

1 ILLINOIS POLLUTION CONTROL BOARD

2 SIERRA CLUB, PRAIRIE RIVERS)
3 NETWORK, and NATIONAL)
4 ASSOCIATION FOR THE)
5 ADVANCEMENT OF COLORED)
6 PEOPLE,)
7 Complainants,)
8 -vs-) Case No. PCB 18-11
9) (Enforcement - Water)
10 CITY OF SPRINGFIELD, OFFICE)
11 OF PUBLIC UTILITIES d|b|a)
12 CITY WATER, LIGHT AND POWER,)
13 Respondent.)

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I N D E X

APPEARANCES:

BEFORE HEARING OFFICER:

Ms. Carol Webb

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APPEARING ON BEHALF OF COMPLAINANTS:

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APPEARING ON BEHALF OF RESPONDENT:

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ALSO PRESENT:

Mr. Joaquin Garcia

COMPLAINANT WITNESS:

Mark Hutson

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1 MS. WEBB: Good morning. My name is
2 Carol Webb, and this is the hearing for PCB 18-11,
3 Sierra Club, Prairie Rivers Network, and the NAACP
4 versus City Water, Light and Power, also known as
5 CWLP.

6 It is May 5th, and we are beginning at
7 9:00 a.m. On September 27th, 2023, the Board granted
8 Complainants' motion for partial summary judgment.
9 The Board held that CWLP violated Section 12(a) of
10 the Environmental Protection Act and Section 620.115,
11 620.301(a), and 620.405 of the Board's groundwater
12 rules for the discharge of boron, sulfate, and TDS at
13 its facility in Springfield, Sangamon County.

14 The purpose of this hearing is to assist
15 the Board in determining a remedy for these
16 violations. Today is part one of the hearing for
17 this case focusing on testimony from Complainants'
18 expert.

19 Part 2 of this hearing will be scheduled
20 either at the end of this hearing or at a later date.
21 There are a couple members of the public present, but
22 no one wishes to make a public comment. Written
23 public comment may be filed with the clerk of the
24 Pollution Control Board and a deadline for public

1 comment will be set during part two of this hearing.

2 The Pollution Control Board members will
3 make the final decision in this case. My purpose is
4 to conduct the hearing in a neutral and orderly
5 manner so that we have a clear record of the
6 proceedings.

7 This hearing was noticed pursuant to the
8 Act and the Board's rules and will be conducted
9 pursuant to Sections 101.600 through 101.632 of the
10 Board's procedural rules.

11 At this time I would like to ask the
12 parties to please make their appearances on the
13 record.

14 MS. BUGEL: I am Faith Bugel,
15 appearing for Sierra Club in this matter. With me I
16 have Joaquin Garcia, a legal assistant who's helping
17 with exhibits today.

18 MS. WEBB: Okay. Thank you.

19 MS. WILLIAMS: And I'm Deborah
20 Williams. My title is regulatory affairs director,
21 but today I'm appearing as special assistant
22 corporation counsel for the city's office of public
23 utilities, often referred to as City Water, Light and
24 Power. And I have with me from my staff Emily

1 Rosenberger, and also Eric Staley and Brad
2 Hunsberger, our senior technical expert.

3 MS. BUGEL: Ms. Webb, I just needed to
4 add I'm also appearing -- I'm representing Prairie
5 Rivers Network and the NAACP. Thank you

6 MS. WEBB: Okay. Thank you. Are
7 there any preliminary matters to discuss on the
8 record?

9 MS. BUGEL: Yes.

10 MS. WEBB: Yes?

11 MS. BUGEL: I don't know if you want
12 these on the record or off the record. They're
13 procedural.

14 MS. WEBB: Either way.

15 MS. BUGEL: Okay. So I know we have
16 talked a lot about the lengthy exhibits. We have
17 been able to make excerpts of lengthy exhibits. We
18 will be submitting one full set of exhibits with all
19 of the lengthy exhibits in total to the Board so the
20 Board will have a full and complete copy.

21 I did want to ask you how you wanted to
22 handle the excerpts. We did not mark them with
23 exhibit stickers or exhibit numbers. You mentioned
24 wanting -- possibly wanting them as demonstratives.

1 We have enough copies to make them demonstratives,
2 but I didn't know how to mark them.

3 MS. WEBB: Well, why don't we maybe
4 discuss that off the record. And if you want to, you
5 know, I don't know if -- we'll stay on the record
6 right now. Deborah, do you have -- would you like to
7 weigh in on anything?

8 MS. WILLIAMS: No. Whatever works for
9 you, Carol, is fine.

10 MS. WEBB: Okay.

11 MS. WILLIAMS: I just want to
12 understand, I guess, so I'm clear what's happening is
13 fine.

14 MS. WEBB: We could number them
15 separately as, you know, Demonstrative Exhibit 1,
16 Demonstrative Exhibit 2, something like that, D1, D2,
17 something like that.

18 MS. BUGEL: Okay. When we get to the
19 excerpts.

20 MS. WEBB: Yeah, let's just do that.
21 Was there anything else?

22 MS. BUGEL: I do have -- we have
23 Complainants' exhibit list with the numbered exhibits
24 now if we might distribute a copy of that.

1 MS. WEBB: Yes, that sounds good. I'd
2 like that.

3 MS. BUGEL: And may we approach?

4 MS. WEBB: Yes, absolutely.

5 MS. BUGEL: And we did distribute the
6 stipulated exhibit list, which is in the pre-hearing
7 memo, ahead of time so we did not bring copies of
8 that, but if anybody needed it --

9 MS. WEBB: Okay. Anything else?

10 MS. BUGEL: No, that's it.

11 MS. WEBB: Okay. Would you like to
12 make an opening statement?

13 MS. BUGEL: I would not. Thank you.

14 MS. WEBB: Okay. Ms. Williams, would
15 you like to make an opening statement?

16 MS. WILLIAMS: We're going to reserve
17 opening statement for the part two hearing.

18 MS. WEBB: Okay. All right. Sure.

19 MS. BUGEL: May we reserve for
20 part two hearing as well?

21 MS. WEBB: Yes. Okay. So, Ms. Bugel,
22 you may call your witness.

23 MS. BUGEL: Complainant -- oh, I'm
24 sorry. Before we call our witness, I think we had

1 discussed us moving for the admission of the
2 stipulated exhibits right away. Because they're
3 stipulated, we don't need to --

4 MS. WEBB: Yeah.

5 MS. BUGEL: So if you're ready,
6 Complainants move for the admission of
7 Complainants -- of the stipulated exhibits, which are
8 numbered 1 through 13. Initially they had been
9 numbered 1 through 14, but we are no longer relying
10 on Exhibit 14, the ELG rule, so we move for the
11 admission of 1 through 13. May we approach and have
12 a moment to distribute those?

13 MS. WEBB: Yes. And I'm assuming,
14 Ms. Williams, you have no comments on that?

15 MS. WILLIAMS: No. That's great. I
16 would suspect that the numbering is one off on this
17 list then.

18 MS. BUGEL: We are starting with 15 so
19 we're skipping 14, yep.

20 MS. WEBB: So Exhibits 1 through 13
21 are admitted into evidence.

22 MS. BUGEL: Here's a set for you.
23 This does not contain the lengthy exhibits. When we
24 get to those, we'll distribute excerpts.

1 MS. WEBB: Okay. Thank you.

2 MS. BUGEL: Hearing Officer, will you
3 need us to ask if we can approach?

4 MS. WEBB: No. Go ahead. Standing
5 permission for everyone to approach.

6 MS. BUGEL: Okay. So Joaquin can help
7 mark, find the exhibits that he needs in all these
8 boxes here. Okay.

9 MS. WEBB: So if you want to go ahead
10 and call your witness, and I will ask the court
11 reporter to please swear him in.

12 MS. BUGEL: Joaquin, before you do
13 that, can you grab Exhibit 15? Thank you.
14 Appreciate that. Complainants call Mark Hutson.

15 MS. WEBB: Would the court reporter
16 please swear him in?

17 THE COURT REPORTER: Please raise your
18 right hand.

19 MARK HUTSON,
20 called as a witness, after having been first duly
21 sworn, was examined and testified as follows:

22 EXAMINATION

23 BY MS. BUGEL:

24 Q. Mark, can you please introduce yourself for

1 the record?

2 A. Yeah. I'm Mark Hutson. I'm a geologist
3 with Geo-Hydro, Inc. I live in Littleton, Colorado.
4 I have 46 or 7 years of experience in various aspects
5 of hydro-geology, site characterization, site
6 remediation, all related to groundwater contamination
7 and/or waste disposal in some fashion.

8 Q. And, Mark, if I can interrupt, we have an
9 exhibit here that's going to help with some of this.
10 Complainants are placing an exhibit in front of you
11 that has been marked Exhibit 15, and let me start by
12 asking, are you familiar with this document?

13 A. I am.

14 Q. And can you please describe what this
15 document is for the record?

16 A. This is my January 2025 report on the
17 closure permit application and other materials on the
18 CWLP impoundments.

19 Q. And does this have attachments to it?

20 A. It does.

21 Q. And can you just tell us one by one what
22 those attachments are?

23 A. The first -- oh, there's a table.

24 Q. You can start with the table, please.

1 A. Oh, okay. Table 1 is just a listing of
2 units that have been closed by removal of CCR, or
3 coal combustion residuals, as of -- what we knew at
4 that time.

5 MS. WILLIAMS: Do you want to move to
6 enter?

7 MS. BUGEL: Yes.

8 MS. WILLIAMS: There's just one of the
9 attachments that we're objecting to the foundation
10 of, but he can go through them.

11 Q. (by Ms. Bugel) Okay.

12 A. Attachment A is the 2021 potentiometric
13 surface map. Attachment B is the 2022 monitoring
14 data summary. Attachment C is the AP-4 boring log.
15 Attachment D is the printout of the FEMA flood map.
16 And the appendix is my resumé.

17 Q. And so your resumé is the appendix, also
18 called a CV, or curriculum vitae, sometimes?

19 A. Yes.

20 MS. BUGEL: Okay. And Complainants
21 move for the admission of Exhibit 15 into the record.

22 MS. WILLIAMS: We're going to object
23 to the use of Table 1. I think it's been pretty well
24 established, even within Mr. Hutson's report, that he

1 didn't prepare the table. He doesn't know what
2 definitions the folks used who prepared the table to
3 categorize one topic to another. He's not the
4 appropriate witness to be able to lay the foundation
5 for this exhibit.

6 MS. BUGEL: And it is not a
7 requirement that a witness prepare every attachment
8 themselves. That's never been a requirement. The
9 requirement is that the evidence is material,
10 relevant, and would be relied upon by prudent
11 persons.

12 While Mr. Hutson didn't prepare the table,
13 he can say who prepared it, he can describe what is
14 on the table, and this would be useful information to
15 the Board in deciding this matter.

16 MS. WEBB: Well, why don't we go ahead
17 and hear the testimony. I'll take the testimony as
18 an offer of proof and then if everything, you know,
19 if you answer those questions we can discuss
20 admission of that table but the remainder of
21 Exhibit 15 is admitted.

22 Q. (by Ms. Bugel) Okay. Mark, I'd like to
23 start by discussing your experience.

24 A. Okay.

1 Q. Can you tell us what field -- I think you
2 said 46 years of experience?

3 A. Depending on how you count it, 46, 47.

4 Q. Okay.

5 A. It's getting up there.

6 Q. Can you tell us in what field that
7 experience is?

8 A. It's a combination of geology and
9 groundwater hydrology or geohydrology.

10 Q. Okay. So -- and in your report you have
11 a -- at the beginning you discuss your
12 qualifications. I'm looking at page 4 of your
13 report, starting at the bottom.

14 A. Oh, yes. Okay.

15 Q. And you mentioned somewhere in here that --
16 I'm looking at the top of page 5, the third line
17 down, that your career has been focused on regulatory
18 site characterization and remediation issues related
19 to waste handling and disposal practices and
20 facilities. Do you see that?

21 A. I do.

22 Q. And can you explain what site
23 characterization is?

24 A. Site characterization is basically doing

1 the, oh, the drilling and sampling of soils and
2 groundwater to characterize existing conditions at
3 the time that you're investigating the site,
4 establish whether or not there's a -- if the site is
5 useful for its intended purpose or whether it is --
6 if it's already developed, causing a problem.

7 Q. And you also mentioned remediation issues
8 in that list. Can you tell us what sort of
9 remediation issues you have experience in?

10 A. Oh, I've done a variety of things. I
11 managed an RIFS at a Superfund landfill in Colorado.

12 Q. Can you say what RIFS stands for?

13 A. Remedial Investigation Feasibility Study.

14 I managed, geez, everything from asbestos soil
15 removal to JP-4, jet fuel contaminated groundwater
16 site. A variety of things.

17 I've worked for people like Phillips Petroleum,
18 Motorola, Waste Management, basically doing
19 characterization and helping to come up with remedial
20 options.

21 MS. WEBB: Sir, it would help if you
22 could actually face your attorney.

23 THE WITNESS: Oh, I thought I was
24 telling you.

1 MS. WEBB: You need to tell the woman
2 on the other side of you. That's really who needs to
3 hear you.

4 Q. (by Ms. Bugel) Thank you. So have you
5 done hands-on remediation?

6 A. I have.

7 Q. Okay.

8 A. Yes.

9 Q. Can you just summarize your hands-on
10 remediation experience?

11 A. Oh, I put in a petroleum recovery system at
12 the Hess Oil Refinery in Saint Croix. I put in -- or
13 I removed a PCB impoundment at Cavalier Air Force
14 Base in North Dakota. I have done a series of soil
15 removals at a couple of different sites on asbestos
16 soils and/or PCB or solvent contaminated sites.

17 Q. And you've also -- well, let me strike
18 that. Has all your experience been in private
19 practice?

20 A. No. The first two years of my experience
21 was with the Illinois EPA as a landfill inspector
22 with the land pollution group. And then I went to
23 work for a company that had a contract with the
24 Federal EPA in Chicago, and we did the initial site

1 characterizations, basically to score sites that were
2 being considered at that time way back then for
3 inclusion in the Superfund list.

4 Q. And --

5 A. Actually, I can augment that. I've also
6 worked on several contracts for the Air Force doing
7 work on contaminated groundwater. I worked for ten
8 years on the contaminated groundwater plumes from the
9 Air Force base out on Cape Cod. There's -- oh, I did
10 characterization work for Department of Energy,
11 characterizing -- some of the initial
12 characterization of plutonium contamination in the
13 soils and groundwater at Rocky Flats Plant. So it's
14 been a wide variety of clients and sites.

15 Q. And in your work on waste handling and
16 disposal facilities, what sorts of issues were you
17 dealing with?

18 A. Everything -- well, if we include the coal
19 combustion residual sites, it's typically
20 establishing whether or not the sites are impacting
21 groundwater and what they -- appropriate remedy would
22 be.

23 If we're talking about other sites, it could be
24 installing wells. It could be -- you know, we worked

1 for Midwest Generation up in Joliet, and I wrote the
2 groundwater impact assessment for the Lincoln Stone
3 Quarry. At that time we were trying to control a
4 contaminant plume that was being drawn off site by a
5 newly installed quarry on adjacent property.

6 Q. And so Midwest Generation was your client
7 for that work?

8 A. Yes.

9 Q. And what kind of company is Midwest
10 Generation?

11 A. They're an electrical generating facility,
12 company. Company. Or they were. I'm not sure who
13 owns them now.

14 Q. And do you know what sort of fuel they
15 used?

16 A. Oh, it was coal generation, yeah, at that
17 time.

18 Q. And you mentioned Lincoln Stone Quarry.
19 What is Lincoln Stone Quarry?

20 A. It's an old limestone quarry that has been
21 used to dispose of coal ash.

22 Q. And your -- looking at your report again,
23 I'm looking at the page 5, still looking at your
24 discussion of qualifications. In the third to last

1 sentence, you say: Much of my consulting activity
2 over the last eighteen years has been related to
3 groundwater contamination and permitting issues at
4 coal ash storage and disposal sites in numerous
5 states. Do you see where you wrote that?

6 A. I do.

7 Q. Can you give us an approximation of how
8 many sites you've worked on in those eighteen years?

9 A. I thought you might ask me that because I
10 got asked that the last time I talked about this. I
11 did a quick list, and I came up with thirty-two that
12 I recall working on.

13 Q. And can you explain what that work has
14 involved?

15 A. Primarily it's been records reviews,
16 testimony to describe the problems that are being
17 associated with the sites, and talk about what the
18 appropriate remedy would be.

19 Q. And what sorts of tasks has that involved
20 besides testimony and record reviews?

21 A. Gone out and walked the facilities, looked
22 at the lay of the land at each of these things,
23 prepared reports, and testified in some cases. I
24 think I've testified maybe seven or eight times.

1 Q. As an expert witness?

2 A. As an expert witness.

3 Q. And have you ever worked on a site where
4 you haven't found concerns or issues?

5 A. Yeah. Was it -- it was just last year. I
6 was hired by EIP, Environmental Integrity Project, to
7 take a look at the Valmont facility in Boulder,
8 Colorado. And they wanted -- they were working with
9 the county health department and the citizens group
10 up there, and they wanted an independent review of
11 what Excel Energy has been doing and a proposal for
12 closing the site.

13 And I did my review and went to the public
14 meeting, and to much of their surprise, I think, got
15 up and said, you know, this is -- there could be
16 improvements but it's not bad. So, yeah, it happens.

17 Q. And when you say there could be
18 improvements but it's not bad, can you tell us a
19 little more what that means?

20 A. Well, there was one area where there was
21 potential for drainage off in a different direction
22 than had been the focus of their efforts, and I made
23 some recommendations that they put in some more
24 monitoring along that particular drainage location to

1 see if there was a problem in that vicinity.

2 Q. Okay. I think we're ready for Exhibit 16.

3 And we have placed a document in front of you that
4 has been marked as Exhibit 16. Are you familiar with
5 this document?

6 A. I am.

7 Q. And can you please describe what this
8 document is?

9 A. These are the comments about the revised
10 closure plans for the CWLP impoundments that I
11 prepared last winter.

12 Q. And does this document have any
13 attachments?

14 A. Not on my copy.

15 Q. And can you just tell us a little bit more
16 about the content of this document? Could you just
17 quickly summarize it or explain it?

18 A. Basically I -- this was written as a series
19 of comments, basically, about the revised plans. The
20 current closure plan is for the coal ash and the
21 Lakeside impoundment to be -- the dry portion be
22 excavated and put on top of the Dallman pond.

23 And then the plan is to sluice the wet ash up to
24 the top of the Dallman facility and sluice the coal

1 ash into geotextile tubes to facilitate dewatering of
2 the coal ash through the permeable tube, and it holds
3 it together while it's doing that.

4 So basically you would -- the idea would be to
5 remove as much of the Lakeside ash as they can
6 remove, it appears, without undermining the adjacent
7 dam and create a wetland in that area. The creation
8 of the wetland in the place of the previous Lakeside
9 impoundment I think is a really good improvement to
10 the whole plan.

11 Q. I just want to interrupt you for a second.
12 The plans that you were just describing, are those
13 found in a series of 2025 documents that you
14 reviewed?

15 A. Yes.

16 Q. Okay.

17 A. And they're listed right here on the first
18 bullets.

19 Q. Okay. And for the record, can you just
20 list off what those documents are?

21 A. Yep. Let's see. The first one is the
22 Assessment of Corrective Measures, dated
23 September 23rd, 2025. The next one is the Interim
24 Measures Report, dated September 23rd, 2025. The

1 third is the Closure Plan, dated September 23rd,
2 2025. The fourth is the Nature and Extent Report,
3 dated September 22nd of 2025. And the last one is
4 the CCR Surface Impoundments and FGDS Unit 2
5 Landfill, Flow Path Report dated September 22nd,
6 2025.

7 Q. And to be clear, those appear as Exhibits 1
8 through 5 on the stipulated exhibit list. And so
9 prior to 2025, was there a previous proposal for the
10 closure of the Dallman and Lakeside ash ponds?

11 A. Yes, there was.

12 Q. And --

13 A. Did you want me to finish talking about the
14 rest of these options first before you move on to the
15 next?

16 Q. Sure. Go ahead.

17 A. We only talked about removing the waste
18 from Lakeside.

19 Q. Oh, thank you. Did you mean removing the
20 waste from Lakeside?

21 A. Well, yeah, excavating it or sluicing it
22 and putting it over on top of Dallman. So the waste
23 that would be placed up over the Dallman pond, the
24 plan for that is, at least the last I saw, was to

1 grade it and contour it and put it beneath a
2 geotextile or it's called closure turf, artificial
3 turf with a geotextile cover beneath it.

4 And then it also proposed to install a
5 dewatering system, which I don't remember the number
6 of wells offhand, but it's several wells through the
7 Dallman pond, basically there to be used for
8 dewatering the waste that's currently in the facility
9 and stay there, apparently, to be used in case
10 they're needed for removal of interaction with
11 groundwater or infiltration through the cap or
12 whatever.

13 MS. WEBB: I'll remind you, if you
14 could please try to remember the court reporter.
15 Thank you.

16 A. So it's a combination of putting a cover in
17 place over the top of the Dallman facility and a
18 groundwater dewatering system inside the facility,
19 extending I think maybe two feet beneath the bottom
20 of the Dallman facility.

21 Q. Thank you. So, Mr. Hutson, I'd like to
22 draw your attention to Exhibit 7 in your collection
23 of exhibits there. Just to be clear, this is a
24 document that we have excerpted, and Mr. Garcia is

1 going to pass out the excerpts. And we have not
2 premarked this, so I'm -- this will be exhibit -- I
3 guess it will be Exhibit D1, Demonstrative 1.

4 MS. WEBB: So Exhibit D1 is an excerpt
5 from Exhibit 7?

6 Q. (by Ms. Bugel) Exhibit D1 is an excerpt
7 from Exhibit 7, and these are all the excerpts from
8 this document that we'll be referring to bundled
9 together. And this document has been labeled with
10 PDF page numbers as well for ease of identifying
11 different pages.

12 Okay. So, Mr. Hutson, was there a previous
13 proposal for the closure of Dallman and Lakeside ash
14 ponds?

15 A. Yes, there was.

16 Q. And can I direct you to PDF page 932 in
17 your exhibit, and that is going to be towards the end
18 and these -- there are paperclips that are separating
19 the different bundles of excerpts.

