

ILLINOIS POLLUTION CONTROL BOARD

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

TRANSCRIPT of the PROCEEDINGS taken before
HEARING OFFICER BRADLEY HALLORAN at the James R.
Thompson Center, 100 West Randolph Street, Room
503, Chicago, Illinois, on the 14th day of June,
2023, A.D., at 9:00 o'clock a.m.

Reported by: Kari Wiedenhaupt, CSR

License No.: 084-004725

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NUMBER	MARKED FOR ID
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ADMITTED INTO EVIDENCE

RESPONDENT'S EXHIBIT

No. 1601	124
No. 1602	129
No. 1603	139
No. 1604	140
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COMPLAINANTS' EXHIBIT

No. 1518	285
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1 HEARING OFFICER HALLORAN: Good
2 morning. Today is June 14, 2023. We have
3 continued this matter on record from yesterday,
4 June 13th. My name is Bradley Halloran, a hearing
5 officer at the Illinois Pollution Control Board.
6 This is 13-15.

7 Right now we are in the middle
8 of cross. Mr. Ross is crossing Respondent's
9 experts, Mr. Dorgan and Mr. Maxwell.

10 Just to be on the safe side,
11 gentlemen, could you please raise your hand, and
12 Kari will swear you in?

13 (Whereupon, the witnesses,
14 Mr. Dorgan and Mr. Maxwell,
15 were duly sworn.)

16 HEARING OFFICER HALLORAN: Mr. Russ,
17 you may proceed.

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1 WHEREUPON:

2 D O U G L A S D O R G A N

3 and

4 M I C H A E L M A X W E L L

5 called as a witness herein, having been first duly
6 sworn, deposeth and saith as follows:

7 C R O S S E X A M I N A T I O N (cont.)

8 MR. RUSS: Thank you. Good morning.

9 MR. DORGAN: Good morning.

10 MR. MAXWELL: Good morning.

11 MR. RUSS: I'm going to ask a couple
12 of questions about the remedy -- remedies that you
13 proposed at the four sites, and I'm going to start
14 at Joliet 29.

15 In your proposed remedy, did you
16 recommend any source control beyond what was
17 contained in the compliance commitment agreements?

18 MR. MAXWELL: The source -- or the
19 items recommended in the -- included in the
20 compliance commitment agreements are certainly
21 recommended to be followed. To the extent that
22 there are sources that are beyond the -- those
23 discussed in the compliance commitment agreement,
24 we are recommending that the compliance commitment

1 agreement be followed.

2 MR. RUSS: So, just so I am clear
3 for the record, you are not recommending anything
4 beyond what is in the compliance commitment
5 agreement?

6 MS. NIJMAN: Misstates testimony
7 from yesterday.

8 HEARING OFFICER HALLORAN: You're
9 going to have to speak up, people, because --

10 MS. NIJMAN: Misstates testimony
11 from yesterday.

12 HEARING OFFICER HALLORAN: Okay.
13 You know what? You can -- I am thinking of
14 objections of that ilk, because this could go on
15 and on, you can state your objections, and say
16 why, and then Mr. Russ can respond, and then if
17 that doesn't work out, we can clean it up on
18 re-direct, if possible.

19 Because I really don't know what
20 was said yesterday. I do, but I don't. So,
21 Ms. Nijman, you have an objection, misstates the
22 evidence from yesterday?

23 MS. NIJMAN: Yes. There was a
24 specific slide of the presentation that described

1 the remedy for Joliet 29, and it included a series
2 of factors that he testified to, which would
3 include the new rules as a method of source
4 control.

5 HEARING OFFICER HALLORAN: Okay.
6 Mr. Russ?

7 MR. RUSS: Okay. So, I was
8 referring to his testimony of 30 seconds ago, and
9 not yesterday, but now I have an objection to the
10 speaking objection that --

11 HEARING OFFICER HALLORAN: Well, I
12 have asked her to give a speaking objection,
13 because, you know, part of my job is to make a
14 clear, concise, and a timely record. I think
15 concise left the station a while ago. We've got
16 to make it clear, and I've got to get the record
17 on time, so -- the transcript.

18 So we can't keep doing this, and
19 if, in fact, there is an objection, we can clean
20 it up on re-direct, and we have to move forward on
21 this.

22 So, Mr. Russ, you may proceed
23 with your question of 30 seconds ago.

24 MR. RUSS: Yeah. I asked you first,

1 you know, is it your position that your remedy
2 requires any source control beyond the compliance
3 commitment agreements? And you talked about how
4 the compliance commitment agreements include what
5 you're proposing for a remedy.

6 So just to clarify for the
7 record, is there anything outside of the
8 compliance commitment agreements that you are
9 proposing for a remedy?

10 MR. MAXWELL: We are also
11 recommending that the CCR -- the state and the
12 federal CCR rules continue to be followed. The
13 closure of the ponds can certainly be interpreted
14 as a measure of source control.

15 MR. RUSS: Okay. Can you please
16 turn to your deposition at page 73? There is a
17 question on line 14, "Did you recommend any
18 additional source control beyond the measures
19 contained in the CCA?"

20 And Mr. Dorgan replied, "I don't
21 believe that we recommended any additional source
22 controls. We recommended the continuing
23 implementation of the groundwater monitoring
24 program at that site and the continued inspection

1 regime that's in place. So that would be my
2 answer."

3 HEARING OFFICER HALLORAN: Mr. Russ,
4 could you slow down, please?

5 MR. RUSS: Yes.

6 HEARING OFFICER HALLORAN: Thank
7 you.

8 MR. RUSS: Would you like me to
9 start back with the question?

10 HEARING OFFICER HALLORAN: Kari, did
11 you get all that?

12 THE COURT REPORTER: Yes, but if you
13 could speak up as well.

14 MR. RUSS: Sure. Okay. Did you --
15 did you hear what I -- did you read along what I
16 was saying?

17 MR. DORGAN: I believe you were on
18 page 73, line 14 and 16.

19 MR. RUSS: 14 through 21, yeah.

20 MR. DORGAN: Okay. I see that.

21 MR. RUSS: Is that still your
22 opinion?

23 MR. DORGAN: Well, I think we were
24 responding specifically to the question about

1 additional source controls, so -- and the response
2 there, referenced that we had the groundwater
3 monitoring program in place. While it says that
4 there were no additional source controls, that was
5 in addition to the ones we were already
6 considering. So I don't know that there is
7 necessarily a conflict there.

8 MS. NIJMAN: I am going to -- I'm
9 sorry. I have to object to the improper cross
10 examination and misleading nature of the question.
11 We saw a couple of these yesterday where later on,
12 two questions later Mr. Maxwell says exactly what
13 he just said now about closure of the ponds.

14 HEARING OFFICER HALLORAN: Yeah,
15 Mr. Russ, I'm not getting this. It's not an
16 impeachment. You're just reading from the dep,
17 and, you know, it may or may not be a different
18 answer.

19 MR. RUSS: I'm --

20 HEARING OFFICER HALLORAN: It sounds
21 like more for a post-hearing brief. But your
22 response?

23 MR. RUSS: Well, I mean, I'm
24 referring to the remedy that they proposed in

1 their presentation yesterday, and I'm trying to
2 understand whether there is any source control in
3 that remedy outside of the CCAs, because it's not
4 clear to me from the presentation whether there
5 is.

6 MS. NIJMAN: And Mr. Maxwell -- you
7 are being misleading in your questions, because
8 five lines later he describes it, so --

9 HEARING OFFICER HALLORAN: Yeah,
10 Mr. Russ, I pretty much agree with that. It's
11 only 9:05, and we're at loggerheads already. So
12 if you could rephrase your questions to try to
13 make it not as misleading.

14 MR. RUSS: Could you give me a
15 moment?

16 HEARING OFFICER HALLORAN: Yes.

17 MR. RUSS: Okay. So I'm going to
18 ask about the remedy at Waukegan now.

19 Did you estimate how long your
20 proposed remedy would take to achieve groundwater
21 protection standards at Waukegan?

22 MR. DORGAN: We considered that
23 there is a time element to the remedy when looking
24 at MNA, and we acknowledged in our report that MNA

1 takes time, but we don't have a specific target
2 end date for when the MNA process results in the
3 restoration to below groundwater protection
4 standards.

5 MR. RUSS: Okay. And aside from the
6 cap you proposed for Waukegan, would your remedy
7 require anything more than what Midwest Generation
8 is already doing to comply with state and federal
9 obligations at Waukegan?

10 MR. DORGAN: Well, certainly --
11 certainly that. We have also recommended that the
12 stations comply with any new rules for the
13 historic fill areas as they come out at the state
14 and federal levels. And so that would be another
15 element of the ongoing remedy.

16 MR. RUSS: And at Will County,
17 similar question. Is it still your position that
18 beyond what Midwest Generation is doing to comply
19 with the CCAs and state and federal regulations,
20 the remedy doesn't require any further -- propose
21 any further source control?

22 MR. DORGAN: Well, I think the
23 remedy that we proposed as we did at Waukegan and
24 the other stations indicates that as these new

1 rules are promulgated, to the extent they will
2 have application to the conditions at the
3 stations, that whatever those rules end up being,
4 that they should be followed.

5 MR. RUSS: Okay. I want to turn to
6 page 32 -- 23 of your report in the heading to
7 Section 3.2. Here it says, "The 2012 CCAs at each
8 of the stations are key compliance mechanisms that
9 have also resulted in collection of a substantial
10 quantity of --"

11 MS. NIJMAN: I'm sorry. Where are
12 you reading?

13 MS. RUSS: Heading 3.2. I will
14 start again.

15 "The 2012 CCAs at each of the
16 stations are key compliance mechanisms that have
17 also resulted in collection of a substantial
18 quantity of data useful for characterization of
19 environmental conditions and implementation of
20 measures to control potential contaminant sources
21 at each station."

22 Did I read that correctly?

23 MR. DORGAN: That's what's stated in
24 our report.

1 MR. RUSS: And where it says
2 potential contaminant sources, what potential
3 contaminant sources are you referring to there?

4 MR. DORGAN: May I have a moment
5 just to review the rest of that section, if we
6 could?

7 MR. RUSS: Sure.

8 MR. DORGAN: So, this is obviously a
9 heading to the broader language that follows it on
10 the next two pages, actually three pages, that
11 describes some of the specific actions and
12 information that's available for the site. We
13 have acknowledged that there are areas outside of
14 the regulated units that have both been documented
15 to be presence -- present, are alleged to be
16 present. Our evaluation has considered that, and
17 that's why we have taken the approach of looking
18 at the downgradient property boundary under the
19 more TACO, traditional SRP approach.

20 We feel even that's a bit
21 conservative. Because the wells aren't actually
22 at the property boundary, all of the conditions
23 that we are talking about, including any reference
24 to a potential source here would be within the

1 GMZs that have been established at three of the
2 four sites or are within the ELUC at the fourth
3 one in the case of Waukegan.

4 So we continue to recommend and
5 have proposed part of our strategy is this
6 downgradient focus, which is consistent with what
7 you would do with a traditional brownfield similar
8 to this type of a site. So we -- yes, we have
9 considered sources, and they are reflected in the
10 way in which we have approached our remedy.

11 MR. RUSS: How would the CCAs
12 control potential contaminant sources outside of
13 the units that are named in the CCAs, the ash
14 ponds?

15 MR. DORGAN: The CCAs don't
16 specifically speak to areas outside of the
17 regulated units, other than what is comprised of
18 the regulated unit itself, and that has been
19 documented in the record.

20 MR. RUSS: Okay. Thank you.

21 Now, turning to Will County, in
22 your report at page 16, starting at the bottom and
23 going over to 17, you talk about the bottom
24 elevation of Ponds 2S and 3S and the highest

1 recorded groundwater elevations. Do you see that?

2 MR. MAXWELL: Yes.

3 MR. RUSS: And on the top of page
4 17, you note that the groundwater elevations have
5 been as high as 584.1 feet MSL, which I believe is
6 mean sea level; is that right?

7 MR. MAXWELL: Yes.

8 MR. RUSS: Is that higher than the
9 bottom of the ash ponds that you describe on the
10 bottom of page 16?

11 MR. MAXWELL: So the bottom of the
12 pond is referenced in -- at the bottom of page 16,
13 at 582.5, and there is a -- one monitoring point
14 for May of 2019 that's noted at 584.1.

15 MR. RUSS: Okay. Thank you. Can
16 you now look at what you should have in front of
17 you as Exhibit 1332? Have you reviewed this
18 document before today, I mean?

19 MR. MAXWELL: So this document is
20 the operating permit application. It's dated
21 March 31st of 2022.

22 MR. RUSS: Right.

23 MR. MAXWELL: As we had discussed
24 yesterday, I believe, we are generally aware that

1 there has been documentation that has continued to
2 be generated as the compliance with the CCR rules
3 continues to take place. This document is one of
4 those, and we obviously did not -- did not
5 consider this document in our report, because it
6 post-dates the document.

7 So am I generally aware of this
8 document? I am. It's not our document, and I
9 haven't necessarily reviewed it in detail here --

10 MR. RUSS: Okay. That's fine.

11 MR. MAXWELL: Prior to now.

12 MR. RUSS: That's fine. Understood.

13 I'm bringing this document up
14 just as a point of reference with regard to the
15 elevations that you just mentioned. Can you look
16 at page 125661, which is also Figure 9-2 of this
17 report?

18 MR. MAXWELL: I'm sorry. 66?

19 MR. RUSS: The Bates number is
20 really hard to see, but it's Figure 9-2, and it --
21 the Bates page is 125661.

22 MR. MAXWELL: It's Figure 9-2?

23 MR. RUSS: Yep. It should be a
24 cross section diagram.

1 MS. NIJMAN: I'm going to --
2 objection. This document relates to different
3 surface impoundments than the previous discussions
4 about elevation.

5 MR. RUSS: So, if you look at Figure
6 9-2, it shows all four of the surface impoundments
7 at Will County.

8 HEARING OFFICER HALLORAN: He may
9 answer if he's able. Overruled.

10 MR. MAXWELL: I'm not seeing Figure
11 9-2. I'm sorry.

12 MR. RUSS: Is it 125661? Can you
13 find that Bates page?

14 MR. DORGAN: What's -- what's the
15 Bates page number?

16 MR. RUSS: 125661.

17 MR. MAXWELL: Okay.

18 MR. RUSS: Okay. Great. Thanks.

19 Have you seen diagrams like this
20 before in your professional experience?

21 MR. MAXWELL: Yeah. This appears to
22 be a geologic cross section that lists the
23 lithology, the bedrock that's shown through the
24 section.

1 MR. RUSS: Okay. Great. Thank you.

2 Does this show the elevation of
3 the bottom of Pond 3S?

4 MR. MAXWELL: It looks like Pond 3S
5 is depicted on this, yes.

6 MR. RUSS: And where is the
7 elevation of the bottom of Pond 3S, roughly?

8 MR. MAXWELL: So, the bottom of pond
9 3S on this cross section is depicted as "projected
10 pond outline." I'm not quite sure exactly what
11 that is in reference to. That's a little vague
12 description.

13 MR. RUSS: I can ask this a
14 different way. This is definitely not a trick
15 question. I'm just trying to confirm what's in
16 your report, which is shown here. In your report
17 on page 16 you said that the bottom elevation of
18 Pond 2S and 3S is 582.5 feet.

19 Does this figure appear to
20 roughly correspond to that?

21 MS. NIJMAN: I'm going to object to
22 the relevance of this line. He has never reviewed
23 this document. You can't compare it to then
24 what's in his report, and he just noted that the

1 projected pond outline is unclear and not related
2 to necessarily the pond.

3 HEARING OFFICER HALLORAN: I think
4 he is doing a swell job in answering. Overruled.

5 MR. MAXWELL: Well, if one assumes
6 that the projected pond outline as shown on this
7 cross section -- I can say that the projected pond
8 outline as shown on this cross section, it looks
9 like it is roughly 581.

10 MR. RUSS: Okay. Thank you.

11 Now, looking at the legend here,
12 there is a box labeled A. Do you see that? The
13 legend right below the cross section diagram.

14 MR. MAXWELL: Yes, I do.

15 MR. RUSS: And this says, "fill
16 consisting of brown and black silty clay, and
17 silty sand mixed with gravel and crushed
18 limestone. The fill may include coal, black
19 cinders, and slag."

20 Do you see that?

21 MR. MAXWELL: Yes.

22 MR. RUSS: What's the lowest
23 elevation of that fill layer in this diagram?

24 MR. MAXWELL: In the vicinity of

1 Pond 3S or overall?

2 MR. RUSS: Sure. In the vicinity of
3 Pond 3S.

4 MR. MAXWELL: It looks like it comes
5 to an elevation of roughly 580.

6 MR. RUSS: Okay. Thank you.

7 And what's the elevation of the
8 water in this diagram in about the same location,
9 Pond 3S?

10 MR. MAXWELL: Again, it's difficult
11 to decipher from a cross section, because it's
12 approximate just because of the nature of the
13 scale.

14 MR. RUSS: Yep.

15 MR. MAXWELL: But that monitoring
16 well, MW-06, it shows a water level as of May of
17 '21. That's depicted with a triangle there
18 towards the top of the screen.

19 MR. RUSS: Yep. And is that
20 elevation -- what's the elevation of that
21 triangle?

22 MR. MAXWELL: It looks like it's
23 roughly 581. Again, it's hard to tell just based
24 on this cross section, but 581, plus or minus.

1 MR. RUSS: Okay. Great. Thank you.

2 Now, turning to page 125663.

3 There is a similar diagram, but zoomed in on Pond
4 1N. What's the lowest elevation of the fill layer
5 in this area?

6 MR. MAXWELL: It looks like it's a
7 little bit below 580 elevation.

8 MR. RUSS: Okay. And does this
9 diagram show contact between that fill layer and
10 groundwater?

11 MR. MAXWELL: This diagram indicates
12 groundwater in this particular -- for this
13 particular monitoring event on November of '21,
14 that it's slightly higher than the bottom of the
15 fill layer that's noted here.

16 MR. RUSS: Okay. Thank you.

17 And what does it show with
18 respect to the groundwater level on the bottom of
19 the Pond 1N?

20 MR. MAXWELL: What they have done
21 here is they have connected the two groundwater
22 elevations from the two monitoring wells, assuming
23 that the -- the groundwater elevation in between
24 the two well locations is -- is directly

1 connected, and the line approximately is -- is
2 similar with the -- the bottom of the -- the
3 notation that's the -- is indicated on this figure
4 is pond outline.

5 MR. RUSS: Right. Okay. Thank you.

6 And now turning to page -- the
7 last page we are going to look at here is 125665,
8 just a couple of pages down.

9 MR. MAXWELL: That's a trend graph?

10 MR. RUSS: Yep. And this shows a
11 number of different groundwater monitoring wells.
12 If you want to flip back to the one we were just
13 looking at on page -- Figure 9-4 on page 125663,
14 that shows Monitoring Wells 15 and 2, right?

15 MR. MAXWELL: MW-15 and MW-2 are
16 shown on this graph.

17 MR. RUSS: Okay.

18 MR. MAXWELL: It's labeled Will
19 County Station.

20 MR. RUSS: Okay. Great.

21 And then on -- back to page
22 125665 where the groundwater elevation versus time
23 is plotted. Do you -- can you make out the line
24 for MW-2?

1 MS. NIJMAN: For the record, I would
2 like to show a continuing objection to this line
3 of questioning. It's about a report that he has
4 never seen before, he's looking at for the first
5 time. The witness who prepared these documents
6 was here and could have been asked these
7 questions, and now we are being asked to, on the
8 fly, determine what might be there.

9 HEARING OFFICER HALLORAN: Mr. Russ,
10 any response?

11 MR. RUSS: Sure. I'm just trying to
12 establish that what they said in their report a
13 few years ago is still true by looking at some of
14 the more recent data.

15 HEARING OFFICER HALLORAN: Yeah. I
16 agree. He can continue. It's so noted on the
17 record, Ms. Nijman, your continued objection.
18 Thank you.

19 MS. NIJMAN: Thank you.

20 MR. RUSS: So looking at the
21 groundwater elevation chart, can you make out the
22 line for MW-02?

23 MR. MAXWELL: I can make out certain
24 points for MW-02. You know, it overlaps with --

1 with other monitoring wells in certain locations,
2 but there are -- there's portions of the graph
3 where I can see the symbol for MW-2.

4 MR. RUSS: Great. And the
5 groundwater fluctuates as you expect it to, but it
6 gets as high as 584 or a little higher in MW-2;
7 isn't that right?

8 MR. MAXWELL: There is one location
9 during the roughly 10 years of monitoring where it
10 looks like the elevation of MW-2 has gotten
11 slightly higher than 584.

12 MR. RUSS: Right. Thank you.
13 And it -- just below 584 at some
14 point, roughly, June of 2020; is that right?

15 MR. MAXWELL: That's correct.

16 MR. RUSS: And then for the rest of
17 the period shown here, MW-2 fluctuates between 581
18 and 584; is that right?

19 MR. MAXWELL: It looks like that,
20 the June point -- well, I guess there is a second
21 point there in June of '19 as well, but those --
22 the June '19 and June '20 elevations seem to be a
23 bit of an outlier in terms of them being unusually
24 high. The -- it looks like really the majority of

1 the data other than those two points is between
2 583, 583 and a half, and in recent -- the last
3 couple of years, the elevation has actually
4 gone -- it's decreased from that, that relative
5 high elevation that you mentioned from June of
6 2020.

7 MR. RUSS: Okay. Thank you.

8 Is it fair to say that most of
9 the data on the chart here are above an elevation
10 of 582?

11 MR. MAXWELL: It looks like there is
12 only a few that are below 582, yeah.

13 MR. RUSS: Okay. So is this the
14 kind of information that could be useful in doing
15 a mass analysis, as we were discussing yesterday?

16 MS. NIJMAN: Objection to the
17 reference of "mass analysis". The witness
18 explained it.

19 Objection to the term "mass
20 analysis." The witness explained yesterday what
21 he meant by that.

22 HEARING OFFICER HALLORAN: Okay. He
23 can answer, if he is able. Overruled.

24 MR. MAXWELL: When you are speaking

1 to mass analysis -- you want to give me a little
2 more understanding of what -- what you understand
3 that to be?

4 MR. RUSS: Well, I was trying to get
5 to this yesterday when I was -- you were asked
6 about the mass analysis by Ms. Nijman originally,
7 and so then I was trying to ask yesterday what
8 that looks like, what kind of information you
9 need, and how you would perform one.

10 I didn't get to the end of --
11 you know, I didn't get a clear answer, so I'm
12 still kind of wondering what you guys meant by it.

13 But we talked about how contact
14 with groundwater is one of the factors you would
15 consider. The age of the material in place, the
16 current concentration, if it's been there for a
17 long time, you can't know the original
18 concentration, that kind of information.

19 And I believe the point is you
20 want to estimate how much more weathering and
21 leaching there's going to be from the material
22 that's in the ground based on its history, but I
23 don't want to speak for you, because I didn't --
24 I'm not totally sure what you mean by mass

1 analysis.

2 MR. DORGAN: I believe I fielded
3 that question yesterday, so I'm going to follow up
4 on this.

5 So, we were, I think, speaking
6 directly to Waukegan and discussing the beneficial
7 effects that we were anticipating from the cap,
8 and I don't think we represented at any point that
9 there had been a wide scale mass analysis. We
10 were discussing the mass of the CCR that's at
11 Waukegan in contact with the groundwater relative
12 to our cap.

13 And so I don't necessarily see
14 the relevance here. The questions about the wells
15 you were just asking are different wells than what
16 we discussed on our report on different dates. We
17 interpreted the information for you as best we
18 could.

19 But at -- at the end of the day,
20 it doesn't change the fact that our focus -- you
21 were referencing upgradient wells. Our focus has
22 been on the downgradient wells. That was what we
23 discussed in our trend testing that we did, in our
24 averaging, and relative to our risk assessment.

1 So I'm not sure that I can answer your question
2 with regard to mass analysis, other than the
3 discussion we had yesterday with respect to
4 Waukegan.

5 MR. RUSS: Okay. That's fine.

6 I guess what I'm getting at is,
7 in your report, you talked about the relative
8 elevations of the groundwater in the ponds, and we
9 were just confirming that that's still true today
10 with the more recent data, and I'm wondering what
11 significance that has for your remedy.

12 MS. NIJMAN: I'd just note the
13 objection to misstating what's in the report, his
14 discussion of the rules.

15 HEARING OFFICER HALLORAN:
16 Sustained.

17 MR. RUSS: I'm sorry. I don't
18 understand the objection, because I don't see a
19 discussion of the rules here.

20 MS. NIJMAN: In the following
21 paragraph, they describe --

22 HEARING OFFICER HALLORAN: Could
23 you -- could you rephrase, Mr. Russ, please?

24 MR. RUSS: Yeah. I mean, we can go

1 back to the --

2 HEARING OFFICER HALLORAN: Yeah,
3 that'd be great. Thanks.

4 MR. RUSS: -- report at page 16.

5 HEARING OFFICER HALLORAN: That'd be
6 great. Thank you.

7 MR. RUSS: So you look at --

8 HEARING OFFICER HALLORAN: You may
9 proceed.

10 MR. RUSS: Thank you.

11 If you look at the bottom of
12 page 16 of your report, you -- as we discussed
13 earlier, you talk about the bottom elevation of
14 Pond 2S and 3S, and we just confirmed from these
15 more recent drawings that that's still accurate.
16 And then you talked about the highest groundwater
17 elevation since June 2011 in that vicinity, and we
18 looked at the groundwater charts, and that still
19 seems to be roughly accurate.

20 And I'm -- so you presented that
21 information in your report, and I'm wondering how
22 that information influenced your opinion as to the
23 remedy for that site.

24 MR. DORGAN: Well, in the report

1 where this information is presented was part of
2 the background about the stations themselves and
3 which surface impoundments were considered either
4 federal or state impoundments. So we were simply
5 reflecting the information that was already in the
6 record, relative to each of the individual ponds
7 at the different stations and providing
8 information about the general groundwater
9 conditions with respect to the pond areas.

10 Certainly, groundwater
11 elevations were considered as part of our
12 analysis. We needed to know them with respect to
13 assessing groundwater flow, which is why the
14 emphasis was on the downgradient well conditions.
15 Understanding the overall groundwater gradient was
16 important to assessing the downgradient wells and
17 supporting the risk analysis that we performed.

18 MR. RUSS: So, I mean, my question
19 is about this -- this paragraph only talks about
20 two things, the elevation of the pond and the
21 elevation of the groundwater, which suggests that
22 they have something to do with each other, and I'm
23 wondering what that is and how that influences
24 your remedy opinion.

1 MS. NIJMAN: Asked and answered.

2 HEARING OFFICER HALLORAN:

3 Overruled. You may answer, if you are able.

4 MR. DORGAN: So, obviously, there is
5 separation distance standards. There is -- we
6 were looking at the analysis relative to what was
7 considered a federal pond versus a state pond.
8 This particular section had more to do with
9 background on the stations.

10 Further evaluation of the
11 groundwater occurred at later points in our report
12 as we documented and supported the remedy approach
13 that we were working with from a strategy
14 perspective.

15 MR. RUSS: Okay. And were you aware
16 of the overlap between the groundwater and the
17 fill when you were constructing your remedy
18 opinion?

19 MR. DORGAN: I don't recall exactly.
20 Obviously, there is what Mr. Maxwell just
21 testified to. They're all the groundwater and the
22 fill and the surface water, and we reference here
23 that there are some variations in the groundwater
24 elevations. So exactly what -- how much

1 information we had in our possession at the time?
2 We certainly recognized that there are instances
3 where the groundwater elevation came up higher and
4 came into the zone immediately at the base of the
5 pond, but how much of that?

6 We were pointing out both the
7 specific instance of what we knew at the time to
8 be the highest, and more importantly, we
9 referenced what was the average over that period
10 of time that we had available to us as well. So
11 that was the information we were considering.

12 MR. RUSS: Okay. So I'm going to
13 move on to some different questions.

14 Staying on the topic of remedy,
15 but thinking about more generally, yesterday or
16 the day before Ms. Nijman asked you about how your
17 proposed remedies might conflict with forthcoming
18 state and federal regulations regarding historic
19 ash.

20 Do you remember that?

21 MR. DORGAN: Yes, I do.

22 MR. RUSS: First of all, just to
23 make clear for the record, have those regulations
24 been finalized?

1 MR. DORGAN: My understanding, they
2 have been published as proposed rules.

3 MR. RUSS: All right. Have you
4 been --

5 MR. DORGAN: The CC -- the federal
6 have been published as proposed rules.

7 MR. RUSS: Okay. Thank you.

8 Have you been keeping track of
9 the state rulemaking docket related to historic
10 ash?

11 MR. DORGAN: In general.

12 MR. RUSS: Are you aware of any
13 movement in that docket in the past two years?

14 MR. DORGAN: I'm not aware that they
15 have been finalized, but they are still under
16 consideration.

17 MR. RUSS: And I think you said in
18 your presentations yesterday that you anticipate
19 that these will be finalized, but you don't know
20 for sure, right?

21 MR. DORGAN: Well, we consider
22 what's happened historically to be informative to
23 what we might anticipate. There have been
24 proposed CCR rules that came out as proposed rules

1 and were adopted within a relatively short period
2 of time. I can't say how long it will take, but
3 just from the history, the new rules have
4 similarities to the existing CCR rules.

5 So I have no reason to believe
6 that they won't advance and eventually be
7 promulgated.

8 MR. RUSS: Are you familiar with the
9 content of the current draft of the state?

10 MR. DORGAN: Generally.

11 MR. RUSS: And the -- are you
12 familiar with the content of the proposed federal?

13 MR. DORGAN: Not looked at it in
14 great detail, but just generally familiar with
15 what's been proposed.

16 MR. RUSS: Okay. To the extent that
17 you are able to answer this question, how would an
18 investigation of site conditions at these sites
19 conflict with the federal CCR rulemaking that has
20 been proposed?

21 MR. DORGAN: That's a question I
22 can't answer. I mean, we don't know what the
23 federal rules are going to be and how they're
24 going to end up coming out, and that's part of the

1 challenge that we have is in terms of why we have
2 included compliance with those rules as part of
3 our remedy is we will have to see what they look
4 like when they finally are published, adopted.

5 MR. RUSS: Okay. We looked a number
6 of times at -- I believe it was referred to as
7 your cheat sheet at the end of your presentation,
8 the second to last slide in your presentation, if
9 I'm not mistaken.

10 Does this table list any of the
11 historic ash areas identified by the Board?

12 MR. DORGAN: This table is detailing
13 conditions related to the impoundments that had
14 been identified at each of the four stations.

15 MR. RUSS: Okay. Thank you.

16 At one point Ms. Nijman was
17 asking you about whether ash in the ground is a
18 source of contamination, and I believe,
19 Mr. Maxwell, you said that depends on the
20 quantities of that mixture. Do you remember that?

21 MR. MAXWELL: Yes, I do.

22 MR. RUSS: Because the ash might be
23 mixed with soil, and it depends on how much of
24 each.

1 Did you evaluate the relative
2 proportions of coal ash and soil in any of the
3 areas at these four sites?

4 MR. MAXWELL: To the extent that
5 there was boring log information available, I can
6 speak to -- for example, there were borings at the
7 southeast fill area from Waukegan -- or I'm
8 sorry -- from Will County that described ash
9 material, I believe mixed with soil, were -- we
10 didn't, however, see any quantitative information
11 in the record that would say that the soil is --
12 you know, that that particular sample is
13 60 percent one thing and 40 percent the other.
14 That level of detail was not present in the
15 record, but -- so what we focused on was the
16 analytical data from historical soil sample
17 locations that had -- that were characterized as
18 CCR and/or ash.

19 And there were instances where
20 those concentrations ultimately -- the soil
21 concentrations that were noted were below the TACO
22 Tier I numbers, which would suggest that that
23 particular sample isn't -- isn't reflective of a
24 source, and the logical explanation for that is

1 that -- that the CCR, it's mixed with soil, which
2 would tend to drive towards that result, as
3 opposed to a -- a large mass of CCR.

4 MR. RUSS: Okay. Thank you. I'm
5 sorry that these questions are going to seem a
6 little bit disjointed, but I'm trying to clean up
7 here.

8 In your report at page 51 -- and
9 I believe this was discussed in your presentation
10 as well, and I don't remember exactly what slide
11 we were on at that point, but in your report on
12 page 51 there is a large paragraph at the top of
13 the page there. Right in the middle there is a
14 sentence that starts with "GMZs."

15 Do you see that?

16 MR. MAXWELL: I believe so. GMZs
17 and ELUCs.

18 MR. RUSS: Yep. "GMZs and ELUCs are
19 proven as effective, industry-accepted remedial
20 approaches approved by the State of Illinois to
21 adequately control exposure to impacted
22 groundwater."

23 I just want to make clear for
24 the record, because GMZs and ELUCs are approved

1 together in that sentence. Is there any -- did
2 GMZs control exposure to impacted groundwater by
3 themselves?

4 MR. DORGAN: I think I handled some
5 of the questions on this yesterday, so I will take
6 that.

7 So what we are saying here is
8 that they are part of the remedial process that's
9 ongoing. There had to be corrective measures
10 taken in order to support obtaining the GMZ. The
11 GMZ is an IEPA designation that acknowledges a
12 corrective action is taking place, and that there
13 may be concentrations of contaminants of concern
14 above the groundwater protection standards.

15 The ELUC, which goes with the
16 GMZ, is the mechanism by which there is a
17 prohibition on the installation of wells and use
18 of that groundwater as a potable resource. So the
19 two of them combined is the point that we are
20 making. They had been commonly used to address
21 the types of conditions that exist at these
22 stations, and as we have said previously, should
23 continue to remain in place as part of the remedy
24 that's occurring.

1 MR. RUSS: Okay. Thank you.

2 So yesterday when we were
3 talking about the northwest area at Joliet 29, I
4 apparently didn't get a clear answer on the record
5 to one question, so I have to ask it again.

6 For that area, have you seen any
7 information about contact between ash and
8 groundwater?

9 MR. MAXWELL: You are speaking of
10 the northwest area at Joliet?

11 MR. RUSS: Yeah.

12 MR. MAXWELL: I believe that -- so
13 that area was investigated with a series of
14 borings in 2005 by KPRG. That -- those borings
15 were -- the source of the information -- the soil
16 samples that were collected for the NLET testing
17 that was done, those boring logs -- boring logs
18 typically make reference to -- to groundwater.

19 I'm not recalling if groundwater
20 was specifically encountered or not, but to the
21 extent that it was or it was not, the remedy that
22 we put forth with -- the information that we do
23 have as it relates to the characteristics of those
24 soils we do believe is protective of human health

1 and the environment based on the information that
2 we do have relative to the northwest fill area.

3 MR. RUSS: Okay. And, again, this
4 is a separate question, but for clarifying the
5 record.

6 In our discussion of trend tests
7 yesterday, we talked a lot about the no trend
8 results and how some are associated with
9 non-detects and some are not, as you recall. Just
10 for the record so that it's clear, that's all new
11 information that we talked about in this hearing
12 that's not in any documents in the record at this
13 point. So I want to look at your report at
14 page -- starting at page 81505 where you have the
15 summary of the trend tests.

16 MR. DORGAN: Could -- could I just
17 ask real quick? I wasn't following your reference
18 to what information is in the record, and I think
19 you said something is not in or I didn't -- if you
20 could just clarify that for us --

21 MR. RUSS: Yeah.

22 MR. DORGAN: -- to frame up the
23 question.

24 MR. RUSS: Before today we hadn't

1 seen documentary evidence of this breakdown you're
2 discussing between no trend tests that are -- you
3 were giving us a bunch of numbers. You know, of
4 the no trend tests, this number is primarily
5 associated with non-detects. This number is not.
6 We hadn't seen that breakdown before this hearing.

7 MS. NIJMAN: I'm going to object to
8 the characterization. It's all in the appendix.
9 You just have to count them. I'm not
10 understanding the reference to not being in the
11 record, and I think that's misleading.

12 HEARING OFFICER HALLORAN: Mr. Russ?

13 MR. RUSS: Had you tallied those
14 prior to -- had you tallied those in a way that
15 was in the record prior to the hearing this week?

16 MR. MAXWELL: The information was in
17 our Appendix C. The total number of
18 non-detects -- or I'm sorry -- the total number of
19 no trends is summarized at the bottom of the
20 tables.

21 MR. RUSS: That's exactly what I'm
22 getting at. Thank you.

23 So in that summary on page
24 81507, you show 85 trend tests that have no trend;

1 is that right?

2 MR. MAXWELL: Correct.

3 MR. RUSS: But from this summary
4 table, we wouldn't see the breakdown of those 85
5 trend tests between the ones that are primarily
6 associated with non-detects?

7 MR. MAXWELL: That information could
8 be gleaned from the supporting information after
9 the summary tables. So it was there. It was in
10 the record. It wasn't necessarily -- and the
11 summation of the no trend results was presented in
12 the summary table. The breakdown was not.

