

ILLINOIS POLLUTION CONTROL BOARD

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

REPORT OF PROCEEDINGS at the hearing of
the above-entitled cause before HEARING OFFICER
BRADLEY HALLORAN, on the 19th day of May, 2023, at
the hour of 9:00 a.m.

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15 On behalf of Sierra Club;

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20 On behalf of Prairie Rivers Network;

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On behalf of the Respondent.

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I N D E X

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E X H I B I T S

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1 HEARING OFFICER HALLORAN: We're on
2 the record. Good morning, everyone. My name
3 is Bradley Halloran. I'm the hearing officer
4 with the Illinois Pollution Control Board.
5 We're continuing this matter on record from
6 yesterday, May 18th. Today is May 19th,
7 2023.

8 I want to -- you know, for the
9 record, I want to announce that we have
10 Vanessa Horton here today from the Board.
11 And that's all I have to say.

12 Right now we are in the middle of
13 direct as an adverse witness Miss Shealey;
14 but, before that, I would like the
15 Environmental Group and Midwest to introduce
16 themselves for the record.

17 MS. BUGEL: Good morning. Faith Bugel
18 representing Sierra Club.

19 MS. WACHSPRESS: Megan Wachspress
20 representing Sierra Club.

21 MR. RUSS: Abel Russ representing
22 Prairie Rivers Network.

23 MR. WANNIER: Greg Wannier
24 representing Sierra Club.

1 MS. GALE: Good morning. Kristen Gale
2 and my partner Jennifer Nijman and Drew
3 Nishioka representing Midwest Generation,
4 LLC.

5 HEARING OFFICER HALLORAN: Thank you.

6 Miss Wachspress, you may proceed.

7 MS. WACHSPRESS: Yeah. So I'd like to
8 introduce a new exhibit, 1480 -- exhibit --
9 marked for identification as Exhibit 1408.

10 (Complainants' Exhibit No. 1408 was
11 introduced.)

12 WHEREUPON:

13 SHARENE SHEALEY
14 called as an adverse witness herein, pursuant to
15 Section (4) Rule 611(c): 735 ILCS 5/2-1102 of the
16 Illinois Rules of Evidence, having been previously
17 duly sworn, resumed the stand, deposeth and saith
18 as follows:

19 CROSS-EXAMINATION (Resumed)

20 BY MS. WACHSPRESS:

21 Q. Do you recognize the document in front
22 of you?

23 A. Yes, it appears -- it's a lot of pages,
24 but it appears to be the Adjusted Standard Midwest

1 Generation file for Waukegan Station AS21003.

2 Q. I believe it's actually the IEPA
3 recommendation --

4 A. Oh.

5 Q. -- with respect to that.

6 A. I didn't read. I'm so sorry.

7 Q. That's okay.

8 A. Before -- in the matter of -- it is the
9 IEPA's recommendation in that matter. Yes, I
10 agree.

11 Q. And, in that matter, Midwest Generation
12 sought a determination that an area directly west
13 of the west pond is not a coal ash impoundment,
14 correct?

15 A. Correct.

16 Q. And that area is sometimes called the
17 grassy field, correct?

18 A. Correct.

19 Q. And in the finding in front of you, the
20 Illinois IEPA describes certain conclusions it
21 reached about the past use of this area, correct?

22 A. I wouldn't call this a finding. It's a
23 recommendation, I believe.

24 Q. I'll rephrase. As part of this

1 **recommendation, Illinois EPA describes certain**
2 **conclusions it reached about the past use of this**
3 **area, correct?**

4 A. I believe so.

5 Q. **And is it your understanding that**
6 **Illinois EPA's recommendation was that the Board**
7 **deny Midwest Generation's amended petition?**

8 A. I am unsure whether they did with or
9 without conditions, and I'm trying to get to their
10 recommendation.

11 (Brief pause.)

12 BY THE WITNESS:

13 A. Yes. That is what they requested -- I'm
14 sorry. Could you reask...

15 BY MS. WACHSPRESS:

16 Q. **The Illinois EPA -- Illinois EPA's**
17 **recommendation was that the Board deny Midwest**
18 **Generation's amended petition?**

19 A. Correct.

20 Q. **Okay. And the Illinois EPA recommended**
21 **that the board find that the grassy field is a CCR**
22 **impoundment, correct?**

23 A. Yes.

24 Q. **Okay. If I could direct your attention**

1 to Page 18 marked on the bottom.

2 A. I have it.

3 Q. Okay. And if you look -- oh, gosh.
4 There's a block quote, and then three lines up from
5 the block quote, you'll see it states: To date,
6 the Agency is not aware of any actions voluntarily
7 initiated by Midwest Generation to mitigate the
8 release of contaminants from the grassy field; is
9 that correct?

10 A. That's what this says, but I don't agree
11 with the statement.

12 Q. Okay. What is the basis of your
13 disagreement?

14 A. I believe that we offered the Agency a
15 mitigation plan for the grassy field.

16 HEARING OFFICER HALLORAN: Could you
17 speak up, please, Miss Shealey.

18 THE WITNESS: I'm sorry.

19 BY THE WITNESS:

20 A. I -- I believe we offered the Agency a
21 mitigation plan for the grassy field.

22 Miss Wachspress, as -- as we discussed,
23 I think I mentioned yesterday, timing is a little
24 fuzzy for me, whether we had at this point or after

1 that point, I -- I don't recall because this is
2 from -- oh, this is just 2022.

3 Yeah. Yeah. This is only -- yes, we
4 had at this point.

5 BY MS. WACHSPRESS:

6 Q. So any mitigation plan you offered, with
7 respect to the grassy field, would be in the
8 materials you submitted to the Illinois EPA as part
9 of the adjusted standard petition?

10 A. No.

11 Q. So you communicated information to the
12 Illinois EPA regarding a mitigation plan outside of
13 the filings of this docket?

14 A. I believe so, but I -- I would have to
15 go through the docket to under- -- to know whether
16 it's actually in it.

17 Q. Okay. Are you aware of any mitigation
18 actions taken since October of 2022 when this was
19 filed?

20 A. Again, timing is -- timing is -- is
21 fuzzy for me. I -- I'm sure that we did an
22 investigation of the grassy field.

23 Q. Midwest Generation has taken borings
24 from the grassy field site, correct?

1 A. Which I would consider investigation,
2 yes.

3 **Q. Okay. Can you think of any other**
4 **mitigation activities besides those borings?**

5 A. This is in dispute. If it is a -- if
6 the Board agrees that it is a CCR surface
7 impoundment --

8 (Reporter interruption.)

9 BY THE WITNESS:

10 A. If the Board -- I -- rephrase.
11 If the Board agrees that it's a CRR
12 surface impoundment, we would have different steps
13 under regulations we would have to take than if
14 it's not a regulated unit.

15 BY MS. WACHSPRESS:

16 **Q. I understand, but I'm asking about**
17 **actions Midwest Generation has taken.**

18 A. If -- if the Board is -- I mean -- I'm
19 sorry. If the Agency -- if the Board accepts the
20 Agency's recommendation, we would be in violation
21 of the public act that is the foundation of
22 Part 845 if we acted on that area.

23 **Q. So it's Midwest Generation's position**
24 **that it cannot take any actions with respect to the**

1 **grassy field site until the Board has acted with**
2 **respect to the adjusted standard petition?**

3 A. No --

4 (Reporter interruption.)

5 MS. WACHSPRESS: The adjusted standard
6 petition.

7 BY THE WITNESS:

8 A. No. It is our position that -- our
9 position that we cannot take any action without
10 Agency agreement.

11 BY MS. WACHSPRESS:

12 **Q. Okay. And you do not have that**
13 **agreement?**

14 A. We do not.

15 **Q. So the only physical actions that have**
16 **been taken at the site, up until this date, is the**
17 **borings at the grassy field?**

18 A. Which I would characterize as an
19 investigation, and I would characterize as
20 significant information for us to understand to be
21 able to act in the future.

22 **Q. Okay. But the sentence I just read to**
23 **you referred to mitigation, not investigation?**

24 A. You have to investigate to be able to

1 mitigate.

2 Q. Do you consider investigation to be a
3 form of mitigation?

4 A. I believe it is a step to get to
5 mitigation.

6 Q. Okay.

7 MS. WACHSPRESS: All right. I would
8 like to move for admission of Exhibit 1408.

9 HEARING OFFICER HALLORAN: And, like I
10 said yesterday, in the interest of full
11 disclosure, although this service list has
12 another hearing officer on it, I am actually
13 assigned this case, AS21-3 and that I note I
14 will not, and have not, taken any substantive
15 rulings or decision in this case.

16 Miss Gale.

17 MS. GALE: We -- well, we would object
18 to the admission of the entire document.
19 They pointed to a single sentence on a single
20 page. They haven't demonstrated it's
21 relevant to this matter at all.

22 HEARING OFFICER HALLORAN: Okay. I
23 think it's relevant to the extent the Board
24 can weigh it, and it's on our website, so

1 overruled. I'll take Complainant
2 Exhibit 1408 over objection.

3 (Complainants' Exhibit No. 1408 was
4 received in evidence.)

5 (Complainants' Exhibit No. 1409 was
6 introduced.)

7 BY MS. WACHSPRESS:

8 **Q. Okay. I'd like to place before you**
9 **marked for identification as 1409.**

10 A. Can I set 1408 to the side?

11 **Q. You can.**

12 **Do you recognize this document?**

13 A. "Recognize" is strong, I'm sorry.

14 I -- I am aware of what it -- I believe
15 I know what it is.

16 **Q. And what is it?**

17 A. It looks like the Agency's
18 recommendation in Adjusted Standard AS21001.

19 **Q. And that relates to Joliet 29, correct?**

20 A. Correct.

21 **Q. And this -- this recommendation is dated**
22 **February 2022, correct?**

23 A. Yes.

24 **Q. Okay. And this recommendation is in**

1 **response to Midwest Generation's request for**
2 **adjusted standards for certain coal ash ponds at**
3 **Joliet 29, correct?**

4 A. I -- I would not characterize the ponds
5 as coal ash ponds at Joliet 29. And, in fact, the
6 Board agreed with us yesterday that Ponds 1 and 3
7 at Joliet 29 are not coal ash ponds.

8 Q. But it also sought an adjusted standard
9 for Pond 2, correct?

10 A. Yes.

11 Q. And the other ponds were not the subject
12 of an adjusted standard but a --

13 A. Yes, they were --

14 Q. -- determination of applicability?

15 A. They're in here.

16 Q. No, I understand that they're in here,
17 but it's a term- -- just a terminology, adjusted
18 standard versus determination of applicability.

19 A. It was filed as an adjusted --

20 Q. It's an adjusted --

21 (Reporter interruption.)

22 HEARING OFFICER HALLORAN: You can't
23 talk over each other --

24 MS. WACHSPRESS: Okay.

1 HEARING OFFICER HALLORAN: -- folks.

2 Thank you.

3 BY MS. WACHSPRESS:

4 Q. Okay. Have you reviewed --

5 (Reporter interruption. Record
6 clarified.)

7 MS. WACHSPRESS: For applicability.

8 BY THE WITNESS:

9 A. I considered them to be the -- a part of
10 the adjusted standard. They were filed under
11 AS2001 -- 2021-000. Those are part of this
12 adjusted standard.

13 MS. WACHSPRESS: Sorry. Could we go
14 off the record for a moment?

15 HEARING OFFICER HALLORAN: Yes.

16 (Discussion held off the record.)

17 HEARING OFFICER HALLORAN: Could you
18 read back the question regarding the case
19 number of this exhibit, please.

20 (Record read as requested.)

21 HEARING OFFICER HALLORAN: Thank you,
22 Lucy.

23 Miss Wachspress.

24 MS. WACHSPRESS: Thank you.

1 BY MS. WACHSPRESS:

2 Q. Just for the record, Miss Shealey, I'd
3 like to see -- if I could direct you to the case
4 number here, it's AS2021-0001?

5 A. I thought I said that, but I misspoke.

6 Q. No worries.

7 And if you -- if you look to the left,
8 it states: Petition of Midwest Generation for an
9 adjusted standard and by --

10 (Reporter interruption.)

11 BY MS. WACHSPRESS:

12 Q. (Continuing) -- for an adjusted standard
13 from 845.274(a) and finding of inapplicability of
14 Part 845; is that correct?

15 A. That's what it says.

16 Q. Okay.

17 A. I am not a lawyer.

18 Q. Did you participate in the preparation
19 of this application?

20 A. Yes -- or wait. This -- not in the
21 Agency's, no, not in the -- this is the Agency's
22 document, or is this the petition? I'm sorry.
23 I've lost -- this is the Agency's recommendation.
24 I did not participate in the Agency's

1 recommendation, no.

2 Q. Did you participate in the application
3 on which the IEPA is issuing a recommendation?

4 A. Yes.

5 Q. Okay. And what was your role in that
6 preparation?

7 A. Multiple. I'm sure I reviewed documents
8 at Joliet. I attended the hearings. I do not
9 recall that I participated in the hearings for
10 Joliet. So I've been involved since it started.

11 Q. And as part of the application, Midwest
12 Generation sought an adjusted standard for pond 2,
13 correct?

14 A. Correct.

15 Q. And, specifically, Midwest Generation
16 sought permission to retaining the historical HDPE
17 liner in pond 2 rather than remove the liner and
18 any contaminated soil beneath it, correct?

19 A. Yes, pond 2 does not contain ash.

20 Q. And the Illinois EPA recommended that
21 the Board deny Midwest Generation's request with
22 respect to pond 2, correct?

23 A. They recommended -- my recollection --
24 and, in fact, there was a Board order I believe two

1 weeks ago -- I believe it was in the month of May,
2 it could have been in April.

3 The Board order picked up on the
4 Agency's recommendation that if the Board were to
5 grant, that we would have to do additional sampling
6 of the liner system at Pond 2. And that is a huge
7 paraphrase of that Board order.

8 (Reporter interruption.)

9 THE WITNESS: Board order.

10 BY MS. WACHSPRESS:

11 **Q. But the IEPA's recommendation on which**
12 **the Board acted was that the Board deny Midwest**
13 **Generation's request?**

14 A. I believe it was with conditions. But
15 if you -- if you would like to point me to the
16 page, I'll read it.

17 **Q. Pond 2 was also lined with Poz-o-Pac**
18 **when it was constructed?**

19 A. I don't know what you mean by "when it
20 was constructed." I am aware that Pond 2 has --
21 has Poz-o-Pac in its liner system.

22 **Q. As we sit here today?**

23 A. As we sit here today.

24 **Q. Okay. And Midwest Generation relined**

1 **Pond 2 in 2007, correct?**

2 A. They -- my notes say 2008.

3 **Q. Okay. Did Midwest Generation remove the**
4 **Poz-o-Pac when it relined Pond 2?**

5 A. I would have to read documents. It may
6 have had some Poz-o-Pac removed. I -- I cannot say
7 whether specifically Joliet 2 had any -- Joliet
8 Pond 2 had any Poz-o-Pac removed. I would have to
9 read because some ponds did, some ponds didn't.
10 There are a lot of ponds.

11 **Q. So you know that there is currently**
12 **Poz-o-Pac currently? There may have been some**
13 **Poz-o-Pac removed during the relining, but you**
14 **don't know whether or how much?**

15 A. There may have been some Poz-o-Pac
16 removed during the history of operation of that
17 pond. I would not know, as I sit here, when and
18 how much. I'm certain there would be record of
19 those things, though.

20 **Q. Thank you.**

21 **So if I could direct your attention to**
22 **Bates No. 121578.**

23 A. I'm here.

24 **Q. And this is marked --**

1 A. No, I'm sorry. I am not. 1215...

2 Q. 78.

3 A. This (indicating)?

4 Q. It's Exhibit -- it's marked as Exhibit
5 G, right? And then on the following page, you'll
6 see a document, and this is a letter from Sargent &
7 Lundy dated January 18, 2022, correct?

8 A. Correct.

9 Q. And it's with regard to a construction
10 chronology of Pond 2 at Joliet 29 generating
11 station, correct?

12 A. Yes.

13 Q. And if I could take you to Page
14 Bates 121582, so just a few pages down.

15 A. I have it.

16 Q. Okay. And if you look at the second
17 full paragraph, the second sentence beginning
18 "Bottom ash," it states: Bottom ash or slag were
19 only identified within the upper foot of KPRG
20 borings JS29-GT-2 and JS-29- --

21 (Reporter interruption.)

22 HEARING OFFICER HALLORAN: Yeah, we
23 gotta slow down and speak up.

24

1 BY MS. WACHSPRESS:

2 Q. (Continuing) -- It states: Bottom ash
3 or slag were only identified within the upper foot
4 of KPRG borings JS29-GT-2 and JS29-GT-3.

5 Is that correct?

6 A. That is what it says, yes.

7 Q. Okay. And then if you turn to the
8 previous page and you see the heading: Pond 2 with
9 Poz-o-Pac liner, and then two paragraphs down, the
10 paragraph beginning: A total of eight borings have
11 been drilled through Pond 2's embankments by three
12 engineering consultants, JS29-GT-2 and JS29-GT-3 by
13 KPRG in 2005.

14 And I'll stop there. And have I read
15 that correctly?

16 A. Up until the semicolon, yes.

17 Q. Yes. So is it your understanding that
18 KPRG found bottom ash and slag in Pond 2's
19 embankments?

20 MS. GALE: Objection; mischaracterized
21 document.

22 HEARING OFFICER HALLORAN: Rephrase.

23 BY MS. WACHSPRESS:

24 Q. Is it true that KPRG took borings within

1 **Pond 2's embankments?**

2 A. That is what this states, yes.

3 **Q. And is it true that bottom ash or slag**
4 **were identified within the upper foot of two of**
5 **those borings?**

6 A. That is -- excuse me. Taking those two
7 sentences in combination, that is what it appears
8 to say, yes.

9 **Q. So is it fair to say that KPRG found**
10 **bottom ash and slag in Pond 2's embankments?**

11 MS. GALE: Again, objection to the
12 mischaracterization of what those borings
13 said.

14 I would also object that she hasn't
15 reviewed the borings. She's -- she's just
16 pointing her to a page on the document that
17 was written by an engineer.

18 HEARING OFFICER HALLORAN: Okay. You
19 don't you have to make an argument on the
20 record. You can cross on that.

21 Miss Wachspress, could you rephrase
22 and see what happens.

23 MS. WACHSPRESS: Your Honor,
24 respectfully, I've established that the

1 borings were taken from the embankment. And
2 I've established that the borings contained
3 bottom ash and slag. I -- I don't know how
4 to break it down any further.

5 HEARING OFFICER HALLORAN: Okay. Try
6 one more time, and we'll see what happens.

7 BY MS. WACHSPRESS:

8 Q. Does your memory of the coal ash --
9 scratch that.

10 Does your memory of what is at Pond 2
11 differ from what's in this document?

12 A. I don't specifically have a memory of
13 what's in Pond 2. This was done in 2005. I didn't
14 even know Joliet station existed in 2005.

15 Q. The letter is dated 2022, however --

16 A. Oh, the borings were done in 2005,
17 though, so -- that's what the letter states, and it
18 was done by a professional engineer. I have
19 confidence that the engineer did the due diligence
20 to make those statements, yes.

21 Q. And has Midwest Generation removed any
22 bottom ash or slag from Pond 2's embankments?

23 A. Not that I am aware.

24 Q. Are you aware of any groundwater

1 **monitoring wells that have been installed at Joliet**
2 **29 since June 2019?**

3 A. June 2019, I do not believe -- and,
4 again, I would have to check the records. We're
5 talking about -- we have probably, across our
6 fleet, 50, I'm guessing, monitoring wells. I --
7 they're not cataloged when -- as to installation,
8 in my memory.

9 As I sit here today, I do not believe
10 that any monitoring wells have been installed at
11 Joliet 29 since 2019.

12 **Q. Understood. Okay. And that would**
13 **include the area known as the northeast area of the**
14 **site?**

15 A. Correct.

16 **Q. And that would also include the area**
17 **known as the northwest area of the site?**

18 A. My statement was inclusive of the entire
19 property that is Joliet 29, yes.

20 **Q. Has Midwest Generation taken any leach,**
21 **l-e-a-c-h, tests at Joliet 29 since 2019?**

22 A. I -- I would have to, again, go back to
23 the records. I do not distinguish -- because I am
24 not a geologist, nor am I a professional

1 engineer -- between l-e-a-c-h or l-e-a-f. I cannot
2 say that we have not take- -- whether we have taken
3 any, l-e-a-c-h, leach testing since 2019.

4 **Q. Can you recall any instance in which**
5 **Midwest Generation took an l-e-a-f, LEAF, test**
6 **since 2019?**

7 A. I believe we did in -- since 2019?
8 Yeah, timing is, again, questionable; but, I
9 believe -- there may have been one or the other
10 in the investigation around a monitoring well at
11 Joliet 29.

12 And I believe there was an investi- --
13 there may have been an alternate source
14 demonstration at Joliet 29, which I -- I cannot say
15 with certainty without, again, reviewing the
16 records because we're talking about multiple years
17 over multiple stations.

18 **Q. And so that test would have been done**
19 **pursuant to Part 257?**

20 A. Not ne- -- no. The first -- the first
21 was not.

22 **Q. The...**

23 A. The first that I mentioned was not done
24 pursuant to Part 247. It was an investigation

1 around an exceedance of some contaminant. And,
2 again, I would have to look at the records around a
3 monitoring well at Joliet station --

4 Q. Okay. But that was with respect to an
5 alternate source demonstration?

6 A. No.

7 Q. No? Okay.

8 So there was an investigation of an
9 exceedance not related to an alternate source
10 demonstration?

11 A. Yes.

12 Q. Okay. Do you recall which monitoring
13 well that involved?

14 A. I would need a map of the monitoring
15 wells.

16 Q. Okay.

17 A. If I could see a map, I could tell you
18 which one 'cause I know the location.

19 Q. Okay.

20 A. Or I can -- I can hopefully tell you
21 which one.

22 Q. I think we can help you out with that.

23 (Brief pause.)

24 MS. WACHSPRESS: I'm handing an

1 excerpt from Exhibit 901 to the witness.

2 For the record, I've placed before
3 the witness an excerpt from Exhibit 901 to
4 refresh her recollection.

5 BY THE WITNESS:

6 A. I believe it was MW-9.

7 BY MS. WACHSPRESS:

8 **Q. All right. Thank you.**

9 **Has Midwest Generation undertaken any**
10 **steps to address the volume of ash at Joliet 29**
11 **since 2019?**

12 A. Again, timestamps in my memory are not
13 working. I do not know when ash was removed from
14 Pond 2. I believe that was in 2019. It could have
15 been 2020.

16 **Q. Has Midwest Generation removed ash from**
17 **anywhere outside of the ponds at Joliet 29?**

18 A. Since 2019?

19 **Q. Since 2019?**

20 A. Joliet stopped generating ash in 2016,
21 so not to the best of my recollection.

22 **Q. Okay. And so since 2016, to the best of**
23 **your recollection, Midwest Generation has not**
24 **removed ash from anywhere outside of the ponds?**

1 A. That is not what I said. I said that we
2 removed ash from Pond 2 in 2019 or '20.

3 In 2016 we would have most likely
4 removed ash from ash silos. That's the best that I
5 can remember right -- as I sit here right now.

6 Q. Okay. And I asked -- I, actually, asked
7 about outside of the ponds. You -- you've
8 mentioned silos.

9 Other than the silos and the ponds, to
10 your knowledge, has Midwest Generation removed ash
11 from anywhere at the Joliet 29 site since 2016?

12 A. I can't really timestamp it, but not to
13 the best of my recollection right now, as I sit
14 here.

15 Q. To the best of your recollection, has
16 Midwest Generation installed any caps at Joliet 29
17 since 2019?

18 A. No.

19 Q. To the best of your recollection, has
20 Midwest Generation installed any liners at Joliet
21 29 since 2019?

22 A. No.

23 Q. And for each of those questions, that
24 includes anyone acting at Midwest Generation's

1 **direction, correct?**

2 A. Correct. It would be illegal for us to
3 install a cap on coal ash impoundments at this
4 point without Agency approval.

5 **Q. Has Midwest Generation performed any**
6 **soil testing at the Joliet 29 site for coal ash**
7 **constituents since June of 2019?**

8 A. I -- I cannot speak to the entire site,
9 so I -- I am not aware of any, but I don't know.
10 And -- I do not know the answer to that question in
11 its entirety.

12 **Q. But you're not aware of any?**

13 A. That's what I said. I'm not aware of
14 any.

15 **Q. And that includes Midwest Generation**
16 **directing someone else to have done so?**

17 A. That would include that, yes.

18 MS. WACHSPRESS: Okay. I'd like to
19 move Exhibit 40- -- 1409, the IEPA
20 recommendation, into the record.

21 HEARING OFFICER HALLORAN: All right.

22 Miss Gale?

23 MS. GALE: No objection.

24 HEARING OFFICER HALLORAN: Thank you.

1 Complainant's Exhibit 1409 is admitted.

2 (Complainants' Exhibit No. 1409 was
3 received in evidence.)

