

ILLINOIS POLLUTION CONTROL BOARD
August 31, 2017

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

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable BRADLEY HALLORAN, Hearing Officer of said Court, Room 9-040, The Thompson Center, Chicago, Illinois, on the 31st day of January, 2018, at the hour of 9:00 a.m.

1 A P P E A R A N C E S:

2

3 BY: MS. FAITH E. BUGEL
4 1004 Mohawk Road
5 Wilmette, Illinois 60091
6 (312) 282-9119
7 fbugel@gmail.com

8

9 ENVIRONMENTAL LAW & POLICY CENTER
10 BY: MS. LINDSAY DUBIN
11 35 East Wacker Drive
12 Suite 1600
13 Chicago, Illinois 60601
14 (312) 795-3712
15 ldubin@elpc.org

16

17 ENVIRONMENTAL INTEGRITY PROJECT
18 BY: MR. ABEL RUSS
19 1000 Vermont Avenue NW
20 Suite 1100
21 Washington, D.C. 20005
22 (202) 263-4453
23 aruss@environmentalintegrity.org
24 slam@environmentalintegrity.org

25

26 SIERRA CLUB
27 BY: MR. GREG WANNIER
28 2101 Webster Street
29 Suite 1300
30 Oakland, California 94612
31 (415) 977-5637
32 greg.wannier@sierraclub.org

33

 Appeared on behalf of the Complainants;

34

35

36

37

38

39

1 NIJMAN & FRANZETTI, LLP
BY: MS. JENNIFER T. NIJMAN
2 MS. SUSAN M. FRANZETTI
MS. KRISTEN GALE
3 10 South LaSalle Street
Suite 3600
4 Chicago, Illinois 60603
(312) 251-5255,
5 jn@nijmanfranzetti.com
sf@nijmanfranzetti.com
6 kg@nijmanfranzetti.com

7 Appeared on behalf of the Respondent;

8

9 REPORTED BY:

10 Steven J. Brickey, CSR
CSR License No. 084-004675

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1 HEARING OFFICER HALLORAN: All
2 right. We're back on the record. We just
3 finished up with non-disclosable testimony and I
4 do want to state again that this case is docketed
5 as PCB 13-15. It's a citizen enforcement water
6 Sierra Club, et al, complainants, versus Midwest
7 Generation, LLC. Today is January 31st, 2018.
8 This is continued on record from yesterday January
9 30th, 2018. I do want to note for the record
10 again that we have chairperson Katie Papadimitriou
11 in the back and we may proceed. I think Ms. Bugel
12 still has Ms. Race for cross.

13 MS. BUGEL: Thank you.

14 HEARING OFFICER HALLORAN: Thank
15 you.

16 C R O S S E X A M I N A T I O N
17 BY MS. BUGEL

18 Q. Ms. Race, can you please turn to
19 Exhibit 610.

20 A. Okay.

21 Q. And --

22 HEARING OFFICER HALLORAN: And when
23 we say exhibits, I know they're not commingled,
24 but make sure you say respondent's exhibit,

1 complainants' exhibit because it's easier to read
2 when you're reviewing the record and the board is
3 writing the opinion.

4 MS. BUGEL: Very good.

5 HEARING OFFICER HALLORAN: Thank
6 you.

7 BY MS. BUGEL:

8 Q. Ms. Race, can you please turn to
9 Complainants' Exhibit -- I'm sorry -- Respondent's
10 Exhibit 610.

11 A. Yes.

12 Q. And this -- you testified as to the
13 liner replacement projects at Joliet ponds one and
14 two, correct?

15 A. Yes, I did.

16 Q. And this exhibit relates to the
17 liner replacement project at Joliet ponds one and
18 two, correct?

19 A. Correct.

20 Q. Could you please turn to Bates page
21 49474. Do you have that in front of you?

22 A. Yes, I do.

23 Q. And this -- this page or subsequent
24 two pages discusses the leak location survey for

1 pond two, correct?

2 A. Yes, it is the report for the
3 electronic leak location survey for ash
4 impoundment two.

5 Q. And if you look under results, the
6 very first sentence states one leak was found, do
7 you see that?

8 A. I see that.

9 Q. And you also testified that that
10 leak was repaired, correct?

11 A. Correct.

12 Q. Can you please turn to page 49493.
13 And this page documents the repair of that leak,
14 correct?

15 A. Yes, this document -- this discusses
16 the repair of the leak.

17 Q. And under 522 leak detection survey,
18 the fourth bullet point from the bottom states one
19 hole was found around 245 feet from the
20 discharge -- is it weir?

21 A. Weir.

22 Q. Do you see that?

23 A. Yes, I do see that.

24 Q. And if you look at the second bullet

1 point from the bottom under 522, it says "There
2 was one other hole in the southeast corner of the
3 pond where an operator hit the side slope with the
4 construction equipment," do you see that?

5 A. Yes, I do.

6 Q. So there were two holes in the
7 liner?

8 A. It appears here the way this is
9 written is that there are two holes. It doesn't
10 appear that it is the same hole.

11 Q. Do you have an understanding of
12 where the southeast corner of the pond is in
13 relation to the discharge weir?

14 A. Let me think. Yes.

15 Q. And is the southeast corner of the
16 pond 245 feet approximately from the discharge
17 weir?

18 A. No, I don't believe so.

19 Q. And the hole that was 245 feet from
20 the discharge weir, do you see the third bullet
21 point from the bottom where they are discussing
22 it? It says that it appeared the liner was
23 punctured by the construction equipment when
24 placing the cushion layer/limestone screenings, do

1 you see that?

2 A. Yes, I do see that.

3 Q. So is it accurate to say both of the
4 holes were caused by the construction equipment as
5 discussed in this field note summary?

6 A. It appears that the NRT staff member
7 made that assumption.

8 Q. This field note summary indicates
9 that both holes were caused by construction
10 equipment, correct?

11 A. This field note summary does assume
12 that both holes were caused by construction
13 equipment.

14 Q. There is nothing in this field note
15 summary that indicates that this is an assumption
16 rather than a conclusion, correct?

17 MS. FRANZETTI: Objection.
18 Argumentative.

19 HEARING OFFICER HALLORAN:
20 Sustained.

21 MS. BUGEL: Withdrawn.

22 HEARING OFFICER HALLORAN: Thank
23 you.

24

1 BY MS. BUGEL:

2 Q. Can you please turn to page 49495.
3 That's just one page later in the exhibit. And
4 this also is a field note summary and it refers to
5 the impoundment number one liner replacement, do
6 you see that at the top?

7 A. Yes. Let me get my bearings. Just
8 a moment. Okay.

9 Q. Just to make it clear for the
10 record. The previous one was talking about the
11 impoundment number two replacement and now we're
12 turning to the impoundment number one replacement,
13 do you agree?

14 A. Agree.

15 Q. And can you please review the fifth
16 bullet point under field comments?

17 A. Okay. I've reviewed it.

18 Q. And Brieser was expressing concerns
19 about heavy equipment on a wet soft subgrade
20 tearing the liners, do you see that?

21 A. I do see that.

22 Q. We can move on. We're done with
23 this exhibit if you want to set that aside.

24 A. Okay.

1 Q. I'm going to turn to some questions
2 about Will County ponds one north and one south
3 and is it correct to say that ponds one north and
4 one south are not completely dewatered?

5 MS. FRANZETTI: Objection to the
6 phrase completely dewatered in terms of vague.

7 HEARING OFFICER HALLORAN: Yeah, can
8 you try to rephrase, Ms. Bugel? Thank you.

9 BY MS. BUGEL:

10 Q. Are you familiar with the term
11 dewatering?

12 A. Yes, I am.

13 Q. And what is your understanding of
14 the term dewatering?

15 A. Removal of water.

16 Q. And when I say completely dewatered,
17 I'm referring to the removal of all the water in a
18 pond, is that fair?

19 A. Okay.

20 Q. I'm trying to understand if all the
21 water in pond one north at Will County has been
22 removed, has it?

23 A. All of the water in Will County one
24 north is -- was removed and then as there are

1 rainwater events, it is continuously removed so
2 that that impoundment does not have standing water
3 in it.

4 Q. So does that impoundment have a
5 dewatering system?

6 A. Yes.

7 Q. Can you describe the dewatering
8 system?

9 A. I know that the water is pumped out,
10 but I can't go beyond that. I'm not familiar with
11 the equipment.

12 Q. And has the remaining coal ash or
13 coal ash residues in pond one north, have those
14 been solidified?

15 A. The slag that remains in pond one
16 north, which is the one we're talking about,
17 right --

18 Q. Yes.

19 A. -- is still in the impoundment.

20 Q. My question was has that been
21 solidified?

22 MS. FRANZETTI: Objection to form,
23 meaning of solidified.

24 HEARING OFFICER HALLORAN: Ms.

1 Bugel, can you rephrase, please?

2 MS. BUGEL: Yes.

3 HEARING OFFICER HALLORAN: Thank
4 you.

5 BY MS. BUGEL:

6 Q. You're familiar with the CCR rules,
7 correct?

8 A. Correct.

9 Q. Are you familiar with the dewatering
10 requirements for ponds that are going to be
11 closed?

12 A. I'm familiar with putting together
13 closure plans or closing an impoundment.

14 Q. Closing an impoundment in the manner
15 that is required by the CCR rules?

16 A. Closing an active impoundment, yes.

17 Q. And when you were closing an active
18 impoundment, it requires dewatering that
19 impoundment? I'm sorry. Let me rephrase that.

20 If you were closing an
21 impoundment in place, it requires dewatering that
22 impoundment?

23 A. I can't think of a closure that
24 wouldn't involve that for an impoundment.

1 However, there could be a closure plan in place
2 that -- I can't think of an example, no, of where
3 you wouldn't dewater an active impoundment to
4 close it, to clean close it.

5 Q. And also to clean close an
6 impoundment under the CCR rules with ash in place,
7 it also requires solidifying the ash, correct?

8 A. If it's an active impoundment, I
9 believe that's the case or it needs to be capped.
10 I'm not entirely sure that it has to be
11 solidified. I cannot recall.

12 Q. Well, with that understanding of the
13 meaning of solidifying the contents of the
14 impoundment, my question is have the contents of
15 one north been solidified?

16 MS. FRANZETTI: With -- objection.
17 With that clarification, there has been no
18 foundation laid that this pond is subject to the
19 CCR rules and the prior testimony is to the
20 contrary.

21 HEARING OFFICER HALLORAN: Ms.
22 Bugel?

23 MS. BUGEL: And I am not referring
24 to the CCR rules to -- regarding the applicability

1 of the rules to this pond. I am referring to them
2 because the witness has indicated an understanding
3 of those rules and a knowledge of those rules and
4 I am referring to them for the context that they
5 give to the word solidify.

6 HEARING OFFICER HALLORAN: She may
7 answer if she's able. Overruled.

8 THE WITNESS: Can you repeat the
9 question?

10 HEARING OFFICER HALLORAN:
11 Mr. Brickey, sorry, before all the objections, can
12 you please repeat the question that Ms. Bugel
13 submitted to Ms. Race?

14 (Whereupon, the record was read
15 as requested.)

16 BY THE WITNESS:

17 A. Within the context that you're
18 describing, I believe that the contents of one
19 north have not been solidified.

20 BY MS. BUGEL:

21 Q. And you have indicated that one
22 north receives storm water, correct?

23 A. Yes, it is open -- it's an open
24 area. So it does receive storm water.

1 Q. And I just want to confirm, that
2 does not mean storm water is routed from the
3 facility -- elsewhere in the facility is routed to
4 one north, correct?

5 A. That's correct.

6 Q. And turning to pond one south, has
7 pond one south been completely dewatered as we
8 defined those terms in the previous questions?

9 A. It is dewatered and receives
10 occasional storm water.

11 Q. And when you say it receives
12 occasional storm water, this also does not mean
13 storm water from elsewhere in the facility is
14 routed?

15 A. Correct, it's open to the storm
16 water and the rain.

17 Q. And pond one south also has a
18 dewatering system?

19 A. Yes, it does.

20 Q. And does that dewatering system
21 operate in the same manner as one north?

22 A. Correct. I believe they're the
23 same, but I'm not entirely sure.

24 Q. And the remaining coal ash and coal

1 ash residues have not been solidified at pond one
2 south using the same meaning as solidified that we
3 have previously discussed?

4 A. That is my understanding.

5 Q. Moving onto Waukegan and we are
6 going to jump around a little bit.

7 Can you please turn to Exhibit
8 649 in your binders.

9 MS. BUGEL: And, for the record,
10 that is Respondent's Exhibit 649.

11 HEARING OFFICER HALLORAN: Thank
12 you, Ms. Bugel.

13 BY THE WITNESS:

14 A. I have it.

15 BY MS. BUGEL:

16 Q. Okay. I am still turning to it.
17 Okay. And bear with me while I find my place.
18 Okay. Referring to the third to last sentence in
19 the top e-mail in the chain. You discussed this
20 sentence in your testimony, correct?

21 A. Is that the sentence that begins
22 with the CCA that IEPA approved?

23 Q. That is correct, that sentence.

24 A. I believe I did.

1 Q. And this sentence refers to the
2 active ash ponds (for which the VN was issued), do
3 you see that?

4 A. I do see that.

5 Q. This sentence does not rule out any
6 other possible source at the Midwest Generation
7 Waukegan facility, correct?

8 A. Although it says they are not a
9 likely source of contaminants, it does not
10 completely rule it out.

11 Q. And I'm now referring to a source at
12 Waukegan other than active ash ponds. This e-mail
13 also does not rule out a source at the Waukegan
14 facility other than the active ash ponds, correct?

15 A. It says it's not likely, correct.

16 Q. When it says it's not likely, it is
17 only referring to the active ash ponds, correct?

18 A. Correct.

19 Q. We can move on from that exhibit and
20 can you please turn in this same notebook to
21 Exhibit 654.

22 A. Okay. I have it in front of me.

23 Q. And at the same time I'd also like
24 to pull out Exhibit 510 and that would be in your

1 notebook of Maddox exhibits.

2 A. Okay. I have both of them.

3 Q. Thank you. Yesterday in your
4 testimony you at one point when you were
5 discussing the bottom liners at Will County prior
6 to -- when you were talking about bottom liners of
7 the Will County ponds that were made of poz-o-pac,
8 you initially testified that there was 12 inches
9 of poz-o-pac, 12 inches of fill and then 12 more
10 inches of poz-o-pac, do you remember that?

11 A. Yes, I do remember that.

12 Q. And first turning to Exhibit 510,
13 can you please look at 34428.

14 MS. BUGEL: And that is
15 Complainants' Exhibit 510 for the record.

16 HEARING OFFICER HALLORAN: Thank
17 you.

18 MS. BUGEL: I'm sorry.

19 Respondent's --

20 HEARING OFFICER HALLORAN:

21 Respondent's --

22 MS. BUGEL: -- Exhibit 510.

23 HEARING OFFICER HALLORAN: Thank
24 you.

1 BY THE WITNESS:

2 A. I think I have it. It's tiny.

3 BY MS. BUGEL:

4 Q. Do you know what, I think I have,
5 too, but I'm not even sure with my glasses.

6 A. Is it called "Pre-Construction site
7 conditions south ash pond two liner replacement"?

8 Q. Yes, it is. Thank you for reading
9 that in.

10 Do you see where this discusses
11 two borings in shapes that look a little bit like
12 clouds?

13 A. Yes, I do see that.

14 Q. Okay. Referring to boring number
15 two, do you see that one?

16 A. Yes, I do.

17 Q. And is it accurate to say that that
18 is in the middle of the ash pond approximately?

19 A. Yes, it's accurate to say that this
20 drawing indicates that it is in the middle of
21 south ash pond two.

22 Q. And looking at boring one, is it
23 accurate to say that that is closer to the side of
24 the south ash pond two?

1 A. Yes, that is correct.

2 Q. And this diagram or the description
3 of boring two in this figure indicates six-inch
4 poz-o-pac -- poz-o-pac layer, six-inch poz-o-pac
5 layer, a second one, sandy clay fill with gravel
6 and then greater than 12-inch poz-o-pac layer, do
7 you see that?

8 A. Yes, I do see that.

9 Q. And on the side of boring two, does
10 it indicate how many feet the boring was?

11 A. The boring itself was three feet
12 below ground surface.

13 Q. And -- and turn -- can you please
14 turn now to Exhibit -- Respondent's Exhibit 654.

15 A. Okay.

16 Q. Can you please turn to page 34217 of
17 that exhibit. My apologies. I have the wrong
18 number written down. Can you please turn to
19 34214.

20 MS. BHARGAVA: 37214. This one.

21 MS. BUGEL: I'm sorry.

22 MS. BHARGAVA: 37214.

23 BY MS. BUGEL:

24 Q. And can you please look at the

1 diagram in the upper right-hand corner?

2 A. Okay.

3 Q. And on the left side of the diagram,
4 it shows a cross section of the pond bottom,
5 correct?

6 A. Correct.

7 Q. And that diagram indicates 12 inches
8 of poz-o-pac, 12 inches of fill and 12 more inches
9 of poz-o-pac, is that correct?

10 A. Well, it indicates a couple of
11 different things. There is the side of the
12 impoundments which has poz-o-pac and six inches --
13 six-inch compacted lips out to ten feet
14 horizontally and then the bottom of the pond
15 has -- is very -- it's very confusing, but I think
16 it's 12 inches total, two six-inch layers of
17 poz-o-pac, two six-inch layers of fill and two
18 six-inch layers of poz-o-pac.

19 Q. I'm sorry. I was having trouble
20 with my page numbers. I am going to ask you to
21 turn back -- you still have Respondent's Exhibit
22 510 in front of you?

23 A. Okay. This one.

24 Q. That one. Yeah. I'm sorry to jump

1 back and forth. I was just having trouble with
2 page numbers. Respondent's Exhibit 510 page
3 34271.

4 A. 34 --

5 Q. It's right at the beginning of the
6 exhibit.

7 A. So 510. Okay. I'm sorry.

8 Q. That's okay. The page numbers --

9 A. 52.

10 Q. 34271.

11 A. Okay. Thank you.

12 Q. And this is a field note summary
13 from the south ash pond two liner replacement,
14 correct?

15 A. Correct.

16 Q. And it has field comments in the
17 middle of the exhibit, do you see that?

18 A. Yes, I do.

19 Q. And the third bullet point down, it
20 says "Meet Terry Anderson to discuss cores," do
21 you see that?

22 A. Yes, I do.

23 Q. And the second bullet point under
24 that indicates boring 02 zero to six inches first

1 layer of poz-o-pac; six to 12 inches second layer
2 of poz-o-pac; 12 inches to 24 inches sandy clay
3 filled with gravel; 24 to 36 inches third layer of
4 poz-o-pac; end of core - note bottom of third
5 layer of poz-o-pac not encountered, do you see
6 that?

7 A. I do see that.

8 Q. So this is consistent with the
9 exhibits that the bottom layer is 12 inches of
10 poz-o-pac, 12 inches of fill and 12 more inches of
11 poz-o-pac, correct?

12 MS. FRANZETTI: Objection.
13 Mischaracterization. It says here the bottom of
14 the third layer was not encountered --

15 MS. BUGEL: We --

16 MS. FRANZETTI: -- more than 12
17 inches.

18 HEARING OFFICER HALLORAN: Ms.
19 Bugel?

20 MS. BUGEL: I'll rephrase.

21 BY MS. BUGEL:

22 Q. This is consistent with the -- so
23 this indicates -- this exhibit indicates that the
24 boring shows 12 inches of poz-o-pac, 12 inches of

1 fill, 12 more inches of poz-o-pac with the caveat
2 that the bottom of the third layer was not
3 encountered, correct?

4 A. I think the caveat is that the core
5 was only 36 inches. So there are 12 inches of
6 poz-o-pac, 12 inches of fill and then at least 12
7 inches of poz-o-pac, but we really don't know how
8 much more poz-o-pac there might be because the
9 third -- bottom of the third layer was not
10 encountered because the core ended before it hit
11 the bottom.

12 Q. Thank you. We can set aside this
13 exhibit.

14 MR. RUSS: Both?

15 MS. BUGEL: Both of these exhibits.

16 Thank you.

17 BY MS. BUGEL:

18 Q. And do you know Christopher Lux?

19 A. Yes, I do.

20 Q. What is his role at Midwest
21 Generation?

22 A. He's had various roles over the
23 years. I'm not sure what his current title is,
24 but he has been a project manager and worked in

1 engineering and construction and maintenance.

2 Q. Do you know how long he has been at
3 Midwest Generation?

4 A. Well, he's been here longer than I
5 have, which is since 2001. So he has been with
6 the company a long time. He was with Commonwealth
7 Edison before the sale.

8 Q. In the course of your jobs at
9 Midwest Generation, have you ever had to rely on
10 Christopher Lux for information?

11 A. Yes, I have.

12 Q. Do you find him to be a reliable
13 source of information?

14 A. Yes.

15 Q. Do you know Mark Kelly?

16 A. Yes, I do.

17 Q. Do you know what his role at Midwest
18 Generation is?

19 A. He is the chemical specialist for
20 Powerton station.

21 Q. Do you know how long he has been at
22 Midwest Generation?

23 A. Probably, you know, the same -- same
24 answer. I think probably, you know, 20 or 30

1 years at this point.

2 Q. And he was also with ComEd --

3 A. Yes.

4 Q. -- before Midwest Generation
5 purchased the plants?

6 A. Yes, he was.

7 Q. And in the course of your various
8 jobs at Midwest Generation, have you ever had to
9 rely on Mark Kelly for information?

10 A. Yes, I have.

11 Q. And do you find him to be a reliable
12 source of information?

13 A. Yes, I do.

14 Q. Can you please turn to Complainants'
15 Exhibit 38, which is right -- it should be in this
16 stack on your table.

17 A. All right.

18 Q. She'll help you.

19 A. I'm making a mess.

20 Q. And do you have Complainants'
21 Exhibit 38 in front of you?

22 A. Yes, I do.

23 Q. Can you please turn to Bates page
24 12014.

1 A. I have it.

2 Q. And do you see the middle -- I have
3 it. Sorry. Can you please look at the middle of
4 the third paragraph from the bottom and the third
5 sentence in that paragraph states "A coal pile is
6 depicted on the southeastern portion of the
7 subject property with fly ash and slag piles
8 located on the south and west portions of the
9 subject property, respectfully," do you see that?

10 A. I do see that.

11 Q. And can you please turn to -- I'm
12 sorry. One more question about this page.

13 Have you previously reviewed
14 this page of this exhibit before today?

15 A. Yes, I have.

16 Q. Can you please turn to page 12034.
17 And do you have 12034 in front of you?

18 A. I do.

19 Q. And have you previously reviewed
20 this page before today?

21 A. Yes, I have.

22 Q. And can you refer to the third
23 bullet point on the page where it says "Onsite
24 wastewater and fly/bottom ash disposal systems,"

1 do you see that?

2 A. Yes, I do see that.

3 Q. And in the middle, second sentence,
4 it says "For context, it refers to July 1977," do
5 you see that?

6 A. I do see that.

7 Q. Can you refer to the last sentence?
8 It says "Prior to this time," referring back to
9 July 1977, quote, unlined slag basins were in use
10 at the station. It is unknown if the use of the
11 unlined slag basins may have impacted the
12 subsurface at the subject property. Do you see
13 that?

14 A. The second sentence says "Unlined
15 basins" and unlined isn't defined here. I don't
16 know what unlined means in this context, but, yes,
17 that's what it says.

18 Q. The second sentence says "Unlined
19 basins," but the last sentence -- I'm sorry. I
20 see. Did I say -- okay.

21 Now, I'm not sure if I misread
22 it. So the second to last sentence refers to
23 unlined slag basins were in use at the station,
24 period, correct?

1 A. Correct.

2 Q. And then the last sentence, it says
3 "It is unknown if the use of the unlined basins
4 may have impacted the subsurface at the subject
5 property," did I read that correctly?

6 A. Yes, you did read that correctly
7 this time.

8 Q. And in your testimony, I don't think
9 we need to pull this exhibit out, but do you
10 recall -- referring to the Powerton phase one and
11 the Joliet phase one -- Powerton phase one was
12 exhibit -- Respondent's Exhibit 632, do you
13 remember referring to -- and the Joliet.

14 A. Twenty-nine?

15 Q. I'm sorry. Strike that. I'm going
16 to re-ask that question.

17 In your testimony, do you recall
18 referring to the Powerton phase one which was
19 Respondent's Exhibit 632?

20 A. In what context?

21 Q. Just do you remember testifying
22 about that exhibit?

23 A. Yes, I do.

24 Q. Do you remember testifying as to the

1 statement that the exhibit contains a statement
2 "No evidence of landfilling was observed in the
3 photographs reviewed for this assessment," do you
4 remember referring to that statement?

5 A. For which document?

6 Q. For the Powerton phase one Exhibit
7 632 and if you want to pull the Powerton phase one
8 out, we can.

9 A. I just want to refresh my memory.

10 Q. Okay. Very good. You can refer to
11 page 8516 to refresh your memory.

12 A. Yes, I do remember this.

13 Q. And on that page, this statement "No
14 evidence of landfilling was observed in the
15 photographs reviewed for this assessment," that
16 appears as the last sentence in the second to last
17 paragraph on that page.

18 A. Yes, I see that.

19 Q. And are you aware that the Waukegan
20 phase one, Complainants' Exhibit 38, does not
21 contain the same statement?

22 MS. FRANZETTI: I'm going to object
23 to form. That's a lengthy document and to ask
24 this witness whether or not that statement appears

1 in the document I think is an overbroad question.

2 HEARING OFFICER HALLORAN: Can you
3 hone in on that, Ms. Bugel, please.

4 MS. BUGEL: Okay. I can represent
5 for the record I reviewed this document and I did
6 not find the same quote.

7 MS. FRANZETTI: With all due respect
8 to counsel, she is not a witness and she is not
9 testifying.

10 HEARING OFFICER HALLORAN:
11 Sustained.

12 BY MS. BUGEL:

13 Q. Let's turn to site history in the
14 exhibit.

15 MS. BUGEL: I'm going to -- for
16 expediency, I'm going to withdraw the question and
17 we can move on.

18 HEARING OFFICER HALLORAN: Thank
19 you, Ms. Bugel.

20 BY MS. BUGEL:

21 Q. Can you please turn to page 12036 in
22 Complainants' Exhibit 38.

23 A. I have it.

24 Q. And do you see persons interviewed

1 or contacted?

2 A. Yes, I do.

3 Q. Do you see that section? Do you see
4 Mr. Christopher Lux in the middle of that section?

5 A. Yes, I do.

6 Q. We can set that aside. We're now
7 done with Complainants' Exhibit 38, but we will
8 keep Respondent's Exhibit 632 out.

9 MS. BUGEL: Before I move onto a new
10 exhibit, I just wanted to check with you about
11 timing, Hearing Officer?

12 HEARING OFFICER HALLORAN: What do
13 you think, Ms. Bugel, is now a good time to take a
14 15-minute break?

15 MS. BUGEL: Yeah, I think it is
16 before we start another exhibit.

17 HEARING OFFICER HALLORAN: Okay.
18 Let's come back at 10:45, please. Thank you.

19 (Whereupon, a break was taken
20 after which the following
21 proceedings were had.)

22 HEARING OFFICER HALLORAN: Okay.
23 We're back on the record. It's approximately
24 10:45. Ms. Bugel?

1 MS. BUGEL: Hearing Officer, at your
2 urging, I have cut questions from my
3 cross-examination.

4 HEARING OFFICER HALLORAN: Thank
5 you.

6 MS. BUGEL: Okay.

7 BY MS. BUGEL:

8 Q. Can you please turn to Complainants'
9 Exhibit 21, Ms. Race. And that is one of the
10 loose exhibits on your table.

