

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:

ILLINOIS POWER GENERATING
COMPANY

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 2024-043

(Petition for review – Alternative
Source Demonstration)

NOTICE OF FILING

To:

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PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the attached **MOTION TO SUPPLEMENT RECORD ON APPEAL**, along with a certificate of appeal, copies of which are herewith served upon you.

Dated: July 1, 2024

Respectfully submitted,

/s/ Samuel A. Rasche

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*Attorney for Illinois Power Generating
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CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 1st Day of July, 2024:

I have electronically served true and correct copies of this Notice of Filing, Certificate of Service, and the attached MOTION TO SUPPLEMENT RECORD ON APPEAL, consisting of 88 pages, and an Appendix consisting of 5,882 pages, by electronically filing with the Clerk of the Illinois Pollution Control Board and by e-mail upon the following persons:

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The e-mail transmission took place before 5:00 p.m.

/s/ Samuel A. Rasche

Samuel A. Rasche

Dated: July 1, 2024

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MOTION TO SUPPLEMENT RECORD ON APPEAL

Petitioner Illinois Power Generating Company (“IPGC” or “Petitioner”), by and through its counsel, ArentFox Schiff, LLP, and in accordance with 35 Ill. Admin. Code 101.500 and 35 Ill. Admin. Code 105.212, respectfully moves that the Board supplement the Record on Appeal in this proceeding with certain documents that the Illinois Environmental Protection Agency (“IEPA” or the “Agency” or “Respondent”) did or should have relied upon in reaching its decision regarding whether or not to concur with IPGC’s Alternative Source Demonstration (“ASD”) for the Newton Power Plant (“Newton”) Primary Ash Pond (“PAP”). In support of its motion, IPGC states as follows:

I. Introduction

1. For the Board to make an informed decision in this dispute, it requires a full, fair, and accurate Record that includes, “the application, the correspondence with the applicant, and the denial . . . [and] any facts material and relevant to the Agency's decision, which existed at the time of the

decision.” *Fritz Enterprises Inc. v. IEPA*, PCB 86-76 (Sept. 11, 1986), slip op. at 3, citing *Land and Lakes Company v. IEPA and White Fence Farm, Inc.*, 47 PCB 019 (May 13, 1982). The Agency Record filed in this case is partial, selective, and omits significant relevant material that was before IEPA as it decided whether to concur with IPGC’s ASD. In the Record, IEPA included some of the documents cited to in IPGC’s submittals to IEPA in support of the ASD, but not all. Moreover, IEPA independently and selectively located scientific literature and federal guidance to include in the Record, while ignoring and omitting the scientific literature and federal guidance IPGC referenced in IPGC’s submittals to IEPA in support of the ASD. This partial Record reflects an incomplete and biased view of the universe of information available to Respondent. IEPA may not cherry pick only those documents which support its ultimate conclusion, and fairness dictates that the Record be expanded to include *all* material facts.

II. Background

2. On October 6, 2023, IPGC submitted an ASD for the Newton PAP (the “Newton ASD”) to IEPA. The Newton ASD included references to scientific literature and to documents regarding Newton and the Newton PAP previously submitted by IPGC to IEPA. (R001618).

3. On November 3, 2023, within the written comment period provided for by 35 Ill. Admin. Code § 845.650(e)(3), IPGC submitted a comment letter (the “Comment Letter”) to IEPA containing additional information supporting the Newton ASD, in response to discussions and other communications between IEPA and IPGC. (R001787-R001945). The Comment Letter contained references to additional scientific literature, as well as guidance documents from the United States Environmental Protection Agency (“USEPA”) in support of the ASD. (R001941).

4. On November 7, 2023, IEPA issued a non-concurrence for the Newton ASD. IPGC filed its petition for review of IEPA’s non-concurrence on December 15, 2023.

5. On March 26, 2024, pursuant to 35 Ill. Admin. Code §§ 105.116 and 105.212, Respondent filed its Record on Appeal in this matter, along with an Index of Record and Certification of Record.

6. The Record includes a few of the references included in the Newton ASD and Comment Letter (particularly a copy of IPGC's October 25, 2021 Operating Permit Application for the Newton PAP and corresponding attachments, including the Groundwater Monitoring Plan and Hydrogeologic Site Characterization (R000564-R001588), while excluding the other documents referenced in those submittals. The Record also includes several documents that IEPA claims to have reviewed and considered, that were not referenced in IPGC's submittals or IEPA's denial, but that IEPA pulled independently and included in the Record. These items include, in part, scientific literature and USEPA guidance documents that IEPA chose to independently pull in its review of the Newton ASD (e.g., R000002-R000421, R001589-R001604), information and correspondence IEPA chose to include regarding an ASD for another site (e.g. R001651-R001754), and information and correspondence IEPA chose to include regarding an adjusted standard proceeding related to another site (e.g. R001775-R001788).

7. On May 28, 2024, Petitioner conducted depositions of two IEPA employees primarily responsible for reviewing the Newton ASD and preparing IEPA's nonconurrence.¹ Through these depositions, Petitioner became aware of specific documents relied upon by IEPA in its final decision, as well as additional documents that were available to IEPA during its review of the Newton ASD.

8. IEPA admitted to reviewing some but not all of the documents referenced in the Newton ASD and Comment letter. Deposition of Heather Mullenax ("Mullenax Dep.") at 74-78

¹ Relevant excerpts from the deposition transcripts are attached as Exhibit A.

(May 28, 2024); Deposition of Lauren Hunt (“Hunt Dep.”) at 127-130 (May 28, 2024). IEPA admitted to having access to USEPA guidance documents and rulemakings. *See* Hunt Dep. at 60, 105. IEPA admitted to having reviewed certain USEPA guidance documents and rulemakings related to CCR characterization but not considering them in connection with the Newton ASD. Hunt Dep. at 104, 110, 129.

9. IPGC seeks to supplement the Record with documents cited in but not included in the Record that IEPA relied upon or should have relied upon in reviewing the Newton ASD submittal; USEPA guidance and rulemaking documents to which IEPA had access and should have relied upon in reviewing the Newton ASD submittal; and documents IEPA stated it relied upon in issuing its denial of the Newton ASD submittal but that were not included in the Record.

III. Motion to Supplement the Record

10. 35 Ill. Admin. Code § 105.212(a) requires that “the Agency must file its entire Agency record of decision with the Clerk in accordance with Section 105.116.” The Record must include:

- 1) Any permit application or other request that resulted in the Agency’s final decision;
- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The . . . Agency final decision;
- 4) The Agency public hearing record of any Agency public hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

35 Ill. Adm. Code § 105.212(b).

11. The Board has held that the Record on appeal must include “all documents that the Agency either relied on or ‘reasonably should have relied on.’” *KCBX Terminals Company v.*

IEPA, PCB 14-110 (April 17, 2014), slip op. at 12. “If there was information in the Agency’s possession upon which it actually or reasonably should have relied, the applicant may submit such information to the Board for the Board’s consideration.” *BFI Waste Systems of North America, LLC v. IEPA*, PCB 24-29 (May 16, 2024), slip op. at 4, citing *Ameren Energy Resources Generating Company v. IEPA*, PCB 14-41 (March 20, 2014), slip op. at 9; see also, *Fritz Enterprises Inc. v. IEPA*, PCB 86-76 (Sept. 11, 1986), slip op. at 3, citing *Land and Lakes Company v. IEPA and White Fence Farm, Inc.*, 47 PCB 019 (May 13, 1982) (noting “that (in addition to the application, the correspondence with the applicant, and the denial) the record is also to include any facts material and relevant to the agency’s decision, which existed at the time of the decision”) (internal quotations omitted). The Board regularly allows the Record to be supplemented with relevant documents that existed prior to the Agency making its final decision on an application, even when the Agency did not necessarily consult those materials. See, e.g., *White & Brewer Trucking, Inc. v. IEPA*, PCB 96-250, slip op. at 4 (Mar. 20, 1997) (regulations and draft instructions referenced in letter included in the Record must also be included in the Record); *Waste Management, Inc. v. IEPA*, PCB 84-45, slip op. at 61, 68 (Oct. 1, 1984) (data in the Agency’s possession but overlooked by the Agency should be included in the Record); *Joliet Sand and Gravel Company v. IEPA*, PCB 86-159, slip op. at 6 (Feb. 5, 1987) (prior permits and related materials referenced in permit application should be included in the Record); *KCBX*, PCB14-110 (April 17, 2014).

12. The Record on Appeal, as well as facts uncovered through discovery, indicate that there are several documents which were before IEPA during its review of the Newton ASD and upon which IEPA did or should have relied in reaching its final decision that should be made part of the Record, including (A) IPGC prior submittals to IEPA referenced in the Newton ASD and Comment Letter; (B) scientific literature referenced in the Newton ASD and Comment Letter; (C) USEPA guidance referenced in the Comment Letter; (D) USEPA documents regarding the use of porewater

data (a type of data submitted in support of the Newton ASD submittal) reviewed by and/or available to IEPA prior to rendering its decision on the ASD; and (E) chapters from USEPA SW-846 guidance (referenced in IEPA's nonconcurrency letter and noted in deposition as a resource relied upon by the Agency in its review of the Newton ASD).

A. IPGC Prior Submittals to IEPA cited to in the Record

13. The Newton ASD relied upon and included references to several documents previously submitted to IEPA by IPGC or its predecessor regarding Newton and the PAP. (R001618). These documents were necessarily within IEPA's possession when it reviewed the Newton ASD submittal. The Comment Letter further cited to documents previously submitted to IEPA by IPGC. (R001941). These documents were relied upon and referenced as evidence in the Newton ASD and Comment Letter, so they are also plainly relevant to IEPA's review of the Newton ASD. *Id.* Surprisingly, IEPA noted that it selectively reviewed and relied upon certain of these documents when considering the Newton ASD. Mullenax Dep. at 75, 77 (stating that Ms. Mullenax reviewed the documents or portions of the documents attached as Appendices 3 and 19, as well as the Newton PAP operating permit application and attachments the Agency chose to include in the Record); Hunt Dep. at 100. IEPA did not review or rely upon all of these documents, nor did IEPA explain why it chose to exclude from its review and the Record certain of these documents but not others.

