

ILLINOIS POLLUTION CONTROL BOARD

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

Report of Proceedings had at the Hearing on October 25th, 2017, at the hour of 9:00 o'clock a.m, pursuant to notice, at 100 West Randolph Street, Ninth Floor, Chicago, Illinois, before HEARING OFFICER BRADLEY P. HALLORAN.

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22

23

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|    |                                   |      |
|----|-----------------------------------|------|
| 1  | I N D E X                         |      |
| 2  | WITNESS:                          | PAGE |
| 3  | REBECCA MADDOX                    |      |
| 4  | Cross-Examination - Ms. Dubin     | 10   |
|    | Redirect Examination - Ms. Nijman | 30   |
| 5  |                                   |      |
| 6  | RICHARD GNAT                      |      |
|    | Direct Examination - Mr. Wannier  | 39   |
| 7  | Voir Dire Examination - Ms. Gale  | 42   |
| 8  |                                   |      |
| 9  |                                   |      |
| 10 |                                   |      |
| 11 |                                   |      |
| 12 |                                   |      |
| 13 |                                   |      |
| 14 |                                   |      |
| 15 |                                   |      |
| 16 |                                   |      |
| 17 |                                   |      |
| 18 |                                   |      |
| 19 |                                   |      |
| 20 |                                   |      |
| 21 |                                   |      |
| 22 |                                   |      |
| 23 |                                   |      |
| 24 |                                   |      |

| E X H I B I T S |                         |          |
|-----------------|-------------------------|----------|
|                 | Complainant Exhibit No. | Admitted |
| 1               |                         |          |
| 2               |                         |          |
| 3               | 201                     | 51       |
|                 | 202                     | 53       |
| 4               | 203                     | 54       |
|                 | 204G through 209G       | 61       |
| 5               | 210H through 215H       | 65       |
|                 | 216I through 220I       | 66       |
| 6               | J222 to J228            | 68       |
|                 | K229 through 235.5      | 70       |
| 7               | 236L through 241L       | 72       |
|                 | 242                     | 91       |
| 8               | 243M                    | 93       |
|                 | 293                     | 112      |
| 9               | 248N                    | 117      |
|                 | 249N                    | 120      |
| 10              | 250N                    | 121      |
|                 | 251N                    | 126      |
| 11              | 253                     | 138      |
|                 | 254                     | 141      |
| 12              | 255                     | 148      |
|                 | 256 to 260              | 150      |
| 13              | 261                     | 154      |
|                 | 263                     | 107      |
| 14              | P                       | 182      |
|                 | 271                     | 189      |
| 15              | 274                     | 195      |
|                 | 275                     | 198      |
| 16              | 276                     | 212      |
|                 | 278Q to 281Q            | 216      |
| 17              | 284                     | 220      |
|                 | 286                     | 223      |
| 18              |                         |          |
|                 | Respondent Exhibit No.  | Admitted |
| 19              |                         |          |
|                 | 511                     | 6        |
| 20              |                         |          |
| 21              |                         |          |
| 22              |                         |          |
| 23              |                         |          |
| 24              |                         |          |

1 HEARING OFFICER HALLORAN: We're in the middle  
2 of a hearing. We're starting cross.

3 Ms. Nijman, proceed.

4 MS. DUBIN: We're ready. Mr. Hearing Officer  
5 we have some follow-up from yesterday.

6 HEARING OFFICER HALLORAN: Let me do my speal  
7 first. Anyway, we're on the record. Good morning  
8 everybody. My name is Bradely Halloran. I'm a  
9 Hearing Officer with the Illinois Pollution Control  
10 Board.

11 I'm assigned to this matter entitled  
12 "Sierra Club Environmental Law and Policy Center,  
13 Prairie Rivers Network and Citizens Against Ruining  
14 the Environment, Complainants, versus Midwest  
15 Generation, LLC," referred to as Complainants or  
16 Citizens Group. It's docketed as PCB 13-15.

17 It's a water enforcement. Today is  
18 October 25th. This is the third day of hearing.  
19 We've continued on the record from 23rd and 24th.  
20 It's approximately 9:05.

21 In any event, right now we have Ms. Maddox  
22 is still on the stand, and we're due for crossing  
23 from Ms. Dubin. I understand Ms. Nijman has some  
24 housekeeping matters first.

1 MS. NIJMAN: Yes. Yesterday we moved to admit  
2 Midwest Gen Exhibit 511, and there was an objection  
3 by the complainant concerning the size of the  
4 exhibit because they couldn't read it.

5 We have provided complainant this morning  
6 with an oversized colored map that is completely  
7 legible. I would like to submit this replaced  
8 Exhibit 511 and move for admission.

9 HEARING OFFICER HALLORAN: Ms. Dubin?

10 MS. DUBIN: I have no objection, and thank you  
11 very much for getting that to us.

12 MS. NIJMAN: You're welcome.

13 MS. DUBIN: I have a similar housekeeping  
14 matter.

15 HEARING OFFICER HALLORAN: Midwest Generation's  
16 Exhibit 511 is admitted.

17 (Respondent Exhibit No. 511 was  
18 admitted into evidence.)

19 HEARING OFFICER HALLORAN: Thank you. Ms.  
20 Dubin?

21 MS. DUBIN: I have a similar housekeeping  
22 matter. Earlier when Ms. Maddox was on direct with  
23 plaintiffs yesterday, there was an issue over  
24 Complainant's Exhibit 308.

1           And opposing counsel had objected -- I'll  
2 let you fish for it for a minute.

3           HEARING OFFICER HALLORAN: It might be more  
4 than a minute.

5           MS. DUBIN: Absolutely. I have --

6           MS. NIJMAN: Lindsay, are you sure it's 308?  
7 Because I don't have a 308 in my list.

8           MS. DUBIN: Oh, gosh. It might be because --  
9 so, it's complainant's exhibit beginning at Bates  
10 28350.

11          HEARING OFFICER HALLORAN: I don't have a 308  
12 either. Maybe you took it back.

13          MS. DUBIN: All right. I apologize. I wonder  
14 if it's because there were concerns and objections  
15 to its inclusion.

16          HEARING OFFICER HALLORAN: Counsel, are we on  
17 the record or off?

18          MS. DUBIN: We're off the record now.

19          HEARING OFFICER HALLORAN: Thank you.

20   (Discussion off the record.)

21          HEARING OFFICER HALLORAN: We're back on the  
22 record. We took a little brief break for  
23 housekeeping matters. If the court reporter will  
24 swear Rebecca Maddox in again, please.

1 Ms. Dubin, cross?

2 MS. DUBIN: So, I guess so we're not fumbling  
3 around in the middle of this, you might want to pull  
4 out now Complainant's Exhibit 11D and Complainant's  
5 Exhibit 302, just so you have it as we're talking.  
6 That will be easy to have it ahead of time.

7 MS. NIJMAN: I'm sorry, what are they?

8 MS. DUBIN: 11B is the letter written by  
9 opposing counsel, or on behalf of Midwest  
10 Generation, in response to the notice of violation  
11 dated July 27 2012.

12 And then Complainant's Exhibit 302 is the  
13 field change request submitted by Brieser and signed  
14 off by Ms. Maddox.

15 MS. NIJMAN: These are complainant's exhibits?

16 MS. DUBIN: Yes. Both of these are  
17 complainant's exhibits. They are just going to be  
18 useful to have as we're talking.

19 HEARING OFFICER HALLORAN: I'm having trouble  
20 finding it.

21 MS. DUBIN: No problem.

22 HEARING OFFICER HALLORAN: 11?

23 MS. DUBIN: 11B, B as in boy.

24 MS. NIJMAN: I guess I'm struggling here



1 because this isn't cross.

2 MS. DUBIN: Yes. We're going to be asking  
3 questions about evidence that has already been  
4 admitted and comparing it to evidence that you guys  
5 discussed on your direct yesterday.

6 HEARING OFFICER HALLORAN: I don't have 116B.  
7 I'll look through my notes.

8 MS. DUBIN: Okay.

9 HEARING OFFICER HALLORAN: I'll look through my  
10 notes. I have it in my notes it was admitted, no  
11 objection.

12 MS. BUGEL: We can provide you with another.

13 MS. NIJMAN: Could you find the witness a copy?

14 MS. DUBIN: The witness has a copy. Here is  
15 11B.

16 Do all you have copies in front of you  
17 now?

18 HEARING OFFICER HALLORAN: I do.

19 MS. NIJMAN: Yes.

20 MS. DUBIN: Great. So we'll get started.

21

22

23

24

1 (Witness was previously sworn.)

2 REBECCA MADDOX,

3 called as a witness herein, after having been previously  
4 duly sworn, was examined and testified as follows:

5 CROSS-EXAMINATION

6 BY MS. DUBIN:

7 Q. Yesterday, I saw some conflicting  
8 information about how many layers of Poz-O-Pac there  
9 are in the Will County ash ponds.

10 There are two layers of Poz-O-Pac in one  
11 north, correct?

12 A. In one north, correct.

13 Q. And those layers of Poz-O-Pac are -- the  
14 first layer is 12 inches of Poz-O-Pac?

15 A. I believe so.

16 Q. And then 12 inches of fill material?

17 A. I don't recall the exact amount.

18 Q. And after that, do you believe it's  
19 12 inches of Poz-O-Pac again?

20 A. Yes.

21 Q. So, I just wanted to clarify only because  
22 there is some documents that seem complex.

23 If you don't mind taking a look at the  
24 very first tab of the respondent's exhibit list,

1 Midwest Gen Exhibit 500, please. Hopping over to  
2 Bates Midwest Gen 5, there are descriptions of the  
3 Will County ash pond.

4 I first wanted to start out this was  
5 prepared by Rebecca Schwartz; is that correct, this  
6 document?

7 A. Her name is listed as that, yes.

8 Q. And Rebecca Schwartz was an intern at  
9 Midwest Generation?

10 A. I understand that. I wasn't employed  
11 there at the time I prepared this.

12 Q. If you look at back at Midwest Gen 5, the  
13 second line of text says "bottom" and then it says,  
14 "6-6 inch list of Poz-O-Pac with a bituminous curing  
15 coat."

16 So, does that mean in this document that  
17 it's for Will County north ash pond, it's 36 inches  
18 of Poz-O-Pac, according to this?

19 A. According to this document, it is.  
20 However, there are other documents in plant  
21 engineering diagrams that I was relying off of as  
22 well.

23 Q. Okay. And then just to clarify, can you  
24 turn the page to Bates Midwest Gen 7?

1           This also says that the bottom of the pond  
2 is 36 inches of Poz-O-Pac; is that correct?

3           A.    That's correct.  But, again, different  
4 engineering documents that I relied on for what I  
5 thought was the appropriate layers of Poz-O-Pac.

6           Q.    And that's for south ash pond 1?

7           A.    That's correct.

8           Q.    If you flip the page again, Bates Midwest  
9 Gen 8 south ash pond 2.

10           Again, it says on the bottom, and I note,  
11 "South ash pond 2 has been relined."

12           But at the time that this was written, it  
13 says that it was 36 inches of Poz-O-Pac, correct?

14           A.    That's correct.  Again, I had different  
15 documents that I was using that were engineering  
16 documents in construction of the pond.

17           Q.    Thank you.  And then, finally, for south  
18 ash pond 3, again it says at the bottom it's  
19 36 inches of Poz-O-Pac; is that correct?

20           A.    That's correct.  Again, I had different  
21 diagrams and engineering documents showing the  
22 Poz-O-Pac construction.

23           Q.    All right.  So, we'll turn away from the  
24 intern document and now instead hop over to Bates

1 Comp 11B, which is the violation notice submitted or  
2 response to the violation notice provided by counsel  
3 for Midwest Gen.

4 HEARING OFFICER HALLORAN: Is this complainant  
5 Exhibit 11B?

6 MS. DUBIN: Yes, sir.

7 HEARING OFFICER HALLORAN: Okay.

8 BY MS. DUBIN:

9 Q. Now, if you turn to Bates Midwest Gen  
10 Bates 425, you will see the large paragraph in there  
11 discusses the relining of pond 3S?

12 MS. NIJMAN: Objection to foundation.

13 MS. DUBIN: This is evidence already in the  
14 record.

15 HEARING OFFICER HALLORAN: I'll allow it. You  
16 made proceed. Overruled.

17 BY MS. DUBIN:

18 Q. So, the large paragraph discusses the  
19 relining of pond 3 south, but then the next  
20 paragraph down, the first sentence says, "The other  
21 three Will County ash ponds that are still  
22 constructed of Poz-O-Pac material meet expected  
23 standards for preventing the migration of  
24 constituents to the environment.

1                   "Each has a bottom constructed of two  
2 12-inch layers of Poz-O-Pac surrounding 12 inches of  
3 fill material, insides constructed of three deep  
4 Poz-O-Pac."

5                   Is that your understanding what the ponds,  
6 other than 3S, what their bottoms consisted of at  
7 the time?

8                   A.    That's my understanding, yes.

9                   Q.    Now, I would like you to please take a  
10 look at Respondent's Exhibit 510, which is tab 11.

11                   Now, this is the letter from NRT regarding  
12 the relining of south ash pond 2, correct?

13                   A.    It is.

14                   Q.    If you don't mind, please, turning the  
15 page to Bates 34271, and then in a text you'll see  
16 three black bulleted points and then two white  
17 bulleted points.

18                   MS. NIJMAN: I'm sorry, what page are you on?

19                   MS. DUBIN: Sure. It's 34271.

20 BY MS. DUBIN:

21                   Q.    You'll see three black bulleted points and  
22 three white bulleted points.

23                   If you don't mind taking a look at the  
24 second point, it says, "Boring to 0 to 6 inches

1 first layer Poz-O-Pac. 6 to 12 inches second layer  
2 of Poz-O-Pac. 12 to 24 sandy clay fill with  
3 gravel," and then, "24 to 36 third layer of  
4 Poz-O-Pac."

5 Do you see that?

6 A. I do.

7 Q. So, again, that's your understanding of  
8 the bottom of south ash pond 2, correct?

9 A. That's what's written in this document  
10 based on the boring sample.

11 Q. And then, finally, I wanted to take a look  
12 at one more document within this same exhibit  
13 located -- oh, gosh the text is small on this map.

14 So, if don't mind looking for Bates page  
15 34426, and then just turning to page 1.

16 A. Could you repeat that Bates number?

17 Q. Sure. 34426.

18 HEARING OFFICER HALLORAN: This is tab 13?

19 BY MS. DUBIN:

20 Q. It's still tab 11. So, still Midwest Gen  
21 Exhibit 510. And then the two pages from that,  
22 you'll see a map, and you'll see the Bates number is  
23 small, which is why I didn't give that one in the  
24 frame of reference.

1           You'll see for south ash pond 2, in the  
2 very center, there is sort of a bubble and then  
3 sticking out from the bubble, you'll see a line  
4 going to a rectangle with one, two, three, four  
5 segments, and we're concerned with that top  
6 rectangle of the four segments.

7           Does that appear to be a diagram of a bore  
8 or the results of a boring in the center of the  
9 pond?

10          A.    It appears to be, yes.

11          Q.    Again, that says the first layer is 6  
12 inches the Poz-O-Pac, correct?

13          A.    That's correct.

14          Q.    The second layer says "6 inches of  
15 Poz-O-Pac," correct?

16          A.    Yes.

17          Q.    The third layer says, "Sandy clay fill  
18 with gravel," correct?

19          A.    That's correct.

20          Q.    And the final layer says 12 inches  
21 Poz-O-Pac," correct?

22          A.    Greater than 12 inches.

23          Q.    Greater. Finally -- that's all the  
24 questions I have on this issue. I just wanted to



1 clarify a little bit more. So, thank you.

2 And then with pond 3, did it have similar  
3 -- was it a similar design as far as layers of  
4 Poz-O-Pac go?

5 A. I believe I recall, yes.

6 Q. For one north as well?

7 A. That I don't know. I don't believe there  
8 were any borings performed on 1 north.

9 Q. And for 1 south?

10 A. Again, we never did a boring of 1 south  
11 that I can recall. So, I don't know.

12 Q. Thank you. The next point or issue I  
13 would like to discuss is back to the field change  
14 request, and that's the issue of cutting holes to  
15 remove water from -- that was trapped inside of the  
16 liner of the pond.

17 So, the field change request was  
18 Complainant's Exhibit 302, and if you don't mind  
19 taking a look at Midwest Gen Exhibit 507.

20 Who is Rick Gunther?

21 A. Rick Gunther was the professional engineer  
22 from NRT who worked on the project and performed  
23 inspections during the project.

24 Q. Was Mr. Gunther on site every day during

1 the relining of south ash pond 3?

2 A. I don't recall if he was, if it was him or  
3 Heather Simon.

4 Q. Are the days covered in the field notes  
5 the only days that they were present on the site?

6 A. I can't answer that.

7 Q. Who are Brieser or who is Brieser?

8 A. Brieser is the contractor who performed  
9 basically everything except installing the liner.  
10 So, material removal, true grading, preparing the  
11 subject grade, everything except liner installation.

12 Q. Now, if you don't mind taking a look the  
13 Bates page 8250, which is in Midwest Gen  
14 Exhibit 507, this is the note that you discussed  
15 yesterday filled out by Mr. Gunther?

16 MS. NIJMAN: Sorry, Lindsay, what's the Bates  
17 page?

18 MS. DUBIN: Oh, sure. It's 8250.

19 MS. NIJMAN: That's exhibit?

20 MS. DUBIN: This is Midwest Gen Exhibit 507  
21 underneath tab 8.

22 MS. NIJMAN: Thank you.

23 BY MS. DUBIN:

24 Q. Now, we discussed the third bullet down

1 says that, "There was water underneath the liner.  
2 This is runoff that was pushed to these areas when  
3 placing warning layer. It will disappear once the  
4 pond is filled up. I informed Becky, Midwest Gen,  
5 of this."

6 Were you informed of this by Mr. Gunther?

7 A. I was.

8 Q. And he didn't recommend that you remove  
9 the water from the liner, correct?

10 A. He didn't include those in his notes.

11 Q. He posited that it would disappear once  
12 the ponds fills up, correct?

13 A. That is what he indicated in his field  
14 notes.

15 Q. And by "filled up," does he mean filled up  
16 with coal ash as it's discharged into the pond?

17 MS. NIJMAN: Objection.

18 THE WITNESS: I can't answer what he meant.

19 MS. NIJMAN: Objection to speculation. I'm  
20 objecting to speculation. It's fine. She answered.

21 HEARING OFFICER HALLORAN: She can answer. You  
22 may proceed.

23 BY MS. DUBIN:

24 Q. So, he reported this issue to you,

1 correct?

2 A. Yes.

3 Q. When did he -- what did he mean by when it  
4 will disappear?

5 MS. NIJMAN: Same objection.

6 HEARING OFFICER HALLORAN: She can answer, if  
7 she's able.

8 THE WITNESS: I don't know what he meant.

9 BY MS. DUBIN:

10 Q. I would now like you to take a look at the  
11 filed change request, Plaintiff's Exhibit 302, and  
12 Bates page Midwest Gen 28850.

13 HEARING OFFICER HALLORAN: That is still under  
14 tab 8?

15 MS. DUBIN: No, this is Complainant's 302.  
16 This is the field change request.

17 HEARING OFFICER HALLORAN: I thought you  
18 mentioned Midwest as well. Thank you.

19 MS. DUBIN: I apologize.

20 BY MS. DUBIN:

21 Q. So, this is the field change request from  
22 Brieser, and the description of change says, "Cut  
23 holes in liner to pump out ground water," correct?

24 A. Yes.

1 Q. This is what you signed off on, right?

2 A. That's correct.

3 Q. You'll notice the date on this is -- you  
4 approved this on October 30th, 2009, correct?

5 A. Yes.

6 Q. Mr. Gunther reported there was water, I  
7 apologize, underneath the liner on October 22nd,  
8 2009?

9 A. That's correct.

10 Q. And Midwest Generation went with Brieser's  
11 request, correct, or recommendation?

12 A. I wouldn't say it's a recommendation. I  
13 recall the station management, project management,  
14 and other personnel certainly discussed the options.

15 So, it wasn't based on Brieser's  
16 recommendation. It was discussion within the  
17 station of the actions to take.

18 Q. Would you mind, please, turning now back  
19 tab 8, Midwest Gen Exhibit 507, please. It's the  
20 same page you've been on, and just two pages over,  
21 which is 8254 -- three pages over.

22 Now, if you look at the forth bullet  
23 listed, it say, "Brieser and Midwest Gen chose to  
24 put 6 holes along toward the slope, 2-north end,

1 2-south end, and 2-south end to pump water,"  
2 correct?

3 A. That's correct.

4 Q. And Brieser mentioned in the bullet above  
5 that when they arrived yesterday, the water beneath  
6 the liner had dissipated by 70 percent since last  
7 visit two weeks ago.

8 By "last visit two weeks ago," does that  
9 mean that NRT hadn't visited the site in two weeks?

10 A. I can't answer that.

11 Q. I will move on to other questions I had  
12 about these documents. I will just go in order  
13 through the binder.

14 So, first off, if you don't mind turning  
15 to tab 7, which is Midwest Generation Exhibit 506.  
16 This is the request for proposal, and you'll notice  
17 at the bottom it's dated September 8, 2008, correct?

18 A. That's correct.

19 Q. And the request for proposal is for No. 2  
20 and 3 ash pond liner replacement and miscellaneous  
21 work followed 2008, correct?

22 A. That's correct.

23 Q. Now, ash pond No. 2 was relined in 2009.  
24 I apologize, ash pond 3 was relined in 2009; is that

1 right?

2 A. I believe so, yes.

3 Q. Ash pond 2 was relined in 2013, correct?

4 A. Yes.

5 Q. So, that was five years after the RFP?

6 A. It appears so.

7 Q. Why did Midwest Generation wait five years  
8 after it issued this RFP to reline pond 2S?

9 A. From what I recall, there are numerous  
10 factors changing the CCR impoundment regulations.

11 That was the main thing to kind of see  
12 what the new regulations would be, and then ensure  
13 that the work that we would be doing would meet  
14 those regulations, and not have to go in there again  
15 and change the technology that was installed.

16 Q. Does Midwest Gen consider HDPE a superior  
17 liner over Poz-O-Pac?

18 MS. NIJMAN: Objection, foundation with this  
19 witness.

20 HEARING OFFICER HALLORAN: Can you rephrase,  
21 please?

22 MS. DUBIN: Yes, absolutely.

23 BY MS. DUBIN:

24 Q. So, you E-mailed Mr. Lux back in 2008, as

1 we discussed about some concerns they had about  
2 switching over from Poz-O-Pac to HDPE.

3           Assuming that Mr. Lux expressed those  
4 concerns, and I think that's what you mentioned  
5 yesterday, and so is there a reason that Mr. Lux, or  
6 whomever else when you guys decided to reline the  
7 pond, why did you switch over from Poz-O-Pac to  
8 HDPE?

9           MS. NIJMAN: Objection, speculation, vague and  
10 compound.

11           HEARING OFFICER HALLORAN: I agree with the  
12 compound, but I think she can answer, if she's able,  
13 if you rephrase.

14           MS. DUBIN: Absolutely.

15 BY MS. DUBIN:

16           Q. Why did Midwest Gen switch from Poz-O-Pac  
17 to HDPE as its liner?

18           MS. NIJMAN: Objection, misstates testimony.  
19 The Poz-O-Pac remained. It's been established.

20 BY MS. DUBIN:

21           Q. Why did Midwest Generation add in HDPE?

22           A. At the time for the CCA compliance.

23           Q. In 2008, why did Midwest Generation add in  
24 HDPE, or 2009 was the year of the relining?



1 A. Again, for compliance with the CCA.

2 Q. What CCA was Midwest Generation involved  
3 in, in 2009?

4 A. I must have the dates incorrect, then.  
5 I'm getting my dates -- I can't recall anymore.

6 So, the CCA might not have been issued by  
7 then. I apologize.

8 BY MS. DUBIN:

9 Q. No problem. So, why did Midwest  
10 Generation switch over or add in HDPE in 2009?

11 A. I'm not going to be able to provide an  
12 answer to that.

13 Q. Next, I would like to -- I have a question  
14 about, again, Midwest Generation 507, Bates page  
15 8248, that's underneath tab 8.

16 HEARING OFFICER HALLORAN: What's the Bates  
17 number again, Ms. Dubin?

18 MS. DUBIN: Sure. It's 8248.

19 HEARING OFFICER HALLORAN: Thank you.

20 THE WITNESS: I'm sorry, what was the Bates  
21 number again?

22 BY MS. DUBIN:

23 Q. Absolutely. So, it's tab 8, Midwest,  
24 Generation Exhibit 507, Bates page 80248.

1           You'll see the fifth bullet down, it just  
2 says, "HDPA liner installation."

3           I was wondering with HDPA stood for?

4           A.    I would imagine that is a typo.

5           Q.    Okay. I just wanted to make sure I wasn't  
6 missing something.

7           So, this is instead HDPA, this meant HDPE?

8           A.    I believe so, yes.

9           Q.    I would like to now discuss underneath tab  
10 11, Midwest Generation Exhibit 510. Then if you  
11 don't mind going to Bates page 34281.

12           The third paragraph down, this is dated,  
13 let's see, July 31st, 2013, and this is a field note  
14 summary from relining pond 2S.

15           Do you call it 2S pond? I've seen it  
16 written two ways.

17           A.    2S or 2 south, either way, S as in Sam.

18           Q.    The paragraph starts out, "The first lift  
19 on the south slope did not meet a modified proctor  
20 of 90 percent, and it was necessary to add water to  
21 the slope and recompact with a drum roller.

22           "The water was pumped from the adjacent  
23 pond. Erin questioned Dan and the laborers about  
24 the decision to use water from the pond. Brieser

1 confirmed that because the waterer truck was  
2 receiving" --

3 HEARING OFFICER HALLORAN: You have to slow  
4 down.

5 BY MS. DUBIN:

6 Q. I apologize. It says, "The first lift on  
7 the south slope did not meet a modified proctor of  
8 90 percent, and it was necessary to add water to the  
9 slope and recompact with a drum roller.

10 "The water was pumped from the adjacent  
11 pond. Erin questioned Dan and the laborers about  
12 the decision to use water from the pond. Brieser  
13 confirmed that because the water truck was receiving  
14 maintenance, the water from the pond would be  
15 suitable.

16 "A hose was used from the pump to bring  
17 water from the adjacent pond to the south slope.  
18 After watering and rerolling the slope, the density  
19 was greater than 90 percent modified proctor."

20 Ms. Maddox, when they say the water was  
21 pumped from the adjacent pond, is this water that  
22 was mixed with coal ash?

23 A. I don't recall any of this. So, I  
24 wouldn't assume it would be from 2 south. That is

1 speculation. I really don't remember any of this.

2 Q. What ponds were adjacent to this one?

3 A. 3 south is adjacent.

4 Q. And what did pond 3 south store?

5 A. Coal combustion byproducts from operation  
6 of unit 3 and 4 boilers and water.

7 Q. Now, if you don't mind, within this same  
8 exhibit, which is again is Exhibit 510, Midwest Gen  
9 510, if you go over to Bates page 34311, this is  
10 attachment B1, boring source samples.

11 MS. NIJMAN: Hang on.

12 BY MS. DUBIN:

13 Q. There appears to be some borings in here.  
14 For example, if you go to page 34317; is that  
15 correct? If not, if you don't mind letting me know  
16 what this is.

17 A. I don't believe this is a boring; but,  
18 again, it's not my expertise. It doesn't appear to  
19 be a boring.

20 Q. So, if you look there's that rectangle  
21 there, a text on page 34317, and then it's separated  
22 down the middle with a line.

23 If you don't mind looking just above that  
24 line, it says, "Material description, black

1 cinder-sand-fly ash."

2           Where was this material being collected  
3 from?

4           A.    I don't recall at all.

5           Q.    Did you review this document?

6           A.    I did not.

7           Q.    I have one more question.  Would you mind  
8 going through Midwest Gen Exhibit 511, which is  
9 underneath tab 12 of the binder.  It's the map, and  
10 thank you guys again for printing out a larger  
11 version of this map.

12           Now, if you look inside these two areas  
13 and, for the record, what are the different  
14 outlines -- you'll see dotted outline here on the  
15 left.

16           Is that pond 2S or 2S pond?

17           A.    Oh, no.  Is that 1 south?  That's 1 south,  
18 correct?

19           Q.    You'll see kind of a rectangle in between  
20 the other pond.  In that rectangle is the retention  
21 pond, correct?

22           A.    Retention basin, retention pond, yes.

23           Q.    Next to that is the 1 north pond?

24           A.    That's correct.

1 Q. Now, the text inside of both 1 north pond  
2 and 1 south pond says, "Area within 20-foot radius  
3 of height shall be cut to 582.5 elevation. Pond  
4 bottom shall be graded from .5 percent to 2 percent  
5 to direct water to the outlet."

6 No, when we're discussing the bottom of  
7 the pond being graded, does that refer to grading  
8 the ash?

9 A. It could. Or with the ash that is  
10 remaining on the pond is slag here for 1 north and 1  
11 south; but, yes.

12 MS. DUBIN: That's all the questions I have.

13 HEARING OFFICER HALLORAN: Thank you.

14 Ms. Nijman, when you are ready, you may proceed.

15 MS. NIJMAN: Thank you. Let's go back --

16 HEARING OFFICER HALLORAN: We're on the record.  
17 Do you want to go off?

18 MS. NIJMAN: I'm ready.

19 HEARING OFFICER HALLORAN: Proceed, Ms. Nijman.  
20 Thank you.

21 MS. NIJMAN: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. NIJMAN:

24 Q. Turning to tab 8 in the binder, Ms. Dubin

1 directed your attention to 8254.

2 A. Okay.

3 Q. Do you see in the second bullet there,  
4 would you read what it states?

5 A. In the field comments section?

6 Q. Yes. I'm sorry, in the field comments  
7 section.

8 A. "Brieser on site since yesterday to pump  
9 water beneath liner along base of side slopes."

10 Q. So, what is your understanding what  
11 happened with the water that was collected under the  
12 liner?

13 A. It was pumped out.

14 Q. Thank you. Turning to tab 11, Bates  
15 34271.

16 A. Okay.

17 Q. Ms. Dubin had drawn your attention again  
18 to the field comments section in the third bullet,  
19 but failed to point you to the note of the  
20 discussion of the boring.

21 Let me back up a little bit and ask you do  
22 you know what's going on here with the cores?

23 A. I don't.

24 Q. Okay. If you would read the note under

1 the sub-bullet underneath, "Terry Anderson to  
2 discuss cores"?

3 A. Bottom of third layer of Poz-O-Pac not  
4 encountered."

5 Q. What does that mean to you?

6 MS. DUBIN: Objection. Calls for speculation.

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

9 THE WITNESS: That they did not reach it.

10 BY MS. NIJMAN:

11 Q. Why would they have not reached it? Is  
12 the core not deep enough?

13 A. Most likely it wasn't there.

14 Q. It says the bottom of the third layer, not  
15 the top.

16 MS. DUBIN: Objection, leading the witness.

17 HEARING OFFICER HALLORAN: Ms. Nijman, if you  
18 could rephrase.

19 BY MS. NIJMAN:

20 Q. Do you see where it says, "The bottom of  
21 the third layer"?

22 A. Yes.

23 Q. What does that suggest to you?

24 MS. DUBIN: Objection, leading the witness,



1 calls for speculation.

2 HEARING OFFICER HALLORAN: Overruled. She may  
3 answer, if she's able.

4 THE WITNESS: It says they were expecting a  
5 third layer of Poz-O-Pac, the bottom of it. I  
6 really don't know.

7 BY MS. NIJMAN:

8 Q. I'll note on the second boring as well, it  
9 says -- read the note at the bottom of the second  
10 subheading, the sub-bullet, I mean.

11 A. Okay. Yes, "Bottom" -- of the same  
12 comment, same note, "Bottom of third layer of  
13 Poz-O-Pac not encountered."

14 Q. Thank you. Ms. Dubin also directed you to  
15 the same Exhibit NWG510 at Bates Midwest Gen 34281.

16 A. Okay.

17 Q. And I believe you said you didn't know,  
18 but you assumed water was coming from 3 south  
19 adjacent?

20 A. Correct.

21 Q. So, do you know if 3 south had ash in it  
22 at the time of this note?

23 A. It could.

24 Q. But you don't know?

1 A. I don't know.

2 Q. Turning to still Exhibit MWG510, page  
3 34317, I believe you stated you didn't know what  
4 this was?

5 A. Correct.

6 Q. You don't know if it was material from the  
7 pond?

8 MS. DUBIN: Objection, leading the witness.

9 HEARING OFFICER HALLORAN: Ms. Nijman, could  
10 you rephrase, please?

11 MS. NIJMAN: Certainly.

12 BY MS. NIJMAN:

13 Q. Do you know if it was material from the  
14 pond?

15 A. The description doesn't appear to be  
16 anything that was in the pond.

17 Q. Do you know if it was material outside the  
18 pond?

19 MS. DUBIN: Objection, calls for speculation.  
20 The witness has established she's not familiar with  
21 this boring, or whatever this is.

22 HEARING OFFICER HALLORAN: What's good for the  
23 goose is good for the gander. I allowed you some  
24 speculation as well.

1 MS. DUBIN: That's fair.

2 HEARING OFFICER HALLORAN: Thank you.

3 THE WITNESS: Sorry. Can you repeat the  
4 question?

5 BY MS. NIJMAN:

6 Q. Do you know where this sample came from at  
7 all?

8 A. No, I really don't.

9 Q. Thank you. Turning to tab 11, which is  
10 Exhibit Midwest Gen 510. If you would go to page  
11 34426, Bates No. 34426, and then two pages over is  
12 the map we were looking at before, which would be  
13 34428?

14 A. Yes.

15 Q. Ms. Dubin drew your attention to the  
16 little bubble on the side of this map, and asked you  
17 about the layers, and you see on the top of the  
18 boring it says, "6 inches Poz-O-Pac layer"?

19 A. Yes.

20 Q. Do you know if that is consistent with  
21 what Rebecca Schwartz talked about in her initial  
22 memo, a six-inch layer, and that's Exhibit 500?

23 A. So, Exhibit 500, if we look at Bates 42,  
24 ash pond -- south ash pond 2, which is Bates number

1 8, Midwest Gen No. 8, you see where she's talking  
2 about the six six-inch lifts that you discussed  
3 yesterday?

4 Q. Yes. So, this -- and going back to Bates  
5 34428, the map, the first layer is a six-inch  
6 Poz-O-Pac layer. Do you see that?

7 A. I see that, correct.

8 Q. And then the second layer is a six-inch  
9 Poz-O-Pac layer; do you see that?

10 A. I do.

11 Q. That is consistent with what Ms. Schwartz  
12 wrote in Exhibit 500.

13 Is that consistent with what she wrote in  
14 Exhibit 500?

15 MS. DUBIN: Objection, leading the witness.

16 HEARING OFFICER HALLORAN: Sustained. If you  
17 could rephrase, Ms. Nijman.

18 BY MS. NIJMAN:

19 Q. Can you see whether this is consistent  
20 with the other document, Midwest Gen Exhibit 500?

21 A. It's different terminology than the  
22 Ms. Schwartz documentation.

23 Q. How so?

24 A. She's using the term "lift." That's not

1 something -- a terminology I would use. I'm more  
2 familiar with the map here in Exhibit 510 of layers.  
3 So, it appears it's different.

