

Exhibit

Y

Joppa Station March 2021 Sampling Data Above Section 845.600 GWPS

Illinois Environmental Protection Agency Response to Electric Energy's Petition for a Finding of Inapplicability, or in the Alternative, an Adjusted Standard for Joppa West Ash Pond

Illinois Environmental Protection Agency, Bureau of Water

Electronic Filing: Received, Clerk's Office 11/22/2021 **AS 2021-05**

Legend

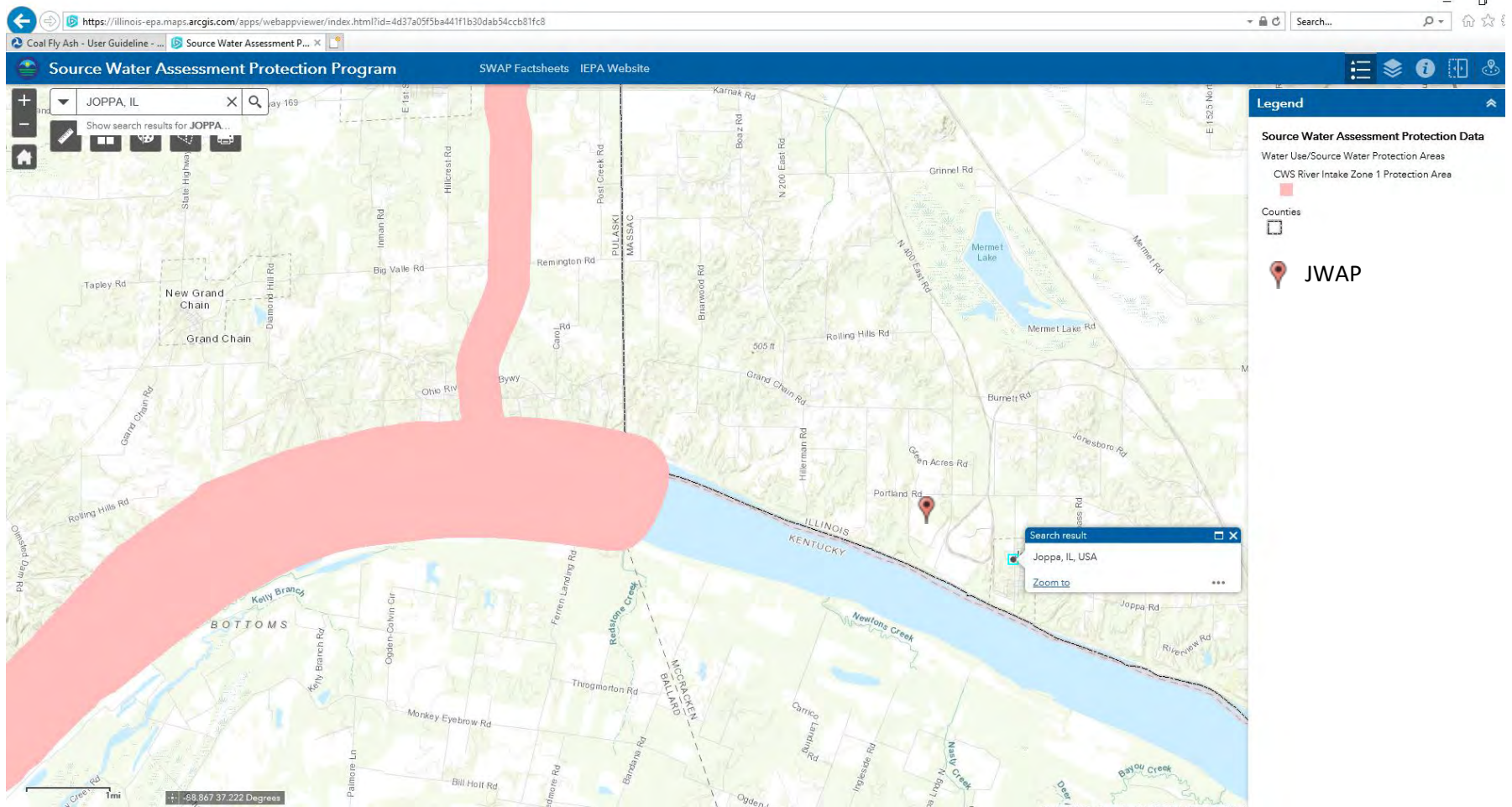
Well Location and Exceedance Summary

Note: See Petitioner's Exhibit 3 Tables for analytical data for each location. Data was compared to Section 845.600 GWPS. Outline of West Ash Pond is resized from Petitioner's Exhibit 3. Well and boring locations are estimated.