11 A. Thank you. I have it.

12 Q. Can you please turn to page 25150.

13 A. Yes, I have it.

14 Q. And can you please look at the very
15 bottom of that page second sentence in the last
16 paragraph, which is an incomplete paragraph where
17 it says "Coal ash was primarily disposed in a
18 landfill on the eastern portion of the site. A
19 second abandoned ash disposal landfill lies on the
20 southwest portion of the site between the coal
21 pile and the Caterpillar, Inc. site," do you see
22 where it says that?

23 A. I do see that.

24 Q. Can you please turn to page 251 --

1 I'm sorry. Before we move away from that page,
2 have you previously reviewed this page of this
3 exhibit?

4 A. Yes, I have.

5 Q. Can you please turn to page 25153.
6 Have you previously reviewed page 25153?

7 A. Yes, I have.

8 Q. And can you look at the fourth
9 sentence in the top paragraph and, for the record,
10 just flip back.

11 Can you flip back one page and,
12 for the record, do you see that this is under
13 Section 2.6 description of operations?

14 A. Yes, I do see that.

15 Q. And then again turning to the next
16 page 25153 fourth sentence in the very top
17 paragraph "Other facilities of note include an
18 abandoned waste water treatment plant to the east
19 near the ash handling ponds, which was used to
20 treat nonchemical metal cleaning waste and at the
21 east end of the property, an inactive ash landfill
22 once used to dispose of ash from the Joliet No. 9
23 generating station," do you see where it says
24 that?

1 A. Yes, I do.

2 Q. Did I read that correctly?

3 A. Yes, you did.

4 Q. Can you please turn to page 25156,
5 do you have that in front of you?

6 A. Yes, I do.

7 Q. And do you see the section -- that
8 the section is titled "Onsite contamination
9 potential"?

10 A. Yes, I do see that.

11 Q. And can you please turn to page
12 25159, do you see Section 4.6 ash and coal pile
13 runoff basins?

14 A. Yes, I see that.

15 Q. Is it your understanding that this
16 is still part of Section 4.0 onsite contamination
17 potential and that was back on page 25156?

18 A. Yes, that makes sense.

19 Q. And in the middle of the first
20 paragraph under 4.6, do you see the very same
21 sentence I read previously beginning "Other
22 facilities of note"?

23 A. It looks the same.

24 Q. And can you please turn to page

1 25160. 4.8, is it your understanding that this --
2 this is still in the same Section 4.0 onsite
3 contamination potential?

4 A. Yes, that would be my understanding
5 that it is still within that section.

6 Q. And first two sentences "At the east
7 side of the subject property is an abandoned ash
8 disposal landfill. The landfill was used for the
9 disposal of waste ash from the Joliet No. 9
10 station located to the south across the river," do
11 you see that?

12 A. Yes, I do see that.

13 Q. And do you see the last two
14 sentences "The type of ash deposited in this area
15 is from the burning of high sulfur content coal
16 and is suspected to be highly acidic. It is
17 unknown whether leachate from the ash has had an
18 adverse impact on soil and/or groundwater
19 quality," do you see where it says that?

20 A. Yes, I do see that.

21 Q. And have you previously reviewed
22 this page?

23 A. Yes, within the context that I
24 described before of not relying on this document

1 as gospel and also stating that this section was
2 called "Onsite contamination potential," not
3 absolute.

4 Q. And can you please turn to 25164.
5 Are you -- are you on that page?

6 A. Yes, I am.

7 Q. And do you see -- have you reviewed
8 this page previously?

9 A. Yes, I have.

10 Q. Do you see the bullet point ash
11 landfills at the top of the page?

12 A. I do see the bullet ash landfills.

13 Q. And without reading the whole thing
14 again, do you see that this mentions that there
15 are two landfills, an inactive ash disposal
16 landfill in the first sentence and in the very
17 last sentence a smaller inactive ash landfill,
18 there are two ash landfills mentioned again in
19 this paragraph?

20 A. I see those two mentioned here, yes.

21 Q. And can you please turn to page
22 25165. Under 6.1, persons interviewed, do you see
23 the first name listed Ms. Elsie Briette?

24 A. Yes.

1 MS. FRANZETTI: Objection.

2 Misleading. The title is persons interviewed or
3 contacted.

4 HEARING OFFICER HALLORAN: Ms.
5 Bugel?

6 MS. BUGEL: Withdrawn. I will
7 rephrase that.

8 BY MS. BUGEL:

9 Q. Under 6.1, persons interviewed or
10 contacted, do you see that heading?

11 A. Yes, I do see that heading.

12 Q. Do you see the name Ms. Elsie
13 Briette?

14 A. Yes, I see Elsie Briette.

15 Q. Are you familiar with Elsie Briette?

16 A. Yes, I am.

17 Q. Who is she?

18 A. She is a former employee that was --
19 was working at Joliet and Will County at different
20 points in time and was an employee during the time
21 that Commonwealth Edison owned the station.

22 Q. Was she also an employee after
23 Commonwealth Edison sold the stations?

24 A. Yes, she was.

1 Q. So she was an employee of Midwest
2 Generation?

3 A. At one time, yes.

4 Q. Thank you. We are done with that
5 exhibit. Two days ago I believe you mentioned
6 Superfund sites that may be present around the
7 Midwest Generation facilities, do you remember
8 that?

9 A. Yes, I do.

10 Q. Do you remember using the plural
11 form of sites?

12 A. Yes, I do.

13 Q. You were only able to identify one
14 Superfund site in the proximity of the Midwest
15 Generation facilities, correct?

16 A. There are actually several. For
17 example, at Waukegan there are several Superfund
18 sites in the vicinity of Midwest Generation, but
19 directly to the north was the one that I
20 indicated, that was Johns Manville.

21 Q. And that is the only Superfund site
22 immediately adjacent to the Waukegan facility,
23 correct?

24 A. Immediately adjacent, correct,

1 because the others are in the state site
2 remediation program.

3 Q. And when you say state site
4 remediation program, does that mean they are not
5 in the federal Superfund site remediation program?

6 A. To my knowledge, that is correct.

7 Q. And when you said -- when you
8 mentioned the others, do you know how far away
9 they are from the Waukegan facility?

10 A. There are several that are located
11 nearby. There is -- I can't remember the name of
12 it, but there is one a few blocks away from the
13 Waukegan site. There is another one to the south
14 near Waukegan Harbor and there are several others
15 I think in the vicinity which is why they have a
16 citizens group that watches over that process.

17 Q. Thank you. Can you -- you can't
18 identify any Superfund site near Powerton, can
19 you?

20 A. There is a landfill that existed
21 next to Powerton, but not a Superfund site.

22 Q. You can't identify a Superfund site
23 near Joliet, can you?

24 A. No, just a site in the site

1 remediation.

2 Q. You can't identify a Superfund site
3 near Will County, can you?

4 A. I am not sure of that. I cannot
5 identify one, no.

6 Q. We are placing a new exhibit in
7 front of you.

8 MS. FRANZETTI: Just a moment,
9 counsel, so we can look at this a moment. Okay.
10 Thank you.

11 BY MS. BUGEL:

12 Q. We have placed some photos in front
13 of you, are you familiar with these photos?

14 MS. BUGEL: I'm sorry. We have
15 marked this as Complainants' Exhibit 50.

16 HEARING OFFICER HALLORAN:
17 Five-zero?

18 MS. BUGEL: Five-zero.

19 HEARING OFFICER HALLORAN: Thank
20 you.

21 (Document marked as
22 Complainants' Exhibit No. 50
23 for identification.)

24

1 BY THE WITNESS:

2 A. No, I'm not familiar with these
3 photos.

4 BY MS. BUGEL:

5 Q. Are you familiar with the location
6 of these photos?

7 MS. FRANZETTI: Objection to form.
8 Lack of foundation. It hasn't been established
9 what the location of these photos is.

10 MS. BUGEL: And I'm asking the
11 witness if she is able to establish what the
12 location of the photos is.

13 HEARING OFFICER HALLORAN: If she's
14 able, she can. Thanks.

15 BY THE WITNESS:

16 A. No, I cannot.

17 BY MS. BUGEL:

18 Q. Can you please turn to page 22694.

19 A. Okay.

20 Q. Do you see the buildings in the
21 background of those photos?

22 A. Yes, I do.

23 Q. Are you familiar with those
24 buildings?

1 A. Those buildings look similar to the
2 Joliet 9 facility across the river, but I'm not
3 certain.

4 Q. And at the bottom of the exhibit,
5 there is handwriting for the record that appeared
6 on this exhibit on these photos when they were
7 provided to us. That handwriting for the record
8 says "Joliet Pond 3 - dredging," do you see that?

9 A. Yes, I do see that.

10 Q. Do you recognize that handwriting?

11 A. No, I do not.

12 Q. Okay.

13 MS. BUGEL: We will not be moving
14 for the admittance of this exhibit and we can --

15 HEARING OFFICER HALLORAN: Thank
16 you.

17 MS. BUGEL: -- take that back.

18 BY MS. BUGEL:

19 Q. And can you please -- we're turning
20 to Complainants' Exhibit 301. And I'll give you a
21 minute to look at that exhibit.

22 A. Okay. I've taken a quick look at
23 the document.

24 Q. Are you familiar with this document?

1 HEARING OFFICER HALLORAN: Ms.

2 Bugel, what exhibit is this?

3 MS. BUGEL: This is Complainants'

4 Exhibit 301.

5 HEARING OFFICER HALLORAN: Thank

6 you.

7 BY THE WITNESS:

8 A. Although I'm copied on it, I don't

9 remember it exactly.

10 BY MS. BUGEL:

11 Q. But your name does appear as a cc on
12 this -- or your e-mail address does appear as a cc
13 on this exhibit, correct?

14 A. Correct, and this would have been
15 generated during the ICR time. So I would have
16 been getting probably hundreds of e-mails. So I'm
17 not sure I read this one, but I might have.

18 Q. You just referenced that this was
19 generated at the ICR time.

20 Was -- was this -- you received
21 this as part of collecting information for the ICR
22 you just referenced?

23 A. I believe so. That's the right
24 timing for it.

1 Q. Thank you. We can set that aside.

2 You have mentioned the name Brian Delcorio in the
3 past several days, correct?

4 A. Yes.

5 Q. Who is Brian Delcorio?

6 A. Brian Delcorio is a long-time
7 employee of Midwest Generation and I believe
8 Commonwealth Edison before that at Joliet station.

9 Q. And does he -- you -- does he
10 currently work at Joliet?

11 A. I'm actually not sure.

12 Q. But you mentioned Joliet station.
13 His -- did he previously work at Joliet?

14 A. I believe so, yes.

15 Q. Do you know if he was involved in
16 pond relining projects?

17 A. I know that Terry Kazmatko as
18 involved and I believe Brian was also involved,
19 but I don't know to what extent or what each of
20 them did.

21 Q. And -- and your responsibilities in
22 2012 included pond relining projects?

23 A. Let me think. I was still Director
24 of Environmental Services. So the day-to-day

1 compliance type things in air, land and water were
2 my responsibility, but I had an employee at that
3 point that was doing a lot of the NPDES work, the
4 day-to-day stuff.

5 Q. But that employee reported to you?

6 A. Correct.

7 Q. So pond relining projects were still
8 part of your overarching responsibilities,
9 correct?

10 A. Correct. The permitting piece I
11 should qualify that.

12 Q. And we are passing you what we have
13 marked as Complainants' Exhibit 51.

14 (Document marked as
15 Complainants' Exhibit No. 51
16 for identification.)

17 BY MS. BUGEL:

18 Q. And this -- do you see that this is
19 an e-mail from Brian Delcorio to James Dicola?

20 A. Yes, I do see this.

21 Q. And it also cc's Elsie Briette who
22 we have previously discussed, correct?

23 A. We have previously discussed her,
24 but I'm not copied on this.

1 Q. Okay. And do you see the statement
2 in the e-mail that says "I do not know the
3 original liner thickness since there was very
4 little liner left when the new liners were
5 installed"?

6 MS. FRANZETTI: Objection to form.
7 Lack of foundation. She hasn't asked Ms. Race if
8 she has seen this document before. She is not
9 named in it.

10 HEARING OFFICER HALLORAN: Ms.
11 Bugel?

12 MS. BUGEL: Yeah. Hearing Officer,
13 this document goes directly to the condition of
14 the liners which has been an issue that Ms. Race
15 has raised in her testimony. This is extremely
16 critical evidence in this case and Ms. Race is
17 familiar with the people who wrote this e-mail and
18 this pond relining project that is being discussed
19 here was part of her overarching responsibilities.

20 HEARING OFFICER HALLORAN: Quick
21 follow-up, Ms. Franzetti?

22 MS. FRANZETTI: Mr. Hearing Officer,
23 that still does not solve the problem that she
24 hasn't testified that she has seen this document

1 before, she did not prepare it, she is not cc'd on
2 it. So to ask her questions about its contents,
3 it's not even in evidence, is improper and as to
4 how critically important it is I beg to differ.

5 MS. BUGEL: The contents of the
6 e-mail -- the subject matter of the e-mail is a
7 responsibility of Ms. Race's overarching
8 responsibilities. The contents of the e-mail goes
9 to an issue that Ms. Race has raised in her
10 testimony.

11 HEARING OFFICER HALLORAN: Yeah, I'm
12 going to sustain Ms. Franzetti's objection as to
13 Complainants' Exhibit 51.

14 MS. BUGEL: We will maintain our
15 motion to include this and, for the record, we are
16 not withdrawing the exhibit, but we will collect
17 it at the moment. We will appeal this ruling to
18 the board.

19 HEARING OFFICER HALLORAN: Okay.
20 But do you want me to take it as an offer of
21 proof?

22 MS. BUGEL: Yes, I do.

23 HEARING OFFICER HALLORAN: Those are
24 the magic words.

1 MS. BUGEL: Thank you.

2 HEARING OFFICER HALLORAN: Thank
3 you.

4 BY MS. BUGEL:

5 Q. Just one question about this exhibit
6 then.

7 Do you see where it says "I do
8 not know the original liner thickness since there
9 was very little liner left when the new liners
10 were installed," do you see where it says that?

11 MS. FRANZETTI: Objection. This --

12 HEARING OFFICER HALLORAN: This is
13 within the offer of proof?

14 MS. BUGEL: This is within the offer
15 of proof.

16 MS. FRANZETTI: Okay.

17 BY THE WITNESS:

18 A. It looks like that is the last part
19 about an e-mail regarding clay liners within ponds
20 one and two.

21 BY MS. FRANZETTI:

22 Q. And at Joliet ponds one and two in
23 2012, were there clay liners?

24 A. There could have been. Not in 2012,

1 but before that.

2 Q. And were there clay liners in Joliet
3 ponds one and two prior to 2007/2008 timeframe?

4 A. There could have been on top of the
5 poz-o-pac.

6 Q. And you signed the permit
7 applications for Joliet?

8 HEARING OFFICER HALLORAN: Okay. Is
9 this outside the offer of proof?

10 MS. BUGEL: Within the offer of
11 proof.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 BY MS. BUGEL:

15 Q. You signed the permit applications
16 for the Joliet ponds one and two liner replacement
17 project, correct?

18 A. I don't know. Do we have those
19 documents?

20 Q. Yes, we do. That's Exhibit 308 --
21 I'm sorry. Exhibit 508 and 508 is in the front.
22 That's in the notebook.

23 MS. DUBIN: 608.

24 MS. BUGEL: My mistake. 608

1 Respondent's Exhibit 608, which is also in the
2 notebooks in front of you.

3 THE WITNESS: Thank you.

4 BY THE WITNESS:

5 A. I did not sign the application for a
6 construction permit.

7 BY MS. BUGEL:

8 Q. Okay. Can you turn to -- let me
9 rephrase that question.

10 Did you sign the letter
11 forwarding the permit application for Joliet ponds
12 one and two if you look at page 18134 of
13 Respondent's Exhibit 608?

14 A. Yes, I signed the transmittal letter
15 to submit the application for construction for ash
16 impoundments one and two for Joliet 29 station.

17 MS. BUGEL: I have no further
18 questions within the offer of proof.

19 HEARING OFFICER HALLORAN: Thanks
20 for letting me know.

21 BY MS. BUGEL:

22 Q. We can set exhibits aside for the
23 moment. Yesterday -- I'm sorry. Two days ago you
24 testified on capacity, do you remember that?

1 A. Within the meaning of capacity of
2 power plants --

3 Q. Yes.

4 A. -- or capacity of impoundments?

5 Q. Within the meaning of capacity of
6 power plants.

7 A. Okay.

8 Q. Do you remember that?

9 A. Yes, I do remember that.

10 Q. Are you an expert on capacity
11 markets?

12 A. I have had training on capacity
13 markets when I was an asset manager, but I am not
14 an expert on capacity markets.

15 Q. Are you aware how regional grid
16 operators procure capacity commitments through the
17 market?

18 A. I have actually bid plants into the
19 capacity market as part of my job as an asset
20 manager.

21 Q. And do regional grid operators
22 procure capacity -- capacity commitments through a
23 capacity auction?

24 A. It depends on the regional

1 transmission operator whether they do that or not.

2 Q. Does PJAM do that?

3 A. Yes, they do.

4 Q. Are Midwest Generation plants in the
5 PJAM region?

6 A. Yes, they are in the PJAM region.

7 Q. And does PJAM procure capacity
8 commitments through a capacity auction?

9 A. Yes, they do for given years.

10 Q. When you say for given years, what
11 do you mean?

12 A. It's an auction that is setup for
13 three years out from the present time.

14 Q. And if one of Midwest Generation's
15 plants did not participate in the auction, there
16 are other possible sources of capacity in the PJAM
17 marketplace, correct?

18 MS. FRANZETTI: Objection. Calls
19 for speculation as to what the rest of the market
20 consists of.

21 HEARING OFFICER HALLORAN: Is there
22 a way you can rephrase that, Ms. Bugel?

23 MS. BUGEL: Yes, there is.

24

1 BY MS. BUGEL:

2 Q. The PJAM region has a surplus of
3 capacity available right now, correct?

4 MS. FRANZETTI: Objection. Lack of
5 foundation.

6 HEARING OFFICER HALLORAN: Ms.
7 Bugel?

8 MS. BUGEL: The witness has
9 established in her previous testimony that she is
10 familiar with the capacity auction, the PJAM
11 region and how the auctions work.

12 HEARING OFFICER HALLORAN: I agree.
13 Go ahead, Ms. Franzetti.

14 MS. FRANZETTI: But that's not the
15 question. The question is whether right now there
16 is a surplus of electricity sources in this
17 market.

18 MS. BUGEL: And the witness has
19 established her familiarity.

20 HEARING OFFICER HALLORAN: She can
21 answer if she's able. Overruled.

22 BY THE WITNESS:

23 A. By this market, which market do you
24 mean?

1 BY MS. BUGEL:

2 Q. I mean, the market that the Midwest
3 Gen plants participated in within the PJAM region.

4 A. There are circumstances where --
5 particularly within the ComEd region where three
6 of the Midwest Generation plants that we're
7 discussing here reside within ComEd, which is a
8 region within PJAM where there is significant
9 congestion and due to that I -- my opinion is that
10 there are times when there certainly is not excess
11 power available which is why the capacity market
12 exists.

13 Q. And there are times when there is
14 excess power available?

15 A. I don't know that.

16 Q. You are not a hydrogeologist,
17 correct?

18 A. That's correct. I'm a physicist.

19 MS. BUGEL: Hearing Officer,
20 Complainants do have questions on Exhibit 662,
21 which is the beyond coal campaign exhibit that
22 was -- that is the issue of motions and briefings
23 obviously. We would like to ask some follow-up
24 questions to Ms. Franzetti's question that was

1 about -- questions about where Ms. Race obtained
2 the document.

3 HEARING OFFICER HALLORAN: I gave
4 you a chance yesterday and you said no. I offered
5 you a chance to follow-up with any questions and I
6 believe you said no.

7 MS. BUGEL: Okay.

8 HEARING OFFICER HALLORAN: Because
9 Ms. Franzetti I think addressed some questions --

10 MS. FRANZETTI: Yes.

11 HEARING OFFICER HALLORAN: -- to
12 Ms. Race and then I offered you and you huddled
13 with Mr. Russ and company and you said, no, we
14 don't want to do that.

15 MS. BUGEL: Okay. We did have an
16 opportunity, counsel, to revisit the issue and we
17 would like to ask now for an opportunity to ask
18 some follow-up questions and it would be without
19 waiving either the motion to strike
20 Ms. Franzetti's question or our objection to the
21 exhibit.

22 HEARING OFFICER HALLORAN: Ms.
23 Franzetti?

24 MS. FRANZETTI: It's been

1 established in her testimony she obtained it off
2 the Internet through a Google search. I'm not
3 sure how much more we can -- we can elicit about
4 this or needs to be elicited since their whole
5 position is it shouldn't even be used here.

6 HEARING OFFICER HALLORAN: I guess
7 we'll find out. I'll allow a few questions, but,
8 again, I gave you an opportunity yesterday on
9 January 30th and it was an adamant no.

10 MS. BUGEL: We have very few
11 questions and --

12 HEARING OFFICER HALLORAN: Thank
13 you, Ms. Bugel.

14 MS. BUGEL: Thank you.

15 BY MS. BUGEL:

16 Q. Referring back to the beyond coal
17 campaign exhibit that was put in front of you
18 marked as Respondent's Exhibit 662, but hasn't
19 been admitted, do you recall that exhibit?

20 A. Yes, I do.

21 Q. When did you find this document?

22 A. I believe it was in 2014 because I
23 sent the link to my then boss John Baylor and so
24 that would be the 2014 timeframe.

1 Q. Do you recall what sort of website
2 you found it on?

3 A. It looked to me like it was an
4 Australian Sierra Club website or something along
5 those lines. It had to do with Australia.

6 Q. Okay.

7 A. And that's all I remember about it.

8 Q. Thank you.

9 MS. BUGEL: I have no further
10 questions.

11 HEARING OFFICER HALLORAN: Thank
12 you, Ms. Bugel.

13 MS. BUGEL: I have no further
14 questions on our cross.

15 HEARING OFFICER HALLORAN: Okay.
16 Terrific. Ms. Franzetti, redirect?

17 MS. FRANZETTI: Very limited.

18 HEARING OFFICER HALLORAN: That's
19 fine.

20 MS. FRANZETTI: -- Mr. Halloran.

21 R E D I R E C T E X A M I N A T I O N

22 BY MS. FRANZETTI

23 Q. Ms. Race, you were asked some
24 questions with regard to the ENSR reports with

1 regard to Mr. Christopher Lux being a person
2 interviewed or contacted, and I'm speaking of
3 Complainants' Exhibit 38, do you know whether
4 Mr. Lux was interviewed or was he rather just
5 simply contacted?

6 A. I do not know. I wasn't working
7 with Commonwealth Edison. So I have no idea.

8 Q. Do you know what information, if
9 any, Mr. Lux provided to ENSR?

10 A. I do not.

11 Q. With respect to Ms. Elsie Briette,
12 who you were also asked questions about with
13 respect to one of the other ENSR reports, do you
14 know whether she was interviewed or whether she
15 was simply contacted?

16 A. I do not know.

17 Q. Do you have any knowledge as to
18 whether she provided any information that appears
19 in the report?

20 A. I don't know.

21 Q. I'm going to go back to -- I'm going
22 to ask you to look at Exhibit 610 and this is in
23 reference to the leak location survey document you
24 were questioned about, particularly the field note

1 summary. It is at Bates number 49493.

2 A. I'm there.

3 Q. Now, Ms. Race, I believe you
4 generally testified that the purpose of a leak
5 location survey is to determine whether or not
6 there are any leaks in the liner once it has been
7 placed in the impoundment, is that correct?

8 A. That's correct.

9 Q. Now, you were questioned by
10 Ms. Bugel with respect to the portion of these
11 field comments that are dated May 22nd which is
12 entitled leak detection survey, do you generally
13 recall those questions in your testimony?

14 A. Yes, I do.

15 Q. And you were questioned with respect
16 to references to one hole found around 245 feet
17 from the discharge weir and then one other hole in
18 the southeast corner of the pond, do you recall
19 that?

20 A. Yes, I do.

21 Q. I want to direct your attention to
22 the next entry for May 23rd leak repairs. If you
23 would review the information provided there, how
24 many holes does it say were repaired?

1 A. Two.

2 Q. And does it also say that a patch
3 was placed on each location?

4 A. Yes, it does say that.

5 MS. FRANZETTI: No further
6 questions.

7 HEARING OFFICER HALLORAN: Thank
8 you. Ms. Bugel?

9 MS. BUGEL: No further questions.

10 HEARING OFFICER HALLORAN: Okay.
11 Thank you. Thank you, Ms. Race. You may step
12 down. Let's go off the record a minute.

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

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

18 MS. FRANZETTI: Mr. Hearing Officer,
19 there was a request yesterday with respect to
20 Exhibit 648 where we, Midwest Gen, used an excerpt
21 from the Waukegan generating station NPDES permit
22 public hearing transcript and it was requested by
23 you that we agree to Ms. Bugel's request that the
24 whole transcript of that public hearing be made a

1 part of the exhibit. So we have printed that out
2 and would like to present a complete copy of 648.
3 Counsel, here is your copy.

4 HEARING OFFICER HALLORAN: Thank
5 you.

6 MS. BUGEL: Thank you.

7 MS. FRANZETTI: And with your other
8 housekeeping matter, I did not move to admit
9 Exhibit 667, which is the aerials of the power
10 station maps that we have used in connection with
11 Ms. Race's testimony.

12 HEARING OFFICER HALLORAN: 667?

13 MS. FRANZETTI: Yes, I don't think
14 you have a copy.

15 HEARING OFFICER HALLORAN: Ms.
16 Bugel?

17 MS. FRANZETTI: We are moving to
18 admit it.

19 HEARING OFFICER HALLORAN: Let's let
20 Ms. Bugel look at it.

21 MS. FRANZETTI: Yes. Yes.
22 Absolutely.

23 MS. BUGEL: I have no objection.

24 HEARING OFFICER HALLORAN: Thank

1 you, Ms. Bugel.

2 MR. RUSS: Can I ask one more
3 question on the exhibit? On my list, 666 wasn't
4 admitted. I just want to clarify you had admitted
5 Exhibit 666.

6 MS. GALE: I have it admitted.

7 MS. FRANZETTI: We have --

8 HEARING OFFICER HALLORAN: I have it
9 admitted and I believe I asked the board to
10 disregard the poz-o-pac photo.

11 MS. GALE: That is what you did.

12 HEARING OFFICER HALLORAN: All
13 right. And then exhibit -- Respondent's Exhibit
14 648 replacing Exhibit 648 with the whole
15 transcript is admitted and let's go off the record
16 for a few minutes so Midwest can call their next
17 witness.

18 MS. GALE: Thank you.

19 (Whereupon, a break was taken
20 after which the following
21 proceedings were had.)

22 HEARING OFFICER HALLORAN: We're
23 going back on the record. Before we begin, I
24 would like to state for the record we do have

1 member Zalewski in the back watching and
2 listening. So, in any event, Ms. Gale, your
3 witness.

4 MS. NIJMAN: Yes, thank you.
5 Midwest Generation calls Mark Kelly.

6 HEARING OFFICER HALLORAN: Thank
7 you. Mr. Kelly, raise your hand and Mr. Brickey
8 will swear you in.

9 WHEREUPON:

10 MARK KELLY
11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 HEARING OFFICER HALLORAN: You may
14 begin.

15 D I R E C T E X A M I N A T I O N

16 BY MS. GALE

17 Q. Can you please state your name and
18 spell your last name.

19 A. Mark Kelly, K-E-L-L-Y.

20 Q. And who do you work for?

21 A. I work for Midwest Generation, the
22 Powerton station.

23 Q. And what is your position at Midwest
24 Generation?

1 A. I am a chemical specialist there,
2 chemical engineer.

3 Q. And we have stipulation 17 "Midwest
4 Generation operates the Powerton electric
5 generating station, commonly known as Powerton,
6 located in Pekin, Tazewell County, Illinois."