4 Q. As far as the term layer versus lift?

5 A. Layer versus lift, correct.

6 Q. Do you recall when we talked yesterday you  
7 said those were probably the same thing?

8 MS. DUBIN: Objection, leading the witness.

9 HEARING OFFICER HALLORAN: Sustained. She  
10 answered.

11 THE WITNESS: Yes, lift and layers are similar.

12 BY MS. NIJMAN:

13 Q. Do you see in this little bubble on Bates  
14 34428, it says, "End of boring."

15 Do you see that?

16 A. I do.

17 MS. DUBIN: Objection, leading the witness.

18 HEARING OFFICER HALLORAN: This is foundation  
19 for the question.

20 MS. NIJMAN: Thank you.

21 THE WITNESS: I see that, yes.

22 BY MS. NIJMAN:

23 Q. Do you know whether end of boring means  
24 the end of the Poz-O-Pac?

1 A. I couldn't answer that.

2 Q. Thank you.

3 MS. NIJMAN: That's all I have right now.

4 Thank you.

5 HEARING OFFICER HALLORAN: Ms. Dubin?

6 MS. DUBIN: That's all I have.

7 HEARING OFFICER HALLORAN: Thank you.

8 Ms. Maddox, you're early. You can go. Let's go off  
9 the record.

10 (Discussion off the record.)

11 HEARING OFFICER HALLORAN: We're going to go  
12 back on the record, everyone. Thank you. We're  
13 back on the record.

14 It's approximately 10:00 a.m.

15 Complainant's case in chief continues.

16 MR. WANNIER: Complainant moves to call Richard  
17 Gnat as an adverse witness.

18 HEARING OFFICER HALLORAN: Could you identify  
19 yourself, please?

20 MR. WANNIER: I'm sorry. My name is Gregory  
21 Wannier, counsel for Sierra.

22 HEARING OFFICER HALLORAN: Wannier?

23 MR. WANNIER: Wannier.

24 HEARING OFFICER HALLORAN: Thank you.

1 MS. GALE: Mr. Hearing officer, they moved to  
2 call him as adverse witness. I'm just wondering  
3 what their basis is.

4 HEARING OFFICER HALLORAN: We're going to  
5 listen to some questions. It's a little early to  
6 call him as an adverse witness. Establish some  
7 foundation first.

8 MR. WANNIER: We can establish. Does he need  
9 to be sworn in?

10 HEARING OFFICER HALLORAN: Yes. Raise the your  
11 right hand and the court reporter will swear you in.

12 (Witness was duly sworn.)

13 HEARING OFFICER HALLORAN: Thank you. You may  
14 proceed.

15 RICHARD GNAT,  
16 called as an adverse witness herein, after having been first  
17 duly sworn, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WANNIER:

20 Q. Thank you. First, can you please state  
21 your name, for the record?

22 A. My name is a Richard Gnat, G-n-a-t, like  
23 the bug.

24 Q. Okay. And, Mr. Gnat, who do you work for?

1 A. I work for KPRG & Associates.

2 Q. What is KPRG & Associates?

3 A. We're an environmental consulting group.

4 Q. Okay. And what is your role at KPRG &  
5 Associates?

6 A. I'm a principal and part owner of the  
7 firm.

8 Q. Okay. You said environmental consulting.  
9 What type of environmental consulting?

10 A. We do a variety of environmental  
11 consulting; however, we specialize in subsurface  
12 consulting soils and ground water.

13 Q. Okay. And what is the work -- when you  
14 work on subsurface, what is the work that you're  
15 doing exactly?

16 A. It depends on the project. Our work  
17 includes characterizing soils, characterizing the  
18 ground water flow conditions. It depends on the  
19 project.

20 Q. Okay. And you understand that we're here  
21 talking about Midwest Generation.

22 Can you describe the work that you've done  
23 for them?

24 A. We do a variety of work for Midwest



1 Generation, environmental work, everything from  
2 ground water sampling and data reporting through  
3 assisting with other environmental items as  
4 requested.

5 Q. What is the relationship -- what is your  
6 business relationship with Midwest Generation  
7 exactly?

8 A. Midwest Generation is one of our clients.

9 Q. Okay. So, can you just -- you would call  
10 yourself a -- what would you call yourself in  
11 relation to that, a consultant, a contractor?

12 A. I am a consultant of theirs.

13 Q. Okay. And how long have you been working  
14 with Midwest Generation?

15 A. I have within working with Midwest  
16 Generation since probably around 2000, 2001, when I  
17 was with the prior company.

18 Q. Okay.

19 MR. WANNIER: We would at this time call  
20 Mr. Gnat as an adverse witness.

21 HEARING OFFICER HALLORAN: Ms. Gale?

22 MS. GALE: I guess I would request a basis for  
23 that. Since he is a consultant for Midwest  
24 Generation doesn't mean he's adverse in this matter.

1 If I may ask him a follow-up question.

2 HEARING OFFICER HALLORAN: You can ask voir  
3 dire.

4 VOIR DIRE EXAMINATION

5 BY MS. GALE:

6 Q. Do you have other clients?

7 A. Yes, we do.

8 Q. So, you work for other people, other  
9 companies?

10 A. Yes, we do.

11 Q. So, Midwest Generation is not your only  
12 client?

13 A. By far, no.

14 Q. How many other clients do you have?

15 A. Depending on the year, but we've got a  
16 steady 50, 60 clients.

17 MS. GALE: Again, I'm failing to see the basis  
18 he is an adverse witness in this matter.

19 HEARING OFFICER HALLORAN: I think he has  
20 sufficient beneficial interest. He's a -- Midwest  
21 is his client. He's been working with them for at  
22 least -- well, maybe not with that company -- from  
23 the year 2000, 2001.

24 So, I'm going to grant Mr. Wannier's

1 motion to treat Mr. Gnat as an adverse witness. So,  
2 overruled. Thank you.

3 MR. WANNIER: Thank you, your Honor.

4 BY MR. WANNIER:

5 Q. Mr. Gnat, going back to the type of work  
6 you've done, the subsurface soil analysis, what sort  
7 of analysis do you generally -- what analyses have  
8 you run in your work with Midwest Generation?

9 MS. GALE: Objection, misstates testimony. He  
10 said he did sampling.

11 HEARING OFFICER HALLORAN: Sustained.

12 MR. WANNIER: I can rephrase.

13 BY MR. WANNIER:

14 Q. In your work for Midwest Generation, what  
15 can you describe, actually, in a little more detail,  
16 the work that you've done for Midwest Generation?

17 A. It depends on the project. So, if you ask  
18 me what type of project, I can tell you what we're  
19 doing with evaluating the soil.

20 Q. I guess let me ask this: Have you ever  
21 done three-dimensional modeling for Midwest  
22 Generation?

23 A. We have done three-dimensional ground  
24 water modeling; however, that is a very specialized

1 field. Our company uses an associate firm that  
2 specializes in ground water modeling.

3 When we have an actual project that  
4 requires three-dimensional ground water modeling, we  
5 will contract with that firm to provide that  
6 expertise as part of our team.

7 Q. When did you do that three-dimensional  
8 modeling?

9 A. We did that modeling back in the -- it  
10 started -- it is a long process, probably in the  
11 2006 time frame.

12 MS. GALE: I'm going to object, to the extent  
13 are you talking about generally, or are you talking  
14 about the stations that are subject to this  
15 complaint?

16 MR. WANNIER: I can clarify, your Honor.

17 HEARING OFFICER HALLORAN: Just object and  
18 stated your grounds.

19 MS. GALE: Objection, vague.

20 HEARING OFFICER HALLORAN: Okay, thank you.  
21 Sustained. Rephrase.

22 BY MR. WANNIER:

23 Q. Have you ever done three-dimensional  
24 modeling for Midwest Generation, with respect to the

1 issue in this proceeding?

2 A. No, we have not.

3 Q. Okay, thank you. I'm going to be placing  
4 before you Plaintiff's Exhibit 201, which includes a  
5 letter from you, as well as geotechnical analysis of  
6 soil surrounding settling basins of ponds?

7 HEARING OFFICER HALLORAN: Keep your voice up.

8 MR. WANNIER: Understood, your Honor.

9 BY MR. WANNIER:

10 Q. Mr. Gnat, do you recognize this document?

11 A. Yes, I do.

12 Q. Can you describe it, please, for the  
13 record?

14 A. This is a summary letter dated October 13,  
15 2005, regarding geotechnical analysis of soil  
16 surrounding settling basin/ponds.

17 Q. Okay. Looking at that first page, do you  
18 see where there are six bullet points two of which  
19 have been redacted?

20 A. Yes.

21 Q. And do you see Waukegan, Will County  
22 Joliet No. 29 and Powerton station on the bullet  
23 points?

24 A. Yes.

1 Q. Does this mean that this exhibit includes  
2 your geotechnical analysis of those four sites?

3 A. That is not necessarily correct. What  
4 this includes are the geotechnical -- are the  
5 borings that we did to collect the soil samples that  
6 were then analyzed by geotechnical laboratory.

7 Q. Understood. Could you please turn to page  
8 Bates page MWG131524275?

9 I'm sorry, if you could first turn to  
10 2473, two pages away. Is this a map of the Waukegan  
11 site to your knowledge?

12 A. Yes, it appears to be.

13 Q. And do you see on the map it has five  
14 labels WS-DT-1 and then 2345?

15 A. Yes.

16 Q. Are those the boring site locations that  
17 were done for this report at Waukegan, to your  
18 knowledge?

19 A. I believe so, yes.

20 Q. Okay. If you could turn to 24275 now?

21 A. Yes.

22 Q. Looking at the top, does this appear to be  
23 a boring log of well WS or site WS-GT-1.

24 A. Yes, it does.

1 Q. Okay. Do you see in the middle of the  
2 column where it says "slag"?

3 A. Yes. It says, "Slag black medium core  
4 sand and gravel and some bottom ash."

5 Q. Slag is a -- is slag a form of coal ash?

6 A. My understanding is that it depends on the  
7 way it was burned, the type of coal and the type of  
8 burners. That will determine how that material, the  
9 combustion of that material, results in. So, it may  
10 be a coal ash.

11 Q. Is slag a coal combustion byproduct?

12 A. It may be.

13 Q. If you could turn to 24277, and this  
14 appears to be a boring log for site WSGT3, correct?

15 A. That is correct.

16 Q. Again, looking at the description column,  
17 turn to the second row.

18 Do you see where it says, "Bottom ash  
19 black and gray, some sand and gravel dry"?

20 A. Yes.

21 Q. Okay. Turning to 24278.

22 A. That also --

23 Q. I'm sorry?

24 A. To say that is on the log, as well as

1 other layers above and below that layer that don't  
2 say bottom ash gray and black. They say, "Sand fine  
3 to medium black and brown" or "Sand and gravel" as  
4 well.

5 MR. WANNIER: Move to strike as nonresponsive,  
6 your Honor.

7 HEARING OFFICER HALLORAN: Overruled.

8 BY MR. WANNIER:

9 Q. Turning to 24278, do you see -- again,  
10 does this appear to be WSGT4?

11 A. Yes, it does.

12 Q. You see in the second row under  
13 description where it says, "Bottom ash and sand and  
14 gravel, mixture very moist"?

15 A. Yes, I do. That is one of the -- its on  
16 the log, yes.

17 Q. Understanding that there are multiple  
18 layers that have been tested in this boring --  
19 actually, turn to another one. Turn to the fifth  
20 line.

21 Do you see where it says, "Bottom ash  
22 black granular medium to core, sand and gravel  
23 slightly moist"?

24 A. Yes, I do. There is also another layer in



1 this log.

2 Q. Turning to 24279, does this appear to be a  
3 log of boring WSGT5?

4 A. Yes, it does.

5 Q. And do you see in the third row under the  
6 description where it says, "Bottom ash fine to  
7 medium sand and silt, brown and some gray, some  
8 slag, slightly moist"?

9 HEARING OFFICER HALLORAN: Keep your voice up,  
10 please.

11 MR. WANNIER: I will, thank you.

12 THE WITNESS: Yes, I do.

13 BY MR. WANNIER:

14 Q. Do you see in the line directly below that  
15 where it says, "Bottom ash black granular medium to  
16 core sand and gravel, slightly moist"?

17 A. Yes.

18 Q. I understand there are other layers in  
19 this boring?

20 A. That is correct.

21 Q. Can you turn to 242 -- we won't run  
22 through all of them, but let's turn to 24282.

23 A. Okay.

24 Q. Does this appear to be a map of the, to

1 your knowledge, of the Will County facility?

2 A. Yes, it does.

3 Q. Okay. And, again, do you see in that map  
4 where they have delineated the location of multiple  
5 boring locations?

6 A. Yes.

7 Q. And we'll just do one from the site at --  
8 can you turn to 24284?

9 A. Okay.

10 Q. Do you see in the third line where it  
11 says, "Slag and bottom ash dark and gray, medium to  
12 core sand, little silt, dry to slightly moist"?

13 A. Yes, that is the very bottom one foot  
14 layer of the whole boring.

15 Q. Okay. And can you please turn to 24292?  
16 I'm sorry, 24290.

17 A. Okay.

18 Q. Does this appear to be a map of the Joliet  
19 facility, to your knowledge?

20 A. Yes, it does, Joliet 29.

21 Q. And, again, to make this go quicker, you  
22 see the map of the boring sites there?

23 A. Yes.

24 Q. Okay. We'll just turn to 24302 -- excuse

1 me, 24300.

2 A. 24300, okay.

3 Q. Does that appear to be a map of the power  
4 plant facility with boring logs on it?

5 A. Yes, it does.

6 Q. Okay. Do you have any reason to doubt the  
7 accuracy of any of the boring logs in this report?

8 A. No, I don't.

9 Q. We will -- your Honor, I move for  
10 admission of Plaintiff's Exhibit -- Complainant's  
11 Exhibit 201.

12 HEARING OFFICER HALLORAN: Ms. Gale?

13 MS. GALE: No objection.

14 HEARING OFFICER HALLORAN: Thank you.

15 Complainant's 201 is admitted.

16 (Complainant Exhibit No. 201 was  
17 admitted into evidence.)

18 MR. WANNIER: We're not going to be introducing  
19 -- I'm sorry, my counsel spoke to me.

20 MS. GALE: I'm sorry, it was admitted, right?

21 HEARING OFFICER HALLORAN: Exhibit 201 is  
22 admitted. Evidently, they're not going to offer  
23 200.

24 MS. GALE: Thank you.

1 MR. WANNIER: We would like to introduce  
2 Complainant's Exhibit 202, which is Bates range  
3 24387 to 24392. This is another letter from the  
4 witness to Maria Race.

5 HEARING OFFICER HALLORAN: R-a-c-e.

6 BY MR. WANNIER:

7 Q. Mr. Gnat, do you recognize this document?

8 A. Yes.

9 Q. Can you please describe it for the record?

10 A. The document is regarding a reissuance of  
11 Figure 4-1 for the geotechnical report.

12 There must have been a relocation on one  
13 of the maps on the map for Joliet 29, and we're  
14 issuing a corrected version.

15 Q. Thank you. Can you please turn to Bates  
16 page 24388?

17 A. Okay.

18 Q. Does this, again, appear to be a map of  
19 the Joliet site?

20 A. Joliet 29.

21 MR. WANNIER: Complainant would move for the  
22 issue of complainant's 202.

23 MS. GALE: No objection.

24 HEARING OFFICER HALLORAN: Complainant 202 is

1 admitted.

2 (Complainant Exhibit No. 202 was  
3 admitted into evidence.)

4 BY MR. WANNIER:

5 Q. Complainants are now placing before you  
6 Complainant 203, which is a geologic log of  
7 muddering wells 8 and 9 at Waukegan.

8 Do you recognize this document, Mr. Gnat?

9 A. Yes, this is one of our boring logs as  
10 well as construction summaries.

11 Q. Okay. Do you see -- turning to page  
12 45649, do you see -- strike that.

13 Does this appear to be a geologic log of  
14 muddering well 9?

15 A. Yes, it does.

16 Q. Do you see in the 3rd line under the  
17 description where it says, "Fill black slag"?

18 A. Yes, I do. That is a layer within the  
19 overall 18-foot boring. This is a single layer  
20 within a larger column of an 18-foot boring.

21 MR. WANNIER: Your Honor, can I just have that  
22 last part read back for the record to make sure my  
23 words were captured in the transcript?

24 HEARING OFFICER HALLORAN: His answer or your

1 question?

2 MR. WANNIER: My question.

3 HEARING OFFICER HALLORAN: Could you please  
4 read back his question, please? Thank you.

5 (Said record was read.)

6 HEARING OFFICER HALLORAN: Thank you.

7 MR. WANNIER: Thank you, your Honor.

8 Complainants would move for the admission of  
9 complainant Exhibit 203.

10 MS. GALE: No objection.

11 HEARING OFFICER HALLORAN: Thank you. Ms.  
12 Gale?

13 MS. GALE: No objection.

14 HEARING OFFICER HALLORAN: Complainant's  
15 Exhibit 203 is admitted.

16 (Complainant Exhibit No. 203 was  
17 admitted into evidence.)

18 MR. WANNIER: Complainants are now placing  
19 before the witness a group exhibit. We have  
20 discussed this with defendants. This is the first  
21 of several that will we will be introducing in a  
22 row.

23 This is group G, and it includes  
24 Complainant's Exhibit Nos. 204G through 209G.

1 MS. GALE: Are you going to describe them?

2 MR. WANNIER: Thank you. These are Joliet CCR  
3 lab results conducted by Test America.

4 BY MR. WANNIER:

5 Q. If you can let me know when you're ready  
6 to proceed.

7 A. Yes, these are the analytical reports from  
8 Test America.

9 Q. Okay. Sorry. So the record is clear, you  
10 recognize these documents?

11 A. Yes, I do.

12 Q. Do these contain lab water or lab data and  
13 ground water monitoring results from the Joliet  
14 site?

15 A. From Joliet No. 29?

16 Q. Joliet 29.

17 A. CCR sampling, that is correct.

18 Q. Okay. Did you rely on these reports in  
19 conducting your analysis for Midwest Generation?

20 MS. GALE: Objection, foundation. He never  
21 said he did any analysis.

22 HEARING OFFICER HALLORAN: Can you rephrase,  
23 please?

24

1 BY MR. WANNIER:

2 Q. Why is your name not on this report?

3 Sorry. Why is your name on this report?

4 I misspoke.

5 A. Because we collect the ground water  
6 samples for the CCR monitoring that is done at this  
7 station.

8 Q. Okay. Have you shared these samples with  
9 Midwest Generation as part of your work?

10 A. Yes, Test America is contracted directly  
11 to Midwest Generation, and we use them through their  
12 contract, and they provide us copies with the  
13 report.

14 Q. Okay. Do you have any reason to doubt the  
15 accuracy of any of these lab results?

16 A. No. When we receive the lab results, we  
17 look at any potential qualifiers and use the data to  
18 provide summary tables.

19 Q. Okay. When you're looking at this data,  
20 do you analyze trends in the well data over time?

21 MS. GALE: Objection. Mr. Gnat does this work  
22 under privilege, attorney-client privilege. Any  
23 analysis related to it is privileged.

24 HEARING OFFICER HALLORAN: Could you read the



1 question back, please?

2 (Said question was read.)

3 MS. GALE: I further object. He's being called  
4 as a fact witness, not an expert witness in this  
5 matter. He's here to simply talk about the facts in  
6 this data.

7 MR. WANNIER: Your Honor, I'm not asking for  
8 the specifics of his analysis, whether it's  
9 privileged or not. This is just asking whether he  
10 does this analysis.

11 HEARING OFFICER HALLORAN: I agree. Overruled.  
12 You may answer, if you are able.

13 MS. GALE: If I may, I'm going to direct my  
14 client not to disclose any privileged information  
15 that he may have related to this information.

16 HEARING OFFICER HALLORAN: The question, I  
17 don't think, calls for privileged information.

18 MS. GALE: Understood.

19 THE WITNESS: On the CCR data, I do not  
20 remember if we include -- what we would do is  
21 provide time versus concentration curves to Midwest  
22 Generation.

23 I do not remember if we provided that for  
24 the CCR data or not.

1 BY MR. WANNIER:

2 Q. Just to clarify, when you say "provide  
3 time versus concentration curves," is that anything  
4 more than simply creating a chart that represents  
5 data you received?

6 A. That is correct.

7 Q. Sorry. Are you saying you have done more  
8 than simply provide a chart, or you are only  
9 providing a chart?

10 A. I am taking the data that's provided to us  
11 and my company develops the chart and provides the  
12 chart to our client.

13 Q. Okay. We can talk about those charts a  
14 little later. I believe they are in future  
15 exhibits, but I just want to understand how you are  
16 creating these charts.

17 Are you simply taking concentration and  
18 data points and putting them in a chart?

19 MS. GALE: I object here, just for vagueness.  
20 Are you asking about the CCR data, or are you asking  
21 about the CCA data?

22 HEARING OFFICER HALLORAN: Sustained.  
23 Rephrase, please.

24

1 BY MR. WANNIER:

2 Q. You're looking at a series of CCR reports,  
3 correct?

4 A. Correct.

5 Q. Now, when you're looking at -- when you  
6 are creating charts of the CCR data for Midwest  
7 Generation, and you said you create these charts, do  
8 you do anything -- do you create CCR charts?

9 A. That is what I wanted to clarify. I  
10 believe I said I do not remember if we do that for  
11 the CCR data or not.

12 And then I just basically described, in  
13 general, what a time versus concentration chart is.

14 Q. Okay, understood. Can you just explain  
15 the distinction between CCR reports and other  
16 reports, for the record?

17 A. Sure.

18 MS. GALE: Objection, vague.

19 HEARING OFFICER HALLORAN: Overruled. You can  
20 answer, if you're able.

21 THE WITNESS: We are at Joliet 29, which is  
22 what I have in front of me. We do sampling that we  
23 call CCR sampling, which is a sampling program that  
24 has been developed by Midwest Generation with

1 compliance of the new federal rule for coal  
2 combustion byproduct ponds.

3 That's the CCR rule. So, we have a  
4 program called CCR sampling, which is the data you  
5 provided me.

6 We also do what we call CCA sampling,  
7 which is a sampling that's done on a quarterly basis  
8 in accordance with the compliance commitment  
9 agreement that was signed with IEPA.

10 Q. Understood. Thank you.

11 MR. WANNIER: Complainants would move for  
12 admission of Complainant's Exhibits 204G through  
13 209G?

14 MS. GALE: We object to the admission of the  
15 CCR data, which is Exhibits 204G to 209G, because  
16 it's prejudicial and cumulative evidence.

17 The CCR data is collected pursuant to the  
18 new federal rules. I actually have complaints.  
19 They also tend to introduce the CCA data as well  
20 which is collected pursuant to the Illinois EPA  
21 requirement.

22 The CCR data and CCA data is collected  
23 from the exact same wells at Joliet 29 and collected  
24 at the exact same time. It is prejudicial to

1 Midwest Generation to include both sets of data  
2 which are virtually identical to each other.

3 HEARING OFFICER HALLORAN: I think the Board  
4 can sort that out. It's not like a jury. I  
5 overrule your objection. Complainant's Exhibit 204G  
6 through 209G is admitted over objection.

7 (Complainant Exhibit Nos. 204G  
8 through 209G was admitted into  
9 evidence.)

10 MS. GALE: I move to strike any testimony  
11 related to the CCR data.

12 MR. WANNIER: Your Honor, just to explain, for  
13 the record -- here, part of the reason we're  
14 including this is that although CCR data is taking  
15 contemporaneously with CCA well data, the results  
16 for the CCR are measured as total recoverable  
17 concentrations; and the results in CCA data are  
18 measured in dissolved, which are similar, but not  
19 exact, figures.

20 We are using both to create a more  
21 complete picture of the series of ground water  
22 results at the time.

23 MS. GALE: If I may, Mr. Halloran, respond to  
24 that. The method of testing is a marginal

1 difference. My understandings is the only  
2 difference is one step taken in the field, but that  
3 analysis, when the samples get to the laboratory, is  
4 the exact same.

5 To further explain our reasoning, our  
6 understanding is that the complainants intend to use  
7 each of the same results. So, the same results from  
8 CCA data in second quarter, for example, and CCR  
9 data in second quarter of 2016 to include as  
10 individual evidence of alleged the violations, and  
11 it's very prejudicial to Midwest Generation.

12 In effect, Midwest Generation is being  
13 penalized for following two different agencies'  
14 requirements.

15 HEARING OFFICER HALLORAN: The Board will take  
16 note of your objection in the record. Thank you.  
17 It goes to the weight, not the admissibility. But,  
18 thank you. You may proceed.

19 BY MR. WANNIER:

20 Q. I can put that aside. Plaintiffs are now  
21 placing before you Group Exhibit H, which  
22 Complainant's Exhibits 210H through 215H.

23 MS. GALE: Before we get into it, I'm going to  
24 continue to object to this group exhibit, except for

1 wells 17, 18 and 19.

2 MR. WANNIER: We have the same response, your  
3 Honor.

4 HEARING OFFICER HALLORAN: Hold on, counsel. I  
5 was hoping we would figure it out long before today.

6 MR. WANNIER: Your Honor --

7 HEARING OFFICER HALLORAN: Hold on, please.  
8 Thank you. Ms. Gale, you want an anticipatory or  
9 objection to which ones, which wells, which exhibit?

10 MS. GALE: This is the Powerton CCR data  
11 Exhibit 210H, 2111, 212, 213. I'm missing one.  
12 214, 215, as I've discussed with counsel previously.  
13 We have discussed this.

14 HEARING OFFICER HALLORAN: I'm sorry, what did  
15 you say?

16 MS. GALE: We have discussed this.

17 MS. DUBIN: I object to the admission of this  
18 data as accumulative and duplicative, as it relates  
19 to the wells, except monitoring wells 17, 18 and 19  
20 because those wells are not reflected in the CCA  
21 data.

22 HEARING OFFICER HALLORAN: Your objection is so  
23 noted but overruled. The Board will take a look at  
24 it and figure something out. Thank you.

1                   You may proceed. You haven't offered it  
2 yet?

3                   MR. WANNIER: I haven't offered it yet.

4 BY MR. WANNIER:

5                   Q. Mr. Gnat, you recognize these documents?

6                   A. Yes, I do.

7                   Q. Are these CCR lab results for the Powerton  
8 facility?

9                   A. Yes, they are.

10                  Q. Do you recall the series of questions I  
11 asked you regarding the Joliet lab reports, CCR lab  
12 reports.

13                  MS. GALE: Objection, vague, compound.

14                  HEARING OFFICER HALLORAN: Sustained.

15                  MR. WANNIER: We can discuss it.

16 BY MR. WANNIER:

17                  Q. These reports contain ground water  
18 monitoring samples from wells at the Powerton  
19 facility, correct?

20                  A. CCR data samples, yes.

21                  Q. CCR data samples, thank you. Do you have  
22 any reason to doubt the accuracy of any of these  
23 results?

24                  A. No.



1 MR. WANNIER: Complainant's move for  
2 introduction of Complainant's Exhibit 210H through  
3 215H.

4 HEARING OFFICER HALLORAN: You can state your  
5 objection, again, Ms. Gale, or so noted on the  
6 record.

7 MS. GALE: As I said earlier, we object to the  
8 admission of these reports, except for the results  
9 for MW17, 18, 19, because they are duplicative and  
10 cumulative evidence.

11 HEARING OFFICER HALLORAN: Thank you.  
12 Overruled. Complainant's Group Exhibit 210H through  
13 215H is admitted.

14 (Complainant Exhibit No. 210H  
15 through 215H were admitted into  
16 evidence.)

17 BY MR. WANNIER:

18 Q. Mr. Gnat, we are placing before you now  
19 Complainant Exhibits 216I through 220I, as part of  
20 Group Exhibit I, which we would present our CCA lab  
21 results of the Waukegan facility monitoring wells 8  
22 and 9.

23 Do you recognize these documents?

24 A. Yes, I do. However, I would like to

1 clarify that wells 8 and 9 are not part of CCA  
2 sampling.

3 Q. Sorry, can you say that again?

4 A. Wells 8 and 9 are not part of CCA  
5 sampling, which is what you indicated.

6 Q. I can correct that on the record. These  
7 are lab results from monitoring wells 8 and 9, but  
8 they are not part of the CCA sampling; is that  
9 correct?

10 A. That is correct. I'll check and verify  
11 that for you. Yes, this is the data for 8 and 9.

12 Q. Okay. Do you have any reason to doubt the  
13 accuracy of any of this data?

14 A. No, I do not.

15 MR. WANNIER: Complainant's move for admission  
16 of Complainant Exhibit 216I through 220I.

17 HEARING OFFICER HALLORAN: Ms. Gale?

18 MS. GALE: No objection.

19 HEARING OFFICER HALLORAN: Thank you.

20 Complainant Exhibit 216I through 220I is admitted.

21 (Complainant Exhibit Nos. 216I  
22 through 220I were admitted into  
23 evidence.)

24

1 BY MR. WANNIER:

2 Q. Mr. Gnat, we are placing before you  
3 Group J, which is Complainant's Exhibits 222J  
4 through 228J.

5 HEARING OFFICER HALLORAN: May I ask  
6 complainants do you have a clip or something?

7 MR. WANNIER: Yes, we do, your Honor.

8 MS. NIJMAN: If you have extras, that would be  
9 great.

10 HEARING OFFICER HALLORAN: I need two clips now  
11 because you just handed me a bundle of more  
12 exhibits, correct?

13 MR. WANNIER: Yes. Can we go off the record?

14 HEARING OFFICER HALLORAN: Yes, we're off the  
15 record.

16 (Discussion off the record.)

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

19 BY MR. WANNIER:

20 Q. Mr. Gnat, do you recognize these exhibits?

21 A. Yes, I do.

22 Q. And are these CCR lab results at the  
23 Waukegan facility?

24 A. Yes, they are.

1 Q. Okay. And do you have any reason to doubt  
2 the accuracy of any of this information?

3 A. No, I do not.

4 MR. WANNIER: Complainants move for admission  
5 of Group Exhibit J, Complainant's Exhibit Nos. 222J  
6 through 228J.

7 MS. GALE: Again, I similarly, for the group  
8 Exhibits G and H, I object to the admission of this  
9 data because it is duplicative and cumulative,  
10 except for the wells 11, 14 and 16, which are new  
11 wells.

12 HEARING OFFICER HALLORAN: Thank you. Your  
13 objection is noted on the record; however,  
14 overruled. I'll admit Complainant's Group Exhibit  
15 J222 to 228.

16 (Complainant Exhibit Nos. J222  
17 to J228 were admitted into  
18 evidence.)

19 BY MR. WANNIER:

20 Q. Mr. Gnat, we are now placing before you  
21 Group Exhibit K, which is Complainant's  
22 Exhibits 229K through 235.5K, and I'll just note  
23 that it's 229 through 235 plus 235.5. We added one  
24 at the end.

1           When you're ready, I'll give you some  
2 time, but let me know when you're ready.

3           A.    Okay.

4           Q.    Do you recognize these exhibits?

5           A.    Yes, I do.

6           Q.    And are they the Waukegan Tannery ELUC,  
7 and ELUC standing for environmental land use control  
8 lab results?

9           A.    These are samples will be collected from  
10 five wells that are identified as ELUC, E-L-U-C  
11 wells, correct.

12          Q.    Can you tell me were any of these reports  
13 prepared for the CCA?

14          A.    That is the clarification I wanted to make  
15 in some of the titles on these reports.  These are  
16 not CCA wells, if I remember correctly.

17          Q.    But turning to Complainant's Exhibit --  
18 actually, if you can turn to complainant  
19 Exhibit 231K?

20          A.    Yes.

21          Q.    Does that indicate that those reports are  
22 pursuant to the CCA?

23          A.    Yes.  That is the clarification I was  
24 speaking about.  On a few of these, I saw that it

1 specifically said CCA, and I do not believe those  
2 are actually part of CCA sampling.

3 Q. Okay. And that would also apply to  
4 Exhibit 235.5K?

5 A. That is correct.

6 Q. Do you have any reason to doubt the  
7 accuracy of the data in any of these reports?

8 A. No.

9 MR. WANNIER: Complainants will move for  
10 admission of Exhibits 229K through 235.5K.

11 MS. GALE: No objection.

12 HEARING OFFICER HALLORAN: Thank you, Ms. Gale.  
13 Complainant's Group Exhibit K229 through 235.5 is  
14 happened.

15 (Complainant Exhibit Nos. K229  
16 through 235.5 were admitted into  
17 evidence.)

18 BY MR. WANNIER:

19 Q. And I have one last set for you, Mr. Gnat.  
20 We are now placing before you Group Exhibit L, which  
21 is Complainant's Exhibits 236L through 241L, which  
22 we represent are CCR lab results at the Will County  
23 facility.

24 Do you recognize these documents?

1           A.    Yes, I do.

2           Q.    Are they ground water monitoring results  
3 at the Will County facility?

4           A.    For the CCR sampling, correct.

5           Q.    Do you have any reason to doubt the  
6 accuracy of any of this information?

7           A.    No, I do not.

8           MR. WANNIER: Complainant's move for introduce  
9 -- the admission of Group Exhibit L, Complainant's  
10 Exhibits 236L through 241L.

11          HEARING OFFICER HALLORAN: Ms. Gale?

12          MS. GALE: Again, we would object to the  
13 admission of this document as duplicative and  
14 cumulative, except for monitoring wells 11 and 12,  
15 which are not part of the CCA sampling.

16                 Again, the admission of this data, the  
17 inclusion of this in this case, prejudices my client  
18 for being double dinged for simply following two  
19 different agency requirements.

20          HEARING OFFICER HALLORAN: Okay, thank you.  
21 The Board will take note, I'm sure. In any event,  
22 it's overruled.

23                 Complainant's Exhibit Group L -- 236L  
24 through 241L is admitted.

1 (Complainant Exhibit Nos. 236L  
2 through 241L were admitted into  
3 evidence.)

4 HEARING OFFICER HALLORAN: Let's take a  
5 15-minute break. See you at 11:00 o'clock. We're  
6 off the record.

7 (Discussion off the record.)

8 HEARING OFFICER HALLORAN: We're back on the  
9 record at approximately 11:02. Mr. Wannier, your  
10 witness still.

11 MR. WANNIER: Thank you, your Honor.

12 BY MR. WANNIER:

13 Q. Mr. Gnat, we are placing in front of you  
14 an excerpt from Plaintiff Exhibit 20D. We're going  
15 to provide the excerpt here to everyone, and we have  
16 it available on the screen as well.

17 If we could put -- it's Complainant  
18 Exhibit 20D, Midwest Gen Bates number 23339.

19 HEARING OFFICER HALLORAN: 20D as in dog?

20 MR. WANNIER: 20D as in dog.

21 MS. GALE: Mr. Hearing Officer, we renew our  
22 objection to the use of 20D, because it's  
23 inadmissible, and what renew our motion -- because  
24 the report for ComEd is done by one of ComEd's



1 contractors, and we move to strike any testimony  
2 related to Midwest Generation 13-15 under score  
3 23339, and anything related to Exhibit 20D.

4 HEARING OFFICER HALLORAN: First of all, this  
5 doesn't have a marking on it, complainant.

6 MR. WANNIER: It should be at the top.

7 HEARING OFFICER HALLORAN: It's got to be  
8 consistent.

9 MR. WANNIER: It's got to be consistent.

10 HEARING OFFICER HALLORAN: I'll put it at the  
11 bottom. You have so many exhibits.

12 MR. WANNIER: Understood. This is a excerpt,  
13 so it's not the entire exhibit.

14 HEARING OFFICER HALLORAN: Okay. Let's go back  
15 on the record and find out where this is from.

16 MR. WANNIER: So, your Honor, we are only  
17 attempting to use this as a demonstrative. It is a  
18 excerpt from an exhibit that was previously admitted  
19 in this case.