13 MR. RUSS: Okay. That's all I
14 wanted to clarify for the record. Thank you.

15 So at this point I have some
16 questions about the surrounding land use at the
17 plants that we weren't anticipating that we would
18 be talking about, so I'm going to do something
19 that I'm sure will elicit an objection. We have
20 some new demonstratives that we would like to use.
21 These are website snapshots of maps surrounding
22 the areas.

23 MS. NIJMAN: Yes, you can anticipate
24 the objection.

1 MR. RUSS: Yeah, of course.

2 MS. NIJMAN: Never seen them.

3 Didn't get them last night. Didn't get an e-mail.

4 Didn't get advanced notice per our discussion and

5 per this Hearing Board's order. The order and

6 agreement says thee days for demonstratives. I

7 understand that sometimes three days gets

8 shortened, but at least give us some advanced

9 notice of maybe yesterday.

10 HEARING OFFICER HALLORAN: Mr. Ross?

11 MS. NIJMAN: So, yes. I do object

12 to there are plenty of maps in the record.

13 MR. RUSS: We just put these

14 together yesterday.

15 MS. NIJMAN: And this is nothing

16 new.

17 HEARING OFFICER HALLORAN: Yeah.

18 You know what? This -- again, it -- five years

19 ago. In any event, I will take them as an offer

20 of proof. I haven't even seen them yet. The

21 Board can take a look and see if they want to take

22 a look at them, but this untimeliness is not

23 acceptable. But you may refer to them.

24 MR. RUSS: Okay.

1 HEARING OFFICER HALLORAN: It will
2 be an offer of proof, and I would assume any
3 testimony regarding those demonstrative exhibits
4 would be in the offer of proof as well.

5 MR. RUSS: Sure. I mean, can I just
6 have a second to confer?

7 HEARING OFFICER HALLORAN: Sure.

8 MS. NIJMAN: And let me just point
9 out. I'm getting three different exhibits, and I
10 assume we are getting four, that we have never
11 seen before. I understand -- I appreciate that it's
12 not admitted. It's an offer of proof, and I thank
13 you for that.

14 But, again, this issue of where
15 these areas are, where these facilities are
16 located has been in every single report discussed
17 by every single person. This is not new
18 information where these facilities are located.
19 So, again, the surprise issue and this
20 last-minute --

21 HEARING OFFICER HALLORAN: Yeah. I
22 agree, and I want to, you know, have the Board
23 take a look at that, but I have to take them at
24 the very minimum as an offer of proof, but this

1 being so untimely is not acceptable.

2 MS. NIJMAN: And I don't have an
3 opportunity to respond to it. I don't know where
4 this is from, what date it is, how I can respond
5 at this point. I don't have access to a computer
6 to print out my own. I mean, the whole thing.
7 This is, like, four pages.

8 HEARING OFFICER HALLORAN: You have
9 made your objection, Ms. Nijman. I can't do
10 anything more. Everything is on the record.

11 MS. NIJMAN: Yeah. And it's --

12 HEARING OFFICER HALLORAN: You have
13 made your objection. Mr. Russ?

14 MR. RUSS: Can we just have two
15 minutes to take a break off the record for
16 two minutes?

17 HEARING OFFICER HALLORAN: Sure.
18 Off the record, Kari.

19 (Whereupon, a short break was
20 taken.)

21 HEARING OFFICER HALLORAN: All
22 right. We are back on the record. Thank you.

23 MR. RUSS: So, I might propose an
24 alternative. To facilitate this, we are not going

1 to move to admit these. We don't want them in the
2 record. We just wanted to use them as visual
3 aids, if that's an option.

4 HEARING OFFICER HALLORAN: Well,
5 that's kind of all what a demonstrative exhibit
6 is.

7 MR. RUSS: Except that we won't have
8 it in the record in any form. We just want to be
9 able to orient the witness to the locations we are
10 talking about.

11 MS. NIJMAN: There is plenty of maps
12 that provide orientation.

13 HEARING OFFICER HALLORAN: Yeah, I
14 don't understand this.

15 MR. RUSS: Well, the maps in the
16 record don't actually include all the information
17 that we are going to ask about.

18 HEARING OFFICER HALLORAN: So, why
19 didn't we know that beforehand?

20 MR. RUSS: Well, we didn't
21 anticipate that there was going to be this
22 discussion of surrounding land uses, so --

23 MS. NIJMAN: That's a little
24 misleading, again, because the surrounding land

1 uses have been discussed in every report by every
2 witness and have been an issue in this case, and
3 it's part of the considerations of the Board in
4 the rules. It is well known that that's an issue.

5 MR. RUSS: Our understanding is that
6 there was agreement about that. We didn't
7 disagree with any of the depictions of the
8 surrounding land use until this hearing. So it
9 became a new issue for us.

10 That said, we will work from the
11 slides in the presentation, and we won't use these
12 as all.

13 HEARING OFFICER HALLORAN: All
14 right. Thank you.

15 MR. RUSS: Can you turn to the
16 Powerton part of your presentation, starting on
17 slide 33?

18 MR. DORGAN: I'm there.

19 MR. RUSS: Do you see -- first of
20 all, did you say you have visited the site, and
21 you're familiar with the area?

22 MR. DORGAN: I have visited the
23 site.

24 MR. RUSS: Does this image depict

1 the full extent of the Powerton power plant
2 property?

3 MR. DORGAN: This particular image
4 doesn't, but that wasn't the purpose of the
5 inclusion of this image on this slide.

6 MR. RUSS: Okay. I just want to
7 make clear for the record that there is more to
8 the property than what's shown here.

9 So this area to the west of the
10 plant that says Powerton Lake, are you familiar
11 with that area?

12 MR. DORGAN: Generally.

13 MR. RUSS: Are you aware that it's
14 located in the Powerton Lake State Fish and
15 Wildlife Area?

16 MR. DORGAN: We reference on our
17 slide that there is a wildlife area to the west.

18 MR. RUSS: Yep. Thank you.

19 And are you aware that that's a
20 state park?

21 MR. DORGAN: I may have had exposure
22 to that at some point. I -- you know, my
23 understanding is that Powerton Lake is actually
24 owned by Midwest Gen and is managed -- partially

1 managed by them. So was I familiar with it as
2 being a state park? We certainly know that it's a
3 wildlife area.

4 MR. RUSS: Okay. Turning to slide
5 39. Can you, for orientation, describe where you
6 understand the power plant property boundary to be
7 in this picture?

8 MR. DORGAN: I believe it's just to
9 the east and runs roughly the other side of the
10 roadway that's running in a southwest to northeast
11 fashion.

12 MR. RUSS: Does it include the
13 area -- so there are two roads or train tracks --
14 I can't really tell -- but they make an "X" in
15 this picture, if you know what I'm talking about.
16 Is that --

17 MR. DORGAN: I see the feature you
18 are, I think, referring to.

19 MR. RUSS: There are kind of four
20 quadrants around that intersection. The west
21 quadrant is the Powerton property; is that right?

22 MR. DORGAN: I -- obviously, I -- we
23 don't have the property boundaries superimposed on
24 this figure. I'd need to maybe reference to one

1 of the figures on our report.

2 MR. RUSS: Well, let's look back at
3 slide 33. This will help, I think.

4 There was an orange line on
5 slide 33 that says "approximate property
6 boundary." Do you see that?

7 MR. DORGAN: Yes, I do.

8 MR. RUSS: And as you were
9 describing, it shows that part of Powerton Lake is
10 in the property boundary and part of that is not,
11 right?

12 MR. MAXWELL: That's how it's shown
13 on this figure, yes.

14 MR. RUSS: And the property boundary
15 shows that it goes from southwest to northeast and
16 then comes back to the northwest, if you are going
17 from south to north, is that right, on the eastern
18 side?

19 MR. DORGAN: Yes. And we have got
20 it labeled as the approximate property boundary on
21 that figure.

22 MR. RUSS: So then flipping back to
23 page 39, that would be the quadrant on the western
24 side of that "X" that we were talking about,

1 right?

2 MR. DORGAN: If you are referring to
3 the area of the property that -- where we are
4 featuring the surface impoundments and the 2010
5 hydrogeologic investigation and the wells that
6 were installed as part of that, that area of the
7 property would be inside the property boundary to
8 the west of the property line.

9 MR. RUSS: Thank. That's good
10 enough.

11 So then if you move east from
12 that point in the property boundary in the middle
13 of the "X" there, what is directly east of that
14 intersection?

15 MR. DORGAN: That appears to be
16 some -- a residential area, which I mentioned in
17 my testimony yesterday.

18 MR. RUSS: Right. Okay. Thank you.

19 So there is a residential area
20 to the east. And then to the south I believe you
21 said there is agricultural land, in your
22 presentation; is that right?

23 MR. DORGAN: There is some
24 agricultural land to the south.

1 MR. RUSS: Let's see if I can find
2 it again. Right. So on slide 33 you have a
3 bullet that says, bordered by north, south, east,
4 west bullet list. The bullet for south says
5 agricultural, right?

6 MR. DORGAN: That's what the bullet
7 says, yes.

8 MR. RUSS: So there is the Illinois
9 River to the north, the wildlife area to the west,
10 agricultural land to the south, and a residential
11 neighborhood to the east. But on slide 93 -- your
12 last bullet on slide 93 states that Powerton is
13 located in a primarily industrial area.

14 I'm wondering if that's still
15 your opinion that this is a primarily industrial
16 area?

17 MR. DORGAN: Well, I think we used
18 the word "primarily," because we weren't
19 suggesting it's exclusively industrial. I think
20 when you look at the character in general of the
21 types of land uses in the area, they are more
22 industrial than they are weighted towards any
23 other particular land use type.

24 MR. RUSS: Okay. I'm going to turn

1 to Will County, slide 55 of your presentation. Do
2 you see that white box in the map on the upper
3 left?

4 MR. DORGAN: Yes, I do.

5 MR. RUSS: You put this together.
6 Do you know why there is a white box there?

7 MR. DORGAN: Well, when I look at
8 the figures, this figure and others, I'm seeing
9 that we were generally featuring and calling out
10 the property itself, and there is a little notch
11 in the property boundary at that area of the site,
12 which is reflected through the white area that you
13 are discussing.

14 MR. RUSS: Okay. Do you know what's
15 in that area that's covered by the white box?

16 MR. DORGAN: I don't know
17 specifically all of the features that are located
18 in that white box. Mr. Maxwell points out to me
19 that on our original figure on our report, that
20 was where we had our legend, and the legend was
21 called out and amplified for this demonstrative.
22 So this is how we ended up calling out this
23 particular image for this demonstrative.

24 MR. RUSS: Thank you. Yeah, that

1 does explain it.

2 So then if you look at slide 62,
3 you can actually see that area. Are you familiar
4 with that area there? I believe it's known as the
5 Isle a la Cache, if I'm pronouncing that
6 correctly. Is that right? Isle a la Cache? In
7 Maine we say "isle." In some places -- in Vermont
8 they say "isle." Isle a la Cache Preserve.

9 Are you familiar with that area?

10 MR. DORGAN: I know -- I have known
11 of it. I live in the area, so I have heard about
12 it, but specifically its location and boundaries,
13 I'm not familiar with that.

14 MR. RUSS: Okay. And did you know
15 that it was part of the forest preserve district
16 for that area?

17 MR. DORGAN: I can't say that I had
18 that specific knowledge.

19 MR. RUSS: Okay. Are you familiar
20 with the Centennial Trail that runs just north of
21 the plant property?

22 MS. NIJMAN: Vague as to just north.

23 HEARING OFFICER HALLORAN: Mr. Russ?

24 MR. RUSS: Well, it actually runs

1 directly across the north part of the property. I
2 don't know how else to describe it.

3 HEARING OFFICER HALLORAN: You can
4 answer, if you are able, sir.

5 MR. DORGAN: I don't have
6 specific -- specifically -- specific familiarity
7 with that trail system.

8 MR. RUSS: Okay. All right.

9 And as part of your research
10 into the surrounding land uses, did you look into
11 the public use of the trail or the forest park
12 district -- forest preserve district?

13 MR. MAXWELL: Could I add that the
14 location of these two features that we just
15 discussed, they are to the north of the facility?
16 Up river on the Des Plaines River when you look at
17 the documented groundwater elevation contour maps
18 for the site, they are not downgradient of any
19 known ponds or historical fill areas.

20 So in terms of importance, in
21 terms of impact to human health and the
22 environment, for those reasons, they weren't
23 necessarily -- they didn't receive -- they weren't
24 necessarily called out. So I just want to make

1 that clear.

2 MR. DORGAN: And more specifically,
3 on our demonstrative, we point out the Des Plaines
4 River having -- being the adjacent land use to the
5 station itself, and I'm not quite sure the
6 boundaries that you are referring to, but it
7 appears you are talking about locations west of
8 the Des Plaines River.

9 MR. RUSS: The Centennial Trail is
10 north of the site, but what I'm getting at is that
11 the bullet on page 63 of your report has a heading
12 that says, "Onsite and surrounding industrial land
13 use," and I just want to clarify for the record
14 that there are other land uses in the immediate
15 vicinity, and this is one of them.

16 I don't have any more questions
17 about Will County. I have just a couple of
18 questions about Waukegan. If you turn to slide
19 71, and actually, I think slide 75 might be easier
20 to look at.

21 Are you familiar with the area
22 east of the ash ponds at Waukegan?

23 MR. DORGAN: Only to the extent that
24 during the site visit I was able to observe that

1 area, but we -- I haven't specifically inspected
2 it.

3 MR. RUSS: Are you aware that there
4 are public beaches to the east of those ash ponds?

5 MR. DORGAN: Yes. We are aware of
6 that, and I believe we mentioned that.

7 MR. RUSS: Okay. That's good enough
8 for now on the surrounding land use. I just have
9 two more questions, and then maybe we will take a
10 break and see if I have any cleanup questions, but
11 I'm almost done.

12 How does your proposed remedy
13 cure the open dumping violations at Powerton?

14 MR. DORGAN: I believe the open
15 dumping violation has already been cured. The ash
16 was removed and disposed of, so --

17 MR. RUSS: So is it your opinion
18 that the only open dumping violations at Powerton
19 pertain to that area of cinders that were stored
20 and removed?

21 MR. DORGAN: That was the area that
22 we specifically referenced in our report that was
23 identified in the Board order.

24 MR. RUSS: Okay. Let's look at the

1 Board order.

2 HEARING OFFICER HALLORAN: What
3 date, Mr. Russ?

4 MR. RUSS: I'm still trying to find
5 it.

6 HEARING OFFICER HALLORAN: What
7 date? Is it 2019?

8 MR. RUSS: Oh, date. 2019. I'm
9 sorry. I thought you said what page.

10 HEARING OFFICER HALLORAN: Thanks.

11 MR. RUSS: So if you turn to page
12 92, the third paragraph of page 92 talks about the
13 cinders that you were just describing as a
14 violation of Section 12(d) of the act. Do you see
15 that?

16 MR. DORGAN: I see that reference.

17 MR. RUSS: And the open dumping
18 violations are described in the next paragraph
19 under Section 21(a) of the act. But it doesn't
20 say open dumping at that point. If you look back
21 at page 86 of the Board order, you will see
22 Section 21(a) of the act, "Open Dumping."

23 Do you see that?

24 MR. DORGAN: Yes. And I believe

1 that's also the subject of a clarification we made
2 in our document.

3 MR. RUSS: Well, that's what I'm
4 confused about, because in the testimony you gave
5 yesterday, you described the cinders on land as
6 being a violation of 21(a), but I think in the
7 document you clarified that you meant something --
8 there was another clarification related to where a
9 parenthetical went in your report, but just so we
10 are clear on the record, the cinders deposited
11 directly upon the land described in the Board
12 order that were a violation of Section 12(d), that
13 has been removed.

14 There is also the open dumping
15 violations at Powerton under Section 21(a), and if
16 you look at the Board's description of the
17 historic coal ash sites at Powerton, you will see
18 that they mention, as we talked about yesterday,
19 coal ash fill throughout the site. And that's on
20 page 41 as one of the historic coal ash areas.

21 Do you see that?

22 MR. DORGAN: I'm sorry. What are
23 you referring to specifically?

24 MR. RUSS: If you turn to page 41,

1 there is the description that we looked at
2 yesterday of coal ash fill through the site.

3 MR. DORGAN: I see that.

4 MR. RUSS: So this is the subject of
5 the open dumping violation. How does your
6 proposed remedy cure the open dumping violations
7 at Powerton?

8 MR. DORGAN: Well, I think we
9 discussed this yesterday, which is this language
10 that you are referring to is referencing
11 locations, specific individual borings. It
12 references some of the regulated units that we
13 have discussed, and again, as we stated yesterday,
14 we considered this information with respect to the
15 presence of coal ash at the site, and again,
16 relied on our evaluation of the groundwater
17 conditions downgradient of these areas that were
18 between these areas and potential offsite both
19 ecological and human health receptors.

20 So we -- we do believe that the
21 specific conditions referenced on this page of the
22 Board order have been considered.

23 MR. RUSS: Right. I guess my
24 question is, whether your proposed remedy is going

1 to affect the open dumping violations at all?

2 MS. NIJMAN: Asked and answered.

3 HEARING OFFICER HALLORAN:

4 Sustained.

5 MR. RUSS: I believe --

6 HEARING OFFICER HALLORAN: He gave
7 his answer. I know what he said, sir. Excuse me.
8 You may move on.

9 MR. RUSS: Okay. How does your
10 proposed remedy cure the open dumping violations
11 at Joliet?

12 MS. NIJMAN: Same objection. Asked
13 and answered.

14 HEARING OFFICER HALLORAN: Overruled
15 for now.

16 MS. NIJMAN: I'm going to also just
17 object to the extent they are asking for a legal
18 assessment of open dumping.

19 HEARING OFFICER HALLORAN: You know
20 I take that, and the Board takes it -- they are
21 comprised of a technical unit and a legal unit,
22 and they can parse it out and accept it or not.

23 But you may proceed.

24 MR. MAXWELL: So our understanding

1 of what we were tasked to do by the Board was to
2 focus on an appropriate remedy that's protective
3 of human health and the environment. The remedy
4 that we recommended, that we have opined is
5 appropriate, is intended to be protective of human
6 health and the environment, not necessarily cure
7 each and every violation that the Board called out
8 in the interim 2019 order. We were more focused
9 more globally on what's protective of human health
10 and the environment as it relates to risk.

11 MR. RUSS: Okay. Thank you. That's
12 great.

13 So my last question -- I think
14 this is going to be our last question. You said a
15 couple of times that you were asked to work with
16 the information you had, and you also referred to
17 data gaps that might be filled later; am I right?

18 MR. DORGAN: We have referenced the
19 data gaps on several occasions.

20 MR. RUSS: Did you at any point ask
21 counsel for Midwest Generation for more field
22 work, more analysis of soil or groundwater?

23 MS. NIJMAN: Object to asking
24 counsel.

1 HEARING OFFICER HALLORAN: Yeah. He
2 can answer if he is able.

3 MR. DORGAN: As we have stated
4 previously, and Mr. Maxwell just restated it, we
5 work with the information that we were provided.
6 The information that we were provided we felt was
7 sufficient, useful, and of sufficient quality to
8 allow us to evaluate remedies and the relief that
9 goes with that as prescribed by the Board.

10 So we, again, stated it many
11 times. Our remedy is centered on the information
12 that's available to us. There's obviously been
13 some new information generated which has been
14 discussed, and we continue to believe the
15 sufficiency of the existing historic record at
16 these sites to arrive at a remedy that's
17 protective of human health and the environment,
18 which is what we have done, and what we have
19 outlined in our document.

20 MR. RUSS: Okay. Thank you. I have
21 no further questions.

22 HEARING OFFICER HALLORAN: Thank
23 you.

24 Ms. Nijman, re-direct?

1 MS. NIJMAN: Yes. Okay. We have a
2 lot to clean up.

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

4 MS. NIJMAN: Mr. Maxwell, I will
5 start with you.

6 Mr. Russ asked you yesterday
7 some very technical questions about your trend
8 testing. Do you recall that?

9 MR. MAXWELL: Yes, I do.

10 MS. NIJMAN: And he asked you to
11 look at the slopes of certain data based on a
12 chart of numbers?

13 MR. MAXWELL: Yeah.

14 MS. NIJMAN: And he referred you to
15 your report. Let's pull that out. I think he was
16 looking at page Bates 81517.

17 MR. MAXWELL: Say that again,
18 please?

19 MS. NIJMAN: Sure. 81517.

20 MR. MAXWELL: 815 --

21 MR. DORGAN: 517.

22 MR. MAXWELL: Okay. Got it. Sorry.

23 MS. NIJMAN: And one of the items he
24 had you focusing on was arsenic total, MW-4. Do

1 you remember his questions about that?

2 MR. MAXWELL: Yes.

3 MS. NIJMAN: And the point there was
4 that this data was not related to a non-detect.
5 Is that a fair statement?

6 MR. MAXWELL: That's the context
7 that we discussed it.

8 MS. NIJMAN: Okay. I would like to
9 refer you to page Bates 81536.

10 MR. MAXWELL: Is that a graph for
11 barium?

12 MS. NIJMAN: No. 81 -- I'm sorry.
13 81535.

14 MR. MAXWELL: Yeah, okay.

15 MS. NIJMAN: Okay. So, what is that
16 document?

17 MR. MAXWELL: So, this is a
18 graphical presentation of the total arsenic data
19 at MW-4, and it shows the concentrations, the
20 individual dots or the individual concentrations.
21 The solid line through the middle of the dots is
22 the slope, which in this particular case is a
23 slope of 0.

24 MS. NIJMAN: Okay. Let me stop you

1 right there. I just want to ask you, what are
2 each of these charts? I see many, many of them in
3 your report.

4 MR. MAXWELL: So this, essentially,
5 is the backup, that -- what the statistical
6 software that we utilized produces in order to
7 support the summary tables that we generated
8 earlier in Appendix C.

9 MS. NIJMAN: And I have got it up on
10 the screen for you to look at as well.

11 So if we are looking at this
12 particular graph, this is for MW-4, the same well
13 that Mr. Russ pointed out to you for arsenic; is
14 that right?

15 MR. MAXWELL: Correct.

16 MS. NIJMAN: And you were mentioning
17 this flat line at the bottom. That's the slope
18 line for the results at that well?

19 MR. MAXWELL: Correct. And the
20 slope equates to the trend. In this instance,
21 there was 0 slope and 0 trend.

22 MS. NIJMAN: Are you the one who
23 draws the lines in here and develops the slope
24 analysis?

1 MR. MAXWELL: No. The reason we
2 do -- we rely on the software to perform that.
3 That's an automated function of the software as
4 the analysis is performed by the software.

5 MS. NIJMAN: So the software
6 concluded the flat line?

7 MR. MAXWELL: Correct, based on the
8 data.

9 MS. NIJMAN: In looking at the top
10 left axis, what is the standard for arsenic?

11 MR. MAXWELL: So the Class 1
12 groundwater quality standard for arsenic is 0.01,
13 which is --

14 MR. RUSS: And what are we seeing at
15 MW-4 for arsenic?

16 MR. MAXWELL: So the concentrations
17 are substantially below that. There is just one
18 instance that exceeds 0.002, but the
19 concentrations are substantially lower than the
20 Class 1 standard of 0.01 milligrams per liter.

21 And, again, the intention of the
22 trend testing isn't necessarily -- it certainly is
23 possible to have trends below the standard. The
24 idea of the trend analysis is, what is the -- what

1 is the pattern in the data, not necessarily how
2 does it compare to a standard. Two completely
3 different things.

4 MS. NIJMAN: And when you said
5 yesterday that you didn't think Mr. Russ pointing
6 out certain wells impacted your conclusions, is
7 this partly what you meant?

8 MR. RUSS: Objection to the leading
9 question.

10 HEARING OFFICER HALLORAN: Can you
11 rephrase, Ms. Nijman, please?

12 MS. NIJMAN: What did you mean
13 yesterday when you said Mr. Russ' picking out
14 certain wells didn't affect your conclusions?

15 MR. MAXWELL: Well, the wells that
16 were discussed were -- weren't the most
17 appropriate wells that we felt were most useful to
18 make the judgment as to whether or not monitored
19 natural attenuation is actually occurring. Those
20 wells, in order to take -- in order to utilize the
21 monitored natural attenuation, that's a natural
22 process, and you want to have wells after that
23 process has actually taken place.

24 And so the wells that are

1 towards the downgradient boundary of the stations
2 are representative of information or of the
3 groundwater after those mechanisms have occurred.
4 And so that was the focus of our -- of our
5 assessment, and I would add that that also is the
6 basic framework that a site is analyzed under,
7 TACO or the SRP, because in most instances there
8 is the ability to control site use in some way
9 with some type of an institutional control. So
10 the point of emphasis becomes the downgradient
11 property line.

12 MS. NIJMAN: I'm sorry. Does --
13 just to understand, are you saying that Illinois
14 EPA would also look to the downgradient wells as
15 you did here?

16 MR. RUSS: Object to the leading
17 question.

18 HEARING OFFICER HALLORAN:
19 Overruled. You may answer.

20 MR. MAXWELL: Under certain
21 regulatory programs, yes, Illinois EPA would look
22 at it that way, yes.

23 MS. NIJMAN: Under the TACO.

24 MR. MAXWELL: Under the TACO SRP

1 rules, yes.

2 MS. NIJMAN: Okay. You also recall
3 your discussion with Mr. Russ yesterday about
4 dissolved versus total sample results?

5 MR. MAXWELL: As it relates to the
6 trend tests, yes.

7 MS. NIJMAN: And you stated that you
8 included both dissolved and total where they
9 existed to be comprehensive?

10 MR. MAXWELL: We wanted to be
11 thorough and include a thorough analysis, and we
12 thought that including as much data as we had made
13 sense. So we included both.

14 MS. NIJMAN: And Mr. Russ had you
15 review data tables that you used to see if some of
16 your summary included those wells?

17 MR. MAXWELL: Yeah. We looked at
18 some total and some dissolved data yesterday.

19 MS. NIJMAN: And I think we used or
20 Mr. Russ used arsenic at Joliet 29 as an example.
21 Did you look at --

22 MR. MAXWELL: Yes.

23 MS. NIJMAN: Okay. And if I'm
24 understanding what we were talking about yesterday

1 correctly, was there some suggestion that you were
2 including data twice, both total and dissolved?
3 Do you understand what the point was?

4 MR. MAXWELL: I think the point was
5 that -- or the concern was that we were in some
6 way skewing or double counting because we were
7 using both total and dissolved for certain
8 constituents.

9 MS. NIJMAN: And did it make any
10 difference -- when you look at the data, does it
11 make any difference whether you use the total
12 and -- whether you include both total and
13 dissolved or not?

14 MR. MAXWELL: I actually reviewed it
15 in response to the testimony yesterday, and I went
16 through an exercise where I removed the total data
17 in instances where we had corresponding dissolved
18 data, and the analysis indicates that the
19 conclusion is the same.

20 The numbers do change slightly,
21 however, the percentages of the various different
22 categories do not substantially change because
23 some of those are upward trends. Some of them are
24 downward trends in terms of the total versus the

1 dissolved. So eliminating one or the other, it
2 did not skew the results. The conclusion is the
3 same, whether you include collectively the total
4 and dissolved or you take out one so as not to
5 double count.

6 MS. NIJMAN: Do you recall Mr. Russ
7 also had you reviewing certain wells that were not
8 included in your trend testing?

9 MR. MAXWELL: Yes.

10 MS. NIJMAN: So let's look at the
11 exhibit that he referenced you to, Exhibit 1314.
12 And if you turn to Bates -- I believe it's 118355.
13 No. I'm sorry.

14 Just look at the Figure 1 on
15 this document.

16 MR. MAXWELL: Yes.

17 MS. NIJMAN: Okay. So you
18 testified -- and that's -- for the record, I
19 couldn't read the Bates number. I think it's
20 118382, for the record.

21 Now, Mr. Russ pointed you to
22 Wells 2, 3, and 4 as not included in your trend
23 testing. Do you recall that?

24 MR. MAXWELL: Yes.

1 MS. NIJMAN: Where are those wells
2 located?

3 MR. MAXWELL: So those wells are
4 located to -- MW-2 is southeast of Pond 1N, and
5 MW-3 and MW-4 are both located to the east of Pond
6 1S.

7 MS. NIJMAN: And is east up or
8 downgradient?

9 MR. MAXWELL: East is upgradient
10 with respect to the ponds.

11 MS. NIJMAN: And you have already
12 discussed a minute ago why your focus was on the
13 downgradient?

14 MR. MAXWELL: Yes. The reason is
15 that the -- the groundwater has more of an
16 opportunity to utilize the monitored natural
17 attenuation mechanisms as the groundwater flows
18 from the upgradient portions of the station
19 towards the downgradient portions of the station.

20 MS. NIJMAN: Is looking at
21 downgradient a standard approach for assessing
22 MNA?

23 MR. MAXWELL: I would say that it
24 is. Again, it's -- part of it is based on risk

1 assessment. Part of it is just based on the
2 technology of MNA. It's most useful and most
3 appropriate to utilize the downgradient wells for
4 that purpose.

5 MS. NIJMAN: And are all the wells
6 that you used in the trend testing for Joliet,
7 Will, and Powerton stations within the GMZs for
8 those stations?

9 MR. MAXWELL: That is correct. And
10 the monitored -- the monitored natural attenuation
11 is taking place within the GMZ, yes.

12 MS. NIJMAN: Mr. Dorgan, Mr. Russ
13 also asked you about wells that weren't included
14 in your trend testing for the Waukegan station.
15 Do you remember that?

16 MR. DORGAN: Yes.

17 MS. NIJMAN: And he referred you
18 specifically to one well, MW-6, as a well that
19 wasn't included?

20 MR. DORGAN: I believe that's
21 correct, yes.

22 MS. NIJMAN: And if you could pull
23 out Exhibit 1310. And do you recall, by the way,
24 that Mr. Russ had you pointing out that MW-6 was

1 over 10 for boron?

2 MR. DORGAN: Yes.

3 MS. NIJMAN: So if we look at Figure
4 1 again. This is -- what is Figure 1? Figure 1
5 is at Bates No. 118492.

6 MR. DORGAN: Figure 1 is titled a
7 site map for the Waukegan station.

8 MS. NIJMAN: Do you see MW-6 on this
9 map?

10 MR. DORGAN: I do. It's to the --
11 towards the southwest corner of the station.

12 MS. NIJMAN: Is that upgradient from
13 the station?

14 MR. DORGAN: It would be upgradient
15 of the station operations.

16 MS. NIJMAN: And what does this
17 location of MW-6 tell you about offsite impacts
18 coming onto the station?

19 MR. DORGAN: Well, in my testimony
20 yesterday, I made reference to a former tanning --
21 tannery operation that's located west of the site
22 that's gone through a site remediation program
23 process. The groundwater is known to be flowing
24 from that site onto the Midwest Generation

1 station, and that -- part of the reason that well
2 is there is because of the ELUC, the environmental
3 land use control, that was created as part of that
4 process that covers the western part of the
5 station that we discussed yesterday.

6 MS. NIJMAN: I'm going to hand you
7 an excerpt from Exhibit 1331.

8 What is this document?

9 MR. DORGAN: This is a log of MW-6,
10 the well that we have been discussing.

11 MS. NIJMAN: And for the record,
12 this is Midwest Gen 13-15_110872, excerpt from
13 Exhibit 1331, that's admitted in this case.

14 What does this log tell you
15 about whether there is ash located in MW-6?

16 MR. DORGAN: Ash is not described as
17 having been encountered in the lithology, the
18 geologic conditions that were encountered when the
19 boring was advanced.

20 MS. NIJMAN: So where is the boron
21 in MW-6 coming from?

22 MR. DORGAN: We believe it's coming
23 from the west from the tanning operation, which
24 has already been documented, and it's the reason

1 the ELUC is present on that part of the station.

2 MS. NIJMAN: Is boron associated
3 with tanneries, to your knowledge?

4 MR. DORGAN: Boron is a component of
5 various processes that are used in tanning.

6 MS. NIJMAN: Thank you. You were
7 also present for the public comments yesterday,
8 were you, Mr. Dorgan?

9 MR. DORGAN: Yes, I was.

10 MS. NIJMAN: Did you hear a comment
11 about arsenic 2,000 times the standard being found
12 at Waukegan?

13 MR. DORGAN: Yes. I believe that
14 was mentioned by the mayor in her comments.

15 MS. NIJMAN: I would like to pull
16 out Exhibit 1331 that we were just referencing to.
17 I'm going to hand you a larger version of the
18 table I want to reference you to, because this
19 document itself has a very small table.

20 So we are looking at Table 9.4
21 of Exhibit 1331, and the Bates numbers are
22 MWG13-15_110670 through 110671.

23 What does this table show?

24 MR. DORGAN: This table presents the

1 results of analytical testing on a series of
2 monitoring wells that started in November of 2015
3 and is through, I believe, May of 2021.

4 MS. NIJMAN: And on the top of this
5 chart, do you see the column for arsenic?

6 MR. DORGAN: Yes, I do. It's about
7 the middle of the table.

8 MS. NIJMAN: And just so we are
9 clear, if you look at both pages of this table, it
10 covers the wells at Waukegan, each of the wells at
11 Waukegan on the left side?

12 MR. DORGAN: Yes. I believe these
13 are all wells located at the Waukegan Station.

14 MS. NIJMAN: If we look at the
15 arsenic column, let me point you to MW-14.

16 Do you see that?

17 MR. DORGAN: Yes, I do.

18 MS. NIJMAN: And looking at the data
19 for MW-14, what is the highest level of arsenic
20 that's ever been located there?

21 MR. DORGAN: Of the data presented
22 for MW-14 for this record period, the highest
23 detected concentration was 21 milligrams per
24 liter.

1 MS. NIJMAN: And that was in 2017?

2 MR. DORGAN: That was the November
3 of 2017 sampling event.

4 MS. NIJMAN: Is this 21 roughly
5 2,000 times the standard?

6 MR. DORGAN: Yes, it would be,
7 approximately.

8 MS. NIJMAN: And looking through,
9 scanning through each of the other wells, do you
10 see any level higher than 21?

11 MR. DORGAN: No. Of the data
12 presented on the table, 21 is the highest recorded
13 measurement for arsenic in any of the wells.

14 MS. NIJMAN: So one more thing on
15 this chart. Looking to the left under the
16 description of MW-14, what does it say under
17 MW-14?

18 MR. DORGAN: Upgradient.

19 MS. NIJMAN: So let's look at where
20 it's located. If you could go to your
21 presentation at page 73, if we could put that up
22 on the screen.

23 Can you see where MW-14 is
24 located?

1 MR. DORGAN: It's on the far western
2 part of the station. If you look at the callout,
3 the approximate boundary -- it's a bit cut off.
4 In the white callout, it's just to the north of
5 that, just across the property boundary that's
6 superimposed there.

7 MS. NIJMAN: To the far west of this
8 drawing?

9 MR. DORGAN: Correct.

10 MS. NIJMAN: To your knowledge, what
11 was the purpose of installing MW-14?

12 MR. DORGAN: My understanding, that
13 there was a series of wells that were installed as
14 part of approval of the environmental land use
15 control that was agreed upon by the station to
16 accept as part of the closure process that the
17 tannery site was undergoing.

18 So it was basically designed to
19 monitor the groundwater flowing from the tannery
20 to Waukegan station under the terms of the ELUC
21 and the closure that the tannery obtained from the
22 IEPA.

23 MS. NIJMAN: So, are impacts at
24 MW-14 from upgradient sources?

1 MR. DORGAN: Yes, that's correct.

2 MS. NIJMAN: And I would like to
3 show you an excerpt again from Exhibit 1331. And
4 for the record, this is Midwest Gen 13-15_110879.

5 What is this document,
6 Mr. Dorgan?

7 MR. DORGAN: This is a geologic log
8 for Monitoring Well 14 that we have been
9 discussing.

10 MS. NIJMAN: Does Monitoring Well 14
11 have any ash in it?

12 MR. DORGAN: Ash is not referenced
13 as being present in the soil boring.

14 MS. NIJMAN: What does this tell you
15 about the cause of any finding of arsenic in
16 MW-14?

17 MR. DORGAN: We understand that
18 there was contamination migrating from the
19 adjacent property to the west, that these wells
20 were installed to monitor that migration. The
21 wells were installed to support the ELUC that was
22 established in recognition of that contamination
23 plume, and that what we are seeing here is
24 originating with the historic tanning operations

1 to the west and not related to any of the Midwest
2 Gen operations.

3 MS. NIJMAN: And, unfortunately,
4 will that groundwater contamination continue to
5 flow onto the Midwest Gen property?

6 MR. DORGAN: Yes.

7 MS. NIJMAN: Mr. Maxwell, regarding
8 the Joliet 29 area, the northeast area, do you
9 recall Mr. Russ asked you about evaluating the
10 area or volume in that northeast area?

11 MR. MAXWELL: Yes. That was part of
12 the testimony yesterday.

13 MS. NIJMAN: And you, and I think
14 Mr. Dorgan, during the deposition stated that you
15 didn't find that information would be particularly
16 relevant. Do you recall that?

