, actually,
21 this provides the details on the statistical
22 approach for analyzing groundwater data?

23 A. Right. This is a permit, a state
24 permit, as well as federal permit requirement to

1 basically put down on paper how you are intending
2 your general approach for approaching your
3 statistical evaluation.

4 Q. Okay. Can I ask you a question
5 about Bates page 125849?

6 A. Okay.

7 Q. And not to put you on the spot, but
8 can you explain the difference between the Tukey's
9 Outlier Screening and EPA screening?

10 MS. GALE: Objection, foundation.

11 BY MR. RUSS:

12 Q. Okay. I'll ask about the
13 foundation.

14 Are you familiar with these
15 statistical tests?

16 A. Yes.

17 Q. Did you run these tests?

18 A. Yes, we did. As part of the
19 statistical package we run, it not only includes,
20 for example, the EPA screening, but it provides
21 other -- other outlier tests as well for, you
22 know, helping evaluate things. So it's --
23 basically the program is set up with general
24 defaults to the EPA requirements that are

1 generally outlined in the unified guidance, but it
2 also provides you other information that the
3 statistical -- whoever is taking a look at it,
4 that may be of help to them, yes.

5 **Q. Okay. Now, could you explain the**
6 **difference between the Tukey's Outlier Screening**
7 **and the EPA screening?**

8 A. I would have to go back through and
9 really put my head into the difference between the
10 two, which, I guess, I was not prepared to get
11 into that detail, but --

12 **Q. That's understandable?**

13 A. -- if you give me a minute. It will
14 also -- it will determine, I believe, on the --
15 the distribution of the constituent in the
16 particular well.

17 And so, for example, at Well 2
18 on the background, it's defaulting to a Tukey's
19 Outlier Screening for a specific reason, and --
20 and it goes to the EPA screening default for, in
21 this case, total dissolved solids for downgradient
22 Well 7, which is, I guess, the question that you
23 are asking. So I would have to go through and
24 really read through and determine what was the

1 reason that the statistical program decision was
2 made for one versus the other.

3 Q. Okay. That's fine. Thank you for
4 answering that to the best of your ability.

5 Can you turn now to page -- keep
6 your finger on this one, but also look at page
7 125853? And in the lower, right corner there is a
8 Tukey's Outlier Screening Chart MW-14 for lead,
9 and there is a diamond that's filled in with
10 black. Does that indicate an outlier?

11 A. 1258, and I'm sorry. Can you --

12 Q. Sure. Yeah. The Bates page is
13 125853.

14 A. 125853, okay.

15 Q. And on the lower, right there is
16 that Tukey's Outlier screening for lead for MW-14?

17 A. Yes.

18 Q. Does this indicate that there was an
19 outlier in this dataset? And if it helps, if you
20 look over at the legend on the right, the first
21 sentence is "Outlier is drawn as solid."

22 A. That is correct, yes.

23 Q. And can you just explain briefly
24 what an outlier is, for the record?

1 A. An outlier is a data point that is
2 sufficiently higher or lower in concentration that
3 it falls outside of the statistical allowance that
4 you are -- that you are looking at, and in this
5 case, we are generally looking at 95 percent
6 confidence and then alpha values of -- I forget if
7 it's 0.01 or 0.05, but it's a statistical
8 calculation. So this value is, if you want to
9 say, uniquely higher or lower than all of the
10 other values that are in that particular data
11 grouping that you have.

12 **Q. Is it fair to say that they are**
13 **statistically anomalous?**

14 A. That is correct.

15 **Q. And with these charts you are able**
16 **to see if there was an outlier, when it was, and**
17 **what the concentration was for each constituent?**

18 A. That's -- that's right. And we
19 also, I believe, provide a summary data table that
20 takes these observations and tabulates them.

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

22 **I'm going to skip ahead to**
23 **Attachment 10, which begins on Bates page 126011.**

24 **Okay. Are you familiar with**

1 **this preliminary closure plan?**

2 A. Well, for Ponds 1 North and 1 South,
3 yes.

4 Q. Correct. Thank you. And just, for
5 the record, the -- the closure plan actually
6 begins on Bates page 126012 and has a KPRG header?

7 A. Yes.

8 Q. And it says under heading three on
9 that page Pond 1N and Pond 1S will be closed by
10 leaving the CCR in place. Similar to what it said
11 in Section 10 of the text, correct?

12 A. Yes.

13 Q. And you have already answered -- I
14 already asked you about whether that's current.
15 So I won't ask it again.

16 But this provides more details
17 about the closure plan, correct?

18 A. Yeah, it's, again --

19 Q. Preliminary?

20 A. Yes.

21 Q. Including how long it's going to
22 take and the largest area of CCR requiring a final
23 cover?

24 A. I don't see a specific area. Oh,

1 oh, yeah, the largest area requiring cover, yes.

2 Q. Okay. Thank you.

3 Now, Attachment 11, I believe
4 you said you weren't involved in. I just want to
5 clarify, because it has a KPRG header. I don't --
6 I'm not necessarily fishing for any particular
7 answer. I'm just curious if you were involved in
8 the production of this.

9 A. You know, I might have glanced at
10 it, yes. Did I write it? No.

11 Q. Okay. Fair enough. Thank you.

12 And then the Liner Certification
13 that begins on Bates page 126019. This describes
14 what we were talking about with Section 12 of the
15 text where it has 12 inches of Poz-O-Pac, 12
16 inches of fill, 12 inches of Poz-O-Pac; is that
17 right?

18 A. It's a liner certification, and, you
19 know, again, I wasn't involved in these tables
20 here or any of that. I don't know if it was our
21 firm or another engineering firm. I would have to
22 ask Josh, our engineer, who compiled all this
23 information. But relative to your question, I see
24 that as inputs there in that table of the upper

1 liner component.

2 Q. Okay. And then Attachment 13,
3 History of Known Exceedences, starts on Bates page
4 126022, but then the subsequent page says, "no
5 attachment." Do you see that?

6 A. Yes.

7 Q. So does that mean there is no
8 history of known exceedences?

9 A. I believe this was relative to -- in
10 particular, relative to the fact that -- from a
11 CCR perspective, which is the total analyses and
12 so on. Since this was not under the federal rule,
13 we didn't have -- we don't have historical data,
14 so to speak. So that's why that was put in place.

15 Q. Okay. So it's an absence of data
16 more than an absence of exceedences, so to speak?

17 MS. GALE: Objection.
18 Mischaracterizes the document.

19 HEARING OFFICER HALLORAN: Could you
20 rephrase, Mr. Russ?

21 BY MR. RUSS:

22 Q. Sure.

23 If I understand what you are
24 saying, there wasn't -- the data relevant to this

1 **section weren't available, so you couldn't write**
2 **anything about it?**

3 A. The data -- certainly we have CCA
4 data for this area, but this being a CCR rule
5 document, we didn't feel it appropriate to make
6 decisions based on CCA data.

7 Q. Okay. So this is a history of known
8 exceedances under the state CCR program?

9 A. That's the -- yes.

10 Q. Okay. Thank you. I would like to
11 move to admit Exhibit 1332, subject to the same
12 conditions that you stated earlier?

13 HEARING OFFICER HALLORAN: Ms. Gale?

14 MS. GALE: No objection to that. We
15 just -- also, as he mentioned, there is some
16 duplication in here of historic information that's
17 already been admitted. So we request the same
18 direction that you have made before to the Board.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 I'm going to admit Exhibit --
22 Exhibit 1332 and request the Board not to consider
23 parts of the exhibit Mr. Gnat through his
24 testimony cannot speak to or has no knowledge, and

1 disregard the remainder that's in the exhibit.

2 Also, I understand there are
3 duplications and cumulative documents in here
4 and -- from other exhibits that have been entered,
5 and I would ask the Board to disregard that.

6 Thank you.

7 (Whereupon, Complainants'
8 Exhibit No. 1332 was admitted
9 into evidence.)

10 MR. RUSS: And we have no further
11 questions, your Honor.

12 HEARING OFFICER HALLORAN: All
13 right. Let's go off the record for a minute.

14 (Whereupon, a short break was
15 taken.)

16 HEARING OFFICER HALLORAN: We are
17 back on the record.

18 Ms. Gale will be crossing
19 Mr. Gnat, but Mr. Russ has a housekeeping matter.
20 You may proceed.

21 MR. RUSS: Just to preserve the
22 issue for appeal -- sorry to do this -- but we're
23 going to put on the record an objection to the
24 ruling on the partial -- the limitations on the

1 admissibility of Exhibits 1331 and 1332 based on
2 Board Rule 101.626(e), which states that the lack
3 of personal knowledge can affect the weight, but
4 not the admissibility of a document as a business
5 record.

6 HEARING OFFICER HALLORAN: Okay. So
7 noted. Thank you. I'm sure the Board will take
8 that under consideration.

9 MR. RUSS: Thank you.

10 HEARING OFFICER HALLORAN: You may
11 proceed, Ms. Gale. Sorry.

12 R E - D I R E C T E X A M I N A T I O N

13 by Ms. Gale

14 Q. Good afternoon, Mr. Gnat. It's
15 still morning. Good morning. Yesterday I believe
16 Ms. Bugel was asking you questions about you
17 walking over the northeast area at Joliet 29. Do
18 you recall that discussion?

19 A. Yes, I do.

20 Q. And she asked you about whether you
21 had conducted any sediment testing along the banks
22 of Joliet -- excuse me -- along the banks of
23 Joliet 29. Do you recall that?

24 A. Yes.

1 **Q. Is there any basis to test the**
2 **sediments along the Joliet station in the Des**
3 **Plaines River?**

4 A. You know, based on my walkovers, I
5 have never seen any seeps or anything entering the
6 Des Plaines River. I am not aware of any
7 groundwater information from that area. So
8 there -- from my perspective, there was no basis.
9 I haven't been requested either. I do know that
10 there has been some recent sampling done now by
11 the Army Corp of Engineers in the sediments that
12 actually extends a good portion along the banks of
13 the northeast area, and I believe in others'
14 discussion of that, that data did not show
15 anything that was above a comparison value.

16 **Q. Okay. And then we are talking about**
17 **the northeast area. I want to then now discuss**
18 **the -- she asked you about walking the bank --**
19 **west of the Joliet 29 further downriver, and I**
20 **believe you stated that you don't walk those**
21 **banks; is that correct?**

22 A. Oh, that's correct. I do not walk
23 those banks. I'm not aware of anything that was
24 occurring in that area that would suggest the need

1 for that. It's not part of the stormwater permit
2 that the walks that I do require.

3 Q. And similar question. For the rest
4 of the downriver section of the Des Plaines River
5 along Joliet 29, do you see any basis to test the
6 sediments?

7 A. No. Not at this point, no, I don't.

8 Q. And then I believe yesterday you
9 also discussed walking the bank of the Powerton
10 station along the Illinois River. Do you remember
11 that discussion?

12 A. Yes.

13 Q. And if I remember correctly, you
14 responded that you did not, and you had an
15 explanation why. Do you remember that?

16 A. Yes.

17 Q. Please tell us why.

18 A. Well, the Illinois River is on the
19 far north end, and then you have got the little
20 old feeder in what that used to be the inlet
21 channel for the plant. The downgradient
22 monitoring wells closest to the Illinois River are
23 Wells 2, 3, 4, and 5, and, you know, looking at
24 the CCR data, we don't have any exceedances of --

1 quite honestly, there is nothing above a drinking
2 water standard in those monitoring wells.

3 And so that in and of itself
4 suggests that there is no seep to be looking for.
5 The groundwater is already at standard or below
6 standard, and also, somewhat the distance. So the
7 nearest location to the entrance of the intake
8 channel is Well 5, and that's about 550 feet, and
9 the nearest well to the first bank of the Illinois
10 River would be Well 4, and that's over 1,000.
11 It's about 1100 feet.

12 So between the fact that the
13 groundwater quality is already below the 620
14 standards and the distance, I don't see a need to
15 go doing that walk.

16 **Q. And then, similar question along the**
17 **same lines. Do you see any basis to test the**
18 **sediments in the Illinois River along the Powerton**
19 **station?**

20 A. No, I don't for -- for the same
21 reason.

22 **Q. Yesterday she also asked you about**
23 **walking the shore of Lake Michigan along Waukegan**
24 **station. Do you recall that testimony?**

1 A. Yes, I do.

2 Q. And you said you had walked that,
3 correct?

4 A. Correct.

5 Q. And you -- I believe you also said
6 that you had not recalled seeing any seeps when
7 you had, correct?

8 A. Correct.

9 Q. And -- and is there any basis to
10 look for seeps along the Waukegan station at --
11 near the lake -- river -- Lake Michigan? Excuse
12 me.

13 A. Again, I think it would go back to
14 not just what we are seeing in the downgradient
15 monitoring wells of the east pond, but also the
16 distance. I mean, that's another 900 plus feet
17 from the regulated unit to the lake shoreline.

18 Q. And, again, a similar question. Is
19 there any basis to test the sediments in Lake
20 Michigan near the Waukegan station?

21 A. Not in my opinion, no.

22 Q. And we are also going to discuss the
23 Will County station, and I believe you were asked
24 questions about walking along the bank of the

1 western edge of the Will County station. Do you
2 remember that discussion?

3 A. Yes.

4 Q. And I believe you said that you have
5 walked along it, and for other reasons, and then
6 you had not seen any seeps; is that correct?

7 A. That's correct. And whenever I am
8 down there, the downgradient line of monitoring
9 wells is right at the edge, and then the bank --
10 the slope starts to slope down towards the river.
11 There's a utility corridor that's -- that goes
12 through there, overhead lines, and certainly just
13 whenever I am out there and just looking down, I
14 certainly do not see any seeps, no.

15 Q. And is there any basis to test the
16 sediments along -- in the Des Plaines River along
17 the Will County station?

18 A. Not in my opinion based on not
19 seeing any seeps or so on, no.

20 Q. Mr. Gnat, for the Midwest stations
21 that are at issue here today, are you aware that
22 some are not burning coal anymore?

23 A. Yes. I believe that the Waukegan
24 station no longer burns coal. The Joliet station

1 no longer burns coal. The Will County station no
2 longer burns coal. Powerton is -- still is a
3 coal-fired power plant.

4 Q. All right. And I want you to find
5 in your stack of documents Exhibit No. 1315, which
6 would be the alternate source demonstration for
7 the former ash basin.

8 A. Okay.

9 Q. All right. And I want you to turn,
10 please, to Table 1, which is Bates numbered
11 MWG13-15_70544.

12 A. Okay.

13 Q. And here in this table you have
14 an -- or there is -- excuse me -- a value that's
15 called a prediction limit. Do you see that?

16 A. I'm sorry. Can you refer me over to
17 the right page?

18 Q. I'm sorry. 70544, Table 1.

19 A. Oh, thank you.

20 Q. I will re-ask the question.

21 A. Okay.

22 Q. So in the second column, for each of
23 the monitoring wells there is a phrase -- it's
24 actually pred. limit, which I would take as stands

1 **for prediction limit.**

2 **What does the prediction limit**
3 **mean?**

4 A. The prediction limit is the
5 statistical calculation for comparison that's
6 based on background evaluation, and in this
7 particular case, it's a -- based on a 95 percent
8 confidence, and it's a value, the statistical
9 value, that says, based on the upgradient
10 background concentration, if I pull a sample from
11 this particular well, I have a 95 percent
12 probability or chance that I will be at or below
13 this particular value, and a 5 percent chance that
14 I might be above.

15 **Q. Now, is it tied to the 620**
16 **groundwater standards?**

17 A. No, no. It is not tied to the
18 groundwater quality standards at all. This is
19 strictly a background-based calculation. So it
20 can easily be substantially lower than a standard.

21 **Q. Well, and let's give an example.**

22 **Can you go to Monitoring Well 5**
23 **and look at sulfate, please?**

24 A. Sure.

1 Q. And if you can recall the
2 groundwater standard value under 620 for sulfate,
3 otherwise, I can get you there.

4 A. Yeah.

5 Q. Can you describe what you are seeing
6 there?

7 A. Okay. So for Well 5, the prediction
8 limit based on background for sulfate is 85
9 milligrams per kilogram. And so, for example, in
10 the August 26th sampling, which is the first round
11 of sampling after we generated our background
12 dataset, we were above that value. So under the
13 detection limit rules of the federal CCR rule, I
14 have got a potential statistically significant
15 increase here, and if the sample confirmed, then
16 we would have to evaluate.

17 But here is the reality. The --
18 so the 85, the prediction limit is based on the
19 background data from the background wells. The
20 actual standard, the 620 standard for sulfate, is
21 400. So even though I have a potential
22 statistically significant increase over this
23 background prediction value of 85, that is
24 substantially lower than the 400 milligram per

1 kilogram standard, drinking water standard, for
2 sulfate.

3 Q. Thank you. You can put that exhibit
4 aside, please. I'm going to switch gears again.

5 Yesterday I believe you touched
6 upon a discussion of brownfields, and you
7 mentioned the SRP program, which stands for, in
8 Illinois, the site remediation program. How --
9 and, you know, can you explain how you apply that
10 brownfield SRP program, generally speaking, to
11 industrial sites?

12 A. You know, most old historical and
13 industrial sites do have impacts. I mean, that's
14 just a fact of life, and the SRP program allows an
15 old industrial property to go through -- it
16 provides the framework to take an old industrial
17 property through a site investigation, identify
18 appropriate remedial options, what option you want
19 to implement, and then go ahead and implement that
20 program.

21 And the SRP program allows for
22 risk-based corrective action type approaches where
23 you can look at general areas based on risk, on
24 your property boundary, nearest receptors, and so

1 on, and implement a remedy, which, you know, just
2 standard monitored natural attenuation remedies
3 aren't -- you have to have something additional in
4 terms of source control, removal, whatnot, to
5 augment that, but it allows for making some common
6 sense source control strategies, and then augment
7 those with what are called engineering controls,
8 be it engineering barriers, what are somewhat a
9 part of a remedy, placing an asphalt cap over
10 impacted -- residually impacted soils to preclude
11 percolation of rain.

12 You know, buildings will
13 accomplish the same thing. So you can structure
14 that type of engineering control with your
15 development plan or redevelopment plan, and also,
16 you can implement institutional controls; such as,
17 ELUCs, which is what we talked about what was done
18 for the tannery site west of Waukegan, which
19 basically places a deed restriction on -- on the
20 property that doesn't allow for, in that case, the
21 installation of drinking water wells.

22 So it's a way to be able to
23 approach large industrial facilities that can have
24 fill, quite honestly, over large portions of those

1 areas. I don't like using the term "ubiquitous,"
2 but sometimes that is an appropriate term. And it
3 can be a mixture of clean fill. It could be a
4 mixture of old industrial fills. You know,
5 foundries, again, a very typical example. You've
6 got foundry sands all over those areas also
7 impacted with heavy metals, but honestly, also
8 impacted with solvents that are much more
9 carcinogenic.

10 And full removals of every, you
11 know, bit of fill are not required. What makes
12 sense you do, you can do control measures, but it
13 allows you to develop a strategy which focuses on
14 appropriate source control measures and then
15 management as well to facilitate being able to get
16 these properties back into appropriate uses.
17 Usually industrial; sometimes they cross over into
18 commercial, and if it does cross over into
19 residential, you have to address it in a more
20 robust fashion to meet residential criteria under
21 the SRP.

22 **Q. All right. Again, switching gears.**
23 **Yesterday I recall you using the phrase,**
24 **various -- so we are talking now about the Midwest**

1 Gen stations and your work, and related to
2 groundwater work, and at the Midwest Gen stations.

3 And you use the phrase, "various
4 masters." What did you mean by that?

5 A. In the case of several of our
6 sites -- and we talked about it, and, in fact,
7 that's kind of how towards the end we got crossed
8 a little bit, because I'm thinking about CCR, and
9 the reference was relative to a discussion that I
10 had several years back in my deposition, which was
11 relative to CCA, and hence, you know, potential
12 confusion.

13 Well, you know, here are, you
14 know, plans for reality. So we have got our
15 impoundments, the same impoundments. We sample
16 these things on a quarterly basis, these wells,
17 under a compliance commitment agreement for
18 dissolved parameters, as we said, in a slightly
19 different list by the Illinois Water Group, listed
20 by the Illinois Water Group.

21 And we provide those reports to
22 them on a quarterly basis. Then, we have -- the
23 federal rule kicks in, in 2015. Same
24 impoundments, primarily the same monitoring wells.

1 We may have added a few to augment the rule, and
2 then we have a separate set of contaminants; some
3 overlap, some not, but now total instead of
4 dissolved. We have got detection monitoring
5 parameters, and then assessment monitoring
6 parameters.

7 And then so now we are operating
8 under two -- the same ponds -- monitoring
9 programs, two separate rules, making sure that
10 everything is being complied with this and then
11 that. And then come along '21. Illinois kicks in
12 its own rule, which is fine and understandable.

13 However, recognizing now we have
14 got, again, the same set of wells for the same
15 ponds being analyzed for the same parameters as
16 the federal rule, plus turbidity, but now we are
17 going to restructure detection versus assessment.
18 We are no longer going to recognize that. We are
19 no longer going to allow for semi-annual, but, no,
20 now you are going to have to do everything for
21 annual, again, which is fine, but at the same
22 time, I can't stop having to fulfill federal
23 requirements, which are slightly different, and I
24 can't stop fulfilling CCA requirements.

1 So that's why I said three
2 masters in this case, and in each case, recognize
3 how these samples are pooled. We go up to, let's
4 say, Well 5 at Will County, and let's say this
5 Well 5 is actually included in the CCA program.
6 It's included in the federal CCR program, and it's
7 included in the state CCR program.

8 So we go -- go in Well 5 with
9 all the sample bottles. And we always tell our
10 samplers, start with the CCR because that's under
11 the federal rule and this and that. We want to --
12 if the well goes dry for some reason, we want to
13 make sure we have enough sample to fulfill those
14 requirements.

15 So they will start the purge,
16 and then they'll start their low purge sampling,
17 and they'll fill up the jars for the federal rule.
18 Some of those are crossover for the state rule,
19 and then those are done. Those jars are sealed,
20 placed on ice.

21 Then we start collection the
22 exact same time. You know -- well, you know, a
23 half hour later or whatever, you know, however
24 long it took to collect the federal samples, and

1 now we are going to start on the next set of --
2 the CCA samples. So now we are going to place the
3 filter in line and start the CCA sampling process.

4 But the fact of the matter is
5 it's the same well that was basically sampled on
6 the same day over the period of time that it takes
7 to fill all those sample bottles. So you are
8 basically looking at the same sample from the same
9 well on the same day then being compared against
10 three different programs.

11 **Q. And yesterday wasn't another**
12 **publication issued by the US EPA?**

13 A. Sure. And now their new -- there's
14 a new publication. I haven't looked at it yet,
15 but my understanding is that there is a new
16 proposed rule coming out on how to address the
17 legacy ash, which is the ash outside of the
18 impoundments, which for the most part, you know, I
19 have always viewed as part of that larger
20 brownfields type issue, but now, it appears that
21 they are -- for some reason, there is going to be
22 specific regulations for that ash.

23 And I also know that relative to
24 that same topic, there is a subdocket that's still

1 in place, that may address that at a state level
2 as well. So, you know, again, if both rules for
3 the legacy ash pass under the federal rule, and,
4 say, the state follows and does a state rule, then
5 there are going to be two additional sampling
6 programs probably requiring, you know, so on.

7 And so, again, you are going to
8 be having the same issue managed at that point
9 then under five potential programs. So it gets
10 pretty crazy out there, and quite honestly, it's
11 inherent at some point -- it's asking for field
12 mistakes to be made.

13 Q. Thank you. Okay.

14 I want to turn to Exhibit 1330,
15 which is the investigation of the area west of the
16 west ash pond at the Waukegan station.

17 And, Drew, could you put that up
18 on the screen? Or not, it's fine.

19 A. I have it here.

20 (Whereupon, Complainants'
21 Exhibit No. 1330 was previously
22 marked for identification.)

23 BY MS. GALE:

24 Q. Oh, you have it. Okay.

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So I want to turn to Boring

No. A1?

A. Okay.

Q. Okay. And I believe there was a lot of discussion yesterday about the term "wet." And I believe you stated that wet would indicate a saturated layer. Am I recalling that correctly?

A. That is correct, yes.

Q. Okay. On -- in Boring No. A1, do you see wet on there?

A. Yes. At -- under -- at 12 feet under the description, the brown/gray fine to medium sand, wet.

Q. And where is that? Is that in the -- under the remarks? What section is that in?

A. That's in the native sand and gravel.

Q. Okay. Great. And then I want you to look at the same time at Boring No. A2. I think you can just look at the same time.

A. Yes.

Q. And you see it says wet at five feet there?

1 A. Correct.

2 Q. And then below that it says moist.

3 And then it says wet again at 10 feet?

4 A. Yes.

5 Q. Can you tell me -- and if we can
6 look at the map, they are -- A1 and A2 are next to
7 each other on a north-south position, correct?