20 So, we will not be asking the witness any  
21 substantive questions. We're using this to ask the  
22 witness questions about the Joliet site because it's  
23 helpful, but we're not --

24 HEARING OFFICER HALLORAN: Is this the phase 2

1 Com Ed Exhibit 17, 18, 19, 20?

2 MR. WANNIER: Yes.

3 MS. GALE: Mr. Halloran, there are maps that we  
4 have provided to complainants that are Midwest  
5 Generation maps that would be a better demonstrative  
6 of Midwest Generation's operation of the site.

7 This is a map created for Com Ed by ENSR,  
8 who was not employed by Midwest Generation. Sorry,  
9 E-N-S-R. We would simply object to the use of this  
10 map, in part, because there are other maps that  
11 Midwest Generation has.

12 HEARING OFFICER HALLORAN: They chose this. It  
13 is a low threshold of authentication. Overruled.  
14 I'll allow Mr. Wannier to use it.

15 MS. GALE: I renew my motion to strike all the  
16 testimony related to this.

17 HEARING OFFICER HALLORAN: Denied.

18 BY MR. WANNIER:

19 Q. Mr. Gnat, do you recognize this?

20 Does this appear to be a map of the Joliet  
21 facility, 29 facility?

22 A. It appears to be.

23 Q. Are you generally familiar with the Joliet  
24 29 site layout?

1           A.    In general, yes.

2           Q.    Do you -- and as part of that, are you  
3 generally aware of the locations of ash impoundments  
4 at the Joliet 29 site?

5           A.    Yes.

6           Q.    Okay. You can put this aside for now.  
7 We're going to use this as demonstrative as we go.  
8 Right now we're going to place before you Plaintiff  
9 Exhibit 242, which is the compliance commitment  
10 agreement grand water management application for  
11 Joliet No. 29 generating station, Midwest Gen Bates  
12 667 through 711.

13                   I did mean complainant. Thank you for  
14 clarifying.

15           Mr. Gnat, do you recognize this document?

16           A.    Yes, I do.

17           Q.    Can you state what it is for the record?

18           A.    This document is dated January 18th, 2013.  
19 It is on Midwest Generation letterhead, and it's  
20 regarding the compliance commitment agreement ground  
21 water management zone application for Midwest  
22 Generation Joliet No. 9 generating station.

23           MS. GALE: I object. Does he mean No. 29?

24           THE WITNESS: No. 29 generating station.

1 HEARING OFFICER HALLORAN: Your objection is?

2 MS. GALE: Withdrawn.

3 HEARING OFFICER HALLORAN: Okay, thank you.

4 MR. WANNIER: Your Honor, can I represent for  
5 the record that every time I refer to Joliet, I'm  
6 only referring to Joliet No. 29?

7 MS. GALE: I can't agree to that.

8 HEARING OFFICER HALLORAN: I agree. Please say  
9 Joliet 29. It makes it clear on the record.

10 MR. WANNIER: Understood.

11 HEARING OFFICER HALLORAN: Thank you. I  
12 appreciate your streamlining.

13 BY MR. WANNIER:

14 Q. Mr. Gnat, have you seen this document  
15 before?

16 A. Yes, I have.

17 Q. And turning to Bates number page 6668,  
18 excuse me, it's the second page.

19 Do you see your name second from the  
20 bottom on the CC list?

21 A. Yes, I do.

22 Q. Okay. Turning to page 670, does this  
23 appear to be a map of the ash ponds at the Joliet 29  
24 facility?

1           A.    This is a map of the proposed ground water  
2 management zone, which is the main topic of the  
3 submittal.

4           Q.    Understood. Does it depict ash ponds on  
5 the map?

6           A.    Yes, it does.

7           Q.    Specifically, do you see ash pond 1, ash  
8 pond 2 and ash pond 3?

9           A.    Yes, I do.

10          Q.    And do you see the ground water monitoring  
11 zone, is that depicted in the area delineated with  
12 slash lines on this figure?

13          A.    That is the proposed area.

14          Q.    The proposed area?

15          A.    Yes.

16          Q.    That doesn't include the entire Joliet  
17 facility, does it?

18          A.    No, it does not.

19          Q.    Do you know why it doesn't include the  
20 entire Joliet facility?

21          A.    This area is focused on the ponds which  
22 were the topic of the CCA and violation notice, and  
23 this is the area that was geed upon with Illinois  
24 EPA.

1 Q. Okay. Mr. Gnat, are you aware of any  
2 other ash being present at the Joliet site?

3 MS. GALE: Objection, vague.

4 HEARING OFFICER HALLORAN: Sustained.

5 BY MR. WANNIER:

6 Q. Mr. Gnat, are you aware of any ash  
7 placement areas, other than the three ash ponds  
8 depicted in this map?

9 MS. GALE: Same objection, vague.

10 MR. WANNIER: Your Honor, I'm asking if he's --

11 HEARING OFFICER HALLORAN: Overruled. You may  
12 answer, if you're able.

13 THE WITNESS: I'm familiar with some areas that  
14 may have had some ash, yes.

15 BY MR. WANNIER:

16 Q. If we can turn to the demonstrative.

17 Would you be able to point to me where on  
18 this map any such areas would be?

19 A. The only concern on this map that I have  
20 is -- certainly, I haven't drawn it, and how things  
21 are labeled or titled on this map, I don't know if  
22 that's the correct terminology for its use at the  
23 time.

24 Q. Understood.

1           A.     There was a wet area in the northwest part  
2 of the property that we did collect some samples of  
3 ash to determine whether or not it could be used for  
4 -- it can be classified as co-combustion byproduct  
5 or beneficial reuse. That would be in the northwest  
6 part of this site map.

7           Q.     Understanding that the labels on this map,  
8 that you cannot confirm the accuracy of the labels  
9 on this map, could you try to delineate on this map,  
10 maybe using those labels, where that area is?

11          MS. GALE:   Objection, asked and answered. He  
12 just did.

13          MR. WANNIER:   Your Honor, he said the northwest  
14 portion. I'm asking for a little bit more detail.

15          HEARING OFFICER HALLORAN:   I agree. Overruled.

16          THE WITNESS:   It would be hard for me to give  
17 you any very exact type location outside of pointing  
18 to a general area.

19                    The maps that I'm used to seeing the  
20 aerial photos would have some access roads and so  
21 on, which would give me a better flavor as to where  
22 that area was. I do not see the markers that I  
23 usually look for to locate that area on this map.

24          Q.     What about turning back to Plaintiff's --

1 Complainant's Exhibit 242. Looking at Midwest Bates  
2 670, is that the ash area you mentioned in the  
3 northwest corner of the site on this map?

4 A. Yes. I would be to locate it better for  
5 you off this map.

6 MR. WANNIER: Your Honor, may I approach the  
7 witness?

8 HEARING OFFICER HALLORAN: Sure.

9 BY MR. WANNIER:

10 Q. If you could point it out for me, I can  
11 clarify it for the record.

12 MS. GALE: Why don't you have him clarify it  
13 for the record.

14 MR. WANNIER: I can have him clarify.

15 HEARING OFFICER HALLORAN: I'm still trying to  
16 find Complainant Exhibit 242.

17 MR. WANNIER: It's our most recent exhibit. It  
18 should be the most recent one you received. It's  
19 the Joliet.

20 HEARING OFFICER HALLORAN: Thank you.

21 BY MR. WANNIER:

22 Q. Would it be easier to use a different map,  
23 Mr. Gnat?

24 A. This aerial photograph on -- I'll try



1 this, Bates page 687.

2 Q. Okay, if you could turn to that.

3 A. You can see an area to the northwest of  
4 the coal storage pile that has somewhat of an access  
5 road that runs east-west curves and goes  
6 north-south.

7 Q. Okay.

8 A. It would be within that southeast portion  
9 of that access road, between the coal pile and that  
10 access road, so in this area right in here.

11 Q. Okay. Just for everyone's benefit, is  
12 there roughly a white square in the middle you're  
13 describing immediately northwest of the coal storage  
14 pile?

15 A. That is correct.

16 Q. Is that area within the proposed ground  
17 water management center?

18 A. No, it is not.

19 Q. Are you aware of any other ash placement  
20 areas at the Joliet site?

21 MS. GALE: Objection, vague.

22 MR. WANNIER: I can rephrase.

23 HEARING OFFICER HALLORAN: Thank you.

24

1 BY MR. WANNIER:

2 Q. Other than the ash ponds and this area  
3 that we previously discussed?

4 A. I know that I do a walk-over area as part  
5 of storm water -- the storm water plan. I've been  
6 asked to walk over an area to do an erosion control  
7 inspection, and that is an area that is to the  
8 northeast of the ash pond area.

9 But I have -- I've been asked to do those  
10 inspections, and I do not know what the history of  
11 that site is, and I have not collected any samples  
12 in that part of the property.

13 Q. Okay.

14 A. So, I don't have any direct knowledge than  
15 that.

16 Q. If we can turn to the demonstrative once  
17 more, and understanding that I'm not asking you to  
18 confirm the accuracy of any of these labels, would  
19 the area that you just described be delineated by  
20 the words "Ash landfill" in the northeast of the map  
21 that we placed in front of you?

22 A. The area that I described certainly fits  
23 into that area. I don't know if the terminology is  
24 correct.

1 Q. Understood. And is that area within the  
2 proposed ground water management zone?

3 A. No, it is not.

4 Q. Can you please turn to Bates page 688.  
5 Does this appear to be a monitoring wells location  
6 site map?

7 A. That is correct.

8 Q. Do you see where it says MW-1, and then  
9 there's several of them. I believe there are 11 of  
10 them delineated on this map.

11 A. MW-1 through MW-11.

12 Q. Are these ground water monitoring wells at  
13 the Joliet site?

14 A. Yes.

15 Q. And are you aware of any other monitoring  
16 locations at Joliet?

17 A. Not that I'm aware of.

18 Q. Okay. Can you please turn to page 689,  
19 the next page.

20 Does this appear to be a ground water  
21 contour map at Joliet?

22 A. That is correct.

23 Q. Can you just describe -- we can see the  
24 same MW1 through 11, correct?

1           A.    Yes.

2           Q.    I see horizontal lines and vertical lines.  
3    Can you please describe what those mean?

4           A.    The horizontal lines -- each well has a  
5    ground water elevation posted based on a measurement  
6    that we took in the field.  That measurement being  
7    December 20, 2012 in this case.

8                    And the horizontal lines are the lines  
9    that are going in a southeast -- I'm sorry,  
10   northeast-southwest direction.  Those are ground  
11   water contour lines or lines of estimated equal  
12   ground water elevation or head.

13                   The perpendicular lines to those that have  
14   the arrows are the representation of the direction  
15   of ground water flow or the low line on the map.

16          Q.    Did you prepare this map, Mr. Gnat?

17          A.    It was probably prepared by one of the  
18   geologists working for me, but I have seen and  
19   reviewed it.

20          Q.    You did review the ground water contour  
21   delineations here?

22          A.    Yes.

23          Q.    Okay.  Did you know what data was used to  
24   create these lines?

1           A.    Yes, we collected water levels at each  
2 monitoring well, prior to the start of ground water  
3 sampling.

4           Q.    Do you see on this map the bottom part  
5 where it says, "Intake channel"?

6           A.    Yes.

7           Q.    Do you see further to the right of that  
8 where it says "This is the Des Plaines River"?

9           A.    Des Plaines River, correct.

10          Q.    Did you obtain river elevation data for  
11 those two water bodies?

12          A.    No, we did not.

13          Q.    Okay. Do you believe surface elevations  
14 by nearby waterways are needed to accurately draw  
15 contour lines?

16          MS. GALE: Objection, he's not an expert in  
17 this case. He's simply here for a fact witness.

18          HEARING OFFICER HALLORAN: Mr. Wannier?

19          MR. WANNIER: Your Honor, he testified he  
20 prepared these contour lines. I'm simply trying to  
21 understand why he selected some data as opposed to  
22 others.

23                   I'm trying to establish -- we're not  
24 trying to establish his expert opinion on this

1 matter.

2 HEARING OFFICER HALLORAN: Overruled. He may  
3 answer, if he's able.

4 THE WITNESS: The contour lines are  
5 representation of the ground water elevations at  
6 those points.

7 BY MR. WANNIER:

8 Q. Okay.

9 A. The river and intake elevation is a  
10 surface water elevation. Although those two are  
11 tied together in some ways, knowing the exact  
12 surface water elevation does not require getting an  
13 understanding of the ground water flow conditions in  
14 this situation.

15 Q. Thank you. Can you please turn to page  
16 690, which is the next page?

17 Does this appear to be the aerial -- a map  
18 of the aerial distribution of ground water impacts  
19 at Joliet 29?

20 A. This is an aerial depiction in what we  
21 call box plot format of our ground water data for a  
22 specific well.

23 Q. Okay.

24 A. And for specific parameters.

1 Q. Can you please look at the MW-9 in the top  
2 center and the chart attached to it?

3 A. Okay.

4 Q. Do you see that four of those numbers are  
5 white in this printing, I believe, in the colored  
6 printing?

7 A. That is correct.

8 Q. Are those -- to your knowledge, do those  
9 four numbers represent exceedances of the possible  
10 standard?

11 MS. GALE: Objection, that is GMZ. It means  
12 it's a ground water management zone, and it is 2, 3  
13 and 4 standards do not apply.

14 MR. WANNIER: I can rephrase, your Honor.

15 HEARING OFFICER HALLORAN: Thank you.

16 BY MR. WANNIER:

17 Q. To your knowledge, do these four numbers  
18 represent ground water monitoring results of  
19 concentrations that are higher than the applicable  
20 ground water -- than the class 1 water standards?

21 A. There are class 1 water standards. In  
22 this particular case, again, being under an existing  
23 ground water management zone, shows standards are  
24 not applicable.

1 Q. Can you turn to the bottom left of the  
2 map? Do you see the word "bold"?

3 A. Yes.

4 Q. Do you see it says, "Bold equals bold  
5 values exceed 35 IAC part 620"?

6 A. That is correct.

7 Q. Would you call those four numbers at  
8 exceedances?

9 MS. GALE: Objection, ground water management  
10 zone class 1, 2, 3 and 4 standards did not apply.

11 HEARING OFFICER HALLORAN: He can answer.  
12 Ms. Gale, you can on cross flush it out.

13 THE WITNESS: Those standards, if I had to  
14 compare them against what the class 1 standard is,  
15 they are higher than the class 1 standard.

16 They cannot be considered an exceedance  
17 because they are within the context of the ground  
18 water management zone.

19 Q. Can you clarify the distinction in your  
20 mind -- well, first, can you clarify the distinction  
21 between being higher than the standard and  
22 constituting an exceedance?

23 MS. GALE: Objection, vague.

24 HEARING OFFICER HALLORAN: Could you rephrase,



1 Mr. Wannier.

2 BY MR. WANNIER:

3 Q. You stated that these results are higher  
4 than the applicable standards, but they are not an  
5 exceedance?

6 MS. GALE: Objection, that misstates his  
7 testimony. He did not say applicable standards. He  
8 said, "I compare them to the class 1 standards."

9 HEARING OFFICER HALLORAN: Sustained. You want  
10 to rephrase?

11 MR. WANNIER: That's fair.

12 BY MR. WANNIER:

13 Q. You said they are higher than the class 1  
14 standard, but they are not in exceedance.

15 Can you explain why that is to be the  
16 case?

17 A. I believe we discussed that. It is above  
18 the class 1 standard; however, since this is data  
19 from within an approved ground water management  
20 zone, is not an exceedance which I believe in what  
21 -- I'm just trying to highlight that it is exceeding  
22 an allowable concentration.

23 This is not an exceedance as such. This  
24 is within the context of the ground water management

1 zone. Yes, it is above the class 1 water standard.

2 Q. Can you just clarify for me the difference  
3 between exceedance and violation, to your knowledge?

4 MS. GALE: Objection, I don't know he used the  
5 term "violation."

6 BY MR. WANNIER:

7 Q. Do you know what the term violation is?

8 A. I believe if you're parsing words  
9 exceedance to violations here, there is probably  
10 some legal distinction, and I'm not a legal expert.

11 Q. Okay, thank you. 688, this is, again, the  
12 monitoring well locations at the site, and we've  
13 previously discussed these.

14 Are there any monitoring wells near the  
15 eastern ash placement area we discussed previously?

16 MS. GALE: Objection, misstates,  
17 mischaracterization, on how you described it.

18 HEARING OFFICER HALLORAN: You want to  
19 rephrase?

20 BY MR. WANNIER:

21 Q. You described an ash placement area  
22 generally to the northeast of the ash pond; is that  
23 correct?

24 A. Is that where the storm water inspection

1 area is.

2 Q. Yes.

3 A. Yes.

4 Q. Are there any monitoring wells in that  
5 area?

6 A. I'm not aware of any.

7 Q. Were you ever asked by Midwest Generation  
8 to place any monitoring wells in that area?

9 A. No, I haven't.

10 Q. Okay. Now, turning to the other area we  
11 discussed to the northwest of the coal pile, are  
12 there any monitoring wells in that area?

13 A. Not that I'm aware of.

14 Q. And were you ever asked by Midwest  
15 Generation to place any wells in that area?

16 A. No.

17 Q. Okay. Okay, we're done with that exhibit.  
18 Thank you, Mr. Gnat.

19 We will now be placing before you  
20 Complainant's Group Exhibit M, which includes  
21 Plaintiff's Exhibit 243M through 246M, which I am  
22 representing are Joliet ground water monitoring  
23 reports. I'll give you a second to review these.  
24 So, you can let me know when you're ready.

1 I apologize. Before we do that, your Honor,  
2 complainants move for admission of Complainant  
3 Exhibit 242.

4 HEARING OFFICER HALLORAN: Ms. Gale?

5 MS. GALE: No objection.

6 HEARING OFFICER HALLORAN: Thank you.

7 Complainant's Exhibit 24 is admitted.

8 (Complainant Exhibit No. 242 was  
9 admitted into evidence.)

10 BY MR. WANNIER:

11 Q. Mr. Gnat, do you recognize -- sorry,  
12 you're not done.

13 A. Okay.

14 Q. What are these? Do you recognize these  
15 documents?

16 A. Yes, I do.

17 Q. What are they?

18 A. They are quarterly ground water monitoring  
19 reports for Joliet 29 station.

20 Q. And, specifically, the Plaintiff  
21 Exhibit 243M are the results for 2013 quarter 2,  
22 correct?

23 A. Correct.

24 Q. And 244M is 2015 quarter 2?

1 A. Yes.

2 Q. And 245M is 2016 annual/quarterly report?

3 A. Yes.

4 Q. And 246 is 2017 quarter one, correct?

5 A. The second quarter.

6 Q. I'm sorry, I misspoke. Yes, the second  
7 quarter. Thank you.

8 Why do you have any reason to doubt the  
9 accuracies of any of the information of these  
10 reports?

11 A. No.

12 Q. Okay. These reports were prepared by  
13 KPMG, correct?

14 A. That's right.

15 MR. WANNIER: Your Honor, complainants move --  
16 complainants move for admission of Group M, which  
17 includes 243M through 246M.

18 MS. GALE: No objection.

19 HEARING OFFICER HALLORAN: Thank you, Ms. Gale.  
20 Complainants Exhibit 243M, as in man, through 246M,  
21 are admitted.

22 (Complainant Exhibit No. 243M  
23 was admitted into evidence.)

24

1 BY MR. WANNIER:

2 Q. Mr. Gnat, you can put that aside.  
3 Plaintiffs are placing before you what has been  
4 marked as Complainant Exhibit 247, which I am  
5 representing is the CCB determination support for  
6 Joliet 29.

7 And you can let me know when you're ready?

8 A. I believe there is a later revised version  
9 of this report.

10 Q. Do you know when this report was revised?

11 A. I believe the following month because if  
12 memory serves me correct, we referenced three  
13 tables, and we only included one in this report.

14 We reissued a revised report that  
15 basically was the same but included in the  
16 additional tables.

17 Q. Understood. We can come back to that.

18 And we can discuss this when we get to  
19 admitting this report. For now, I'm going to ask  
20 you some questions about that.

21 A. Okay.

22 Q. Can you please turn to page -- actually,  
23 just the first page.

24 Do you see where is it says, "Midwest

1 Generation Joliet stations No. 29"?

2 A. Yes.

3 Q. Can you look at the first paragraph under  
4 project history and previous work?

5 A. Okay.

6 Q. And ignoring redactions in that document,  
7 do you see that it says, "Midwest Generation Joliet  
8 stations No. 29 include areas where ash and slag  
9 resultant from the combustion of coal were formerly  
10 placed on the ground surface"?

11 A. Yes.

12 Q. Can you describe what was the purpose of  
13 this report?

14 A. The purpose of this sampling was to obtain  
15 representative samples of the ash to determine  
16 whether or not it can be classified as coal  
17 combustion byproduct for beneficial reuse.

18 Q. When did you become -- actually, let me  
19 back up one second.

20 The ash thing described here, is that in  
21 either of the two areas we discussed on the not  
22 using it?

23 A. Yes.

24 Q. Which one?

1           A.    The ash from the northwest portion of the  
2 site.

3           Q.    It was immediately northwest of the coal  
4 pile?

5           A.    Correct.

6           Q.    And when did you become aware of this ash?

7           MS. GALE:  Objection, vague.

8           HEARING OFFICER HALLORAN:  Rephrase.

9           BY MR. WANNIER:

10          Q.    When did you first become aware that there  
11 was ash placed in this portion of the Joliet 29  
12 site?

13          A.    Probably shortly before we were asked to  
14 sample it.

15          Q.    Do you know when Midwest Generation became  
16 aware of this?

17          MS. GALE:  Objection, speculation.

18          HEARING OFFICER HALLORAN:  He can answer, if  
19 he's able.

20          THE WITNESS:  No, I do not.

21          BY MR. WANNIER:

22          Q.    And can you please turn to page 19495?  
23 Are you at 19495?

24          A.    Yes, sir.



1 Q. Okay. And does this appear to be a map of  
2 borings that were made in this area?

3 A. Yes.

4 Q. Okay. There were -- and there are two  
5 different types of symbols. What is the difference  
6 between those two symbols?

7 A. The black dots, as it notes in the legend,  
8 were from a study by a previous consultant that was  
9 done in July 2004.

10 Q. Okay. And did you rely on those borings,  
11 as well as the borings that you conducted in  
12 preparing this report?

13 MS. GALE: Objection to the term "rely" as  
14 vague.

15 HEARING OFFICER HALLORAN: Rephrase.

16 BY MR. WANNIER:

17 Q. Did you review the previous borings?

18 A. I had some data from the previous study,  
19 yes, I did.

20 Q. So, you had the data. Did you review that  
21 data?

22 A. I believe we included a general  
23 understanding of the data in our report and used  
24 that as a guide to developing our program, amongst

1 other things.

2 Q. If you turn to page 19499. Does that  
3 appear to be a longer boring at site GP-1?

4 A. Yes.

5 Q. And GP-1 would be on the map that we  
6 previously discussed, correct?

7 A. That's correct, yes.

8 Q. As would call of the borings, right?

9 A. Yes.

10 Q. Do you have any reason to doubt the  
11 accuracy of any of the borings conducted by Andrews  
12 Environmental Engineering?

13 MS. GALE: Objection. I don't think Andrew  
14 Environmental Engineering Borings are in here.

15 BY MR. WANNIER:

16 Q. The legend on the map refers to them as  
17 "Andrews Environmental Engineering Borings,"  
18 correct?

19 A. That map is incorrect.

20 Q. The map also includes KPRG G2 borings  
21 June 2005?

22 A. Yes. The logs that you are referring to,  
23 and that are in this report, are KPRG boring logs  
24 June 2005.

1 Q. That's fine. Do you have any reason to  
2 doubt the accuracy of the KPRG borings?

3 A. No, I do not.

4 Q. Can you turn -- actually, let's stay on  
5 19499.

6 You can see on the description the first  
7 line says, "Bottom ash as well as" -- it says,  
8 "Bottom ash common ground, brown, pattern dry,"  
9 correct?

10 A. It says, "Bottom ash, brown fine powder,"  
11 correct, yes.

12 Q. And the next line also includes the words  
13 "Bottom ash"?

14 A. As well as "Brown sand and gravel mix"?

15 Q. And the line after has the word "slag"  
16 with the description?

17 A. As well as flat clay with some gravel.

18 Q. Blackened clay describes the slag, right?

19 A. No.

20 Q. Is clay an analysis?

21 A. Clay is a descriptive term that we use for  
22 a clay-type material. Slag is certainly not a  
23 clay-type material.

24 Q. Okay. The next one says, "Bottom ash" as

1 well, correct?

2 A. It sames, "Brown sand and gravel mix."

3 Q. Yes. The one after that says, "Bottom  
4 ash"?

5 A. "Gray powder."

6 Q. The one after that says, "Slag black clay  
7 and sand"?

8 A. Clay and sandy moist, yes.

9 Q. Can you turn to boring log GP13. Sorry.  
10 Which is on Bates 19511 -- I'm sorry, 19512. I  
11 misspoke.

12 That has one item under description it  
13 says, "Coal black sand-size dry," correct?

14 A. It says, "Coal black sand size dry," yes.

15 Q. And now can you turn to 19513, and that  
16 appears to be a log boring at GP13A, right?

17 A. That is correct.

18 Q. That says, "Bottom ash Gray powder and  
19 sand dry per the top layer," correct?

20 A. Yes.

21 Q. Can you explain the distinction between  
22 GP13 and GP13A?

23 A. Sure, and it's explained in the report as  
24 well. These would be true for 14 and 15 I believe.

1 Q. I will represent for the record that 14  
2 and 14A --

3 A. Yes.

4 Q. Is there also a 14A boring?

5 A. Yes.

6 Q. And also a 15A boring?

7 A. Yes.

8 Q. This same relationship exists between 13  
9 and 14A and 14 and 14A?

10 MS. GALE: Objection to the characterization as  
11 "relationship." I don't think it's established.

12 HEARING OFFICER HALLORAN: Sustained.

13 THE WITNESS: When we got to the area of where  
14 we had our initial boring for 12, and we collected  
15 the sample, it was -- sorry, 13, which you were  
16 asking about, we selected the sample, what we saw  
17 was coal, and we were looking to try and  
18 characterize the potential ash within that area.

19 And, sorry, taking a sample of coal would  
20 not help the purpose of our study. It was not the  
21 intent of the study to sample the coal. The intent  
22 of the study was to determine whether any ash was  
23 there and can be beneficially reused.

24 So, we relocated that boring over to -- we

1 shifted it over, as you can see on the map that  
2 showed the locations, and found we were back -- in  
3 this particular case, it reads, "Bottom ash powder  
4 and sand," and we collected the sample from there,  
5 because that's more the area of the material we were  
6 targeting from this study.

7 Q. So, 13A is a relocated boring?

8 A. Correct.

9 Q. Okay. And the same for 14A and 15A?

10 A. Correct.

11 Q. Thank you.

12 MR. WANNIER: Your Honor, Complainants move for  
13 admission of Complainant Exhibit 247.

14 HEARING OFFICER HALLORAN: Miss Gale?

15 MS. GALE: I object to that. Mr. Gnat  
16 represented that there is a -- that they issued a  
17 new report in August, that includes table 2 and 3,  
18 which are not in this report.

19 Those tables are described in this report  
20 on pages MWG13-15 underscore 19489 and 19490. This  
21 is an incomplete report.

22 HEARING OFFICER HALLORAN: Mr. Wannier, why are  
23 we looking at a revised one? Do you have --

24 MR. WANNIER: This is not the revised one.

1 HEARING OFFICER HALLORAN: Why are you we  
2 looking at the revived one? I'm sorry?

3 Why are we not looking at the revised one  
4 and looking at this one in front of me?

5 MR. WANNIER: We can provide the revised  
6 report. That was through -- we did not realize  
7 there is an original and revised, but we have the  
8 revised report, which we can introduce as Exhibit  
9 247.5.

10 HEARING OFFICER HALLORAN: I'm going to grant  
11 Ms. Gale's objection. I'll take it is an offer of  
12 proof.

13 MR. WANNIER: That's fine.

14 BY MR. WANNIER:

15 Q. We're placing before you what has -- well,  
16 what has been marked as Complainant Exhibit 293.

17 Mr. Gnat, do you recognize this document?

18 A. Yes, I do.

19 Q. Does this appear to be a revised version  
20 of the CCB determination support for Joliet 29 that  
21 we just discussed?

22 A. That is what it is.

23 Q. I asked you many questions about the CCB  
24 determination support.

1           If I asked you all those same questions  
2 again, would your answers be the same?

3           MS. GALE: Objection, compound.

4           HEARING OFFICER HALLORAN: I'm sorry?

5           MS. GALE: Objection, compound.

6           MR. WANNIER: We can go through every question.

7           HEARING OFFICER HALLORAN: Overruled. He can  
8 answer if he's able. I think it's clear enough.

9           THE WITNESS: Yes.

10          BY MR. WANNIER:

11           Q. I'm just going to state, for the record --  
12 okay.

13                    So, 194, can you keep what was attempted  
14 to be entered as Complainant's Exhibit 247 front of  
15 you?

16           A. Okay.

17           Q. Does Bates 1946 correlate to 19576?

18           A. Yes.

19           Q. Other than the fact that 19576 was  
20 reissued?

21           A. Yes.

22           Q. Okay. Does 19487 correspond to 19577,  
23 other than the fact that 19577 was reissued?

24           A. That would be my recollection. Unless I



1 sat here and went word for word for you, that is my  
2 recollection.

3 Q. Okay. I won't make you read it word for  
4 word and I won't go through --

5 MS. GALE: Can we go off the record for second?

6 HEARING OFFICER HALLORAN: Yes, you can. We're  
7 off the record.

8 (Discussion off the record.)

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

11 BY MR. WANNIER:

12 Q. Turning to Complainant Exhibit 293, does  
13 this appear to be the reissued CCB determination  
14 report for Joliet 29?

15 A. Yes, it does.

16 Q. Can you please turn -- do you see under  
17 "Project history and previous work" on the first  
18 page where it says, "Excluding redactions, Midwest  
19 Generation Joliet station No. 29 include areas where  
20 ash and slag resultant from the combustion of coal  
21 were formerly placed on the ground surface"?

22 A. Yes.

23 Q. It goes on to say, "The ash placement area  
24 at station No. 29 is approximately 13.2 acres in

1 size"?

2 A. Yes.

3 Q. Can you explain the purpose of this  
4 report, for the record?

5 A. The purpose of this report was to sample  
6 the materials in this area, to determine whether or  
7 not they can be considered as coal combustion  
8 byproduct for beneficial reuse.

9 Q. Specifically, would that beneficial reuse  
10 of the material and the construction of the wind  
11 break along the existing coal storage piles?

12 A. I know that that was one of the  
13 engineering considerations that they were thinking  
14 of using the material for, yes.

15 Q. Were you aware of any other engineering  
16 considerations?

17 A. Not offhand, no.

18 Q. When did you become aware that there was  
19 ash at that location at the Joliet site?

20 A. Shortly before being asked to do the  
21 sampling.

22 Q. When you say "shortly," can you estimate,  
23 roughly?

24 A. I couldn't. This was back in 2005. That

1 was 12 years ago. It could have been, you know, a  
2 couple weeks earlier, you know, enough time to put  
3 together a proposal.

4 Q. Okay. That's fine.

5 A. A proposal to do the work and then the  
6 report is after that.

7 Q. That's fine. Are you aware when Midwest  
8 Generation became aware?

9 MS. GALE: Objection, vague, and speculative.

10 HEARING OFFICER HALLORAN: Rephrase.

11 MR. WANNIER: I'm asking if he knows.

12 HEARING OFFICER HALLORAN: I'm going to give a  
13 little latitude, since we've already gone through  
14 this already. We're basically worried about the  
15 Bates stamp.

16 MS. GALE: Right, I made the objection on the  
17 other document that was excluded, so I want to  
18 maintain the objection on this document which we'll  
19 see if it will come in.

20 HEARING OFFICER HALLORAN: Okay. Rephrase,  
21 please.

22 BY MR. WANNIER:

23 Q. Are you aware when Midwest Generation  
24 became aware that there was ash at the site that you

1 analyzed?

2 MS. GALE: Objection, speculative.

3 MR. WANNIER: I'm asking if he knows.

4 HEARING OFFICER HALLORAN: Overruled. He can  
5 answer, if he knows.

6 THE WITNESS: No, I do not.

7 BY MR. WANNIER:

8 Q. And please turn to Bates page 19585. Is  
9 this a map of borings -- is this a map of the site  
10 that you analyzed in this report?

11 A. This is a map of the study area, yes.

12 Q. Study area. And does this not represent  
13 the boring sites, boring locations in this area?

14 A. It represents where the borings were  
15 taken, yes.

16 Q. Okay. And you'll see that there are black  
17 circles and target symbols.

18 What do the black circles represent in  
19 this map?

20 A. The black circles are from boring  
21 locations performed by another environmental group  
22 called Andrew's Environmental Engineering performed  
23 in July of 2004.

24 Q. Okay. And did you review these borings?

1           A.    We reviewed some of the information that  
2    was within that report and summarized it within the  
3    context or within the text of our summary here.

4           Q.    And where in your summary would that be?

5           A.    Bottom of the first page Bates number 576  
6    and onto the top half of Bates page 577.

7           Q.    Just to clarify, that is 19576 to 19577?

8           A.    Yes, sir.

9           Q.    Okay. The other symbols on the map, what  
10   do those symbols represent?

11          A.    Those are the KPRG boring locations that  
12   we performed in June of 2005.

13          Q.    Can you please turn to -- strike the  
14   previous question.

15                    Can you please turn to page Bates stamp  
16   19591?

17          A.    Yes.

18          Q.    Does this appear to a log boring of log  
19   GP-1?

20          A.    Yes, it does.

21          Q.    GP-1 is one of the borings KPRG did,  
22   correct?

23          A.    Yes.

24          Q.    And it's represented on the map that we

1 just discussed?

2 A. Yes.

3 Q. Okay. Do you have any reason to doubt the  
4 accuracy of any of the boring logs that KPRG  
5 conducted for this survey?

6 A. No.

7 Q. And just to clarify, can you turn to  
8 19605? Does this appear to be a log of GP-13A?

9 A. Yes.

10 Q. Okay. If you turn to the previous page  
11 19604, there is a log of borings GP-13?

12 A. Yes.

13 Q. The boring log for 13A is a completely  
14 different location from the boring log for 13,  
15 correct?

16 MS. GALE: Objection to the statement  
17 "Completely different."

18 BY MS. GALE:

19 Q. It is not in exactly as the same location  
20 as 13, correct?

21 A. Correct.

22 Q. Why did you conduct -- why did you choose  
23 to conduct boring 13A?

24 A. The purpose of the study was to evaluate

1 whether or not the material in that area could be  
2 used as coal combustion byproduct for beneficial  
3 reuse.

4 The material encountered in log of GP-13  
5 did not include any of that material. It included  
6 coal. So we shifted that location to an area that  
7 had the type of material we were targeting for this  
8 particular study.

9 Q. Okay. Just turning back to the map at  
10 19585.

11 A. Okay.

12 Q. Let me first ask: Did the same thing  
13 occur where you found primarily coal for the borings  
14 at CGP-14 and GP-15?

15 A. That is correct.

16 Q. If you look at this map GP-13, 14, and 15  
17 are all within -- that are part of the map labeled  
18 primarily, "Coal/coal residue, little to no dash,"  
19 correct?

20 A. Yes, that's the area that's labeled like  
21 that.

22 Q. And GP-13, 14A and 15A are all located in  
23 the northern part of that map above the dotted line,  
24 correct?





1 Do you recognize these documents?

2 A. Yes, I do.

3 Q. And can you describe them, please, for the  
4 record?

5 A. I recognize these documents, with the  
6 exception, as I'm going through here -- but,  
7 honestly, I do not recognize -- let's take the  
8 August 27, 2009.