Exhibit

Z



Joppa Station comparison of distance to CWS River Intake Zone 1 Protection Area.

Accessed on November 16, 2021.

EXHIBIT

AA

U.S. Fish and Wildlife Service
Guidance on Developing and Implementing
an Indiana Bat Conservation Plan
(revised July 26, 2011)

Introduction

Various land development and land use activities can cause the loss, degradation, and fragmentation of Indiana bat habitat, and harm or death to Indiana bats due to these habitat impacts. Within its legal authorities under the federal Endangered Species Act (16 U.S.C. 1531-1543), the Fish and Wildlife Service is often in the position of providing technical assistance to project proponents to assist them in determining if potential adverse effects on Indiana bats are likely to occur and, if so, how they can avoid, minimize, and/or compensate for those adverse effects. In many cases, potential adverse effects can be avoided or greatly reduced by early project planning that incorporates the measures outlined below.

This guidance consolidates and memorializes technical advice currently provided on a project-by-project basis. Frequently, these project-by-project reviews include considerable explanation of Indiana bats needs and responses to habitat. To provide similar context for this document, Appendix A provides summary background information concerning Indiana bats.

Rationale for Plan Development

The unauthorized “take” of federally listed species is prohibited pursuant to section 9 of the Endangered Species Act. Where there is a risk of take occurring (*e.g.*, due to effects caused by the proposed loss of forest habitat), this guidance details specific measures that can be taken to avoid, minimize, and compensate for potential adverse effects on the Indiana bat, and significantly reduce the likelihood that take will occur. In some cases, application of this guidance may be sufficient to determine that effects on Indiana bats are insignificant or discountable. In other cases, this determination may be met through different or greater measures built into project design. In any instance where project design and Indiana Bat Conservation Plan implementation successfully avoid potential adverse effects on Indiana bats, it would preclude the need for take exemption or authorization, and project proponents would be able to forego the lengthy regulatory process associated with seeking “take” authorization under the Endangered Species Act.

The development and implementation of an Indiana Bat Conservation Plan does not itself confer incidental take exemption or authorization. Consequently, if implementation of a Plan is not sufficient to avoid potential adverse effects, incidental take would be exempted or authorized only via the issuance of biological opinions pursuant to Section 7 of the ESA, or incidental take permits pursuant to Section 10 of the ESA.

Plan Development and Implementation

To avoid or minimize potential adverse effects on Indiana bats, project proponents should develop and implement an Indiana Bat Conservation Plan when a project will affect forests, woodlots, forested fencerows, or trees within areas that are known Indiana bat habitat. Known Indiana bat habitat includes habitat located 1) within 5 miles of an Indiana bat female (reproductive or non-reproductive) or juvenile capture record without an identified maternity roost tree; 2) within 2.5

miles of an Indiana bat maternity roost or male capture record; and 3) within 10 miles of an Indiana bat hibernaculum¹. The Plan should consider the various sources and types of effects on Indiana bats due to project development, and incorporate measures to avoid, minimize, and offset potential effects². It is important to note that “project” includes all project features, not just the portion of the project prompting the submittal of a permit application (*e.g.*, to PADEP or the Corps). For example, a residential development would include all features of the development, including all forest or wooded areas to be affected or encroached upon by roads, utility lines, houses, driveways, septic areas, detention basins, stormwater basins, yards, lots, *etc.* An oil or gas project would include not only the well and well pad, but also the roads, staging areas, and oil and gas lines associated with the well or well field.

The Indiana Bat Conservation Plan becomes an integral part of the proposed project, and as such, is something the project proponent or applicant commits to implement. When total forest impacts due to the project are expected to exceed ten acres (within known habitat as defined above), send the Indiana Bat Conservation Plan to the Fish and Wildlife Service for review.³ The Fish and Wildlife Service will evaluate the proposed project, along with its Indiana Bat Conservation Plan, to determine whether or not the combined effects of the project and Plan will result in insignificant or discountable effects on the Indiana bat and its habitat, or whether further consultation and coordination would be necessary due to continued adverse impacts or the likelihood of take of Indiana bats.

Plan Content

Provide a detailed project description and map, including all project features. Include project area size (acres), acres and location of forest in the project area that would be removed and that would remain undisturbed, timing of forest removal, and any measures proposed to replace lost forest habitat or permanently protect forest habitat off-site for Indiana bats (see measures #6 and #10 below).

Provide a listing of all avoidance, minimization, and compensation measures that will be implemented, explaining how each measure will be implemented for the particular project.