8 A. Right, I believe 100 feet apart.

9 Q. Yeah. So what's the difference?
10 Why the difference between the two?

11 A. Well, what this is saying is it's
12 observing as the boring was going through and the
13 geologist was logging it, it started out with a --
14 a slightly -- a clay topsoil with some gray silt.
15 It was moist, and there was ash mixed in with it,
16 clearly, there, and as the boring was going down
17 at about just past four and a half feet, a wet
18 zone was encountered.

19 However, by the time seven -- at
20 seven feet, basically, came back to a black fine
21 sand, but -- with slag, but it was slightly moist.
22 So what that says is we have got probably
23 precipitation water, and if I remember right, it
24 was -- it was a pretty wet season. This was done

1 towards the end of November.

2 So probably we have got this --
3 from infiltration, from precipitation, you have
4 got a wetting front or layer working its way
5 through. So you've got this pocket of some
6 saturated material, and that's just basically
7 water moving vertically downwards through the
8 system.

9 So it came back up. Below that,
10 it was still moist. So that hasn't worked its way
11 down through, and then the actual water table --
12 and water table defines anything -- that depth
13 beyond this level is saturated, and that's the
14 natural water table, and that's -- again, at this
15 point, it's at 10 feet in the native materials.

16 **Q. Excellent. Let's skip to Boring Log**
17 **C10, which -- and I should have said before.**
18 **Boring Log A1 is on Bates paged MWG13-15_79494,**
19 **and C10 is at MWWG13-15_79523. Are you there?**

20 A. Yes, I am.

21 **Q. Okay. Similar question as before.**
22 **Where does it say wet on C10?**

23 A. It does not, which shows to me or
24 suggests to me here that the actual water table or

1 saturated conditions are deeper than 15 feet.

2 Q. And does that indicate anything?

3 A. That it's still not -- anything
4 above 15 feet at this point is still not
5 saturated.

6 Q. Okay. And I want to look at -- so
7 at seven and a half feet, do you see that it says,
8 "medium sand, ash and slag"?

9 A. Yes.

10 Q. Okay. And -- and then below that in
11 the native area it says, "medium sand, moist." Do
12 you see that?

13 A. Yes.

14 Q. Okay. And medium sand is, what, a
15 particle size or a grain size, right?

16 A. A grain size, correct, yes.

17 Q. Okay. And then, so, when looking at
18 a boring log like this, you know, you see medium
19 sand, ash, and sand, and medium sand. How would
20 you know the difference between the two?

21 A. Well, you know, sand is also a
22 descriptor. You know, everybody knows what a
23 beach sand looks like, but it is also a particle
24 size. So if you have a fill material, you can

1 have a sandy or a gravelly or a sandy gravelly
2 fill material that is actually clean sand and
3 gravel type material. It's just brought on to
4 this property from a quarry somewhere, and it's
5 used to bring a property elevation up.

6 An example of that is a lot of
7 what we saw at Joliet 29 in our boring logs, it
8 was a -- it was a sand and gravel type fill, but
9 there was no notice, no indication of ash or
10 cinders or anything else in that material.

11 So if you have a sandy matrix, a
12 medium sand matrix, but what these other notes
13 here are telling me is that it's -- clearly above
14 13 feet it appears to have -- to be intermixed
15 with -- with components that have here been
16 identified as ash or slag, or I don't know if
17 cinders -- the term "cinders" was used in this
18 particular log, but, you know, I look at that, and
19 it suggests to me, yes, I have got fill. It's not
20 native. It may have some native components, some
21 sand, but certainly mixed in with, in this case,
22 ash and slag.

23 And below that, that is the
24 native. That's the fine beach -- the fine to

1 medium, the beach sands, which really make up that
2 water table aquifer beneath the Waukegan station.

3 Q. And I -- you made a point there, and
4 I just want to point on that. You said some fill
5 can be medium sand, and some fill can be medium
6 sand, ash, and slag. Is it industry standard to
7 make that distinction?

8 A. You know, certainly it's industry
9 standard to provide as much description there as
10 possible. For us, it's our standard. It helps us
11 evaluate it, but I think for the most part, when a
12 geologist is identifying a fill layer, they will
13 describe it, and if they see a sandy, gravelly
14 fill and they see some brick pieces or wood pieces
15 or organic pieces, even some municipal waste
16 sometimes in there, that's noted on the log. I
17 mean, that's usually a pretty good environmental
18 standard.

19 Q. And, I guess, a similar question for
20 if you see gravel in the fill --

21 A. Uh-huh.

22 Q. -- would they similarly be specific
23 in the gravel if it's gravel or if it's bottom ash
24 or, you know, et cetera?

1 A. Sure. You know, and sometimes the
2 distinction to bottom ash might not be able to be
3 made, but, again, I think any geologist behind the
4 drill rig that's looking at a gravelly fill can
5 distinguish an industrial waste type gravel size
6 particles, which you would see from a bottom ash,
7 versus kind of the native gravel that you get from
8 your gravel quarry or even a, you know, native
9 gravel from, you know, different fluvial deposits,
10 background deposits, whatever, you know. That's
11 quite a difference. They are both gravel-sized
12 particles, but you can for the most part tell an
13 industrial slag chunk that's gravel-sided, versus
14 a natural piece of dolomite gravel.

15 **Q. Thank you. And can you turn to --**
16 **back to the boring logs, Boring Log D1, which is**
17 **a -- just flipping the next page, MWG13-15_79524.**

18 A. Yes.

19 **Q. And looking at this boring log,**
20 **where does it say wet?**

21 A. There is no indication of wet
22 conditions being encountered.

23 **Q. And what does that mean to you?**

24 A. Again, that throughout this layer

1 there, this is all unsaturated material.

2 Q. And would that mean there is no
3 indication of a wetting front?

4 A. In this particular log, that there
5 is no indication of that.

6 Q. I'm sorry. That fell off. Can you
7 just make sure that she got that?

8 A. There is no indication of that on
9 this log.

10 Q. Thank you. Mr. Gnat, you discussed
11 earlier the tannery site near the Waukegan
12 station, and to confirm, that's upgradient of the
13 Waukegan station, right?

14 A. Yes.

15 Q. And it's actually -- I'll clarify.
16 It's the tannery and the boiler -- what's it
17 called?

18 A. General boiler.

19 Q. Thank you. The general boiler site.
20 Would you call the tannery and
21 the general boiler site potential historic
22 sources?

23 A. Yes, I would.

24 Q. And I believe you said the tannery

1 and the general boiler are in the Illinois SRP
2 program?

3 A. Certainly the tanner was. I believe
4 the general boiler was as well, yes.

5 Q. And I believe you said that their
6 groundwater is contaminating the Midwest Gen
7 station?

8 A. Yes.

9 Q. And will that contamination --
10 contaminated groundwater from the tannery and the
11 general boiler continue to flow onto Midwest
12 Generation's property?

13 A. Yes.

14 MS. BUGEL: Objection. Calls for
15 speculation.

16 HEARING OFFICER HALLORAN: He may
17 answer if he's able.

18 BY THE WITNESS:

19 A. Yes. They are upgradient.
20 Groundwater will continue to flow from west to
21 east.

22 BY MS. GALE:

23 Q. All right. I want to just go
24 through a few pages of the Exhibit 1331. Bear

1 with me, Mr. Hearing Officer, I'm skipping a lot.

2 Oh, I just want to make sure we
3 hit upon this. Can you turn to Figure 9-11, which
4 is on Bates number 110688?

5 A. Okay.

6 Q. What's depicted on Figure 9-11?

7 A. Figure 9-11 identifies what the
8 initial -- on the west side there in yellow, what
9 the previously established environmental land use
10 control boundary or ELUC boundary, E-L-U-C, was
11 established for the work that was done for the
12 sites to the west of the tannery site, the general
13 boiler site, and this is what -- the area that was
14 identified in that ELUC that Midwest Generation
15 that we voluntarily agreed to sign to facilitate
16 those sites being able to get closure under the
17 site remediation program and part of that
18 management strategy.

19 And then to the east in the more
20 pink type color hashed that goes beneath the
21 impoundments and over to the lake is the
22 environmental land use control boundary that was
23 agreed upon between Illinois EPA and Midwest
24 Generation as part of the compliance commitment

1 agreement that was then -- I believe this was also
2 subsequently placed, the description of -- well,
3 both of these ELUCs is upon the deed for the
4 property restricting the use of groundwater
5 beneath those areas.

6 Q. And it -- thank you.

7 And so the pink, it actually
8 describes it as "proposed ELUC boundary
9 extension." Is that accurate?

10 A. Well, this is a figure from when the
11 discussions were occurring, but this was
12 finalized, and it is on the deed.

13 Q. Okay. All right. Mr. Gnat, I want
14 you to turn to -- well, turn to Attachment 9-1,
15 turning to page Midwest -- excuse me --
16 MWG13-15_110856.

17 A. Okay.

18 Q. Okay. And this is entitled the,
19 "Local Well Stratigraphy Information," right?

20 A. Yes.

21 Q. And I just want to clarify for
22 everyone, Well Count 1 does not mean Monitoring
23 Well 1 at Midwest Gen, right?

24 A. That is correct, yes.

1 Q. Okay. And you know the Well ID
2 because you have that number there, but you don't
3 know -- well, you don't know the location of this
4 well, right?

5 A. Well, not -- not off of hand. I
6 mean, this is tied to a map location that can be
7 easily pulled off, and we probably have it back in
8 our office, but, yes.

9 Q. But it's not on Midwest Gen's
10 property, right?

11 A. No, no, it's not.

12 Q. All right. I want to look at --
13 okay. So same thing with Well Count No. 2.
14 That's not on Midwest Gen's property, right?

15 A. That is correct. I do know that
16 Waukegan has a potable water well. It's about
17 1500 feet deep or so. I would have to go back and
18 take a look at which plants do, but, no, these are
19 all wells that are not on -- it's not on Midwest
20 Gen property.

21 Q. Look at the first -- excuse me -- I
22 guess, Row 9, or ID Row 9 for Well Count 2.
23 What's the description?

24 A. Black cinders fill.

1 Q. All right. And same thing for ID
2 Row 18 for Well Count 3. What's the first
3 description?

4 A. Very loose cinders fill.

5 Q. Okay. ID 27 and Well Count 4,
6 what's the first description?

7 A. Very loose cinders fill.

8 Q. And I guess I should say, Well Count
9 No. 3 and Well Count No. 4, those are not on
10 Midwest Gen property, correct?

11 A. I -- I do not believe so, no. I
12 mean, I -- again, I would have to go back and take
13 a look --

14 Q. Sure.

15 A. -- exactly where these are located,
16 but I know these were taken from a fairly broad
17 area around -- around the station.

18 Q. Okay. But if you were to go through
19 the other wells, and looking at the first line for
20 each of those numbers, do you see that they have
21 ash fill in each of them?

22 A. Yes.

23 Q. What does that tell you, Mr. Gnat?

24 A. That there is a lot of ubiquitous

1 fill out there. It's a fairly industrial area,
2 and there are a lot of industrial-generated fills
3 mixed in.

4 Q. Oh, yes, thank you. I want to now
5 turn to Attachment 9-4, which is on
6 MWG13-15_110923.

7 A. Okay.

8 Q. And this is the certification by
9 Josh Davenport, the professional engineer that you
10 had discussed with Mr. Russ this morning, right?

11 A. Yes, it is.

12 Q. And he based his conclusion and
13 certification upon four bases, right?

14 A. Yes.

15 Q. What's the fourth basis?

16 A. Illinois Environmental Protection
17 Agency, IEPA, approved the overall hydrogeologic
18 assessment as part of a larger study.

19 Q. Thank you. Right. Okay. Let's
20 move on to Attachment 10, which is at -- and this
21 is simply a correction, I think, that we had.

22 There was a statement earlier. MWG13-15_111163.

23 A. Okay.

24 Q. And when Mr. Russ was talking with

1 you about the cover section of this document, I
2 believe you had stated that KPRG had done the
3 closure plan for Exhibit 1331, but who wrote the
4 preliminary closure plan for Exhibit 1331, the
5 Waukegan initial operating permit application?

6 A. For the Waukegan permit it was
7 Sargent & Lundy.

8 Q. Okay. Great. And, again, in the
9 introductory 20 pages at the top of this, it's
10 called at Section 10, the Written Closure Plan,
11 but what is it described as in Attachment 10?

12 A. Preliminary Written Closure Plan.

13 Q. Thank you. Okay. We are done with
14 that document.

15 Can you pull out Exhibit 1332,
16 which is the Will County Operating Permit
17 Application, please?

18 A. Okay.

19 Q. And can you turn to -- well, we will
20 be looking at Figure 9-12, and it's the Bates
21 number -- oh, boy -- 125671.

22 A. Okay.

23 Q. What's depicted in Figure 9-12,
24 please?

1 A. This is a -- there is a -- the
2 cross-hatched part of the figure shows the
3 groundwater management zone that was agreed upon
4 between Illinois EPA and Midwest Generation
5 relative to the compliance commitment agreement.

6 MS. GALE: Thank you. Can I have a
7 moment, Mr. Hearing Officer?

8 HEARING OFFICER HALLORAN: You may.

9 (Whereupon, a discussion was had
10 off the record.)

11 MS. GALE: I have no further
12 questions at this time.

13 HEARING OFFICER HALLORAN: You have
14 no further questions?

15 MS. GALE: At this time.

16 HEARING OFFICER HALLORAN: Great.

17 I'm confused as to whose witness this is.

18 MR. RUSS: I will be doing
19 re-direct. Would you like to break for lunch now?

20 HEARING OFFICER HALLORAN: Yeah.

21 MS. NIJMAN: We would certainly like
22 to get Mr. Gnat finished.

23 THE WITNESS: You and me both.

24 HEARING OFFICER HALLORAN: He's been

1 up here a while. Fair enough.

2 R E - C R O S S E X A M I N A T I O N

3 by Mr. Russ

4 Q. Just a second. Excuse me.

5 Can you, Mr. Gnat, look at
6 Exhibit 1331 that Ms. Gale was just asking you
7 about, and can you turn to page -- Bates page
8 111163? I'm sorry. Bear with me for a minute.
9 I'm having a technical issue.

10 Oh, yeah. Okay. And does this
11 describe a preliminary written closure plan for
12 the east ash pond?

13 A. I'm sorry. Could you -- I looked at
14 111063.

15 Q. Oh, do you have that number? I'm
16 looking at 111163.

17 A. Oh, okay. I'm sorry. I --

18 Q. Yeah. No problem.

19 A. Okay. Got it.

20 Q. This is a preliminary written
21 closure plan for the east ash pond?

22 A. That's the title of the document,
23 Sargent & Lundy, "Preliminary Written Closure Plan
24 for East Ash Pond, Revision 1, October 29, 2021."

1 Q. Okay. And the -- I believe the text
2 of Section 10 refers to -- if you look to page
3 110658?

4 A. Yes.

5 Q. And here it says, "Written Closure
6 Plan," and then the last line on that page says,
7 "The written closure plan complies with 845.720."
8 Do you see that?

9 A. Yes, I do.

10 Q. I just want to clarify. Where it's
11 discussing the written closure plan here, the
12 attachment says, "Preliminary Written Closure
13 Plan."

14 Is there a final written closure
15 plan that should have been attached?

16 A. Again, I did not write either this
17 Section 10, nor the preliminary written closure
18 plan. Why the word "preliminary" is used in this
19 area and not that, you know, I would have to first
20 go back to the regulation. To resolve this, I
21 would have to go back to 845.230(d)(2)(J) seeing,
22 does that require a written or a preliminary
23 written closure plan, to see which of this wording
24 is actually the correct wording.

1 The -- then just, I guess, to
2 clarify so that we are not parsing words, I
3 believe it's intended that this is the same
4 document, and the reason being is I having worked
5 with Sargent & Lundy, when they are pulling
6 together documents, this is Revision 1, and then
7 the issue of purpose is use, and the date is
8 October 29, 2021, which is the date for the
9 submittals of this document.

10 So I believe this is intended to
11 fulfill that requirement, and whether or not that
12 word "preliminary" should be there or not, that --
13 that, I can't address for you.

14 **Q. Okay. Fair enough. Thanks for**
15 **trying there.**

16 **Now, Ms. Gale was asking you**
17 **about Powerton and walking along the shoreline.**
18 **Do you remember that?**

19 A. Yes.

20 **Q. And one of the reasons you gave for**
21 **not looking for seeps is that the groundwater**
22 **didn't exceed drinking water standards; is that**
23 **right?**

24 A. Relative to Wells 2, 3, 4 and 5,

1 which are the wells closest -- they're the
2 furthest north closest to the river itself, yes.

3 Q. Okay. And would you compare
4 sediment to a drinking water standard in your line
5 of work?

6 A. No, I would not. In general, I
7 believe that the -- a lot of the sediment or
8 surface water requirements are not as stringent as
9 the -- as the drinking water standards, but that
10 relative to walking for seeps, I'm not quite sure
11 how the standard fits in on a sediment standard
12 versus walking to visually inspect for a seep.

13 Q. Understood. I guess the point I'm
14 just trying to get out is that there are separate
15 standards for drinking water, surface water for
16 aquatic life, and sediment; different types of
17 standards for different reasons?

18 A. That's my understanding, yes.

19 Q. Do you ever walk along -- do you
20 ever walk along the intake channel at Powerton for
21 any reason?

22 A. Along the intake channel, again, we
23 have got wells that parallel along that channel,
24 and so, you know, if I'm out at the site, I'm

1 certainly walking past those wells, and I do look
2 around and in the area and vicinity, yes, as well
3 as our sampling crew.

4 Q. Okay. Thank you. And with Ms. Gale
5 you were talking about the federal and state rules
6 that would apply to historic fill. Do you
7 remember that?

8 A. The upcoming or the proposed, yes.
9 There is some rule out there that -- apparently
10 that has come out proposed for the federal rule,
11 and I do know that there is an open sub-docket
12 for -- relative to the state.

13 Q. Right. And I just wanted to clarify
14 for the record, both of those are currently
15 proposed, but not final. Is that your
16 understanding?

17 A. That is correct, yes. And I believe
18 I kind of said when I was talking, if those had
19 passed, then potentially we're looking at up to
20 five different programs at the same time.

21 Q. Right. And actually, that's funny.
22 That was my next question.

23 I think you said that that would
24 be the same ash monitored by five different

1 programs. And I just want to clarify, are you --
2 you are not saying that the historic ash and the
3 ash in the ponds are the same ash?

4 A. No, no.

5 MR. RUSS: No further questions.

6 HEARING OFFICER HALLORAN: Thank
7 you, Mr. Russ.

8 Ms. Gale?

9 MS. GALE: We are done.

10 HEARING OFFICER HALLORAN: Thank
11 you, Mr. Gnat, you are done.

12 THE WITNESS: Thank you, sir.

13 HEARING OFFICER HALLORAN: Thank
14 you. We are off the record.

15 (Whereupon, a lunch break was
16 taken.)

17 HEARING OFFICER HALLORAN: All
18 right. We are back on the record. It's
19 approximately 1:30. Welcome back from lunch. I
20 believe we have Ms. Wachspress --

21 MS. WACHSPRESS: Yes.

22 HEARING OFFICER HALLORAN: -- who
23 will be calling her witness.

24 MS. WACHSPRESS: Yes. I would like

1 to call Sharene Shealey, please.

2 HEARING OFFICER HALLORAN: There
3 should be room. I don't know if we need those
4 exhibits. I don't think you need them. Okay.

5 Thank you. If you could raise
6 your right hand, and the court reporter will swear
7 you in.

8 (Whereupon, the witness was duly
9 sworn.)

10 HEARING OFFICER HALLORAN: You may
11 proceed. Thanks.

12 WHEREUPON:

13 S H A R I N E S H E A L E Y
14 called as an adverse witness herein, having been
15 first duly sworn, deposeseth and saith as follows:

16 D I R E C T E X A M I N A T I O N

17 by Ms. Wachspress

18 Q. Hi, Ms. Shealey. My name is Megan
19 Wachspress. Could you state your name for the
20 record?

21 A. And I will spell it, too.

22 Q. Yeah.

23 A. It's Sharene Shealey, S-H-A-R-E-N-E,
24 S-H-E-A-L-E-Y.

1 **Q. And I can see you brought a piece of**
2 **paper with you to the stand today. Could you tell**
3 **me what's on that piece of paper, please?**

4 A. A list of the impoundments across
5 the four stations.

6 MS. WACHSPRESS: Okay. And could
7 we -- actually, could we go off the record, your
8 Honor?

9 HEARING OFFICER HALLORAN: Sure.

10 (Whereupon, a discussion was had
11 off the record.)

12 HEARING OFFICER HALLORAN: We are
13 back on the record.

14 MS. WACHSPRESS: I have been handed
15 a sheet that I have been told is the same sheet
16 that Ms. Shealey has in front of her. I would
17 like to mark this as Exhibit 1400.

18 (Whereupon, Complainants'
19 Exhibit No. 1400 was marked for
20 identification.)

21 BY MS. WACHSPRESS:

22 **Q. I can just write 1400 on there.**

23 Okay. So, Ms. Shealey, if I
24 **were to use the term "CCR" in this context, would**

1 you know what I meant?

2 A. Yes.

3 Q. Okay. And what -- what would you
4 assume that I meant by that word or CCR?

5 A. I would presume you meant coal
6 combustion residuals.

7 Q. Great. And if I were to use the
8 term "coal ash," what would you understand me to
9 mean?

10 A. Ash that is produced from the
11 burning of coal.

12 Q. Okay. Great.

13 And if I were to use IEPA to
14 stand for the Illinois Environmental Protection
15 Agency, would we understand each other?

16 A. Yes, we would.

17 Q. And if I were to use US EPA for the
18 federal Environmental Protection Agency, would we
19 understand each other?

20 A. Yes, we would.

21 Q. Okay. Great.

22 Are you familiar with the
23 Resource Conservation and Recovery Act?

24 A. By title.

1 Q. And if I were to refer to that as
2 RCRA, would we understand each other?

3 A. Yes, we could.

4 Q. Okay. Are you familiar with Part
5 257 of RCRA regulations?

6 A. Yes.

7 Q. Can you briefly describe your
8 understanding of these regulations?

9 A. And I will rephrase that. I'm not
10 sure I'm familiar with all of Part 257. I am
11 familiar with the part that deals with coal
12 combustion residuals, which may be Subpart D or E.

13 Q. That's my understanding as well. So
14 if I refer to Part 257 to refer to the parts of
15 that regulations dealing with CCR, would we
16 understand each other?

17 A. Yes.

18 Q. Okay. And are you familiar with the
19 Illinois Part 845 regulations?

20 A. Yes.

21 Q. So if I refer to Part 854, we will
22 understand each other?

23 A. Yes, we will.

24 Q. Okay. Great.

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Who is your current employer?

A. I do -- I work for Midwest Generation.

MS. WACHSPRESS: Okay. At this time, your Honor, I would like to move -- to treat this witness as adverse for the remainder of the direct examination.

HEARING OFFICER HALLORAN: Ms. Gale?

MS. GALE: No objection.

HEARING OFFICER HALLORAN: Thank you. Granted.

WHEREUPON:

S H A R E N E S H E A L E Y

called as an adverse witness herein, pursuant to Section 1-01.624 of procedural rules of the Illinois Pollution Control Board, having been first duly sworn, deposeth and saith as follows:

C R O S S E X A M I N A T I O N

by Ms. Wachspress

Q. Okay. When did you come to work for Midwest Generation?

A. I'm so sorry. Excuse me.

Come to work for is slightly different, and I'm not trying to be difficult at

1 all. I probably was hired to work for Midwest
2 Generation in the fall of 2014. I came to
3 Illinois in the winter of 2015.

4 Q. Okay. And so have you ever been
5 employed by NRG?

6 A. Yeah. Yes, I think so.

7 Q. And when did you first begin to be
8 employed by NRG?

9 A. I didn't write that on my sheet.
10 Sorry. I believe it was December of 2012.

11 Q. Okay. And so to make sure I
12 understand your testimony, in December of 2012,
13 you began working for NRG, and then in fall of
14 2014, you left NRG and started to be employed by
15 Midwest Gen?

16 A. I think that -- well, I am paid by
17 NRG, but my work is for Midwest Generation.

18 Q. Okay. So NRG continues to pay you
19 today?

20 A. Yes.

21 Q. Okay. And you said your work is for
22 Midwest Gen?

23 A. Yes.

24 Q. Tell me about that work. Could you

1 **describe your job responsibilities for me?**

2 A. I can attempt to. I am the Director
3 of Environmental for Midwest Generation, which
4 means that I deal with all things -- well, maybe
5 not all. A lot of things that are related to
6 environmental compliance or planning with regard
7 to operations of the plants.