20 A. Okay.

21 Q. Have you found page 932?

22 A. I have.

23 Q. Okay. Is this the previous closure plan
24 for the Dallman and Lakeside ash ponds?

1 A. Yes.

2 Q. And can you please tell us what this
3 closure plan entailed?

4 A. Basically this was to cap both impoundments
5 in place with the waste remaining where it is.

6 Q. And so I'm going to refer to this as the
7 2022 closure plan when we come back to it. Do you
8 know why the proposal changed in 2025, the proposal
9 being the closure plans for the two ash ponds?

10 A. I do not know what their thinking was. I
11 could only guess.

12 Q. So you don't need to guess. Thank you.
13 I'd like to turn back to Exhibit 16, which is your
14 report, and starting on page 2 you discuss the plans
15 for the Lakeside impoundment starting on page 2 of
16 your report. Do you see that?

17 A. Yes.

18 Q. And I just want to ask you, is an ash pond
19 the same thing as an impoundment?

20 A. Yeah. In this case, yeah.

21 Q. And how about a CCR surface impoundment, is
22 that the same thing?

23 A. That would be the same thing.

24 Q. And starting on page 2, you list some of

1 the benefits of the 2025 plan for the Lakeside ash
2 pond. Do you see that?

3 A. I do.

4 Q. What did you view as some of the benefits
5 of that closure plan?

6 A. Well, first of all, you're moving the
7 source of the contamination, some of the
8 contamination downgradient of Lakeside, up and out of
9 the groundwater and getting it away from the edge of
10 the dam. That effectively removes any real concern
11 that I could have had about -- in an eventual flood
12 that might overtop the dam, I was concerned that
13 floodwater could run down the drainage ditch, down
14 the slope of Lakeside, and cause erosion of the berms
15 potentially, in an extreme case leading to a
16 substantial potential release. With Lakeside being
17 gone, there's not an opportunity for that to happen
18 anymore.

19 Another benefit that I see to this removal is
20 that turning the Lakeside impoundment into a wetland
21 after the ash is removed has the potential to
22 basically serve as a groundwater sink, which means
23 it'll intercept some of the flow of the groundwater
24 that comes from the southeast corner of the property

1 and flows to the northwest, and thereby it'll
2 slightly, to some extent, lower the elevation of the
3 potentiometric surface across the facility, across
4 the site.

5 What I don't know is, I've not seen an
6 evaluation that tells me how much, how much
7 difference that groundwater sink in the previous
8 Lakeside site would make to the water table.

9 Q. And I want to ask you a question about
10 that. Do you know if the new wetlands at Lakeside
11 will reduce groundwater to the extent that it's no
12 longer in contact with ash?

13 A. I don't know for sure.

14 Q. And why not?

15 A. Well, in order to investigate that you'd
16 need to do a numeric groundwater model to basically
17 model the site the way -- under current conditions
18 and then take out that big volume of waste in the
19 lake, under the Lakeside footprint, to the point that
20 you can evaluate how much discharge would go through
21 that new wetland versus going across the rest of the
22 facility and I've not seen that done.

23 Q. And in the 2025 documents that you listed
24 at the beginning of your report, Exhibit 16, did you

1 see any modeling in those documents?

2 A. There may have been a HELP model, which is
3 on the new cap in one of the attachments. The HELP
4 model is not a groundwater flow model, it's an
5 infiltration. It gives you an estimate of how much
6 water comes in through a cap and how much water goes
7 through each individual layer underneath it and
8 eventually discharges out the bottom. It doesn't
9 describe flow across the site.

10 Q. And are there any other benefits listed
11 here of the plan, the 2025 plan for the Lakeside
12 impoundment?

13 A. Let's see. Reduces the volume of waste and
14 contact with groundwater. Removes the source.
15 Removes the flood danger and removes -- potentially
16 could have a beneficial impact to reducing the level
17 of groundwater. I think that's it.

18 Q. In the third bullet point you mention
19 reducing the hydraulic head beneath the entire
20 property?

21 A. Yeah.

22 Q. Can you explain what that is?

23 A. A hydraulic head is the level to which
24 water will rise from a confined or semi-confined

1 aquifer under the pull of gravity.

2 Q. And did you see any quantification of the
3 hydraulic head, how much it would be reduced?

4 A. No, no. Not at all.

5 Q. Do you know what would be needed to
6 estimate the hydraulic head?

7 A. Well, you can directly measure the
8 hydraulic head as it is. In order to estimate the
9 post -- if they were to implement this, what you
10 would want to know is prediction of what the head
11 beneath the rest of the site would be following
12 removal of Lakeside.

13 Q. Okay. And what would one need to do to
14 make an accurate prediction of what the hydraulic
15 head would be?

16 A. I would recommend a numeric groundwater
17 flow model.

18 Q. And, again, did you see a numeric
19 groundwater flow model that predicted the hydraulic
20 head for the 2025 plans?

21 A. No. You need to do a baseline and then
22 take out the waste from Lakeside and see what effect
23 it has.

24 Q. I would like to turn to the deficiencies

1 discussed on page 2 of Exhibit 16 as well. Do you
2 see those at the bottom of page 2?

3 A. Yes.

4 Q. Can you please tell us what deficiencies
5 you identified in the 2025 plans for Lakeside?

6 A. Uh-huh. I had made a comment that I wanted
7 to see the final NPDES permit. The plan is to
8 discharge the dewatering liquids through the
9 clarification pond, which discharges to Sugar Creek
10 under a NPDES permit.

11 The reason I asked for that is it's amazing how
12 many sites I've seen over the years which have NPDES
13 permits for their discharges from things like
14 clarification ponds that don't actually have
15 requirements or limits for monitoring appropriate
16 parameters.

17 In this case I've since, since I wrote that,
18 seen at least a public notice from IEPA about the
19 NPDES permit that they're considering. I've not seen
20 the final. The public notice at least has the
21 appropriate parameters and has got downstream
22 monitoring required, downstream of the impoundments.
23 So I'm feeling better about that if the final NPDES
24 permit comes out and is similar to this, to what I've

1 seen.

2 Q. So did your review of the NPDES permit
3 resolve your concerns about discharges to Sugar
4 Creek?

5 A. It's a good indication. I've not seen the
6 final so I don't know what the final permit would be.

7 Q. Okay. And with your report here, we
8 touched a little bit on flooding at the Lakeside and
9 Dallman site. I would like to turn to Exhibit 17,
10 which is a previous report of yours. And while
11 Mr. Garcia is gathering that, I'd like to move for
12 admission of Exhibit 16 into the record.

13 MS. WILLIAMS: No objection.

14 MS. WEBB: Exhibit 16 is admitted.

15 Q. (by Ms. Bugel) And Mr. Garcia is placing a
16 document in front of you that is marked Exhibit 17.
17 Can you tell me, are you familiar with this document?

18 A. I am.

19 Q. And can you please describe what this
20 document is for the record?

21 A. This is my rebuttal report on comments that
22 were made by Mr. Hunsberger.

23 Q. And as we -- regarding Exhibit 16, you
24 mentioned flooding. Can you tell me, even with the

1 Lakeside wetlands, are there -- does flooding still
2 pose a concern to you at the site?

3 A. Yeah. Even if the Lakeside impoundment is
4 removed, the sides, bottom sides, of the Dallman
5 impoundment will still be subject to some pretty
6 rapid flow rates from Sugar Creek during a high water
7 event.

8 When we were out -- you and I were out there
9 years ago, we saw a monitoring well that had the
10 steel protective casing bent over after a high water
11 event. It takes some fast flowing water to do that
12 sort of thing.

13 So the other -- so the potential for some likely
14 continuing erosive problems along the outside of the
15 berm, and you've also got the potential for during a
16 flood event groundwater rising up beneath the
17 facility to re-wet the coal ash that may not be wet
18 all the time. Or some of the coal ash that may not
19 be wet all the time.

20 Q. Can you explain when the groundwater rises
21 up, where is that happening?

22 A. Where is it happening?

23 Q. Well, is it visible? Is it --

24 A. Well, the surface water flow in Sugar Creek

1 would be visible, but the rising up of the water
2 inside the impoundment would not be.

3 Q. Okay. And when you talk about groundwater
4 rising up beneath the waste and re-wetting the waste,
5 can you explain just where is that happening?

6 A. At the bottom -- let's say for argument
7 sake that the water beneath the impoundment is right
8 at the bottom of the Dallman impoundment under normal
9 conditions. During a high flow in the creek, it
10 could raise the head inside the impoundment to the
11 point that some number of feet of fill gets re-wetted
12 during the high water event.

13 Q. Okay. And we have placed an exhibit in
14 front of you that's been marked as Exhibit 17. Are
15 you familiar with this document?

16 A. Oh, there's 17. I've got it.

17 Q. And --

18 A. Yes, I am.

19 Q. Can you please describe what this document
20 is for the record?

21 A. This is my rebuttal report.

22 Q. And can you explain what were you rebutting
23 in your rebuttal report?

24 A. Oh, Mr. Hunsberger had written some

1 comments about my testimony during a deposition, and
2 I replied to some of those comments.

3 Q. And so let's turn to page 3 of this report.
4 On page 3 you have a comment numbered comment 4. Do
5 you see that?

6 A. I do.

7 Q. And in this comment you provide some
8 examples of, in Illinois, of flooding overtopping
9 dams. Do you see that?

10 A. I do.

11 Q. Can you please summarize some of those
12 examples for us?

13 A. Well, sure. There's -- I don't remember
14 the year.

15 Q. I'll direct you to the last sentence of the
16 first paragraph.

17 A. Ah, okay, 1996. The floods in northern
18 Illinois. The Illinois Association for Floodplain
19 and Stormwater Management describes the 1996 floods
20 in northern Illinois saying that three dams in the
21 region experienced complete failure and numerous
22 others were overtopped. Basically this is just
23 providing an example that the potential for or risk
24 from a flood is not zero. It's -- it does happen and

1 it has happened in Illinois.

2 Q. And in footnote 8, are you relying on
3 another document for some of that information?

4 A. Yes. It's the Website from this
5 organization, Illinois Association for Flood Plain
6 and Storm Water Management.

7 Q. Okay. And we have an exhibit that we have
8 marked as Exhibit 18 that Mr. Garcia is going to
9 place in front of you. And is this the -- a printout
10 of the Website that you relied on for that flooding
11 information?

12 A. Yes, it is.

13 Q. And can you give us a quick overview of
14 what this document, what information this document
15 provides?

16 A. This document is -- basically it's just a
17 thumbnail description of some of the major flooding,
18 flooding events that have happened in Illinois over
19 the -- since 1996 appears to be the -- no, 1993 is
20 the earliest one.

21 MS. BUGEL: Okay. And Complainants
22 move for the admission of Exhibit 18 into the record.

23 MS. WILLIAMS: No objection.

24 MS. WEBB: Exhibit 18 is admitted.

1 You did not -- did we do 17?

2 MS. BUGEL: I haven't moved for 17
3 yet.

4 MS. WEBB: Okay. Thanks.

5 Q. (by Ms. Bugel) And I think we can set that
6 aside. So let me just ask you, Mr. Hutson, even with
7 the proposed Lakeside wetlands, do you still have
8 concerns about the Dallman ash pond -- the location
9 of the Dallman ash pond?

10 A. Yeah. What we're doing is creating a
11 permanent repository for these wastes, enclosing the
12 coal ash pond, but we're creating this permanent
13 repository on the floodplain within fifty feet or so
14 of the edge of Sugar Creek and it's just not a great
15 location for permanent storage of waste.

16 MS. BUGEL: So with that, Complainants
17 would move for the admission of 17 into the record.

18 MS. WILLIAMS: No objection.

19 MS. WEBB: Exhibit 17 is admitted.

20 Q. (by Ms. Bugel) Okay. So we can set 17
21 aside for a moment, and I would like to turn back to
22 Exhibit 16. And do you recall -- and we were talking
23 a little bit about hydraulic head and modeling.
24 Mr. Hutson, do you recall if CWLP did migrate

1 modeling for the 2022 closure plans?

2 A. Yes.

3 Q. Okay. Did CWLP do new migrate modeling for
4 the 2025 closure plans?

5 A. Not that I've seen.

6 Q. And do you have an opinion on what sort
7 of -- what modeling program, I guess, I don't know if
8 that's the right word, what modeling program should
9 have been done?

10 A. Because of the -- well, in 2022, for the
11 2022 plan are we talking about?

12 Q. Yes.

13 MS. WILLIAMS: Wait. I just want to
14 clarify. So you're asking him now about what was
15 wrong with the modeling on the old plan that's not
16 the current plan? Not --

17 MS. BUGEL: Yeah.

18 MS. WILLIAMS: Not what modeling
19 should be done today?

20 Q. (by Ms. Bugel) You know what, let's strike
21 that and let me rephrase the question.

22 Mr. Hutson, do you have an opinion on what
23 modeling should have been done under any plan for the
24 CWLP site?

1 A. I would have recommended that a typical
2 numeric model be used. Maybe MODFLOW plus MT3D, a
3 flow and transport model, be used so that you could
4 evaluate changes in head beneath the facility, the
5 directions of flow and flow paths and also numerical
6 quantification of what the potential downgradient
7 concentrations of contaminants might be.

8 MS. WILLIAMS: Can I ask him to repeat
9 his answer here when he said MODFLOW plus and then --

10 THE WITNESS: Oh, MT3D.

11 MS. WILLIAMS: MT3D. I couldn't hear.

12 Q. (by Ms. Bugel) And that's M, as in Mary,
13 T, as in toy, 3, and then D or B?

14 A. D.

15 Q. D as in dog?

16 A. Yes.

17 MS. WILLIAMS: Thank you.

18 Q. (by Ms. Bugel) And did you -- so let me
19 start with -- I'm going to ask about the 2025 plans.
20 Did you see any modeling investigate horizontal flow
21 into or out of the ash pond in the 2025 plans?

22 A. I did not.

23 Q. Did you see any groundwater modeling that
24 investigated horizontal flow into and out of the ash

1 ponds under the 2022 plans?

2 A. Yes.

3 Q. Okay.

4 A. Wait, did you say flow?

5 Q. Horizontal flow.

6 A. No, no. No horizontal flow.

7 Q. And can you just tell me, and if you need
8 to you can refer to your Exhibit 17, page 10, can you
9 tell me why is horizontal flow important?

10 A. Well, horizontal flow, it's very important
11 because typically in fluvial sediments like these,
12 the horizontal component of flow, the hydraulic
13 conductivity is typically higher in the horizontal
14 direction than in the vertical direction.

15 Q. Can you explain why?

16 A. Yeah. I can talk about this for a while.
17 When these things are deposited, the minerals tend to
18 fall out of water, or the clay, the clay particles
19 tend to fall out of the water. And they're
20 plate-like structures, and they fall in the water
21 column and accumulate on the bottom so that their
22 long axis is horizontal rather than up and down.

23 Q. Okay. So I'd like to turn to page 2 of
24 your -- of Exhibit 16, and I think we discussed

1 discharges to Sugar Creek, but you have a second
2 deficiency that you identified relative to the plans
3 related to closure of Lakeside ash pond. Can you
4 explain what the second deficiency is?

5 A. Yeah. The second deficiency is that I see
6 no indication that there's a plan and -- there needs
7 to be a plan to update the background data set once
8 the Lakeside waste has been removed and the AP-4, the
9 upgradient well, which is currently sitting
10 downgradient of the Lakeside ash and beneath a ten
11 foot layer of ash outside the berms, that well needs
12 to be taken out of the data set and a new background
13 data set calculated.

14 Q. Okay. And this is a concern that you have
15 relative to Dallman ash pond, too?

16 A. Well, the background -- it's one of two
17 background wells. One of the two background wells
18 currently existing that's used in the background data
19 set is actually located downgradient of the coal ash
20 pond, and it's no surprise that it detects way higher
21 than normal background arsenic.

22 Q. We're going to come back to this a little
23 later. I just wanted to ask one clarifying question.
24 Let's turn to Dallman ash pond. On page 3 of

1 Exhibit 16, do you see where you begin discussing
2 Dallman ash pond on this page?

3 A. Yes.

4 Q. And looking at the very first sentence, you
5 mention your testimony before the Illinois Pollution
6 Control Board. Do you see that?

7 A. I do.

8 Q. Can we please have Exhibit 18? I'm sorry.
9 It's Exhibit 19. And Mr. Garcia is gathering another
10 exhibit for us. We have marked it as Exhibit 19.

11 So Mr. Garcia is placing an exhibit in front of
12 you marked Exhibit 19, and let me start by asking,
13 are you familiar with this document?

14 A. I am.

15 Q. And can you please describe for the record
16 what this is?

17 A. This is the -- what do you call this? The
18 pre-filed testimony that I filed with the Illinois
19 Pollution Control Board about the Illinois CCR rules.

20 Q. Okay. And can you -- do you rely on this
21 document in your discussion of Dallman ash pond?

22 A. Let me see. Where is that again?

23 Q. I'll refer -- page 3, footnote 1.

24 A. I'm starting to get a buildup of paper over

1 here. Page 3, footnote 1. Yes, I have a notation
2 that references back to this pre-filed testimony.

3 Q. And what -- in what -- sorry. For what
4 purpose are you relying on this testimony, this
5 pre-filed testimony?

6 A. Basically I'm -- I was warning that
7 allowing waste to go from one impoundment that needs
8 to be closed and putting on top of another is simply
9 just adding more source material for, you know, for
10 future problems should something happen.

11 Q. And can you explain what source material
12 is?

13 A. Coal ash.

14 Q. And when you say for future problems, what
15 sort of problems are you referring to?

16 A. Basically if a cap begins -- if it's capped
17 in place and then the cap begins to leak, you've got
18 just that much more of volume of metals, leachable
19 metals in the impoundment which contains the combined
20 waste.

21 MS. BUGEL: And Complainants move for
22 Exhibit 19 to be admitted into the record.

23 MS. WEBB: Exhibit 19 is admitted.

24 Q. (by Ms. Bugel) And in the first paragraph

1 you also mention a performance standard. Do you see
2 that, in the second sentence of the first paragraph?

3 A. Oh, yes. Okay.

4 Q. And can you explain what the performance
5 standard is?

6 A. The crux of the performance standard is
7 that a site remedy has to be able to separate the
8 waste from groundwater, or from water, I should say.
9 And groundwater which either can come up from below
10 or laterally from the sides and flow through the
11 waste is still water that is in contact with the
12 waste.

13 Q. And can you explain -- and I'm looking
14 again at the second sentence, footnote 3. Can you
15 explain where the performance standard is found?

16 A. Footnote 3. Yeah, the Illinois
17 Administrative Code, Section 845.750(a)(1).

18 Q. And are those -- let me -- when you offered
19 your pre-filed testimony before the Pollution Control
20 Board in 2020, what rules were you testifying on?

21 A. The proposed Illinois rules.

22 Q. And is that also the rules that you're
23 citing to in footnote 3?

24 A. I believe so.

1 Q. And can you explain how the performance
2 standard is relevant to the 2025 closure plan for the
3 Dallman ash pond?

4 A. Well, one of the comments that I made about
5 the Dallman ash pond is that we really need an
6 evaluation, a numerical evaluation of what the effect
7 on water levels beneath the facility would be if
8 implemented as is currently proposed.

9 You know, it's possible that it might not have
10 any effect if there's not enough discharge to this
11 newly created wetland. It's possible that a lot of
12 water may discharge into this newly created wetland
13 and lower the water levels beneath the whole site.
14 We just don't know at this point.

15 Q. In the first scenario you said it's
16 possible that there might be no effect on water
17 levels. What would that mean for the ash in the
18 Dallman ash pond?

19 A. The Dallman ash pond now, the bottom of the
20 waste sits below the potentiometric surface, so it's
21 subject to water entering from below and beneath the
22 berms.

23 Q. And in your opinion is that consistent with
24 the performance standard?

1 A. It would be a violation of the performance
2 standard because the whole performance standard is to
3 keep water out of the waste.

4 Q. Okay. I would like to move on to the
5 second paragraph on page 3, and in the second
6 paragraph you discuss U.S. EPA's position on the
7 addition of CCR to a pond during closure. Do you see
8 that?

9 A. I do, yeah.

10 Q. What is U.S. EPA's position?

11 A. The position is that once an impoundment is
12 identified as needing to be closed under the rules,
13 additional CCR cannot be -- or should I say coal ash
14 should not be deposited onto the site.

15 Q. And I'm looking at footnote 4. Can you
16 tell us where you found U.S. EPA's position
17 articulated?

18 A. Yeah. Back in 2022, EPA sent out a series
19 of letters to various facilities and in each of those
20 cases articulated that adding additional CCR to a
21 site that's required to close is not a beneficial use
22 of the CCR.

23 Q. And we have a couple of documents that we
24 are going to put in front of you that we have marked

1 as Exhibits 20 and 21, and let's look at 20 first.

2 And can you tell me -- I'm going to wait a moment for
3 everyone to get a copy.

4 Looking at Exhibit 20, are you familiar with
5 this document?

6 A. I am. This is one of the documents sent by
7 EPA.

8 Q. And can you please tell us what Exhibit 20
9 is?

10 A. This is the proposed denial of the
11 alternative cleanup or closure schedule or deadline
12 for the Ottumwa, Iowa, site.

13 Q. And I'm just going to spell Ottumwa for the
14 record. O-T-T-U-M-W-A. In footnote 4, what do you
15 cite this proposed denial for?

16 A. Let's see. The proposal for adding coal
17 ash to a site that needs to be closed.

18 Q. And in this document, what was U.S. EPA's
19 response to that proposal?

20 A. They said it's not an appropriate use of
21 coal ash to put it on top of another facility that
22 needed to be closed. I'm just looking to find the
23 specific point if I can find it.

24 Q. And I'll refer you to page 35 and 36 --

1 A. That may take a while for me to get there.

2 Q. -- which is what you cite in footnote 4.

3 A. All right. IPL's claim that the placement
4 of CCR in the OGS ash pond is of beneficial use is
5 irrelevant because the regulation does not
6 distinguish between placement that might be
7 considered beneficial use and placement that might be
8 considered disposal for units that are required to
9 close.