14. The inclusion of documents referenced in the Newton ASD in the Record should not be selective. Allowing the Agency to engage in selectivity necessarily results in an incomplete Record that is prejudicial to Petitioner. To the extent IEPA did not consider one or more of these documents in its review, it should have, given that they serve as references supporting the statements and conclusions included in the Newton ASD. IEPA asserts it could not concur with the Newton ASD due to "data gaps," and these documents provide the full scope

and context of data available to IEPA during its review. Without them, the Record is not complete and the Board cannot make a fully informed decision. IPGC clearly referenced each of these documents as evidence in support of the Newton ASD submittal and IEPA had each of these documents in its possession when making a decision regarding the Newton ASD submittal. Accordingly, these documents should be included in the Record on Appeal. IPGC respectfully requests that the Record be supplemented to include the following documents that were submitted IEPA, attached as Appendices 1-4:

- 1) HDR, Illinois Power Generating Company; Primary Ash Pond Construction Permit Application (July 28, 2022)²
- 2) Natural Resource Technology, an OBG Company (NRT/OBG), 2017. Hydrogeologic Monitoring Plan, Newton Primary Ash Pond – CCR Unit ID 501, Newton Landfill 2 – CCR Unit ID 502, Newton Power Station, Canton, Illinois, Illinois Power Generating Company. October 17, 2017.³
- 3) Ramboll, 35 I.A.C. § 845.610(B)(3)(D) Groundwater Monitoring Data and Detected Exceedances; Quarter 2 2023; Primary Ash Pond, Newton Power Plant, Newton Illinois (August 7, 2023).⁴
- 4) Rapps Engineering and Applied Science (Rapps), 1997. Hydrogeologic Investigation and Groundwater Monitoring, CIPS – Newton Power Station Landfill, Jasper County, Illinois, in Newton Power Station Landfill, Application for Landfill Permit.⁵

² This is the construction permit for the Newton PAP submitted to the Agency in 2022. Portions of this document were cited to in the Newton ASD (R001618), and the entire document was included as a reference in the Comment Letter (R001941).

³ Portions of this document were included as attachments to the Comment Letter (R001863-R001920) and the entire document is part of IPGC's public federal CCR record as an attachment to IPGC's 2020 Newton Power Station Revised Alternative Closure Demonstration.

⁴ This is the underlying groundwater monitoring data submitted to IEPA for which the Newton ASD was submitted.

⁵ Portions of this document were included as attachments to the Comment Letter (R001921-R001929) and the entire document was submitted to IEPA in 1997.

B. Scientific Literature cited to in the Record

15. The Newton ASD also cited to scientific literature as evidence in support of the ASD. (R001618-R001619). Again, references included in the Newton ASD should not selectively be a part of the Record.

16. The Agency admitted that it had “heard” of and even discussed certain of the scientific literature referenced in the Newton ASD and Comment Letter when reviewing the ASD, but did not consider or include these documents as part of the Record. Mullenax Dep. at 75, 78 (noting Ms. Mullenax had “heard [of]” but not reviewed Appendix 10 and that the Agency discussed but did not review Appendix 15). Notably, the Agency did consider certain scientific literature when reviewing the Newton ASD. Mullenax Dep. at 79-80 (noting that Ms. Mullenax reviewed and considered certain USEPA porewater guidance and a geochemistry textbook); Hunt Dep. at 103-104. However, rather than review and evaluate the resources provided in the Newton ASD, the Agency pulled *different* documents of its own accord from reference documents and other publicly available resources. *Id.* IEPA included these documents, that it independently pulled, in the Record. (R000002-R000421). Meanwhile, IEPA chose not to consider and include in the Record all of the scientific literature IPGC relied upon in support of the Newton ASD. Allowing IEPA to include scientific literature of its choice in the Record while excluding the scientific literature specifically referenced in Petitioner’s submittals in support of its ASD creates a prejudicial and biased Record. For the Board to reach a fully informed and fair decision, IEPA cannot include only its favored sources of information while erasing equally relevant sources provided by IPGC.

17. These documents were available to IEPA during its review of the Newton ASD and IEPA reasonably should have considered these documents when reaching its final decision. To the extent any of these referenced documents were not already in IEPA's physical possession, they were easily accessible through publicly available resources and/or from IPGC.⁶ The scope of the Agency's review should have included consideration of the scientific literature specifically referenced as supporting evidence in the Newton ASD report. IPGC respectfully requests that the Record be supplemented to include the following documents, attached as Appendices 5-13:

- 5) Cartwright, K., 1970. Groundwater discharge in the Illinois Basin as suggested by temperature anomalies. *Water Resources Research* 6, No. 3: 912-918.
- 6) Kelley, Walton R., Samuel V. Panno, and Keith Hackley, 2012. *The Sources, distribution, and Trends of Chloride in the Waters of Illinois*. Prairie Research Institute. University of Illinois at Urbana-Champaign. March 2012.
- 7) Lineback, J., 1979. *Quaternary Deposits of Illinois: Illinois State Geological Survey map, scale 1:500,000*.
- 8) Mehnert, Edward, Craig R. Gendron, and Ross D. Brower, 1990. *Investigation of the Hydraulic Effects of Deep-Well Injection of Industrial Wastes*. Champaign, Illinois: Illinois State Geological Survey.
- 9) Panno, S.V., and K.C. Hackley, 2010. *Geologic influences on water quality*. In *Geology of Illinois*, ed. D.R. Kolata and C.K. Nimz, 337-350. Champaign, Illinois: Illinois State Geological Survey.
- 10) Panno, S.V., Askari, Z., Kelly, W.R., Parris, T.M. and Hackley, K.C., 2018. *Recharge and Groundwater Flow Within an Intracratonic Basin, Midwestern United States*. *Groundwater*, 56: 32-45.
- 11) Siegel, D.I., 1989. *Geochemistry of the Cambrian-Ordovician Aquifer System in the Northern Midwest*, U.S. Geological Survey Professional Paper 1405-D, 76p.

⁶ In fact, IEPA served requests to admit to IPGC in this matter related to certain of these documents, indicating they had access to them and likely considered them in connection with their nonconurrence decision. Exhibit B, Respondent's Requests to Admit, PCB 24-43 (May 16, 2024) (asking about the documents attached as Appendices 10, 15, 16, 17, & 18, referenced in the Newton ASD but not included by Respondent in the Record).

- 12) Willman, H.B., J.C. Frye, J.A. Simon, K.E. Clegg, D.H. Swann, E. Atherton, C. Collinson, J.A. Lineback, T.C. Buschbach, and H.B. Willman, 1967. Geologic Map of Illinois: Illinois State Geological Survey map, scale 1:500,000.
- 13) Willman, H.B., E. Atherton, T.C. Buschbach, C. Collinson, J.C. Frye, M.E. Hopkins, J.A. Lineback, and J.A. Simon, 1975. Handbook of Illinois Stratigraphy: Illinois State Geological Survey, Bulletin 95, 261 p.

18. For similar reasons, the Record should be supplemented with the documents referenced in IPGC's Comment Letter. In response to discussions with IEPA during its review of the Newton ASD, IPGC's Comment Letter provided citations to additional scientific literature for the Agency's consideration. (R001941). These documents provided additional support for the Newton ASD. Moreover, these documents were provided in direct response to questions and comments raised by the Agency during its review period. (R001938). These documents were therefore before IEPA during its review of the Newton ASD and are plainly relevant, and IEPA reasonably should have considered these documents when reaching its final decision.

19. Again, to the extent any of these referenced documents were not already in IEPA's physical possession, they were easily accessible through publicly available resources and/or from IPGC. IPGC respectfully requests that the Record be supplemented to include the following documents, attached as Appendices 14-18:

- 14) Interstate Technology Regulatory Council (ITRC), 2007. Technical and Regulatory Guidance Vapor Intrusion Pathway: A Practical Guide. January 2007.
- 15) Electric Power Research Institute (EPRI), 2022. Evaluation and Comparison of Leach Test and Porewater Variability for Multiple Coal Combustion Product Management Units. EPRI, Palo Alto, CA: 2022. 3002024214.
- 16) Electric Power Research Institute (EPRI), 2021. Leaching, Geotechnical, and Hydrologic Characterization of Coal Combustion Products from an Active Coal Ash Management Unit: Plant 42197. EPRI, Palo Alto, CA: 2021. 3002018780.

17) Electric Power Research Institute (EPRI), 2020. Leaching, Geotechnical, and Hydrologic Characterization of Coal Combustion Products from a Closed Coal Ash Impoundment: Capped Unit. EPRI, Palo Alto, CA: 2020. 3002017363.

18) Electric Power Research Institute (EPRI), 2017. Guidelines for Development of Alternative Source Demonstrations at Coal Combustion Residual Sites. EPRI, Palo Alto, CA: 2017. 3002010920.

C. USEPA Guidance cited to in the Record

20. The Comment Letter also provided citations to USEPA guidance documents regarding waste characterization and assessment. (R001941). These guidance documents provided further support for the evidence utilized by the Newton ASD and to demonstrate why the additional evidence requested by IEPA during its pre-decision communications with IPGC was inappropriate or unnecessary. *See* Comment Letter, (R001938-R001940). These documents were before IEPA during its review of the Newton ASD, and IEPA reasonably should have considered these documents when reaching its final decision. As noted above, these documents were referenced in the Comment Letter in response to specific questions and comments raised by the Agency regarding the waste characterization and assessment done for the Newton ASD submittal.