7 Mr. Kelly, what does the power
8 station do?

9 A. We generate electricity.

10 Q. How is electricity generated at
11 Powerton?

12 A. We burn coal to generate steam, it
13 turns the turbine, it creates electricity.

14 MS. GALE: Can I have the aerial
15 photo up, please?

16 BY MS. GALE:

17 Q. Mr. Kelly, directing your attention
18 to the aerial, and if it's too far to see, there
19 is a screen in front of you.

20 A. Okay.

21 Q. Do you recognize what's on the
22 screen?

23 A. Yes.

24 Q. What is it?

1 A. It's an aerial view of the station
2 and surrounding area.

3 Q. And, generally speaking, how would
4 you describe the area around Powerton?

5 A. There is forest, there is trees,
6 there is -- it's -- we are remote from the city.
7 There is an industrial area also off to the
8 northeast.

9 Q. And when did -- when did -- I guess
10 were you there in 1999 when Midwest Generation
11 purchased the station?

12 A. Yes, I was.

13 Q. When did you start working at the
14 Powerton station?

15 A. I worked there for four to five
16 weeks in the fall of '91 and I started on a
17 permanent basis in January of '92.

18 Q. And can you just generally describe
19 what you do at Powerton?

20 A. I am responsible for boiler water
21 chemistry, wastewater, the drinking water, the
22 circulating water for the condensers. Mostly a
23 lot of things to do with water.

24 Q. Does that -- does that water include

1 the water in the ash pond?

2 A. Yes.

3 Q. The ash sluice water as we will call
4 it?

5 A. Yes.

6 Q. And when coal is burned for
7 electricity at Powerton, what is one of the
8 bi-products?

9 A. Well, there is a couple. There is
10 bottom ash and then there is fly ash and there's
11 cinders, yes.

12 Q. Okay. And fly ash, can you
13 generally describe what that is?

14 A. It is the unburned coal that is
15 lighter in mass and it --

16 Q. I'm sorry. Are you finished?

17 A. Yes.

18 Q. And at Powerton, how is the fly ash
19 collected?

20 A. We have electrostatic precipitators
21 that collect the fly ash and then it is collected
22 in silos and hauled offsite.

23 Q. So is that a dry system?

24 A. It's a very dry system.

1 Q. And is the fly ash ever directed to
2 the ponds?

3 A. No.

4 Q. And when you say the fly ash is held
5 offsite, do you know where it's taken to?

6 A. It is taken to the Buckheart Mines
7 for mine reclamation.

8 Q. And you mentioned the bottom ash,
9 how is that collected?

10 A. That is -- goes to the bottom of
11 boilers and slag tanks and it is quenched with
12 water and sluiced out to dewatering bins and then
13 from there it can be decanted and it goes to the
14 ash basin.

15 Q. And when you say ash basin, what ash
16 basin are you talking about?

17 A. The large ash surge basin.

18 Q. And the water that gets to the ash
19 surge basin with the ash, what happens to that
20 water once it passes through the ash surge basin?

21 A. It can either be recycled back to
22 our cooling pond or it's discharged to the river.

23 Q. And what kind of discharge is that,
24 is that a permitted discharge?

1 A. It is an NPDES -- there are NPDES
2 outfalls, yes.

3 Q. And the ash in the basin, what
4 happens to that ash?

5 A. It collects in that basin and then
6 we periodically will clean it out.

7 Q. And where does it go when you clean
8 it out?

9 A. That also gets sent to -- it gets
10 collected and taken to the mines for mine
11 reclamation also.

12 Q. Okay. Mr. Kelly, I am showing you
13 what we have identified for identification
14 purposes only as Exhibit 712. I am handing it to
15 you. Do you know what is contained in that jar?

16 (Document marked as Respondent's
17 Exhibit No. 712 for
18 identification.)

19 BY THE WITNESS:

20 A. It looks like some bottom ash and
21 ash that would be in our basins.

22 BY MS. GALE:

23 Q. And can you just describe it for me?

24 A. It's brown in color. It's very --

1 it's like a sand almost. It's very -- it's very
2 sandy, yes.

3 Q. Can you tell me what's its smell?

4 A. I cannot smell anything. I can't
5 smell anything. It has no smell to me.

6 Q. And I believe you said that's
7 similar to the bottom ash you see at Powerton?

8 A. Yes.

9 Q. Do you sometimes conduct sampling of
10 the bottom ash at Powerton?

11 A. Yes, we do.

12 Q. What are your reasons for the
13 sampling?

14 A. We have collected in the past to
15 send to the mine because they would just like to
16 verify what they are getting. So we sample and
17 let them know what is in there.

18 Q. Can you please turn to Exhibit 700
19 in your binder.

20 A. All right.

21 Q. Can you tell me what that is?

22 A. That is an analytical report from
23 our station from Severn Trent Labs.

24 Q. And what is the analytical report

1 for?

2 A. It was a sample of bottom ash that
3 was taken.

4 Q. And who is the report attention to?

5 A. Myself.

6 Q. And who collected the sample?

7 A. I believe I did. Yes, on chain of
8 custody, I sampled it.

9 Q. And on the chain of custody, it says
10 Powerton bottom ash.

11 MR. WANNIER: I'm sorry to
12 interrupt. What page are you on?

13 MS. GALE: I'm sorry. You're right.
14 MWG 13-15_10965.

15 MR. WANNIER: Thank you.

16 MS. GALE: Are you there?

17 MR. WANNIER: Yes, thank you.

18 BY MS. GALE:

19 Q. And it's described as Powerton
20 bottom ash, where is that sample from?

21 A. More than likely it was taken from
22 the large ash surge basin.

23 Q. And when did you take this sample?

24 A. On February 27th, 2007.

1 Q. And what was the analysis that was
2 requested?

3 A. It is a -- it was an ASTM method
4 03987-85.

5 Q. And if you turn to page MWG
6 13-15_10951 --

7 A. All right.

8 Q. -- what were the results of this
9 sampling analysis?

10 A. Mostly all non-detectables except
11 for barium, which was 0.027.

12 MS. GALE: Mr. Hearing Officer, we
13 move to admit Exhibit 700.

14 HEARING OFFICER HALLORAN:
15 Mr. Wannier?

16 MR. WANNIER: No objection, your
17 Honor.

18 HEARING OFFICER HALLORAN: Thank
19 you. Respondent's Exhibit 700 is admitted.

20 BY MS. GALE:

21 Q. Okay. Mr. Kelly, directing your
22 attention back up to the Powerton map.

23 MS. GALE: And can we get the ponds
24 highlighted, please.

1 BY MS. GALE:

2 Q. It might be easier to see on your
3 screen there.

4 A. Okay.

5 Q. Can you identify the ponds at the
6 Powerton station?

7 A. The larger blue basin in the middle
8 of the screen is the ash surge basin. The basin
9 to the left or to the west of that is the metal
10 cleaning basin. The basin to -- the smaller basin
11 to the south is the bypass basin and the basin
12 that is to the northeast that is in green I
13 believe is our -- our secondary ash basin.

14 Q. And, generally speaking, what is the
15 purpose of the -- the ash ponds?

16 A. The general purpose is to collect
17 and hold the ash and the bottom ash from the
18 station and then we treat the water and discharge
19 it.

20 Q. And turning your attention to the
21 ash surge basin, would you describe that as the
22 primary ash basin at Powerton?

23 A. That is the primary basin, yes.

24 Q. At the basin, in the ash surge

1 basin, how high does the water go up in the pond?

2 A. The level varies, but it goes, you
3 know, within five feet of the top of the basin
4 probably is the highest level.

5 Q. What's the lowest level?

6 A. Probably four or five feet maybe.

7 Q. From the bottom?

8 A. From the bottom.

9 Q. And so estimating, about how much
10 can you see of the pond liner?

11 MR. WANNIER: Objection. Vague.

12 Can you just clarify when?

13 MS. GALE: Sure.

14 BY MS. GALE:

15 Q. So when the pond is only four
16 feet -- or excuse me -- the water is only four
17 feet from the bottom, about how much can you see
18 of the pond liner?

19 A. I'd say probably 75 percent, 80
20 percent maybe.

21 MS. GALE: Mr. Hearing Officer, we
22 have a stipulation here. I believe these were
23 already read into the record, but it will assist
24 in this examination as well.

1 BY MS. GALE:

2 Q. Stipulation 20. "The ash surge
3 basin was constructed in 1978 with a poz-o-pac
4 liner on the bottom and a Hypalon liner on the
5 sides" and, Mr. Kelly, question to you, what is
6 your understanding of poz-o-pac?

7 A. It is a very dense material that was
8 made from fly ash and mixed with water and it
9 becomes concrete.

10 Q. Mr. Kelly, I'm showing you what we
11 have been showing as a demonstrative here.
12 What -- what does that look like?

13 A. That looks like a core sample from a
14 poz-o-pac liner.

15 Q. And in the ash surge basin, to your
16 recollection, how thick was the poz-o-pac?

17 A. I believe it is 12 inches thick.

18 Q. And what is your understanding of
19 what Hypalon is?

20 A. Hypalon is a rubber material for
21 lining.

22 Q. I believe you said earlier that the
23 ash in the ash surge basin is removed, are you
24 familiar with the removal process for the ash?

1 A. Yes.

2 Q. How often is that ash basin dredged?

3 A. I'd say every six to eight years.

4 Q. And during the clean-out process,
5 who does the cleaning out?

6 A. Our station operators would perform
7 the maintenance of -- would operate the machinery
8 inside the basin to remove the ash.

9 Q. And are they trained?

10 A. Yes. They have -- before we start
11 any of the jobs, they would have meetings to
12 discuss what they have to do and they are trained
13 specifically to operate those -- those pieces of
14 machinery.

15 Q. And -- and for an ash removal
16 process, can you just -- what is -- walk me
17 through the steps of how you go about removing the
18 ash.

19 A. Well, first, we would have a meeting
20 to discuss how we're going to do that with the
21 operators and lay out the safety objectives to
22 make sure they understand to be cognizant of the
23 liner and not to rip or tear it. Then the station
24 would dewater the basin, the process of just

1 trying to take the water out of the basin and then
2 the operators would get in and start moving the
3 material, start stockpiling it and letting more
4 water decant out of it to try to get the material
5 as dry as possible before transport.

6 Q. And you've talked about equipment,
7 what kind of equipment is used inside the basin?

8 A. End loaders with buckets to -- to
9 scoop the material.

10 Q. To your knowledge, what kind of
11 tires do those end loaders have?

12 A. Rubber. Rubber coated tires.

13 Q. And have you seen the machinery
14 operate in the ponds?

15 A. Yes, I have.

16 Q. How would you describe how they
17 operate?

18 A. Careful. I mean, they're just
19 moving back and forth, but they are -- are very
20 methodical and very particular about what they're
21 doing, yes.

22 Q. And you said there is a meeting to
23 discuss a liner before you do a clean out?

24 A. Mm-hmm.

1 Q. What happens if there is an incident
2 related to the liner during a clean out?

3 A. If anything was to happen, they stop
4 and they either call their supervisor or call me
5 to come out to inspect to see what we have to do
6 to repair.

7 Q. So you schedule a repair?

8 A. Yes, I would.

9 Q. Who do you call to schedule a
10 repair?

11 A. I call Clear Air and Water. They
12 are the people who installed the liners.

13 Q. And at that time when it is being
14 cleaned out, is it in service?

15 A. No, it is not in service.

16 Q. When you say in service, what does
17 that mean?

18 A. Treating water. There would be
19 water in the basin if it was in service and there
20 is no water in the basin when we were cleaning
21 them out.

22 Q. And, typically, how long does it
23 take for a repair to be conducted?

24 A. Usually within a week or two. They

1 are fairly good about responding.

2 Q. And even if there is no tear in the
3 liner, once the surge basin is emptied, what is
4 the station's procedure?

5 A. We would inspect to verify that we
6 have gotten what we can out safely and then once
7 we inspected it we would put it back in service.

8 Q. And the ash surge basin, when was
9 the last time it was emptied?

10 A. In 2013, before it was relined.

11 Q. I'm going to read the stipulation
12 in. I don't know if it was read in last time.
13 Stipulation 21. "In 2013, Midwest Generation
14 relined the ash surge basin with a 60 mil HDPE
15 liner" and, Mr. Kelly, did you participate in the
16 relining process at the ash surge basin?

17 A. Yes, I did.

18 Q. How did you participate?

19 A. I was the station contact to help
20 with the consultants to write the bid spec and
21 then I oversaw the lining process.

22 Q. Okay. Mr. Kelly, I would like you
23 to turn to 701 in your exhibit book, please.

24 A. Okay.

1 Q. What is this?

2 A. That is a letter to the Illinois EPA
3 for our application for a permit for construction
4 for the ash surge basin.

5 (Document marked as Respondent's
6 Exhibit No. 701 for
7 identification.)

8 BY MS. GALE:

9 Q. What date is it?

10 A. January 17th of 2013.

11 Q. And it's a construction
12 application -- I'm sorry. Did you say to
13 construct a liner replacement?

14 A. It is for the liner replacement for
15 the ash surge basin, yes.

16 Q. And by liner, what kind of liner was
17 proposed to be installed?

18 A. High density polyethylene liner.

19 MS. GALE: Mr. Hearing Officer, I
20 move to admit Exhibit 701.

21 HEARING OFFICER HALLORAN:

22 Mr. Wannier?

23 MR. WANNIER: No objection, your

24 Honor.

1 HEARING OFFICER HALLORAN: Thank
2 you. Respondent's Exhibit 701 is admitted.

3 BY MS. GALE:

4 Q. Mr. Kelly, did Illinois EPA issue a
5 construction permit?

6 A. Yes, they did.

7 Q. Can you please turn to Exhibit 702
8 in your binder.

9 A. Okay.

10 Q. Can you tell me what that is?

11 (Document marked as Respondent's
12 Exhibit No. 702 for
13 identification.)

14 BY THE WITNESS:

15 A. That is the letter from the Illinois
16 EPA for our construction permit for the ash surge
17 basin.

18 BY MS. GALE:

19 Q. And it's a construction permit to do
20 what?

21 A. To line the basins -- I should say
22 to line the basin, the ash surge basin, with --
23 with the high density polyethylene liner.

24 MS. GALE: Mr. Hearing Officer, I

1 move to admit Exhibit 702.

2 MR. WANNIER: No objection.

3 HEARING OFFICER HALLORAN: Thank
4 you. Respondent's Exhibit 702 is admitted.

5 BY MS. GALE:

6 Q. Mr. Kelly, to reline the basin, what
7 was the first thing the station had to do?

8 A. We had a meeting to discuss how we
9 were going to do it. So we had to remove all the
10 ash and everything completely before we could
11 reline that basin.

12 Q. And that includes the water?

13 A. That includes the water.

14 Q. So when you removed all the ash and
15 the water and the pond was empty, did you observe
16 the condition of the basin?

17 A. Yes.

18 Q. What did the poz-o-pac look like?

19 A. The poz-o-pac was in excellent
20 condition. So much so that in the bid spec it was
21 required to be removed, but we had a meeting and
22 the contractor said that there was no need because
23 it was in such good shape, plus it would have been
24 very difficult to remove. So we decided to lay

1 down the liner over that and not remove it at all.

2 Q. Okay. And do you recall the
3 condition of the Hypalon on the sides of the ash
4 surge basin?

5 A. Yes.

6 Q. What were -- excuse me. What was
7 the condition of the Hypalon on the sides?

8 A. It was in good condition. There
9 were rips and tears around the top of the basin
10 that had been repaired in the past, but everything
11 that was below the water line, normal water line,
12 was in good shape.

13 Q. Mr. Kelly, can you please turn to
14 Exhibit 703 in your book.

15 (Document marked as Respondent's
16 Exhibit No. 703 for
17 identification.)

18 BY THE WITNESS:

19 A. All right.

20 BY MS. GALE:

21 Q. What is that?

22 A. That is a letter from Natural
23 Resource Technology for -- it's the construction
24 documentation for the liner to the ash surge basin

1 replacement.

2 Q. And, generally speaking, how would
3 you consider this construction documentation?

4 A. It was very complete.

5 Q. Would you call them QAQC documents?

6 A. Yes, they are. They are a QAQC
7 document.

8 Q. Mr. Kelly, can you please turn to
9 MWG 13-15_34095.

10 A. All right.

11 Q. I'm sorry. Mr. Kelly, before we
12 talk about that page, can you tell me who this
13 documentation was addressed to?

14 A. It was addressed to me.

15 Q. Great. Thank you. Back to 34095.
16 What does this state?

17 A. This is a QAQC document. It's the
18 certificate of acceptance of the subgrade from the
19 contractor.

20 Q. And by the contractor, do you
21 mean --

22 A. The people who are installing the
23 liners.

24 Q. And who was that?

1 A. Clean Air and Water.

2 Q. So under where it says installer, it
3 states "The undersigned authorized representative
4 is CAAW, Clean Air and Water?"

5 A. Clean Air and Water. That is their
6 initials, yes.

7 Q. "Certifies that he or she has
8 visually inspected the subgrade surface of the
9 area described above and has found the surface to
10 be acceptable for installation of the geosynthetic
11 materials," is that what it states?

12 A. Correct.

13 Q. What does that mean to you?

14 A. That means, to me, that they had
15 certified that they had visually inspected and the
16 subgrade surface before they put the liner down
17 was acceptable to start putting the liner down.

18 Q. And, Mr. Kelly, looking down at the
19 bottom of that page that you left, underneath
20 installers acceptance, can you tell me what his
21 title was?

22 A. QAQC is his title for Clean Air and
23 Water.

24 Q. And do you know what QAQC stands

1 for?

2 A. Quality assurance quality control.

3 Q. Thank you. Mr. Kelly, can you turn
4 to page -- it's one flip over -- 34097.

5 A. Okay.

6 Q. What -- what does it state on here?
7 What does it tell you?

8 A. That is a letter to Midwest Gen from
9 Clean Air and Water and it says that the HDPE, the
10 high density polyethylene liner, and geotextiles
11 were installed in the ash surge basin in
12 accordance with the project specifications and the
13 manufacturer's recommendations.

14 Q. And what does that mean to you?

15 A. That it was properly installed. The
16 liner was properly installed.

17 Q. Thank you. Mr. Kelly, can you turn
18 to 34141.

19 A. Okay.

20 Q. What is this? What is this
21 document?

22 A. That is a leak -- that is a letter
23 from the leak location company that performed the
24 leak location surveys on the ash surge basin.

1 Q. And, to your knowledge, what is the
2 purpose of a leak location survey test?

3 A. After the liner is installed, they
4 are called to perform a spark or a leak test on
5 the liner to make sure that its continuity -- that
6 it is continuous all the way through and to check
7 for any possible leaks.

8 Q. And this is before it's put back
9 into service?

10 A. This is done before it's put back
11 into service.

12 Q. And on this leak location test under
13 results, what did they find?

14 A. It says that two leaks were found
15 during a testing of the ash basin.

16 Q. Okay. And, Mr. Kelly, to your
17 knowledge, were those two leaks fixed?

18 A. Yes, they were.

19 Q. I'd like to actually turn to -- next
20 to 34145.

21 A. Okay.

22 Q. And what is this?

23 A. This is another letter from the leak
24 location survey people for another test that was

1 done right before we put the basis -- ash surge
2 basin back in service. It was done in October,
3 yes.

4 Q. And under results, what did they
5 find?

6 A. That no leaks were found at that
7 time, but they did find three leaks during a
8 visual inspection.

9 Q. And were those leaks fixed?

10 A. Yes, they were.

11 Q. Can you please -- in the back of
12 your what you have -- of 703 are drawings. So
13 further in the back. Can you please open up
14 34156.

15 A. All right. Okay.

16 Q. And looking at the cross section on
17 the top left-hand corner, what is that a cross
18 section of?

19 A. That is a cross section of the ash
20 surge basin liner replacement.

21 Q. Okay. And, Mr. Kelly, I'd like to
22 actually make everyone's attention easier.
23 Directing your attention to the cross section of
24 the ash surge basin on the screen, Powerton ash

1 surge basin.

2 Mr. Kelley, does this reflect
3 your understanding of the layers in the liner as
4 they are reflected in Exhibit 703?

5 A. Yes.

6 Q. Can you please describe the layers
7 starting from the bottom and going to the top.

8 A. The bottom is the 12-inch poz-o-pac,
9 then there is a layer of geotextile cushion and
10 then the liner itself, the high density
11 polyethylene liner, and then there is another
12 layer of cushion, a geotextile cushion, and then
13 there is a 12-inch layer of sand and then there is
14 six inches of crushed limestone on top of that.

15 Q. Mr. Kelly, is the drawing on the
16 screen correct as you see it represented in that
17 drawing?

18 A. Yes.

19 Q. You mentioned a limestone layer,
20 what is the purpose of the limestone layer?

21 A. A limestone layer is a warning layer
22 for when the basin is cleaned that it's a warning
23 layer to the operators that when they are hitting
24 the rock that they have reached the bottom of

1 material that they can scoop out -- or should
2 scoop out.

3 Q. And what is the limestone layer's
4 colors?

5 A. White.

6 Q. How does that compare to the ash you
7 have in the basin?

8 A. It's a dark -- it's a contrast
9 because the rock is white and the cinders are a
10 dark brownish black color.

11 Q. Since the ash surge basin has been
12 relined in 2013, has it been emptied?

13 A. No, we have not emptied it.

14 Q. So no trucks have been in it since
15 then?

16 A. Nothing has been in that basin
17 since, no.

18 Q. Okay. You can close that up. I
19 have one more page to look at. If you want to
20 give it to me, we can close it up later. Can you
21 now turn to 34046.

22 A. Okay.

23 Q. Just give me a moment.

24 MS. GALE: Can we go off the record

1 for a second?

2 HEARING OFFICER HALLORAN: Yes,
3 we're off the record.

4 (Whereupon, a break was taken
5 after which the following
6 proceedings were had.)

7 HEARING OFFICER HALLORAN: Back on
8 the record.

9 BY MS. GALE:

10 Q. Mr. Kelly, on the bottom of 34046,
11 what is depicted?

12 A. It says it is a panoramic view of
13 the entire basin. It looks like the ash basin
14 from the northeast corner facing southwest towards
15 the station.

16 Q. When you say ash basin, do you mean
17 the ash surge basin?

18 A. The ash surge basin.

19 Q. And what stage of the relining
20 process is this picture representing?

21 A. I believe it is right before, soon
22 before, we put in -- after the liner has been
23 installed and before we put it in service.

24 Q. Okay. Mr. Kelly, I'm placing in

1 front of you -- it's actually not marked because
2 it was part of Exhibit 664, which was removed
3 yesterday, but I'll put it back in.

4 Mr. Kelly, what is the picture
5 that was a part of 664 that I just handed you?
6 What does it look like?

7 A. It appears to me to be the exact
8 picture that is on page 34046.

9 MS. NIJMAN: I'm going to call it
10 for the record 664-A for now.

11 (Document marked as Respondent's
12 Exhibit No. 664-A for
13 identification.)

14 BY MS. GALE:

15 Q. And you just said it looked like the
16 same picture that was in 34046?

17 A. Correct.

18 Q. In looking at the larger picture
19 because it's just easier on the eyes, what is the
20 white material on the slopes of the basin?

21 A. The white material is the liner --
22 is the high density polyethylene liner.

23 Q. And at the bottom of the basin, what
24 is it -- what is contained in the bottom of the

1 basin?

2 A. The bottom of the basin is the
3 crushed limestone layer.

4 Q. And it's sort of a grayish white?

5 A. It's a grayish white, yeah.

6 Q. And sort of in the middle of the
7 photo there is a stick sticking out, I don't
8 believe it's actually a stick, but it appears like
9 a stick right now, what is that?

10 A. That is a warning pole. Those were
11 installed in the basins. You really can't see
12 them down -- they're probably a hundred feet or
13 so. That is a warning pole for -- to let
14 operators know when we're cleaning it out that
15 they are reaching the sides of the basin and to --
16 to be aware of that when they're cleaning it out.

17 Q. And by be aware of that, be aware of
18 the sides?

19 A. Be aware of the sides of the liner
20 so they are not to get close to that.

21 Q. And so those poles they stick out of
22 the ash?

23 A. They are -- they would stick out of
24 the ash. They are probably ten feet tall. You

1 can see them, yes.

2 MS. GALE: Mr. Hearing Officer, we
3 move to admit Exhibit 664-A to be included as part
4 of Exhibit 664.

5 MR. WANNIER: No objection, your
6 Honor.

7 HEARING OFFICER HALLORAN: Thank
8 you, Mr. Wannier. I'll just keep this separate.

9 MS. GALE: Okay.

10 HEARING OFFICER HALLORAN: I'm not
11 going to insert it into the original document.

12 MS. GALE: That's fine.

13 HEARING OFFICER HALLORAN: So
14 Respondent's Exhibit 664-A is admitted.

15 MS. GALE: Okay. Let's bring the
16 Powerton map up again, please.

17 BY MS. GALE:

18 Q. After looking at the Powerton map
19 looking at the basins of ash ponds, are you
20 familiar with the bypass basin?

21 A. Yes.

22 Q. And I think you described it as the
23 one at -- the southern most basin?

24 A. South of the ash surge basin, yes,

1 the smaller one.

2 MS. GALE: Mr. Hearing Officer, I
3 neglected to move to admit Exhibit 703.

4 HEARING OFFICER HALLORAN: Yes, I
5 know you did.

6 MS. GALE: Thank you.

7 HEARING OFFICER HALLORAN: Mr.
8 Wannier?

9 MR. WANNIER: No objection.

10 HEARING OFFICER HALLORAN:
11 Respondent's Exhibit 703 is admitted. No
12 objection.

13 MS. GALE: Thank you.

14 BY MS. GALE:

15 Q. I'll read into the record
16 stipulation 30. "The bypass basin receives ash
17 when Powerton is emptying the ash surge basin."

18 So when Powerton empties the ash
19 surge basin, how -- how does ash get to the bypass
20 station?

21 A. By water -- I mean, by water. It's
22 still connected to the same inlet as the ash basin
23 and we would close gates going to the ash basin
24 and open up a gate to the bypass station.

1 Q. So it's simply taking a new route?

2 A. Yes.

3 Q. And so is that the same bottom ash
4 that flows into the surge basin?

5 A. Yes.

6 MR. WANNIER: Can I just --

7 HEARING OFFICER HALLORAN: Yes, you
8 may.

9 MR. WANNIER: Objection. To
10 clarify, when the witness is referring to ash
11 basin, is that the same as the surge basin just
12 for the record?

13 THE WITNESS: Yes. Sorry.

14 MR. WANNIER: I apologize, your
15 Honor.

16 HEARING OFFICER HALLORAN: I'll ask
17 Ms. Gale to rephrase or something.

18 MR. WANNIER: I apologize.

19 HEARING OFFICER HALLORAN: No. No
20 worries.

21 BY MS. GALE:

22 Q. We will try to use surge basin.

23 A. Okay.

24 Q. Stipulation 28 "The bypass basin has

1 a poz-o-pac liner and a -- on the bottom and
2 Hypalon liner on the sides."

3 Mr. Kelly, to your recollection,
4 how thick was the poz-o-pac liner on the bypass
5 basin?

6 A. I believe it was also a foot thick.

7 Q. And, generally speaking, how often
8 is the bypass basin dredged?

9 A. Similarly to the ash surge basin
10 whenever we get done with the larger surge basin,
11 when we put that in service, we will go back and
12 clean out what was done when we were using the
13 bypass basin.