10 Q. And that was a quote that you were reading
11 from this document from Exhibit 20, correct?

12 A. Correct.

13 MS. BUGEL: Complainants move for
14 Exhibit 20 to be admitted into the record.

15 MS. WEBB: Exhibit 20 is admitted.

16 Q. (by Ms. Bugel) And now I'd like to turn
17 your attention to Exhibit 21. Do you have that in
18 front of you?

19 A. I do.

20 Q. And are you familiar with this document?

21 A. I am.

22 Q. And can you please describe what this
23 document is?

24 A. This is a letter to Duke Energy on the --

1 this is the Gallagher site in Indiana. And as part
2 of this they also say that -- at the very end of the
3 letter, they say that finally because of north ash
4 pond and the primary pond ash fill, it must close
5 pursuant to 40 CFR 257.101(a). Any further receipt
6 of CCR into those units is prohibited.

7 Q. And that was a quote that you were just
8 reading from Exhibit 21, correct?

9 A. Correct.

10 Q. And you -- in footnote 4, are you -- in
11 footnote 4, what are you relying on this document
12 for?

13 A. Basically it's to show the EPA's rulings,
14 that additional placement of CCR on top of
15 impoundments that are required to close is not
16 allowed.

17 MS. BUGEL: Okay. And Complainants
18 move for Exhibit 21 to be admitted into the record.

19 MS. WEBB: Exhibit 21 is admitted.

20 Q. (by Ms. Bugel) And I'm now turning back to
21 Exhibit 16. Looking at the last paragraph on page 3,
22 in the first sentence do you identify a post closure
23 groundwater elevation?

24 A. Yes. I reference a document from Andrews

1 of a closure alternatives assessment, contaminant
2 transport model, where they indicated that the post
3 closure groundwater elevation would be approximately
4 528 feet.

5 Q. Okay. And I want to turn your attention
6 back to the excerpts from Exhibit 7, and this is
7 Exhibit D1 or Demonstrative 1. Do you still have
8 that in front of you?

9 A. I don't know.

10 Q. Joaquin can come help you.

11 MS. WEBB: I think it's the one you're
12 holding.

13 THE WITNESS: This?

14 Q. (by Ms. Bugel) Yes. But it was -- Mark,
15 it was bundled together with a bunch of others.
16 Okay.

17 A. Yeah.

18 Q. We're good. So turning to Exhibit 7, the
19 excerpt, can you describe what Exhibit 7 is? I'm
20 sorry. It's Exhibit 7 in its entirety or Exhibit D1.
21 Can you please describe what this is for the record?

22 A. This is an excerpt from the 2022 closure
23 construction permit application.

24 Q. And looking at footnote 5, you are

1 referencing the closure alternatives assessment from
2 2021, contaminant transport model. Do you know if
3 that is attached to the closure construction permit
4 application?

5 A. I believe it is.

6 Q. Okay. Can you please turn to -- in your
7 excerpts, can you please turn to PDF page 756?

8 MS. WEBB: And I just want to clarify
9 for the transcript, all references to footnotes are
10 Exhibit 16, page 3.

11 Q. (by Ms. Bugel) Thank you.

12 A. It's --

13 Q. The font is teeny tiny but --

14 A. Oh, there is a number up there.

15 Q. But I will represent for the record that
16 PDF page 756 is part of this bundle. And can you
17 please describe what you're looking at for the
18 record?

19 A. Yeah. This is the conceptual model for the
20 HELP and migrate modeling that they did under the
21 previous closure scenario.

22 Q. And I'll represent for the record that this
23 is figure 4 from the contaminant transport model,
24 which is attachment 2 to the closure alternatives

1 assessment, which is attachment 11 to the closure
2 construction permit application. And I did it.
3 That's a lot of attachments to follow, but hopefully
4 that is clear where that can be found in the record.

5 And in the -- on figure 4 on page PDF 756, did
6 you find a groundwater elevation?

7 A. Yes.

8 Q. And is this the predicted or the estimated
9 post closure groundwater elevation?

10 A. Yes.

11 Q. And what is that?

12 A. 528.

13 Q. Okay. We can set this aside. Oh, let me
14 just ask one more question. Where on figure 4 do you
15 find that 528 groundwater elevation?

16 A. Just -- between Sugar Creek and the site of
17 the impoundment there's -- in blue ink, there's a
18 groundwater symbol with elevation 528.

19 Q. And that's on the left-hand side of the
20 page?

21 A. Yes. Between the creek and the
22 impoundment.

23 Q. Okay. I'd like to draw your attention
24 to -- back to -- well, we can set aside the excerpts

1 for a moment. Can you look back at Exhibit 16,
2 page 3, the last paragraph, second sentence?

3 A. Oh, yeah. Okay.

4 Q. Can you generally explain how that
5 groundwater elevation of 528 feet estimated compares
6 to the pond bottom?

7 A. The borings that were -- that I referenced
8 here in this document showed that the bottom of the
9 actual Dallman pond ranged from 526 down to 523,
10 another 526, and then a 529.

11 Q. And how does that compare to the estimated
12 groundwater elevation?

13 A. Three of the four are below the estimated
14 groundwater elevation.

15 Q. Okay. And Mr. Garcia has another set of
16 excerpts for us. For the record, these are excerpts
17 from Exhibit 6 and Exhibit 6 is stipulated. It is
18 CWLP's response to Illinois EPA regarding the
19 construction permit application, and this response is
20 dated September 9th of 2024.

21 Looking at the first page of that excerpt,
22 Mr. Hutson, are you familiar with this document?

23 MS. WEBB: I'm sorry. This is -- is
24 this D2?

1 MS. BUGEL: Yes. I have not said that
2 yet.

3 MS. WEBB: That's okay. This is still
4 Exhibit 7?

5 MS. BUGEL: No, no.

6 MS. WEBB: I'm sorry. I don't know
7 what this is.

8 MS. BUGEL: Thank you for raising
9 that. This is now -- this is -- can we mark this as
10 Exhibit D2, also a demonstrative? And just to be
11 clear, this is -- these are the excerpts from
12 Exhibit 6.

13 MS. WEBB: Oh, Exhibit 6.

14 MS. BUGEL: And Exhibit 6 is one of
15 the stipulated exhibits.

16 MS. WEBB: Okay. Thank you. Sorry
17 about that.

18 Q. (by Ms. Bugel) Sure. No problem. Any
19 time. I'm just going to re-ask the question, which
20 is now that you've had a moment to look at this,
21 Mr. Hutson, are you familiar with this document?

22 A. Now that I see what's back here in the
23 back, yes.

24 Q. Okay. And did you previously review this

1 document?

2 A. I did.

3 Q. Okay. And can you please describe what
4 this document is for the record?

5 A. These are CWLP's responses to comments from
6 IEPA.

7 Q. And what were the comments on; do you know?

8 A. Oh, a variety of things, including the
9 hydrogeologic report and the groundwater monitoring
10 program.

11 Q. Do you know if these are in relation to the
12 construction -- CWLP's construction permit
13 application?

14 A. I don't recall.

15 Q. Can you please, if you turn to page -- PDF
16 page 2, does this -- do you see under the "re" line,
17 r-e colon, looking at the fifth line down, does that
18 refresh your recollection on what the subject of this
19 response was?

20 A. Yes. It was on the coal combustion
21 residual, surface impoundment, operating and
22 construction permit.

23 Q. And was it a permit or a permit
24 application; do you know?

1 A. Oh, yes, permit application.

2 Q. Okay. Let's -- can you please turn to PDF
3 pages 18 and 19?

4 A. Yes.

5 Q. And looking at -- looking at this page,
6 does -- can you please describe what you found
7 towards the bottom of PDF page 18 in relation to
8 Item 1.7.15?

9 A. This is basically the agency's comments
10 and, I assume, responses about the base of the
11 Lakeside and Dallman ash ponds being below the flood
12 zone on the FEMA flood map.

13 Q. And turning over to page 19 and the
14 response on page 19, does this discuss borings taken
15 in the Lakeside and Dallman ash ponds?

16 A. Let me get there. Yes.

17 Q. And what was the result of those borings
18 regarding the bottom of Lakeside ash pond?

19 A. Lakeside, the four borings showed the
20 bottom of Lakeside was at 534-1|2, 530-1|2, 553, and
21 530 feet above mean sea level.

22 Q. And do you know how that compared to
23 previous estimates regarding the bottom of Lakeside
24 ash pond?

1 A. It's deeper, but I don't remember what
2 the --

3 Q. And going on to Dallman ash pond, does this
4 also discuss borings in Dallman ash pond?

5 A. It does.

6 Q. And what was the result of those borings?

7 A. The borings showed the bottom of the pond
8 at 526, 523, 526.2, and 529.5 mean sea level.

9 Q. And is this what you relied upon for the
10 discussion of the pond bottom elevations in
11 Exhibit 16 on page 3, last paragraph?

12 A. Yes, that's where the data came from.

13 Q. And how did those elevations compare to the
14 previous estimate of the bottom of the Dallman ash
15 pond?

16 A. They were lower.

17 Q. And you also said this was Andrews
18 response. Can you explain who Andrews is?

19 A. Oh, the consultant working for CWLP.

20 Q. Okay. And is Andrews Andrews Engineering?

21 A. Yes.

22 Q. We can set Exhibit D2 aside; although, we
23 will come back to it.

24 A. Which one is D2?

1 Q. The excerpts that we were just looking at
2 from the September 9th letter from Andrews
3 Engineering, with Andrews Engineering cover sheet.

4 So just one more question on this, Mark. What
5 is the significance of the elevations of the pond
6 bottoms compared to the groundwater elevation?

7 A. Well, what you're looking at is how many
8 feet of saturated ash that could be in the
9 impoundment. Take the elevation of the water and
10 subtract the elevation of the pond bottom.

11 Q. And looking again at the Exhibit 16, the
12 last paragraph, what was your conclusion about the
13 bottom of the impoundment based on the borings
14 compared to the groundwater elevations?

15 A. Comparing the estimated 528 feet for the
16 groundwater elevation to the pond bottoms of 526 to
17 523, 526 and 529, three of the four would have waste
18 below the water elevation.

19 MS. BUGEL: Okay. All right. I want
20 to move on to page 3, but I also -- I want to be
21 mindful of the time and whether anyone needs a break.

22 MS. WEBB: Well, it's 10:45. Would
23 anyone like to take five?

24 MS. WILLIAMS: I wouldn't object.

1 MS. WEBB: Okay. Why don't we take
2 ten.

3 (Whereupon a break was taken.)

4 MS. WEBB: We are back on the record.

5 MS. BUGEL: And Complainants move for
6 Demonstrative Exhibit D1 and Demonstrative Exhibit D2
7 to be admitted into the record.

8 MS. WEBB: All right. Exhibit D1 and
9 D2 are admitted into the record.

10 Q. (by Ms. Bugel) Okay. So I want to turn to
11 page 4 of your report, Mr. Hutson, about halfway down
12 the page, and again the report I'm looking at is
13 Exhibit 16. About halfway down the page you list a
14 series of benefits of the revised closure plan, which
15 is the 2025 closure plan. Can you please identify
16 those benefits? And this is in relation to Dallman
17 ash pond.

18 A. Sure. The way I see the new proposed
19 closure plan for Dallman, there could be some benefit
20 to the removal of the Lakeside impoundment in that it
21 potentially might somewhat lower the high
22 potentiometric surface if there's enough discharge
23 into the Lakeside impoundment.

24 The installation and operation of dewatering

1 wells is a good thing, especially since the
2 dewatering wells are intended to stay there now to be
3 used as necessary to lower or remove groundwater that
4 might flow in or, you know, water that might
5 percolate down and enter the waste.

6 And the proposed geosynthetic cap will probably
7 be very effective for a period of several decades at
8 least. The design life that I've seen is a hundred
9 plus years, so at least for all of our lives it'll --
10 it should be effective at reducing infiltration into
11 the waste.

12 Q. Okay. And below that you also discuss
13 deficiencies for the 2025 closure plan for Dallman on
14 page 4. Do you see that?

15 A. Yes.

16 Q. Can you please tell us what the first
17 deficiency is?

18 A. The first one is just that the proposed
19 closure plan needs to describe how it would be a
20 permanent fix. If the waste is going to stay on the
21 flood plain, fifty feet from the creek in an area of
22 high groundwater, it needs to just basically force
23 feed, there's a potential need that it could be a
24 permanent operational issue or problem to be

1 rectified.

2 Q. Does your first bullet point mention the
3 performance standard?

4 A. It does.

5 Q. And what is your opinion on the performance
6 standard in relation to Dallman ash pond and the 2025
7 closure plan?

8 A. It remains to be seen. That's why I said
9 that we would really like to see some modeling to see
10 how the groundwater elevation beneath the site would
11 respond to eliminating the Lakeside pond.

12 Q. And we've already discussed modeling. I
13 don't want to go through that again, but I do want to
14 ask, aside from modeling is there any other way to
15 get a reliable estimate of what the groundwater level
16 will be following the removal of Lakeside?

17 A. Not until the material is removed.

18 Q. Okay. So -- and when you say material,
19 what are you referring to?

20 A. The coal ash.

21 Q. So there's -- aside from modeling, there's
22 no other way to get an estimate ahead of the removal
23 of the coal ash? And by estimate, I'm referring to
24 estimate of groundwater level.

1 A. Well, everything is going to require some
2 assumptions. Nothing for sure.

3 Q. Okay. I'd like to turn to your second
4 bullet point. What is the second deficiency that you
5 discuss there?

6 A. That is the discussion that we had earlier
7 about the EPA's position on moving waste from one
8 coal ash impoundment that's required to close to
9 another coal ash impoundment that's required to
10 close. Basically just it's unclear how the proposal
11 gets around that policy.

12 Q. Okay. And moving on, I'm looking at the
13 last bullet point on page 4, what is the deficiency
14 that you discuss there?

15 A. The four borings that identified the base
16 of the impoundment in Dallman, it's a big impoundment
17 for four data points. I indicated that a systemic
18 boring program was needed to really determine the
19 actual elevation of impoundment.

20 Q. And can you just explain why more borings
21 are needed?

22 A. Well, because we saw that based on the
23 first four, the first four borings that were
24 reported, three of the four showed the elevation of

1 the bottom of the pond beneath the projected post
2 closure water elevation. So if three of the four
3 were put in and identified to be that deep, how much
4 more of the pond could we expect to be below the
5 water elevation.

6 Q. Okay. I'd like to turn to page 5 and the
7 first bullet point on page 5. Can you tell us what
8 concern you're raising here?

9 A. On the geotextile cover?

10 Q. Yes.

11 A. The proposal is for -- it's the same thing
12 I said just a few minutes ago. These things will
13 likely be effective for several decades, and by the
14 time they are no longer effective, by the time the UV
15 light degrades the material or there's some physical
16 damage that allows infiltration into the waste,
17 nobody will be looking at that point unless we're
18 going to continue to have regular monitoring past the
19 thirty year operation of the maintenance period.

20 Q. And do you know if there is a post closure
21 care plan in relation to the 2025 closure plans?

22 A. I believe there is.

23 Q. Okay. All right. We have another excerpt,
24 and for the record this is -- these are excerpts of

1 Exhibit 3, and Exhibit 3 is the 2025 closure plan.
2 And we have not previously marked this, so I am
3 marking my copy as Exhibit D3. And, Joaquin, could
4 you please mark Mark's copy for him.

5 A. I can do it. What is it?

6 Q. So we're marking this as Exhibit D3, which
7 is also a demonstrative. And looking at this
8 exhibit, can you see whether -- if the post closure
9 care plan is appended to the 2025 closure plan? And
10 to help you out with that, you can turn to PDF
11 page 617.

12 A. Okay.

13 Q. And so I just -- I'll just ask you a
14 question. Can you see if based on this exhibit, does
15 the post closure plan appear to be an appendix or
16 appended at the end of the 2025 closure plan?

17 A. It does. At least it was that way on the
18 copy that I downloaded.

19 Q. And I've been referring to a post closure
20 care plan. Do you know if a post closure care plan
21 and a post closure plan are the same thing?

22 A. That would be my interpretation.

23 Q. And can you tell me, is monitoring past
24 thirty years covered by the post closure plan that

1 we're looking at as part of Exhibit D3?

2 A. Past the thirty years?

3 Q. Yes.

4 A. No.

5 Q. And can you tell me where you're looking to
6 get that answer?

7 A. Well, let's see. On PDF page 624, post
8 closure care period. Under Item 5, post closure care
9 period. Post closure care period must be conducted
10 for thirty years unless the CCR unit is operating
11 under assessment monitoring.

12 Q. Okay. And so is -- and is there monitoring
13 of the pond included as part of the post closure
14 plan?

15 A. Monitoring of the pond. What --

16 Q. Let me rephrase that. Is there monitoring
17 of the water levels in the pond included as part of
18 the post closure plan?

19 A. No, not that I've seen.

20 Q. And can you explain how monitoring of the
21 water levels in the pond is related to the design
22 life of the cover?

23 A. Yeah. Basically it would be beneficial to
24 have piezometers inside the impoundment during and

1 after the post closure care period to check water
2 levels inside the impoundment, basically to see if
3 you can detect when the cap starts to deteriorate and
4 would need to be replaced.

5 Q. Why would the cap deteriorating affect
6 water levels in the pond?

7 A. Because it would -- as the cap
8 deteriorates, infiltration through the cap could
9 increase.

10 Q. Infiltration of what?

11 A. Water.

12 Q. Okay. So I want to turn back to page 5 of
13 Exhibit 16, and the second bullet on that page
14 discusses dewatering wells. Do you see that?

15 A. Just a second. The second bullet on
16 page 5?

17 Q. On page 5, yes.

18 A. Okay. I see it.

19 Q. And do you see that this discusses or you
20 discuss in this bullet dewatering wells?

21 A. Yes.

22 Q. And what concern are you raising regarding
23 the dewatering wells?

24 A. What I was looking for in the closure plan

1 was an explanation of how the wells would be
2 operated, specifically at what elevation would
3 pumping start, would it start automatically, would
4 there be a float system that would cause the pump to
5 start to work should water reach a certain elevation,
6 or does somebody have to go out and physically take a
7 measurement and decide, well, we've got too much
8 water in here. It's time to start the pumps.

9 Where I've worked on extraction systems before,
10 there's always been an electronic readout that shows
11 how much -- what the water level is, what the pumping
12 rate on a particular day was, how much was pumped. I
13 just want some -- I was looking for some specific
14 information about how would you go about operating
15 this thing and make sure that the water stays out.

16 Q. And did you find that in the post closure
17 plan?

18 A. I did not.

19 Q. And can you tell me what is included in the
20 post closure plan regarding the dewatering wells?

21 A. The basic design of the wells and the
22 location. That's about it.

23 Q. And is -- okay. I'm looking at page 5.
24 I'm sorry. Strike that. Okay. So can we turn to

1 the third bullet on page 5 of Exhibit 16?

2 A. Okay.

3 Q. And do you discuss plans to operate the
4 dewatering system past thirty years in this bullet?

5 A. Yes.

6 Q. And what concern are you raising in this
7 bullet?

8 A. If we were to allow the waste to stay in
9 impoundment, that waste will still be sitting there
10 underneath a cap ready to -- ready and able to leach
11 metals into the water whenever water is allowed to
12 come in contact with it for an extended period. So
13 it doesn't -- the leaching of the metals into the
14 water will not automatically stop at thirty years.
15 We need to look at a permanent system.

16 Q. And what is included in the post closure
17 plan regarding operating the dewatering system past
18 thirty years?

19 A. Nothing. It stops at thirty years, as far
20 as I can tell.

21 Q. And moving on to your next bullet that
22 talks about maintaining the dewatering system on
23 page 5, do you see that bullet?

24 A. Yes.

1 Q. And can you tell us what concern you're
2 raising in this bullet point?

3 A. Yeah. This is basically a heads up
4 because, based on my experience, when you put
5 extraction wells into water containing high
6 concentrations of metals, there's an awful lot of
7 fouling of the equipment. It's a maintenance
8 headache. Basically it requires a regular
9 maintenance schedule for the well, for the well and
10 the pumping systems to keep things operational.

11 Q. And what is in the post closure plan
12 regarding maintenance of the dewatering wells?

13 A. Nothing.

14 Q. Well, I'm looking at page 5 of the closure
15 plan, PDF page 624.

16 A. Yikes, 624. Okay. Oh, you mean the
17 schedule?

18 Q. Well, what's included regarding maintenance
19 activities?

20 A. Mowing the berms, final cover inspections,
21 berm inspections, drainage structures, dewatering
22 wells, and groundwater monitoring wells.

23 Q. So for the dewatering wells, what -- what's
24 the maintenance plan?

1 A. Quarterly -- or do inspections and
2 maintenance quarterly or when not functioning
3 properly.

4 Q. And does the post closure plan include any
5 information on what maintenance activities will be
6 conducted?

7 A. No, not that I've seen.

8 Q. And the idea of doing maintenance when
9 they're not functioning properly, what's -- do you
10 have an opinion on that?

11 A. I think they need to be -- the performance
12 of the pumping systems needs to be monitored to show
13 that it's continuing to operate properly as opposed
14 to waiting for a quarterly inspection.

15 Q. And so you mentioned having previous
16 experience with extraction wells?

17 A. Yes.

18 Q. Can you tell us what -- where that
19 experience took place?

20 A. Initially my first experience with
21 extraction wells was on the Saint Croix refinery,
22 Hess Oil Saint Croix refinery in the Virgin Islands.
23 But after that I worked on the Joliet Lincoln Stone
24 Quarry facility, and that's where I observed the

1 effects of pumping coal ash leachate on the equipment
2 that was used in the pumping system.

3 Q. And what were the effects on the Lincoln
4 Stone Quarry extraction wells?

5 A. The screened intervals of the wells would
6 crust over rapidly. The mechanism for the pumps
7 would degrade and they would stop working within
8 weeks. At one point there was a person assigned full
9 time to keeping the pumping system going.

10 Q. And how long a period were these wells in
11 place before you started to see issues with --
12 maintenance issues?

13 A. Within a week or two. It was very quick.

14 Q. Okay. Can you just tell me, how do
15 extraction wells compare to dewatering wells?

16 A. Basically the same thing. It's just a
17 different term.

18 Q. Okay. At this point I would like to put
19 aside Exhibit 16, and can we please turn back to
20 Exhibit 15. And if you need help finding it, Joaquin
21 can help you. And Exhibit 15, just while you're
22 looking for it, is the January 5th, 2025, your report
23 of January 5th.