21. As IEPA noted, it regularly reviews, utilizes and has access to USEPA guidance documents. *See* Hunt Dep. at 60, 104-105. An Agency witness admitted to reviewing at least one of the USEPA guidance documents cited in the Comment Letter and included here as Appendix 19. Mullenax Dep. at 77. In this case, IEPA also independently searched for, pulled and reviewed other USEPA documents in its review of the Newton ASD submittal (see, e.g., R001589-R001604). Inexplicably, IEPA chose to largely ignore the USEPA guidance provided by IPGC during the Agency's review period and to not include any of these materials in the Record. These documents should have been considered by the Agency, particularly in light of the

Agency's admission to independently searching for and reviewing scientific literature and USEPA guidance and should be part of the Record. *See* Hunt Dep. at 59-60. IEPA admitted to reviewing at least one of these documents, had access to all of the documents, and, given that they are cited in the Comment Letter, all are plainly relevant to the Agency's consideration of IPGC's ASD submittal. Allowing IEPA to cherry pick the USEPA guidance in the Record, while excluding the USEPA guidance referenced in Petitioner's Comment Letter, again, results in a biased and prejudicial Record. IPGC respectfully requests that the Record be supplemented to include the following documents, attached as Appendices 19-22:

- 19) United States Environmental Protection Agency (USEPA), 2019. Leaching Environmental Assessment Framework (LEAF) How-To Guide. SW-846 Update VII. Revision 1. May.
- 20) United States Environmental Protection Agency (USEPA), 2016. Weight of Evidence in Ecological Assessment. EPA/100/R-16/001. December.
- 21) United States Environmental Protection Agency (USEPA), 2014. Leaching Test Relationships, Laboratory-to-Field Comparisons and Recommendations for Leaching Evaluation using the Leaching Environmental Assessment Framework. EPA 600/R-14/061 September.
- 22) United States Environmental Protection Agency (USEPA), 1999. Use of Monitoring Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites. OSWER Directive Number 9200.4-17P.

D. USEPA documents regarding the use of porewater data

22. During the May 28, 2024, depositions, IEPA employees testified that IEPA independently consulted USEPA guidance documents to determine whether it would accept porewater sampling as a method of source characterization for ASDs. Mullenax Dep. at 26-27 (stating that IEPA consulted USEPA porewater sampling guidance to determine it "could not accept porewater"); Hunt Dep. at 47-49 (noting that the IEPA team consulted USEPA guidance because it was "not as familiar with pore water"). However, IEPA failed to include in the Record

relevant USEPA documents (attached as appendices 23-25) specifically addressing the use of porewater data for characterizing coal combustion residuals (CCR), the waste at issue in the Newton ASD. Mullenax Dep. at 82-92; Hunt Dep. at 103-116.

23. These documents are part of the public Record for the federal CCR rules and include discussion regarding the use of porewater sampling to conduct CCR surface impoundment characterization. Hunt Dep. at 114-116; Appendix 25. IPGC provided porewater sampling data in support of the Newton ASD submittal. (R001635-R001639). The method by which the PAP was characterized is an issue raised by IEPA in its nonconurrence letter and is relevant to this proceeding. *See e.g.*, R001965; Hunt Dep. at 100, 113-114. Moreover, IEPA admitted to lacking experience with the porewater characterization utilized by the Newton ASD and requiring outside guidance from USEPA. *See* Hunt Dep. at 47, 60-61, 103-116. IEPA further acknowledges that the federal CCR rules form the basis for the Illinois CCR rules governing IPGC's ASD submittal. *See* Hunt Dep. at 110-112.

24. Confusingly, the Agency chose not to consult or include in the Record any documents relating to the federal CCR rule. A reasonable review of the Newton ASD would have included a review of these documents, and as such they should be included in the Record. Moreover, as explained above, IEPA independently searched for and included in the Record *different* USEPA guidance regarding porewater and leach testing. (R000033-R000152). IPGC is entitled to "challenge the reasons given by the Agency for [the denial]" and to provide additional information to "test the validity of the information (relied upon by the agency)." *Weeke Oil Co. v. IEPA*, PCB 10-1, slip op. at 2 (May 20, 2010), *quoting Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738 (5th Dist. 1987). The below documents are necessary for that challenge, including to show the lack of relevance of the documents IEPA chose to include in the Record.

25. Members of the IEPA review team were aware of these documents, in some instances had reviewed these documents before, and admitted to “indirectly” relying upon certain of these documents in their review of IPGC’s ASD submittal. Hunt Dep. at 103-104. Fairness dictates that they be included in the Record as well. IPGC respectfully requests that the Record be supplemented to include the following documents, attached as Appendices 23-25:

23) USEPA, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule, 83 Fed. Reg. 11584 (Mar. 15, 2018) (Deposition Exhibit 15)

24) USEPA, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities, Final Rule, 80 Fed. Reg. 21302 (April 17, 2015) (Deposition Exhibit 16)

25) USEPA, Human and Ecological Risk Assessment of Coal Combustion Residuals, 2050-AE81 (December 2014) (Deposition Exhibit 17)

E. USEPA SW-846 Guidance

26. Finally, IEPA’s nonconcurrence stated that the Newton ASD “must include total solids sampling in accordance with SW846.” (R001965). IEPA included a few specific test methods from SW-846 in the Record on Appeal (R000033-R000121), but did not include any of the introductory text providing guidance on the use of SW-846 procedures. However, IEPA employee Lauren Hunt testified that IEPA relied upon the introductory chapters of SW-846 in making its final decision. Hunt Dep. at 124-126. Specifically, IEPA referred to Chapter 1, which provides guidance on project quality assurance and project quality control. *Id.* Accordingly, IEPA either did or should have relied upon the following introductory portions of SW-846. IPGC respectfully requests that the Record be supplemented to include the following documents, attached as Appendices 26-28:

26) USEPA SW-846 Disclaimer, July 2014.

27) USEPA SW-846 Chapter 1, Project Quality Assurance and Quality Control, July 2014.

28) USEPA SW-846 Chapter 2, Choosing the Correct Procedure, July 2014.

F. *The Board May Take Administrative Notice of the Above Documents*

27. While these documents should properly be included in the Record for the reasons outlined above, each and any of the above-listed documents attached as Appendices 1-28 may also properly be considered by the Board and relied on by the parties in accordance with 35 Ill. Admin. Code § 101.630, which allows for the Board to take official notice of “[g]enerally recognized technical or scientific facts within the Board's specialized knowledge.” The Board cannot ignore generally available relevant information, even if that information is not a part of the official Record. *See Sierra Club et al. v. IEPA and Midwest Generation, LLC*, PCB 15-189, slip op. at 2 (Dec. 8, 2016), citing *Texaco, Inc. v. Environmental Protection Agency*, PCB 70-29, concurring, Samuel Aldrich, slip op. at 2 (Feb. 17, 1971). The documents consist of submittals by IPGC to IEPA under the Board’s regulatory programs and scientific literature and USEPA guidance relevant to the Board’s regulatory programs. These are the types of technical and scientific facts commonly within the orbit of the Board’s consideration and that fall within the Board’s specialized knowledge.

28. Additionally, Petitioner and the Board may properly rely on any and each of Appendices 1-28 for the purposes of challenging the “information relied on by the Agency for the denial.” *Weeke Oil Co. v. IEPA*, PCB 10-1, slip op. at 2 (May 20, 2010) (considering documents outside the Record because “[i]t is the hearing before the Board, however, that affords the petitioner the opportunity ‘to challenge the reasons given by the Agency for [the

denial] by means of cross-examination and the Board the opportunity to receive testimony which would test the validity of the information (relied upon by the Agency).”), citing *Alton Packaging Corp. v. PCB*, 162 Ill. App. 3d 731, 738 (5th Dist. 1978) and *Community Landfill Co. & City of Morris v. IEPA*, PCB 01-170 (Dec. 6, 2001).

29. As explained in detail above, IEPA independently located and included in the Record extensive scientific literature and federal guidance. By including these documents in the Record and omitting similar documents cited to and relied upon in the Newton ASD and Comment Letter, IEPA has presented the Board with a slanted and incomplete Record upon which to reach a decision in this appeal. IPGC is entitled, at minimum, to refute the validity of the outside information relied upon by IEPA—particularly with information that the Agency was clearly made aware of and had access to during its review. Should the Board decline to enter some or all of the above listed documents into the Record, it should nevertheless take administrative notice so that the parties and the Board may rely on all relevant information available.

IV. **Conclusion**

30. For the above reasons, Petitioner IPGC respectfully requests that the Record on Appeal in this matter be supplemented to include the documents described above and attached to this motion as an Appendix.

Dated: July 1, 2024

On behalf of:

Illinois Power Generating Company
Petitioner

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Exhibit A

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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

ILLINOIS POWER GENERATING
COMPANY,

Petitioner

-vs-

No. PCB 2024-043

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

DEPOSITION OF HEATHER MULLENAX
May 28, 2024
9:00 AM
133 S. Fourth Street
Springfield, IL 62706

Reported In Person By:

Deann K. Parkinson: CSR 84-002089



1 APPEARANCES IN PERSON:

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FOR THE PETITIONER:

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FOR THE RESPONDENT:

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Coal Combustion Residuals article)

DISCOVERY DEPOSITION

The deposition of HEATHER MULLENAX taken on behalf of the Petitioner at 133 South 4th Springfield, IL on May 28th, 2024, before Deann K. Parkinson, Certified Shorthand Reporter of the State of Illinois. Deposition taken pursuant to the discovery provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court promulgated pursuant thereto.

1 be the alternative source. And have a, I would
2 say, a more complete understanding for the IEPA
3 and for the public.

4 Q. You would believe it would provide a
5 more fullsome picture?

6 A. Yes.

7 Q. Do you believe that any of that data
8 would end up changing the ultimate conclusion that
9 the Newton PAP is not the source of the chloride
10 exceedance?