17 MR. MAXWELL: Yes, I do.

18 MS. NIJMAN: I would like to show
19 you slide 23 from your PowerPoint at Exhibit 1702.

20 Are you there?

21 MR. MAXWELL: Yes.

22 MS. NIJMAN: We went through this on
23 your direct. This is the slide regarding the
24 northeast historic fill area lines of evidence

1 that you considered.

2 Is this why you concluded that
3 volume or area wasn't particularly relevant?

4 MR. MAXWELL: That's correct. This
5 listing that we reviewed yesterday is the lines of
6 evidence that is -- we do believe is relevant and
7 is available as it informed the remedial
8 recommendation that we made.

9 MS. NIJMAN: And we had heard from
10 Mr. Gnat about the location of where he saw ash in
11 the northeast area.

12 Can you describe, or do you
13 recall what he said?

14 MR. MAXWELL: Yeah. So that --
15 those were the areas that were identified near the
16 slope that -- and I believe there was four or five
17 of them. They were subsequently identified. They
18 were subsequently -- the erosional features were
19 subsequently repaired, and as I recall, the
20 materials that -- that were covered were
21 characterized as ash mixed with soil.

22 And like I said, that was
23 subsequently covered with an -- in order to
24 control erosion per the NPDES permit requirements.

1 MS. NIJMAN: And just to clarify,
2 where in the northeast area did Mr. Gnat notice
3 this ash mixed with soil?

4 MR. MAXWELL: Along -- near the
5 slope to the Des Plaines River.

6 MS. NIJMAN: The southern part of
7 the northeast area?

8 MR. RUSS: Object. Leading
9 question.

10 HEARING OFFICER HALLORAN:
11 Sustained.

12 MS. NIJMAN: Is that area closer to
13 the southern part or where the facility is
14 located?

15 MR. MAXWELL: Yes, it is.

16 MS. NIJMAN: And when you said --
17 you noted the composition of the ash materials
18 that Mr. Gnat testified to. How is it relevant to
19 you that this was not homogenous ash, that this
20 was mixed with soil?

21 MR. MAXWELL: Right. We actually
22 discussed this today as well. Ash mixed with soil
23 is different than a mass of ash, homogenous ash,
24 if you will. The -- the characteristics of the

1 native soil are different than the characteristics
2 of the ash. The mixture is -- the percentages is
3 ultimately what dictates the actual analytical
4 concentrations within the -- within that soil
5 matrix, and so that will ultimately inform what
6 the ability is of that material to serve as a
7 source.

8 MS. NIJMAN: And when you have a
9 mixture, what is your expectation about that area
10 as a source?

11 MR. MAXWELL: Well, the -- when you
12 have a mixture, that area -- when CCR is noted as
13 having been mixed with soil, it's less likely for
14 it to serve as a specific source.

15 MS. NIJMAN: Mr. Russ also asked you
16 about calculating area and volume in the northwest
17 area.

18 Do you recall that?

19 MR. MAXWELL: Yes, I do.

20 MS. NIJMAN: And I think there was
21 the same answer, about not particularly relevant,
22 but you were never asked why it wasn't
23 particularly relevant. So I'm going to ask you
24 that. If you can refer to slide 17.

1 MR. MAXWELL: Okay.

2 MS. NIJMAN: So why wasn't volume or
3 depth relevant, based on the information you put
4 forth about the CCB investigation on slide 17?

5 MR. MAXWELL: Yeah. So slide 17
6 describes the CCB investigation. That was an
7 investigation that was performed in order to
8 evaluate the potential for beneficial reuse of the
9 CCR materials there.

10 It was ultimately determined
11 based on the natural leaching test, the NLET, that
12 the concentrations of the -- the relevant
13 constituents there that were analyzed were below
14 the Class 1 number based upon that leach test, and
15 so that information helped inform the -- the
16 ultimate importance or relevance of looking at the
17 specific -- the specific depth of ash there.

18 MS. NIJMAN: So the NLET testing for
19 the ash that's in that area told you what about
20 the leaching of that -- the potential for leaching
21 in that area?

22 MR. MAXWELL: So based on the NLET
23 testing, the potential for leaching of those
24 constituents was low, the concentrations that were

1 noted in the NLET results were below the Class 1
2 groundwater quality standards.

3 MS. NIJMAN: Did that -- how did
4 that inform your opinions on risk in this area?

5 MR. MAXWELL: Well, it's -- it made
6 it less likely that the material that's there is
7 going to serve -- going to present an unacceptable
8 risk.

9 MS. NIJMAN: Mr. Dorgan, do you
10 recall that Mr. Russ asked you about the grid
11 sampling that was done at the FS area at Waukegan?

12 MR. DORGAN: Yes, I do.

13 MS. NIJMAN: And he asked you an
14 interesting question. He asked you if it would
15 be -- and he used the word -- "helpful" to have
16 similar grid data in other areas like at Powerton.

17 Do you recall that?

18 MR. DORGAN: I do.

19 MS. NIJMAN: So I'm going to ask the
20 question a different way.

21 Is it necessary to have grid
22 data in any location where ash is located?

23 MR. DORGAN: No.

24 MS. NIJMAN: Why not?

1 MR. DORGAN: The -- first of all,
2 it's not customary practice. It's not consistent
3 with a brownfields-type of an investigation that
4 we have done on all range of size properties in
5 the past. It's not practical to collect that much
6 data from a management perspective, from a cost
7 perspective.

8 So I haven't seen an instance
9 where a full site was gridded with that type of a
10 grid for purposes of site investigation.

11 MS. NIJMAN: Does this refer back to
12 the testimony you gave on direct about source
13 identification at brownfield sites?

14 MR. RUSS: Object, leading.

15 MS. NIJMAN: How does this refer
16 back to your testimony about source identification
17 at brownfield sites?

18 MR. RUSS: Same objection.

19 HEARING OFFICER HALLORAN:
20 Overruled. You may answer.

21 MR. DORGAN: Under a brownfield site
22 strategy, you will -- it's usually a multi-phased
23 approach. Early phases inform what happens in the
24 subsequent -- subsequent phases. Subsequent

1 phases inform what happens as you go -- as you
2 move forward. It's rare that you have the
3 opportunity to design a remedy with 100 percent
4 certainty concerning all of the sources that may
5 be present at a site.

6 It's one of the reasons why
7 under the SRP and TACO framework they place the
8 emphasis on the downgradient property conditions.
9 Excuse me. They recognize that there could be
10 sources that haven't specifically been identified,
11 but is -- are there conditions that are at the
12 property boundary that are allowing contamination
13 to migrate to a potential receptor at a
14 concentration that's unacceptable to human health
15 and the environment?

16 So the specific framework of
17 that whole regulatory program is geared towards
18 making sure we are protecting off-gradient
19 receptors and not in trying to identify
20 100 percent of potential sources.

21 MS. NIJMAN: And do you recall that
22 Mr. Russ referred you to the Board opinion about
23 the ash areas at Powerton that the Board had
24 identified?

1 MR. DORGAN: Yes, I do.

2 MS. NIJMAN: And all those -- are
3 all those areas identified within the groundwater
4 management zone, the GMZ, at Powerton?

5 MR. DORGAN: Yes, they are.

6 MS. NIJMAN: Is that relevant to
7 you?

8 MR. DORGAN: Yes. Again, part of
9 our risk evaluation in terms of there are
10 documented occurrences of CCR material in certain
11 of the locations that were identified by the
12 Board, but it's within the GMZ. Our assessment of
13 evaluation of risk utilized the downgradient
14 monitoring wells that were protective of the
15 offsite receptors. So they were considered, and
16 have been reflected in the remedy that we have
17 proposed.

18 MS. NIJMAN: At Will County,
19 Mr. Russ asked you about trying to estimate the
20 volume of ash around the ponds.

21 Are the ponds within the GMZ at
22 Will County?

23 MR. DORGAN: Yes, they are.

24 MS. NIJMAN: And would your answer

1 about relevancy of that data be the same?

2 MR. DORGAN: Yes. It would be
3 equally relevant.

4 MS. NIJMAN: There was also a
5 discussion yesterday about NLET data versus LEAF
6 data. Do you recall that?

7 MR. DORGAN: Yes, I do.

8 MS. NIJMAN: And Mr. Russ referred
9 you to tables in your expert report and asked you
10 which ones were leach -- LEAF data and which ones
11 were NLET data.

12 Do you recall that?

13 MR. DORGAN: Yes, I do.

14 MS. NIJMAN: When did the LEAF test
15 method become generally used in your field?

16 MR. DORGAN: I don't recall the
17 specific date, but it has been roughly five years.

18 MS. NIJMAN: So what test was used
19 for leaching analyses before five years ago?

20 MR. DORGAN: Well, there is several
21 forms of leaching tests. The NLET is one, and
22 it's one of the reasons that that was used. And
23 NLET is a method that must be used for the CCB
24 determinations, the beneficial reuse. So that's

1 why it appears relatively prominently in some of
2 the historic record, but there were others that
3 have been mentioned, like the synthetic
4 precipitation leaching procedure, the TCLP,
5 toxicity characteristic leaching procedure, but
6 NLET would have been the predominant method that
7 would have applied to CCR materials.

8 MS. NIJMAN: Is NLET data good data?

9 MR. DORGAN: Yes.

10 MS. NIJMAN: And how long -- well,
11 can you estimate how long not only the State of
12 Illinois, but others, have been using NLET data to
13 assess leaching?

14 MR. DORGAN: Again, I don't recall
15 the specific date that that method was approved,
16 but it has been many years.

17 MS. NIJMAN: So should you ignore
18 the NLET data because it's an older method?

19 MR. RUSS: I object. Leading.

20 MS. NIJMAN: How should you treat
21 the NLET data at these sites?

22 MR. DORGAN: It's a data point that
23 is an expression of the characteristics of the
24 material that's being sampled and analyzed, and

1 it's useful and warranted to be included in an
2 evaluation of the site and its environmental
3 characteristics.

4 MS. NIJMAN: In your experience,
5 does Illinois EPA accept NLET data for leaching
6 review?

7 MR. DORGAN: Well, they require it.
8 So, yes, they accept it.

9 MS. NIJMAN: Mr. Dorgan, Mr. Russ
10 also asked you about the Limestone Ash Basin
11 testing at Powerton that was done in 2004.

12 Do you remember that?

13 MR. DORGAN: Yes, I do.

14 MS. NIJMAN: And I think you
15 identified the area on Figure 6 of your report.

16 MR. DORGAN: Yes, we did.

17 MS. NIJMAN: Could you refer to the
18 chart of your ponds at the second to last page of
19 your Exhibit 1702?

20 MR. DORGAN: I have that.

21 MS. NIJMAN: In looking at Powerton,
22 is the Limestone Runoff Basin listed there?

23 MR. DORGAN: Yes. It's the second
24 to last basin that's referenced for Powerton.

1 MS. NIJMAN: And what does it say in
2 the comments?

3 MR. DORGAN: That that basin has not
4 been used for CCR since 2013. And that it's
5 currently unused and empty.

6 MS. NIJMAN: I also would like to
7 read into the record the parties' jointly filed
8 agreed stipulation in this matter, No. 13, which
9 states, "The limestone basin at Powerton has been
10 empty since 2013."

11 Mr. Dorgan, do you recall
12 Mr. Russ asking you about models that might be
13 used to analyze a cap at Waukegan?

14 MR. DORGAN: Yes, I do.

15 MS. NIJMAN: And you discussed the
16 HELP Model, and Mr. Russ asked you about the
17 MODFLOW Model. Do you recall that?

18 MR. DORGAN: There was a discussion
19 about both, yes.

20 MS. NIJMAN: At Waukegan, what would
21 be the reason for not conducting a MODFLOW Model
22 at this time?

23 MR. DORGAN: As we have pointed out
24 on a number of occasions, we have a pending

1 rulemaking, and any action we take is going to be
2 judged against that rulemaking. So in order to
3 comply, there may be a time when a modeling
4 exercise is warranted, but as part of our
5 evaluation of the risk, we didn't feel that it was
6 going to be particularly useful with respect to
7 our overall evaluation of the site conditions and
8 the remedy that we are proposing given the
9 conditions that we were -- that we were
10 controlling for.

11 MS. NIJMAN: And as you said in your
12 report, what do you want to do as far as timing
13 with regards to the rule?

14 MR. DORGAN: We are proposing a cap.
15 That would have to be designed. That would have
16 to be constructed. We anticipate that as part of
17 the rulemaking there may be both design and
18 performance specifications that are included in
19 those rules, and you would want to consider those
20 relative to how that cap goes on so that we don't
21 run the risk of having to redo the cap or adding
22 to it later.

23 MS. NIJMAN: This morning Mr. Russ
24 asked you about your report at page 22 in Section

1 3.2, which was the discussion of the CCAs.

2 MR. DORGAN: Which page?

3 MS. NIJMAN: I think he referred you
4 to page 23. That's when he read the heading.

5 MR. DORGAN: Yes. For Section 3.2?

6 MS. NIJMAN: Yes. What data and
7 institutional controls did the CCAs provide?

8 MR. DORGAN: The data that they
9 provided was the groundwater monitoring that ended
10 up being implemented to comply with the CCA
11 requirements, and as a result of that and a number
12 of other actions that the CCAs required, that
13 eventually led to the approval of the GMZ for
14 three of the four stations.

15 MS. NIJMAN: And as you've spoken
16 about many times, why was the GMZ relevant to your
17 remedy analysis?

18 MR. DORGAN: It -- the GMZ and the
19 attendant ELUC, environmental land use control,
20 that went with the GMZ, were one of the elements
21 to help us assess risk. They prevent the use of
22 groundwater as a potable resource, and therefore,
23 mitigate potential exposures to receptors.

24 So they were an important

1 element of the conditions that existed at the
2 site, and are supportive of the MNA strategy that
3 we proposed.

4 MS. NIJMAN: If you could pull out
5 Exhibit 1332, and Mr. Russ pointed you to this --

6 MR. DORGAN: I'm sorry. We
7 haven't -- we haven't gotten there yet.

8 MS. NIJMAN: Sorry.

9 MR. DORGAN: Okay.

10 MS. NIJMAN: So Mr. Russ identified
11 this document as the Will County permit
12 application, and I believe, Mr. Maxwell, you said
13 you hadn't reviewed it prior to this time; is that
14 correct?

15 MR. MAXWELL: That's correct.

16 MS. NIJMAN: If you would go back to
17 that Figure 9.2, which I believe was Bates 125661.
18 Is that the figure you were talking to Mr. Russ
19 about?

20 MR. MAXWELL: Yes.

21 MS. NIJMAN: So in this description
22 of the fill area that Mr. Russ had you reading,
23 the -- yeah, the fill.

24 Is this a homogenous ash area?

1 In other words, is it all ash?

2 MR. MAXWELL: No. To the contrary.
3 There is -- there is quite a descriptive -- there
4 is quite a description that's provided here that
5 references not only coal, black cinders, slag, but
6 also native or natural soils, brown and black
7 silty clay, silty sand mixed with gravel, and
8 crushed limestone.

9 Again, those are materials
10 that -- separate from the coal and coal ash that
11 also play a role in the degree to which materials
12 like this are going to actually serve as a source
13 or not.

14 MS. NIJMAN: So, and again, I am
15 just going to ask you that same question.

16 Because it's mixed, how is that
17 relevant to your analysis of risk? You may have
18 just answered it.

19 MR. MAXWELL: I would say that it
20 plays into whether or not the material -- it's
21 relevant to whether or not the material serves as
22 a source, because it impacts the chemical
23 characteristics of the matrix as a whole.

24 MR. DORGAN: Can I add something to

1 this discussion quickly?

2 And this goes back, I believe,
3 to Mr. Gnat's testimony in the earlier phase of
4 the hearing, but the common practice when logging
5 materials is you describe first the majority, the
6 primary matrix that you are seeing, and then you
7 add descriptors based upon other observations.

8 So when this is described as a
9 fill consisting of brown and black silty clay and
10 silty sand mixed with gravel and crushed
11 limestone, that's the predominant matrix. Then,
12 there is a mention of the fill "may" include coal,
13 black cinder, and ash.

14 So this would tell me, based
15 upon the way this has been described, that the
16 matrix is this other fill, and occasionally, there
17 is observations to these other CCR materials.

18 MS. NIJMAN: Thank you.

19 One of the first questions this
20 morning from Mr. Russ was the estimated length for
21 a potential MNA -- as MNA would continue, how long
22 would that take. I'm paraphrasing. Is that -- do
23 you recall that discussion?

24 MR. RUSS: I object. That's not the

1 testimony. That's not the question I asked.

2 HEARING OFFICER HALLORAN: That's

3 not -- I'm sorry, Mr. Russ?

4 MR. RUSS: I object that that's not
5 what I asked.

6 MS. NIJMAN: Do you recall Mr. Russ
7 asking you if there was a target end date for MNA?

8 MR. DORGAN: Yes, I do.

9 MS. NIJMAN: And your response was
10 that it takes time?

11 MR. DORGAN: It takes time.

12 MS. NIJMAN: And I would like to
13 refer you to page 13 of the Board's decision in
14 this matter in the second interim opinion dated
15 February 6th of 2020, and on page 13, on the
16 second -- or the first full paragraph, the second
17 sentence states, "The Board is aware that the
18 process of monitored natural attenuation can be by
19 its nature a long one. Monitored natural
20 attenuation, depending upon its efficacy and
21 subject to the Agency's review, can conceivably
22 last for many years."

23 Do you agree with that general
24 statement?

1 MR. DORGAN: We do. And I believe
2 that's consistent with the way in which we have
3 described the time frames around MNA.

4 MS. NIJMAN: So you were asked a lot
5 of questions by Mr. Russ about impacts of other --
6 of potential water areas around the stations
7 today. Do you recall that?

8 MR. DORGAN: I believe Mr. Russ was
9 attempting to have us identify other features in
10 proximity of several of the stations.

11 MS. NIJMAN: And as to surface water
12 located near any of the stations, did you address
13 impacts, potential impact to surface water in your
14 opinions?

15 MR. DORGAN: Yes. That was part of
16 our risk evaluation, and we, I think, described
17 that in a quite a bit of detail yesterday when we
18 were talking about the evaluation of receptors in
19 comparison to relevant groundwater and surface
20 water standards.

21 MS. NIJMAN: And did you find any
22 unacceptable or unreasonable risk to surface water
23 due to any potential impact?

24 MR. DORGAN: No, we did not.

1 MS. NIJMAN: Mr. Russ asked you
2 about resolving violations of open dumping. Do
3 you recall that?

4 MR. DORGAN: Ah, yes, I do.

5 MS. NIJMAN: In your role as a
6 consultant, are you looking at the legal
7 violation, or are you looking at the impact?

8 MR. DORGAN: We are looking at the
9 data that describes the environmental conditions
10 at the site and how those environmental conditions
11 may pose risk to the various receptors we have
12 discussed. So we did not parse the Board ruling
13 with respect to every violation noticed --
14 referenced. We focused on the environmental data
15 that was available in the record for purposes of
16 assessing remedy and relief as directed by the
17 Board.

18 MS. NIJMAN: And why as a consultant
19 would you focus on the groundwater data, the
20 result, if you will?

21 MR. DORGAN: Well, the results are
22 what informs our understanding of the current
23 environmental conditions at the property with
24 respect to the assessment we did for risk.

1 So that data was one of the
2 features of our analysis. We did the trend
3 testing that Mr. Maxwell has discussed and other
4 evaluation to, in totality, consider what was the
5 appropriate remedy strategies for each of the four
6 sites.

7 MS. NIJMAN: Thank you. That's all
8 I have.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 Mr. Russ, do we need to take a
12 short break before re-cross?

13 MR. RUSS: No. I only have one
14 question.

15 HEARING OFFICER HALLORAN: Okay.
16 Thanks.

17 MR. RUSS: Just to --

18 HEARING OFFICER HALLORAN: You may
19 proceed.

20 R E - C R O S S E X A M I N A T I O N

21 MR. RUSS: Oh, sorry.

22 Just to clarify for the record,
23 earlier in the re-direct you referred to the NLET
24 test as the natural leaching test. Did you want

1 to clarify that?

2 MR. DORGAN: Well, the NLET is an
3 acronym for neutral leaching extraction test. If
4 I said something different, I -- that was an error
5 on my part.

6 MR. RUSS: That's all I have.

7 HEARING OFFICER HALLORAN: Okay.
8 Thank you, Mr. Russ.

9 Ms. Nijman, anything else?

10 MS. NIJMAN: That's it.

11 HEARING OFFICER HALLORAN: All
12 right. Gentlemen, thank you. You are dismissed.

13 We can go off the record.

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

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

18 Call your next witness.

19 MS. GALE: Yes.

20 HEARING OFFICER HALLORAN: Sorry,
21 Ms. Gale.

22 MS. GALE: And, Mr. Hearing Officer,
23 we call Ms. Sharene Shealey.

24 HEARING OFFICER HALLORAN: Okay.

1 Thank you.

2 MS. GALE: And the spelling of
3 Shealey -- of Sharene, is S-H-A-R-E-N-E, and
4 Shealey is, S-H-E-A-L-E-Y.

5 HEARING OFFICER HALLORAN: Good
6 morning, Ms. Shealey. If you raise your right
7 hand, Kari will swear you in, please.

8 (Whereupon, the witness was duly
9 sworn.)

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

12 WHEREUPON:

13 S H A R E N E S H E A L E Y
14 called as a witness herein, having been first duly
15 sworn, deposeth and saith as follows:

16 D I R E C T E X A M I N A T I O N
17 by Ms. Gale

18 Q. Good morning.

19 A. Good morning.

20 Q. Ms. Shealey, let's start with your
21 educational background.

22 Can you please describe for us
23 your educational background?

24 A. Excuse me. Yes. I have both a

1 bachelor of science and a master's of science in
2 chemical engineering. My BS is from Howard
3 University. My master's is from Carnegie Mellon.

4 **Q. And following your graduation, who**
5 **did you work for?**

6 A. Proctor & Gamble.

7 **Q. And what did you do for Proctor &**
8 **Gamble?**

9 A. Product development, R & D.

10 **Q. And then following Proctor & Gamble,**
11 **who did you work for?**

12 A. My next full-time employment I think
13 was with the Pennsylvania Department of
14 Environmental Protection, PADP.

15 **Q. And what was your role there?**

16 A. I was an air -- for most of the time
17 I was with the state or with the commonwealth, I
18 was an air quality specialist. For a short amount
19 of time, I was a water quality specialist.

20 **Q. And as part of being an air quality**
21 **specialist, what did you do?**

22 A. Generally, permits, either Title I
23 permitting and/or construction -- what we call
24 here in Illinois construction permits, and I don't

1 think it's the same term in Pennsylvania, but it's
2 escaping me right now.

3 **Q. And by permitting, what do you mean**
4 **by permitting?**

5 A. So, sources would apply for permits
6 to operate or construct some air polluting or a
7 potential air pollution source, and I was
8 responsible for writing that permit, writing a
9 review of that permit, writing a review to
10 support -- a technical support document to support
11 the permit and submitting that through the system
12 for issuance to the source.

13 **Q. And then at some point, did you**
14 **leave the Pennsylvania Department of Environmental**
15 **Protection?**

16 A. Yes.

17 **Q. And where did you go?**

18 A. To a predecessor company. I think
19 it was Reliant. So I joined the power industry
20 directly from PADP.

21 **Q. And what kind of power did they --**
22 **did they create? Or, I guess, what kind of**
23 **material did they use to create power?**

24 A. For my involvement, coal, gas, and

1 oil.

2 Q. And I think you said it was Reliant
3 was the company?

4 A. Yes.

5 Q. And when you started at Reliant, and
6 as you worked your way for them, what did you --
7 how -- what did you come to understand about power
8 generation?

9 A. That's very general.

10 Q. High level.

11 A. Yeah. Basically how power plants
12 operate, what -- the purpose of power plants, you
13 know, and I have always been in environmental. So
14 environmental regulations that are specific to
15 power plants or that -- power plants would have
16 specific -- that would impact power plants
17 specifically.

18 Q. And so how power plants operate,
19 does that include waste streams?

20 A. Yes.

21 Q. And when you were working for
22 Reliant, where was this?

23 A. In Pennsylvania.

24 Q. What city?

1 A. My employment? My location was in
2 Cannonsburg, PA, which is a suburb of Pittsburgh,
3 PA.

4 **Q. And when you were -- and you were in**
5 **Pittsburgh?**

6 A. I lived in Pittsburgh, yes.

7 **Q. And when you were in Pittsburgh, did**
8 **you hold a public office?**

9 A. Yes.

10 **Q. What was that?**

11 A. A school director. I was an
12 elected -- I was elected to a term as a school
13 director, which most people would call a school
14 board member, for Pittsburgh Public Schools, the
15 second biggest school district in Pennsylvania.

16 **Q. And how long were you a**
17 **school board -- well, school director?**

18 A. Four years.

19 **Q. And at some point -- and I think you**
20 **have said when -- in 2015, you came to Illinois?**

21 A. Yes.

22 **Q. And what -- where -- what company**
23 **did you start working for?**

24 A. Midwest Generation.

1 **Q. Okay. And what do you do for**
2 **Midwest Generation?**

3 A. I am an environmental -- or pretty
4 much the environmental director, and so I
5 generally am concerned with compliance with
6 environmental rules and laws, and help support the
7 plants in their operations so that they maintain
8 compliance.

9 **Q. And I think you said, high level,**
10 **your job responsibilities, but let's get a little**
11 **bit more granular.**

12 **What sort of -- what sort of**
13 **things do you do specifically in your job**
14 **responsibilities?**

15 A. So, I still kind of do permitting
16 but from the opposite end, or the opposite side as
17 what I described before for the state. I do
18 reporting. I support reporting. I hire
19 consultants and experts to guide our work. I
20 think that is -- yeah, that kind of stuff.

21 **Q. As part of your role, do you**
22 **communicate with regulatory agencies?**

23 A. Yes, I do.

24 **Q. And does your environmental**

1 **compliance responsibilities include the ash ponds**
2 **at the four stations that are subject here?**

3 A. Yes.

4 **Q. And specific to the ash ponds that**
5 **are subject to the matter here, what are those,**
6 **generally speaking, compliance responsibilities?**

7 A. The thing that comes to mind first
8 is permitting, because of the Part 845 rules. And
9 we are in the process, or have over the past
10 couple of years, worked towards applying for
11 permits for CCR impoundments. Permitting, I
12 review reports. And again, I -- I work to
13 recommend or hire consultants for the plants to do
14 all of the activities that are associated with
15 compliance for the CCR ponds.

16 **Q. And for -- and you mentioned the**
17 **rules. We are talking about the federal CCR rule?**

18 A. And -- yes, the federal CCR rules
19 and state.

20 **Q. And as part of those -- compliance**
21 **with the federal CCR rule, do you communicate with**
22 **USEPA?**

23 A. Yes.

24 **Q. Similar question. As part of**

1 compliance for the Illinois CCR rule, who do you
2 communicate -- what regulatory agency do you
3 communicate with?

4 A. Illinois EPA.

5 Q. And as part of compliance for these
6 rules, does that cost money?

7 A. Yes, significant money. Well, from
8 my perspective, significant money, yes.

9 Q. And as part of your duties is --
10 related to money, what are your responsibilities?

11 A. So, I help the plants plan for
12 budgeting for costs associated with compliance,
13 whether that be the hiring of consultants or
14 helping them become more aware of the amount of
15 sampling they need. And I had another one that
16 I -- just escaped me, but I do help with -- plants
17 with budgeting and estimating their costs.

18 Q. And as part of your role as
19 environmental director, does that include
20 familiarity with this lawsuit?

21 A. Yes.

22 Q. And to get familiar with this
23 lawsuit, what did you do?

24 A. A lot of things. I definitely read

1 the Board orders, the two orders. I have talked
2 to people who have been around longer than me,
3 read a lot of historical documents around
4 operations in the ponds.

5 Q. Do you recall coming to the hearing
6 previously?

7 A. Yes.

8 Q. Do you remember which -- what year
9 it was?

10 A. I would say 2019.

11 Q. 2018 sound more accurate?

12 A. I -- yeah. It would seem, yeah.
13 I'm sorry. The Board -- I think the Board order
14 is 2019 -- the first order is 2019, and I was
15 thinking it was -- yeah. So it was 2018.

16 Q. And as part of your familiarity, are
17 you familiar with the groundwater conditions at
18 the stations?

19 A. Generally, yes.

20 Q. And as part of your role as the
21 environmental director, are you familiar with
22 Midwest Generation's petitions for regulatory
23 relief under the Illinois CCR rule?

24 A. Absolutely.

1 **Q. And, Ms. Shealey, your time with**
2 **Midwest Generation as environmental director, with**
3 **regard to environmental compliance, what is**
4 **Midwest Generation's policy?**

5 A. Environment over production. It's a
6 simple statement that empowers each of us to act
7 to protect the environment before we would produce
8 a megawatt.

9 **Q. And, Ms. Shealey, in preparation for**
10 **your testimony here, what did you do?**

11 A. Re-read the Board's order, re-read a
12 lot of documents, became even more familiar with
13 the operations in the pond -- particularly at --
14 those of the ponds.

15 **Q. Did you review any histories?**

16 A. Yes. And I'm sorry. I included
17 that in the review of the ponds, because the --
18 it's -- all of those documents are kind of mixed
19 up; so, yes.

20 **Q. Ms. Shealey, are you familiar with**
21 **the operating capacity of the stations that are**
22 **involved in this matter?**

23 A. You mean, operating capacity? Yes,
24 I think so.

1 **Q. Am I using the wrong term? Are you**
2 **familiar with the term "capacity market"?**

3 A. Oh, yes.

4 **Q. What's your understanding of a**
5 **capacity market?**

6 A. It's a mechanism of the ISOs. Which
7 ISO escapes me right now. Please forgive me.
8 ISOs. To ensure that there is always power
9 available to the grid. Some units are what's
10 called base loaded units, so they run all of the
11 time. But the capacity market is for when base
12 load units are not available, or there is more
13 demand than base load units can provide.

14 **Q. And I will read into the record 2022**
15 **Stipulation No. 1. "The Joliet 29 Station,**
16 **Powerton Station, Waukegan Station and Will County**
17 **Station generate electricity sold on the PJM**
18 **energy market and offer generating capacity sold**
19 **on PJM's capacity market."**

20 **Ms. Shealey, in the PJM capacity**
21 **market that Midwest Generation stations are in,**
22 **what is the PJM market's role?**

23 A. They determine the general need, the
24 area's electricity needs and essentially determine

1 who -- which units run and which don't, and I --
2 ISO is independent system operator. I had a
3 blank. It came to me. Thank you.

4 **Q. So the PJR -- excuse me. The PJM**
5 **markets pass, you know, determinations on what**
6 **runs. How -- why is that important?**

7 A. Well, it generally tells us when we
8 operate our units. Because we operate in the
9 capacity market, we only operate when PJM
10 essentially tells us that our electricity -- that
11 electricity from a specific unit or specific units
12 is needed.

13 **Q. And when would PJM tell you that a**
14 **unit is needed more so or less so?**

15 A. It depends on the situation. It
16 could be -- when is several -- there are several
17 places/times when they could. They could tell us
18 the day before. They tell us sometimes years in
19 advance. So it ranges.

20 **Q. What I'm getting at is, what sort of**
21 **circumstances would they tell you to fire up?**

22 A. Oh. If it's generally an outage,
23 when other units are out. For example, nuclear
24 units in Illinois are generally base load units,

1 and one or two of them at least operate in a PJM
2 market. So when there is a nuclear outage, we
3 would be more like- -- coal would be generally the
4 next resource.

5 The other one is when there's a
6 peak demand, which generally happens in very hot
7 times or very cold times, so the electricity
8 demand is greater than normal. And so PJM would,
9 say, run these units to meet that demand so that
10 we are not experiencing brownouts and blackouts as
11 individual customers.

12 **Q. And so today, what stations in this**
13 **matter continue to provide power to the PJM**
14 **capacity market?**

15 A. Waukegan, Joliet 29, and Powerton.

16 **Q. And starting with Waukegan,**
17 **recently, what change to Waukegan's operations**
18 **happened?**

19 A. They ceased firing coal to produce
20 electricity. Waukegan only operates -- well, they
21 have always operated -- or in my time, have always
22 operated peakers. The peakers still operate,
23 which are oil-fired units. The coal-fired units
24 were retired last year in '22.

1 **Q. And what's a peaker?**

2 A. A -- generally a smaller gas or
3 oil-fired unit, generally smaller, but not always,
4 that operates with peak demand. So peaker and
5 peak demand, those things are tied together.

6 **Q. And at Will County recently, what**
7 **has happened to Will County's operations?**

8 A. They ceased firing coal.

9 **Q. But for Waukegan and Will County,**
10 **are there future plans for those stations?**

11 A. Yes. At Waukegan station -- or at
12 both stations, we intend to install battery
13 storage.

14 **Q. What is battery storage?**

15 A. A way to enhance renewable usage,
16 sort of, in my -- in my simplification of it.
17 What batteries do is they pull electricity off the
18 grid and store it for placing it back onto the
19 grid. Renewable resources can only operate when
20 weather conditions allow. Like the sun has to be
21 shining for solar. There has to be wind for wind.

22 So battery storage is great for
23 those types of opportunities to pull that wind
24 capacity or that solar capacity off the grid,

1 store it, and put it on, like, maybe at night.
2 They pull -- it's sunny during the day. It's not
3 sunny at night. So battery storage fills that
4 gap.

5 **Q. And these transitions at the**
6 **Waukegan and Will County Stations, what will that**
7 **entail? What will occur there?**

8 A. Well, they will actually have to
9 build the battery storage units.

10 **Q. Does that mean construction?**

11 A. Yes.

12 **Q. I would like you to turn to the**
13 **first tab.**

14 A. I don't have a book.

15 MS. GALE: Yeah, there is no book.

16 Mr. Hearing Officer, can we go off the record?

17 HEARING OFFICER HALLORAN: We can go
18 off the record.

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

21 HEARING OFFICER HALLORAN: Back on
22 the record. Thank you.

23 BY MS. GALE:

24 **Q. Ms. Shealey, you have a book in**

1 **front of you?**

2 A. Yes.

3 (Whereupon, Respondent's Exhibit
4 No. 1601 was marked for
5 identification.)

6 BY MS. GALE:

7 **Q. Can you turn to the first tab,**
8 **please, which is marked for identification as**
9 **Exhibit 1601, and has Bates No. MWG13-15_83856?**

10 A. Got it.

11 **Q. What is this document?**

12 A. An e-mail from me to Dr. Brian
13 Richard.

14 **Q. And what is contained in the e-mail?**

15 A. The employee -- the total costs of
16 employees and the number of employees and
17 essentially where we live for Midwest Gen.

18 **Q. And when you say "essentially where**
19 **we live," what are you looking at?**

20 A. The ZIP codes.

21 **Q. That are attached to the e-mail?**

22 A. That are attached to the e-mail.

23 Thank you. Yes.

24 **Q. And where did you get this**

1 **information?**

2 A. Human resources. Midwest Gen human
3 resources.

4 **Q. And for the date that this e-mail**
5 **was provided, was this information accurate, to**
6 **the best of your knowledge?**

7 A. Yes.

8 MS. GALE: Mr. Hearing Officer,
9 Midwest Generation moves for the admission of
10 Exhibit 1601.

11 HEARING OFFICER HALLORAN: Mr. Russ?

12 MR. RUSS: No objection.

13 HEARING OFFICER HALLORAN: Thank
14 you. Respondent's Exhibit 1601 is admitted. No
15 objection.

16 (Whereupon, Respondent's Exhibit
17 No. 1601 was admitted into
18 evidence.)

19 BY MS. GALE:

20 **Q. Ms. Shealey, it's a term we have**
21 **used a lot, but do you have an understanding of**
22 **the term "CCR surface impoundment"?**

23 A. Yes.

24 **Q. What is it?**

1 A. Coal combustion residual surface
2 impoundment. It's a -- I could almost quote the
3 definition, but I can't exactly. Basically a
4 depression -- in terms of Midwest Gen, it's a
5 depression that contains -- that was built or
6 designed to hold both CCR and water.

7 **Q. And in your understanding, where is**
8 **that definition?**

9 A. Part 257 under the federal rules, 40
10 CFR Part 257. I think it's Subpart D, and that
11 it's in 35 IAC Part 845.

12 **Q. And when you joined Midwest**
13 **Generation and began to learn about its stations,**
14 **generally, what did you learn about the**
15 **construction of the ash ponds or CCR surface**
16 **impoundments at the Midwest Gen stations that are**
17 **subject to this matter?**

18 A. That they had what I would call just
19 been re-lined. They were -- the majority of them
20 were still operating at that point, and I probably
21 learned about their NPDES permitting, initially.

22 **Q. Did you learn anything about their**
23 **original construction?**

24 A. Eventually, yes.

1 **Q. And for ash handling at the**
2 **stations, generally speaking, where in location is**
3 **this ash placed or stored?**

4 A. In the -- surface impoundments.

5 **Q. What about the fly ash?**

6 A. It's not placed or stored on station
7 property, and my understanding is that that's true
8 of all of Midwest Gen's operations since 1999.
9 Fly ash is sent offsite for beneficial reuse
10 almost immediately.