8 Q. **And when you say the plants, which**
9 **plants are you referring to?**

10 A. Every plant that Midwest Generation
11 owns.

12 Q. **Okay. And that would include Joliet**
13 **29?**

14 A. Yes.

15 Q. **And Waukegan?**

16 A. Waukegan station, yes.

17 Q. **And Powerton?**

18 A. Station, yes.

19 Q. **And Will County station?**

20 A. Yes.

21 Q. **Yes. Okay. And so are you the lead**
22 **environmental compliance officer at each of those**
23 **plants?**

24 A. I would never consider myself to be

1 an officer.

2 Q. Okay.

3 A. But I am the lead compliance, yes,
4 generally.

5 Q. Do you cover any particular
6 regulatory compliance issues at those plants or
7 are -- go ahead.

8 A. No. That -- and that's why I said I
9 would attempt to describe. I kind of do
10 everything.

11 Q. So if there is an environmental
12 issue, you are involved in that at those plants?

13 A. Not 100 percent, but, yes,
14 generally.

15 Q. Okay. And so -- and so in
16 particular, you're responsible for environmental
17 compliance with respect to rules governing the
18 disposal of CCR?

19 A. Is that a question?

20 Q. Yes. In particular, are you
21 responsible for the compliance with rules
22 governing the disposal of CCR?

23 MS. GALE: Objection to the extent
24 that the rules of disposal -- it's not just

1 disposal under the rules.

2 MS. WACHSPRESS: I will rephrase.

3 MS. GALE: Thank you.

4 BY MS. WACHSPRESS:

5 Q. You have primary responsibility for
6 compliance with rules governing CCR at the four
7 plants we have discussed, correct?

8 A. Primary is tough for me, but I do
9 have responsibility for that -- what you stated.

10 Q. Why is primary tough for you?

11 A. There are an abundance of --
12 there -- there's a team. I am just a member of a
13 team.

14 Q. And who are the other members of
15 that team?

16 A. One of my responsibilities is to
17 hire consultants, and as Mr. Gnat testified with
18 the -- with regard to the operating permit
19 operation applications, there are -- I think
20 those -- some of those applications may have up to
21 five or six different consulting firms.

22 So I would be responsible for
23 finding and working with the consultants towards
24 compliance.

1 Q. But those consultants are not
2 employed by NRG, correct?

3 A. Correct.

4 Q. Correct. So --

5 A. Well, yeah, I -- technically, no, I
6 guess, yes.

7 Q. Okay. Is there anyone employed by
8 NRG that you would consider part of this team?

9 A. Yes.

10 Q. Okay. And how many people would you
11 say?

12 A. I -- I am uncertain of that number.
13 As an example -- and I'm going off track.

14 Yes, I am -- I'm really
15 uncertain. It has -- it's more than a handful.

16 Q. Okay. And are you primarily
17 responsible for compliance with rules governing
18 groundwater quality at the four plants at issue in
19 this proceeding?

20 A. Yes.

21 Q. And are you primarily responsible
22 for compliance with rules governing the release of
23 waste into surface waters at the four plants
24 covered by this proceeding?

1 A. If you mean discharges?

2 Q. **Discharges, yes.**

3 A. Not exactly, but I am involved.

4 Q. **Okay. Is your approval required**
5 **before certain documents are filed with state**
6 **regulators?**

7 A. Approval is a strong word.
8 Agreement would probably be a better
9 characterization.

10 Q. **Is that also the case with filings**
11 **with federal regulators?**

12 A. Yes.

13 Q. **Okay. And which of those documents**
14 **is your agreement required on?**

15 A. There -- those are -- there are
16 hundreds of documents I touch, but with -- I'm
17 sorry.

18 Q. **No, no.**

19 A. Literally, hundreds.

20 Q. **Is your agreement required for**
21 **filings under Part 257?**

22 A. Generally.

23 Q. **Okay. What about Part 845?**

24 A. I can think of an example where I

1 have removed myself from the process or have been
2 removed, however you would like to look at it.

3 **Q. And was that an occasion involving**
4 **one of the plants that we are discussing here**
5 **today?**

6 A. The only plants that I work with
7 would be -- are subject to Part 845.

8 **Q. Is your approval required before**
9 **certain actions are taken at the four plants?**

10 A. Approval, again, is a strong word,
11 but agreement I would say I would -- I would
12 definitely be a member of a team who would agree
13 to do things, yes.

14 **Q. And what sorts of actions would your**
15 **agreement be --**

16 A. A simple example is Part 845
17 requires public hearings -- public meetings.
18 Forgive me. Public meetings to be held prior to
19 operating permit application -- or construction
20 permit application submittals. I would be a --
21 I -- I would set the date, essentially, of those
22 meetings.

23 **Q. What about sampling, would your**
24 **agreement be --**

1 A. We don't sample in-house. We
2 contract that out. So I would be involved in
3 hiring the contractor.

4 **Q. And would your agreement be involved**
5 **in the work order or the specification sent to**
6 **that contractor?**

7 A. The request for proposal would
8 probably go through me, yes.

9 **Q. Okay. Okay. And what about removal**
10 **of CCR at the plants? Would your agreement be**
11 **part of that?**

12 A. No.

13 **Q. Would you be informed?**

14 A. I believe, generally, but I don't
15 know what I don't know.

16 **Q. Okay. Okay. Are you involved in**
17 **the preparation of permit applications under --**
18 **well, scratch.**

19 **Are you involved in reporting**
20 **under Part 257 of RCRA?**

21 MS. GALE: Objection, vague.

22 Reporting. Reporting of what?

23 HEARING OFFICER HALLORAN: Yeah.

24 Could you rephrase, please?

1 BY MS. WACHSPRESS:

2 Q. Is it your understanding that Part
3 257 of RCRA requires that owners and operators
4 publish certain information about CCR units at
5 their sites?

6 A. Yes.

7 Q. Yes. Okay.

8 Are you involved in the
9 preparation of those reports that are published
10 pursuant to Part 257 for the plants for which you
11 are responsible?

12 A. I cannot say 100 percent, but
13 generally, yes.

14 Q. Generally. And it is correct that
15 Illinois Part 845 also requires certain reporting,
16 as well as permit applications; is that correct?

17 A. Correct.

18 Q. Okay. Are you responsible in the
19 preparation of the reporting for Illinois Part
20 845?

21 A. That's an example of where I'm --
22 Part 845 requires sampling be reported, I think,
23 within 14 -- I would have to read the regs, but
24 within 14 or 30 days. I do not review those

1 14-day reports anymore. So I'm not completely
2 involved in reporting for Part 845.

3 Q. So is it fair to say that you are
4 generally involved, but when timing prevents you
5 from the opportunity of reviewing the materials,
6 you do not necessarily --

7 MS. GALE: Objection. Misstates her
8 testimony.

9 BY MS. WACHSPRESS:

10 Q. Is it fair to say that you are
11 generally involved in that reporting --

12 A. Yes.

13 Q. -- with the exception of -- with the
14 exception of sampling under a short time frame for
15 reporting?

16 MS. GALE: Again, same objection.

17 HEARING OFFICER HALLORAN:

18 Sustained.

19 BY MS. WACHSPRESS:

20 Q. Would you say -- would you say you
21 are generally involved in reporting for Illinois
22 Part 845, with exceptions?

23 A. Yes.

24 Q. Okay. And one of those exceptions

1 **is when sampling data must be turned around in a**
2 **short period of time?**

3 A. Yeah. And another one that came
4 immediately to mind is that we are required to
5 post our weekly inspections, I believe. I believe
6 that's a requirement, and that's kind of where you
7 can tell that I'm not really involved in that,
8 because I believe it is. So I would not review
9 every week's inspections at every facility or for
10 every unit.

11 **Q. And you -- can you think of any**
12 **other exceptions to that general rule as we sit**
13 **here?**

14 A. Not immediately, I cannot. Nothing
15 comes to mind.

16 **Q. Okay. So sometimes water that is in**
17 **a coal ash impoundment will be discharged into**
18 **surface waters of the United States, correct?**

19 A. Correct.

20 MS. GALE: Objection, foundation.

21 HEARING OFFICER HALLORAN:

22 Sustained. Ms. Wachspress, rephrase.

23 BY MS. WACHSPRESS:

24 **Q. Are you familiar with the term**

1 **"Surface Waters of the United States"?**

2 A. Yes.

3 **Q. Okay. And that term refers to**
4 **waters that are subject to the Clean Water Act?**

5 A. Yes. And I actually would have
6 called -- I think the correct -- the term is
7 Waters of the United States. Not Surface Waters
8 of the United States. That's the term I'm
9 familiar with, Waters of the United States.

10 **Q. Thank you. And it is the case that**
11 **impoundments, which are places for the storage of**
12 **water and coal ash, sometimes have outfalls,**
13 **correct?**

14 A. Impoundments don't necessarily
15 contain both water and coal ash. My simple
16 understanding is that an impoundment impounds a
17 material.

18 **Q. So I'm referring -- if I -- if I**
19 **refer to the term "coal ash impoundment," can we**
20 **understand that I mean an impoundment with both**
21 **coal ash and liquid material in it?**

22 A. Yes.

23 HEARING OFFICER HALLORAN: Can you
24 speak up?

1 MS. WACHSPRESS: Liquid material in
2 it.

3 HEARING OFFICER HALLORAN: Thank
4 you.

5 BY THE WITNESS:

6 A. Oh, no, no. We cannot agree to
7 that. I'm sorry.

8 BY MS. WACHSPRESS:

9 Q. Okay. What can't we agree to about
10 that?

11 A. You said -- wait. I'm sorry. Maybe
12 I didn't hear you correctly. Could you repeat?

13 Q. I said if I -- well, if I use the
14 term "coal ash impoundment," can we agree that
15 that refers to an impoundment that contains coal
16 ash and liquid?

17 A. I didn't hear the coal ash the first
18 time, and that's why I couldn't agree with you. A
19 coal ash impoundment has coal ash and liquid, yes.
20 We can agree to that.

21 Q. And is it sometimes the case that
22 there are outfalls from coal ash impoundments?

23 A. Yes.

24 Q. Okay. And it's sometimes the case

1 that there are pipes or other places where water
2 exits from the impoundment in -- from the coal ash
3 impoundment into another facility, correct?

4 A. Into a --

5 MS. GALE: Objection, vague.

6 BY MS. WACHSPRESS:

7 Q. Okay. Scratch it. Okay.

8 Let's just stick with the
9 outfalls. Okay? In the case where a coal ash
10 impoundment has an outfall, if that outfall were
11 to exit into a waters -- Water of the United
12 States, a permit under the Clean Air Act would be
13 required for that outfall; is that correct?

14 A. No.

15 MS. GALE: Objection, foundation.

16 Did you say Clean Air Act?

17 BY MS. WACHSPRESS:

18 Q. Oh, sorry. Clean Water Act. I
19 misspoke. I'm sorry.

20 All right. I'm just going to --
21 I'll -- all right. We will come back to that one.
22 Okay.

23 If Midwest Generation files
24 construction permits for CCR facilities, are you

1 involved with the preparation of those permit
2 applications?

3 MS. GALE: Objection. Vague as to
4 CCR facilities.

5 HEARING OFFICER HALLORAN: Yeah.

6 BY MS. WACHSPRESS:

7 Q. If Midwest Generation files
8 construction permits for places where CCR is held,
9 disposed, or stored, are you involved with the
10 preparation of those permit applications?

11 MS. GALE: Objection. Vague as to
12 construction permits. Are we talking about the
13 construction permits under the Illinois rule? Are
14 we talking about construction permits under a
15 different rule?

16 HEARING OFFICER HALLORAN:

17 Sustained. Ms. Wachspress?

18 BY MS. WACHSPRESS:

19 Q. All right. If Midwest Generation
20 files construction permits under Illinois law, as
21 required by Illinois law for facilities for the
22 storage, disposal -- or disposal of CCR, are you
23 involved with the preparation of those permit
24 applications?

1 MS. GALE: I apologize, sir, but
2 same objection. Illinois law is -- is still very
3 broad. So objection, vague. Also, foundation as
4 to what we are -- what -- what they are asking her
5 about.

6 HEARING OFFICER HALLORAN: Well, I
7 agree with you. It is rather vague.
8 Ms. Wachspress, could you maybe --

9 MS. WACHSPRESS: Sure.

10 HEARING OFFICER HALLORAN: Try to
11 rephrase? Thank you.

12 BY MS. WACHSPRESS:

13 Q. Part or -- Part -- excuse me. Part
14 845 requires owners or operators to file a permit
15 application before they dispose, place or store
16 CCR, correct?

17 A. No.

18 Q. No. So is it your understanding
19 that CCR can be placed, stored, or disposed of
20 without a permit?

21 A. Not quite, no.

22 Q. All right. What permits do you
23 understand to be required for the storage,
24 disposal, or placement of CCR facilities -- or

1 **excuse me -- scratch -- placement of CCR?**

2 MS. GALE: I guess, objection,
3 vague. Placement where? I mean --

4 BY MS. WACHSPRESS:

5 Q. On -- at the -- at the Joliet 29
6 site, for example.

7 MS. GALE: In an impoundment? I'm
8 not quite following.

9 HEARING OFFICER HALLORAN: She can
10 answer, if she is able.

11 BY THE WITNESS:

12 A. And -- okay. I need the question
13 again because -- I'm so sorry. Am I --

14 HEARING OFFICER HALLORAN: Shall we
15 read the question back or --

16 MS. WACHSPRESS: Yeah, why don't we
17 read the question back.

18 THE WITNESS: Okay. Thank you.

19 (Whereupon, the record was read
20 as requested.)

21 BY THE WITNESS:

22 A. My knowledge of the history of
23 permitting, for example, at Joliet 29 is that they
24 have N-P-D-E-S permits, NPDES permits. They are

1 operating permits, or NPDES permits. They have
2 construction permits, and we have applied for an
3 operating permit under Part 845, but 845 doesn't
4 restrict me from placing ash in an impoundment
5 today.

6 BY MS. WACHSPRESS:

7 **Q. Okay. So the 845 applies to the**
8 **construction of the facility to place the CCR --**

9 A. If you're constructing a new
10 facility --

11 THE COURT REPORTER: Sorry. The end
12 of your question.

13 HEARING OFFICER HALLORAN: Yeah.
14 You've got to keep your voice up at the end.

15 BY MS. WACHSPRESS:

16 **Q. Oh, I'm sorry. Okay. So Part 845**
17 **applies to the construction of the facility in**
18 **which the CCR is placed?**

19 A. If it were new construction, yes.
20 We -- the -- my understanding is the facilities we
21 are here to discuss existed, so I did not need or
22 we -- Midwest Generation did not need permits to
23 construct the impoundments that may or may not be
24 coal ash impoundments that are on my list.

1 Q. Are you involved in the preparation
2 of documents required by Part 257 of the RCRA
3 rules -- the RCRA CCR rules?

4 A. Generally. Not -- not -- may or may
5 not be 100 percent.

6 Q. Could you give an estimate of what
7 percentage?

8 A. Most. No, I cannot. I'm sorry.

9 Q. But most would be a fair
10 characterization?

11 A. Most would be fair, yes.

12 Q. And you receive the results of
13 groundwater testing for purposes of compliance
14 with federal regulations, correct?

15 A. Yes.

16 Q. For purposes of compliance with
17 state regulations?

18 A. Yes.

19 Q. And do you receive the results of
20 any testing done for CCR constituents at the four
21 Midwest Generation sites?

22 A. Not 100 percent of the time, no.

23 Q. And under what circumstances would
24 you not receive such results?

1 A. When stations need to empty
2 impoundments under routine operations, I would
3 generally not see the sampling results.

4 **Q. But that's the only exception you**
5 **can think of?**

6 A. As I sit here right now.

7 **Q. Okay.**

8 A. I'm not certain that there aren't
9 others, though.

10 **Q. What about the results of testing**
11 **for CCR constituents in soil or subterranean**
12 **materials? Would you receive those?**

13 A. I believe so.

14 **Q. And you would receive the results of**
15 **testing for CCR constituents in groundwater at the**
16 **four Midwest Generation sites?**

17 A. Yes.

18 HEARING OFFICER HALLORAN:

19 Ms. Wachspress, you are tailing off at the end of
20 your --

21 MS. WACHSPRESS: Oh, I'm so sorry.
22 I'm so sorry.

23 HEARING OFFICER HALLORAN: No, no,
24 that's -- it's fine.

1 MS. WACHSPRESS: I'm trying not to
2 shout, but it's --

3 HEARING OFFICER HALLORAN: I know.
4 Just act like you are an angry -- I'm an angry
5 hearing officer.

6 BY MS. WACHSPRESS:

7 Q. You are included on correspondence
8 from Midwest Generation to IEPA, correct?

9 A. Correct.

10 Q. Correct. Okay. And vice versa, are
11 you included on correspondence to I -- from IEPA
12 to Midwest Generation?

13 A. In many instances, yes.

14 Q. In many. In instances involving
15 coal ash?

16 A. Not 100 percent, but yes.

17 Q. And when you say not 100 percent,
18 what exceptions can you think of?

19 A. The immediate one that comes to mind
20 is I don't -- I don't believe I receive the
21 invoices. I could. I'm not sure, to be honest.

22 Q. But other than invoices, you can't
23 think of any exceptions?

24 A. I can think of other exceptions.

1 **Q. You can?**

2 A. Yeah.

3 **Q. All right. What are the other**
4 **exceptions?**

5 A. Documents that go to Powerton
6 generally go to Powerton.

7 **Q. All?**

8 A. I can't say -- I cannot say what
9 percentage of documents. Powerton tends to
10 receive their mail specifically.

11 **Q. But anything involving the other**
12 **three plants is directed to you?**

13 A. Yeah. I can't say that. I can
14 definitely say that I would see it. I cannot say
15 that it was -- would be addressed to me. It could
16 be addressed to the station specifically.

17 **Q. Understood. Who do you report to?**

18 A. Walter Stone.

19 **Q. And what is his title?**

20 A. Deputy General Counsel and Vice
21 President of Environmental, I believe.

22 **Q. And is he employed by NRG or Midwest**
23 **Generation?**

24 A. NRG.

1 **Q. And does he cover more than the four**
2 **plants at issue in this case?**

3 A. Yes.

4 **Q. Okay. Does he cover all of the NRG**
5 **plants?**

6 MS. GALE: Objection, relevance.

7 HEARING OFFICER HALLORAN:

8 Sustained.

9 MS. WACHSPRESS: Your Honor, later
10 on I'm going to ask about her familiarity with
11 documents and practices at these plants, and I
12 want to get a full understanding of her degree of
13 knowledge about the operation of the organization.

14 MS. GALE: Again, that -- but that
15 has nothing to do with NRG. We are talking about
16 the four plants at -- and these four -- she has
17 established that she is generally familiar with
18 the documents coming in and out of those stations,
19 and if they don't come to her, she sees them.

20 HEARING OFFICER HALLORAN: I --
21 that's my understanding, correct. I'm not sure
22 NRG is a part of this situation.

23 BY MS. WACHSPRESS:

24 **Q. Who at Midwest Generation could**

1 **direct the construction of a well for obtaining**
2 **samples for testing groundwater at Joliet 29?**

3 A. There are several people I could
4 think of. So it -- and it would depend on the
5 situation and need, the reason for constructing
6 the well, who would be the director of that work.

7 **Q. Even within the category of testing**
8 **groundwater, taking groundwater samples?**

9 A. Even within the category of taking
10 groundwater samples, yes.

11 **Q. Would you be informed if such a well**
12 **were constructed?**

13 A. Generally, yes.

14 **Q. And that's also true at Powerton?**

15 A. Yes.

16 **Q. At Waukegan?**

17 A. I believe so.

18 **Q. And at Will County?**

19 A. Yes.

20 **Q. Great. Who at Midwest Generation**
21 **could direct the sampling of soil material at**
22 **Joliet?**

23 A. Same answer. It could be any number
24 of people, depending on the reason or need.

1 **Q. But you would be informed if such**
2 **sampling were to take place?**

3 A. My -- yes, I believe so.

4 **Q. And the same is true at Powerton?**

5 A. Yes, I believe so.

6 **Q. Waukegan?**

7 A. I believe so.

8 **Q. And Will County?**

9 A. Yes, I believe so.

10 **Q. Okay. Who at Midwest Generation**
11 **could direct the removal of CCR material from a**
12 **site?**

13 A. Again, an abundance of people.

14 **Q. Would you be informed?**

15 A. No, not necessarily.

16 **Q. Not necessarily, okay.**

17 A. Again, I'm --

18 **Q. Do you have any direct reports?**

19 A. Yes.

20 **Q. How many?**

21 A. One.

22 **Q. One. And what's their role?**

23 A. She is an air compliance specialist.

24 **Q. Okay. A topic we will likely not be**

1 getting into today.

2 All right. If I could direct
3 your attention to MWG -- Exhibit MWG 636. Do you
4 recognize this document?

5 (Whereupon, MWG Exhibit No. 636
6 was previously marked for
7 identification.)

8 BY THE WITNESS:

9 A. Not offhand, but I know what it is.

10 BY MS. WACHSPRESS:

11 Q. Okay. And what is it?

12 A. It looks like a -- well, it's the
13 Agency's acceptance of a compliance commitment
14 agreement.

15 Q. And that compliance commitment
16 agreement is between Midwest Generation and
17 Illinois EPA, correct?

18 A. That's what it looks to be, yes.

19 Q. And if I use CCA for compliance
20 commitment agreement, will we understand each
21 other?

22 A. Yes, we will.

23 Q. Great. And this is dated
24 October 24th, 2012?

1 A. Yes.

2 Q. Okay. And it's in relation to the
3 Powerton generating station, correct?

4 A. That's what it appears, yes.

5 Q. All right. If I could direct your
6 page -- your attention to Bates number 554, and
7 I'm going to read Item 5(a). Okay. "The ash
8 ponds at Powerton shall not be used as permanent
9 disposal sites and shall continue to function as
10 treatment ponds to precipitate ash. Ash shall
11 continue to be removed from the ponds on a
12 periodic basis."

13 Have I read that correctly?

14 A. Yes.

15 Q. Okay. And then I will direct your
16 attention to 5(e) on the same page, and I will
17 read, "Within 90 days of the effective date of the
18 CCA, Midwest Generation shall submit an
19 application for a construction permit to re-line
20 the ash surge basin and the secondary ash settling
21 basin at Powerton with a 60-mil thickness high
22 density polyethylene HDPE liner or an Illinois EPA
23 approved equivalent material." Is that correct?

24 A. Yes.

1 **Q. What is your understanding of what**
2 **would have occurred if Midwest Generation had not**
3 **agreed to the CCA?**

4 MS. GALE: Objection. It calls for
5 a legal conclusion. Speculation.

6 HEARING OFFICER HALLORAN: Yeah, I
7 agree. It's --

8 MS. WACHSPRESS: Your Honor, she
9 was -- has already said that she was employed by
10 NRG at the time that this was signed. I'm asking
11 her, her understanding, not for a legal
12 conclusion, and I think it's fair to say what
13 Midwest Gen believed to be the case was the
14 alternative to signing the CCA in understanding
15 the circumstances surrounding it and its impact on
16 this case.

17 MS. GALE: If I may respond?

18 HEARING OFFICER HALLORAN: Yes.

19 MS. GALE: She was -- this is
20 addressed to Midwest Generation. She wasn't with
21 Midwest Generation until 2014. This document is
22 from 2012. So any -- her understanding in 2012
23 would -- is -- just doesn't exist.

24 HEARING OFFICER HALLORAN:

1 Ms. Wachspress?

2 BY MS. WACHSPRESS:

3 Q. Were you responsible for the
4 Powerton generating station in 2012?

5 A. No.

6 Q. No. You did not come to be
7 responsible for the Powerton generation --
8 generating station in 2014?

9 A. I'm sorry. I'm not playing
10 semantics for --

11 Q. No, no, no.

12 A. But I didn't come to be responsible
13 until way after I got here.

14 Q. When -- when --

15 A. I have been learning as I have been
16 going.

17 Q. Okay. When --

18 A. I did not appear until -- I moved to
19 Illinois in February of 2015.

20 Q. When did you first become
21 responsible for the Powerton generating station?

22 A. I would probably guess around the
23 time I moved here.

24 Q. So around 2015?

1 A. Late '14, but, yeah, probably '15 is
2 more accurate.

3 Q. Okay. So if I could refer you to
4 the first page of this exhibit, Bates numbered
5 552, and it states, "Failure to fully comply with
6 the CCA may, at the sole discretion of the
7 Illinois EPA, result in referral of this matter to
8 the Office of the Attorney General, the State's
9 Attorney General, or the U.S. Environmental
10 Protection Agency."

11 Based on your eight years of
12 experience as dealing with environmental matters
13 with respect to the Powerton generating station,
14 how would you understand that statement?

15 A. I'm not sure what you are asking.
16 Is it -- it's sort of -- it's plain language.

17 Q. Based on this language, what would
18 you understand the consequences of failing to sign
19 the CCA would have been for Midwest Generation?

20 A. I don't think this is failing to --
21 MS. GALE: I guess, object to legal.
22 This is a legal document, and she is asking what
23 would the consequences be if the Illinois EPA
24 would -- had made a decision. I just am not --

1 objection.