11 A. It would depend on the -- the
12 characterization of the CCR, and the laboratory
13 data. If it did show that the characterization
14 was low, and the laboratory data that is given
15 validates or is the same as the analytical data
16 that was given, then yes.

17 Q. Then "yes" what?

18 A. Then yes, we could see that as the --
19 that the surface impoundment was not the cause of
20 the chloride exceedance.

21 Q. I'm going to refer you to page ten of
22 this document.

23 Do you see that section titled,
24 references?

1 A. Yes.

2 Q. All right. Did you review this page of
3 the document?

4 A. Yes.

5 Q. Did you review any of the references
6 listed in this document?

7 A. No.

8 Q. Did you search for any of the references
9 listed in this document?

10 A. No, I did not.

11 Q. Did you ask Illinois Power for any of
12 the documents listed in this reference section?

13 A. No. I didn't.

14 Q. But, let's just go down, let's say, to
15 the fourth item from the bottom. Do you see that
16 Ramboll Americas Engineering Solutions 2021
17 Hydrogeologic Site Characterization Report.

18 Correct me if I'm wrong, but you have reviewed
19 that document?

20 A. Yes, I have.

21 Q. Can I give you a moment to just review
22 this list and let me know what it is that you have
23 reviewed and haven't reviewed?

24 A. Yes. Okay.

1 Q. Go ahead. Could you now walk me through
2 what it is you have reviewed and have not
3 reviewed? Why don't we just go with what you have
4 reviewed.

5 A. Yes. The AECOM 2016 drawing that was
6 included in the construction permit application.
7 The HDR 2022 closure drawing that was also
8 included in the construction permit application.

9 And then the Ramboll Hydrogeologic Site
10 characterization, the groundwater monitoring plan
11 that were also included into the operating permit.
12 And those were the ones that I reviewed during the
13 ASD.

14 Q. And did you review any after the ASD
15 denial letter was issued?

16 A. The Ramboll detected exceedances quarter
17 to Primary Ash Pond.

18 Q. Right above the Ramboll Engineering
19 Solutions there's a document called Panno, do you
20 see that? It starts with Panno SV 2018?

21 A. Yes.

22 Q. Have you ever reviewed this document?

23 A. I believe that I have heard. I did not
24 review it.

1 Q. Okay. And if I could just have you flip
2 the page because there are three more citations on
3 the next page. If you could take a look, and
4 again let me know whether you have reviewed any of
5 these documents.

6 A. No, I did not review these.

7 Q. And did you ask for any of these
8 documents from Illinois Power?

9 A. No.

10 Q. Did you independently go and look for or
11 obtain these documents?

12 A. No.

13 Q. I'm going to hand you another document,
14 which we will be marking as exhibit 14.

15 (Whereupon, Deposition Exhibit No. 14
16 was marked for identification.)

17 Q. This is record document number 29. Are
18 you familiar with this document?

19 A. Yes, I am.

20 Q. What is it?

21 A. This is the additional information that
22 Illinois Power provided us before the -- or on
23 November 3rd.

24 Q. And additional information related to

1 what?

2 A. The alternative source demonstration
3 data gaps.

4 Q. Did you review this document prior to
5 IEPA issuing the denial of Newton's ASD?

6 A. Yes.

7 Q. I'm going to ask you to turn to, and
8 just so you know this is towards the back of the
9 document. The page that is Bates numbered with
10 the number R001941.

11 Would you have reviewed this page as
12 part of your review of this document?

13 A. Yes.

14 Q. Did you review any of the references
15 listed on this page?

16 A. I have reviewed the Burns & McDonnell
17 operating permit. The Ramboll Hydrogeologic Site
18 Characterization. The USEPA LEAF document. And
19 that is it.

20 Q. Okay. The USEPA LEAF document, you mean
21 the USEPA 2019 Leaching Environmental Assessment
22 Framework, how-to guide document?

23 A. Yes.

24 Q. Thank you. Did you ask for any of these

1 documents to review as part of your review of the
2 Newton ASD?

3 A. No.

4 Q. And did you seek out or review any of
5 these documents as part of your review of the
6 Newton ASD?

7 A. There was a discussion with Mike Summers
8 and Lauren Hunt about the Electric Power Research
9 Institute that we had a discussion on that. But I
10 did not go out and look for these references.

11 Q. And so there was a discussion regarding
12 the Electric Power Research Institute; which
13 document? The 2017 document that's listed here?

14 A. The 2022 document.

15 Q. Okay. And that discussion was in
16 relation to the Newton ASD submittal?

17 A. The Newton ASD, and ASDs going forward
18 with this reference.

19 Q. And do you recall the scope of that
20 discussion?

21 A. The discussion was on the validation of
22 EPRI, our Electric Power Research Institute,
23 between Lauren and Mike Summers.

24 Q. What do you mean by the validation of --

1 A. According to Mike Summers, there were
2 articles of EPRI that are not peer reviewed, and
3 that was his position to me and Lauren.

4 Q. Did you confirm whether or not this EPRI
5 reference or any of the other EPRI references
6 listed here were in fact peer reviewed?

7 A. I did not confirm them.

8 Q. The agency considered documents outside
9 of those provided with, or referenced in IPGC's
10 ASD submittal when reviewing the Newton PAP ASD,
11 correct?

12 A. Can you please repeat that?

13 Q. So, for example, earlier we talked about
14 a textbook that you referenced when reviewing the
15 Newton PAP ASD, correct?

16 A. Yes.

17 Q. Okay. So, you didn't just look at
18 references that were cited to you in the Newton
19 ASD when reviewing and considering the ASD
20 submittal, correct?

21 A. Yes, that's correct.

22 Q. Okay. You also referenced EPA pore
23 water sampling guidance that you reviewed to,
24 correct?

1 A. Yes.

2 Q. How did you determine what documents to
3 review?

4 A. These were given as our background
5 documentation of my understanding or, like, well
6 the documents that I reviewed are my background
7 documentation. So --

8 Q. Okay. You started by saying these
9 documents were given; what do you mean by given?

10 A. Well, my textbook was one that I have
11 already had. The pore water documentation was
12 found by Lauren Hunt.

13 Q. Why did you decide to refer to that
14 particular textbook?

15 A. That, the geochemistry textbook is my
16 background in my Master's degree. And to document
17 the basis of my understandings.

18 Q. Okay. And when you say, and the
19 textbook we're talking about, can you confirm
20 that's the document that's been marked as Exhibit
21 3 on the record?

22 A. Yes. That's correct.

23 Q. Okay. Did you ever think about pulling
24 any other reference materials?

1 A. Not at the time of the Newton ASD.

2 Q. Have you pulled any additional reference
3 materials for ASDs you've reviewed since the
4 Newton ASD submittal?

5 A. Yes.

6 Q. Can you provide me with examples?

7 A. We've pulled more like recent guidance
8 documents instead of ones that are in 2017. We're
9 looking more at the 2022 or 2023.

10 And then that's typically with the other
11 ASDs, what we've done.

12 Q. Recent guidance related to what?

13 A. The USEPA typically, yes.

14 Q. And what is the subject matter of the
15 guidance?

16 A. The pore water or leaching testing, just
17 so we have the most up to date.

18 Q. Do you happen to recall specifically
19 what any of these documents are right now?

20 A. No, I do not recall.

21 Q. But, they are guidance documents from
22 USEPA, correct?

23 A. Yes.

24 Q. And they relate to pore water or leach

1 testing?

2 A. Yes.

3 Q. And were they available at the time you
4 reviewed the Newton PAP ASD?

5 A. I believe so.

6 Q. Do you review federal rule makings
7 related to CCR surface impoundments as part of
8 your job?

9 A. Yes.

10 Q. And it sounds like yes, but do you
11 review EPA guidance documents as part of your job?

12 A. Yes.

13 Q. I'd like to direct your attention to a
14 document which I will mark as exhibit 15.

15 (Whereupon, Deposition Exhibit No. 15
16 was marked for identification.)

17 Q. Are you familiar with this document?

18 A. No. I'm not familiar.

19 Q. Okay. Do you see the title of the
20 document there, Hazardous and Solid Waste
21 Management System: Disposal of Coal Combustion
22 Residuals From Electric Utilities: Amendments to
23 the National Minimum Criteria, Phase One, Proposed
24 Rule?

1 A. Yes.

2 Q. Okay.

3 A. I see that.

4 Q. Do you agree that this is a rule making
5 related to coal combustion residuals from electric
6 utilities?

7 A. Yes.

8 Q. Is this the type of rule making document
9 from EPA you might review as part of your job?

10 A. Yes.

11 Q. Do you have any recollection of actually
12 reviewing this document as part of your job ever?

13 A. No.

14 Q. Okay. I'd like to refer you to page
15 11588 of this document.

16 It's the fifth page of the document.
17 You'll see some highlighted language there. So,
18 this document in the third column here, the
19 highlighted language; well, first of all, do you
20 agree there's some highlighted language there?

21 A. Yes.

22 Q. Do you see it?

23 A. Yes. I do.

24 Q. So, it reads, out of all the coal ash

1 constituent modeled by EPA, boron has the fastest
2 travel time, meaning that boron is likely to reach
3 potential receptors before their constituent. Do
4 you agree with that statement?

5 A. Yes.

6 Q. The next sentence reads, therefore,
7 boron is expected to be one of the earliest
8 constituents detected if releases to groundwater
9 are occurring. Do you agree with that statement?

10 A. Yes.

11 Q. And then that sentence continues to say,
12 consequently, EPA reasoned that retaining boron on
13 Appendix III was more appropriate as it would
14 function as a signal constituent that would insure
15 that assessment monitoring was quickly triggered
16 in response to any release. Do you agree with the
17 portion of that statement that says that boron can
18 function as a signal constituent?