9 Q. Okay.

10 A. Attached to that is some additional  
11 documentation on the erosion blankets and a couple  
12 of copies of the maps. Honestly, I don't remember  
13 if those were included in my original or not.

14 MS. GALE: I'm just going to object to this  
15 group. It was not -- as I understood the  
16 representation from complainant, it's missing a  
17 couple of documents, the fixes that were related to  
18 each of these inspections.

19 And perhaps we miscommunicated on the  
20 numbers, but I thought that this grouping included  
21 the repairs --

22 HEARING OFFICER HALLORAN: One at a time,  
23 please.

24 MS. GALE: -- that KPRG did. I would say that

1 this grouping is a mischaracterization.

2 MR. WANNIER: We can do these one by one, your  
3 Honor.

4 MS. GALE: Okay.

5 HEARING OFFICER HALLORAN: Okay.

6 BY MR. WANNIER:

7 Q. Can you please turn to Complainant  
8 Exhibit 248?

9 A. Okay.

10 Q. You stated previously that you recognized  
11 this document, with the exception of which pages?

12 A. The pages starting Bates number 19455,  
13 446, 447, 448, 449, 450.

14 Q. Do you recognize 19451 and 19452?

15 A. Those are my field notes, and whether or  
16 not I included that with the report, itself, going  
17 to my client, I do not remember offhand. I usually  
18 don't include the field notes, but those are my  
19 field notes.

20 Q. And are those field notes in relation to  
21 -- were those field notes taken as a part of the  
22 analysis that is included in your letter?

23 MS. GALE: Objection to the description of an  
24 analysis.

1 HEARING OFFICER HALLORAN: Sustained.

2 BY MR. WANNIER:

3 Q. Were these field notes taken as part of  
4 your preparation of the letter starting at 19448?

5 A. The first page appears -- because it has a  
6 date of August 24th of '09, and my inspection  
7 summary was issued a few days later, and those have  
8 notes for five areas. My report includes I think  
9 six areas.

10 And then the next page are additional  
11 field notes, but they don't have a date with them,  
12 and it's certain this is more describing field notes  
13 from during a reparation of the features that we  
14 noted, rather than a description of the features.

15 That certainly would not have been  
16 included in this initial report.

17 Q. I would like to ask you questions about  
18 the first few pages of what has been marked as  
19 Exhibit 248N.

20 To be clear, do you remember when we  
21 previously discussed the two ash placement areas?

22 A. Yes.

23 Q. Is it fair to say this inspection was of  
24 the ash placement area you identified as being

1 northeast of the ash pond?

2 A. Yes.

3 Q. Okay. Looking at the bottom, or the last  
4 paragraph before the bullet point -- I'm sorry, the  
5 one paragraph up.

6 Do you see where it says, "KPRG identified  
7 five areas outside the fenced boundary of the Joliet  
8 No. 29 facility where either sheet wash erosion or  
9 rilling has exposed the underlying ash slag and may  
10 transport the material to the Des Plaines River"?

11 A. Yes, I see that.

12 Q. When you say they are outside the fenced  
13 boundary, what does that mean?

14 A. There is a fence line associated with the  
15 operational portion to the facility that is to the  
16 east of the ash ponds, but does not include part of  
17 that area to the northeast that I did the site walk  
18 over.

19 Q. Understood. To your knowledge, though,  
20 the area you did the site walk over, as part of the  
21 Joliet, is part of the property, correct?

22 A. That is my understanding.

23 Q. Okay. Then you also identified a sixth  
24 area that is within the fence line, correct?

1 A. Yes.

2 Q. Okay.

3 MR. WANNIER: Complainant moves for admission  
4 of Midwest Gen Bates range 19442 to 19444, which we  
5 would classify as Complainant's 248N.

6 Feel free to rip off the remaining pages.  
7 We're not moving to include those pages as part of  
8 this exhibit.

9 HEARING OFFICER HALLORAN: Ms. Gale?

10 MS. GALE: Okay. 19442?

11 MR. WANNIER: To 19444.

12 MS. GALE: No objection.

13 HEARING OFFICER HALLORAN: Okay. Thank you. I  
14 am taking off Bates stamped 19445, 446, 447, 448,  
15 449, 450, 451 and 452.

16 I'm taking them off from the back of  
17 Complainant's Exhibit 248N, as in Nancy; and with no  
18 objection, I'm taking Complainant's Exhibit 248N  
19 into evidence as admitted. Thank you.

20 (Complainant Exhibit No. 248N  
21 was admitted into evidence.)

22 BY MR. WANNIER:

23 Q. Can you please turn to complainant  
24 Exhibit 249, then?

1 A. Yes.

2 Q. Do you recognize this document?

3 A. Yes, I do.

4 Q. And is this a runoff -- is this a runoff  
5 -- sorry, a former ash burial area runoff inspection  
6 from August 2010?

7 A. It's for 2010, that's correct. It  
8 includes my field notes from that inspection, which  
9 I do not believe we usually submit with our reports.

10 Q. Okay. And in this inspection, you  
11 identified five areas where sheet wash erosion or  
12 rilling had exposed or could expose ash or slag,  
13 correct?

14 A. I'm sorry, can you restate state that?

15 Q. Yes. During the inspection, you  
16 identified five areas where either sheet wash  
17 erosion or rilling had exposed or may expose the  
18 underlying ash slag, correct?

19 A. That was one of the purposes of the  
20 inspection, that is correct. We also then  
21 identified what we recommend is to repair that  
22 situation for each of those areas, which was then  
23 subsequently done, obviously.

24 Q. Yeah, understood. You did actually

1 subsequently repair the damage in this area?

2 A. Yes, we did.

3 Q. All of these five areas are within the  
4 Joliet property line, to your knowledge, correct,  
5 Joliet 29 property area?

6 A. That is correct.

7 Q. Okay.

8 MR. WANNIER: Complainant's move for admission  
9 of Complainant's Exhibit 249.

10 MS. GALE: My only objection is the witness  
11 stated that his notes are not generally part of his  
12 report. So, therefore, I don't think this should be  
13 considered as one exhibit.

14 HEARING OFFICER HALLORAN: Mr. Wannier?

15 MR. WANNIER: Okay, Complainant's --  
16 complainants will move -- will withdraw that motion  
17 and instead move to admit 19455 through 19457, as  
18 Complainant Exhibit 249N, 249.5M, and you can --  
19 we're happy to provide clean copies tomorrow.

20 HEARING OFFICER HALLORAN: Mr. Wannier?

21 MR. WANNIER: Complainants move for admission  
22 of Midwest Gen Bates 19455 through 19457 as  
23 complainants Exhibit 249N.

24 HEARING OFFICER HALLORAN: Ms. Gale?

1 MS. GALE: No objection.

2 HEARING OFFICER HALLORAN: It's admitted.

3 (Complainant Exhibit No. 249N  
4 was admitted into evidence.)

5 HEARING OFFICER HALLORAN: However, complainant  
6 is to provide a clean copy when they are able  
7 because we're not accepting 9458, 9459. Thank you.  
8 It's admitted.

9 BY MR. WANNIER:

10 Q. Can you please turn to what's been marked  
11 as Complainant's Exhibit 250N?

12 A. Okay.

13 Q. And is this your runoff inspection for the  
14 Joliet 29 former ash burial area for August 2011?

15 A. It appears to be, yes.

16 Q. Okay. Again, in this report, you  
17 identified two areas here where either sheet wash  
18 erosion or rilling had exposed or may expose the  
19 underlying ash slag, correct?

20 A. That is the terminology that we use for  
21 the purpose of that report, yes.

22 Q. Can you turn to Bates 44145?

23 HEARING OFFICER HALLORAN: Bates what number?

24 MR. WANNIER: It's Midwest Bates 44155.



1 THE WITNESS: 55, okay.

2 MR. WANNIER: I may have misspoke, I apologize.

3 HEARING OFFICER HALLORAN: Thank you.

4 BY MR. WANNIER:

5 Q. What are the pictures on this page?

6 A. These are a set of pictures from area one  
7 and area two.

8 Q. Would you have included these pictures in  
9 your letter?

10 A. Yes.

11 Q. Okay. Can you also turn to 4415 -- I'm  
12 sorry, strike that.

13 MR. WANNIER: Complainant's move for admission  
14 of Complainant 250N.

15 HEARING OFFICER HALLORAN: Ms. Gale?

16 MS. GALE: No objection.

17 HEARING OFFICER HALLORAN: Thank you.

18 Complainant 250N, as in Nancy, is admitted.

19 (Complainant Exhibit No. 250N  
20 was admitted into evidence.)

21 BY MR. WANNIER:

22 Q. I'm sorry, Mr. Gnat, can you please turn  
23 back to Complainant's 248, and also I'll want you to  
24 look at Complainant Exhibit 249, so you can have

1     them both in front of you.

2                   Now, do you see -- on 248, can you turn to  
3     1944 -- or, actually, sorry, just the first page,  
4     19442.

5                   And the area one, do you see the  
6     coordinates for area one at the bottom of that page  
7     are listed as north 4130.068, west 8806.419?

8           A.     Yes.

9           Q.     Now, turning to Complainant's 249N, turn  
10    to Bates 19456, and looking at area 3, do you see  
11    that area 3 is listed as being at coordinates  
12    4130.068, west 8806.419?

13          A.     Yes.

14          Q.     Those are the same coordinates, right?

15          A.     They appear to be.

16          Q.     Now, is that the same -- to your  
17    recollection, is that the same issue that has been  
18    identified in both reports?

19          A.     No.   Two slightly different issues.  They  
20    are certainly within the same general area.  We  
21    use -- or I use a little hand-held GPS unit, and so  
22    the coordinates in this case lined right up, but  
23    that doesn't necessarily mean you're standing right  
24    on top of the same exact area.

1           These two items are in the same general  
2 area, yes, two different issues.

3           Q.    Okay, that's fine. Thank you. So, can  
4 you turn, please, to Complainant's Exhibit 251N,  
5 what's been presented as 251N.

6           This is your runoff inspection for the  
7 same area in September 2012, correct?

8           A.    That is correct.

9           Q.    Do you see that you identify four areas in  
10 this report that where either sheet wash erosion or  
11 rilling has exposed or may expose the underlying ash  
12 slag?

13          MS. GALE:  Objection to the characterization,  
14 for conclusion sake.

15          HEARING OFFICER HALLORAN:  I'm sorry, could you  
16 repeat your objection?

17          MS. GALE:  I object to form. I object to his  
18 question as mischaracterization of what the document  
19 states?

20          HEARING OFFICER HALLORAN:  Please rephrase.

21 BY MR. WANNIER:

22          Q.    In this report, did you identify four  
23 areas where either sheet wash erosion or rilling has  
24 exposed or may exposed the underlying ash slag?

1 MS. GALE: Again, same objection. That is not  
2 what this document states. It mischaracterizes the  
3 document.

4 BY MR. WANNIER:

5 Q. Can I direct you to the second paragraph  
6 of 19470, the full paragraph?

7 A. Yes.

8 Q. Do you see where it says, "During the  
9 inspection, KPRG identified four areas where either  
10 sheet wash erosion or rilling has exposed or may  
11 expose the underlying ash slag"?

12 A. Yes, I can see where the confusion is  
13 stemming.

14 Q. Okay. If you could please elaborate, I  
15 would like to hear it.

16 A. That initial statement, if you'll notice,  
17 is one that is in every report in that paragraph,  
18 and that is the general intent and purpose of the  
19 inspection.

20 And then with each area that I defined, I  
21 also defined what I see in that area. And a lot of  
22 these descriptions, for example, in area 3, this is  
23 an area where there is a small incision into the top  
24 of the bank and sized features 25 feet long, 15 feet

1 wide and up to one foot deep.

2 I'm not seeing any ash here. The purpose  
3 of this inspection is to determine the five areas of  
4 sheet wash or erosion or rilling that has exposed or  
5 may expose ash.

6 So, a lot of our repairs are very  
7 conservative. I see a rill that is greater than  
8 four to six inches, I'm concerned they are exposing  
9 ash. Even though I'm not seeing ash, I'm  
10 identifying this as an area of repair.

11 If I actually see ash, that is also noted  
12 in the description. So, even though a report may  
13 have four or five locations, I did not necessarily  
14 see ash exposed at four or five locations.

15 BY MR. WANNIER:

16 Q. Understood. That's why --

17 A. That is not what you were trying to say  
18 what I said, and that's why I wanted to clarify.

19 MR. WANNIER: Objection.

20 BY MR. WANNIER:

21 Q. But it is fair to say that the areas are  
22 identified either had exposed or may expose  
23 underlying ash?

24 A. They are areas that I didn't want to get

1 any deeper.

2 Q. That's fine. Thank you. Turn to page  
3 19473 of that same exhibit.

4 The two pictures on the back, would they  
5 have been included in this report?

6 A. Yes, they would have.

7 MR. WANNIER: Complainants move for admission  
8 of Complainant's Exhibit 251N.

9 MS. GALE: No objection.

10 HEARING OFFICER HALLORAN: Thank you.  
11 Complainant's Exhibit 251N, as in Nancy, is  
12 admitted.

13 (Complainant Exhibit No. 251N  
14 was admitted into evidence.)

15 BY MR. WANNIER:

16 Q. Can you please turn to Complainant's --  
17 strike that. We're placing in front of you --  
18 sorry, hold on.

19 You can put aside what we had placed front  
20 of you. We're going to withdraw that as an exhibit.

21 HEARING OFFICER HALLORAN: We're going to  
22 withdraw Complainant's Exhibit 252? You are going  
23 to withdraw?

24 MR. WANNIER: Yes.

1 MS. GALE: For the record, I would like to  
2 describe what it is. It is the 2013 inspection  
3 summary letter by KPRG for the July -- excuse me,  
4 dated August 2013.

5 It is a runoff inspection. It is a single  
6 page NWG13-15 under score 19483.

7 HEARING OFFICER HALLORAN: It was August 21st,  
8 2013.

9 MS. GALE: Correct. I'm sorry, yes,  
10 August 21st, 2013.

11 HEARING OFFICER HALLORAN: Mr. Wannier?

12 MR. WANNIER: Your Honor, I would object to  
13 that. We didn't have any questions. We were trying  
14 to save time. We got rid of it. They are free to  
15 introduce that exhibit in their direct.

16 HEARING OFFICER HALLORAN: Okay. It's  
17 withdrawn for now.

18 MR. WANNIER: Yes.

19 HEARING OFFICER HALLORAN: Just, for the  
20 record, and we're still on the record, I'm planning  
21 on taking a lunch in about ten minutes. So kind of  
22 figure that in.

23 MR. WANNIER: This would be a great place to  
24 stop. We're about to start on a new issue.

1 HEARING OFFICER HALLORAN: Let's go to lunch.  
2 Be back about 1:20, 1:25. Thank you. We're off the  
3 record.

4 (Recess taken.)

5 HEARING OFFICER HALLORAN: We're back on the  
6 record. It's approximately 1:25. We're back from  
7 lunch.

8 At present, we have Mr. Gnat on the stand  
9 and Mr. Cannier is --

10 MR. WANNIER: Wannier.

11 HEARING OFFICER HALLORAN: Wannier. You got me  
12 confused.

13 MR. WANNIER: Sorry.

14 HEARING OFFICER HALLORAN: Anyway, so you're up  
15 doing the direct as adverse. Thank you.

16 MR. WANNIER: Thank you, your Honor. I would  
17 like to start with one housekeeping note.  
18 Complainants have a clean version of Complainant's  
19 Exhibit 249N, which before the lunch break, we  
20 included -- we had removed the last two pages from  
21 the item.

22 HEARING OFFICER HALLORAN: Complainant's  
23 Exhibit 249N, as if Nancy, is admitted.

24 MS. GALE: No objection.



1 BY MR. WANNIER:

2 Q. And I have one last question about the --  
3 just before lunch, I was asking you about runoff  
4 inspections for the Joliet No. 29 former ash burial  
5 area.

6 A. Yes.

7 Q. I just wanted to confirm, did you conduct  
8 any runoff inspections in -- actually, let's turn to  
9 Exhibit 251N.

10 A. Okay.

11 Q. That was your inspection in September of  
12 2011, correct?

13 A. 2012.

14 Q. I'm sorry, 2012. I misstated. Did you  
15 conduct any other runoff inspection of this area in  
16 2012?

17 A. No. After this, we did the repairs of  
18 what I saw in 2012.

19 Q. And did you do any inspection earlier in  
20 the year of that area?

21 A. Not that I remember.

22 Q. In 2011, other than the inspection for  
23 which you issued a report, did you ever inspect that  
24 the former ash burial area?

1 MS. GALE: Objection, vague, to the word  
2 "Ever."

3 BY MR. WANNIER:

4 Q. Did you do an inspection other than the  
5 inspection referred to in your report in  
6 Exhibit 249?

7 A. Not that I remember.

8 Q. Okay. As a general matter, in 2011, did  
9 you conduct an inspection of the former ash burial  
10 area, other than the inspection that is referred to  
11 in your report?

12 A. I believe that's what you just asked me  
13 about. No, not that I remember.

14 Q. The same question for 2010?

15 A. That is correct.

16 Q. And for 2009?

17 A. That is correct.

18 Q. Thank you. I'm placing in front of you  
19 what has been marked as Complainant's Exhibit 253,  
20 which is Midwest Gen Bates number 712 to 723, I'm  
21 representing as a compliance agreement or ELUC  
22 report at the Powerton station site. I'll give you  
23 a chance to review it.

24 A. Okay.

1 Q. Do you recognize this document?

2 A. Yes.

3 Q. If you turn to -- sorry, what is this  
4 document?

5 A. This document is a letter from Midwest  
6 Generation to Illinois EPA dated January 18th, 2003,  
7 compliance commitment and agreement ELUC, E-L-U-C.

8 Q. Okay. And you received this document when  
9 it was sent, correct?

10 A. I received a copy yes.

11 HEARING OFFICER HALLORAN: Mr. Gnat, was this  
12 January 18th, 2013? I'm looking at Exhibit 253 on  
13 top?

14 THE WITNESS: 253. January 18th, 2013.

15 HEARING OFFICER HALLORAN: Okay. I thought I  
16 heard 3, 2003.

17 MR. WANNIER: Thank you for clarifying, your  
18 Honor.

19 BY MR. WANNIER:

20 Q. Can you please turn to page -- Bates page  
21 720?

22 A. Okay.

23 Q. Does this appear to be a map of the ground  
24 water contours at the power site?

1           A.     This is a map of the ground water contours  
2     for the silty clay units for the December 12th,  
3     2012, sampling.

4           Q.     Thank you.  Actually, if you could turn to  
5     Bates page 721, this a ground water contour map for  
6     the gravelly sand unit on 12-12-2012?

7           A.     Yes.

8           Q.     Just, for the record, can you clarify the  
9     distinction between the silt clay unit and the  
10    gravelly sand unit?

11          A.     Sure.  When the initial wells went in by  
12    the consultant, they were grappling with water  
13    levels, that they were having a hard time  
14    understanding the flow system.

15                   KPRG was brought in under privilege with  
16    the attorneys to assist in reviewing some of these  
17    documents in developing a response to the violation  
18    notices.

19                   We determined -- we looked at the data of  
20    the boring logs and so on, that the wells that we  
21    have on our Figure B-2 on page 720, were all  
22    screened within the silty clay unit, which is not  
23    present everywhere across the site.

24                   Those water levels tend to be a little bit

1 higher. So, if we isolated looking at the water  
2 level from that unit from the wells that were  
3 screened within the finer sands, we found that even  
4 though these two units are correlated, are probably  
5 geologically connected, there is a little bit  
6 difference in the flow.

7           Within this silky clay unit the flow was  
8 to the west. Within that underlying sandy unit,  
9 which the other map contours flows more in a  
10 north/northwesterly direction over to the northeast.  
11 So, that's how those two maps were developed.

12           Q. Thank you. You mentioned, I believe, that  
13 some of the wells were not within the silt clay  
14 unit; is that correct?

15           A. That is correct.

16           Q. Can you clarify what you mean when you say  
17 that they were not in the back unit?

18           A. Either that unit was not present within  
19 that area, or it was screened within the underlying  
20 sands.

21           Q. Okay. Can you -- are you familiar with  
22 the extent of the silty clay unit?

23           A. I never sat down and mapped down the  
24 borings as to where exactly that unit might pitch

1 out.

2 Q. That's fine. Can you share which units  
3 were not part of the silt clay unit?

4 MS. GALE: Objection, foundation. He just said  
5 he never did it.

6 MR. WANNIER: He said he never did an analysis  
7 outside of the boring of the wells. He felt he was  
8 aware of which wells were --

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

11 THE WITNESS: The wells that are described in  
12 the silty clay unit, with this data here, are the  
13 ones on Exhibit B-2, page 720, would be monitoring  
14 well MW12, MW14, MW15, MW8 and MW6.

15 BY MR. WANNIER:

16 Q. Sorry. Just to clarify, I didn't hear  
17 you. You're saying those were the wells within the  
18 unit?

19 A. Those are the wells we have depicted on  
20 this figure with their water levels attached, which  
21 suggests those are the ones in the silty clay unit.

22 Q. Okay. Turning to page 721, would it be  
23 fair to say that wells to whom an elevation is  
24 attached are located within that unit?

1 MS. GALE: Objection, only to the extent I  
2 think the witness should testify to that.

3 MR. WANNIER: That's fair. I can restate that.

4 HEARING OFFICER HALLORAN: Sustained.

5 BY MR. WANNIER:

6 Q. Which wells, to your knowledge -- are you  
7 aware which wells were within the gravelly sand?

8 A. On this figure, the wells in that sandy  
9 gravelly unit, gravelly sand unit, are the wells  
10 that have a water level attached to the level  
11 location on this figure.

12 Q. Okay. So, just to confirm, the wells to  
13 whom a water elevation data point is not attached,  
14 you do not believe to be part of the gravelly sand,  
15 correct?

16 A. That is correct.

17 Q. In evaluating the contour lines for the  
18 silt clay unit, did you obtain any elevation data  
19 from nearby surface water?

20 A. We did not, no.

21 Q. Same question for the evaluation of the  
22 ground water contour map for the gravelly sand  
23 level?

24 A. We did not.

1 Q. So, can you please turn to Bates page 722?

2 A. Okay.

3 Q. This is an aerial distribution of ground  
4 water impact at the Powerton station, correct?

5 A. This is an area photograph that has what  
6 we call hot spots with the data with specific  
7 parameters associated with each well.

8 Q. And using one monitoring well as an  
9 example, can you please turn to monitoring MW-7 in  
10 the top left corner of the letter?

11 A. Okay.

12 Q. Do you see that the values for arsenic,  
13 iron and Manganese, are a lighter shade and slightly  
14 bolded?

15 A. Yes.

16 Q. Okay. Are those values -- do those values  
17 exceed class 1 ground water standards?

18 MS. GALE: Objection to the use of this  
19 document.

20 HEARING OFFICER HALLORAN: I think we went  
21 through before. I sustained this objection.

22 MR. WANNIER: I think we --

23 HEARING OFFICER HALLORAN: When I'm talking,  
24 you have to stop. She can't take both.



1 MR. WANNIER: Your Honor, I'm reading verbatim  
2 from the bottom left-hand corner of the map it uses  
3 the term "exceed."

4 HEARING OFFICER HALLORAN: Okay. Well, then,  
5 phrase it that way. You can bring it up that way.

6 MR. WANNIER: I believe I did phrase it that  
7 way, but I can do it again.

8 HEARING OFFICER HALLORAN: You didn't, sir.

9 MR. WANNIER: Okay. I apologize.

10 BY MR. WANNIER:

11 Q. Do you see in the bottom left-hand corner  
12 where it says in bold language, "Exceeds 35 ISE part  
13 620"?

14 A. That is what it says there. Basically, it  
15 implies they are above a class 1 drinking water  
16 standard; however, there is not an exceedance of the  
17 standard because it is within the GMZ.

18 Q. And can you please turn to Bates 723?  
19 Does this appear to be a proposed ELUC boundary for  
20 the Powerton station?

21 A. That is the title of the figure, yes.

22 Q. Just to clarify, the slashed line area  
23 would be that proposed ELUC?

24 A. Correct. However, I'll make one

1 distinction. This line along the northeast side  
2 should be a little bit further.

3 The ELUC goes all the way over to the  
4 fence line of the property, as it was surveyed for  
5 the final submittal.

6 Q. Just to clarify, then, for the record,  
7 you're testifying the ELUC would include that dark  
8 strip that also encompasses monitoring well 2 and 3;  
9 is that correct?

10 A. Correct.

11 Q. Thank you for that clarification.

12 MR. WANNIER: Complainants move for admission  
13 of Complainant's Exhibit 253.

14 MS. GALE: No objection.

15 HEARING OFFICER HALLORAN: Thank you.

16 (Complainant Exhibit No. 253 was  
17 admitted into evidence.)

18 BY MR. WANNIER:

19 Q. We're going to place in front of you what  
20 has been marked Exhibit 254, which we are  
21 representing is the complainant's commitment  
22 agreement ground water management application for  
23 Powerton generating station.

24 Do you recognize this document?

1 A. Yes, I do.

2 Q. Can you just say quickly briefly what it  
3 is?

4 A. Sure. It's a letter from Midwest  
5 Generation to Illinois EPA, dated January 18, 2013,  
6 regarding compliance commitment agreement ground  
7 water management zone application.

8 Q. Okay. You received this document, as you  
9 were CCed?

10 A. That is correct.

11 Q. Can you please turn to Bates number 727?  
12 You're looking here at a proposed ground water  
13 management zone for Powerton, correct?

14 A. That is the figures of the proposed ground  
15 water management zone area, yes.

16 Q. You can see on the map there is at slashed  
17 area, that I believe represents the ground.

18 Would you like it make the same correction  
19 to the extent of the ground management water zone?

20 A. Yes.

21 Q. Can you state for the record what that  
22 correction is?

23 A. The correction is moving the northeast  
24 boundary to the fence line of the property.

1 Q. And thereby including monitoring well 2  
2 and 3, correct?

3 A. Correct.

4 Q. Okay. Could you please turn to Bates page  
5 749. I'm sorry -- well, 749, yes.

6 HEARING OFFICER HALLORAN: 749 in Exhibit 254?

7 MR. WANNIER: In Exhibit 254, yes.

8 BY MR. WANNIER:

9 Q. This states there is a summary data table  
10 attached to the GMZ application, correct?

11 A. Yes.

12 Q. Okay. The next several pages include the  
13 summary data table up through Bates page 15764,  
14 correct?

15 A. Actually, 15765.

16 Q. It continues to 15766, actually.

17 MS. GALE: I'm only going to object. It's not  
18 the number. It's not 15766. It's just 766.

19 MR. WANNIER: Thank you for that correction. I  
20 was misreading it is 766, correct.

21 BY MR. WANNIER:

22 Q. Do you have any reason to doubt the  
23 accuracy of any of this information in these tables?

24 A. No.

1 MR. WANNIER: Complainants move for admission  
2 complainant Exhibit 254.

3 MS. GALE: No objection.

4 HEARING OFFICER HALLORAN: Complainant's 254 is  
5 admitted.

6 (Complainant Exhibit No. 254 was  
7 admitted into evidence.)

8 BY MR. WANNIER:

9 Q. Mr. Gnat, we are now going to place before  
10 Complainant Exhibit 255, which we are representing  
11 is Bates numbers 11233 to 11237.

12 Are you familiar with this document?

13 A. Yes, I am. I have two copies of page 1.

14 Q. Yes. This is how it was produced to us.  
15 I believe -- if you can look at 11235.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. This is a transmittal letter sent from  
19 KPRG from myself to Mr. Lynn Dunaway of Illinois EPA  
20 on September 11th, 2013, regarding the Midwest  
21 Generation Powerton generating station compliance  
22 commitment agreement, the ELUC/GMZ.

23 Q. Was this letter sent in response to a  
24 request from the Illinois EPA?

1 A. That is correct.

2 Q. What was Illinois EPA requesting?

3 A. When we submitted our submission  
4 applications for the ELUC/GMZ, they had a concern on  
5 having an upgraded monitoring report.

6 This letter addresses how I addressed my  
7 discussions with Lynn Dunaway. In this letter, I  
8 paraphrase what I understand was Illinois EPA's  
9 exception or disagreement with what we defined at  
10 that time as the upgrading monitoring wells.

11 So, I paraphrased in a letter what I felt  
12 was their concern, and then provided modified  
13 language within our submittal that used their  
14 understanding, and their language to abate their  
15 concerns, and that was the basis of this letter.

16 Q. Okay. So, in making these changes, and  
17 specifically turn to 11236, if you look at the top  
18 line, do you see where it say, "Wells MW-1, MW-9 and  
19 MW-10 are considered intermediate monitoring wells  
20 being generally up gradient of ash basins, but still  
21 within an area that impacted ground water from  
22 historical ash-related handling activities"?

23 A. Yes, I see that.

24 Q. Does that statement reflect your current

1 position on the ground water -- where those wells  
2 are located with respect to in terms of the  
3 gradient?

4 A. Yes and no. The wording in this sentence  
5 reflects Illinois EPA's interpretations on items.

6 Where I do agree, we have another  
7 monitoring well 16 further up gradient, a new one  
8 and wells 1, 9 and 10 are intermediate between that  
9 new monitoring well between where the ash ponds are.  
10 That part I agree with.

11 The other wording was wording, like I  
12 said, was used based on -- to address Illinois EPA's  
13 concerns, what they wanted of the GMZ document.

14 Q. Now, in responding to Illinois EPA, and  
15 making this correction, you are agreeing, then, that  
16 those wells are within an area impacted ground water  
17 from historic ash-related handling activities,  
18 correct?

19 MS. GALE: Objection, mischaracterizes his  
20 testimony.

21 HEARING OFFICER HALLORAN: Rephrase.

22 BY MR. WANNIER:

23 Q. What was the effect of your updating this  
24 language?

1 MS. GALE: Objection, asked and answered. He's  
2 told you twice that he's paraphrasing what the  
3 agency --

4 HEARING OFFICER HALLORAN: Overruled. He may  
5 answer.

6 THE WITNESS: Well, the effect is getting our  
7 ground water management approved. I understand that  
8 wells 1, 9 and 10 are in an area of impacted ground  
9 water.

10 Whether or not that is related to the  
11 historical or ash-handling activities, I can't come  
12 to a conclusion on that.

13 BY MR. WANNIER:

14 Q. So, when you told the Illinois EPA that  
15 you were accepting their updated language, that did  
16 not affect your actual position on the truth of that  
17 language?

18 MS. GALE: Objection, mischaracterizes his  
19 testimony. He didn't say he's accepting their  
20 language. He accepted -- he's paraphrasing the  
21 language to comply with what they requested in the  
22 application in an GMZ.

23 HEARING OFFICER HALLORAN: Sustained.

24



1 BY MR. WANNIER:

2 Q. Mr. Gnat, when you sent this letter, did  
3 you say anything in this letter that you did not  
4 believe to be true?

5 MS. GALE: Objection. Vague, compound, asks  
6 for his opinion. He's not an expert.

7 He's simply responding to a request by the  
8 agency to get a GMZ application done on behalf of  
9 his client, Midwest Generation.

10 MR. WANNIER: Your Honor, we're trying to  
11 understand what his current position is on the  
12 relative position of monitoring 1, 9 and 10 in  
13 ground water contour map.

14 And he's now claiming -- it is not clear  
15 what he's claiming.

16 HEARING OFFICER HALLORAN: I'm unclear, too. I  
17 understand the question. I would like for Mr. Gnat  
18 to answer based on Mr. Wannier's question.

19 It is a little confusing. If you can  
20 rephrase, but I'm not sure how else he can ask it.

21 MS. GALE: Well, my understanding of his  
22 question was that whether he believed anything in  
23 here not to be true.

24 So, he's being asked to affirm an agency

1 position, which he only put in here to simply  
2 paraphrase what the agency told him?

3 HEARING OFFICER HALLORAN: It's on the record.  
4 Your objection is noted. If you can get him on  
5 cross to rehabilitate him, if need be.

6 I'm not sure what question is, though.

7 MR. WANNIER: Would we be able to have the  
8 question reread for the record?

9 HEARING OFFICER HALLORAN: Well, there's, like,  
10 six questions.

11 MR. WANNIER: The most recent one.

12 HEARING OFFICER HALLORAN: I'm sorry?

13 MR. WANNIER: Would it be possible to read the  
14 most reason question.

15 HEARING OFFICER HALLORAN: Sure. Court  
16 reporter, please.

17 (Said question was read.)

18 MR. WANNIER: I can rephrase that, your Honor.

19 HEARING OFFICER HALLORAN: Okay.

20 BY MR. WANNIER:

21 Q. Mr. Gnat, do you believe that monitoring  
22 wells 1, 9 and 10 are located within an area of  
23 impacted ground water from historical ash-related  
24 handling activities?

1           A.     Monitoring wells 1, 9 and 10 are located  
2     within an area of impacted ground water from  
3     historical activities, be they ash related or other  
4     historical activities, that I cannot definitively  
5     say.

6           Q.     Okay. Was it your understanding that IEPA  
7     expected -- strike that.

8                     Who wrote the GMZ application?

9           A.     I did.

10          Q.     You did? And that's the application that  
11     is Exhibit 254?

12          A.     That is correct, yes.

13          Q.     Okay. And when IEPA approved -- it's your  
14     understanding that IEPA only approved your GMZ  
15     application after the changes they requested were  
16     made, correct?

17          A.     Correct.

18          MR. WANNIER: No further questions. Sorry,  
19     further questions, but not on this exhibit.

20                     Complainants move for admission of  
21     Complainant's Exhibit 1255.

22           HEARING OFFICER HALLORAN: Ms. Gale?

23           MS. GALE: No objection.

24           HEARING OFFICER HALLORAN: Okay. Thank you.

1 Complainant's Exhibit 255 is admitted.

2 (Complainant Exhibit No. 255 was  
3 admitted into evidence.)

4 BY MR. WANNIER:

5 Q. Mr. Gnat, complainants are placing before  
6 you Complainant's Exhibit 25 -- a group Exhibit O,  
7 which includes Exhibit 2560 through 2600.

8 HEARING OFFICER HALLORAN: Could you repeat  
9 that again, please?

10 MR. WANNIER: Yes, the group is the letter O,  
11 and that is Exhibits 2560, to 2600.

12 HEARING OFFICER HALLORAN: Thank you.

13 MS. NIJMAN: Mr. Halloran, could we have just a  
14 moment to look at the exhibits?

15 HEARING OFFICER HALLORAN: Yes, you may.

16 (Pause)

17 MS. BUGEL: You can let me know when you're  
18 ready.

19 THE WITNESS: Okay.

20 BY MR. WANNIER:

21 Q. Do you recognize that these documents?

22 A. Yes, I do.

23 Q. Can you describe what they are, please?

24 A. The first one is a quarterly ground water

1 monitoring report for the Powerton generating  
2 station for second quarter 2013.

3 Q. And, for the record, this is 2560?

4 A. Yes, Exhibit 2560. 2570 is a quarterly  
5 monitoring report for the Powerton station for  
6 second quarter 2015.

7 Exhibit 2580 is the annual and quarterly  
8 ground water monitoring report for the Powerton  
9 station for fourth quarter 2016. 2590 exhibit is  
10 the quarterly ground water monitoring report for the  
11 Powerton station first quarter 2017.

12 And Exhibit 2600.

13 Q. O?

14 A. O is the quarterly ground water monitoring  
15 report, Powerton station, second quarter 2017.

16 Q. Thank you. And I'm just going to clarify  
17 the record the last digit of each of those is the  
18 letter O instead of the number of zero.