2 MS. WACHSPRESS: I mean, based on
3 her years of experience as an environmental
4 compliance employee of Midwest Generation how she
5 would have understood a statement in a document
6 that was sent not to another attorney, but to a
7 senior vice president at Midwest Generation.

8 HEARING OFFICER HALLORAN: You know,
9 I think she can give her -- opine exactly what --
10 or not exactly, but just kind of opine what she
11 thinks that means based on her years of
12 experience, but I do note -- and I'm not sure if
13 they still use the same language -- this is a 2012
14 document. She just stated she didn't start until
15 2014.

16 But she may answer if you are
17 able.

18 BY THE WITNESS:

19 A. I guess, you asked me, had they not
20 signed this document? They did sign the document.
21 So I don't understand what you mean.

22 This is -- this is -- I -- my
23 understanding without having read it completely is
24 that this is the result of them having signed.

1 Yes. Because the signatures are on the back page.

2 BY MS. WACHSPRESS:

3 Q. So if I could -- I'll refer you to
4 page 5, Bates number 555, number 6, and direct you
5 to where it says, "Respondent shall comply with
6 all provisions of the CCA, including, but not
7 limited to, any appendices to the CCA and all
8 documents incorporated by reference into the CCA.
9 Pursuant to" -- and then there's a citation -- "if
10 Respondent complies with the terms of this CCA,
11 the Illinois EPA shall not refer the alleged
12 violations that are the subject of the CCA as
13 described in Section II above to the Office of the
14 Illinois Attorney General or the State's Attorney
15 of the county in which the alleged violations
16 occurred."

17 So I will ask a slightly
18 different question. Is it your understanding
19 based on that statement, that if Powerton had
20 failed to install the HDPE liner as described in
21 5(e), that the violations described in this could
22 be referred to the Attorney General?

23 MS. GALE: Objection. Again, calls
24 for a legal conclusion.

1 HEARING OFFICER HALLORAN: Calls for
2 what?

3 MS. GALE: A legal conclusion.

4 MS. WACHSPRESS: I'm asking -- I
5 mean, I could go through it again, and say, asking
6 on the basis of her experience and --

7 HEARING OFFICER HALLORAN: Well, you
8 know, she can. The Board can parse that out,
9 whether it's legal or not.

10 If you can answer, Ms. Shealey,
11 please do so.

12 BY THE WITNESS:

13 A. I'm sorry. Just to be clear,
14 whether Powerton had not complied with the CCA as
15 written, whether they could be referred to the
16 Attorney General or State's Attorney?

17 BY MS. WACHSPRESS:

18 Q. Yes.

19 A. That's exactly what I think it says.

20 Q. Okay. Let's turn to MWG 647. This
21 is the Waukegan CCA.

22 (Whereupon, MWG Exhibit No. 647
23 was previously marked for
24 identification.)

1 **HEARING OFFICER HALLORAN: So**
2 **this -- these aren't the environmental groups'?**
3 **This is MWG's exhibits, and you're going to --**

4 MS. NIJMAN: This is from Phase 1.

5 HEARING OFFICER HALLORAN: I'm
6 sorry?

7 MS. NIJMAN: This is from five years
8 ago.

9 HEARING OFFICER HALLORAN: Oh, okay.

10 MS. NIJMAN: Yeah.

11 HEARING OFFICER HALLORAN: I didn't
12 know that. Okay.

13 MS. WACHSPRESS: Yeah, just to make
14 this clear on the record, these are all exhibits
15 from the previous phase of trial that have already
16 been --

17 HEARING OFFICER HALLORAN: Thank
18 you.

19 MS. WACHSPRESS: I -- I apologize
20 for not specifying that.

21 HEARING OFFICER HALLORAN: No
22 worries.

23 BY MS. WACHSPRESS:

24 **Q. And just to back up a bit, with**

1 **respect to the Powerton CCA, were these CCAs ever**
2 **discussed since you came to Midwest Gen in 2015?**

3 A. Mr. Gnat, I think, clearly testified
4 that he does CCA monitoring, and so yes.

5 Q. **But within Midwest Generation, were**
6 **these CCAs ever discussed or --**

7 A. Well, I'm sorry. I'm sorry to
8 interrupt you. I'm so sorry.

9 Q. **It's okay.**

10 A. Okay.

11 Q. **I get excited, too.**

12 **Within Midwest Generation, were**
13 **these CCAs ever discussed?**

14 MS. GALE: Objection, vague at ever.

15 HEARING OFFICER HALLORAN:

16 Sustained.

17 BY MS. WACHSPRESS:

18 Q. **Have you been part of any**
19 **conversations in which -- within Midwest**
20 **Generation in which the CCAs were mentioned?**

21 A. Yes.

22 Q. **Okay.**

23 A. I am involved with hiring Mr. Gnat,
24 and I have to tell the plant managers to pay

1 Mr. Gnat, or whoever our contractor is. So I talk
2 about this annually with our plant managers so
3 that we can continue to do the monitoring.

4 Q. So you are pretty familiar with
5 these CCAs then?

6 A. I -- I'm familiar.

7 Q. Okay. Familiar enough to be
8 responsible for the hiring of the contractors to
9 fulfill the terms of the CCA?

10 MS. GALE: Objection. Misstates
11 testimony.

12 HEARING OFFICER HALLORAN: Correct.
13 Sustained. Rephrase.

14 BY MS. WACHSPRESS:

15 Q. You just testified that you were
16 responsible for hiring Mr. Gnat and other
17 consultants for testing in accordance with the
18 terms of the CCA. Is that a fair restatement of
19 your testimony?

20 A. I'm sorry. Responsible for or
21 involved with, yes.

22 Q. Yes.

23 A. Yes.

24 Q. Okay. So would you say you are

1 familiar enough with the CCAs to be responsible
2 for or involved in the hiring of consultants
3 responsible for fulfilling one or more of the
4 terms of the CCAs?

5 MS. GALE: I would object to the
6 extent that some of the terms are already over and
7 no longer applicable. This is a ten-year-old
8 document.

9 MS. WACHSPRESS: Your Honor, I asked
10 about her familiarity with it.

11 HEARING OFFICER HALLORAN: She can
12 answer. Overruled.

13 BY THE WITNESS:

14 A. I guess familiar is a -- I don't
15 know -- it's kind of fuzzy to me. I know that I
16 have to -- Midwest Gen has to continue to monitor
17 groundwater. That is the thing I am completely
18 familiar with. The rest of this, probably, but as
19 I sit here today, I could not quote chapter or
20 verse anything except for the fact that we
21 continue to monitor groundwater.

22 BY MS. WACHSPRESS:

23 Q. Would you be in a position -- all
24 respect to Mr. Gnat, but if the testing were to

1 **come up short of what was required under the CCA,**
2 **would you be in a position to recognize that the**
3 **testing came up short?**

4 A. More likely than not.

5 **Q. Okay.**

6 A. Oh, no. I'm so sorry. What do you
7 mean by came up short? Like I don't -- yeah.
8 What do you mean by came up short?

9 **Q. If you felt that the testing did not**
10 **fulfill the terms of the CCA, would you be in a**
11 **position to basically quality control Mr. Gnat's**
12 **work?**

13 A. I'm reviewing the CCA to make
14 sure --

15 HEARING OFFICER HALLORAN: Oh, sure.
16 Take your time, Ms. Shealey.

17 BY THE WITNESS:

18 A. If Mr. Gnat or if any consultant who
19 would do our groundwater monitoring would not
20 include the list of constituents that are in the
21 CCA, and I was aware of that, I would be in the
22 position to redirect the work, yes.

23 BY MS. WACHSPRESS:

24 **Q. But my question goes to whether you**

1 would be aware of that.

2 Would you be aware looking at
3 the report whether it met the requirements of the
4 CCA?

5 A. I cannot say that each quarter I go
6 through -- okay. First off, I do not have this
7 list of constituents memorized, nor do I quarter
8 by quarter go through the list to QA our
9 consultants' work.

10 So if I -- as I stated, if I see
11 it, if I'm aware, I am the one who will remedy
12 that.

13 MS. WACHSPRESS: Okay. Your Honor,
14 may I take just one minute to confer with
15 co-counsel?

16 HEARING OFFICER HALLORAN: You may.
17 We are off the record.

18 (Whereupon, a short break was
19 taken.)

20 HEARING OFFICER HALLORAN: Back on
21 the record.

22 BY MS. WACHSPRESS:

23 Q. And just if I haven't been clear
24 about where in the document, please just let me

1 know, and I can help you, help you find that.

2 Okay. So we are looking at
3 liability phase Exhibit 6 -- 647. And is -- do
4 you recognize this document?

5 A. I don't have a document.

6 (Whereupon, a discussion was had
7 off the record.)

8 BY MS. WACHSPRESS:

9 Q. This is the next one.

10 A. Oh, I'm sorry. She called it
11 liability. I'm sorry, Mr. Hearing Officer. When
12 you said liability, I expected to hear you say MWG
13 647. That's what I was expecting to hear. I was
14 thinking you were giving me something new.

15 Q. You're right. I -- I think we all
16 got a little bit lost. So do you recognize this
17 document?

18 A. I know what it is.

19 Q. Okay. And this is a compliance
20 commitment agreement between Midwest Generation
21 and the Illinois EPA, correct?

22 A. It is the acceptance of that
23 agreement, yes.

24 Q. Okay. And this is for Waukegan

1 **station, correct?**

2 A. Correct.

3 **Q. Okay. And would any of the answers**
4 **you just gave with respect to Powerton differ with**
5 **respect to Waukegan?**

6 MS. GALE: Objection, compound.

7 HEARING OFFICER HALLORAN:

8 Sustained. Break it up, please. Thanks.

9 MS. WACHSPRESS: Okay. Your Honor,
10 I am just trying to move things along here.

11 HEARING OFFICER HALLORAN: I know.

12 MS. WACHSPRESS: Okay.

13 HEARING OFFICER HALLORAN: But it's
14 not working.

15 MS. WACHSPRESS: Okay. Okay.

16 HEARING OFFICER HALLORAN: It hasn't
17 worked for the last three and a half days, so --

18 BY MS. WACHSPRESS:

19 **Q. All right. All right. All right.**

20 **All right. Have you ever been**
21 **in a conversation where this CCA was discussed**
22 **within Midwest Generation?**

23 MS. GALE: Same objection. Vague.

24 Sorry. Same objection, vague. I should speak

1 more clearly.

2 HEARING OFFICER HALLORAN: Can you
3 rephrase?

4 MS. WACHSPRESS: Your Honor, I'm
5 asking if she has ever been in a --

6 HEARING OFFICER HALLORAN: Just --

7 BY MS. WACHSPRESS:

8 Q. Have you ever had cause to discuss
9 this CCA with other employees of Midwest
10 Generation?

11 A. Yes.

12 Q. Yes. And do you have any
13 responsibility with respect to fulfilling the
14 terms of this CCA?

15 A. Similar to my answer, I think for
16 Power- -- we were at Powerton's CCA, yes, I would
17 specifically be responsible for finding and
18 recommending consultants to complete groundwater
19 monitoring.

20 Q. Okay. All right. And I know we had
21 some back and forth about your ability to oversee
22 the work of those consultants.

23 Would you be able to evaluate if
24 the work of the consultants fulfilling the terms

1 of the Waukegan CCA did not comply with that CCA?

2 A. Would I be able to? I am capable
3 of, yes.

4 Q. So you have sufficient understanding
5 of the CCA to do that?

6 A. As I sit here today, I believe I do.

7 Q. Okay. Great. All right. Now, we
8 are going on to MWG Exhibit 656 from the liability
9 phase. So this is not a new exhibit. Okay. Do
10 you recognize this document?

11 (Whereupon, MWG Exhibit No. 656
12 was previously marked for
13 identification.)

14 BY THE WITNESS:

15 A. I know what it is.

16 BY MS. WACHSPRESS:

17 Q. Okay. And what is it?

18 A. It is the compliance commitment
19 agreement with regard to Violation Notice W-202 --
20 2012-00058 between the Agency and Midwest
21 Generation for Will County station.

22 Q. Okay. So this is a compliance
23 commitment agreement between Midwest Generation
24 and the Illinois EPA, correct?

1 A. This is the acceptance of it, yes.

2 **Q. The acceptance of it. Okay. And if**
3 **you will turn the page, you will see the agreement**
4 **itself is attached to the -- to the acceptance**
5 **letter?**

6 A. I do see that now.

7 **Q. Okay. Okay. And have you**
8 **participated in discussions with other Midwest**
9 **Generation employees about this CCA?**

10 A. Similar to my responses for Powerton
11 and Waukegan, I am very involved in securing
12 contractors for groundwater monitor -- monitoring
13 under this CCA.

14 **Q. And similar to the other sites, you**
15 **are sufficiently knowledgeable about the CCA that**
16 **you would be able to know if the work performed by**
17 **consultants was not in compliance with the CCA?**

18 MS. GALE: Objection as to
19 monitoring. I think that's what she -- her
20 testimony has been.

21 MS. WACHSPRESS: She testified more
22 generally than that with respect to Waukegan. She
23 didn't limit her answer to monitoring with respect
24 to her work with consultants.

1 HEARING OFFICER HALLORAN: You can
2 answer, if you are able.

3 BY THE WITNESS:

4 A. I lost my answer. Could you read it
5 back to me? I'm so sorry.

6 HEARING OFFICER HALLORAN: Yeah.
7 Could you read it back, Kari, please?

8 (Whereupon, the record was read
9 as requested.)

10 BY THE WITNESS:

11 A. And I didn't say it at Waukegan, but
12 I said it at Powerton, and I will go back and
13 state it for Waukegan. I do not have this list of
14 parameters memorized, nor do I quarter by quarter
15 QA that every parameter is included in each
16 report.

17 I would hope that if I would
18 miss it, the Agency would catch it, because those
19 reports are submitted to the Agency.

20 BY MS. WACHSPRESS:

21 Q. Okay. All right. Let's do Midwest
22 Gen Exhibit 626. Okay. Do you recognize this
23 document?

24

1 (Whereupon, MWG Exhibit No. 626
2 was previously marked for
3 identification.)

4 BY THE WITNESS:

5 A. I am aware of what it is.

6 BY MS. WACHSPRESS:

7 Q. Okay. What is it?

8 A. It is the compliance commitment
9 acceptance for Violation Notice W-2012-00059
10 between Midwest Generation and the Illinois EPA
11 for Joliet 29 station.

12 Q. Okay. And you will note that if you
13 turn over to the following page, the agreement
14 itself is part of the document.

15 A. Yes, thank you. I do see it.

16 Q. Okay. And so this CCA is between
17 Midwest Generation and the Illinois EPA, correct?

18 A. Yes.

19 Q. And it relates to Joliet 29,
20 correct?

21 A. Correct.

22 Q. Okay. And do you have any
23 responsibility with respect to complying with the
24 terms of this CCA?

1 A. Yes.

2 **Q. Okay. And what are those**
3 **responsibilities?**

4 A. I cannot -- without having read this
5 line by line immediately, I cannot -- it goes back
6 to the other ones. I cannot without reading them
7 line by line tell you what all of my
8 responsibilities are for compliance. Some of
9 these things happened before I even knew Midwest
10 Gen existed, but currently the thing that comes to
11 mind first is responsibility for ensuring that the
12 groundwater monitoring is done.

13 **Q. Okay. And your responsibilities**
14 **with respect to that groundwater monitoring**
15 **include hiring consultants to carry it out,**
16 **correct?**

17 A. Correct.

18 **Q. And you are sufficiently**
19 **knowledgeable about the CCA, such that if the**
20 **consultants' work were not to meet the terms of**
21 **the CCA, you would be able to identify that,**
22 **correct?**

23 MS. GALE: Objection, misstates
24 testimony.

1 HEARING OFFICER HALLORAN: She can
2 answer, if she is able.

3 BY THE WITNESS:

4 A. Again, I do not know the list of
5 constituents that are included in 620.410(a) by
6 memory, nor do I quarter by quarter QA the
7 groundwater monitoring reports against that list.
8 If I were made aware that something -- if I did do
9 that, or I do do that, and I'm aware that
10 something is missing, I would be responsible for
11 that.

12 BY MS. WACHSPRESS:

13 Q. And you have mentioned monitoring.
14 Are there any other aspects of the CCA for which
15 you have some responsibility?

16 A. The CCAs require that certain
17 ponds -- and I'm speaking generally across all
18 four CCAs -- certain ponds be re-lined. Excuse
19 me. I am responsible for helping the plants to
20 ensure compliance with liner integrity
21 requirements. There may be other things, again,
22 not having read each term.

23 Q. Okay. All right. I would like to
24 introduce marked as 1401 for now -- marked for

1 labeling purposes Exhibit 1401.

2 (Whereupon, Complainants'

3 Exhibit No. 1401 was marked for

4 identification.)

5 BY MS. WACHSPRESS:

6 Q. All right. Ms. Shealey, do you
7 recognize this document?

8 A. Yes.

9 Q. Okay. What is it?

10 A. It is an -- oh, wait. Let me just
11 make sure. It is an alternate capacity
12 demonstration for Powerton station.

13 Q. I think you misstated that slightly.
14 It's an alternate --

15 A. Alternate closure. Sorry.

16 Q. -- closure.

17 A. Alternate closure. Sorry. It's an
18 alternate closure dem- -- no alternative capacity,
19 right? But anyway. It's an alternate closure
20 demonstration. I don't think I misstated. I'm
21 not sure.

22 Q. It's not -- I won't testify on the
23 record, but I think -- it is an alternate closure
24 demonstration and capacity is part of what it's

1 about, so yes.

2 And have you seen this document
3 before today?

4 A. Yes.

5 Q. Okay. And this is an application
6 filed in 2020 requesting an alternative deadline
7 to initiate closure of the ash surge basin at the
8 Powerton facility, correct?

9 A. I believe so, yes.

10 Q. Okay. And who filed this
11 application?

12 A. Midwest Gen.

13 Q. And I'm going to direct you to the
14 very first page. At the bottom it states it was
15 filed by David Bacher of NRG energy, so --

16 A. Okay. Then that's who it was.

17 Q. And this application was filed in
18 November of 2020, correct?

19 A. Correct.

20 Q. Okay. And under federal regulations
21 at the time, it was Midwest Generation's
22 understanding that the deadline to close the ash
23 surge basin was April 11th, 2021, correct?

24 MS. GALE: Objection, foundation.

1 MS. WACHSPRESS: This is -- I'm
2 trying to lay a foundation as to what this
3 document is.

4 HEARING OFFICER HALLORAN: Yeah,
5 overruled. You may proceed.

6 BY THE WITNESS:

7 A. Yeah, that is in the third
8 paragraph, that date.

9 BY MS. WACHSPRESS:

10 Q. And the purpose of this application
11 was to delay the deadline for the closure of the
12 ash surge basin, correct?

13 A. Yes.

14 Q. And your name is at the bottom of
15 this front page as an individual carbon copied on
16 the application, correct?

17 A. Yes.

18 Q. Okay. Did you participate in the
19 preparation of this application?

20 A. Yes.

21 Q. What role did you play in the
22 preparation?

23 A. It was April. That -- this is two,
24 three years ago, three years, two and a half.

1 What role? Sorry. I'm not being facetious. Lots
2 of them. I may or may not. I cannot say
3 specifically. I definitely -- the one thing I can
4 definitely say specifically, I reviewed it before
5 it left.

6 Q. Okay. And was your agreement
7 required for the submission of this application?

8 A. Yes. Required is strong. I'm so
9 sorry. Required is a strong word. It was
10 definitely sought.

11 Q. Okay. At the time this application
12 was filed, Midwest Generation did not seek an
13 extension of the deadline to initiate closure of
14 the bypass basin, correct?

15 A. At the time this was filed, no.

16 Q. And in this application, Midwest
17 Generation represents that the bypass basin had
18 already ceased receipt of CCR at the time the
19 application was filed, correct?

20 A. I would have to read the
21 application.

22 Q. Yeah. So I'm going to direct you to
23 Bates number 78832, and the first full paragraph.
24 And I will read it.

1 "In early October 2020, Powerton
2 took the bypass basin out of service for routine
3 cleaning. Since the station does not need to have
4 both of its surface impoundments in service to
5 generate power and pursuant to the revised EPA CCR
6 rule, Powerton will not send CCR or non-CCR
7 wastestreams to the bypass basin after April 11,
8 2021, and does not plan on sending any
9 wastestreams to that basin in the interim."

10 Have I read that correctly?

11 A. Yes, you have.

12 Q. And does that refresh your
13 recollection with respect to the bypass basin at
14 the time this application was filed?

15 A. Could you ask what -- refresh my
16 recollection with respect to what?

17 Q. So I asked whether Midwest
18 Generation represented that the bypass basin had
19 already ceased receipt at the time this
20 application was filed. You said you didn't
21 remember.

22 A. So, yes, it does. We had.

23 Q. And it was Midwest Generation's
24 position at the time this was filed that the

1 **bypass basin had already complied with the**
2 **April 2021 deadline for closure, correct?**

3 A. I don't believe that that's what
4 that sentence says.

5 Q. Okay. So was it Midwest
6 Generation's position that the bypass basin had
7 not yet complied with the April 2021 deadline for
8 closure?

9 MS. GALE: Objection. Misstates --
10 mischaracterization of law and of any sort of
11 deadline closure.

12 MS. WACHSPRESS: Your Honor, I asked
13 about Midwest Generation --

14 HEARING OFFICER HALLORAN: Could you
15 rephrase, please?

16 BY MS. WACHSPRESS:

17 Q. I asked her, was it Midwest
18 Generation's -- was it Midwest Generation's
19 position that the bypass basin had already
20 complied with the April 2021 deadline for closure
21 at the time it filed this application?

22 A. We took it out of service.

23 No, because it says, we will not
24 send wastestreams after April 11th of 2021, and

1 this was in October. That's where I was
2 questioning. I don't specifically remember the
3 period -- interim -- wait. Let me keep reading.
4 Maybe it -- it says, "and does not plan," so I
5 cannot tell you exactly what happened between
6 October 2020 and April 2021, because at that
7 point, it was a plan not to send any other
8 wastestreams to the bypass basin. I cannot tell
9 you whether we achieved that, as I sit here today.

10 **Q. So it was Midwest Generation's**
11 **position that it planned to comply with the**
12 **April 2021 deadline?**

13 A. Oh, absolutely, and we did.

14 **Q. You just stated that you -- okay.**
15 **Okay.**

16 A. I just stated that we didn't
17 know what --

18 **Q. That you weren't sure what**
19 **happened --**

20 THE COURT REPORTER: Sorry?

21 BY MS. WACHSPRESS:

22 **Q. Sorry for the crosstalk.**

23 **Okay. Could I direct your**
24 **attention to Bates number 78841 within this? And**

1 **Midwest Generation represented as part of this**
2 **application that the bypass basin would be clean**
3 **closed; is that correct?**

4 A. No, I don't believe so, unless you
5 can point me to where it says that.

6 Q. So I'm going to point you to about
7 midway up the page, and if you see the two bullet
8 points and then "of the new" it states, "MWG can
9 and plans to refurbish Powerton's dewatering bins
10 while going through the process of obtaining a
11 construction permit under the final Illinois CCR
12 rule to clean close and subsequently repurpose the
13 bypass basin and to install a concrete
14 ash-settling tank."

15 A. Oh, at this point in time, that was
16 indeed our plan.

17 Q. Okay. So as of November 30th, 2020,
18 it was Midwest Generation's plan to clean close
19 the bypass basin?

20 A. As of that date, yes, that was the
21 plan.

22 Q. And if you will turn to 78855. And
23 it's very tiny print because these engineers make
24 these big documents. And if you look about

1 40 percent of the way down the page where it says
2 "Close Bypass Basin" it states, "6.2.3.1,
3 "excavate existing liner and CCR-impacted soils
4 (if any)" and then "decontaminate pond floor and
5 appurtenances" and "certify bypass basin closure."

6 And so was it Midwest
7 Generation's plan as of the date this was filed
8 that it would excavate the existing liner and any
9 CCR-impacted soils beneath it?

10 A. At the time this was filed, I
11 believe the plan was that we would replace the
12 bypass basin with concrete tanks. So, yeah, and
13 that plan has been completely revised, and there
14 is a document, I believe, posted on our website
15 that gives those revisions, so -- and I'm sorry.
16 I don't mean to be difficult, but that's why some
17 of these details are out of my memory. These are
18 not our current plans.

19 Q. Okay. The by-pass basin has not, in
20 fact, been clean closed since this application was
21 filed?

22 A. The bypass basin does not -- we
23 cannot close the bypass basin without a permit
24 from the Illinois EPA. So, no, it has not.

1 **Q. Okay. And so Midwest Generation has**
2 **not completed the closure steps outlined?**

3 A. We cannot close any impoundment
4 without permits from the Illinois EPA, and we have
5 not been issued any permits from the Illinois EPA.