19 A. Yes.

20 Q. So, generally, do you agree that boron
21 can serve as a signal constituent?

22 A. Generally, yes.

23 Q. And what do you understand the term,
24 signal constituent to mean?

1 A. I understand that as to be a primary
2 indicator when it comes to CCR, or the coal
3 combustion.

4 Q. And could you explain what you mean by
5 primary indicator?

6 A. The boron would be generally noticed
7 first as an exceedance, or a large amount of it,
8 in groundwater.

9 Q. Did you review or consider this document
10 in connection with the ASD?

11 A. I did not.

12 Q. Did anyone else you're aware of review
13 this document in connection with the ASD?

14 A. I'm not sure.

15 Q. Is this a document that IEPA would have
16 had in its possession when reviewing the Newton
17 ASD?

18 A. We would have had the final rule of 257.
19 I am not 100 percent sure if we have this one.

20 Q. Okay. Do you typically review proposed
21 rules related to CRR? You or other folks at IEPA?

22 A. I believe so.

23 Q. I'd like to refer you to another
24 document. This will be marked as exhibit 16.

1 (Whereupon, Deposition Exhibit No. 16
2 was marked for identification.)

3 Q. Give you a second to look at it. Are
4 you familiar with this document?

5 A. I am not.

6 Q. So, over there, do you agree that it's a
7 USEPA rule making?

8 A. Yes, I do.

9 Q. Do you agree that it's a rule making
10 that was published in the Federal Register?

11 A. Yes.

12 Q. Do you agree that the title of this rule
13 making is Hazardous and Solid Waste Management
14 System Disposal of Coal Combustion Residuals From
15 Electric Utilities?

16 A. Yes.

17 Q. Do you agree that this is a final rule?

18 A. Yes.

19 Q. Have you ever reviewed this document?

20 A. I do not believe so. Not this document.

21 Q. Do you agree that it's authored by EPA?

22 A. Yes.

23 Q. I would like to direct your attention to
24 page 21441 of this document. Apologize, it's

1 long.

2 Just let me know when you're there.

3 A. 21441.

4 Q. Yes. Okay. In the third column of
5 21441 do you see at the top section that starts
6 with EPA response, colon.

7 A. Yes.

8 Q. The first sentence there after EPA
9 response says: The use of pore water data is
10 still considered the most appropriate approach to
11 estimate constituent fluxes to groundwater for CCR
12 surface impoundments. Do you see that sentence?

13 A. I do.

14 Q. Do you agree with that sentence?

15 A. I do.

16 Q. The second sentence there reads: This
17 is because pore water better represents the
18 leachate seeping from the bottom of the
19 impoundment than impoundment water samples. Do
20 you see that sentence?

21 A. Yes, I do.

22 Q. Do you agree with that sentence?

23 A. I do.

24 Q. And if I were to just tell you generally

1 that this is the 2015 Federal CCR rule, would that
2 refresh your recollection as to whether you've
3 ever reviewed this document before?

4 A. I would still say I believe I have not
5 reviewed this one.

6 Q. Okay. So, again, did you consider this
7 document at all when reviewing the Newton ASD
8 submittal?

9 A. No.

10 Q. Is this a document that IEPA would have
11 had in its possession when reviewing the Newton
12 ASD submittal?

13 A. I believe so.

14 Q. Are you aware of whether anyone else at
15 IEPA reviewed this document in connection with the
16 Newton ASD submittal?

17 A. I am not aware.

18 Q. I'd like to direct your attention to an
19 additional document which I will mark as exhibit
20 17.

21 (Whereupon, Deposition Exhibit No. 17
22 was marked for identification.)

23 Q. Are you familiar with this document?

24 A. I have heard of it. I have not

1 reviewed.

2 Q. Okay. When you say you've heard of it,
3 in what context?

4 A. Lauren Hunt had mentioned about the
5 human and ecological risk assessments. And that
6 there was documentation. I did not see this, I
7 should say.

8 Q. Okay. Do you have familiarity generally
9 with what this is?

10 A. A very general --

11 Q. Sure. How would you describe what it
12 is?

13 A. Whether the coal combustion residuals
14 are at risk to the human health or the ecological
15 health.

16 Q. Do you agree that this is a document
17 authored by the United States Environmental
18 Protection Agency?

19 A. Yes.

20 Q. So, would it be fair to categorize this
21 as a risk assessment conducted by the United
22 States Environmental Protection Agency related to
23 coal combustion residuals?

24 A. Yes.

1 Q. So, I would like to direct your
2 attention to page 4-5 of this document. At the
3 bottom right-hand corner of the page. Do you see
4 the section that starts, surface impoundments?
5 Section 4.2.1?

6 A. Yes.

7 Q. Okay. The first sentence of that
8 section reads, similar to the screening analysis
9 described in section three, EPA relied on pore
10 water concentrations to characterize leaching from
11 impoundments. Do you agree that this sentence is
12 saying that EPA was relying on pore water data to
13 characterize CCR surface impoundment leaching?

14 A. Yes.

15 Q. The second sentence reads: These
16 concentrations are collected from the interstitial
17 water between waste particles and surface
18 impoundments as it occurs in the field, and best
19 reflect leachate as it is released into underlying
20 soils. Do you see that sentence?

21 A. Yes, I do.

22 Q. Do you agree with that sentence?

23 A. Yes.

24 Q. Do you agree with the fact that pore

1 water concentrations best reflect leachate as it's
2 released into underlying soils from a CCR surface
3 impoundment?

4 A. I do.

5 Q. I'd like to refer you to page 5-17 of
6 this document.

7 There's some highlighted language there.
8 Do you see that?

9 A. I do.

10 Q. Okay. The highlighted language reads:
11 Pore water data were determined to be the most
12 representative data available for impoundments
13 because these data are field measured
14 concentrations of leachate present at the bottom
15 of these WMUs. Do you see that sentence?

16 A. I do.

17 Q. What do you understand the term WMUs to
18 mean?

19 A. I understand that as a waste management
20 unit.

21 Q. Do you agree with the statement in that
22 sentence that I just read?

23 A. I do.

24 Q. Did you review or consider this document

1 in connection with the Newton ASD submittal?

2 A. I did not.

3 Q. Are you aware of whether anyone else at
4 IEPA reviewed or considered this document in
5 connection with the Newton ASD submittal?

6 A. I am not aware.

7 Q. Would this document have been in IEPA's
8 possession prior to its review of the Newton ASD
9 submittal?

10 A. I would guess so.

11 Q. Can we take a short break?

12 (The time is 11:16 a.m.)

13 (The time is 11:25 a.m.)

14 CONTINUED EXAMINATION BY

15 MS. JOSHI:

16 Q. Ms. Mullenax, can you refer back to
17 what's been marked as Exhibit 2 in this
18 deposition. It's the Newton ASD submittal, record
19 document number 12.

20 And go to Appendix C of this document.
21 I think you had referred to this appendix
22 previously, correct?

23 A. Yes.

24 Q. What do you understand this appendix to

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DEPOSITION ERRATA SHEET

Our Assignment No. J11288877
Case Caption: ILLINOIS POWER GENERATING COMPANY
vs. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the 18 day of
June, 2024.

Heather Mullenax

HEATHER MULLENAX

DEPOSITION ERRATA SHEET

Page No. 61 Line No. 15 Change to: Joppa

Reason for change: The name Joppa does not need to be entirely capitalized

Page No. 61 Line No. 20 Change to: Joppa

Reason for change: The name Joppa does not need to be entirely capitalized

Page No. 62 Line No. 9 Change to: Joppa

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Page No. 63 Line No. 24 Change to: Joppa

Reason for change: The name Joppa does not need to be entirely capitalized

Page No. 78 Line No. 22 Change to: or

Reason for change: Supposed to state "EPRI, or Electric Power Research Institute" not our.

SIGNATURE: Heather Mullenax DATE: 6/18/2024

HEATHER MULLENAX

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DEPOSITION ERRATA SHEET

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Reason for change: _____

SIGNATURE: _____ DATE: _____

HEATHER MULLENAX

1 BEFORE THE
2 ILLINOIS POLLUTION CONTROL BOARD

3
4 IN THE MATTER OF:

5 ILLINOIS POWER GENERATING
6 COMPANY,

7 Petitioner

8 - vs -

9 No. PCB 2024-043

10 ILLINOIS ENVIRONMENTAL
11 PROTECTION AGENCY,

12 Respondent .

13
14 DEPOSITION OF LAUREN HUNT
15 May 28, 2024
16 2:00 PM
17 133 S. Fourth Street
18 Springfield, IL 62706

19 Reported In Person By:

20 Deann K. Parkinson: CSR 84-002089
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WITNESS: LAUREN HUNT

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DISCOVERY DEPOSITION

The deposition of LAUREN HUNT taken on behalf of the Petitioner at 133 South 4th Springfield, IL on May 28th, 2024, before Deann K. Parkinson, Certified Shorthand Reporter of the State of Illinois. Deposition taken pursuant to the discovery provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court promulgated pursuant thereto.

1 exhibit 19.

2 (Whereupon, Deposition Exhibit No. 19
3 was marked for identification.)

4 Q. Are you familiar with this document?

5 A. Somewhat.

6 Q. What is it?

7 A. It is the SW846 test method for liquid,
8 solid partitioning as a function of liquid solid
9 ratio for constituents in solid material using an
10 upflow percolation column procedure.

11 Q. When you say you're somewhat familiar
12 with the document, what do you mean by somewhat?

13 A. Somewhat in that, like, we as a team
14 we're not as familiar with pore water because it
15 is not a regulated, I guess, media because it's
16 already a part of groundwater. And so there
17 wasn't specific standards for it.

18 So we pulled that method of sampling and
19 the other documents five, six and -- five and six
20 to basically show what we could find as far as
21 like what procedures were out there in SW846 on
22 the methods that were provided under SW846, which
23 is incorporated by reference in 845.