24 A. Ah-ha, yes. Thank you.

1 Q. And regarding your January 5th, 2025,
2 report, can you give us just a brief overview of your
3 recommendation in this report? And I'm looking in
4 the introduction, second paragraph on page 1.

5 A. Oh, the final recommendation?

6 Q. Yeah. What's your recommendation?

7 A. I recommended that the waste be excavated
8 and either taken off site for disposal at a secure
9 location or beneficially reused.

10 Q. And is that the waste from both Lakeside
11 and Dallman ash ponds?

12 A. Yes.

13 Q. And at the time that you wrote this report,
14 do you recall the proposed closure plan for Dallman
15 and Lakeside ash ponds?

16 A. It was to close the impoundments in place
17 with the waste remaining in Lakeside.

18 Q. With the waste remaining in Lakeside and
19 Dallman?

20 A. Yes. Both of them, yeah. It wasn't going
21 to be removed.

22 Q. Okay. So I'd like to turn to the
23 discussion, and looking at page 5.

24 A. Looking at page 5. Okay.

1 Q. So on page 5, under discussion, the first
2 thing you talk about is impoundment location and
3 construction. Do you see that?

4 A. Yes.

5 Q. And can you give us a very quick summary of
6 what's relevant about the location and construction
7 of the impoundments?

8 A. They are constructed on fluvial sediments
9 adjacent to the creek, to Sugar Creek, over the top
10 of abandoned meandering stream channels that meander
11 at least under Dallman. The berms have been elevated
12 over the course of years and -- I don't know. What
13 else do you want to know?

14 Q. That is sufficient for that. Can you
15 please turn to page 7, at the top of page 7 where you
16 discuss site geology?

17 A. Yes.

18 Q. Can you give us a really quick summary of
19 the site geology?

20 A. Yeah. The bedrock beneath the area is the
21 Pennsylvanian shale. It's overlain by a series of
22 generally -- it's a fine upwards sequence of fluvial
23 sediments with a basal sand layer which is the
24 cleanest sand on the site. Overlain by a lower --

1 what they call a lower cohesive unit and it's a
2 clay -- not clay. It's a clay-rich unit in most
3 places; although, in some locations it's cited as
4 having 45 percent sand in the unit. There's an upper
5 sand layer above that and an upper confining layer,
6 another more clay-rich unit above that.

7 Q. You mentioned 45 percent sand. What's the
8 significance of having -- of the layer being
9 45 percent sand?

10 A. Well, it's -- the more sand you have in a
11 layer, generally the higher the hydraulic
12 conductivity. The -- let me back up. Fluvial
13 deposits are, by nature, very variable in terms of
14 thickness of units, in terms of composition of units.
15 If you go from one place in a -- look at a layer and
16 take a sample ten feet away, it can look very
17 different depending on where you're at.

18 So the ability of anybody to characterize the
19 natural fluvial materials sufficiently to show that
20 water and/or contaminants can't migrate through them
21 is very problematic just because of that variability
22 of these materials.

23 Q. Okay. And in the first paragraph on
24 page 7, the second sentence, you discuss -- or it's

1 the second and third sentence. You discuss the
2 relocation of Sugar Creek. Do you see that?

3 A. Where is it?

4 Q. Under site geology, on page 7, in the first
5 paragraph. I'm looking at the third sentence.

6 A. Yeah, okay. Uh-huh.

7 Q. Can you tell us what is the significance of
8 the relocation of Sugar Creek?

9 A. The relocation, it's a couple of things.
10 It creates a potential conduit through the finer
11 layer of materials underneath Dallman, and it -- the
12 relocation of the channel from on the southeast
13 corner of Dallman, all the way over to the north,
14 where the northwest corner is, that raises the base
15 or discharge level.

16 So over time what water that used to discharge
17 into the creek over near where the landfill is now in
18 the southeast corner of the Dallman impoundment where
19 the old meander comes through there, that water now
20 has to go across Dallman, further downgradient.

21 That provides an opportunity for the water level
22 to rise over time to create that -- to create the
23 gradient to get it to migrate all the way across to
24 the new channel location.

1 Q. And you've talked about the places where
2 there could be a conduit under the pond. What's the
3 concern with there being a conduit?

4 A. Well, the documents up until most recently
5 have always described the channel fill materials as
6 being highly variable. In fact, even the most recent
7 one may still say, make a statement something like
8 further characterization is difficult because of the
9 variation and the materials in the channel fill.

10 The water in the basal sand is under hydraulic
11 head, which means that if you put a well into the
12 basal sand it comes up higher than the overlying
13 confining unit. If there is a conduit, if there's a
14 channel, part of the channel which has a permeable
15 fill material, that becomes a conduit to let water
16 rise from that confining -- confined aquifer, or semi
17 confined, in the basal sand and into the waste, into
18 the coal ash.

19 Q. Okay. So in your pile of exhibits in front
20 of you, there's an exhibit marked Exhibit 11. This
21 is stipulated so it's already admitted. And Joaquin
22 can come over and help you find that.

23 Okay. And do you have Exhibit 11 in front of
24 you?

1 A. I do.

2 Q. Okay. And are you familiar with this
3 document?

4 A. It looks familiar. I don't know the
5 details of it.

6 Q. Have you reviewed this document before
7 today?

8 A. I have, yeah. I've seen it before.

9 Q. And referring to Exhibit 16, page 7,
10 footnote 17, is this the document that you rely on
11 regarding the relocation of Sugar Creek?

12 A. What was the footnote again?

13 Q. Seventeen.

14 A. Seventeen.

15 Q. We're on Exhibit 15, your January 5th
16 report.

17 A. There we go.

18 MS. WEBB: Exhibit 15, page 7,
19 footnote 17.

20 Q. (by Ms. Bugel) Correct.

21 A. Ah, there we go. Yes, this is it.

22 Q. And can you please very briefly describe
23 what this document is?

24 A. This is the permit application to allow

1 CWLP to relocate the creek in order to build Dallman.

2 Q. Okay. And we can put Exhibit 11 aside.

3 We're going to stay on Exhibit 15. And we can turn
4 to page 10, site hydrogeology.

5 A. Okay.

6 Q. And can you give us a quick summary, just a
7 couple sentences on the site hydrogeology?

8 A. Sure. The water as measured in the
9 sediments just above the bedrock flows in at a high
10 head or high elevation on the north -- at the
11 southeast corner of the property and probably along
12 the eastern edge but it's not well monitored over
13 there.

14 But it flows generally from high head in the
15 southeast toward the west-northwest and north. And
16 underneath the Dallman facility there's some radial
17 flow just driven by the high leachate elevation
18 inside the impoundment.

19 Q. And turning to page 12, again of
20 Exhibit 15, I am looking at the -- I'm looking at the
21 middle paragraph, middle paragraph on the page that
22 begins "capping." I'm looking at the second sentence
23 in that paragraph. And in here do you discuss the
24 natural low conductivity materials have been replaced

1 with fill beneath portions of the impoundments? Do
2 you see that?

3 A. Yes.

4 Q. And is that -- does that pertain to the
5 discussion we were just having regarding concerns
6 about the conductivity of the material below the
7 impoundments and the creek being relocated?

8 A. Yep.

9 Q. Okay. And for footnote -- for that
10 sentence, for footnote 4, what I'm --

11 A. Footnote 4?

12 Q. I'm sorry. Footnote 44. What do you rely
13 on to support your opinions regarding the materials
14 beneath the impoundments?

15 A. This was a -- references the stabilized
16 report from 2010, which was a hydrogeologic report of
17 the Dallman impoundment.

18 Q. And Joaquin is retrieving that from your
19 stack of materials. It has been marked as
20 Exhibit 12. And are you familiar then with this
21 document?

22 A. I am.

23 Q. And can you please describe what it is?

24 A. It's a hydrogeologic assessment of Dallman

1 pond area.

2 Q. And can you explain what you relied on this
3 document for?

4 A. Basic information about the geology and
5 materials beneath the site.

6 Q. Okay. And staying on page 12, I now want
7 to direct your attention to the next paragraph. And
8 so in the next paragraph, what concern are you
9 raising?

10 A. That leaving the Dallman impoundment in
11 place in contact with groundwater flowing in at high
12 head on the southeast and exiting at lower head on
13 the south -- or the west and north and northwest, and
14 east in some cases, does not meet the performance
15 standard of the Illinois regs.

16 Q. And -- well, and in this paragraph are
17 you -- what do you cite for support regarding your
18 opinion that it's not okay to leave ash in contact
19 with groundwater?

20 A. Well, EPA has said repeatedly that the
21 federal performance standard does not allow ash to
22 remain in contact with groundwater.

23 Q. And do you know if the federal performance
24 standard and the Illinois performance standard are

1 the same or virtually the same?

2 A. At least very close. I don't recall if
3 there's a word change in there somewhere or not.

4 Q. And I'd like to turn to Exhibit 21.
5 Exhibit 21 should already be in front of you. We
6 looked at it earlier.

7 A. I got it.

8 Q. And in this portion of your discussion,
9 what do you rely on Exhibit 21 for?

10 A. I just lost this portion of my discussion.
11 Where are we?

12 Q. We're looking at the January 5th report,
13 which is Exhibit 15, page 12, towards the bottom of
14 that page.

15 A. Oh, this is -- in this letter is where the
16 EPA states that leaving the waste in contact with
17 groundwater doesn't meet the performance standard.

18 Q. Okay. All right. We can set Exhibit 21
19 aside, and I want to turn to the bottom of page 12,
20 carrying over to page 13. Can you discuss the
21 Alabama Department of Environmental program, how U.S.
22 EPA denied approval of that program? Do you see that
23 discussion starting at the very bottom of page 12?

24 A. I do.

1 Q. And can you tell us, can you explain what
2 your -- what point you're making there?

3 A. Alabama had applied for approval of or the
4 ability to run their own CCR regulations, and the EPA
5 had denied it because of Alabama's allowing closure
6 of coal waste sites with waste in contact with
7 groundwater.

8 Q. Okay. And we have what we have previously
9 marked as Exhibit 22. Joaquin is placing it in front
10 of you. And are you familiar with this document?

11 A. This would be the federal -- the Alabama
12 denial.

13 Q. And can you explain what you relied on this
14 document for?

15 A. Let's see. This is just -- this is the
16 support where -- that shows that EPA had denied the
17 state rules or the ability to implement rules by not
18 meeting the minimum standard of separating waste from
19 groundwater.

20 MS. BUGEL: And Complainants move for
21 admission of Exhibit 22 into the record.

22 MS. WEBB: Exhibit 22 is admitted.

23 Q. (by Ms. Bugel) And continuing with
24 Exhibit 15, can you please turn to page 14 and

1 halfway down this page, or a little more, you have
2 the heading Groundwater Quality Monitoring. Do you
3 see that?

4 A. Yes.

5 Q. And in the very first sentence, do you
6 offer an opinion about whether the impacts to
7 groundwater quality downgradient of the ash ponds
8 continue?

9 A. Yes. I say it has continued.

10 MS. BUGEL: Okay. Can we please get
11 the demonstratives? And Joaquin just reminded me for
12 a little bit of cleanup, I need to make a motion for
13 Exhibit D3, which is one of Complainants'
14 demonstrative exhibits to be admitted into the
15 record.

16 MS. WEBB: That was an excerpt from --

17 MS. BUGEL: It was an excerpt from the
18 2025 closure plan, and off the top of my head --
19 Exhibit 3, yes.

20 MS. WEBB: D3 is admitted.

21 MS. BUGEL: And we are now placing an
22 exhibit in front of you, which is Complainants'
23 Second Amended Demonstratives. I believe we are at
24 Exhibit D4, and these were pre-filed before the start

1 of this hearing.

2 MS. WILLIAMS: Can we just take a
3 couple minutes to look over the old version, make
4 sure we're clear on what the difference from --

5 MS. WEBB: Sure.

6 MS. BUGEL: And can I just represent
7 for the record that the difference is that we pulled
8 out the first graph on arsenic.

9 MS. WEBB: Okay. That's helpful.
10 I'll still give Deborah, Ms. Williams, a minute to
11 check for herself.

12 MS. BUGEL: Of course.

13 MS. WILLIAMS: And it was the first
14 graph in the second version?

15 MS. BUGEL: Yes.

16 MS. WILLIAMS: The second graph in the
17 first version, I think, right? But otherwise the
18 graphs are the same, I assume.

19 MS. BUGEL: Yes.

20 MS. WILLIAMS: Okay. You can go, move
21 ahead.

22 Q. (by Ms. Bugel) Okay. So, Mr. Hutson, can
23 you please turn to the first page of graphs that is
24 titled Sulfate Concentrations?

1 A. Yes.

2 Q. And can you please -- can you please
3 describe what this graph is showing?

4 A. This -- well, let me back up. I find it
5 particularly instructive on a lot of sites to look at
6 how concentration trends have evolved over time. And
7 so since many of the new wells don't have a long
8 history of being sampled, I basically took an old
9 graph I had done some years ago and updated it with
10 continuing information for those wells that have a
11 long-term concentration history.

12 And what this graph is showing us is that AP-1,
13 the well with the little blue squares, AP-2, which is
14 the green line with the orange squares, and AP-3 have
15 been showing just an -- overall just an increasing
16 concentration of sulfates in the water over the time
17 and it hasn't resolved with the discontinuation of
18 sluice water going into the impoundment, Dallman
19 impoundment.

20 Q. And on this graph, do you compare the well
21 concentrations to any sort of standard?

22 A. Yeah. On the graph, I have the Class 1
23 groundwater standard of 400 milligrams in the yellow
24 line and the background, reported background, of 55.5

1 milligrams per liter in the purple line, I guess it
2 is.

3 Q. Purple or pink maybe?

4 A. Maybe it's pink.

5 Q. And how do wells AP-1, 2, and 3 that you
6 highlighted compare to the Class 1 standard?

7 A. They're above the standard that the -- did
8 you say AP-1 and 2?

9 Q. I said AP-1, 2, and 3.

10 A. Okay. AP-1 and 2 have been above standard
11 for quite some time. AP-3 has shown an increasing
12 trend that it's come into above standard over the
13 last couple of years.

14 Q. And let's turn to the next page, which is
15 boron. Do you have that in front of you?

16 A. I do.

17 Q. And can you tell us what is -- what the
18 overview is of boron at the CWLP ash ponds?

19 A. Yeah. There are three wells that are
20 typically above the Class 1 standard. Now, this is
21 three wells of the long-term monitoring program
22 wells, not -- there may be other wells out there, and
23 there certainly are, that have other concentrations.

24 But AP-1 is currently showing the highest

1 concentrations, in the low twenties milligrams per
2 liter. AP-2 has got lower concentrations, around
3 five or so, but not as high as AP-1. And
4 interestingly, AP-3 has shown somewhat of a decline;
5 although, it's still above the Class 1 standard.

6 Q. Okay. How about compared to background?

7 A. Oh, the background is -- well, depends on
8 which report you're looking at. There's different
9 backgrounds reported between the federal and the
10 state monitoring reports. I think -- I believe this
11 .14973 came from the state report.

12 Q. Okay. And can we please turn to the next
13 page, which is TDS. T as in toy, D as in dog, S as
14 in sulfate.

15 A. All capital.

16 Q. And what is TDS?

17 A. Total dissolved solids.

18 Q. And can you please tell us what this graph
19 shows?

20 A. This graph shows that AP-1 is still above
21 the Class 1 standard of 1200 milligrams per liter in
22 the most recent samples, and up until recently AP-2
23 had also been there. Remains to be seen whether it
24 stays. Also, you might notice AP-3, which is showing

1 an overall slowly increasing trend, coming close to
2 Class 1 standard but not exceeding it yet.

3 Q. And how about compared to background?

4 A. Compared to background, all three of those
5 wells are regularly above background.

6 Q. Okay. And I want to have -- I want to make
7 sure we tell the Board where it can find the data
8 that supports these charts. Besides groundwater
9 monitoring reports, where else does that data appear?

10 A. It's in the construction -- is it the
11 construction -- I can't think of it. I'm not sure if
12 it's the construction application or --

13 Q. Well, let's --

14 A. -- closure application.

15 Q. Let's grab the operating permit application
16 to start.

17 A. Okay. Where would I find that?

18 MS. BUGEL: That would be in front of
19 you. And do you -- what number is the operating
20 application? Okay. So let me do a little cleanup
21 here and simply start by Complainants move for
22 Exhibit D4 to be admitted into the record.

23 MS. WILLIAMS: Can we just do one --
24 I don't want to object at all, but I would like it if

1 he could explain for foundation about how information
2 got from -- like did he by hand take data from
3 reports and plot it? Can we talk to him a little
4 bit? How did this chart get made? I think he made
5 it, right?

6 THE WITNESS: I made it.

7 MS. WILLIAMS: Yeah. Let him -- would
8 you mind just --

9 Q. (by Ms. Bugel) Not at all. Mark, can you
10 explain how you made this chart, these charts?

11 A. I took PDF -- I have PDF documents that
12 have the groundwater monitoring tables in them, ran
13 them through optical character resolution and copied
14 them over, which I will say is not a hundred percent
15 infallible and it gives problems where there's --
16 especially where there's less than values. And then
17 created a master sheet off of that and created the
18 graph.

19 MS. WILLIAMS: Thank you.

20 MS. BUGEL: Okay. So Complainants
21 renew their motion for --

22 MS. WEBB: Exhibit D4 is admitted.

23 Q. (by Ms. Bugel) And now we are -- we have
24 another set of excerpts, and this is from Exhibit 10,

1 which is the CWLP operating permit application. I am
2 marking mine as Exhibit D5 because this is a
3 demonstrative.

4 MS. WEBB: D5 -- I'm sorry. D5, and
5 it was an excerpt from --

6 MS. BUGEL: Exhibit 10.

7 MS. WEBB: Okay. Thank you.

8 Q. (by Ms. Bugel) And, Mark, you should have
9 that in front of you now.

10 A. Yep.

11 Q. Can you please -- are you familiar with
12 this document?

13 A. I am.

14 Q. And you've reviewed this document before
15 today?

16 A. Yes.

17 Q. And I'm going to turn to -- well, I'm going
18 to turn to attachment 11, and does this have -- this
19 might be one of the moments. Appendix H. Do you
20 see -- and we might not have Appendix H attached.
21 I'm not sure at this moment. So this might require
22 you pulling out the big version of Exhibit 10.

23 A. Okay. Maybe I pulled out more than I
24 needed. Okay.

1 Q. Okay. So if you look at Attachment 12 --
2 no. I'm sorry. Attachment 11, Appendix H to
3 Attachment 11, does that contain the groundwater --
4 tables with groundwater data, groundwater quality
5 monitoring data?

6 A. It may take me a little time to get there.

7 MS. ROSENBERGER: What PDF page is
8 that?

9 THE WITNESS: Is there a PDF that goes
10 along with that?

11 MS. BUGEL: Yes. It is -- begins at
12 PDF page -- bear with me one second. Appendix H
13 begins at PDF page 541 and it goes through 559.

14 MS. WEBB: And this is D5?

15 MS. BUGEL: No, this is not excerpted
16 in D5.

17 MS. WEBB: Oh, okay.

18 Q. (by Ms. Bugel) So this requires going back
19 into Exhibit 10.

20 A. Oh, okay. Got it.

21 Q. Okay. So I just want to ask you quickly,
22 does Appendix H to Exhibit 10 contain groundwater
23 monitoring quality data that supports your graphs?

24 A. It does.

1 Q. Okay. Now, I know this is painful and I
2 apologize ahead of time. Can we please -- can you
3 please talk about and tell us what range of years
4 this appears to cover?

5 A. Oh, let's see, 2012 was it? 2012
6 through --

7 Q. Do you see 2012 on here?

8 A. Yeah. April of 2012.

9 Q. Do you have a PDF page you're looking at?

10 A. Oh, 542.

11 Q. Okay. And do you know where that extends
12 to or, I'm sorry, what date that it finishes at?

13 A. Last one I see is 2021.

14 Q. Okay. Okay. So we can actually set that
15 aside for a moment. And does that cover the full
16 range of dates in your charts?

17 A. No.

18 Q. Okay. So I am looking now for Exhibit 27.
19 And we are placing what has been marked as Exhibit 27
20 in front of you, and are you familiar with this
21 document?

22 A. I am.

23 Q. And have you reviewed this document before
24 today?

1 A. I have.

2 Q. Can you please briefly explain what this
3 document is?

4 A. It's the annual groundwater monitoring and
5 corrective action report for year ending
6 December 31st, 2022.

7 Q. And does this also contain groundwater
8 quality monitoring data?

9 A. Yes.

10 Q. Can you tell us where we can find that
11 data?

12 A. The summary of exceedances is on PDF -- is
13 there a PDF page on this?

14 Q. There are not PDF pages.

15 A. Oh, okay. In the tables in the back,
16 followed by the summary of all the samples in table
17 form.

18 Q. And is this one of the groundwater quality
19 monitoring reports that you used to create your
20 charts?

21 A. Yes.

22 MS. BUGEL: Complainants move for
23 Exhibit 27 to be admitted into the record.

24 MS. WEBB: Exhibit 27 is admitted.

1 Q. (by Ms. Bugel) And I'm not going to pull
2 it out right now but, just for the record, did you
3 also use additional reports like this one after this
4 report?

5 A. Yes, uh-huh.

6 Q. Okay. What other report would you have
7 used?

8 A. Starting in -- is it 3, the '23 data, I
9 think, there were annual reports posted on the
10 Illinois compliant Website that I was able to get.

11 Q. Okay. And we will come back to some of
12 those reports later. I do want to ask you, why --
13 well, let me ask. This Exhibit 27, is this a report
14 for the state program, the state CCR program, or the
15 federal CCR program?

16 A. I have to check. I think it's federal.

17 Q. And if you look at the table of contents,
18 does that tell you?

19 A. 40 CFR, that gives you a hint, I guess.

20 Q. So has that refreshed your memory?

21 A. Yeah. It's a federal report.

22 Q. Okay. And why -- when you were working on
23 your reports for this proceeding, why did you rely on
24 federal reports?

1 A. Because until the 2023 data, I think, there
2 were not actual groundwater monitoring reports on the
3 Illinois compliant Website. It was basically just
4 laboratory sheet dumps that would have taken a heck
5 of a long time to create graphs.