4 BY MS. WACHSPRESS:

5 Q. All right. Let's talk about Will
6 County. There are four -- I can also give you a
7 moment.

8 A. Can I set this aside?

9 Q. Yeah.

10 A. I'm ready. Thank you.

11 Q. Thank you.

12 There are four CRR impoundments at the
13 Will County site, correct?

14 A. Under state law, yes; under federal law
15 there are only two.

16 Q. Okay. And those --

17 A. Or regulation, I'm sorry. Regulation.

18 Q. And those four ponds are called Pond 1
19 North, Pond 2 south, Pond 2, and Pond 3, correct?

20 A. No.

21 Q. All right. How would you refer to that?

22 A. 1 North, 1 South, 2 South, 3 South, or,
23 I would say, 1N, 1S, 2S, or 3S.

24 Q. And 2S was relined in 2013, correct?

1 A. Yes.

2 Q. Okay. And Midwest Generation understood
3 in 2020 that the 2013 liner did not comply with the
4 standards for CCR impoundments under Part 257,
5 correct?

6 A. Correct.

7 Q. And neither Pond 1N or Pond 1S has an
8 HDPE liner, correct?

9 A. That is my understanding, yes.

10 Q. Okay. All right.

11 MS. WACHSPRESS: I'd like to introduce
12 exhibit -- or marked for identification
13 Exhibit 1410.

14 (Complainants' Exhibit No. 1410 was
15 introduced.)

16 BY MS. WACHSPRESS:

17 Q. Are you familiar with this document?

18 A. I'm aware of what it is, yes.

19 Q. Okay. And what is it?

20 A. An alternate closure demonstration under
21 40 CFR Part 257.103 for Will County station.

22 Q. Okay. And were you involved in the
23 preparation of this document?

24 A. Most likely, yes.

1 **Q. And do you recall --**

2 A. And it -- I'm sorry. It is dated in
3 2020, so that's why I added the caveat "most
4 likely."

5 **Q. Do you recall what your involvement was?**

6 A. Specifically, no. I'm sure I reviewed
7 it -- or I would -- I would presume I reviewed it
8 before it was submitted. Maybe I contributed a
9 line or two. No idea.

10 **Q. What was the purpose of this document?**

11 A. Will County station did not -- at the
12 time of this submittal, we believed that Will
13 County station needed additional time to secure
14 capacity for place- -- for an impoundment -- well,
15 we needed an -- to be able to use an impoundment.

16 **Q. And that additional time was with**
17 **reference to an April 11th, 2021 deadline for**
18 **closure, correct?**

19 A. Yes.

20 **Q. And that deadline for closure was due to**
21 **the lack of Part 257 compliant liners at the ponds,**
22 **correct?**

23 A. Yes.

24 **Q. And, as part of this application,**

1 **Midwest Generation proposed clean closing south**
2 **Pond 3, correct?**

3 A. I have no idea what this application
4 says --

5 Q. Okay.

6 A. -- with regard to that. You would have
7 to point me to it.

8 Q. Okay. So let's go to Bates Stamp 77949.
9 And I'd like to direct you to the bottom paragraph
10 beginning with: Pursuant to the proposed Illinois
11 CCR rule, south ash Pond 3's existing liner will
12 also be removed. Prior to removing the liner,
13 however, MWG will submit a closure construction
14 permit application to the Illinois EPA pursuant to
15 the proposed citation. After receiving a final
16 permit from the Agency, the contractor hired to
17 execute the pond closure will mobilize to the site
18 and start excavating and/or dredging the existing
19 liner materials and any underlying soils impacted
20 by CCR.

21 Have I read that correctly?

22 A. Yes.

23 Q. Okay. And with your memory so
24 refreshed, Midwest Generation proposed clean

1 **closing Pond 3 as a part of this application?**

2 A. Now that you've jogged my memory, it --
3 because that area would have been used for a remote
4 SCC system, submerged --

5 (Reporter interruption.)

6 BY THE WITNESS:

7 A. (Continuing) -- A remote SCC system, a
8 submerged conveyer system, to process ash. So we
9 were going to replace the pond with a conveyer
10 system such that the impoundment wasn't needed.

11 This has since been -- this application
12 has since been withdrawn, and Will County station
13 has since ceased combustion of coal.

14 BY MS. WACHSPRESS:

15 Q. You anticipated my next questions.

16 The current closure plan for Pond 2
17 anticipates leaving impounded ash in place,
18 correct?

19 A. To what?

20 Q. South Pond 2 anticipates leaving
21 impounded ash in place, correct?

22 A. I believe so. I don't have the closure
23 plan in front of me, yeah, but I believe so.

24 Q. And the same --

1 A. Oh -- sorry. Go -- yes.

2 Q. Oh.

3 A. No -- go ahead.

4 Q. **And the same for Pond 3?**

5 A. S?

6 Q. **South Pond 3, I'm so sorry.**

7 A. I bel- -- I believe that that is what
8 the closure -- the proposed closure plans that are
9 posted on our website say.

10 Q. **Okay. I can -- I can refresh your**
11 **recollection. We have them here. Would that be**
12 **helpful?**

13 A. (No audible response.)

14 Q. **Okay. Why don't we --**

15 MS. WACHSPRESS: Can I get the most
16 recent version...

17 (Brief pause.)

18 MS. WACHSPRESS: And, for the record,
19 I'm placing a document in front of the
20 witness...

21 THE WITNESS: Thank you.

22 MS. WACHSPRESS: (Continuing) ...that
23 is entitled: Final Written Draft, Final
24 Written Closure Plan for south ash Pond 2 and

1 south ash Pond 3, and it's dated May 8th,
2 2023.

3 BY MS. WACHSPRESS:

4 Q. And if you'd like to refresh your
5 recollection with this plan, I can -- I can point
6 you --

7 A. Okay.

8 Q. -- at the bottom of Page 1 under 2.0,
9 Closure Plan Narrative Description, the first
10 sentence there states: Pursuant to 35 Illinois
11 Administrative Code 845.750(a) and 40 CFR
12 257.102(d) south ash Ponds 2 and 3 will be closed
13 by leaving the CCR stored in each pond in place --
14 (Reporter interruption.)

15 MS. WACHSPRESS: I'm sorry.

16 BY MS. WACHSPRESS:

17 Q. (Continuing) -- Stored in each pond in
18 place and installing a vinyl cover system over each
19 impoundment.

20 Have I read that correctly?

21 A. Yes, I believe so.

22 Q. And does that refresh your recollection
23 as to the current closure plans for Pond -- south
24 Ponds 2 and 3?

1 A. Yes, that is our plan as it stands
2 today.

3 Q. Okay. If I could direct your attention
4 back to the alternate closure demonstration and go
5 to Bates No. 77945.

6 A. I have it.

7 Q. Okay. And in the second paragraph on
8 the page, the second sentence, it states: As noted
9 in Table 1, the floor and crest of south ash Pond 3
10 are at L582.5 feet and L590.5 feet respectively.

11 Per the groundwater contour maps
12 provided in Appendix C2.2 the maximum static water
13 elevation recorded at Will County's ash pond is
14 L584.14 feet, and then in parens MW-5 on July 5th,
15 2019.

16 Have I read that correctly?

17 A. Yeah, I would have said the word
18 "elevation," but...

19 Q. Okay. And so groundwater levels at Will
20 County in the ash ponds extend up to a level of
21 584.14 feet, correct?

22 A. That does say the maximum, yes.

23 Q. And the bottom of Pond 3 is at
24 582.5 feet, correct?

1 A. I believe that's what that says, yes.

2 **Q. So the bottom of south ash Pond 3 is a**
3 **little bit less than two feet below the highest**
4 **groundwater level recorded, according to this**
5 **document, correct?**

6 A. Foot and a half, yes.

7 **Q. And so it's a fair inference from these**
8 **two statements that groundwater extends a foot and**
9 **a half into any contents of Pond 3, correct?**

10 MS. GALE: Objection; mischaracterizes
11 the document.

12 MS. WACHSPRESS: I'm -- I'm asking for
13 her to --

14 HEARING OFFICER HALLORAN: Could you
15 rephrase, Miss Wachspress -- I mean, you
16 don't have to, but -- talk to me, you can
17 just try to rephrase and see what comes out.

18 BY MS. WACHSPRESS:

19 **Q. How high into the contents of ash**
20 **pond -- south ash Pond 3 does groundwater extend**
21 **when it is recorded at its highest level?**

22 MS. GALE: I would object to this line
23 of questioning. There's no basis or
24 foundation that she has the understanding to

1 interpret these sentences. This -- again,
2 this was written by a professional engineer.

3 HEARING OFFICER HALLORAN: I think she
4 can answer if she's able.

5 BY THE WITNESS:

6 A. How --

7 THE WITNESS: Could she read back the
8 question?

9 HEARING OFFICER HALLORAN: Could you
10 read back the question, please, Lucy. Thank
11 you. Sorry.

12 (Record read as requested.)

13 BY THE WITNESS:

14 A. I would not characterize -- how high
15 into the contents, I -- I would not characterize it
16 that way.

17 Groundwater is -- can be or is -- can
18 reach a maximum level that is higher than the base
19 of the pond.

20 BY MS. WACHSPRESS:

21 **Q. And so if there were material in the**
22 **bottom of pond, would the groundwater extend above**
23 **or into that material?**

24 A. I don't know your hypothetical. I -- I

1 can't answer your hypothetical.

2 Groundwater is above the base of the
3 pond at its maximum level.

4 **Q. If there were coal ash stored in the**
5 **bottom of the pond, would that coal ash be**
6 **saturated by groundwater?**

7 A. No.

8 **Q. Why not?**

9 A. Because there's a liner in the pond.

10 (Brief pause.)

11 THE WITNESS: Can I -- I'm sorry.

12 MS. WACHSPRESS: Do you need a break?

13 BY THE WITNESS:

14 A. No, but I -- could you ask your question
15 again to make sure I answered you correctly.

16 BY MS. WACHSPRESS:

17 **Q. Yeah. If there's coal ash in the bottom**
18 **of the pond, at the highest level of groundwater,**
19 **would the ash be submerged in groundwater?**

20 A. Okay. No. Okay. I just wanted to make
21 sure --

22 **Q. And that's because the liner...**

23 A. Protects the ash or protects the
24 groundwater from --

1 Q. And if the --

2 A. -- exposure, yes.

3 Q. And if there were a leak in the liner,
4 could groundwater seep into the coal ash?

5 A. I don't know that. I'm not a geologist,
6 nor am I a PE.

7 Q. All right. I'd like to direct your
8 attention to Bates Stamp 78014. And this is a
9 document produced by KPRG, correct?

10 A. I -- I'm not there.

11 Q. Oh, sorry. Take your time.

12 A. It -- I'm sorry, just to make sure,
13 cross-section AA, November 22nd?

14 Q. Yes. That's correct.

15 A. Yes.

16 Q. Okay. And you'll notice in the bottom
17 left there is an aerial photograph of Will County
18 generating station, correct?

19 A. Yes.

20 Q. Okay. And there are monitoring well
21 locations marked on that aerial photograph,
22 correct?

23 A. Yes.

24 Q. And if you look on the left-hand side,

1 do you see monitoring wells 7, 8, 9, and 10?

2 A. Yes.

3 Q. Okay. And these wells are located
4 outside of the western edges of ash Ponds 2S and
5 ash Pond 3S, correct?

6 A. No.

7 Q. How would you describe the placement of
8 those monitoring wells?

9 A. West of 1N, 1S, 2S, and 3S.

10 Q. All right. Thank you for that
11 correction.

12 Okay. And if you look up at the
13 cross-section on the top right of the page, you'll
14 see it marked monitoring well 7, 8, 9, 11, 10, and
15 12?

16 MS. GALE: Mr. Hearing Officer, we're
17 gonna object to this line of questioning.
18 Again, this is a KPRG document, as she
19 stated. They had Mr. Gnat on the stand.
20 He -- who could have answered questions about
21 this. As Miss Shealey has testified, she's
22 not a geologist. She has -- you know, she
23 maybe reviews documents but certainly not
24 into the nitty-gritty, particularly when the

1 witness that could have testified to this was
2 here.

3 HEARING OFFICER HALLORAN: Yeah, I
4 think she's competently answering the
5 questions. And she's stating that if she
6 can't, she can't. So I would disagree and
7 overrule. And you may continue,
8 Miss Wachspress.

9 BY MS. WACHSPRESS:

10 Q. So you'll see on the top right there's a
11 cross-section corresponding to the line indicated
12 in the left-hand aerial photograph passing through
13 each of the wells, correct?

14 A. I would really need to study this
15 understand -- to be able to answer your question.

16 Q. Okay. You can take as much time as you
17 need to answer.

18 A. What did you ask me?

19 Q. I asked that the cross-section on the
20 right has the monitoring wells marked on it?

21 A. I see that part. I can agree to that.

22 Q. Okay. Great. Okay. And the
23 cross-section, you'll see the top level; and it's
24 faint, but it describes -- it's an area shaded with

1 **small diamonds, correct?**

2 A. That's what it looks like, I guess.

3 **Q. And it's labeled "fill"?**

4 A. I do see the label fill, yes.

5 **Q. And if you go down below, there's the --**

6 **the shading indicated, and next to it it states:**

7 **Fill: Consisting of brown and black silty clay and**

8 **silty sand mixed with gravel and crushed limestone.**

9 **The fill may include coal, black cinders, and**

10 **slack.**

11 **Have I read that correctly?**

12 A. Yes, you have.

13 **Q. And if you go to monitoring well 10, do**

14 **you see that blue line extending across the**

15 **cross-section?**

16 A. I see a blue line.

17 **Q. And that's marked below as "water**

18 **level," correct?**

19 A. Yes.

20 **Q. And would you agree that at monitoring**

21 **well 10 that blue line of the water level meets the**

22 **shaded area called "fill"?**

23 A. I have no idea. Like I said, I -- I --

24 **this is out of context. This is not my area of**

1 expertise. I would need the paragraphs that
2 explain this to me to be able to really get
3 to where you're going --

4 HEARING OFFICER HALLORAN: I think we
5 can move on --

6 MS. WACHSPRESS: Okay.

7 HEARING OFFICER HALLORAN: --

8 Miss Wachspress.

9 MS. WACHSPRESS: Sure.

10 HEARING OFFICER HALLORAN: Thank you.

11 BY MS. WACHSPRESS:

12 **Q. The current closure plan for Pond 1**
13 **north anticipates leaving impounded ash in place,**
14 **correct?**

15 A. Again, that's -- I haven't read it this
16 week, so I -- I can only assume that that's what
17 it -- it says. I don't know for sure.

18 **Q. So you would need to rely on documents**
19 **to -- to refresh your recollection?**

20 A. Absolutely.

21 **Q. And that's also true for Pond 1 south?**

22 A. I would -- I would need to check the
23 documents.

24 MS. WACHSPRESS: Okay. I'd like to

1 move for admission of Exhibit 1410 at this
2 time.

3 HEARING OFFICER HALLORAN: Miss Gale.

4 MS. GALE: Again, we would object to
5 its relevance. Not only is it a document
6 related to the federal CRR rule -- which is
7 not at issue in this case, as she
8 testified -- this document has been withdrawn
9 and is no longer relevant because the -- the
10 plan in this document has -- is not
11 happening.

12 And I believe she testified that the
13 plan is not happening because Will County is
14 no longer burning coal, so there's -- there's
15 no relevance to the Board on the contents of
16 this document.

17 HEARING OFFICER HALLORAN: Okay.
18 Overruled.

19 The Board may find relevance. I
20 think there might be a little. Miss Shealey
21 has reviewed it and knows the purpose of the
22 letter. It's a public document.

23
24

1 Complainant Exhibit 1410 is admitted
2 over objection.

3 (Complainants' Exhibit No. 1410 was
4 received in evidence.)

5 HEARING OFFICER HALLORAN: Let's go
6 off the record for a minute.

7 (Discussion held off the record.)

8 BY MS. WACHSPRESS:

9 **Q. Are you aware of any soil testing**
10 **performed at the Will County site for CRR**
11 **constituents by Midwest Generation since June of**
12 **2019?**

13 A. I believe Will County has a ASD -- an
14 alternate source demonstration that would have
15 required some testing. I don't know if there
16 were -- that was soil testing or not.

17 **Q. So other than the ASD has Midwest**
18 **Generation performed any groundwater testing at the**
19 **Will County site?**

20 A. We test groundwater every quarter. We
21 sample under -- I think Mr. Gnat -- on multiple
22 programs. So, yeah, we test groundwater
23 frequently.

24 **Q. Has Midwest Generation installed any new**

1 **groundwater monitoring wells at the Will County**
2 **site since 2019?**

3 A. I believe -- I believe there are two new
4 monitoring wells that were installed in '19 or '20.

5 **Q. Okay.**

6 A. 2019 or 2020.

7 **Q. Do you recall the location of those**
8 **wells?**

9 A. I would -- again, similar to Joliet, I
10 would need a map.

11 **Q. Okay.**

12 A. I think -- I think they may be marked.

13 **Q. Okay. We can bring out the excerpt from**
14 **Exhibit 901 again.**

15 **(Brief pause.)**

16 THE WITNESS: If you're gonna --

17 HEARING OFFICER HALLORAN: We're off
18 the record, Lucy.

19 **(Brief pause.)**

20 HEARING OFFICER HALLORAN: Okay.
21 We're back on the record.

22 BY THE WITNESS:

23 A. Thank you.

24 MS. WACHSPRESS: So, for the record,

1 I've handed the witness an excerpt from
2 Exhibit 901, which is an aerial map of Will
3 County with monitoring wells indicated.

4 BY MS. WACHSPRESS:

5 **Q. Since this document was produced, are**
6 **there any monitoring wells on this map that are not**
7 **indicated here?**

8 MS. GALE: I would object to vague. I
9 mean, they're asking her to identify
10 monitoring wells that don't exist on a
11 document from 2018.

12 MS. WACHSPRESS: I'll rephrase, your
13 Honor.

14 HEARING OFFICER HALLORAN: Thank you.

15 BY MS. WACHSPRESS:

16 **Q. Okay. Has Midwest Generation installed**
17 **any groundwater monitoring wells at Will County**
18 **that are not indicated on this map?**

19 MS. GALE: Same objection.

20 HEARING OFFICER HALLORAN: It's the
21 same question, yeah.

22 BY MS. WACHSPRESS:

23 **Q. Does this map contain all of the**
24 **monitoring wells at Will County, to your knowledge?**

1 A. No, it does not, to the best of my
2 knowledge.

3 **Q. Okay. Could you describe the monitoring
4 wells that are missing from this map?**

5 A. There are at least two. I do not know
6 their location, and there may be more than two that
7 were installed, I believe, after the effective date
8 of Part 845. So they would have been --

9 (Reporter interruption.)

10 THE WITNESS: Part 845.

11 BY THE WITNESS:

12 A. (Continuing) -- Meaning they would have
13 been installed in 2021.

14 BY MS. WACHSPRESS:

15 **Q. So Midwest Generation has installed two
16 monitoring wells at the Will County site?**

17 A. I believe at least two I think is what I
18 said.

19 **Q. At least two, and those were installed
20 pursuant to Part 845, correct?**

21 A. I believe so, yes.

22 **Q. Okay. To your knowledge has Midwest
23 Generation, or someone at Midwest Generation,
24 removed -- excuse me. Scratch that.**

1 **To your knowledge has Midwest Generation**
2 **removed CCR from areas outside of the surface**
3 **impoundments at the Will County site since June**
4 **of 2019?**

5 A. I am not aware of CCR outside of the
6 impoundments at Will County site, so I would have
7 to answer no.

8 **Q. Okay. And the same answer for someone**
9 **acting at Midwest Generation's direction?**

10 A. Again, I am not aware of CCR outside of
11 the impoundments at Will County site, so the answer
12 would be no.

13 **Q. Has Midwest Generation taken any leach,**
14 **l-e-a-c-h, tests at the Will County site?**

15 A. I haven't -- I cannot answer that, as I
16 sit here today.

17 **Q. You're not --**

18 A. I would have to -- I would have to
19 review records to be able to answer that.

20 **Q. So you're not aware of any?**

21 A. I would have to review records to be
22 able to answer you.

23 **Q. Has Midwest Generation performed any**
24 **activities to assess the volume of ash outside of**

1 **the impoundments in the -- at the Will County site?**

2 A. I stated I am not aware of any ash
3 outside of the impoundments, so I would have to say
4 no.

5 **Q. But the basis of that is not based on**
6 **anything Midwest Generation has done since 2019?**

7 MS. GALE: Objection; vague.

8 HEARING OFFICER HALLORAN: I don't
9 think it's vague. I think it's a little
10 confusing, but try to rephrase that.

11 BY MS. WACHSPRESS:

12 **Q. The basis of your statement that there**
13 **is no coal ash outside of any impoundments at the**
14 **Will County site is not anything that Midwest**
15 **Generation has done since 2019, correct?**

16 MS. GALE: Same objection.

17 HEARING OFFICER HALLORAN: She may
18 answer if she's able.

19 BY THE WITNESS:

20 A. I did not state that there is no ash
21 outside of the impoundments at Will County station.
22 I stated that I am not aware of any ash at -- at
23 any of -- outside of the impoundments at Will
24 County station.

1 BY MS. WACHSPRESS:

2 Q. So you don't know whether there's ash
3 outside the impoundments?

4 A. I am unaware at that -- I've said it --
5 I think that's at least the third time I've said
6 it.

7 Q. So if there were to be ash outside of
8 the impoundments at Will County station, you would
9 not be aware of it?

10 MS. GALE: Objection.

11 MS. NIJMAN: Objection.

12 HEARING OFFICER HALLORAN: Yeah.

13 Miss Gale has an objection I
14 sustained.

15 MS. WACHSPRESS: Okay.

16 HEARING OFFICER HALLORAN: Thank you.

17 BY MS. WACHSPRESS:

18 Q. Okay. Has Midwest Generation installed
19 any caps at Will County station since 2019?

20 A. Again, that would be in violation of
21 public acts.

22 Q. And the same answer for liners?

23 A. No, we have not installed any liners
24 since 2019.

1 MS. WACHSPRESS: Okay. Okay. I'd
2 like to move for -- okay. All right. I'd
3 like to introduce marked for identification
4 Exhibit 1401 -- 1411. 1411.

5 (Complainants' Exhibit No. 1411 was
6 introduced.)

7 BY MS. WACHSPRESS:

8 Q. Do you recognize this document?

9 A. Oddly enough, no. I know what it is.

10 Q. What is it?

11 A. I'm sorry -- wait. I'm trying to catch
12 up to what this is. It was filed in 2022. You've
13 gotta give me a second.

14 Q. Of course.

15 (Witness peruses document.)

16 BY THE WITNESS:

17 A. August of 20- -- I believe this is my
18 pre-filed testimony and the rulemaking that the
19 Board undertook with regard to the public acts that
20 I will refer to as Senate Bill -- that came from
21 Senate Bill 9.

22 (Reporter interruption.)

23 HEARING OFFICER HALLORAN: Could you
24 speak up, please.

1 THE WITNESS: Senate Bill 9.

2 HEARING OFFICER HALLORAN: Thank you.

3 BY THE WITNESS:

4 A. It is a public act that I cannot
5 remember the number of. Forgive me.

6 BY MS. WACHSPRESS:

7 Q. And that rulemaking culminated in
8 Part 845, which we've been discussing, correct?

9 A. That's what it seems, yes.

10 Q. Okay. And as you've already noted, the
11 date of this document is August 27th, 2020?

12 A. Yes.

13 Q. Okay. And your signature appears on
14 this document, correct?

15 A. Not exactly, but, yes.

16 Q. Okay. An electronic signature?

17 A. Yes. I couldn't find the right
18 terminology. Exactly, yes.

19 Q. Okay. And this document was true and
20 accurate, to the best of your knowledge, at the
21 time it was filed, correct?

22 A. I would have to say, yes, absolutely.

23 Q. And so if could I direct your attention
24 to Footnote 1, which is on Page -- it's on the

1 seventh page of the document, Footnote 1.

2 Are you there?

3 A. Mm-hmm.

4 Q. Okay. And it states: Illinois EPA has
5 designated an additional seven areas that MWG
6 contends are not CRR surface impoundments as that
7 term is defined in the Act.

8 Could you say which those seven areas
9 are?

10 A. Precisely, I -- I may not be able to be,
11 but I can make an attempt.

12 Q. Okay.

13 A. My recollection is Pond 1N at Will
14 County; Pond 1S at Will County; Pond 1 at Joliet
15 29; Pond 3 at Joliet 29; the service water basin at
16 Powerton. I can only get to six. And I believe at
17 this point we did -- we contended that the metal
18 cleaning basin at Powerton was not a CRR surface
19 impoundment.

20 Q. And you say "at this point."

21 Has Midwest Generation's pos- --
22 position on the metal cleaning basin since changed?

23 A. It did.

24 Q. Okay. And --

1 A. I -- I wasn't -- I'm sorry. I only got
2 to six.

3 **Q. Okay.**

4 A. Give me a second. The grassy area at
5 Waukegan, that would be seven.

6 **Q. And it is Midwest Generation's position**
7 **that the seven areas you just named are not subject**
8 **to the requirements of Part 485, correct?**

9 A. No --

10 MS. GALE: Objection to the
11 characteri- -- mischaracterization of the
12 document. She used the present tense.

13 HEARING OFFICER HALLORAN: You want to
14 rephrase? Thanks.

15 BY MS. WACHSPRESS:

16 **Q. With the exception of the metal cleaning**
17 **basis at Powerton, is it Midwest Generation's**
18 **position that the other six places you identified**
19 **are not subject to the requirements of Part 845?**

20 A. It is not --

21 MS. GALE: Same objection.

22 HEARING OFFICER HALLORAN: I think
23 it's still present tense. I think -- I'm not
24 sure if you want to do a past tense or...