24 Q. Methods for what?

1 A. Sampling or analyzing.

2 Q. For analyzing what?

3 A. Pore water. Or pulling the pore water
4 out of the material.

5 Q. Do you agree that this is a laboratory
6 test?

7 A. Uh-huh.

8 Q. Referring still to this document that is
9 marked exhibit 19?

10 A. Yes.

11 Q. It's not a method to directly sample
12 pore water from a source, correct?

13 A. Correct.

14 Q. So what's your understanding of how this
15 method in exhibit 19 is used to predict pore water
16 source concentrations in a CCR surface
17 impoundment?

18 A. I don't know that that has been fully
19 vetted. And we were, again, just pulling the
20 known test methods that were available for
21 analyses. And then there is the -- so, there is
22 the method for field sampling is also in our
23 document list for pore water.

24 So, between the two, we were just

1 basically showing these are what we know to be the
2 established procedures and methods for analyzing
3 or collecting pore water. But, we do not have, I
4 guess, a great deal of knowledge. Or I don't have
5 a great deal of knowledge of what this method is
6 about. And I could say that about pretty much any
7 method in SW846 'cuz I've never worked in a lab.

8 Q. Sure. Okay. So that document, Exhibit
9 No. 19, refers to something called a
10 liquid-to-solid ratio. Are you familiar with
11 that term?

12 A. I mean, I understand what you're saying.
13 But --

14 Q. Okay.

15 A. I understand ratios. And liquid and
16 solid, yes.

17 Q. Okay. Are you familiar with the term
18 eluate, which is used in that document?

19 A. No.

20 Q. So, going back to the liquid-to-solid
21 ratio term, does or do you, have you heard from
22 anyone at the agency an opinion on what an
23 appropriate liquid-to-solid ratio would be for
24 testing a CCR surface impoundment?

1 Q. Could different permeability in
2 different areas of the unit impact leaching?

3 A. Yes.

4 Q. Do you believe that any of the methods
5 discussed in exhibits 19, 20 and 21 are a better
6 indication of current impacts on groundwater than
7 actual in-field pore water sampling?

8 A. I don't know.

9 Q. Did IEPA conduct any investigation into
10 whether the methodologies reflected in documents
11 19, 20 and 21 are appropriate for a CCR surface
12 impoundment?

13 A. No, we didn't have time.

14 Q. Did the agency look into any drawbacks
15 or flaws from these methodologies as they might be
16 applied to CCR surface impoundment?

17 A. No.

18 Q. All right. I'm going to give you
19 another document that's been marked as exhibit 5.
20 Are you familiar with this document?

21 A. Yes.

22 Q. What is it?

23 A. The USEPA pore water sampling procedure.

24 Q. Is this a document that the agency

1 independently pulled in its review of the Newton
2 ASD?

3 A. Yes.

4 Q. Did you review it in connection with the
5 Newton ASD?

6 A. We reviewed the basics of it, and then
7 looked for evidence in the ASD that these methods
8 were followed. But we did not see that
9 information.

10 Q. And generally do you consider USEPA to
11 be a trustworthy source?

12 A. Yes.

13 Q. Does the agency regularly pull and
14 review USEPA documents?

15 A. Um, with respect to some procedures,
16 yes, we do.

17 Q. Do you believe that the pore water
18 sampling methodology represented in that document
19 is appropriate for CCR surface impoundments?

20 A. I do.

21 Q. Why so?

22 A. Because you can use these push points
23 very easily in the field, and there are methods to
24 be able to reshift load to be able to move out

1 into the CCR surface impoundments to get samples.
2 So, yes. And I've used the hydropunch, which
3 would fall under the push point or similar
4 sampler, prior to my time at the agency. So we
5 weren't collecting pore water though. That's not
6 what we would call it though, I don't think.
7 Again, this is a whole new thing that's not even
8 in our regulation; pore water, the term.

9 Q. So, you're just saying you use a
10 particular instrument that they refer to in that
11 document?

12 A. Yeah.

13 Q. But you've never used it to collect pore
14 water?

15 A. When you read this document and the way
16 that it's supposed to be collected, it looks like
17 what we were saying was a groundwater grab from a
18 hydropunch or a push sampler way back in the day.

19 Q. Okay. A hydro what?

20 A. Hydropunch.

21 Q. Punch. Okay.

22 A. So, I guess I'm not sure what the
23 difference is between a groundwater grab where you
24 are just opening the slot and you're letting the

1 says subsurface free liquids average
2 concentration. Do you see that?

3 A. Yeah.

4 Q. Do you understand what that means?

5 A. I don't know what it refers to, no.

6 Q. Okay. Did you review this document in
7 connection, or rather did you review this Appendix
8 A of Attachment C of the initial operating permit
9 application as part of your review of the Newton
10 PAP ASD submittal?

11 A. We did take a look at it. However, we
12 need the actual data laboratory reports for the
13 constituents that were collected for it to be
14 considered. But it was still not total solids as
15 agreed upon with management approval. So we were
16 unable to accept it as source characterization.

17 Q. Okay. But you do agree that this
18 provides some information about the chemical
19 constituents contained in the Ash Pond?

20 A. I agree that it provides information
21 about chemical constituents of the water in the
22 Ash Pond.

23 Q. Moving on to Appendix B. All right. Do
24 you agree the first table of Appendix B provides a

1 A. Yes.

2 Q. I'm going to provide you with a document
3 that has been marked as exhibit 15.

4 Does the agency consider -- well, to go
5 back for a moment. The agency considers documents
6 outside of those just provided by Illinois Power
7 in connection with the Newton ASD submittal,
8 correct?

9 A. To an extent, yes.

10 Q. So, for example, you looked at EPA
11 guidance?

12 A. Yes.

13 Q. Okay. You looked at some maybe academic
14 references? Is that a fair characterization?

15 A. Yeah, possibly.

16 Q. How did you determine what other
17 documents to review and consider?

18 A. So, I basically had the conversation
19 with Heather Mullenax and asked her for the
20 specifics that go into source characterization.

21 So, I asked her if there was any source
22 characterization. And then we went through like
23 what was missing. And so these pieces that are in
24 the letter are not actually in the submittal. And

1 so we just, yeah, we went through that process of
2 just asking those questions.

3 Q. So, referring to this document that's in
4 front of you right now; have you ever seen this
5 document before?

6 A. Yes.

7 Q. Okay. What is it?

8 A. It's 40 CFR part 257. The USEPA CCR
9 rule, or at least the preamble, it looks like.
10 I'm not sure. Or the proposed rules. I'm not
11 really sure.

12 Q. Okay.

13 A. How you, like, interpret all of that.
14 But, yes, it goes -- this seems to go through 107,
15 257, 107, I don't know.

16 Q. So do you agree it's an EPA rule making?

17 A. Yes.

18 Q. Or it's a proposed rule from the United
19 States Environmental Protection Agency, agreed?

20 A. Yes.

21 Q. You agree it's authored by EPA?

22 A. Yes.

23 Q. Would you have this document in your
24 possession when you were reviewing the Newton ASD

1 submittal?

2 A. Do you mean did I look at this
3 specifically during my review?

4 Q. Could you have looked at it?

5 A. I could have, yes.

6 Q. Did you consider this document in
7 connection with the Newton ASD submittal?

8 A. Indirectly, yes. Directly, no.

9 Q. Okay. Can you go to page 11588 of this
10 document.

11 A. 115 what?

12 Q. 88. It's like a few pages in.

13 A. Okay.

14 Q. Do you see highlighted language in the
15 third column there?

16 A. Yes.

17 Q. Okay. I'm going to read the first
18 sentence of the highlighted language: Quote, "out
19 of all the coal ash constituents modeled by EPA,
20 boron has the fastest travel time, meaning boron
21 is likely to reach potential receptors before
22 other constituents." End quote.

23 Do you agree with that statement?

24 A. Yes.

1 Q. I'm going to read the second sentence
2 that's highlighted there. Quote, "therefore,
3 boron is expected to be one of the earliest
4 constituents detected if releases to groundwater
5 are occurring." The sentence then continues,
6 "consequently, EPA reasoned that retaining boron
7 on Appendix III was more appropriate as it would
8 function as a signal constituent that would ensure
9 that assessment monitoring was quickly triggered
10 in response to any release."

11 Did I read that correctly?

12 A. Yes.

13 Q. Do you agree that boron is expected to
14 be one of the earliest constituents detected if
15 releases to groundwater are occurring?

16 A. Yes.

17 Q. Do you agree that boron can serve as a,
18 or that boron would function as a signal
19 constituent?

20 A. Yes, it could.

21 Q. Okay. And what do you understand the
22 term signal constituent to mean as it's used here?

23 A. Basically, it's one of the first to
24 appear, which is why it's Appendix III, and in the

1 detection monitoring versus assessment monitoring
2 for this part.

3 Q. Were there exceedances to your
4 recollection at Newton, at the Newton PAP other
5 than the chloride exceedance that's the subject of
6 this ASD?

7 A. I don't know. We'd have to look at
8 that. I think there was ones that you've
9 submitted in there, wasn't there?

10 Q. Let's look at Exhibit 2, which is the
11 ASD submittal.

12 And if you could just turn to the page
13 that has R0001611 at the top.

14 A. Okay.

15 Q. All right. And then going maybe
16 two-thirds of the way down the page. Do you see
17 the paragraph starting, "the most recent quarterly
18 sampling event"?

19 A. Yes.

20 Q. Okay. The last sentence of that
21 paragraph reads, "the statistical determination
22 identified the following GWPS exceedances at
23 compliance groundwater monitoring wells." Do you
24 see that language?