6 Q. And I also want to ask, then, how did you
7 come to your conclusions regarding exceedances at the
8 state level?

9 A. By comparing the background and Class 1
10 standards to the parameters, to the concentrations.

11 Q. And when you refer to concentrations, what
12 are you referring to?

13 A. The chemical concentration?

14 Q. What concentrations from where?

15 A. Oh, from the analyses.

16 Q. Okay. And --

17 A. Any chance we can take a break again one of
18 these days?

19 MS. BUGEL: Yeah. I think we have one
20 more motion. I apologize for doing some housekeeping
21 over here. Hearing Officer, what would you like to
22 do as far as breaks?

23 MS. WEBB: How about when you come to
24 your next convenient stopping point, let's break for

1 lunch.

2 MS. BUGEL: Okay.

3 MS. WEBB: I don't want to interrupt
4 you mid thought.

5 Q. (by Ms. Bugel) Okay. I think I just have
6 two more questions on this, and then I'm at a good
7 stopping point. So I want to refer to your report at
8 page 16.

9 A. Which report?

10 Q. And I'm looking at Exhibit 15, January 5th,
11 2025, report, at page 16, and I am looking at the
12 last full paragraph on the page.

13 A. Okay.

14 Q. The last sentence in that paragraph refers
15 to a groundwater protection standard. And -- I'm
16 sorry. And that actually refers to a published
17 groundwater protection standard. What are you
18 referring to when you say published groundwater
19 protection standard?

20 MS. WILLIAMS: Where are we at? I
21 heard page 16.

22 Q. (by Ms. Bugel) Page 16. It's the last
23 full paragraph on the page. The last sentence in the
24 paragraph, like three lines up from the bottom of the

1 paragraph says published groundwater protection
2 standard.

3 A. Oh, I see where you're at. Okay. That's
4 the MCL.

5 Q. And what is the MCL?

6 A. Maximum contaminant limit, I think.

7 Q. Okay. And is that a federal standard or a
8 state standard?

9 A. Well, the MCL is a federal.

10 Q. Okay. And you say that it's 0.01
11 micrograms per liter.

12 A. Whoops. I sure do.

13 Q. Is that a mistake?

14 A. That's a mistake, yeah.

15 Q. What is it meant to be?

16 A. Milligrams.

17 MS. BUGEL: Okay. And then those are
18 all the questions I have on this line of questions
19 and we're at a good stopping point.

20 MS. WEBB: Okay. Well, why don't we
21 break for lunch and meet back at 1:15. Does that
22 sound good to everybody? Okay. We'll go off the
23 record. Thank you.

24 (Whereupon a break was taken.)

1 MS. WEBB: Let's go back on the
2 record.

3 Q. (by Ms. Bugel) Okay. Mr. Hutson, we
4 are -- we should still have Exhibit 15 in front of
5 us, which is your January 5th, 2025, report.

6 A. Wait a minute.

7 Q. And I would like -- I'll wait for you to
8 get there. And can you also get Exhibit 13 out of
9 the box? In Exhibit 15 -- I'm sorry. Exhibit 15,
10 can you please turn to pages 15 and 16 or starting on
11 15?

12 A. Okay.

13 Q. And on page 15, I'm looking in this latter
14 half of the page. There's a table at the very bottom
15 of the page, and I'm looking at the paragraph right
16 above that table. And right in the middle of that
17 paragraph you say -- there's a sentence that reads,
18 in part, CWLP will be proposing to revise, in
19 parentheses, increase the background concentration
20 for arsenic. Do you see where it says that?

21 A. I do, yeah.

22 Q. Okay. I want to talk a little bit about
23 why you opined that background was increasing. If
24 you -- and did you pull Exhibit 13 out? Okay. We

1 pulled Exhibit 13 out of your box, and do you see --

2 MS. WILLIAMS: I think I'm going to
3 object here about the relevance of this and what
4 factor we're going towards here, talking about
5 background levels for a parameter you took out of his
6 testimony. So what is the relevance here?

7 MS. BUGEL: The relevance -- well, the
8 relevance is background and how -- and concerns that
9 our expert has had about how background is set and
10 whether it reflects -- accurately reflects the
11 groundwater contamination. And we have also had an
12 ongoing discussion about arsenic and whether arsenic
13 indicates whether the groundwater contamination is
14 getting better or getting worse and background is
15 relevant to that comparison.

16 MS. WEBB: And I did say I would allow
17 a limited discussion about -- they did allege arsenic
18 in the amended complaint. That was one of the
19 constituents, and I did say you could summarize.

20 MS. WILLIAMS: Right. We just want to
21 avoid getting to a point where my witnesses then have
22 to put on a factual case that the allegations are not
23 proven. Nobody wants to complicate any of that. And
24 I felt when you revised your demonstrative exhibit

1 maybe we were going to narrow. So far we haven't
2 talked about this issue at all. I know it's in the
3 reports.

4 MS. BUGEL: Right. So we've narrowed
5 it because we haven't talked about it at all today.
6 What we're going to talk about right now is arsenic
7 and background, and then we are going to spend a
8 little time on recent arsenic levels just to
9 establish that the contamination is not getting
10 better.

11 MS. WEBB: Okay. Go ahead.

12 MS. WILLIAMS: Am I allowed to enter
13 your demonstrative exhibit that you took out on my
14 turn? Can I re-use the old one when I go to cross to
15 explain?

16 MS. BUGEL: I mean, I can't answer
17 that right now because that just -- I'm just
18 completely caught off guard on that question, and I
19 need to think about it a little bit.

20 MS. WEBB: Okay. Go ahead.

21 Q. (by Ms. Bugel) Thank you. So you have
22 Exhibit 13 in front of you?

23 A. I do. Thirteen? Yes.

24 Q. And can you just identify what Exhibit 13

1 is for the record?

2 A. It's the Annual Groundwater Monitoring and
3 Corrective Action Report for year ending 2023.

4 Q. And the date on it, it was submitted in
5 January of 2024?

6 A. Yes.

7 Q. Okay. And can you please identify what the
8 background is for arsenic in that report? And when
9 you find the page, can you tell us what page you're
10 looking at?

11 A. Here we go. What page is this? I don't
12 see PDF markers on it.

13 Q. Yeah. It might not have PDF markers on it.
14 Just tell us like the attachment, the table and the
15 attachment you're looking at.

16 A. It's Table 1. The second page of Table 1.
17 The Table 1 is the 2023 groundwater analytical
18 results summary table, and on the second page of it
19 arsenic appears with a site specific background of
20 0.0266.

21 Q. Okay. And could you now please turn to
22 Exhibit 9 of your stipulated exhibits, which is
23 the -- can you just tell us what this exhibit is for
24 the record?

1 A. This is the surface impoundment operating
2 and construction permit application.

3 Q. Is it the application or --

4 A. Permit -- oh, permit application review
5 letter.

6 Q. And the date on that letter?

7 A. October 30th, 2024.

8 Q. Okay. And you've reviewed this document
9 before today?

10 A. Let me double-check. Yes, uh-huh.

11 Q. Okay. And in your report at page 15,
12 looking at footnote 55, what did you rely on this
13 document for?

14 A. Oh, provides their proposed new arsenic
15 background data.

16 Q. And what -- what background did the
17 October 30th letter to IEPA, Exhibit 9, what did it
18 propose as a new background level? And if you need
19 guidance, it's Attachment B and attached then going
20 to Attachment A, which is attached to Attachment B.

21 A. Attachment A which is attached to
22 Attachment B.

23 Q. Attachment A to Attachment B.

24 A. Ah, statistical calculation.

1 Q. Yeah.

2 A. Okay. Here we go. What's the question?

3 Q. The question is what arsenic background
4 level did this propose to Illinois EPA?

5 A. .0375 milligrams per liter. The table,
6 it's in micrograms per liter.

7 Q. And how does that compare to the federal
8 background that you were aware of?

9 A. It's higher.

10 MS. WILLIAMS: Federal background?

11 Q. (by Ms. Bugel) Sorry. Arsenic background
12 in the federal groundwater monitoring reports.

13 A. It's higher. I wasn't aware that they had
14 two different sets of reporting, two different sets
15 of background.

16 Q. When you became aware that they were
17 reporting two different sets of background for state
18 levels versus federal levels, what was your reaction?

19 A. Surprise.

20 Q. Why?

21 A. I've never seen that done before.

22 Q. Can you elaborate?

23 A. I've reviewed a lot of groundwater
24 monitoring programs and their reports. I've never

1 seen the background wells based on two background --
2 the background values based on two background wells
3 varied between the federal and the state.

4 Q. Okay. And do you know if the federal
5 background level was changed from .0266 in 2024?

6 A. I would have to look it up.

7 Q. Okay. Let's -- I think we can pull that
8 out. It's Exhibit 8 from your stipulated groundwater
9 monitoring reports -- or stipulated exhibits.

10 A. Okay. What's the question?

11 Q. The question is what was background,
12 arsenic background, in the federal groundwater
13 monitoring reports in 2024?

14 A. 0.0266.

15 Q. And do you know, is that the same as it was
16 in 2023?

17 A. I believe that was the same number.

18 Q. Okay. You can put the groundwater
19 monitoring reports aside. I just want to turn to
20 Exhibit 15. I'm sorry. Exhibit 15 again, page 15 to
21 16. And can you tell us, what's your primary concern
22 that you're raising in this discussion on these
23 pages?

24 A. Hang on a minute. Fifteen?

1 Q. You've got it. It's the one you have
2 opened to your right. That's it right there.

3 A. No wonder I can't see the document. Okay.
4 What's the question?

5 Q. The question is in pages 15 and 16, what's
6 the primary concern that you're raising?

7 A. Oh, this is the discussion about using AP-4
8 as a background monitoring well. AP-4 is located
9 hydraulically downgradient of the Lakeside ash pond.
10 It penetrates a ten-foot layer of coal ash, or it
11 penetrated a ten-foot layer of coal ash when it was
12 installed, and it, not unsurprisingly, returns high
13 arsenic.

14 MS. WILLIAMS: I'm going to object
15 again to explain the relevance of arsenic background
16 wells and what factor under Section 42(h) this
17 testimony is relevant for.

18 MS. BUGEL: Section 33(c), not 42(h).

19 MS. WILLIAMS: Okay. I mean, 42(h) is
20 the penalty factors, right? Am I citing it
21 correctly?

22 MS. WEBB: Honestly, I can't keep it
23 straight.

24 MS. BUGEL: 42(h) is the penalty

1 factors, but our pre-hearing memo made clear that
2 we're not asking for a penalty. We're just asking
3 for removal as the remedy.

4 MS. WILLIAMS: Thank you.

5 MS. BUGEL: So Section 33(c), this is
6 relevant to whether or not the ash ponds are coming
7 into compliance with the standards, including the
8 Environmental Protection Act, and it's relevant
9 because the higher the background is the fewer
10 exceedances you have. And that goes directly -- the
11 exceedances go directly to whether or not the ponds
12 are coming into compliance.

13 MS. WEBB: I'm going to go ahead
14 and --

15 MS. WILLIAMS: Exceedances of boron,
16 sulfate, or TDS, or exceedances of anything that
17 hasn't been proven to be caused by the ash pond? So
18 there has not been evidence made that the ash ponds
19 cause exceedances of arsenic. That has not been
20 settled in this case. We can bring that into it if
21 it's rele -- if it needs to be relevant for the
22 remedy, we will put on testimony as to why arsenic
23 levels are not caused by the ash pond. We can and we
24 will, but I don't think it's relevant to the remedy

1 for boron, sulfate, and TDS what the background
2 number for arsenic is.

3 MS. WEBB: Well, you're right, this is
4 not a liability hearing, it's a remedy hearing, but I
5 did say I would allow limited testimony on the
6 constituents that were alleged in the amended
7 complaint as long as they relate to 33(c), 42(h). So
8 I am going to --

9 MS. WILLIAMS: Can we ask for what
10 33 -- did you explain what 33(c) factor it is?

11 MS. BUGEL: Yeah. The continuing
12 whether the company is coming into compliance.

13 MS. WILLIAMS: All right.

14 MS. WEBB: Okay. Go ahead.

15 MS. WILLIAMS: I may still object
16 again. I'll let it go for a bit.

17 MS. BUGEL: Just for expediency, I am
18 willing to agree to an ongoing objection so that we
19 don't re-argue the same point.

20 MS. WEBB: I am, too, a standing
21 objection.

22 MS. WILLIAMS: I mean, I'm not
23 worried. You said limited, so at some point am I
24 allowed to make a new objection that it's not limited

1 anymore, is that fair, or are you just always going
2 to --

3 MS. WEBB: Yes, yes, yes.

4 MS. WILLIAMS: I mean, I'm assuming
5 you would probably keep it limited.

6 MS. WEBB: Yes. Well, I mean, it is
7 self limiting in the sense that we have about an hour
8 and a half left for Complainants' questioning.

9 Q. (by Ms. Bugel) Okay. So I want -- let's
10 see. Now I lost track of where I was.

11 Okay. So, Mr. Hutson, you were talking about
12 your concern regarding AP-4?

13 A. Oh, yeah.

14 Q. Can you please -- could you please go on
15 with your concerns regarding AP-4?

16 A. I think I pretty much summarized it in a
17 nutshell. It's actually located downgradient of the
18 ash in Lakeside, and it penetrates a ten-foot layer
19 of coal ash where it was bored. So we now know
20 that -- because of that well, we know there is
21 actually ash outside the berms of the Lakeside
22 impoundment. We've got limited amount of data on the
23 extent and that sort of thing, but it's there.

24 Q. And just on whether or not AP-4 is

1 downgradient, your Exhibit 15 has attachments to it,
2 right? I want to turn to Attachment A.

3 A. Yes. Potentiometric surface maps.

4 Q. Wonderful. And can you please turn to the
5 fourth of those maps?

6 A. Okay.

7 Q. And can you maybe just -- and I realize
8 it's hard to do because the record won't, but can you
9 explain for the record where AP-4 is located on that
10 map?

11 A. It is between the west side of the Lakeside
12 impoundment and Sugar Creek just downstream from the
13 dam. Not too far from the dam. I don't know how far
14 that is.

15 Q. And do you see --

16 A. A few hundred feet.

17 Q. Do you see the red arrows on that map?

18 A. Yes.

19 Q. What are the red arrows? What are they
20 supposed to represent?

21 A. The groundwater flow direction.

22 Q. Do you have an opinion on whether these
23 flow arrows are drawn correctly?

24 A. Oh, in this case they're supposed to be

1 perpendicular to the contour lines and actually
2 they're at an angle to the contour lines here.

3 Q. And if the arrows were drawn correctly,
4 what would they show?

5 A. They would show flow toward the -- from the
6 northeast to the southwest.

7 Q. And what would they show in terms of AP-4?

8 A. AP-4 is downgradient of -- the actual flow
9 between AP-5 and AP-4 is not well represented here
10 anyway because if you look at the head differential
11 between AP-5 and AP-4, it's clear that there's a
12 downgradient component of flow that's straight
13 between those two.

14 Q. Okay. And do you also have the boring log
15 for AP-4 attached to your report, the Exhibit 15
16 report?

17 A. I don't know. Oh, I do.

18 Q. And can you tell us where to find that?

19 A. Yeah. It's Attachment C, AP-4 boring log.

20 Q. And what does the AP-4 boring log show?

21 A. If you look at the boring log, you hit a --
22 let's see, the one, two, three, fourth description,
23 material description down from the top of the boring,
24 five inches of brown sand transitioning to black fly

1 ash at 9.4 feet. Very stiff. Slightly moist.

2 Black fly ash continues all the way down to a
3 little over eighteen feet it appears. No, I take
4 that back. A little -- about twenty feet. So about
5 ten feet of coal ash.

6 Q. Okay. Okay. And I'd like to turn to
7 page 19 of your report, and on page 19 do you have
8 a -- I'll wait for you to get there. Do you have a
9 discussion of closure alternatives?

10 A. I do.

11 Q. What is the first closure alternative that
12 you have here?

13 A. Leachate collection and treatment.

14 Q. And can you summarize what leachate
15 collection and treatment entails?

16 A. Basically it's -- well, it would be similar
17 to the dewatering system that is proposed under the
18 new plan. It's installing extraction wells and
19 collecting leachate from inside the impoundment.

20 Q. And what's your recommendation on leachate
21 collection and treatment?

22 A. I recommended against it for a couple of
23 reasons. One is that it's difficult to do a
24 collection in fluvial sediment and be sure that

1 you're going to get, capture all the material, all
2 the contaminants just because of the heterogeneity of
3 the sediments.

4 I've worked on some sites where I've been trying
5 to capture CCR leachate for Colstrip up in Montana.
6 They've worked on it for probably twenty years trying
7 to capture the contaminant plumes or at least control
8 them at the source with pumping. And because of the
9 heterogenous nature of the fluvial sediments up
10 there, it makes it very difficult to be successful.

11 Q. Okay. Can you turn to page 20, and on
12 page 20 you discuss collection and treatment of
13 contaminated groundwater?

14 A. Uh-huh.

15 Q. Can you summarize what that is?

16 A. That would be like infiltration --
17 groundwater collection galleries or pumping well
18 systems designed to capture the plumes after it's
19 left the impoundment.

20 Again -- in fact, I see that I even reference
21 the coal strip again in this section because of the
22 problems that they've had trying to capture the
23 plumes in fluvial sediments just because of the
24 heterogeneity of the system.

1 Q. And what is your recommendation regarding
2 collection and treatment of contaminated groundwater?

3 A. It would be very difficult at the CWLP
4 ponds, ash pond, because there's so little distance
5 between the edge of the impoundments and Sugar Creek.
6 If you put a pumping system in or a collection trench
7 in downgradient of the ponds at CWLP, it would be
8 collecting a lot of creek water in addition to
9 whatever comes down from the site, the impoundment
10 site.

11 Q. And can you please turn to page 21, and
12 this discusses physical barriers, correct?

13 A. Uh-huh, yep.

14 Q. Can you summarize what physical barriers?

15 A. Well, when I'm talking physical barriers,
16 my meaning is things like low permeability barrier
17 walls, slurry walls, things that basically are meant
18 to contain the containment and ash inside the
19 perimeters of the impoundment.

20 Q. And what's your recommendation?

21 A. It could be somewhat helpful maybe if it
22 was paired with other things like pumping from
23 within. The problem is that there's no bottom on
24 Colstrip other than all the way down to bedrock. You

1 have to take it down to the rock to get a good bottom
2 on the barrier.

3 Q. And you said Colstrip.

4 A. Did I say Colstrip?

5 Q. There's no bottom on Colstrip. Did you
6 mean --

7 A. Actually there's no bottom on CWLP is what
8 I meant, but I'm thinking Colstrip.

9 Q. And by bottom, what are you referring to?

10 A. You'd have to take your permeability, low
11 permeability systems, down to the bedrock to get a
12 good seal on the bedrock in order to get it
13 contained.

14 Q. Okay. And let's look at, same page, you
15 talk about retrofitting impoundments as an
16 alternative?

17 A. Uh-huh.

18 Q. Can you summarize what's involved there?

19 A. This may have made sense if they still
20 needed the room for disposal of additional coal ash,
21 but basically I've seen some sites where they've gone
22 in and pulled ash from one side of the pond to the
23 other, backfilled some clean backfill and then put a
24 liner in and basically lined the pond. Create a

1 lined pond in place of an unlined pond.

2 Q. And what's your recommendation on this for
3 CWLP?

4 A. Oh, I don't think it makes any sense since
5 they don't need any more CCR disposal.

6 Q. Let me ask you this. Why, even if they
7 don't need any more, if they wanted to leave the ash
8 there instead of removing it, why wouldn't retrofit
9 make sense?

10 A. Well, you'd already have to move the ash
11 once to get it out of the way to be able to retrofit
12 it, so why then move it back into the same spot?

13 Q. Okay. So then on page 22, you discuss
14 in situ stabilization. And situ is S-I-T-U. And
15 what's -- can you summarize what that is?

16 A. What is done in these situations is
17 chemically stabilize the ash that is -- at least the
18 ash that's potentially in contact with water. So I
19 was contacted to see if I would consult on the Gibson
20 station in Indiana to talk about how far up the
21 sediment column or waste column they would need to
22 stabilize in order to keep the materials that are
23 located below water table solid and not let them
24 leach.

1 I declined to do that because I'd already been
2 working for another organization over there, but
3 that's how I know that that was their plan was to in
4 situ stabilization.

5 Q. And what's your recommendation on this for
6 CWLP?

7 A. You know, I -- actually, I believe I said
8 that I thought, you know, that might be something
9 that could be useful.

10 Q. And how -- in your opinion, how does this
11 compare to removal, excavation and disposal or
12 excavation with beneficial reuse?

13 A. Well, the benefits of just either
14 excavation or disposal or excavation and reuse is it
15 physically gets the waste up out of the flood plain
16 and away from the creek. So it's more of a -- it's
17 just a safe alternative. Stabilization could, it
18 could, I would have thought it would be something
19 that would be looked at, but not that I know of so
20 far.

21 Q. Okay. And turning to at the bottom on
22 page 22 your discussion of cap in place begins. Do
23 you see that?

24 A. Uh-huh.

1 Q. And it carries over to page 23. Can you
2 summarize -- we've already discussed cap in place as
3 a proposal for CWLP, correct?

4 A. Yeah.

5 Q. So I don't think we need to summarize what
6 it is. But on page 23, you have a series of bullet
7 points and do these bullet points capture the reasons
8 for your recommendation?

9 A. Yeah.

10 Q. And what's your recommendation?

11 A. I just -- I think there are better
12 alternatives than capping the waste in place in an
13 area on the flood plain next to the creek with a
14 shallow potentiometric surface.

15 Q. Okay. And I don't want to reiterate
16 anything that we've already discussed, but do any of
17 these bullet points touch on anything that we haven't
18 discussed yet as a reason for your recommendation?
19 You know what, I'm going to direct you to the very
20 first bullet point. Can you tell us what that bullet
21 point covers?

22 A. It's talking about the ponds and their
23 close proximity to the uppermost aquifer.

24 Q. And does this indicate that they are within

1 five feet of the high water table for the uppermost
2 aquifer?