19 We probably could have skipped  
20 Group Exhibit O. So my apologies.

21 BY MR. WANNIER:

22 Q. Did KPMG prepare these reports?

23 A. Yes, we did.

24 Q. Do you have any reason to doubt the

1 accuracies of any of the information of any of these  
2 reports?

3 A. No, I do not.

4 MR. WANNIER: Plaintiffs would move for  
5 admission of Group Exhibit O, which is 256 through  
6 260.

7 HEARING OFFICER HALLORAN: Thank you.  
8 Complainant's Exhibit Group Exhibit O 256 through  
9 260 is admitted.

10 (Complainant Exhibit Nos. 256 to  
11 260 were admitted into  
12 evidence.)

13 BY MR. WANNIER:

14 Q. We're now placing in front of you  
15 Plaintiff's Exhibit 261, which is the Midwest  
16 Generation Powerton generating station -- I'm sorry,  
17 hold on.

18 This is actually -- we're representing  
19 this is the metals cleaning basin quarterly group  
20 water sampling summary for the fourth quarter of  
21 20165.

22 Do you recognize this document?

23 A. Yes, I do.

24 Q. Can you describe what it is?

1           A.     This is the metals cleaning basin ground  
2 water sampling summary dated January -- the date of  
3 the report is January 24, 2017, to Midwest  
4 Generation Powerton station.

5           Q.     If you could turn to Bates page 58589,  
6 which is unfortunately obscured, but it's the map on  
7 the second page.

8           A.     Yes.

9           Q.     Does this map depict the metal cleaning  
10 basin?

11          A.     Yes, it does.

12          Q.     And do you see that it mentions monitoring  
13 wells 12 through 16?

14          A.     Yes, it does.

15          Q.     Those are the four wells for which data  
16 are included on the subsequent data, correct?

17          A.     No, the metals cleaning basin permit  
18 requirements are only three monitoring wells, 13,  
19 14, and 15, and that's the data for those wells.  
20 Wells 12 is not part of that network.

21          Q.     I apologize for my misstatement, but it  
22 includes wells 13 through 15?

23          A.     Correct.

24          MR. WANNIER: Complainants move for admission

1 of Complainant Exhibit 271.

2 MS. GALE: I have to object because I'm  
3 wondering if there was analytical data attached to  
4 this report. My understanding is typically  
5 analytical data is attached to these reports.

6 BY MR. WANNIER:

7 Q. Mr. Gnat, is analytical data of this type  
8 typically attached to these types of reports?

9 A. In these reports, I do not believe we were  
10 attaching the analytical data package because these  
11 are also sampled as part of our CCA sampling. All  
12 the analytics were included in there.

13 MS. GALE: Now I have a different objection.  
14 Mr. Gnat just told us this data is in the CCA  
15 reports, which I've just admitted into evidence.

16 As I stated this morning, the data is  
17 cumulative and duplicative. In fact, I believe it  
18 had the exact same numbers and the exact same data  
19 that's already in the record.

20 So, there is really no reason to include  
21 this document.

22 MR. WANNIER: Your Honor, we don't believe that  
23 is the case. We're not prepared to do that this  
24 comparison at this time.



1           I mean, we can try to go through it right  
2 now. But, I mean, we did offer this as a ground  
3 water monitoring Exhibit 2, defendants, and they did  
4 authenticate and did not raise any concerns with the  
5 inclusion of it at that time.

6           I understand they can object at this time  
7 on different grounds.

8           HEARING OFFICER HALLORAN: I know the Board  
9 will disregard any kind of prejudicial effect.

10          MS. GALE: To their point -- I didn't have a  
11 problem with it.

12          HEARING OFFICER HALLORAN: I'm talking.

13          MS. GALE: I'm sorry.

14          HEARING OFFICER HALLORAN: Anyway, Ms. Gale?

15          MS. GALE: May I continue?

16          HEARING OFFICER HALLORAN: Yes, you may.

17          MS. GALE: Sorry. To the point I didn't have a  
18 problem with it. I've made it clear to them since  
19 last week that we have problems with duplicative  
20 data. I just learned today that this is duplicative  
21 from my witness, because it contain the data  
22 package, which these typically do.

23                 Again, this is duplicative. And as he  
24 just said, it contains information that's in these

1 reports that were just admitted no evidence.

2 HEARING OFFICER HALLORAN: The Board can sift  
3 that out. I'm sorry?

4 MS. GALE: I'm sorry.

5 HEARING OFFICER HALLORAN: It's accepted, over  
6 Midwest's objection, Complainant Exhibit 261.

7 (Complainant Exhibit No. 261 was  
8 admitted into evidence.)

9 MR. WANNIER: Thank you, your Honor.

10 BY MR. WANNIER:

11 Q. You can set that aside. We are now  
12 placing before you Complainant Exhibit 262, which is  
13 a letter that represents a letter you wrote to  
14 Mr. Lynn Dunaway at the Illinois EPA.

15 Do you recognize this document?

16 A. Yes, I do.

17 Q. Is it, in fact, a letter that you wrote to  
18 Mr. Lynn Dunaway?

19 A. Yes, it is the same letter I believe that  
20 you asked me about in Exhibit 255.

21 MR. WANNIER: Complainants will withdraw  
22 Complainant 262.

23 HEARING OFFICER HALLORAN: Good choice.

24

1 BY MR. WANNIER:

2 Q. I have one further question about this  
3 exhibit, then. I'm talking about Complainant  
4 Exhibit 255.

5 A. Okay.

6 Q. Let's actually turn back to the historical  
7 ash relating to the activities language on page  
8 11236.

9 HEARING OFFICER HALLORAN: Could you hold on a  
10 minute? I have to have find your exhibit. What  
11 exhibit are we looking at it?

12 MR. WANNIER: 255.

13 HEARING OFFICER HALLORAN: I got it. Thank  
14 you. You may proceed.

15 BY MR. WANNIER:

16 Q. Are you aware of what historic ash-related  
17 handling activities his you were referring to here?

18 MS. GALE: Objection, calls for speculation.  
19 As he testified earlier, he's paraphrasing the  
20 agency's statement.

21 MR. WANNIER: I understand. I'm only asking if  
22 he's aware of these ash-handling activities.

23 HEARING OFFICER HALLORAN: He may answer, if  
24 he's able.

1 THE WITNESS: I do not know what all the  
2 ash-handling activities were at this facility. I  
3 don't know how they handled their ash.

4 BY MR. WANNIER:

5 Q. Complainant would like to place before you  
6 Complainant Exhibit 263, which we are representing  
7 is the compliance committee agreement, ELUC, for the  
8 Waukegan site.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. Yes, I do.

12 Q. Can you please describe it for the record?

13 A. It's a letter from Midwest Generation  
14 dated January 18, 2013, regarding compliance  
15 commitment agreement ELUC Midwest Generation  
16 Waukegan station.

17 Q. And did you receive this letter when it  
18 was sent?

19 A. I received a copy, yes.

20 Q. Can you please turn to page 608?

21 A. Okay.

22 Q. And does this appear to be a ground water  
23 contour map for Waukegan station?

24 A. Yes, it does.

1 Q. And you helped to prepare this map working  
2 with KPRG?

3 A. I reviewed it, yes.

4 Q. In preparing this contour -- sorry, this  
5 map includes contour lines and water flow lines as  
6 we previously discussed?

7 A. Yes.

8 Q. And in comparing those contour lines, did  
9 you obtain any surface validation data from any  
10 nearby waterways?

11 A. No, no physical measurement. Lake  
12 Michigan has a general validation. I don't remember  
13 the validation offhand.

14 Q. Sorry, just to clarify, did you obtain  
15 that data?

16 A. We did not take any physical measurements  
17 of the water level, no.

18 Q. Did you make any other attempts to find  
19 out the surface water levels, the nearby surface  
20 water levels?

21 A. I believe from topographic maps and so on,  
22 you can get an elevation of Lake Michigan and not  
23 have it posted on.

24 Q. Did the elevation of Lake Michigan go up

1 or down at all?

2 MS. GALE: Objection, vague.

3 HEARING OFFICER HALLORAN: He can answer, if  
4 he's able to.

5 THE WITNESS: Yes.

6 BY MR. WANNIER:

7 Q. And did you make any attempt to understand  
8 how the evaluation might change throughout the year?

9 MS. GALE: Objection, if he's talking about  
10 Lake Michigan. I think you are talking about the  
11 ground water here. It's vague, compound.  
12 Throughout the year?

13 MR. WANNIER: I'm trying to figure out if he  
14 ever obtained surface water data for Lake Michigan,  
15 and as he's discussed -- he's testified it can be  
16 ground water.

17 HEARING OFFICER HALLORAN: Overruled.  
18 Mr. Gnat?

19 THE WITNESS: Relative to creating this ground  
20 water contour map, the absolute elevation of Lake  
21 Michigan at the time of obtaining these water levels  
22 would not change the drawing of this map.

23 BY MR. WANNIER:

24 Q. That wasn't quite my question. Does that

1 mean that you did then did not attempt to secure  
2 this data that I asked you about, the change in  
3 elevation?

4 A. I do not have data on Lake Michigan for  
5 the change in elevation over the course of the year.

6 Q. Thank you. This map also shows monitoring  
7 wells at Waukegan; is that correct?

8 A. Yes.

9 Q. Are you aware of any monitoring wells at  
10 Waukegan, other than wells that are depicted in this  
11 map?

12 A. Yes.

13 Q. What are those monitoring wells?

14 A. We have depicted on this map monitoring  
15 wells 1 through 7, and I do know that we have an  
16 additional set of wells 8 through 16, I believe.

17 Q. Okay. Where is monitoring well 8 located?

18 Or, if you prefer, you can state generally  
19 where those latter ones are and see if we get an  
20 objection it's a compound question.

21 A. I know maps that are available that have  
22 locations of wells on there. I would rather have  
23 that rather than to misspeak in this forum.

24 Q. Can you please turn to page 609?

1 A. Okay.

2 Q. Again, is this a map of the aerial -- 609  
3 is an aerial map that depicts ground water sampling  
4 at monitoring well 1 through 7?

5 A. This is an aerial photograph with what we  
6 call box spots that contain the concentrations of  
7 specific parameters associated with each well on  
8 this figure, yes.

9 Q. If you could turn to page 610. Does this  
10 appear to be a proposed ELUC boundary extension at  
11 the Waukegan site?

12 A. That is what is depicted on the map, yes.

13 Q. Just to be clear, the left center of this  
14 map has white shaped, that is the  
15 previously-established ELUC, correct?

16 A. That's my understanding, yes.

17 Q. The dark hashed area is encompassing the  
18 western part of the proposed extension, correct?

19 A. Correct.

20 Q. Turning quickly to page 608 again, the  
21 contour map. So, I understand that you don't want  
22 to -- well, strike that.

23 Monitoring wells 8 through 16, which I  
24 understand are not depicted on this map, would have



1 ground water elevation data?

2 You would procure ground water elevation  
3 data at those monitoring wells, correct?

4 A. Yes. Perhaps not at this time in 2012.

5 Q. Understood. Do you believe that the  
6 ground water elevations that monitoring wells 8  
7 through 16 could affect the contours in this -- that  
8 were depicted in this map?

9 MS. GALE: Objection calls for speculation.

10 HEARING OFFICER HALLORAN: He may answer, if  
11 he's able.

12 THE WITNESS: That would depend on what those  
13 water levels were.

14 MR. WANNIER: Complainants would move for the  
15 admission of Complainant's Exhibit 263.

16 MS. GALE: No objection.

17 HEARING OFFICER HALLORAN: Thank you, Ms. Gale.  
18 Complaint Exhibit 263 is admitted.

19 (Complainant Exhibit No. 263 was  
20 admitted into evidence.)

21 MR. WANNIER: Can we have one moment, your  
22 Honor?

23 HEARING OFFICER HALLORAN: Sure. We're off the  
24 record.

1 (Discussion off the record.)

2 MR. WANNIER: We can go backed on the record.

3 HEARING OFFICER HALLORAN: We're back on the  
4 record. Thank you.

5 BY MR. WANNIER:

6 Q. Sticking once more with Complainant's  
7 Exhibit 263, do you know what the proposed -- I'm  
8 sorry, is there a ground water management zone at  
9 Waukegan?

10 A. Not to my knowledge, no.

11 Q. Thank you. We're now going to place  
12 before you what's been marked as Complainant  
13 Exhibit 264, which we are representing is a series  
14 of maps and charts relating to the Waukegan station.

15 Are you familiar with this document? You  
16 can take some time to review it.

17 A. I am familiar with the pages you handed  
18 me. They are never together as a part of one  
19 document. This is within, I imagine, a file folder,  
20 it looks like.

21 So, I don't know what the description of  
22 the document is. I am familiar with the pages that  
23 you handed me.

24 Q. Let's -- maybe if we look at Midwest Gen

1 Bates 14524 through 14531, are you familiar with  
2 those pages as a single document?

3 A. 14524 is a copy of my folder label. So,  
4 that's a document -- it's a folder label. 14525 and  
5 14526 are a table from Patrick Engineering with the  
6 survey data basically for the monitoring wells they  
7 installed, and added to that were the two wells that  
8 -- some data from the two wells MW-6 and MW-7 that  
9 KPRG installed.

10 Q. If I can ask, 15424 is a folder label,  
11 correct?

12 A. Correct, that is what it appears to be.

13 Q. Is it fair to say 15425 to 15431 were all  
14 kept together in your folders as a single document?

15 A. I'm assuming that's why they are grouped  
16 together, yes. In my head, a document is something  
17 like this, generally everything is referenced.

18 BY MR. WANNIER:

19 Q. That's understood. This is how it was  
20 produced to us.

21 A. I understand.

22 Q. I would like to turn your attention to  
23 15429, and this is an aerial photo from 1974,  
24 correct?

1 A. Yes, an aerial photo from 1974.

2 Q. Okay. Have you seen this map before?

3 A. I have seen this aerial photo, yes.

4 Q. Can you turn to 15430? I'm sorry, 14530.

5 A. Okay.

6 Q. I may have misspoken on the record. I may  
7 have said 15429. I intended to say 14529. My  
8 apologies for that.

9 And 15429 is the 1974 aerial photo,  
10 correct?

11 A. Yes.

12 Q. And 14530 is another aerial photo from  
13 1961, correct?

14 A. Correct.

15 Q. And have you seen this map before?

16 A. Yes, I've seen this aerial, yes.

17 Q. Okay. Do you see in, I guess, the upper  
18 central part of the map where it says, "Present ash  
19 foundry"?

20 A. Yes.

21 Q. And you can see that there are seven --  
22 the seven monitoring wells, 1 through 7, correct?

23 A. Yes.

24 Q. Okay. And turning back to 14529, can you

1 also see the present ash foundry as a label on that  
2 map?

3 A. Yes.

4 Q. And you see monitoring wells 1 through 7?

5 A. Yes.

6 Q. Okay.

7 MR. WANNIER: Complainants move for -- strike  
8 that.

9 Complainant's move for admission of  
10 Midwest Gen Bates numbers 14524 to 154 -- 14531 as  
11 Complainant Exhibit 264.

12 HEARING OFFICER HALLORAN: Okay. On the front  
13 page, 14522 --

14 MR. WANNIER: Yes, we believe that is a  
15 separate exhibit. We're looking to get 14524 to  
16 14531.

17 HEARING OFFICER HALLORAN: So, you're moving  
18 Complainant Exhibit 264 at Bates stamp 14524 through  
19 what?

20 MR. WANNIER: 14531.

21 HEARING OFFICER HALLORAN: Ms. Gale?

22 MS. GALE: No objection. So you don't want  
23 14532 and the rest?

24 MR. WANNIER: That's right.

1 HEARING OFFICER HALLORAN: I should rip these  
2 off?

3 MR. WANNIER: You should rip those off.

4 HEARING OFFICER HALLORAN: Okay. Can you come  
5 up here and take this? No hurry. Complainant's  
6 Exhibit No. 261, Bates stamped 14524 through 15431  
7 is admitted.

8 BY MR. WANNIER:

9 Q. Mr. Gnat, complainant is placing before  
10 you -- sorry about that.

11 Complainant's are placing before you what  
12 is marked as Complainant Exhibit 265, which is a  
13 table of ground water elevations at Waukegan.

14 Do you see where in looking at along the  
15 columns, do you see where it says, "Ground water  
16 elevation"?

17 A. Yes.

18 Q. And do you see where it says -- the column  
19 that says, "Sampling ground water elevation"?

20 A. Yes.

21 Q. Can you explain the difference between the  
22 ground water elevation column and the sampling  
23 ground water elevation column?

24 A. Sure.

1 MS. GALE: Objection, lack of foundation. It's  
2 not been established this is his document.

3 HEARING OFFICER HALLORAN: Sustained.

4 BY MR. WANNIER:

5 Q. Do you recognize this document?

6 A. It's a table with the information you were  
7 describing on it.

8 Q. Have you ever seen it before?

9 A. It appears to be a format that we would  
10 put things in. I don't know what document it might  
11 have come out of.

12 Q. And by "we," you mean KPRG?

13 A. Correct.

14 Q. Have you -- do you remember analyzing  
15 ground water elevation at wandering wells at  
16 Waukegan?

17 A. Yes.

18 Q. And do you have any reason to doubt the  
19 accuracy of the ground water elevations listed in  
20 this chart?

21 MS. GALE: Objection. There's been no  
22 foundation laid that he could establish this is  
23 accurate in the first place.

24 HEARING OFFICER HALLORAN: I agree. Sustained.

1           MR. WANNIER: Your Honor, this is yet another  
2 example of a document that was produced to us with  
3 no accompanying pages on either side and no  
4 explanation that has data that is important it make  
5 our case.

6           I understand that this is a single table.  
7 It is the only example of this table we've been able  
8 to find, and Midwest Gen -- the defendants have  
9 produced this document, and we're not able to get  
10 this through another way.

11          HEARING OFFICER HALLORAN: That's why I  
12 suggested for the last, I don't know how many  
13 months, to get together to try to work things and  
14 hone things down.

15          Lately, you been giving me questionable --  
16 cumulative and duplicate stuff. You know, the other  
17 stuff you've been giving me, exhibits, some have too  
18 many pages on them. Some don't have enough.

19          There seems to be a pattern. I can't  
20 really with this. If he can't testify to the best  
21 of his knowledge, this is true and accurate, I can't  
22 see him stating yes or no.

23          So, I sustained, and you know Ms. Gale's  
24 objection, but we've got to do a better job on



1 exhibits and laying foundation. It doesn't take  
2 much.

3 MR. WANNIER: I understand, your Honor.

4 HEARING OFFICER HALLORAN: I don't ask for  
5 much. If you were to offer this into evidence, I  
6 would say no.

7 MR. WANNIER: We would like to submit it as an  
8 offer of proof.

9 HEARING OFFICER HALLORAN: Very well. The  
10 surrounding testimony regarding this Exhibit 265  
11 will be taken under an offer of proof.

12 MS. GALE: Okay.

13 HEARING OFFICER HALLORAN: Thank you.

14 BY MS. DUBIN:

15 Q. Mr. Gnat, we're placing before you what  
16 has been marked as Group P, which includes Plaintiff  
17 Exhibits 267P through 270P. When you are ready.

18 MS. GALE: Are we skipping 266?

19 MS. DUBIN: We are. We're not offering that as  
20 an exhibit.

21 MR. WANNIER: We can also clarify now, for the  
22 record, that we did not offer any Exhibit 221 as  
23 well, Complainant Exhibit 221.

24 THE WITNESS: Okay.

1 BY MR. WANNIER:

2 Q. Do you recognize these documents?

3 A. Yes, I do.

4 Q. And can you describe them, please, for the  
5 record?

6 A. The first document, Exhibit 267P, is a  
7 quarterly ground water monitoring report, Waukegan  
8 station, third quarter 2013.

9 Exhibit 268P is the annual applicable  
10 standards quarterly ground water monitoring report  
11 Waukegan station fourth quarter 2014. Exhibit 269P  
12 is the annual and quarterly ground water monitoring  
13 report Waukegan station fourth quarter 2016.

14 And 270P exhibit is the quarterly ground  
15 water monitoring report Waukegan station second  
16 quarter 2017.

17 Q. Thank you. Can you turn to Complainant's  
18 Exhibit 268?

19 A. Okay.

20 Q. This is, again, the fourth quarter 2014  
21 and annual ground water monitoring results, correct?

22 A. Correct.

23 Q. Can you please turn to Bates number page  
24 45329?

1                   Actually, let me start by directing you to  
2 45331.

3           A.    Okay.

4           Q.    That you can see this is written by Mark  
5 Nagle, the station manager, correct?

6           A.    It is signed by him, correct.

7           Q.    Signed by him, thank you.  This letter --  
8 what role did you have in preparing this letter?

9           A.    I prepared the letter.

10          Q.    You prepared the letter and he signed it?

11          A.    Correct.

12          Q.    If you turn to 45329, the summary of  
13 analytical data, and I should say 45329 through  
14 carrying over onto 45330.

15                   The analyses on 45330 are KPRG's analyses?

16          MS. GALE:  Objection to the term of "analysis."

17          BY MR. WANNIER:

18          Q.    I'm sorry, the opinions in this section  
19 were developed by you through -- or by KPRG,  
20 correct?

21          MS. GALE:  Objection to the term "opinions."

22          MR. WANNIER:  Your Honor, I think these are  
23 within the scope.  I don't know what she wants me to  
24 call them.

1 MS. GALE: You have not established these are  
2 opinions.

3 HEARING OFFICER HALLORAN: Sorry?

4 MS. GALE: There's been no establishment that  
5 these are opinions on page 45330.

6 HEARING OFFICER HALLORAN: You might want to  
7 have back up and rephrase. Thank you.

8 BY MR. WANNIER:

9 Q. Does are section entitled, "Summary of  
10 Analytical Data," which begins on 45329, contain  
11 KPRG's opinions on the analytical data that's  
12 presented?

13 A. They contain our observations as we state  
14 in the report, "No further observations."

15 Q. Okay. And did KPRG make the determination  
16 which observations were noteworthy enough to be  
17 included in the section?

18 A. These were my observations.

19 Q. Thank you. Can you please turn on 45330  
20 to the second bullet point?

21 A. Okay.

22 Q. And there you say that "Monitoring wells  
23 05 is immediately up gradient of the ash ponds and  
24 monitoring well 07 is slightly site gradient to the

1 south, correct?

2 A. That is correct.

3 Q. Okay.

4 MR. WANNIER: At this point, I would like to  
5 offer as demonstrative an excerpt from Plaintiff's  
6 Exhibit 45816.

7 I'm sorry, Complainant Exhibit 19D, which  
8 is Bates number 45816, and I'm representing this is  
9 a map --

10 MS. GALE: Hold up.

11 MR. WANNIER: I'm offering an exhibit. So you  
12 don't have to dig through.

13 MS. GALE: Okay.

14 MR. WANNIER: You can confirm, if you want.

15 MS. GALE: Mr. Halloran, as we objected to this  
16 document earlier in this proceeding, this is a  
17 Commonwealth Edison document prepared by NSRP, a  
18 consultant of Commonwealth Edison, and we object to  
19 the production of the entire document.

20 We object to the use of the map. We  
21 certainly object to the use of the map with this  
22 witness who may have not seen this before. We again  
23 move to strike any testimony that is related to the  
24 map or this.

1           MR. WANNIER: Once again, your Honor, we're  
2 using this as demonstrative. This is a map of the  
3 site. This exhibit has already been admitted into  
4 evidence.

5           HEARING OFFICER HALLORAN: I understand. There  
6 is no other maps out there that Ms. Gale suggested  
7 that you could use?

8           I know I let the other one in, and I'm  
9 leaning towards that way too, since it's  
10 demonstrative. I'm confused.

11          MR. WANNIER: If your Honor would give me  
12 another moment, I can try to find another map to  
13 use.

14           Honestly, your Honor, none of the other  
15 maps that have been provided by defendants in this  
16 case provide the level of detail about the site,  
17 including terminology that's used to describe  
18 different areas of the site, and that's -- that  
19 terminology is important to us being able to discuss  
20 the sites.

21          HEARING OFFICER HALLORAN: The objection is  
22 overruled. Its's demonstrative, but the Board will  
23 note Ms. Gale's objection. You may continue.

24

1 BY MR. WANNIER:

2 Q. Mr. Gnat, if you look at this  
3 demonstrative 458 - Midwest Gen 45816, do you see in  
4 the bottom where there are two fly bottom ash  
5 settling basins?

6 A. I see that they are depicted on this map.  
7 I'm not sure what you want me to do with that  
8 observation.

9 Q. Do you recognize this map?

10 A. I've seen this map in the context of this  
11 phase 2. It was done for Commonwealth Edison.

12 Q. Are you aware what the fly and bottom ash  
13 settlement basins are depicting on this map?

14 MS. NIJMAN: Mr. Halloran, we would object at  
15 this point. Counsel said they were going to use  
16 this as a demonstrative exhibit.

17 So, they need to establish it is a  
18 reasonably accurate picture of whatever it is  
19 demonstrating, and I don't think they can do that  
20 with this witness.

21 Now, they are asking him to explain things  
22 what things are on this map.

23 MR. WANNIER: I am simply trying to orient the  
24 witness on this map, making sure that he is

1 sufficiently oriented for me to ask the questions I  
2 need to ask.

3 HEARING OFFICER HALLORAN: You may continue.  
4 Overruled.

5 BY MR. WANNIER:

6 Q. Mr. Gnat, without -- and just to clarify  
7 for defense counsel, without confirming any labels  
8 on this map, what is your understanding of what the  
9 two sections of the bottom ash settling basins are?

10 A. I don't know what these are intended to  
11 depict, but I do know that the outlines of the  
12 current east ash pond and west ash pond are quite  
13 different than what is shown here.

14 Q. Are the east and west ash ponds located in  
15 the same general part of the Waukegan site, to your  
16 knowledge?

17 A. They would appear to be.

18 Q. Let's turn to Plaintiff --

19 HEARING OFFICER HALLORAN: Complainant.

20 BY MR. WANNIER:

21 Q. Complainant, excuse me. Complainant  
22 Exhibit 263. If you could pull that.

23 MS. GALE: Mr. Halloran, I move to strike all  
24 testimony related to the demonstrative exhibit.



1 They haven't established it's reasonably accurate,  
2 nor have they established how they are using it with  
3 this witness.

4 MR. WANNIER: I am about to use it with this  
5 witness. I'm using another map to help orient the  
6 witness so he can understand the demonstrative.

7 HEARING OFFICER HALLORAN: I'm trying to find  
8 263.

9 MR. WANNIER:

10 HEARING OFFICER HALLORAN: Thank you. I've  
11 found it. Please. Proceed.

12 BY MR. WANNIER:

13 Q. Looking at 263 -- if can you turn to Bates  
14 page 608. Are you there?

15 A. Yes.

16 Q. And can you see on that map the west ash  
17 pond and the east ash poind?

18 A. Yes.

19 Q. Do you see directly to the north and  
20 extending slightly to the northeast from there that  
21 there is a coal pile?

22 A. Yes.

23 Q. And if you turn to the demonstrative page,  
24 do you see the rightmost of the two fly bottom ash

1 settling basins?

2 A. If that's what those are. I don't know if  
3 those are the correct terms. I don't know how they  
4 got that. Yes, I see where you are orienting to the  
5 map.

6 Q. Okay. And do you see on the demonstrative  
7 where the coal storage area is directly north and  
8 extends to the northeast of the eastern more of what  
9 are labeled as the fly bottom ash settling basin?

10 A. On that map, that's the label, yes.

11 Q. Thank you. And, actually, staying on page  
12 608, do you see monitoring wells 5 and 7?

13 A. Yes.

14 Q. Would you agree that monitoring well 5 is  
15 directly west of the west ash pond?

16 A. Yes.

17 Q. Would you agree monitoring well 7 is  
18 directly southwest of the west ash pond?

19 A. Yes.

20 Q. And are you aware -- actually, staying on  
21 page 608, do you see the roughly rectangular field  
22 directly to the west of the west ash pond, the west  
23 end of which would be monitoring well 6?

24 A. Yes.

1 Q. And that rectangle extends up to what  
2 appears a road to the north that also goes past the  
3 west ash pond?

4 A. Yes.

5 Q. Are you aware of what is in that area?

6 A. Only anecdotally. I don't know what is in  
7 that area.

8 Q. What anecdotal information are you aware  
9 of?

10 MS. GALE: Anecdotal are not facts.

11 MR. WANNIER: He just testified --

12 HEARING OFFICER HALLORAN: Sustained.

13 Rephrase.

14 BY MR. WANNIER:

15 Q. I understand you don't have direct  
16 knowledge.

17 Have you ever received any information  
18 that might give you knowledge of what is in that  
19 location?

20 MS. GALE: I'm sorry, I missed that question.  
21 Can you say it again?

22 MR. WANNIER: Yes.

23 BY MR. WANNIER:

24 Q. Have you received any information that

1 would speak to what is in that rectangular are we're  
2 discussing?

3 MS. GALE: Objection, hearsay.

4 THE WITNESS: There's no information as to  
5 specifically what's in that area. I've never seen  
6 any date borings from that area.

7 BY MR. WANNIER:

8 Q. Okay. Well, looking at the ground water,  
9 this is -- again we can see the ground water contour  
10 map in this figure, right?

11 A. Yes.

12 Q. And do you see the arrows pointing roughly  
13 south and east on that contour map?

14 A. Yes.

15 Q. So would it be fair to say monitoring  
16 wells 5 and 7 are down gradient from the rectangular  
17 area we've been discussing, according to your  
18 contour map?

19 A. They're in that down gradient direction,  
20 yes.

21 Q. Okay. And turning back to Exhibit 26 --  
22 sorry, one moment, your Honor.

23 Turning back to Complainant Exhibit 268P,  
24 which as we have discussed, it is the ground water

1 monitoring results for fourth quarter 2014 annual?

2 A. Okay.

3 Q. And turning back to page 45 -- Bates  
4 45330, that exhibit, and I'll wait for the Hearing  
5 Officer.

6 A. Okay.

7 HEARING OFFICER HALLORAN: Which one is it,  
8 Mr. Wannier?

9 MR. WANNIER: It is 268P beginning at Bates  
10 45328.

11 HEARING OFFICER HALLORAN: If I need it, I'll  
12 find it.

13 MR. WANNIER: I only have one question.

14 HEARING OFFICER HALLORAN: Okay, thank you.

15 BY MR. WANNIER:

16 Q. Do you see in the second bullet point  
17 where it says, "Bore on concentrations again at  
18 wells 5 and 7 are consistently higher than at the  
19 other locations"?

20 A. Yes.

21 Q. No further questions of this exhibit.  
22 Thank you.

23 MR. WANNIER: Complainant would move for  
24 admission for Group Exhibit P, which includes

1 Exhibits 267 through 270?

2 HEARING OFFICER HALLORAN: Ms. Gale?

3 MS. GALE: No objection.

4 (Complainant Exhibit No. P was  
5 admitted into evidence.)

6 HEARING OFFICER HALLORAN: Good time to take a  
7 break, do you think?

8 MR. WANNIER: Great time to take a break.

9 HEARING OFFICER HALLORAN: See you 3:00 o'clock  
10 about. Off the record. Thank you.

11 (Recess taken.)

12 BY MR. WANNIER:

13 Q. We're placing before you what's been  
14 marked as Complainant Exhibit 271, which is a series  
15 of ground water tables depicting monitoring wells at  
16 Waukegan.

17 Are you familiar with this document?

18 A. This is a table certainly in our format.  
19 It's entitled "Table 2 Ground Water Annual Results  
20 for Midwest Generation Waukegan Station."

21 And it shows data from 2010 through August  
22 of 2014. What report this came out of, I'm not  
23 sure.

24 Q. But you have seen those tables before?

1           A.     This appears to be one of our tables.

2           Q.     Okay.  And clipping through them, they all  
3 include ground water monitoring data at Waukegan,  
4 correct?

5           A.     Correct.

6           Q.     Do you have any reason to doubt the  
7 accuracy of these tables?

8           MS. GALE:  I'm going to object to that question  
9 because there is no analytical attached to this.  
10 Again this doesn't have KPRG's name on top of it.

11                   And, finally, this data is from 2010 to  
12 2014, which is in reports, multiple reports now,  
13 that have been admitted into evidence.  So this data  
14 on here is duplicative and it's cumulative evidence,  
15 and we object to the use or admission of this  
16 document.

17           HEARING OFFICER HALLORAN:  Let me say this  
18 before I ask for a response.  Mr. Gnat did say it  
19 looks like the same format his company uses.

20                   So -- but in any event, sir, any response?

21           MR. WANNIER:  Yes, I was going to say exactly  
22 that.  He testified --

23           HEARING OFFICER HALLORAN:  Is it duplicative?

24           MR. WANNIER:  We do not believe it is

1 duplicative because it includes monitoring  
2 information for monitoring wells 8 and 9 that is not  
3 included in the ground water reports.

4 We did get other monitoring well 8 and 9  
5 data introduced as group exhibits this morning, but  
6 that data is different from this one because, again,  
7 it measures differently as we have discussed  
8 previously.

9 I'll furthermore state for this exhibit  
10 and also the next one, before introducing,  
11 complainants specifically reviewed the production;  
12 and in that production, defendants explicitly  
13 delineated different documents with bookmarks, and  
14 these pages were delineated completely independently  
15 in the production that was made.

16 MS. GALE: I don't understand his  
17 representation. I will say that I continue to  
18 believe this is duplicative and cumulative evidence.

19 Additionally, we have no ability to  
20 understand whether it is accurate. There is no data  
21 books attached to this. There are no to analytical  
22 data.

23 We don't know if there are transcription  
24 errors in this these tables. It would be impossible



1 to establish the data in these tables is accurate.

2 MR. WANNIER: Your Honor, that would go to the  
3 weight and not the admissibility.

4 HEARING OFFICER HALLORAN: I totally agree.  
5 Mr. Gnat did say he's familiar with this. So, I'm  
6 going to overrule.

7 This can go forward. I don't think you've  
8 moved this yet.

9 MR. WANNIER: We have not.

10 HEARING OFFICER HALLORAN: Right. You may  
11 proceed.

12 BY MR. WANNIER:

13 Q. I believe my question was: Do you have  
14 any reason to doubt the accuracy of this  
15 information?

16 A. I can take it through page 43857, and the  
17 reason being, yes, these are our format, and it's  
18 pages 1 through 9 of table 2, and I would imagine I  
19 can find within the report stack here, either this  
20 exact table, or some of the backup.

21 But then we get to page 43859, ELUC MW-11,  
22 or prior to that on 43858, ELUC MW-10, no longer  
23 part of the 9-page table 2. And in order for me to  
24 say, "Yes, this is accurate," I would like to go

1 back -- I would have to go back.

2 And since we don't usually include these  
3 in summary reports, I would have to go back through  
4 and just be able to tag them to the data package  
5 they come from.

6 MR. WANNIER: Can I just clarify that response?

7 BY MR. WANNIER:

8 Q. You said the portion of the exhibit that  
9 you would have to confirm begins at 43858; is that  
10 correct, or is it --

11 A. 43858.

12 Q. Okay.

13 MR. WANNIER: Complainants would move for  
14 introduction of Midwest Gen Bates Nos. 43849 through  
15 43857 as Complainant Exhibit 271.

16 I understand it's 458 is -- 858 is on the  
17 back of the page, so we can provide clean copies  
18 tomorrow morning.

19 HEARING OFFICER HALLORAN: What about  
20 Mr. Gnat's statement that he said pages 43849  
21 through 43856, was that it?