11 **Q. Other than the surface impoundments**
12 **and then the fly ash being sent offsite, is ash**
13 **placed in other locations at the stations?**

14 A. Not generally, no. Will County had
15 a -- as allowed by the federal rules, a concrete
16 laydown area, but other than that -- which was
17 cleaned up really quick -- well, frequently, as it
18 was placed, essentially, but no.

19 **Q. And as your role as an environmental**
20 **director, did that include an understanding of the**
21 **ash removal from the CCR surface impoundments at**
22 **the stations?**

23 A. Yes.

24 **Q. And what is your understanding of**

1 **the ash removal at the four stations that are**
2 **subject to this matter?**

3 A. It had been done relatively
4 frequently. The stations operate slightly
5 differently, but each station pretty much can --
6 has one main ash pond. Is that true? Yes.

7 Each station has one main ash
8 pond, so that -- when that would fill up, they
9 would take it out of service, empty it, and put
10 the other one in service, and so they alternated
11 ash pond usage generally.

12 Q. And I believe you stated earlier
13 that as part of your job as environmental
14 director, you became familiar with the groundwater
15 conditions at the four stations?

16 A. Yes.

17 Q. Does that include any potential
18 impacts to drinking water from the stations?

19 A. Yes.

20 Q. And what is your understanding?

21 A. There is none.

22 Q. There is none, what?

23 A. Oh, no impact to drinking water from
24 any Midwest Gen station.

1 **Q. How do you know that?**

2 A. Experts have told me.

3 **Q. Are there any reports that you have**
4 **looked at that said that?**

5 A. "Report" is a strange word. I
6 actually think the -- yes. The place that's
7 coming to mind top of head is the operating permit
8 application. We had to do a -- in that -- the
9 consultant did. I said we, but -- I will say we
10 had to do a potable well search, potable water
11 well search -- potable water well search, and
12 there were none within, I think, 2500 feet of any
13 of our impoundments. So, essentially, more than a
14 half a mile away.

15 **Q. Can you turn to the next tab in your**
16 **book, please, and it's exhibit -- marked for**
17 **identification as Exhibit 1602?**

18 **(Whereupon, Respondent's Exhibit**
19 **No. 1602 was marked for**
20 **identification.)**

21 MR. RUSS: For the record, we
22 maintain the objection on reliability and hearsay,
23 that we made in a motion in limine a few months
24 ago.

1 HEARING OFFICER HALLORAN: Ms. Gale?

2 MS. GALE: Mr. Hearing Officer, this
3 was briefed, and you held that this document was
4 relevant and an admission by a party opponent, and
5 so -- and you denied their motion in limine on
6 this document.

7 HEARING OFFICER HALLORAN: That's my
8 recollection, and I think the Board affirmed my
9 ruling, so -- or excuse me. Your objection is
10 noted, Mr. Russ, but it's admitted.

11 (Whereupon, Respondent's Exhibit
12 No. 1602 was admitted into
13 evidence.)

14 BY MS. GALE:

15 Q. Ms. Shealey, what is this?

16 A. An article from Energy News Network
17 titled, "Historic Coal Ash Raises Concerns At
18 Iconic Illinois Coal Plant Site."

19 Q. And have you read this?

20 A. Yes.

21 Q. What is its date?

22 A. December 21st, 2021.

23 Q. Okay. And can you please turn to
24 page 3 of the article?

1 A. Yes.

2 Q. Looking up on the page, sixth
3 paragraph down -- well, first I will ask, it
4 starts with NRG. Is that an accurate description?

5 A. No.

6 Q. What -- who should it say?

7 A. Midwest Gen. Midwest Generation.

8 Q. So it states -- it should say, "A
9 Midwest Generation official said state officials
10 have surveyed any impact on drinking water and
11 found no evidence of risk. Environmentalists'
12 expert witnesses have also not found the immediate
13 risk to drinking water, Bugel said."

14 Ms. Shealey, who is Bugel in the
15 article?

16 A. Faith Bugel.

17 Q. And do you agree with Ms. Bugel's
18 statement here on page 3?

19 A. Yes.

20 Q. I would like to turn to page 4. And
21 I think it's the -- under the heading, "Historic
22 Ash." It states, "Bugel explained that most of
23 the coal ash repositories at Midwest Generation's
24 coal plants are lined, and unlike many other

1 companies, Midwest Generation frequently emptied
2 the ash and sold it for 'beneficial reuse' as
3 construction materials and other uses. That means
4 Midwest Generation's active coal ash ponds subject
5 to the state and federal rules were probably less
6 likely to be contaminating groundwater than at
7 many other coal ash sites, she said."

8 Ms. Shealey, do you agree with
9 Ms. Bugel's statements here?

10 A. Yes.

11 MS. GALE: Mr. Hearing Officer, just
12 to make the record clear, we move for the
13 admission of Exhibit 1602.

14 HEARING OFFICER HALLORAN: I think
15 we did that, but, yeah, it was admitted. 1602 was
16 admitted over objection. Thank you.

17 BY MS. GALE

18 Q. Thank you.

19 Ms. Shealey, are you familiar
20 with the Joliet 29 Station?

21 A. Yes.

22 Q. Have you visited it?

23 A. Yes.

24 Q. What county is Joliet 29 Station in?

1 A. Will.

2 Q. Will County?

3 A. Will County, yes.

4 Q. Is it in Kendall County?

5 A. No, it is not. Joliet is -- it's in
6 Rockdale, Will County, essentially Joliet, and
7 Joliet is the county seat of Will County. It's in
8 Will County.

9 Q. Are any of the Midwest Generation
10 stations that are subject in this matter in
11 Kendall County?

12 A. None of them, no.

13 Q. Ms. Shealey, are you familiar with
14 the area in the vicinity -- excuse me.

15 Are you familiar with the area
16 in the vicinity of the Joliet 29 Station?

17 A. Yes.

18 Q. Okay. Looking at your screen, we
19 have a map. What does this map depict?

20 A. Joliet -- Joliet 29 and the
21 surrounding area.

22 (Whereupon, Respondent's Exhibit
23 No. 1607 was marked for
24 identification.)

1 BY MS. GALE:

2 Q. And I should state for the record,
3 that this map is from what has been marked for
4 identification as Exhibit 1607. And I'm sorry.

5 You said this depicts the Joliet
6 29 Station?

7 A. Yes.

8 Q. Can you please describe the area
9 around the Joliet 29 Station?

10 A. So it abuts a major road. I think
11 it might be Route 6, and the Des Plaines River.
12 The Brandon Road Lock and Dam is shown on this
13 map, and to the -- I hope I don't do this wrong --
14 west, okay, is what I understand to be an old
15 Caterpillar manufacturing site.

16 Q. And do you know what's there now at
17 the old Caterpillar site?

18 A. I think it's a FedEx or a
19 transportation site, some kind of transportation
20 hub. I'm not 100 percent certain of that, though.

21 Q. And today what does the Joliet 29
22 Station do?

23 A. Produces electricity via natural
24 gas, combustion of natural gas.

1 Q. Ms. Shealey, are you familiar with
2 zoning maps?

3 A. Yes.

4 Q. How are you familiar with zoning
5 maps?

6 A. Just as a general course of my job.

7 Q. And as part of your job, are you
8 familiar with the zoning of the Midwest Generation
9 stations?

10 A. Yes.

11 Q. Ms. Shealey, on slide 5 of
12 Exhibit 1607, what is depicted?

13 A. The zoning map of Joliet Station, it
14 looks like, Joliet 29.

15 Q. And what is Joliet 29 zoned as?

16 A. And I -- sorry. I-3, an industrial
17 classification.

18 Q. And just so you know, if you have a
19 hard time reading the screen, this document is
20 actually at the end of your book. You can pull it
21 out, if you like.

22 A. Thank you.

23 Q. Okay. Ms. Shealey, I want to turn
24 to the next slide, which is slide 6, and on the

1 **screen, you will see something highlighted.**

2 **Where are the ponds on the**
3 **Joliet 29 Station?**

4 A. At the north -- center north in the
5 station, essentially.

6 **Q. And how many ponds are there?**

7 A. Three.

8 **Q. Let's turn to the next slide, slide**
9 **7.**

10 A. I'm so sorry. Can I go back?

11 **Q. Sure.**

12 A. Three are depicted. There are
13 additional ponds that are not -- that are at
14 Joliet.

15 **Q. These are the three ponds that are**
16 **subject to this matter, right?**

17 A. Correct.

18 **Q. Thank you. The other ponds are**
19 **related to other operations at the station?**

20 A. Correct.

21 **Q. Moving on to slide 7.**

22 **What is -- generally speaking,**
23 **what are we seeing at slide 7?**

24 A. The current status and the

1 description of the three ponds at Joliet that are
2 subject to this matter.

3 **Q. Starting with Pond 1, is Pond 1 a**
4 **CCR surface impoundment?**

5 A. It is not.

6 **Q. Why not?**

7 A. It was emptied of ash prior to the
8 effective date of the federal CCR rules and has
9 not received ash since.

10 **Q. Okay. Same question for Pond 3.**

11 A. It is not a CCR surface impoundment.
12 It never was. It never received ash. It was a
13 finishing pond.

14 **Q. Did Midwest Generation evaluate the**
15 **contents of Ponds 1 and 3 to support those**
16 **conclusions?**

17 A. Yes.

18 **Q. Generally speaking, what did Midwest**
19 **Generation do?**

20 A. Basically took what I would consider
21 muck from the -- sampled the muck at the bottom of
22 the ponds and had it analyzed for what it was,
23 really.

24 **Q. And what did the analysis show?**

1 A. It was muck. So biological, mostly.
2 I think it was mostly biological.

3 **Q. And did Midwest Generation present**
4 **this information to Illinois EPA?**

5 A. Yes, and the Board, too, I believe.

6 **Q. Yeah. You anticipated my next**
7 **question.**

8 **Turn in your book to what has**
9 **been marked for identification as Exhibit 1603.**

10 **(Whereupon, Respondent's Exhibit**
11 **No. 1603 was marked for**
12 **identification.)**

13 BY THE WITNESS:

14 A. I am there.

15 MS. GALE: And I will state for the
16 record that Exhibit 1501 is Midwest Generation's
17 Petition For Joliet 29 Adjusted Standard, which is
18 located at MWG13-15_119367 and has already been
19 admitted.

20 HEARING OFFICER HALLORAN: Great.
21 Thank, Ms. Gale.

22 BY MS. GALE:

23 **Q. Ms. Shealey -- and it might be**
24 **easier if you turn to MWG13-15_120528.**

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What is this document?

A. The Agency's recommendation, Illinois EPA's recommendation for our adjusted standard for the Joliet 29 Station.

Q. And you can see at the top of that document, when was this filed?

A. September 22nd, 2021.

Q. And as part of your duties as the environmental director, did you review the Illinois EPA's recommendation?

A. Yes.

Q. And I think it will be easier if I just get you to the page. If you turn to 1 -- MWG13-15_120535. Under Recommendation, what was the Agency's recommendation?

A. Illinois EPA stipulates that Ponds 1 and Pond 3 are not CCR surface impoundments subject to Part 845.

MS. GALE: And Mr. Hearing Officer, Midwest Generation moves for the admission of Exhibit 1603.

HEARING OFFICER HALLORAN: Mr. Russ?

MR. RUSS: No objection.

HEARING OFFICER HALLORAN: Thank

1 you, Mr. Russ.

2 Respondent's Exhibit 1603 is
3 admitted.

4 (Whereupon, Respondent's Exhibit
5 No. 1603 was admitted into
6 evidence.)

7 BY MS. GALE:

8 **Q. Ms. Shealey, for -- related to Ponds**
9 **1 and 3, has the Board made a decision?**

10 A. Yes.

11 **Q. I would like you to turn to your**
12 **next tab, which was labeled for identification**
13 **purposes Exhibit 1604.**

14 A. I'm there.

15 (Whereupon, Respondent's Exhibit
16 No. 1604 was marked for
17 identification.)

18 BY MS. GALE:

19 **Q. What is this?**

20 A. The Board's order in that matter
21 with regard to Ponds 1 and 3 at Joliet 29.

22 **Q. What is the date of this order?**

23 A. May 18th, 2023.

24 **Q. And turning to page 5 of the Board's**

1 **order under conclusion, what did the Board**
2 **conclude?**

3 A. Part -- Ponds 1 and 3 are not
4 subject to the provisions of Part 845.

5 MS. GALE: Mr. Hearing Officer,
6 Midwest Generation moves for the admission of
7 Exhibit 1604.

8 HEARING OFFICER HALLORAN: Mr. Russ?

9 MR. RUSS: No objection.

10 HEARING OFFICER HALLORAN: Thank
11 you. Exhibit 1604 is admitted.

12 (Whereupon, Respondent's Exhibit
13 No. 1604 was admitted into
14 evidence.)

15 BY MS. GALE:

16 Q. Okay. I will read 2022 Stipulation
17 No. 3. "Pond 2 at Joliet 29 is a CCR surface
18 impoundment as defined in 415 ILCS 5/3.143."

19 Ms. Shealey, for Pond 2, why is
20 that a CCR surface impoundment?

21 A. We continued to use that pond after
22 the effective date of the federal CCR rules. I
23 believe until -- we continued to place ash in
24 there until, I believe, 2016 when the units -- the

1 generating units were converted to gas.

2 **Q. And I can refer you to slide 7 of**
3 **Exhibit 1607, but what is in Pond 2 today?**

4 A. Nothing. Well, yeah, there's no --
5 not ash.

6 **Q. And when was the ash removed?**

7 A. 2019.

8 **Q. And for what purpose was it removed?**

9 A. Sorry. I'm thinking back to the
10 time when we did the -- give me a second.

11 **Q. Was Pond 2 ever emptied before?**

12 A. Yes, uh-huh.

13 **Q. Okay.**

14 A. So, yeah, I guess it was routine
15 station operations.

16 MS. GALE: Mr. Hearing Officer, it
17 is noon, and I'm at a pretty good stopping point.

18 HEARING OFFICER HALLORAN: Yeah,
19 that sounds good. Does that sound good? Okay.
20 Yeah. We're off the record. We'll come back at
21 1:10. Thank you.

22 (Whereupon, a lunch break was
23 taken.)

24 HEARING OFFICER HALLORAN: All

1 right. We are back on the record. It's
2 approximately 1:10. Thanks for being back
3 promptly. We have Ms. Shealey on the stand, a
4 witness for the Respondent, and Ms. Gale is in the
5 middle of direct.

6 And you may proceed. Thank you.

7 BY MS. GALE:

8 Q. Thank you.

9 Ms. Shealey, we are still
10 talking about the Joliet 29 Station. Since you
11 began with Midwest Generation in 2015, have you
12 become familiar with Midwest Generation's history
13 related to the ash ponds at the Joliet 29 Station?

14 A. Yes.

15 MR. RUSS: Can I just -- I'm sorry.

16 Can I just object to the picture
17 on that slide that was just up?

18 MR. NISHIOKA: The picture?

19 MR. RUSS: Yeah, the photograph.

20 So this same photograph appears
21 on each of the sites, and it gives the impression
22 that that's a sample of the liner at the site, but
23 since it's the same photograph from each site,
24 that can't be the case. So I just -- if there's

1 some way we can stipulate on the record that it's
2 just an example or something like that and not
3 meant to be representative.

4 HEARING OFFICER HALLORAN: Yeah, I
5 think -- Ms. Gale?

6 MS. GALE: Well, I guess I should
7 clarify. We hadn't gotten to the slide yet, but
8 this -- this slide and the information in it up
9 until 2017 was admitted as a part of Exhibit 663,
10 and we are -- so I -- I took it, I looked at
11 what's on the Board's website, and it's already
12 there.

13 MR. RUSS: Okay. All right. Good
14 enough.

15 HEARING OFFICER HALLORAN: All
16 right. Thank you. That addresses that objection.

17 Thank you. You may proceed,
18 Ms. Gale.

19 BY MS. GALE:

20 Q. Thank you. Okay. So I think you
21 just said you became familiar with Midwest
22 Generation's history of the ash ponds at the
23 Joliet 29 Station?

24 A. Yes.

1 THE COURT REPORTER: Does the mic
2 work?

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

5 HEARING OFFICER HALLORAN: All
6 right. We're back on the record.

7 BY MS. GALE:

8 Q. Now, you are familiar -- and you
9 have become familiar with Midwest Generation's
10 history of the ash ponds at the other three
11 stations that we will be talking about?

12 A. Yes.

13 Q. How did you become familiar with the
14 history of the ash ponds at the four stations we
15 are discussing here?

16 A. Review of documents, just general
17 conversation with Midwest Generation employees. I
18 sat in on part of the hearing previous to this
19 one. I talked with Maria Race, who testified last
20 time. Just a lot of -- yeah, a lot.

21 Q. And for the Joliet 29 Station,
22 during Joliet 29's operation using coal, where did
23 most of the ash go?

24 A. To Lincoln Stone Quarry.

1 Q. What is Lincoln Stone Quarry?

2 A. A state permitted landfill.

3 Q. And where is that located?

4 A. Across the river from Joliet 29, the
5 Des Plaines River.

6 Q. And so if it went to the landfill
7 across the river, what was the purpose of the
8 Joliet 29 ash ponds?

9 A. They were generally used -- when the
10 station burned coal, they were generally used when
11 ash could not be sluiced across the river. When
12 it was extremely cold, for example, or there was
13 some other type of outage, they would -- to
14 continue to generate, they would place ash into
15 the ponds.

16 Q. And Ms. Shealey, we have put on the
17 screen, and I would like to turn -- if you could
18 turn to your slides, Slide No. 8, which are
19 entitled, "Joliet #29 Timeline of Events," and as
20 I said earlier, this was admitted as 663. We have
21 added to it as a further timeline and put it in
22 one place for the Board's convenience.

23 Ms. Shealey, when did Joliet 29
24 Station begin operating?

1 A. In the mid-60's; '64, '65. Probably
2 '64 and '65. There were two units.

3 **Q. And the units, what did they use to**
4 **make electricity?**

5 A. They used coal from the time they
6 began operation until February of 2016, I believe.

7 **Q. Okay. And looking at the timeline,**
8 **in 2002 to 2005, what did Midwest Generation do?**

9 A. They initiated a review of its
10 ash -- of the ash ponds at the stations, which
11 included locating the drawings and planning,
12 retaining consultants, and actually site visits by
13 those consultants.

14 **Q. And by the stations, what stations?**

15 A. Joliet 29 -- sorry -- Will County
16 Station, Waukegan Station, and Powerton Station.

17 **Q. Did any regulatory agency ask**
18 **Midwest Generation to do evaluate -- do this**
19 **evaluation of the ash ponds?**

20 A. No.

21 **Q. Was Midwest Generation required by**
22 **law to conduct this evaluation?**

23 A. No.

24 **Q. At the time of this assessment, were**

1 **there any Illinois or federal regulations related**
2 **to the storage or use of coal ash?**

3 A. No. Not that I am aware of, no.

4 **Q. Okay. Well, then, what is your**
5 **understanding of why Midwest Generation conducted**
6 **this evaluation?**

7 A. Good operating practice,
8 environmental stewardship. They wanted to make
9 sure that the ponds were in good condition.

10 **Q. And, generally, what did Midwest**
11 **Generation do -- and I think you started upon it,**
12 **but for the systematic evaluation, what did they**
13 **start with?**

14 A. A review of the history of the
15 ponds, the history of -- their usage history and
16 construction.

17 **Q. And did they engage anyone to do**
18 **that?**

19 A. Yes.

20 **Q. Who did they engage?**

21 A. NRT Consultants and KPRG.

22 **Q. I wanted you to turn to the next tab**
23 **of your binder, which has been a previously**
24 **admitted exhibit, Comp Exhibit 34.**

1 **Mr. Hearing Officer, to be**
2 **clear, this was admitted in the first stage of the**
3 **hearing.**

4 HEARING OFFICER HALLORAN: Okay.
5 And this is what exhibit again, please?

6 MS. GALE: Complainants' Exhibit 34.

7 HEARING OFFICER HALLORAN: Oh, okay.
8 Proceed. Thank you.

9 BY MS. GALE:

10 **Q. And this is the 2005 --**
11 **December 21st, 2005 NRT Technical Memorandum**
12 **No. 1.**

13 **Ms. Shealey, have you seen this**
14 **before?**

15 A. Yes.

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

17 A. I think it's the outcome of NRT's
18 evaluations of the ash ponds in the Midwest Gen
19 fleet.

20 **Q. And, to your knowledge, what did NRT**
21 **do for those evaluations?**

22 A. They visited stations, and they
23 reviewed documents.

24 **Q. They visited stations, and they**

1 reviewed documents.

2 Did -- for when they visited
3 stations, to your knowledge, what did they
4 evaluate?

5 A. I actually don't know. They -- they
6 did -- while this document may categorize liner
7 states, they did not look at liners.

8 Q. And I want you to turn to
9 MWG13-15_23614, 23615, 23616, 23617, and first,
10 what do these charts state?

11 A. That they are an impoundment matrix.

12 Q. And take a look at all -- each of
13 these, and then I will ask you a question. Tell
14 me when you are ready.

15 A. I'm ready.

16 Q. And you said it's an impoundment
17 matrix. Did NRT make conclusions in this matrix?

18 A. Yes.

19 Q. And have you considered their
20 conclusions in this matrix before?

21 A. Yes.

22 Q. Do you agree with the conclusions
23 that they made in this matrix?

24 A. No.

1 **Q. Why not?**

2 A. Because they did not look at the
3 ponds -- or they looked at the ponds, but they
4 didn't look at the liners.

5 For example -- well, here is on
6 the first one. Will County, liner condition if
7 known is poor for all four ponds. They couldn't
8 have known that without emptying the ponds, and
9 they did not empty the ponds. I -- no, they
10 didn't.

11 **Q. So, if they didn't do that, how**
12 **would you characterize their conclusion?**

13 A. False or not true, at least.
14 Questionable. Questionable is the best way, I
15 think, to say it.

16 **Q. Do you think they made assumptions?**

17 A. I absolutely think they made
18 assumptions.

19 **Q. Okay. But, to your knowledge, did**
20 **Midwest Gen start to implement the plan for**
21 **re-lining the ponds?**

22 A. Yes.

23 **Q. All right. So looking at the**
24 **timeline on page 9 of Exhibit 1607, what happened**

1 **in '06?**

2 A. They began the process of re-lining
3 the ponds. They did the engineering, scheduling,
4 and budgeting for the work to re-line the ponds.

5 **Q. So, Ms. Shealey, you have worked at**
6 **power stations for a long time. Scheduling,**
7 **engineering, and budgeting, what does that mean?**

8 A. In a context of a power plant,
9 scheduling means that they have to account for
10 when the units are needed or not needed, so the
11 units could take outages. The ash ponds are --
12 well, yeah, generally necessary for the units to
13 be able to run. So scheduling would take into
14 account outages, equipment avail- -- like,
15 material availability, contractor time, just
16 everyone's schedule, particularly the unit's
17 schedule.

18 **Q. And what does engineering mean?**

19 A. The design. So hopefully a licensed
20 professional engineer in the State of Illinois
21 would design the new liner system, whatever that
22 would be.

23 **Q. And for design, where are designs**
24 **written? What do they look like?**

1 A. Drawings. Engineering drawings,
2 specifically.

3 **Q. Okay. So moving ahead to 2008, what**
4 **station did Midwest Generation start with for**
5 **re-lining the ponds?**

6 A. This Joliet 29, Pond 2, right? Am I
7 right? Yeah.

8 **Q. And so to re-line a pond, what's**
9 **your understanding of the work required to do**
10 **that?**

11 A. You would have to empty the pond
12 first. Well, okay. Go back. You have to procure
13 the liner system -- procure the liner system,
14 empty it, install the liner, certify that the
15 liner is installed correctly, and then you could
16 probably place the unit back in service.

17 **Q. And for scheduling, can it happen in**
18 **winter?**

19 A. No.

20 **Q. Why not?**

21 A. Things freeze. Particularly -- we
22 are in Illinois, so it's too cold to do that work
23 in winter, because of frozen stuff.

24 **Q. And now that you have worked in**

1 Illinois for a while, what sort of permit is
2 required to do that sort of project?

3 A. An NPDES construction permit at that
4 time.

5 Q. From whom?

6 A. Illinois EPA.

7 Q. And when Midwest Generation emptied
8 the ponds, what is your understanding of the
9 condition of the Poz-O-Pac -- I'll rephrase.

10 When Midwest Gen emptied the
11 ponds at Joliet 29, what is your understanding of
12 the condition of the Poz-O-Pac that they found?

13 A. It was good, or if not better than
14 good. Sufficient. More than sufficient.

15 Q. What do you mean by "good"?

16 A. There were no cracks. There were no
17 holes. It was in tact, had its full integrity.

18 Q. Back to looking at the timeline. In
19 December of 2008, what was reported in the press?

20 A. A Tennessee Valley Authority ash
21 spill.

22 Q. And after that ash spill, what
23 regulatory agency contacted Midwest Generation
24 about its ash ponds?

1 A. Illinois EPA.

2 Q. Yeah. About what time?

3 A. Approximately, four months later, in
4 April of the following year.

5 Q. And what did Illinois EPA ask
6 Midwest Generation to do?

7 A. A hydro -- oh, my goodness.
8 A hydrogeological assessment.

9 Q. And what is a hydrogeological
10 assessment?

11 A. I think it -- I think it determines
12 the -- I don't want to say quality, but how
13 groundwater behaves in relation to the ponds.

14 Q. Did it also conclude an evaluation
15 of any nearby wells?

16 A. Yes.

17 Q. What was that?

18 A. The potable wells, any nearby
19 potable wells that would be impacted by -- could
20 be impacted by the ponds.

21 Q. And how did Midwest Generation
22 respond to Illinois EPA's inquiry?

23 A. They complied. They agreed to do
24 it. They did the hydro -- hydrogeological

1 assessment and installed groundwater monitoring
2 wells.

3 Q. I promise this is the last time you
4 have to say that word. Well, I don't know.

5 Ms. Shealey, to your knowledge,
6 was there any regulatory requirement to conduct
7 this hydrogeologic assessment?

8 A. No, not at all.

9 MS. GALE: And for the record,
10 Mr. Hearing Officer, that assessment was
11 previously admitted as Exhibit 621.

12 HEARING OFFICER HALLORAN: So noted.
13 Thank you.

14 BY MS. GALE:

15 Q. And, Ms. Shealey, it's in your book,
16 if you could flip to it.

17 And, Ms. Shealey, this was for
18 the -- all four stations that are subject here,
19 right?

20 A. Yes.

21 Q. And in this assessment, as it
22 relates to potable wells, what were the
23 conclusions?

24 A. That there were none within -- that

1 were within a distance that would be impacted by
2 the ash ponds.

3 Q. I'm sorry. Did you say none?

4 A. None, zero.

5 Q. Thank you.

6 I want to flip to the next page
7 of 10 of the exhibit. Around this same time, in
8 January of 2010, what did USEPA do?

9 A. They announced that they were going
10 to regulate coal ash, CCR. Coal ash -- coal
11 combustion residuals as a hazardous waste.

12 Q. They didn't, though, did they?

13 A. No, they did not.

14 Q. Or I said -- I should be clear.

15 They did not regulate it as
16 hazardous waste, right?

17 A. No. They did not regulate it as a
18 hazardous waste.

19 Q. And in response to that
20 announcement, what did Midwest Generation do?

21 A. Attempted to cease work in -- or
22 they ceased the work of re-lining the ponds.

23 Q. Why did Midwest Gen do that?

24 A. I believe the initial announcement

1 included liner standards, and so to avoid
2 unnecessary or inappropriate work, Midwest Gen
3 wanted to wait until the final -- the rules
4 were -- regulations were finalized.

5 Q. Okay. And then at the same time,
6 did Illinois EPA ask Midwest Generation to install
7 anything around the ash ponds?

8 A. Groundwater monitoring wells.

9 Q. And what was Midwest Generation's
10 response?

11 A. The ground -- they installed
12 groundwater monitoring wells.

13 Q. And, to your knowledge, was Illinois
14 EPA's request based upon a court order?

15 A. No.

16 Q. Was it based upon an order from
17 another governmental body?

18 A. No.

19 Q. So given that it was not based upon
20 a court order or a government -- or an order from
21 a governmental body, how would you characterize
22 Midwest Generation's decision to say yes to the
23 Agency's request?

24 A. Voluntary.

1 **Q. Okay. So, generally, in -- starting**
2 **in April of 2010 -- August. August. I meant**
3 **August of 2010, what did Midwest Generation first**
4 **do?**

5 A. They got proposals for a
6 hydrogeologic assessment. Oh, and then they
7 submitted -- I'm sorry. And then they submitted
8 their -- they accepted a proposal and submitted a
9 plan -- their plans to the Agency, the Illinois
10 EPA.

11 **Q. And was that for each of the four**
12 **stations that are subject here?**

13 A. Yes.

14 MS. GALE: And, Mr. Hearing Officer,
15 for the record, those plans were previously
16 admitted as Exhibits 613 for Joliet 29, 614 for
17 Powerton Station, 615 for Waukegan Station, and
18 616 for Will County Station.

19 HEARING OFFICER HALLORAN: So noted.
20 Thank you.

21 BY MS. GALE:

22 **Q. Ms. Shealey, did Illinois EPA**
23 **approve those plans?**

24 A. Yes.

1 Q. And upon approval, what did Midwest
2 Generation do?

3 A. Began groundwater sampling.

4 Q. 2022 stipulation No. 4. "Midwest
5 Gen began sampling the groundwater at Joliet 29 in
6 December of 2010."

7 Ms. Shealey, upon collection of
8 the groundwater results and the hydrogeologic
9 assessment, what did Midwest Generation do? Where
10 did those results go?

11 A. To the Illinois EPA.

12 Q. I'm going to turn to slide 11.

13 Ms. Shealey, did Midwest
14 Generation following the initial groundwater
15 collection continue to conduct the sampling of
16 these groundwater wells?

17 A. Yes.

18 Q. How frequently?

19 A. Quarterly.

20 Q. Stipulation -- excuse me. 2022
21 Stipulation No. 7. "Midwest Generation has
22 submitted the groundwater monitoring results for
23 Joliet 29 to Illinois EPA from 2010 to present."

24 Ms. Shealey, did Illinois EPA

1 issue any type of order that required Midwest
2 Generation to continue to conduct the quarterly
3 monitoring at the Midwest Generation stations?

4 A. No.

5 Q. Is there a statutory requirement to
6 conduct the quarterly groundwater monitoring in
7 2010?

8 A. No.

9 Q. Was there any regulatory requirement
10 to conduct the groundwater monitoring in 2010?

11 A. No.

12 Q. Okay. So there is no order to do
13 the work, or was there a permit requirement to do
14 that groundwater monitoring in 2010?

15 A. No.

16 Q. So, there's no order to do the work.
17 There's no permit required, no regulatory or
18 statutory requirement. How would you call Midwest
19 Generation's decision to continue to conduct the
20 groundwater sampling in 2010?

21 A. Voluntary.

22 Q. Now, we have just been discussing
23 Joliet 29. Is that true for the Powerton Station?

24 A. Yes.

1 **Q. Is that also true for the Waukegan**
2 **Station?**

3 A. Yes.

4 **Q. Finally, is that also true for the**
5 **Will County Station?**

6 A. Yes.

7 MS. GALE: Mr. Hearing Officer, I
8 want to note for the record that Complainants'
9 Exhibits 1A, 2A, 3A, and 4A are the Illinois EPA
10 violation notices related to the ground water at
11 Midwest Gen for all four stations.

12 HEARING OFFICER HALLORAN: So noted.
13 BY MS. GALE:

14 **Q. Ms. Shealey, to your knowledge, did**
15 **the proposed USEPA CCR regulations that were**
16 **proposed in 2010 affect in any way Midwest**
17 **Generation's response to the violation notices**
18 **they received from Illinois EPA?**

19 MR. RUSS: Object, leading.

20 HEARING OFFICER HALLORAN:
21 Sustained.

22 BY MS. GALE:

23 **Q. Ms. Shealey, I just stated that**
24 **Illinois EPA violation notices were received to**

1 **Midwest Gen.**

2 **Are you aware of that?**

3 A. Yes.

4 **Q. And are you aware -- well, how did**
5 **Midwest Generation respond?**

6 A. Ultimately, they entered into
7 compliance commitment agreements.

8 **Q. And before they entered into the**
9 **compliance commitment agreements, to your**
10 **knowledge, did they have conversations with**
11 **Illinois EPA?**

12 A. Yes.

13 **Q. And, to your knowledge, did -- what**
14 **did those conversations entail?**

15 A. Midwest Gen's preference to not
16 re-line the ponds at that point because of the
17 pending federal regulations.

18 **Q. And yet despite the pending federal**
19 **regulations, how did the Illinois EPA violation**
20 **notices ultimately get resolved?**

21 A. By -- with compliance commitment
22 agreements, which included re-lining some ponds in
23 the fleet.

24 **Q. And re-lining some ponds with what?**

1 A. HDPE liners.

2 Q. And what is -- high level, what is
3 an HDPE liner?

4 A. High density polyethylene is a
5 plastic liner. It's a -- it -- well, it comes in
6 various thicknesses, but Midwest Gen chose 6 --
7 used -- which is industry standard, 60 mil
8 liners -- 60 mil being their thickness.

9 Q. And we went earlier and discussed
10 the re-lining projects and the efforts that it
11 takes for a station to do that. Do you recall
12 that discussion?

13 A. Yes.

14 Q. Here to do those re-lining projects,
15 how much time, to your recollection, did Midwest
16 Generation have?

17 A. I believe it was months. I believe
18 it was months.

19 Q. Okay. And so in 2012, were there
20 any liner requirements for CCR surface
21 impoundments?

22 A. No, they were pending.

23 Q. And, approximately, what were the
24 costs to re-line the Midwest Generation station

1 **requirements?**

2 A. Yes.

3 Q. **And was that for all four of the**
4 **stations that are subject here?**

5 A. Yes.

6 Q. **And so at Joliet 29, what did**
7 **Midwest Generation do?**

8 A. They re-lined Pond 3. Well, they
9 continued groundwater monitoring, and they
10 re-lined Pond 3.

11 Q. **Ms. Shealey, I want to take a step**
12 **back. We have been talking about CCAs.**

13 **What is a CCA?**

14 A. Compliance commitment agreement.

15 Q. **And as an agreement, how would you**
16 **describe it?**

17 A. It's an agreement between a source
18 and the Agency to resolve a potential or -- a
19 potential compliance issue.

20 Q. **Is it like a court order?**

21 A. No.

22 Q. **Looking at slide 12 of Exhibit 1607,**
23 **in 2015 what happened related to USEPA?**

24 A. They published the final CCR rules,

1 coal combustion residual rules, in the federal
2 register.

3 Q. Thank you. And at Joliet 29
4 following published occasion of those rules, what
5 did Midwest Generation do?

6 A. Remove the ash from Pond 1.

7 Q. And what did they do at Pond 3 --

8 A. Noth- --

9 Q. In July of 2015?

10 A. Oh, sorry. They -- yeah, sampled
11 the influent water to assure that it didn't
12 contain ash.

13 Q. I want to turn to the next slide, 13
14 of Exhibit 1607. So following enactment of the
15 federal rule, what did Midwest Gen start doing?

16 A. Complying with the federal rule,
17 which is a lot. So that's my simple statement.
18 Sorry.

19 Q. High level, what's the "a lot"?

20 A. There are engineering
21 certifications, like structural civility
22 assessments. There was a groundwater -- hydro --
23 groundwater monitoring for -- under the federal
24 rule, we had eight quarters of sampling to

1 establish our groundwater background, and
2 continued monitoring since. Structural stability
3 inspections, both by qualified persons on a weekly
4 basis and by a professional engineer annually.
5 Well, that's my list that comes to mind, top of
6 head.

7 **Q. Were there liner requirements in**
8 **that rule?**

9 A. Yes, there are.

10 **Q. And referring to your earlier**
11 **statement that Midwest Generation was concerned**
12 **about re-lining the ponds in 2012 for the VNs**
13 **because of the USEPA regulations, were Midwest**
14 **Generation's concerns correct?**

15 A. They were.

16 **Q. How so?**

17 A. The ponds are not -- or under the
18 federal rule, the ponds are unlined.

19 **Q. Can you explain that further,**
20 **please?**

21 A. Yeah. They don't have the composite
22 liner system that the federal rules require, and
23 so, generally, HDPE is a piece, a part of a
24 composite system, but it's not the only part.

1 So our HDPE liners don't qualify
2 as lined ponds under the federal rule.

3 **Q. And what did that mean for Midwest**
4 **Generation?**

5 A. Well, it means that we have unlined
6 ponds that may or may not have -- that have
7 different dates where they may have seeps
8 operating, and that they spend a lot of money to
9 get to a place that's not compliant with the
10 rules.