6 **Q. Okay. I know this is -- I'm going**
7 **to belabor it, but Midwest Generation has not**
8 **removed all CCR material from the embankments of**
9 **the bypass basin?**

10 A. Not to my knowledge, no.

11 **Q. And Midwest Generation has not**
12 **removed the historical HDPE liner within the**
13 **bypass basin?**

14 A. No to my knowledge, no.

15 **Q. And Midwest Generation has not**
16 **assessed whether any soils beneath that historical**
17 **HDPE liner are impacted by CCR?**

18 A. We can't close the basin. There is
19 no need for us to pull up the liner at this point.

20 **Q. And without pulling up the liner,**
21 **you cannot assess whether the soils underneath the**
22 **liner --**

23 A. That is my simple understand -- I'm
24 sorry to overtalk you. I didn't mean to.

1 Q. No. Please go ahead.

2 A. That is my simple understanding,
3 yes.

4 Q. Okay. All right. So if I could --
5 all right.

6 So I am going to direct your
7 attention to 78890. This is another tiny one. It
8 is a flow diagram.

9 A. I can't -- I'm -- I'm so sorry, but
10 I cannot read whether this is 90. I would -- I
11 can read 89. I assume this is 90 since it was
12 sequenced that way.

13 Q. Yeah. Okay. Yeah. It's the second
14 diagram after Appendix B?

15 A. That -- no. That would be my first
16 one.

17 Q. Okay.

18 A. 8 -- Appendix B, this is my 89.

19 Q. 89, you are right. You are right.
20 You are correct. So it would be -- it would -- it
21 would be -- it would be 8890.

22 Okay. And I would like to
23 direct your attention -- well, first, you said you
24 were -- your agreement was -- was appreciated in

1 terms of prior to submission of this -- of this
2 document, correct?

3 A. That would be a characterization,
4 yes.

5 Q. Okay. And so was this diagram true
6 and correct at the time it was filed, to the best
7 of your knowledge?

8 A. Yes.

9 Q. Okay. So if you look in the bottom,
10 right corner, you can see that they are
11 actually -- you know what? I actually -- if I
12 could direct your attention to 78891. I
13 apologize. I'm off by one. And the same
14 question.

15 A. I'm assuming the next -- the back of
16 the page would be --

17 Q. The back of the page.

18 A. All right.

19 Q. And it says on the bottom, "Existing
20 Water Block Flow Diagram"?

21 A. That -- that's 90. I'm confused.

22 Q. Okay.

23 A. Because I was on what I thought was
24 90, and that says existing water block. What I

1 believed to be 91 says proposed.

2 MS. WACHSPRESS: Okay. So can we go
3 off the record for just for a moment?

4 HEARING OFFICER HALLORAN: Sure. We
5 are off the record.

6 (Whereupon, a discussion was had
7 off the record.)

8 HEARING OFFICER HALLORAN: Back on
9 the record. Thank you.

10 BY MS. WACHSPRESS:

11 Q. Okay. So we are looking at 78890,
12 and it's labeled, "Existing Water Block Flow
13 Diagram," correct?

14 A. Correct.

15 Q. Okay. And this was true and
16 correct, to the best of your knowledge, at the
17 time of its filing?

18 A. Yes.

19 Q. Okay. And if you look on the
20 bottom, right you can see a purple box labeled,
21 "Ash Surge Basin"?

22 A. Yes.

23 Q. Okay. And then there is a dotted
24 line that states, emergency overflow to the former

1 **ash basin; is that correct?**

2 A. I'm not seeing it yet. Give me a
3 second, please.

4 **Q. Okay.**

5 A. Emergency overflow to the -- yes, I
6 do.

7 **Q. Okay. Has the former ash basin been**
8 **used for emergency overflow from the ash surge**
9 **basin since June 2019?**

10 A. I cannot tell you if they have
11 needed -- if there has been an overflow since
12 June 2019, as I sit here today. I would need to
13 review records.

14 **Q. Does Midwest Generation make any**
15 **record if such an event were to occur?**

16 A. I believe so, yes.

17 **Q. Okay. As we sit here today, do you**
18 **know whether there is coal ash in the former ash**
19 **basin?**

20 A. Yes, I do know that.

21 **Q. Is there coal in the former ash**
22 **basin?**

23 A. Yes, there is.

24 **Q. Okay. All right. Let's go to**

1 78896, which is further along. And this is an
2 appendix to the application, correct?

3 A. That's what it appears to be, yes.

4 Q. Yes. And it's an appendix relating
5 to geology and hydrogeology, correct?

6 A. That's what it appears to be, yes.

7 Q. Okay. And this appendix was true
8 and correct, to the best of your knowledge, at the
9 time you filed the application, correct?

10 A. Correct.

11 Q. Okay. Okay. So if you look at the
12 first bullet point, it describes fill, quote,
13 "consisting of tan, black -- brown and black fine
14 to medium sand with some gravel and clay seams.
15 Several locations also included black cinders and
16 brick fragments." Have I read that correctly?

17 A. Yes.

18 Q. And cinders are CCR, correct?

19 A. I'm not being -- oh, my goodness.

20 CCR is from any coal combustion,
21 not just electric generating unit coal combustion.

22 Is that accurate? I don't know. I would have to
23 look at the term as it's defined in the
24 regulations --

1 **Q. Do you --**

2 A. -- to be able to say that these
3 cinders are CCR. I would be willing to say that
4 they are most likely from the combustion of coal.

5 **Q. Okay. So you understand the black**
6 **cinders reference here to be remnants of the**
7 **combustion of coal?**

8 A. That's what I would understand it to
9 be, yes.

10 **Q. Okay. And this is describing fill**
11 **throughout the Powerton site, correct?**

12 A. I would have to read the whole page.
13 So do you want to -- to know if -- to know if it's
14 a specific area or the entire site?

15 **Q. Okay. I will direct your attention**
16 **upwards where it says, "site-specific stratigraphy**
17 **to a depth of approximately 54 [sic] feet below."**

18 A. Yeah.

19 **Q. Is there any --**

20 A. What --

21 **Q. Please go ahead.**

22 A. I'm so sorry.

23 **Q. I was going to say, does that help**
24 **you at all in your response?**

1 A. No, because it could be in the
2 introduction paragraph he defined site as a
3 specific area of the plant. So I can't sit here
4 and represent that this is the entire however
5 large Powerton station is.

6 **Q. But it's not limited to a particular**
7 **place within the Powerton facility?**

8 A. I don't know. That's my point. I
9 haven't read this in years.

10 **Q. Got it. Okay. But it does state**
11 **that these cinders are part of the fill that**
12 **extends between 16 to 24.5 feet where the samples**
13 **were taken?**

14 A. Wherever this -- sorry.

15 MS. GALE: I would object to the
16 characterization, though, because it says several
17 locations. So her characterization of being
18 throughout the site is a mischaracterization of
19 what this -- what that first bullet states.

20 HEARING OFFICER HALLORAN:

21 Ms. Wachspress?

22 MS. WACHSPRESS: She is fair to --

23 HEARING OFFICER HALLORAN:

24 Ms. Wachspress, could you rephrase maybe?

1 BY MS. WACHSPRESS:

2 Q. Okay. It is -- CCR was found
3 between 16 and 24 feet below surface at several
4 locations throughout the site; is that correct?

5 MS. GALE: And I would object to
6 mischaracterization. Again, it calls -- says
7 black cinders.

8 MS. WACHSPRESS: She just -- I mean,
9 your Honor, she -- that's why I went through
10 laying the foundation --

11 HEARING OFFICER HALLORAN: We have
12 to make a clean record.

13 MS. WACHSPRESS: Okay.

14 HEARING OFFICER HALLORAN: So if you
15 could say it again, that would be great.

16 MS. WACHSPRESS: I -- but I already
17 laid the foundation. I don't understand why I
18 have to go back to cinders when I've already laid
19 the foundation to call cinders CCR.

20 HEARING OFFICER HALLORAN: Well, I'm
21 asking you to, so --

22 MS. WACHSPRESS: Okay. All right.

23 MS. NIJMAN: She called cinders
24 combustion of coal.

1 MS. GALE: She said it's combustion
2 of coal. She agreed with you that it was from
3 combustion of coal.

4 BY MS. WACHSPRESS:

5 Q. Are there any components of the
6 combustion of coal that are not CCR?

7 A. I think my answer was initially that
8 I don't know as the term CCR is defined in federal
9 or state regulations, and I do know, I believe in
10 state regulations, it's only from electric
11 generating units.

12 So I don't -- again, cinders
13 could be from anything that burned coal. It could
14 a household boiler. I don't know that that
15 defines CCR.

16 Q. Okay. So cinders from the
17 combustion of coal were found at locations between
18 16 and 24 feet at the Powerton site, correct?

19 A. At locations -- at some locations.
20 That's what this says, yes.

21 Q. Okay. If you could turn to the next
22 page, in the second complete sentence it says,
23 "Groundwater occurs under unconfined conditions
24 with depth to groundwater ranging from

1 **approximately 18 to 32 feet across the site"?**

2 A. That is what it says, yes.

3 Q. **Is that correct? Okay. All right.**

4 **Okay. Let's go to 78901.**

5 A. Those numbers are blended into
6 the --

7 Q. **Yeah.**

8 A. You are going to have to tell me,
9 yeah.

10 Q. **So it is Figure C-1. It is the**
11 **first CCR monitoring well site map.**

12 A. You said C-1?

13 Q. **Figure C-1 is the first CCR**
14 **monitoring well site map.**

15 A. I'm there. Thank you.

16 Q. **Okay. And this is a CCR monitoring**
17 **well site map, correct?**

18 A. That's what it's labeled as, yes.

19 Q. **Okay. And do you see Monitoring**
20 **Well 5?**

21 A. Yes.

22 Q. **Okay. And that is outside the area**
23 **marked as approximate former ash basin, correct?**

24 A. Correct.

1 Q. And it is to the northwest of that,
2 correct?

3 A. North, not necessarily. It's west.

4 Q. West. Okay. Fair enough. Okay.
5 So if you could turn to 78913. And this is a
6 boring log, correct?

7 A. That's what it appears to be, yes.

8 Q. And you will see at the top it's
9 marked B-MW-5-Po, correct?

10 A. Yes.

11 Q. So this appears to be a boring log
12 for Monitoring Well 5, correct?

13 A. It does.

14 Q. Okay. And so if I could draw your
15 attention to the column Soil/Rock Description, and
16 you will see that it says, black coal cinders at a
17 depth of 0 feet, correct?

18 A. At a depth of 0 feet?

19 Q. Right at the top.

20 A. Okay. Thank you.

21 Q. And --

22 A. Yes. I'm sorry.

23 Q. Yes. And going downward to 17 feet
24 it also says at points red coal cinders and trace

1 **black coal cinders, correct?**

2 A. Yes.

3 **Q. Okay.**

4 A. Well, I'm sorry. I'm not -- I'm
5 not -- no. It doesn't. I don't -- I'm not sure.
6 I'm not a geologist. I don't read these well. I
7 don't -- I'm not convinced that it goes all the
8 way to 17 feet, because below the black coal
9 cinders, you get clay, gray clay silt. So it
10 looks to me that that bottom portion does not
11 necessarily contain cinders.

12 **Q. Okay. But more than half of the way**
13 **to 17 feet as represented here?**

14 A. More than half, yes.

15 **Q. Okay. All right. Let's go back to**
16 **78901, and we are going to be flipping back and**
17 **forth, so if you want to hold your place there.**

18 A. Can I possibly have a marker? I'm
19 sorry.

20 HEARING OFFICER HALLORAN: Go ahead,
21 Ms. Shealey.

22 THE WITNESS: Can I possibly have
23 like a Post-It, because as I keep flipping back
24 and forth --

1 MS. WACHSPRESS: Oh, sure.

2 THE WITNESS: Just so I can hold
3 this page.

4 HEARING OFFICER HALLORAN: We're off
5 the record.

6 (Whereupon, a discussion was had
7 off the record.)

8 BY MS. WACHSPRESS:

9 Q. Okay. Do you see Monitoring Well 8?

10 A. Yes.

11 Q. And that is to the west of the ash
12 surge basin, correct?

13 A. Correct.

14 Q. Okay. Let's go to 78 -- sorry.

15 Excuse me. 78915. And this is a boring log for
16 Monitoring Well 8, correct?

17 A. Correct.

18 Q. Okay. And you will see -- under the
19 Soil/Rock Description, from 0 to 10 feet, you will
20 see where it says black cinders; is that correct?

21 MS. GALE: So I am going to object
22 to this testimony. She just said, "I'm not a
23 geologist, and I don't read these typically."

24 And so, I guess, object to

1 foundation. I mean, also, frankly, these boring
2 logs are already in the record as a different
3 exhibit from phase -- from the first phase. In
4 fact, I believe they had Mr. Gnat go through them,
5 each and every single one, in the first phase of
6 the hearing.

7 HEARING OFFICER HALLORAN: Ms. --

8 MS. WACHSPRESS: Your Honor, if I
9 may, she has testified that she was involved and
10 her agreement was required -- or not required but
11 strongly encouraged as part of the filing of this
12 application. And I am anticipating, because this
13 is not an agreed exhibit, an objection similar to
14 the one we heard yesterday to putting in an entire
15 exhibit without familiarity of the witness.

16 And so I'm merely walking
17 through all of the procedural niceties to make
18 sure we get our exhibit in. If they would
19 stipulate to admission of the document in its
20 entirety, we can move on.

21 MS. GALE: Mr. -- Hearing Officer,
22 first of all, I would -- our objection will
23 obviously be duplication, because we truly have
24 gone -- did these boring logs in the last phase

1 page by page with Mr. Gnat. In fact, he mentioned
2 it earlier when he said, "I have seen these
3 before," and we went through that.

4 So -- and whether she -- you
5 know, she probably reviewed the prose that was
6 drafted, but her review of boring logs from -- I
7 don't know the date on these -- 2010 probably was
8 not necessary when she -- so it is certainly lack
9 of foundation, beyond the scope of her
10 understanding, duplicative, and if we went -- you
11 know.

12 HEARING OFFICER HALLORAN: Well,
13 will you stipulate?

14 MS. GALE: No.

15 HEARING OFFICER HALLORAN: Okay.
16 Well, you may proceed, although she did say she is
17 not a geologist, and she has trouble reading
18 charts, as do I, but continue.

19 BY MS. WACHSPRESS:

20 **Q. I will try to make it fast.**

21 **So you will see in the boring**
22 **log for Monitoring Well 8, there is black cinders**
23 **down to the level of 20 feet; is that correct?**

24 **A. Again, I'm not a geologist, and I**

1 don't know how to read this. I would say that
2 black cinders stop at 10.

3 Q. If I could direct your attention to
4 page 78916 at the very top.

5 A. Oh, okay. You had me on 915.

6 Q. Okay.

7 A. I see black cinders at 20 feet, yes.

8 Q. Okay. And you see that the -- there
9 is a marker just before black cinders that
10 indicates the saturation up until that point; is
11 that correct?

12 A. Just before? No.

13 Q. Just below black cinders on page --

14 A. I thought you said before.

15 Q. Okay.

16 A. I do see the word "saturated."

17 Q. Okay. Okay. Let's go to 78901.

18 A. Okay.

19 Q. And do you see Monitoring Well 9 on
20 this diagram?

21 A. Yes.

22 Q. Okay. And using the scale to your
23 left, about how far would you place that
24 monitoring well from the ash bypass basin?

1 A. I would need a ruler.

2 **Q. Would you say that it is fewer than**
3 **350 feet?**

4 A. I would need a ruler.

5 **Q. Okay. Would you say it's fewer than**
6 **400 -- would you say it's greater than -- would**
7 **you say it's greater than 100 feet?**

8 A. I would need a ruler.

9 **Q. Okay. So you are not prepared to**
10 **use the scale to identify the distance?**

11 A. I'm an engineer by training. I need
12 a ruler. I want a ruler to be able to say if it's
13 greater or less than 350 feet. This looks like an
14 approximate one-inch scale. Is that an inch? I
15 don't know. I want a ruler.

16 **Q. Okay. All right. Let's go to --**
17 **let's see. Boring Well 9 is at 78917. And if you**
18 **look at the Soil/Rock Description?**

19 MS. GALE: I'm sorry. Mr. Hearing
20 Officer, we are just going to have a continuing
21 objection to this boring log.

22 HEARING OFFICER HALLORAN: Okay.
23 It's noted on the record.

24 MS. GALE: Thank you, sir.

1 HEARING OFFICER HALLORAN: Thank
2 you.

3 BY MS. WACHSPRESS:

4 Q. There are black cinders listed as
5 part of the Soil/Rock Description from a depth of
6 0 to just below the depth indicating -- just below
7 the line indicating the depth of 10 feet; is that
8 correct?

9 A. Among other things that are listed,
10 yes.

11 Q. Okay. Okay. All right. Each of
12 these boring logs are dated 2010, correct?

13 A. Each of which?

14 Q. The boring -- the boring --

15 A. Every one in here?

16 Q. Well --

17 A. I don't know what every one in here
18 is dated. I would have to flip through.

19 Q. The boring logs that I indicated to
20 you for each unit.

21 A. Which ones were those?

22 Q. So those were 5, 8, and 9.

23 A. 9 definitely is, 8 is, 5 is, yes.

24 Q. Since 2010, have -- has Midwest

1 **Generation attempted to determine the volume of**
2 **coal ash that has been identified by these boring**
3 **logs?**

4 A. Since 2010?

5 **Q. When the boring logs were taken.**

6 A. The boring -- I -- I don't even
7 know. I -- honest to goodness, I'm not even sure
8 what you are asking me. Could you --

9 **Q. So these boring logs indicate some**
10 **amount of cinders within the ground, correct?**

11 A. That's what they say.

12 **Q. Has Midwest Generation ever**
13 **attempted to determine the volume of cinders that**
14 **are in the ground at these locations?**

15 A. Ever? I cannot speak to. I'm
16 sorry.

17 **Q. Since 2010?**

18 A. I cannot speak to since 2010 either,
19 because I didn't appear until '15.

20 **Q. Since 2017?**

21 A. Ever? I -- I don't recall, but I
22 cannot -- I cannot say -- confirm or deny, to be
23 honest with you.

24 **Q. But you are not personally aware?**

1 A. I do not recall. I may be aware if
2 my memory were jogged in the right way.

3 **Q. And that responsibility -- well, has**
4 **Midwest Generation ever directed someone else to**
5 **attempt --**

6 A. Same answer. I just don't have the
7 specific memory of that. It does not mean it did
8 not occur, nor does it mean I wasn't involved in
9 it. I just don't remember.

10 **Q. And since 2017 had -- has Midwest**
11 **Generation undertaken any activity to remove the**
12 **coal ash described in these boring logs?**

13 A. Again, I cannot say in its entirety,
14 but I am not aware. As I sit here today, nothing
15 comes to mind.

16 **Q. And no one acting at Midwest**
17 **Generation's direction?**

18 A. As I sit here today, I'm not aware,
19 nor do I recall.

20 **Q. Okay.**

21 A. It does not mean it did not happen,
22 I just don't -- nothing is coming to mind right
23 now.

24 **Q. But you could not tell me, as we sit**

1 **here today, when it was?**

2 A. I cannot.

3 MS. WACHSPRESS: Okay. All right.

4 I would like to move for admission of

5 Exhibit 1401.

6 HEARING OFFICER HALLORAN: Ms. Gale?

7 MS. GALE: Well, with the same
8 limitations that were established in the prior
9 exhibit, that it was -- it would be limited to
10 those pages that were -- the testimony that she
11 has given here today. This is a 100-page document
12 filed pursuant to federal law, not part of the
13 complaint, and so, you know, they identified the
14 pages they thought were relevant.

15 MS. WACHSPRESS: Your Honor, may I
16 respond?

17 HEARING OFFICER HALLORAN: You may.

18 MS. WACHSPRESS: Unlike the previous
19 exhibit, this is an exhibit in which the witness
20 was involved in the preparation, submitted by
21 Midwest Generation to a federal agency,
22 presumptively true and correct. She has testified
23 to elements of it being true and correct, to the
24 best of her knowledge, and it's been filed since

1 the liability phase in this hearing.

2 This goes directly to what
3 actions Midwest Gen has taken, not taken, been
4 required to take, tried to avoid taking with
5 respect to cleanup at the plant, and it's a
6 document they themselves produced in its entirety.
7 I really don't see how they can keep out something
8 that comes from them, was turned over to us by
9 them, was filed with a federal agency, involves a
10 period of time directly at issue in this
11 proceeding and relates to precisely the question
12 here, which is what should happen with these
13 ponds?

14 MS. GALE: Mr. Hearing Officer, if I
15 can respond?

16 HEARING OFFICER HALLORAN: I will
17 give one more.

18 MS. GALE: Thank you.

19 HEARING OFFICER HALLORAN: Go ahead,
20 Ms. Gale.

21 MS. GALE: Production does not make
22 it relevant, first of all. So simply because we
23 produced it in response to a document request does
24 not make it relevant.

1 Second of all, this is pursuant
2 to the federal program. The Board does not have
3 jurisdiction over federal law, and this -- and so
4 that also makes it not relevant to this case. The
5 complaint is related to complaints related to
6 12(a) and 21(d) and regulations under 620. So it
7 also doesn't make -- many of the documents which
8 we discussed are duplicative. Many of them are
9 un- -- are just not relevant to the claims made in
10 this matter.

11 HEARING OFFICER HALLORAN: Okay.

12 MS. WACHSPRESS: Your Honor, may I?

13 HEARING OFFICER HALLORAN: No.

14 MS. WACHSPRESS: Okay.

15 HEARING OFFICER HALLORAN: I'm going
16 to -- I'm going to allow it. I find it relevant.
17 The only thing is, it's duplicative. I would ask
18 the Board to disregard that, but I'm accepting the
19 whole thing. Thank you.

20 (Whereupon, Complainants'
21 Exhibit No. 1401 was admitted
22 into evidence.)

23 MS. WACHSPRESS: Thank you. And I'm
24 prepared to press on with a new exhibit, or we can

1 take a break.

2 THE WITNESS: I'm sorry. Hold on
3 just a minute.

4 HEARING OFFICER HALLORAN: Yes,
5 Ms. Shealey. You're the boss here.

6 THE WITNESS: Break, please.

7 MS. WACHSPRESS: If we can -- may we
8 have a short recess, your Honor, to give the
9 witness a break?

10 HEARING OFFICER HALLORAN: Yes.
11 We're off the record.

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

14 HEARING OFFICER HALLORAN: Okay.
15 We're back on the record at approximately 3:10.
16 You may proceed. Thank you.

17 BY MS. WACHSPRESS:

18 Q. Thank you, your Honor.

19 Okay. Ms. Shealey, I am now
20 going to introduce Exhibit 14 -- well, marked for
21 identification Exhibit 1402.

22 (Whereupon, Complainants'
23 Exhibit No. 1402 was marked for
24 identification.)

1 BY MS. WACHSPRESS:

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. Okay. And what is it?

5 A. It is an outdated closure plan for
6 Powerton's former ash basin.

7 Q. And you say outdated. What is the
8 date on this closure plan?

9 A. May of 2019. It has been revised
10 several times since.

11 Q. Okay. And have you reviewed this
12 document before today?

13 A. In 2019 or when it was updated, yes.

14 Q. Okay. And did you participate in
15 the drafting of this document?

16 A. Probably not.

17 Q. Probably not. Was your agreement
18 part of the process for submitting this document?

19 A. Again, in May of 2019, maybe not.

20 Q. Maybe not. You don't recall?

21 A. Not -- I believe if this is the
22 initial -- I believe this is the initial closure
23 plan by this date. I don't -- I don't know. I
24 know it's not the most recent one.

1 **Q. Okay. But this is a closure plan**
2 **from May 2019 for the former ash basin at the**
3 **Powerton site, correct?**

4 A. That is what this is, yes.

5 **Q. Okay. And it describes Midwest**
6 **Generation's intentions with respect to the**
7 **handling of coal ash in the former ash basin on a**
8 **permanent basis as of the time it was filed,**
9 **correct?**

10 A. In May of 2019, that is my
11 understanding.

12 **Q. Okay.**

13 A. And I can remember. I -- based on
14 who the PE that signed this, I would say that I
15 probably was not intimately involved.

16 **Q. And the drafting and publication of**
17 **this plan was required by Part 257, correct?**

18 A. Yes.

19 **Q. Okay. And so Midwest Generation has**
20 **since published an amended plan, correct?**

21 A. At least once. I believe maybe -- I
22 would have to look, but at least one.

23 **Q. Okay. And there was an amended plan**
24 **published in November of 2022, correct?**

1 A. If -- I don't know. I would have to
2 look.

3 Q. Okay. Could I --

4 A. You said what of 2022?

5 Q. November of 2022.

6 A. That doesn't sound right to me, but
7 okay.

8 Q. All right. I am going to -- well,
9 while we are looking for it, I'm going to ask you
10 some questions about the 2019. Has the former ash
11 basin been a part of the ash slicing system at
12 Powerton -- sluicing system at Powerton at any
13 point since 2019?