22 THE WITNESS: 857.

23 HEARING OFFICER HALLORAN: 43857, that can be  
24 found somewhere else in the exhibits, but

1 Mr. Wannier said that, "No, there's different ground  
2 watering reports on these different wells."

3 MR. WANNIER: It is our belief that the  
4 monitoring wells and the dates were sampled on the  
5 dates in that chart and are there, but were not  
6 analyzed necessarily in the same way.

7 We would have to confirm there are two  
8 different ways to analyze the ground water sampling  
9 point. One is looking at the total recoverable  
10 amount, and the other is the dissolved amount.

11 I can ask the witness questions about  
12 whether those amounts would be similar, but it is  
13 our belief that this contains data that is separate  
14 from what exists in the reports. So, we believe  
15 this is still necessary information.

16 Furthermore, this contains monitoring  
17 reports from 8 and 9, which don't actually exist in  
18 the reports. The only information we have from  
19 monitoring wells 8 and 9 was from the Test America  
20 lab data. So there would be not be the information  
21 in the ground water reports that the witness  
22 referred to.

23 HEARING OFFICER HALLORAN: You know this is  
24 confusing.

1 MR. WANNIER: I do very much agree that it is  
2 confusing.

3 HEARING OFFICER HALLORAN: I'll allow you to  
4 ask some questions. You haven't moved this yet,  
5 right?

6 MR. WANNIER: No.

7 HEARING OFFICER HALLORAN: Okay. So, what  
8 about are you going to provide a clean copy again?

9 MR. WANNIER: We will provide a clean copy of  
10 this exhibit.

11 HEARING OFFICER HALLORAN: So, over objection,  
12 I'll allow Complainant's Exhibit 271, Bates stamped  
13 43858, to -- help me out here.

14 MR. WANNIER: I believe the range begins at  
15 43849.

16 HEARING OFFICER HALLORAN: Okay, 43849. Sorry.

17 MR. WANNIER: And ends at 43857. The witness  
18 could help me out.

19 THE WITNESS: That is correct.

20 HEARING OFFICER HALLORAN: So, then, you'll  
21 provide a clean copy deleting the rest of the pages?

22 MR. WANNIER: Yes.

23 THE WITNESS: Excuse me. Again, not knowing  
24 which document this came from, I recognize this

1 isn't our format.

2 We got the sequential pages 1 through 9 on  
3 here, but I know -- so, if you go through all the  
4 pages, our bottom footnotes are all the same on all  
5 these tables, the way we usually do it.

6 And then I get to wells 8 and 9, and the  
7 footnotes are different. They are set up different.  
8 That's my only difference I can see.

9 BY MR. WANNIER:

10 Q. Which pages are you referring to?

11 A. 856 and 857.

12 Q. Do those pages otherwise appear to be  
13 styled in the typical style of KPRG?

14 A. Yes.

15 MR. WANNIER: We would maintain our motion.

16 HEARING OFFICER HALLORAN: Okay. I'll admit  
17 it. Plaintiff's Exhibit 271, with that noted on the  
18 record from 43859 through 43857.

19 (Complainant Exhibit No. 271 was  
20 admitted into evidence.)

21 MR. WANNIER: Thank you, your Honor. We have  
22 one more of those, and I believe that is the last  
23 one.

24

1 BY HEARING OFFICER HALLORAN:

2 Q. I'm placing before you next, Mr. Gnat,  
3 what is marked as Complainant's Exhibit 272, which  
4 contains again Waukegan ground water analytical  
5 results.

6 A. Which?

7 Q. Mr. Gnat, do you recognize this document?

8 A. I recognize this document. It's titled,  
9 "Draft Ground Water Analytical Results Waukegan  
10 Station."

11 So, I'm not sure which of the report this  
12 was going to, and it's certainly a table that I  
13 can't attest. It might contain errors, because it's  
14 still in the draft format. So, I don't know if it's  
15 gone through our QAQC to remove the draft.

16 MR. WANNIER: In recognition of the difficulty  
17 here, complainants are willing to withdraw this  
18 exhibit.

19 HEARING OFFICER HALLORAN: Thank you.

20 MR. WANNIER: I'll take that back.

21 BY MR. WANNIER:

22 Q. Mr. Gnat, we're now placing before you  
23 what's marked as Complainant's Exhibit 273. It will  
24 be one moment.

1           And this begins at Bates number 12822, and  
2 we are presenting for the record the inspection  
3 summary letter for Waukegan.

4           Do you recognize this document?

5           A.    Yes.

6           Q.    Actually, I would -- before that, there is  
7 a little complication here. We would also like to  
8 place before you Complainant's 12827. I'm sorry,  
9 Complainant's 274, which is Midwest Generation Bates  
10 12827 to 45.

11           There is a complication here with the way  
12 this letter was produced. We're going to need to  
13 work with the witness, I believe.

14           Mr. Gnat, do you recognize Complainant's  
15 Exhibit 274? If it will assist you, I can try to  
16 represent what's happened here.

17           A.    If you could, because I'm completely  
18 confused right now.

19           Q.    It was very confusing to me as well. I  
20 believe that these are two copies of the same  
21 letter, with the exception that Complainant's  
22 Exhibit 273, does not have any of the attachments  
23 listed at the end of the letter, and Complainant's  
24 Exhibit 274 does have those attachments.





1 properly follow directly from Midwest Gen Bates  
2 12828 and, therefore, come before Midwest Gen Bates  
3 12129 and 12130?

4 A. 12829?

5 Q. 12829 and 12830?

6 A. Yes.

7 Q. Okay. Thank you. Can you please turn  
8 to -- can you please turn to patients 13832?

9 A. Okay.

10 Q. I'm sorry, can you describe generally what  
11 this document is?

12 A. KPRG was requested by Midwest Generation  
13 to inspect the liner of the west and east ash ponds  
14 at Waukegan station and provide the observations and  
15 any thoughts.

16 Q. Okay. And the east and west ponds were  
17 both relined with an HDP layer, correct?

18 MS. GALE: I'm sorry, you said layer or liner?

19 MR. WANNIER: Liner. I misspoke.

20 THE WITNESS: It is my understanding that they  
21 had been lined with an HDP liner at some point prior  
22 to our inspection, yes.

23 BY MR. WANNIER:

24 Q. It was prior to the inspection that

1 eventually did this report, correct?

2 A. Correct.

3 Q. Okay. Staying on 12832, do you see No. 7?

4 A. Yes.

5 Q. Did you have any reason to believe  
6 anything in this letter or the attachments are not  
7 accurate, any of your statements were inaccurate?

8 A. The person who wrote most of this was not  
9 myself. I'm not an engineer, nor a liner expert,  
10 and liners are an interesting animal.

11 There is one expertise in designing a  
12 liner, and then there's also an expertise in laying  
13 that liner. In general, the people who design the  
14 liner probably never laid one; and the people who  
15 lay the liner, haven't designed one.

16 When we were asked to do this, we brought  
17 on an associate, Chris Swires, who is both a design  
18 engineer for liners, as well as working for a liner  
19 installation company. So he's actually seen both  
20 sides.

21 Most of the observations written here were  
22 his observations on our behalf, since we contracted  
23 him. So, I can attest to having brought this  
24 letter, these are his observations that we're

1 summarizing here.

2 Q. Okay. And just to confirm, at the time  
3 this letter was sent, Mr. Swires was employed by  
4 KPRG, correct?

5 A. He was a contractor of ours, yes.

6 Q. And did you review his work?

7 A. I walked with him on the sidewalk.

8 Q. Do you have any reason to mistrust the  
9 analysis that Mr. Swires conducted?

10 A. No.

11 Q. If you turn to Bates 12829, your name does  
12 appear as the first signatory on this letter,  
13 correct?

14 A. Correct.

15 MR. WANNIER: Complainants move for admission  
16 of Complainant's Exhibit 274.

17 MS. GALE: No objection.

18 HEARING OFFICER HALLORAN: Thank you.  
19 Complainant's Exhibit 274 is admitted.

20 (Complainant Exhibit No. 274 was  
21 admitted into evidence.)

22 BY MR. WANNIER:

23 Q. This is our last exhibit for Waukegan. We  
24 will be placing before you Complainant's

1 Exhibit 275, which is a letter -- we're representing  
2 it is a letter that you wrote to Ms. Andrea Rhodes  
3 at the Illinois EPA.

4 Do you recognize this document?

5 A. Yes.

6 Q. And can you describe this document?

7 A. That document is a letter from Midwest  
8 Generation to Ms. Andrea Rhodes with Illinois EPA  
9 dated January 15, 2013, regarding the compliance  
10 commitment agreement, well installation  
11 documentation, Midwest Generation Waukegan station.

12 Q. Okay. You can see there are attachments  
13 to this letter.

14 They were sent with this letter right?  
15 Sorry, on Midwest Gen Bates page No. 596 through  
16 598.

17 A. Yes.

18 Q. Turn first to 597. There is a boring log  
19 for monitor well 6; is that correct?

20 A. That is correct.

21 Q. And if you look on the third line, under  
22 description of the boring log, it says, "Black silty  
23 clay, organic, slightly moist," correct?

24 A. That is what it says, yes.

1 Q. Is it possible that those black layers  
2 include co-ash?

3 MS. GALE: Objection, calls for speculation.

4 HEARING OFFICER HALLORAN: He may answer if  
5 he's able.

6 THE WITNESS: I don't think so. The reason I  
7 say this, the person who logged this is Patrick  
8 Allenstein, who is the same person who logs some of  
9 the geotechnical borings that you had.

10 When he saw those observations, he listed  
11 them, the same person. And on this log he describes  
12 it as a black silty clay, organic slightly moist. I  
13 don't see any ash or slag in that.

14 Q. Okay. But you don't know for sure?

15 MS. GALE: Objection.

16 HEARING OFFICER HALLORAN: Sustained.

17 MR. WANNIER: The basis for the objection?

18 MS. GALE: He just said he knows Patrick, how  
19 he did these logs. He knows how he does it. He  
20 looks at the prior logs that came in.

21 HEARING OFFICER HALLORAN: Sustained.

22 BY MR. WANNIER:

23 Q. You said you didn't think so. Did you  
24 intend to imply more certainty with that statement?

1 MS. GALE: I'm sorry, I missed the question.  
2 Can you repeat it?

3 MR. WANNIER: He testified he didn't think so,  
4 when I asked my previous question. I was wondering  
5 what level of certainty he was intending to imply  
6 with that statement.

7 THE WITNESS: I have an eye level of certainty.  
8 This is a senior geologist of ours. Him and I log  
9 in a very similar way.

10 I saw his logs before, which clearly did  
11 indicate some of that material; and in this case,  
12 he's not indicating this. It is the same person  
13 generating these logs. If he did not see it, it's  
14 not here.

15 BY MR. WANNIER:

16 Q. Understood. I simply wanted to clarify.  
17 Thank you for your answer.

18 MR. WANNIER: Complainant's move for admission  
19 of Complainant's 275.

20 HEARING OFFICER HALLORAN: Ms. Gale?

21 MS. GALE: No objection.

22 HEARING OFFICER HALLORAN: Thank you.  
23 Complainant's Exhibit 275 is admitted.

24

1 (Complainant Exhibit No. 275 was  
2 admitted into evidence.)

3 BY MR. WANNIER:

4 Q. Mr. Gnat, we are now placing before you  
5 what has been marked as Complainant's Exhibit 276,  
6 which we are representing is the compliance  
7 commitment agreement ground water management zone  
8 application for the Will County station.

9 Do you recognize this document?

10 A. Yes, I do.

11 Q. And can you describe it, please, for the  
12 record?

13 A. This is a letter from Midwest Generation  
14 from Ms. Andrea Rhodes from Illinois EPA dated  
15 January 18, 2013, regarding compliance commitment  
16 agreement ground water management zone application  
17 Will County generating station.

18 Q. Can you please turn to 625 in that  
19 exhibit?

20 A. Okay.

21 Q. This is a map of a proposed water  
22 management zone?

23 A. Correct.

24 Q. And the zone is delineated in the hashed

1 roughly square-shaped area in the center of the map?

2 A. Yes, that is the proposed ground water  
3 management zone, yes.

4 Q. Does that -- well, first of all, do you  
5 see in the middle of that where it says, "Com Ed  
6 retains tract"?

7 A. Yes.

8 Q. Are you aware of what that is?

9 MS. GALE: Objection, lack of foundation.

10 MR. WANNIER: I'm literally asking him --

11 HEARING OFFICER HALLORAN: He can answer, if  
12 he's able.

13 THE WITNESS: I believe that is a portion of  
14 the property within our property or Midwest Gen's  
15 property that is owned by Com Ed.

16 That might be their switching yard or  
17 something that they still retain as part of their  
18 tract.

19 BY MR. WANNIER:

20 Q. Okay. You know what the extent is of the  
21 Will County site, correct?

22 MS. GALE: Objection, lack of foundation.

23 BY MR. WANNIER:

24 Q. Do you know how large the Will County site



1 is?

2 A. I don't remember offhand how large it is.  
3 I basically know the layout of the facility.

4 Q. Okay. Let me ask this: Does the proposed  
5 ground water management zone cover the entirety of  
6 the Will County site?

7 A. No, it does not.

8 Q. Let's turn to page 643. Actually, while  
9 you were turning there, do you have any knowledge  
10 why it does not cover the entire site?

11 A. That was -- the area that was defined was  
12 based on discussions between Midwest Generation and  
13 Illinois EPA during the discussion on the scope of  
14 the CCA.

15 Q. And were you privy to any of those  
16 discussions?

17 A. Some, but not discussions directly with  
18 IEPA. I was not in those meetings discussing the  
19 scope of the CCA. I was contracted to assist in  
20 developing materials for it.

21 Q. Understood. What conversations regarding  
22 the scope were you privy to?

23 A. With IEPA, it would be written  
24 correspondence or a telephone call with Lynn

1 Dunaway, just to clarify any comments.

2 So, we would do a submittal with the  
3 proposed GMZ, and we would get comments, and I would  
4 be then assisting with addressing those comments.

5 And that's where any interaction that I  
6 would have would be to get an understanding of why  
7 or what's driving IEPA's comments here so I can  
8 understand it and try and address it properly and  
9 get the document finalized.

10 Q. Why did the GMZ -- the proposed GMZ not  
11 cover the full site?

12 MS. GALE: Objection, asked and answered.

13 MR. WANNIER: He hasn't actually answered it.

14 HEARING OFFICER HALLORAN: I agree. Overruled.

15 THE WITNESS: That wasn't a -- that size of the  
16 GMZ wasn't part of the discussions I had with the  
17 EPA that I had on this.

18 None of their comments that came back  
19 indicated any larger or smaller area that I  
20 remember, relative to the GMZ. So, I just may have  
21 had -- you know, trying to understand what it was.

22 For example, one document where we had  
23 some disagreements. So, I got an understanding of  
24 why they wanted this additional upgrade as well.

1           Now, why this was the size it was, again,  
2 that was part of that initial discussion with the  
3 scope and discussion between Midwest Generation and  
4 IEPA. There wasn't anything there that I had any  
5 questions on. I wasn't part of that conversation.

6 BY MR. WANNIER:

7           Q. So, did you provide any information -- did  
8 you assist Midwest Generation at all in trying to  
9 figure out what an appropriate scope of the GMZ  
10 should be?

11           MS. GALE: Objection, mischaracterizes his  
12 testimony. He said it is between Midwest Generation  
13 and the Illinois EPA and the GMZ.

14           MR. WANNIER: I'm simply asking --

15           HEARING OFFICER HALLORAN: He can answer, if  
16 he's able. Overruled. Mr. Gnat?

17           THE WITNESS: I'm not sure I can answer  
18 completely to your satisfaction.

19           I certainly developed the package of the  
20 GMZ application as to describe, as I understood what  
21 the agreements were with the initial discussions  
22 between Midwest Generation and IEPA, and that being  
23 this zone that is identified here as the proposed  
24 ground water management zone focusing on the area

1 associated with the VNs, violation notices.

2 BY MR. WANNIER:

3 Q. Let me back up a second. Is it fair to  
4 say -- so, you're saying Midwest Generation and IEPA  
5 had a discussion about the scope of the GMZ,  
6 correct?

7 A. That is my understanding.

8 Q. Midwest Generation presumably came into  
9 those discussions with a position on what an  
10 appropriate scope would be?

11 MS. GALE: Objection, calls for speculation.

12 HEARING OFFICER HALLORAN: Sustained.

13 MR. WANNIER: Okay.

14 BY MR. WANNIER:

15 Q. Did you provide any information or  
16 analysis to Midwest Generation that informed -- that  
17 might have informed them on the question of what an  
18 appropriate ground water management zone scope  
19 should be?

20 MS. GALE: Objection to the characterization of  
21 appropriate ground water management zone.

22 HEARING OFFICER HALLORAN: I'm sorry?

23 MS. GALE: Objection to the characterization of  
24 ground water management zone. I don't know what

1 "appropriate" means. Vague.

2 MR. WANNIER: I'll state it again.

3 HEARING OFFICER HALLORAN: Thank you.

4 BY MR. WANNIER:

5 Q. Did you provide any information to Midwest  
6 Generation that might -- or analysis, that might  
7 have informed them as to what the scope of the  
8 ground water management zone should be?

9 A. My only input on these issues was done  
10 under counsel privilege. I did not sit down and  
11 square out for Midwest Generation, "Here, this is  
12 the area to throw in front of the IEPA." No, I did  
13 not do that.

14 Q. That last part wasn't my question. Are  
15 you saying any information you provided would be  
16 subject to privilege?

17 A. When I brought on with this matter  
18 originally, for helping to address the violation  
19 notices, I was hired by counsel to provide some  
20 thoughts, and all of that was done under client  
21 privilege.

22 Relative to this particular map, and the  
23 history behind how it got to here, I don't think I  
24 have all the pieces that you're asking about. I

1 honestly don't think I have all that information to  
2 give you an answer.

3 MS. NIJMAN: Mr. Hearing Officer, for the  
4 record, Midwest Generation does not waive its  
5 attorney-client or attorney work-product privilege  
6 with respect to this matter.

7 BY MR. WANNIER:

8 Q. Were your discussions with Midwest  
9 Generation, where you may have provided any  
10 information or analysis concerning scope of the  
11 ground water management, exclusively with attorneys?

12 MS. GALE: Objection, as he stated, and as we  
13 have stated, we're not waiving attorney-client  
14 privilege. He was brought on after the violation  
15 notices.

16 He assisted in preparation of this was  
17 under the -- pursuant to assist legal counsel in  
18 preparation for litigation. Even if -- it doesn't  
19 matter if it was only with attorneys.

20 Any information he gave Midwest Generation  
21 is subject to that privilege.

22 MR. WANNIER: Your Honor, Mr. Gnat is not an  
23 attorney. So, his conversations with non-attorneys  
24 with Midwest Generation would not involve --



1           MR. WANNIER: Your Honor, we don't think that  
2 broad scope of privilege is a legitimate claim of  
3 privilege, if we're talking about communications  
4 between two non-attorneys relating to communications  
5 with the Illinois EPA, which is an Illinois  
6 governmental body.

7           HEARING OFFICER HALLORAN: My inclination is to  
8 sustain the objection. I have a feeling Mr. Gnat is  
9 going to be back here tomorrow.

10           You can brief that, if you would like. I  
11 will give midwest a chance to respond, but, you  
12 know, this has to be done in hours.

13           MR. WANNIER: That's fine.

14           MS. NIJMAN: Just in addition, and I really  
15 don't want to get into briefing that we don't have  
16 to get into it, but if counsel is going to inquire  
17 in this area, the questions have to be very clear in  
18 terms of what communication is he asking about?

19           Because it's not clear enough, in terms of  
20 determining whether the privilege applies. To just  
21 say, "Did you have communications where counsel  
22 wasn't directly involved?" Because that isn't the  
23 only criteria with respect to work-product privilege  
24 when counsel has directed the work to be done.



1           So, it's difficult for us to explain where  
2           and why the privilege applies, unless the questions  
3           are more specific. I'm not trying to be difficult.

4           HEARING OFFICER HALLORAN: Ms. Wannier?

5           MR. WANNIER: Okay. I can try asking one last  
6           question. If they object and it's sustained, we can  
7           address it tomorrow.

8           HEARING OFFICER HALLORAN: Okay.

9           BY MR. WANNIER:

10          Q. Did you recommend -- I'm sorry, is that  
11          okay?

12          HEARING OFFICER HALLORAN: Go ahead.

13          BY MR. WANNIER:

14          Q. Did you recommend a scope -- a GMZ scope  
15          to Midwest Generation?

16          MS. GALE: Asked and answered.

17          HEARING OFFICER HALLORAN: He can answer if  
18          he's able. Overruled.

19          THE WITNESS: I can't say that I recommended  
20          anything specific. We discussed it.

21          MR. WANNIER: Okay, we can address this  
22          tomorrow.

23          MS. NIJMAN: Mr. Halloran, could I just ask a  
24          question, again, to be able to tell whether or not

1 this is in the area of privilege or not, if we're  
2 going to debate this further tomorrow?

3 HEARING OFFICER HALLORAN: If we're going to  
4 debate it further tomorrow, I need a brief by  
5 tomorrow morning at 7:00 o'clock.

6 MR. WANNIER: Would it be okay if defense  
7 counsel asks her question?

8 MS. NIJMAN: I don't need to ask my question,  
9 unless you are going to brief this issue.

10 MR. WANNIER: Can we have a moment?

11 HEARING OFFICER HALLORAN: Sure, we are off the  
12 record.

13 (Discussion off the record.)

14 HEARING OFFICER HALLORAN: Mr. Wannier?

15 MR. WANNIER: I think we're fine not briefing  
16 this. We'll move on to our next question.

17 HEARING OFFICER HALLORAN: Okay. Thank you.

18 BY MR. WANNIER:

19 Q. Can you please turn to page 3?

20 HEARING OFFICER HALLORAN: On your Exhibit 276?

21 MR. WANNIER: On Exhibit 276.

22 BY MR. WANNIER:

23 Q. Does this appear to be a map of various --  
24 does it appear to be a map of the Will County site?

1           A.    Yes, it does.

2           Q.    And you see that there are four ash ponds  
3 delineated on this map?

4           A.    Yes.

5           Q.    Okay.  If you can turn to page 644.  Do  
6 you see there are several monitoring wells depicted  
7 around the ash ponds?

8           A.    Ten monitoring wells.

9           Q.    Ten monitoring wells.  Thank you for  
10 clarifying.  If you could turn to page 645.

11                   Does this appear to be a ground water  
12 contour map?

13           A.    That is correct.

14           Q.    And, again, in preparing this ground water  
15 contour map, did you obtain the surface elevation of  
16 nearby waterways?

17           A.    We did not physically measure it.  Perhaps  
18 this will help explain some of our previous  
19 discussions.

20                   We certainly take into account the fact  
21 that there is a surface water body there, when we're  
22 looking at other interpretations.

23                   In this case, we have an estimated value  
24 plus or minus 579 feet, and that is obviously taken

1 into consideration when we drew our map.

2 Q. Did you account for changes in the  
3 elevation of the surface water over time?

4 A. This is a map for a specific day. So I  
5 did not have a measurement of the surface water here  
6 at a particular time.

7 But if I remember correctly, that might be  
8 in the average pool elevation for that stretch of or  
9 that reach of the river. It's plus or minus 579.

10 Q. Where did you obtain that data?

11 A. I would have to go back and find out is it  
12 map versus some actual information on the pool  
13 elevation. So the river -- that I don't remember  
14 offhand.

15 Q. Okay. Can you turn to page 646? And,  
16 once again, this is aerial photo that depicts  
17 monitoring well results at the ten monitoring wells  
18 at the site, correct?

19 A. It is an aerial photograph of the box plot  
20 map of the analytical data for various parameters,  
21 that is correct.

22 MR. WANNIER: Complainants move for admission  
23 of Complainant Exhibit 276.

24 HEARING OFFICER HALLORAN: Ms. Gale?

1 MS. GALE: No objection.

2 HEARING OFFICER HALLORAN: Thank you.

3 Complainant's Exhibit 276 is admitted.

4 (Complainant Exhibit No. 276 was  
5 admitted into evidence.)

6 BY MR. WANNIER:

7 Q. We're placing before you Complainant's  
8 Exhibit 277, which we are representing is the Will  
9 County -- I'm sorry, complainants are going to  
10 withdraw Complainant Exhibit 277. I apologize for  
11 that.

12 Complainants now will place before you  
13 Group Exhibit Q, which is the last group exhibit,  
14 and this includes Exhibits 278Q through 281Q.

15 Do you recognize these documents?

16 A. I recognize a part of this. As I'm going  
17 through on the first one, I guess I have a question  
18 on this, because I'm not sure all of it is ours.

19 278Q, I believe the extent of that report  
20 would end at your Bates page No. 6734. On the back  
21 of that attached is some water level data from  
22 Patrick Engineering, and some data tables from  
23 Patrick Engineering, which I do not think we  
24 reference here, which we -- I don't think we

1 referenced them at all in this report.

2 So, I'm not sure how they got attached to  
3 this report.

4 MR. WANNIER: Your Honor, the ground water  
5 monitoring reports, we printed out three courtesy  
6 copies for those parties.

7 Is it okay if I refer to the exhibit that  
8 the witness is holding or look at it? May I  
9 approach the witness?

10 MS. NIJMAN: Are you saying you don't have an  
11 exhibit?

12 HEARING OFFICER HALLORAN: Yes. I'm sorry.

13 THE WITNESS: This is the page. It starts  
14 on --

15 BY MR. WANNIER:

16 Q. Mr. Gnat, can you please turn to Midwest  
17 Gen Bates 6671, and if you look at the summary of  
18 analytical data on the bottom, do you see a  
19 reference to table 2?

20 A. Yes.

21 Q. If you turn back to the Patrick  
22 Engineering pages.

23 A. This table 2 says, "The field parameter  
24 analytical data for the most recent sampling along

1 the previous eight quarters are summarized in  
2 table 2."

3 So, I go to KPRG's table 2, which is right  
4 here, and our field parameter data are summarized,  
5 along with the previous eight quarters. What I'm  
6 referring to is table 2 from Patrick Engineering  
7 that's got ground water elevation data that is  
8 referenced that is not part of the this report.

9 MR. WANNIER: Your Honor, understood.

10 BY MR. WANNIER:

11 Q. Can you review the other three?

12 A. I'm in the process.

13 Q. Do you recognize the remaining documents  
14 apart from the Patrick Engineering report?

15 A. Yes, I do.

16 Q. Do you prepare those, or did KPRG prepare  
17 those reports?

18 A. Yes, we did.

19 Q. And do you have any reason to doubt the  
20 accuracy of any of the information in these reports,  
21 apart from Patrick Engineering data table that we  
22 discussed?

23 A. No.

24 MR. WANNIER: Complainant's will move for Group

1 Exhibit Q as an exhibit encompassing 278 through  
2 281Q with the proviso that 278 Bates range would be  
3 modified. It goes from Midwest Gen 6670 to 6734.

4 HEARING OFFICER HALLORAN: Sorry, 6670 to 67 --

5 MR. WANNIER: 34.

6 HEARING OFFICER HALLORAN: Hold on a minute,  
7 please. Ms. Gale?

8 MS. GALE: No objection.

9 HEARING OFFICER HALLORAN: We're going to get a  
10 clean copy of this?

11 MR. WANNIER: We'll provide a clean copy of  
12 this.

13 HEARING OFFICER HALLORAN: Give me a minute.  
14 (Pause).

15 HEARING OFFICER HALLORAN: All right, thank  
16 you.

17 MR. WANNIER: I believe we have a motion. Is  
18 there an objection?

19 HEARING OFFICER HALLORAN: There is no  
20 condition. Group exhibit Q -- 278Q to 281Q is  
21 admitted, subject to a clean copy of 278Q.

22 (Complainant Exhibit No. 278Q to  
23 281Q were admitted into  
24 evidence.)



1 MR. WANNIER: Your Honor, can we go off the  
2 record for a second?

3 HEARING OFFICER HALLORAN: Sure.

4 (Discussion off the record.)

5 HEARING OFFICER HALLORAN: We're back on the  
6 record.

7 BY MR. WANNIER:

8 Q. We will place in front of you  
9 complainant's Exhibit 284, which is Midwest Gen  
10 Bates No. 49565, and we are representing it's a CCB  
11 determination support for the Will County station.

12 BY MR. WANNIER:

13 Q. Do you recognize this document?

14 A. Yes, I do.

15 Q. Can you describe it quickly for the  
16 record?

17 A. This is a summary report from KPRG to  
18 Sharene Shealey of Midwest Generation dated  
19 September 8, 2015, regarding CCB, which is coal  
20 combustion byproduct, the determination support,  
21 Midwest Generation Will County station.

22 Q. If you look at the first -- what was the  
23 purpose of this report?

24 A. We were asked to evaluate an area at the

1 plant there to determine whether or not that  
2 material could be classified as coal combustion  
3 byproduct for potential beneficial reuse in  
4 engineering.

5 Q. Looking at the second line, it says there  
6 that you provided this report with regard to  
7 evaluating whether coal ash, formerly deposited at  
8 the Will County site, can be classified as coal  
9 combustion byproducts, correct? That's a slight  
10 paraphrase.

11 A. It says, so we are both accurate here,  
12 "KPRG & Associates is pleased to provide this  
13 summary letter report with regard to evaluating  
14 whether coal ash, formerly deposited at the Midwest  
15 Generation Will County station, can be classified as  
16 coal combust byproduct CCD."

17 Q. Thank you. Do you know where -- where is  
18 this site on the Midwest Generation -- where is this  
19 on the Midwest Generation site with respect to the  
20 ash ponds?

21 A. I did not do this sampling in the field.  
22 So, exactly where it's located, I would have to take  
23 a look at a larger map and look at our Figure 1 here  
24 and key myself in as to where exactly that's located

1 on the plant.

2 Q. Can you please turn to Complainant  
3 Exhibit 276?

4 A. On 276.

5 Q. Turn to page 643.

6 A. Got it.

7 Q. That is a larger map, correct?

8 A. Correct.

9 Q. Using that map, can you please identify  
10 where on that map this sampling -- this site is  
11 located?

12 A. Okay. I believe this site is located just  
13 to the southeast of what's labeled as ash pond 1  
14 north, in that area there.

15 Q. I see. Just to the southeast, there is a  
16 slightly darker region that corresponds with what  
17 appears to be the darker region on page 49569 in  
18 complainant's exhibit?

19 A. Correct.

20 Q. Do you have any understanding when this  
21 coal ash was deposited at that site?

22 A. No, I do not.

23 Q. Did you only become aware of this when --  
24 so, when did you become aware of it then?



1 BY MR. WANNIER:

2 Q. We're now placing before you what is  
3 Complainant's Exhibit 285, which we are representing  
4 is a Will County coal ash and slag -- wait, I'm  
5 sorry. Scratch that.

6 We are going to place before you what's  
7 been marked as Complainant Exhibit 286 first, which  
8 is -- we're representing is a memo from Midland  
9 Standard Engineering and Testing to the witness.

10 Do you recognize this document?

11 A. I believe so. This is a long time ago,  
12 yes.

13 Q. And what is it?

14 A. This is A Midland Standard Engineering  
15 testing report, analytical report to us. They are a  
16 geotechnical testing firm dated August 22nd, 2012,  
17 regarding laboratory testing services, Midwest  
18 Generation Will County station.

19 Q. Okay. And you see in the beginning of the  
20 letter, this is addressed to you, correct?

21 A. Yes.

22 Q. If you can look at the first page, the  
23 full paragraph, under "Laboratory test methods,"  
24 after the ASTM lines, it begins, "Permeability and

1 strength is consistent."

2 Did you see that?

3 A. Yes.

4 Q. If you read further, the second line says,  
5 "Hairline cracks were noted at the ends of the  
6 core," right?

7 A. It says, "Additionally, the samples  
8 inspected for science of cracking and discoloration  
9 -- if cracking and discoloration. Hairline cracks  
10 were noted at the ends of the core," yes.

11 Q. What core are you they referring to there?

12 A. We collected a core of Poz-O-Pac and sent  
13 it off for this analysis. So, apparently the two  
14 end parts of the core might have gotten cracked up a  
15 little bit. That's where he's defining he sent it  
16 to.

17 Q. Do you know what pond this Poz-O-Pac came  
18 from at the Will County site?

19 A. The exact pond, I would have to go back  
20 and refresh my memory the exact pond number we  
21 collected it from.

22 MR. WANNIER: The complainants move for  
23 admission of Complainant Exhibit 286.

24 MS. GALE: No objection.

1 HEARING OFFICER HALLORAN: Complainant exhibit  
2 286 is admitted.

3 (Complainant Exhibit No. 286 was  
4 admitted into evidence.)

5 MR. WANNIER: Our last exhibit, other than the  
6 confidential one for today, is Complainant's  
7 Exhibit 287, which is -- actually, scratch that.

8 I think we're done introducing exhibits,  
9 apart from the confidential exhibit, your Honor.  
10 We're actually -- I have a few more questions, and  
11 then I think I may actually be done entirely with  
12 the witness.

13 HEARING OFFICER HALLORAN: Are we still on the  
14 record? You may proceed, if we are.

15 BY MR. WANNIER:

16 Q. Mr. Gnat, can we go back to your -- talk a  
17 little bit more about your work with Midwest  
18 Generation?

19 I understand you began work with them in  
20 2001?

21 A. Very early on, yes. I was still working  
22 with a previous employer.

23 Q. Okay. Your work with them expanded in  
24 2012, right?

1 MS. GALE: Objection, vague. What does  
2 "Expanded" mean?

3 HEARING OFFICER HALLORAN: Sustained.

4 BY MR. WANNIER:

5 Q. Did the scope of your work change in 2012?

6 A. No.

7 Q. What work were you doing when you first  
8 came on in 2001?

9 A. First, let's start from when I started  
10 with KPR, which then became KPRG. I introduced my  
11 new firm to Midwest Generation at the time.

12 We developed -- we started some work, I  
13 believe, in 2002, 2003 time frame, some small  
14 projects, a handful of small projects, and we  
15 performed well on those projects, and we got a  
16 handful of additional projects.

17 That's typical how you grow a business.  
18 And we performed on those and Midwest Generation  
19 became more comfortable. We got some larger  
20 projects.

21 We got to a point where we were having a  
22 fairly good -- Midwest Generation is a very  
23 proactive company. Once they were comfortable with  
24 our work, and the quality of our work, they used us



1 to help them with their environmental program,  
2 implementing their needs to stay in compliance and  
3 so on.

4 A good part of our work has nothing to do  
5 with these four stations in this issue at all.

6 Q. Agreed. Understood. Just sort of  
7 limiting this to the four stations that are at issue  
8 here, you have been working with Midwest Generation  
9 to respond to violation notices that were received?

10 HEARING OFFICER HALLORAN: Speak up, please.

11 BY MR. WANNIER:

12 Q. You have been working with Midwest  
13 Generation to respond to violation notices sent by  
14 the Illinois EPA, correct?

15 A. Correct.

16 Q. Okay. And when did you start that work?

17 A. I would have to -- I received a call. I  
18 don't remember all the exact timeframes, the exact  
19 time frames when the VNs were issued. But I know  
20 when the VNs were issued, that is when I received a  
21 call from Midwest Generation, their legal counsel.  
22 A team was developed.