14 Q. So would you say every six to eight
15 years?

16 A. Yes.

17 Q. And is the ash removed similarly to
18 the ash surge basin?

19 A. Yes, it is. Very similarly using --
20 using our people and equipment to remove it, yes.

21 Q. Mm-hmm. So, by that, you mean you
22 dewater the basin first?

23 A. Yes, we would -- the same -- same
24 procedure as before where we would have a meeting

1 to discuss, you know, the procedure, how we're
2 going to do it, any precautions and then we would
3 dewater ash -- not ash, but take the water out,
4 get in there, move the material around to dewater
5 it even more to dry it out and then they would
6 load the ash into trucks for removal.

7 Q. And the machinery that goes in
8 there, are they end loaders?

9 A. Yes.

10 Q. What kind of tires?

11 A. Rubber. Rubber tires.

12 Q. And do trucks go into the bypass
13 basin?

14 A. No, it's not big enough. They would
15 either stay on the top on the road or be on the
16 ramp going down and be loaded that way. They
17 would not go into the basin.

18 Q. And once all the ash is removed
19 before it's put back into service, what does
20 Midwest Generation do?

21 A. Well, before it gets put back into
22 service, we would inspect to make sure that we
23 removed adequate amounts. Nothing -- the liner
24 was intact and nothing was damaged and then we

1 would put it back in service.

2 Q. And where -- the bottom ash that was
3 in the bypass basin, where does it go?

4 A. It also goes to the mines for mine
5 reclamation, the Buckheart Mine.

6 Q. If a liner is -- excuse me. If a
7 tear or damage is seen in the liner, what happens?

8 A. They would stop, they would contact
9 the supervisor or myself and I would go out there
10 and inspect the area and then arrange for repair.

11 Q. Similarly to -- similarly as to the
12 ash surge basin?

13 A. Correct.

14 Q. Since 1999, was the ash bypass basin
15 relined?

16 A. Yes, it was relined in 2010.

17 Q. Mr. Kelly, can you please turn to
18 Exhibit 704 in your --

19 A. Okay.

20 Q. What is this?

21 A. This is a letter from the Illinois
22 EPA to the station.

23 Q. Are you sure it's from the Illinois
24 EPA? You said from the Illinois EPA.

1 A. I'm sorry. It is -- it is to the
2 Illinois EPA, but it is our application for
3 construction for the bypass liner replacement.

4 Q. And what was -- what was the bypass
5 liner to be replaced with?

6 A. It was to be replaced with the high
7 density polyethylene liner.

8 Q. And what is the date of the letter?

9 A. The date is June 30th of 2010.

10 Q. And --

11 MS. GALE: Mr. Hearing Officer, we
12 move to admit Exhibit 704.

13 HEARING OFFICER HALLORAN:
14 Mr. Wannier?

15 MR. WANNIER: No objection.

16 HEARING OFFICER HALLORAN: Thank
17 you. Respondent's Exhibit 704 is admitted.

18 BY MS. GALE:

19 Q. Did Illinois EPA issue a
20 construction permit?

21 A. Yes, they did.

22 Q. Can you please turn to Exhibit 705.

23 A. Okay.

24

1 (Document marked as
2 Respondent's Exhibit No. 705
3 for identification.)

4 BY MS. GALE:

5 Q. What is that?

6 A. That is a letter from the Illinois
7 EPA to the station for the bypass basin liner
8 upgrade.

9 Q. By letter, is it the construction
10 permit?

11 A. This is our construction permit.

12 MS. GALE: Mr. Hearing Officer, we
13 move to admit Exhibit 705.

14 MR. WANNIER: No objection, your
15 Honor.

16 HEARING OFFICER HALLORAN: Thank
17 you. Respondent's Exhibit 705 is admitted.

18 BY MS. GALE:

19 Q. Mr. Kelly, did you participate in
20 the process of the relining of the bypass basin?

21 A. Yes, I did.

22 Q. Can you turn to Exhibit 706?

23 A. Okay.

24 Q. What is this?

1 A. This is the letter from Natural
2 Resource Technology to myself for our construction
3 of the basin's liners of the metal cleaning basin
4 and the bypass basin.

5 Q. And when you relined the bypass
6 basin, what was the first thing the station had to
7 do?

8 A. When we relined the bypass basin?

9 Q. Mm-hmm.

10 A. We had to clean it out.

11 Q. And by clean it out, what do you
12 mean?

13 A. We had to take all the water out and
14 dewater it like I had talked to similarly earlier
15 and clean out all of the ash and the bottom ash
16 that was in that basin.

17 Q. And when all the ash was cleaned out
18 and the water of the bypass basin, did you observe
19 the bottom of the basin?

20 A. Yes.

21 Q. What did you see?

22 A. The poz-o-pac bottom.

23 Q. How -- what was the condition of the
24 poz-o-pac bottom?

1 A. In my opinion, it was very good.

2 Q. And by very good, what do you mean?

3 A. There were no cracks. There was
4 nothing -- there were no cracks. There was
5 nothing missing. It was very smooth. It was in
6 good condition.

7 Q. And when the -- all the ash was
8 removed from the bypass basin, did you also
9 observe the condition of the Hypalon sides?

10 A. Mm-hmm.

11 Q. What was that condition?

12 A. There were, again, rips and tears
13 that had been repaired over the years around the
14 top of the basin, but the liner below, that was
15 below the water line, was very good.

16 Q. Mr. Kelly, in Exhibit 706, can you
17 please turn to -- I'm sorry.

18 MS. GALE: Mr. Hearing Officer, I
19 was thinking I would just finish this exhibit and
20 if we could take a lunch break, that's what my
21 thought was.

22 HEARING OFFICER HALLORAN: Is that
23 okay with --

24 MR. WANNIER: We're fine with that.

1 BY MS. GALE:

2 Q. Again, in Exhibit 706, turn to page
3 49200.

4 A. Okay.

5 Q. What is this?

6 A. This is an acceptance letter of
7 subgrade from the installers that were looking at
8 the -- inspecting the subgrade before they put the
9 liner down saying that it was acceptable.

10 Q. And by acceptable, what -- what does
11 this mean to you?

12 A. That means that the subgrade before
13 they put the liner down was in very good condition
14 before they put the liner down.

15 Q. And by they, you mean Clean Air and
16 Water Systems?

17 A. Clean Air -- yes.

18 Q. Thank you. Can you please turn the
19 page to 49202.

20 A. Okay.

21 Q. What -- what does this tell you?

22 A. This is a letter to Midwest
23 Generation from Clean Air and Water saying that
24 they have installed the high density polyethylene

1 and the geotextiles in the metal cleaning basin
2 and the bypass basin. They're installed in
3 accordance with the project specifications and the
4 manufacturer's recommendations.

5 Q. And let's turn to 49209.

6 A. Okay.

7 Q. What do you see here?

8 A. This is a letter from the leak
9 location services for checking for the leaks in
10 the bypass basin and the metal cleaning basin.

11 Q. And what did they find as it relates
12 to the bypass basin? Second paragraph.

13 A. One leak was found during a survey
14 from the bypass basin.

15 Q. And, to your knowledge, was that
16 leak repaired?

17 A. Yes, it was.

18 Q. And, again, what is the purpose of
19 these certifications in this document?

20 A. To verify that there are no leaks in
21 the basin before it goes back into service.

22 Q. Okay.

23 MS. GALE: Can we put the cross
24 section of the bypass basin up, please.

1 BY MS. GALE:

2 Q. Mr. Kelly, can you turn to 49230.

3 A. Okay.

4 Q. On the top left corner, what does
5 that show you?

6 A. That is a cross section of the
7 bypass liner replacement.

8 Q. And looking at the cross section on
9 the screen, does that look similar to the cross
10 section of what you see in the top left-hand
11 corner?

12 A. It is similar, yes.

13 Q. And on the screen, can you please
14 describe for me the layers from the bottom to the
15 top?

16 A. From the bottom, you have the
17 poz-o-pac, then you have the geotextile cushion,
18 then you have the liner itself and there is
19 another layer of cushion, the geotextile cushion
20 and then there is sand layer that is 12 inches and
21 then there is the crushed limestone warning layer
22 which is another six inches on top of that.

23 Q. And are the purposes of the
24 limestone layer and the sand layer similar to as

1 they were in the surge basin?

2 A. Yes. They're warning layers for
3 when you clean it out, yes.

4 Q. And in the ash bypass basin, are
5 there also posts, warning posts?

6 A. Yes, there are. Very similar to
7 that where they were posted near the -- near the
8 walls to serve as a warning when you're cleaning
9 out that basin.

10 Q. Presently, is there ash in the
11 bypass basin?

12 A. No.

13 Q. What is in the bypass basin?

14 A. Right now probably just rainwater
15 and snow, melted snow.

16 Q. Have you had a chance to look at the
17 bypass basin?

18 A. Yes.

19 Q. How does the liner look?

20 A. It looks very good.

21 MS. GALE: Mr. Hearing Officer, we
22 move to admit Exhibit 706.

23 HEARING OFFICER HALLORAN: Mr.
24 Wannier?

1 MR. WANNIER: No objection.

2 HEARING OFFICER HALLORAN: Thank
3 you. Respondent's Exhibit 706 is admitted.

4 It's been suggested we take a
5 lunch break now. So, I agree. So let's be back
6 at 1:25. Thank you.

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

10 HEARING OFFICER HALLORAN: We're
11 back on the record. It is approximately 1:25.
12 Thanks for being prompt. I believe Ms. Gale is
13 still directing her witness, Mr. Kelly. Ms. Gale?

14 BY MS. GALE:

15 Q. Mr. Kelly, before lunch, we were
16 discussing the dredging -- we had discussed the
17 dredging at the ash surge basin and the ash bypass
18 basin.

19 When those basins are dredged,
20 how far down is the ash dredged?

21 A. It's down to the point where you
22 can't see the warning layer, but there is very
23 minimal ash at the bottom.

24 Q. So ash is left at the bottom?

1 A. Yes.

2 Q. But you can't see the warning layer?

3 A. You can see probably -- I mean,
4 there is little thin strips of, you know, when
5 they're scraping it, but there is not big patches
6 that you can see, no.

7 Q. All right. Mr. Kelly, I want to go
8 back to Exhibit 706. I'm sorry. One more
9 question about the ash dredging.

10 The sides, how much ash is taken
11 off the sides?

12 A. Usually same. I mean, minimal where
13 you're getting down -- you're not scraping down to
14 the -- to the -- to the warning layer. You're
15 leaving a minimal amount of ash on the sides so,
16 you know, you're still not getting to the bottom.

17 Q. And --

18 A. You are leaving a little bit there.

19 Q. Sorry. You're not getting to the
20 liner on the side?

21 A. No.

22 Q. Okay. Now, I want to go back to
23 Exhibit 706.

24 A. Okay.

1 Q. And can you look to the drawing in
2 the back at 49230.

3 A. Here?

4 Q. Yes.

5 A. Okay. I have it.

6 Q. And the top left corner, do you see
7 in the cross section it says "Prepared subgrade"?

8 A. Yes.

9 Q. Now, you said there was poz-o-pac
10 underneath the bypass basin liner, can you explain
11 the difference?

12 A. Well, I don't know what prepared
13 subgrade is, but I do know that we have poz-o-pac
14 on the bottom.

15 Q. And how do you know that?

16 A. I've seen it.

17 Q. You saw it. Okay. And -- and the
18 poz-o-pac was left underneath the installed liner?

19 A. Yes, it was.

20 Q. And in the bottom corner right above
21 details and sections, you see it says "Not for
22 construction"?

23 A. Correct.

24 Q. What does that mean for you, to you?

1 A. It is just a -- a drawing. It was
2 not as it was built. It is just a drawing for
3 reference.

4 Q. Could this mean that when this was
5 originally constructed, the idea was to leave --
6 was to remove the poz-o-pac?

7 A. That was the original intent, but it
8 was in such good condition and due to weather at
9 the time of the year when it was done it was in
10 the fall, close to winter, and the liner has to
11 have temperature requirements to be put down and
12 so we were up against that and the fact that the
13 poz-o-pac was in such good condition, it was
14 decided just to leave it and put the liner down.

15 Q. Still on the bypass basin, why did
16 Midwest Generation reline the basin?

17 A. At the time, it was -- the company
18 was going through and going to reline various
19 basins at all the stations and it was just in a
20 normal maintenance rotation and I believe Maria --
21 or Maria Race or somebody at corporate decided
22 which basins were going to be relined at which
23 time.

24 Q. I'd like to turn to -- if we could

1 turn on --

2 MS. NIJMAN: Did you move for 706
3 yet?

4 MS. GALE: Mr. Hearing Officer, I'd
5 like to move to admit Exhibit 706.

6 HEARING OFFICER HALLORAN: I think
7 that was already moved and admitted, correct?

8 MR. WANNIER: 706 was already
9 admitted.

10 HEARING OFFICER HALLORAN: Isn't
11 that what you just said?

12 MS. NIJMAN: Yes. Okay. Yeah,
13 thank you very much.

14 HEARING OFFICER HALLORAN: You're
15 welcome.

16 MR. WANNIER: I can state for the
17 record that we don't object to its inclusion just
18 in case.

19 MS. GALE: Can I get the map with
20 the basins up, please?

21 BY MS. GALE:

22 Q. If you can look at the map up on
23 your screen or up on the big screen, can you tell
24 me where the metal cleaning basin is?

1 A. The metal cleaning basin is to the
2 left, or east, of the large ash surge basin.

3 Q. And what is the metal cleaning
4 basin's purpose?

5 A. The metal cleaning basin is a
6 specific basin for -- during outages, we will use
7 high pressure water to clean the external surfaces
8 of the boiler tubes. So that is a specific basin
9 to treat that material, to treat that water.

10 Q. And is it part of the bottom ash
11 sluicing system?

12 A. No, it is -- it is -- it is specific
13 to -- it has a specific route for that purpose
14 when we do that during outages.

15 Q. Is there ash in the metal cleaning
16 basin right now?

17 A. No, there is not.

18 Q. What is the -- excuse me. What is
19 in the metal cleaning basin?

20 A. It would just be rainwater or very
21 minimal ash in there. Like I said, when we clean
22 it out, we don't go all the way to the bottom, but
23 there is just -- at the bottom there is just
24 probably minimal material and water --

1 Q. So --

2 A. -- rainwater.

3 Q. I'm sorry. Are you able to see the
4 liner?

5 A. Yes.

6 Q. How does it look?

7 A. It's very good.

8 Q. Any tears?

9 A. No.

10 Q. What happens to the ash in the metal
11 cleaning basin?

12 A. Similar to the ash surge basin, the
13 bypass basin, we take -- we clean that out and
14 take it to the mines for mine reclamation.

15 Q. And how -- again, similar to the
16 surge basin and bypass basin, how is that ash
17 removed?

18 A. Very similar process where we would
19 discuss what we're going to do, outline for the
20 operators the -- to make sure not to get down to
21 the warning layer or to get close to the liner on
22 the sides. First, we would dewater it and then we
23 have this meeting, then we dewater it to get all
24 the water out of the basin and to get the material

1 as dry as possible and then the operators would go
2 in with end loaders and load the material.

3 Q. And what kind of tires do those end
4 loaders have?

5 A. Rubber. Rubber lined.

6 Q. And how often is that basin dredged?

7 A. We do that annually.

8 Q. And have you observed the operators
9 removing the ash?

10 A. Yes.

11 Q. How would you characterize their
12 removal?

13 A. They're very methodical and very
14 precise in what they're doing. They are very
15 careful.

16 Q. Stipulation here -- stipulation 25
17 "The metal cleaning basin was constructed in 1978
18 with a poz-o-pac liner on the bottom and a Hypalon
19 liner on the sides."

20 Mr. Kelly, how thick is the
21 poz-o-pac liner?

22 A. It's a foot thick, 12 inches.

23 Q. Another stipulation in 26. "In
24 2010, Midwest Generation relined the metal

1 cleaning basin with a 60 mil HDPE liner."

2 Mr. Kelly, can you please turn
3 to Exhibit 707 in your binder.

4 A. Okay.

5 (Document marked as Respondent's
6 Exhibit No. 707 for
7 identification.)

8 BY MS. GALE:

9 Q. What is this?

10 A. This is a letter from the station to
11 the Illinois EPA requesting an application for
12 permit construction for the metal cleaning basin
13 liner replacement.

14 Q. And what is the date?

15 A. July 27th, 2009.

16 Q. And what were you replacing the
17 liner with?

18 A. High density polyethylene liner.

19 Q. And why was Midwest Generation
20 relining the -- excuse me.

21 Why was Midwest Generation
22 relining the metal cleaning basin?

23 A. At the time, it was just normal
24 maintenance. It was -- like I said before, this

1 was part of the basins that we were going to
2 reline for maintenance.

3 MS. GALE: Mr. Hearing Officer, we
4 move to admit Exhibit 707.

5 HEARING OFFICER HALLORAN: Mr.
6 Wannier?

7 MR. WANNIER: No objection.

8 HEARING OFFICER HALLORAN: Thank
9 you. Respondent's Exhibit 707 is admitted.

10 BY MS. GALE:

11 Q. Did Illinois EPA issue a
12 construction permit?

13 A. I believe so.

14 Q. Can you turn in your book to Exhibit
15 708?

16 A. Okay.

17 (Document marked as Respondent's
18 Exhibit No. 708 for
19 identification.)

20 BY MS. GALE:

21 Q. What is that?

22 A. That is the construction permit from
23 the Illinois EPA to the station to clean or -- not
24 to clean, but for liner replacement of the metal

1 cleaning basin.

2 MS. GALE: Mr. Hearing Officer, we
3 move to admit Exhibit 708.

4 HEARING OFFICER HALLORAN: Mr.
5 Wannier?

6 MR. WANNIER: No objection.

7 HEARING OFFICER HALLORAN: Thank
8 you. Respondent's Exhibit 708 is admitted.

9 BY MS. GALE:

10 Q. Mr. Kelly, to reline on the metal
11 cleaning basin, what did the station first have to
12 do?

13 A. Again, similar to the other basins
14 where we clean them out, we had a meeting to
15 discuss how we're going to do it and then we would
16 dewater the basin, get the water out as much as
17 possible, and before the operators went in we have
18 a meeting with them to discuss the procedure on
19 how to clean that out and to be careful not to get
20 down --

21 Q. This is before you're relining it.

22 A. I'm sorry. What was the question
23 then?

24 Q. I'm sorry. Before you reline a

1 basin, what is the first thing the station has to
2 do? Do you have to empty the basin?

3 A. We have to empty the basin out.

4 MR. WANNIER: Objection to the
5 leading nature of the question.

6 HEARING OFFICER HALLORAN:
7 Sustained. Do you want to rephrase?

8 MS. GALE: Yes.

9 BY MS. GALE:

10 Q. When you first empty the basin, what
11 is the first thing you have to do?

12 A. Well, we do have to get all the
13 water out, yes.

14 Q. And all the ash?

15 A. And then we take the ash out.

16 Q. When the basin was empty, did you
17 observe the condition of the basin?

18 A. Yes.

19 Q. What did it look like?

20 A. The poz-o-pac was in excellent
21 condition. It was very good. There were some
22 repairs to the liner around the top similar to the
23 other basins, but the majority of the liner from
24 the water line normally -- the water line was

1 down. It was in good shape.

2 Q. Can you please turn to Exhibit 709.

3 (Document marked as Respondent's
4 Exhibit No. 709 for
5 identification.)

6 BY THE WITNESS:

7 A. Okay.

8 BY MS. GALE:

9 Q. I'm sorry. I want you to turn back
10 to Exhibit 706. I forget. These are the same.

11 A. Okay.

12 Q. We have already identified these as
13 the construction documentation for the metal
14 cleaning basin, the bypass basin.

15 Mr. Kelly, would you describe
16 these sort of documents from NRT as construction
17 documents?

18 A. Yes, I would.

19 Q. And, again, let's turn to page
20 49199.

21 A. Okay.

22 Q. What does this show?

23 A. This is a letter of the certificate
24 of acceptance of the subgrade from the installer

1 saying that they had visually inspected the
2 subgrade surface before placing the liner down and
3 it was deemed to be acceptable.

4 Q. Acceptable for what?

5 A. Acceptable for the liner -- to have
6 the liner installed.

7 Q. And can you turn to 49202?

8 A. All right.

9 Q. What does this show?

10 A. This is a letter from the contractor
11 Clean Air and Water to the station saying that the
12 high density polyethylene membrane was installed
13 properly at the -- through project specifications
14 and manufacturing recommendations at the metal
15 cleaning basin and the bypass basin.

16 Q. And what does that mean to you?

17 A. That it was properly installed.

18 Q. Can you turn to 49216, please.

19 A. Okay.

20 Q. What does this show?

21 A. This is a letter from the leak
22 location service from March of 2011 where they
23 came back and did a leak detection survey of the
24 metal cleaning basin.

1 Q. And what did they find?

2 A. They found one leak during the
3 survey.

4 Q. And, to your knowledge, was that
5 leak fixed?

6 A. Yes, it was.

7 Q. Mr. Kelly, can you turn to page
8 49226. It is one of the drawings in the middle of
9 your packet.

10 A. Okay.

11 Q. Okay. And looking at the bottom
12 left corner, does that depict the layers in the
13 metal cleaning basin?

14 A. Yes, it does.

15 MS. GALE: And can I get the cross
16 section of the metal cleaning basin up on the
17 screen, please.

18 BY MS. GALE:

19 Q. Mr. Kelly --

20 MR. WANNIER: I --

21 HEARING OFFICER HALLORAN: Mr.
22 Wannier?

23 MR. WANNIER: It's not an objection,
24 but can I ask opposing counsel a question? I

1 don't know that we have this document.

2 MS. GALE: Off the record.

3 MR. WANNIER: If we can go off the
4 record.

5 HEARING OFFICER HALLORAN: Let's go
6 off the record.

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

10 BY MS. GALE:

11 Q. So, Mr. Kelly, looking at the bottom
12 left corner, the cross section of the liners, can
13 you compare it to the cross section on the
14 demonstrative on your screen, does this accurately
15 reflect what is in Exhibit 7- -- excuse me.

16 Does the demonstrative on the
17 screen accurately reflect what is in Exhibit 706
18 for the metal cleaning basin?

19 A. Yes.

20 Q. And looking at the demonstrative on
21 your screen, can you describe to me from the
22 bottom up the layers that are in the metal
23 cleaning basin?

24 A. There is a 12-inch poz-o-pac and

1 then you have the geotextile material, then you
2 have the HDPE liner material and then there is
3 another layer of geotextile and then we have 12
4 inches of sand and the six-inch warning layer of
5 the crushed limestone.

6 Q. And the sand is a cushion layer,
7 right?

8 A. Yes.

9 Q. And similar to the other basins, are
10 there posts in the metal cleaning basin?

11 A. Yes, there are. They're similar to
12 the posts for the same purpose, to warn the
13 operator when they're cleaning out that they are
14 approaching the side -- sides of the basin.

15 Q. Mr. Kelly, can we bring up the map
16 of the stations now. Let's talk about this
17 secondary ash basin. I think you previously
18 identified it as the one at the top in the green,
19 is that correct?

20 A. Yes.

21 Q. Okay. What -- what -- excuse me.
22 What does the ash -- secondary ash basin do?

23 A. It is a polishing basin for the ash
24 surge basin before it gets discharged to the

1 Illinois River or we have pumps there that can
2 pump the water back to our cooling pond for
3 recycle.

4 Q. When you say it receives water from
5 the ash surge basin, does it receive ash?

6 A. No.

7 Q. No. How do you know it receives no
8 ash or little ash?

9 MR. WANNIER: Objection. Misstates
10 the witness's testimony. He said that it received
11 no ash.

12 HEARING OFFICER HALLORAN: Rephrase,
13 please. Sustained.

14 MS. GALE: Okay.

15 BY MS. GALE:

16 Q. How do you know it receives no ash?

17 A. Before we were to clean that basin
18 out in 2013 -- well, before that that basin had
19 never, to my knowledge, and I have been there
20 before that, it had never been cleaned out and
21 before we went to reline that basin I had
22 engineers from Natural Resource Technology and we
23 pumped that basin all the way down so they could
24 look to see how much material was in there and

1 there was less than a foot of material and it
2 really wasn't ash. It was more like -- like a
3 muddy material. It was more soupy. It really
4 wasn't ash at all.

5 Q. I have stipulation 22. "Since
6 before 1999, the secondary ash settling basin had
7 a Hypalon liner." And I have stipulation 24.

8 Mr. Kelly, you said that it
9 had -- for the past 35 years, in your knowledge it
10 had been operating, it had never been dredged, do
11 you know why it had never been dredged?

12 A. There was never a need for it. I
13 mean, there was never a need to go in there, there
14 was never any indication that we had to go in and
15 clean that -- clean that out.

16 Q. Stipulation 24. "In 2013, Midwest
17 Generation relined the secondary ash settling
18 basin with a 60 mil HDPE liner."

19 Mr. Kelly, if the secondary ash
20 settling basin had never been dredged, why did it
21 need a new liner?

22 A. That was part of the -- I believe it
23 was part of the CCA agreement we had with the
24 state that it would be relined with the ash surge

1 basin.

2 Q. Mr. Kelly, can you turn -- actually
3 on your table should be Exhibit 33 underneath your
4 binder on the left-hand side. It was previously
5 admitted.

6 A. Okay.

7 Q. You might want to turn to the next
8 page.

9 MR. WANNIER: I'm sorry, counsel.
10 What page?

11 MS. GALE: Just the first page.
12 Exhibit 33.

13 MR. WANNIER: Thirty-three. Okay.

14 BY MS. GALE:

15 Q. Exhibit 33 is an application for the
16 construction permit for the secondary ash basin,
17 do you recall seeing that in 2013?

18 A. Yeah.

19 Q. Okay. And did Illinois EPA issue a
20 permit?

21 A. Yes.

22 Q. Can you turn to Exhibit 709 in your
23 binder, please.

24 A. Okay.

1 Q. What is that?

2 A. That is the construction permit from
3 the Illinois EPA to the station for the secondary
4 ash settling basin liner replacement.

5 Q. And what were you -- relining --
6 what were you replacing the liner with?

7 A. Sixty mil thickness of high density
8 polyethylene liner.

9 MS. GALE: Mr. Hearing Officer, we
10 move to admit Exhibit 709.

11 MR. WANNIER: No objection.

12 HEARING OFFICER HALLORAN: Thank
13 you. Respondent's Exhibit 707 is admitted. Thank
14 you.

15 BY MS. GALE:

16 Q. Mr. Kelly, I believe you said you
17 observed the conditions of the pond when it was
18 emptied of water, did you also observe the
19 conditions of the Hypalon liner when it was empty
20 of water?

21 A. Just the one time, yes.

22 Q. What did you see?

23 A. I did not notice anything out of the
24 ordinary when it was pumped down.

1 Q. So the Hypalon liner was in good
2 condition?

3 A. It was in very good shape, yeah.

4 Q. Mr. Kelly, can you please turn to
5 Exhibit 710 in your -- what is this?

6 (Document marked as Respondent's
7 Exhibit No. 710 for
8 identification.)

9 BY THE WITNESS:

10 A. This is construction documents from
11 Natural Resource Technology for the secondary ash
12 settling basin liner replacement.

13 BY MS. GALE:

14 Q. Mr. Kelly, in the spring of 2013
15 when the secondary ash settling basin was being
16 relined, do you recall any challenges during the
17 relining?

18 A. Yes. Yes, we did.

19 Q. What were those challenges?

20 A. When we were getting to the point
21 right before we had everything cleaned out and we
22 were ready to start installing the liner in April,
23 late March, early April, the Illinois River in our
24 area crested to an all-time high and river water

1 was seeping in. You can't really see it on that
2 diagram there, but there is a canal that connects
3 from the station out to the river and the river
4 was coming in and the river water was seeping in
5 the sides in that -- in that embankment to the
6 east from -- from the river.