14 A. No.

15 Q. Okay. Has the former ash basin
16 received overflow from other areas that contain
17 CCR at any point since 2016?

18 A. As I stated when you were asking me
19 questions about the other document, I would have
20 to review documents to know.

21 Q. Okay. And the 2019 closure plan, so
22 the May 2019 closure plan you are looking at,
23 stated that Midwest Generation intended to remove
24 CCR from the north pond and consolidate it with

1 **CCR in the south pond, correct?**

2 A. I haven't read it.

3 **Q. Okay.**

4 A. Do you want me to read it?

5 **Q. Yes, please do. Take your time.**

6 A. That is not what this says.

7 **Q. What does it say?**

8 A. It says, "both the south and north
9 ponds will be closed in place."

10 **Q. So the 2019 closure plan stated that
11 Midwest Generation intended to close both ponds
12 with ash in place, correct?**

13 A. I wouldn't call them both ponds. I
14 would call them both parts of a single
15 impoundment, but that's what Section 2.0, first
16 sentence says.

17 **Q. Okay.**

18 A. I didn't continue reading, though.
19 I stopped when I found the answer to your
20 question.

21 **Q. Okay. No. That's fine.**

22 **So now -- yeah. I am going to
23 try to refresh your recollection about the
24 November 2022. This is not an exhibit. This is a**

1 refreshing recollection. Okay. And you have an
2 exhibit in front of you titled, "Final Closure
3 Plan, Former Ash Basin Powerton Station,
4 November 2022," correct?

5 A. I thought you just said it wasn't an
6 exhibit. Was not.

7 Q. No. I said it's not an exhibit.

8 A. So you just said -- so I don't have
9 an exhibit in front of me --

10 Q. Do you have a document in front of
11 you?

12 A. Oh, yes, I do.

13 Q. Okay. Do you recognize this
14 document?

15 A. Generally, yes.

16 Q. Okay. And it is the final closure
17 plan, correct?

18 A. That's what it's titled.

19 Q. Okay. And does this document
20 refresh your recollection as to Midwest
21 Generation's plans with respect to the former ash
22 basin at Powerton station?

23 A. I would have to read. Let me read,
24 please.

1 Q. Okay.

2 A. Yes.

3 Q. Okay. So does Midwest Generation
4 still intend to close the former ash basin by
5 leaving CCR in place?

6 A. Again, I -- so seven months have
7 passed since this. I would have to review the CCR
8 operating record to ensure that this is the
9 current and -- the most current plan. I believe
10 it is the most current plan, but without reviewing
11 the CCR operating record, I can't assure you of
12 that. So I would hate to represent -- I would
13 hate to misrepresent if we made an edit in
14 February. That's my point.

15 Q. So this document, it states it was
16 the final closure plan?

17 A. Prepared in the -- yes.

18 Q. Okay. Is Midwest Generation in the
19 habit of labeling things as final if they are
20 still subject for revision?

21 A. I would suggest that that
22 terminology came from the regulation that this is
23 citing to.

24 Q. Do you know what --

1 A. So, yeah, there are tons of -- for
2 example, I would have considered Exhibit 1401 a
3 final document. I am 100 percent certain
4 Exhibit -- this -- this request has been modified.
5 So back in 2020, this was final. Sometime after
6 2020 we amended or modified our alternate -- I
7 called it the wrong thing.

8 **Q. Alternate closure demonstration?**

9 A. Alternate -- yes. I called it the
10 wrong thing again. Alternate closure
11 demonstration.

12 So am I in the habit of final
13 and -- no. Things change. We revise. We keep up
14 with the times to the best we can.

15 **Q. So as you sit here today, is it**
16 **Midwest Generation's intention to close the former**
17 **ash basin with ash in place?**

18 A. This states that it would be closed
19 in place in the southern half or southern portion,
20 and it would be removed from the northern portion.

21 **Q. But you -- but you have previously**
22 **testified that this is all part of one pond,**
23 **correct, north and south?**

24 A. Yes.

1 **Q. Okay. So the pond as a whole will**
2 **be closed with ash in place under Midwest**
3 **Generation's current plans?**

4 MS. GALE: Objection.
5 Mischaracterizes testimony.

6 HEARING OFFICER HALLORAN: I agree.
7 Sustained.

8 BY MS. WACHSPRESS:

9 **Q. Okay. So as of November 2022, it**
10 **was Midwest Generation's intent to close the**
11 **former ash basin with CCR material in place?**

12 MS. GALE: Objection. Same
13 objection. Misstates -- mischaracterizes
14 testimony.

15 HEARING OFFICER HALLORAN: Could you
16 rephrase?

17 MS. WACHSPRESS: I don't
18 understand how it -- I said as of November 2022.

19 HEARING OFFICER HALLORAN: Could you
20 rephrase, please?

21 MS. WACHSPRESS: Okay.

22 HEARING OFFICER HALLORAN: Don't
23 argue with me. Just rephrase.

24 BY MS. WACHSPRESS:

1 Q. Okay. As of November 2022, the date
2 on this document, was it Midwest Generation's
3 intention to close the former ash basin with CCR
4 materials in place?

5 A. It was our -- sorry.

6 MS. GALE: She has asked the same
7 question three times, and the objection has been
8 sustained.

9 HEARING OFFICER HALLORAN: Let's get
10 this over with.

11 Ms. Shealey, if you can answer,
12 please do so.

13 BY THE WITNESS:

14 A. As of -- I'm sorry. As of
15 November 2022, it was our intention to remove ash
16 from the northern portion of the FAB. The FAB is
17 bisected, dissected, whichever the correct word
18 is.

19 I guess -- I'm not sure bisected
20 is the correct term, because I'm not sure if it's
21 equal, but it is bisected by a rail line. Half of
22 the -- or a portion of the FAB is north of the
23 rail line. A portion is south of the rail line.
24 It was our intention at this time to remove the

1 ash north of the rail line, and consolidate it
2 south of the rail line, and close that portion in
3 place.

4 BY MS. WACHSPRESS:

5 **Q. And just to be clear, are there one**
6 **or two ponds called the former ash basin at**
7 **Powerton station?**

8 A. It is a single pond that was
9 bisected by a rail line. I believe in one of
10 these documents it says 2010, and, in fact,
11 bifurcated is the word, in the May 2019 closure
12 plan. Oh, in both of them. Both of them call --
13 the word is bifurcated.

14 **Q. And just to confirm, when you say**
15 **FAB, do you mean the former ash basin?**

16 A. Oh, I'm so sorry. It -- yes, F-A-B,
17 former ash basin, and I do use the FAB shorthand.

18 **Q. Thank you.**

19 A. Is that okay?

20 **Q. Oh, yes.**

21 A. Okay.

22 **Q. No. That's totally fine. I just**
23 **wanted to make sure it was clear --**

24 A. Yes, yes. Oh, sorry.

1 Q. -- for the record.

2 So if you will turn to the next
3 page of the 2019 FAB closure plan, and if you look
4 right under 4.0 it says, "Implementation of
5 closure of the FAB is estimated to require
6 14 months. Closure is anticipated to begin in
7 2019 and estimated to be completed in 2020." Is
8 that correct?

9 A. That is what this says, yes.

10 Q. Was closure completed in 2020?

11 A. No. In 2019, a state law -- what I
12 would call Senate Bill 9, but I can't remember the
13 exact name. It was passed, and that prohibited us
14 from closing anything, because that became --
15 those laws led to -- or that law, I guess, led to
16 Part 845 of the Board rules. So, no, we did not.

17 Q. Okay.

18 A. Because that would be a violation.

19 Q. Okay. And then if you turn -- if
20 you go back to the 2020 -- scratch that.

21 What is Midwest Generation's
22 current estimation of when closure is anticipated
23 to be completed at the FAB?

24 A. I think you should ask -- I'm sorry.

1 That question would be better
2 asked of the Agency. I'm going to refer to my
3 chart. Did I write that down? FAB. We are at
4 the FAB. We submitted the closure permit
5 application for the FAB, but I cannot tell you
6 when, because I did not write it down.

7 **Q. Okay. Okay.**

8 MS. WACHSPRESS: I would like to
9 move for the admission of the 2019 FAB closure
10 plan, the document marked as Exhibit 1402.

11 HEARING OFFICER HALLORAN: Ms. Gale?

12 MS. GALE: Well, as she testified,
13 she doesn't even remember it. It's outdated, so
14 it's not even relevant. A construction permit
15 application has been submitted to Illinois EPA, as
16 she testified. It doesn't have the plan, which
17 she testified what -- before the current, for the
18 former ash basin. It's -- it's outdated. It's
19 not relevant. There's -- it really has no reason
20 to come in.

21 HEARING OFFICER HALLORAN:

22 Ms. Wachspress?

23 MS. WACHSPRESS: Your Honor, you may
24 pick up a theme over the course of this

1 cross-examination. We are looking at all of the
2 regulatory and compliance actions that Midwest
3 Generation has taken since the liability phase of
4 this proceeding to understand and convey the
5 degree to which they have actively complied with
6 consistent plans for dealing with these
7 facilities, and we think a historical record of
8 changes to their plans is important for the Board
9 to understand the need for additional relief
10 beyond regulatory requirements.

11 HEARING OFFICER HALLORAN: Yeah, I
12 think the Board might find this of assistance, or
13 they might just throw it out, but I will accept
14 Complainant's Exhibit 1402 over objection.

15 (Whereupon, Complainants'

16 Exhibit No. 1402 was admitted
17 into evidence.)

18 MS. WACHSPRESS: Okay. Our next
19 Exhibit 1403 is Midwest Generation's petition for
20 adjusted standard.

21 HEARING OFFICER HALLORAN: We're off
22 the record.

23 (Whereupon, a discussion was had
24 off the record.)

1 HEARING OFFICER HALLORAN: Back on
2 the record. You may proceed.

3 (Whereupon, Complainants'
4 Exhibit No. 1403 was marked for
5 identification.)

6 BY MS. WACHSPRESS:

7 Q. Okay. And I have marked for
8 identification as 1403 a document. The first page
9 is Notice of Filing, but if you scroll down to --
10 or turn to the sixth page of the document, it's
11 entitled, "Midwest Generation, LLC's Petition an
12 Adjusted Standard and Finding of Inapplicability
13 for the Powerton Station;" is that correct?

14 A. That is what this is titled, yes.

15 Q. Do you recognize this document?

16 A. I'm sorry. Forgive me. Not -- I
17 didn't realize it printed out this large.

18 Q. So you do recognize it?

19 A. I'm familiar with the subject matter
20 of this document. I could tell you that one.

21 Q. Okay. And what is it?

22 A. It is a petition for an adjusted --
23 well, it's a -- this is just an adjusted standard?
24 Yes. This is a petition for the adjusted standard

1 for a portion of which we withdrew, I believe.
2 When it was filed in May of 2021, it was for a
3 finding of -- if I am -- without reading it, I
4 believe it was for a finding of inapplicability
5 for the service water -- the Part 845 rules to the
6 service water basin at Powerton which the Board
7 granted. Am I right? Let me go to my chart.

8 Service water, the -- which the
9 Board granted, and it was initially for reuse of a
10 liner, I believe. Well, I would have to read to
11 figure out which basin it was, but reuse of a
12 liner at least -- in at least one basin for
13 continued use as a CCR service impoundment.

14 **Q. Okay. And if you will look down at**
15 **the first paragraph it states, "An adjusted**
16 **standard is needed for the ash surge basin, bypass**
17 **basin, and metal cleaning basin to allow the**
18 **decontamination and retention of the existing**
19 **liners in the three basins, rather than the**
20 **liners' removal as provided in the Illinois CCR**
21 **rule"?**

22 A. Okay. And those were all withdrawn.

23 **Q. All three were withdrawn?**

24 A. All three.

1 MS. WACHSPRESS: Okay. Okay. So if
2 you will give me just a moment. Your Honor, can I
3 go off the record for just two minutes, please?

4 HEARING OFFICER HALLORAN: Sure.
5 We're off the record for two minutes.

6 (Whereupon, a discussion was had
7 off the record.)

8 HEARING OFFICER HALLORAN: Back on
9 the record. You may proceed.

10 BY MS. WACHSPRESS:

11 Q. You said that this application was
12 withdrawn with respect to all three basins,
13 correct?

14 A. With respect to reuse of the liner
15 in those three basins, yes.

16 Q. Does that -- does that mean that
17 Midwest Generation is currently intending to
18 remove the liner from all three of those basins?

19 A. Midwest Generation is currently
20 intending to retrofit the three basins such that
21 the -- and I believe with -- with Agency approval,
22 the current HDPE liners can be decontaminated and
23 reused as an extra layer of protection in the
24 retrofitted basins.

1 Q. So you said IEPA approval. The --
2 it is still -- Midwest Generation still needs
3 approval from the IEPA to reuse the liners as you
4 describe?

5 A. I believe so. I would have to go to
6 the regulations. It is in the Board rules, that
7 requirement.

8 Q. So let's go back to the time that
9 this was filed back in May of 2021. At the time
10 that this was filed, Midwest Generation understood
11 that it would be required to remove the historical
12 HDPE liners and any CCR material underneath them
13 as part of the closure of these basins, correct?

14 MS. GALE: I would say objection,
15 foundation. I don't think that's what she said.

16 MS. WACHSPRESS: I'm asking about
17 why this was filed.

18 HEARING OFFICER HALLORAN: Try to
19 rephrase that.

20 MS. WACHSPRESS: Okay.

21 HEARING OFFICER HALLORAN: I think
22 you can get it.

23 BY MS. WACHSPRESS:

24 Q. Do you know why this document was

1 **filed?**

2 A. To request an adjusted standard to
3 reuse the liners.

4 **Q. What is an adjusted standard?**

5 A. It is an -- I cannot use the
6 words -- I cannot define it without using the
7 words "adjusted standard." It is a mechanism of
8 regulatory relief that is available to sources.

9 **Q. And why would such regulatory relief**
10 **be required?**

11 A. Because of site-specific conditions
12 that don't exactly fit with regulations.

13 **Q. So the relief is required because**
14 **regulations might otherwise require something?**

15 A. No.

16 **Q. No?**

17 A. Or not exclusively I wouldn't say
18 that.

19 **Q. Okay. So the regulations might --**
20 **what --**

21 A. It may not -- it may or may not be
22 practical to do some things that you're --
23 depending on your site-specific conditions. There
24 are a lot of reasons. I guess, as I stated, I

1 work in all media. There are lots of reasons I
2 could need an adjusted standard.

3 **Q. Okay. Well, let's talk about**
4 **adjusted standards in Part 845. Why would an**
5 **adjusted --**

6 A. I cannot talk about any adjusted --
7 again, I'm so sorry to interrupt you, but that is
8 a universe that is beyond the scope of what I can
9 tell you. There are -- 845 is over 800 sections.
10 It goes to 8, 900. There are tons of things in
11 there a specific source would need an adjusted
12 standard for.

13 **Q. Okay. With respect to the closure**
14 **requirements of Part 845, are you familiar with**
15 **those?**

16 A. Generally.

17 **Q. So why did Midwest Generation submit**
18 **this adjusted standard petition?**

19 A. I would have to read. It's --
20 again, I'm so sorry. I'm not trying to be
21 facetious, but it was withdrawn. So it really
22 doesn't matter to me. So I would have to read to
23 refresh my memory. I know what our current plans
24 are today.

1 **Q. Uh-huh.**

2 A. I don't remember whatever I was
3 thinking or we were thinking as a group,
4 essentially two years -- more than two years ago.
5 This was filed on May 11th, 2021, so -- and to get
6 to this filing, we started as soon as the rules
7 were probably at second notice, before they were
8 finalized and at second notice.

9 **Q. So going back to May 2021 at the**
10 **time this petition was being contemplated, did**
11 **Midwest Generation have any alternatives to filing**
12 **this petition?**

13 A. I'm sure we did.

14 **Q. Do you know what those alternatives**
15 **were?**

16 A. Again, I don't even remember a
17 specific reason. I would have to read this. I
18 would literally have to read this to be able to
19 convey to you the specific reason we thought that
20 we needed an adjusted standard at this time.

21 **Q. Oh, okay.**

22 A. Once it was withdrawn, I stopped
23 caring. I'm not being facetious or -- in any way,
24 but it's erased from my memory. I would have to

1 reread it.

2 Q. The -- I think I understand our
3 misunderstanding.

4 The Part 845 requires the
5 removal of historical noncompliant liners,
6 correct?

7 A. I'm not sure.

8 Q. Was it Midwest --

9 A. I would have to -- I have to --
10 again, I would have to read the regulations to be
11 able to agree with you. If you want to say that,
12 then you can say it. I would have to read to
13 bring this all back freshly. I do not have Part
14 845 memorized in any way, shape, or form, and
15 that's why it's written down and it's printed out,
16 so I can find the sections when I need to.

17 Q. Okay. So let's just talk about the
18 contents of the petition then.

19 A. Okay.

20 Q. Since you are having trouble
21 remembering the circumstances surrounding its
22 filing.

23 A. Okay.

24 Q. So under the proposed closure plan

1 described in this petition, Midwest Generation
2 would add another HDPE liner to the bypass basin
3 and the ash surge basin, correct?

4 A. I have no idea. I didn't -- again,
5 I've got to read it, because I don't even know
6 that a closure plan is included in this petition.
7 I -- if you are telling me that it is, point me to
8 it, please. This was a -- this was a continued
9 operation plan in my simple way of thinking of it.

10 Q. Okay. So I'm turning at the very
11 next page. I am -- the first full paragraph,
12 "Midwest Generation seeks to reuse the basins'
13 high-density polyethylene liner, HDPE liners,
14 because the liners are in good condition and,
15 after decontamination, can continue to serve the
16 intended purpose as a liner. The CCR surface" --
17 I'm on -- it's indicated page 2 on the first full
18 sentence.

19 "The CCR surface impoundment
20 closure by removal requirement under the Illinois
21 CCR rule instead requires removal of the liner in
22 a CCR surface impoundment. By comparison, the
23 federal CCR rule does not require removal of the
24 liner when a CCR surface impoundment is closed by

1 removal.

2 Because the liners in the ash
3 surge basin, bypass basin, and metal cleaning
4 basin are in good condition and can be effectively
5 decontaminated consistent with the federal CCR
6 rule, MWG is requesting an adjusted standard from
7 Section 845.740(a) to allow the continued
8 post-closure use of the three liners."

9 Does that refresh your
10 recollection at all as to what -- the purpose and
11 content of this document?

12 A. Somewhat. But there is a lot of
13 words after that, too, because I -- and forgive
14 me, but you said the first full sentence, so I
15 looked for the first capital letter, which is the
16 first -- which is "Recycling." Because it was a
17 name, when you were reading, I wasn't with you.
18 So if you would allow me to read it, I could
19 reread it, but I wasn't with you, because I was
20 busy looking for what you were talking about.

21 Q. Okay. Go ahead, and take your time.
22 Go ahead and reread it.

23 A. Okay. What was your question?

24 Q. Does this refresh your recollection

1 **at all as to the circumstances and content of this**
2 **petition?**

3 A. Yeah. It was for a completely
4 different operating scheme of Powerton. With --
5 that's -- that could be the -- again, I cannot --
6 I don't remember exactly why it was withdrawn, but
7 that could be the reason. This is associated with
8 the November 30th, 2020 alternate closure
9 demonstration, which was modified. So these two
10 things were plans at those moments in time that
11 are different today. We do not intend this as
12 it's stated here at this time.

13 Q. So Midwest Generation, I think your
14 words were, has -- now intends to do a completely
15 different system with respect to these ponds; is
16 that correct?

17 A. Yes.

18 Q. Okay.

19 A. I believe. I'm sorry. I believe.
20 What I just read -- what you just pointed me to
21 leads me to believe that this is associated with
22 installation of concrete tanks, which is a
23 November 30th, 2020 submittal. We have no intent
24 to use concrete tanks at Powerton going forward.

1 We intend to retrofit the basins
2 as they stand with compliant liners and leachate
3 collection systems as required by Part 845.

4 **Q. Has Part 845 been revised at all**
5 **since this document was filed?**

6 A. It was -- no. It was new.

7 **Q. So the completely different system**
8 **you described was not motivated by any change in**
9 **regulatory requirements?**

10 A. It absolutely was. I think we
11 received -- well, I can't -- again, sequence is
12 hard for three years ago. My belief is that we
13 received feedback from US EPA that a concrete tank
14 would be considered a surface impoundment, which
15 made us re-visit our plans. If we had to have a
16 surface impoundment, and in combination with the
17 requirements of Part 845, somewhere along the line
18 we decided it was easiest or best to simply
19 retrofit the impoundments we have, and that is our
20 current plan, to retrofit the impoundments with
21 compliant liners and compliant leachate collection
22 systems.

23 **Q. And the advice from the US EPA with**
24 **regard to the concrete storage system, that's in**

1 **relation to the -- is that the Clifty Creek**
2 **proposed decision?**

3 THE COURT REPORTER: Sorry?

4 BY THE WITNESS:

5 A. I have no idea. I've never heard of
6 that.

7 MS. WACHSPRESS: Clifty Creek,
8 C-L-I-F-T-Y, C-R-R-E-K.

9 THE COURT REPORTER: Thank you.

10 BY MS. WACHSPRESS:

11 Q. Excuse me. Or, E-E-K. Oh, boy. I
12 lost the spelling.

13 Okay. So you don't know
14 anything beyond the US EPA advised you of this?
15 You don't know the basis on which they advised you
16 or --

17 A. I am sure that at the time of that
18 advisement, I was aware of their reasoning and
19 rationale. Whether I agreed with it is different,
20 but I'm sure I was aware at that time. Again,
21 once we decided not to have concrete tanks, it is
22 not relevant to my work at all. My work is
23 relevant to operating the plants and complying
24 today.

1 Q. So when you say, once we --

2 A. And in the future. Sorry.

3 Q. Once you decided not to have
4 concrete tanks, what is it that wasn't relevant to
5 your work?

6 A. This. That's what -- it was
7 withdrawn. I don't even understand what you are
8 asking me about it. It's mute -- it's moot.

9 Q. Okay. So let's go to page --
10 notwithstanding that it's moot, let's go to what's
11 marked as page 8 in this petition.

12 A. Uh-huh.

13 Q. And under subsection (a), if you
14 look at the third line it states, "The liner
15 systems consist of six layers of material from
16 bottom to top. The --"

17 A. The fourth line?

18 Q. Oh, sorry. Oh, so I'm on subsection
19 (a). It's labeled page 8 at the top.

20 A. Four. It's the fourth line.

21 Q. Fourth line. "The liner systems
22 consist of six layers of materials (from bottom to
23 top): The original poz-o-pac, a geotextile
24 cushion, the HDPE liner, a geotextile cushion, a

1 12-inch thick sand cushion layer, and a 6-inch
2 limestone warning layer." Have I read that
3 correctly?

4 A. I believe so, yes.

5 Q. Okay. So at the time this was
6 filed, Midwest Generation represented to Illinois
7 EPA that there was original poz-o-pac in all three
8 of the basins at issue?

9 A. This was not filed with the Agency.
10 This was filed with the Board. So we represented
11 it to the Board, yes.

12 MS. WACHSPRESS: With that
13 correction, yes. Okay.

14 All right. I would like to -- I
15 would like to move for admission of this document,
16 of the exhibit labeled 1403.

17 HEARING OFFICER HALLORAN: Ms. Gale?

18 MS. GALE: Mr. Hearing Officer, she
19 testified -- stated that this document is moot.
20 It's not relevant. It's also a legal document
21 that has been filed with the Board. It has the
22 Board's stamp on it. The matter is over and
23 closed. The Board issued an order. I don't -- so
24 the Board doesn't need it. It's not necessary for

1 this proceeding at all. Also, as she said, half
2 of it was withdrawn. So it's -- I don't
3 understand.

4 And they pointed out two pages
5 on here, and, you know, again, now we have a whole
6 thing, and I can tell you, since I wrote it, there
7 is a number -- a lot of this information is in the
8 record already because we went through the liners
9 during the first hearing. So this would be
10 entirely duplicative.

11 HEARING OFFICER HALLORAN: Okay. As
12 you know, it's on the Board's website, and the
13 Board can take official notice, and I would -- I
14 would admit it, but I would advise the Board
15 that -- you know, that it is duplicative, to
16 disregard, but it is admitted. That's my ruling.
17 Thank you.

18 MS. GALE: Okay.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 MS. NIJMAN: Can we get the
22 qualification limited to testimony?

23 MS. WACHSPRESS: Your Honor, no.

24 HEARING OFFICER HALLORAN: No, no.

1 The whole thing is in. Thank you.

2 (Whereupon, Complainants'

3 Exhibit No. 1403 was admitted

4 into evidence.)