11 **Q. And then looking at the timeline, in**
12 **January of 2019, what was introduced in the**
13 **Illinois General Assembly?**

14 A. Senate Bill 9.

15 **Q. What was Senate Bill 9?**

16 A. It -- it was a -- well, yeah, it is.
17 It is now, but it was an act to regulate coal ash
18 impoundments in Illinois.

19 **Q. And around that time, what was**
20 **Midwest Generation preparing to do in relation to**
21 **its CCR surface impoundments pursuant to the**
22 **federal CCR rule?**

23 A. We were intending to close several.

24 **Q. And close them under the --**

1 A. Under the federal rule, as the
2 federal rule defines closure.

3 **Q. And when Senate Bill 9 was proposed,**
4 **what did Midwest Generation do?**

5 A. Approached the Agency about a --
6 well, at least one specific pond so that we could
7 close it under the federal rules. Then the Agency
8 responded that they would probably find us in
9 violation if we did so, because of Senate Bill 9's
10 existence.

11 **Q. And explain that further, because of**
12 **Senate Bill 9's existence. What was required**
13 **under Senate Bill 9?**

14 A. Senate Bill 9 explicitly stated that
15 you cannot close a CCR surface impoundment without
16 a permit from the Agency.

17 **Q. And under the -- when you were going**
18 **to close under the federal rules, did you require**
19 **something from the Agency?**

20 A. We required a permit from the
21 Agency, yes.

22 **Q. What kind of permit was it at that**
23 **time?**

24 A. An NPDES permit.

1 Q. An NPDES construction permit?

2 A. Construction permit, yeah.

3 Q. Right. What did the Agency tell you
4 about issuing that construction permit?

5 A. That they would not; not with Senate
6 Bill 9, sort of, out there at that point.

7 Q. And what was your takeaway when the
8 Agency told you they would not issue a permit?

9 A. That we could not close any
10 impoundments.

11 Q. I'm going to turn to the next --
12 slide 14 of Exhibit 1607. 20 -- excuse me.

13 2021, what rule passed in front
14 of the Board?

15 A. Part 845, which was the result of
16 Senate -- the Senate Bill 9 law. I can't -- I
17 can't name the act, exactly, that it came from,
18 but the Board passed rules regarding CCR surface
19 impoundments.

20 Q. And, generally -- well, following
21 passage of the rule, what did Midwest Generation
22 do?

23 A. Begin complying.

24 Q. High level, what does that mean?

1 A. It required a somewhat modified
2 groundwater monitoring, engineering certifications
3 again, like structural stability analyses,
4 inspections, permit applications. That is my
5 list, off the top of my head.

6 **Q. Where is that information posted?**

7 A. On our website.

8 **Q. Is that publically available?**

9 A. Absolutely.

10 **Q. 2022 Stipulation No. 6. "On**
11 **November 1st of 2021, Midwest Generation submitted**
12 **an operating permit application to Illinois EPA**
13 **for Pond 2 at Joliet 29."**

14 **Ms. Shealey, you just mentioned**
15 **the publically available website. Is the Joliet 29**
16 **permit application on that website?**

17 A. Yes, it is.

18 **Q. And, generally speaking, what is in**
19 **the permit application?**

20 A. Demonstration that we meet location
21 restrictions, hazard potential classifications,
22 structural stability, as I said before, closure
23 plans, groundwater monitoring network and
24 preliminary groundwater monitoring results under

1 Part 845, which kind of brought in the historic
2 results from federal CCR monitoring, and our
3 proposed groundwater protection standards.

4 **Q. Ms. Shealey, how big is the**
5 **operating permit application?**

6 A. Hundreds of pages.

7 **Q. And who prepared it?**

8 A. I think KPRG is the chief author,
9 but there are sections that were prepared by other
10 consultants.

11 **Q. And, to your knowledge, how much**
12 **effort was it to create this operating permit**
13 **application?**

14 A. A lot. We had about six months
15 between April and November 1st. So it was
16 mid-April to November 1st. We had about six
17 months to compare -- prepare operating permit
18 applications for all of our impoundments, and so
19 it was several people's full-time job for that six
20 months.

21 **Q. And just to correct something, you**
22 **said all of your impoundments. Do you mean all of**
23 **the federal impoundments?**

24 A. No. The federal impoundments plus

1 three -- yes, all of the federal impoundments, and
2 there is an additional three that are state
3 impoundments.

4 Q. And we will get into that later.

5 Ms. Shealey, to your knowledge,
6 has Illinois EPA issued an operating permit for
7 Pond 2 yet?

8 A. No.

9 Q. Ms. Shealey, are you aware that
10 Illinois EPA -- are you aware of Illinois EPA's
11 CCR surface impoundment website?

12 A. Yes.

13 Q. Have you visited it?

14 A. Yes.

15 Q. What is on that website?

16 A. Links to each of -- each
17 owner/operator's websites, any public notices that
18 would have been -- will be issued. Those are two
19 things that come to top of mind first.

20 Q. Do they put notices of documents
21 they receive?

22 A. I believe so.

23 Q. And as part of your role as
24 environmental director, do you review that

1 **website?**

2 A. Yes.

3 **Q. How often?**

4 A. At least monthly, typically looking
5 for permit notices.

6 **Q. When you have looked, what have you
7 found?**

8 A. That there are no permit notices, or
9 no draft permits issued.

10 **Q. For Midwest Gen?**

11 A. For Midwest Gen or anyone.

12 **Q. 2022 Stipulation No. 7. "On
13 February 1st, 2022, Midwest Generation submitted a
14 construction permit application to the Illinois
15 EPA for closure of Pond 2 at Joliet 29."**

16 **Ms. Shealey, for Pond 2 at
17 Joliet 29, what is the proposed closure method?**

18 A. Essentially, closure by removal and
19 reuse of the liner system for a low-volume waste
20 pond.

21 **Q. Okay. But you told me earlier Pond
22 2 is empty. So what would be removed?**

23 A. There is a warning layer system.
24 It's a lime -- limestone and sand warning layer

1 that is still in the pond. All of the ash was
2 removed.

3 **Q. And to support Midwest Generation's**
4 **proposed closure method, what was in the**
5 **construction permit application?**

6 A. A request for an adjusted standard.
7 What was in the construction -- I don't -- there
8 were lots of things. I'm sorry.

9 **Q. Were there drawings?**

10 A. Oh, absolutely, yes.

11 **Q. And what did the drawings show?**

12 A. The liner system as it stands.
13 There were also descriptions of how engineer --
14 how we could or would be able to clean the liner
15 and repurpose it so to ensure that there are no
16 CCR constituents left in the pond.

17 **Q. And for the construction permit**
18 **application related to groundwater, what is**
19 **required to be submitted?**

20 A. I think it's the groundwater
21 monitoring network, and I'm questioning it,
22 because I know that that was in the operating
23 permit, but the groundwater monitoring results
24 probably are in there, too.

1 **Q. And what -- and what else is in**
2 **there related to groundwater that you use the**
3 **results for?**

4 A. Modeling. There is groundwater
5 modeling done for construction permit applications
6 as a requirement under Part 845.

7 **Q. Ms. Shealey, the construction permit**
8 **application for Pond 2, how big was it?**

9 A. Hundreds of pages.

10 **Q. And what was the kind of effort to**
11 **prepare the Pond 2 construction permit**
12 **application?**

13 A. Equally as strenuous as the effort
14 to prepare the operating permit application,
15 because in addition to those things I have already
16 said, we held public meetings with regard to the
17 closure plans.

18 **Q. So I think you touched upon it by**
19 **closure by removal, and you said reuse of the**
20 **liner.**

21 **What is Midwest Generation's**
22 **plan for Pond 2?**

23 A. To use it as a low-volume waste pond
24 for general station operation of Joliet 29 on gas.

1 **Q. What is a low-volume waste pond?**

2 A. It collects processed water and
3 stormwater. In the case of Joliet 29, it would be
4 processed water -- the easiest example of
5 processed water is boiler water. Boiler blowdown
6 is what we call it; the -- discharge of water from
7 the boiler as you process it to make steam.

8 **Q. And that -- that water, that**
9 **low-volume waste water, is it part of a permitting**
10 **program?**

11 A. Yes.

12 **Q. Which program?**

13 A. NPDES.

14 **Q. And I'm not going to ask you what**
15 **that stands for.**

16 A. I can do that one.

17 **Q. Okay.**

18 A. National -- I think I can. National
19 pollutant discharge elimination system permit.

20 **Q. Nicely done.**

21 **So to reuse the HDPE liner in**
22 **Pond 2, what does Midwest Generation need?**

23 A. A permit. Oh, and an adjusted
24 standard. Sorry.

1 MS. GALE: And for the record,
2 Mr. Hearing Officer, Midwest Generation's --
3 again, I said this earlier, but just to reiterate
4 it, Midwest Generation's Petition for Adjusted
5 Standard for the Joliet 29 Station was previously
6 admitted as Exhibit 1501.

7 HEARING OFFICER HALLORAN: So noted.
8 Thank you.

9 BY MS. GALE:

10 Q. In Exhibit 1501, which was the
11 petition, what did Midwest Gen state it can do
12 with the HDPE liner to reuse it?

13 A. Decontaminate it. So essentially
14 remove all CCR and CCR constituents and place it
15 back into -- assure -- assure -- and assure its
16 integrity to be able to place it back in service
17 as a low-volume waste pond.

18 MS. GALE: And, Mr. Hearing Officer,
19 for the record, Illinois EPA's second
20 recommendation, which was related to Pond 2, was
21 previously admitted as Exhibit 1409.

22 HEARING OFFICER HALLORAN: So noted.
23 Thank you.

24

1 (Whereupon, Respondent's Exhibit
2 No. 1605 was marked for
3 identification.)

4 BY MS. GALE:

5 Q. Ms. Shealey, can you turn to the
6 next tab in your binder, which has been previously
7 marked as Exhibit 1605? And I want to ask you
8 what it is. I would direct you to page
9 MWG13-15_122675.

10 A. Oh, it's Midwest Generation's
11 response to the Illinois Environmental Protection
12 Agency's recommendation with regard to that
13 adjusted standard.

14 Q. And as part of your duties as an
15 environmental director, did you review it?

16 A. Yes.

17 Q. I would like you to turn to page --
18 oh, we are there.

19 HEARING OFFICER HALLORAN: Ms. Gale,
20 did you point this out on the cover page? It's
21 AS21-2, and then it's AS21-1.

22 MS. GALE: Well, that must have been
23 a typo in the original filing, sir. So probably.

24 HEARING OFFICER HALLORAN: Yeah. I

1 just wanted to point it out.

2 MS. GALE: Yeah.

3 HEARING OFFICER HALLORAN: I don't
4 remember the AS21-2.

5 MS. GALE: Well, for the record,
6 that is a typo in the Notice of Filing for the
7 wrong adjusted standard. It definitely should be
8 AS21-1, sir.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 BY MS. GALE:

12 Q. Turning to MWG13-15_122675.

13 Generally speaking, what was
14 Midwest Generation's response to Illinois EPA's
15 recommendation related to Pond 2?

16 A. That there is no evidence of CCR
17 in -- in that pond or in its liner system, and
18 that we should be able to decontaminate the liner
19 and reuse the pond for low-volume waste.

20 Q. Ms. Shealey, I would like -- and in
21 support of Midwest Generation's response, what did
22 Midwest Generation attach?

23 A. Expert opinions.

24 Q. Can you turn to MWG_122705? And

1 there is a tab. There should be a tab for each,
2 everybody.

3 What is this?

4 A. Weaver Consultants Group Expert
5 Opinion for Joliet 29 Pond 2.

6 Q. And to your recollection, generally
7 speaking, what did Mr. Max- -- for Weaver -- what
8 did Weaver Consultants Group -- and I believe it
9 was Mr. Maxwell who testified earlier, what was
10 his opinion related to Pond 2?

11 A. That it was not a source of any
12 groundwater contamination.

13 Q. And the next tab in that exhibit,
14 which is on MWG13-15_122897, what is this?

15 A. An expert report from Exponent.

16 Q. And if you look four pages in, it's
17 by a Dr. Mateusz Redlinski. Do you see that?

18 A. Yes.

19 Q. And what did Dr. Radlinski opine
20 upon?

21 A. The -- whether the liner system --
22 liner system was a CCR material, whether the
23 Poz-O-Pac was -- whether Poz-O-Pac was CCR
24 material, essentially.

1 Q. And Poz-O-Pac is spelled, P-O-Z,
2 dash, O, dash, P-A-C.

3 And the third tab in this
4 exhibit, which is at MWG13-15_122914, what is
5 this?

6 A. Another expert -- expert opinion.
7 This one by Sargent & Lundy.

8 Q. And at the top of that page you see
9 it's by Mr. Dehlin?

10 A. Yes.

11 Q. What -- generally speaking, what was
12 Mr. Dehlin's opinion?

13 A. That we could decontaminate the
14 liner and reuse it.

15 MS. GALE: Mr. Hearing Officer, we
16 move for the admission of Exhibit 1605.

17 MR. RUSS: No objection.

18 HEARING OFFICER HALLORAN: Thank
19 you, Mr. Russ.

20 Respondent's Exhibit 1605 is
21 admitted.

22 (Whereupon, Respondent's Exhibit
23 No. 1605 was admitted into
24 evidence.)

1 BY MS. GALE:

2 Q. Ms. Shealey, I'm going to turn back
3 to the slides. We are going to turn to the map.
4 We are on slide 15 of Exhibit 1607, and we have on
5 the map the monitoring wells highlighted on the
6 screen. Are you there?

7 A. Yes, I see it.

8 Q. Do you see Monitoring Well 9 on the
9 map?

10 A. Yes.

11 Q. What pond is closest to Monitoring
12 Well 9?

13 A. Pond 3.

14 Q. And you were here for Mr. Gnat's
15 testimony?

16 A. Yes.

17 Q. Recalling his testimony, what is
18 your understanding of the groundwater results at
19 Monitoring Well 9?

20 A. They were anomalous.

21 Q. And by anomalous, you mean they were
22 different?

23 A. Yeah, than what would be expected.

24 Q. And given that the groundwater

1 results were anomalous or different -- and I
2 presume you mean than the other wells -- what did
3 Midwest Generation do?

4 A. An investigation around that well.

5 Can I go back?

6 Q. Sure.

7 A. I am sure I missed part of
8 Mr. Gnat's testimony.

9 Q. Oh, that's right.

10 A. I just wanted to clear that up.
11 Sorry.

12 Q. Well, even if you missed that part
13 of his testimony -- about this part, that
14 testimony was in May, Ms. Shealey?

15 A. Okay, yeah. Okay. Thank you. I
16 just wanted to clear up that I have not seen
17 all -- I did not see all of Mr. Gnat's testimony.

18 Q. But anyways, well, as your role as
19 environmental director, were you aware of what --
20 the monitoring well results of Monitoring Well 9?

21 A. Yes.

22 Q. Okay. And given that they were
23 different, what did Midwest Generation do?

24 A. An investigation around that well.

1 Q. And in part -- well, we discussed
2 this earlier, but what is the class -- Pond 3 is
3 not a CCR surface impoundment, right?

4 A. No, it is not.

5 Q. Were there any statutory or
6 regulatory requirements to do that investigation?

7 A. No.

8 Q. And as environmental director, did
9 you see the results of that investigation?

10 A. Yes.

11 Q. And to your recollection, what did
12 soil borings show?

13 A. That there was not CCR around that
14 well. So CCR was not the source of the anomaly
15 was the conclusion.

16 Q. Excellent. Thank you.

17 I'm going to refer now to the
18 map, and we are going to be highlighting three
19 areas.

20 Referring to the map, do you see
21 three areas sort of identified there?

22 A. Yes.

23 Q. Are you generally familiar with
24 those three areas?

1 A. Yes.

2 Q. Okay. Let's start with the
3 northeast area. To your knowledge, has Midwest
4 Generation placed ash in the northeast area?

5 A. No.

6 Q. And to your knowledge, what was the
7 status of the northeast area when Midwest
8 Generation purchased the Joliet 29 Station?

9 A. It looks like a nature preserve.
10 It's covered with grass and trees, and there is
11 animals. You can -- or you can see evidence of
12 many animals living over there or using that area.

13 Q. And I believe you are aware, as
14 environmental director, of Mr. Gnat's
15 investigations of that area?

16 A. Yes.

17 Q. And do you recall what those
18 investigations are pursuant to?

19 A. The NPDES permit.

20 Q. Is it the stormwater permit?

21 A. Yes.

22 Q. And then other than the stormwater
23 permit, has Illinois EPA or USEPA ever asked
24 Midwest Gen to investigate the northeast area?

1 A. No.

2 Q. Ms. Shealey -- and I think you
3 touched upon this in May, so we are going to
4 revisit it. You have had conversations with other
5 regulatory agencies about this area, right?

6 A. Yes.

7 Q. Which ones?

8 A. Army Corp of Engineer -- Engineers
9 and Illinois Department of Natural Resources.

10 Q. And in your conversations with the
11 Army Corp of Engineers and the Illinois Department
12 of Natural Resources about the northeast area,
13 what have you understood is in that area?

14 A. River spoils.

15 Q. Are you aware that -- of the 1999
16 ENSR reports?

17 A. I'm aware, yes.

18 Q. And are you aware that they describe
19 that area as an ash landfill?

20 A. Yes.

21 Q. You said earlier that you worked at
22 power stations for a long time. Do you recall
23 that?

24 A. Yes.

1 **Q. As a person that's worked at power**
2 **stations, coal stations, does it make sense that**
3 **that is an ash landfill?**

4 A. None, whatsoever.

5 **Q. Why not?**

6 A. It makes no sense to me. As I
7 stated before, most of the ash that was generated
8 at Joliet 29 was sluiced across the river to
9 Lincoln Stone Quarry. That -- that has to be -- I
10 mean, I have worked that personally. It has to be
11 more than a mile, two miles away. It doesn't make
12 sense for them to drive -- it just doesn't make
13 sense for them to place ash in -- that far away
14 from the boilers.

15 **Q. Which boilers?**

16 A. Unit 7 and 8, the coal fire boilers.

17 **Q. At what station?**

18 A. Joliet 29. Particularly when they
19 have other places. They have the quarry. It just
20 makes no sense to me.

21 **Q. Ms. Shealey, in your conversations**
22 **with the Army Corp of Engineers and IDNR about the**
23 **northeast area, what did you learn about the**
24 **ownership of that property?**

1 MR. RUSS: Object to hearsay.

2 HEARING OFFICER HALLORAN: I'm
3 sorry. Object?

4 MR. RUSS: Hearsay. She's being
5 asked what the Army Corp said.

6 MS. GALE: I asked her what she
7 learned.

8 HEARING OFFICER HALLORAN: Yeah.
9 No, I'll allow it. Go ahead.

10 BY THE WITNESS:

11 A. It wasn't the Army Corp, actually.
12 It was IDNR. The state owns a piece of -- part of
13 that land.

14 BY MS. GALE:

15 Q. In looking at that map, what do you
16 see?

17 A. That's not identified on here?

18 Q. But it's -- I'm sorry.

19 Looking at the map, the
20 borderline of the northeast area along the river,
21 can you see there?

22 A. Oh, I think it does show that our
23 property line does not go all the way to the
24 river.

1 **Q. Okay. And we have talked about your**
2 **conversations with the Army Corp. To your**
3 **knowledge, why is the Army Corp interested in the**
4 **northeast area?**

5 **A. It is their singular solution to**
6 **invasive species in the Great Lakes. Singular**
7 **solution to stopping invasive species into the**
8 **Great Lakes. The Brandon Road Lock and Dam system**
9 **provides a -- well, the Brandon Road Dam provides**
10 **a barrier for fish traveling upstream, because**
11 **they can't get up the dam. So the lock is**
12 **critical to them to be able to stop fish from**
13 **getting through the lock.**

14 **Q. I now want to turn to the northwest**
15 **area, and it's located on your map. He keeps on**
16 **turning it off.**

17 **Do you see the area described as**
18 **Former Ash Placement Sampled in 2005?**

19 **A. Yes.**

20 **Q. Are you familiar with those sampling**
21 **results?**

22 **A. Yes.**

23 **Q. And what did those results indicate?**

24 **A. The majority of the material**

1 qualified as CCB, coal combustion byproducts.

2 Q. Did Illinois -- to your knowledge,
3 did Illinois EPA ask Midwest Generation to
4 investigate this area?

5 A. No.

6 Q. Did USEPA ever ask Midwest
7 Generation to investigate this area?

8 A. No.

9 Q. I now want to turn to north --
10 excuse me -- the southwest area.

11 To your knowledge, has Midwest
12 Generation placed any CCR in the southwest area?

13 A. No.

14 Q. And to your knowledge, has Illinois
15 EPA ever asked you to investigate the southwest
16 area?

17 A. No.

18 Q. And by you, I mean Midwest
19 Generation.

20 A. No.

21 Q. And to your knowledge, has USEPA
22 ever asked Midwest Generation to investigate the
23 southwest area?

24 A. No.

1 Q. You testified earlier that the
2 neighbor to the west used to be a Caterpillar
3 fac- -- excuse me -- facility. Do you recall
4 that?

5 A. Yes.

6 Q. In looking at the scene, there is a
7 hashmark on the western edge or western side of
8 the Joliet 29 Station. What is that hashmark?

9 A. It's actually Caterpillar's ELUC
10 that extends onto Joliet 29 property.

11 Q. And you said it's Caterpillar's
12 ELUC. How did Caterpillar be -- was able to place
13 an ELUC on Midwest Gen's property?

14 A. Midwest Gen agreed to it.

15 Q. Do you know why?

16 A. Other than being a good neighbor,
17 no, I don't. But they were a good neighbor. We
18 are a good neighbor.

19 Q. And to your knowledge, what does the
20 ELUC require, or what restrictions are on the
21 ELUC?

22 A. The groundwater in that area cannot
23 be used for potable water sources.

24 Q. And to your knowledge, has Midwest

1 Generation disturbed or removed any soil in that
2 area?

3 A. No, not to my knowledge.

4 Q. And to your knowledge, has Illinois
5 EPA required Caterpillar to do anything additional
6 for the contamination from its property onto
7 Midwest Gen's property?

8 A. No.

9 Q. And I guess I'll ask it now, since
10 it's no longer Caterpillar property.

11 To your knowledge, has Illinois
12 EPA required the current owner of that property to
13 do anything additional for contamination from that
14 property onto Midwest Generation's property?

15 A. No.

16 Q. I'm going to turn to the next slide,
17 which is slide 16 of Exhibit 1607.

18 Ms. Shealey, it's been brought
19 up a few times this week, but recently what has
20 Illinois -- excuse me.

21 Recently, what has USEPA
22 introduced related to historic coal ash areas?

23 A. Proposed rules for legacy surface
24 impoundments and what they call CCR management

1 units.

2 **Q. As the environmental director of**
3 **these plants, were these -- was USEPA's proposal**
4 **for the rules a surprise to you?**

5 A. No.

6 **Q. Why not?**

7 A. It was a settlement, and I'm not
8 sure who the plaintiff was, but it was a -- there
9 was a consent decree published in the federal
10 register about several months ago, and I think
11 actually when the settlement happened, I was aware
12 of the settlement years ago. It's just general
13 course of my job.

14 **Q. Was there a decision years ago that**
15 **also you were aware of?**

16 MR. RUSS: Object to vague.

17 HEARING OFFICER HALLORAN: Could you
18 rephrase? Thank you.

19 BY MS. GALE:

20 **Q. Ms. Shealey, are you aware of the**
21 **USWAG decision?**

22 A. Yeah, and that's -- that's how -- I
23 think that's one of my initial introductory points
24 to knowing that the legacy impoundment rules were

1 coming. As it states on the screen, it was in
2 August of 2020 -- 2018.

3 **Q. And so because you were aware since**
4 **2018 about the possibility or pendency of these**
5 **regulations, how did that inform your**
6 **decisionmaking process as it relates to the**
7 **historic ash areas at Joliet 29 Station?**

8 A. We need -- generally regulatory
9 certainty is necessary for us to be able to act.
10 The changing regulatory environment sort of would
11 put us in a position similar to Midwest Gen many
12 years ago when they re-lined the ponds, and those
13 liners are not qualified as -- those impoundments
14 don't qualify as lined impoundments. So it gives
15 us caution around our next steps.

16 **Q. So, you mentioned the CCA. The**
17 **re-lining of the ponds, was that pursuant -- you**
18 **are talking about the CCA process?**

19 A. Yes. Excuse me.

20 **Q. And so why do you want to act**
21 **cautiously or it gives you caution?**

22 A. There are several reasons. One is
23 Midwest Gen -- again, I don't know the exact
24 number, but I'm pretty sure they spent \$10 million

1 re-lining ponds for it not to be compliant with
2 the final rules. There are a lot of people
3 involved in -- and just in that re-lining project.

4 There were engineers,
5 consultants, station operations, involved in that,
6 and it's -- sorry. It's a personal preference. I
7 don't want to use people's time in a way that is
8 not beneficial, does not move us forward, closer
9 to compliance. So it gives me hesitancy.

10 **Q. I will turn to the next screen,**
11 **which is slide 17 of Exhibit 1607.**

12 **What is this showing?**

13 A. The -- it's a -- the docket for the
14 proposed rules, proposed legacy and CCR management
15 unit rules.

16 **Q. And I think you mentioned this**
17 **earlier, but did they propose a new CCR unit?**

18 A. Yeah, the CCR management unit.

19 **Q. And have you had a chance to review**
20 **the docket?**

21 A. I have been able to poke through the
22 docket. The docket is very large. I have not
23 reviewed it in its entirety.

24 **Q. Do you have an understanding of what**

1 **a CCR management unit is?**

2 A. Yes, I do.

3 **Q. What is it?**

4 A. An area of ash at a power plant.

5 **Q. So --**

6 A. That is not an impoundment or a CCR
7 landfill. Sorry.

8 **Q. So, Ms. Shealey, as it relates to**
9 **Joliet 29 Station and the three historic areas we**
10 **just discussed and this USEPA rule, how do those**
11 **two -- how do the USEPA's CCR management unit**
12 **rules apply?**

13 A. I'm not exactly sure, but I believe
14 that we will have to determine whether the rules
15 apply -- apply to those three areas.

16 **Q. Could they?**

17 A. They could, yeah, absolutely.

18 **Q. And similarly, does the current**
19 **Illinois CCR rule apply to the historic areas of**
20 **Joliet 29?**

21 A. No, but there is an open subdocket.

22 **Q. And what is -- yeah. What is the**
23 **open subdocket?**

24 A. For -- forgive me. I don't remember

1 what it's exactly called, but it -- my simple
2 recollection is that it would cover areas that --
3 of historic ash.

4 Q. Okay. So -- but we have these areas
5 of historic ash; the northeast area, the northwest
6 area, and the southwest area.

7 What, if anything, had Midwest
8 Generation done with those areas, even with these
9 regulations?

10 A. So, I think I already said -- and if
11 I didn't, forgive me. The northeast area was
12 investigated to determine whether that material
13 qualified as CCB.

14 Q. Northwest area, you mean?

15 A. North -- I knew I was going to --

16 MR. RUSS: Object. Sorry.

17 THE WITNESS: Sorry.

18 HEARING OFFICER HALLORAN: I'm
19 sorry. Mr. Russ?

20 MR. RUSS: I'm slow to object there,
21 but there have been a series of leading questions.
22 I just want to object to the leading questions.

23 HEARING OFFICER HALLORAN: Yeah. I
24 agree with Mr. Russ.

1 MS. GALE: I'm simply correcting her
2 direction.

3 HEARING OFFICER HALLORAN: I know,
4 but it's been leading.

5 MS. GALE: Okay.

6 HEARING OFFICER HALLORAN: Thank
7 you.

8 BY MS. GALE:

9 Q. What, if anything, has Midwest
10 Generation done -- you mentioned the northwest
11 area.

12 In addition to the northwest
13 area, what has Midwest Generation done in relation
14 to these historic areas?

15 A. So now it's -- northeast is
16 inspected at least annually to ensure that there
17 is nothing -- to ensure that it looks as I
18 described, without any disturbance or ash or
19 anything that can be seen by the eye.

20 Q. As an environmental director, are
21 you aware -- generally aware of any issues that
22 may arise at the stations?

23 A. Absolutely.

24 Q. Have you been made aware of any

1 **issues that arise at the northwest area, northeast**
2 **area, or southwest area?**

3 A. Other than what I have discussed
4 with the DNR wanting to purchase the piece of
5 land, no. There are no issues that I have been
6 made aware of.

7 Q. **And so then today under current**
8 **laws, is Midwest Generation required to do any**
9 **more at these Joliet 29 stations -- historic**
10 **areas?**

11 A. No.

12 Q. **Okay. But even if Midwest**
13 **Generation were not required to do more, why**
14 **hasn't it?**

15 A. One of the reasons is this lawsuit.

16 Q. **Okay.**

17 A. Similar to the re-lining -- the CCAs
18 and the re-lining of the ponds, if we would go --
19 get out ahead of any decisions here, we would run
20 the risk of wasted work or having to redo work.

21 Q. **So this lawsuit. What other reasons**
22 **that we may have come up with?**

23 A. Pending regulations.

24 Q. **And, Ms. Shealey, in your**

1 **experience, what is the best way to conduct a**
2 **corrective action for areas at a station?**

3 A. You start with understanding what
4 needs correcting. So an investigation, and then
5 depending on what the investigation finds, you
6 develop a plan and execute that plan.

7 Q. **And for that plan, do you have -- is**
8 **there some sort of requirement for that plan that**
9 **you need?**

10 A. Prudently, you would get the
11 Agency's agreement to it.

12 Q. **And you touched upon this, but how**
13 **does Midwest Generation's experience with the 2012**
14 **CCAs inform Midwest Generation's decisionmaking**
15 **here?**

16 A. Again, I just would never want to
17 get out ahead of the Agency at this point. It's
18 sort of -- yeah. I just wouldn't want to get out
19 in front of the Agency's decisions.

20 Q. **Is it technically feasible to get**
21 **ahead of those Agency decisions?**

22 A. It's technically feasible, but I
23 would not call it technically prudent.

24 Q. **Ms. Shealey, moving on. Do you need**

1 **a break? Because we are going to move on to a**
2 **different station.**

3 A. I would like one.

4 MS. GALE: Mr. Hearing Officer, can
5 we take a five or a ten-minute break?

6 HEARING OFFICER HALLORAN: Sure. We
7 are off for ten. Thank you. No more.

8 (Whereupon, a short break was
9 taken.)

10 HEARING OFFICER HALLORAN: Back on
11 the record. Ms. Shealey is on the stand under
12 oath.

13 Ms. Gale?

14 BY MS. GALE:

15 Q. Ms. Shealey, before we continue on
16 to the next station, I wanted to back it up about
17 your background. Well, where do you live?

18 A. In Will County, northern Will
19 County.

20 Q. And you are going to have to take
21 your hand off your face.

22 A. Oh, I'm so sorry. I'm sorry.

23 Q. So you said what county?

24 A. Will.

1 Q. Will County?

2 A. Yeah, close to Will County Station
3 in Romeoville.

4 Q. Ms. Shealey, are you familiar with
5 the Powerton Station?

6 A. Yes.

7 Q. I'm going to direct you to the next
8 slide, which is slide 19 of Exhibit 1607.

9 What does slide 19 depict?

10 A. Powerton Station.

11 Q. Is that the entire station?

12 A. No.

13 Q. What's it missing?

14 A. The rest of the lake.

15 Q. What's the lake?

16 A. Oh, the -- on this map, it is
17 labeled Powerton Fish and Wildlife Area.

18 Q. And the rest of the lake, who owns
19 that lake?

20 A. We do. Midwest Gen.

21 Q. And it's called a --

22 A. In its entirety. Sorry.

23 Q. And it's called the Fish and
24 Wildlife Area. Why is that?

1 A. My guess is that because we lease it
2 to -- I'm bad with directions here. We lease a
3 portion to IDNR for recreational fishing and water
4 foul hunting.

5 **Q. And, Ms. Shealey, okay. So we have**
6 **the Powerton Lake to the west.**

7 **Can you please describe the area**
8 **the Powerton Station is in?**

9 A. Well, it's industrial, generally.

10 **Q. How so?**

11 A. There are industries along Manito
12 Road, or Manito Blacktop, as they call it, in
13 Pekin. There -- well, I guess that's not
14 industrial, but there is a prison really nearby.
15 There was other power plants in the area. It's a
16 generally industrial area.

17 **Q. And earlier you testified that you**
18 **are familiar with the zoning of the Midwest**
19 **Generation stations. Do you recall that**
20 **testimony?**

21 A. Yes.

22 **Q. Is that true for Powerton Station?**

23 A. Yes.

24 **Q. And looking at slide 20 of**

1 **Exhibit 1607, what is depicted?**

2 A. The zoning map for Powerton Station.

3 Q. **And what is the zoning for the**
4 **Powerton Station?**

5 A. This is -- I think it's I-2, which
6 is "I" for industrial.

7 Q. **Next slide, which is slide 21 of**
8 **Exhibit 1607, and looking at the map on slide 21,**
9 **where are the ash ponds in Powerton Station?**

10 A. Essentially, in the center of the
11 plant proper, excluding the lake.

12 Q. **Let's turn to the next slide, which**
13 **is slide 22. What is depicted on this slide?**

14 A. A list of the impoundments at
15 Powerton Station.

16 Q. **And starting with the top under the**
17 **ash pond column, what's the first station?**

18 A. You mean the first --

19 Q. **I'm sorry. What's the first pond?**
20 **Excuse me.**

21 A. The Ash Surge Basin.

22 Q. **And what is the Ash Surge Basin?**

23 A. A CCR surface impoundment, the
24 primary -- the primary ash collecting impoundment

1 at Powerton Station.

2 **Q. Is it currently in use?**

3 A. Yes, it is.

4 **Q. And what is it used for?**

5 A. Overflow from the Hydrobins. The
6 majority of ash from Powerton is captured in -- or
7 what some may call de-watering bins or Hydrobins
8 and taken offsite for beneficial reuse. The small
9 amount that is not contained within the Hydrobins
10 is -- overflows to the ash pond.

11 **Q. And what federal regulation is it**
12 **covered by?**

13 A. NPDES and the federal CCR rule.

14 **Q. And under the federal CCR rule, for**
15 **its current operation, what is Midwest Generation**
16 **relying upon?**

17 A. An alternative capacity
18 demonstration.

19 **Q. And what is that?**

20 A. It's a demonstration allowed
21 under -- oh, I was going to say Part 845. Forgive
22 me -- Part 257 of 40 CFR where the owner or
23 operator demonstrates that they cannot
24 construct -- they could not construct alternative

1 capacity for their CCR prior to April -- April of
2 2021. So it gives you an extension of -- a longer
3 time to use what's considered an unlined
4 impoundment or some other type of -- or
5 impoundments, yeah.

6 **Q. And looking back at slide 22, what's**
7 **the second impoundment in that?**

8 A. The Bypass -- Ash Bypass Basin.

9 **Q. And what -- I guess, what was the**
10 **Bypass Basin used for?**

11 A. Similar to the Surge Basin, it --
12 overflow from the Hydrobins. It was used -- it
13 was placed into service when the Surge Basin was
14 taken out of service.

15 **Q. And you said the Bypass Basin was**
16 **taken out of service; is that right?**

17 A. It is out of service now, and it
18 will be until it's retrofitted.

19 **Q. Why is that?**

20 A. Because -- well, federal -- it's an
21 unlined impoundment under federal regulations,
22 which required it to be closed or cease receiving
23 waste by April 2021.

24 **Q. Currently, what is in the Bypass**

1 **Basin?**

2 A. Nothing. It was emptied of ash.

3 Q. **And I think you said this, but what**
4 **is the plan for the Bypass Basin?**

5 A. To retrofit it with a compliant
6 liner, and because we are in Illinois, we actually
7 also have to install a leachate collection system.

8 Q. **Turning to the next basin in this**
9 **chart, what is the third basin down?**

10 A. Metal Cleaning Basin.

11 Q. **What is the purpose of the Metal**
12 **Cleaning Basin?**

13 A. It's for when they wash the boilers.
14 It's for treatment of that -- the wash waters from
15 boiler washes at Powerton.

16 Q. **Now, I should have asked this, but**
17 **to confirm, under the -- is the Ash Surge Basin a**
18 **CCR surface impoundment?**

19 A. Yes.

20 Q. **Is the Bypass Basin a CCR surface**
21 **impoundment?**

22 A. Yes.

23 Q. **For the Metal Cleaning Basin, is**
24 **that a federal CCR surface impoundment?**

1 A. No, it is not.

2 **Q. Under the Illinois CCR surface**
3 **impoundment rules, what is the status of the Metal**
4 **Cleaning Basin?**

5 A. It is a surface impoundment, a CCR
6 surface impoundment.

7 **Q. Why is there a different**
8 **classification for the Metal Cleaning Basin?**

9 A. Under -- I think because -- it
10 doesn't impound ash under -- really, so there is a
11 distinction in the federal rules and the state
12 rules that I cannot recall at this time. I cannot
13 recall the distinction.