7 Q. And how did that impact the relining
8 project?

9 A. Well, we -- we could not reline the
10 basin with water seeping in. We had to have it
11 completely dry. So we had to devise a method to
12 draw the water away from that embankment.

13 Q. Okay. Mr. Kelly, I'd like you to
14 turn to 34265. I believe it's one of the drawings
15 in the back.

16 A. Okay.

17 Q. What does this depict?

18 A. This shows the -- what we did to
19 prepare the subsurface before we could put the
20 liner down to prevent the water from coming in or
21 how we got around that.

22 Q. And looking at the figure on the
23 top, so from where on the top it says west to east
24 underneath the liner, what was the bottom layer,

1 what is that bottom layer?

2 A. It's just stone and we have a --
3 there are -- the circles that you can see are
4 drain tiles that were installed across the bottom
5 of the -- of the area and there was riprap on the
6 sides and the idea was if the water was to ever
7 seep in from the sides or from the bottom for that
8 matter, now it would collect in these drain tiles
9 and be routed to a sump that was installed and
10 from that sump we could pump water out.

11 Q. Okay. Speaking of the sump, can you
12 please turn to 34263.

13 A. Okay.

14 Q. In looking at the -- this is
15 described as the underdrain subgrade elevation,
16 isn't that correct?

17 A. Yes, it is.

18 Q. In looking at the bottom right
19 corner of the basin, is that the sump you were
20 just discussing?

21 A. Yes. Yes, it is directed to that
22 sump and then it goes over to a drain pipe and on
23 the very right-hand side is where there is an area
24 where you can install a pump to pump the water

1 out.

2 Q. And is there a pump there right now?

3 A. No, there is not.

4 Q. When would you use that pump?

5 A. If we ever saw water collecting in
6 that -- in that sump, we could -- we could put a
7 pump in there to pump it out.

8 Q. If you were to empty the pond, would
9 that be another use?

10 A. Yes.

11 Q. And can we turn to the secondary ash
12 settling basin cross section -- keep those out.

13 A. Oh, the back?

14 Q. Yes. Look at the cross section that
15 is on your screen.

16 A. Okay.

17 Q. Compare what is in the cross section
18 on 34265 to the screen, does that accurately
19 reflect what is in the construction documentation?

20 A. Yes.

21 Q. And from the -- we have already
22 discussed the gravel underdrain system and the
23 pipes. Below the gravel underdrain system and
24 above the underdrain system, can you tell me what

1 layers are there?

2 A. There is a -- a -- there is a
3 geotextile layer above the rock and then you have
4 a 12-inch cushion layer of sand and then you have
5 another geotextile cushion and then you have the
6 liner itself on top of that.

7 Q. There is no cushion layer on top of
8 the liner, correct?

9 A. Correct.

10 Q. Do you know why there is no cushion
11 layer in this?

12 A. It was due to the fact that we were
13 only -- we had never, ever cleaned it out in 35
14 years and only one foot -- less than one foot of
15 material was in there. It was deemed that for the
16 life of the station we probably would never have
17 to go back in there again to clean it out. So we
18 did not put a sand warning layer on top.

19 Q. All right. And you can put those
20 drawings away now.

21 Mr. Kelly, still within Exhibit
22 707, can you go to 34228, please. I'm sorry.
23 710. Exhibit 710 34228.

24 A. Okay.

1 Q. What does this show?

2 A. This is a certificate of acceptance
3 quality QAQC document from the installers saying
4 they have visually inspected the subgrade of the
5 secondary ash settling basin and they deemed it to
6 be acceptable before they installed the liner.

7 Q. And turning to 34258.

8 A. Okay.

9 Q. What does this show?

10 A. This is a letter from the leak
11 location service to the station for the report of
12 the secondary ash settling basin.

13 Q. And what were the results?

14 A. There were no leaks found in the
15 secondary ash basin.

16 Q. And so, again, what does this
17 construction documentation mean to you as a
18 recipient of it?

19 A. That everything was installed
20 properly and there were no leaks at the end of
21 the -- before it was put back into service.

22 Q. Now that the basin is relined, is it
23 empty?

24 A. We have not emptied it, no.

1 Q. But what is in the basin?

2 A. Just water right now.

3 Q. And since 2013, has there been since
4 an issue related to river water --

5 A. No.

6 Q. -- moving or impacting the liner?

7 A. No.

8 Q. Mr. Kelly, I want to ask you about
9 the east yard basin, are you familiar with that
10 basin?

11 A. Yes.

12 Q. What is that basin?

13 A. That is a basin on the east half of
14 the property.

15 MS. GALE: Can you put the map up,
16 please?

17 BY MS. GALE:

18 Q. I don't think it's highlighted.

19 A. It would be the east yard basin. If
20 you see the large ash surge basin in the middle,
21 the east yard is the basin southwest of that down
22 the lower left to the left of the bypass basin.

23 Q. Is it fair to describe it as the one
24 that is covered by the word bypass basin?

1 A. It is covered by the ash -- sorry.
2 It is covered by -- does it say bypass basin? It
3 says ash bypass basin. It is covered by that,
4 yes.

5 Q. Is it a part of the ash flow system?

6 A. No, it is not.

7 Q. Has it ever been a part of the ash
8 flow system?

9 A. No.

10 Q. Does it receive ash?

11 A. No, it does not.

12 Q. What does it receive?

13 A. Rain runoff from the east half of
14 the property?

15 Q. To your knowledge, or to your
16 recollection, did Midwest Generation have to
17 monitor the water from the east yard basin?

18 A. Yes, we did. As part of the CCA
19 agreement, we had to monitor water in that basin
20 for two years.

21 Q. Do you recall what it had to be
22 monitored for?

23 A. I believe metals.

24 Q. And do you recall how often?

1 A. Quarterly.

2 Q. Can you please turn to Exhibit 711
3 in your binder.

4 A. Okay.

5 (Document marked as Respondent's
6 Exhibit No. 711 for
7 identification.)

8 BY MS. GALE:

9 Q. Can you please describe this?

10 A. This is a letter from the state to
11 NRG saying that for the compliance agreement -- so
12 it says that after reviewing the data from the
13 east yard basin that there was nothing there and
14 that the only thing they did find was indicated
15 elevation concentrations of chloride, which
16 occurred periodically in a seasonal pattern it
17 says.

18 So it also says "This pattern
19 and lack of elevated concentrations of other ash
20 indicators as constituents suggest that the core
21 may result from deicing agents within the area
22 around the east yard runoff basin" and then it
23 says that "We may cease monitoring water from the
24 east yard runoff basin."

1 Q. And you said from the state. You
2 mean what state agency?

3 A. Illinois EPA. Illinois EPA.

4 Q. Regarding the deicing referenced in
5 the letter, what is that deicing referring to?

6 A. More than likely it was referring to
7 salt that was put down around the -- around the
8 property or specifically around the east yard that
9 would be runoff, the rain runoff that would
10 probably be carried into that basin.

11 Q. Ans is salt spread at the station?

12 A. Yes, it is.

13 Q. Where is it spread?

14 A. It's spread everywhere for safety
15 reasons. We spread it on all the roads, all the
16 parking lots. It is very extensively spread out
17 in the winter time to prevent people from slipping
18 and falling.

19 Q. And, to your knowledge, what is a
20 constituent of salt?

21 A. Sodium chloride. So it would be
22 very heavy in chlorides.

23 MS. GALE: Mr. Hearing Officer, we
24 move to admit Exhibit 711.

1 MR. WANNIER: No objection, your
2 Honor.

3 HEARING OFFICER HALLORAN: Thank
4 you. Respondent's Exhibit 711 is admitted.

5 MS. GALE: Okay.

6 BY MS. GALE:

7 Q. I'd like to switch gears to the
8 former ash basin.

9 MS. GALE: Looking at the map, can
10 you hit the pink button. Mr. Hearing Officer, did
11 we move to admit Exhibit 710?

12 HEARING OFFICER HALLORAN: No, you
13 did not.

14 MS. GALE: I move to admit 710.

15 MR. WANNIER: No objection.

16 HEARING OFFICER HALLORAN:
17 Respondent's Exhibit 710 and 711 are admitted.

18 BY MS. GALE:

19 Q. The former ash basin on this map,
20 where is it located?

21 A. It is located to the northeast of
22 the ash surge basin. In that diagram, it looks
23 like an ice cream cone.

24 Q. And it's pink?

1 A. And it's pink.

2 Q. And have you been out there?

3 A. Yes, I have.

4 Q. What does it look like when you get
5 out there?

6 A. It looks like a wildlife refuse
7 area. There is a little bit of water, there is
8 lots of trees, lots of weeds, but it's like a
9 forest.

10 Q. Since Midwest Generation began
11 operations at the station in 1999, was ash routed
12 to the former ash basin?

13 A. No, it was not.

14 Q. Is it part of the water system at
15 the station?

16 A. It is part of our NPDES permit. It
17 is a permitted emergency overflow from the ash
18 surge basin.

19 Q. And when you say emergency overflow,
20 what do you mean by that?

21 A. Only in extreme cases would we put
22 water out there and from my recollection this has
23 only happened twice in the past ten years where
24 water has gotten from the overflow, from the ash

1 basin, out to that area.

2 Q. And you said it's a part of the
3 permit, did you say part of the NPDES permit?

4 A. It's part of our NPDES permit.

5 Q. Do you know the future of the former
6 ash basin?

7 A. Right now we are in the process of
8 permanently closing those areas.

9 Q. Do you know generally how it's going
10 to be closed?

11 A. Generally, what's happening is that
12 dark line that bisects that area is a rail spur
13 and so, therefore, the area to the north of that
14 rail spur we are going to dredge and sluice that
15 material to the southside of that rail spur and
16 once that is done then we're going to cover the
17 material on the south end.

18 Q. Below the pink ice cream shaped
19 former ash basin, what is also outlined?

20 A. That is a basin. It is called the
21 limestone runoff area.

22 Q. Stipulation 31. "The limestone
23 basin at the Powerton electric generating station
24 is lined on the bottom with poz-o-pac and with

1 Hypalon liner on the sides."

2 So, Mr. Kelly, since 1989, has
3 the limestone basin been used?

4 A. No, it has not.

5 Q. And is it used now?

6 A. No, it is not.

7 Q. What is in the limestone basin?

8 A. Currently there is nothing in the
9 limestone basin.

10 Q. Is the poz-o-pac still there?

11 A. The poz-o-pac is on the bottom, yes.

12 Q. Is the Hypalon still there?

13 A. The Hypalon is not there. We
14 have -- that basin is not for use, but when we
15 were relining the ash surge basin in 2013 because
16 of the difficulties we had because with the
17 secondary ash basin and then pushing that further
18 into the summer we had to take the material out of
19 the ash basin and we were taking it out and
20 temporarily putting it in the limestone basin so
21 we could remove it so we could get into the ash
22 basin to line it and then once we were done we
23 removed all the material and we took out the liner
24 at the same time. So we just totally cleaned it

1 out.

2 Q. I want to turn to a new section.
3 Since you began working at the station before
4 Midwest Generation operated the station, were the
5 ponds inspected?

6 A. Yes, they were.

7 Q. How?

8 A. Well, I would go out and inspect
9 them, but routinely the operators on their shifts
10 would go out and inspect the liners and the basins
11 also.

12 Q. And that's part of their rounds?

13 A. That is part of their daily rounds
14 and part of their shift rounds also, every shift.

15 Q. How many shifts are there?

16 A. Well, currently there are two, but
17 there were three shifts at one time.

18 Q. And when Midwest Generation
19 purchased the station in 1999, did that continue?

20 A. Yes, it did.

21 Q. And, at that time, in 1999, were
22 there three shifts?

23 A. There were three.

24 Q. Okay. And you said now there are

1 two shifts. So they run -- they go past and
2 inspect the basins twice a day?

3 A. Yeah.

4 Q. If the operators see an issue such
5 as a tear, what do the operators do?

6 A. Similar to before they would either
7 contact a supervisor and the supervisor would call
8 me or just call me directly and I would go out and
9 look to see if there was a tear or anything like
10 that to evaluate it and then I would make
11 arrangements for repairs.

12 Q. In your experience, how often are
13 there tears in the liners?

14 A. Not very often.

15 Q. And, typically, where do those tears
16 occur?

17 A. Usually at the top.

18 Q. And does that mean above the water
19 line?

20 A. Above the water line, yes, at the
21 very top of the basin.

22 Q. And how long does it take for the
23 installer to repair the tear?

24 A. As I said, they're usually there

1 within a week or two.

2 Q. And that repair is still CAAW, Clean
3 Air and Water?

4 A. That is -- I called it Clean Air and
5 Water, yes.

6 Q. In your experience working for
7 Midwest Generation, have you ever been told not to
8 fix a tear?

9 A. No. No.

10 Q. Have you ever decided not to fix a
11 tear?

12 A. No.

13 Q. Mr. Kelly, are you familiar with the
14 federal CCR rules?

15 A. A little.

16 Q. Are you familiar enough about the
17 inspection requirements?

18 A. Yes.

19 Q. What -- what are the inspection
20 requirements? What is your knowledge of the
21 inspection requirements under the CCR rules?

22 A. Under the CCR, I am required to go
23 around weekly to inspect around the former ash
24 basin, around the ash basin and around the bypass

1 basin.

2 Q. And --

3 A. That is in addition to -- well, the
4 operators still do that everyday, but I am -- over
5 and above that, I, myself, or somebody from the
6 station is required to go do that.

7 Q. And do you keep a record of that?

8 A. Yes, I do.

9 Q. Where is that record stored?

10 A. We have a library at the station and
11 after I -- after I do the inspections and fill out
12 the forms, I scan them in and then I save a copy
13 on my computer and then I print it and keep a
14 hardcopy in our station library files.

15 Q. And if you see a problem on your
16 inspections, do you follow the same procedure that
17 you've just described to us previously for any
18 tears in the liner?

19 A. Yes.

20 Q. Okay. So we've established that
21 you're out there once a week and the operators are
22 out there twice a day, so really the ponds are
23 inspected multiple times a day?

24 A. Yes.

1 Q. I have a final question, Mr. Kelly.
2 Since Midwest Generation began operating the
3 Powerton station, how would you describe Midwest
4 Generation's policy as it relates to environmental
5 compliance?

6 A. I think that Midwest Gen, and now
7 currently NRG, they were a -- they still are a
8 very environmental friendly company. I think we
9 take any kind of upset or anything out of the
10 ordinary very seriously and we try to correct it
11 as fast as we can to the best of our ability. I
12 think that. I think the company is, like I said,
13 very environmental friendly and they would go out
14 of their way to fix anything they had to.

15 MS. GALE: A moment. Nothing
16 further.

17 HEARING OFFICER HALLORAN: Thank
18 you. Mr. Wannier, do you need a moment?

19 MR. WANNIER: Yeah, if I can just
20 get a couple minutes.

21 HEARING OFFICER HALLORAN: Let's go
22 off the record.

23

24

1 (Whereupon, a break was taken
2 after which the following
3 proceedings were had.)

4 HEARING OFFICER HALLORAN: All
5 right. We're back on the record. Mr. Wannier is
6 ready for his cross of Mr. Kelly. You may
7 proceed. Thank you.

8 C R O S S E X A M I N A T I O N
9 BY MR. WANNIER

10 Q. Good afternoon, Mr. Kelly.

11 A. Hello.

12 Q. So let's start just quickly, if I
13 may, with your understanding. Let me just ask
14 this. Are coal cinders coal ash?

15 A. Yes.

16 Q. Okay. And is boiler slag coal ash?

17 A. It can be considered that, yes.

18 Q. The terms can be used
19 interchangeably?

20 A. Interchangeably.

21 Q. And you were asked about several
22 basins at the site and I think it's probably
23 easiest if we do it as opposing counsel --

24 HEARING OFFICER HALLORAN: Is it

1 possible to keep your voice up. You're kind of
2 turned.

3 MR. WANNIER: I apologize. Yes.

4 HEARING OFFICER HALLORAN: Thank
5 you.

6 BY MR. WANNIER:

7 Q. I'm going to go through the basis --
8 basins one by one --

9 A. Okay.

10 Q. -- and start with the surge basin
11 which, as you said, is the primary ash recipient
12 basin at the site, correct?

13 A. Yes.

14 Q. And the basin is populated with
15 bottom ash from the facility as opposed to fly
16 ash, correct?

17 A. Yes.

18 Q. Now, when you relined it in 2013
19 and -- sorry. Let me back up. There is a
20 poz-o-pac layer that was there before the relining
21 in 2013, yes?

22 A. (Affirmative nod.)

23 Q. When you relined it, the basin in
24 2013, you scraped off a little bit of the

1 poz-o-pac layer, right?

2 MS. GALE: Objection to vague only
3 that he is using the term you.

4 MR. WANNIER: Fair.

5 HEARING OFFICER HALLORAN: Just --
6 BY MR. WANNIER:

7 Q. Midwest Generation -- in the
8 dredging process, part of the poz-o-pac layer was
9 scraped off, correct?

10 A. I don't believe they scraped any. I
11 believe they tried to remove some and they were
12 not successful.

13 Q. So it was not -- it was not scraped
14 during the relining process?

15 A. As I said, I think they tried to
16 remove some of that and did not get anything
17 and -- and they determined to just leave it.

18 Q. Okay. And were they trying to
19 scrape off some of the layer?

20 A. As I said, that part of the
21 construction was to remove the poz-o-pac before
22 the liner was put down.

23 Q. Okay. So are you saying there is no
24 scrape in the poz-o-pac layer today?

1 A. No.

2 Q. I apologize. Mr. Kelly, did you
3 give a deposition in this matter?

4 A. Okay.

5 Q. You did, yes?

6 A. Yes.

7 Q. And when you gave that deposition,
8 you were under oath to tell the whole truth?

9 A. Okay.

10 Q. And your answers were truthful when
11 you gave that deposition?

12 A. Yes.

13 Q. Okay. I'm going to place in front
14 of you a copy of that deposition and I can hand
15 you one.

16 Does this appear to be a copy of
17 the deposition transcript that you gave?

18 A. Okay. Yes.

19 Q. Okay. If you can turn to page 42 of
20 that transcript. If you can turn to line 14.

21 A. Okay.

22 Q. Do you see where it says -- where
23 Mr. Russ in that deposition asked "And was any of
24 that pre-existing poz-o-pac removed prior to

1 relining"?

2 A. Okay.

3 Q. Can you read your response, please?

4 A. "A very small layer was probably
5 scraped off to level."

6 Q. Okay. And then if you turn to line
7 20, do you see where Mr. Russ asked how much
8 poz-o-pac is still there?

9 A. Yes.

10 Q. Can you read your response, please?

11 A. It says "I do not know the depth,
12 but it is mostly all there. Yes, except for, like
13 I said, a little part that was scraped on. And I
14 know it's very deep. I don't know the exact
15 dimension."

16 MS. GALE: Objection to the
17 mischaracterization of the deposition. He did
18 skip line 18 and 19.

19 MR. WANNIER: I'm sorry. You can
20 read it. We can read 18 and 19 into the record.

21 BY MR. WANNIER:

22 Q. On 18, Mr. Russ asked "Was some
23 poz-o-pac left in place" and your answer can you
24 read it?

1 A. I said "Very much so."

2 MR. WANNIER: Does that satisfy
3 opposing counsel?

4 MS. GALE: Mm-hmm.

5 MR. WANNIER: Okay.

6 BY MR. WANNIER:

7 Q. Okay. We can continue. Let me get
8 my place.

9 Do you expect -- when do you
10 expect the next dredging is going to occur at the
11 surge basin?

12 A. I can't answer that. I don't know.

13 Q. Can you try to estimate?

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

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

18 BY THE WITNESS:

19 A. I would -- I would think probably in
20 the next five to ten years.

21 BY MR. WANNIER:

22 Q. Okay. And do you anticipate you'll
23 follow roughly the same dredging procedure that
24 you followed the last time you dredged?

1 A. Yes.

2 Q. Okay. Is this basin -- is the surge
3 basin capped?

4 MS. GALE: Objection. Vague.

5 HEARING OFFICER HALLORAN: Rephrase.

6 BY MR. WANNIER:

7 Q. Do you have an understanding of what
8 it means to cap an ash impoundment?

9 A. What do you mean? What do you mean
10 by capped?

11 Q. An installation of an impermeable
12 cap -- top to the pond?

13 A. Okay. So what is the question?

14 Q. Is that -- first of all, is that
15 consistent with your understanding of what it
16 means to cap a pond?

17 A. I'll go with your definition, yes.

18 Q. Okay. Is the surge basin capped?

19 A. Is it capped?

20 Q. That is the question.

21 A. No, it is not capped. It is in
22 service right now.

23 Q. Okay.

24 A. So there would be no reason to cap

1 it.

2 Q. I understand.

3 A. Okay.

4 Q. I'm just asking questions.

5 A. Okay.

6 Q. And is there a drain system from
7 this pond?

8 A. How do you mean a drain system?

9 Q. Okay. Well, you just -- go ahead.
10 I'm curious how you would define a drain system.

11 A. Are you asking if there is a drain
12 system similar to the secondary ash basin?

13 Q. Okay. Let's split this up. Is
14 there a drainage system similar to that installed
15 at the secondary ash basin?

16 A. No.

17 Q. Is there any other installation at
18 that pond that you would consider to be a drainage
19 system?

20 A. No.

21 Q. Okay.

22 A. Besides the secondary ash basin,
23 that's the only one I would consider to have a
24 drain system.

1 Q. Right. So, to be clear, there is
2 nothing at the surge basin that you installed that
3 you would consider to be a drainage system?

4 A. No.

5 Q. Okay. And you've testified that
6 overflow from the ash surge basin periodically
7 flows into the former ash basin, correct?

8 MS. GALE: Objection.

9 Mischaracterizes his testimony.

10 HEARING OFFICER HALLORAN: You're
11 going to have to speak up because you keep turning
12 that way and I think this happened back in
13 October.

14 MR. WANNIER: Okay. I'm going to
15 sit over here, your Honor, so that way you can
16 hear me better.

17 HEARING OFFICER HALLORAN: If you
18 can rephrase to satisfy the objection.

19 MR. WANNIER: I'm happy to rephrase.

20 HEARING OFFICER HALLORAN: Thank
21 you.

22 BY MR. WANNIER:

23 Q. You've testified that at times
24 overflow from the surge basin has flown into the

1 former ash basin, correct?

2 MS. GALE: Objection.

3 Mischaracterizes the testimony.

4 MR. WANNIER: I stand by my
5 phrasing, your Honor.

6 HEARING OFFICER HALLORAN: He can
7 answer if he's able.

8 BY THE WITNESS:

9 A. At times, yes, water has gotten into
10 the -- from the overflow, from the ash basin, to
11 the former ash basin.

12 BY MR. WANNIER:

13 Q. Okay. And, specifically, you said
14 that happened twice in the last ten years?

15 A. Yes.

16 Q. What was the most recent time that
17 occurred?

18 A. Actually, the most recent time was
19 about four weeks ago.

20 Q. Okay. And what was the time before
21 that?

22 A. The time before that it was -- I
23 believe it was right before this deposition in
24 2015.

1 Q. Okay. So, in fact, in the last
2 three years, it's happened twice as well, correct?

3 A. That is true.

4 Q. Okay. Can you --

5 A. But then, again, it hadn't happened
6 for the previous -- since I can remember before
7 that.

8 Q. Understood. Weather -- weather
9 sometimes changes.

10 So can you try to estimate or
11 give me sort of a rough estimate of how much
12 overflow there was in the most recent time?

13 A. In the most recent time, I would say
14 it overflowed for less than four hours.

15 Q. Okay. Do you know roughly what the
16 volume of that flow was?

17 A. I do not know.

18 Q. And what about the time in 2015?

19 A. I don't recall how much or how long
20 it did at that time.

21 Q. Okay. And do you have any way of
22 knowing how long the water persisted in the former
23 ash basin after it overflowed?

24 A. No, I do not have a way of knowing

1 that.

2 Q. Okay. So we can move onto the
3 secondary basin now, which -- let me turn to my --
4 give me one moment to turn to my notes in the
5 secondary basin.

6 Now, you said that it was
7 relined with HDPE in 2013, right?

8 A. The -- I'm sorry?

9 Q. I'm sorry. The secondary basin was
10 relined?

11 A. The secondary ash basin, yes.

12 Q. And you also I believe testified,
13 and you can correct me if I'm remembering that
14 wrong, that -- that it had never been cleaned
15 before the relining in 2013?

16 A. Correct.

17 Q. Okay. And what did you find when
18 you relined it at the bottom of this pond again?

19 A. When I was there to witness -- when
20 they pumped the water down?

21 Q. Yeah.

22 A. There was -- there was -- like I
23 said, there was material less than a foot thick,
24 but it really wasn't similar to this. It was more

1 muddy, soupy material. It was -- it was -- the
2 technical term could be muck.

3 Q. Understood. Could it have been
4 bottom ash, though?

5 A. I don't believe so. It did not look
6 like this at all.

7 Q. Okay. And, again, you gave the
8 testimony in this proceeding. So I'm going to ask
9 you again to turn to your deposition testimony and
10 specifically you can turn to page 27. And you can
11 turn to line 6 on page 27.

12 A. Okay.

13 Q. And do you see where Mr. Russ asked,
14 "Was there bottom ash in the basin?" We can
15 confirm. Let me -- we can turn further back. So
16 we can confirm this is the Bates number. So this
17 is -- do you see on page 26 line 15 where Mr. Russ
18 says "Okay. That could be called the secondary
19 ash settling basin."

20 A. Okay.

21 Q. And you said -- you can read your
22 response.

23 A. I said "Yes."

24 Q. Okay. And on the next page when you

1 were still talking about that basin, again on page
2 27 line 6, Mr. Russ asks "Was there bottom ash in
3 the basin," what was your reply on line 7?

4 A. I said it could be bottom ash, yes.

5 Q. And actually if you look up to line
6 2 as well, do you see where Mr. Russ asked "And
7 what was in the basin in 2010"?

8 A. Yes.

9 Q. And your answer was?

10 A. I said "There was ash material."

11 Q. Okay. You can put your transcript
12 away. Thank you.

13 A. Okay.

14 Q. Now, Mr. Kelly, is the secondary
15 basin capped?

16 A. Again, no, it is not capped
17 according to your definition from earlier because
18 it is in service.

19 Q. Okay. And, again, does this basin
20 have a drainage system -- does this basin have a
21 drainage system?

22 A. Yes, we went over that earlier.

23 Q. Yes, this is the one --

24 A. It's the one that does have like --

1 like a drainage tile underneath, yes.

2 Q. Perfect. I'm sorry I interrupted
3 your response there.

4 A. It's okay.

5 Q. Again, when this basin was relined,
6 there was visible rips and tears around the top
7 part of the basin above the water line, correct?

8 A. They were repaired, yes, from
9 previous.

10 Q. I'm sorry. From previous what?

11 A. Well, if there were rips and tears,
12 they were repaired.

13 Q. Yes, understood. Okay. I'm going
14 to introduce what we will mark as Complainants'
15 Exhibit 713 or what we have marked as 713.

16 (Document marked as
17 Complainants' Exhibit No. 713
18 for identification.)

19 BY MR. WANNIER:

20 Q. And you can turn to Bates 21463.
21 Actually, I apologize. We can put this aside for
22 now. We're not going to do anything with this
23 yet. Just put it aside.