1 BY MS. WACHSPRESS:

2 Q. Is it Midwest Gen's current position
3 that Pond 1N at Will County is subject to the
4 requirements of Part 845?

5 A. Yes.

6 Q. Okay. Is it Midwest Gen's current
7 position -- Midwest Generation's current position
8 that Pond 1S at Will County is subject to the
9 requirements of Part 845?

10 A. Yes.

11 Q. Is it Midwest Gen's current position
12 that the pond -- that Pond 1 at Joliet is subject
13 to the requirements of Part 485?

14 A. No, and the Board agreed with us
15 yesterday.

16 Q. Is it Midwest Generation's position that
17 the pond at -- or, excuse me, that Joliet 3 is
18 subject to the requirements of Part 485?

19 A. No. And, again, the Board agreed with
20 us yesterday, which I don't know the date, but it's
21 May something. It's a Thursday in May.

22 Q. Is it Midwest Generation's position that
23 the service water basin at Powerton is subject to
24 the requirements of Part 485?

1 A. No. And, again, the Board agreed with
2 us, I believe, at -- a long time -- well, a long
3 time ago. It's -- the date is -- escapes me.
4 Escapes me.

5 Q. Is it Midwest Generation's position that
6 the metal cleaning basin at Powerton is subject to
7 the requirements of Part 845?

8 A. Yes, it is.

9 Q. Okay. And is it Midwest Generation's
10 position that the grassy field at Waukegan is
11 subject to the requirements of Part 845?

12 A. No, it is not.

13 Q. And so sometime between when this
14 document was written in 2020 and now Midwest
15 Generation has changed its position with respect
16 to -- gosh, I can't keep track.

17 The service -- no, the -- the metal
18 cleaning basin, correct?

19 MS. GALE: Objection; argumentative
20 and asked and answered.

21 MS. WACHSPRESS: Okay. I'll
22 move on -- I can move on.

23 HEARING OFFICER HALLORAN: Sustained.
24 Thank you.

1 THE WITNESS: I'm sorry, can we take a
2 break?

3 HEARING OFFICER HALLORAN: Sure.
4 You're the boss. We're off the record.

5 (Short recess.)

6 HEARING OFFICER HALLORAN: We can go
7 back on the record, Lucy, when you're ready.
8 We're on the record.

9 You may proceed, Miss Wachspress.

10 MS. WACHSPRESS: Thank you.

11 BY MS. WACHSPRESS:

12 Q. Miss Shealey, if I could direct your
13 attention in -- within the document in front of
14 you. It's -- the -- the pages aren't numbered, but
15 if you go to Subsection III and then on to the next
16 page, which, I believe, is the 11th page of the
17 document.

18 A. I am here.

19 Q. Okay. And at the top of the page you'll
20 see a partial sentence and then the first full
21 sentence starts: For a CRR surface impoundment
22 that is relatively small, removal of all CCR from a
23 CCR surface impoundment will likely be the most
24 effective and protective closure method.

1 **Have I read that correctly?**

2 A. Yes, you have.

3 **Q. Do you still believe this to be the**
4 **case?**

5 A. No, I do not.

6 **Q. When did you come to change your opinion**
7 **on this?**

8 A. Sometime between August of 2020 and
9 today.

10 **Q. Do you recall when your opinion changed**
11 **on this?**

12 A. Sometime between August of 2020 and
13 today. I've learned a lot since then. I cannot
14 tell you when I specifically have changed my mind
15 about things, no -- or changed my opinions.

16 **Q. What have you learned that has caused**
17 **you to change your opinion on this?**

18 A. Removal costs communities a lot. The
19 traffic generated by removals is phenomenal, and
20 that is a huge cost that I wasn't considering at
21 this point in time, I believe.

22 **Q. If I could direct your attention to the**
23 **following page, the last full paragraph before**
24 **Roman IV, you state: These types of considerations**

1 are critical in environmental justice communities,
2 which will be directly affected by the closure not.
3 A closure method that would require 50 trucks per
4 day, operating 5 days a week and 48 weeks per year,
5 for over 4- -- 20 years --

6 (Reporter interruption.)

7 MS. WACHSPRESS: Sorry.

8 BY MS. WACHSPRESS:

9 Q. (Continuing) -- 48 weeks per year for
10 over 20 years, would result in high volumes of
11 traffic, and communities would absorb the impacts
12 of trucks constantly rumbling through.

13 Have I read that correctly?

14 A. You have.

15 Q. So environmental justice concerns were a
16 part of your consideration when you wrote this
17 document, correct?

18 A. I did not mention environmental justice
19 concerns in my previous answer, and I don't
20 consider the impact -- I -- I didn't necessarily
21 mean -- and maybe they are an environmental justice
22 concern, as you just characterized them; but I mean
23 a neighborhood receiving that truck traffic is an
24 impact to that neighborhood, which is significant.

1 And, in fact, there's an article in The
2 Washington Post that I've read recently -- and by
3 "recently" I mean in 2023 -- that describes a
4 removal in Tennessee, and the impact is significant
5 to those neighbors.

6 **Q. So you discussed the significance of**
7 **those impacts here in your testimony in 2020?**

8 A. And I've learned since, yes.

9 **Q. But despite considering**
10 **those consider- -- or even with those**
11 **considerations taken into account, you still state,**
12 **on the previous page, that for a CRR surface**
13 **impoundment that is relatively small, removal of**
14 **all CRR from a CRR service im- -- surface**
15 **impoundment will likely be the most effective and**
16 **protective closure method.**

17 A. I have learned since. That's
18 what I'm -- my testimony today is I have learned --
19 since August 27th of 2020, I have learned a lot.

20 **Q. And so a surface impoundment of even**
21 **less than one acre you believe that the traffic**
22 **impacts, and the other impacts you described, would**
23 **outweigh the benefit of removing that coal ash?**

24 A. You --

1 MS. GALE: Objection to the
2 hypothetical.

3 HEARING OFFICER HALLORAN: She can
4 answer, if she's able. You can cross.
5 Thanks.

6 BY THE WITNESS:

7 A. It -- the size of the impoundment is not
8 the only consideration for removal. The area that
9 an impoundment is located in should also be
10 considered. Rural impoundments have different
11 challenges than urban impoundments, and we operate
12 urban impoundments, for the most part.

13 BY MS. WACHSPRESS:

14 **Q. Do you know how many trucks it would**
15 **take to remove coal ash from a basin of less than**
16 **an acre?**

17 A. It depends on the amount of ash in the
18 basin.

19 **Q. How about 725 cube yards?**

20 A. I would need a calculator.

21 **Q. Do you know how many cubic yards an**
22 **individual truck can carry?**

23 A. I believe it is 15, but, again, I'm not
24 an engineer.

1 **Q. Okay. You mentioned that the CRR**
2 **surface impoundments you handle are located in**
3 **urban communities?**

4 A. Generally, I'm sorry.

5 **Q. Are any of the surface impoundments at**
6 **Will County located within a mile of a**
7 **environmental justice community, as defined under**
8 **Illinois law?**

9 A. They weren't -- I do not know what
10 current Illinois law defines as an environmental
11 justice community. They just ended session, or
12 they -- they may still be in session. I have no
13 idea if they've changed the definition in the past
14 three months.

15 When we looked at environmental justice
16 communities for compliance with Part 485, Will
17 County did not meet that definition. Will County
18 station did not meet that definition.

19 **Q. When you looked for Joliet 29, did that**
20 **meet the definition?**

21 A. It did.

22 **Q. When you looked for Waukegan, did that**
23 **meet the definition?**

24 A. Yes, it did.

1 Q. What about for Powerton?

2 A. It did not.

3 Q. Okay. So if I could direct your
4 attention -- and it will take me a moment -- to
5 what is PDF -- it is the 9th page of the document.
6 It is the last sentence before the section labeled
7 small B.

8 A. There are several small Bs.

9 Q. Okay. So --

10 A. I'm sorry.

11 Q. That's okay.

12 A. Are you counting these as pages
13 (indicating)?

14 Q. Yes. So the 9th page -- because there's
15 no page numbers.

16 A. I see a small B on what I consider -- I
17 counted to be the 9th page, yes.

18 Q. And that small B says: CCR surface
19 impoundments have been regulated for --

20 A. That is the one, yes.

21 Q. So the last sentence before then states:
22 By 2013 MWG completed its installation of new HDPE
23 liners in all nine of its CCR surface impoundments
24 pursuant to construction permits issued by the

1 **Illinois EPA.**

2 **What are those nine -- oh, have I read**
3 **that correctly?**

4 A. Yes.

5 **Q. What are those nine surface**
6 **impoundments?**

7 A. Nine. That would be Waukegan east pond;
8 Waukegan west pond; Will County 2S; Will County 3S;
9 Joliet Pond 2; Powerton ash surge basin; Powerton
10 ash bypass basin.

11 There were others relined, but I don't
12 know if they're included because that would get me
13 to more than nine.

14 **Q. Okay. So was the metal cleaning basin**
15 **at Powerton relined with HDPE?**

16 A. I believe it was, but I -- as I stated
17 earlier, at this point we were not counting that as
18 a surface impoundment. So that's how I can't
19 figure out how to get to nine.

20 **Q. What about Joliet Pond 1?**

21 A. It was relined. Again, it's not a CCR
22 surface impoundment. And I know that we went into
23 this not considering it a CCR surface impoundment.

24 **Q. What about Pond 2?**

1 A. It was relined, and I just named it.

2 Q. Okay. Then Pond 3, excuse me.

3 A. It was also relined. And I'm certain
4 that is not a CCR surface impoundment. And we went
5 into this --

6 (Reporter interruption.)

7 HEARING OFFICER HALLORAN: Yeah, you
8 have to slow down. She can't --

9 THE WITNESS: I'm so -- I'm sorry.

10 BY THE WITNESS:

11 A. (Continuing) -- I am certain that this
12 is not a CCR surface impoundment when we into -- at
13 the point we went into this submittal -- or
14 document.

15 BY MS. WACHSPRESS:

16 Q. Okay. Okay. So...

17 A. So addition- -- in addition, Joliet 1,
18 Joliet 3, Powerton service water, so that's how I
19 get to more than nine 'cause I counted seven, and I
20 get -- now I'm at ten. I have no idea what the
21 nine were in this moment without reading the whole
22 document.

23 Q. Right. So it's fair to say that Midwest
24 Generation relined more than nine ponds, correct?

1 A. I think I just counted ten.

2 Q. That at the time this was written,
3 Midwest Generation contested the classification of
4 some of those as surface impoundments, correct?

5 A. I -- I believe so.

6 Q. Okay. And -- okay. I'm -- I'm just
7 trying to clarify the record, but I'll -- I'll move
8 on. Okay.

9 Do you know if Midwest Generation
10 removed any soil or other materials before relining
11 these ponds with HDPE?

12 A. I believe that they -- so I was not
13 there. I believe that they had to remove all of
14 the ash that was contained within the pond to get
15 to the base to be able to reline.

16 Q. And what is the base that you're
17 referring to?

18 A. The bottom of the pond.

19 Q. But beneath that is it your
20 understanding that Midwest Generation --

21 A. Again, I would have to review
22 construction documents. I don't know.

23 Q. And Midwest Generation has never
24 installed an HDPE liner at Pond 1N in Will County,

1 **correct?**

2 MS. GALE: Objection; misstates
3 testimony.

4 HEARING OFFICER HALLORAN: Could you
5 read the question back, please, Lucy? I'm
6 sorry.

7 MS. GALE: Oh, I'm sorry. It's my
8 bad. I -- I heard Pond 1, and I thought
9 Joliet 29. Forgive me.

10 Objection; mischaracterizes the pond
11 on 1S.

12 HEARING OFFICER HALLORAN: Do you need
13 the answer -- or question?

14 THE WITNESS: Oh, do you -- I -- so I
15 can answer?

16 HEARING OFFICER HALLORAN: Could you
17 ask the question...

18 THE WITNESS: I'm sorry. I wasn't...

19 BY MS. WACHSPRESS:

20 **Q. Has Midwest Generation ever installed an**
21 **HDPE liner at Pond 1N at Will County?**

22 A. My knowledge of that is that when --
23 when the pond relinings were done, yes, at Will
24 County 1N and 1S were out of service. They were

1 specific to units 1 and 2 -- generating units 1 and
2 2 at Will County station.

3 And so as part of -- I believe it's in
4 the CCA for Will County. As part of the CCA,
5 instead of relining, they installed what I would
6 consider to be an under-drain system so that the
7 pond cannot contain water.

8 Q. And is that also true of Pond 1S --

9 A. Yes.

10 Q. -- at Will County?

11 And Midwest Generation has never
12 installed a lined -- an HDPE line- -- liner in the
13 grassy field at Waukegan, correct?

14 A. Not to my knowledge, no.

15 Q. As we sit here today, is there any CCR
16 in any coal ash pond at Waukegan?

17 A. Yes.

18 Q. Which ponds?

19 A. I hate to do this wrong. I'm sorry.

20 (Brief pause.)

21 BY THE WITNESS:

22 A. I believe the east pond contains coal
23 ash; the west a sig- -- a more significant amount
24 of coal ash, which I really cannot quantify. The

1 west pond only has a small amount of coal ash. I
2 believe that's correct. I could have them
3 flip-flopped.

4 One is nearly empty, one is not. One of
5 the ponds is nearly empty; one of the ponds is not
6 empty.

7 BY MS. WACHSPRESS:

8 **Q. And the same question for Will County:**
9 **As we sit here today, is there CCR in any coal ash**
10 **pond at Will County?**

11 A. 1N, 1S definitely contain ash. 1N and
12 1S definitely contain ash. And, again, I may
13 flip-flop -- yeah, I -- I cannot tell you -- one --
14 one of either 2S or 3S would contain what I would
15 consider de minimis quantities of ash, I believe.
16 The other one contains greater than de minimis
17 quantities. I cannot -- my notes --

18 HEARING OFFICER HALLORAN: Greater
19 than what?

20 THE WITNESS: De minimis quantities.

21 Sorry.

22 BY THE WITNESS:

23 A. I cannot tell you one or the other. I
24 would have to go back and review records.

1 BY MS. WACHSPRESS:

2 Q. And then Joliet 29?

3 A. None of the ponds at Joliet 29 contain
4 ash.

5 MS. WACHSPRESS: Your Honor, I'd like
6 to move to admit Exhibit 1411 into the
7 record.

8 HEARING OFFICER HALLORAN: Miss Gale?

9 MS. GALE: We would object to the
10 exhibit as relevant [sic]. As she's
11 testified, the information here is old.
12 There is updated information, including
13 recent Board orders, indicating certain ponds
14 are not CCR surface impoundments. She has
15 new information that has changed,
16 and whatever she's stated in this document
17 really isn't relevant to this proceeding.

18 Oh, I'm sorry, one more thing.
19 Plus, it is related to the rulemaking of
20 Part 257 and unrelated to the complaint in
21 this case.

22 HEARING OFFICER HALLORAN: Your
23 objections are noted on the record, however,
24 that -- the Board may find this relevant.

1 The document is also on our -- our website.
2 So over objection, Complainant's No. 1411
3 exhibit is admitted.

4 (Complainants' Exhibit No. 1411 was
5 received in evidence.)

6 MS. WACHSPRESS: Your Honor, may we go
7 off the record for a moment?

8 HEARING OFFICER HALLORAN: Sure.

9 (Discussion held off the record.)

10 MS. WACHSPRESS: Your Honor, can we go
11 back on the record?

12 HEARING OFFICER HALLORAN: Yes, Miss
13 Wachspress, we're back on the record.

14 MS. WACHSPRESS: Thank you.

15 Your Honor, just one more item.
16 We'd like to move for admission of
17 Exhibit 1400, which was the document witness
18 had -- the witness had in front of her for at
19 least her testimony yesterday and has with
20 her again today.

21 HEARING OFFICER HALLORAN: You know, I
22 can't find it. I've been given many, many
23 documents.

24 Thank you. Is this -- okay.

1 Miss Gale, do you have any objection
2 for Exhibit 1400?

3 MS. GALE: No objection.

4 HEARING OFFICER HALLORAN: Thank you.
5 Exhibit 1400 is admitted. No objection.

6
7 (Complainants' Exhibit No. 1400 was
8 received in evidence.)

9 MS. GALE: And, Mr. Hearing Officer,
10 may I correct, for the record, when I -- that
11 I misspoke which part her testimony 1411...

12 HEARING OFFICER HALLORAN: Yes, you
13 may.

14 MS. GALE: (Continuing) ...was
15 related?

16 Yes, I -- I misspoke. It was
17 related to Part 845, not Part 257.

18 HEARING OFFICER HALLORAN: The record
19 will so reflect. Thank you.

20 MS. WACHSPRESS: And, your Honor,
21 we've completed our direct examination of
22 Miss Shealey.

23 HEARING OFFICER HALLORAN: All right.
24 Thank you.

1 Miss Gale, do you need a moment?

2 MS. GALE: Just for off the record for
3 three seconds --

4 HEARING OFFICER HALLORAN: Okay.

5 MS. GALE: Two minutes.

6 HEARING OFFICER HALLORAN: We're off
7 the record.

8 (Brief pause.)

9 HEARING OFFICER HALLORAN: All right.
10 We're back on the record.

11 Miss Shealey is on the stand.
12 Miss Gale from Midwest is doing her cross.
13 You may begin when ready. Thank you.

14 CROSS-EXAMINATION

15 BY MS. GALE:

16 Q. Miss Shealey, can you pull out 1409,
17 please? And it's the Illinois EPA recommendation
18 for pond -- Joliet 29. It's -- it's a really big
19 one.

20 A. I -- I have it. Yes, okay. I couldn't
21 find Joliet 29 on the cover. That was my issue.
22 Okay. Thank you.

23 Q. And we're gonna go back to the page she
24 directed you to, which is Bates No. MWG13-15

1 **underscore 121582.**

2 A. 121. Surprisingly, I have it, yes.

3 Q. You got it?

4 A. Yeah.

5 Q. Okay. Miss Wachspres asked you about
6 the first two sentences in the second full
7 paragraph on that page; do you recall that?

8 A. Yes.

9 Q. And she didn't ask you about the
10 remainder of that paragraph, did she?

11 A. No.

12 Q. Can you just read through the remainder
13 of that paragraph on your own, and then we'll
14 discuss.

15 (Witness peruses document.)

16 BY MS. GALE:

17 Q. Okay. And as it says in there, the
18 remainder of the paragraph states: Given the
19 absence of bottom ash beyond the depth of one foot
20 and these borings, and a general absence of bottom
21 ash in the other six borings, these two instances
22 are more likely to be from bottom ash particles
23 being present at the surface of the pond's access
24 roads than ash being used as fill material; do you

1 **see that?**

2 A. I do.

3 Q. And would you agree with Mr. Dehlin,
4 who's the drafter of this document's assessment of
5 that ash?

6 A. Yes.

7 MS. WACHSPRESS: Objection; lack of
8 foundation.

9 HEARING OFFICER HALLORAN: Overruled.

10 She may ask.

11 BY MS. GALE:

12 Q. And given that this is ash on the top of
13 the soil -- well, never mind. Strike that.
14 Withdrawn.

15 You can put that document aside. Thank
16 you.

17 A. Thank you.

18 HEARING OFFICER HALLORAN: Which
19 exhibit was that, Miss Shealey?

20 THE WITNESS: 1409.

21 HEARING OFFICER HALLORAN: Thank you.

22 BY MS. GALE:

23 Q. Put that away. You -- we're done with
24 that. Take your time.

1 A. Okay. Thank you.

2 Q. I just want to clarify something that
3 was discussed this morning and clarify when --
4 when -- you've been asked a few times about closure
5 of the ponds -- the pond, excuse me, leaving CRR in
6 place; do you recall that testimony?

7 A. Yes.

8 Q. And that closure of the pond leaving CRR
9 in place, that comes with a cap, correct?

10 A. Correct.

11 Q. And it's an engineered cap, right?

12 A. Correct.

13 Q. And that it's an engineered cap
14 engineered by professional engineers, right?

15 A. Yes.

16 Q. And it would be pursuant to the Federal
17 Part 257, right?

18 A. Yes. And part -- the State Part 845,
19 too. Yes.

20 Q. Thank you.

21 A. It would be pursuant to both.

22 Q. And -- well, I'll leave it there.

23 Oh, you were asked earlier about -- and
24 you -- about sampling done at Joliet 29. And I

1 just want to clarify something because you had
2 discussed with Miss Wachspress an understanding of
3 sampling done around monitoring well 9; do you
4 recall that testimony?

5 A. Yes.

6 Q. And then later on -- and I recall her
7 asking you again whether soil testing had been done
8 at Joliet 29 since 2019, and I believe you stated
9 that you weren't aware.

10 Do you want to correct your testimony?

11 A. I absolutely do. Soil testing was done
12 with regard to the -- or with regard to the
13 investigation around monitoring well 9 at Joliet --

14 (Reporter interruption.)

15 BY THE WITNESS:

16 A. I stuttered and slurred. Forgive me.

17 Soil testing was done as part of the
18 investigation around Joliet 29 monitoring well 9.

19 BY MS. GALE:

20 Q. And are you aware of other sampling
21 that's been done near Joliet 29?

22 A. Yes.

23 Q. What is that sampling?

24 A. I believe the Army Corps of Engineers --

1 the U.S. Army Corps of Engineers has sampled along
2 the land that they own in the northeast area, and
3 they have done sediment sampling in the Des Plaines
4 River.

5 Q. Let's -- oh, yeah. Let's do that.

6 You were asked about -- we're talking
7 about the northeast area, and you just mentioned
8 the U.S. Army Corps. The Army Corps is interested
9 in the northeast area; isn't that right?

10 A. Absolutely.

11 Q. And they're interested in it for a
12 project related to Asian carp, correct?

13 A. Yeah. Invasive species, generally, yes.

14 Q. Right. Okay. Thank you for that
15 correction.

16 And the Army Corps of Engineers also
17 have an understanding of the material in that -- in
18 that area, don't they?

19 A. They -- they have said that to me, yes.

20 Q. What have they told you?

21 A. That it's mostly -- or that they -- they
22 would -- they believe it is dredging from the river
23 or -- well, from the river that could have been
24 from constructing the lock that is adjacent,

1 including -- I'm sorry.

2 Dredging spoils from the Des Plaines
3 River, including when they built the lock that is
4 adjacent to the northeast area at Joliet 29.

5 Q. And I think it's also been called "river
6 spoils"?

7 A. River spoils. Thank you, yes.

8 Q. And the lock near Joliet 29 is called
9 the Brandon Road Lock and Dam, right?

10 A. Yes.

11 Q. Okay. Miss Shealey, you've been shown a
12 lot of documents today, right?

13 A. Yes.

14 Q. And yesterday, correct?

15 A. Yes.

16 Q. And for those documents you described
17 that you did review of them, right?

18 A. Yes.

19 Q. And that was a high-level review,
20 correct?

21 A. Correct.

22 Q. 'Cause as you've testified you engage
23 consultants and experts to assist you in complying
24 with, for example, Part 257, right?

1 A. Absolutely, yes.

2 Q. And, similarly, in complying with
3 Part 845, correct?

4 A. Yes.

5 Q. And -- so, for example, when you're
6 reviewing boring logs, as you -- were done
7 yesterday, you're not conducting any sort of
8 analysis, right?

9 A. No.

10 Q. No. You would rely upon a geologist to
11 do that; isn't that true?

12 A. Absolutely.

13 Q. 'Cause you're not a geologist?

14 A. Yeah. And if I could offer a metaphor?

15 Q. By all means.

16 A. My role is sort of like an air traffic
17 controller. I'm not a pilot. I don't have that
18 expertise. I ensure, metaphorically, that all the
19 planes take off on time, that they're in the air
20 with no interference with each other, and they land
21 on time. I sort of just run -- I'm the traffic
22 controller. I'm not the technical expert in any of
23 these things.

24 Q. Right. So a traffic controller isn't a

1 pilot; is that what --

2 A. Correct.

3 Q. -- by extension that's your metaphor?

4 A. Yeah. Yeah.

5 Q. Great.

6 A. I hire -- I put the pilots in the area.

7 Q. Excellent.

8 And so just to close the loop on that,
9 you know, when you're reviewing, say, a
10 cross-section of KPRGs, that's not any sort of
11 analysis, right?

12 A. No.

13 Q. And then, as part of your directing
14 traffic, you said that you work with a team, right?

15 A. Absolutely.

16 Q. And a team at Midwest Generation as --
17 you know, as well as its consultants, right?

18 A. Absolutely.

19 Q. And I believe yesterday you said you
20 worked with -- you know, to get agreements on
21 decisions, right?

22 A. Yes.

23 Q. And that's -- you're basically looking
24 for a consensus; isn't that right?

1 A. Yes, it is.

2 I'm sorry, if I could expand?

3 Q. **By all means.**

4 A. So yesterday I was struggling with
5 defining my role, and that -- that's part of it --
6 or what I'm responsible for because we move with
7 consensus. Our -- our -- our mechanism is to gain
8 consensus among the people who are involved. So no
9 one person is really the decider in the way that we
10 work.