14 **Q. That's fine. I want to turn to the**
15 **fourth impoundment in the chart. What is that**
16 **impoundment?**

17 A. Service Water Basin.

18 **Q. So you call it the Service Water**
19 **Basin. Have you heard it called something**
20 **different?**

21 A. Yes. Oh, I know what it was.
22 Secondary Ash Basin.

23 **Q. 2017 Stipulation No. 22. "Since**
24 **before 1999, the Secondary Ash Basin had a Hypalon**

1 liner."

2 **Ms. Shealey, based upon that**
3 **stipulation I just read, what does that mean to**
4 **you?**

5 A. It was lined.

6 **Q. When?**

7 A. Before the date you just named.
8 Sorry.

9 **Q. Can you turn in your book back to**
10 **Exhibit 34, which is the NRT evaluation? And I**
11 **would like you to turn to MWG13-15_23615.**

12 A. I'm there.

13 **Q. And on 23615, what is it showing**
14 **here?**

15 A. That the Secondary Ash Settling
16 Basin, which I call the Service Water Basin, is --
17 has no liner.

18 **Q. Ms. Shealey, is that accurate?**

19 A. No, it is not.

20 **Q. How do you know?**

21 A. Well, the stipulations you just
22 read. It has a Hypalon liner. Talking to station
23 personnel is how I know.

24 **Q. Ms. Shealey, I want to put on the**

1 screen page 39 of the Board's 2019 opinion. First
2 paragraph under Section (b)(1), second sentence,
3 the Board states, "In 2005 and 2006, a Midwest
4 Generation consultant investigated the liners at
5 Powerton ponds and rated the condition of the Ash
6 Surge and Metal Cleaning Basin as 'poor,' the
7 Secondary Ash Settling Basin as 'no liner,' and
8 the Bypass Basin as 'unknown,' relying upon
9 Complainants' Exhibit 34 at 23615."

10 Do you see that there?

11 A. I do.

12 Q. Based upon the 2017 stipulation and
13 your understanding, was the Board correct?

14 A. No. Well, I guess they were correct
15 in reading the consultant's report, but the
16 consultant was wrong.

17 Q. Ms. Shealey, is the Service Water
18 Basin a CCR surface impoundment?

19 A. No.

20 Q. How do you know?

21 A. We sampled it. We -- similar to
22 what I described we did at Joliet Ponds 1 and 3,
23 we sampled the muck in the Service Water Basin and
24 determined it was mostly biological material, not

1 ash.

2 Q. And following that determination,
3 what did Midwest Generation file?

4 A. An adjusted standard, which I
5 was corrected to, is a request for inapplicability
6 or something of that sort.

7 (Whereupon, Respondent's
8 Deposition Exhibit No. 1606 was
9 marked for identification.)

10 BY MS. GALE:

11 Q. Ms. Shealey, I am sorry to do this,
12 but can you now turn to Exhibit 1606 in your book?

13 A. Yes.

14 Q. And what is this?

15 A. A Board order regarding the adjusted
16 standard for -- and finding of inapplicability for
17 Powerton.

18 Q. And what's the date?

19 A. February 17th, 2022.

20 Q. Can you turn to page -- well, bottom
21 of 6 carrying over to 7.

22 A. I'm there.

23 Q. And what was the Board's conclusion?

24 A. The Board found that the Service

1 Water Basin is not subject to Part 845, which
2 means it's not a CCR surface impoundment.

3 MS. GALE: Mr. Hearing Officer,
4 Midwest Gen moves for admission of Exhibit 16 --
5 excuse me -- of Exhibit 1606.

6 HEARING OFFICER HALLORAN: Mr. Russ?

7 MR. RUSS: No objection.

8 HEARING OFFICER HALLORAN: Thank
9 you. Respondent's Exhibit 1606 is admitted.

10 (Whereupon, Respondent's Exhibit
11 No. 1606 was admitted into
12 evidence.)

13 BY MS. GALE:

14 Q. Ms. Shealey, I want to direct your
15 attention back to the slides of 1607. I'm going
16 to turn to slide 23.

17 A. Slide 23.

18 Q. And we are going to -- Ms. Shealey,
19 what is the Former Ash Basin?

20 A. It's a CCR surface impoundment that
21 is inactive.

22 Q. What regulations is it regulated
23 under?

24 A. Both NPDES and the federal -- well,

1 the federal CCR rule and the state CCR rules.

2 Q. And, to your knowledge, when was the
3 last time approximately the Former Ash Basin was
4 used to collect CCR?

5 A. Prior to the 70s, I believe. The
6 1970s. Prior to that.

7 Q. I'm going to read Stipulation 2022,
8 Stipulation No. 9. "The Former Ash Basin at
9 Powerton is not lined." Then, if you'd turn back
10 to what we put on the screen, the Board's order
11 from 2019, page 39 again. The last sentence of
12 the first paragraph, the Board states, "Some coal
13 ash might have been left between the layers when
14 re-lining the Former Ash Basin, citation."

15 Is that correct, Ms. Shealey?

16 A. No.

17 Q. Why not?

18 A. The Former Ash Basin was never
19 re-lined, to my knowledge, ever.

20 Q. Ms. Shealey, I want to -- you recall
21 testifying in May?

22 A. Yes.

23 Q. And you were asked questions about
24 the Former Ash Basin?

1 A. Yes.

2 Q. Do you recall being asked if there
3 was coal in the Former Ash Basin?

4 A. No. I do not recall that.

5 Q. Do you recall answering there was
6 coal in the Former Ash Basin?

7 A. No. I do not recall that.

8 Q. Is there coal in the Former Ash
9 Basin?

10 A. No. There is not coal. There is no
11 coal, to the best of my knowledge, in the Former
12 Ash Basin. It only contains ash.

13 Q. Ms. Shealey, are you familiar with
14 an area called the Limestone Basin?

15 A. Yes.

16 Q. What do you know about that area?

17 A. It is not used currently. And has
18 not been used in recent history.

19 Q. 2022 Stipulation No. 13. "The
20 Limestone Basin at Powerton has been empty since
21 2013."

22 Ms. Shealey, is the Limestone
23 Basin a federal impoundment?

24 A. No, it is not.

1 Q. Is it an Illinois CCR surface
2 impoundment?

3 A. No, it is not.

4 Q. I want to turn back to the Board's
5 2019 order, page 40, which we will put on the
6 screen for you. Ten lines down the Board states,
7 "The basin was empty since 2013."

8 Do you see that there?

9 A. Yes.

10 Q. What is your opinion of that
11 statement?

12 A. It is accurate.

13 Q. Turning to the next page, 41 of the
14 Board's 2019 opinion, which is the same paragraph
15 carrying over from page 40, last sentence.

16 The Board states, "It appears
17 from the record that due to an easily cracked
18 Poz-O-Pac liner, material from this basin may be
19 leaking contaminants into groundwater."

20 Do you see that there?

21 A. Yes.

22 Q. Based on your understanding of the
23 basin, including the stipulation entered here, is
24 that correct?

1 A. No. There is no material in it.

2 Q. Ms. Shealey, I want to turn to the
3 East Yard Runoff Basin.

4 2022 Stipulation No. 12. "East
5 Yard Basin at Powerton receives precipitation
6 runoff from the east half of the Powerton
7 Station."

8 Ms. Shealey, to your knowledge,
9 has the East Yard Runoff Basin or the East Yard
10 Basin at Powerton ever received CCR?

11 A. No.

12 Q. And turn to the next slide of the
13 screen, and this is actually also in your book,
14 which is a previously admitted exhibit, 711.

15 Ms. Shealey, what is
16 Exhibit 711?

17 A. It's a letter from Illinois EPA to
18 Midwest Gen regarding the modification of the CCA
19 at Powerton Station.

20 Q. And looking at the third paragraph
21 down on Exhibit 711, and it's highlighted on your
22 screen, Illinois EPA states, "Review of the data
23 from the East Runoff Basin indicates elevated
24 concentrations of chloride occur periodically in a

1 seasonal pattern. This pattern and lack of
2 elevated concentrations of other ash indicator
3 constituents suggests the chloride may result from
4 de-icing agents within the area tributary to the
5 East Yard Runoff Basin. Therefore, Midwest
6 Generation may cease monitoring water from the
7 East Yard Runoff Basin."

8 Do you see that there?

9 A. I do.

10 Q. What does "lack of elevated
11 concentrations of other ash indicators" mean to
12 you?

13 A. That there are no CCR constituents
14 or components in that basin.

15 Q. And following receipt of this
16 letter, what did Midwest Generation do?

17 A. Cease sampling the water at the East
18 Yard Runoff Basin.

19 Q. And is the East Yard Runoff Basin a
20 federal CCR surface impoundment?

21 A. No.

22 Q. Is it an Illinois CCR surface
23 impoundment?

24 A. No.

1 MS. GALE: Ms. Shealey, I want to
2 turn to the next slide in Exhibit 7 -- excuse
3 me -- 1607, which is slide 25.

4 And, Mr. Hearing Officer, for
5 the record, this timeline has the same information
6 as Exhibit 664 that was previously admitted that
7 we have been adding to for the convenience of the
8 Board.

9 HEARING OFFICER HALLORAN: Thank
10 you.

11 BY MS. GALE:

12 Q. Ms. Shealey, how old is the Powerton
13 Station?

14 A. Around 100 years.

15 Q. And what did it do when it started
16 operating?

17 A. Burned coal to produce electricity.

18 Q. Turning to the next slide, 26 of
19 Exhibit 1607. Moving forward in time to 2008.
20 Were the Powerton ash ponds a part of the ash pond
21 evaluation and re-lining project we discussed with
22 Joliet 29?

23 A. Yes.

24 Q. And so in 2008, what happened

1 **related to that re-lining project?**

2 A. They -- Midwest Gen issued a request
3 for proposal for the re-lining of the surface
4 impoundments across the fleet.

5 Q. And then in 2010 -- in 2017
6 Stipulation No. 29, "In 2010, Midwest Generation
7 re-lined the Bypass Basin with a 60-milliliter
8 HDPE liner."

9 2017 Stipulation No. 26, "In
10 2010, Midwest Generation re-lined the Metal
11 Cleaning Basin with a 60-milliliter HDPE liner."

12 Ms. Shealey, what was the
13 purpose of re-lining these two ponds?

14 A. Compliance with the CCAs, I believe.

15 Q. In 2010?

16 A. 2010. Oh, it was a result of their
17 examination. They determined that they -- Midwest
18 Gen determined that as a part of their
19 environmental stewardship, they should re-line
20 those ponds.

21 Q. And to your knowledge, when Midwest
22 Generation emptied the Bypass Basin and the Metal
23 Cleaning Basin to re-line the ponds, what was your
24 understanding of the condition of the Poz-O-Pac

1 that they found?

2 A. It was in good condition.

3 Q. 2022 Stipulation No. 14, "Midwest
4 Generation began sampling the groundwater at
5 Powerton in December 2010."

6 Ms. Shealey, we did this
7 discussion related to Joliet 29. Do you recall
8 that?

9 A. Yes.

10 Q. Did Midwest Generation sample the
11 groundwater in 2010 for the same reasons at Joliet
12 29?

13 A. Yes.

14 Q. Next slide, 28. 2022 Stipulation
15 No. 15, "Midwest Generation has submitted the
16 groundwater monitoring results for Powerton to
17 Illinois EPA from 2010 to present."

18 Ms. Shealey, we discussed this
19 for Joliet 29. Did Midwest Generation submit the
20 groundwater results for Powerton for the same
21 reasons as Joliet 29?

22 A. Yes.

23 Q. Ms. Shealey, we discussed this for
24 Joliet 29. Did Midwest Generation receive a

1 violation notice for the Powerton groundwater
2 results?

3 A. Yes.

4 Q. And how did Midwest Generation --
5 excuse me.

6 How did Midwest Generation
7 respond to that violation notice?

8 A. Eventually, they entered into
9 compliance commitment agreements, CCAs, or a CCA
10 at Powerton Station.

11 Q. And in looking at the next slide,
12 29, what did Midwest Generation do in compliance
13 with that CCA, compliance commitment agreement,
14 for Powerton?

15 A. They re-lined the Surge Basin first,
16 and then they re-lined the Service Water Basin.

17 Q. And we discussed the HDPE liners
18 that were installed. Are you familiar with their
19 installation and construction generally?

20 A. Generally, yes.

21 Q. And in your familiarity, to your
22 knowledge, what, if anything, did the contractors
23 leave to use as a cushion underneath the liner?

24 A. Nothing.

1 Q. And, Ms. Shealey, since you've
2 worked at Midwest Generation, to your knowledge --
3 well, I will say this.

4 As environmental director, would
5 you be aware of flaws in any of the liners?

6 A. Yes.

7 Q. What, if any, flaws have you been
8 aware -- made aware of, of the HDPE liners at the
9 Powerton ponds?

10 A. Flaws? None. I have been made
11 aware of tears or repairs.

12 Q. And what are repairs?

13 A. If a tear is discovered, it is
14 repaired. Essentially a patch.

15 Q. And how are tears discovered?

16 A. By inspections.

17 Q. And how are they repaired?

18 A. By patching, sort of, with HDPE.

19 Q. Who does those repairs?

20 A. A contractor at the station's
21 direction.

22 Q. Any old contractor?

23 A. No. Sorry.

24 Q. What kind of contractor?

1 A. Somebody who is qualified and
2 certified to install HDPE liners or repair HDPE
3 liners, which are generally the same group of
4 people, but, yeah.

5 **Q. So I want to turn back to slide 29**
6 **of Exhibit 1607, the next slide, 29.**

7 **In 2015 when the federal CCR**
8 **rule passed, what did Midwest Generation do in**
9 **response at Powerton?**

10 A. Began to comply, but specifically,
11 posted a Notice of Intent to Close for the Former
12 Ash Basin.

13 **Q. And turning to the next slide, slide**
14 **30. When you say began to comply, what did you**
15 **do?**

16 A. Similar to Joliet 29; history of
17 construction, hazard potentials, location
18 restrictions, seismic -- structural stability,
19 began inspecting on a weekly basis, and began
20 annual PE, professional engineer, inspections,
21 among other things.

22 **Q. And then you said, posted a notice**
23 **of the Former Ash Basin in the previous slide.**
24 **What happened in 2019, in January of 2019?**

1 A. Senate Bill 9.

2 **Q. And what did that mean for the**
3 **Former Ash Basin?**

4 A. That we could not complete closure,
5 or we cannot complete closure without a permit
6 issued under Part 845 by the Illinois EPA.

7 **Q. 20 -- excuse me -- 2022 Stipulation**
8 **No. 8. "The Ash Surge Basin, Ash Bypass Basin,**
9 **and the Metal Cleaning Basin at Powerton are CCR**
10 **surface impoundments as defined in 415 ILCS**
11 **5/3.143."**

12 **Ms. Shealey, at the Powerton**
13 **Station, how is Midwest Generation complying with**
14 **the Illinois CCR rule?**

15 A. Groundwater monitoring, continuing
16 inspections. We have applied for operating permit
17 applications for all four basins that are affected
18 and construction permit applications for two of
19 the four with plans to apply for the last two in
20 the coming weeks.

21 **Q. Where is that information posted?**

22 A. On our website, public website.

23 **Q. And pursuant the federal and CCR --**
24 **excuse me -- federal and Illinois CCR rule, what**

1 must Midwest Generation do related to the berms of
2 the ponds, including the Former Ash Basin, on a
3 weekly basis?

4 A. Inspect.

5 Q. And each year pursuant to those
6 rules, what must Midwest Generation prepare?

7 A. An inspection by a professional
8 engineer, someone -- a licensed professional
9 engineer.

10 Q. And as part of your role as
11 environmental director, do you review that
12 inspection by the professional engineer?

13 A. Yes.

14 Q. And is that called the annual
15 inspection?

16 A. Yes.

17 Q. And during the annual inspections,
18 in your review of those inspections, what have
19 they found?

20 A. Generally, that the -- it's
21 structurally -- structural -- they are
22 structurally sound, used as intended.
23 Occasionally, they will find some animal holes. I
24 can't think of the right word. Bores? But

1 animal --

2 Q. Burrows?

3 A. Burrows -- thank you -- is the word
4 I was looking for. And we will repair those.

5 Q. When they are doing their
6 inspection, are they looking for any discharges?

7 A. Yes.

8 Q. What have they found related to
9 that?

10 A. That there are no discharges, other
11 than the permitted discharge points.

12 Q. And by permitted, what permit?

13 A. I'm sorry. NPDES permitted
14 discharge points.

15 Q. 2022 Stipulation No. 16. "On
16 November 1st, 2021, Midwest Generation submitted
17 an operating permit application to the Illinois
18 EPA for the Ash Surge Basin, Ash Bypass Basin, and
19 the Former Ash Basin at Powerton."

20 Ms. Shealey, were you involved
21 in preparations of the operating permit
22 applications for the Powerton Station?

23 A. Yes.

24 Q. And, generally speaking, what was in

1 **the operating permit applications for the Ash**
2 **Surge Basin, Bypass Basin, and Former Ash Basin?**

3 A. History of construction,
4 certifications of structural stability, liner
5 composition, location restrictions, ground --
6 proposed groundwater monitoring network, and
7 proposed groundwater protection standards, among
8 other things.

9 Q. **And where is this permit application**
10 **posted?**

11 A. On our website.

12 Q. **How big, to your recollection,**
13 **approximately how many pages was the permit**
14 **application?**

15 A. Hundreds.

16 Q. **And, Ms. Shealey, how much effort**
17 **was it to prepare the operating permit**
18 **application?**

19 A. Substantial. Again, similar to
20 Joliet 29, I believe KPRG was the lead consultant
21 on that application, but there are several other
22 consulting groups and a lot of internal resources
23 that were used to prepare those applications.

24 Q. **Ms. Shealey, I think we can look at**

1 slide 30, and a stipulation was that they were due
2 by November 1st, 2021.

3 How many months after the
4 Illinois CCR rule became effective were these
5 operating permit applications due?

6 A. Just over six.

7 Q. And so how was Midwest Generation
8 able to collect all this information for the
9 operating permit application within six months?

10 A. A lot of it was common to
11 requirements we had to complete under federal CCR
12 rules, so -- but we did have to add.

13 Q. Let's turn to the next slide, slide
14 31 of Exhibit 1607. The Metal Cleaning Basin, we
15 stated earlier it's not a federal unit. Because
16 it wasn't a federal unit, what information did it
17 have?

18 A. It did not have, particularly
19 groundwater monitoring, sufficient to meet the --
20 to meet the requirements of Part 845, but none of
21 the documents have been completed. None of the
22 analyses or engineering assessments have been
23 completed for Metal Cleaning Basin prior to
24 Illinois CCR rules.

1 **Q. So to collect that data information**
2 **that wasn't available to Midwest Generation, what**
3 **did Midwest Generation require?**

4 A. We requested and got a variance from
5 the Board to allow for more time.

6 **Q. And to your recollection, what was**
7 **the Board's opinion on Midwest Generation's**
8 **request for a variance for additional time?**

9 A. It was granted.

10 **Q. And so following the Board's order,**
11 **what did Midwest Generation do?**

12 A. Got to work on -- well, actually,
13 while were waiting for the Board's order, we got
14 to work on preparing the application and preparing
15 the data we needed. For example, for metal
16 cleaning, I think we had to install two additional
17 groundwater monitoring wells to be able to
18 establish groundwater protection standards. So
19 those wells were installed, I'm pretty sure,
20 before the Board's order.

21 **Q. And then, to your recollection, and**
22 **in looking at slide 31, when was the operating**
23 **permit application for the Metal Cleaning Basin**
24 **submitted?**

1 A. March 31st of 2022.

2 **Q. And how -- approximately how big is**
3 **the Metal Cleaning Basin operating permit**
4 **application?**

5 A. Hundreds of pages. Similar to the
6 others.

7 **Q. And similar question as before, what**
8 **kind of -- what was the effort to prepare the**
9 **operating permit application for the Metal**
10 **Cleaning Basin?**

11 A. Again, substantial, and as I just
12 stated, it was more than the others or than some
13 of the others, because we needed to install
14 additional groundwater monitoring wells for the
15 Metal Cleaning Basin.

16 **Q. Earlier you testified about Illinois**
17 **EPA's website for the CCR surface impoundment**
18 **permit applications. Do you recall that?**

19 A. Yes.

20 **Q. To your knowledge, has Illinois EPA**
21 **issued a permit application -- operating permit**
22 **application for the Powerton ponds?**

23 A. If I could just correct you.
24 Operating permit.

1 Q. Did I say -- what did I say? Yeah.

2 A. You said permit application.

3 No. They have not issued an
4 operating permit for Powerton.

5 Q. Ms. Shealey --

6 A. Or Metal Cleaning or whichever
7 basin, yes, none of them.

8 Q. Ms. Shealey, what are the future
9 plans for the Powerton station?

10 A. We will continue to operate as a
11 coal-fired power plant.

12 Q. And so what are Midwest Generation's
13 plans to manage CCR?

14 A. We intend to apply for a retrofit
15 of -- well, we intend to retrofit the Bypass
16 Basin, Ash Surge Basin, and Metal Cleaning Basins.

17 Q. And so, to retrofit the Bypass
18 Basin, what did Midwest Generation submit to the
19 Illinois EPA?

20 A. A construction permit application.

21 Q. And for the Bypass Basin to support
22 Midwest Generation's proposal to retrofit,
23 generally speaking, what was in the construction
24 permit application?

1 A. Engineering design around the new
2 liner system. The retrofit involves a new liner
3 system and a leachate collection system. So, the
4 application contained the design drawings and
5 information around those two systems and
6 groundwater monitoring results.

7 **Q. Ms. Shealey, how big was the**
8 **retrofit application?**

9 A. Again, hundreds of pages.

10 **Q. And how much was the effort to**
11 **prepare that operating -- excuse me --**
12 **construction permit application?**

13 A. Significant; engineering design,
14 similar to Joliet 29 closure application --
15 construction -- reuse of the pond application. We
16 had public meetings for the Bypass Basin, yeah.
17 So it was a significant effort.

18 **Q. Ms. Shealey, what are the plans for**
19 **the Ash Surge Basin and the Metal Cleaning Basin?**

20 A. Both to retrofit.

21 **Q. And what does Midwest Generation**
22 **need to retrofit both ponds?**

23 A. Construction permits from Illinois
24 EPA.

1 **Q. And I think you said, they have not**
2 **been submitted yet?**

3 A. No. We have had the public
4 meetings, and we will submit the permit
5 application in the coming weeks.

6 **Q. Have you seen the permit**
7 **application?**

8 A. Not yet.

9 **Q. How much effort has it been to**
10 **prepare the permit application for the**
11 **construction permit for the Ash Surge Basin and**
12 **the Metal Cleaning Basin?**

13 A. So far it's been significant, as
14 with the others. Again, I -- I think I just said
15 this. We had the public hearing -- public
16 meetings for those permit applications and are in
17 the process of getting the engineering designs and
18 drawings completed and reviewed to be able to
19 submit to the Agency.

20 **Q. Former Ash Basin. What is the plan**
21 **for the Former Ash Basin?**

22 A. To close it, as we intended to do
23 in many years -- well, before Senate Bill 9 was
24 promulgated or even proposed.

1 **Q. I can't remember, but what is the**
2 **status of the construction permit application to**
3 **close the pond?**

4 A. The Former Ash Basin?

5 **Q. Uh-huh.**

6 A. It is submitted.

7 **Q. To who?**

8 A. Illinois EPA. Give me a second.

9 Let me just make sure I've got it.

10 Yes. FAB, the Former Ash Basin,
11 application has been submitted, yes.

12 **Q. And I can refer you to slide 31 of**
13 **Exhibit 1607 on the timeline of events.**

14 A. Yes. It was submitted last year.

15 **Q. And to your recollection, how big**
16 **was the Former Ash Basin construction permit**
17 **application?**

18 A. Again, hundreds of pages.

19 **Q. What was the effort to prepare that**
20 **application?**

21 A. Again, significant. It took all the
22 other things that the other applications took, and
23 public meetings -- public meetings, engineering
24 design, and so on. So it was a significant

1 effort.

2 Q. And following submission of the
3 construction permit application for the Bypass
4 Basin and the Former Ash Basin, has the -- what
5 has the Agency issued, if anything?

6 A. Nothing. Nothing. We haven't --
7 no. They have not issued a draft permit yet.

8 Q. Ms. Shealey, I want to turn to the
9 next station, which is the Waukegan Station.

10 Ms. Shealey, on slide 33 of
11 Exhibit 1607, what is -- what do you see?

12 A. The Waukegan Station.

13 Q. 2022 Stipulation No. 19, "Midwest
14 Generation has publically announced that the
15 Waukegan station is scheduled to cease burning
16 coal in June 2022."

17 Ms. Shealey, now that it's 2023,
18 is -- what's Waukegan station doing with coal?

19 A. It is not burning coal, and, in
20 fact, it stopped in May of 2022.

21 Q. Does that mean the station shut
22 down?

23 A. No. Waukegan operates peaking
24 units. My screen just went dark.

1 MS. GALE: Can we go off the record
2 for a second, Mr. Hearing Officer?

3 HEARING OFFICER HALLORAN: Yes.

4 (Whereupon, a discussion was had
5 off the record.)

6 HEARING OFFICER HALLORAN: All
7 right. We are back on the record. Thank you.

8 BY MS. GALE:

9 Q. So, I'm sorry. It's not shut down.
10 What are the Waukegan Station's operations?

11 A. They operate two peaking units for
12 peak generation, oil fired.

13 Q. And, Ms. Shealey, similar to the
14 Powerton and Joliet 29 Stations, are you familiar
15 with the zoning of the Waukegan Station?

16 A. Yes.

17 Q. Let me turn to the next slide, slide
18 34 of Exhibit 1607. What does this show?

19 A. A zoning map.

20 Q. Of what?

21 A. Waukegan Station and beyond.

22 Q. And do you see that Midwest
23 Generation Waukegan Station on the map?

24 A. Yes.

1 **Q. What is the zoning of the Waukegan**
2 **Station?**

3 A. General industrial.

4 **Q. And I will turn to the next slide,**
5 **35. Ms. Shealey, have you been to the Waukegan**
6 **Station?**

7 A. Yes.

8 **Q. Highlighting on the map on the**
9 **screen in front of you the industrial areas for**
10 **neighbors -- neighboring.**

11 **Ms. Shealey, have you seen the**
12 **property located in -- have you seen the property**
13 **located immediately to the north of the Waukegan**
14 **Station?**

15 A. Yes.

16 **Q. What is it?**

17 A. Johns Manville asbestos site.

18 **Q. You said asbestos site. What do you**
19 **mean by that?**

20 A. They have a Superfund asbestos
21 landfill immediately to the north, and it is large
22 with rolling hills of asbestos covered -- covered
23 asbestos.

24 **Q. And turning your attention to the**

1 west of the Waukegan Station, to your knowledge,
2 what was that property used for?

3 A. A tannery, and there is a general
4 boiler, which I assume are manufacturing boilers.

5 Q. And as environmental director, are
6 you aware of the -- how did you become aware of
7 the tannery?

8 A. Because the tannery -- groundwater
9 from the tannery is entering our site, and it is
10 above groundwater -- it's above the Part 620
11 standards. So it was one of the first things I
12 became aware of.

13 Q. Ms. Shealey, what is to the south of
14 the Waukegan Station?

15 A. North Shore Sanitary District.

16 Q. What does the North Shore Sanitary
17 District do?

18 A. Process the wastewater, or I'm not
19 sure for how much area, but in the City of
20 Waukegan. I mean, public, people waste water.

21 Q. And you said you visited the
22 station. Have you visited the south side of the
23 station -- of the Waukegan Station?

24 A. Yes.

1 **Q. When you've visited the south side**
2 **of the Waukegan Station, what have you observed?**

3 A. Not 100 percent of the time, but
4 there is a very pungent bad odor that wafts from
5 the sanitary district.

6 **Q. Can you see the sanitary district**
7 **from the station?**

8 A. Yes.

9 **Q. Back on the map, bottom left corner**
10 **of the southern end of the map, what is described?**

11 A. Former North Shore Gas --
12 manufactured gas plant.

13 **Q. To your knowledge, what is that**
14 **location? What is that location?**

15 A. I think it -- I'm going to say I
16 think. Well, it's a former manufactured gas
17 plant, and I think it's a Superfund site.

18 **Q. So, Ms. Shealey, where are the ash**
19 **ponds at the Waukegan Station?**

20 A. South center of the property.

21 **Q. And turn to slide 36 of**
22 **Exhibit 1607. What does this show?**

23 A. The two coal ash impoundments at
24 Waukegan Station.

1 Q. And what are they called?

2 A. The East Pond and -- the East Ash
3 Pond and West Ash Pond.

4 Q. And what regulations are the ash
5 ponds covered under related to CCR?

6 A. Both the state and federal CCR
7 rules. So Part 257 federally and Part 845 in the
8 state.

9 Q. Turning to slide 37 of Exhibit 1607.

10 Ms. Shealey, to your knowledge,
11 when did the Waukegan Station begin operating?

12 A. In the 1920s, 1923.

13 Q. And what did it do when it -- in the
14 20s?

15 A. Produce electricity using coal or by
16 burning coal.

17 MS. GALE: And turning to the next
18 slide, 37 -- or excuse me -- 38 of Exhibit 1607.

19 And Mr. Hearing Officer, I
20 should have said for the record that this timeline
21 was previously admitted as 665, and this is an
22 extension of that exhibit.

23 HEARING OFFICER HALLORAN: Thank
24 you.

1 BY MS. GALE:

2 Q. Ms. Shealey, looking at the
3 timeline, what happened in 1992?

4 A. There was an investigation of the
5 tannery site and general boiler site that are to
6 the west of Waukegan Station.

7 Q. Turning to the next slide, slide 39.
8 Between 2002 and 2005, similarly just as with the
9 other stations, what was Midwest Generation doing
10 as it relates to the ash ponds?

11 A. Reviewing and evaluating them for
12 their essential competency.

13 Q. And so in 2003 and 2004, at the
14 Waukegan Station, what happened?

15 A. They re-lined the East and West
16 Ponds with HDPE liners at Waukegan.

17 Q. Turning to the next slide, 40 of
18 Exhibit 1607. I guess, related to the Midwest
19 Generation ponds, what was Midwest Generation
20 doing in 2005 through 2006?

21 A. Generally? I'm sorry.

22 Q. Generally.

23 A. Evaluating the ponds, and initiating
24 the process of re-lining as needed.

1 Q. Turning to the next slide, 41 of
2 Exhibit 1607. Moving ahead to 2009. Were the
3 Waukegan ash ponds also the subject of EPA's
4 request to Midwest Generation to do a
5 hydrogeologic assessment?

6 A. Yes.

7 Q. And to your recollection, what was
8 the conclusion of the hydrogeologic assessment for
9 the Waukegan Station?

10 A. That there were no potable water
11 wells or impacted drinking water from Waukegan
12 Station.

13 Q. And turning to the next slide, slide
14 42.

15 Were -- did Illinois EPA's
16 request that Midwest Generation install
17 groundwater monitoring wells include the Waukegan
18 Station?

19 A. Yes.

20 Q. 2022 Stipulation No. 20, "Midwest
21 Generation began sampling the groundwater at
22 Waukegan in October of 2010."

23 Next slide, slide 43. 2022
24 Stipulation No. 21. "Midwest Generation has

1 submitted the groundwater monitoring results for
2 Waukegan to Illinois EPA from 2010 to present."

3 Ms. Shealey, to your knowledge,
4 following submission of the groundwater monitoring
5 results, did Midwest Gen also receive a violation
6 notice for the Waukegan Station?

7 A. Yes.

8 Q. And in response to that violation
9 notice, what did Midwest Generation do at the
10 Waukegan Station?

11 A. Entered into a compliance commitment
12 agreement with the Agency.

13 Q. Turning to the next slide, 44. Did
14 Midwest Generation complete the tasks in the CCA
15 for the Waukegan Station?

16 A. Yes.

17 Q. For the Waukegan Station CCA, was
18 there a requirement to re-line the ponds?

19 A. No.

20 Q. Why not?

21 A. They had just been re-lined within
22 the past ten years, I think. I think they started
23 in 2003. Yes. They had been re-lined within the
24 past ten years, and as -- I think I kind of

1 alluded to it earlier. HDPE liners were industry
2 standard, and so there was not an improvement on
3 them at that time.

4 Q. All right. Ms. Shealey, I want you
5 to turn back to your book, and following
6 previously admitted Exhibit 711, there should be
7 previously admitted Exhibit 648.

8 A. Yes.

9 MS. GALE: And for the record,
10 Mr. Hearing Officer, this was admitted in the
11 first part of the hearing, 648.

12 HEARING OFFICER HALLORAN: Thank
13 you.

14 BY MS. GALE:

15 Q. Ms. Shealey, what is this?

16 A. It looks like a transcript from an
17 NPDES permit public hearing that probably was held
18 by Illinois EPA.

19 Q. And on the first page, what was the
20 date?

21 A. Oh, I'm sorry. July 31st, 2013.

22 Q. And I want to turn to the next page,
23 and it's actually MWG13-15_29975, and it carries
24 over to 29976.

1 **And, Ms. Shealey, it's on the**
2 **screen, but who was testifying here?**

3 A. It said it's Mr. Dunaway.

4 **Q. Who is Mr. Dunaway?**

5 A. Lynn Dunaway of Illinois EPA.

6 **Q. And you can read from there, but**
7 **what did Mr. Dunaway state? And it's on your**
8 **screen as well.**

9 A. That the ponds at Waukegan Station
10 are not a source of contamination, that there may
11 be some other source, but it's not the ponds.

12 **Q. Turning to the next slide, 46, and I**
13 **want you to turn in your book to the next exhibit,**
14 **which was previously admitted, Exhibit 649. Okay?**

15 A. Yes.

16 **Q. Ms. Shealey, previously admitted**
17 **Exhibit 649, generally speaking, what is this?**

18 A. It looks like e-mail -- well, it is
19 an e-mail exchange between staff at Illinois EPA.

20 **Q. And who is the e-mail from?**

21 A. The most recent or top one is from
22 Lynn Dunaway, the same Lynn Dunaway.

23 **Q. And who is it to?**

24 A. Jamie Rabins, who at that time was

1 an NPDES permit writer for Waukegan Station.

2 Q. And what's the date of this e-mail?

3 A. January 6, 2015.

4 Q. And it's highlighted on the screen,
5 but what does Mr. Dunaway state in this e-mail?

6 A. That the ponds are not the likely --
7 are not the likely source of contaminants in
8 groundwater.

9 Q. Okay. Ms. Shealey, I want you to
10 turn to slide 47. Do you recognize this cover
11 page?

12 A. I do.

13 Q. What is it?

14 A. It's a -- sorry. It's a
15 presentation that the Agency gave to, I believe,
16 the City of Waukegan sometime in 2021.

17 Q. Ms. Shealey, at the end of the
18 slides, there is a document that was part of the
19 demonstrative of Exhibit 1607 towards the end.
20 Did you find it?

21 A. No. I don't know what you are
22 talking about.

23 Q. The last page is in your binder.

24 MR. RUSS: I don't see it either.

1 THE WITNESS: Yes.

2 BY MS. GALE:

3 Q. It's at the end of the slides?

4 A. I have it.

5 Q. Okay. So if you turn -- so you will
6 see at the end, what is that -- what is that
7 document?

8 A. I know what it is, but I will read
9 it to be sure. It's essentially a public -- a
10 public comment in the matter of the adjusted
11 standard we requested for Waukegan Station.

12 Q. And what's attached?

13 A. The presentation from the Agency.

14 Q. And turning back to the slide, slide
15 48, looking at slide 48, do you recognize this
16 page?

17 A. Yes, I do.

18 Q. I just want to look at the top
19 bullet of this page where it states, "Illinois EPA
20 issued a violation notice (VN) NRG Waukegan."

21 Ms. Shealey, is that accurate?

22 A. No.

23 Q. What's wrong?

24 A. It's not at NRG Waukegan.

1 Q. Yeah, who should it be?

2 A. Midwest Gen.

3 Q. Is that the same violation notice as
4 we have been discussing earlier?

5 A. Yes.

6 Q. And then, Ms. Shealey, the second
7 para -- the sentence of the first bullet, what
8 is -- please read, what does Illinois EPA state?

9 A. "Continued groundwater monitoring
10 indicated a source other than the east or west
11 ponds."

12 Q. So, Ms. Shealey, looking at
13 previously admitted Exhibit 648, Exhibit 649, and
14 now Illinois EPA's presentation in thereabouts
15 2021, what is your understanding of the Agency's
16 conclusions about the Waukegan ponds?

17 A. That they are not a source of
18 contamination.

19 Q. I want to turn back to the slide.
20 Go to slide 49 of Exhibit 1607. So in 2015, when
21 the federal CCR rule passed at Waukegan, generally
22 speaking, what did Midwest Generation do?

23 A. Comply. Completed the certifi- --
24 the engineering -- professional engineer

1 certifications, reviewed the groundwater
2 monitoring network. I don't specifically recall
3 if additional wells were installed at Waukegan. I
4 don't believe so, but it could have been, but the
5 network was reviewed for compliance.