24 A. All right.

1 Q. Now, during the relining of the
2 secondary basin, ash ponds came into contact with
3 groundwater, right?

4 A. Say that again. Ash basins --

5 Q. I'm sorry. The ash basin came into
6 contact with the groundwater, right?

7 A. No. No.

8 Q. Sorry. Let's go back. The
9 secondary basin this is the one where you had the
10 issue with the groundwater incursion from the
11 river, right?

12 A. Correct.

13 Q. And, in fact, you saw groundwater
14 entering the basin?

15 A. I saw groundwater from the -- it was
16 from river water coming in through the embankment,
17 yes, I did.

18 Q. Okay. And --

19 A. But the basin, there was nothing --
20 the basin was bare. It was all dirt. We had not
21 started to reline the basin yet.

22 Q. Understood. It was during the
23 relining process.

24 A. Okay.

1 Q. And now you cleaned the basin before
2 you put in a new liner, right?

3 A. Yes, they did.

4 Q. And you -- but you haven't cleaned
5 it since?

6 A. No.

7 Q. And you have not discussed the
8 cleaning schedule for that basin?

9 A. No.

10 Q. Okay. And is that partly because
11 you might damage the existing liner there?

12 A. No, I think it is because so far as
13 I said before, that there hasn't been a need to
14 clean it. There is no indication that we have to
15 do it in any near term to do that. So I can't say
16 that if and when we would do that.

17 Q. Okay. So do you have any concern
18 that were you to clean it that the liner might be
19 damaged?

20 A. Do I have a concern? No.

21 Q. Are you aware of anyone else having
22 a concern?

23 A. To clean it out right now?

24 Q. Yes.

1 A. (Negative nod.)

2 Q. I guess, specifically, has NRT, the
3 company that you used to install the liner, have
4 they ever expressed any concerns about what might
5 happen if you clean the basin?

6 A. I don't know.

7 Q. Okay. We'll now place before you
8 what has been marked as Complainants' Exhibit 714.

9 (Document marked as
10 Complainants' Exhibit No. 714
11 for identification.)

12 BY MR. WANNIER:

13 Q. Do you recognize this document?

14 A. It is an e-mail from Amy -- from
15 Bill Gaynor to Amy Hanrahan.

16 Q. And were you cc'd on this e-mail?

17 A. Yes, I am.

18 Q. You are. And can you turn -- do you
19 see where on the first few lines -- I guess it
20 starts two-thirds of the way through the first
21 line of the main part of the e-mail where it says
22 "If we do have to clean the basin periodically in
23 the future, NRT expressed concern about the water
24 infiltration we are currently experiencing. The

1 concern is about the possibility of the new liner
2 floating up from the bottom and becoming damaged
3 during cleaning."

4 MS. GALE: I would object to hearsay
5 within hearsay. This is an e-mail written by Bill
6 Gaynor discussing what NRT said.

7 MR. WANNIER: Your Honor, this is a
8 clear objection to the hearsay -- this is a clear
9 hearsay exception. This is a statement against
10 party interest that was kept as part of their
11 regular business records.

12 HEARING OFFICER HALLORAN: Yeah, you
13 know, I'm going with that as well as Section
14 101.626. I think I'm a prudent person and I would
15 rely on it. So overruled.

16 BY MR. WANNIER:

17 Q. You can put that aside.

18 A. Do you want me to answer your
19 question?

20 Q. Sorry. Do you share those concerns?

21 A. No. Because actually when this
22 e-mail was written this was before -- this was
23 actually when the river water was coming through
24 the embankment and that was before we came up with

1 the idea of the French drain system. So actually
2 by installing that drain system, I think that
3 alleviated any concerns about infiltration of
4 groundwater coming up because we were able to
5 devise an engineering solution to that problem.

6 Q. Okay. Have you used the pump system
7 since it was installed?

8 A. No, we have not.

9 Q. Thank you. We can turn to the
10 former basin now.

11 A. Okay.

12 Q. Now, this is the basin we just
13 discussed. It serves as the emergency overflow
14 for the surge basin, right?

15 A. Okay.

16 Q. And you testified that you are
17 intending to close this basin, correct?

18 MS. GALE: Objection. Vague again.

19 HEARING OFFICER HALLORAN: Rephrase.

20 BY MR. WANNIER:

21 Q. What are your intentions with
22 respect to the former ash basin?

23 MS. GALE: Mr. Hearing Officer, if I
24 may explain my objection to vague, I am sure it

1 can be remedied.

2 MR. WANNIER: Is it Midwest
3 Gen versus him?

4 MS. GALE: Thank you.

5 BY MR. WANNIER:

6 Q. Midwest Gen's intention is to close
7 the station --

8 A. Yes.

9 Q. -- to your knowledge?

10 A. To my knowledge.

11 MR. WANNIER: Thank you for the
12 clarification.

13 BY MR. WANNIER:

14 Q. Now, this basin currently still
15 has -- contains dredge material from plant
16 operations, right?

17 MS. GALE: Objection. No facts into
18 evidence.

19 BY MR. WANNIER:

20 Q. To your knowledge.

21 HEARING OFFICER HALLORAN: I'm
22 sorry. Ms. Gale?

23 MS. GALE: My objection stands.
24 Foundation.

1 HEARING OFFICER HALLORAN: Okay.

2 Mr. Wannier?

3 MR. WANNIER: The witness has
4 testified many times that he's very familiar with
5 the operation of these ponds as well as the
6 contents therein.

7 HEARING OFFICER HALLORAN: Yeah, you
8 know, I think he can answer if he's able. I'm not
9 even sure I have to give him latitude, but you may
10 proceed, sir.

11 BY THE WITNESS:

12 A. From the current operations of the
13 current plant, there was no ash in that basin.

14 BY MR. WANNIER:

15 Q. Okay. But are you aware of there
16 being ash from previous operations at the plant
17 site?

18 A. I was told that there is stuff out
19 there, yes.

20 Q. Okay. And are you -- do you know
21 what that stuff is?

22 A. No, I do not.

23 Q. So are you familiar with the term
24 intake flume?

1 A. Intake flume is -- refers to what?

2 Q. Are you familiar with what it would
3 mean to be dredged material from an intake flume?

4 A. In generalities, okay.

5 Q. Are you aware of the fact that the
6 basin contains dredged material from the intake
7 flume at the site?

8 A. No, I do not know that.

9 Q. I can refresh your recollection. If
10 you can turn to your deposition transcript. If
11 it's possible, we'd like to withdraw 713. We
12 found an error in the exhibit and we're going to
13 correct that and distribute it.

14 HEARING OFFICER HALLORAN: Okay. It
15 was never admitted.

16 MR. WANNIER: Sorry. Not withdraw
17 it, but just take our copies back. Thank you.

18 HEARING OFFICER HALLORAN: Thank
19 you.

20 BY MR. WANNIER:

21 Q. If you can turn to page 16 of your
22 deposition transcript. And do you see where
23 Mr. Russ is questioning you about a document that
24 in that deposition had been marked as Exhibit 37

1 starting on line 11?

2 A. Okay.

3 Q. And, specifically, do you see -- I'm
4 going to turn your attention to -- we'll start at
5 line 17. Mr. Russ asks "And the unlined basin
6 north of the service water basin is no longer used
7 in the wastewater treatment process" and you said
8 "Correct," do you see that?

9 MS. GALE: Objection to the extent
10 that you are assuming this is the former ash basin
11 described on page 16.

12 HEARING OFFICER HALLORAN: Do you
13 want to give a little more foundation,
14 Mr. Wannier, as far as what are we talking about
15 here?

16 MR. WANNIER: Yeah.

17 THE WITNESS: Okay. I can clear
18 this up.

19 MS. GALE: No, you don't.

20 MS. NIJMAN: No question pending.

21 BY MR. WANNIER:

22 Q. Why don't we set this aside and
23 we'll address it on a break and we can come back
24 to this as-needed.

1 Instead, let's turn to -- let me
2 ask. Let's place in front of you what we have
3 marked as Complainants' Exhibit 715.

4 (Document marked as
5 Complainants' Exhibit No. 715
6 for identification.)

7 MR. WANNIER: Before I do that, your
8 Honor, we move for admission of Complainants'
9 Exhibit 714.

10 HEARING OFFICER HALLORAN: Ms. Gale?

11 MS. GALE: We -- as I said, I object
12 to the admission of this document. It includes
13 the impressions of Mr. Bill Gaynor thinking about
14 it for the impressions of NRT. Mr. Kelly did not
15 write it. He -- it was not addressed to him. He
16 simply was copied on it. I don't recall him
17 actually recalling ever seeing it before or
18 recalling the contents of it. He was only
19 questioned whether he shared NRT's concern. So I
20 don't think there was proper foundation laid for
21 this exhibit to be admitted.

22 HEARING OFFICER HALLORAN: Mr.
23 Wannier?

24 MR. WANNIER: Your Honor, the

1 witness testified specifically about -- about what
2 this concern was and he actually through his
3 testimony made clear he was aware of the
4 conversations because he pointed out the ways in
5 which they had addressed this concern.

6 Furthermore, he was -- he was -- he was among the
7 recipients of the e-mail.

8 HEARING OFFICER HALLORAN: You've
9 got your objections and explanation on the record.
10 However, I'm going to overrule Ms. Gale and take
11 it definitely under 101.626, but also it could be
12 a party opponent. Thank you.

13 MR. WANNIER: Okay. Thank you, your
14 Honor.

15 HEARING OFFICER HALLORAN: And that
16 was Complainants' Exhibit 714?

17 MR. WANNIER: Yes.

18 BY MR. WANNIER:

19 Q. You can now turn to 715. Do you
20 recognize this document?

21 A. I have not seen this. It's not
22 addressed to me. I don't know.

23 Q. But you have not seen this document
24 before?

1 A. I don't believe so.

2 Q. Okay. But you're aware of Midwest
3 Generation's intentions to close the former ash
4 basin?

5 A. This kind of generally outlines what
6 I said just previously about how we're going to do
7 it, yes.

8 Q. Have you -- to your knowledge, is
9 the former ash basin capped?

10 A. We have not got to that point yet,
11 no.

12 Q. Okay. And it is not lined, correct?

13 A. I can't say for certain if it is or
14 not. I don't know what's down there, but,
15 speculating, I would say no.

16 Q. Okay. And there is no drain
17 system -- drainage system for this pond, correct?

18 MS. GALE: Object to speculation.

19 HEARING OFFICER HALLORAN: I'm
20 sorry, Ms. Gale?

21 MS. GALE: Object to speculation.

22 HEARING OFFICER HALLORAN: Can you
23 read the question back, please, Mr. Brickey.

24

1 (Whereupon, the record was read
2 as requested.)

3 HEARING OFFICER HALLORAN: Mr.
4 Wannier, I sustained Ms. Gale's objection. Please
5 proceed.

6 BY MR. WANNIER:

7 Q. Have you seen any evidence of a
8 drainage system for this pond?

9 A. Not that I'm aware of.

10 Q. Have you seen any evidence of a
11 liner for this pond?

12 A. Not that I'm aware of.

13 Q. Okay. Thank you. Has this -- has
14 this -- the former ash basin been dewatered?

15 A. Not in the sense that I have
16 described how we do the other basins. Dewatering
17 occurs naturally I guess from the river if the
18 river comes up and goes back, it ebbs and flows, I
19 guess, but to -- to put a pump in to dewater, no,
20 we have not done that.

21 Q. Okay. Quickly -- if we can turn
22 quickly to the east yard runoff basin.

23 A. Okay.

24 Q. And, sorry, can you remind me what

1 is in this basin currently?

2 A. It is just runoff from the east half
3 of the plant storm -- storm water.

4 Q. Okay. Is it possible that there is
5 any ash at all in there?

6 A. Is it possible? There could be ash
7 blown in, you know, from the property or whatever,
8 but -- so there could be a little bit in there,
9 but it does not receive ash from any direct
10 system.

11 Q. Okay. And it's not lined, correct?

12 A. It is not lined.

13 Q. And is the east yard runoff basin
14 capped?

15 A. No. Because, again, it is in
16 service.

17 Q. Understood. We can move onto the
18 metal cleaning basin.

19 A. Okay.

20 Q. Which -- this basin had fly ash in
21 2010, right?

22 A. It has -- it is a -- a fly ash that
23 is on the external part of the tube -- boiler
24 tubes that gets washed off the tubes and collected

1 in that basin.

2 Q. So it currently has that fly ash as
3 well?

4 MS. GALE: Objection.
5 Mischaracterizes his testimony.

6 MR. WANNIER: I'm not characterizing
7 his testimony.

8 HEARING OFFICER HALLORAN:
9 Overruled. He can answer if he's able.

10 BY THE WITNESS:

11 A. The basin is cleaned out and there
12 is minimal material left in that basin from the
13 cleaning -- cleaning practices, but it would be
14 fly ash light material from the boiler tubes.

15 BY MR. WANNIER:

16 Q. And when was it last cleaned?

17 A. We just did it this fall.

18 Q. Fall 2017?

19 A. 2017.

20 Q. Okay. How is it cleaned?

21 A. Similarly as I described earlier we
22 would dewater it to get all the water out and then
23 we would pile the material to dewater some more
24 and then we would have end loaders take the

1 material and load it into trucks for removal.

2 Q. Okay. And I know you don't like
3 this question, but is this basin capped?

4 A. No, this basin is not capped also
5 because, as I have said, it is a still serviceable
6 basin.

7 Q. Okay. And does this basin have a
8 drainage system?

9 A. Not that I'm aware of.

10 Q. And we can turn to the bypass
11 basin --

12 A. Okay.

13 Q. -- which I believe this is the one
14 you testified is used during periods when the
15 surge basin is being dredged, correct?

16 A. Correct.

17 Q. And so it only stores bottom ash
18 during those times that the surge basin is
19 undergoing the dredging?

20 A. Mm-hmm.

21 Q. Okay. And you said that the
22 poz-o-pac layer -- this pond was relined in 2010?

23 A. Mm-hmm.

24 Q. And the poz-o-pac layer I believe

1 you testified was not removed, is that correct?

2 A. Correct.

3 Q. Okay. And do you clean it after
4 every use?

5 A. After every use? It is not
6 annually, but it is, like I said, every six to
7 eight years when we do the ash basin we will go
8 back and clean out the bypass basin after we are
9 done. So I guess according to that definition, it
10 would be after every use almost, yes.

11 Q. Okay. So it's only ever used in
12 that six to eight-year period of time?

13 A. That's what it is designed for.

14 Q. Okay. And there were some rips and
15 tears in the old Hypalon liner before it was
16 replaced, right?

17 A. There were some across the top, yes.

18 Q. Okay. And why was it relined?

19 A. That was part of the maintenance
20 schedule that the -- the company was going through
21 at the time and so that basin with -- the metal
22 cleaning basin was relined as part of that
23 maintenance schedule.

24 Q. So do you think that the condition

1 of the bypass basin required relining?

2 A. In terms of maintenance schedule, it
3 was -- it was time to do so, yes.

4 Q. So the condition of the bypass -- of
5 the bypass basin --

6 A. For maintenance purposes, it was --
7 it was part of that schedule. So, yes, it was
8 part of that maintenance schedule to be relined.

9 Q. Okay. I'm asking something slightly
10 different, though. I understand it was part of
11 the maintenance schedule. I'm asking if you
12 believe that the condition of the liner
13 necessitated a relining?

14 MS. GALE: Objection. Asked and
15 answered.

16 HEARING OFFICER HALLORAN: That's
17 what I thought. You can --

18 MR. WANNIER: I might have missed
19 it. I'm --

20 HEARING OFFICER HALLORAN: You can
21 answer if you're able one more time.

22 BY THE WITNESS:

23 A. If you're asking could we have
24 delayed it? I think we could have delayed it, but

1 it was scheduled to be done. So let's do it.

2 BY MR. WANNIER:

3 Q. Is it --

4 MR. WANNIER: Could I ask the
5 response to the previous iteration's question be
6 read in the transcript?

7 HEARING OFFICER HALLORAN: Yeah.
8 Mr. Brickey, before I think Ms. Gale's objection
9 that question.

10 (Whereupon, the record was read
11 as requested.)

12 BY MR. WANNIER:

13 Q. Let's move on to the limestone
14 runoff basin.

15 Now, has this ever been used to
16 store fly ash?

17 A. Temporarily it did.

18 Q. And when was that?

19 A. I don't know the exact date.

20 Q. Can you -- you give the
21 circumstances in which it was serving as a storage
22 for fly ash?

23 A. It was a temporary place to store
24 fly ash before it was removed, but, like I said, I

1 don't know the dates --

2 Q. Okay. And when --

3 A. -- specifically.

4 Q. When it was removed, you said you
5 sent it to mines for mine reclamation?

6 A. Yes.

7 Q. What is mine reclamation?

8 A. There are a series of mines in
9 central Illinois that are old coal mines. So they
10 were empty. So to prevent cave-ins, the mine
11 takes material to pack -- pack back the mine to
12 fill it up.

13 Q. Okay. Now, are you aware of any
14 times where ash was stored in direct contact with
15 the ground at Powerton?

16 MS. GALE: Objection to vague.

17 HEARING OFFICER HALLORAN: Could you
18 narrow that or rephrase?

19 BY MR. WANNIER:

20 Q. In your experience at Powerton, have
21 you ever seen ash in direct contact with the
22 ground?

23 A. There was a place south of the
24 bypass basin that cinders were temporarily stored

1 during the winter time when Reed Mineral could not
2 get them offsite. And they were having
3 difficulties and so we temporarily stored cinders
4 on the ground so they could remove them.

5 Q. Do you remember what year that was?

6 A. As I said, I don't remember the
7 year, but I know it was, as I corrected myself in
8 the deposition, it was before the CCA.

9 Q. Right.

10 A. So it was sometime before 2013. I
11 don't remember exact dates.

12 Q. Okay. Do you remember how long it
13 was kept there?

14 A. I know it was over a period of the
15 winter months. So maybe two to three months
16 during the winter.

17 Q. Okay. And can you just describe
18 roughly where it was on the site?

19 A. It was directly south of the bypass
20 basin. There is an open area in that area and
21 they were just -- they were there.

22 Q. Okay. And is that just north of the
23 railroad tracks that are down there?

24 MS. GALE: Objection. Vague and

1 description of --

2 MR. WANNIER: We can turn to the
3 maps. If you can turn to, I guess, Respondent's
4 Exhibit 667. We're going to pull up our own copy.

5 THE WITNESS: Do I have 667?

6 MS. GALE: You do.

7 HEARING OFFICER HALLORAN: We can go
8 off the record for a minute until Mr. Wannier is
9 ready.

10 (Whereupon, a break was taken
11 after which the following
12 proceedings were had.)

13 HEARING OFFICER HALLORAN: We'll go
14 back on the record. We're back on the record.
15 Mr. Wannier.

16 BY MR. WANNIER:

17 Q. Okay. If you can turn to Exhibit
18 667 and -- sorry. Respondent's Exhibit 667 and
19 there are several -- several pages without page
20 numbers that are entitled Powerton station -
21 Pekin, Illinois and I'm specifically -- I think
22 all of them could work, but I'm specifically
23 referring to the one that has the blue rectangles
24 separated out for the ash surge basin, the metal

1 cleaning basin and the ash bypass basin, are you
2 on that page?

3 A. Mm-hmm.

4 Q. Great. So on this map -- can you
5 try to describe where that site was? They are
6 numbered 12. Is that 12? I missed it.

7 A. Page 12. I'm on that page. The way
8 I described it, it is the area -- it is directly
9 south of the ash bypass basin, which is the lower
10 blue rectangle. So you can just see a little
11 green area right there.

12 Q. Okay. Are you referring to the
13 green -- tiny area just to the right of --

14 A. Just right -- directly to the right
15 of the N in basin.

16 Q. Yeah. Perfect.

17 A. It was right there.

18 Q. That's helpful. Thank you very
19 much.

20 And when it was removed at the
21 end of the winter, did it also go to mine
22 reclamation?

23 A. No, those were minerals that were --
24 those were cinders that go to Reed Mineral and

1 that is under a separate purpose. They use that
2 for shingles and sandblasting material. Black
3 beauty.

4 Q. Okay. Thank you. That's helpful.
5 Okay. We're going to place in front of you what
6 we will mark as Complainants' Exhibit 717.

7 (Document marked as
8 Complainants' Exhibit No. 717
9 for identification.)

10 MR. WANNIER: We're skipping 716 for
11 the record. I'll also note that because the
12 witness claimed he had not seen what we had marked
13 as 715, we're not going to try to move that into
14 evidence.

15 HEARING OFFICER HALLORAN: Thank
16 you. I'll add that to my notes.

17 MS. GALE: Can we go off the record
18 for a moment?

19 (Whereupon, a break was taken
20 after which the following
21 proceedings were had.)

22 HEARING OFFICER HALLORAN: We're
23 back on the record. Okay.

24 MR. WANNIER: In recognition of

1 opposing counsel's concern, we can skip this
2 exhibit discussion. I have -- I'm going to turn
3 to a different part.

4 HEARING OFFICER HALLORAN: If you
5 need it to present your case, Mr. Wannier, please
6 don't think you're under duress.

7 MR. WANNIER: Thank you.

8 BY MR. WANNIER:

9 Q. Now, you testified -- you can put
10 that exhibit aside. You testified that you
11 conduct weekly inspections at three basins, right?

12 A. (Affirmative nod.)

13 Q. Are those inspections any more than
14 a cursory visual review?

15 A. You are -- you are looking for
16 specific things in those inspections.

17 Q. Okay. Is it anything more than a
18 cursory visual review?

19 MS. GALE: Objection. Asked and
20 answered.

21 HEARING OFFICER HALLORAN:
22 Overruled.

23 BY THE WITNESS:

24 A. In my opinion, they are, yes. They

1 are more than that.

2 BY MR. WANNIER:

3 Q. Okay. So, Mr. Kelly, you
4 testified -- you can turn to Exhibit 700.
5 Respondent's Exhibit 700.

6 A. Okay.

7 Q. And, specifically, you can turn to
8 10965.

9 A. Okay.

10 Q. Now, you were asked questions as to
11 where the sample came from.

12 A. Okay.

13 Q. Do you have any personal knowledge
14 where the sample came from?

15 A. Yes, since I did it.

16 Q. You collect -- you collected the
17 sample?

18 A. Yes, I did.

19 Q. Yeah. Okay. When you -- because I
20 think you previously said this was more than
21 likely from --

22 A. The ash surge basin.

23 Q. You're certain it was from there?

24 A. Yes.

1 Q. Great. And that was just to clarify
2 your previous testimony. I appreciate that.

3 A. Okay.

4 Q. And when you -- when you dredged the
5 surge basin, what machines specifically are
6 entering into the basin?

7 A. End loaders go inside the basin.

8 Q. And front end loaders?

9 A. Well, yeah, they're the buckets on
10 the front, yes.

11 Q. Okay. And any other machinery?

12 A. Occasionally, trucks would drive in
13 there.

14 Q. Do they also have the rubber wheels?

15 A. Mm-hmm.

16 Q. And how long does the dredging take?

17 A. Anywhere from two to three months
18 maybe.

19 Q. Okay. And turning to the relining.
20 When you're relining, the last step for this surge
21 basin and also for many of the other basins was to
22 put, I guess, the sand cushion and the limestone
23 on the top, is that correct?

24 MS. GALE: Again, objection to vague

1 and if I were able to explain my objection I'm
2 sure it could be remedied.

3 HEARING OFFICER HALLORAN: I think
4 it's vague, but please go ahead and explain.

5 MS. GALE: He keeps stating "You
6 are. You are relining" and I only object to the
7 nature of it expecting Mr. Kelly to be doing all
8 of the work. I don't think he did.

9 HEARING OFFICER HALLORAN: Mr.
10 Wannier, you may continue.

11 MR. WANNIER: I'm certainly not
12 implying that. I will rephrase.

13 BY MR. WANNIER:

14 Q. Midwest Generation, when they do
15 their relining, how do -- how is the sand cushion
16 installed?

17 A. They would bring in -- there are
18 material trucks that bring in the sand and put it
19 out and they would have another machine to spread
20 the sand out.

21 Q. Okay. Do those trucks enter the
22 basin?

23 A. I believe they did.

24 Q. Okay. And what are the other --

1 what were the other machines you referred to that
2 spread the sand out?

3 A. I don't know how to describe it. I
4 guess the technical term is a Bobcat. It's a
5 smaller type of machinery that has -- I mean, I
6 don't even think the bucket on it is bigger than
7 this table.

8 Q. Okay. Now, the -- when -- the
9 trucks you described and the Bobcat, they're going
10 out after the HDPE liner is in place, right?

11 A. And -- yeah.

12 Q. Okay. Do they have rubber wheels?

13 A. Mm-hmm.

14 Q. The trucks and the Bobcats?

15 A. (Affirmative nod.)

16 Q. You have to answer --

17 A. Yes.

18 Q. -- out loud. And just going through
19 those layers I won't make you pull out those giant
20 exhibits, but you mentioned the geotextile layers
21 above and below the HDPE liner, correct?

22 A. Mm-hmm.

23 Q. Would you consider those layers to
24 be cushions?

1 A. They are foam cushion, yes.

2 Q. How thick are they?

3 A. I believe they are maybe an inch.

4 I'm not exactly sure.

5 Q. Okay. So the one below is maybe an
6 inch and --

7 A. They're the same.

8 MR. WANNIER: Your Honor, if we can
9 just have a short break. I need to confer with
10 counsel. I think we're almost done.

11 HEARING OFFICER HALLORAN: You know,
12 let's take a break until 3:30 and hopefully we can
13 wrap this up. Thank you.

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

17 HEARING OFFICER HALLORAN: We're
18 back on the record from a short break. It is
19 approximately 3:32. Mr. Wannier?

20 MR. WANNIER: Thank you.

21 BY MR. WANNIER:

22 Q. We would like to place before you,
23 Mr. Kelly, what has been marked as Complainants'
24 Exhibit 713. And you can turn specifically to

1 Bates MWG 21464. Does this appear to be an e-mail
2 you sent?

3 MS. GALE: I'm going to object only
4 to the extent, is this supposed to be one whole
5 exhibit with multiple e-mails?

6 MR. WANNIER: We believe this is a
7 chain of connected e-mails, but if you want to
8 remove pages, that's up to you.

9 HEARING OFFICER HALLORAN: Let's go
10 off the record.

11 (Whereupon, a break was taken
12 after which the following
13 proceedings were had.)

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

16 MR. WANNIER: For the record,
17 Complainants' Exhibit 713 is Bates numbers 21463
18 through 21465, which is a single e-mail chain. We
19 took off -- all of these e-mails have the title
20 ash impoundment and have the words ash impoundment
21 in the title, therefore, we believe they are a
22 connected chain of e-mails.

23 MS. GALE: Mr. Hearing Officer, as
24 I -- as said on the break, I don't -- because of

1 how the subject lines are broken up and at the
2 bottom of 216 -- I thought on break we were only
3 talking 21464. I am not -- so if --

4 HEARING OFFICER HALLORAN: Let's go
5 off the record again.

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

9 HEARING OFFICER HALLORAN: All
10 right. We're back on the record.

11 BY MR. WANNIER:

12 Q. Okay. Mr. Kelly, do you recognize
13 this series of e-mails?

14 A. As I have read them, I can see that,
15 yes.

16 Q. Okay. And do you see the e-mail on
17 page 21464 that you wrote?

18 A. Okay. Yes.

19 Q. Now, on the top half, specifically
20 21464, do you see the third paragraph where it
21 says "I would like to repair ripped liners in the
22 metal cleaning basin later this summer"?

23 A. Mm-hmm.

24 Q. What was -- why did you want to

1 repair it?

2 A. Well, I believe at the time this was
3 written we were waiting for construction permits
4 and we did not know if we were going to get
5 permits to do the whole basin. So I just wanted
6 to repair some rips that were -- like I said, at
7 the top of the basin which is where the rips were.
8 So -- so that's -- I think that's what this is
9 referring to.