3 A. Yes.

4 Q. And where does that five foot measurement
5 come from?

6 A. Well, I've got a reference to a 2018
7 evaluation of CCR location restrictions document.

8 Q. And do you know what the location
9 restrictions are?

10 A. You need to have a five foot separation
11 between the bottom of the waste and uppermost
12 aquifer.

13 Q. Okay. And do the CWLP ponds have that?

14 A. They've got -- the actual aquifer is
15 probably lower than five feet below. It's the
16 potentiometric surface that's not.

17 Q. Okay. Okay. Okay. Okay. So I want to
18 pull up Exhibit 17, which is your reply report in
19 response to Mr. Hunsberger. Do you have Exhibit 17
20 in front of you?

21 A. I do.

22 Q. That doesn't -- and the attachments are
23 still there because we might need those.

24 A. I don't know about attachments.

1 Q. Yeah, we will need the attachment, which
2 was the EPRI report.

3 A. Oh, I saw that. There it is.

4 Q. Okay. So if you could turn to page 11 of
5 this report, and do you see the heading Hunsberger
6 Deposition Comment 2? Do you see that?

7 A. I do.

8 Q. And looking at the first paragraph, first
9 sentence, are you responding to an argument that
10 Mr. Hunsberger made that the source of contamination
11 will be cut off once the leachate head within the
12 impoundment is reduced?

13 A. That's what I'm responding to, yep.

14 Q. All right. And what's your response to
15 that?

16 A. Well, that's -- at multiple sites I've
17 noticed that you may get a reduction in contamination
18 during the initial dewatering of a facility. And cut
19 off -- how did he say it? Once the leachate head is
20 reduced.

21 But the problem is that that reduction in head
22 also reduces the velocity with which water moves
23 through the impounded coal ash. Slower moving water
24 that's moving through the coal ash has more contact

1 time between the ash and the water, which actually
2 allows the concentrations in some cases to increase
3 over what there was before.

4 This is something that I first observed at the
5 Roxboro site in North Carolina, but it was kind of
6 early in its development at that point. But after I
7 was involved with that, I was given a copy of this
8 EPRI document. This EPRI investigation, this is from
9 2001. It's called Evaluation and Modeling of Cap
10 Alternatives at three unlined coal ash impoundments.

11 What they did was they went to three different
12 coal ash impoundments. They were trying to show that
13 just by dewatering the impoundments that the
14 contamination would be cut off and the problem could
15 be solved just by dewatering.

16 On two of the impoundments they simply dewatered
17 and monitored to see what the results were. On the
18 third they dewatered and put a cap over the top.
19 After a period of time, after they dewatered these
20 facilities, they found that two of the three there
21 was an improvement. But much to their surprise the
22 third impoundment showed increasing concentrations of
23 coal ash constituents in the groundwater after it was
24 dewatered.

1 And they concluded in this document that it was
2 a function of the slow down of the flow, allowing
3 more contact time with the waste, allowing dissolved
4 metals to reach higher concentrations in the one that
5 had been left inadvertently in contact with
6 groundwater. One of the three they did not know had
7 been left in contact with groundwater and, therefore,
8 the contaminants went up in concentration.

9 Q. And can you please turn to Exhibit D4,
10 which is our demonstrative. And I want to turn to --
11 you have a couple or three or four charts on
12 Sutherland. Can you tell us generally about -- can
13 you tell us what Sutherland is an example of?

14 A. This is part of some work I've been doing
15 over the last couple of months on another project,
16 basically looking at some of these other sites that
17 have been closed and still have groundwater in
18 contact with the waste. They've been closed by
19 capping, including this one. Sutherland is in Iowa.
20 The first -- is that the first one?

21 Q. Sutherland is the first one.

22 A. Boron and groundwater at Sutherland, you
23 can see the remediation was done in 2019 and 2020.
24 It was finished in 2020. Since then the

1 concentration of boron in downgradient well MW306 has
2 increased from 2500 to 3500 at the latest sample.
3 It's an example of a site that was capped in place
4 while still leaving the waste in contact with
5 groundwater.

6 The next slide is lithium and groundwater. By
7 the way, these are all graphs that were prepared in
8 the annual report by the Sutherland facilities.
9 These are not graphs I put together.

10 And you can see, if you look at lithium,
11 groundwater concentrations of lithium are increasing
12 at MW306, MW301, and interestingly going down a
13 little bit in MW303. It's not uncommon to see water
14 quality deteriorating in some locations, generally
15 the more direct downgradient locations, or near a low
16 point and water quality improving in some.

17 And that's because as you dewater these things
18 and cap them, it's no longer as much a radial flow.
19 So some of these wells that had been impacted are no
20 longer being affected by the radial flow and water
21 quality improves in some of those locations.

22 The next graph is molybdenum in groundwater at
23 Sutherland. And you can see since 2020 molybdenum
24 has taken a jump in MW306, MW305, and again declined

1 in MW303, similar to the previous situation.

2 Q. Can you just turn back to lithium? I know
3 you said it was decreasing in 303. Was -- can you
4 explain how that compares to the number of wells
5 where it's increasing?

6 A. How it compares to the number of wells?

7 Q. Well, you said in some wells it's
8 decreasing?

9 A. Yeah.

10 Q. And I'm wondering just in terms of sheer
11 number of wells, how many are decreasing versus how
12 many are increasing?

13 A. Oh, there's two increasing and one
14 decreasing. And again that is a reflection of
15 transitioning from radial flow, which is impacting
16 wells that wouldn't ordinarily be impacted, and
17 straight through thru-flow.

18 Q. And can we turn to Hennepin and discuss
19 Hennepin now?

20 A. Sure. The next graph is a graph of water
21 quality at the old west ash pond from Hennepin. It's
22 another site that I've just looked at in the last two
23 or three months as part of another project. And you
24 see that the -- again, there are some wells that are

1 increasing over time since the completion of the
2 capping in 2020, and there are a few wells again that
3 are no longer affected by the radial flow and the
4 concentrations are declining.

5 So it's the combination of wells being
6 downgradient or in an affected area under normal
7 conditions as opposed to radial flow conditions.

8 Hennepin, the next page, is sulfate. Sulfate
9 shows big increases in concentrations at well 35,
10 pretty stable at well 23, and some of the others are
11 declining slowly. So it's variable from location to
12 location, and it depends on how much of these wells
13 were impacted by the radial flow beforehand.

14 And then the last one is arsenic concentrations
15 at Hennepin old west ash pond, and you can see two of
16 these wells -- let's see. What well is that, 21,
17 21R, and 49 showed a big increase in arsenic over
18 what they had previously contained; although, the
19 values are still fairly small compared to some of the
20 ones that we see around CWLP.

21 Q. Okay. So I think -- let me -- and can you
22 please turn back to Exhibit 15, your January 5th
23 report, page 24. And on page 24 you discuss
24 excavation and beneficial reuse. Do you see that?

1 A. Yes.

2 Q. And can you summarize what excavation and
3 beneficial reuse entails?

4 A. That would be, oh, taking the ash out of
5 the ponds and -- oh, there was an example given in
6 somebody's deposition about using the ash in
7 construction of a highway interchange. If I'm not
8 mistaken, there's been a history of taking the ash
9 for mine reclamation, things like that. Anything
10 that could use the coal ash in a beneficial manner.

11 The Valmont site in Boulder, they entered an
12 agreement for a company to come in and recycle the
13 ash into cement or use it in their cement making
14 operations. So anything that would get it out of the
15 ground, get it off the floodplain, get it away from
16 the creek, and eliminate the source of contamination
17 from the environment.

18 Q. And can you turn to excavation and
19 disposal?

20 A. Yes.

21 Q. And can you summarize what that is?

22 A. That would be excavate the material and
23 take it to another site, take it to a new landfill
24 on-site, take it to a better disposal area than the

1 floodplain along Sugar Creek.

2 Q. Is this the same as removal?

3 A. Yeah. I guess it would be, yeah. Did I
4 say removal?

5 Q. No, no. I want to get the terminology
6 straight for the record because it can be referred to
7 by different names. How does excavation and disposal
8 compare to clean closure?

9 A. Typically excavation and disposal would be
10 clean closure.

11 Q. What does clean closure mean to you?

12 A. That means the coal ash and its
13 contaminated underlying sediments are removed and
14 disposed of properly.

15 Q. And what's your recommendation on
16 excavation and disposal?

17 A. I think it's an appropriate tool to be used
18 at this facility.

19 Q. And did I ask you your recommendation on
20 excavation and beneficial reuse? I can't remember
21 now. I think I might have missed it.

22 A. I don't know, but I think I said I would
23 support that being looked at.

24 Q. And why do you support these two options?

1 A. Because it gets the waste up and off the
2 floodplain and away from the groundwater and disposed
3 of properly.

4 Q. So we've talked a little bit about removal.
5 You have some experience with removal sites, right?

6 A. I do.

7 Q. Is Plant Wansley --

8 A. Wansley in Georgia.

9 Q. Is that one of them?

10 A. Uh-huh.

11 Q. Can you tell us about that?

12 A. Oh, it's one of Georgia Power's coal ash
13 plants that had, I don't know, at least two or three
14 ponds on it. I went down there and met with the
15 state and talked with them and talked with
16 consultants for Georgia Power. And the last I heard,
17 it was at least one or two of the ponds that they'd
18 agreed to back them up or -- back them up -- to
19 excavate them and remove them. Wansley, I believe,
20 goes to an off-site landfill.

21 Q. And what about Plant Hammond in Georgia?

22 A. That is the same kind of a thing. I was
23 down there working for another organization and met
24 with the state, and they finally agreed to excavate

1 and dispose of. I'm trying to remember where their
2 waste goes. I don't recall offhand. But they were
3 going to excavate and treat it, you know, put it into
4 either on-site landfill or off site.

5 Q. And can we move on to sites in North
6 Carolina?

7 A. Uh-huh.

8 Q. How about Belews?

9 A. Belews Creek. That's a big coal ash
10 impoundment that is being excavated, and that one I
11 believe has a new on-site landfill that they're
12 taking the ash to.

13 Q. Okay. And how about Mayo in North
14 Carolina?

15 A. The same thing, they're excavating and
16 taking that one to a new on-site landfill.

17 Q. And do you know if Mayo appears in Table 1,
18 the attachment?

19 A. Table 1. Does Mayo appear? I don't know.

20 Q. And these do look like they're alphabetical
21 for ease of finding.

22 A. Yes, Mayo does.

23 Q. Okay. And how about Roxboro in North
24 Carolina?

1 A. Roxboro. I don't see Roxboro on here, do
2 I?

3 Q. Well, can you tell us about Roxboro?

4 A. Yeah. That's a huge site. There's a
5 combination of remedies going on there. One area is
6 being -- is having a slurry wall put in around it to
7 control the subsurface and then a cap over the top of
8 it. And other areas are being excavated and removed
9 for disposal off site at a nearby landfill.

10 Q. And how about -- how about sites in South
11 Carolina?

12 A. Okay. Wateree.

13 Q. Wateree.

14 A. Yep. Wateree is one I went to and visited
15 while they were in the process of excavating it. It
16 was -- it's completely done. It's been done for a
17 while now. And they were excavating it and moving it
18 to a facility, a new facility maybe a couple miles
19 away.

20 Q. And does Wateree appear in Table 1?

21 A. I don't know. Yes, it does.

22 MS. BUGEL: So based on that
23 testimony, Complainants would renew our motion for
24 exhibit -- the Table 1 in Exhibit 15 to be included

1 in the exhibit.

2 MS. WEBB: Do you still have questions
3 about --

4 MS. WILLIAMS: I still believe he
5 doesn't understand the table and how it was prepared,
6 and I can ask a bunch of questions that show that on
7 cross. It might mean we're going to be here later
8 than otherwise.

9 MS. WEBB: Okay.

10 MS. BUGEL: Hearing Officer, if I
11 could respond. I just -- I don't believe that he
12 needs to understand how it was prepared. Experts can
13 rely on all sorts of records without understanding
14 how they're prepared. The relevant question is, is
15 it relevant? Is it useful to the Board?

16 MS. WILLIAMS: As you said, we talked
17 about is it something they could reasonably rely on,
18 right? And so we know that someone, not the witness,
19 went onto a Website, manipulated the data on the
20 Website and printed it out, and no one -- and made a
21 table from that, right? That's what you did, right?
22 You can't go to a Website and find this table as it
23 is. That information you can go find, but you can't
24 like just find this table.

1 MS. BUGEL: But you're representing
2 that I made this table, and that's not accurate.

3 MS. WILLIAMS: Well, that's what was
4 in the witness' testimony. He said they made the
5 table. I don't know --

6 MS. BUGEL: I think he said I gave it
7 to him.

8 MS. WILLIAMS: So I don't know who
9 made the table, but somebody made it. It's not like
10 I can just go out on the Website and find the same
11 table. You have to choose factors that get it. And
12 we don't know what caused the site to get on the
13 table or off the table. That was my concern.

14 I wanted to present it with someone who could
15 explain why is this site not on the table and this
16 one is. I can ask him about some of the sites he
17 talks about, what I know about why they may or may
18 not be on there, but it's offered for the proof of
19 the matter asserted, which is lots of people are
20 doing removal. That's what he uses it for and so,
21 therefore, look at this table. Lots of people are
22 doing removal. So if we're going to let it in, I
23 will be asking cross about it.

24 MS. WEBB: I think it is a fair point

1 that you make, but let's just leave it as an offer of
2 proof and you can argue in your post hearing briefs
3 for the admission but I understand your questions
4 about the document.

5 Q. (by Ms. Bugel) Okay. Moving on. Can you
6 please pull up -- well, there's one -- there's
7 actually one question I want to go back to where --
8 one topic I want to go back to very quickly. On the
9 topic of arsenic in Exhibit 15, back on pages 15 and
10 16, there's one item I forgot to cover. And at the
11 top of page 16, Mr. Hutson, you -- you talk about
12 pore water analysis from Dallman and Lakeside ash
13 ponds.

14 A. Right.

15 Q. Can you please explain --

16 MS. WILLIAMS: I'm going to object
17 again. So we're going to go back again? So now
18 you're going to be presenting evidence about whether
19 arsenic concentrations are caused by the ash ponds or
20 not, right? That is what this line of evidence looks
21 like to me.

22 I don't know if you've thought through why
23 you're asking these questions, but that's what I see
24 in the questions and I think it would be really --

1 make things really difficult for the Board for us
2 then to have to argue about all the reasons we don't
3 think the arsenic concentrations are caused by the
4 ash pond.

5 MS. BUGEL: Okay. This is in his
6 report.

7 MS. WILLIAMS: I asked for it to be
8 redacted in my motion for that reason.

9 MS. BUGEL: And your motion wasn't
10 granted.

11 MS. WILLIAMS: And you were granted
12 limited leeway to present things. So explain -- if
13 that's not true, if that's not what you're -- is that
14 not what you're trying to show with the questioning?
15 Let's agree on this so we don't have it in there and
16 have to take it out.

17 MS. BUGEL: I was granted limited
18 leeway. I don't think I've exceeded the bounds in
19 the amount that we've discussed arsenic. It's been
20 very limited.

21 MS. WEBB: No, I think it has been
22 limited, but she's right. We've already -- you've
23 already agreed not to try to show that the ponds were
24 the cause of the arsenic.

1 MS. BUGEL: I don't think I agreed to
2 that. I think in my response --

3 MS. WEBB: Oh, you agreed not to
4 pursue it?

5 MS. BUGEL: No. It was my response on
6 the motion in limine.

7 MS. WILLIAMS: We already talked about
8 that before that.

9 MS. BUGEL: The stipulation is the
10 same. The stipulation is about isolated arsenic in
11 only certain wells and that they were -- and it was
12 just certain wells at certain times. Once arsenic
13 got beyond that, then it was an issue not covered by
14 our stipulation and that's what I pointed out in my
15 motion in limine, that we're talking about different
16 wells and we're talking about arsenic that is not
17 just isolated exceedances, one here, one there.

18 This, you know, I do think it's relevant
19 that the arsenic -- whether or not the arsenic is
20 coming from the pond because that adds to the
21 evidence that the groundwater is actually getting
22 worse and that there's not compliance.

23 MS. WEBB: Well, I'm concerned about
24 the fact that we're bringing new wells in at this

1 stage, as well as the cause for the exceedances. I
2 mean, I guess I was anticipating that you would just
3 talk about, you know, you would just kind of
4 summarize that, you know, there was arsenic in
5 wherever but that it wouldn't, you know, that most of
6 your questioning would focus on the sulfate, TDS, and
7 boron.

8 MS. BUGEL: I think, though, the
9 reason to bring new wells is this is a recent problem
10 that came up after the Board's liability decision,
11 and that's why we're focusing on these more recent
12 years like 2024 and the fact that at the time that we
13 made this stipulation, yes, arsenic was isolated.

14 Arsenic was only appearing in AW3, and then
15 since then it's actually appearing in new wells and
16 that's our concern and this is where the public
17 health concern, the concern about to the groundwater
18 is actually even worse because of the harm that
19 arsenic can cause.

20 MS. WEBB: I understand, but there
21 wasn't an amended complaint and I just don't feel
22 like they had enough opportunity to prepare a
23 response to that for today.

24 MS. BUGEL: And I think, though, we're

1 looking at reports that are dating back to January of
2 2025, and there was time after Mr. Hutson's report to
3 actually respond on arsenic.

4 MS. WILLIAMS: We did. We filed a
5 motion in limine. We deposed him on it. And that's
6 fine, but I filed the motion in limine to say I think
7 it's wasting the Board's time. I know it's there and
8 that's why I filed the motion in limine because I
9 think it's a waste of the Board's time to bring these
10 issues in they can't influence where there was no
11 liability finding. We'll have to come back and be
12 prejudiced by it. It's prejudicial, it's not -- and
13 now we'll have to come back and defend that we aren't
14 causing this arsenic.

15 I don't know why it matters. Under
16 Illinois law, boron, sulfate, and TDS is enough to
17 require a remedy. Why would we need to complicate
18 things for the Board to focus on something that
19 hasn't been established as a liability? Under
20 federal law that's not necessarily the case, and
21 that's why there's a lot of attention on arsenic in
22 these reports. But under Illinois law, we have to
23 fix the boron, sulfate, and TDS. It's not relevant.

24 MS. WEBB: I think we're getting lost

1 in the weeds. I mean, I'm going to give you a few
2 more questions so you can complete your thought but,
3 you know, it's really -- you don't need it. You got
4 the adjudication already on the boron, sulfate, and
5 TDS.

6 I'd like to redirect you sort of. I don't
7 think you need this for your remedy. And I'm not
8 sure how much -- how fair it is. I feel like there
9 was no discussion about arsenic for a number of
10 years, and then it just kind of resurfaced here at
11 the end right as we were getting ready for hearing.
12 So I think, you know, I don't want to get lost in the
13 weeds on this issue.

14 MS. BUGEL: Okay.

15 MS. WEBB: But I will let you ask, you
16 know, summarize your point, and let's maybe move on
17 to other constituents or whatever else you have.

18 MS. BUGEL: One of the lines of
19 questions that I haven't done yet is the January --
20 the 2024 groundwater monitoring reports, and I was
21 going to ask Mr. Hutson to summarize arsenic, what he
22 sees in arsenic in those reports. I want to just ask
23 you right at the moment, is that in or out because I
24 won't ask -- if you're ruling that that is out, then

1 I won't ask those questions.

2 MS. WEBB: You know, I just don't want
3 to waste a lot of time on it. I don't think we need
4 it. If he can summarize it briefly. I feel like
5 this whole conversation is taking away from your time
6 for you to pursue other options.

7 MS. BUGEL: Okay. I'm going to check
8 the time and I'm going --

9 MS. WEBB: It's 2:20.

10 MS. BUGEL: Yes. I'm going to check
11 the time and see what I have left. So let me ask
12 this. Can I proceed with -- I can't even find my
13 outline anymore. I want to look at what I have left.
14 Okay. So I think I have time and I will be able to
15 finish by 3:00 o'clock, and I will ask just two more
16 questions about arsenic.

17 MS. WEBB: Okay. Sounds good.

18 Q. (by Ms. Bugel) Top of page 16, Mr. Hutson,
19 where --

20 A. Exhibit 15?

21 Q. Exhibit 15, at the top of page 16, can you
22 please explain what the arsenic testing of Lakeside
23 pore water showed?

24 A. Oh, okay. Yeah, total arsenic

1 concentrations detected in Lakeside range from 32.8
2 to 139 micrograms. So that's .0328 to 0.139
3 milligrams.

4 Q. Okay. And I want to turn to the
5 January 2024 groundwater monitoring report if we --
6 and I believe that is in our stipulated exhibits and
7 Joaquin is going to come help find that in your stack
8 of exhibits.

9 MS. WILLIAMS: Thirteen, does that
10 sound right?

11 Q. (by Ms. Bugel) Wait a minute. Thirteen is
12 dated January of 2024. I think we want the one
13 that's dated January of 2025 for the year of 2024.
14 It is Exhibit 8. And can you please look at that
15 groundwater monitoring report and tell us what your
16 observations are about arsenic?

17 A. Okay. This is 2024 data. Exceedances of
18 background was 0.0375 in AP-4. AP-7 had exceedances
19 all four quarters, and RW-3 had exceedances in all
20 four quarters.

21 Q. Okay. And let's turn to your -- what we've
22 called your reply report, which is Exhibit 17, and
23 this report is dated August 1st of 2025. Let me know
24 when you have that in front of you.

1 A. Yep. Got it.

2 Q. And I would like to turn to page 6.

3 A. Okay.

4 Q. And under comment 6, can you explain what
5 argument you are responding to? And I would look not
6 at the italics but your first sentence saying
7 "Mr. Hunsberger suggests."

8 A. That the indicator parameters arsenic,
9 boron, sulfate, and TDS will be found at elevated
10 concentrations at all leaking CCR sites.

11 Q. Do you agree with that?

12 A. No.

13 Q. Why not?

14 A. Because in my experience many of these
15 sites have -- some have boron, some have arsenic,
16 some have two or three of them. Some have
17 molybdenum. I did a study a few years ago of -- I
18 don't remember who for now -- reviewing the
19 background -- or not background. Impacted
20 downgradient CCR groundwater quality at sites all
21 over the country.

22 Boron was by far the number one most frequently
23 detected contaminant. Number two was lithium.
24 That's found at many sites. But cobalt, molybdenum,

1 manganese, arsenic, a variety of other sites, and
2 this really seems to be dependent on the coal source,
3 what mine did the coal come from, as well as how it
4 was processed, what the difference is between the
5 equipment that burned the coal with was.