1 A. Yes.

2 Q. Okay. And so does that then list
3 several wells at which there were groundwater
4 protection standard exceedances?

5 A. Yes.

6 Q. Okay. So, do you see the listing for
7 chloride in APW15?

8 A. Yes.

9 Q. And are there other listings on there?

10 A. Other listings of what?

11 Q. Other wells where there were exceedances
12 of groundwater protection standards?

13 A. For chloride or for others?

14 Q. For anything?

15 A. Yes.

16 Q. Okay. So, do you see a listing here for
17 lithium at well APW02?

18 A. Yes.

19 Q. And then do you see sulfate exceedances
20 listed for four different wells?

21 A. Yes.

22 Q. And then do you see TDS, or total
23 dissolved solids, listed as exceedances in three
24 other wells?

1 A. Yes.

2 Q. Okay. And then I would like to point
3 your direction to the last sentence on that page,
4 which says lithium, sulfate and TDS exceedances
5 will be addressed in accordance with
6 35 I.A.C. 845.660.

7 A. Okay.

8 Q. Do you see that sentence?

9 A. Yes.

10 Q. What do you understand that to mean?

11 A. That means that only chloride is being
12 addressed here.

13 Q. Okay. And what does that mean for the
14 other exceedances?

15 A. That they're going to assessment of
16 corrective measures.

17 Q. Do you have any understanding of what
18 boron concentrations were in the wells that are
19 undergoing an assessment of corrective measures?

20 A. No.

21 Q. Do you have an understanding of what
22 sulfate concentrations were in the wells that are
23 undergoing --

24 A. No.

1 Q. -- an assessment of corrective measures?

2 A. No.

3 Q. I'm going to direct your attention to
4 another document, which has been marked as exhibit
5 16.

6 Are you familiar with this document?

7 A. I am familiar with the part 257, not
8 261.

9 Q. Okay. Do you agree that this is a final
10 rule making related to part 257?

11 A. It seems to be.

12 Q. Okay. Have you reviewed this document
13 before?

14 A. I have reviewed part 257. I, again, am
15 not familiar with 261.

16 Q. Okay. Would you have reviewed the
17 portions of this document related to part 257?

18 A. To some extent, but not in total.

19 Q. Okay. Do you agree this document is
20 authored by EPA?

21 A. Yes.

22 Q. And when I say EPA, I mean the United
23 States Environmental Protection Agency?

24 A. Yes.

1 Q. Is this a document that IEPA would have
2 had access to when it was reviewing the Newton
3 ASD?

4 A. Yes.

5 Q. Did you consider this document in
6 connection with the Newton ASD?

7 A. Indirectly, yes. Directly, no.

8 Q. Indirectly how so?

9 A. Indirectly, the 845 is written to be as
10 protective as or more protective than 257. So --

11 Q. Is part 845 meant to address similar
12 risks as 257 is meant to address?

13 A. To my understanding, yes.

14 Q. I'd like to refer you to page 21441 of
15 this document. And it's a bit of a ways through
16 the document. All right. In the third column at
17 the very top of the third column do you see a
18 section starting, EPA response?

19 A. Yeah.

20 Q. Okay. The first sentence there reads,
21 "the use of pore water data is still considered
22 the most appropriate approach to estimate
23 constituent fluxes to groundwater for CCR surface
24 impoundments." Did I read that correctly?

1 A. Yes.

2 Q. Do you agree with that statement?

3 A. Yes.

4 Q. The second sentence reads, "this is
5 because pore water better represents the leachate
6 seeping from the bottom of the impoundment than
7 impoundment water samples." Do you see that
8 sentence?

9 A. Yes.

10 Q. Did I read it correctly?

11 A. Yes.

12 Q. Do you agree with that statement?

13 A. Yes.

14 Q. Okay. Are you aware of any EPA or other
15 documents that state that LEAF testing or other
16 leach tests are better than measurements taken in
17 the field?

18 A. I am not familiar with LEAF testing
19 enough to make a statement on that.

20 Q. I'm going to show you a document that's
21 been marked as exhibit 17.

22 Are you familiar with this document?

23 A. Yes.

24 Q. What is it?

1 A. It's the Human and Ecological Risk
2 Assessment of Coal Combustion Residuals From
3 December 2014 done by the USEPA.

4 Q. Have you reviewed this document before?

5 A. Yes.

6 Q. In what context?

7 A. Just in general, how it pertains to CCR
8 and --

9 Q. Do you agree that it's authored by the
10 United States Environmental Protection Agency?

11 A. Yes.

12 Q. Is this a document that IEPA had in its
13 possession when reviewing the Newton ASD?

14 A. Yes.

15 Q. Did you consider this document in
16 connection with the Newton ASD?

17 A. Indirectly, yes.

18 Q. And indirectly how so?

19 A. In that I have reviewed it. I agree
20 with what it says in respect to -- well, in total.
21 But also, like, it doesn't contradict the mass
22 transport equation and does still require source
23 characterization is what we were asking for. So,
24 it doesn't contradict what our request is. So,

1 yes.

2 Q. Okay. Can I refer your attention to
3 page 4-5 of this document?

4 A. Okay.

5 Q. Do you see the section that's listed as
6 4.2.1?

7 A. Yes.

8 Q. All right. I'm going to read the first
9 sentence there: It says, "similar to the
10 screening analysis described in Section 3, EPA
11 relied on pore water concentrations to
12 characterize leaching from impoundments." Do you
13 see that sentence?

14 A. Yes.

15 Q. Do you agree I read it correctly?

16 A. Yes.

17 Q. Do you agree with that statement?

18 A. Yes.

19 Q. Do you agree that under the risk
20 assessment presented in this document, EPA relied
21 upon pore water concentrations to characterize
22 leaching from CCR surface impoundments?

23 A. Yes.

24 Q. The second sentence reads: "These

1 concentrations are collected from the interstitial
2 water between the waste particles in surface
3 impoundments as it occurs in the field, and best
4 reflect leachate as it is released into underlying
5 soils." Did I read that sentence correctly?

6 A. Yes.

7 Q. Do you agree with that statement?

8 A. Yes.

9 Q. Going to direct your attention to page
10 5-17 of this document.

11 All right. Let's turn it around here.
12 Can you read the first sentence there under
13 Section 5.1-3. Do you see the section titled,
14 representativeness?

15 A. Yes.

16 Q. Could you read the first sentence there:

17 A. "Pore water data were determined to be
18 the most representative data available for
19 impoundments because these data are field-measured
20 concentrations of leachate present at the bottom
21 of these WMUs."

22 Q. First off, are you familiar with the
23 acronym WMUs?

24 A. No.

1 Q. Okay. Do you agree that it might be
2 referring to waste management units?

3 A. It's possible, yeah.

4 Q. All right. Assuming that WMUs is
5 referring to waste management units, do you agree
6 with the statement in the sentence you just read?

7 A. Yes.

8 Q. All right. I'm going to go back to
9 Exhibit 2, which is the original ASD submittal.

10 Actually, can we take a short break?

11 (The time is 4:52 p.m.)

12 (The time is 4:58 p.m.)

13 CONTINUED EXAMINATION BY

14 MS. JOSHI:

15 Q. All right. So, I'd like to refer you
16 back to what's been marked as Exhibit 2. And I'd
17 like to refer you to the third page of the
18 document, which has the record Bates number 1608
19 at the top.

20 All right. Do you agree that this page
21 includes a certification from a professional
22 engineer?

23 A. Yes.

24 Q. Do you agree that this page includes a

1 in your regs there?

2 A. Okay.

3 Q. And the very last section of 845.640?

4 A. Okay.

5 Q. Is that subsection, what is that j?

6 A. Yeah.

7 Q. Okay. Does that refer to SW846?

8 A. Yeah.

9 Q. Okay. Does 845.650 refer to SW846
10 anywhere?

11 A. So, j refers to 845 -- SW846 test
12 methods, not to Chapter One.

13 Q. Okay.

14 A. 650 -- hold on. 650 does not refer to
15 it directly, but Chapter One applies to
16 across-the-board regulatory decisions.

17 Q. And what is your basis for saying that?

18 A. Because S40 -- S846 Chapter One in the
19 first, like, introduction it says that all
20 regulatory decisions must be supported by
21 environmental data.

22 Q. Okay. Is SW846 law in Illinois?

23 A. No, but you can't just make decisions on
24 opinions.

1 Q. Okay. Well, let's go back to this last
2 sentence of Subsection e. So, you agree that a
3 report was submitted?

4 A. Correct.

5 Q. It may not have included the information
6 you wanted to see, but you agree that a report was
7 submitted?

8 A. Correct.

9 Q. Do you agree that that report contained
10 facts?

11 A. I agree that that report contained what
12 was stated to be fact. However, the laboratory
13 result, like laboratory reports and the field
14 documentation substantiating that it is fact, were
15 not provided.

16 Q. Okay. Did you ask for that data during
17 your discussions?

18 A. I believe so, but I am not entirely
19 sure.

20 Q. Okay. Do you agree that the report
21 includes an evidentiary basis for the conclusions
22 in the report?

23 A. I feel that if you do not have the
24 substantial, like, evidence that this is in fact

1 data that is fact, then it undermines the whole
2 entire document.

3 So, I don't agree that it would be
4 evidence if it's not substantiated as fact. So,
5 if you don't have the facts, then you don't have
6 the evidence. One can not be by itself.

7 Q. Are there any facts presented in Exhibit
8 2 that you can point to, and tell me that you
9 disagree with?

10 A. I did not review it enough to give an
11 opinion on that specifically agree or disagree on
12 the geochemistry; because again, I am not the
13 geochemist. I was just agreeing based on the mass
14 transport equation and the law of conservation of
15 mass.

16 Q. So because there was no -- they didn't
17 do those two things, you disagree with the ASD?

18 A. Correct.

19 Q. And you did not review any of these
20 lines of evidence in detail?

21 A. Not in detail. I am not a geochemist.

22 Q. And sitting here today, you couldn't
23 tell me whether you disagree with any of the facts
24 in this ASD?

1 A. Well, if in fact they are substantiated
2 as facts by the laboratory reports documentation.

3 Q. Sitting here today, do you disagree with
4 any of the information presented in the ASD?

5 A. I can't say whether or not I do.

6 Q. Can we break really quick? I want to
7 check on time.

8 (The time is 5:13 p.m.)