10 Q. And do you see in the bottom half of
11 that page an e-mail from someone named Joseph
12 Heredia to you at 10:19 a.m. on June 8th, 2010?

13 A. Okay.

14 Q. Do you see that?

15 A. Yes.

16 Q. And, specifically, do you see on the
17 bottom of that e-mail where you have the line that
18 says "Forwarded by Joseph Heredia, Powerton on
19 6/08/2010 10:18 a.m."?

20 A. Okay.

21 Q. And if you turn to page 21465, does
22 that appear to be the e-mail that you forwarded?

23 A. Well, I would believe so because it
24 says Maria on one page and Race on the top of the

1 other page. So I would think -- I would think
2 that would be a continuation of that.

3 Q. Yeah. Thank you. Do you also see
4 that the forwarded -- well, scratch that. Oh, I
5 see.

6 Do you also see that the
7 forwarded e-mail on page 21465 was sent at 3:41
8 p.m. on June 7th, 2010?

9 A. Okay.

10 Q. Turning to 21463, do you see that
11 e-mail was also sent June 7th, 2010, at 3:41 p.m.?

12 A. Yes, it does say the same.

13 MR. WANNIER: Complainants move for
14 admission of what has been marked as Complainants'
15 Exhibit 713.

16 HEARING OFFICER HALLORAN: Ms. Gale?

17 MS. GALE: No objection.

18 HEARING OFFICER HALLORAN: Thank
19 you. Complainants' Exhibit 713 is admitted.

20 BY MR. WANNIER:

21 Q. We are now going to place before you
22 what has been marked as Complainants' Exhibit
23 717 -- 716. Excuse me.

24

1 (Document marked as
2 Complainants' Exhibit No. 716
3 for identification.)

4 BY MR. WANNIER:

5 Q. If you turn to the first page, Bates
6 21335, do you see the e-mail from Maria Race to
7 you -- to you, among other people, sent on August
8 12th, 2012?

9 A. Okay.

10 Q. If you go to bullet point five, do
11 you see where it says "Mark sent back an e-mail on
12 the bypass basin saying the condition required
13 relining"?

14 MS. GALE: I'm sorry. Where are
15 you?

16 MR. WANNIER: Bullet point five on
17 Bates page 21335.

18 BY MR. WANNIER:

19 Q. At the bottom of the page, there is
20 a bullet point five. Do you see that, Mr. Kelly?

21 A. Yes.

22 Q. Does the Mark in that sentence refer
23 to you?

24 A. Yes.

1 Q. Okay.

2 MR. WANNIER: Complainants move for
3 admission of what has been marked as Complainants'
4 Exhibit 716, which we are representing for the
5 record and we will make sure that everyone's
6 exhibits reflect that 21335 through 21339, which
7 is all we are representing for the record are a
8 series of e-mails part of the chain with the
9 subject line "Refreshing my memory."

10 MS. GALE: We would object to the
11 admission for they have not asked no questions of
12 this witness of this.

13 HEARING OFFICER HALLORAN: I think
14 we can do a little better. I know you're trying
15 to speed things up, but could you ask Mr. Kelly a
16 few more questions regarding this document for
17 foundation purposes?

18 MR. WANNIER: Yeah, sure.

19 BY MR. WANNIER:

20 Q. Why did you -- do you remember
21 sending the e-mail that is referred to in bullet
22 point five on 21335 where you said the condition
23 of the bypass basin required relining?

24 MS. GALE: Objection.

1 Mischaracterizes the document. He did not send
2 the e-mail.

3 HEARING OFFICER HALLORAN: Mr.
4 Wannier.

5 BY MR. WANNIER:

6 Q. Okay. Do you recall -- do you see
7 the sentence -- I'm talking about the e-mail that
8 is referred to in bullet point five and it says
9 "Mark sent back an e-mail on the bypass basin
10 saying the condition required relining"?

11 A. I read that, but I don't recall
12 sending that, but, I mean, I could have.

13 Q. Okay. Do you recall having received
14 this e-mail?

15 A. I do not recall receiving it, but my
16 name is on it. So more than likely I did read it
17 at one time.

18 Q. Okay. Do you have any -- do you
19 have any reason to doubt the accuracy of this
20 e-mail?

21 A. No, but at that time in October --
22 in August of 2010, we were waiting to reline
23 the -- I don't remember if we actually started
24 relining the metal cleaning basin and we were

1 waiting to reline the bypass basin. So, I mean, I
2 could probably send the e-mail saying we needed --
3 we were going to do it so that's why I sent that.

4 HEARING OFFICER HALLORAN: Ms. Gale?

5 MS. GALE: All right. I'm sorry.

6 Are you asking for me to respond?

7 HEARING OFFICER HALLORAN: Yes, for
8 you to respond.

9 MS. GALE: Well, I would also object
10 to pages 21337 through 21339 to be included for
11 materiality and relevance. I appreciate that
12 first e-mail, the response on 21335 is included,
13 but 21337 has an entirely different e-mail
14 actually from this witness that they have not
15 established any foundation for. I don't see any
16 reason to include that. I would also -- this is
17 on the e-mail discussed -- Maria's e-mail on
18 21335, bullet point five, as Maria is hearsay.
19 It's Maria's interpretation of Mark Kelly's
20 e-mail. If they want to ask Mark Kelly what he
21 thought -- but I still object to the admission of
22 this document as hearsay, additionally the other
23 pages for materiality and relevance.

24 MR. WANNIER: Your Honor, may I

1 respond?

2 HEARING OFFICER HALLORAN: Yeah, let
3 me respond real quickly.

4 MR. WANNIER: Okay.

5 HEARING OFFICER HALLORAN: I'm not
6 sure why this looks like the first time both
7 parties are discussing this on January 31st at
8 quarter to 4:00 in the afternoon when I directed
9 everybody to have their ducks in a row regarding
10 exhibits. Now, you may speak, Mr. Wannier.

11 MR. WANNIER: Yes, your Honor.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 MR. WANNIER: We were not sure going
15 into our cross what exhibits we would be using
16 because we weren't sure what -- we didn't have the
17 full knowledge of what the scope of the direct
18 testimony would be. So we didn't know what cross
19 exhibits would be within the scope and as to the
20 objection, again, this is a clear hearsay
21 exception because this is a statement by a
22 party -- by a representative of a party opponent
23 and the e-mails that counsel has referred to
24 starting on 21337 were sent by this witness. I

1 don't think there is -- they're a part of this
2 same chain according to the subject of the e-mails
3 and I can ask questions about those additional
4 e-mails if your Honor requests that, but I was
5 trying to limit my questioning in the interest of
6 saving time.

7 HEARING OFFICER HALLORAN: Yeah,
8 keep -- keep on questioning Mr. Kelly, please.

9 MR. WANNIER: Okay.

10 BY MR. WANNIER:

11 Q. Can you please turn to 21337.

12 A. Okay.

13 Q. And if you turn to the second line,
14 do you see where you said "We did not put a liner
15 in the secondary ash basin because we were going
16 to do this basin and the ash basin together"?

17 A. Okay.

18 Q. Does this confirm that -- your
19 recollection of the timing of when you installed
20 liners at these basins?

21 A. Well, the e-mail was written before
22 we did it and I know we did it in 2013. So, for a
23 timeline, yes.

24 Q. Okay. And on that last paragraph

1 where you say "As far as relining the metal
2 cleaning and bypass basins, the contractors did
3 the metal cleaning first and moved over to the
4 bypass basin," does that -- does that --

5 A. That is true.

6 Q. Okay. That is consistent with your
7 recollection of how the relining occurred?

8 A. Yes.

9 Q. Okay. And were these documents --
10 did you send this e-mail as part of your
11 employment with Midwest Generation and your job
12 responsibilities to report to Ms. Race about the
13 process of the relining?

14 A. I don't think it was in that
15 context. I think this e-mail was asking for a
16 timeline of when we did that and I was just
17 commenting that we did the metal cleaning basin
18 and then we did the bypass basin.

19 Q. Okay. So turn to the e-mail at the
20 bottom of the page.

21 Do you see, again, this is this
22 e-mail sent on August 12th, 2012, at 3:35 p.m.?

23 A. Okay.

24 Q. Maria's e-mail to you where she is

1 asking -- she is giving facts the way she
2 understands them and specifically in bullet point
3 five, do you see where it says "Mark sent back an
4 e-mail on bypass basins saying the condition
5 required relining," do you see that?

6 A. Yes.

7 Q. Okay. If you go up to the top of
8 the page, does this appear to be your response to
9 Ms. Race's e-mail?

10 A. I don't think that's the e-mail that
11 I was referring to, but Mark sent an e-mail on the
12 bypass saying that --

13 THE COURT REPORTER: Wait. That was
14 garbled.

15 BY THE WITNESS:

16 A. Bullet point five where it says "But
17 Mark sent back an e-mail on a bypass basin saying
18 the condition required relining" is not the e-mail
19 that is above where I talked about when the basins
20 were relined.

21 BY MR. WANNIER:

22 Q. I agree -- I accept that and that's
23 not what I'm asking you.

24 A. Okay.

1 Q. What I'm asking you is, is this
2 e-mail at the top of the page your response to
3 this e-mail Ms. Race sent at the bottom of the
4 page?

5 A. I believe so.

6 Q. And then the first line of that
7 response, did you say "Yes, I agree with your
8 timelines"?

9 A. Yes.

10 Q. Okay.

11 MR. WANNIER: Complainants renew
12 their motion to admit --

13 HEARING OFFICER HALLORAN: Ms. Gale?

14 MR. WANNIER: -- Exhibit 716.

15 MS. GALE: We maintain our objection
16 to the admission of the e-mails not written by
17 Mark Kelly. Maria Race was here for three days.
18 This was an e-mail that she wrote. They could
19 have asked her about what she meant in this
20 e-mail. We would also ask if it were admitted
21 that you would limit the reliance upon this
22 exhibit to questions asked of Mark Kelly.

23 HEARING OFFICER HALLORAN: Mr.
24 Wannier?

1 MR. WANNIER: Your Honor, I don't
2 think there is any basis to be limiting the use of
3 this exhibit and as for the basis -- as for the
4 stated basis for the objection, this -- the
5 question -- the relevant information is that
6 Mark -- the witness here sent an e-mail confirming
7 the e-mail that Ms. Race sent and that's important
8 because Ms. Race's e-mail has information about --
9 about this witness's opinion as to the condition
10 of the liner and what's important is that he sent
11 an e-mail confirming her recollection of his
12 position.

13 Now, we could have tried to do
14 it with Ms. Race but it probably would have been
15 objected to there and we thought it made more
16 sense with this witness because it's his opinion
17 that is relevant to this proceeding.

18 HEARING OFFICER HALLORAN: I find
19 sufficient foundation. I find sufficient
20 relevancy. I'm going to admit it and I'm not
21 going to limit the testimony, this exhibit,
22 Complainants' Exhibit 716 to the testimony given.
23 So Complainants' Exhibit 716 is admitted.

24 And I would on the record -- I

1 know you didn't anticipate submitting this
2 exhibit, but that's what trials/hearings are all
3 about. You have to anticipate. Now, I would
4 direct for any further exhibits that are going to
5 be introduced that you sit down and talk with the
6 other party because we have another three
7 witnesses at least from Midwest. I don't want
8 another surprise with this.

9 MR. WANNIER: We will do that, your
10 Honor.

11 HEARING OFFICER HALLORAN: Thank
12 you. You may proceed.

13 BY MR. WANNIER:

14 Q. Just a couple further questions. No
15 more exhibits.

16 When you said, I believe in your
17 previous testimony, that you had kept material in
18 the limestone basin and then removed that material
19 along with the Hypalon liner, do you recall that
20 testimony?

21 A. Yes.

22 Q. What was the material that you kept
23 in the limestone basin?

24 A. We had taken some of the ash out of

1 the ash basin when we were cleaning it out, as I
2 had testified, as I had said, that we were taking
3 stuff out of there to get it out and we
4 temporarily stored it in the limestone basin and
5 we were removing it so we could get into the ash
6 basin to reline it.

7 Q. Okay. And then you also testified
8 that you do not often find tears in the liners.
9 I'm not sure you specified a basin. It may have
10 been just generally, but you correct me if I'm
11 misremembering that testimony.

12 A. I did not specify basins, no.

13 Q. Okay. Can you just give a little
14 more detail on what you mean by not often, like
15 how often?

16 A. There have been since we -- since we
17 have relined these basins, there have been four
18 occasions that I have called Clean Air and Water
19 to come out and repair liners in the metal
20 cleaning basin and the bypass basin.

21 Q. Over what timeframe?

22 A. Since -- since -- well, we did the
23 metal cleaning basin in 2010 and we -- I guess we
24 did both of them in 2010. So four times over the

1 past eight years.

2 Q. Okay. And have you identified tears
3 at any other of the basins in that timeframe?

4 A. There have not been any tears on any
5 other basins during that time.

6 Q. Thank you. And, finally, you
7 mentioned at the former ash basin when I was
8 asking you about dewatering you mentioned that the
9 water ebbs and flows?

10 A. Well, it is -- it is -- that area is
11 connected to the river. The river -- the river is
12 just on the -- it's a floodplain for the river.
13 So if the river in the spring, if it comes up
14 high, the water will come up into that area and
15 then when the water recedes it will go back.

16 Q. So the water will come into that
17 former ash basin and then does it drain back out
18 to the river?

19 A. Yes, it goes back out.

20 Q. To the river?

21 A. Yes.

22 Q. Okay.

23 MR. WANNIER: No further questions,
24 your Honor.

1 HEARING OFFICER HALLORAN: Thank
2 you. Ms. Gale, redirect?

3 MS. GALE: Yes, but I'd like a
4 minute off the record just to --

5 HEARING OFFICER HALLORAN: Sure.
6 We're off the record.

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

10 HEARING OFFICER HALLORAN: Back on
11 the record.

12 R E D I R E C T E X A M I N A T I O N
13 BY MS. GALE

14 Q. Mr. Kelly, earlier -- earlier today
15 you talked about the poz-o-pac under the ash surge
16 basin and Mr. Wannier showed you your deposition
17 from a few years ago and you -- he showed you that
18 you said at the time that some of this -- some of
19 the material -- the poz-o-pac probably was scraped
20 off, do you recall that?

21 A. Mm-hmm.

22 Q. And when you said probably, is
23 that -- can you explain, is that inconsistent with
24 what you said today or can you explain?

1 A. Well, what I said when they were
2 scraping it, I think they had to scrape some to
3 see if they could remove it and there were, you
4 know, parts where they were trying to remove it,
5 but they weren't getting anything. So there were
6 scrapings, but there would just be like little
7 scratch marks. There was nothing that they were
8 getting. So, no, they weren't getting anything.

9 Q. And earlier today we went over the
10 construction documentation and you recall that we
11 saw that the subgrade was certified --

12 A. Mm-hmm.

13 Q. -- for the geotextile?

14 A. It was certified by the installers,
15 yes, that it was acceptable for the liner.

16 Q. I want to switch to the secondary
17 ash basin. Again, Mr. Wannier showed you your
18 deposition from a couple of years ago about bottom
19 ash could get into the secondary ash basin, do you
20 recall that?

21 A. Yes.

22 Q. And, again, you know, when you say
23 could get in, what do you mean by that?

24 A. Well, I mean, it's -- it's possible

1 that some ash could have blown in there, bottom
2 ash. It is not inconceivable over 35 years there
3 is some material that could have gotten in there,
4 a little bit of ash, but it is not anywhere --
5 anything near what was representative of the ash
6 basin which we would typically call the ash that
7 is in there. Could it have been mixed in there
8 with the sludge material? I think so, but it
9 wasn't anything like the ash in the ash basin.

10 Q. Would the word di minimis help you?

11 A. Yes, it was very small. Like I
12 said, it was less than a foot of material after 35
13 years. So, no, I wouldn't think there would be
14 ash in there accumulating like the ash basin, ash
15 surge basin.

16 Q. And I want to go now to the lining
17 of the ash surge basin and clarify how that --
18 your recollection of how that was done. And you
19 said that there were Bobcats that moved the sand
20 and then trucks went out, but can you clarify the
21 sequence of events of how that went?

22 A. Yes. Actually, that's why I think I
23 was pausing because I don't recall trucks being
24 out there, but what did happen is the trucks at

1 the bottom of the ramp would dump the sand and
2 everything and then the Bobcat would come along
3 and push and take the sand out to wherever it had
4 to be and smooth it out and the limestone was the
5 same way.

6 Q. So, to your recollection, did you
7 ever see a truck drive on the liner?

8 A. No.

9 Q. Did the truck -- where did the
10 truck -- what did the truck drive on?

11 A. The trucks would drive down the ramp
12 and then -- and then deposit the sand and rock at
13 the bottom of the ramp.

14 Q. Okay. Thank you. Can you pull out
15 Complainants' Exhibit 716. You should have it
16 right there.

17 A. Yes.

18 Q. And complainants were pointing to at
19 the bottom of that page 21335 number five, do you
20 recall what underlying e-mail that Maria -- that
21 you wrote that Maria is talking about?

22 A. I do not recall, no.

23 Q. Do you recall if Maria reworded what
24 you said?

1 MR. WANNIER: Objection. Leading
2 question.

3 HEARING OFFICER HALLORAN: He may
4 answer if he's able.

5 BY THE WITNESS:

6 A. Do I recall her rewording what I had
7 sent?

8 BY MS. GALE:

9 Q. Said, yes, what you said.

10 MR. WANNIER: Also objection to
11 foundation. He just said he doesn't remember what
12 he sent.

13 BY THE WITNESS:

14 A. I do not recall.

15 HEARING OFFICER HALLORAN:

16 Sustained.

17 BY MS. GALE:

18 Q. So you have no idea what she was
19 writing about here in this Exhibit 716, do you?

20 MR. WANNIER: Objection. Can you
21 clarify? Are you asking here today or at the time
22 he sent his e-mail?

23 HEARING OFFICER HALLORAN: Ms. Gale?

24 MS. GALE: He doesn't recall the

1 e-mail this was based upon and he doesn't recall
2 if she reworded it. So he actually doesn't
3 know -- doesn't recall anything about number five
4 in Exhibit 716.

5 MR. WANNIER: Also, I'm going to
6 object to the leading nature of that question.

7 HEARING OFFICER HALLORAN:
8 Overruled.

9 BY THE WITNESS:

10 A. I mean, as I said in my response,
11 the only thing I answered -- I just stated what I
12 knew which was as far as, you know, when we did
13 the relining and when we did it, but I don't
14 recall specifically about that -- about that
15 number five.

16 BY MS. GALE:

17 Q. Okay. And you testified earlier
18 that the -- the reason for relining the bypass
19 basin was due to the program.

20 Do you recall any condition of
21 the bypass basin other than the timing in the
22 program to conduct a relining?

23 A. I just think that it was -- the
24 condition was still good, I think. I think

1 that -- if they're giving us the money to reline
2 the basin, I want to reline the basin. I mean,
3 sometimes -- sometimes they offer and if we don't
4 do it, that money goes away. So I'd rather when
5 we were given that timeframe in 2010 to do that, I
6 wanted to do it at that time.

7 Q. So what I'm hearing you saying if
8 your station has an opportunity to conduct
9 preventive maintenance, you're going to do it?

10 A. Yes.

11 MR. WANNIER: Objection. Leading.

12 HEARING OFFICER HALLORAN:

13 Sustained.

14 MS. GALE: Nothing further.

15 HEARING OFFICER HALLORAN: Mr.

16 Wannier?

17 MR. WANNIER: Just a couple of

18 questions.

19 R E C R O S S E X A M I N A T I O N

20 BY MR. WANNIER

21 Q. Are you present for the entire time
22 that a pond is relined?

23 A. Am I present?

24 MS. GALE: Objection to vague.

1 BY MR. WANNIER:

2 Q. Okay. I can go pond by pond. For
3 the relining of the surge ash -- ash surge pond,
4 were you present all day every day that the pond
5 was relined?

6 MS. GALE: Objection. Beyond the
7 scope of the redirect.

8 HEARING OFFICER HALLORAN: Latitude.
9 You may continue.

10 BY THE WITNESS:

11 A. I don't recall if they worked on
12 weekends, but I was -- without taking vacation,
13 normal vacation days, my normal workdays were
14 Monday through Friday. So, yes, I would have been
15 there if I was working those days.

16 BY MR. WANNIER:

17 Q. Just to clarify, you would have
18 spent the whole day at the site overseeing the
19 relining?

20 A. The whole day, no. I would have
21 went out there probably in the morning and the
22 afternoon to talk to the contractors, but to spend
23 the whole day out there I was not out there the
24 whole day, no.

1 Q. Okay. And just to save us all time,
2 does that roughly describe your experience at the
3 relining at the other ponds?

4 A. Mm-hmm.

5 Q. Can you answer --

6 A. Yes.

7 MR. WANNIER: No further questions.

8 HEARING OFFICER HALLORAN: Ms. Gale?

9 MS. GALE: Nothing further.

10 HEARING OFFICER HALLORAN: Thank
11 you. Mr. Kelly, you are finished.

12 THE WITNESS: Thank you.

13 HEARING OFFICER HALLORAN: At least
14 I think you are.

15 THE WITNESS: I'm going home.

16 HEARING OFFICER HALLORAN: We're off
17 the record.

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

21 HEARING OFFICER HALLORAN: We're
22 back on the record. Ms. Gale will be doing a
23 direct of her next witness. As soon as he gets
24 seated, we'll have him raise his right hand and

1 Mr. Brickey can swear him in.

2 MS. GALE: For the record, Midwest
3 Generation calls Fred -- is it Fred or Fredrick?

4 THE WITNESS: Frederick.

5 MS. GALE: Frederick Veenbaas,
6 V-E-E-N-B-A-A-S.

7 WHEREUPON:

8 FREDRICK VEENBAAS
9 called as a witness herein, having been first duly
10 sworn, deposeth and saith as follows:

11 D I R E C T E X A M I N A T I O N

12 BY MS. GALE

13 Q. Mr. Veenbaas, where do you work?

14 A. I work at Waukegan station.

15 Q. And what does the Waukegan station
16 do?

17 A. It's an electrical generator.

18 Q. Can you generally describe what you
19 do at Waukegan?

20 A. I'm the senior compliance
21 specialist. So I'm concerned with the regulatory
22 activities, environmental regulatory activities in
23 the station.

24 Q. And how long have you worked at

1 Waukegan?

2 A. I arrived late in 2012. I've been
3 there since then.

4 Q. And did you work at a Midwest
5 Generation station before then?

6 A. Yes, I worked at Will County station
7 between December of '99 to when I went to
8 Waukegan.

9 Q. And what was your position at Will
10 County?

11 A. I was a chemistry systems specialist
12 there.

13 Q. What did you do when you were at
14 Will County?

15 A. I -- I was the -- I was the
16 certified wastewater operator. I also handled the
17 process chemistry and the water treatment area.

18 Q. I'm going to put the aerial of
19 Waukegan station on the screen, please. Do you
20 recognize what is shown on the screen?

21 A. Yes, that's an aerial of Waukegan
22 station.

23 Q. And, to your knowledge, can you
24 generally describe the area around the Waukegan

1 station?

2 A. Yes, it's what we call -- it's on
3 what we call the Lake Michigan Bench or Lake
4 Michigan Plain, which is an area of land to the
5 east of the bluff where Sheridan Road is and it
6 basically consists of sand deposited over a long
7 period of time. Do you want more?

8 Q. How about the -- how it's been used,
9 before its use?

10 A. The plain has been used since
11 probably the 1840's for different kinds of
12 industry. For instance, to the north of us, Johns
13 Manville was there for many years. It's now a
14 Superfund site. To the west, there is the
15 Tannery, Boilermaker. To the south, we've got the
16 sanitation district and then if you go further
17 south you go to the Johnson Marine Plant which is
18 another Superfund site. We have also liquified
19 gas Superfund sites to the immediate south in two
20 spots. It's probably one of the higher density
21 urban sites in the country right now.

22 Q. And coal fire -- actually, I don't
23 know if you said this.

24 How is electricity generated at

1 Waukegan station?

2 A. Well, coal is brought in from the
3 Powder River Basin in Wyoming. The trains enter
4 the property. The cars are dumped individually
5 and the contents of the car are sent to the coal
6 pile. The pile is then -- the coal from the pile
7 is then introduced to the station, to the series
8 of conveyor belts. It's basically introduced to
9 the boiler where it's ignited and goes from there.

10 Q. So it uses coal --

11 A. Yes.

12 Q. -- to produce energy?

13 A. Yes. Sorry.

14 Q. And at a coal fire power plant, what
15 is one of the bi-products?

16 A. Ash is one of the bi-products.

17 Q. And what kinds of ash are there at
18 the Waukegan station?

19 A. We have what we call bottom ash and
20 we have fly ash.

21 Q. At Waukegan, what happens with the
22 fly ash?

23 A. Fly ash is pneumatically transported
24 through a series of two fly ash piles on the east

1 part of the property. It's then dumped into the
2 cars and then -- trucks, I mean, and taken off the
3 property where it's beneficially reused for mine
4 stabilization.

5 Q. And pneumatically, does that mean
6 dry?

7 A. Yes, it's all dry. It's a dry
8 system. It's all air driven.

9 Q. And is the fly ash routed to the ash
10 ponds?

11 A. No, it's not.

12 Q. And at Waukegan, what happens to the
13 bottom ash?

14 A. Bottom ash is sluiced. Bottom ash
15 goes down to the bottom of the furnaces where it's
16 sluiced to the ash ponds to the south end of the
17 property.

18 Q. And how many ash ponds are there at
19 Waukegan?

20 A. There is two ash ponds, east and
21 west.

22 Q. And on the map on the screen there,
23 and there is one in front of you in case it's
24 easier to see, can you generally describe where

1 they are?

2 A. Sure, they're at the bottom of the
3 property. They're U-shaped. There is one on the
4 east and one on the west.

5 Q. And, generally, what do those ash
6 ponds do?

7 A. They -- we sluice the ash, the water
8 with the ash in it, and the ash that is in the
9 water is allowed to settle out and the water
10 proceeds around the U and is reused again as
11 recycled ash water.

12 Q. Okay. And, Mr. Veenbaas, on the
13 table here is Respondent's Exhibit 712. Can you
14 tell me what that is?

15 A. That is bottom ash taken from the
16 east pond.

17 Q. Who -- do you know --

18 HEARING OFFICER HALLORAN: I'm
19 sorry. It's for identification? It hasn't been
20 moved. It's --

21 MS. GALE: We have not moved it yet.
22 I'm sorry. Respondent's Exhibit 712 for
23 identification purposes.

24 HEARING OFFICER HALLORAN: Thank

1 you.

2 MS. GALE: Thank you.

3 BY THE WITNESS:

4 A. I took this sample from that pond.

5 BY MS. GALE:

6 Q. So you collected the sample?

7 A. Yes, I did.

8 Q. From which pond?

9 A. The east pond.

10 Q. And when did you collect it?

11 A. October 12th, '17.

12 Q. 2017?

13 A. Yes.

14 Q. How did you collect it?

15 A. I got a bucket and shoveled some ash
16 in the bucket and then filled this jar up with it.

17 Q. After you placed the bottom ash in
18 that jar, where did you take it?

19 A. I took it to your office.

20 Q. And you gave it to me?

21 A. Gave it to you, yes.

22 Q. Can you generally describe the ash
23 in the jar, please?

24 A. Sure, it's a very granular

1 substance, kind of soil-like, it's relatively --
2 it's dewatered. You don't see any residual
3 moisture in it.

4 Q. What color is it?

5 A. It's brown. Dark brown.

6 Q. And what is its smell?

7 A. Do you want me to smell it?

8 Q. If --

9 A. It has no smell. I can tell you
10 that. I've been around ash ponds for most of my
11 adult life and it doesn't smell.