11 Q. **Thank you.**

12 **Yesterday you were also asked about the**
13 **CCAs, which are, you know, called the Compliance**
14 **Commitment Agreement; do you recall that testimony?**

15 A. Yes.

16 Q. **And when you joined Midwest Generation,**
17 **if I recall correctly, it was -- really you -- it**
18 **was, I think, the fall of 2014, but then you came**
19 **here in 2015; is that correct?**

20 A. That is correct.

21 Q. **And at that time you became familiar**
22 **with the CCAs, right?**

23 A. After 20- -- sometime in 2015, yes.

24 Q. **Yeah. But as we just discussed, your**

1 understanding of the CCAs was as a high level,
2 correct?

3 A. Oh, correct.

4 Q. Okay. And we're going to just show you
5 previously admitted Exhibits 630, 661, 637, and
6 651. And we have them here for everybody. Give us
7 a minute.

8 (Brief pause.)

9 MS. GALE: I'll note for the record
10 these were previously admitted in the first
11 phase of the hearing, and they're so marked.

12 HEARING OFFICER HALLORAN: Thank you.

13 BY MS. GALE:

14 Q. All right. Do you have those four in
15 front of you?

16 A. I do.

17 Q. Great.

18 And these are the signed compliance
19 statements for the four CCAs, correct?

20 A. Yes, they are.

21 Q. And these indicate that the terms in the
22 CCAs have been completed, correct?

23 A. Yes, they did.

24 Q. Okay. I think, actually, on the first

1 page it says "successfully completed."

2 A. It does on the second, too.

3 Q. Okay. Great.

4 And that -- you know, that includes
5 establishing the GMZs, if you recall correctly,
6 right?

7 A. Yes.

8 Q. Under the GMZs and under these CCAs,
9 Midwest Generation continues to conduct the CCA
10 sampling end of it, correct?

11 A. Yes.

12 Q. So -- and your understanding, when you
13 joined Midwest Generation, was that the CCAs were
14 successfully completed other than continuing the
15 CCA groundwater sampling pursuant to the GMZs,
16 right?

17 A. Correct.

18 Q. And -- and these CCAs, they're in
19 agreement with the Illinois EPA; isn't that right?

20 A. Yes, that is my understanding.

21 Q. And throughout your time with Midwest
22 Generation, Midwest -- or, excuse me, Illinois EPA
23 has never claimed that Midwest Generation has
24 broken those agreements, correct?

1 A. No -- or correct. Sorry. That was a --
2 correct.

3 Q. Let's do that again.

4 And throughout your time with Midwest
5 Generation, Illinois EPA has never claimed that
6 Midwest Gen has broken that agreement, correct?

7 A. Correct.

8 Q. Thank you.

9 Miss Shealey, yesterday you were shown
10 closure plans for impoundments from, for example,
11 2016; do you recall that?

12 A. Yes.

13 Q. And those closure plans, I mean, they
14 were maybe two pages, sometimes six pages, right?

15 A. Yes.

16 Q. Okay. And those were the preliminary
17 plans; isn't that true?

18 A. I believe so, yes.

19 Q. And, in fact, you've seen the closure
20 plans that have been submitted to the Agency as a
21 part of the permit applications under Part 845,
22 right?

23 A. Yes.

24 Q. And those are bigger, correct?

1 A. Yes.

2 Q. And, as time passed, from the
3 preparation of the preliminary closure plans,
4 Midwest Generation learned more; isn't that right?

5 A. Yes, it is.

6 Q. And -- and as part of that learning
7 process was communicating with regulators such as
8 U.S. EPA; isn't that correct?

9 A. That is correct.

10 Q. And part of the communication of the
11 U.S. EPA is understanding how they interpret, for
12 instance, Part 257, right?

13 A. Correct.

14 Q. And, similarly, as after Part 845 was
15 passed, there are additional communications with
16 Illinois EPA; isn't that correct?

17 A. Absolutely correct.

18 Q. And part of those communications is
19 understanding how they understand their rule
20 Part 485; isn't that correct?

21 A. Yes.

22 Q. And as Midwest Gen learns more about
23 how -- about its stations and how the two
24 regulators, Illinois EPA and U.S. EPA, interpret

1 their different rules, plans change, right?

2 A. Correct.

3 Q. Including the technical feasibility of
4 any of the preliminary closure plans; isn't that
5 right?

6 A. Yes, it is.

7 Q. And that includes the economic
8 reasonableness of any of the preliminary closure
9 plans, correct?

10 A. Correct.

11 Q. Okay. Yesterday, and I think today, as
12 well, you've mentioned a few times that Midwest
13 Generation requires a permit from Illinois EPA to
14 do work at the CCR surface impoundments, right?

15 A. Yes.

16 Q. And, actually, they would -- and
17 unrelated to Part 845, Midwest Generation, at
18 times, needs permits from Illinois EPA to do other
19 work, right?

20 A. Correct.

21 Q. Yeah. And by that it's a construction
22 permit, right?

23 A. Yes.

24 Q. And I believe you also mentioned your --

1 you know, Senate Bill 9; do you recall that
2 testimony?

3 A. Yes.

4 Q. And that bill, I think, is commonly
5 called the Coal Ash Protection Act; is that right?

6 A. Yes.

7 Q. And under that bill it added a new
8 requirement to require a permit for CCR surface
9 impoundments under the Illinois Environmental
10 Protection Act, right?

11 A. Yes.

12 Q. And time is hard, but, I think we can
13 remember, that bill was presented to the Illinois
14 General Assembly around the winter of 2019; is
15 that...

16 A. Actually, I specifically remember that
17 one, yeah.

18 Q. And around 2019 -- you know, 2018
19 Midwest Generation was considering closing some of
20 its surface impoundments under Part 257, right?

21 A. Yes.

22 Q. And it was working towards doing the
23 construction of those closures around 2018, right?

24 A. Yes.

1 Q. And at that time you consulted with --
2 excuse me. And "at that time," by that I mean,
3 winter of 2019, you consulted with Illinois EPA
4 about trying to close certain ponds under the
5 federal program, right?

6 A. Yes.

7 Q. And what did you learn from Illinois EPA
8 in that consulsion [sic]?

9 A. That they would consider it a violation
10 of the unsigned, at that point, Act because the Act
11 was very clear that you cannot close a surface
12 impoundment without a permit.

13 Q. Right. So...

14 A. So I feared that we would -- that the
15 Illinois EPA -- if we had attempted after -- and I
16 would say after January of '19 or in January of '19
17 and beyond, if we would have attempted to close any
18 CCR surface impoundment without Agency permission,
19 we -- the Agency would have found us in violation
20 of something. Of what, I don't know, but that was
21 what was communicated to me.

22 Q. Great. Changing topics a bit.

23 Yesterday with Miss -- excuse me.

24 Yesterday with Miss Wachspress you

1 discussed the plan for closing the Waukegan west
2 pond; do you recall that discussion?

3 A. Yes.

4 Q. And I'll -- and the -- I think the
5 discussion -- or if I recall correctly, the
6 discussion was related to closure by removal and
7 using the pond as a low volume wastewater pond; do
8 you remember that?

9 A. Yes. And my chart is helping me. Thank
10 you.

11 Q. And Miss Wachspress used a term of
12 "constructing" a low volume waste pond.

13 Would you agree with it that you're
14 constructing a low volume waste pond?

15 A. No.

16 Q. No. The plan is to reuse the liner,
17 right?

18 A. Yes.

19 Q. And that is the purpose of the petition
20 for adjusted standard?

21 A. Yes.

22 Q. Great.

23 Yesterday you were also asked about the
24 alternate closure demonstrations for Powerton; do

1 you recall that discussion?

2 A. Yes.

3 Q. And you were asked about the purposes of
4 the alternative closure demonstrations, right?

5 A. I believe so, yes.

6 Q. And I believe the term and the question
7 was asked was it was -- you were asked about the --
8 the purpose of the demonstrations were a delay,
9 Midwest Generation delaying compliance. Do you
10 remember hearing "delay"?

11 A. No. I would say that we are in
12 compliance. We have not delayed compliance. We
13 are in compliance with Part 257.

14 Q. Right. So you didn't hear her use the
15 term "delay"?

16 A. No.

17 Q. And, in fact, Midwest Generation's
18 policy is to comply with the law, for example, of
19 Part 257?

20 A. Fully.

21 Q. And but for the CCR and CCR surface
22 impoundments, for the past few years, the law has
23 not been consistent, right?

24 A. It has not, no.

1 Q. And now, there are, just this week, new
2 rules on the horizon; isn't that right?

3 A. That is correct.

4 Q. And I understand that we haven't had
5 time to look at them, what is your understanding of
6 those rules?

7 A. Those rules -- the proposed rules are
8 for legacy surface impoundments --

9 (Reporter interruption.)

10 BY THE WITNESS:

11 A. (Continuing) -- Legacy surface
12 impoundments. And I think they called them CCR
13 Management Units, CCRMU. Yes, that's what those
14 are for.

15 BY MS. GALE:

16 Q. And those are for areas outside a CCR
17 surface impoundment, correct?

18 A. Correct.

19 Q. Under -- and you've actually known about
20 the pendency, the likelihood, of those rules for a
21 while, right?

22 A. Yes. I would guess since -- I think it
23 was since '19 at least.

24 Q. 2019?

1 A. 2019. I'm sorry. It could have been
2 '18, though, so I -- I shouldn't have said.

3 **Q. 2018? 2019? Thereabouts?**

4 A. Yes.

5 MS. GALE: Nothing further.

6 HEARING OFFICER HALLORAN: Thank you,
7 Miss Gale.

8 Miss Wachspress, redirect.

9 MS. WACHSPRESS: If I could have just
10 a few moments to confer with co-counsel.

11 HEARING OFFICER HALLORAN: Sure. Off
12 the record.

13 (Brief pause.)

14 HEARING OFFICER HALLORAN: Lucy, we're
15 back on the record.

16 Miss Wachspress, your redirect.

17 REDIRECT EXAMINATION

18 BY MS. WACHSPRESS:

19 **Q. Miss Shealey, on cross-exam you**
20 **mentioned an Army Corps study; is that correct?**

21 A. I'm not sure if it's a study. I
22 mentioned testing done by the Army Corps.

23 **Q. And how did you come to learn about that**
24 **testing?**

1 A. The Army Corps is interested in
2 purchasing the land that is -- well, not the Corps,
3 I'm sorry.

4 IDNR, as the Corps' local partner, is
5 interested in purchasing land that is within or all
6 of the northeast area at Joliet 29 station as part
7 of the construction of the fish barrier that they
8 will install at Brandon Road lock.

9 **Q. And how did that fact come to you**
10 **learning about the study?**

11 A. How did I learn --

12 **Q. I asked how you came to learn about it,**
13 **and you -- and you told me why they were conducting**
14 **the study. I'm interested in how you came to find**
15 **out about the Army Corps sampling.**

16 A. IDNR told me.

17 **Q. And when did IDNR tell you?**

18 A. I believe it was this month. It could
19 have been in April.

20 **Q. And so you've never spoken directly to**
21 **the Army Corps, correct?**

22 A. I have spoken to the Army Corps many
23 times. This is -- this has been going on forever,
24 as far as my little memory goes.

1 Q. So I'm -- I'm just trying to figure out
2 your testimony.

3 I asked when -- how you came to learn
4 about the testing by the Army Corps, correct?

5 A. That is what you asked me.

6 Q. And you said you came to learn about it
7 through the IDNR's plan to purchase a certain area
8 near Joliet 29, correct?

9 A. The IDNR's desire to purchase or own
10 area -- land at Joliet 29 that we currently own.

11 Q. And I asked you when you had spoken to
12 IDNR about that.

13 A. I said within the past month, I believe.

14 Q. Okay. And so then I asked if you had
15 ever spoken to the Army Corps directly?

16 A. "Ever" is a very long time. I've spoken
17 to the Army Corps many, many times.

18 Q. About...

19 A. You didn't ask that.

20 Q. You got me.

21 Have you ever spoken to the Army Corps
22 directly about this sampling?

23 A. About that sampling, no. I was not
24 aware of that sampling until, like I said, a month

1 ago.

2 The Corps -- I didn't -- I knew that the
3 Corps was doing sampling in the waterway. I did
4 not -- but -- and my recollection it was around the
5 floodplain, so I don't -- I didn't really know what
6 they were sampling.

7 If you look at a map at Joliet 29,
8 there's, I believe -- I believe it's a peninsula.
9 It could be an island in the Des Plaines -- between
10 the shores that is, I believe, in the floodplain.
11 And they -- the Corps was trying to change a
12 floodplain map or something of that sort. It's
13 beyond my specific knowledge. I didn't
14 specifically care.

15 But we own -- under Illinois law we own
16 at least part of the riverbed, so they contacted us
17 for that reason, I believe.

18 **Q. Okay. And during the cross-examination,**
19 **you testified that you had been told by the Army**
20 **Corps certain information about the findings of**
21 **that study -- or of the sampling, correct?**

22 A. No. That's not what I said.

23 **Q. Do you -- you testified that the Army**
24 **Corps of Engineers hypothesized that dredging from**

1 **the river or river spoils were responsible for**
2 **something?**

3 A. Which is independent --

4 MS. WACHSPRESS: Objection --

5 BY THE WITNESS:

6 A. -- of that sampling.

7 MS. GALE: It mischaracterizes --

8 (Reporter interruption.)

9 HEARING OFFICER HALLORAN: Okay.

10 Let's -- we can't talk over each other.

11 Miss Wachspress, you want to ask the
12 question again? Should I have Lucy read it
13 back? We have to slow down and speak up.

14 Do you want Lucy to read your
15 question back before Miss Gale objected?

16 MS. WACHSPRESS: If you would, please.

17 HEARING OFFICER HALLORAN: Thank you.

18 (Record read as requested.)

19 MS. GALE: Objection; mischaracterizes
20 testimony. She did not testify that Army
21 Corps said anything about responsibility, two
22 separate issues.

23 HEARING OFFICER HALLORAN: I don't
24 remember that at all, so sustained.

1 BY MS. WACHSPRESS:

2 Q. You testified about river spoils in the
3 area around Joliet 29, correct?

4 A. Every river has river spoils; but, yes,
5 I specifically spoke to the -- Des Plaines around
6 Joliet 29.

7 Q. Do you recall that testimony?

8 A. Yeah.

9 Q. What was it?

10 A. Oh, ver- -- verbatim? I don't know.
11 You would have to read the transcript.

12 What are you asking me? I'm -- I'm
13 unclear.

14 Q. Generally, what is your understanding of
15 what the Army Corps believes about river spoils in
16 the area around Joliet 29?

17 A. That spoils were placed in the northeast
18 area throughout the history of the world. I mean,
19 over course [sic] of a long period of time.

20 Q. And how did you come to learn that fact
21 from the Army Corps?

22 A. They told it to me. As I mentioned,
23 I -- my -- I don't know when the first time I
24 talked to the Corps was, but they have been talking

1 with us. And it's -- it's a public project. It's
2 congressionally funded. GL- -- GLMRIS. Great
3 Lakes -- G-L-R-M-I-S [sic]. I cannot tell you
4 exactly what that stands for, Great Lakes
5 something, but it is the project to stop -- to stop
6 invasive species from entering the Great Lakes.
7 And Illinois and at least Wisconsin are partners in
8 that project.

9 Q. Okay.

10 A. The Corps owns it, though, and they have
11 congressional funding to complete it.

12 Q. Okay. I'd like to move on to a
13 different area.

14 You were asked about the applications
15 for alternate closure demonstrations -- for the
16 alternate closure demonstration applications,
17 correct?

18 A. I wouldn't characterize those as
19 applications at that point. I -- I think they were
20 demonstrations, but, yes.

21 Q. Okay. And those closure demonstrations
22 were with respect to an April 11, 2021 deadline,
23 correct?

24 A. For closure of impoundments, yes. So

1 CCR surface impoundments, yes.

2 **Q. Was the deadline to close the**
3 **impoundments April 11, 2021?**

4 A. I believe it was cease placement by --
5 I'm not to sure if it was cease placement or
6 closure. It was one of the two. I believe it was
7 cease placement.

8 **Q. Okay. So Midwest Generation was not**
9 **under an obligation, under Part 257, to complete**
10 **closure at any of those locations by April 11th,**
11 **2021?**

12 A. At any of what locations?

13 **Q. For which it submitted an alternate**
14 **closing demonstration?**

15 A. I -- again, I would have to read the
16 regs. I believe that April 11, 2021 deadline is
17 for cease placement of both water and ash into
18 those impoundment -- or any materials, any waste,
19 into those impoundments.

20 **Q. And Midwest Generation did not apply for**
21 **that alternate closure deadline for every pond that**
22 **was currently operating at that point, correct?**

23 A. No. The -- the rules require -- and,
24 again, we are going to comply. That is our full

1 intent to be in compliance with the laws.

2 The rules say -- and I am paraphrasing
3 greatly -- that you should only apply for that when
4 you don't have excessive cap- -- excess capacity,
5 when you cannot put that ash anywhere else or that
6 water, that waste stream.

7 We don't need every pond at Powerton
8 continuously, for example. Powerton operates the
9 bypass basin and the ash surge basin at different
10 times. I don't want to use the wrong word.

11 For example, right now the bypass basin
12 has been removed from service back to that
13 April 11th, 2021 deadline. We met that deadline,
14 so it was it wasn't complete closure. It was
15 definitely to cease placement.

16 (Reporter interruption.)

17 BY THE WITNESS:

18 A. It was not to complete closure. It was
19 definitely to cease placement. We met that
20 deadline for the bypass basin. The ash surge
21 basin, though, is still operating today because we
22 don't have yet -- we have not yet built a compliant
23 liner system pond. We are waiting a permit from
24 the Agency to do so.

1 MS. WACHSPRESS: Okay. Your Honor, at
2 this time -- I know you took it on offer of
3 proof. I would like to move again to have
4 Exhibit 1405 entered into the record.

5 On cross there were several
6 questions about what the current status of
7 the bypass basin is, claims about what is and
8 is not outdated. And the witness has
9 testified that they are waiting on approval
10 on this very application before they can
11 continue with the federal compliance, to move
12 forward on that. And so I think this
13 document, 1405, is directly relevant to this
14 proceeding and should be admitted in its
15 entirety. And, of course, it would aid the
16 Board pursuant to 626.

17 HEARING OFFICER HALLORAN: Miss Gale?

18 MS. GALE: I -- I don't even know what
19 1405 -- what's --

20 MS. WACHSPRESS: It's the Powerton
21 application.

22 MS. GALE: I -- you know, the
23 objection -- the objection still stands.
24 Just because it was brought up on cross to

1 explain questions that were asked in the
2 offer of proof doesn't mean it becomes even
3 more relevant. It's meant to simply clarify
4 what was explained in the offer of proof.

5 And, similar, again, the issue here
6 is their complaint under 12A and 21B and
7 groundwater regulations, not any sort of
8 compliance with 845. How Part 845 is only
9 relevant is that it exists.

10 So -- but we don't -- we don't need
11 to clutter the Board's record with voluminous
12 documents related to permit applications that
13 were submitted to Illinois EPA and are under
14 their review.

15 HEARING OFFICER HALLORAN: Anything
16 further before I decide?

17 MS. WACHSPRESS: Yes. Your Honor,
18 I'll just -- I'll just say, again, that the
19 pre-hearing memo filed by Midwest Generation
20 made enormous -- made much of the fact that
21 compliance with Part 845 and 257 were
22 sufficient.

23 And so I think it is absolutely
24 relevant for the Board's decision to assess

1 what that compliance looks like and the
2 details of compliance in crafting a remedy.

3 HEARING OFFICER HALLORAN: Okay. I
4 appreciate it. That's enough, please. Thank
5 you.

6 Yeah, I'm gonna stand by my ruling.
7 You know, if -- if the Board feels like it's
8 cluttering their -- their -- whatever --
9 information they look at, or if they find it
10 relevant, and they'd like to take a look at
11 it, they can do so.

12 Again, it's not the first time I've
13 been overruled. So I am gonna keep it as an
14 offer of proof in -- in the Board notes from
15 me being on record and, Counsel, your
16 position, so denied. Thank you.

17 MS. WACHSPRESS: Thank you, your
18 Honor.

19 I have nothing further.

20 HEARING OFFICER HALLORAN: All right.
21 So do you rest then, your case in chief?

22 MS. WACHSPRESS: I -- I think we do.
23 We rest our case in chief, your Honor.

24 HEARING OFFICER HALLORAN: All right.

1 Thank you.

2 Let's go off the record.

3 (Short recess.)

4 HEARING OFFICER HALLORAN: All right.

5 We're on the record.

6 The complainants have finished with
7 their case in chief.

8 Now it's Midwest, and we have
9 Miss Gale. You may proceed.

10 MS. GALE: Thank you.

11 RESPONDENT'S EVIDENCE

12 BY MS. GALE:

13 Q. Good morning, Mr. Gnat.

14 A. Good morning.

15 Q. This would be your fourth time
16 testifying in this matter; isn't that right?

17 HEARING OFFICER HALLORAN: You know,
18 Miss Gale, I'm sorry, I should -- I should
19 have Mr. Gnat raise his hand and get sworn in
20 again. Third time.

21 (Witness sworn.)

22 HEARING OFFICER HALLORAN: You may
23 proceed.

24 RICHARD GNAT,

1 called as a witness, having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MS. GALE:

5 Q. Yes, the fourth time testifying in this
6 matter; isn't that right?

7 A. Yes.

8 Q. All right. And in 2017 and 2018 you
9 testified about your occupational profession, but,
10 to catch everything up, what degrees do you hold?

11 A. I have a bachelor's degree in earth
12 sciences from Northeastern Illinois University; a
13 master's degree in geosciences [sic] from
14 University of Illinois at Chicago; and I had
15 follow-up post-graduate work in hydrogeology at
16 Eastern Michigan University.

17 Q. And you're a professional geologist?

18 A. Yes, I am. In Illi- --

19 Q. With which states?

20 A. In Illinois and Wisconsin active; and
21 then inactive certifications in Arkansas and
22 Minnesota.

23 Q. What does "inactive certification" mean?

24 A. It means that I haven't re-upped the --

1 the fee to maintain the license for active practice
2 and that we haven't been doing a lot of work in
3 those states. And so rather than paying the fees
4 and not using my -- my certification in those
5 states, I've gone inactive.

6 If we do need to do a project in that
7 state that requires the certification, then I just
8 basically re-up my fees and reactivate my license.

9 **Q. And, Mr. Gnat, who do you work for?**

10 A. KPRG & Associates.

11 **Q. How long have you been with KPRG?**

12 A. Since January of 2002. 21 years.

13 **Q. I'm sorry?**

14 A. 21 years.

15 **Q. And what is your position?**

16 A. Principal and part owner of the company.

17 **Q. And as principal and part owner, what do**
18 **you do for KPRG?**

19 A. I run the Wisconsin operations, and I am
20 involved with, obviously, generating work -- or for
21 bringing clients into the firm and -- and servicing
22 the clients with respect to assisting them in their
23 environmental issues.

24 Our company focuses on sur- -- on

1 subsurface soil and groundwater issues, primarily.
2 That's our forte. We do -- do other environmental
3 work. We also have an asbestos group in our
4 company at this point as well. But in terms of my
5 practice, that's -- that's where my expertise lies.

6 **Q. And you can -- in 2017 and 2018 you**
7 **testified that you did work for Midwest Gen? Do**
8 **you recall that testimony?**

9 A. Yes.

10 **Q. And do you continue to do work for**
11 **Midwest Gen at its power stations?**

12 A. Yes, I do.

13 **Q. Which power stations?**

14 A. I currently do work at the Waukegan
15 station, the Joliet station, the Will County
16 station, and the Powerton station.

17 My company also does work at a couple of
18 other of their facilities.

19 **Q. And the four stations you've just**
20 **identified are the ones that are the subject in**
21 **this matter, correct?**

22 A. Correct.

23 **Q. All right. Let's start with Joliet 29.**
24 **Your firm continues to collect**

1 groundwater samples from Joliet 29, correct?

2 A. Yes, we do.

3 Q. And so you're familiar with the
4 locations of the monitoring wells?

5 A. Yes, I am.

6 Q. Can you pull out Exhibit 1303.

7 MS. GALE: And, Drew, if you could put
8 figure --

9 (Reporter interruption.)

10 MS. GALE: Exhibit 1302.

11 The figure of the monitoring wells.

12 BY MS. GALE:

13 Q. So, Mr. Gnat, you have in front of you
14 Exhibit No. 1303. What is that exhibit?

15 A. This is a groundwater contour map for --

16 Q. I'm sorry. I'm gonna cut you off. I
17 want you to start -- backup.

18 What -- go to the first page of the
19 exhibit.

20 What -- what -- what exhibit are we --
21 let me just, so everybody -- really to understand
22 where we're at, what are we looking at? What
23 exhibit is this?

24 A. This is the CCA Annual and Quarterly

1 Groundwater Monitoring Report for the Joliet No. 29
2 generating station dated January 20th, 2022.

3 **Q. Great. And then, yes, please flip to**
4 **Figure 2.**

5 A. Okay.

6 **Q. What is this figure?**

7 A. This is a groundwater contour map for
8 water levels obtained in November of 2021 for the
9 Joliet 29 generating station.