6 You can see at one site I worked on there was
7 talk of digging up a small area of the coal ash,
8 which had been shown by sampling to contain very high
9 concentrations of contaminants with the idea that by
10 taking out that small area the impacts to groundwater
11 downgradient would be improved. So it changes over
12 time at a single plant even. When the contracts for
13 supplying coal change from one mine to another, you
14 can get different suites of contamination.

15 Q. Okay. Can you please turn to page 9?

16 A. Okay.

17 Q. And comment 11 on page 9.

18 A. Uh-huh.

19 Q. And this discusses lenses, right?

20 A. Uh-huh.

21 Q. Can you explain what lenses are?

22 MS. WEBB: Sorry. Which exhibit?

23 MS. BUGEL: I'm sorry. We're in

24 Exhibit 17 still.

1 MS. WEBB: Seventeen. Okay.

2 Q. (by Ms. Bugel) On page 9, comment 11.

3 A. I use the term lenses. That's a term
4 that's commonly used in alluvial sedimentology to
5 describe discontinuous bodies. These fluvial
6 sediments tend to be more like inter-fingering bodies
7 as opposed to laterally continuous homogenous bodies.

8 If you look at them in cross section, you can
9 see -- go from an area that shows silty sand or silty
10 clay in this area, move down ten feet and it's a
11 different composition. You can have either finer or
12 courser materials. It's very heterogenous.

13 So that's why I use the word lenses. And it
14 also carries over from -- I did my Master's thesis in
15 fluvial sedimentology, so I'm used to describing it
16 like that.

17 Q. And we have one last exhibit that we're
18 distributing. This is Exhibit 26, and we're going to
19 take a moment for you to take a look at that. And
20 are you familiar with this exhibit?

21 A. What's the date on this one? Is there a
22 date on it?

23 Q. It would be great to find a date. I can --
24 my understanding of the date on it is that it's 2017.

1 A. Oh, okay.

2 Q. But I would love to -- October of 2017.
3 I'd love to actually find someplace in here that
4 indicates that.

5 MS. WILLIAMS: I think I would object
6 to this as cumulative, maybe, but obviously I'll give
7 you a chance to clarify what we need this for.

8 MS. BUGEL: Yes. You had indicated
9 that you were objecting to this. Just for purposes
10 of a date stamp, I am looking at the figures
11 towards -- the figures attached to the back, and
12 Figure 3 has a date of 2017 on it. I know there's no
13 date on the front cover.

14 MS. WILLIAMS: Did you respond?

15 MS. BUGEL: I haven't made a motion
16 yet, but I don't know. Hearing Officer --

17 MS. WILLIAMS: If it's too early to
18 object, fair enough.

19 MS. WEBB: Yeah. Can I hear a little
20 more?

21 MS. WILLIAMS: Yeah. No, I do too.
22 That's fine. I think it's cumulative, but I don't
23 know what she's going to use it for.

24 MS. WEBB: Okay. Okay.

1 Q. (by Ms. Bugel) So we've placed a document
2 in front of you, and are you familiar with this
3 document?

4 A. Yes, I am.

5 Q. And have you relied on this document in the
6 course of writing your reports?

7 A. I believe I've referenced this document.

8 Q. And -- well, what do you find relevant
9 about this document?

10 A. Okay. Part of the descriptions of the
11 geologic materials, it was interesting discussions in
12 here. For instance, at the top of page 5 -- well,
13 actually starts on the bottom of page 4. Movement
14 within the creek fill materials is complicated
15 because of the highly variable hydraulic
16 characteristics of the fill materials and their
17 random placement. In some areas, there appears to be
18 direct hydraulic communication between fill
19 materials, shallow sand, and basal sand.

20 That's actually what I would kind of expect for
21 a site that the construction plans made note that the
22 channel -- preexisting channel was not to be
23 backfilled during construction of the impoundment.

24 And the combination of highly variable

1 conditions or materials and the presence in the
2 channel, previously existing channel, can create the
3 potential for cross-contamination or cross-movement
4 of water into contaminants vertically.

5 Q. And can you explain how that discussion
6 relates to Mr. Hunsberger's criticism of the use of
7 the word lenses?

8 A. I'm not sure I understand.

9 Q. Okay. Well, so I'm looking at the very
10 last sentence under comment 11 in your response to
11 Mr. Hunsberger.

12 A. Yeah.

13 Q. The very last sentence in your response
14 where you say: These are sedimentary lenses, not
15 continuous layers of homogenous materials that extend
16 all across the site.

17 How does what you were finding in the 2017
18 groundwater monitoring program relate to that point?

19 A. The materials that are in the creek fill
20 are highly variable, and it's known that the fine
21 grain materials are missing in locations above the
22 creek fill so that allows the possibility for
23 vertical flow either in and out of the impoundment.

24 Q. Okay.

1 MS. WILLIAMS: Can I interrupt and
2 withdraw my objection? I want to apologize to the
3 hearing officer and I don't want to interrupt your
4 flow, but I was getting this one confused with No. 5.
5 I didn't object to this as cumulative. It's not
6 cumulative. You've taken out the one that was
7 cumulative. Sorry. I just want to apologize.

8 MS. WEBB: Okay. Thank you.

9 MS. BUGEL: Then on that note, I will
10 make a motion for Exhibit 26 to be admitted into the
11 record.

12 MS. WEBB: Exhibit 26 is admitted.
13 Also, I think we did not -- did we admit D5? I don't
14 have that we admitted D5, that you moved to admit
15 that.

16 MS. BUGEL: You know what, just --
17 I'll make a motion to admit Exhibit D5 into the
18 record.

19 MS. WEBB: Okay. Yes, Exhibit D5 is
20 admitted. Okay.

21 MS. BUGEL: And while we're doing
22 housekeeping, I wanted to double-check on Exhibit --
23 I know we didn't admit Table 1 to Exhibit 15, but did
24 we admit the rest of Exhibit 15?

1 MS. WEBB: Yes.

2 Q. (by Ms. Bugel) Okay. Wonderful. Okay.

3 So then just to go back to this line of questions.

4 A. Can I point out something else?

5 Q. Yes.

6 A. I just want to point out that in Section
7 2.3 of this report, under uppermost aquifer, the
8 statement is -- oh, let's see. In some areas -- in
9 some locations the creek fill materials, ranging from
10 silty clays and organic silty clays and clayey sands
11 were found to be in direct hydraulic communication
12 with the basal sand that directly overlies the
13 bedrock surface. Due to the highly variable
14 hydraulic characteristic and random placement of the
15 creek fill materials, further characterization is
16 difficult. I've seen that statement in different
17 documents.

18 MS. WILLIAMS: That's what I was
19 getting at with cumulative. Some of this stuff
20 appears many times in many, many places.

21 THE WITNESS: Right, but it's true.

22 Q. (by Ms. Bugel) Okay. Let's move on, then.

23 Okay. Can you please -- can we move on to page 9?

24 A. Of?

1 Q. Page 9, Exhibit 17.

2 A. Okay.

3 Q. And I am looking at comment 12, which
4 starts at the very bottom of page 9. So
5 Mr. Hunsberger indicated that you erroneously
6 indicated that upgradient monitoring well AP-5
7 measures head in the basal sand unit. What's your
8 response to that?

9 A. It measures head in the sediments that
10 directly overlies the shale where the sand is, when
11 the sand is present, but also that the groundwater
12 monitoring program that I reference here describes it
13 as the screen elevation located at the top of the
14 Pennsylvanian shale and across the basal sand at this
15 location. That's a quote from their documents.

16 Q. Okay. And looking at page 8 of Exhibit 26,
17 which is the 2017 groundwater monitoring program --

18 A. Exhibit what?

19 Q. I am looking at Exhibit 26, and I'm looking
20 at page 8 and I'm looking at the third paragraph
21 under Background Quality.

22 A. Okay.

23 Q. And that -- looking at the third sentence
24 in that paragraph.

1 A. Oh, yeah. Uh-huh.

2 Q. Does that support your position?

3 A. Yes. It says the screened section of AP-5
4 is also located at the top of the Pennsylvanian shale
5 and screened across the basal sand at this location.
6 Yep.

7 Q. Okay. And turning to page 11 of
8 Exhibit 17. I am looking at comment 3, all the way
9 on the bottom of page 11. And this states that --

10 A. Ah, I remember that one.

11 Q. Yeah. Do you want to explain what
12 Mr. Hunsberger's theory is and your response?

13 A. Yeah. His theory is that if CWLP were to
14 completely dewater the waste contained in the
15 impoundments that the waste would compact
16 sufficiently that it would preclude interaction with
17 groundwater.

18 And that is simply not the case. As the EPRI
19 study showed, they dewatered these cells and not only
20 did -- in the case where it was still in contact with
21 groundwater, the concentrations not only didn't go
22 down but they actually started to go up.

23 Q. And can you talk to me about in situ
24 chemical stabilization and how that also calls into

1 question the theory that you can compact waste
2 sufficiently to preclude interaction with
3 groundwater?

4 A. Well, if you could dewater waste and have
5 it compact enough that it would no longer interact
6 with groundwater, then people wouldn't be going
7 around and doing in situ stabilization of the wastes
8 that are below the water table. They wouldn't need
9 to anymore.

10 MS. BUGEL: Okay. And with that, I
11 have no further questions.

12 MS. WEBB: Okay. Would you like to
13 take -- should we take a ten minute break before we
14 move on?

15 MS. WILLIAMS: It's really up to the
16 witness. I can get started.

17 THE WITNESS: I could use a quick one.

18 MS. WEBB: Okay. Let's do that.

19 (Whereupon a break was taken.)

20 MS. WEBB: Okay. Looks like everyone
21 is ready. We'll go back on the record and we will
22 take up with Ms. Williams' cross-examination.

23 EXAMINATION

24 BY MS. WILLIAMS:

1 Q. Good afternoon, Dr. Hutson. Is it -- it's
2 doctor?

3 A. No, Mister.

4 Q. Mister. I just want to say good to see you
5 again and congratulations on your much deserved
6 retirement.

7 A. Thank you.

8 Q. I'm not going to spend much time on your
9 qualifications. I don't think there's any dispute
10 you've had a long and good career in this field. So
11 we met in person the first time you visited our site,
12 right?

13 A. Yeah. That's right, yeah. I'm not sure
14 when that was.

15 Q. I was going to say, do you remember when
16 that was?

17 A. I don't remember when that was. It was
18 quite a while ago.

19 Q. Okay. And you mentioned a number of other
20 coal ash sites that you've worked on during this sort
21 of last eighteen years of your career?

22 A. Yeah, twenty.

23 Q. Have you done many of those site visits
24 like this to the other facilities, or was this kind

1 of unusual?

2 A. Oh, no. I've done quite a few site visits.

3 Q. Okay. How many do you think?

4 A. Oh, geez. Probably -- I don't know.

5 Probably eight or nine.

6 Q. And when you came out to our facility, do
7 you remember if we still had four coal-fired power
8 plants at that time running?

9 A. I don't recall.

10 Q. Do you remember if we were still sluicing
11 ash to the ash ponds at that time?

12 A. I believe so.

13 Q. How about were we still sending lime sludge
14 material from the drinking water plant?

15 A. It was still there. I'm not sure if you
16 were still sending it or not.

17 Q. Had we built new --

18 A. No.

19 Q. -- lagoons for the drinking water plant yet
20 at that time? Not yet. So you don't -- do you
21 recall when CWLP stopped sending material to the ash
22 pond?

23 A. I do not off the top of my head, no.

24 Q. And do you know if we've started dewatering

1 the ash pond?

2 A. I do not know that.

3 Q. But you did take a look at the NPDES draft?

4 A. At the draft.

5 Q. I'm just going to -- I'm not convinced
6 we're going to enter this as an exhibit because if
7 you don't know what it is then it's just for
8 identification, but I'll mark it -- what are we on?

9 MS. WEBB: Is this demonstrative or
10 what is -- would it be easier to just call it
11 Respondent's Exhibit 1?

12 MS. BUGEL: We left off at 27.

13 MS. WEBB: Yes, we did.

14 MS. BUGEL: I worry about overlapping
15 exhibit numbers.

16 MS. WEBB: Okay. We can do 28. You
17 want to do 28?

18 MS. WILLIAMS: Sure, yeah.

19 MS. WEBB: Okay.

20 Q. (by Ms. Williams) I'm not sure, but for
21 identification I've just marked this as No. 28. It's
22 possible you won't be able to authenticate this
23 exhibit and we won't enter it, but I just want to see
24 if you have ever seen this and know what it is.

1 A. I've not seen this particular one, I don't
2 believe. Wait a minute. Maybe I just haven't seen
3 the cover page. I don't believe I've seen this.

4 Q. Okay. So when you talked about looking at
5 an NPDES permit, it wasn't this one?

6 A. No.

7 Q. Okay. I will not move to enter 28. We'll
8 just -- I still go back to your earlier testimony
9 that you felt that what you had reviewed, the earlier
10 version that you had reviewed had addressed your
11 concerns about Sugar Creek.

12 A. As I said --

13 MS. BUGEL: I'm going to just object
14 to misstates the witness' testimony.

15 MS. WILLIAMS: Okay.

16 MS. BUGEL: I don't believe the
17 witness said it resolves his concerns about Sugar
18 Creek. I think he said it resolved some of his
19 concerns.

20 MS. WEBB: What did you say?

21 THE WITNESS: I don't know.

22 MS. WEBB: I don't recall.

23 THE WITNESS: I don't either.

24 Q. (by Ms. Williams) I'm not going to ask the

1 court reporter to read that back, that's for sure.

2 A. Anyway, the reason I had that comment in
3 there is that I've seen lots of permits written on
4 these sites which the analytical parameters and the
5 limitations on the effluents have nothing to do with
6 CCR constituents.

7 Q. You would agree EPA's placed substantial
8 and appropriate monitoring in the permit to
9 address --

10 A. I thought it was much better than it could
11 have been, and I was pleased to see the downstream
12 monitoring.

13 Q. So when you did talk about your past
14 experience, most of your hands-on remediation
15 activity was prior to the CCR world time?

16 A. That's correct, yes.

17 Q. But you spent time as a consultant?

18 A. Uh-huh.

19 Q. Primarily for environmental groups,
20 correct, reviewing CCR sites?

21 A. For the last eighteen to twenty years
22 primarily, except for a few projects for people like
23 Midwest Generation or Motorola or things like that.

24 Q. You mentioned there was one site that you

1 looked at for environmental groups even where you
2 were able to say, yep, this one is being adequately
3 addressed?

4 A. Uh-huh.

5 Q. Do you recall which one you said that was?

6 A. Yeah. That was just this past year. It
7 was Valmont.

8 Q. And the -- can you just describe for
9 everyone again quickly what Valmont is doing?

10 A. They are removing -- well, back up.
11 They've entered into an agreement with a recycling
12 company to recycle the material they're excavating to
13 keep it up. The low areas, basically, to get it up.
14 Anything that's potentially or is in contact with
15 groundwater, they're moving it and going to have it
16 recycled. And the stuff that is up, well out of the
17 groundwater with a buffer zone, they're going to cap
18 that in place.

19 Q. Okay. So this is not a site where all of
20 it's going to be excavated for beneficial reuse, only
21 parts of it?

22 A. The parts that are down in groundwater.

23 Q. And you've testified, I believe, but you
24 can tell me if it's not correct, that you don't know

1 for sure, based on what you've been able to review,
2 whether, and to what extent, ash will remain in
3 contact with groundwater after closure at this site,
4 correct?

5 A. Under the new proposed plan?

6 Q. Correct.

7 A. Yeah, I think there are some -- there's a
8 potential that the water levels across the entire
9 site could decline somewhat if the Lakeside -- new
10 Lakeside wetland intercepts -- becomes a groundwater
11 sink and intercepts groundwater, such as flowing from
12 the high elevation or high potentiometric surface
13 area to the southeast onto the site. I would hope
14 that would be the case.

15 Q. And I'm not asking you if you agree with
16 the opinion, but I would like to ask you if from
17 having reviewed so many of CWLP's materials, is it
18 your understanding that CWLP's position is that after
19 closure waste will not be in contact with
20 groundwater? Again, not that you agree with that,
21 but is that what your read is of what CWLP has said?

22 A. I believe so. I believe under both the old
23 and the new.

24 Q. That was their position. And you -- okay.

1 Thank you. And did you perform any of your own
2 modeling on the groundwater?

3 A. No.

4 Q. Okay. I'm going to try to very quickly
5 talk about this issue with the background at AP-4 and
6 not -- I don't think I'm even going to get into some
7 of it, but just the part where you were trying to
8 explain the one statement in your report about
9 increasing background. Do you remember us talking
10 about this at your deposition?

11 A. I do. That's why I went to find out where
12 that came from.

13 Q. So do you agree that if we were to show a
14 chart of the background for that well, it would have
15 been higher prior to the period you were just -- so
16 in your testimony with Faith you talked about a .03
17 versus a .02. Do you agree that prior to that the
18 background had been .07? Do you recall us talking
19 about that?

20 A. I recall it's changed multiple times. I
21 don't know the number.

22 Q. And so is that -- I mean, that's not --
23 there are reasons for backgrounds to change, right?

24 A. I just don't -- yeah, yeah. It's a little

1 uncommon for it to change multiple times.

2 Q. I would agree with you. I would agree. Is
3 it possible, too, that the reason -- I think you
4 testified I wouldn't expect to see a U.S. EPA number
5 be different than a state number, and I think that's
6 a fair point, but is it possible that could also be
7 explained by data changing over time as opposed to
8 one, if you looked at a later report for the other
9 agency versus an earlier? Does that make sense? Is
10 that possible?

11 A. You would think that the numbers would
12 change in tandem if there's a reason rather than
13 showing one report for -- or one number for a couple
14 years and a different number for another couple years
15 to the other agency.

16 Q. I would agree with you that would make
17 sense. Would you agree there's been a lot of work
18 done in the last few years at this site?

19 A. It appears to be; although, I've not been
20 out there to see what's been going on.

21 Q. And I say that in terms of paperwork at
22 least, that there's been a lot of paperwork created
23 since the time you came out to the site as far as
24 studies and samples and such?

1 A. Yes, indeed.

2 Q. You talked about a couple other plants. I
3 mean, you talked about several other plants, and
4 that's understandable, in your testimony, but with
5 regard to this demonstrative chart with the colorful
6 pictures, there was two plants. Sutherland, which I
7 think that was Iowa?

8 A. Yeah.

9 MS. WEBB: Is this D4 you're looking
10 at?

11 MS. WILLIAMS: Yes, D4. Sorry.

12 MS. WEBB: Okay.

13 THE WITNESS: I should get it out.

14 Q. (by Ms. Williams) I don't even think
15 you'll have to get it out. And then the other one
16 was Hennepin, right?

17 A. Right.

18 Q. So when we had your deposition last year,
19 do you remember me asking you if you knew anything
20 about the Hennepin site?

21 A. I remember. I only remembered it because I
22 took a look at the deposition.

23 Q. And what did you say at that time?

24 A. I said nope, don't know a thing about it.

1 Q. And then today you're testifying as an
2 expert witness about Hennepin. Can you tell us about
3 what's changed since then about how you became an
4 expert on that?

5 A. Well, I'm in the middle of doing work.
6 This is a part of the work that I've been doing for
7 the last two or three months, looking at various
8 sites that have been closed with their waste in
9 contact with groundwater and how the groundwater
10 concentrations of CCR contaminants have reacted to
11 that.

12 Q. Okay. So with regard to a site -- so
13 you're saying, and I will just take it as a given
14 because I don't know about that site because I don't
15 have to worry about that site, but we'll say -- we'll
16 accept that it's been closed by capping it in place
17 with waste.

18 A. Clearly under the water table.

19 Q. Yeah. Do you know if there were other
20 corrective actions then proposed to address
21 groundwater contamination there?

22 A. No. I looked at what closure method had
23 been selected and what the water quality impacts
24 were. I don't know what else may have been done out

1 there eventually.

2 Q. But there is -- I mean, corrective action
3 is different, may not necessarily be addressed by
4 closure in a lot of these sites in a way that is
5 being discussed here, right? There's very likely
6 groundwater corrective action that's established?

7 A. Oh, well, this was just a site capping and
8 closure.

9 Q. So are you saying there was no groundwater
10 corrective action proposed or you don't know if there
11 was other groundwater corrective action?

12 A. I don't know if there was anything else
13 proposed that wasn't implemented.

14 Q. Thank you. And then do you agree that this
15 pond at Hennepin that you were looking at had waste
16 added to it from an old polishing pond like we talked
17 about?

18 A. Yeah. The -- what would that be? The west
19 end of that pond was a polishing pond. It was
20 connected right to the same site.

21 Q. And, I mean, would you consider that
22 closure by removal of the polishing pond?

23 A. You know, I really wasn't looking at the
24 polishing pond. I was looking at the ash pond.

1 Q. No. I think it's fine. I think, you know,
2 CWLPL hasn't suggested that its revised closure plan
3 would meet a closure by removal standard, have they?

4 A. Not that I've seen.

5 Q. Is there a -- do you have an opinion or is
6 there a concept, I mean, because the federal rule
7 just has removal or in place. There's just two
8 buckets. But would you agree in a lot of sites the
9 in place may have some type of consolidation that's
10 going on or some type of narrowing, kind of what you
11 discussed at Valmont? What would you describe at
12 Valmont?

13 A. At which one? Oh, Valmont, yeah. It's
14 actually multiple different units on Valmont. So the
15 one closest down to the -- there's a big cooling lake
16 right there. The one closest down by the water,
17 which has got the waste and contact with the water,
18 the groundwater, that's the one that's -- or maybe
19 there's two of them. Those are being recycled.

20 Q. Okay. So -- and so the remaining units
21 then would be closed in place?

22 A. Yeah. Because the bottoms of the waste are
23 at least five feet above the water table.

24 Q. So -- well, let's talk a little bit

1 about -- is this fair to say that you felt the 2025
2 closure plan was an improvement and better for the
3 environment than the 2022 closure plan?

4 A. Yes.

5 Q. But if I'm reading your report right, even
6 though we're all in agreement it's better for the
7 environment, your concern is it's not legal? Is
8 that -- I may be misstating. You state it.