9 (The time is 5:13 p.m.)

10 CONTINUED EXAMINATION BY

11 MS. JOSHI:

12 Q. I'd like to refer you to page ten of
13 Exhibit 2, the top is R0001618.

14 Did you review this section of the ASD
15 submittal?

16 A. No, I did not.

17 Q. Did you review any of the references
18 listed in the reference section of this document,
19 which is on this page and also the following page,
20 just so you know?

21 A. No.

22 Q. Why did you not review any of these
23 documents?

24 A. Again, I was leading the technical

1 review and asking the questions of Heather
2 Mullenax.

3 Q. Are you familiar with whether anyone
4 from IEPA reviewed any of the reference documents
5 listed here in connection with the Newton ASD?

6 A. I don't know that.

7 Q. All right. I'm going to refer you to
8 one last document here, exhibit number -- it's
9 been marked as Exhibit No. 14.

10 Are you familiar with this document?

11 A. I am not necessarily. Yeah, I'm not
12 familiar.

13 Q. Did you review this document in
14 connection with the Newton PAP ASD?

15 A. No.

16 Q. I'm going to refer you to R001941 of the
17 document.

18 A. Okay.

19 Q. Do you see that section entitled,
20 references?

21 A. Yes.

22 Q. Again, can you take a look at the
23 references listed there, and let me know whether
24 you reviewed any of the documents listed there in

1 connection with the Newton ASD submittal?

2 A. Not in particular.

3 Q. What do you mean by, not in particular?

4 A. I didn't review this page. But yes, I
5 mean, I think I reviewed a few of these documents
6 potentially for other purposes. But --

7 Q. Okay. Which of those documents would
8 you have reviewed for other purposes?

9 A. Inasmuch as I've already said the
10 initial operating permit, if I have done any
11 review of that specific part of the document that
12 we were looking at earlier that was part of the
13 initial operating permit. And, I mean, the USEPA
14 monitoring natural attenuation of Superfunds -- I
15 may have reviewed that at a past time, but not in
16 the course of this. So, otherwise none of this
17 looks familiar.

18 Q. Okay.

19 A. Well, 846, yeah, obviously. But, yeah.

20 Q. And then turning back a couple pages
21 from this reference section to page 1938.

22 Just want to confirm whether, did you
23 look at this particular letter and the information
24 contained within it as part of your review of the

1 Newton ASD?

2 A. I do not believe that I looked at this.

3 Q. Okay. Can we pause?

4 (The time is 5:19 p.m.)

5 (The time is 5:23 p.m.)

6 MS. JOSHI: We're all set. No more
7 questions. Thank you.

8 THE WITNESS: Thank you.

9 MS. MEADE: No questions from us.

10 Reserve signature.

11 (The time is 5:24 p.m.)

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Exhibit B

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS POWER)	
GENERATING COMPANY,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 2024-043
ILLINOIS ENVIRONMENTAL PROTECTION)	(Petition for review – Alternative
AGENCY,)	Source Determination)
)	
Respondent.)	

RESPONDENT’S REQUESTS TO ADMIT

WARNING: Failure to respond to the following requests to admit within 28 days may have severe consequences. If you fail to respond to the following requests, you will be considered to have admitted that all the facts requested are true for this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding or an attorney.

Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by KWAME RAOUL, Attorney General of the State of Illinois, pursuant to Section 101.618 of the Board Regulations, 35 Ill. Adm. Code 101.618, hereby serves upon Petitioner, ILLINOIS POWER GENERATING COMPANY, the following Requests to Admit, to be answered in writing, under oath, within twenty-eight (28) days of service.

For purposes of these Requests to Admit, any terms defined or used in the Alternative Source Demonstration dated October 6, 2023 (hereinafter “the Newton ASD”) for the Newton Primary Ash Pond (hereinafter “the Newton PAP”), which is attached to Petitioner’s Petition in this matter as Exhibit B, shall have the same meaning as in the Newton ASD unless otherwise defined herein.

Citations to the “Record” refer to the Record that Respondent filed with the Board in this matter on March 26, 2024.

1. Admit that the attached Exhibit A is a true and correct copy of Figure 7 from the article “Recharge and Groundwater Flow Within an Intracratonic Basin, Midwestern United States” by Samuel V. Panno et al., published in volume 56 of the journal *Groundwater* (hereinafter “Panno 2017”), as cited in the Newton ASD.

Answer:

2. Admit that the references to “Panno et al, 2017” and “Panno et al, 2018” in section 2.3.2 of the Newton ASD both refer to Panno 2017.

Answer:

3. Admit that the references to “Recharge and Groundwater Flow Within an Intracratonic Basis, Midwestern United States,” in footnotes 14 and 20 of the Affidavit of Melinda Hahn attached to Petitioner’s Petition, refer to Panno 2017.

Answer:

4. Admit that Jasper County, Illinois (“Jasper County”), is mentioned in Panno 2017 only in Figure 7.

Answer:

5. Admit that the groundwater flow referred to in Section 2.3.3 of the Newton ASD is the flow of groundwater in weathered bedrock at the top of the bedrock surface.

Answer:

6. Admit that the Newton ASD contains no data from direct samples of bedrock groundwater.

Answer:

7. Admit that the Electric Power Research Institute guidelines for ASD preparation, cited in the November 3, 2023 letter from Ramboll to IEPA (Record at R001938-1942) as “EPRI, 2017,” are not peer reviewed.

Answer:

8. Admit that the Newton ASD contains no data regarding fracture flow.

Answer:

9. Admit that the Newton ASD contains no data regarding an upward vertical hydraulic gradient at the Newton PAP.

Answer:

10. Admit that the 2021 operating permit application for the Newton PAP (Record at R00564-1588) does not mention the Clay City Anticline.

Answer:

11. Admit that none of the upgradient monitoring wells at the Newton PAP have a bottom of screen elevation within 50 feet of the bottom of screen elevation of APW15.

Answer:

12. Admit that the Newton ASD did not include in-situ hydraulic conductivity testing of the layer of glacial till between the Newton PAP and APW15.

Answer:

13. Admit that the Newton ASD did not include a three-dimensional model of the layer of glacial till between the Newton PAP and APW15.

Answer:

14. Admit that the porewater sampling results in the Newton ASD were not accompanied by laboratory reports or a description of analytical methods.

Answer:

15. Admit that the Newton ASD did not state the field collection methods used for the porewater sampling results in the Newton ASD.

Answer:

16. Admit that for the porewater results in the Newton ASD, the procedure used to extract the porewater from each solid sample was a low flow groundwater sampling procedure.

Answer:

17. Admit that the field samples presented in the Newton ASD were not accompanied by chains of custody.

Answer:

18. Admit that the Newton PAP contains more than one waste stream.

Answer:

19. Admit that the Newton ASD did not provide data regarding what is in the waste material at Newton PAP beyond porewater samples.

Answer:

Exhibit A

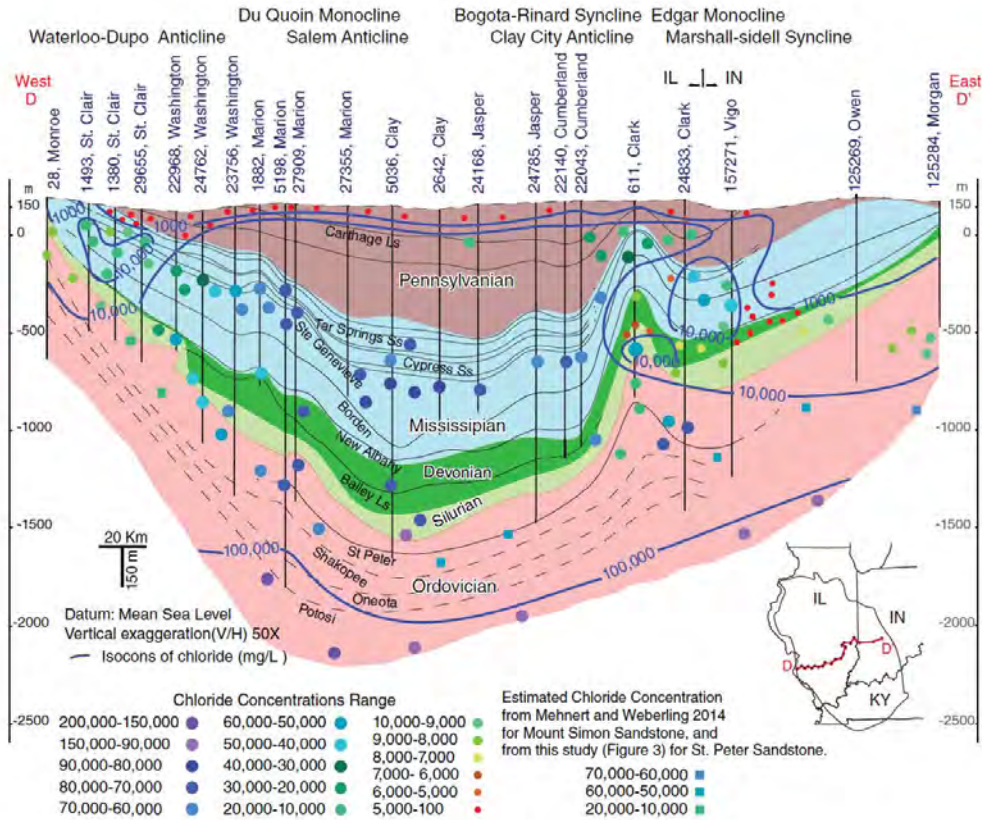


Figure 7. Cross section D–D' extending east-west across southern Illinois and southern Indiana. Freshwater recharge affects the western and eastern margins of the basin, but not to the extent seen in cross sections farther north. Brines are also diluted along the LaSalle Anticlinorium (groundwater movement toward the reader). Again, the most concentrated brines are present in the Cambrian strata.