¹ Radii applied to known habitat areas may be expanded based on radio-telemetry data or other information indicating that summer and/or swarming habitat extends farther than the referenced radius.

² This approach is sequential, meaning all reasonable efforts should be taken first to avoid adverse effects on Indiana bats and their habitat. Then, minimization measures should be implemented to the maximum extent practicable. After both avoidance and minimization measures have been fully integrated into project design, include measures to offset or partially offset any remaining adverse effects on Indiana bats and their habitat.

³ **Note that ALL tree removal within known Indiana bat habitat – regardless of the amount – is subject to the appropriate seasonal restriction (see measure #4).** We recommend that even projects with relatively small-scale forest impacts (*e.g.*, less than ten acres) consider developing and implementing an Indiana Bat Conservation Plan, because in doing so, the cumulative forest losses from a multitude of such projects would be reduced. Nevertheless, when total forest impacts are expected to be less than ten acres, the associated Indiana Bat Conservation Plan does not require Fish and Wildlife Service review and approval.

Avoidance and Minimization Measures

1. To minimize impacts on foraging and roosting Indiana bats, avoid or minimize impacts on forests, woodlots and forested fence rows. Configure projects to avoid and/or minimize impacts on suitable summer and swarming habitat, particularly in and around wetlands and riparian areas.
2. Retain at least a 50-foot forested buffer (but preferably a 100-150 foot buffer) on each side of streams and around wetlands.
3. Co-locate project features (*e.g.*, roads and utility lines) and cluster project features (*e.g.*, houses) to reduce forest clearing.
4. Seasonal restriction on tree cutting: Only cut trees when Indiana bats are hibernating or concentrated near their hibernacula. For project areas affecting Indiana bat swarming habitat (near hibernacula), only cut trees between November 15 and March 31. For project areas affecting Indiana bat summer habitat, only cut trees between October 15 and March 31.
5. Phase tree clearing over multiple years, if applicable to the project. Indicate the rate at which forest will be cleared, as well as the total duration of this effect (*e.g.*, 5 acres/year for 10 years).
6. Reforest temporarily cleared areas with tree species preferred by Indiana bats (see Appendix B). Ensure soils are segregated during earth disturbance activities and ensure soils are not compacted, to allow for successful tree establishment.
7. Avoid use of invasive, exotic plant species when re-foresting and when stabilizing soils.
8. Develop and implement stringent erosion and sedimentation controls to protect water quality and the Indiana bat prey base in streams and wetlands.
9. Develop and implement a pollution prevention plan to ensure hazardous materials (*e.g.*, oils, lubricants, *etc.*) do not contaminate soils, wetlands, or waterways.
10. For forest habitat loss resulting from the project that will not be addressed through reforestation under measure #6, provide for the short and long-term habitat needs of the Indiana bat by offsetting the effects of this loss. This can be done through the conservation of existing, currently unprotected forest habitat or use of an in-lieu fee program that conserves forest habitat for Indiana bats, as discussed in A and B, below.
 - A. Permanently conserve off-site forest suitable for Indiana bat foraging and roosting. This is best accomplished through a fee simple land transfer to a conservation entity (*e.g.*, Pennsylvania Game Commission, The Nature Conservancy, Western Pennsylvania Conservancy, *etc.*) willing and able to commit to holding and managing the land in perpetuity for Indiana bat conservation. This habitat should benefit the same Indiana bat population that is being potentially affected by the project, so it should be located within the swarming radius of the affected hibernating population or the summer habitat associated with the affected maternity colony. Because this loss of known habitat is immediate as well as long-term, conserving existing habitat at a 1:1 ratio would only partially offset the effects of the loss on Indiana bats. Consequently, for a Plan to fully offset loss of known habitat through this measure, it should conserve significantly more forest habitat than is proposed for removal (*e.g.*, 3:1 conservation ratio). Conserved

forest stands should have characteristics of suitable Indiana bat habitat (*e.g.*, a variety of tree species used by Indiana bats, various age/d.b.h. classes, appropriate canopy closure, adequate snags). If only a portion of the conserved land is currently forested, the remainder should be reforested with trees that are preferred by Indiana bats for roosting. Forest conservation will occur prior to forest removal associated with the proposed project.

- B. If forest habitat cannot be found and permanently protected prior to forest removal associated with the proposed project, an in-lieu-fee contribution to the Indiana Bat Conservation Fund (IBCF) would ensure that habitat will be conserved. Habitat conservation ratios would be the same as those discussed under 10A. For further information about offsetting habitat impacts through the IBCF, see the Pennsylvania Field Office's website (http://www.fws.gov/northeast/pafo/endangered_species.html).