9 MS. BUGEL: Objection. Calls for a
10 legal conclusion.

11 THE WITNESS: Are we talking about the
12 EPA statements?

13 Q. (by Ms. Williams) Uh-huh.

14 A. Whether that's legal or not, I'm not --

15 MS. WEBB: He can answer if he knows.
16 He's an expert.

17 THE WITNESS: I'm not the lawyer. I
18 don't know.

19 Q. (by Ms. Williams) I used the trigger
20 words. I said, oh, you don't think it's legal.
21 Well, is it different if I say you don't think it's
22 consistent with U.S. EPA directives? That's right in
23 his testimony.

24 A. I think that's fair because they've

1 repeatedly said that.

2 Q. And when I listen to -- I went through the
3 exhibits. I listened to your testimony. They said
4 what?

5 A. I'd have to look it up. If you want a
6 quote --

7 Q. Well, no. I don't need a quote. You just
8 summarize what you think would be against the
9 directives and see if I can make a distinction at our
10 site.

11 A. They say that when two sites are not --
12 when two sites are required to close, it's not
13 appropriate -- what's it called?

14 Q. Beneficial reuse?

15 A. Beneficial reuse.

16 Q. I agree with you. I agree with you. Now,
17 I'm going to show you Exhibit 6. Now, Exhibit 6, I'm
18 going to apologize, Hearing Officer, but I'm going to
19 try to be really clear for the record, is not part of
20 the excerpts you have, but I want him to look at --
21 does he have a complete copy of Exhibit 6? I need
22 him to look at a complete copy of Exhibit 6.

23 A. What is Exhibit 6?

24 Q. Exhibit 6 is the --

1 MS. BUGEL: It's the September 9th
2 letter in response to the permit application.

3 THE WITNESS: Oh, there.

4 MS. WEBB: It's here. It's here.
5 It's large.

6 Q. (by Ms. Williams) It's the one we
7 responded to EPA's questions about the permit
8 applications. So it's huge --

9 A. Yeah.

10 Q. -- but it started out with a letter. So
11 it's going to be the letter. I don't need all the
12 stuff at the back. It'll be within the first fifty
13 pages or whatever. And I think the page, if you can
14 find it, PDF page 47.

15 A. Okay.

16 Q. And there's hopefully on your page, like
17 mine, there's a question number 2.4.7. It's very
18 short.

19 A. Oh, yeah.

20 Q. Could you take a quick look at that?

21 A. Okay.

22 Q. So after having looked at that, would you
23 agree that CWLP has represented to IEPA that it will
24 not be beneficially reusing any other CCR material at

1 its surface impoundments is what you described. Or
2 can you explain what -- why don't you explain what
3 you think the question and the answer in 2.4.7 is
4 about.

5 A. It sounds to me like CWLP has committed not
6 to bring additional CCR from somewhere off site.

7 Q. Or from somewhere on site that's the
8 operating plant, I would think, too, right? When you
9 say on site, I don't know how you're defining --

10 A. I was thinking of the impoundments.

11 Q. Right. Committing not to bring new
12 material, correct?

13 A. Additional CCR material for -- not to bring
14 it on site. Okay.

15 Q. I think we already established you're not
16 sure what date we stopped sending material --

17 A. No.

18 Q. -- to the site, but you would agree we're
19 not sending any more material?

20 A. That's my understanding.

21 Q. I'm going to show you an exhibit we've
22 marked as 28 for identification.

23 MS. WEBB: What's the deal with the
24 first 28?

1 MS. WILLIAMS: Oh, shoot. We should
2 have marked it 29. We skipped 27.

3 MS. WEBB: No, we didn't, but I don't
4 know what to do with it. Do you want to withdraw it
5 or --

6 MS. WILLIAMS: Yes. Thank you.
7 Sorry. Let's withdraw the other 28 and make this 28
8 again. Is that okay, Faith?

9 MS. BUGEL: That is fine with me.

10 MS. WEBB: Okay.

11 Q. (by Ms. Williams) Okay. Thank you. Are
12 you familiar with this? This U.S. -- I'll identify
13 it. It says: Frequent Questions about, Closure and
14 Post Closure, Implementing the Final Rule Regulating
15 the Disposal of Coal Combustion Residuals, just to
16 identify it.

17 A. I've not seen this. Is this a Website?

18 Q. Yes. So you did not review other -- you
19 did not review these frequently asked questions when
20 you determined what U.S. EPA guidance, the closure
21 plan may have complied with or not?

22 A. I didn't review this Website.

23 Q. Do you agree that CWLP has identified its
24 facility as a multiunit system? Have you seen that?

1 A. I believe it's identified as a multiunit
2 groundwater monitoring program. I don't know of any
3 other multiunit designation.

4 Q. Are you familiar with other sites that have
5 in the closure process reduced their footprint in
6 doing so? Like -- go ahead.

7 A. I believe so. I'm having a hard time
8 drawing a beat on which ones, but I believe I have.

9 Q. And why would they do that?

10 A. It would be site specific. I don't know.

11 Q. But in site specific cases, would it often
12 mean a smaller impact to groundwater to have a
13 smaller footprint to an ash pond?

14 A. It could. Not necessarily. It may -- it
15 could be just a combining all the contaminant source
16 into one concentrated area.

17 Q. And then you can either -- do you agree or
18 disagree that U.S. EPA guidance provides that CCR
19 operators may move material within a multiunit system
20 without triggering the issues you referred to of
21 putting new material in?

22 MS. BUGEL: I'm going to object to the
23 question, number one, without any exhibits
24 representing what U.S. EPA guidance says. Number

1 two, form of the question because to say do you agree
2 or disagree, I don't think that's a proper form of a
3 question.

4 MS. WILLIAMS: I don't think it was
5 confusing to the witness.

6 MS. BUGEL: I don't think it's about
7 confusing. It's about whether it's fair, and it is a
8 compound question to say agree or disagree.

9 MS. WEBB: Can you repeat the
10 question?

11 Q. (by Ms. Williams) I can also try to
12 rephrase. I'll just ask are you aware of any U.S.
13 EPA guidance on moving materials within a multiunit
14 system?

15 A. That is nothing that I've been involved
16 with working on making those decisions. I'm usually
17 working on the site, you know, the groundwater
18 contamination and subsequent activities.

19 Q. And you can understand why, I mean, if
20 we're saying an alternative is better for the
21 environment, it would be desirable to also conclude
22 it was legal, right? You wouldn't want to have to
23 say, oh, we can't do this thing so -- you didn't
24 fully explore whether there could be any guidance out

1 there that would allow for this?

2 A. That's why I put that comment in my report
3 saying, you know, this appears to run afoul of the
4 guidance. Do you guys have a plan for getting around
5 this? I don't understand.

6 Q. Gotcha. But you haven't reviewed this
7 particular guidance document that I presented to
8 address that or not?

9 A. Is this a guidance document? Oh, it's a
10 frequently asked questions. No, I've not seen these
11 questions before.

12 Q. Okay. That's great. We can move on. So
13 do we agree -- do you agree that in your 2026
14 report -- so I will refer to your 2025 report and
15 your 2026 report. Will you know what I mean?

16 A. Yep.

17 Q. I believe 2026 is 16, Exhibit 16 for the
18 record, and 2025 would be Exhibit 15.

19 A. Do I need them?

20 Q. No.

21 MS. BUGEL: Confirmed, 2026 is 16 and
22 2025 is 15.

23 Q. (by Ms. Williams) Okay. So in your 2026
24 report, I believe I heard you testify this morning

1 that your most significant concerns related to
2 catastrophic impacts on flooding was addressed by the
3 new closure plan; is that correct?

4 A. Correct.

5 Q. And you would agree that this site where
6 the ash pond and the current landfill is located is
7 not an appropriate site to create a new on-site
8 landfill; is that correct? Have we discussed that?
9 I feel like we've discussed that before, that making
10 a new on-site landfill because of the floodplain
11 issues would not be appropriate at this time?

12 A. Yeah. The whole thing is covered with the
13 floodplain. I don't know where the boundary -- you
14 know that little house where the environmental
15 offices are?

16 Q. Yeah. Well, that's where the lime ponds
17 are now, I'm afraid. There's no house anymore.

18 A. Oh, there's not? Okay.

19 Q. We had to move them out in favor of
20 environmental remediation.

21 A. Oh, okay.

22 Q. It was very sad, actually.

23 A. I would have thought, well, maybe up there
24 on that hill.

1 Q. Fair enough. Fair enough. But other than
2 up on the hill, which in general the area in the
3 floodplain you wouldn't recommend putting it on?

4 A. Typically putting permanent waste disposal
5 facilities in the floodplain is not a good idea.

6 Q. And I don't think we're disagreeing with
7 you. This is what was done, right? We can't undo
8 it. But you would -- would you also agree that then
9 when you are talking about off-site permanent
10 disposal, there are other environmental impacts that
11 you have to take into account in order to accomplish
12 that?

13 A. Yeah, there are some. Or potentially at
14 least there are.

15 Q. Potentially, yes. And are you aware, do
16 you have any examples of sites that you've been
17 involved with that have done off-site permanent
18 disposal?

19 A. Yeah. I've removed --

20 Q. I mean CCR sites.

21 A. Oh, CCR.

22 Q. Yes. Obviously you're not --

23 A. Let's see. Which one. The Georgia --
24 which one of the Georgia sites is taking their

1 facility or taking their waste to the Hoffaker Road
2 landfill. It's either Wansley or -- I'd have to look
3 it up. One of the Georgia sites. It's about five
4 miles away.

5 Q. And you're not aware of any Illinois sites
6 doing that?

7 A. Illinois sites. Well, I haven't worked
8 recently on too many Illinois sites and so I don't
9 know exactly what's happening with the Illinois
10 sites.

11 Q. Let's switch gears since I brought up
12 Illinois sites. You reminded me of something I
13 wanted to follow up on. You did mention one Illinois
14 site that you had worked on, Lincoln Stone Quarry.

15 A. Yeah.

16 Q. And I just kind of wanted to -- and you
17 made some recommendations, which I think is fine, for
18 being sure to be doing maintenance on pumps and
19 wells. I just want to get a little context, though.
20 I mean, can you explain a little bit about the
21 magnitude of the type of pumping involved at that
22 site in comparison to this site?

23 A. Seems to me that there were eight or ten
24 pumping wells along the south side of the quarry,

1 pumping at perhaps twenty or twenty-five gallons a
2 minute.

3 Q. All the time?

4 A. All the time.

5 Q. Permanently?

6 A. Yeah. Well, at least at the time they were
7 trying to control a contaminant plume that was moving
8 off site in an unplanned direction.

9 Q. Yeah. And so I just don't want to leave
10 the Board with -- I don't disagree with your
11 testimony about any time you install something like
12 there has to be a maintenance program, but I don't
13 want to leave the Board with sort of the impression
14 that after two or three days or whatever, like you
15 said, that that's going to happen at the site with
16 this level of --

17 A. The reason I -- I think I said it this
18 morning. The reason you can put that in there is
19 kind of a heads up to, you know, put it in your
20 dewatering wells, absolutely. Just be aware that
21 keeping them in operation pumping the high TDS, high
22 metals water out of the impoundment is hard on
23 equipment.

24 Q. Okay. So we talked about Hennepin. You

1 were not sure about groundwater corrective action.
2 What about Sutherland? Is it true that Sutherland
3 had selected gradient control as their groundwater
4 corrective action?

5 A. Gradient control, not on the site that I
6 have been looking at.

7 Q. That's not your understanding?

8 A. Yeah.

9 Q. Do you know when they began groundwater
10 corrective action at Sutherland or if they have
11 groundwater corrective action besides closure, either
12 way?

13 A. We're talking about capturing the plume, is
14 that what we're talking about?

15 Q. Uh-huh.

16 A. Oh, no. I've just been looking at the
17 monitoring data.

18 Q. Okay. So it's possible that these issues
19 of monitoring data may have to do with what's going
20 on with the plume in the groundwater corrective
21 action, we don't know?

22 A. It's more than likely it's the reduced head
23 inside the impoundment is causing -- rather than
24 radial flow from the middle out, it's allowing flow

1 all the way through, across the pond at a lower rate.

2 Q. Horizontally because of saturation?

3 MS. BUGEL: I'm sorry. The witness
4 hadn't finished his answer.

5 MS. WEBB: All right. I didn't hear
6 your question anyway, so why don't you finish your
7 answer and then --

8 THE WITNESS: Did I say vertically?
9 The groundwater is flowing all the way across through
10 the pond and at a lower gradient because there's no
11 more mounding and it gives more time for the water to
12 dissolve metals.

13 Q. (by Ms. Williams) You were involved when
14 the Board adopted the 845 regulations, correct?

15 A. Well, I wasn't much involved. I testified.

16 Q. You were one of the witnesses. You
17 testified. Okay. So do you agree that under --
18 well, when I say part 845, you understand what I'm
19 talking about? That's the --

20 A. The Illinois rules?

21 Q. Yeah. Under 845, Illinois EPA has the
22 authority to review and approve or deny closure plans
23 for CCR impoundments, correct?

24 A. That's my understanding. I've not reviewed

1 the rules specifically for something like that for a
2 while.

3 Q. Do you agree that CLWP's closure plan is
4 currently pending before Illinois EPA under 845?

5 A. That's my understanding, but I don't know
6 for sure. I assume it is.

7 Q. And then you're aware that CWLP entered
8 into a consent agreement and final order with U.S.
9 EPA, right?

10 A. Right. I read that.

11 Q. I guess we're going to mark Exhibit 28
12 right now, but this time I'm confident. I'm going to
13 show you what's been marked Exhibit 28 for
14 identification. The title is Consent Agreement and
15 Final Order. Have you seen this document before?

16 A. I have, uh-huh.

17 MS. WILLIAMS: Can I move to enter
18 this exhibit?

19 MS. BUGEL: We have no objection.

20 MS. WEBB: I just have a question. So
21 the EPA frequent questions is withdrawn?

22 MS. WILLIAMS: I will withdraw it.
23 I'll bring them back in part two, yes.

24 MS. WEBB: Okay. But you're not

1 moving to admit this?

2 MS. WILLIAMS: I am not moving to
3 admit.

4 MS. WEBB: Okay. So Exhibit 28, which
5 is the Consent Agreement and Final Order, okay, that
6 is admitted into evidence.

7 Q. (by Ms. Williams) So would you agree this
8 Consent Agreement and Final Order establishes a
9 framework for federal oversight of CWLP's surface
10 impoundment closure?

11 A. Establishes a framework for federal
12 oversight?

13 Q. Fancy word.

14 A. I don't know that I know what you mean by
15 that.

16 Q. Okay. Do you agree that the closure plan
17 has to be submitted to U.S. EPA?

18 A. Oh, I think that's correct.

19 Q. Okay. And they get a chance to approve,
20 comment on it, disapprove of it, or whatnot?

21 A. I would have to look at the details. I
22 would assume that would be correct.

23 Q. And the September 2025 closure plan that
24 we've talked about today, the new closure plan, that

1 was specifically prepared to address requirements in
2 this Consent Agreement and Final Order, correct?

3 A. That's my understanding.

4 Q. And U.S EPA is currently reviewing that, as
5 far as you know?

6 A. As far as I know.

7 Q. As far as we all know. If U.S. EPA
8 determines that the closure plan does not meet the
9 federal performance standards, would you agree they
10 have authority under the CAFO to require
11 modifications to the closure plan?

12 A. Wow. This sounds like a legal question to
13 me.

14 Q. Okay. Would that be how just generally as
15 a common technical person, would you assume that
16 under what you understand of the agreement that if
17 they don't like it they're just stuck with it or is
18 there something they can do about it?

19 A. Oh, I assume that there's some back-fall
20 for them to do something else.

21 Q. To make sure --

22 A. Yeah.

23 Q. -- it's adequate at the end of the day,
24 right, would you assume?

1 A. I would assume that, but again it's been a
2 while since I've gone through this.

3 Q. And if Illinois EPA determines that the
4 closure plan does not meet the performance standards,
5 Illinois EPA can deny the permit, correct?

6 A. Again, I would assume so, but I've not
7 really concentrated on the permitting process.

8 Q. So can you think of some reason that
9 between U.S. EPA and Illinois EPA together that
10 there's something missing, some need for the Board to
11 order a remedy outside that process?

12 A. It depends on what the agencies would come
13 up with.

14 Q. So it may be that the agencies like with
15 the NPDES permit, you would look at it maybe and say,
16 oh, that was good, we didn't need the Board to
17 intervene because --

18 A. Possible.

19 Q. -- once I see it. But you haven't seen it
20 yet to know for sure?

21 A. Right. I hate to do this, but that soda I
22 had for lunch --

23 MS. WILLIAMS: That would probably
24 help speed things up for me, to kind of go through,

1 mark off what I --

2 MS. WEBB: Do you want to take five
3 minutes? All right. We'll go off the record for
4 five minutes.

5 (Whereupon a break was taken.)

6 MS. WEBB: We're ready to go back on
7 the record, and we will resume with Ms. Williams'
8 questioning.

9 Q. (by Ms. Williams) I'm very close to being
10 done, I think, but there was one comment that you
11 made I wanted to -- I won't say correct, but specify.
12 I believe when you were being questioned by Ms. Bugel
13 you mentioned that the berms had been elevated over
14 the years at the ash pond. Would you agree that's
15 only true of the Lakeside ash pond and not the
16 Dallman?

17 A. Oh, did I say both?

18 Q. What?

19 A. Did I say both?

20 Q. You didn't specify, but it implied both,
21 yes. I wanted to clarify it was just the --

22 A. Yeah, as far as I know. I don't --

23 Q. Can you repeat? As far as you know what?

24 A. As far as I know, I don't know that the

1 Dallman has been elevated.

2 Q. Only the Lakeside?

3 A. Only the Lakeside. The Lakeside is the one
4 that had trouble with the seepage coming through the
5 berms and, who knows, may still have some.

6 MS. WILLIAMS: All right. I think
7 that'll do it.

8 MS. BUGEL: I have just a couple real
9 short questions.

10 MS. WEBB: Okay.

11 EXAMINATION

12 BY MS. BUGEL:

13 Q. Mark, Debbie talked to you, you two
14 conversed about a multiunit system, right?

15 A. Correct.

16 Q. What evidence have you seen at the site
17 that it is not a multiunit system?

18 A. Well, there's two separate ponds. The two
19 are separated by the clarification pond and the
20 landfill. One is much older than the other. One
21 took in wastewater treatment sludge and, to my
22 knowledge, the other one hasn't. It just basically
23 operated as two separate facilities.

24 Q. And Deborah also talked to you about U.S.

1 EPA and Illinois EPA oversight. Do you know if there
2 was a violation notice from IEPA over the ash ponds
3 at CWLP?

4 A. I believe there was. It's been a while
5 since I've looked at that. But, yeah, I believe
6 there was.

7 Q. Do you know how that violation notice was
8 resolved?

9 A. Not off the top of my head, no.

10 Q. Do you know if it was resolved?

11 A. I do not know.

12 MS. BUGEL: All right. Those are all.

13 MS. WILLIAMS: Can I follow up on that
14 violation notice?

15 MS. WEBB: Yes.

16 EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Do you know what parameters were at issue
19 in that violation notice?

20 A. No, I do not know. I don't remember.

21 MS. WILLIAMS: Okay.

22 MS. BUGEL: I have no further
23 questions.

24 MS. WEBB: Well --

1 THE WITNESS: Hallelujah. Call that a
2 career.

3 MS. WEBB: You're all done here. I
4 think we're done with you right now. Did you have
5 anything else you wanted to present today?

6 MS. BUGEL: Not today. Thank you.

7 MS. WEBB: Okay. But you're not --
8 are you concluding with your case?

9 MS. BUGEL: No, we are not concluding
10 with our case.

11 MS. WEBB: Okay. Just checking. Do
12 you want to schedule part two of the hearing now or
13 should we adjourn and regroup and figure something
14 out later?

15 MS. WILLIAMS: I think we want to set
16 a status and talk about it later. Is that okay?

17 MS. BUGEL: Yeah. I think you and I
18 should talk.

19 MS. WILLIAMS: Yeah. We haven't
20 talked about dates yet.

21 MS. WEBB: Okay. All right. Does
22 anyone have anything else before we adjourn?

23 MS. BUGEL: I have just one or two
24 procedural issues. And maybe -- I haven't talked to

1 Deborah about this yet, but it's Exhibits, stipulated
2 exhibits, 1 through 5. We didn't use all of them
3 today. There were -- actually there were ones that
4 Mark has indicated that he would have reviewed and
5 relied on them, but we didn't actually ask questions
6 about all of them. We only asked questions about --

7 MS. WILLIAMS: We were marking it off.
8 I think we did.

9 MS. BUGEL: The only questions I asked
10 about them were that Mark reviewed them and relied on
11 them.

12 MS. WILLIAMS: I gotcha.

13 MS. BUGEL: So there are a couple of
14 exhibits in there that we didn't actually ask
15 substantive questions about, and my only question
16 would be should we leave them in the record because
17 you know that Debbie knows that their witnesses might
18 be coming, relying on them later, or are these ones
19 where we feel like they're mucking up the record and
20 making it too lengthy?

21 MS. WEBB: Well, that might be
22 something you want to discuss, you know, when we're
23 getting ready for part two.

24 MS. BUGEL: Okay. Okay. We could

1 always withdraw them at a later time.

2 MS. WEBB: Yes. No reason to do it
3 now. We don't need to. Okay. So this hearing will
4 be continued at a later date. We will adjourn today,
5 and I thank you all for your participation.

6 (Off record at 3:52 p.m. CST.)

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1 STATE OF ILLINOIS)
)
2 COUNTY OF CHAMPAIGN)

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4 I, Janet E. Cummings, a Certified Shorthand
Reporter, in and for the County of Champaign, State
5 of Illinois, do hereby certify that the
above-captioned matter was taken on May 5, 2026;

6

7 That said is a true record of the
proceedings and was taken down in stenograph notes
and afterwards reduced to typewriting under my
8 instruction.

9 I do hereby certify that I am a
disinterested person in this cause of action; that I
10 am not a relative of any party or any attorney of
record in this cause, or an attorney for any party
11 herein, or otherwise interested in the event of this
action, and am not in the employ of any attorneys for
12 any party.

13 IN WITNESS WHEREOF, I have hereunto set my
hand this 1st day of June 2026.

14

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16

JANET E. CUMMINGS, CSR

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