10 **Q. And what is the direction of the**
11 **groundwater flow?**

12 A. Groundwater flow is in a southerly
13 direction towards the intake channel.

14 **Q. And in 2018 you testified about the**
15 **groundwater flow -- excuse me.**

16 **In 2018 you testified about the**
17 **groundwater flow at the Joliet 29 station; do you**
18 **recall that testimony?**

19 A. Yes, I do.

20 **Q. In reviewing this groundwater map, has**
21 **there been any changes -- substantial changes in**
22 **the groundwater flow at Joliet 29 since 2018?**

23 A. This -- this appears a pretty routine
24 map. The groundwater flow is very similar from

1 quarter to quarter.

2 Q. So we covered this in the first hearing,
3 but I just want to refresh everyone's collective
4 memory.

5 When did Midwest Generation start
6 groundwater sampling in -- at the Joliet 29
7 station?

8 A. I believe the very first quarterly
9 sampling of -- I believe was done in the fourth
10 quarter of 2010 by Patrick Engineering.

11 Q. And that quarterly sampling, what were
12 the samples analyzed for?

13 A. It was a list of parameters that was
14 agreed upon by Midwest Generation and Illinois EPA
15 at the time. And I believe it might be the same
16 set of parameters that we're currently analyzing
17 for under the CCA program.

18 Q. And those parameters are metals, right?

19 A. Correct, dissolved metals.

20 Q. Dissolved metals.

21 And when you say "dissolved metals,"
22 what does that mean?

23 A. That the sample -- the groundwater
24 sample is field filtered prior to placing it in the

1 sample bottle from the lab 'cause that bottle
2 contains acid. So prior to preservation it gets
3 field sampled -- or, I'm sorry, field filtered.

4 Q. And that field filtered dissolved
5 samples, that's what we typically call the CCA
6 sampling, right?

7 A. Correct.

8 Q. And then in 2015 the federal CCR surface
9 impoundment rules were passed; do you recall that?

10 A. Yes.

11 Q. And what kind of sampling do they
12 require?

13 A. Under the federal rule there's a
14 slightly different set of parameters. There's some
15 overlap, but the main difference is they require
16 sampling for total metals, which does not allow for
17 field filtering of the water samples.

18 Q. And then in 2021 the Illinois CC- --
19 excuse me.

20 And in Illinois 2021 the CCR rule was
21 passed, right?

22 A. Correct.

23 Q. And what kind of sampling does the
24 Illinois CCR rule require?

1 A. The CC- -- the Illinois CCR rule
2 basically has the same set of parameters as the
3 federal rule, with the addition of field
4 measurement of turbidity. And the requirement is
5 also for total metals, so there's no field
6 filtering of those samples. And the frequency of
7 sampling, under the federal program, they allow you
8 to be at semiannual. Under the state program, it's
9 quarterly.

10 **Q. And we just -- you've touched upon this**
11 **before, and we discussed this at the first hearing.**

12 **At Joliet 29 -- excuse me.**

13 **At Joliet 29 what, if any, difference is**
14 **there between the two types of analysis, the CCA**
15 **sampling and the federal or -- and state sam- --**
16 **CCR sampling?**

17 A. In terms of the analytical results, it
18 was somewhat determined and agreed upon, by -- by
19 the various parties, in the previous sets of
20 hearings, that even though those -- those values
21 could be slightly different, for the most part,
22 they were pretty close to similar, not identical
23 but -- but pretty close.

24 And there are other cases or other sites

1 that I've seen where there's substantial
2 differences between totals and dissolved on -- on
3 the metals analyses, however, for -- for the
4 case -- for our cases here, for -- for these four
5 sites, those values seem to be pretty close, so
6 very -- very similar, not identical.

7 Q. And I think you got there, but let's
8 just clarify.

9 My question was just related to Joliet
10 29, but I think you just said -- well, I guess I'll
11 ask the question: Does that analysis that there's
12 very little difference apply to Powerton --
13 Powerton station groundwater results?

14 A. Yes, it does.

15 Q. And does that analysis related to the
16 difference also apply to the Waukegan groundwater
17 results?

18 A. Yes, it does.

19 Q. And, final question, does the analysis
20 that you just discussed that there's very little
21 difference between the total metals and the
22 dissolved metals apply to the Will County results?

23 A. Yes, it does.

24 Q. And so looking at your map, you see

1 **there's Pond 1 and Pond 3?**

2 A. Yes, I do.

3 **Q. What kind of sampling is conducted at**
4 **the wells around Pond 1 and Pond 3?**

5 A. The monitoring wells in -- in the
6 vicinity of those ponds are part of the overall CCA
7 groundwater monitoring network.

8 **Q. And so that sampling is the dissolved**
9 **metals, right?**

10 A. Correct.

11 **Q. And that means it's field filtered?**

12 A. Yes.

13 **Q. And Pond 2 in the middle, that's a CCR**
14 **service impoundment, right?**

15 A. That is currently a CCR surface
16 impoundment, correct.

17 **Q. So what kind of sampling is conducted in**
18 **the monitoring wells around Pond 2?**

19 A. The monitoring wells around Pond 2 that
20 we sample, under the CRR program, both federal and
21 state, include wells MW-10 and then 3, 4, and 5.
22 And those are sampled for total metals, so it's
23 not -- the sample is not field filtered.

24 **Q. And then Pond 2 -- I'm sorry. Did you**

1 **also say they're sampled for CCA as well?**

2 A. Yes, that's also sampled for CCA. So
3 that would -- the CCA samples from those wells
4 collected, at the same time, basically is field
5 filtered for dissolved metals.

6 Q. **And I just want to break this down.**

7 **So when KPRG samples a groundwater well**
8 **for C- -- for the CCA and the CCR, let's say, for**
9 **example, at Pond 2, when the technician is out**
10 **there, how does that process work?**

11 A. The technician opens the well head,
12 inspects the well for its integrity, takes a -- a
13 starting water level, and then initiates -- we have
14 dedicated bladder pumps down each of these wells so
15 we minimize potential -- any cross-contamination
16 type issues. So he starts to purge the well.

17 We do low-flow sampling. And once the
18 field parameters suggest that we're at -- at
19 relatively static conditions suggesting that we've
20 got representative water flowing into the well, he
21 starts to fill sample bottles.

22 In this case, we fill the sample bottles
23 for the state and federal CCR sampling as non- --
24 as un- -- unfiltered, so there's no filtering

1 mechanism between the water coming out of the well
2 and the jar that it goes into.

3 And then, when we collect samples for
4 the CCA, which would be right at the same time --
5 it's just filling one sample bottle after the next,
6 so to speak, however, when the shift comes over
7 to -- to start collecting samples for the CCA, the
8 field filter is put in place, and the water is run
9 through the filter before it's placed into the jar.
10 But the sampling occurs right at the same time.

11 Q. Great.

12 And I think we just heard you say -- you
13 said an example for a -- a monitoring well around
14 Pond 2 is --

15 (Reporter interruption.)

16 MS. GALE: I'm sorry.

17 BY MS. GALE:

18 Q. I think I heard you say -- thank you for
19 the description, but I think I heard you describe
20 the wells around Pond 2, one of them being
21 monitoring well 9; is that correct?

22 A. No. If I did, I was incorrect. I said
23 upgradient well -- monitoring well 10 and then
24 wells 3, 4 and 5.

1 **Q. And then, just to clarify, when the**
2 **technician does the sampling for the CCA and CCRs,**
3 **temporally -- when is that temporally? How close**
4 **in time is that?**

5 A. You know, it depends on the well and how
6 the well produces water. The wells that need to
7 recover between -- you know, filling sample bottles
8 will take a little bit longer. And other wells
9 produce water very well, and it will take shorter.
10 So, you know, I'd say anywhere from, you know,
11 30 minutes to a couple hours of sampling.

12 On some wells that go dry, and you have
13 to come back and wait till enough recovers and --
14 and try and extract that water. That process might
15 take a day or two.

16 **Q. But, typically, it's the same day,**
17 **right?**

18 A. Oh, absolutely.

19 **Q. And once the samples are collected, what**
20 **happens to those samples?**

21 A. Samples are preserved in a sam- -- or
22 placed the sample bottles that are provided from
23 the lab, which include preservatives, as needed,
24 and placed on ice. And the chain of custodies are

1 completed, and the samples are delivered to the lab
2 either in person or via courier to log into the lab
3 for analysis.

4 Q. And how often is this sampling done?

5 A. At this point on a quarterly basis.

6 Q. And by "quarterly" you mean four times a
7 year?

8 A. Correct.

9 Q. And is this CCA sampling and CRR
10 sampling also conducted at the other three stations
11 that are subject to this case?

12 A. Yes, it is, with the caveat on -- on
13 Waukegan, which has a slightly altered...

14 Q. Forgive me. I'll rephrase.

15 So is the CCA sampling and CCR sampling
16 also conducted at Will County?

17 A. Yes, it is.

18 Q. And is CCA sampling and CCR sampling
19 also conducted at Powerton?

20 A. Yes.

21 Q. And then at Waukegan what happens?

22 A. At Waukegan there was a -- with the
23 federal CCR rule coming in, it was -- a
24 determination was made that they needed to modify

1 their -- I believe it was their east side
2 embankment and so that the -- in order to do so --
3 in order to do that modification, the station had
4 to apply for a construction permit from Illinois
5 EPA.

6 And within that construction permit,
7 another sampling -- groundwater sampling
8 requirement was issued, which included total
9 parameters as opposed to dissolved.

10 And at that point the IEPA had indicated
11 that we -- for Waukegan station we could stop doing
12 the dissolved sampling under CCA and that if we met
13 the terms of that permit, that that would, for
14 them, suffice for meeting the CCA requirement on
15 that -- on that site.

16 **Q. And then the lab runs the sampling**
17 **analysis. They get the results. Where do the**
18 **results go to?**

19 A. KPRG gets a copy of the results. We
20 tabulate the results. And then, in accordance with
21 the CCA agreement, a quarterly report is provided
22 to Illinois EPA within 30 days after the quarter
23 that includes a summary of the data as well as the
24 groundwater elevations and a groundwater flow map.

1 **Q. And that is true for the Joliet 29**
2 **station?**

3 A. Yes, it is.

4 **Q. And the Powerton station?**

5 A. Yes, it is.

6 **Q. And the Will County station?**

7 A. Yes, it is.

8 **Q. And then the permit sampling is also**
9 **collected, right?**

10 A. Yeah.

11 **Q. At the Waukegan station, excuse me.**

12 A. At the Waukegan station, yes.

13 **Q. And where do those results go to?**

14 A. The same. It goes to -- under the CCA,
15 we sent copies through to -- through Miss Andrea
16 Rhodes at Illinois EPA.

17 And then at -- at Waukegan station those
18 results get submitted to not only Andrea Rhodes but
19 also to the permitting folks within -- within
20 Illinois EPA. So at that point they're getting, I
21 believe, three or four copies, basically, ending up
22 in the same group at Illinois EPA.

23 **Q. After looking at Joliet 29, as part of**
24 **the CCA agreement, what did you assist in**

1 **establishing at Joliet 29?**

2 A. As part of the CCA agreement, KPRG
3 assisted Midwest Generation with establishing or --
4 or submitting and presenting the groundwater
5 management zone and the -- I don't remember if
6 there was an environmental land use control at
7 Joliet 29 or not.

8 **Q. For the groundwater management zone?**

9 A. Yes.

10 **Q. Which is commonly called a GMZ, right?**

11 A. Correct.

12 **Q. Is the GMZ still in effect?**

13 A. As far as I understand, yes.

14 **Q. And as far as you understand, Illinois**
15 **EPA has never revoked the GMZ, correct?**

16 A. That is my understanding.

17 **Q. And as far as you understand, Illinois**
18 **EPA hasn't had a problem with the GMZ, correct?**

19 MS. BUGEL: Objection to all the
20 leading questions.

21 HEARING OFFICER HALLORAN: Sustained.

22 MS. GALE: I'll rephrase.

23 HEARING OFFICER HALLORAN: Rephrase.

24

1 BY MS. GALE:

2 Q. As far as you understand, has Illinois
3 EPA ever contacted you about the GMZs?

4 A. Since -- since signing of the CCA and
5 establishment of the GMZs?

6 Q. Yes.

7 A. No. No, they have not. I've never been
8 provided any indication of anything with the GMZs
9 or any noncompliance issues with the CCA rule --
10 or, I'm sorry, with the CCA agreement.

11 Q. I want to now talk about Ponds 1 and 3,
12 and if you could pull out Exhibit 1409.

13 A. All right.

14 Q. Just for the record, what is
15 Exhibit 1409?

16 A. Exhibit 1409 is a notice of filing in
17 the matter of petition of Midwest Generation for an
18 adjusted standard from 845.740(a) and finding of
19 incapability of Part 485 Joliet 29 station.

20 Q. Okay. And I want you to turn to Bates
21 number -- and it's pretty far back. So you're
22 gonna go probably nine-tenths of the way down,
23 119367, which would be Exhibit 19 of the petition.

24 MS. GALE: Mr. Hearing Officer, can we

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go off the record for a minute.

HEARING OFFICER HALLORAN: Yes.

(Discussion held off the record.)

HEARING OFFICER HALLORAN: All right.

Back on the record. The parties have agreed we're gonna take a lunch until approximately 1:10 p.m.

(Whereupon, the hearing in the above-entitled cause was recessed to 1:10 p.m. this date.)

1 A F T E R N O O N S E S S I O N

2 HEARING OFFICER HALLORAN: All right.
3 It's about 1:15. We're back on the record.
4 We may only go till 2:00 p.m. today, and
5 that's due to potential outside activity in
6 the Loop. But it's been agreed that this
7 hearing will close no later than 2:00 p.m.

8 Miss Gale, you may proceed with
9 Mr. Gnat direct.

10 MS. GALE: Thank you.

11 We need those binders. Sorry. Can
12 we get the binders out?

13 DIRECT EXAMINATION (Resumed)

14 BY MS. GALE:

15 Q. **Mr. Gnat, you have a binder in front of**
16 **you?**

17 A. Yes, I do.

18 Q. **On the cover it should say: Gnat 2023**
19 **Client Book 1?**

20 A. Yes.

21 Q. **And just to orient everyone, can you**
22 **flip to the first tab, please. And the first tab**
23 **is -- just to orient everyone is an excerpt from**
24 **the exhibit we just looked at, Exhibit 1303 -- or**

1 at least it -- the first tab looks to be an excerpt
2 from this 1303, right?

3 A. Yes, it is.

4 Q. And we discussed that before, so we can
5 just move on.

6 Flip to the next tab. And it might be
7 easier for you to flip to -- three pages in to
8 describe what this is -- oh, sorry, to identify --
9 for purposes of identification, the exhibit number
10 is 1501.

11 (Respondent's Exhibit No. 1501 was
12 introduced.)

13 BY MS. GALE:

14 Q. What is this?

15 A. I'm looking for a title here. It says:
16 Before the Illinois Pollution Control Board, entry
17 of appearance of Susan M. Franzetti?

18 Q. I'm sorry. The one, two, three -- three
19 pages -- one more.

20 A. Okay. It's before the Illinois
21 Pollution Control Board. This is Midwest
22 Generation LLC's petition for an adjusted standard
23 and a finding of inapplicability for the Joliet 29
24 station.

1 **Q.** And for the purposes of the record, the
2 document starts at MWG13-15 underscore 119367.

3 I'm gonna back up a bit. Actually,
4 that's not true.

5 So I want you to turn to -- let's turn
6 to Exhibits 19 and 20 of the petition, which start
7 at 120498. And it's way in the back.

8 MS. GALE: For everybody here, truly,
9 it should look like this (indicating).

10 BY THE WITNESS:

11 A. Did you say 498?

12 BY MS. GALE:

13 **Q.** Yes. 120498.

14 A. 120498. Yes.

15 **Q.** Okay. Do you see at 498 it says
16 **Exhibit 19?**

17 A. Yes, it does.

18 **Q.** And what is Exhibit 19?

19 A. This is a memorandum from Josh
20 Davenport, PE, KPRG & Associates, dated
21 November 19th, 2020, subject being evaluation of
22 sediment quantities in Joliet generating stations
23 Pond 1 and 3 and Powerton generating station's
24 service water basin.

1 **Q. Okay. So, Mr. Gnat, what happened here**
2 **in this document?**

3 A. My understanding is these three
4 particular ponds, Pond --

5 MS. BUGEL: Hearing Officer, if I may
6 interrupt and object to this line of
7 testimony. This is written from Joshua
8 Davenport. And Mr. Gnat made it clear a
9 couple days ago in testimony that when
10 something was written by someone other than
11 himself at KPRG, he wasn't able to testify to
12 it. So I'm just gonna put in an objection
13 that this memo is not admissible through this
14 witness.

15 HEARING OFFICER HALLORAN: Okay.

16 Miss Gale?

17 MS. GALE: Mr. Hearing Officer, I
18 could certainly lay the foundation that he's
19 reviewed this document as part of his working
20 with KPRG.

21 HEARING OFFICER HALLORAN: You may do
22 so. Lay a little foundation.

23 MS. GALE: Yep.

24 HEARING OFFICER HALLORAN: Thank you.

1 BY MS. GALE:

2 Q. Mr. Gnat, have you reviewed this
3 document before?

4 A. Yes, I have.

5 Q. And you reviewed it as part of your work
6 for KPRG?

7 A. Yes, I have.

8 Q. And did you consult with Joshua
9 Davenport when he was doing this -- this work?

10 A. Yes, we did discuss the project.

11 Q. All right. So, Mr. Gnat, again,
12 Exhibit 19, which is at 120499, what was this
13 project?

14 A. These three particular ash ponds or
15 ponds, Ponds 1, Pond 3 at -- and Pond 3 at Joliet
16 29 station and service water basin at Powerton
17 generating station, those were ponds that were
18 being considered for -- for being included under
19 these [sic] state rule and even under the federal
20 rule, I believe.

21 But it -- it was believed that these
22 ponds were not -- or did not fit the requirements
23 of being considered under those rules, and so there
24 was a sampling program that was done. There was a

1 bathymetric study done on these ponds --

2 (Reporter interruption.)

3 THE WITNESS: Bathymetric,

4 b-a-t-h-y-m-e-t-r-i-c.

5 BY MS. GALE:

6 **Q. And I'm gonna stop you right there.**

7 A. Mm-hmm.

8 **Q. What is a bathymetric study?**

9 A. A bathymetric study is a study that uses
10 really sonar to identify the elevation of the top
11 of the sediment in -- in the pond. And knowing
12 that elevation, and knowing, based on construction
13 documents, the base of the pond, you get an
14 estimate of what the sediment thickness that's
15 accumulating in that pond.

16 And so there was a bathymetric study
17 done for those ponds. And then -- into to the
18 areas where there was actually slightly more
19 sediment that might be accumulating, not much
20 sediment was -- was found, but slightly more
21 sediment accumulating, those areas were then
22 sampled for grain-size type analysis to get an idea
23 of -- of what the nature of this material is.

24 **Q. Okay. And I'm gonna flip through to the**

1 Page 120501. I'm gonna direct your attention to
2 Joliet Pond 1 heading.

3 A. Yes.

4 Q. Excuse me. And I believe you said the
5 material -- the bathymetric study evaluated a
6 volume of material at the base of the pond. And
7 then you said where there was material there, so
8 what was the result of the bathymetric study?

9 A. I believe that's up here in -- in the
10 first paragraph.

11 It was estimated to be approximately --
12 the total quantity of material at the base of the
13 pond was calculated to be approximately 5,124 cubic
14 yards.

15 Q. And didn't it show an average depth of
16 1.5 feet?

17 A. Yes, up -- further up in that paragraph,
18 the aver- -- average depth of -- of the material is
19 about 1.5 feet, correct.

20 Q. And then could you turn to the next
21 page, which is 120502.

22 A. Yes.

23 Q. The top heading: Grain size comparison
24 of the material in Pond 1, so it says they compared

1 **the grain size.**

2 **What did they compare the grain size to?**

3 A. The grain size was -- was compared
4 against, excuse me, that of -- of what would be
5 considered ash.

6 **Q. Okay. And they -- they compared it to**
7 **the ash from where?**

8 A. From pond -- from Joliet station 29.

9 **Q. And what did the -- so looking at the**
10 **bottom of that paragraph, last sentence, what did**
11 **the -- what was the conclusion of the comparison?**

12 A. The difference in the des- -- in the
13 description of the material, and in the coarse --
14 in the coarse and medium-sized -- medium sand size
15 particles between Joliet 29 CCR and the Pond 1
16 material indicates that the composition of the
17 material in Pond 1 is not CCR material.

18 **Q. Right. Okay. And, then, continuing on**
19 **the same page for Joliet Pond 3, they also did a**
20 **bathymetric survey of the Pond 3, correct?**

21 A. Correct.

22 **Q. And what was the depth of material for**
23 **that bathymetric survey?**

24 A. That was estimated to be at an average

1 depth of about 2.4 feet.

2 Q. Oh. And then in the next paragraph
3 there's a description of the material that was
4 found in Pond 3. What was the material like?

5 A. The description here is: The material
6 sampled in Pond 3 was black in color, was
7 sticky/pasty in consistency, and had a silty clay
8 feeling that when rubbed -- when rubbed between
9 your fingers.

10 Q. What was its smell?

11 A. The material stuck to the gloves and the
12 sampler during the process. The material had a
13 sewer odor.

14 Q. Okay. And then flipping to the next
15 page, under the grain-size comparison -- excuse me,
16 grain-size comparison of material in Pond 3 -- do
17 you see that on the next page?

18 A. Yes.

19 Q. And so what did they compare the
20 material at the bass of Pond 3 to?

21 A. To Joliet 29 CCR.

22 Q. Okay. So let's go to the next paragraph
23 and -- that last sentence of the next paragraph.

24 What did the -- Mr. Dav- -- what was it

1 **noted about the characteristics of material in Pond**
2 **3?**

3 A. They were fairly fine, almost -- I'm --
4 I'm looking for the correct term here, that I would
5 use.

6 **Q. Look at the last sentence.**

7 A. It escapes me here, but -- well, the
8 last sentence says: It should be noted that the
9 characteristics of the material in Pond 3 are
10 similar to that of suspended solids contained in a
11 wastewater treatment plant.

12 **Q. What does that mean?**

13 A. In a wastewater treatment plant, you've
14 got a colloidal fraction to the -- that's the word
15 I was looking for, to the material. And it -- it
16 somewhat suspends itself. It doesn't completely
17 just settle out to the bottom, so it suspends
18 itself in the liquid towards the bottom.

19 **Q. And I just want to flip back, since we**
20 **missed it on the first round.**

21 **Go back to the Page 120501, under Joliet**
22 **Pond 1.**

23 A. Yes.

24 **Q. And at the first sentence it has a**

1 description of the material that was found in Pond

2 1. What was it -- what was the material -- what
3 was that description?

4 A. The material sampled in Pond 1 was black
5 in color, was sticky/pasty in consistency, and had
6 a silty and clay feeling when rubbed between your
7 fingers.

8 Q. And then what was its smell? You could
9 see in the last sentence there.

10 A. The material also had a sewer odor.

11 Q. Okay. Thank you. I'm sorry. So
12 flipping back to 120503.

13 A. Yes.

14 Q. Under: Grain-size comparison of
15 material in Pond 3, one, two -- third paragraph
16 down, what was the conclusion of the nature of the
17 settling of the material in Pond 3?

18 A. It's in the first sentence there is that
19 it's -- it is not CCR.

20 Q. All right. Okay. Can we turn to
21 Exhibit 20, which starts at 120515.

22 A. Yes.

23 Q. So what is this document?

24 A. This document is a memorandum from --

1 also from Joshua Davenport, engineer with KPRG,
2 dated February 26th, 2021, sampling -- subject
3 being sampling location discussion as part of
4 evaluation of sediment quantities in Joliet
5 generating stations Pond 1 and 3 and Powerton
6 generating station's service water basin.

7 Q. Okay. And have you reviewed this
8 document before?

9 A. A while ago, yes.

10 Q. A while ago?

11 When you reviewed it, did you talk about
12 it with Mr. Davenport?

13 A. Yes, I did.

14 Q. So here -- back to Exhibit 19, which is
15 at 120499.

16 Ultimately, what was the conclusion
17 about the material in Ponds 1 and 3?

18 A. In the previous -- in the previous
19 exhibit?

20 Q. Correct.

21 A. Is that the material was not CCR based
22 on the physical analyses.

23 Q. And do you know where this
24 information -- who was -- where this information

1 **was submitted to?**

2 A. My understanding this was submitted to
3 Illinois EPA.

4 Q. **And do you know what Illinois EPA -- if**
5 **Illinois EPA agreed with that conclusion?**

6 A. They -- I believe that they were
7 agreeing with it, but they did have some questions
8 and wanted some additional clarifications.

9 Q. **Okay. And that is what Exhibit 20 is?**

10 A. That is correct.

11 Q. **And do you know if, according to**
12 **Mr. Daven- -- well, do you know if those**
13 **clarifications were sufficient for the Agency?**

14 A. I do know that we went out and collected
15 some additional samples to further address any of
16 their concerns.

17 Q. **And did the Agency ultimately agree the**
18 **material was CCR -- was not CCR?**

19 A. That is my understanding, yes.

20 Q. **All right. You can put that aside.**

21 MS. GALE: Mr. Hearing Officer,
22 Midwest Generation would move for the
23 admission of Exhibit 1501.

24 HEARING OFFICER HALLORAN: Miss Bugel?

1 MS. BUGEL: No objection.

2 HEARING OFFICER HALLORAN: Okay.

3 Thank you.

4 (Respondent's Exhibit No. 1501 was
5 received in evidence.)