6 Engineering certifications,
7 routine inspections. Weekly inspections began,
8 annual inspections began, groundwater monitoring
9 under Part 257 began, which is slightly different
10 than the groundwater monitoring that we have been
11 doing under the CCAs.

12 **Q. Turning to the next slide, slide 50.**
13 **2022 Stipulation No. 17, "The East Ash Pond at**
14 **Waukegan is a CCR surface impoundment as defined**
15 **in 415 ILCS 5/3.143."**

16 **2022 Stipulation No. 18. "The**
17 **West Ash Pond at Waukegan is a CCR surface**
18 **impoundment as defined in 415 ILCS 5/3.13 --**
19 **3.143."**

20 **Ms. Shealey, for the Waukegan**
21 **ash ponds, how is Midwest Generation complying**
22 **with the Illinois CCR rule?**

23 **A. We are continuing groundwater**
24 **monitoring, continuing weekly inspections, and**

1 annual inspections, and completing any
2 certifications or recertifications that are
3 required by the rules.

4 Q. Ms. Shealey, I just want to go back
5 to slide 49. In January of 2019, you testified
6 that the Senate Bill 9 was proposed. Do you
7 recall that testimony?

8 A. Yes.

9 Q. And is your testimony related to
10 Senate Bill 9 and Midwest Generation's ash ponds
11 the same for the Waukegan Station?

12 A. Yes.

13 Q. So we are back on slide 50. Under
14 the federal CCR rule and the Illinois CCR rule,
15 what must Midwest Generation do specifically on
16 the eastern berm of the East Pond on a weekly
17 basis?

18 A. Inspect.

19 Q. And each year pursuant to those
20 rules, what must Midwest Generation do?

21 A. Have the berms inspected by a
22 professional engineer.

23 Q. And what's --

24 A. Certified -- licensed -- sorry --

1 professional engineer.

2 Q. And once the licensed professional
3 engineer inspects the berm, what does he prepare?

4 A. A report.

5 Q. What do we call that report?

6 A. Annual report.

7 Q. And as the environmental director,
8 do you review those reports?

9 A. Yeah, probably the -- I'm so sorry.
10 Our nomenclature now, we probably changed to
11 annual inspection report, because we have a
12 different annual report. That's new.

13 Q. Fair enough.

14 A. Okay.

15 Q. Annual inspection report. Thank
16 you.

17 A. Yeah. Thank you.

18 Q. And in your review of the annual
19 inspection reports prepared by the professional
20 engineer following their inspection, what and what
21 not -- what have they found, and what have they
22 not found?

23 A. They have not found any reason to
24 believe that there are seeps or failures of -- in

1 that berm or of that berm. It's possible that
2 there are -- animal burrows have been found at
3 Waukegan. If that is true, those burrows are
4 repaired as found.

5 Q. When you visited the Waukegan
6 Station, have you been to the east side of the
7 East Pond?

8 A. Yes.

9 Q. By the lake?

10 A. Yes.

11 Q. What do you see when you visited
12 that -- when you visited the east side of the East
13 Pond?

14 A. Vegetation.

15 Q. And where are you looking?

16 A. Down along the -- along the east
17 side of the East Pond.

18 Q. Great. Can we -- so 2022
19 Stipulation No. 22. "On November 1st, 2021,
20 Midwest Generation submitted an operating permit
21 application to the Illinois EPA for the East Ash
22 Pond and the West Ash Pond at Waukegan."

23 Ms. Shealey, were you as part of
24 your -- as being the environmental director, are

1 you familiar with the Waukegan ash pond operating
2 permit applications?

3 A. Yes.

4 Q. How big was the application?

5 A. Hundreds of pages.

6 Q. What was the effort to create that
7 application?

8 A. Similar to the other stations,
9 substantial. Again, KPRG was the lead author.
10 There were several other consultants involved.
11 And it included structural stability assessments,
12 liner certifications, groundwater monitoring
13 results, proposed groundwater protection
14 standards, hazard potential classification, and so
15 on. A lot of individual parts and pieces.

16 Q. Now, where is that application
17 posted?

18 A. On our website, publically available
19 website.

20 Q. And this is getting repetitive, but
21 following submission of that application, what is
22 the status of the application as it relates to
23 Illinois EPA?

24 A. It is pending. They have not issued

1 a -- the Agency has not issued a draft permit.

2 Q. 2022 Stipulation No. 23. "On
3 February 1st, 2022, Midwest Generation submitted a
4 construction permit application to the Illinois
5 EPA for the closure of the East Ash Pond and the
6 West Ash Pond at Waukegan."

7 Ms. Shealey, as a --
8 Ms. Shealey, as the environmental director, were
9 you part of preparing that application?

10 A. Yes.

11 Q. Approximately, how big is it?

12 A. Hundreds of pages.

13 Q. What was the effort to prepare that
14 application?

15 A. Substantial. In addition to the
16 pieces from the operating permit application, it
17 included groundwater modeling based on a closure
18 alternatives analysis, and we had to conduct
19 public meetings prior to submitting
20 this application -- those applications.

21 Q. Ms. Shealey, what is the closure
22 method proposed and applied for by Midwest
23 Generation in the application for the East Pond?

24 A. I hope I do this right. Forgive me,

1 because I get them confused. East is closer to
2 the lake, and that would be closure-in-place.

3 **Q. And once the cap is installed, are**
4 **there any post-closure care requirements?**

5 A. Absolutely.

6 **Q. What?**

7 A. Thirty years of groundwater
8 monitoring at least. It's -- I believe the
9 regulations require 30 years of monitoring or
10 until you meet either the groundwater protection
11 standard or Part 620 standards. I can't remember
12 which, but it's at least 30 years.

13 **Q. And Ms. --**

14 A. And I'm so sorry. But it includes
15 continued inspections to make sure there are no
16 failures of your cap, your berms, so on and so
17 forth.

18 **Q. And what is Midwest Generation's**
19 **closure plan for the West Pond?**

20 A. That would be similar to Joliet Pond
21 2, to close the pond as a CCR surface impoundment,
22 and reuse the HDPE liner for a low-volume waste
23 pond for the station.

24 **Q. And to reuse that HDPE liner in the**

1 **West Pond, what did Midwest Generation apply for?**

2 A. A construction -- oh, an adjusted
3 standard. Yes, an adjusted standard.

4 **Q. And to reuse that -- why does**
5 **Midwest Generation want to reuse that liner?**

6 A. To manage stormwater at the station
7 going forward for general low-volume wastewater.

8 **Q. Ms. Shealey, I want to turn to the**
9 **next slide, which is slide 51.**

10 **Ms. Shealey, looking at the**
11 **screen, in the north -- to the north, on the north**
12 **side of the station, do you see where it says,**
13 **"Alleged Former Slag Placement Area"?**

14 A. Yes.

15 **Q. Are you familiar with that area?**

16 A. Yes.

17 **Q. What is in that area?**

18 A. A parking lot. It is concrete or
19 cement. There is no evidence of ash in that area.

20 **Q. And now I want to look --**

21 A. I'm sorry. It's the guard gate,
22 too, I'm pretty sure. It's where you enter the
23 plant from the outside. So it's all -- it's a
24 paved area.

1 Q. And what is stored there?

2 A. Cars? I'm sorry. I don't know.
3 It's a parking lot.

4 Q. Now, looking at the map, what's
5 located west of the West Pond?

6 A. Alleged Former Slag Fly Ash
7 Placement Area.

8 Q. Ms. Shealey, to your knowledge, did
9 Midwest Generation have any operations in that
10 area?

11 A. Not at all.

12 Q. Has Midwest Generation placed ash in
13 that area?

14 A. No.

15 Q. Does the ComEd tannery site ELUC
16 cover any part of that area?

17 A. I think you misspoke.

18 Q. I'm sorry. Does the tannery site
19 ELUC cover any part of that area?

20 A. Yes.

21 Q. And we can see it on the screen.
22 Does the Midwest -- well, where is Midwest
23 Generation's ELUC on that area?

24 A. It overlaps, or it begins where that

1 ends. I can't really tell. I think they overlap.

2 Oh, no. Thank you. It begins
3 where the tannery's ELUC ends.

4 Q. Ms. Shealey, do you recall a soil
5 investigation of that area?

6 A. Yes, I do.

7 Q. Are you familiar with the results?

8 A. Yes, I am.

9 Q. And to your recollection, what did
10 the investigation show?

11 A. That there is ash in that area.

12 Q. I actually think you said this in
13 May, but because of ash in that area, what was
14 Midwest Generation proposing to do?

15 A. Cap it.

16 Q. And who did you propose that to?

17 A. Illinois EPA.

18 Q. And do you recall -- do you recall
19 what that proposal was related to?

20 A. The adjusted standard. In the
21 adjusted standard, we applied for a finding of
22 inapplicability of Part 845 to that area. That
23 area is not a CCR surface impoundment.

24 Q. So flipping to the next -- you said

1 it's not a CCR surface impoundment. Let's turn to
2 slide 52.

3 Ms. Shealey, you said you had
4 perused or looked at some of the docket of the
5 USEPA proposed rule. Do you recall that?

6 A. Yes.

7 Q. What is on slide 52?

8 A. One of the documents that is in the
9 docket, and it's USEPA's potential CCR management
10 unit universe, and I think it's specifically the
11 Illinois units.

12 Q. Yeah. I guess, expanding upon that,
13 have you clicked on this document when you -- have
14 you opened the document in the docket?

15 A. Yeah.

16 Q. What does it look like?

17 A. It's a spreadsheet.

18 Q. And what's on it, generally
19 speaking?

20 A. A list of places. A list of USEPA's
21 proposed CCR management units or areas that USEPA
22 believes could qualify as CCR management units
23 under their proposed rules.

24 Q. And looking at -- and you said it's

1 a -- limited to the Illinois. There is rows
2 there, and if you look at rows 25 and 26, what are
3 in rows 25 and 26?

4 A. Two potential CCR management units
5 at Waukegan Station.

6 Q. And one -- under unit name, under
7 row 25, what's the unit name?

8 A. Old Pond.

9 Q. And what do you -- do you know what
10 the Old Pond is?

11 A. I have an understand -- I believe I
12 do, yes.

13 Q. What do you believe?

14 A. It's the -- what are we calling it
15 here? Alleged Former Slag Fly Ash Placement Area
16 to the west of the West Pond, west of the West
17 Pond at Waukegan Station.

18 Q. And then row 26 on slide 52,
19 Exhibit 1607, what is the unit name?

20 A. Historic fill.

21 Q. And do you have an understanding of
22 what the historic fill would be?

23 A. I believe I do.

24 Q. What is it?

1 A. Ash that's under the current ash
2 ponds.

3 **Q. And so based upon this spreadsheet,**
4 **what is -- what do you think USEPA thinks the**
5 **Former Ash Slag Area and historic fill is?**

6 MR. RUSS: Object. Calls for
7 speculation.

8 HEARING OFFICER HALLORAN: Could you
9 please read the question back, Kari, please?

10 (Whereupon, the record was read
11 as requested.)

12 HEARING OFFICER HALLORAN: All
13 right. Sustained.

14 BY MS. GALE:

15 **Q. What is your understanding of what**
16 **the Former Slag Area and historic fill at Waukegan**
17 **is under the spreadsheet?**

18 A. USEPA believes that these are
19 potential units that will qualify as CCR
20 management units and so will be regulated under
21 their currently proposed rules, which I believe
22 under that USWAG decision, under that consent
23 decree that I referenced earlier, have to be
24 finalized by May of 2024.

1 MS. GALE: Mr. Hearing Officer, I'm
2 moving on to the final station. If we could just
3 have a ten-minute break?

4 HEARING OFFICER HALLORAN: Sure.
5 Off the record.

6 (Whereupon, a short break was
7 taken.)

8 HEARING OFFICER HALLORAN: Back on
9 the record. You may proceed, Ms. Gale.

10 BY MS. GALE:

11 Q. Ms. Shealey, I want to move on to
12 the Will County station. And looking at slide 54
13 of Exhibit 1607, what is depicted?

14 A. Will County Station.

15 Q. Excuse me. And have you visited the
16 station?

17 A. Yes. It was actually my work
18 location initially, yes. So many, many times.

19 Q. 2022 Stipulation No. 24. "Midwest
20 Generation has publically announced that the Will
21 County Station is scheduled to cease burning coal
22 in June 2022."

23 Ms. Shealey, since the 2022
24 stipulations were agreed, what has occurred at

1 **Will County related to burning coal?**

2 A. It has ceased burning coal in
3 June of 20 -- and it did in June of '22.

4 **Q. It ceased burning coal. What's**
5 **going to happen at the Will County Station?**

6 A. Right now the plan is to install
7 battery storage for future operations.

8 **Q. Are you familiar with the vicinity**
9 **of the Will County station?**

10 A. Yes.

11 **Q. Looking at the map on slide 54,**
12 **please describe the area around the Will County**
13 **station.**

14 A. Industrial. It is between the Des
15 Plaines and the Chicago Sanitary Ship Canal. The
16 other side of the canal is a refinery. Across the
17 canal from us is a refinery, a relatively large
18 one.

19 **Q. Do you know who owns it?**

20 A. Citgo.

21 **Q. And to the south -- what is to the**
22 **south of the station?**

23 A. A quarry. And I cannot -- their
24 name begins with an H. I'm sorry. It's escaped

1 me. It's escaping me.

2 Q. Hanson Materials?

3 A. Hanson Materials is quarrying to the
4 south of us, yes.

5 Q. Same as before, ,are you familiar
6 with the zoning of the Will County Station?

7 A. Yes.

8 Q. Next slide, slide 55. What does
9 this map show?

10 A. That Will County Station is zoned
11 industrial, I-3.

12 Q. Slide 56. Ms. Shealey, we have
13 highlighted the ash ponds. Where are the ash
14 ponds at the Will County Station?

15 A. On the western edge sort of center
16 west of the property.

17 Q. And from top to bottom, so north to
18 south, what are the ponds?

19 A. 1N, 1S, 2S, and 3S.

20 Q. Okay. Next slide, 57 of
21 Exhibit 1607. What is depicted in slide 57?

22 A. The four ponds that I just named.

23 Q. So looking at Ponds 2S and 3S, are
24 they federal CCR surface impoundments?

1 A. Yes, they are.

2 Q. What about Ponds 1N and 1S?

3 A. They are not.

4 Q. 2022 Stipulation No. 26. "Will
5 County Ponds 2S and 3S are CCR surface
6 impoundments as defined in 415 ILCS 5/3.143."

7 2022 Stipulation 24. "Will
8 County Ponds 1N and 1S are inactive CCR surface
9 impoundments, citation 35 Ill. Adm. Code 845.20 --
10 I'm sorry -- 845.120."

11 2017 Stipulation 50. "Ponds 1N
12 and 1S were removed from service in 2010 and
13 neither receive any ash or process water."

14 Ms. Shealey, turning to the next
15 slide, 58 of Exhibit 1607. When did the Will
16 County Station begin operating?

17 A. 1955.

18 Q. And what did it operate?

19 A. Two coal-fired units at that point.
20 Two electric generating units.

21 Q. Turning to the next slide, 59. In
22 2002 we discussed the analysis of the ash ponds.
23 Did that also occur at Will County?

24 A. Yes, it did.

1 **Q. Next slide, 60. In 2008, what did**
2 **Midwest Generation submit to Illinois EPA?**

3 A. Construction permits for the
4 re-lining of Ponds 2S and 3S.

5 **Q. And then ending in September of**
6 **2009, what happened?**

7 A. Pond 3S was re-lined with an HDPE
8 liner.

9 **Q. And similar question to the other**
10 **stations, what is your understanding of the**
11 **condition of the Poz-O-Pac found in Pond 3S when**
12 **it was re-lined?**

13 A. It was good and had integrity. It
14 wasn't cracked or failing.

15 **Q. And around the same time, in 2009,**
16 **the preliminary hydrogeological assessments that**
17 **Illinois EPA requested, was that also true of --**
18 **at the Will County Station?**

19 A. Yes.

20 **Q. And what were the results for the**
21 **Will County Station?**

22 A. There were no potable water
23 receptors in the vicinity of the ash ponds that
24 the ash ponds could impact.

1 Q. Turning to the next slide, 61 of
2 Exhibit 1607. In 2010, what did Midwest
3 Generation agree to install at the Will County
4 station?

5 A. Groundwater monitoring wells.

6 Q. 2022, Stipulation No. 28. "Midwest
7 Generation began sampling the groundwater at Will
8 County in December of 2010."

9 Next slide, 62. 2022
10 Stipulation No. 29. "Midwest Generation has
11 submitted the groundwater monitoring results for
12 Will County to Illinois EPA from 2010 to present."

13 Ms. Shealey, did Midwest
14 Generation receive a violation notice for the Will
15 County Station for the groundwater results?

16 A. Yes.

17 Q. How did Midwest Generation resolve
18 that violation notice?

19 A. Entered into a compliance commitment
20 agreement with the Agency.

21 Q. Turning to the next slide, 63.
22 Looking at the slide. In 2013, pursuant to the
23 CCAs, what did Midwest Generation do at Will
24 County?

1 A. I think that -- I think there is a
2 letter missing, but it re-lined 2S with the HDPE
3 liner. Sorry.

4 Q. And so we discussed Ponds 2S and 3S
5 are federal CCR ponds. Do you recall that?

6 A. Yes.

7 Q. When the federal rule passed, what
8 did Midwest Generation do at Will County?

9 A. It began complying. It did hazard
10 assessments, safety factor assessments, liner
11 certifications, groundwater monitoring, and so on.

12 Q. Next slide, 64. In January of 2019
13 you testified about SB-09 being proposed. Is your
14 testimony about SB-09 the same for Will County as
15 it was for the other stations?

16 A. Yes.

17 Q. We discussed earlier the four ponds
18 are subject to the Illinois CCR rule, right?

19 A. Yes.

20 Q. And under the Illinois CCR rule,
21 what is Midwest Generation doing to -- pursuant to
22 the rule?

23 A. Similar to federal rule groundwater
24 monitoring, we do weekly inspections, annual

1 impoundment inspections. Well, that is actually
2 not similar to the CCR federal rules -- sorry --
3 for Will County Station.

4 Under federal rules, Will County
5 impoundments are small, what would be considered
6 small, and are not subject to the annual
7 inspection requirement. State rules do not make
8 that distinction, so we began doing -- having a
9 licensed professional engineer inspect the ponds
10 at Will County under the state rules, but
11 groundwater monitoring -- I've lost track, if I'm
12 repeating myself.

13 **Q. No, that's fine. So you said a**
14 **licensed professional engineer inspects. How**
15 **often did they inspect the ponds?**

16 A. Annually.

17 **Q. Is that -- what do they prepare?**

18 A. A report.

19 **Q. What do you call that report?**

20 A. The annual inspection report.

21 **Q. And as the environmental director,**
22 **do you review the annual inspection report?**

23 A. Yes.

24 **Q. And in those reports, what has the**

1 professional engineer seen and not seen in
2 relation to the berms?

3 A. He has seen -- or she has seen that
4 they are structurally sound, that there is no
5 indication of failure, and they have not seen any
6 seeps or leakages from the pond.

7 Q. 2022 Stipulation No. 16. "On
8 November 1st, 2021, Midwest Generation submitted
9 an operating permit application to Illinois EPA
10 for Ponds 2S and 3S at Will County."

11 Ms. Shealey, as the
12 environmental director, were you a part of that
13 preparation of the operating permit application
14 for Ponds 2S and 3S?

15 A. Yes.

16 Q. How big was it?

17 A. Hundreds of pages.

18 Q. And what was the effort to prepare
19 that operating permit application?

20 A. I would consider it similar to the
21 other stations, substantial. Certifications,
22 groundwater monitoring networks, proposed
23 groundwater protection standards were included,
24 evaluations by professional engineers, and so on

1 and so forth.

2 Q. And this is similar to our
3 discussion about Powerton. If you recall, how
4 many months was the operating permit application
5 due after the effective date of the Illinois CCR
6 rule?

7 A. Just over six. Actually, six months
8 and ten days. I remember exactly.

9 Q. So how was Midwest Generation able
10 to collect all the information within six months
11 and ten days for Ponds 2S and 3S?

12 A. A lot of it had already existed,
13 because they were requirements under federal
14 rules. So instead of -- excuse me.

15 So these were more -- a lot of
16 the documents were recertifications versus initial
17 certifications, so -- which is somewhat --
18 slightly easier than the initial certification,
19 and the groundwater monitoring had -- the
20 groundwater monitoring had been going on at the
21 same -- for most of the same standards under the
22 federal rule. I'm reminded now that Illinois
23 actually added a few more constituents to monitor.
24 So we just did it.

1 **Q. Okay. But Ponds 1N and 1S are not**
2 **federal units, right?**

3 A. Correct.

4 **Q. So what, if any, information did**
5 **Midwest Generation have for Ponds 1N and 1S for**
6 **the operating permit application?**

7 A. Well, none of it existed in it --
8 as -- in its final form. Of course we knew a lot
9 about the ponds, we know a lot about the ponds,
10 but we didn't have professional certifications and
11 things such as that.

12 **Q. So what did Midwest Generation need**
13 **to collect that information?**

14 A. A variance.

15 **Q. And what was the variance for?**

16 A. Additional time to collect the
17 information, and particularly at Will County 1N
18 and 1S for groundwater monitoring, if I remember
19 correct -- I don't recall the number of wells we
20 had to install, but we had to install additional
21 monitoring wells under Part 845 for 1N and 1S.

22 **Q. And who was the variance from?**

23 A. The -- well, yeah, the Board.

24 **Q. And what was the Board's opinion?**

1 A. That they granted the variance so
2 that we had additional time.

3 **Q. And with that additional time,**
4 **looking at slide 64, when was the operating permit**
5 **application for Ponds 1N and 1S submitted to the**
6 **Agency?**

7 A. March 31st, 2022.

8 **Q. And again, how big was it?**

9 A. Hundreds of pages.

10 **Q. What kind of effort did it take to**
11 **prepare?**

12 A. Again, substantial. And again, so
13 slightly different than 2S and 3S, which had a
14 baseline of information, we didn't have that
15 documentation already collected for 1N and 1S. I
16 mentioned we had to install additional groundwater
17 monitoring wells, which meant that we had to
18 accelerate our sampling. Generally under federal
19 CCR, we sample quarterly, I think. In this
20 accelerated timeline to get eight samples, we
21 sampled more frequently than that, and so it was a
22 pretty big effort.

23 **Q. Has Illinois EPA issued an operating**
24 **permit application for Ponds 1N, 1S, 2S and 3S --**

1 A. No.

2 Q. -- yet?

3 **Has Illinois EPA issued an**
4 **operating permit?**

5 A. No. I heard that question. No.
6 They have not issued an operating permit for the
7 Will County impoundments.

8 Q. **Ms. Shealey, we have gone through --**
9 **you can turn off the screen.**

10 **We have discussed the work**
11 **Midwest Generation has done related to the ash**
12 **ponds for each of the four stations. As an**
13 **environmental director, do you believe Midwest**
14 **Generation has been diligent to comply with the**
15 **environmental statutes?**

16 A. Yes, absolutely.

17 Q. **Please explain.**

18 A. Oh, boy. It's a lot. It's -- we
19 worked diligently to ensure compliance. As I
20 mentioned before, our policy is environment over
21 production, and our No. 1 goal is to comply with
22 environmental laws and regulations. The federal
23 CCR rules were first. And we moved in every way
24 to comply with those, including ceased -- ceasing

1 placement of CCR, finding alternative capacity to
2 keep the stations running to provide reliable
3 electricity, the groundwater monitoring, and we --
4 in cases where necessary, we are working towards
5 closure of surface impoundments.

6 It's years and years of work.
7 It's nothing that can be done quickly or without
8 thought, or it's been years of work. We have been
9 working diligently since 2015 under the federal
10 rules.

11 **Q. And we touched upon this in your**
12 **testimony, but when Midwest Generation agreed to**
13 **install the groundwater monitoring wells in 2010,**
14 **how would you describe Midwest Generation's**
15 **actions?**

16 A. It was voluntary. Again -- well,
17 not again, but they were intended -- intending to
18 cooperate with the Agency's request. I don't
19 think that they had to, because it wasn't an
20 order. It wasn't anything of that sort, but
21 Midwest Generation did it. So it was a voluntary
22 action.

23 **Q. And when Midwest Generation agreed**
24 **to submit the groundwater monitoring results and**

1 then continue to submit those results on a
2 quarterly basis, how would you describe Midwest
3 Generation's disclosure of that information?

4 A. Voluntary. Again, there was no
5 order, no regulation that required any of that
6 information be submitted. Midwest Gen -- Midwest
7 Generation's attempt was to be cooperative with
8 the Agency.

9 Q. Ms. Shealey, we discussed the zoning
10 of each of these stations and what was surrounding
11 each of the stations.

12 Are these stations located in a
13 suitable area to which they are located?

14 A. Yes, they are all in industrial
15 areas.

16 Q. And I believe you testified as to
17 the age of the stations, and for Waukegan Station
18 and Powerton Station, you stated they have been
19 operating for approximately 100 years, and so as
20 it relates to their presence in these areas, how
21 would you describe it?

22 A. They were there first, or -- yeah.
23 The industrial sources were -- were there at
24 100 years ago. Those were industrial areas.

1 **Q. And so even Joliet 29 and the Will**
2 **County Stations, which were built in the 1960s, as**
3 **it relates to the presence in these areas, how**
4 **would you describe it?**

5 A. Industrial. We -- or we mentioned
6 the Caterpillar facility was next door to Joliet
7 29. Joliet 29 is on a major truck corridor for --
8 it's on Route 6, I think it is. That -- and Will
9 County is -- has a refinery that is not new across
10 the ship canal from it. And Hanson Materials has
11 been there for -- I don't know how long, but for a
12 long time, so it's an industrial area, too.

13 **Q. And, Ms. Shealey, to your knowledge,**
14 **has any of these four stations been subjected to**
15 **any enforcement action by the Illinois Attorney**
16 **General's Office for a groundwater violation?**

17 A. No.

18 **Q. And have any of these four stations**
19 **been subjected to any enforcement action by the**
20 **USEPA for a groundwater violation?**

21 A. No.

22 **Q. And because Powerton Station will**
23 **continue to operate, will it continue to employ**
24 **people at the station?**

1 A. Yes, it will.

2 Q. And because the Waukegan -- excuse
3 me.

4 And because the Waukegan Station
5 will continue to have the peaker unit and continue
6 to operate, will it continue to employ people at
7 the station?

8 A. Yes, and I include the battery
9 storage. So, yes, Waukegan will continue to
10 employ people, the station.

11 Q. And same question for Will County.
12 Because Will County will install the battery
13 storage, will it continue to employ people at the
14 station?

15 A. Yes. It currently employs and will
16 continue to employ.

17 Q. And finally, with Joliet 29, will it
18 continue to employ people at the station?

19 A. Yes, currently and will continue.

20 Q. Ms. Shealey, what, if anything,
21 could deter Midwest Generation from causing or
22 allowing alleged violations of the environmental
23 statutes?

24 A. I'm sorry. It's -- it's how we

1 operate. What could deter us? I'm not sure that
2 anything could. It's our goal. It's the way we
3 operate. We intend to comply. We want to comply.
4 We want to be good -- good, corporate citizens,
5 good neighbors in our communities, and in my
6 opinion, Midwest Generation has been a good
7 neighbor in their communities.

8 They have supported a lot of
9 things. Hundreds and thousands of people have
10 worked at these stations. The electricity that
11 they have generated has fueled Illinois. We
12 just -- we want to participate in a -- yeah, there
13 is nothing that could make us want to comply more
14 than we already do.

15 MS. GALE: Thank you, Ms. Shealey.
16 I have nothing further for now.

17 HEARING OFFICER HALLORAN: Thank
18 you, Ms. Gale.

19 Mr. Russ, do you want to go off
20 the record for a little bit, or --

21 MS. GALE: Oh, I'm sorry.
22 Mr. Hearing Officer, I'm sorry to interrupt. I
23 forgot.

24 Can I please move to admit

1 Exhibit 1607, which is the slides?

2 HEARING OFFICER HALLORAN: Mr. Russ?

3 MS. BUGEL: Mr. Hearing Officer, can
4 we just have a moment?

5 HEARING OFFICER HALLORAN: We can go
6 off the record.

7 (Whereupon, a discussion was had
8 off the record.)

9 HEARING OFFICER HALLORAN: We'll go
10 back on the record.

11 MR. RUSS: We are going to object
12 just because our -- some of our demonstratives
13 were not admitted, and because there is new
14 information in here that is zoning maps that are
15 not just a visual aide, but actually new evidence.

16 HEARING OFFICER HALLORAN: Well,
17 your demonstratives weren't admitted because you
18 just made them up last night, that timeliness
19 thing. Which ones?

20 MR. RUSS: I'm not talking about
21 those.

22 HEARING OFFICER HALLORAN: Okay.
23 Well, this is a four-week hearing. So you've got
24 to let me know what wasn't admitted and when.

1 MR. RUSS: There were demonstratives
2 during the Gnat direct that were not admitted.
3 Gnat cross.

4 MS. BUGEL: Well, we -- if I may?

5 HEARING OFFICER HALLORAN: You may.

6 MS. BUGEL: We are referring to the
7 ones with the areas for -- different areas and the
8 pinpoint drops on them.

9 HEARING OFFICER HALLORAN: I vaguely
10 remember the pin -- pinpoint.

11 MS. BUGEL: Yeah. We presented them
12 as demonstratives.

13 HEARING OFFICER HALLORAN: Okay,
14 yeah. I do -- I do remember those.

15 MS. BUGEL: Yeah. So we are
16 concerned that there is a -- just an inconsistency
17 in how demonstratives are being treated, if we are
18 admitting some, but not admitting --

19 HEARING OFFICER HALLORAN: Well, I
20 mean, there could be different reasons, too.

21 MS. BUGEL: Yes.

22 HEARING OFFICER HALLORAN: My
23 understanding is who made the pinpoints, or are
24 they accurate? But, anyway, Ms. Gale?

1 MS. GALE: Well, Mr. Hearing
2 Officer, in relation to the zoning, that's
3 publicly available information. That's not new
4 information. This is -- I mean, it's been zoned
5 at least 100 years in part as industrial. As I
6 said, much of this information was already
7 admitted in the first hearing. This is just a
8 tool for the -- that we added on to as information
9 for the Board. These demonstratives -- similar
10 demonstratives have previously been admitted, and
11 well, also, we filed them a week ago, and this is
12 the first we've heard of any objection.

13 HEARING OFFICER HALLORAN: All of
14 them have been admitted already?

15 MS. GALE: Not all.

16 HEARING OFFICER HALLORAN: Okay.

17 MS. GALE: No, sir. This is an
18 update. So the timelines were previously
19 admitted, and the maps were previously admitted,
20 and there are certainly pullouts of admitted
21 documents; such as, Exhibit 711, 649, 648, so --

22 HEARING OFFICER HALLORAN: What
23 exhibits are you talking about, Mr. Russ, as far
24 as yours that I didn't --

1 MS. BUGEL: The -- the only
2 exhibit -- if I may respond?

3 HEARING OFFICER HALLORAN: Sure,
4 yeah. Oh, yeah, please.

5 MS. BUGEL: The only exhibit that we
6 are concerned about is the demonstratives, the one
7 used in the Gnat cross that had visuals for the
8 different areas in the northwest area.

9 As to this exhibit today, our
10 concern is that it's not purely a demonstrative.
11 The zoning maps are evidentiary as to what areas
12 are zoned. So that's not purely a demonstrative,
13 so --

14 HEARING OFFICER HALLORAN: Okay. My
15 question was, what exhibit did I not let in that
16 you tried to get in during the Gnat hearing?

17 MS. NIJMAN: And it is in.

18 HEARING OFFICER HALLORAN: Or
19 testimony?

20 Mr. Russ said I didn't let in
21 some of your demonstratives during the Gnat
22 hearing.

23 MS. BUGEL: Okay. I -- it's -- you
24 need an exhibit number?

1 HEARING OFFICER HALLORAN: That's --

2 MS. BUGEL: Okay. I can look it up.

3 I -- my notes were that
4 Exhibit 1518 was not admitted, that it was treated
5 just as a demonstrative.

6 HEARING OFFICER HALLORAN: Okay.
7 Here is what I'm going to do. Because there has
8 been objections and reasons for objections spread
9 all over the transcript, I would ask the Board to
10 take note of that and weigh it accordingly. I
11 will let in 1607, and I assume there is no
12 objection, because I'm also going to let in
13 Complainants' Exhibit 1518. I'm going to revise
14 my ruling.

15 So Complainants' Exhibit 1518 is
16 admitted. And Respondent's Exhibit 1607 is
17 admitted, and the Board will weigh it accordingly.

18 (Whereupon, Complainants'
19 Deposition Exhibit No. 1518 was
20 admitted into evidence.)

21 (Whereupon, Respondent's
22 Deposition Exhibit No. 1607 was
23 admitted into evidence.)

24 MR. RUSS: Thank you.

1 HEARING OFFICER HALLORAN: Thank
2 you.

3 We are still on the record. I
4 have about 40, 45 minutes before I want to call it
5 a day. I think everybody is getting tired, as I
6 am, but I -- you know, I kind of -- you know, we
7 can get this on record. I kind of want to know
8 what is going to happen. I know Mr. Russ is going
9 to cross Ms. Shealey, but -- and this will
10 probably go over into tomorrow.

11 What's going on tomorrow?
12 And -- and are Complainants -- are you able to say
13 at this point you will have any rebuttal?

14 MS. BUGEL: We are able to say we
15 will not be calling rebuttal witnesses.

16 HEARING OFFICER HALLORAN: Okay.
17 Great. So we do have time. I was worried about
18 Friday.

19 Okay. I don't really need to
20 know any more then at this point. Thank you.

21 Mr. Russ, do you want to take a
22 second before you start your cross, and I just
23 want to --

24 MR. RUSS: I can start now.

1 HEARING OFFICER HALLORAN: Okay.

2 Thank you. You may begin.

3 C R O S S E X A M I N A T I O N

4 by Mr. Russ

5 Q. Ms. Shealey, when you were asked
6 about the NRT liner reviews that happened several
7 years ago, do you remember that?

8 A. Yes.

9 Q. I think you said that NRT didn't
10 look at the liners?

11 A. Yes.

12 Q. How do you know that?

13 A. Because the ponds had ash in them.
14 You can't see the ponds if they are full of ash.
15 You can't see the liners if the ponds are full of
16 ash.

17 Q. You also testified that the ponds
18 are sometimes cleaned out?

19 A. Yes.

20 Q. Is it possible that NRT looked at
21 the ponds when they were cleaned out?

22 A. It is possible, but it is probably
23 not -- it is not probable, because I don't think
24 they -- they would not have cleaned down to the

1 Poz-O-Pac. So they -- they would not have been
2 able to -- that wouldn't have been a part of
3 routine operation. They would not have been able
4 to see the Poz-O-Pac.

5 Q. Okay. Did you talk to anybody at
6 NRT about the -- about their inspections of the
7 liners or about their review of the liners?

8 A. No. I have not spoken to anyone at
9 NRT. As I mentioned, my degrees are in chemical
10 engineering. So I understand a little bit about
11 engineering, so I don't want to talk to NRT, to be
12 frank.

13 Q. Turning to the exhibit that we are
14 talking about now, which is, I think it's -- it
15 got smudged on my thing. Exhibit -- it's
16 Complainants' Exhibit 34, but it's also got a
17 different exhibit number on my tab here. Yeah,
18 it's Exhibit -- okay. Exhibit 34.

19 Do you see that?

20 A. I do.

21 Q. It says on -- under ranking
22 criteria, there is a line that says that the
23 impoundments were ranked based on four criteria,
24 and then it says, No. 1. Do you see that? And

1 then it says, "Existing liner; considering type,
2 age, and known conditions based on the pond
3 characterization document and Midwest's knowledge
4 of the liners." Did I read that correctly?

5 A. Yes.

6 Q. Did you talk to anybody at Midwest
7 Generation who may have worked with NRT on this
8 technical memorandum?

9 A. This memorandum was in 2005. I have
10 to get my head straight on days. Yes, I have.

11 Q. Who would they have been?

12 A. Maria Race.

13 Q. Well, but just to be clear for the
14 record, at the time in 2005, you weren't working
15 there yet?

16 A. No.

17 Q. All right. Okay. Thank you.

18 A. But I did talk to Maria Race about
19 this.

20 Q. Got it. And she worked there at the
21 time?

22 A. She did.

23 Q. And you overlapped with Maria Race?

24 A. By months or -- yeah. It was -- I

1 guess it was measured in months.

2 Q. Long enough to talk about that?

3 A. Yeah, yeah, exactly.

4 Q. We talked about Poz-O-Pac --

5 Poz-O-Pac liners at various stations and the fact
6 that they were in good condition.

7 Just to be clear for the record,
8 you didn't see the Poz-O-Pac liners?

9 A. No, but I have had professional
10 engineers who have reviewed the construction
11 documents of the HDPE re-lining projects,
12 including photos, who have assured me that the
13 Poz-O-Pac was in good condition.