APPENDIX A

Indiana bat – Background and Overview

The Indiana bat is listed as “endangered” under the federal Endangered Species Act. It is a migratory species that hibernates in caves and mines during the winter. During the summer months, Indiana bats use a variety of forest habitats for foraging, roosting, and raising their young. Summer habitat may range from a few miles to over 300 miles from their hibernacula. Potential summer habitat occurs throughout Pennsylvania, while winter habitat coincides with geographic areas having natural cave systems, abandoned coal mines, or abandoned limestone mines. Both males and females return to hibernacula in late summer or early fall to mate and store up fat reserves for hibernation, during which time they forage and roost in forest habitat near their hibernacula (swarming habitat). By mid-November, male and female Indiana bats have entered hibernation. They typically emerge in April, at which time they again migrate to summer habitat.

Reproductive females form maternity colonies (typically of 50-100 bats) and give birth to a single offspring annually. Their colonial roosting behavior is thought to provide thermoregulatory benefits that increase survival and reproductive success. Males and non-reproductive females tend to remain solitary during the summer. Summering Indiana bats (males and females) roost in trees in riparian, bottomland, and upland forests, and they forage in the same types of habitat. Maternity roost trees generally have exfoliating bark which allows the bats to roost between the bark and bole of the tree. Cavities and crevices in trees also may be used for roosting.

The primary threats to Indiana bats in Pennsylvania are white-nose syndrome, and habitat losses due to a wide variety of land development and land use practices that remove forest. White-nose syndrome is causing significant mortality at numerous bat hibernacula, with Indiana bat mortality rates exceeding 60%. At the same time, forest habitat losses occur due to coal mining, wind power development, oil and gas development, commercial and residential development, and various forestry practices.

Forest habitat loss is of particular concern when it occurs in occupied swarming or summer habitat, because bats may be killed or injured when trees are felled. However, habitat loss may have adverse effects on Indiana bats even when they are not present at the time of tree removal. Indiana bats depend on swarming habitat in the vicinity of their hibernacula for foraging and roosting. The presence of these forests and their insect populations is essential to ensuring Indiana bats store up sufficient fat reserves before entering hibernation, so they are able to survive until the spring migration.

Indiana bats also depend upon and exhibit fidelity to their summer habitat, returning to the same foraging and roosting areas each year. Loss of summer habitat forces all displaced bats (including Indiana bats) to find other suitable habitat, and this may result in reduced survival and reproduction. It is not known how long or how far female Indiana bats will search to find new roosting habitat if their traditional roost habitat is lost or degraded. If they are required to search for new roosting habitat in the spring, it is assumed that this effort places additional stress on pregnant females at a time when fat reserves are low or depleted and they are already stressed from the energy demands of migration and pregnancy. It is not known how long it takes for the colony to attain the same level of roosting cohesiveness that it experienced prior to the loss of a primary roost tree, but that roosting cohesiveness is critical to survival and reproductive success. Until the bats from the colony locate another desirable primary roost tree and reunite, it is likely that individual members of the colony will be subject to increased stress resulting from 1) having to search for a replacement primary roost tree(s); 2) having to roost in alternate trees that are less effective in meeting thermoregulatory needs; and 3) having to roost singly, rather than together, which decreases the likelihood of meeting thermoregulatory needs, thereby reducing reproductive success.

APPENDIX B

Preferred Tree Species

Planting plans should include at least six of the tree species listed below, one of which must be shagbark hickory. To promote diversity, do not include more than 15 percent of any one tree species in planting plans.

<i>Acer rubrum</i>	red maple
<i>Acer saccharum</i>	sugar maple
<i>Carya cordiformis</i>	bitternut hickory
<i>Carya glabra</i>	pignut hickory
<i>Carya laciniosa</i>	shellbark hickory
<i>Carya ovata</i>	shagbark hickory
<i>Carya tomentosa</i>	mockernut hickory
<i>Fraxinus americana</i>	white ash
<i>Fraxinus nigra</i>	black ash
<i>Fraxinus pennsylvanica</i>	green ash
<i>Platanus occidentalis</i>	sycamore
<i>Populus deltoides</i>	eastern cottonwood
<i>Quercus alba</i>	white oak
<i>Quercus coccinea</i>	scarlet oak
<i>Quercus prinus</i>	chestnut oak
<i>Quercus rubra</i>	northern red oak
<i>Quercus velutina</i>	black oak
<i>Robinia pseudoacacia</i>	black locust
<i>Sassafras albidum</i>	sassafras
<i>Ulmus americana</i>	American elm
<i>Ulmus rubra</i>	slippery elm