6 BY MS. GALE:

7 Q. Mr. Gnat, we've -- you mentioned
8 that the -- or we've discussed the federal and
9 Illinois CCR rules. And I think you -- I think
10 you've testified that you assist Midwest Generation
11 with compliance with those rules, correct?

12 A. Correct.

13 Q. So for compliance with the federal rules
14 at the Midwest Gen's -- at the Joliet 29 station --
15 (Reporter interruption.)

16 BY MS. GALE:

17 Q. For compliance with the federal rules at
18 Midwest Generation's Joliet stat- -- Joliet 29
19 stations, generally what does KPRG do?

20 A. With the federal rules, we first started
21 with a collection of eight rounds of background
22 samples from all four wells that were identified as
23 part of the CCR monitoring network for Pond 2,
24 which is the -- the pond regulated under the CCR

1 rule.

2 And, then, once we established -- or
3 collected the eight rounds of -- of data, we
4 calculated prediction limits for the seven Appendix
5 III parameters, statistical prediction limits, 95
6 percent confidence interval, and then we initiated
7 semiannual detection monitoring.

8 **Q. And what is "detection monitoring"?**

9 A. That is the front part of the federal
10 CCR monitoring program. Once you establish your
11 background, there's seven parameters identified as
12 Appendix III parameters. And they're -- they're
13 somewhat used as -- as indicator parameters. So
14 you sample on a semiannual basis and compare that
15 value against your calculated background prediction
16 limit for each constituent.

17 And if your -- your -- the sample is
18 above that value, you have an opportunity to
19 collect a verification sample to verify that that
20 value was -- was representative. And if the
21 second -- if that verification sampling is also
22 above the prediction limit, then there -- the
23 pathway within the regulation is -- is one of two
24 options, the first option being you can try and

1 demonstrate, doing an alternate source
2 demonstration, that the value above the prediction
3 limit -- or the exceedance above the prediction
4 limit --

5 (Reporter interruption.)

6 BY THE WITNESS:

7 A. (Continuing) -- Exceedance above the
8 prediction limit is -- is associated with something
9 other than the regulated unit, or you can move
10 ahead into what's called assessment monitoring.

11 BY MS. GALE:

12 Q. And for the detection monitoring, I
13 believe you said a subset of parameters --

14 MS. GALE: I'm sorry.

15 BY MS. GALE:

16 Q. For the detection monitoring, I believe
17 you said a smaller set of parameters. Now, this is
18 not a memory test...

19 A. Mm-hmm.

20 Q. (Continuing) ...but approximately how
21 many parameters are there?

22 A. Appendix III has seven parameters that
23 you analyze for, and that's the detection
24 monitoring portion.

1 **Q. All right. And then you said it -- if**
2 **there's -- if the ASD is unsuccessful, it goes into**
3 **assessment monitoring, right?**

4 A. Correct.

5 **Q. So what is that?**

6 A. Assessment monitoring is a larger list
7 of parameters that are called Appendix IV
8 parameters. And those -- I believe there are 13 or
9 14 of them, one of which fluoride is also in the
10 Appendix III list. That's one that's duplicated in
11 both. Then you have this larger list of
12 parameters.

13 And in assessment monitoring the
14 common -- the process there is that if you first
15 enter assessment monitoring, you sample all of the
16 wells in your monitoring network for both your
17 Appendix III and this largest list of Appendix IV
18 parameters. And whatever is detected in the
19 Appendix IV parameters you would go out and collect
20 a second round of samples.

21 And for those parameters, you would
22 calculate -- or develop a groundwater -- a
23 site-specific groundwater protection standard.

24 And so what is -- or how do you get to

1 the groundwater protection standard? You would
2 first calculate the statistical background for that
3 parameter, you know, based on your upgradient wells
4 and take a look at that statistical background
5 versus what the standard is in the federal rule for
6 that, and it's generally set to the drinking water
7 standard or maximum contaminant limit for that
8 parameter.

9 So if your maximum contaminant level for
10 the parameter is higher than what you calculate
11 your background to be, the groundwater protection
12 standard becomes equal to that higher value.

13 If your background was higher than the
14 maximum contaminant limit, then the groundwater
15 protection standard, again, being set to the higher
16 value in that case, the background.

17 **Q. Okay. And for the federal CCR rule,**
18 **what -- on an annual basis, what reports do you**
19 **prepare?**

20 A. We would prepare a semiannual report.
21 And then -- and on an annual basis, we prepare a
22 annual groundwater monitoring and corrective action
23 report, I believe, is the -- the title of it, which
24 covers the calendar year of -- of work --

1 compliance work for that unit. And those are,
2 generally, due by -- I believe the date in -- in
3 the rule is January 31st of the following year.

4 **Q. And then we have the Illinois CCR rule**
5 **at Joliet 29. What has KPRG done related to the**
6 **Illinois CCR rule?**

7 A. Similar work, except under the rules of
8 the Illinois EPA. So we collected groundwater
9 samples, tabulate the data, and -- and do the -- in
10 Illinois is slightly different setup on -- on the
11 rule. They're -- they don't distinguish between
12 detection monitoring and assessment monitoring,
13 they just require the fullest of parameters, which
14 in the federal rule, are -- are described as
15 Appendix III, Appendix IV. Illinois just has the
16 full list of parameters. And then they also added
17 a field parameter of turbidity.

18 **Q. And under the Illinois CCR rule -- and I**
19 **remember you discussed --**

20 **(Reporter interruption.)**

21 MS. GALE: I'm sorry. I apologize.

22 BY MS. GALE:

23 **Q. Under the Illinois CCR rule, I think I**
24 **heard you say, earlier this week, that there are**

1 **60-day reports?**

2 A. Correct.

3 **Q. What are those?**

4 A. So under the Illinois rule, the way I
5 read the rule is we -- we have quarterly sampling.
6 And the last date of your sampling in the field
7 basically starts a 60-day clock. And within those
8 60 days we are to receive the analytical data,
9 tabulate it, and submit that to the Illinois EPA.

10 **Q. So just so I understand, you have to**
11 **submit the Illinois CCR rule data to Illinois EPA**
12 **on a quarterly basis, right?**

13 A. Correct.

14 **Q. And then, under the Illinois CCR rule --**
15 **and I believe that -- you know, what else have you**
16 **prepared -- or assisted in preparing for Midwest**
17 **Generation?**

18 A. Under the CCR rule we also prepare the
19 annual report. And, actually, under the CCA --
20 under the Illinois rule -- the annual report's a
21 little bit larger. It's kind of a compendium of
22 various other inspection requirements, many of
23 which KPRG itself does not do. There are other
24 contractors that are contracted to do, however, you

1 know, we're -- we were asked to, basically, provide
2 the compendium, bring all those reports in, and
3 make one submittal to Illinois EPA, an annual
4 submittal, again, covering all the required
5 inspections and whatnot for the year.

6 And that -- from a groundwater
7 perspective, that includes an attachment, which is
8 somewhat similar to what the federal requirement is
9 in terms of -- it's -- I believe it's called the
10 annual groundwater monitoring and corrective action
11 supplementary report for -- for the calendar year
12 as well. And those are also due to Illinois EPA
13 January 31st of the following year.

14 MS. GALE: If we could take a moment,
15 Mr. Hearing Officer, we're gonna pull out the
16 next binder.

17 HEARING OFFICER HALLORAN: You may.

18 We can go off the record for a
19 second.

20 (Brief pause.)

21 HEARING OFFICER HALLORAN: We're on
22 the record. You may proceed.

23 Lucy, thank you.

24

1 BY MS. GALE:

2 Q. Mr. Gnat, you have another binder in
3 front of you?

4 A. Yes, I do.

5 Q. Can you flip to the first page, please.
6 And what is this?

7 A. This is a document entitled, Federal CCR
8 Compliance Annual Groundwater Monitoring and
9 Corrective Action Report 2021, dated July 31st,
10 2022.

11 Q. And who wrote this document?

12 A. KPRG did.

13 Q. Did you participate in its preparation?

14 A. Yes, I did.

15 Q. Okay. And we just discussed what you
16 did -- what you do for the Federal CCR rule. Is
17 this one of the reports that you -- you prepare?

18 A. Yes, it is. And I -- I should have said
19 this is for Joliet 29 station.

20 Q. And I believe you also mentioned that
21 you prepare alternate source demonstrations; do you
22 recall that testimony?

23 A. Yes, I do.

24 Q. Can you please turn to Bates No. 144021.

1 A. Okay.

2 Q. What is on 114021?

3 A. This is the alternate source
4 demonstration CCR groundwater monitoring Joliet No.
5 29 generation station dated October 11th, 2021.

6 Q. And what is an alternate source
7 demonstration?

8 A. This was -- is part of detection
9 monitoring under the federal rule.

10 In this particular case, some of the
11 initial sampling indicated a potential
12 statistically significant increase. And what I
13 mean by that is that we sampled one of the seven
14 detection limit parameters. Something came up
15 above our calculated prediction limit. We
16 resampled. We verified that that was above the
17 limit, and so, therefore, it's a -- what's
18 identified here as a potential statistically
19 significant increase.

20 And in this case it was for total
21 dissolved solids and sulfate --

22 (Reporter interruption.)

23 BY THE WITNESS:

24 A. (Continuing) -- Total dissolved solids,

1 TDS, and sulfate for wells MW-3, MW-4, MW-5, and
2 MW-10. MW-10 being our upgradient well; and
3 chloride above its prediction limit at wells MW-5
4 and MW-10; calcium above the prediction limit at
5 MW-10. And, again, it's noted MW-10 is the
6 upgradient monitoring well.

7 BY MS. GALE:

8 Q. Okay. And -- so let's go back. You
9 said a statistically significant increase.

10 What is that compared to? What is that
11 increase compared to? How do you come to an
12 increase?

13 A. The val- -- comparison value is that
14 prediction limit that's calculated based on -- on
15 background, on the sampling of the upgradient
16 monitoring wells in case -- in this case one well,
17 MW-10, and the use of the eight rounds of
18 background sampling data to calculate the
19 statistical background. And then you compare
20 groundwater data from your downgradient monitoring
21 wells to that value.

22 Q. And is that prediction limit tied to an
23 numeric standard?

24 A. No. No, it's not. It's strictly

1 background. It's not tied to any specific numeric
2 standard. And, in fact, in many cases, if not in
3 most cases, that value tends to be lower than --
4 than the standard.

5 **Q. Great. So let's flip to Table 1, which**
6 **is on 114029.**

7 A. Okay.

8 **Q. So what does this table show?**

9 A. This table is the -- a summary of the
10 semiannual detection monitoring data for Joliet
11 Station No. 29. And it provides all of the data to
12 date under the federal rules starting at, excuse
13 me, October of 2015 with the last particular
14 sampling on this table being August of 2021 or that
15 would be third quarter of 2021.

16 **Q. So as we were discussing prediction**
17 **versus -- limit versus a standard, let's look at**
18 **sulfate.**

19 **Tell me what the prediction limit for**
20 **sulfate is, for example, in monitoring well 3?**

21 A. Okay. So the prediction limit for
22 sulfate for all three downgradient monitoring wells
23 would be 160 -- would be 130 milligrams per
24 kilogram -- milligrams per liter.

1 **Q. And off the top of your head, do you**
2 **know the 620 standard for sulfate?**

3 A. I believe it's 400.

4 (Reporter interruption.)

5 BY MS. GALE:

6 **Q. And off the top of your head, do you**
7 **know the 620 standard for sulfate?**

8 A. I believe it's 400.

9 **Q. Okay. So looking at MW3 and the numbers**
10 **below the prediction limit, some are bolded and**
11 **underlined; do you see that?**

12 A. Yes, I do.

13 **Q. And what does that indicate?**

14 A. The bold underline indicates that that
15 value is above the calculated background prediction
16 limit.

17 **Q. And, as you just said, the sulfate value**
18 **is 400.**

19 **Are any of the numbers for sulfate in**
20 **MW-9 above 400?**

21 A. In MW --

22 **Q. I'm sorry. MW-**

23 A. -- 3 --

24 **Q. -- MW-3?**

1 A. -- no, they are not.

2 Q. Thank you.

3 A. And that is also true for the other two
4 downgradient wells.

5 Q. And, actually, look at the upgradient
6 well, MW-10. What's going on there?

7 A. That is also not above the 400.

8 Q. Okay. I want to, actually, turn back to
9 the ultimate source demonstration. And I want you
10 to turn to 114024.

11 A. Okay.

12 Q. What was the conclusion of the ultimate
13 source demonstration?

14 A. The conclusion is that the noted
15 potential statistically significant increases for
16 TDS, sulfate, chloride, and calcium are not
17 associated with a potential release from Pond 2
18 but, rather, an alternate transient source of
19 impacts potentially from upgradient and offsite.

20 Q. And what is an alternate transient
21 source?

22 A. It's something that's -- that's moving
23 through the system, through -- through the
24 groundwater system that, you know, could be just

1 moving through and -- and subsequent concentrations
2 decrease as -- as it moves through the system but
3 not something from a consistent, ongoing source.

4 **Q. And what -- at Joliet 29 Pond 2, what is**
5 **directly upgradient of the Pond 2?**

6 A. Directly upgradient of Pond 2 is
7 Channahon Road, known as U.S. Highway 6. It's a
8 four-lane highway.

9 **Q. And so the conclusion that it's based on**
10 **an alternate transient source was based upon to**
11 **four reasons. Generally speaking, what were those**
12 **four reasons?**

13 A. The first one being that there had been
14 no CCR materials or associated liquids contained in
15 Pond 2 since 2019. TDS, sulfate, and chloride
16 concentrations were also noted above the prediction
17 limit in the upgradient monitoring well MW-10, as
18 well as in the downgradient wells.

19 Subsequent follow-up sampling during the
20 third quarter of '21 showed concentrations of the
21 above-noted parameters to have decreased in the
22 subject wells and some actually reverting to
23 concentrations below the prediction limit.

24 And calcium was only detected above the

1 prediction limit in the upgradient well itself --
2 I'm doing some paraphrasing here, you know, not
3 reading word-for-word, but the calcium was only
4 detected in the upgradient well MW-10. And in the
5 follow-up sampling in that well in the third
6 quarter of '21, calcium concentrations were again
7 below the prediction limit.

8 **Q. Now, I want to go back to transient.**
9 **What it -- you said something moving through the**
10 **system.**

11 **In your experience is that -- is that**
12 **common to see things move through a system?**

13 A. In urban environments, and especially
14 northern urban environments, probably the most
15 typical one that people can somewhat understand or
16 equate to is road salting during the winter adds
17 chlorides and -- and whatever other components of
18 the road salt. Once the salt is dissolved, it --
19 it percolates down through -- through the ground,
20 and it -- it gets to groundwater. And so
21 there's -- there's a transient nature of -- of that
22 as it moves through groundwater.

23 And then you get into the summer months,
24 you don't salt, and, you know, you may see some --

1 some seasonality or -- or something moving through
2 the system at one point in time or another.

3 **Q. And if you see a transient sor- -- or**
4 **something moving through the system, I mean, does**
5 **that require immediate action?**

6 A. No. No, it doesn't.

7 **Q. Why not?**

8 A. Well, in this particular case, it's --
9 it's not associated with the impoundment. So, I
10 mean, the whole purpose of -- of this exercise is
11 to determine as to whether or not the impoundment
12 itself might be the cause of -- of -- of a release
13 that we're seeing in our monitoring wells, in which
14 case would require some type of a corrective
15 action. A transient source you might not even know
16 exactly what that source is.

17 **Q. All right. Okay. Let's turn to the**
18 **next tab, please.**

19 **What is this map?**

20 A. Are we looking at the Exhibit 1503?

21 **Q. Yes. I'm sorry, marked for**
22 **identification -- I'm sorry.**

23 **(Respondent's Exhibit No. 1503 was**
24 **introduced.)**

1 MS. GALE: And before I do that,
2 forgive me, Mr. Hearing Officer, Midwest Gen
3 moves for the admission of 1502.

4 HEARING OFFICER HALLORAN: Miss Bugel?

5 MS. BUGEL: No objection.

6 HEARING OFFICER HALLORAN: Thank you.

7 BY MS. GALE:

8 Q. So turning to the next tab, which is
9 marked for identification purposes as 1503, and the
10 Bates number is 7944 -- excuse me.

11 The Bates number is MWG13-15 underscore
12 79442.

13 Mr. Gnat, what is this figure?

14 A. This is a figure showing boring
15 locations around -- and two or three tem- -- TW
16 locations, temporary well locations, around well --
17 or in the vicinity of well MW-09. And this is at
18 the Joliet 29 station.

19 Q. And I see MW-09 is in pink on this
20 figure?

21 A. Correct.

22 Q. And to orient ourselves, in relation to
23 the pond, what pond is MW-09 next to?

24 A. Pond 3. The pond you see just to the

1 north there, that is Pond 3.

2 **Q. And the circular things on the bottom of**
3 **the figure, what are those?**

4 A. That is the remnants of a former
5 wastewater treatment plant there at the station and
6 two, I believe, clarifiers.

7 **Q. And I think you said there was -- this**
8 **is a figure of an investigation near -- up near**
9 **monitoring well 9? Is that what you said?**

10 A. Correct.

11 **Q. What was the purpose of the**
12 **investigation?**

13 A. Monitoring well 9 was kind of a unique
14 well. It was displaying some characteristics that
15 weren't seen in any of the other 11 monitoring
16 wells, well 9 being sampled as part of the CCA
17 program. And none of the other CCA wells displayed
18 this type of signature where, all of a sudden, we
19 started seeing the pH of the water, which was,
20 generally, if I remember right, you know, in the
21 neutral range 7, maybe a little bit -- 7 1/2. I
22 don't know the exact range.

23 But all of a sudden the pH in this water
24 started dropping. And I believe it got as low

1 as -- as 3 1/2 or so, something like that, which is
2 a fairly acidic pH for groundwater. And -- and we
3 started seeing a handful of metals increasing in
4 concentration associated with that decrease in the
5 pH.

6 **Q. And so -- and, I guess, I'll add, what**
7 **was -- what was in Pond 3 at the time?**

8 A. Pond 3 at the time was -- you know, it
9 was not for CCR purposes. It was a ready -- it was
10 a just a -- a water pond.

11 **Q. And so --**

12 A. A stormwater pond.

13 **Q. I'm sorry.**

14 A. Or -- or a pasture pond, however you
15 want to call it. I don't know what the station
16 uses quite -- quite honestly uses it for there,
17 so...

18 HEARING OFFICER HALLORAN: Speak up,
19 Mr. Gnat.

20 THE WITNESS: I'm sorry.

21 (Reporter interruption.)

22 BY THE WITNESS:

23 A. I -- I'm not quite sure exactly what the
24 station uses it for.

1 BY MS. GALE:

2 Q. I think I heard you say, though, it
3 doesn't contain CCR, right?

4 A. That is correct. We went through that
5 discussion earlier in my testimony.

6 Q. And so the purpose of this investigation
7 was to figure out what's going on in MW-9, right?

8 A. Correct.

9 Q. And so what did KPRG do?

10 A. Well, this -- this map says proposed
11 boring locations. We actually went and implemented
12 and drilled at these locations and collected soil
13 samples for the analysis of sulfate and -- I'd have
14 to take a look at what other parameters we might
15 have analyzed for.

16 We also tried to install temporary wells
17 to see if we encountered any water within the --
18 within these materials to sample that water, but I
19 believe that, for the most part, the water table
20 was below the unconsolidated materials and so it
21 was in the bedrock so we weren't able to collect
22 water samples, if I remember correctly.

23 Certainly in two of them. I don't
24 remember about a third one.

1 **Q. I want you to turn to the next tab --**

2 MS. GALE: Actually, before we do
3 that, Mr. Hearing Officer, Midwest Gen moves
4 for the admission of Exhibit 1503.

5 HEARING OFFICER HALLORAN: Miss Bugel?

6 MS. BUGEL: I'm going to object to
7 this just on the grounds that it's -- I mean,
8 my -- my question about it is, is it taken
9 from another exhibit? The very pixelated
10 nature of it suggests to me that it's -- came
11 out of something bigger, and that's my
12 concern.

13 HEARING OFFICER HALLORAN: Miss Gale?

14 MS. GALE: This was agreed.
15 Mr. Hearing Officer, my confusion is because
16 we have an agreed list of exhibits, and this
17 was on the agreed list of exhibits.

18 HEARING OFFICER HALLORAN: Miss Bugel?

19 MS. BUGEL: And we did reserve some
20 objections on the agreed list of exhibits to
21 see what testimony established, and the
22 discussion about this brought up my concern.

23 HEARING OFFICER HALLORAN: Okay. You
24 know, I'm gonna let it in. The Board can

1 weigh it accordingly.

2 Mr. Gnat has testified thoroughly
3 what it is. So it's admitted over objection
4 subject to Miss -- well, objection subject
5 to, excuse me, Miss Bugel's objections. So
6 that's admitted, Exhibit 1503, I apologize.

7 And, also, it's come to my attention
8 that I did not say the magic words admitted
9 for Exhibit 1502. So that's -- 1502 is
10 admitted as well. Thank you.

11 You may proceed.

12 MS. GALE: Thank you.

13 (Respondent's Exhibit Nos. 1502 and
14 1503 were received in evidence.)

15 (Respondent's Exhibit No. 1504 was
16 introduced.)

17 BY MS. GALE:

18 **Q. Mr. Gnat, I would like you to flip to**
19 **the next tab, which is marked -- and the exhibit's**
20 **in there is marked for identification 1504. And**
21 **it's at Bates No. MWG13-15 underscore 79341.**

22 **What is this?**

23 A. These are boring logs from the boring
24 that were identified in -- on the previous figure

1 that we talked about.

2 **Q. And a boring log, what is that?**

3 A. This is the geol- -- the geologist -- as
4 the drilling occurs, we're pulling core of the
5 soil, and these are the observations of the
6 geologist as to the nature of the material in the
7 core as to the depth of the boring.

8 **Q. Okay. So I want you to look at SB-1.**

9 A. Yes.

10 **Q. And you don't have to tell me all the**
11 **layers, but within this boring log, is there any**
12 **CCR?**

13 A. No. There is no CCR logged in this
14 boring log.

15 **Q. Okay. Let's go to SB-2.**

16 **Same question: Within this boring log**
17 **is there any CCR?**

18 A. No, there is not.

19 **Q. Next, SB-3. Within SB-3 is there any**
20 **CCR in the boring log?**

21 A. No, there is none in this boring log.

22 **Q. SB-4. Is there any CCR in SB-4?**

23 A. Nothing there that -- that would suggest
24 CCR, no.

- 1 **Q. SB-5. Is there any CCR in SB-5?**
- 2 A. No, there is not.
- 3 **Q. SB-6. Is there any CRR in SB-6?**
- 4 A. No, there is not.
- 5 **Q. SB-7. Is there any CCR in SB-7?**
- 6 A. No, there is not.
- 7 **Q. SB-8. Is there any CCR in SB-8?**
- 8 A. No, there is not.
- 9 **Q. SB-9. Is there any CRR in SB-9?**
- 10 A. No, there is not.
- 11 **Q. SB-10. Is there any CCR in SB-10?**
- 12 A. No, there is not.
- 13 **Q. SB-11. Is there any CCR in SB-11?**
- 14 A. No, there is not.
- 15 **Q. SB-12. Is there any CCR in SB-12?**
- 16 A. No, there is not.
- 17 **Q. SB-13. Is there any CCR in SB-13?**
- 18 A. No.
- 19 **Q. SB-14. Is there any CCR in SB-14?**
- 20 A. No, there is not.
- 21 **Q. SB-15. Is there any CCR in SB-15?**
- 22 A. No, there is not.
- 23 **Q. SB-16. Is there any CCR in SB-16?**
- 24 A. No, there is not.

1 **Q. And -- and this was logged by the**
2 **driller during the -- excuse me. Logged by the**
3 **driller during the drilling, right?**

4 A. By a KPRG geologist. The drilling firm
5 was Cabeno Environmental that we've used.

6 (Reporter interruption.)

7 BY THE WITNESS:

8 A. The drilling firm was Cabeno
9 Environmental that we've used in the past, but the
10 geologist -- the KPRG geologist was -- was Aaron
11 Bolson.

12 BY MS. GALE:

13 **Q. Sorry. Thank you for the correction.**
14 **And did you also look at -- review the**
15 **boring logs personally?**

16 A. Yes, reviewed the boring logs as well as
17 the samples. We had the samples also brought back
18 to the office 'cause I -- I was interested in
19 seeing them as well.

20 **Q. All right.**

21 MS. GALE: Mr. Hearing Officer,
22 Midwest Generation moves for the admission of
23 1504.

24 HEARING OFFICER HALLORAN: Miss Bugel?

1 MS. BUGEL: No objection.

2 HEARING OFFICER HALLORAN: Thank you.

3 Exhibit No. 1504 is admitted.

4 (Respondent Exhibit No. 1504 was
5 received in evidence.)

6 (Respondent's Exhibit No. 1505 was
7 introduced.)