5 THE WITNESS: Do I need this again?

6 Will I need this again? I'm sorry.

7 BY MS. WACHSPRESS:

8 Q. You may hold onto it for now. Okay.

9 So -- so let's -- let's talk about that amended
10 petition. So I think that's 1404.

11 (Whereupon, Complainants'

12 Exhibit No. 1404 was marked for

13 identification.)

14 BY MS. WACHSPRESS:

15 Q. So. You have marked in front of you
16 a document marked as 1404 for labeling purposes.

17 Do you recognize this document?

18 A. Yes.

19 Q. And what is it?

20 A. An amended petition for an -- "An
21 Amended Petition For an Adjusted Standard and a
22 Finding of Inapplicability For Powerton Station."

23 Q. And it was filed on November 11th,
24 2021; is that correct?

1 A. That is what it is dated, yes.

2 Q. Okay. And it amended the petition
3 that we had just been discussing, correct?

4 A. That is my recollection, yes.

5 Q. Okay. Were you involved in the
6 preparation of this document?

7 A. Yes.

8 Q. What was your role in the
9 preparation of this document?

10 A. I definitely did not write it. It
11 is filed by an attorney. I probably reviewed it.
12 I definitely was involved in decisions to change
13 our plans.

14 Q. And was this document true and
15 correct, to the best of your knowledge, at the
16 time it was filed?

17 A. I believe so, yes.

18 Q. And if I could direct your attention
19 to Bates number 124135?

20 A. Uh-huh.

21 Q. It states, "Since Midwest Generation
22 or MWG filed its petition for an adjusted standard
23 petition on May 11th, 2021, it has determined it
24 is no longer necessary to close the ash surge

1 **basin, bypass basin, and metal cleaning basin, and**
2 **reuse their liners." Is that -- have I read that**
3 **correctly?**

4 A. Yes, you have.

5 Q. **As you sit here today, does Midwest**
6 **Generation intend to remove the historical HDPE**
7 **liners in the ash surge basin?**

8 A. I would have to look at the current
9 closure plan. As -- the closure plan which would
10 occur after retrofit. As I sit here today, we do
11 not intend to remove the liners for retrofitting
12 of the basins. I would have to look at the
13 closure plans post-retrofit to answer that
14 question completely.

15 Q. **So as you sit here today, Midwest**
16 **Generation intends to retrofit all three basins,**
17 **correct?**

18 A. Surge, bypass, metal cleaning, yes.

19 Q. **Okay. And by retrofit, what do you**
20 **mean?**

21 A. To the liners and those -- to put in
22 a composite liner system. To install composite
23 liner systems and leachate collection systems in
24 each of the basins.

1 Q. And is that so the basins can
2 continue to be used to store wastewater?

3 A. And/or CCR materials.

4 Q. So the intention is to use the ash
5 surge basin to store CCR materials?

6 A. A retrofit would not otherwise be
7 necessary. So, yes, that is our intent.

8 Q. And that's true of the bypass basin
9 as well?

10 A. Yes.

11 Q. And the metal cleaning basin?

12 A. Yes.

13 Q. Okay. Let's go back. I know --
14 let's go back to the original or the -- excuse me.

15 The amended petition we had
16 previously spoken about, Exhibit 1403.

17 A. I'm sorry. That is not amended.
18 That's original.

19 Q. Original. 1403. Okay. And if I
20 could direct you to what's labeled as page 21?

21 A. Yes.

22 Q. Okay. And where it says subdivision
23 (e), if I could direct you to I think it's the
24 sixth line below that where it says "because"?

1 A. Yes.

2 Q. And it states, "Because the planned
3 removal is not a 'clean closure', some CCR will
4 remain on the slopes and in the base of the basins
5 before demolition begins." Have I read that
6 correctly?

7 A. Yes, you have.

8 Q. So at the time Midwest Generation
9 submitted this petition, Midwest Generation
10 anticipated that there would be CCR material on
11 the slopes and the base of the basins when it
12 performed the retrofit of the bypass basin,
13 correct?

14 A. At this -- no. There was no
15 retrofit. I am -- I am lost. I don't -- I
16 thought that I figured out already that this was
17 associated with the concrete tanks. So there
18 wouldn't have been a retrofit at -- in 2021. The
19 retrofit -- the decision to retrofit occurred
20 after this with -- that's why the petitions were
21 withdrawn.

22 Q. Okay. So at the time this was
23 filed, Midwest Generation anticipated that there
24 was CCR materials on the slopes and the base of

1 **the basins for which it was seeking the adjusted**
2 **standard?**

3 A. This says "before demolition
4 begins." So if that's what you were asking, yes.

5 **Q. Okay. And Midwest Generation**
6 **represented as part of this petition that it would**
7 **place a new HDPE liner on top of the materials in**
8 **the basin, correct?**

9 A. I have no idea. I honest to God
10 have no idea, because it was withdrawn. I have
11 lost that from my memory. What I have stated is
12 that the retrofitted basins will have an
13 additional -- or I probably didn't even say this.

14 The retrofitted basin will have
15 an additional HDPE liner. I would have to read
16 this to know what this says.

17 **Q. But part of the reasoning in**
18 **requesting the adjusted standard here was concern**
19 **with what would happen to CCR on the slopes in the**
20 **base of the basin?**

21 A. Ms. Wachspres, forgive me, but I --
22 God, it's thousands of pages, it looks like. I
23 would have to read to remember.

24 **Q. Okay. All right. We will move on.**

1 We will move on to what is
2 **Exhibit 17 of this document, which is about**
3 **two-thirds of -- or, sorry, three-quarters of the**
4 **way through. I think it's the tab that I have for**
5 **you.**

6 A. Oh, that's what the tab is?

7 Q. **I'm not totally unhelpful.**

8 A. Thank you. Yes.

9 Q. **I try.**

10 A. I didn't recognize what the tab was
11 for. That is -- you are correct. Thank you so
12 very much.

13 Q. **Okay. You're very welcome.**

14 And so you are looking at
15 **Exhibit 17 to the petition we have been**
16 **discussing, correct?**

17 A. Yes.

18 MS. GALE: Where is she at?

19 MS. WACHSPRESS: It's --

20 MS. GALE: I don't have tabs.

21 MS. WACHSPRESS: Oh, you don't have
22 a tab. It's -- it's Exhibit 17 just page -- there
23 is no Bates. And we should have tabbed all the
24 copies.

1 HEARING OFFICER HALLORAN: We're off
2 the record.

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

5 HEARING OFFICER HALLORAN: Back on
6 the record.

7 BY MS. WACHSPRESS:

8 Q. So this is an alternate source
9 demonstration from March 25th, 2019, correct?

10 A. Yes, it is.

11 Q. Okay. And it is addressed to you,
12 correct?

13 A. Yes, it is.

14 Q. Okay. And it describes groundwater
15 levels of arsenic, barium, molybdenum, selenium,
16 and thallium, correct?

17 A. I have no idea.

18 Q. Okay. Take as long as you need to
19 refresh your memory. I believe the -- it starts
20 on page 3 of the document.

21 A. Okay. I'm sorry. Can you re-ask?

22 Q. Yes. This alternate source
23 demonstration describes groundwater levels of
24 arsenic, barium, molybdenum, selenium, and

1 thallium, correct?

2 A. It looks like that is correct,
3 without having read through everything, yes.

4 Q. And if you turn to page 7 of it,
5 this -- this demonstration was signed by two
6 individuals, correct?

7 A. Yes.

8 Q. And one of them was Mr. Gnat,
9 correct?

10 A. Correct.

11 Q. Okay. And this alternate source
12 demonstration was performed because groundwater
13 testing indicated statistically significant
14 increases of these five metals, correct?

15 A. In certain or in specific wells,
16 yes. Not across every well.

17 Q. And if you look at the final
18 paragraph, it states that, KPRG -- oh, sorry. Oh,
19 sorry. Look at the final paragraph.

20 It says that these sources "have
21 been evaluated and determined to be associated
22 with other potential alternate sources and not a
23 release from the regulated units." Have I read
24 that correctly?

1 A. I think you paraphrased the
2 beginning. I'm sorry. I wasn't reading along
3 with you.

4 Q. Okay. I'll -- no. I'll start at
5 the beginning.

6 "Based on the discussions
7 provided above, the noted arsenic, barium,
8 molybdenum, selenium, and thallium concentrations
9 detected above the GWPS at several well locations
10 have been evaluated and determined to be
11 associated with other potential alternate sources
12 and not a release from the regulated units." Is
13 that correct?

14 A. Yes, it is.

15 Q. Okay. And do you understand what it
16 meant by GWPS there?

17 A. Yes.

18 Q. Okay. What is -- what does that
19 mean?

20 A. Groundwater protection standards.

21 Q. Okay. So these constituents were
22 measured at levels exceeding the groundwater
23 protection standards?

24 A. Yeah. And it looks like they were

1 in specific wells, but not all of them, and not
2 every constituent was detected at statistically
3 significant levels at every well that is listed in
4 this report.

5 Q. And by regulated units, you
6 understood the alternate source demonstration to
7 refer to the ash bypass basin and the ash surge
8 basin, correct?

9 A. I believe that's what it was titled,
10 yes.

11 Q. Okay. Are there any potential
12 alternate sources identified in this document?

13 A. Not having read it in -- since a
14 long time, this was dated March of 2019. It does
15 not -- I don't know what else is in here. How
16 long is this -- I'm sorry. Is the rest of this --

17 Q. No. It's -- that's the -- again,
18 it's -- the certification follows on the
19 subsequent page and then figures.

20 A. I'm sorry. Your question was?

21 Q. My question was, does KPRG identify
22 the alternate source that they believe was the
23 source of these levels?

24 A. As I sit here, I do not see that

1 they did.

2 Q. And as you sit here today, has
3 Midwest Generation subsequently identified the
4 source of these levels -- these elevated levels?

5 A. Not to the best of my recollection,
6 no.

7 Q. Okay. And to your knowledge, has
8 anyone, you know, a consultant working on behalf
9 of Midwest Generation identified the source of the
10 levels?

11 A. Oh, I assumed that that's what you
12 meant by your first question.

13 Q. Okay.

14 A. A consultant would not work unless
15 they were directed by Midwest Generation.

16 Q. Are you aware of any action taken by
17 Midwest Generation since the date of this
18 alternate source demonstration to determine the
19 source of these elevated levels?

20 A. Powerton. As I sit here today, I --
21 nothing comes to mind, ma'am.

22 Q. So you can't recall any?

23 A. No, I -- I cannot.

24 Q. All right. So if we turn all the

1 way back to the affidavit of Mr. Dale Green, and
2 that is, I think, near the beginning, that one is
3 not tabbed. I apologize. It's the -- it's the
4 first exhibit.

5 And at the time this was
6 filed --

7 A. I haven't found it.

8 Q. Oh, please, take your time. Sorry.

9 A. I found it.

10 Q. Okay. And at the time this was
11 filed, Mr. Green was the station manager of the
12 Powerton station, correct?

13 A. Correct.

14 Q. Okay. And he states in paragraph 6
15 that at the time this was written, approximately
16 88 people worked at the Powerton station. Is that
17 a correct representation of what's on the page
18 there?

19 A. It is.

20 Q. Okay. Do you agree with Mr. Green
21 that at the time that this was written, 88 people
22 worked at Powerton station?

23 MS. GALE: Mr. Hearing Officer,
24 we're going to -- I would have to object to this

1 line of questioning.

2 This is an affidavit by Dale
3 Green. He is not here. They did not identify
4 Ms. Sharene as a corporate representative, but
5 they identified her in and of herself. I -- I
6 don't -- there's -- she has no foundation for
7 her to be able to -- what Dale Green said two
8 years ago.

9 MS. WACHSPRESS: Your Honor, in one
10 of the exhibits counsel produced for this
11 proceeding, Ms. Shealey indicated to Mr. Richard,
12 who's another expert who will be testifying later,
13 that there were 88 individuals working at
14 Powerton, which is consistent with Mr. Green's
15 statement.

16 HEARING OFFICER HALLORAN: I'm going
17 to let it stand.

18 THE WITNESS: Who is Mr. Richard?

19 HEARING OFFICER HALLORAN: And
20 Ms. Gale, you have your cross and --

21 BY MS. WACHSPRESS:

22 Q. Okay. So to the best of your
23 knowledge and recollection, is this a correct
24 statement of how many folks worked at Powerton?

1 A. At the time, yes.

2 MS. WACHSPRESS: Okay. All right.

3 We are done with that. Okay.

4 So, housekeeping, have I moved
5 for admission of the amended -- 1404, the amended
6 petition?

7 (No response.)

8 MS. WACHSPRESS: No. I would like
9 to move at this time for admission of
10 Exhibit 1404, the amended petition for adjusted
11 standard for Powerton.

12 HEARING OFFICER HALLORAN: Ms. Gale?

13 MS. GALE: No objection.

14 HEARING OFFICER HALLORAN: Thank
15 you. Complainant's Exhibit 1404 is admitted.

16 THE WITNESS: Am I done with 1403?

17 MS. WACHSPRESS: We are done with
18 1403, I think.

19 HEARING OFFICER HALLORAN: Never say
20 never.

21 MS. WACHSPRESS: Never say -- never
22 say never, but --

23 THE WITNESS: I would like to move
24 this out of my way, if I can. Thank you.

1 (Whereupon, Complainants'
2 Exhibit No. 1405 was marked for
3 identification.)

4 BY MS. WACHSPRESS:

5 Q. Okay. This is 1405.

6 So you have a document placed in
7 front of you marked for identification as
8 Exhibit 1405. Do you recognize this document?

9 A. Yes.

10 Q. Okay. And this is an application
11 for a retrofit permit for the bypass basin at
12 Powerton station, correct?

13 A. That's what it appears to be.

14 Q. And were you involved in the
15 preparation of this document?

16 A. Yes.

17 Q. Yes. Okay. What was your role in
18 the preparation?

19 A. Multiple. I believe that this
20 document, as I mentioned before, mentions public
21 hearings -- public meetings. I keep using the
22 wrong terminology. Forgive me.

23 So I was definitely involved in
24 the public meetings for the bypass basin. This is

1 the bypass basin? Yes. I'm certain I reviewed
2 lots and lots of things. I probably hired
3 consultant and contractors.

4 HEARING OFFICER HALLORAN: Can you
5 speak up?

6 BY THE WITNESS:

7 A. Oh, sorry. Hired consultants and
8 contractors. I have many roles.

9 BY MS. WACHSPRESS:

10 Q. Okay. And you mentioned public
11 hearings, so I'm actually going to direct your
12 attention to the very end of this.

13 A. And I'm sorry. I corrected myself.
14 It's not a public hearing.

15 Q. Public -- public meeting.

16 A. Yeah, public meeting.

17 Q. You mentioned public meetings, so I
18 would like to direct your attention to the very
19 end of this document. I hope I have tabbed it.
20 Maybe not. It's at 117214. So just a few pages
21 from the end.

22 A. Could you repeat? 117 --

23 Q. -- 214, but the start of the
24 document is -- I will be referring to 117214, but

1 the start of the document is actually at 117211.

2 A. It actually starts at 210.

3 Q. 210, oh, there you go. Okay.

4 So this is a summary, a public
5 meeting general summary, with respect to the
6 bypass basin retrofit, correct?

7 A. And additionally the closure of the
8 FAB.

9 Q. Okay. And if you turn to 117214,
10 and where it says "Bypass Basin." It says,
11 "Bypass Basin Underlying Surface." There is a
12 short paragraph, and then indented it says,
13 "During the May 18 meeting, MWG mistakenly stated
14 that the bypass basin never had a Poz-o-Pac liner,
15 and corrected that statement during the May 19
16 meeting when the question was asked again. The
17 original construction documents showed that a
18 12-inch thick layer of Poz-o-Pac was installed
19 over the bypass basin's original Hypalon liner
20 along the basin floor.

21 Both the Poz-o-pac and Hypalon
22 liners were removed from the bypass basin when the
23 basin was lined in 2010 with a 16-mil HDPE
24 geomembrane liner."

1 And it says, "Currently, the
2 bypass basin does not have either of its original
3 Poz-o-Pac or Hypalon liners; only the relatively
4 new 60-mil HDPE geomembrane liner is present;" is
5 that correct?

6 A. That's what it says.

7 Q. Okay. And I have to apologize to
8 you, because we are, in fact, going back to the
9 petition for existed standard at what is labeled
10 page 8 -- petition for adjusted standard at page
11 8.

12 Oh, sorry. For the record, this
13 is Exhibit 1403.

14 MS. NIJMAN: We are looking back at
15 1403?

16 MS. WACHSPRESS: We are. I
17 apologize. And there, if you will look at
18 subsection (a) one, two, three, four lines down,
19 it states --

20 MS. GALE: I'm sorry. Wait. Where
21 are we?

22 BY MS. WACHSPRESS:

23 Q. Labeled page 8 of the Powerton
24 petition for -- the 1403.

1 A. Uh-huh.

2 Q. And it states, "The liner system
3 consists of six layers of material, from bottom to
4 top. The original Poz-o-Pac, a geotextile
5 cushion, the HDPE liner, a geotextile cushion, a
6 12-inch thick sand cushion layer, and a 6-inch
7 limestone warning layer."

8 So it is the case that in the
9 petition for adjusted standard, Midwest Generation
10 represented that there was Poz-o-Pac liners
11 beneath the historical HDPE liner, correct?

12 A. That is what that document says,
13 yes.

14 Q. And in the permit for the retrofit,
15 they stated that, in fact, there is no Poz-o-Pac
16 liner?

17 A. That is what that document says
18 also, which conflicts, and was -- both were
19 written by humans. Somebody made a mistake. I do
20 not know which one is correct. So I don't know.

21 Q. As you sit here today, you don't
22 know --

23 A. As I sit here today --

24 Q. -- whether there is Poz-o-Pac --

1 HEARING OFFICER HALLORAN: Please,
2 one at a time.

3 BY THE WITNESS:

4 A. I'm sorry. As I sit here today, I
5 have no idea which of these two documents is
6 correct. I tend to believe the petition, but I
7 cannot say that is accurate.

8 BY MS. WACHSPRESS:

9 Q. Okay. All right. Let's -- let's go
10 to -- let's go back to the permit. We are going
11 to go to 11721.

12 A. I'm really going to get these
13 documents confused.

14 Q. Okay. Sorry.

15 A. Because I -- you are --

16 Q. 1405. Exhibit 1405.

17 A. But nothing is -- I don't know where
18 the beginning of one is and --

19 MS. WACHSPRESS: Do you want to
20 put -- your Honor, may we go off the record?

21 HEARING OFFICER HALLORAN: Sure.

22 (Whereupon, a discussion was had
23 off the record.)

24 HEARING OFFICER HALLORAN: Back on

1 the record.

2 BY MS. WACHSPRESS:

3 Q. Okay. So I would like to direct
4 your attention back to Exhibit 1405, page 117121.

5 MS. GALE: I'm sorry. Did you say
6 11712?

7 BY MS. WACHSPRESS:

8 Q. 117121.

9 A. Yes, got it.

10 Q. Okay. All right. And so this -- if
11 you look in the bottom, right this is labeled,
12 "Cross Section D - D', and it's a document
13 produced by KPRG; is that correct?

14 A. You characterize that as a prime,
15 but okay.

16 MS. GALE: I'm sorry. I thought you
17 said 11721.

18 BY MS. WACHSPRESS:

19 Q. 117121. Okay.

20 And on the bottom, left the
21 Cross Section D to D prime or D to D apostrophe --
22 it depends if you're a math or English major -- is
23 labeled in red, correct?

24 A. I guess. I'm not -- I'm not a

1 professional engineer. I cannot digest this
2 document in 30 seconds.

3 **Q. But you were involved in the filing**
4 **of it, correct?**

5 MS. GALE: Objection.
6 Mischaracterization as to how she handled this
7 document.

8 HEARING OFFICER HALLORAN:
9 Sustained.

10 BY MS. WACHSPRESS:

11 **Q. You testified that you played a role**
12 **in the filing of this document, correct? Or this**
13 **entire document, Exhibit 1405, correct?**

14 A. Which one is this? Yes.

15 **Q. Okay. All right. Did you review it**
16 **at the time it was filed?**

17 A. I -- I cannot review -- I'm not a
18 professional engineer. I rely on professional
19 engineers. I rely on the engineers to give me
20 guidance and direction to get me to compliance. I
21 probably did look at this document. I may have
22 digested it at that point, but I would have to
23 redigest it again here to be able to understand
24 what you just asked me. I'm not a PE. That's not

1 what I do.

2 Q. Earlier today you testified that if
3 the consultant fulfilling the terms of the CCA had
4 not done it correctly or done it in accordance to
5 regulations, you wouldn't have -- be in a position
6 to recognize that?

7 MS. GALE: Objection. Asked and
8 answered. And I actually didn't -- would or would
9 not? I didn't --

10 THE WITNESS: I didn't understand.

11 MS. GALE: It's vague.

12 HEARING OFFICER HALLORAN:
13 Sustained.

14 BY MS. WACHSPRESS:

15 Q. Are you able to tell from looking at
16 figures produced by KPRG whether coal ash is
17 saturated in water?

18 MS. GALE: Objection, foundation.

19 MS. WACHSPRESS: All right. Your
20 Honor, I'm trying to assess whether the witness
21 can look at a document in a larger exhibit that
22 she filed and testify to its meaning. If
23 counsel's position is that she is not in a
24 position to assess basic facts about the

1 hydrogeology of the plants for which she has
2 testified that she is one of the senior
3 environmental compliance individuals, then -- and
4 who is also -- that counsel intends to call as a
5 witness to these matters later, I think we need to
6 have a discussion about whether she is able to
7 answer questions going forward about MW -- Midwest
8 Generation's compliance with existing rules and
9 their ability to comply with any order that the
10 Board issues.

11 MS. GALE: If I may respond?

12 HEARING OFFICER HALLORAN: Yes, you
13 may.

14 MS. GALE: What she testified was
15 that she oversees these things, and she relies on
16 experts. This document is a KPRG document. They
17 put Mr. Gnat, the principal of KPRG, on as a
18 witness, and they did not ask him about this
19 document. So I don't see why they would put it in
20 front of Ms. Shealey, who testified that --

21 HEARING OFFICER HALLORAN: I don't
22 understand that either, Ms. Wachspress.

23 MS. WACHSPRESS: All right. If we
24 can move to have the document -- you know what?

1 If we -- if we are able to -- if they are willing
2 to stipulate to move to have the Exhibit 1405
3 entered in the record, we are done with this line
4 of questions.

5 HEARING OFFICER HALLORAN: Ms. Gale?

6 MS. GALE: Mr. Hearing Officer, this
7 is one of the documents that we told them we would
8 object to as to relevance, because we didn't find
9 this document to be relevant to this proceeding.
10 As I said previously related to the other
11 operating permit applications, this is -- this
12 document is not relevant to the Board's analysis
13 of their complaint.

14 That it occurred may be
15 relevant, but the document as it exists, does --
16 is not relevant. Ms. Shealey is able to testify
17 about how these ponds will be retrofitted in a
18 general basis, but drilling down into the
19 nitty-gritty way into the attachments prepared by
20 an expert -- by a consultant is not something that
21 she testified that she would be able to do, nor
22 it's something that, you know -- well, she can't
23 do it.

24 HEARING OFFICER HALLORAN: That, I

1 recall.

2 Ms. Wachspress?

3 MS. WACHSPRESS: Your Honor -- well,
4 we --

5 HEARING OFFICER HALLORAN: I mean,
6 you know --

7 MS. WACHSPRESS: I mean, it's a
8 document that they submitted to the -- I'm just
9 struggling to understand how it's unfair to enter
10 into the record a document that their own expert
11 produced. We are asking Ms. Shealey questions
12 about this only because they have objected to
13 putting the document in its entirety into the
14 record. We are jumping through these hoops
15 because we believe they have been unreasonable
16 about admitting things into the record that they
17 themselves produced.

18 HEARING OFFICER HALLORAN: Well,
19 Ms. Shealey --

20 MS. WACHSPRESS: I don't know what
21 else to do here.

22 HEARING OFFICER HALLORAN: Excuse
23 me. Ms. Shealey testified that she is not a
24 geologist. She can't read, for the most part --

1 and no disrespect -- the boring samples and all
2 this other stuff.

3 You know, I can take it as an
4 offer of proof, and the Board can overrule me.
5 They will take a look at this stuff, see if it is
6 relevant, see, you know, if it will be any
7 assistance, but at this point, no, I can't -- I
8 can't take it, you know, as an exhibit other than
9 an offer of proof.

10 MS. WACHSPRESS: Okay. Well, I will
11 continue as an offer of proof.

12 HEARING OFFICER HALLORAN: And there
13 is always a post-hearing brief. I mean, I --

14 MS. WACHSPRESS: I will continue as
15 an offer of proof, your Honor.

16 HEARING OFFICER HALLORAN: Okay
17 thank you.

18 (Whereupon, the Offer of Proof
19 section begins.)