12 Q. And is this bottom ash similar to
13 the bottom ash you saw when you worked at Will
14 County?

15 A. Yes, the same type of coal is being
16 burned at Will County as it was at Waukegan and
17 the design of the furnace was the same as well.
18 They're combustion engineering type furnaces that
19 are tangentially fired, pulverized coal.

20 MS. GALE: Mr. Hearing Officer, we
21 move to admit Respondent's Exhibit 712.

22 HEARING OFFICER HALLORAN: Ms.
23 Dubin?

24 MS. DUBIN: I object. I think that

1 not enough foundation has been laid for this
2 exhibit. It's unclear how this has been stored
3 since it got to your office, it's unclear who has
4 handled this exhibit and it's unclear whether or
5 not this is now actually representative of the ash
6 in the ash ponds.

7 HEARING OFFICER HALLORAN:
8 Overruled. I'll admit the Exhibit 712, but now
9 we're -- I talked before. We're kind of
10 overlapping. Right now we're in the 700's in both
11 the complainants and respondents now have exhibits
12 in the 700's, right? This is Respondent's Exhibit
13 712?

14 MS. GALE: And, for the record, they
15 asked me when they were going to do Mark Kelly --
16 this is our only exhibit with Mr. Veenbaas and so
17 I -- I included it in Mark Kelly's 100- -- excuse
18 me. 700 through 712 and then 711 and 712 and
19 during the break complainants asked me how to
20 number the exhibits they wanted for Mark Kelly and
21 I suggested 713 through beyond and that would be
22 the only overlap.

23 HEARING OFFICER HALLORAN:
24 Seven-thirteen?

1 MS. NIJMAN: Mm-hmm.

2 MS. GALE: So complainants
3 introduced exhibits starting at 713.

4 HEARING OFFICER HALLORAN: All
5 right. The moral of the story is when we're
6 referring to exhibits, respondent and
7 complainants.

8 MS. GALE: Sorry.

9 HEARING OFFICER HALLORAN: Thank
10 you. Over objection, Respondent's Exhibit 712 is
11 admitted.

12 BY MS. GALE:

13 Q. Mr. Veenbaas, are the ponds at
14 Waukegan used interchangeably?

15 A. Generally, we use one for a period
16 of years and clean the other one out so they're
17 not used at the same time. They're used one at a
18 time.

19 Q. And for a period of years, what do
20 you mean by that?

21 A. They are very large ponds relative
22 to other stations. So you can -- depending how
23 the plant is used and how many hours it runs, it
24 has room for a fair amount of ash in there, each

1 pond.

2 Q. Do you have an estimate of how, many
3 years?

4 A. Two to three, maybe four.

5 Q. In those ponds, does the water level
6 go to the top ridge of the pond?

7 A. No, it doesn't. It only goes
8 several feet.

9 Q. Several feet from where?

10 A. From the bottom. I'm trying to --
11 maybe five or six feet from the bottom.

12 MS. DUBIN: I'm sorry. Would you
13 mind repeating your answer.

14 THE WITNESS: Sure.

15 BY THE WITNESS:

16 A. Five to six feet from the bottom.
17 The actual pond is probably around 15 to 20 feet
18 deep. We do not use the full pond height. We
19 only use a very small portion of it.

20 MS. DUBIN: Sorry. Just to clarify,
21 the water line is --

22 MS. GALE: Is there an objection on
23 the stand?

24 MS. DUBIN: I'm sorry. Would you

1 mind reading -- I just wanted to understand what
2 the question was that he was responding to.

3 HEARING OFFICER HALLORAN: Okay. We
4 have to listen better. It's getting late in the
5 day. Mr. Brickey, is it possible for you to read
6 it back or can Ms. Gale ask it again?

7 MS. GALE: I don't understand
8 what -- there is not an objection. I don't
9 understand what her confusion is.

10 MS. DUBIN: I'm not objecting. What
11 question did you ask, Mr. Veenbaas?

12 MS. GALE: With respect, I'm on
13 direct. If she wants to clarify on cross, that's
14 fine.

15 HEARING OFFICER HALLORAN: You know,
16 unbelievably, I'm the Hearing Officer now. So
17 either you can re-ask the question or I'll ask
18 Mr. Brickey to read it back.

19 MS. GALE: Okay.

20 BY MS. GALE:

21 Q. Just to clarify from the base of the
22 pond, which I think you said was 15 to 20 feet
23 deep, how high up does the water go?

24 A. Probably five or six feet.

1 Q. Thank you. So about how much of the
2 liner, if you can estimate, can you see?

3 A. You can only see the liner in the
4 upper part of it that is not exposed to the water
5 above the water line. Obviously when the ash is
6 collecting in the pond you can't see the liner
7 because it's covering it, along with the layer,
8 the sand layer and the limestone layer.

9 Q. Okay. But when you have water in
10 it, and if it's only up to five feet and it's a 15
11 to 20-foot pond, how much -- about how much of
12 that liner can you see?

13 A. Just the stuff that is exposed to
14 air above the water line.

15 Q. And we have already assumed this,
16 but the ponds at Waukegan are lined?

17 A. Yes, they are.

18 Q. Do you know what they're lined with?

19 A. A high density polyethylene.

20 Q. Do you know what -- if there is
21 anything on the bottom?

22 A. The liner then there is the layers
23 of sand and limestone above the liner.

24 Q. From time to time, is ash removed

1 from the ponds?

2 A. Yes. That happens on a recurring
3 basis, yes.

4 Q. Are you familiar with the process of
5 the ponds being dredged?

6 A. I understand the process, yes.

7 Q. Have you seen it?

8 A. I have, yes. We recently cleaned
9 out a portion of the east pond in 2017.

10 Q. And can you generally describe how
11 the ash is dredged out of the ponds?

12 A. Yes, they have a front end loader
13 with rubber tires and will start at one end of the
14 pond, usually at the U end of the pond, and work
15 towards the other side. It loads trucks which
16 also have rubber tires and those trucks are filled
17 and they leave on a ramp at the south end of the
18 pond, go off the property and take it for
19 beneficial reuse.

20 Q. When dredging the pond, how -- how
21 much of the ash on the bottom do they get?

22 A. They get most of it. I have never
23 seen ever a warning layer shown. So they don't
24 clean all the way down to the warning layer. They

1 always leave some ash behind.

2 Q. You said you clean out portions of
3 the pond, what does that mean?

4 A. Well, the -- the ash -- the heavy
5 fraction of the ash actually drops out within the
6 first 100 feet or 50 feet and beyond. As you go
7 to the other side of the U of the pond, only the
8 fine settle out. So you'll see like a much
9 smaller amount. The heavy stuff really drops off
10 pretty quickly.

11 Q. And so when you're dredging, what
12 parts are the machines at?

13 A. They're on the inlet side of the
14 pond, which on the east side -- would be on the
15 east side of the pond.

16 Q. So do you -- excuse me. Does
17 equipment ever get to the outlet side of the pond?

18 A. Not regularly because there's just
19 not much there.

20 Q. And the equipment that is in there,
21 I think you said it was end loaders, what kind of
22 tires do those have?

23 A. Just rubber tires.

24 Q. And who does the cleaning out at

1 Waukegan?

2 A. Lafarge does it. They have had a
3 contract to do that kind of cleaning service for a
4 long time and they also market the material
5 offsite to beneficial reuse.

6 Q. And how does Lafarge -- when
7 cleaning out the pond, how does Lafarge deal with
8 the size of the ponds? How does -- how do they
9 manage cleaning out the pond and the bottom and
10 the sides?

11 A. Well, the sides have posts that
12 denote where the incline of the slope of the pond
13 is. They don't go beyond those posts. They're
14 mainly concerned with the horizontal bottom of the
15 pond when the ash is there.

16 Q. How do they deal with that concern?

17 A. Well, they're very careful not going
18 down in the warning layer and, again, they don't
19 go to the slopes where the posts -- beyond where
20 the posts are.

21 Q. And have you observed the machinery
22 you're operating in the ponds?

23 A. I have, yes.

24 Q. And how could you describe it?

1 A. Well, they're very deliberate.
2 They're very careful. The speeds that the trucks
3 come in are very slow. They, again, are pretty
4 methodical like they work from, again, south to
5 north and I think over a period of this past time
6 it was probably three months they cleared the one
7 end of the pond out.

8 Q. Have you had occasion to see the
9 ponds after dredging?

10 A. Yes.

11 Q. On those occasions, have you had a
12 chance to see the limestone layer?

13 A. No. I mean, I have not seen the
14 limestone layer. When I took the sample that day,
15 the pond was completely clean and when I looked at
16 the length of the area where they did clean, there
17 was no limestone layer visible.

18 Q. Once the ponds are dredged, does the
19 station conduct any inspections?

20 A. Yes, we have operators who travel
21 the road around the ash ponds daily, sometimes
22 every shift all depending on the time of year and
23 the light. Also we have what we call CCR
24 inspections that occur on a two to three time a

1 week basis.

2 Q. So I think you just said the
3 operators go out three times a day on their
4 rounds?

5 A. Right.

6 Q. And the CCR rules -- do you
7 conduct -- are you one of the people that conducts
8 the CCR --

9 A. I can. I've been trained to do it.
10 We have operators do it. They are trained. They
11 were trained by NRT to do it and they have a form
12 they use every time they perform the inspection.

13 HEARING OFFICER HALLORAN: Mr.
14 Veenbaas, could you keep your voice up. You're
15 trailing off at the end.

16 THE WITNESS: Sure.

17 BY MS. GALE:

18 Q. I think you said the operators go
19 out on their rounds three times a day and then
20 they also do it during the CCR rule inspections.
21 So the ponds are inspected multiple times per day?

22 A. Yes.

23 Q. And if the operator were to see an
24 issue such as a tear, what do they do?

1 A. They're -- they're told -- by
2 procedure told to report to their shift supervisor
3 that there is a tear and, in turn, he would go to
4 probably Chris Lux or myself to make sure that
5 there was attention given to the tear.

6 Q. And what is the attention?

7 A. Call in a repair service to address
8 the tear and fix it.

9 Q. Typically, how long does a repair
10 take?

11 A. A week to two weeks.

12 Q. In your experience at Waukegan, how
13 often has there been tears?

14 A. I've not seen any recently. A
15 couple of years ago we had a couple. So, you
16 know, maybe -- I have not seen any in the last
17 year, year-and-a-half, two years. So it was
18 probably three or four years ago I saw some tears
19 and they were repaired pretty quickly.

20 Q. Do you recall where they were on the
21 liner?

22 A. Yeah, they were near the very top of
23 the liner, near the road, possibly there was some
24 tire issue with some vehicle that might have

1 damaged it. I'm not sure. I'm speculating. But
2 near the top.

3 Q. By top, do you mean above the water?

4 A. Well above the water, yes.

5 Q. To your knowledge, has -- have you
6 seen anyone not -- excuse me. To your knowledge,
7 at the Waukegan station, have you seen anyone not
8 fix a tear?

9 A. We fix all leaks, we fix all tears.
10 We do not disregard those.

11 Q. To your knowledge, has Midwest
12 Generation ever decided not to fix a tear?

13 A. We fix all tears within as
14 expediently as we can getting the vendor out as
15 soon as possible.

16 Q. At Waukegan, is deicing material
17 spread on the roads around the station?

18 A. Yes, we use salt -- to spread the
19 salt on the roads, we have a vendor that comes in,
20 a contractor, that does that and they generally
21 try to cover all the roads around the property.

22 Q. The deicing material is salt?

23 A. Yes.

24 Q. And why is salt spread on the roads?

1 A. To melt the ice. It depresses the
2 freezing point. I'm a chemical guy. So it does
3 that and the fact -- the joke is we spread so much
4 salt we actually make it more dangerous because we
5 slip on the salt.

6 Q. And so it's -- you said it makes it
7 more dangerous. So the salt spreading is for
8 safety?

9 A. It's for safety. It's for vehicle
10 safety and individual safety.

11 Q. And I'm sure we all know this, but
12 what season do you usually spread the salt?

13 A. Winter time. Freezing temperature
14 times.

15 Q. And as a chemist, what is the salt
16 composed of?

17 A. I'm sure it's probably sodium
18 chloride at a minimum. We probably maybe use some
19 calcium chloride as well if that's available.

20 Q. Mr. Veenbaas, do you recall in the
21 summer of 2013 attending a public hearing held by
22 the Illinois EPA concerning the renewal of the
23 NPDES permit for the Waukegan station?

24 A. As part of the renewal process for

1 the NPDES permit, the station -- there is a step
2 in the process where we're required to actually,
3 A, required to host a public hearing that was done
4 at the local park right up the street on Greenwood
5 Avenue.

6 Q. Did you attend?

7 A. I did attend, yes.

8 Q. Did you stay for the entire hearing?

9 A. I was there for the entire hearing,
10 yes.

11 Q. And were Illinois EPA
12 representatives present?

13 A. Yes, they were the ones that hosted
14 the meeting and they had several representatives
15 there at the table.

16 Q. Did that include representatives of
17 the NPDES permit division?

18 A. Yes, they were there.

19 Q. And the Illinois EPA attorney?

20 A. Yes.

21 Q. And personnel from the groundwater
22 protection group at Illinois EPA?

23 A. Yes.

24 Q. Do you recall a response by an

1 Illinois EPA representative in addressing an issue
2 whether the active ash ponds at the Waukegan
3 station were the source of contamination?

4 A. Yes, they responded to a question
5 from the audience that the people wanted to know
6 if there was an influence on the groundwater and
7 he said they did not feel the groundwater -- there
8 was any groundwater influence resulting from the
9 ponds at our station.

10 Q. Okay.

11 MS. GALE: Mr. Hearing Officer,
12 I'm -- we can continue. I'm at a good breaking
13 point, though. I'm not sure what you would like
14 to do.

15 HEARING OFFICER HALLORAN: What
16 about 20 minutes, is that a good breaking point?

17 MS. GALE: That's great. I'm fine.

18 BY MS. GALE:

19 Q. Switching to Will County, what is
20 the purpose of the Will County station?

21 A. It's an electrical power generator.

22 MS. GALE: And can we direct the
23 aerial of the Will -- there it is.

24 BY MS. GALE:

1 Q. Do you recognize what is shown on
2 the screen?

3 A. Yes, Will County station. It's an
4 island between the Sanitary and Ship Canal and the
5 Des Plaines River.

6 HEARING OFFICER HALLORAN: Slow down
7 and speak up.

8 BY THE WITNESS:

9 A. It's an island located between the
10 Sanitary and Ship Canal.

11 BY MS. GALE:

12 Q. So how would you describe the area
13 around the Will County station? I think you just
14 did, but generally --

15 A. Again, it's an island. It's on
16 bedrock in the valley, the Des Plaines River
17 Valley. We have trains that go in from the south
18 and -- and we have a car dumper there that dumps
19 the coal and conveys it to the coal pile.

20 Q. And Will County it generates
21 electricity with coal?

22 A. Yes, Powder River Basin coal.

23 Q. And when you generate electricity
24 with coal, what is one of the bi-products?

1 A. Ash. Bottom ash and fly ash.

2 Q. And at Will County, when you were
3 there, what happened with the fly ash?

4 A. The fly ash was pneumatically sent
5 to a fly ash silo on the south end of the property
6 where it was then collected and then dumped into
7 trucks and taken off the property for beneficial
8 reuse.

9 Q. And was that also dry?

10 A. Yes, it was a dry system.

11 Q. And when you were there, was fly ash
12 ever routed to the ash ponds?

13 A. No, it was only bottom ash in the
14 ash ponds. No fly ash.

15 MS. GALE: Can we get the ash ponds
16 highlighted, please?

17 BY MS. GALE:

18 Q. How many ash ponds are there at Will
19 County or were there when you were there?

20 A. There were four denoted by one
21 north, one south, two south and three south.

22 Q. In particular to pond 2S, you said
23 pond two south and three south, would that also be
24 called 2S and 3S?

1 A. Yes.

2 Q. With regards to ponds 2S and 3S,
3 what do those -- when you were there, what did
4 those ponds do?

5 A. Those ponds collected bottom ash
6 from unit's three and four, which burned Powder
7 River Basin coal.

8 THE COURT REPORTER: Slow down.

9 BY THE WITNESS:

10 A. They were burning Powder River Basin
11 coal in unit's three and four which were
12 combustion engineering design boilers. Unit one
13 north and one south were --

14 BY MS. GALE:

15 Q. Wait.

16 A. Sorry.

17 Q. And so bottom ash at pond 2S and 3S,
18 how did they get to the ponds?

19 A. With a sluice -- with the water
20 system.

21 Q. And what happens to the bottom ash
22 once it gets into those ponds?

23 A. It drops all the water. The water
24 proceeds from one end of the pond to the other and

1 then it is sluiced back into the building and
2 reused. The ash is left behind in the pond to
3 collect.

4 Q. So what was sluiced backed into the
5 building?

6 A. The water.

7 Q. Thank you. And at Will County, were
8 the ponds used interchangeably?

9 A. Yes, we -- we used one at a time for
10 each set of units. So while one was being used,
11 the other one was designated for cleaning.

12 Q. And I believe you said you started
13 at Will County in 1999, is that correct?

14 A. Yes.

15 Q. And so that was also when Midwest
16 Generation took over, is that correct?

17 A. Yes.

18 Q. At that time, did pond's 2S and 3S
19 have a liner?

20 A. Yes, they had a poz-o-pac liner.

21 Q. And, to your knowledge, while you
22 were there, was a pond relined?

23 A. Yes, while I was there I think it
24 was three south was lined or relined or put in

1 with a high density polyethylene liner.

2 Q. When pond three south was relined,
3 did you go down -- excuse me.

4 When pond three south was in the
5 process of relining, before it was relined, did
6 you go down and look at the pond?

7 A. Yes. In the course of my duty as a
8 wastewater operator, we had a sewage treatment
9 plant and I had to visit the sewage treatment
10 plant every day. The route to get to the sewage
11 treatment plant went by the ponds. On one day, I
12 saw three south pond completely clean with the
13 poz-o-pac liner exposed. So I wanted to take a
14 look at what this liner looked like. So I've only
15 seen it in print, but never before, you know, in
16 real -- real life. So I went down and looked at
17 it.

18 Q. So did you walk down into the pond?

19 A. Yes, I went and looked at the pond
20 just to see what it was.

21 Q. What did you see?

22 A. It was a very clean, clear, concrete
23 bottom. It had no cracks that I could see. It
24 was in beautiful shape. There was no water

1 standing on it, no pooling of water. Actually, I
2 was kind of surprised because it was installed in
3 the mid '70s and it was actually pretty pristine.

4 Q. I think you said -- it's getting
5 late. Pond 3S, do you recall what it was relined
6 with?

7 A. Polyethylene. High density
8 polyethylene.

9 Q. When you were at Will County from
10 time to time, was ash removed from the ponds at
11 Will County?

12 A. Yes.

13 Q. Are you familiar with that process?

14 A. Yes, it's very similar to Waukegan.
15 We had a front end loader enter the ponds from a
16 ramp on the east side.

17 Q. And were the front end loaders --
18 what kind of tires --

19 A. They had rubber tires.

20 Q. Let me finish my question. What
21 kind of tires did the front end loaders have?

22 A. Rubber tires.

23 Q. Thank you. And who conducted the
24 cleaning?

1 A. Lafarge.

2 Q. Do you know where they took the ash?

3 A. It was either beneficial reuse or
4 they put it to one of their landfills, but I think
5 for the most part it was beneficially reused as
6 fill.

7 Q. Do you know how Lafarge removed the
8 ash?

9 A. Yes, they had front end loaders with
10 rubber tires and they had -- go from east to west,
11 they would fill trucks that went down the ramp and
12 fill the trucks one by one. Usually it took less
13 time -- I would say about six months -- or three
14 or four months to empty one of the ponds.

15 Q. And the trucks you said they went
16 down the ramp, did they go further into the --

17 A. Not too far. Maybe a third of the
18 way in.

19 Q. And how did Lafarge handle the
20 sides -- the sides and the bottom of the ponds?

21 A. Again, I think there was an
22 understanding that the sides were not to be
23 touched. It was only the horizontal surface of
24 the pond that was available for ash removal.

1 Q. Do you recall whether there are
2 poles?

3 A. Yes, they are there.

4 Q. What were those poles for?

5 A. To denote the incline of the bank of
6 the pond from the horizontal section of the pond.

7 Q. And what was the purpose of denoting
8 the incline?

9 A. So that the people excavating the
10 pond could not -- would not touch the sides of the
11 pond.

12 Q. Did you observe the machinery
13 operating inside the pond?

14 A. Yes.

15 Q. How would you describe it?

16 A. Again, Lafarge had people who would
17 work all these jobs from place to place. They
18 would deliberately and slowly walk their way from
19 east to west. Again, most of the ash dropped out
20 on the east side of the ponds and they would load
21 the trucks one by one and take them out over the
22 course of the day.

23 Q. After pond three south was relined,
24 did it have any layers on top of the liner?

1 A. Yes, it did. It had a sand layer
2 and a limestone layer.

3 Q. And what was the common -- what
4 would you commonly call the limestone layer or
5 what was it also called?

6 A. It was a white warning layer. It
7 was white and you'd see a difference between the
8 white of the limestone and the ash.

9 Q. And have you had occasion to see the
10 ponds after dredging, particularly pond 3S?

11 A. Yes, I saw the pond once after it
12 was completed and I saw no white. It was just ash
13 left on the bottom of the pond.

14 Q. So they had left some ash at the
15 bottom?

16 A. Yes.

17 Q. Once the ash ponds were dredged, did
18 the station conduct any inspections?

19 A. It's possible. I'm not aware of
20 anything.

21 Q. Okay. And to your recollection when
22 you were there, how often were the ponds dredged?

23 A. Once a year. You'd switch back and
24 forth between ponds. One would be in service for

1 one year and then you would clean the other one
2 out and go back and forth.

3 Q. Okay. Turning to ponds 1N and 1S,
4 do you recognize those ponds?

5 A. Yes.

6 Q. Do you recall what they were for?

7 A. Yes, they collected fines from
8 unit's one and two which were cyclone type
9 furnaces.

10 Q. And when you say fines, what do you
11 mean by that?

12 A. Well, there was a pad of concrete
13 located to the east of one north where the bulk of
14 the ash landed and was removed on like a weekly
15 basis and then the water that was used to sluice
16 the ash from that -- from those two furnaces
17 flowed to a trough and the water went to either
18 the one north or the one south ponds.

19 Q. So I think you said the bulk of the
20 material fell out -- what did you --

21 A. The retention pad.

22 Q. The retention pad. So considering
23 that the bulk of the material fell off in the
24 retention pad, how would you describe the purpose

1 of the ponds 1N and 1S?

2 A. The ponds were there to provide a
3 settling time for the fines to settle out on the
4 pond so the water could be -- precede to the pond
5 and be reused.

6 Q. Could you describe them also as
7 finishing ponds?

8 A. Yes, you can call it that, too.

9 Q. When you were at Will County, were
10 unit's one and two operating?

11 A. Yes, they were. I can't tell you it
12 was -- I don't remember when they were retired,
13 but they were retired when I was there, yes.

14 Q. So what basins were receiving bottom
15 ash from unit's one and two when you were there?

16 A. One north only. One south was full
17 of fines and it never operated while I was there.

18 Q. And when you left the station in
19 2012, what was the status of 1N and 1S, to your
20 recollection?

21 A. Well, when I left, one north was
22 still in service because it was used as a water
23 flow device to maintain water flow in the ash
24 sluice system. One south was retired.

1 Q. When it was one north receiving
2 water, was it receiving ash?

3 A. No, it was not.

4 MS. GALE: I didn't think we'd get
5 this far. Can we go off the record for just a
6 moment?

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

10 HEARING OFFICER HALLORAN: We're
11 back on the record.

12 BY MS. GALE:

13 Q. When you were at Will County, had
14 you ever heard of a slag dumping area?

15 A. No.

16 Q. Okay. Can you please look at
17 Exhibit 18-D, look at page 5739. Are you there?

18 A. Yes.

19 Q. In the center of this map next to
20 the switch yard, when you were at Will County, was
21 that a slag dumping area?

22 A. No, it was not.

23 Q. What was in that area?

24 A. Gravel. It was just a way -- piping

1 was there, but there was some gravel between the
2 road and the switch yard.

3 Q. Was there a pathway or mechanism for
4 ash to get to that area?

5 A. No.

6 Q. Okay. Staying on the same page.
7 When you were at Will County, had you ever heard
8 of a slag and bottom ash dumping area?

9 A. No.

10 Q. Looking at the same page on the
11 bottom right of the map at the southeast corner of
12 the property, when you were at Will County, was
13 that a slag and bottom ash dumping area?

14 A. No.

15 Q. What was in that area?

16 A. It was an open field. It was away
17 from the primary processes of the plant. It was
18 basically a road where the ash trucks went by and
19 went to the ash site.

20 Q. And was there a pathway or mechanism
21 for ash to get to that area?

22 A. No.

23 Q. You can put that down. Thank you.

24 When you were at Will County, was deicing material

1 spread on the roads?

2 A. Yes.

3 Q. Why was deicing material spread on
4 the road?

5 A. To use as -- to melt the ice. So it
6 was a safety issue for both vehicles and
7 individuals so they wouldn't slip and fall or the
8 cars wouldn't slide off the roads.

9 Q. And what was the deicing material?

10 A. Sodium chloride. Salt. Possibly
11 some calcium chloride.

12 Q. Okay. When you started working at
13 Will County in 1999, were the ponds inspected?

14 A. I'm not aware of that.

15 Q. Did the operators head out in their
16 rounds then?

17 A. Yes, they would go by every day.
18 Again, one to the sewage treatment plant and the
19 ash recycle house and in the process of driving
20 out there, they would drive by the ponds and look
21 at them. This is before CCR.

22 Q. And they -- on their shifts, they
23 would go out?

24 A. Yes.

1 Q. How many shifts did they --

2 A. Every shift. We had three shifts in
3 operation there and every shift had a guy out and
4 look at the equipment on that part of the plant.

5 Q. And when you were there, if the
6 operator saw an issue, what did they do?

7 A. They would tell their shift
8 supervisor to address the problem, communicate it
9 upwards.

10 Q. And, in particular, for 3S after it
11 was relined, had you ever seen a tear in one --

12 A. No, I never saw a tear.

13 Q. To your knowledge, at Will County
14 after 3S was relined, had you seen anyone not fix
15 a tear?

16 A. I have no knowledge of that.

17 Q. To your knowledge, had Midwest
18 Generation ever decided not to fix a tear?

19 A. I have no knowledge of that either.
20 We'd fix all tears at Waukegan. I can tell you
21 that.

22 Q. Mr. Veenbaas, since you began
23 working for Midwest Generation, in your experience
24 at Will County and now at Waukegan, how would you

1 describe Midwest Generation's policy towards
2 environmental compliance?

3 A. We take environmental issues very
4 seriously and we address them as quickly as we
5 can.

6 MS. GALE: I have nothing further.

7 HEARING OFFICER HALLORAN: Thank
8 you, Ms. Gale.

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF COOK)
4

5 I, Steven Brickey, Certified Shorthand
6 Reporter, do hereby certify that I reported in
7 shorthand the proceedings had at the trial
8 aforesaid, and that the foregoing is a true,
9 complete and correct transcript of the proceedings
10 of said trial as appears from my stenographic
11 notes so taken and transcribed under my personal
12 direction.

13 Witness my official signature in and for
14 Cook County, Illinois, on this _____ day of
15 _____, A.D., 2018.

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STEVEN BRICKEY, CSR
8 West Monroe Street
Suite 2007
Chicago, Illinois 60603
Phone: (312) 419-9292
CSR No. 084-004675



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