8 BY MS. GALE:

9 Q. Mr. Gnat, can you turn to the next tab
10 on your page, please?

11 A. Yes.

12 Q. And, for identification purposes, this
13 is labeled as 1505?

14 A. Yes.

15 Q. The document is Midwest -- excuse me,
16 MWG13-15 underscore 124453.

17 Mr. Gnat, what is 1505?

18 A. These are the boring logs from those
19 temporarily wells that I had mentioned when we were
20 discussing the figure.

21 Q. And by temporary -- oh, right. Sorry.
22 Never mind. Strike that. Strike that.

23 And looking at first boring well --
24 boring number TW-1, looking through the column,

1 **once again, do you see any CCR?**

2 A. No, I do not.

3 **Q. And flipping the page to boring number**
4 **TW-2, is there any CCR in that boring log?**

5 A. No, there is not.

6 **Q. Flipping the page once more to boring**
7 **number TW-3, is there CCR in that boring log?**

8 A. No, there is not.

9 **Q. And, Mr. Gnat, did you also personally**
10 **review the boring logs and the soil from TW-1, 2,**
11 **and 3?**

12 A. Yes. Yes, I did.

13 And if I can just add, another important
14 documentation for us on this was the -- the purpose
15 of these wells -- these temp wells, so to speak,
16 was that if we encountered water, to be able to
17 sample that water. And these were extended down to
18 19 feet here, a little bit over, and they were
19 terminated because we were at the top of bedrock,
20 and we couldn't get further with the Geoprobe. And
21 we did not encounter groundwater at -- at that
22 point, so we were not able to collect a water
23 sample as the -- all of the unconsolidated material
24 was -- was not saturated.

1 **Q. I guess I'm gonna ask a question here:**
2 **What is the difference between a temporary well**
3 **like TW -- these TW-1, 2, and 3 and MW-9?**

4 A. It's -- a monitoring well is constructed
5 with speci- -- under specific requirements by the
6 State, and it's intended for long-term groundwater
7 monitoring and sample collection.

8 A temporary well's rea- -- is really
9 intended to be able to generate a groundwater
10 sample for -- for screening purposes. And the --
11 the meaning itself is very descriptive. It's a
12 temporary well, so you would put in a -- a boring.
13 In this case we were using a Geoprobe. We've got
14 the hole there. And if we have water accumulating
15 in that hole, you can put down -- and you can use
16 various materials for this, but, basically, a
17 temporary well that you put down so that you can
18 actually sample the water that's collecting in the
19 boring. And so you collect that sample.

20 Once you're done, you pull your -- your
21 material out of the well and you pull back the
22 casing and you abandon the boring. So it's very
23 descriptive, its terms. A temporary is set up to
24 pull a groundwater sample.

1 **Q. And the MW-9 is permanent, right?**

2 A. Correct.

3 **Q. And why -- how does that make it**
4 **different from a temporary? How is it permanent?**

5 A. Well, a permanent well is -- is -- under
6 regulations is at least a two-inch monitoring well.
7 It's -- it's drilled with -- in a larger hole. You
8 got specific requirements for the length of the
9 screen that you're putting on, the -- the filter
10 pack that you're putting around a well, how far
11 above the screen you put your filter pack. Then
12 you have the ceiling layer on that. And then
13 you -- you backfill with grout. So it really
14 establishes a well that's intended to stay there
15 for an extended period of time and produce a
16 representative sample.

17 **Q. Thank you.**

18 MS. GALE: Midwest Generation moves
19 for the admission of Exhibit 1505.

20 HEARING OFFICER HALLORAN: Miss Bugel.

21 MS. BUGEL: No objection.

22 HEARING OFFICER HALLORAN: Thank you,
23 Miss Bugel.

24 MS. WACHSPRESS: May we hear the magic

1 word? Mr. Hearing Officer?

2 HEARING OFFICER HALLORAN: I'm sorry?

3 MS. WACHSPRESS: May we hear the magic
4 words?

5 HEARING OFFICER HALLORAN: Oh. The
6 magic words are Exhibit No. 1505 is admitted
7 with no objection.

8 Thank you for reminding me.

9 (Respondent Exhibit No. 1505 was
10 received in evidence.)

11 (Respondent's Exhibit No. 1506 was
12 introduced.)

13 BY MS. GALE:

14 Q. Mr. Gnat, can you please turn to --
15 excuse me, the next document, which is marked for
16 identification purposes as 1506.

17 A. Yes.

18 Q. And it starts at MWG13-15 underscore
19 79357.

20 Mr. Gnat, what is this?

21 A. As I'm flipping through it, this is the
22 analytical report -- Eurofins is the analytical lab
23 laboratory that Midwest Generation has a contract
24 with. So any of our samples that we collect are

1 generally sent to Eurofins.

2 This is their analytical report for a
3 set of -- a subset of samples from the study that
4 we just talked about. And, specifically, for
5 samples from the east clarifier, the west
6 clarifier, and from temporary well borings that we
7 just reviewed from depths 3 feet, 4 feet, and 12
8 feet and 14 feet at each of those locations, temp
9 well 1, 2, and 3.

10 **Q. Great. And what is the -- what are the**
11 **east and west clarifiers?**

12 A. In the aerial photograph that we saw
13 where the boring -- where the borings were located,
14 you had asked about what those two circular things
15 are, that's the old -- part of the old wastewater
16 treatment plant. Those are the clarifier and then
17 east/west being descriptive of -- the east
18 clarifier being the one to the east, the west
19 clarifier being the one to the west.

20 **Q. And you are looking at Exhibit 1503,**
21 **right?**

22 A. Exhibit 1503, yes.

23 **Q. And without going through each and**
24 **every -- well, I guess let's do this.**

1 **For the east and west clarifier,**
2 **generally, what was the result?**

3 A. The analyses that we chose here, iron,
4 manganese, sulfate, and pH were really focused to
5 some of the issues --

6 (Reporter interruption.)

7 THE WITNESS: I'm so sorry.

8 BY THE WITNESS:

9 A. Where -- analyzed specifically for the
10 parameters of iron, manganese, sulfate, and pH.
11 And those are some of the specific issues at that
12 well MW-9 that this was part of the support of,
13 trying to evaluate the -- the anomaly in that well.

14 And so we've got the data for the east
15 clarifier, the west -- and the west clarifier, and
16 iron being .68 milligrams per liter; the manganese
17 .1 milligrams per liter; sulfate 87 milligrams per
18 liter; and a pH of 7.6.

19 Now, I should note I just gave
20 milligrams per liter, which are water units.
21 And -- and, basically, what -- what this was was
22 water within these -- residual water that was left
23 in these clarifiers. That's what we sampled.

24

1 BY MS. GALE:

2 Q. Thank you.

3 And what is a neutral pH?

4 A. Seven -- p- -- pH is a scale for acids
5 and bases. Acids being lower numbers, bases being
6 higher numbers, seven being considered neutral.

7 Q. So, for example, the west clarifier has
8 a pH of 7.6. What does that mean?

9 A. Basically, it's considered a pretty
10 neutral value.

11 Q. Okay. Okay. So let's turn to the --
12 and we don't -- again, we don't need to flip
13 through each and every single sample results; but
14 if you were to flip through TW-1 through TW-3, what
15 were the results of the analysis of the soil?

16 A. The soil we focused on sulfate and pH,
17 and the values here that are provided in the lab
18 package are specifically for sulfate and pH. And
19 so for temp well 1, we had two samples. And the
20 sulfate values there were 400 to -- and 180 pH
21 ranging from 7.5 to 8.4. 7.5 being, generally, you
22 know, fairly neutral; 8.4 moving towards the basic
23 or alkaline end of the scale.

24 Q. And if I remember correctly, you

1 testified about the conditions at MW-9. What
2 was -- what was that --

3 A. The p- --

4 Q. What was that pH?

5 A. I'm sorry. The groundwater in that
6 well -- and one of the reasons that we started
7 taking a look at it was that the pH was dropping.
8 It was dropping well below -- below the neutral,
9 and I think I -- I think I had said previously as
10 low as something -- as 3.5 or something like that,
11 so quite -- quite an anomaly.

12 MS. GALE: Mr. Hearing Officer,
13 Midwest Generation moves for the admission of
14 Exhibit 1506.

15 HEARING OFFICER HALLORAN: Miss Bugel?

16 MS. BUGEL: No objection.

17 HEARING OFFICER HALLORAN: Thank you.

18 Midwest Exhibit 1506 is admitted; no
19 objection.

20 (Respondent Exhibit No. 1506 was
21 received in evidence.)

22 (Respondent's Exhibit No. 1507 was
23 introduced.)

24

1 BY MS. GALE:

2 Q. Mr. Gnat, can you flip to the next tab,
3 please, which has been marked for identification
4 purposes as Exhibit 1507, and it is located at
5 Bates No. MWG13-15 underscore 79381.

6 What is this?

7 A. This is, again, an analytical report
8 from Eurofins, the laboratory contracted by Midwest
9 Generation. And looking at the sample summary, it
10 is for the soil sample analysis from the samples
11 collected from the borings that we went through all
12 the boring logs for.

13 Q. And so that is borings 1 through 16,
14 right?

15 A. That is correct. I'm just checking to
16 see if everything is accounted for. One, two,
17 three, four, five, six, seven, eight, nine, ten.

18 (Brief pause.)

19 BY THE WITNESS:

20 A. Yes.

21 BY MS. GALE:

22 Q. Okay. Mr. Gnat, without going through
23 each and every sample -- and I'll give you a moment
24 to flip through. Generally speaking, what was the

1 **pH of the boring -- of the soils?**

2 MS. BUGEL: I'm sorry. I'm gonna
3 object to the question. It's very hard to
4 understand, if there are individual samples,
5 how there can be a general result.

6 MS. GALE: Okay. We'll go through
7 every single one.

8 HEARING OFFICER HALLORAN: Sounds
9 good. Sustained.

10 BY MS. GALE:

11 **Q. Mr. Gnat, can you turn to -- it's --**
12 **well, it's page 6 of 61, MWG13-15 underscore --**

13 **(Reporter interruption.)**

14 HEARING OFFICER HALLORAN: Can you
15 slow, please?

16 MS. GALE: Yeah, I apologize.

17 HEARING OFFICER HALLORAN: Thank you.

18 BY MS. GALE:

19 **Q. Page 6 of 61, MWG13-15 underscore 79386.**

20 **Are you there?**

21 A. Yes.

22 **Q. What sample is this?**

23 A. Sample SB-14 from 3 to 4 inches.

24 **Q. And by 3 to 4 inches, what does that**

1 **mean?**

2 A. That probably should be 3 to 4 feet.
3 Let me go back and take a look. There might be a
4 misprint on that.

5 No, that is inches. So 3 to 4 inches.

6 **Q. So what does that -- so that's how far**
7 **below the ground?**

8 A. Three to four inches below the surface.

9 **Q. All right. And what is the pH?**

10 A. 7.4.

11 **Q. And what is the sulfate?**

12 A. 4,000 milligrams per kilogram.

13 **Q. And what is the manganese?**

14 A. 250 milligrams per kilogram.

15 **Q. What is the iron?**

16 A. 19,000 milligrams per kilogram.

17 **Q. Okay. Flip to the next page. What is**
18 **this?**

19 A. From SB-5, so boring 5, sample from a
20 depth of 12 to 14 feet.

21 **Q. And what's the pH?**

22 A. pH is 8.2.

23 **Q. What's the sulfate?**

24 A. 140.

1 **Q. Is there a standard by which these are**
2 **compared to?**

3 A. In this case, you know, we were
4 collecting these data, and there are standards that
5 you can compare soils and so on to, however, this
6 data was passed on. We somewhat did a collection
7 and tabulation of the data, but we were not
8 specifically doing any interpretations on it. That
9 was passed on to another consultant.

10 **Q. Got it. Okay.**

11 **Let's flip to the next one, SB-5, 3 to**
12 **4 feet.**

13 A. Yes.

14 **Q. What was the pH there?**

15 A. 7.9.

16 **Q. Turn to the next one, SB-4, 3 to 4 feet,**
17 **what was the pH?**

18 A. 8.0.

19 **Q. SB-4, 12 to 14 feet, what was the pH?**

20 A. 8.5.

21 **Q. SB-3, 3 to 4 feet, what was the pH?**

22 A. 8.3.

23 **Q. SB-3, 12 to 14 feet, what's the pH?**

24 A. 8.4.

1 Q. SB-2, 3 to 4 feet, what is the pH?

2 A. 8.0.

3 Q. SB-2, 11 to 15 feet, what is the pH?

4 A. 11 to 13 feet. 8. --

5 Q. I'm sorry.

6 A. -- 4.

7 (Reporter interruption.)

8 BY THE WITNESS:

9 A. 11 to 13 feet.

10 BY MS. GALE:

11 Q. And did you answer the question?

12 A. 8.4.

13 Q. Thank you.

14 SB-1, 3 to 4 feet, what is the pH?

15 A. 8.4.

16 Q. SB-1, 12 to 14 feet --

17 A. 8- --

18 Q. What is the pH?

19 A. 8.2.

20 Q. SB-1, 12 to 14 feet, what is the pH?

21 A. I'm sorry. What page are you on?

22 Q. I'm sorry. I'm at SB- -- I'm at Page 16
23 of 61, SB-1, 12 to 14 feet?

24 A. I flipped two pages by accident.

1 SB-1, 12 to 14 feet, was 8.2.

2 Q. SB-6, 3 to 4 feet, what is the pH?

3 A. 7.6.

4 Q. SB-6, 7 to 9 feet, what is the pH?

5 A. 8.1.

6 Q. SB-7, 3 to 4 feet, what is the pH?

7 A. 8.7.

8 Q. SB-7, 12 to 14 feet, what is the pH?

9 A. 8.2.

10 Q. SB-8, 3 to 4 feet, what is the pH?

11 A. 8.4.

12 Q. SB-8, 10 to 12 feet, what is the pH?

13 A. 8.0.

14 Q. SB-10, 3 to 4 feet, what is the pH?

15 A. 8.5.

16 Q. SB-10, 12 to 14 feet, what is the pH?

17 A. 8.6.

18 Q. SB-11, 3 to 4 feet, what is the pH?

19 A. 8.5.

20 Q. SB-11, 11 to 13 feet, what is the pH?

21 A. 7.7.

22 Q. SB-9, 2 to 4 feet, what is the pH?

23 A. 8.9.

24 Q. SB-9, 7 to 9 feet, what is the pH?

1 A. 8.2.

2 Q. **SB-15, 3 to 4 feet, what is the pH?**

3 A. 9.1.

4 MS. BUGEL: Hearing Officer, if I may
5 interrupt. Now the witness is just reading
6 the results into the record.

7 And just for the record I did have
8 an objection to the -- asking a question
9 about the generality, but we've also
10 stipulated to this exhibit coming in. I
11 don't think the witness needs to read it in.
12 It's dragging on, but...

13 HEARING OFFICER HALLORAN: I'm
14 confused with your objection and your earlier
15 one about the generality. And Miss Gale was
16 saying, okay, do you want to read them
17 individually into the record and -- but if
18 you've agreed to it, I don't...

19 MS. BUGEL: We've agreed to the
20 exhibit. It doesn't need to be read into the
21 record. That -- my objection earlier was to
22 generalizing, you know, lab result- --
23 individual lab results. And this -- this
24 witness is a fact witness, not an expert

1 witness. He can't give opinions on
2 generalized lab results.

3 HEARING OFFICER HALLORAN: All right.
4 So you don't need Midwest to go through all
5 the SBs --

6 MS. BUGEL: No, we don't. I mean,
7 it's certainly, you know...

8 MS. GALE: Mr. Hearing Officer, I was
9 simply trying to establish relevancy by when
10 I asked him generally what are -- are the pH
11 that we're seeing in here in these soil
12 results. I was objected to --

13 HEARING OFFICER HALLORAN: Yeah.

14 MS. GALE: -- then, so I went through
15 the exercises.

16 MS. BUGEL: Ms. Gale doesn't need to
17 ask every single page. We will agree that
18 this provide- -- that these lab results
19 provide pH results. The whole thing doesn't
20 need to be read into the record to establish
21 relevance. It's just an exercise in
22 exhaustion.

23 HEARING OFFICER HALLORAN: I'm okay
24 with it, but -- all right. So...

1 MS. GALE: I was trying -- I wanted to
2 establish the pH levels. I originally tried
3 to do it in a general sense and having him
4 flip through and try to get a range. That
5 was objected to --

6 HEARING OFFICER HALLORAN: That's --

7 MS. GALE: -- and so we went through
8 this exercise.

9 HEARING OFFICER HALLORAN: That's what
10 I thought.

11 So do we need to do anything else,
12 Miss Bugel?

13 MS. BUGEL: We do not need to do
14 anything else to establish the pH levels
15 established by the document.

16 HEARING OFFICER HALLORAN: Okay.

17 MS. GALE: Mr. Hearing Officer, may I,
18 though, ask for a generality range from him
19 so we have an understanding of what the range
20 of these samples are?

21 HEARING OFFICER HALLORAN: And your
22 objection is...

23 MS. BUGEL: I don't have an objection
24 to establishing the range or -- I do not have

1 an objection to establishing the range.

2 HEARING OFFICER HALLORAN: Okay.

3 Please ask your question, Miss Gale.

4 Thank you, Miss Bugel.

5 BY MS. GALE:

6 Q. And, Mr. Gnat, understanding that you
7 have not looked at every single one recently,
8 generally speaking, what have you seen in a range
9 of pHs?

10 A. I'll tell you here in a second.

11 7.4 was the lowest pH; 9.1 was the
12 highest pH; and all other values between.

13 Q. Thank you, sir.

14 A. Can I make one clarification on this --

15 Q. Please.

16 A. -- data package?

17 At -- in regards to that very first
18 sample, SB-14, where on the lab sample summary page
19 it has 3 to 4 inches and on their -- on their lab
20 data sheet it has 3 to 4 inches, everything else we
21 were sampling at the 3- to 4-foot range, and so
22 that bugged me a little bit. I went into the chain
23 of custody, which is the chain that's filled out in
24 the field by the sampler and signed by the sampler

1 and then signed off by the lab as they received it.

2 In the chain of custody, that sample is
3 SB-14 from the 3- to 4-foot depth level, not the 3-
4 to 4-inch depth level. So that is a typo in the
5 lab as they entered that sample. So that should be
6 SB-14, 3 to 4 feet in terms of the sample interval
7 as opposed to 3 to 4 inches.

8 **Q. Great. And that chain of custody is**
9 **located at MWG13-15 underscore 79428, right?**

10 A. Correct.

11 MS. GALE: Mr. Hearing Officer, it's
12 2:30, and I'm moving on to a different
13 section.

14 HEARING OFFICER HALLORAN: Okay. Did
15 you move for 1507?

16 MS. GALE: Oh, I'm sorry. I have one
17 more question to ask.

18 BY MS. GALE:

19 **Q. Mr. -- back to the Exhibit 1507. You**
20 **know, I asked you for a range of the pHs.**

21 **Again, what does that -- comparing to**
22 **neutral, what does that range mean?**

23 A. In a generally neutral range to more
24 basic range alkaline, certainly not towards the

1 acidic range.

2 MS. GALE: Thank you.

3 And thank you for the reminder,
4 Mr. Hearing Officer.

5 I move to admit Exhibit 1507.

6 HEARING OFFICER HALLORAN: Miss Bugel?

7 MS. BUGEL: No objection.

8 HEARING OFFICER HALLORAN: Thank you.

9 You know, I think we can go on.
10 Obviously, I can't multitask. I was trying
11 to look to see of any updates regarding the
12 Loop activity, but I think -- I think we're
13 good till 3:00. Is that okay?

14 MS. WACHSPRESS: We're having a
15 computer problem. We're just gonna need a
16 minute for it to reboot.

17 HEARING OFFICER HALLORAN: Okay.
18 We're still on the record, Lucy.

19 And I concur with Miss Bugel's
20 concerns that, you know, if we don't keep
21 pushing now, we may not finish in the next
22 five days.

23 (Respondent's Exhibit No. 1508 was
24 introduced.)

1 BY MS. GALE:

2 Q. Mr. Gnat, can you please turn to the
3 next tab?

4 A. Yes.

5 Q. Which is marked for identification
6 purposes as Exhibit 1508?

7 A. Yes.

8 Q. What is this?

9 A. This is a 2018 inspection summary letter
10 dated November 5th, 2018 in regards to the Joliet
11 29 former ash burial -- area runoff inspection
12 2018.

13 Q. And I believe this was discussed in the
14 first hearing. These are walkover inspections.

15 What do you do for these inspections?

16 A. My understanding is that this is an
17 annual -- a visual inspection that's required under
18 the stormwater permit for the facility. And I -- I
19 walk the entire length of the bank -- embankment
20 along what's been called the northeast area of the
21 Joliet 29 site and visually inspect the bank from
22 the station property on the west side all the way
23 to the east side of their property.

24 And then I also walk a little ways in

1 off the bank to kind of see the -- you know, if
2 there are any erosional rails or any features that
3 might be of -- of concern or focusing runoff in a
4 cer- -- certain direction that may then affect the
5 embankment. So that's the purpose of this site
6 walk.

7 MS. GALE: And before I go on,
8 Mr. Hearing Officer, I don't believe we heard
9 the magic words for 1507.

10 HEARING OFFICER HALLORAN: All right.
11 Midwest Exhibit 1507 is admitted. No
12 objection.

13 I thought I did. I apologize.
14 Thank you.

15 MS. GALE: Thank you, sir.

16 (Respondent Exhibit No. 1507 was
17 received in evidence.)

18 BY MS. GALE:

19 **Q. And when -- when you do these**
20 **inspect- -- excuse me, these inspections, when do**
21 **you do you them?**

22 A. They're done annually. And this one was
23 done here in November. Earlier on I used to do
24 them in August. And, quiet honestly, in the middle

1 of August and the humidity humid and heat, quite
2 honestly, and the intense, overgrown jungle, you
3 know, I started doing them with a little more
4 forethought after the leaf drop and also provides a
5 better visual inspection.

6 **Q. And in this November 5, 2018 inspection,**
7 **what did you see?**

8 A. In terms of the bank, I did not identify
9 any erosional features that were of concern. Any
10 of the areas that might have been previously
11 repaired were holding very well, and I did not
12 notice any type of seeps or anything like that
13 along the entire length of that embankment.

14 **Q. And so following your inspection you**
15 **prepared this document?**

16 A. Yes, I did.

17 **Q. And then what do you do with the**
18 **document?**

19 A. I submit this to Midwest Generation. In
20 this case Mr. Peter O'Day was still working with
21 Midwest Generation, since retired.

22 MS. GALE: Mr. Hearing Officer,
23 Midwest Generation moves for the admission of
24 1508.

1 HEARING OFFICER HALLORAN: Miss Bugel?

2 MS. BUGEL: No objection.

3 HEARING OFFICER HALLORAN: Thank you.

4 Exhibit 1508 is admitted; no
5 objection.

6 (Respondent Exhibit No. 1508 was
7 received in evidence.)

8 (Respondent's Exhibit No. 1509 was
9 introduced.)

10 BY MS. GALE:

11 Q. Mr. Gnat, can you turn to the next page,
12 please?

13 A. Yes.

14 Q. This has been marked for identification
15 purposes as 1509. And it's located at MWG13-15
16 underscore 79316.

17 What is this?

18 A. This is the same document -- the same
19 type of document that we just covered for 2018,
20 except this is the 2019 inspection summary letter
21 dated November 4, 2019.

22 Q. And you conducted the inspection?

23 A. Yes, I did.

24 Q. What did you see?

1 A. The same as -- as the previous year. I
2 did not identify any erosional features of concern
3 that I felt needed to be addressed. Any previous
4 repairs were holding well, and I did not see any
5 evidence of any seepage or seeps along the entire
6 length of that embankment.

7 MS. GALE: Mr. Hearing Officer,
8 Midwest Generation moves for the admission of
9 Exhibit 1509.

10 HEARING OFFICER HALLORAN: Miss Bugel?

11 MS. BUGEL: No objection.

12 HEARING OFFICER HALLORAN: Thank you.

13 Exhibit 1509 is admitted; no
14 objection.

15 (Respondent Exhibit No. 1509 was
16 received in evidence.)

17 (Respondent's Exhibit No. 1510 was
18 introduced.)

19 BY MS. GALE:

20 **Q. Mr. Gnat, can you please flip to the**
21 **next tab, please, and you'll see what's been marked**
22 **for identification purposes Exhibit 1501 [sic].**

23 A. Yes.

24 **Q. 1510.**

1 A. Yes.

2 Q. **And it is Bates No. MWG13-15 underscore**
3 **79317?**

4 A. Yes.

5 Q. **What is this?**

6 A. This is my 2020 inspection summary
7 letter, and I just noticed a typographic error
8 here. It says November 6, 2019. That should have
9 been November 6, 2020. And, again, this is the
10 summary letter for that annual inspection.

11 Q. **And what did -- what did you find in**
12 **your inspection?**

13 A. Just quickly reading through it, the
14 same as -- as the previous year, did not identify
15 any areas that I thought needed to be addressed
16 relative to erosional features. And I also
17 noted -- doing these walks I did not see any seeps
18 over the entire length of that property.