20 BY MS. WACHSPRESS:

21 **Q. So, Ms. Shealey, if you take a look**
22 **at the cross section printed at the top of this**
23 **page, you will see on the left numbers marked**
24 **along the left-hand side and on the right-hand**

1 side; is that correct?

2 A. Yes.

3 Q. And you will see three types of
4 fill -- or excuse me -- three types of shaded
5 areas within this diagram; is that correct?

6 A. And a lack of shaded area. So maybe
7 four.

8 Q. Four, yes. And you will see the one
9 labeled A has small diamonds in it; is that
10 correct?

11 A. Yes.

12 Q. Okay. And if you look below, you
13 will see that the one marked as A with the
14 diamonds is labeled "Fill: Consisting of tan,
15 brown and black fine to medium sand with some
16 gravel and clay seams. Several locations also
17 included black cinders and brick fragments." Is
18 that correct?

19 A. It is.

20 Q. So with your understanding and many
21 years of experience in this area, would you
22 understand that to mean that there is coal ash in
23 at least some locations labeled by that diamond
24 shaded area?

1 MS. GALE: Objection to the extent
2 it says black cinders, and she called it coal ash.

3 HEARING OFFICER HALLORAN:
4 Sustained.

5 Kari, we are in an offer of
6 proof. I don't know if you made a note. Thank
7 you.

8 You may proceed. Sorry.

9 BY MS. WACHSPRESS:

10 Q. Would you understand that there are
11 black cinders located in that fill area in at
12 least some locations?

13 A. I would, yes.

14 Q. And if you look, as you very
15 helpfully pointed out, the lack of a shaded area
16 towards the right-hand side, you see that this is
17 labeled the "former ash basin"?

18 A. Yes.

19 Q. And you see that the line at the
20 bottom of the former ash basin extends downward
21 through -- through these layers? Is that -- you
22 will see the -- you will see the outline --

23 A. Through which layers?

24 Q. Sorry. You will see the outline of

1 the bottom of the former ash basin indicated on
2 the diagram.

3 A. That's what it appears to be. And
4 may I state, the problems -- one of the problems
5 I'm having is you're picking out of a page --
6 you're picking a page out of what probably looks
7 like hundreds of pages. So I'm out of context.

8 Q. Okay. I get that. There is
9 specific information on this page that I would
10 like to get into the record. That's all. I
11 promise we are very near to done.

12 And you will see a blue line
13 with a triangle on it, and that blue line is
14 indicated below as water level; is that correct?

15 A. As of 5/21, it appears, yes.

16 Q. Yes. And so that water level
17 extends above the level of the bottom of the
18 former ash basin, correct?

19 A. On -- I actually believe that's on
20 5/21 it did.

21 Q. On 5/21 it did. And you will see --
22 and I know you're an engineer. You'd need a
23 ruler, but it is -- would you say it's fair to say
24 that is more than five of the scale marked on the

1 left and the right-hand sides; is that correct?

2 A. I don't need a ruler, because it is
3 actually a scale that is marked. It is more than.
4 It is at some places more than five, but not at
5 all places, it appears.

6 Q. Okay. Okay. And I think we have
7 finished with the offer of proof.

8 HEARING OFFICER HALLORAN: All
9 right. Thank you. We are outside the offer of
10 proof now. Thanks.

11 (Whereupon, the Offer of Proof
12 section ends.)

13 BY MS. WACHSPRESS:

14 Q. Have any monitoring wells been
15 installed at the Powerton site since 2019?

16 A. I think Mr. Gnat testified to that,
17 and forgive me if he -- if I'm -- if he didn't,
18 and I just know it. Yes.

19 Q. Yes. Okay. And those were 20 and
20 21?

21 A. I have no idea of the numbers.
22 You've got to point me to a diagram.

23 Q. Well, we can go back to -- I mean,
24 we can go back to the permit application if you

1 **would like the diagram. That's 117204. And I**
2 **guess we are back in the offer of proof?**

3 HEARING OFFICER HALLORAN: We are
4 back in the offer of proof.

5 (Whereupon, the Offer of Proof
6 section begins.)

7 BY THE WITNESS:

8 A. 117. Try it again. 117 what?

9 BY MS. WACHSPRESS:

10 Q. 204.

11 A. 117 -- labeled Figure 1?

12 Q. **It's labeled, "CCR Monitoring Well**
13 **Site Map," and it's dated June 10th of 2021.**

14 A. Yes. Should I answer the question?

15 Q. **Okay. And if you will look at this,**
16 **you will see monitoring wells marked at the site,**
17 **correct?**

18 A. Correct.

19 Q. **Have any monitoring wells been**
20 **installed at the site since June 10th, 2021?**

21 A. June 10, 2021?

22 Q. **Since the --**

23 A. I believe. Yeah, what's June 10th?
24 What's the significance of that date?

1 Q. It's the date this map is --

2 A. Oh, no.

3 Q. The date of this map.

4 A. Not in addition to this map.

5 Q. Okay.

6 A. I'm sorry. I knew that -- I didn't
7 realize that you had limited it to after this map.

8 Q. Yeah.

9 A. I'm sorry.

10 Q. No. But this is a complete list of
11 all the monitoring wells at the Powerton site?

12 A. To the best of my recollection,
13 yeah.

14 Q. Okay. And if I could direct your
15 attention to the area near Monitoring Well 11 and
16 12. It's between the ash surge basin and the ash
17 bypass basin. And, to your knowledge, since 2017,
18 has any CCR material been removed from this area
19 between the two basins?

20 MS. GALE: Objection, foundation.
21 Has it been established there is CCR there?

22 MS. WACHSPRESS: Under the order on
23 liability, yes.

24 HEARING OFFICER HALLORAN: Could you

1 read the question back, Kari, please?

2 (Whereupon, the record was read
3 as requested.)

4 HEARING OFFICER HALLORAN: You may
5 answer.

6 BY THE WITNESS:

7 A. I'm not aware that there is CCR
8 material between the two basins. So, no, not to
9 my knowledge.

10 BY MS. WACHSPRESS:

11 **Q. Has Midwest Generation attempted to**
12 **assess whether there is any CCR material in this**
13 **area?**

14 A. Outside of the basins?

15 **Q. Yes.**

16 A. Limited to my time, I'm not
17 currently -- nothing comes to mind. I'm not
18 currently -- as I sit here, nothing comes to mind.

19 **Q. And that includes any consultants**
20 **acting at Midwest Generation's direction?**

21 A. As I sit here, nothing comes to
22 mind.

23 **Q. Has Midwest Generation taken any**
24 **leach, L-E-A-C-H, tests in this area?**

1 A. Outside of the basin?

2 Q. Yes.

3 A. Not that I am aware.

4 Q. **Anyone at Midwest Generation's**
5 **direction?**

6 A. Not that I am aware.

7 Q. **So at -- Midwest Generation has not**
8 **taken a leach test anywhere outside a basin at the**
9 **Powerton site?**

10 A. I cannot say that with 100 percent
11 certainty, no. The Powerton site --

12 Q. **But you don't recall?**

13 A. The Powerton site is large.

14 Q. **But you don't recall any instances?**

15 A. I have not been involved. I don't
16 recall that I have been involved in any instances.

17 Q. **And similarly, you don't recall that**
18 **you have been involved in any effort to assess the**
19 **volume of ash outside of the basins at Powerton?**

20 A. That would be true, I think, yeah.
21 Not to my recollection.

22 (Whereupon, the Offer of Proof
23 section ends.)

24 MS. WACHSPRESS: Okay. All right,

1 your Honor. I think, if I may, go off the record.

2 HEARING OFFICER HALLORAN: Let's go
3 off the record, Kari. Thank you.

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

6 MS. WACHSPRESS: Your Honor, I would
7 like to move for admission of Exhibit 1405 into
8 the record.

9 HEARING OFFICER HALLORAN: You did
10 already, and I said no. I will take it as an
11 offer of proof.

12 MS. WACHSPRESS: Okay.

13 HEARING OFFICER HALLORAN: Thank
14 you.

15 MS. WACHSPRESS: Great. Thank you,
16 your Honor. I'm at a stopping place now. I --
17 but I can also keep going. It's up to you, your
18 Honor.

19 HEARING OFFICER HALLORAN: Let's go
20 off the record.

21 (Whereupon, a short break was
22 taken.)

23 HEARING OFFICER HALLORAN: Back on
24 the record. You may proceed. Thank you.

1 BY MS. WACHSPRESS:

2 Q. Okay. I would like to -- I would
3 like to introduce what I have marked for
4 identification as Exhibit 1406.

5 (Whereupon, Complainants'

6 Exhibit No. 1406 was marked for
7 identification.)

8 BY MS. WACHSPRESS:

9 Q. Okay. So it's another big one. Do
10 you recognize the document that's just been placed
11 in front of you?

12 A. Yes, I believe so. It's a lot of
13 pages, but I believe I do.

14 Q. Okay. And what is it?

15 A. It looks like a petition for an
16 adjusted standard at Waukegan generating station
17 and a finding of inapplicability.

18 Q. And the finding of inapplicability
19 related to an area sometimes called "the grassy
20 field," correct?

21 A. Correct.

22 Q. And the petition for inapplicability
23 sought a determination that the grassy field is
24 not a CCR surface impoundment, correct?

1 A. Under Part 845, yes.

2 Q. Under Part 845?

3 A. That is correct, yes.

4 Q. And as this petition was filed on
5 May 11th, 2021, correct?

6 A. Yes.

7 Q. Did you participate in the
8 preparation of this document?

9 A. Yes.

10 Q. What was your role?

11 A. Reviewing. I'm -- many roles. I'm
12 not exactly sure, because I don't know how many --
13 what's all in here. It was a long time ago. I
14 definitely didn't do the filing. It was done by
15 an attorney.

16 Q. Okay. And as part of this petition,
17 Midwest Generation sought permission to leave the
18 existing liner in the east pond rather than remove
19 it, correct?

20 A. I'm so sorry. What -- we actually
21 modified the petition. So this is the original
22 one. I believe this one would have requested
23 reuse of the east pond liner. We later modified
24 it for the west pond, and hence my confusion.

1 Q. Yeah. I have my own little chart.
2 You are not alone. So -- okay. So let's turn in
3 this document to page -- what's Bates stamped
4 123865, and it is about, I would say,
5 three-quarters of the way down. I don't know if I
6 tabbed it. I didn't.

7 A. Got it.

8 Q. Okay. And do you recognize this
9 document that was filed as part of the petition?

10 A. Yes.

11 Q. Okay. What is it?

12 A. It is an alternative closure
13 demonstration for a pond, whether that would be
14 east or west I would have to read, at Waukegan
15 station.

16 Q. And I believe that if you read down
17 to the second paragraph, this relates to the east
18 ash pond; is that correct?

19 A. Yes.

20 Q. Okay. And you were carbon-copied on
21 this, correct?

22 A. Yes.

23 Q. Okay. And the purpose of this
24 application was to extend the deadline for closure

1 of the east ash pond from April 11th, 2021, under
2 the federal CCR rules, correct?

3 A. Beyond April 11th, 2021, yes.

4 Q. And Midwest Generation understood
5 that it could extend this deadline by submitting
6 an application demonstrating that it had no
7 technically feasible alternative for placing the
8 wastestreams that went into east ash pond,
9 correct?

10 A. Or that we could not achieve a
11 technically feasible alternative by -- before --
12 by or before April 11th, 2021.

13 MS. WACHSPRESS: Okay. All right.
14 I would like to move for admission of
15 Exhibit 1406.

16 HEARING OFFICER HALLORAN: Ms. Gale?

17 MS. GALE: Well, objection to
18 relevance. She talked about two pages, and she
19 also testified that this has been amended, and
20 this -- in the original one, the east pond was
21 going to be reused, and she said, "We amended it
22 later." So this is no longer -- it is not
23 relevant. And it would be confusing to the Board
24 to have these voluminous documents that say

1 numerous things, because as she has testified to
2 over the past many years, things have changed.

3 MS. WACHSPRESS: Your Honor, this is
4 exactly the type of document you have already
5 admitted with respect to Powerton, and our reasons
6 for admission are the same. We have to admit the
7 entire document, because we understood that to be
8 opposing counsel's position with respect to these
9 voluminous exhibits.

10 It goes to what steps Midwest
11 Generation has or has not taken since the order on
12 liability to address coal ash and what their
13 current plans are with respect to the ponds.

14 HEARING OFFICER HALLORAN: I'm going
15 to admit it, and the Board can take a look at it.
16 It is on our Board website.

17 So Complainants' Exhibit 1406 is
18 admitted over objection. Is there -- does anybody
19 have a file stamped copy of this? I have no idea
20 what number this is. PCB -- this is before -- I
21 have the one before it was filed. It's not
22 stamped by the Board.

23 MS. WACHSPRESS: We have the one
24 that was produced to us by Midwest Generation to

1 address authenticity issues. We can also --

2 HEARING OFFICER HALLORAN: What --

3 MS. WACHSPRESS: We can --

4 HEARING OFFICER HALLORAN: Yeah.

5 I'm sorry. We are still on the record. You can
6 make a note, and then the Board will know, but I
7 have no idea what the adjusted standard number is.

8 AS --

9 MS. BUGEL: AS 2021-003.

10 HEARING OFFICER HALLORAN: Okay. I
11 would ask the Board to note that it is AS 21--03.
12 Accepted over objection. Thank you.

13 (Whereupon, Complainants'
14 Exhibit No. 1406 was admitted
15 into evidence.)

16 BY MS. WACHSPRESS:

17 Q. Okay. I would like to introduce
18 with -- introduce labeled for identification as
19 **Exhibit 1407.**

20 (Whereupon, Complainants'
21 **Exhibit No. 1407 was marked for**
22 **identification.)**

23 BY MS. WACHSPRESS:

24 Q. Okay. And do you recognize the

1 **document in front of you?**

2 A. Yes, I do.

3 **Q. Okay. And what is it?**

4 A. It is -- I believe I just referenced
5 the amended petition for adjusted standard for the
6 Waukegan station to switch from one pond to the
7 other. Forgive me. I'm losing track.

8 **Q. Okay. And it was filed on**
9 **September 17th, 2021, correct?**

10 A. That is when it was received.
11 That's the date it is stamped, yes.

12 **Q. The date it's stamped, yes.**

13 **And were you involved in the**
14 **preparation of this document?**

15 A. Yes.

16 **Q. Okay. And what was your role?**

17 A. Review.

18 **Q. Review?**

19 A. Maybe other things. I definitely
20 was not the author. This was authored by an
21 attorney.

22 **Q. Okay. And if I could direct your**
23 **attention to -- oh, gosh; one, two, three, four,**
24 **five, six lines from the bottom on page -- I**

1 should give you the page number first.

2 Page 124091 Bates stamp, and
3 then go up six lines from the bottom. And it
4 states, "In sum, this amendment seeks approval to
5 close the west pond by removal and reuse its liner
6 instead of the original request to reuse the east
7 pond's liner. No other changes to the petition
8 are proposed." Is that a correct -- have I
9 correctly read that statement?

10 A. Yes, you have.

11 Q. And is that your understanding of
12 the purpose of this amendment?

13 A. Yes, it was.

14 Q. Okay.

15 A. Or it is. I'm sorry.

16 Q. So this is the current request
17 before the --

18 A. Yes, it is.

19 Q. Before the Board?

20 A. Yes, it is.

21 Q. Okay. And so as we sit here today,
22 Midwest Generation intends to leave the historical
23 HDPE liner in place in the west pond, correct?

24 A. We intend -- yes. Our desire is to

1 reuse the HDPE -- to decontaminate and reuse the
2 HDPE liner in the west pond.

3 **Q. And is it Midwest Generation's**
4 **intention to remove the historical HDPE liner from**
5 **the east pond?**

6 A. I believe -- I don't know whether
7 this document contains it, but I believe our
8 plan -- our current closure plan is to close the
9 east pond in place with a final cover system,
10 which would not -- which would mean we do not
11 intend to remove the liner.

12 **Q. Does Midwest Generation intend to**
13 **test the soils beneath that liner for**
14 **contamination?**

15 A. No. My understanding, and based on
16 numerous conversations with professional engineers
17 and geologists, is that the final cover system is
18 protective of the environment. There will be no
19 need to test the soils between, underneath any
20 liner.

21 **Q. So there are two options under the**
22 **federal CCR rules, correct, for closure?**

23 A. And as well as state. By removal or
24 in place.

1 **Q. And Midwest Generation has selected**
2 **closure-in-place for the east pond?**

3 A. Yes.

4 **Q. Okay. Does Midwest Generation**
5 **intend to construct a low volume waste pond in the**
6 **footprint of the west pond?**

7 A. Yes.

8 **Q. Okay. And is it Midwest**
9 **Generation's position that the low volume waste**
10 **pond to be installed in the west pond is a CCR**
11 **surface impoundment under Illinois regulations?**

12 A. No. That is --

13 **Q. Is it --**

14 A. I'm sorry.

15 **Q. Go ahead.**

16 A. That would be the purpose of the
17 adjusted -- wait. I'm not sure if that's the
18 purpose of the adjusted standard. I may be
19 incorrect. I may be walking myself in a circle.

20 It would not be -- our intention
21 is not to continue to operate any CCR surface
22 impoundments at Waukegan station.

23 **Q. Okay. So just so the record is**
24 **clear, it's Midwest Generation's position that the**

1 low volume waste pond to be installed in the west
2 pond is not a CCR surface impoundment under
3 Illinois law?

4 MS. GALE: I would just object to
5 the characterization of the document. I
6 believe --

7 MS. WACHSPRESS: I'm not asking
8 about a document. I'm asking her understanding.

9 MS. GALE: Okay. I object to the
10 characterization. I believe the low -- there is
11 not going to be a construction of a low volume
12 waste pond. That's my objection.

13 HEARING OFFICER HALLORAN: The --

14 MS. WACHSPRESS: Your Honor, the
15 witness can testify as to what's going -- the -- I
16 can't -- counsel has --

17 HEARING OFFICER HALLORAN: When I
18 start talking --

19 MS. WACHSPRESS: Okay. Sorry.

20 HEARING OFFICER HALLORAN: -- people
21 have to stop. At least here.

22 So if you can rephrase, that
23 would be perfect. Thank you.

24 MS. WACHSPRESS: I apologize, your

1 Honor.

2 HEARING OFFICER HALLORAN: No. No

3 worries.

4 BY MS. WACHSPRESS:

5 Q. I'll go back to my original
6 question.

7 Is it Midwest Generation's
8 position -- is Midwest Generation going to
9 construct a low volume waste pond in the footprint
10 of the west pond?

11 A. With Board approval.

12 Q. Okay. And is it Midwest
13 Generation's position that that pond, that low
14 volume waste pond, if constructed, would be a CCR
15 surface impoundment under Illinois law?

16 A. Our position is that it would no
17 longer be a CCR surface impoundment because it
18 will not impound CCR. It would be a low volume
19 waste pond.

20 Q. Okay. So if we could go back to the
21 May 2021 -- the original May 2021 petition.

22 A. Sorry. That is 1406?

23 Q. That's 1406. And if I could direct
24 you to Bates number 124055.

1 A. Okay.

2 Q. Okay. And do you recognize this
3 document?

4 A. 124055?

5 Q. Sorry. 124054. I apologize.

6 A. I'm sorry. I was on the wrong page.
7 I was on 005, and I was like, wow. That's a --
8 wow. Sorry.

9 Q. No worries.

10 A. 124054. Is that what you said?

11 Q. Yes.

12 A. 12405 -- I have caught up to you
13 now. Please go ahead.

14 Q. And do you recognize this document?

15 A. I would presume it's an outdated
16 closure plan for Waukegan station. Yes, I do
17 recognize it.

18 Q. And that closure plan is dated
19 October 2016, correct?

20 A. Yes. And that's why I would presume
21 it would be updated by now. That is more than
22 six -- so, shoot, seven years ago. Almost seven.

23 Q. And this closure plan was published
24 consistent with Part 257 regulations, correct?

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

2 Q. Okay. And if I could direct your
3 attention to 124055?

4 A. Yes.

5 Q. And under Item 3 it says, "CCR will
6 be removed from the east and west ash basins in
7 accordance with Section 257.102(c). Therefore, no
8 final cover system will be constructed for
9 closure." Have I read that correctly?

10 A. Yes.

11 Q. So in 2016, was it Midwest
12 Generation's plan to close both ponds by removal?

13 A. In accordance with federal
14 regulations, yes.

15 Q. Okay. But as we currently sit here,
16 it is Midwest Generation's plan to close the west
17 pond by installing a cap; is that correct?

18 A. No.

19 Q. No?

20 A. No. It's the east pond we intend to
21 install by closing in -- with a cap.

22 Q. So the west pond is not closing?

23 A. The west pond -- the adjusted
24 standard -- without having read the adjusted

1 standard in the past recency, the west -- I
2 believe that we are requesting an adjusted
3 standard from the state closure requirements so
4 that we can remove ash to the HDP -- ash and
5 materials down to the HDPE -- HDPE liner,
6 decontaminate that liner so that it is closed as a
7 CCR surface impoundment, and reuse that area, that
8 pond, as a low volume waste pond.

9 Q. Okay. I hate to do this, but if I
10 could direct your attention to Exhibit 1331 from
11 the previous witness.

12 (Whereupon, a discussion was had
13 off the record.)

14 HEARING OFFICER HALLORAN: We are
15 back on the record.

16 BY MS. WACHSPRESS:

17 Q. Okay. And if I could direct you in
18 this exhibit to Bates page number 111166.

19 MS. GALE: I'm sorry. What was the
20 number?

21 BY MS. WACHSPRESS:

22 Q. 111166.

23 A. I have it.

24 Q. Okay. And this is part of a

1 document that is -- sorry. If you scroll up to
2 111163. This is a preliminary written closure
3 plan for the east ash pond, correct?

4 A. That's what it's labeled, yes.

5 Q. Okay. And it's dated October 29th,
6 2021, correct?

7 A. Correct.

8 Q. And if then you scroll down to
9 111166, and it describes at 3.0 the final cover
10 system description; is that correct?

11 A. That appears, yes, to be what it
12 says.

13 Q. Okay. So in 2016, the Midwest
14 Generation closure plan for the east pond
15 indicated that it would be removing CCR material
16 and would not need a cover, correct?

17 A. In 2016, we only had to comply with
18 federal rules. In 2021, we had state and federal
19 rules. Our plans changed.

20 Q. And your plans changed because now
21 it is Midwest Generation's intention to comply
22 with federal regulations by closing the east pond
23 with coal ash in place and a cover, correct?

24 A. Federal and state regulations, and

1 additionally, I can't really get into a time
2 machine and know this for certain, but in 20 -- in
3 2016, I don't believe that we would have thought
4 Waukegan would have ceased operating by now, or
5 ceased combusting coal by now. So plans changed.
6 I guess, my point being, plans have changed in
7 five, seven, eight years, yes.

8 **Q. The decision to cease operating the**
9 **plant didn't cause there to be more coal ash, did**
10 **there?**

11 A. It has ceased producing coal ash.

12 **Q. Okay. Okay. And you anticipated my**
13 **next question, which is that Waukegan station was**
14 **retired on or before June 1st --**

15 A. Not -- not the entire station. The
16 coal units were retired.

17 **Q. Okay. The coal units at Waukegan**
18 **were retired by June 2022?**

19 A. By June 2022, yes.

20 MS. WACHSPRESS: Okay. Okay. I
21 would move for admission of -- oh, we have done
22 Exhibit 1406. 1407. I would like to move for
23 admission of the amended -- 1407, the amended
24 Waukegan petition.

1 HEARING OFFICER HALLORAN: I
2 should -- in the interest of full disclosure, I
3 believe I'm assigned to this AS 21-03 as a hearing
4 officer with the Illinois Pollution Control Board,
5 but I will not and have not made any substantive
6 decisions on this case, nor, you know, I have not
7 made any substantive decisions on the 13-15 that
8 we are in the middle of now, nor will I.

9 With that said, Ms. Gale?

10 MS. GALE: No objection.

11 HEARING OFFICER HALLORAN: Thank
12 you. Exhibit 1407 is admitted.

13 (Whereupon, Complainants'
14 Exhibit No. 1407 was admitted
15 into evidence.)

16 HEARING OFFICER HALLORAN: You know,
17 I think it's about time to take a long break.

18 THE COURT REPORTER: Are we off the
19 record?

20 HEARING OFFICER HALLORAN: Yes. I'm
21 sorry. We are off the record for a second, and
22 then we are going to get back on.

23 (Whereupon, a discussion was had
24 off the record.)

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HEARING OFFICER HALLORAN: All
right. Let's go back on the record. We are
calling it quits for today. It's about five until
5:00. Have a safe evening, and see you tomorrow.

(END OF PROCEEDINGS.)

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I, KARI WIEDENHAUPT, do hereby certify that the foregoing was reported by stenographic and mechanical means, which matter was held on the date, and at the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

I have hereunder subscribed my hand on the ____ day of _____, 2023.

KARI WIEDENHAUPT, CSR

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