23 MS. GALE: I'll stop you there. Don't get into  
24 privileged conversations.

1 THE WITNESS: Our firm and folks from Midwest  
2 Generation and other consulting firms were involved  
3 as well.

4 BY MR. WANNIER:

5 Q. Can you please turn to Complainant  
6 Exhibit 1A?

7 HEARING OFFICER HALLORAN: I know I'm not going  
8 to be able to find it.

9 MR. WANNIER: We can provide it. As long as he  
10 has one, I can provide a courtesy copy.

11 THE WITNESS: Okay, I have it in front of me.

12 BY MR. WANNIER:

13 Q. Do you recognize this document?

14 A. That is copy of the violation notice from  
15 for Midwest Generation dated June 11, 2012, received  
16 June 13th.

17 Q. And does that refresh your recollection as  
18 to when the violation notices were?

19 A. Yes, shortly thereafter is when I would  
20 have been called to discuss.

21 Q. And that would have been later than 2012,  
22 correct?

23 A. Shortly after June 11th, 2012.

24 Q. If you can turn to Complainant

1 Exhibit 276, which again is the ground water  
2 management zone application for Will County. We can  
3 help you find it.

4 A. I'm organized here.

5 Q. And, again, this is the letter that was  
6 sent to Illinois EPA, correct?

7 A. Yes.

8 Q. And was that letter sent on January 18th,  
9 2013?

10 A. Yes.

11 Q. I can go through all of them, but to your  
12 knowledge, was the letter for Will County sent on  
13 the same day as the letters for Joliet 29 Waukegan  
14 and Powerton?

15 MS. GALE: Objection, only to the extent this  
16 witness can't remember the exact dates of these  
17 letters.

18 MR. WANNIER: Okay. We can go through them.  
19 That's fine.

20 BY MR. WANNIER:

21 Q. I will turn you first to Complainant  
22 Exhibit 242, which I'm representing is ground water  
23 management zone letter for Joliet 29. We can help  
24 you find it.



1 contract.

2 Q. Whose data did you rely on in helping  
3 Midwest Generation develop the responses on  
4 January 18th, 2013?

5 MS. GALE: Object to form, vague.

6 MR. WANNIER: I can rephrase.

7 HEARING OFFICER HALLORAN: Thanks.

8 BY MR. WANNIER:

9 Q. Were you aware that Patrick Engineering  
10 had conducted ground water monitoring prior to the  
11 second quarter of 2013?

12 A. Yes.

13 Q. And did you review that data?

14 A. Yes, we viewed that data.

15 Q. And did that data help you develop a  
16 response to Illinois EPA, with regard to the  
17 violation notices?

18 MS. GALE: Objection. I direct you not to  
19 answer on attorney-client privilege. Additionally,  
20 this witness did not develop the response to the  
21 Illinois EPA that a response was generated by  
22 Midwest Generation with an attorney.

23 MR. WANNIER: I can go around that.

24 HEARING OFFICER HALLORAN: Thank you.

1 BY MR. WANNIER:

2 Q. Mr. Gnat, did you advise Midwest  
3 Generation -- sorry, you testified previously  
4 Midwest Generation called you to work on a response  
5 to violation notices sometime in mid to late 2012,  
6 correct?

7 MS. GALE: Objection, mischaracterizes his  
8 testimony.

9 MR. WANNIER: Sometime after --

10 MS. GALE: Let me finish.

11 MR. WANNIER: Sorry.

12 HEARING OFFICER HALLORAN: Hold on.

13 MS. GALE: It mischaracterizes his testimony.  
14 What he said was Midwest Generation and its  
15 attorneys called him to assist with the response to  
16 the violation notice.

17 HEARING OFFICER HALLORAN: That's what I  
18 recall.

19 MR. WANNIER: That's fine.

20 BY MR. WANNIER:

21 Q. I'm not asking you, Mr. Gnat, for your  
22 specific communications with Midwest Generation, but  
23 what I'm trying to understand is whether you relied  
24 on the Patrick ground water monitoring reports to

1 understand the ground water -- the hydrogeological  
2 situation at each of the four sites, and you can  
3 start with Will County.

4 MS. GALE: Are we at a question or no?

5 BY MR. WANNIER:

6 Q. Did you rely on the Patrick ground water  
7 monitoring data to understand the hydrogeology of  
8 Will County?

9 A. I guess there's going to be a little  
10 parsing of terms here. We reviewed the Patrick  
11 Engineering reports, and we had some concerns on the  
12 data tables. We found a lot of transcription  
13 errors, which we corrected.

14 And we used the informs in the report to  
15 give us an understanding of the subsurface, but we  
16 didn't necessarily agree with the way they were  
17 interpreting their ground water flow conditions.

18 So, information from within their report,  
19 we used to gain an understanding, but I did not rely  
20 on their report, or any of their conclusions for my  
21 interpretations.

22 Q. Understood. Did you rely on the data that  
23 was collected?

24 MS. GALE: Objection. Asked and answered.

1           MR. WANNIER: That is a very different  
2 question.

3           MS. GALE: He just said, "I relied on the  
4 information they gave, except for the data tables  
5 that had some transcription errors."

6           HEARING OFFICER HALLORAN: Sustained.

7           MR. WANNIER: That is a mischaracterization of  
8 his testimony.

9           HEARING OFFICER HALLORAN: Could you rephrase  
10 that testimony? I thought it had been asked and  
11 answered, or it was vague or both.

12 BY MR. WANNIER:

13           Q. I understand you did not rely on the  
14 conclusions.

15                   I'm trying to understand if you relied on  
16 the data that had been collected.

17           MS. GALE: Objection, asked and answered.

18           HEARING OFFICER HALLORAN: Isn't that part and  
19 parcel, Mr. Wannier?

20           MR. WANNIER: Sorry, can you elaborate?

21           HEARING OFFICER HALLORAN: Sustained.

22 BY MR. WANNIER:

23           Q. So, you mentioned you corrected data  
24 errors in Patrick Engineering's data?



1 A. In their tables, yes.

2 Q. In their tables. How did you correct  
3 them?

4 A. We went line by line through the  
5 analytical reports and corrected incorrect values  
6 within their table and provided those corrections to  
7 counsel, which included amended tables and  
8 responses.

9 MR. WANNIER: Can we have one moment? I think  
10 this is almost done.

11 HEARING OFFICER HALLORAN: Off the record.

12 (Discussion off the record.)

13 HEARING OFFICER HALLORAN: We're back on the  
14 record.

15 BY MR. WANNIER:

16 Q. So you mentioned you used the analytical  
17 reports to correct the tables?

18 MS. GALE: Objection, misstates testimony.

19 BY MR. WANNIER:

20 Q. Can you restate your previous answer?

21 MS. GALE: Let's have her read it.

22 MR. WANNIER: Reread from the record?

23 HEARING OFFICER HALLORAN: Sure. Court  
24 reporter? I'm not sure how far we're going back

1 either.

2 MR. WANNIER: The question before this last  
3 question.

4 HEARING OFFICER HALLORAN: Okay.

5 (Said record was read.)

6 BY MR. WANNIER:

7 Q. Did you rely on the analytical tables?

8 A. No, I corrected the analytical tables.

9 Q. Sorry, I misspoke.

10 A. I'm not a data validator, but I used the  
11 analytical reports that were included and used the  
12 values there, assuming they are correct.

13 I'm not a data validator, and made sure  
14 that the records that were in the data tables were  
15 correct. There were many that were not, and we  
16 corrected those and provided those corrections to  
17 counsel for inclusion.

18 Q. Thank you very much.

19 MR. WANNIER: We have no further questions.

20 HEARING OFFICER HALLORAN: Thank you. Let's go  
21 off the record.

22 (Discussion off the record.)

23 HEARING OFFICER HALLORAN: We're finished for  
24 today, October 25th. We're coming back tomorrow

1 October 26th at 9:00 a.m. Thank you and have a  
2 great evening.

3 (WHICH WERE ALL THE PROCEEDINGS HAD.)  
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|---|--|--|---|--|
| <b>a.m.</b> 1:12 38:14<br>235:1   | <b>accurate</b> 167:23<br>168:21 175:18<br>177:1 184:20<br>185:1,24 194:7<br>218:11  | 92:2 93:16<br>102:13 112:2<br>117:3 119:8,21<br>121:13 126:7<br>138:12 141:1<br>147:20 150:5<br>151:24 161:15<br>165:9 181:24<br>183:15 195:15<br>198:18 212:22<br>220:18 222:23   | <b>aerial</b> 79:20<br>80:24 86:17,18<br>86:20 136:3<br>160:2,3,5<br>163:23 164:1,3<br>164:9,12,16<br>212:16,19   | 56:10 187:19<br><b>amount</b> 10:17<br>187:10,10<br><b>amounts</b> 187:12<br><b>analyses</b> 43:7<br>171:15,15<br><b>analysis</b> 43:6,7<br>45:5,15 46:2<br>55:19,21 56:23<br>57:8,10 62:3<br>99:20 114:22<br>114:24 134:6<br>171:16 195:9<br>204:16 205:6<br>206:10 222:13  |
| <b>abate</b> 142:14   | <b>accurately</b> 85:14  | 6:16,18 9:4,10<br>51:15,17,20,22<br>53:1,3 54:15<br>54:17 61:6,8<br>65:13,15 66:20<br>66:22 68:17<br>70:16 71:24<br>72:2 73:18<br>92:7,9 93:21<br>93:23 112:6,8<br>112:15 117:19<br>117:21 120:2,4<br>120:8 121:18<br>121:20 126:12<br>126:14 128:23<br>138:17 141:5,7<br>148:1,3 150:9<br>150:11 152:15<br>154:1,8 161:18<br>161:20 166:7<br>174:3 182:5<br>183:13 189:20<br>195:19,21<br>198:23 199:2<br>213:3,5 216:21<br>216:23 220:22<br>220:24 223:2,4   | <b>affect</b> 144:16<br>161:7<br><b>affirm</b> 145:24<br><b>aforesaid</b> 236:9<br><b>agencies'</b> 62:13<br><b>agency</b> 71:19<br>144:3 145:8,24<br>146:2<br><b>agency's</b> 155:20<br><b>ago</b> 22:7,8 107:1<br>221:11<br><b>agree</b> 24:11<br>57:11 76:7,8<br>79:15 143:6,10<br>167:24 178:14<br>178:17 185:4<br>188:1 202:14<br>207:1 231:16<br><b>Agreed</b> 225:6<br><b>agreeing</b> 143:15<br><b>agreement</b> 60:9<br>75:10,20<br>130:21 131:7<br>138:22 139:6<br>141:22 156:7<br>156:15 196:10<br>199:7,16<br><b>agreements</b><br>203:21<br><b>ahead</b> 8:6<br>209:12<br><b>alleged</b> 62:10<br><b>Allenstein</b> 197:8<br><b>allow</b> 13:15<br>74:14 188:3,12<br>220:13<br><b>allowable</b> 89:22<br><b>allowed</b> 34:23<br><b>amended</b> 233:7<br><b>America</b> 55:3,8   | <b>analyses</b> 43:7<br>171:15,15<br><b>analysis</b> 43:6,7<br>45:5,15 46:2<br>55:19,21 56:23<br>57:8,10 62:3<br>99:20 114:22<br>114:24 134:6<br>171:16 195:9<br>204:16 205:6<br>206:10 222:13<br><b>analytical</b> 55:7<br>152:3,5,7,10<br>171:13 172:10<br>172:11 183:9<br>184:21 190:4,9<br>212:20 214:18<br>214:24 221:15<br>233:5,16 234:7<br>234:8,11<br><b>analytics</b> 152:12<br><b>analyze</b> 56:20<br>187:8<br><b>analyzed</b> 46:6<br>108:1,10 187:6<br><b>analyzing</b><br>167:14<br><b>Anderson</b> 32:1<br><b>Andrea</b> 196:2,8<br>199:14<br><b>Andrew</b> 98:13<br><b>Andrew's</b><br>108:22<br><b>Andrews</b> 98:11<br>98:17<br><b>anecdotal</b> 179:8<br>179:10<br><b>anecdotally</b><br>179:6<br><b>animal</b> 194:10<br><b>annual</b> 149:7<br>170:9,12,21<br>181:1 182:19 |
| <b>able</b> 20:7 24:12<br>25:11 32:8<br>33:3 57:12<br>59:20 78:12,17<br>86:3 96:19<br>104:8 120:6<br>134:10 146:7<br>155:24 158:4<br>161:11 168:7,9<br>174:19 186:4<br>197:5 200:12<br>203:16 207:3<br>209:18,24<br>226:8   | <b>acres</b> 105:24<br><b>actions</b> 21:17<br><b>activities</b> 142:22<br>143:17 144:11<br>146:24 147:3,4<br>155:7,17,22<br>156:2<br><b>actual</b> 44:3<br>144:16 212:12<br><b>add</b> 24:21,23<br>25:10 26:20<br>27:8<br><b>added</b> 68:23<br>163:7<br><b>addition</b> 208:14<br><b>additional</b> 94:16<br>113:10 115:10<br>159:16 202:24<br>224:16<br><b>Additionally</b><br>184:19 222:7<br>229:19<br><b>address</b> 143:12<br>202:8 205:18<br>209:7,21<br><b>addressed</b> 142:6<br>221:20<br><b>addresses</b> 142:6<br><b>addressing</b><br>202:4<br><b>adjacent</b> 26:22<br>27:10,17,21<br>28:2,3 33:19<br><b>admissibility</b><br>62:17 185:3<br><b>admission</b> 6:8<br>51:10 54:8<br>60:12,14 63:17<br>65:8 66:15<br>68:4,8 70:10<br>71:9,13,16 | <b>admit</b> 6:1 68:14<br>119:17 189:16<br><b>admitted</b> 4:2,18<br>6:16,18 9:4,10<br>51:15,17,20,22<br>53:1,3 54:15<br>54:17 61:6,8<br>65:13,15 66:20<br>66:22 68:17<br>70:16 71:24<br>72:2 73:18<br>92:7,9 93:21<br>93:23 112:6,8<br>112:15 117:19<br>117:21 120:2,4<br>120:8 121:18<br>121:20 126:12<br>126:14 128:23<br>138:17 141:5,7<br>148:1,3 150:9<br>150:11 152:15<br>154:1,8 161:18<br>161:20 166:7<br>174:3 182:5<br>183:13 189:20<br>195:19,21<br>198:23 199:2<br>213:3,5 216:21<br>216:23 220:22<br>220:24 223:2,4<br><b>admitting</b> 94:19<br><b>adverse</b> 38:17<br>39:2,6,16<br>41:20,24 42:18<br>43:1 128:15<br><b>advise</b> 230:2 | <b>amount</b> 10:17<br>187:10,10<br><b>amounts</b> 187:12<br><b>analyses</b> 43:7<br>171:15,15<br><b>analysis</b> 43:6,7<br>45:5,15 46:2<br>55:19,21 56:23<br>57:8,10 62:3<br>99:20 114:22<br>114:24 134:6<br>171:16 195:9<br>204:16 205:6<br>206:10 222:13<br><b>analytical</b> 55:7<br>152:3,5,7,10<br>171:13 172:10<br>172:11 183:9<br>184:21 190:4,9<br>212:20 214:18<br>214:24 221:15<br>233:5,16 234:7<br>234:8,11<br><b>analytics</b> 152:12<br><b>analyze</b> 56:20<br>187:8<br><b>analyzed</b> 46:6<br>108:1,10 187:6<br><b>analyzing</b><br>167:14<br><b>Anderson</b> 32:1<br><b>Andrea</b> 196:2,8<br>199:14<br><b>Andrew</b> 98:13<br><b>Andrew's</b><br>108:22<br><b>Andrews</b> 98:11<br>98:17<br><b>anecdotal</b> 179:8<br>179:10<br><b>anecdotally</b><br>179:6<br><b>animal</b> 194:10<br><b>annual</b> 149:7<br>170:9,12,21<br>181:1 182:19 |  |
| <b>absolute</b> 158:20<br><b>absolutely</b> 7:5<br>23:22 24:14<br>25:23<br><b>accepted</b> 144:20<br>154:5<br><b>accepting</b> 120:7<br>144:15,19<br><b>access</b> 79:20<br>81:4,9,10<br><b>accompanying</b><br>168:3<br><b>account</b> 211:20<br>212:2<br><b>accumulative</b><br>63:18<br><b>accuracies</b> 93:9<br>150:1<br><b>accuracy</b> 51:7<br>56:15 64:22<br>66:13 68:2<br>70:7 71:6 79:8<br>82:18 98:11<br>99:2 110:4<br>140:23 167:19<br>183:7 185:14<br>215:20 |  |  |   |  |

|                         |                         |                        |                         |                         |
|-------------------------|-------------------------|------------------------|-------------------------|-------------------------|
| <b>annual/quarte...</b> | 28:18 34:15             | <b>appropriate</b>     | 205:12 208:17           | 120:14,19               |
| 93:2                    | 46:22 48:10             | 12:5 203:9             | 210:1 217:24            | 123:11,24               |
| <b>answer</b> 18:6      | 49:2,24 50:18           | 204:10,18,21           | 219:14                  | 124:11 125:2,5          |
| 19:18,21 20:6           | 51:3 52:18              | 205:1                  | <b>areas</b> 19:2 29:12 | 125:9,9,11,14           |
| 22:10 24:12             | 53:13 74:20             | <b>approved</b> 21:4   | 78:7,13,18              | 125:23 129:4            |
| 25:12 32:7              | 76:23 83:5,20           | 89:19 144:7            | 81:20 95:8,21           | 129:24 130:9            |
| 33:3 38:1               | 86:17 97:1              | 147:13,14              | 105:19 115:8,9          | 142:20 143:9            |
| 53:24 57:12             | 98:3 103:19             | <b>approximately</b>   | 115:21 116:7            | 147:3 155:7             |
| 59:20 78:12             | 105:13 109:18           | 5:20 38:14             | 118:11,16,22            | 156:3 164:18            |
| 86:3 88:11              | 110:8 122:15            | 72:9 105:24            | 119:3 120:17            | 165:1 172:23            |
| 96:18 104:8             | 131:23 137:19           | 128:6                  | 123:9,23 124:9          | 175:4,12 176:9          |
| 108:5 134:10            | 156:22 160:10           | <b>area</b> 30:2 77:11 | 125:3,21,24             | 176:12,12,14            |
| 144:5 145:18            | 176:17 189:12           | 77:13,14,21,23         | 174:18                  | 177:16,17,24            |
| 155:23 158:3            | 195:12 210:23           | 79:1,10,18,22          | <b>arrived</b> 22:5     | 178:9,15,18,22          |
| 161:10 197:4            | 210:24 211:11           | 79:23 80:2             | <b>arrows</b> 84:14     | 179:3 192:19            |
| 198:17 200:11           | <b>APPEARAN...</b>      | 81:3,10,16             | 180:12                  | 193:13 197:13           |
| 203:15,17               | 2:1                     | 82:2,4,6,7,8,19        | <b>arsenic</b> 136:12   | 211:2,7 218:7           |
| 206:2 207:3,18          | <b>appears</b> 16:10    | 82:22,23 83:1          | <b>ash</b> 10:9 11:3,17 | 218:14,20               |
| 209:17 229:19           | 23:6 28:13              | 90:15,21 91:1          | 12:6,9,11,18            | 219:13,21               |
| 233:20                  | 37:3 46:12              | 91:5,8,10,12           | 13:21 14:12             | 221:4                   |
| <b>answered</b> 19:20   | 47:14 74:22             | 91:15 97:2             | 15:8 16:1 18:1          | <b>ash-handling</b>     |
| 37:10 79:11             | 100:16 115:5            | 101:13,18              | 19:16 22:20,23          | 144:11 155:22           |
| 144:1 202:12            | 120:15 163:12           | 102:5 105:23           | 22:24 23:3              | 156:2                   |
| 202:13 209:16           | 167:9 179:2             | 106:6 108:11           | 27:22 29:1              | <b>ash-related</b>      |
| 231:24 232:11           | 183:1 219:17            | 108:12,13              | 30:8,9 33:21            | 142:22 143:17           |
| 232:17                  | 228:12                  | 111:1,6,20             | 35:24,24 47:4           | 146:23 155:16           |
| <b>answers</b> 104:2    | <b>applicable</b> 87:19 | 112:21,24              | 47:5,10,18              | <b>aside</b> 62:20 75:6 |
| <b>anticipation</b>     | 87:24 89:4,7            | 115:24 116:17          | 48:2,13,21              | 94:2 112:17             |
| 207:22                  | 170:9                   | 116:20,24              | 49:6,15 50:11           | 126:19 154:11           |
| <b>anticipatory</b>     | <b>application</b>      | 118:5 119:1,5          | 75:3 76:23              | <b>asked</b> 35:16      |
| 63:8                    | 75:10,21                | 120:14 121:6,7         | 77:4,7,7,8 78:2         | 64:11 79:11             |
| <b>anymore</b> 25:5     | 138:22 139:7            | 122:5,6,10,11          | 78:6,7,14 79:3          | 82:6,9 91:7,14          |
| <b>Anyway</b> 5:7       | 140:10 144:22           | 122:20,24              | 80:2 81:19              | 96:13 103:23            |
| 128:14 153:14           | 145:8 147:8,10          | 123:2,7 124:20         | 82:2,8,20               | 104:1 106:20            |
| <b>apart</b> 215:14,21  | 147:15 199:8            | 124:21,22,23           | 90:15,21,22             | 130:12 144:1            |
| 223:9                   | 199:16 203:20           | 125:10 129:5           | 95:8,15,20              | 145:24 154:20           |
| <b>apologies</b> 149:20 | 227:2                   | 129:15,20,24           | 96:1,6,11 99:7          | 159:2 194:16            |
| 164:8                   | <b>applications</b>     | 130:10 133:19          | 99:8,10,13,24           | 198:4 202:12            |
| <b>apologize</b> 7:13   | 142:4                   | 136:5 137:22           | 100:4,18                | 209:16 217:24           |
| 20:19 21:7              | <b>applies</b> 208:20   | 139:15,17              | 101:18,22               | 220:1 231:24            |
| 22:24 25:7              | 209:2                   | 142:21 143:16          | 102:3 105:20            | 232:10,17               |
| 27:6 92:1               | <b>apply</b> 70:3 87:13 | 144:8 146:22           | 105:23 106:19           | <b>asking</b> 9:2 57:7  |
| 121:2 137:9             | 88:10                   | 147:2 160:17           | 107:24 112:21           | 57:9 58:20,20           |
| 151:21 213:10           | <b>appreciate</b>       | 178:7 179:5,7          | 112:22,23               | 73:20 78:10             |
| <b>apparently</b>       | 76:12                   | 180:5,6,17             | 115:21,24               | 79:14 82:17             |
| 222:13                  | <b>approach</b> 80:6    | 200:1 201:11           | 116:1,9,16              | 101:16 107:11           |
| <b>appear</b> 16:7      | 214:9                   | 202:19 203:24          | 118:5,12,18             | 108:3 129:3             |

|                         |                        |                       |                         |                         |
|-------------------------|------------------------|-----------------------|-------------------------|-------------------------|
| 155:21 175:21           | <b>attention</b> 31:1  | <b>B1</b> 28:10       | <b>basins</b> 45:6      | <b>begins</b> 172:10    |
| 200:10 203:14           | 31:17 35:15            | <b>back</b> 7:12,21   | 142:20 175:5            | 186:9 188:14            |
| 205:24 208:18           | 163:22                 | 11:12 17:13           | 175:13 176:9            | 191:1 221:24            |
| 209:5 230:21            | <b>attenuated</b>      | 21:18 23:24           | 178:1                   | <b>behalf</b> 2:11,16   |
| <b>asks</b> 145:5 210:7 | 207:5                  | 30:15 31:21           | <b>basis</b> 39:3 41:22 | 2:21 8:9 145:8          |
| <b>assigned</b> 5:11    | <b>attest</b> 190:13   | 36:4 38:12,13         | 42:17 60:7              | 194:22                  |
| <b>assist</b> 132:16    | 194:23                 | 43:5 44:9             | 142:15 197:17           | <b>belief</b> 187:3,13  |
| 191:15 201:19           | <b>attorney</b> 2:7    | 53:22 54:4            | <b>Bates</b> 7:9 11:2   | 192:24                  |
| 203:8 206:17            | 206:5,23               | 57:1 67:17            | 11:24 12:8,24           | <b>believe</b> 10:15,18 |
| 230:15                  | 229:22                 | 72:8 73:14            | 13:9,10 14:15           | 17:5,7 23:2             |
| <b>assisted</b> 206:16  | <b>attorney-client</b> | 79:24 94:17           | 15:14,16,22             | 26:8 28:17              |
| <b>assisting</b> 41:3   | 56:22 206:5,13         | 95:19 102:2           | 18:13,16 20:12          | 33:17 34:3              |
| 202:4                   | 207:9 229:19           | 105:9 106:24          | 25:14,16,20,24          | 46:19 58:14             |
| <b>associate</b> 44:1   | <b>attorneys</b>       | 111:9 117:16          | 26:11 28:9              | 59:10 70:1              |
| 194:17                  | 132:16 206:11          | 121:23 126:4          | 31:14 33:15             | 83:9 85:13              |
| <b>associated</b>       | 206:19 230:15          | 128:2,5,6             | 35:11,23,24             | 87:5 89:17,20           |
| 116:14 136:7            | <b>August</b> 102:17   | 133:17 155:6          | 36:4 37:13              | 90:8 94:8,11            |
| 160:7 204:1             | 113:8 115:6            | 162:3 164:24          | 46:8 52:2,15            | 97:22 100:24            |
| <b>Associates</b> 40:1  | 118:6 120:14           | 172:7 180:21          | 72:18 75:11             | 118:9 130:12            |
| 40:2,5 218:12           | 127:4,7,10             | 180:23 181:3          | 76:17 80:1              | 133:12 135:14           |
| <b>assume</b> 27:24     | 182:21 192:17          | 186:1,1,3,17          | 81:1 83:4               | 137:6 139:17            |
| <b>assumed</b> 33:18    | 221:16                 | 190:20 192:2,9        | 100:10 104:17           | 141:15 145:4            |
| <b>assuming</b> 24:3    | <b>authenticate</b>    | 202:18 204:3          | 107:15 108:8            | 146:21 152:9            |
| 163:15 234:12           | 153:4                  | 208:9 212:11          | 109:5,6,15              | 152:17,22               |
| <b>ASTM</b> 221:24      | <b>authentication</b>  | 213:20 214:21         | 114:12 117:4            | 154:19 157:21           |
| <b>ASTMD</b> 220:7      | 74:13                  | 217:5 222:19          | 117:14 119:22           | 159:16 161:5            |
| <b>attached</b> 87:2    | <b>available</b> 72:16 | 223:16 228:10         | 120:22,23,24            | 165:14 183:24           |
| 113:10 134:20           | 159:21                 | 233:13,24             | 122:10 130:20           | 184:18 185:13           |
| 134:24 135:10           | <b>average</b> 212:8   | 234:24                | 131:20 132:5            | 187:14 188:14           |
| 135:13 140:10           | <b>aware</b> 75:3 78:1 | <b>backed</b> 162:2   | 136:1 137:18            | 189:22 191:13           |
| 152:3,5,8               | 78:6 81:19             | <b>backup</b> 185:20  | 139:11 140:4            | 191:20 194:5            |
| 183:9 184:21            | 83:15,17 91:6          | <b>bank</b> 124:24    | 140:13 141:11           | 200:13 213:19           |
| 213:21 214:2            | 91:13 96:6,10          | <b>base</b> 31:9      | 151:5 163:1             | 216:17 219:12           |
| <b>attaching</b>        | 96:16 106:15           | <b>based</b> 15:10    | 165:10,18               | 221:11 224:13           |
| 152:10                  | 106:18 107:7,8         | 21:15 84:5            | 166:6 170:23            | 228:18                  |
| <b>attachment</b>       | 107:23,24              | 143:12 145:18         | 173:8 177:13            | <b>believed</b> 145:22  |
| 28:10                   | 134:8 135:7            | 201:12                | 181:3,9 186:14          | <b>beneath</b> 22:5     |
| <b>attachments</b>      | 155:16,22              | <b>basically</b> 18:9 | 188:12 191:1,9          | 31:9                    |
| 191:22,24               | 159:9 175:12           | 59:12 94:15           | 192:3,22,22,24          | <b>beneficial</b> 42:20 |
| 194:6 196:12            | 178:20 179:5,8         | 107:14 137:14         | 193:1,2 195:11          | 79:5 95:17              |
| <b>attempt</b> 158:7    | 200:8 219:23           | 163:6 201:3           | 196:15 213:20           | 106:8,9 111:2           |
| 159:1                   | 219:24 229:9           | <b>basin</b> 29:22    | 214:17 216:2            | 218:3                   |
| <b>attempted</b>        |                        | 150:19 151:1          | 217:10                  | <b>beneficially</b>     |
| 104:13                  | <b>B</b>               | 151:10,17             | <b>Becky</b> 19:4       | 101:23                  |
| <b>attempting</b>       | <b>B</b> 4:1 8:23      | 178:9                 | <b>began</b> 223:19     | <b>benefit</b> 81:11    |
| 73:17                   | <b>B-2</b> 132:21      | <b>basin/ponds</b>    | <b>beginning</b> 7:9    | <b>best</b> 168:20      |
| <b>attempts</b> 157:18  | 134:13                 | 45:16                 | 181:9 221:19            | <b>better</b> 74:5      |



|   |   |   |  |   |
|---|---|---|--|---|
| 79:21 80:4<br>168:24<br><b>binder</b> 22:13<br>29:9 30:24<br><b>bit</b> 17:1 31:21<br>79:14 132:24<br>133:5 138:2<br>222:15 223:17<br><b>bituminous</b><br>11:14<br><b>black</b> 14:16,21<br>28:24 47:3,19<br>48:2,3,22<br>49:15 53:17<br>97:7 100:6,13<br>100:14 108:16<br>108:18,20<br>196:22 197:1<br>197:12<br><b>Blackened</b> 99:18<br><b>blankets</b> 113:11<br><b>Board</b> 1:1 5:10<br>61:3 62:15<br>63:23 71:21<br>153:8 154:2<br>174:22<br><b>bodies</b> 85:11<br><b>body</b> 208:6<br>211:21<br><b>boilers</b> 28:6<br><b>bold</b> 88:2,4,4<br>137:12<br><b>bolded</b> 136:14<br><b>bookmarks</b><br>184:13<br><b>books</b> 184:21<br><b>bore</b> 16:7<br>181:17<br><b>boring</b> 14:24<br>15:10 16:8<br>17:10 28:10,17<br>28:19 31:20<br>33:8 34:21<br>35:18 37:14,23<br>46:16,23 47:14<br>48:18 49:3,19<br>50:5,14,22 | 51:4,7 53:9,19<br>53:20 98:3,23<br>100:9,16 101:4<br>101:6,14,24<br>102:7 108:13<br>108:13,20<br>109:11,18<br>110:4,13,14,23<br>132:20 134:7<br>196:18,22<br><b>borings</b> 17:8<br>28:13 46:5<br>97:2,10,11,17<br>98:8,11,14,17<br>98:20 99:2<br>108:9,14,24<br>109:21 110:11<br>111:13 133:24<br>180:6 197:9<br><b>bottom</b> 11:13<br>12:1,10,18<br>14:1 15:8<br>22:17 30:4,6<br>32:3,14,20<br>33:5,9,11,12<br>47:4,18 48:2<br>48:13,21 49:6<br>49:15 50:11,13<br>73:11 76:20<br>85:4 88:1 99:7<br>99:8,10,13,24<br>100:3,18 102:3<br>109:5 116:3<br>122:6 137:2,11<br>175:4,4,12<br>176:9 177:24<br>178:9 189:4<br>214:18<br><b>bottoms</b> 14:6<br><b>boundary</b> 116:7<br>116:13 137:19<br>139:24 160:10<br><b>box</b> 86:21 160:6<br>212:19<br><b>boy</b> 8:23<br><b>Bradely</b> 5:8<br><b>BRADLEY</b> 1:14 | 2:2<br><b>break</b> 7:22 72:5<br>106:11 128:19<br>182:7,8<br><b>brief</b> 7:22<br>208:10 210:4,9<br><b>briefing</b> 208:15<br>210:15<br><b>briefly</b> 139:2<br><b>Brieser</b> 8:13<br>18:7,7,8 20:22<br>21:23 22:4<br>26:24 27:12<br>31:8<br><b>Brieser's</b> 21:10<br>21:15<br><b>bring</b> 27:16<br>137:5<br><b>broad</b> 208:2<br><b>brought</b> 132:15<br>194:16,23<br>205:17 206:14<br><b>brown</b> 48:3 49:7<br>99:8,10,14<br>100:2<br><b>bubble</b> 16:2,3<br>35:16 37:13<br><b>bug</b> 39:23<br><b>BUGEL</b> 2:7,8<br>9:12 148:17<br><b>bullet</b> 18:24<br>21:22 22:4<br>26:1 31:3,18<br>45:18,22 116:4<br>172:20 181:16<br><b>bulleted</b> 14:16<br>14:17,21,22<br><b>bundle</b> 67:11<br><b>burial</b> 112:21,22<br>112:24 118:5<br>120:14 129:4<br>129:24 130:9<br><b>burned</b> 47:7<br><b>burners</b> 47:8<br><b>business</b> 41:6<br>224:17 236:5<br><b>byproduct</b> 47:11 | 60:2 79:4<br>95:17 106:8<br>111:2 217:20<br>218:3,16<br><b>byproducts</b> 28:5<br>218:9<br><hr/> <b>C</b> <hr/> <b>C</b> 236:2<br><b>C.S.R</b> 236:4<br><b>California</b> 2:19<br><b>call</b> 26:15 38:16<br>39:2,6 41:9,10<br>41:19 59:23<br>60:6 86:21<br>88:7 98:8<br>136:6 160:6<br>171:24 201:24<br>225:17,21<br><b>called</b> 10:3<br>39:16 57:3<br>60:4 108:22<br>220:12 226:20<br>230:4,15<br><b>calls</b> 32:6 33:1<br>34:19 57:17<br>155:18 161:9<br>197:3 204:11<br><b>Cannier</b> 128:9<br><b>captured</b> 53:23<br><b>carrying</b> 171:14<br><b>case</b> 38:15 71:17<br>73:19 84:7<br>85:17 87:22<br>89:16 102:3<br>122:22 152:23<br>168:5 174:16<br>198:11 211:23<br><b>cause</b> 236:7<br><b>CC</b> 76:20<br><b>CCA</b> 24:22 25:1<br>25:2,6 58:21<br>60:6,19,22<br>61:15,17 62:8<br>63:20 65:20<br>66:1,4,8 69:13<br>69:16,22 70:1 | 70:2 71:15<br>77:22 152:11<br>152:14 201:14<br>201:19<br><b>CCB</b> 94:5<br>103:20,23<br>105:13 217:10<br>217:19 220:14<br><b>CCD</b> 218:16<br><b>CCed</b> 139:9<br><b>CCR</b> 23:10 55:2<br>55:17 56:6<br>57:19,24 58:20<br>59:2,6,8,11,15<br>59:23 60:3,4<br>60:15,17,22<br>61:11,14,16<br>62:8 63:10<br>64:7,11,20,21<br>67:22 70:22<br>71:4<br><b>center</b> 1:3 2:3<br>5:12 16:2,8<br>81:17 87:2<br>160:13 200:1<br><b>central</b> 164:18<br><b>certain</b> 115:12<br><b>certainly</b> 21:14<br>34:11 78:20<br>82:22 99:22<br>115:15 122:20<br>173:21 182:18<br>190:12 198:5<br>203:19 211:20<br><b>certainty</b> 197:24<br>198:7<br><b>CGP-14</b> 111:14<br><b>chance</b> 130:23<br>208:11<br><b>change</b> 8:13<br>17:13,17 20:11<br>20:16,21,22<br>23:15 158:8,22<br>159:2,5 224:5<br><b>changes</b> 142:16<br>147:15 212:2<br><b>changing</b> 23:10 |
|---|---|---|--|---|