14 Q. Okay. Now, there was a question
15 Ms. Gale asked you about what the northeast area
16 at Joliet looked like when Midwest Generation
17 bought the -- or took over the plant, do you
18 remember that?

19 A. I think she asked me what I have
20 seen it to be. I don't know if she asked me what
21 it looked like when Midwest Gen started, because I
22 wasn't there.

23 Q. I guess -- right. That's what I
24 wanted to clarify, because my recollection of that

1 exchange was that she was asking about the
2 condition of that area when Midwest Generation
3 took over the property.

4 A. I -- you know, I must have
5 misunderstood. I -- my understanding was the
6 condition of the area as I know it to be.

7 Q. Right. And that's what you said.

8 I just want to clarify for the
9 record. You didn't see it when Midwest Generation
10 took over the property. You are talking about
11 what it looks like now?

12 A. Well, from 2015 until now.

13 Q. Right.

14 A. So over the past eight years I know
15 what it looks like or has looked like, yes.

16 Q. Okay. Thanks.

17 Now, the northeast area, I think
18 you testified that it wouldn't make sense to put
19 coal ash in that area; is that right?

20 A. Yes.

21 Q. Do you think that there is no ash in
22 that area?

23 A. No, I do not think that.

24 Q. Okay. So if there is ash in that

1 area, but it didn't make sense to put it there, do
2 you have any idea why it would have happened?

3 A. I would suppose that it is very
4 small quantities. That would be my guess, but I
5 don't know. I do not know.

6 Q. Because --

7 A. Well, clearly, it does not make
8 sense for them to have placed ash in that area.
9 It's too far from the -- from the boilers.

10 Q. Right. So the ash has, at least
11 recently for some time, been, when it's not
12 temporarily stored in the ponds at the Joliet 29
13 site, sent across the river to Joliet 9 to the
14 Lincoln Stone Quarry; is that right?

15 A. Could you start with -- what did you
16 say at first?

17 Q. The ash at Joliet 29, at least in
18 the recent period of time that I'm -- that you are
19 familiar with, before the plant stopped burning
20 coal, when it wasn't being temporarily stored in
21 the ash ponds at the site, it was sent over to the
22 Lincoln Stone Quarry; is that right?

23 A. Yes.

24 Q. And if it was periodically cleaned

1 out of the ponds at Joliet 29, that would go to
2 the Lincoln Stone Quarry?

3 A. Correct.

4 Q. How did it get there?

5 A. It was sluiced across the river.
6 Generally ash was placed in the quarry by
7 sluicing. I would guess 99.9 percent of the ash
8 in the quarry was sluiced.

9 Q. So there is a sluice line that goes
10 across?

11 A. Not today. There was.

12 Q. Okay. Okay. Let me see.

13 You were asked about the 2018
14 USWAG decision. Do you remember that?

15 A. Yes.

16 Q. And I think your testimony was
17 something to the effect that the legacy ash pond
18 and the historic ash rulemakings were a reason to
19 hesitate before taking a step, because you don't
20 want to get out ahead of those rulemakings; is
21 that right?

22 A. I'm sure I testified that I knew
23 that rulemaking was coming, yes. I think you
24 categorized it correctly, yes.

1 Q. Just to be clear for the record, did
2 the 2018 USWAG decision say -- what did it say
3 about CCR management units?

4 A. It did not address them.

5 Q. Okay.

6 A. But it did not clearly define legacy
7 impoundments either or legacy units, and so it did
8 not -- I knew it was -- I would presume -- I did
9 not know what it would cover. Let's say it that
10 way.

11 Q. Okay. Thank you.

12 Turning to a page or slide
13 number in your -- in the PowerPoint presentation
14 in the Will County section -- I think it's going
15 to be Slide No. 65? 65, yeah.

16 A. I'm there.

17 Q. You were describing a refinery
18 across the ship channel from the station. Can you
19 identify that here?

20 A. I believe that's their impoundment
21 that you can see.

22 Q. Okay. That dark blue/green polygon
23 there?

24 A. Yeah, I believe that that belongs to

1 Citgo.

2 Q. Okay.

3 A. And if you can't see it, as I
4 mentioned, I worked at Will County. I could see
5 the refinery from my window.

6 Q. Okay.

7 A. From the boiler building, I could
8 see it.

9 Q. I think the refinery is north of
10 that pond; is that right?

11 A. I believe that -- I think that that
12 pond belongs to the refinery. I could be wrong in
13 that.

14 Q. Right. I guess the buildings -- the
15 buildings associated with the refinery would be
16 north of the pond?

17 A. Yes.

18 Q. Okay.

19 A. In fact, I'm pretty sure that
20 that -- as you cross the 135th Street bridge, I'm
21 pretty sure that when you get to the other side of
22 the canal, that is Citgo property.

23 Q. Okay. Now, I guess I also wanted to
24 ask you about some of the zoning maps that we were

1 just talking about a minute ago.

2 So the one for Will County, if I
3 can find it, it's on slide 55. I'm not familiar
4 with Illinois zoning, so I'm not sure how to
5 interpret this, but that yellow line that's
6 outlined here, is all of that the Will County
7 power plant?

8 A. That it -- yeah. You've got to go
9 in and out. The yellow -- the greater yellow
10 outline is Will County property, Will County
11 Station property, Midwest Generation property.
12 Within that, there is a car valve that does not
13 belong to us. It belongs to Commonwealth Edison.

14 Q. Okay. And then that little section
15 that's on the west side of the Des Plaines River,
16 that's also Will County property?

17 A. Yes, Midwest Generation property.

18 Q. Right, right. And so the red
19 hatched area that's everywhere else on this map,
20 what is that?

21 A. Not our property.

22 Q. Does that signify a zone of some
23 kind, or is that just a generic?

24 A. No, no. It's -- it's the search.

1 Q. Okay.

2 A. Sort of we searched for -- this
3 search is for our property, because I'm certain
4 that the Hanson Materials is to the south of us,
5 and that would be zoned industrial, too.

6 Q. Okay. So the zoning map for
7 Waukegan is on -- there it is. That's on slide
8 34. Let me know when you get there.

9 A. I'm there.

10 Q. So east of the area -- east of the
11 Waukegan power plant, there is a green strip. Am
12 I interpreting this correctly, between the power
13 plant and the lake?

14 A. Yes.

15 Q. What's that?

16 A. It is labeled a conservation -- I
17 cannot read that word. Forgive me.

18 Q. No. It's very small font.

19 A. But it's a -- in simple terms, it's
20 a wetland.

21 Q. Okay. And it's zoned for something
22 having to do with conservation?

23 A. Yeah. I can't see what the second
24 word is, though, to be honest. I left my glasses

1 at home.

2 Q. Could it be recreation? I honestly
3 can't read it either, so --

4 A. I can't speculate to what that says.
5 I cannot tell.

6 Q. Hold on just a second. Bear with
7 me.

8 Can I approach the witness? I
9 have a magnifying glass. It might help.

10 A. Yeah. I'm afraid it's a -- it's
11 blurry. So that's part of my -- I think part of
12 the problem, but thank you very much.

13 Q. You bet.

14 A. I cannot tell if that says
15 recreation. I will admit it could be recreation,
16 but I'm -- I actually am not certain what that
17 word is still.

18 Q. Okay.

19 A. It looks like it has too many
20 letters to be recreation to me.

21 Q. Okay. Fair enough.

22 Let's turn to the Powerton
23 zoning map, which is slide 20.

24 A. Give me a second.

1 Q. Sure. Take your time. Take your
2 time.

3 A. I got it.

4 Q. Okay. The area in green, darker
5 green, in particular, do you know what that zone
6 is from looking at this?

7 A. I would assume that means
8 conservation. Oh, sorry. Conservation. It's a,
9 C-O-N-S. C-O-N-S, zone that Midwest Generation
10 owns.

11 Q. Right.

12 A. And operates, for the most part,
13 with a lease to IDNR.

14 Q. Okay. Thank you.

15 And then over on the eastern
16 side of the map, there is the bright yellow small
17 area. It looks like it says Virginia Street.
18 What's that zoned as?

19 A. A residential area, and it's a very
20 small -- this map cuts it off, but it's a very
21 small residential area that's abutted by other
22 industry.

23 Q. Okay.

24 A. And I think Ameren owns a lot of

1 land over in that area.

2 Q. Okay. On the Powerton Lake that you
3 were just describing a second ago, that's --
4 Midwest Generation owns it, but did you say
5 Illinois Department of Natural Resources operates
6 a state park in the same area?

7 A. I did not say that.

8 Q. Oh, okay. I thought -- I'm sorry.
9 I misunderstood. I thought you said that Midwest
10 Generation allows the state to use it for --

11 A. I said that Midwest Generation
12 leases it to IDNR. That's what I said.

13 Q. That's right. Okay. Do you know
14 what IDNR does with it?

15 A. They stock it for fish. They
16 monitor it for fish. It's a fishing and water
17 foul hunting area.

18 Q. Okay.

19 A. But we -- we spend -- I -- the
20 operation part is -- I'm not clear on. We spend
21 substantial money on operating the lake out in the
22 recreation area.

23 Q. Okay.

24 A. So I think we are responsible for

1 maintaining berms, and so on and so forth.

2 Q. Okay. And this might seem like an
3 obvious question because it's a fish and wildlife
4 area, but is it open to the public?

5 A. Yes.

6 Q. Now, bear with me for a second. I
7 just want to make sure --

8 A. Oh, I'm sorry. Let me correct
9 myself just slightly. It's open to the public to
10 a point, and I can't quantify that, off the top of
11 my head. But our operations -- basically, we use
12 the -- and I do directions wrong, so forgive me.
13 We use the eastern portion of the lake for
14 operations, and DNR -- the recreational area is
15 the western portion.

16 Q. Okay.

17 A. It's less -- it's more than half of
18 the lake is recreation, though.

19 Q. Okay. Thank you.

20 How does the public access the
21 western side of the lake, do you know?

22 A. I don't know exactly where the
23 entrance is, but I think there is an entrance from
24 Manito Road, but it's somewhere. There -- I know

1 there is a boat dock somewhere on the western edge
2 and a gate that DNR opens and closes.

3 Q. Okay. Is the gate on Midwest
4 Generation property?

5 A. If it's -- if it's associated with
6 the lake, yeah, it is.

7 Q. Looking at the Joliet 29 zoning map
8 on slide 5. And I guess, if you can, look at the
9 slide 4 picture as well, because I have a question
10 sort of about both of these two things.

11 A. I have it.

12 Q. We have had testimony in this matter
13 about a sliver of land that is owned by someone
14 other than Midwest Generation along the northeast
15 area that might be -- I can't remember if it's the
16 Army Corp of Engineers or the state. Do you -- do
17 you know where that is?

18 A. I think you just -- I'm sorry. You
19 just described it. I'm not being facetious.

20 Q. I did describe it in general terms.
21 The reason I'm asking is because in the zoning
22 map, the zones go right to -- they appear to go
23 right to the edge of the river.

24 A. Yeah, because the -- just because we

1 don't own it, doesn't mean it's not an industrial
2 zoned area.

3 Q. Right. Sure. I guess -- you know,
4 I'm looking at the zoning map, and I see a bunch
5 of parcels, each with a different zoning number.

6 A. Uh-huh.

7 Q. I don't see the distinct parcel
8 along the edge of the river. I'm not saying it's
9 not there. I'm just curious about exactly where
10 it starts and stops. So I -- if it starts -- you
11 know, where is the eastern and the western extent
12 of that strip of land?

13 A. If you are looking at slide 4?

14 Q. Yeah.

15 A. You can see that it juts north.

16 Q. Yeah.

17 A. And towards the middle of the --
18 that area.

19 Q. Yeah.

20 A. And it's that sliver along the lake.
21 It's the easement -- so it may not show -- it may
22 be an easement.

23 Q. Okay.

24 A. But I don't think it is. I think

1 DNR -- we discovered this because DNR told us that
2 they owned it, and then we reviewed and found that
3 they do.

4 Q. Okay.

5 A. The state owns it. Not DNR, but the
6 State of Illinois owns that part, that piece of
7 land.

8 Q. Right. Okay. Thank you.

9 So just to clarify. I think you
10 just said this, but that easement or ownership
11 starts at the road that goes across the Brandon
12 Lock and Dam and goes west, and then it stops
13 where the -- where the property line jags down to
14 the south there?

15 MS. GALE: I would only object to
16 the extent that this is an approximation, but
17 there is an Exhibit 601 that is the survey that
18 shows the exact description that he is describing.

19 HEARING OFFICER HALLORAN: Do you
20 know that exhibit, Mr. Russ?

21 MR. RUSS: I don't have it in front
22 of me, but I believe you. So that answers the
23 question. Thank you.

24 Can I just have a second here?

1 HEARING OFFICER HALLORAN: Yes, you
2 may.

3 BY MR. RUSS:

4 Q. Okay. At some point you discussed a
5 prison, and I believe it was in the vicinity of
6 Powerton, but it may have been Joliet. Do you
7 recall that, Joliet?

8 A. No. It was Powerton.

9 Q. Powerton.

10 A. I know there is a prison in Joliet.
11 It's kind of famous, because it was in a Blues
12 Brothers movie, but the one I was referencing is
13 in Powerton.

14 Q. Okay.

15 A. Or Pekin. I'm sorry. In Pekin.

16 Q. In Pekin near Powerton?

17 A. Yes.

18 Q. Is that an industrial use?

19 A. I don't know how a prison is zoned.
20 It's a federal -- I -- the feds own it. I'm
21 pretty sure it's a federal prison, not a state
22 prison. So it's federal land.

23 Q. And then --

24 A. I'm sorry. I believe it to be

1 federal land. It could be state land.

2 Q. Now, just to be clear for the
3 record, who owned the Joliet plant before Midwest
4 Generation?

5 A. I know who operated it. I'm not
6 certain who owned it.

7 Q. Sure. Who operated it?

8 A. Commonwealth Edison.

9 Q. Okay. And do you -- were you
10 employed by Commonwealth Edison at any point?

11 A. No.

12 Q. Do you know what Commonwealth Edison
13 did at the property?

14 A. They produce electricity.

15 Q. And do you know what Commonwealth
16 Edison -- do you have any first-hand knowledge of
17 what Commonwealth Edison did with the coal ash
18 that it generated?

19 A. As I stated -- Joliet 29, as I
20 stated, most of it went to Lincoln Stone Quarry.

21 Q. And just to be clear on the record,
22 do you have personal knowledge of that from
23 Commonwealth Edison, or is this from the records
24 that you have reviewed and people you have talked

1 to?

2 A. Records I reviewed, people I talked
3 to, and, yeah, the amount of generation and the
4 amount of ash, I -- it went to Lincoln Stone
5 Quarry.

6 Q. Right. Okay. And at Powerton, when
7 Commonwealth -- did Commonwealth Edison operate
8 Powerton?

9 THE COURT REPORTER: Sorry? Was
10 there an answer?

11 MR. RUSS: Oh, I'm sorry. She
12 nodded.

13 THE WITNESS: I was -- I was -- but
14 I didn't answer. I was thinking.

15 BY MR. RUSS:

16 Q. Oh, I'm sorry. I thought you were
17 nodding yes. Okay.

18 A. You said did Common -- I'm sorry.
19 Repeat your question.

20 Q. Did Commonwealth Edison operate the
21 Powerton plant before Midwest Generation?

22 A. I believe they were the immediate --
23 that's why I was nodding. I was just -- I believe
24 they were the immediate -- immediately prior

1 operator.

2 Q. Okay. Same question. Do you have
3 any first-hand knowledge of what Commonwealth
4 Edison did with its ash?

5 A. Other than reviewing records,
6 talking with people, yeah. I do not. Well, yeah,
7 I do, because I have reviewed records, and I have
8 talked with people.

9 Q. Sure. And same question for
10 Waukegan.

11 Before Midwest Generation
12 operated the plant, who operated it?

13 A. Immediately before was Commonwealth
14 Edison.

15 Q. And do you have any first-hand
16 knowledge of what Commonwealth Edison did with the
17 ash that it generated?

18 A. From their recordkeeping, which they
19 were required to do and reviewing those records,
20 and from talking with people, yes.

21 Q. Okay. And then at Will County, same
22 question. Who operated the Will County plant
23 before Midwest Generation?

24 A. Commonwealth Edison.

1 **Q. And do you have any first-hand**
2 **knowledge of what Commonwealth Edison did with the**
3 **coal ash that it generated?**

4 A. From record reviews with records,
5 which they were required to keep and pass along,
6 and review of those records and talking -- talking
7 to people, I guess that is not necessarily
8 first-hand, but the records sort of put me in a
9 first-hand knowledge basis. So I guess that's
10 semantics, and I'm not intending to play
11 semantics, but --

12 MR. RUSS: I understand. That's
13 fine.

14 Could we have a five-minute
15 break to confer?

16 HEARING OFFICER HALLORAN: Yeah. We
17 will go off the record.

18 (Whereupon, a short break was
19 taken.)

20 HEARING OFFICER HALLORAN: We are on
21 the record. Go ahead, Mr. Russ.

22 BY MR. RUSS:

23 **Q. Okay. Ms. Shealey, were you at**
24 **Midwest Generation when the Bypass Basin at**

1 **Powerton was re-lined?**

2 A. I don't believe so, no. I would
3 have to -- well, I know I was not. I don't
4 remember exactly when it was re-lined.

5 Q. Okay. So the timeline for Powerton,
6 if you look at slide 27, I believe.

7 A. So -- I'm sorry.

8 Q. This might refresh your memory. Go
9 ahead.

10 A. Yeah, I was not at Midwest
11 Generation when the Bypass Basin was re-lined.

12 Q. And that happened in 2010, correct?

13 A. Correct.

14 Q. You testified about inspections of
15 the liner at the Bypass Basin at Powerton. Do you
16 remember that?

17 A. Not specifically.

18 Q. About ongoing inspections?

19 A. Of the ponds?

20 Q. Of the liner, visual inspections of
21 the liner at the Ash Bypass Basin?

22 A. Oh, okay, yes. To the extent it can
23 be seen, but I think I testified -- I don't recall
24 using the word "inspections of the liner." I

1 recall saying inspections of the ponds. Weekly
2 inspections of the ponds and annual inspections of
3 the ponds.

4 Q. I'm sorry. Maybe it was another
5 site, but I thought you were talking about if
6 there is a tear that someone sees, you replace it
7 with another piece of HDPE?

8 A. Correct.

9 Q. Okay.

10 A. That is true. I did state that.

11 Q. Okay. Now, in -- I believe in the
12 Ash Bypass Basin there's a warning layer; is that
13 right?

14 A. Today there is a warning layer, yes.

15 Q. Can you describe what that is?

16 A. Sand and limestone.

17 Q. And what's the purpose of a warning
18 layer?

19 A. To prevent an operator, a heavy
20 equipment machine operator -- excuse me -- from
21 damaging the liner when they are removing ash.

22 Q. So you can't see the liner below it;
23 is that right?

24 A. Below the warning layer, no, but you

1 can see the sides and up to the -- basically, the
2 warning layer only goes up for -- but so high. So
3 you can see the sides of the liners.

4 Q. Okay. Okay. Now, totally different
5 question. Actually, I'm going to ask the same
6 question about the Ash Surge Basin. Does that
7 also have a warning layer?

8 A. Yes.

9 Q. And can you see the liner below the
10 warning layer at the Ash Surge Basin?

11 A. No. Similarly, you can see the
12 sides of the liners -- the liners of the sides of
13 the ponds, but you can't see what's underneath the
14 warning layer.

15 Q. Okay.

16 A. Which does not receive any contact,
17 because the warning layer prohibits contact with
18 it.

19 Q. Okay. Now, a different question
20 entirely.

21 At the Will County station, you
22 mentioned an area where there was -- I'm trying to
23 remember the term you used, but a concrete pad
24 that was used for temporary coal ash placement.

1 **Where was that located?**

2 A. At the station behind the boiler
3 building.

4 **Q. Okay.**

5 A. It actually still exists. I'm
6 sorry. Just to be clear, it's clear of ash, but
7 the concrete pad still exists.

8 **Q. Okay. Thank you.**

9 **And then at Waukegan, you were**
10 **talking about a -- an area that was marked on a**
11 **map as alleged ash area, and now it's a parking**
12 **lot. Do you remember that area?**

13 A. The parking lot?

14 **Q. Yeah, I believe --**

15 A. It is the parking lot.

16 **Q. -- you were asked what's stored**
17 **there, and you said cars; is that right?**

18 A. Yes.

19 **Q. Do you know what's under the**
20 **asphalt?**

21 A. I always assume sand, but, no, I do
22 not.

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

24 A. Because of where Waukegan is, it's

1 mostly sand underneath everything.

2 Q. Right. Now, with the compliance
3 commitment agreements, there are terms in the CCAs
4 about the ponds being used for temporary storage;
5 is that right?

6 A. Yes.

7 Q. Are -- does Midwest Generation
8 intend to comply with those terms of the CCAs?

9 A. We have already complied with those
10 terms in the CCAs, which are agreements.

11 Q. And some of those ponds are going to
12 be closed in place; is that right?

13 A. That is our intent. That's what we
14 have applied for at several locations.

15 Q. And so then that wouldn't be
16 temporary storage anymore, right?

17 A. The CCAs were an agreement by
18 definition, compliance commitment agreement, and
19 the Agency accepted the actions and considered the
20 CCAs complete. Midwest Generation considered to
21 monitor groundwater under the CCA monitoring
22 programs, and those agreements were while the
23 stations were operating. Additionally,
24 regulations happened after those CCA -- CCAs were

1 signed. Federal CCR rules and state CCR rules
2 allow for ponds to be closed in place.

3 Q. Okay. So, just to make clear what
4 you are saying, the CCAs are no longer effective
5 once the plants stop burning coal?

6 MS. GALE: Objection, misstates
7 testimony.

8 HEARING OFFICER HALLORAN: Can you
9 rephrase, Mr. Russ?

10 BY MR. RUSS:

11 Q. Sure. Did the CCAs ever stop
12 being -- are they no -- are they still in effect
13 at all four plants?

14 A. I believe that the Agency considered
15 them completed within one year.

16 Q. Okay. So the terms of the CCAs no
17 longer apply?

18 MS. GALE: Objection. Misstates
19 testimony.

20 HEARING OFFICER HALLORAN: Can you
21 rephrase that, Mr. Russ?

22 MR. RUSS: Sure.

23 HEARING OFFICER HALLORAN: Thanks.

24

1 BY MR. RUSS:

2 Q. Let me try to parse what you were
3 saying about the terms.

4 So the temporary storage is what
5 I'm wondering about. That was a term in the CCA,
6 and I believe you said that doesn't -- that's not
7 applicable anymore, because the coal -- the plant
8 stopped operating?

9 A. I don't think that's what I said.

10 Q. Okay. Can you clarify what --

11 A. It -- I think the biggest reason
12 it's not applicable is that -- are the new
13 regulations that have been promulgated. Secondly,
14 they are not orders. They are agreements, and the
15 Agency considered them complete. They signed
16 the -- they returned the signed compliance
17 commitment agreements.

18 Q. Okay. So some of the ponds -- the
19 closure plan was originally to -- closure by
20 removal, and it's now -- your new plans or your
21 new proposals are to close them in place, right?

22 MS. GALE: Objection, vague.

23 HEARING OFFICER HALLORAN: Agreed.

24 Sustained.

1 BY MR. RUSS:

2 Q. Are there any -- are there any ponds
3 at Joliet plant that were originally -- have you
4 proposed to close any ponds at the Joliet plant by
5 removal and then changed the plan to close by
6 closure-in-place?

7 A. At Joliet 29, we proposed to close
8 by removal and repurposed the liner. So I think
9 we are still at closure by removal at Joliet 29.

10 Q. And at Powerton, were there any
11 ponds that were once planned to be closed by
12 removal and are now being planned to close in
13 place?

14 MS. GALE: Objection. Misstates
15 testimony about the plants for the Powerton ponds.

16 MR. RUSS: Just asking a question.

17 HEARING OFFICER HALLORAN: She can
18 answer if she is able.

19 BY THE WITNESS:

20 A. I'm not sure that I'm able, because
21 I'm more focused on our current plans for Powerton
22 Station.

23 So the Former Ash Basin is the
24 only basin at Powerton Station that we have

1 applied for closure -- we have applied for a
2 closure permit for. I believe that it's always
3 been an in-place closure, and, in fact, in
4 response to public comment, we changed our plan.
5 Our original plan, the FAB -- I'm sorry. I use
6 the term "FAB" -- Former Ash Basin. When we
7 went -- we originally planned to close -- the FAB
8 is bisected by a rail line.

9 We originally planned to close
10 both sections in place. I believe our application
11 to the Agency is to remove ash from the northern
12 portion and place it in the southern portion and
13 cap the southern portion in place. The other
14 basins at Powerton, I cannot tell you what the
15 closure plans are, off the top of my head. I'm
16 more focused on the retrofits of those other three
17 basins.

18 BY MR. RUSS:

19 **Q. Okay. At Waukegan, the West Ash**
20 **Pond, what's the current closure plan? I know you**
21 **already testified, but just to keep it clear on**
22 **the record.**

23 **A. I hope I get it straight, because**
24 **I'm confused which one. Closure-in-place.**

1 **Q. Okay. And was that -- was the**
2 **closure plan for the West Ash Pond ever closure by**
3 **removal?**

4 MS. GALE: I'm sorry. Was your
5 first question about what the plan was for the
6 West Ash Pond?

7 MR. RUSS: Yes.

8 MS. GALE: Objection,
9 mischaracterizes testimony for the West Ash Pond.

10 BY THE WITNESS:

11 A. I am sorry. I told you I do it
12 wrong every time. I get those confused.

13 The West Ash Pond is closure by
14 removal and repurposing of the liner.

15 BY MR. RUSS:

16 **Q. Okay. And the East Ash Pond, what's**
17 **the closure plan for the East Ash Pond?**

18 A. Thank you. That one is
19 closure-in-place.

20 **Q. Has Midwest Generation planned to**
21 **close that by removal at any point in the last**
22 **several years?**

23 A. Yeah. And I think we've changed the
24 plan three or four times. So, there are -- just

1 generally, we have changed plans several times
2 based on regulatory or -- regulatory requirements.

3 **Q. Okay. What regulatory requirements**
4 **have led you to change your closure plans?**

5 A. Federal or state CCR rules. As
6 those rules have morphed, we have chosen different
7 compliance plans, but both rules still allow for
8 closure-in-place or closure by removal. So
9 closure-in-place is an acceptable method under
10 both sets of regulations.

11 **Q. And at Will County -- I'll just run**
12 **through them quickly. I hope this is okay.**

13 **Starting with Pond 1N, do you**
14 **know what the closure plan is for Pond 1N?**

15 A. I'm -- oh, I'm sorry. I was going
16 to jump ahead. It is closure-in-place.

17 **Q. Has it ever been closure by removal?**

18 A. No. Will County has only been -- we
19 have only considered Will County's Pond 1N a
20 regulated unit for the past -- since Part 845 was
21 promulgated by -- the regulations under Part 845
22 were promulgated by the Board. I believe that
23 it's always been closure-in-place, but I could be
24 wrong, and it's been two years. That's a lot.

1 **Q. And Pond 1S, same question. What's**
2 **the current closure plan for Pond 1S?**

3 A. In place.

4 **Q. Has it ever been anything else, as**
5 **far as you are aware?**

6 A. Not that I -- well, I would -- I
7 can't say that I'm not aware. I can say I cannot
8 recall that it's been anything other than that.

9 **Q. Okay. And Pond 2S, what's the**
10 **current closure plan?**

11 A. In place.

12 **Q. Has Midwest Generation planned to**
13 **close that by removal at any point in the last ten**
14 **years?**

15 A. Yes.

16 **Q. Okay. So that closure plan changed.**
17 **Do you remember when it changed?**

18 A. I do not recall when it changed. I
19 would have to go back through documents. I could
20 be -- and I'm not hedging, but I could be on my
21 third or fourth iteration of closure plans, and
22 there are multiple units across our fleet.

23 **Q. And the Pond 3S at Will County,**
24 **what's the current closure plan for that?**

1 A. In place.

2 Q. And was that closure plan ever
3 closure by removal in the last ten years?

4 A. I believe so, but again, it could
5 have been changed several times. And I have to
6 say -- I'm so sorry -- with regard to Will County,
7 we just had their public meetings last week. We
8 will not submit those applications until
9 August 1st, or they are not due until August 1st.
10 We are evaluating.

11 Q. Okay. Now, can you just confirm for
12 the record -- I think you said this, but the
13 reason the closure plans changed at Will County
14 were state and federal -- state or federal
15 regulations; is that right?

16 A. Those are -- I'm sorry if I stated
17 that unequivocally. Those are among the reasons.

18 Q. Okay. Are there -- what are the
19 other reasons?

20 A. There could be an abundance of
21 reasons. I can't quantify them all.

22 Q. Okay. And, now, I have a couple
23 questions about employment. At Waukegan, was
24 there a reduction in employment when the plant

1 **stopped burning coal?**

2 A. Yes.

3 **Q. Do you know how many people?**

4 A. That -- I think there is an exhibit
5 with the population -- the employment in 2021. I
6 don't know how many people are employed today, but
7 I know it's less than that number.

8 **Q. Okay. And I believe you testified**
9 **that the plan for Waukegan is to turn it into a**
10 **battery storage site?**

11 A. Waukegan actually still operates two
12 EGUs, and, yes, we intend -- well, not to turn it
13 into a battery storage site. I would more
14 characterize it as install battery storage.

15 **Q. And the EGUs will continue to**
16 **operate as well?**

17 A. Until -- until 2030, I think is our
18 current plan, and that's because of our CEJA,
19 which I can't recall the acronym right now.

20 **Q. Okay. And I know it's in the**
21 **future. You don't know what the employment**
22 **numbers will look like when the EGUs stop burning**
23 **but the battery storage is still there, do you?**

24 A. No, I do not.

1 Q. And at Will County, was -- there was
2 a reduction in employment when that plant stopped
3 burning coal, I assume?

4 A. Yes, there was.

5 Q. And the plan for that site is to
6 install some battery storage, but you don't know
7 what the employment is going to look like down the
8 road once the battery storage is up and running?

9 A. I do not. I do know that those
10 battery storage projects will bring construction
11 jobs to Will County and same for Lake County.

12 Q. Do you know what the employment
13 numbers at Will County are right now?

14 A. I do not.

15 Q. And at Powerton -- I mean, at -- I'm
16 sorry -- Joliet, same question.

17 Employment dropped when they
18 stopped burning coal, I assume?

19 A. I think that is true, yes.

20 Q. And there are currently -- that
21 plant is currently burning gas?

22 A. It is.

23 Q. Do you know the employment numbers
24 now for Joliet?

1 A. I would suggest it's pretty close to
2 the number that was in the exhibit that was
3 referenced earlier.

4 **Q. Right.**

5 A. Plus or minus. But I would -- yeah.
6 It wouldn't be significantly less. It would -- it
7 could be more.

8 MR. RUSS: Okay. I only have a few
9 more questions, but I think I would prefer to wait
10 until tomorrow morning, if that's okay.

11 HEARING OFFICER HALLORAN: Well, you
12 know, I hate to bring Ms. Shealey back here for
13 ten minutes, but I think I stated earlier -- let's
14 go off the record for a minute.

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

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

19 Mr. Russ?

20 BY MR. RUSS:

21 **Q. I just have one more question.**

22 **Ms. Shealey, at the Powerton**
23 **site, are you aware of any instances of ash being**
24 **placed on the ground outside of the ash ponds?**

1 A. In its current iteration, no. I
2 think there are -- there are references to as such
3 in the Board order or in the previous testimony.

4 **Q. But not since you have started**
5 **working at Midwest Generation?**

6 A. No. I can't -- I was trying to
7 think. By on the ground, I would exclude -- I
8 cannot recall if Powerton has a concrete pad like
9 I described at Will County. I will presume it
10 does, but I -- I'm not sure that -- I would -- I
11 don't know if that's what you mean by on the
12 ground. If by on the concrete pad means on the
13 ground, yes, there probably is a concrete pad at
14 Powerton.

15 **Q. Okay. And then not on a concrete**
16 **pad, are there any places like that where ash is**
17 **placed on the ground at Powerton?**

18 A. No. It's all in surface
19 impoundments.

20 MR. RUSS: That's it. I'm done.

21 HEARING OFFICER HALLORAN: All
22 right. Thank you, Mr. Russ.

23 Ms. Gale, re-direct?

24

1 RE - DIRECT EXAMINATION

2 by Ms. Gale

3 Q. Just two questions.

4 Ms. Shealey, can you turn to
5 Exhibit 34, which is the NRT technical memorandum?

6 A. I got it.

7 Q. I want you to turn to the first
8 page, MWG13-15_23608.

9 A. There.

10 Q. And you see under "ranking
11 criteria", there is a Paragraph No. 1?

12 A. Uh-huh.

13 Q. And, Ms. Shealey, second sentence,
14 NRT states, "In particular, the Poz-O-Pac liner
15 systems were constructed more than 25 years ago,
16 and are reportedly in poor condition."

17 Ms. Shealey, as your
18 understanding of this document, what do you think
19 reportedly in poor condition means?

20 A. Somebody said something that was out
21 of turn, some -- who didn't know, and NRT took
22 them at their word for it. Because, again, when
23 the ponds were re-lined, the engineers have told
24 me, professional engineers have told me, they

1 reviewed the construction documents and
2 photographs. The Poz-O-Pac across the fleet was
3 in good condition.

4 Q. Thank you. Ms. Shealey, you were
5 asked about the closure plans for certain of the
6 CCR surface impoundments, and you were asked about
7 how those plans changed. Do you recall that?

8 A. Yes.

9 Q. Ms. Shealey, when the federal CCR
10 rule was first passed, how would you describe the
11 plans that were preliminary -- that were first
12 proposed in response to that rule?

13 MR. RUSS: Object, vague.

14 HEARING OFFICER HALLORAN: Could you
15 rephrase, Ms. Gale, please?

16 BY MS. GALE:

17 Q. Okay.

18 Ms. Shealey, when the federal
19 rule was first passed, and let's say you were
20 looking at the closure option for Will County Pond
21 2S. How would you describe the plan that was
22 first proposed by Midwest Generation pursuant to
23 that rule in 2015?

24 A. Yeah. 2015, yeah, particularly

1 since the date of closure at Will County -- I
2 cannot remember whether the closure date was April
3 of 2021 in 2015, or if that came -- that date was
4 established in 2018, but the 2015 plans were
5 preliminary. They were really far out in the
6 future. We intended to keep operating the ponds,
7 and so that was the first -- those were the first
8 blush at it, so that as we learned more, our plans
9 became refined.

10 And I would consider -- Will
11 County has not been submitted yet, but the final
12 closure plans are the ones that have been
13 submitted to the Agency for permitting in the
14 cases where they have been submitted.

15 BY MS. GALE:

16 **Q. And we use that example as Will**
17 **County 2S as an example, but is that analysis**
18 **similar for the other ponds that you were asked**
19 **about by Mr. Russ?**

20 A. Yeah, absolutely.

21 MS. GALE: Mr. Hearing Officer, we
22 have no further questions.

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

1 Mr. Russ?

2 MR. RUSS: One re-redirect or
3 re-cross.

4 R E - C R O S S E X A M I N A T I O N

5 by Mr. Russ

6 Q. When Ms. Gale was asking you about
7 the NRG -- NRT technical memorandum, Exhibit 34,
8 and the statement about the Poz-O-Pac liners being
9 reportedly in poor condition, I think you already
10 testified to this, but I just want to clarify for
11 the record.

12 You don't -- you didn't talk to
13 NRT about how they made that conclusion, right?

14 A. No, but it -- I can read. I'm
15 sorry. But the plain language implies that they
16 did not look at that. They talked to -- they
17 talked to people, and then they reported out that
18 the liners were in poor condition instead of doing
19 the real engineering work to determine whether the
20 liners were in good or bad condition.

21 MR. RUSS: Okay. That's good
22 enough. Thank you. We are done.

23 MS. GALE: Nothing further for
24 Ms. Shealey. Thank you very much.

1 HEARING OFFICER HALLORAN: All
2 right. And before we go off the record, I want to
3 acknowledge Vanessa Horton was here the whole day,
4 staff attorney with the Board, and I keep
5 forgetting that.

6 But we will adjourn to -- well,
7 until tomorrow, June 15th. We're off the record.
8 Thank you.

9 (END OF PROCEEDINGS.)

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1 I, KARI WIEDENHAUPT, do hereby certify that
2 the foregoing was reported by stenographic and
3 mechanical means, which matter was held on the
4 date, and at the time and place set out on the
5 title page hereof and that the foregoing
6 constitutes a true and accurate transcript of
7 same.

8 I further certify that I am not related to
9 any of the parties, nor am I an employee of or
10 related to any of the attorneys representing the
11 parties, and I have no financial interest in the
12 outcome of this matter.

13 I have hereunder subscribed my hand on the
14 ____ day of _____, 2023.

15

16

17

18

19

20

21 _____
KARI WIEDENHAUPT, CSR

22

23

24

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