19 Q. **You know, I'm gonna ask this question**
20 **now: How big is that property?**

21 MS. BUGEL: Objection. What are you
22 referring to with that property?

23 MS. GALE: I'm sorry.

24

1 BY MS. GALE:

2 Q. How big is the northeast area?

3 A. I believe the size of that northeast
4 area, plus or minus, 40 acres.

5 Q. So how long do these -- do these
6 inspections take?

7 A. Several hours.

8 MS. GALE: Midwest Gen moves for the
9 admission of Exhibit 1510.

10 HEARING OFFICER HALLORAN: Miss Bugel?

11 MS. BUGEL: No objection.

12 HEARING OFFICER HALLORAN: All right.

13 Exhibit 1510 is admitted; no objection.

14 (Respondent Exhibit No. 1510 was
15 received in evidence.)

16 (Respondent's Exhibit No. 1511 was
17 introduced.)

18 BY MS. GALE:

19 Q. Mr. Gnat, I would like you to flip to
20 the next document, which has been marked for
21 identification purposes Exhibit 1511. It's
22 identified as MWG13-15 underscore 108394.

23 A. Yes.

24 Q. What is this document?

1 A. Same as the previous two except for the
2 calendar year 2020; the inspection summary letter
3 for the Joliet 29 area there that we were talking
4 about.

5 **Q. And what did you see in this inspection?**

6 A. The same as the previous two years
7 there, that there were no erosional features of
8 concern. Previously repaired areas were -- were
9 holding well and that -- I certainly did not see
10 any seeps along the entire length of my inspection.

11 MS. GALE: Mr. Hearing Officer,
12 Midwest Generation moves for the admission of
13 1511.

14 HEARING OFFICER HALLORAN: Miss Bugel?

15 MS. BUGEL: No objection.

16 HEARING OFFICER HALLORAN: Thank you.
17 Exhibit 1511 is admitted; no objection.

18 (Respondent Exhibit No. 1511 was
19 received in evidence.)

20 (Respondent's Exhibit No. 1512 was
21 introduced.)

22 BY MS. GALE:

23 **Q. And, Mr. Gnat, can you please turn to**
24 **Exhibit 1512 -- that's been marked for**

1 **identification purposes as Exhibit 1512?**

2 A. Yes.

3 **Q. And it's located at MWG13-15 underscore**
4 **124452?**

5 A. Correct.

6 **Q. And what is this?**

7 A. This is the annual inspection summary
8 for 2022 that was dated -- that's dated
9 November 3rd, 2022.

10 **Q. And what did you see at this inspection?**

11 A. Overall, very similar to the previous
12 inspections. We didn't see really any features of
13 immediate concern. I didn't see any seeps,
14 however, we did note that there was one area just
15 on the -- just east of the fence line of the plant
16 that looked like it was starting to develop a
17 little bit more erosion. It was -- it was -- it's
18 all sandy gravel fill on that embankment there. So
19 it's all sand and gravelly-type material, but we
20 were starting to see, perhaps, some toe erosion
21 right there at the -- at the water intersection.
22 And we say, you know, let's -- let's take a look at
23 this after the spring snow melt.

24 **Q. What's "toe erosion"?**

1 A. Well, basically, what I meant here is at
2 the toe of the bank, so right where it met at -- at
3 the water and bank interface in terms of the bank
4 channel there.

5 **Q. Got it. Thank you.**

6 **And you say there -- there as you --**
7 **potential toe erosion, but you saw -- what did you**
8 **not see?**

9 A. Certainly did not see any ash. I mean,
10 it was strictly the sand and gravel material there
11 at the -- at the bank itself.

12 **Q. And I believe you have on your screen**
13 **now a page from Exhibit 667 that was admitted in**
14 **the first phase of the hearing. Do you see that**
15 **map?**

16 A. Yes, I do.

17 **Q. Okay. So if you can describe to us the**
18 **location of the toe erosion -- anyway, you can use**
19 **the words -- I think you said it was the east side.**

20 **Where did you see that toe erosion?**

21 A. Okay. So if -- if you can orient
22 yourself to where Pond 3 is located...

23 **Q. Yes.**

24 A. (Continuing) ...and then go south until

1 you see the heavy black line, which is the property
2 boundary.

3 **Q. Mm-hmm.**

4 A. And then go east along that property
5 line, and you'll kind of see a darker, vegetated
6 area, almost like a triangle of an area, and right
7 where that bottom left of the tri- -- bottom right
8 of that triangle, that's where there's an access
9 gate that you -- that -- basically, there's a fence
10 that -- that isolates the plant area itself.

11 And then the area to the east of that
12 is -- is the large -- or is the 40-acre area.
13 Right there at that fence line, as you go over, oh,
14 maybe five, ten feet past that fence line right
15 there, where the inlet water is that's kind of
16 right at that bank, that's where this particular
17 observation was made.

18 **Q. Got it.**

19 **And you said "inlet water." That's**
20 **right next to the in- -- intake channel?**

21 A. Correct.

22 **Q. Thank you.**

23 **Mr. Gnat, we're looking at this map that**
24 **I previously admitted at Exhibit 667 in the first**

1 **phase of this hearing.**

2 **Do you see there's a property boundary?**

3 A. Yes.

4 **Q. And I -- well, you were here this week.**

5 **Is that property boundary around the**
6 **northeast area, correct?**

7 A. Our map is -- is flawed, like many other
8 historical maps that -- that people have used and
9 that we have used; but, apparently, there's a strip
10 of this property that goes from Brandon Road, which
11 is on -- the road on the east side that goes along
12 that intake -- or right there is where the lock is,
13 so it's along that channel boundary, I don't know,
14 maybe a good 900, 1,000 feet or so, I believe
15 something like that. Apparently, there's about
16 a --

17 **Q. Did you say 900,000 feet?**

18 A. No, 900 or 1,000 feet.

19 **Q. Okay.**

20 A. Exact length I don't know, but,
21 apparently, there is a strip of this land that's
22 actually owned by the State or Army Corps of
23 Engineers or someone, but, apparently, it's -- it's
24 not Midwest Generation property.

1 **Q. Great.**

2 A. Can -- can I just do one follow-up on --
3 on this thing about the -- in this report we said
4 that we would reinspect this feature in the spring.

5 **Q. Yeah.**

6 A. Which we did. And we felt when we did
7 our inspection we put some -- some flag stakes in
8 the ground so that we have a comparison as to how
9 this feature looked from the fall to the spring,
10 and it looked, for the most part, the same; but it
11 looked like, perhaps, it might have expanded a
12 little bit, so we -- I literally, over this week,
13 in my email, got a quote from the contractor we use
14 to assist in fixing these things, and we -- we have
15 a quote for them to go ahead and -- and do a repair
16 in that area.

17 **Q. Great. And then, when you went back**
18 **this spring, did you see any ash?**

19 A. I -- I did not look at it. I got a
20 picture of it, and one of our engineers looked at
21 it, but there was no ash, no.

22 MS. GALE: Mr. Hearing Officer, in
23 case I forgot, Midwest Generation moves to
24 admit Exhibit 1512.

1 HEARING OFFICER HALLORAN: Miss Bugel?

2 MS. BUGEL: No objection.

3 HEARING OFFICER HALLORAN: 1512 is
4 admitted; no objection.

5 (Respondent Exhibit No. 1512 was
6 received in evidence.)

7 (Respondent's Exhibit No. 1513 was
8 introduced.)

9 BY MS. GALE:

10 Q. Mr. Gnat, turn to the next group -- or
11 pages, which is marked for identification purposes
12 as Exhibit 1513?

13 A. Yes.

14 Q. There are pictures. Do you recognize
15 these pictures?

16 A. Yes. These are some of my pictures from
17 my site walk.

18 Q. From 2021, right?

19 A. From 2021.

20 Q. Okay. Let's start with the first
21 picture, which -- well, it looks like it has a
22 power plant in the right-hand side.

23 What does this show?

24 A. That's a look of the area looking back

1 towards the Midwest Generation power plant
2 that's -- so we're looking west right now.

3 To the left of this would be the intake
4 channel at this point, and -- yeah, and this is
5 looking west.

6 **Q. And I will just --**

7 MS. BUGEL: Kristen, can I interrupt
8 for a second?

9 Are there Bates numbers on these
10 pictures.

11 MS. GALE: I was just going to tell
12 him what they are.

13 BY MS. GALE:

14 **Q. So I was going to say, for the record,**
15 **that this is page -- Bates number is MWG13-15**
16 **underscore 108285. It is very hard to see on this**
17 **document, but that is what it is.**

18 Okay. And you said this is looking
19 west; is that right?

20 A. That's correct, yes.

21 **Q. And what does this picture show?**

22 A. This is still within that fence line
23 that I talked about just -- just previously, so
24 we're east -- we're west of that fence line. This

1 is part of that west embankment to the intake
2 channel -- I'm sorry, the north embankment to that
3 intake channel. The intake channel would be to the
4 left here, you know, heavily vegetated.

5 **Q. And when you say "heavily vegetated,"**
6 **have you ever seen an indication of stressed**
7 **vegetation?**

8 A. No, I have not.

9 MS. BUGEL: Objection; foundation.

10 HEARING OFFICER HALLORAN: Miss Gale?

11 MS. GALE: Well, I guess what -- and
12 he walks it, so he observes the place on an
13 annual basis.

14 MS. BUGEL: You haven't established
15 that he knows what stressed vegetation looks
16 like.

17 MS. GALE: Fair enough.

18 BY MS. GALE:

19 **Q. Mr. Gnat, have you seen stressed**
20 **vegetation before?**

21 A. I have seen some stressed vegetation at
22 some other sites I've been involved with, yes.

23 **Q. What does stressed vegetation look like**
24 **at other sites you've been involved with?**

1 A. Not being a biologist or a botanist or
2 anything, but stressed vegetation, at least from
3 what I've seen, would be bushes, shrubs, or trees
4 that their foliage is either dying or not as thick
5 you would anticipate that same type of bush or tree
6 would be; grass that's having a hard time growing
7 or reestablishing itself or establishing itself on
8 the ground.

9 That's, generally, what I -- I would
10 view as stressed vegetation if somebody asked me.

11 **Q. And at the Joliet 29 station, when you**
12 **walk through it, do you see that sort of stressed**
13 **vegetation?**

14 A. No, I do not. Recognizing right now
15 that this picture is taken in fall, so a lot of
16 leaves are down off the trees and so on; but having
17 been at this station and doing the site walk in the
18 middle of summer as well, it's -- it can get like a
19 jungle.

20 **Q. All right. Turn to the next photo,**
21 **which is Bates No. MWG13-15 108293.**

22 A. Yes.

23 **Q. What does this photo depict?**

24 A. This is a photo of the bank. This would

1 already be the bank along the Des Plaines River.

2 This picture is looking to the --
3 towards the east, so I'm walking east along the --
4 the embankment looking down towards the river. And
5 this is, basically, the embankment.

6 I don't know what we can say here. I --
7 there are no seeps here. I -- I guess a -- a
8 little note here is, as you can see, a lot of the
9 dolomite cobble and so on, very typical of the
10 entire embankment, which would be consistent with
11 any type of dredging or whatnot during the
12 construction of the -- of the lock-and-dam system
13 there and so on.

14 You know, it would be what you would
15 expect in that type of a situation, have -- have
16 seen that before and -- along banks in urban areas
17 as well.

18 **Q. Okay. Can you flip to the next photo,**
19 **which has some trees. What -- which would -- that**
20 **is MWG13-15 underscore 108305.**

21 **What is this?**

22 A. Again, another picture walking further
23 to the east along the embankment. You know, I try
24 and take pictures going along the full thing to

1 document and if anybody questions me, that I've
2 got -- that I've walked this visually and so on.

3 And, again, I think -- I mean, a little
4 hard to tell, I guess, in this picture; but you'll
5 see some of the cobble-type embankment there, and,
6 you know, heavily vegetated.

7 **Q. And -- and you say the embankment.**
8 **That's the river, the sort of blue thing --**

9 A. Right, the Des Plaines River there in
10 the background.

11 **Q. Turning to the next photo, which is**
12 **MWG13-15 underscore 108316?**

13 A. Yes.

14 **Q. What does this depict?**

15 A. This -- as I said, as I walk the bank, I
16 also walk further up within the area to just kind
17 of check on the -- on the vegetation and -- and if
18 there's anything peculiar that jumps out at me in
19 terms of anything.

20 So, again, a pretty typical picture of
21 what the area looks like, very heavy grass
22 vegetation, some larger vegetation as well, areas
23 of -- of heavy -- of heavier brush.

24 In this particular case, you see this

1 somewhat tramped down feature. I checked that.
2 You know, when I see something like that, I check
3 that's not any type of erosional rail feature.
4 That was actually an animal trail, probably a -- a
5 deer trail. We -- we do spook a lot of deer when
6 we walk on -- on these -- on these inspections.

7 **Q. And does this sort of depict the jungle**
8 **you were describing?**

9 A. Yes. That's still -- that's still easy.

10 **Q. I'm sorry. What did you say?**

11 (Reporter interruption.)

12 BY THE WITNESS:

13 A. That's still easy --

14 BY MS. GALE:

15 **Q. Oh.**

16 A. -- in terms of open.

17 (Reporter interruption.)

18 THE WITNESS: That's still easy in
19 terms of open.

20 BY MS. GALE:

21 **Q. If you can turn to the next page, which**
22 **looks to be a few more rocks and is near the --**
23 **well, you see the river. And it's MWG13-15**
24 **underscore 108349?**

1 A. Yes. This is another picture of my walk
2 continuing further to the east. Again, another
3 picture of the embankment looking very similar with
4 some of that dolomite cobble -- cobbles and so on,
5 some -- some grasses right there at the toe of the
6 embankment and the river itself.

7 **Q. What is dolomite?**

8 A. Dolomite is the native bedrock there in
9 the area. The quarries in the area are all
10 quarrying the dolomite. And it's a type of a --
11 it's not quite a limestone. It's a -- a
12 magnesium -- more magnesium-rich limestone.

13 **Q. And you've said the word "cobble." What**
14 **is cobble?**

15 A. Cobble is a -- kind of a size, so chunk
16 of a cobble, about that big, you know, broken up
17 rock, you know, cobble size (indicating.)

18 **Q. What did you say?**

19 A. About that big, so, in this case, we're
20 looking at cobbles, I don't know, six,
21 eight inches, a foot or so on. You know, and you
22 get much bigger, I guess we'll call them boulders.
23 It's -- it's a relative grain size, I guess.

24 **Q. It's a rock?**

1 A. Yes.

2 Q. Turn to the next photo, which is
3 MWG13-15 108351. What does this depict?

4 A. Again, another picture further east in
5 my walk. Again, the -- the embankment, in this
6 case, a little heavier vegetation, a little heavier
7 brush along the embankment. You can still see the
8 rock cobble along there and the river in -- in the
9 background there.

10 Q. And that darker stuff, that's not coal,
11 is it?

12 A. No. No. No, that's not --

13 MS. BUGEL: Objection; leading.

14 HEARING OFFICER HALLORAN: Sustained.

15 BY MS. GALE:

16 Q. What's the darker stuff?

17 A. The darker stuff is -- is dirt, just
18 soil, black soil. It's certainly not -- not any
19 CCR material or coal even.

20 Q. Turn to the next photo, which is
21 MWG13-15 underscore 108350.

22 HEARING OFFICER HALLORAN: 350?

23 MS. GALE: Correct.

24 HEARING OFFICER HALLORAN: Thank you.

1 BY THE WITNESS:

2 A. Yes.

3 BY MS. GALE:

4 Q. **What are we looking at here?**

5 A. The same, the embankment towards
6 almost -- I believe this area's almost towards the
7 east end of -- of my walk area. And, again,
8 pictures of the cobbles and some of the vegetation
9 there. You can see the river water in the
10 background. And, again, any of this dark area that
11 you might see here, that's just soil.

12 Q. **And the next photo, MWG13-15 108352.**

13 A. Yes.

14 Q. **What does this depict?**

15 A. Again, a little bit further to the east
16 along my walk, and, again, a picture of the
17 embankment, cobbles, some vegetation, the river
18 itself.

19 Q. **Last one. Final picture MWG- -- excuse**
20 **me. MWG13-15 underscore 108375.**

21 **What does this depict?**

22 A. This is the eastern side of -- of that
23 property. Again, now starting to walk back to the
24 west after having walked along the shoreline and

1 slowly gonna start moving my way back west a little
2 bit further up to inspect some of the more interior
3 areas of the site and, again, showing the grasses
4 and some -- you know, the trees and so on.

5 MS. GALE: Mr. Hearing Officer,
6 Midwest Generation moves for the admission of
7 Exhibit 1513.

8 HEARING OFFICER HALLORAN: Miss Bugel?

9 MS. BUGEL: No objection but just a
10 point of inquiry.

11 Is it possible to get -- my concern
12 is that you can't see the Bates numbers at
13 all.

14 MS. GALE: Oh, we can handle that off
15 the record.

16 HEARING OFFICER HALLORAN: Okay.
17 Thank you.

18 No objection; Exhibit 1513 is
19 admitted.

20 (Respondent Exhibit No. 1513 was
21 received in evidence.)

22 MS. GALE: Mr. Hearing Officer, it is
23 3:00 p.m.

24 HEARING OFFICER HALLORAN: Okay.

1 We'll go off the record for a minute.

2 (Discussion held off the record.)

3 HEARING OFFICER HALLORAN: We're back
4 on the record, Lucy. Thank you.

5 BY MS. GALE:

6 Q. Mr. Gnat, we've put on the screen the
7 Joliet 29 map again, which is part of Exhibit 667.

8 A. Yes.

9 Q. Do you recall in your -- the first phase
10 of the hearing you discussed sampling of the area
11 on the northwest side of the station?

12 A. Yes, I do.

13 Q. And, for the record, that sampling was
14 Exhibit 293, which was entitled the Revised Joliet
15 29 CCB report.

16 Looking at your screen, which has the
17 boundary map of the Joliet 29 station from
18 Exhibit 667, where is the northeast area that you
19 sampled?

20 A. The northwest area.

21 Q. I'm sorry. The northwest area.

22 A. Okay. If can you orient yourself, you
23 can see the main roadway along the north side of
24 the plant, that's U.S. 6, also known as Channahon

1 Road.

2 You can -- in the central portion of --
3 you can see the -- the main site boundary. On the
4 right side there, you see the three ponds we talked
5 about. Then in the middle, that's the plant
6 itself. And then you see the large black area
7 there, that's the coal pile.

8 You will see, along the coal pile, there
9 will be a road on the north that kind of S's
10 around. Then -- then you've got a roadway towards
11 the top on the -- on the property there, and
12 then off of that road, there's a little access, and
13 it seems like to have a white splay in there.
14 That's, actually, pretty gravelly material; but,
15 basically, to the west of that access road and
16 splay area, to the west you see somewhat of a
17 green-shaded area there, that's that northwest
18 area.

19 **Q. Great.**

20 **A. To my recollection.**

21 **Q. Very good.**

22 **And to your recollection what -- and**
23 **when you did that study, what was -- what were the**
24 **majority of the results?**

1 A. The -- the purpose of that study was to
2 determine whether the ash that was placed in that
3 area would qualify as a coal combustion by-product.
4 And we collected it and sampled using the neutral
5 leach, which is required by the State of Illinois
6 for this type of characterization. And almost all
7 the samples, except one or two, I believe, that --
8 basically passed that test; when if you compared
9 the leachate, l-e-a-c-h-a-t-e, from that neutral
10 leach test, if you compared the values of the
11 parameters we had to analyze for under the -- the
12 requirement to the standards in the requirement,
13 they were below those standards.

14 **Q. And then, looking at Exhibit 1329, which**
15 **is in front of you, you said one or two tests did**
16 **not meet that. So what did KPRG do?**

17 A. Correct. I believe it was -- if I
18 remember right, from -- from talking about it the
19 other day, it was -- copper and lead, I think, were
20 the two values. And so what we -- we went back in,
21 and we did some additional sampling within that
22 area to see if we can better define the volume soil
23 with those -- with the slightly higher values,
24 which -- which we did.

1 And then we excavated that soil -- that
2 material from -- from the area and removed it
3 offsite for offsite landfill disposal.

4 **Q. Looking at Page MWG13-15 underscore**
5 **18825, at the bottom of the page, how much material**
6 **was removed?**

7 A. Approximately 1,062.88 tons.

8 MS. GALE: We're done with that
9 exhibit.

10 Mr. Hearing Officer, can we go off
11 the record?

12 HEARING OFFICER HALLORAN: Yes, we
13 may.

14 (Discussion held off the record.)

15 HEARING OFFICER HALLORAN: All right.
16 We're back on the record. Today is still
17 May 19, 2023. We're gonna continue this
18 matter on record starting June 12, 2023. I'm
19 closing a little earlier today due to
20 possible -- some safety concerns in the Loop,
21 and I'd rather be safe than sorry.

22 So thank you very much, and I'll see
23 you on June 12. Thank you.

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(Adjournment taken from 3:11 P.M. to
9:00 A.M. on June 12, 2023.)

<p style="text-align: center;">A</p> <p>a.m 1:14 216:2 AA 41:13 Aaron 166:10 abandon 169:22 Abel 2:11 4:21 able 11:21,24 32:15 39:4 43:15 45:2 51:19,22 52:18 56:10 64:4 69:15 131:11 161:21 168:16 168:22 169:9 above-entitled 1:12 127:9 above-noted 155:21 absence 77:19,20 absolutely 45:20 55:22 80:11 81:10 83:1,12 84:15,18 89:17 106:23 121:18 absorb 62:11 accepts 10:19 access 77:23 198:8 213:12,15 accident 180:24 account 63:11 accounted 176:16 accumulating 133:15,19,21 169:14 accurate 55:20 acid 115:2 acidic 160:2 187:1 acids 174:4,5 acre 63:21 64:16 acres 194:4 act 10:21 11:21 55:4 56:7 91:5 91:10 92:10,10 acted 10:22 11:1 18:12</p>	<p>acting 28:24 51:9 action 11:9 145:22 148:10 149:9 157:5,15 actions 8:6 9:18 10:17,24 11:15 active 109:20 110:1 activities 10:4 51:24 activity 128:5 187:12 acts 53:21 54:19 add 160:6 168:13 added 32:3 91:7 146:16 addition 68:17 116:3 addition- 68:17 additional 18:5 32:13,16 56:5 89:15 140:8,15 214:21 address 27:10 140:15 addressed 192:3 193:15 adds 156:16 adjacent 81:24 82:4 Adjournment 216:1 adjusted 5:24 9:9 11:2,5 13:18 14:2,8,12,17,19 14:20 15:10,12 16:9,12 17:12 93:20 126:18 129:22 Administrative 36:11 admissible 131:13 admission 12:8,18 46:1 74:16 140:23 158:3</p>	<p>162:4 166:22 170:19 175:13 190:23 192:8 194:9 195:12 211:6 admit 73:6 187:5 200:24 admitted 30:1 47:1 74:3 75:5 86:5,10 105:14 163:3,6,8,10 167:3 171:6 175:18 189:11 191:4 192:13 194:13 195:17 197:13 198:24 201:4 211:19 adverse 4:13 5:14 aerial 41:17,21 43:12 49:2 172:12 affect 189:4 aforsaid 217:9 Agency 8:6,14,20 10:19 11:10 29:4 33:16 88:20 92:18,19 104:24 140:13 140:17 Agency's 10:20 13:17 16:21,21 16:23,24 18:4 ago 18:1 59:3 99:1 131:9 139:9,10 agree 6:10 8:10 43:21 44:20 78:3 93:13 140:17 183:17 agreed 14:6 58:14 58:19 59:1 114:14 116:18 127:5 128:6 140:5 162:14,16 162:17,20 182:18,19</p>	<p>agreeing 140:7 agreement 11:10 11:13 85:14 87:19 88:6 123:21 124:24 125:2 126:10 agreements 84:20 87:24 agrees 10:6,11 ahead 35:3 143:10 200:15 aid 105:15 air 83:16,19 alkaline 174:23 186:24 allow 115:16 116:7 altered 122:13 alternate 25:13 26:5,9 31:20 37:4 47:14 93:24 102:15,16 103:13,21 143:1 149:21 150:3,6 154:18,20 155:10 alternative 94:4 amended 7:7,18 amount 64:17 71:23 72:1 analyses 117:3 139:22 173:3 analysis 83:8 84:11 116:14 117:11,15,19 122:3 123:17 133:22 161:13 174:15 176:10 analytical 116:17 147:8 171:22,22 172:2 176:7 analyze 143:23 214:11 analyzed 114:12 161:15 173:9</p>	<p>analyzing 114:16 and/or 33:18 Andrea 124:15,18 animal 207:4 announce 4:9 annual 112:24 145:18,21,22 147:19,20 148:3 148:10 149:8 188:17 193:10 196:7 203:13 annually 189:22 anomaly 173:13 175:11 answer 29:10 39:4 40:1 43:15,17 51:7,8,11,15,19 51:22 52:18 53:22 62:19 64:4 70:13,15 180:11 answered 40:15 42:20 59:20 answering 43:4 anticipate 204:5 anticipated 34:15 anticipates 34:17 34:20 45:13 anybody 206:1 anyway 197:18 apologize 146:21 163:6 177:16 189:13 apparently 199:9 199:15,21,23 appearance 129:17 APPEARANCES 2:1 appears 5:23,24 22:7 55:13 113:23 Appendix 37:12 142:4,12 143:22 144:7,10,17,17</p>
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