|                          |                          |                          |                        |                      |
|--------------------------|--------------------------|--------------------------|------------------------|----------------------|
| <b>channel</b> 85:5      | 149:16 157:14            | <b>clips</b> 67:10       | <b>come</b> 94:17      | 61:7 65:14,19        |
| <b>characterizati...</b> | 169:21 176:6             | <b>Club</b> 1:3 2:17,21  | 107:19 144:11          | 66:16,20,21          |
| 101:10 123:13            | 186:6 198:16             | 5:12                     | 166:4 167:11           | 68:16 69:18          |
| 204:20,23                | 202:1                    | <b>co-ash</b> 197:2      | 186:5 193:2            | 70:15 72:1,17        |
| <b>characterize</b>      | <b>clarifying</b> 75:14  | <b>co-combustion</b>     | <b>ComEd</b> 72:24     | 73:5 75:13           |
| 101:18                   | 131:17 211:10            | 79:4                     | <b>ComEd's</b> 72:24   | 80:16 92:2,8         |
| <b>characterizing</b>    | <b>class</b> 87:20,21    | <b>coal</b> 19:16 27:22  | <b>comfortable</b>     | 93:22 94:4           |
| 40:17,17                 | 88:10,14,15              | 28:5 47:5,7,10           | 224:19,23              | 102:13 103:16        |
| <b>chart</b> 58:4,8,9    | 89:8,13,18               | 47:11 60:1               | <b>coming</b> 33:18    | 105:12 112:3,7       |
| 58:11,12,18              | 90:1 136:17              | 81:4,9,13                | 234:24                 | 112:12,14,19         |
| 59:13 87:2               | 137:15                   | 91:11 95:16              | <b>comment</b> 33:12   | 113:16 114:7         |
| 167:20 187:5             | <b>classified</b> 79:4   | 96:3 100:13,14           | <b>comments</b> 31:5   | 117:3,20,23          |
| <b>charts</b> 58:13,16   | 95:16 218:2,8            | 101:17,19,21             | 31:6,18 202:1          | 119:18 120:3,5       |
| 59:6,7,8                 | 218:15                   | 105:20 106:7             | 202:3,4,7,18           | 121:14,18,19         |
| 162:14                   | <b>classify</b> 117:5    | 106:11 111:2,6           | <b>commitment</b>      | 121:24 126:13        |
| <b>check</b> 66:10       | <b>clay</b> 15:2 16:17   | 111:13 177:21            | 60:8 75:9,20           | 138:16 141:2,6       |
| <b>Chicago</b> 1:13      | 99:17,18,20,21           | 178:7 217:19             | 131:7 138:21           | 141:10 148:2         |
| 2:5,14 236:6             | 100:6,8 132:2            | 218:2,7,8,14             | 139:6 141:22           | 150:10 152:1         |
| <b>chief</b> 38:15       | 132:9,22 133:7           | 218:16 219:21            | 156:15 196:10          | 154:6,7,12,22        |
| <b>choice</b> 154:23     | 133:13,22                | 221:4                    | 199:7,15               | 155:3 156:5,6        |
| <b>choose</b> 110:22     | 134:3,12,21              | <b>Coal/coal</b>         | <b>committee</b> 156:7 | 161:19 162:12        |
| <b>chose</b> 21:23       | 135:18 196:23            | 111:18                   | <b>common</b> 99:8     | 165:11,18            |
| 74:12                    | 197:12                   | <b>coat</b> 11:15        | <b>Commonwealth</b>    | 166:9,12             |
| <b>Chris</b> 194:17      | <b>clay-type</b> 99:22   | <b>collect</b> 46:5 56:5 | 173:17,18              | 169:23 173:7         |
| <b>cinder-sand-fly</b>   | 99:23                    | 79:2                     | 175:11                 | 176:19,21,21         |
| 29:1                     | <b>clean</b> 119:19      | <b>collected</b> 29:2    | <b>communication</b>   | 180:23 181:23        |
| <b>circles</b> 108:17    | 120:6 128:18             | 31:11 60:17,20           | 208:18                 | 182:4,14             |
| 108:18,20                | 186:17 188:8,9           | 60:22,23 69:9            | <b>communicatio...</b> | 186:15 189:19        |
| <b>Citizens</b> 1:4      | 188:21 216:10            | 82:11 85:1               | 207:10 208:3,4         | 192:12,14            |
| 5:13,16                  | 216:11,21                | 101:14 102:4             | 208:21 230:22          | 195:20 199:1         |
| <b>city</b> 236:5        | <b>cleaning</b> 150:19   | 222:12,21                | <b>Comp</b> 13:1       | 212:23 213:4         |
| <b>claim</b> 208:2       | 151:1,9,17               | 231:23 232:16            | <b>companies</b> 42:9  | 213:10 216:22        |
| <b>claiming</b> 145:14   | <b>clear</b> 55:9 76:9   | <b>collecting</b>        | <b>company</b> 41:17   | 219:2 220:19         |
| 145:15                   | 104:8 115:20             | 228:16,20                | 42:22 44:1             | 220:23 221:7         |
| <b>clarification</b>     | 145:14 153:18            | <b>colored</b> 6:6 87:5  | 58:11 183:19           | 222:23 223:1,3       |
| 69:14,23                 | 160:13 208:17            | <b>column</b> 47:2,16    | 194:19 224:23          | 226:5,24             |
| 138:11                   | 208:19                   | 53:20 166:18             | <b>compare</b> 88:14   | 227:21               |
| <b>clarify</b> 10:21     | <b>clearly</b> 198:10    | 166:22,23                | 89:8                   | <b>complainant's</b> |
| 11:23 17:1               | 207:21                   | <b>columns</b> 166:15    | <b>comparing</b> 9:4   | 6:24 7:9 8:4,4       |
| 44:16 58:2               | <b>client</b> 42:12,21   | <b>Com</b> 74:1,7        | 157:8                  | 8:12,15,17           |
| 59:9 66:1                | 57:14 58:12              | 200:5,15                 | <b>comparison</b>      | 17:18 20:15          |
| 80:11,12,14              | 71:17 114:17             | <b>combust</b> 218:16    | 152:24                 | 38:15 51:10,15       |
| 88:19,20 90:2            | 145:9 205:20             | <b>combustion</b> 28:5   | <b>complainant</b> 1:5 | 52:2,22 54:14        |
| 109:7 110:7              | <b>clients</b> 41:8 42:6 | 47:9,11 60:2             | 2:11 4:2 6:3,5         | 54:24 60:12          |
| 125:18 132:8             | 42:14,16                 | 95:9,17 105:20           | 13:4 38:16             | 61:5 62:22           |
| 133:16 134:16            | <b>clip</b> 67:6         | 106:7 111:2              | 51:16 52:21,24         | 65:1,2,12            |
| 137:22 138:6             | <b>clipping</b> 183:2    | 217:20 218:2,9           | 53:2,6 54:9,16         | 66:15 67:3           |

|                     |                         |                         |                         |                         |
|---------------------|-------------------------|-------------------------|-------------------------|-------------------------|
| 68:5,14,21          | <b>complaint</b> 44:15  | 86:13 231:17            | 181:18                  | <b>contract</b> 44:5    |
| 69:17 70:13,21      | 161:18                  | <b>conduct</b> 110:22   | <b>constituents</b>     | 56:12 229:1             |
| 71:8,9,23 80:1      | <b>complaints</b>       | 110:23 129:7            | 13:24                   | <b>contracted</b>       |
| 91:20 92:7          | 60:18                   | 129:15 130:9            | <b>constituting</b>     | 56:10 194:22            |
| 104:14 112:6        | <b>complete</b> 61:21   | <b>conducted</b> 55:3   | 88:22                   | 201:19                  |
| 112:10,13           | <b>completely</b> 6:6   | 97:11 98:11             | <b>constructed</b>      | <b>contractor</b> 18:8  |
| 117:5,17,18         | 110:13,17               | 110:5 195:9             | 13:22 14:1,3            | 41:11 195:5             |
| 119:8,9,15          | 184:14 191:17           | 229:10                  | <b>construction</b>     | <b>contractors</b> 73:1 |
| 120:11 121:13       | 203:18                  | <b>conducting</b>       | 12:16,22 53:10          | <b>control</b> 1:1 5:9  |
| 121:23 122:9        | <b>complex</b> 10:22    | 55:19                   | 106:10                  | 69:7 82:6               |
| 123:4 126:8,11      | <b>compliance</b>       | <b>confidential</b>     | <b>consultant</b> 41:11 | <b>conversation</b>     |
| 126:16,22           | 24:22 25:1              | 223:6,9                 | 41:12,23 97:8           | 203:5                   |
| 128:18,22           | 60:1,8 75:9,20          | <b>confirm</b> 79:8     | 132:12 173:18           | <b>conversations</b>    |
| 130:19 138:13       | 130:21 131:7            | 82:18 129:7             | <b>consulting</b> 40:3  | 201:21 206:23           |
| 138:21 141:4        | 139:6 141:21            | 135:12 173:14           | 40:8,9,11,12            | 225:24                  |
| 147:21 148:1,6      | 156:7,14 196:9          | 186:9 187:7             | 226:2                   | <b>coordinates</b>      |
| 150:8 161:15        | 199:6,15 225:2          | 195:2                   | <b>contain</b> 55:12    | 122:6,11,14,22          |
| 162:6 165:9         | <b>complication</b>     | <b>confirmed</b> 27:1   | 64:17 153:21            | <b>copies</b> 9:16      |
| 166:5,11            | 191:7,11                | 27:13                   | 160:6 172:10            | 56:12 113:12            |
| 170:17 188:12       | <b>comply</b> 144:21    | <b>confirming</b>       | 172:13 190:13           | 119:19 141:13           |
| 190:3,23 191:8      | <b>compound</b>         | 176:7                   | <b>contains</b> 153:24  | 186:17 191:20           |
| 191:9,14,21,23      | 24:10,12 64:13          | <b>conflicting</b> 10:7 | 187:13,16               | 214:6                   |
| 195:16,19,24        | 104:3,5 145:5           | <b>confused</b> 128:12  | 190:4 236:9             | <b>copy</b> 9:13,14     |
| 198:18,19,23        | 158:11 159:20           | 174:10 191:18           | <b>contemporane...</b>  | 120:6 131:10            |
| 199:5 213:3,7       | <b>concentration</b>    | <b>confusing</b>        | 61:15                   | 156:19 163:3            |
| 215:24 217:9        | 57:21 58:3,17           | 145:19 187:24           | <b>context</b> 88:17    | 188:8,9,21              |
| 219:18 221:3        | 59:13 89:22             | 188:2 191:19            | 89:24 109:3             | 216:10,11,21            |
| 223:6               | <b>concentrations</b>   | <b>confusion</b>        | 175:10                  | 226:10,14               |
| <b>complainants</b> | 61:17 87:19             | 124:12                  | <b>continue</b> 62:24   | <b>core</b> 32:12 47:3  |
| 5:14,15 53:5        | 160:6 181:17            | <b>connected</b> 133:5  | 153:15 174:23           | 48:22 49:16             |
| 54:8,18 60:11       | <b>concern</b> 78:19    | <b>connection</b>       | 176:3 184:17            | 50:12 222:6,10          |
| 62:6 67:6 68:4      | 142:4,12                | 207:20                  | <b>continued</b> 5:19   | 222:11,12,14            |
| 70:9 74:4 92:2      | <b>concerned</b> 16:5   | <b>conservative</b>     | <b>continues</b> 38:15  | <b>cores</b> 31:22 32:2 |
| 93:15,16,20         | 125:8                   | 125:7                   | 140:16                  | <b>corner</b> 80:3      |
| 102:12 112:2        | <b>concerning</b> 6:3   | <b>consider</b> 23:16   | <b>contour</b> 83:21    | 136:10 137:2            |
| 119:16,21,23        | 206:10                  | <b>consideration</b>    | 84:11,20 85:15          | 137:11                  |
| 126:7 128:18        | <b>concerns</b> 7:14    | 212:1                   | 85:20 86:4              | <b>correct</b> 10:11,12 |
| 138:12 141:1        | 24:1,4 142:15           | <b>considerations</b>   | 132:5 135:17            | 11:5 12:2,3,7           |
| 147:20 148:5        | 143:13 153:4            | 106:13,16               | 135:22 145:13           | 12:13,14,19,20          |
| 151:24 154:21       | 231:11                  | <b>considered</b>       | 156:23 157:4,5          | 14:12 15:8              |
| 161:14 165:7        | <b>conclusion</b>       | 88:16 106:7             | 157:8 158:20            | 16:12,13,15,18          |
| 184:11 186:13       | 123:14 144:12           | 119:13 142:19           | 160:21 180:9            | 16:19,21 19:9           |
| 190:17 192:12       | <b>conclusions</b>      | <b>consisted</b> 14:6   | 180:13,18               | 19:12 20:1,23           |
| 195:15 212:22       | 231:20 232:14           | <b>consistent</b> 35:20 | 211:12,15               | 21:2,4,9,11             |
| 213:9,12            | <b>condition</b>        | 36:11,13,19             | <b>contours</b> 131:24  | 22:2,3,17,18            |
| 220:18,22           | 216:20                  | 73:8,9 222:1            | 132:1 133:9             | 22:21,22 23:3           |
| 222:22              | <b>conditions</b> 40:18 | <b>consistently</b>     | 161:7                   | 28:15 29:18,21          |

|                |                         |                          |                        |                         |
|----------------|-------------------------|--------------------------|------------------------|-------------------------|
| 29:24 33:20    | 188:19 193:17           | 70:22 71:3               | 145:11 176:12          | 187:13,20               |
| 34:5 36:7 37:5 | 194:1,2 195:4           | 199:8,17                 | <b>curves</b> 57:21    | 212:10,20               |
| 46:3 47:14,15  | 195:13,14               | 200:21,24                | 58:3 81:5              | 213:21,22               |
| 49:20 55:17    | 196:19,20,23            | 201:6 210:24             | <b>cut</b> 20:22 30:3  | 214:18,24               |
| 58:6 59:3,4    | 199:23 200:21           | 213:9 217:11             | <b>cutting</b> 17:14   | 215:4,7,21              |
| 64:19 66:6,9   | 204:6 211:13            | 217:21 218:8             |                        | 228:17,20               |
| 66:10 67:12    | 212:18,21               | 218:15 221:4             | <b>D</b>               | 229:2,13,14,15          |
| 69:11 70:5     | 218:9 219:7,8           | 221:18 222:18            | <b>D</b> 3:1           | 231:7,12,22             |
| 71:4 78:22     | 219:19 221:20           | 227:2,12                 | <b>damage</b> 119:1    | 232:4,16,23,24          |
| 81:15 82:24    | 225:14,15               | 228:17 231:3,8           | <b>Dan</b> 26:23 27:11 | 234:10,13,14            |
| 83:7,22,24     | 226:22 227:6            | 236:2                    | <b>dark</b> 50:11      | <b>date</b> 21:3 115:6  |
| 85:9 87:7 88:6 | 230:6 233:2,17          | <b>couple</b> 107:2      | 138:7 160:17           | 115:11 151:2            |
| 90:23 92:22,23 | 234:12,15               | 113:11,17                | <b>darker</b> 219:16   | 180:6                   |
| 93:4,13 94:12  | 236:8                   | <b>course</b> 159:5      | 219:17                 | <b>dated</b> 8:11 22:17 |
| 96:5 98:6,7,18 | <b>corrected</b> 52:14  | <b>court</b> 7:23 39:11  | <b>dash</b> 111:18     | 26:12 45:14             |
| 99:9,11 100:1  | 231:13 232:23           | 146:15 233:23            | <b>data</b> 41:2 55:12 | 75:18 127:4             |
| 100:13,17,19   | 233:5 234:8,16          | 236:5                    | 56:17,19,20            | 131:6 139:5             |
| 102:8,10       | <b>correction</b>       | <b>courtesy</b> 214:5    | 57:6,19,24             | 151:2 156:14            |
| 109:22 110:15  | 139:18,22,23            | 226:10                   | 58:5,10,18,20          | 192:17 196:9            |
| 110:20,21      | 140:19 143:15           | <b>cover</b> 201:5,10    | 58:21 59:6,11          | 199:14 217:18           |
| 111:15,19,24   | <b>corrections</b>      | 202:11                   | 60:4,15,17,19          | 221:16 226:15           |
| 116:21,24      | 233:6 234:16            | <b>covered</b> 18:4      | 60:22,22 61:1          | <b>dates</b> 25:4,5     |
| 118:7,13,18,20 | <b>correctly</b> 69:16  | 207:16                   | 61:11,14,15,17         | 187:4,5 227:16          |
| 119:4,6 120:19 | 212:7                   | <b>covers</b> 207:10     | 62:8,9 63:10           | <b>day</b> 5:18 17:24   |
| 123:7,8 127:9  | <b>correlate</b> 104:17 | <b>cracked</b> 222:14    | 63:18,21 64:20         | 212:4 227:13            |
| 129:12 130:15  | <b>correlated</b> 133:4 | <b>cracking</b> 222:8    | 64:21 66:11,13         | <b>days</b> 18:4,5      |
| 130:17 131:9   | <b>correspond</b>       | 222:9                    | 68:9 70:7              | 115:7                   |
| 133:14,15      | 104:22                  | <b>cracks</b> 222:5,9    | 71:16 84:23            | <b>debate</b> 210:2,4   |
| 135:15,16      | <b>correspondence</b>   | <b>create</b> 59:7,8     | 85:10,21 86:21         | <b>December</b> 84:7    |
| 136:4 137:24   | 201:24                  | 61:20 84:24              | 89:18 97:18,20         | 132:2                   |
| 138:9,10       | <b>corresponds</b>      | <b>created</b> 74:7      | 97:21,23               | <b>decided</b> 24:6     |
| 139:10,13      | 219:16                  | <b>creating</b> 58:4,16  | 132:19 134:12          | <b>decision</b> 26:24   |
| 140:2,3,10,14  | <b>counsel</b> 7:1,16   | 59:6 158:19              | 135:13,18              | 27:12                   |
| 140:20 142:1   | 8:9 13:2 38:21          | <b>criteria</b> 207:21   | 136:6 140:9,13         | <b>deep</b> 14:3 32:12  |
| 143:18 147:12  | 51:19 63:4,12           | 208:23                   | 151:15,16,19           | 125:1                   |
| 147:16,17      | 175:15 176:7            | <b>cross</b> 5:2 8:1 9:1 | 152:3,5,7,10           | <b>deeper</b> 126:1     |
| 151:16,23      | 205:10,19               | 88:12 146:5              | 152:14,16,18           | <b>defendants</b>       |
| 159:7 160:15   | 206:17 207:10           | <b>Cross-Examin...</b>   | 153:20,21              | 54:20 153:3             |
| 160:18,19      | 207:12,15,20            | 3:4 10:5                 | 157:9,15               | 168:8 174:15            |
| 161:3 163:11   | 208:16,21,24            | <b>crossing</b> 5:22     | 158:14 159:2,4         | 184:12                  |
| 163:12,24      | 210:7 225:21            | <b>cumulative</b>        | 161:1,3 163:6          | <b>defense</b> 176:7    |
| 164:10,13,14   | 233:7 234:17            | 60:16 65:10              | 163:8 168:4            | 210:6                   |
| 164:22 167:13  | <b>counsel's</b> 207:12 | 68:9 71:14               | 171:13 172:10          | <b>defined</b> 124:20   |
| 170:21,22      | 207:12                  | 152:17 168:16            | 172:11 182:21          | 124:21 142:9            |
| 171:5,6,11,20  | <b>County</b> 10:9      | 183:14 184:18            | 183:3,11,13            | 201:11                  |
| 173:1,2 178:3  | 11:3,17 13:21           | <b>curing</b> 11:14      | 184:5,6,20,22          | <b>defining</b> 222:15  |
| 183:4,5 186:10 | 45:21 50:1              | <b>current</b> 142:24    | 185:1 186:4            | <b>definitively</b>     |

|                         |                         |                          |                        |                        |
|-------------------------|-------------------------|--------------------------|------------------------|------------------------|
| 147:4                   | 52:9 55:1               | <b>determining</b>       | <b>directing</b> 171:1 | 204:5 210:13           |
| <b>deleting</b> 188:21  | 83:23 84:3              | 208:20                   | <b>direction</b> 84:10 | 217:4 228:9            |
| <b>delineate</b> 79:9   | 95:12 113:3             | <b>develop</b> 229:3     | 84:14 133:10           | 233:12 234:22          |
| <b>delineated</b> 50:4  | 127:2 148:23            | 229:15,20                | 180:19 207:19          | <b>discussions</b>     |
| 77:11 82:19             | 150:24 156:12           | <b>developed</b> 59:24   | <b>directly</b> 49:14  | 142:7 201:12           |
| 83:10 184:13            | 170:4 174:17            | 133:11 171:19            | 56:10 177:19           | 201:16,17              |
| 184:14 199:24           | 192:15 193:10           | 203:19 224:12            | 178:7,15,18,22         | 202:16 203:21          |
| 211:3                   | 196:6 199:11            | 225:22                   | 193:1 201:17           | 204:9 206:8            |
| <b>delineations</b>     | 203:20 217:15           | <b>developing</b>        | 208:22                 | 211:19                 |
| 84:21                   | <b>described</b> 59:12  | 97:24 132:17             | <b>disagreement</b>    | <b>disregard</b> 153:9 |
| <b>demonstrating</b>    | 82:19,22 90:17          | 201:20                   | 142:9                  | <b>dissipated</b> 22:6 |
| 175:19                  | 90:21 95:20             | <b>develops</b> 58:11    | <b>disagreements</b>   | <b>dissolved</b> 61:18 |
| <b>demonstrative</b>    | 102:19 134:11           | <b>diagram</b> 16:7      | 202:23                 | 187:10                 |
| 73:17 74:5              | <b>describes</b> 99:18  | <b>diagrams</b> 11:21    | <b>disappear</b> 19:3  | <b>distinction</b>     |
| 75:7 78:16              | 197:11                  | 12:21                    | 19:11 20:4             | 59:15 88:19,20         |
| 82:16 173:5             | <b>describing</b> 81:13 | <b>difference</b> 62:1   | <b>discharged</b>      | 90:10 100:21           |
| 174:2,10,22             | 115:12 167:7            | 62:2 90:2 97:5           | 19:16                  | 132:9 138:1            |
| 175:3,16                | <b>description</b>      | 133:6 166:21             | <b>disclose</b> 57:14  | <b>distribution</b>    |
| 176:24 177:6            | 20:22 28:24             | 189:8                    | <b>discoloration</b>   | 86:18 136:3            |
| 177:23 178:6            | 34:15 47:16             | <b>different</b> 12:3    | 222:8,9                | <b>docketed</b> 5:16   |
| <b>Denied</b> 74:17     | 48:13 49:6              | 12:14,20 29:13           | <b>discuss</b> 17:13   | <b>document</b> 11:6   |
| <b>density</b> 27:18    | 53:17 99:6,16           | 36:21 37:3               | 26:9 32:2              | 11:16,19 12:24         |
| <b>depend</b> 161:12    | 100:12 114:23           | 62:13 71:19              | 64:15 94:18            | 15:9,12 29:5           |
| <b>Depending</b>        | 115:14 125:12           | 80:22 97:5               | 174:19 226:20          | 36:20 45:10            |
| 42:15                   | 162:21 196:22           | 110:14,17                | <b>discussed</b> 9:5   | 52:7,10 53:8           |
| <b>depends</b> 40:16    | <b>descriptions</b>     | 122:19 123:2             | 18:14,24 21:14         | 71:13 75:15,18         |
| 40:18 43:17             | 11:2 124:22             | 152:13 153:7             | 24:1 36:2              | 76:14 95:6             |
| 47:6                    | <b>descriptive</b>      | 174:18 176:13            | 54:20 63:12,13         | 103:17 107:17          |
| <b>depict</b> 77:4      | 99:21                   | 184:6,13 187:1           | 63:16 82:3             | 107:18 114:11          |
| 151:9 176:11            | <b>design</b> 17:3      | 187:2,8 189:7            | 89:17 90:13,15         | 118:2 123:18           |
| <b>depicted</b> 77:11   | 194:13,17               | 189:7 232:1              | 91:11 95:21            | 124:2,3 131:1          |
| 78:8 134:19             | <b>designed</b> 194:15  | <b>differently</b>       | 98:6 103:21            | 131:4,5,8              |
| 159:10,14               | <b>designing</b>        | 184:7                    | 110:1 115:21           | 136:19 138:24          |
| 160:12,24               | 194:11                  | <b>difficult</b> 209:1,3 | 157:6 158:15           | 139:8 141:12           |
| 161:8 175:6             | <b>detail</b> 43:15     | <b>difficulty</b> 190:16 | 180:24 184:7           | 141:17 143:13          |
| 211:6                   | 79:14 174:16            | <b>dig</b> 173:12        | 209:20 215:22          | 150:22 152:21          |
| <b>depicting</b> 175:13 | <b>determination</b>    | <b>digit</b> 149:17      | <b>discusses</b> 13:11 | 154:15 156:10          |
| 182:15                  | 94:5 103:20,24          | <b>dinged</b> 71:18      | 13:18                  | 162:15,19,22           |
| <b>depiction</b> 86:20  | 105:13 172:15           | <b>dire</b> 3:7 42:3,4   | <b>discussing</b> 30:6 | 163:2,4,14,16          |
| <b>depicts</b> 160:3    | 217:11,20               | <b>direct</b> 3:6 6:22   | 180:2,17               | 167:2,5,10             |
| 212:16                  | 220:14                  | 9:5 30:5 39:18           | 201:18                 | 168:2,9 170:6          |
| <b>deposited</b> 218:7  | <b>determine</b> 47:8   | 57:13 82:14              | <b>discussion</b> 7:20 | 173:16,17,19           |
| 218:14 219:21           | 79:3 95:15              | 124:5 127:15             | 21:16 31:20            | 182:17 183:16          |
| <b>Des</b> 85:8,9       | 101:22 106:6            | 128:15 179:15            | 38:10 67:16            | 188:24 190:7,8         |
| 116:10                  | 125:3 218:1             | 207:17 229:18            | 72:7 105:8             | 191:4 192:15           |
| <b>describe</b> 40:22   | <b>determined</b>       | <b>directed</b> 31:1     | 162:1 192:8            | 192:16 193:11          |
| 43:15 45:12             | 132:19                  | 33:14 208:24             | 201:13 203:2,3         | 196:4,6,7              |

|  |  |  |   |   |
|--|--|--|---|---|
| 199:9 202:9,22<br>217:13 221:10<br>226:13<br><b>documentation</b><br>36:22 113:11<br>196:11<br><b>documents</b><br>10:22 11:20<br>12:4,15,16,21<br>22:12 55:10<br>64:5 65:23<br>70:24 92:15<br>113:1,5,17<br>132:17 148:21<br>170:2 184:13<br>213:15 215:13<br><b>dog</b> 72:19,20<br><b>doing</b> 23:13<br>40:15 43:19<br>128:15 207:19<br>224:7 236:5<br><b>dots</b> 97:7<br><b>dotted</b> 29:14<br>111:23<br><b>double</b> 71:18<br><b>doubt</b> 51:6<br>56:14 64:22<br>66:12 68:1<br>70:6 71:5 93:8<br>98:10 99:2<br>110:3 140:22<br>149:24 167:18<br>183:6 185:14<br>215:19<br><b>draft</b> 190:9,14<br>190:15<br><b>draw</b> 85:14<br><b>drawing</b> 158:22<br><b>drawn</b> 31:17<br>78:20<br><b>drew</b> 35:15<br>212:1<br><b>drinking</b> 137:15<br><b>Drive</b> 2:4<br><b>driving</b> 202:7<br><b>drum</b> 26:21 27:9<br><b>dry</b> 47:19 50:12 | 99:8 100:13,14<br>100:19<br><b>Dubin</b> 2:3 3:4<br>5:4,23 6:9,10<br>6:13,20,21 7:5<br>7:8,13,18 8:1,2<br>8:8,16,21,23<br>9:2,8,14,20<br>10:6 13:6,8,13<br>13:17 14:19,20<br>15:19 18:18,20<br>18:23 19:23<br>20:9,15,19,20<br>23:22,23 24:14<br>24:15,20 25:8<br>25:17,18,22<br>27:5 28:12<br>30:12,24 31:17<br>32:6,16,24<br>33:14 34:8,19<br>35:1,15 36:15<br>37:8,17 38:5,6<br>63:17 112:16<br>169:14,19<br><b>due</b> 5:22<br><b>duly</b> 10:4 39:12<br>39:17 236:4<br><b>Dunaway</b><br>141:19 142:7<br>154:14,18<br>202:1<br><b>duplicate</b> 168:16<br><b>duplicative</b><br>63:18 65:9<br>68:9 71:13<br>152:17 153:19<br>153:20,23<br>183:14,23<br>184:1,18<br><hr/> <b>E</b> <hr/> <b>E</b> 2:7,8 3:1 4:1<br><b>E-L-U-C</b> 69:10<br>131:7<br><b>E-mailed</b> 23:24<br><b>E-N-S-R</b> 74:9<br><b>earlier</b> 6:22 65:7 | 107:2 129:19<br>155:19 173:16<br><b>early</b> 38:8 39:5<br>223:21<br><b>easier</b> 80:22<br><b>east</b> 2:4 116:16<br>176:12,14<br>177:17 180:13<br>192:19 193:13<br>193:16<br><b>east-west</b> 81:5<br><b>eastern</b> 90:15<br>178:8<br><b>easy</b> 8:6<br><b>Ed</b> 74:1,7 200:5<br>200:15<br><b>Edison</b> 173:17<br>173:18 175:11<br><b>effect</b> 62:12<br>143:23 144:6<br>153:9<br><b>eight</b> 215:1,5<br><b>either</b> 7:12<br>26:17 95:21<br>116:8 118:16<br>120:17 123:10<br>123:23 124:9<br>125:22 133:18<br>168:3 185:19<br>234:1<br><b>elaborate</b><br>124:14 232:20<br><b>elevation</b> 30:3<br>84:5,12 85:10<br>86:9,10,12<br>134:23 135:13<br>135:18 157:22<br>157:24 158:20<br>159:3,5 161:1<br>161:2 166:16<br>166:19,22,23<br>167:15 211:15<br>212:3,8,13<br>215:7<br><b>elevations</b> 85:13<br>86:5 161:6<br>166:13 167:19 | <b>ELUC</b> 69:6,7,10<br>130:21 131:7<br>137:19,23<br>138:3,7 156:7<br>156:15 160:10<br>160:15 185:21<br>185:22<br><b>ELUC/GMZ</b><br>141:22 142:4<br><b>employed</b> 11:10<br>74:8 195:3<br><b>employer</b><br>223:22<br><b>encompasses</b><br>138:8<br><b>encompassing</b><br>160:17 216:1<br><b>encountered</b><br>32:4 33:13<br>111:4<br><b>ends</b> 188:17<br>222:5,10<br><b>enforcement</b><br>5:17<br><b>engineer</b> 17:21<br>194:9,18<br><b>engineering</b><br>11:21 12:4,15<br>12:21 98:12,14<br>98:17 106:13<br>106:15 108:22<br>163:5 213:22<br>213:23 214:22<br>215:6,14,21<br>218:4 221:9,14<br>229:9 231:11<br><b>Engineering's</b><br>232:24<br><b>ENSR</b> 74:7<br><b>ensure</b> 23:12<br><b>entered</b> 104:14<br><b>entire</b> 73:13<br>77:16,20<br>173:19 201:10<br><b>entirely</b> 223:11<br><b>entirety</b> 201:5<br><b>entitled</b> 5:11 | 172:9 182:19<br><b>environment</b> 1:4<br>5:14 13:24<br><b>environmental</b><br>1:3 2:3 5:12<br>40:3,8,9,10<br>41:1,3 69:7<br>98:12,14,17<br>108:21,22<br>225:1<br><b>EPA</b> 60:20<br>77:24 131:6<br>139:5 141:19<br>141:24 142:2<br>143:14 144:14<br>154:14 196:3,8<br>199:14 201:13<br>202:17 203:13<br>208:5 225:14<br>227:6 229:16<br>229:21<br><b>EPA's</b> 142:8<br>143:5,12<br><b>equal</b> 84:11<br><b>equals</b> 88:4<br><b>Erin</b> 26:23<br>27:11<br><b>erosion</b> 82:6<br>113:11 116:8<br>118:11,17<br>120:18 123:10<br>123:23 124:10<br>125:4<br><b>errors</b> 184:24<br>190:13 231:13<br>232:5,24<br><b>establish</b> 39:6,8<br>85:23,24<br>167:22 175:17<br>185:1<br><b>established</b><br>24:19 34:20<br>101:11 167:2<br>172:1 177:1,2<br><b>establishment</b><br>172:4<br><b>estimate</b> 106:22 |
|--|--|--|---|---|

|   |   |  |  |   |
|---|---|--|--|---|
| <b>estimated</b> 84:11<br>211:23                  | <b>exactly</b> 40:15<br>41:7 110:19               | 33:15 34:2<br>35:10,22,23                          | 152:1 153:3<br>154:6,7,12,20   | 169:17 182:1<br>184:5 186:24  |
| <b>evaluate</b> 110:24<br>217:24                  | 133:24 183:21<br>218:22,24                        | 36:12,14,20<br>37:2 45:4 46:1                      | 155:3,4,10,11<br>156:6 161:15  | 213:14 223:8<br><b>exist</b> 187:17   |
| <b>evaluating</b> 43:19<br>135:17 218:7<br>218:13 | <b>Examination</b><br>3:4,6,7 30:22<br>39:18 42:4 | 51:10,11,16,21<br>52:2 53:2 54:9<br>54:15,16,19,24 | 161:18,19<br>162:7,13<br>165:11,15,18<br>166:6,12                    | 192:3<br><b>existing</b> 87:22<br>106:11  |
| <b>evaluation</b><br>135:21 158:8                 | <b>examined</b> 10:4<br>39:17                     | 61:5,7 62:21<br>62:24 63:9,11<br>65:2,12,14,20     | 169:10,20,22<br>169:23 170:6,9<br>170:11,14,18<br>173:6,7,11         | 106:11<br><b>exists</b> 101:8<br>187:14   |
| <b>evening</b> 235:2                              | <b>example</b> 28:14<br>62:8 124:22               | 66:16,20,21<br>68:5,5,14,16<br>68:21 69:17,19      | 173:6,7,11<br>174:3 175:16<br>176:22,24<br>180:21,23                 | <b>expanded</b><br>223:23 224:2<br><b>expected</b> 13:22<br>147:7   |
| <b>event</b> 5:21 71:21<br>183:20                 | 136:9 168:2,7<br>202:22                           | 70:4,13,15,20<br>71:9,23 72:1<br>72:14,18 73:3     | 181:4,21,24<br>182:4,14 184:9<br>186:8,15<br>188:10,12               | <b>expecting</b> 33:4<br><b>expert</b> 57:4<br>85:16,24 90:10<br>145:6 194:9  |
| <b>eventually</b> 194:1                           | <b>exceed</b> 88:5<br>136:17 137:3                | 75:9 80:1,16<br>80:17 91:17,20<br>91:21 92:3,7,8   | 189:17,19<br>190:3,18,23<br>191:15,22,24<br>192:4,13                 | <b>expertise</b> 28:18<br>44:6 194:11,12<br><b>explain</b> 59:14<br>61:12 62:5                                      |
| <b>everybody</b> 5:8                              | <b>exceedance</b><br>88:16,22 89:5<br>89:14,20,23 | 92:21 93:20,22<br>94:4 102:13<br>103:8,16          | 195:16,19,20<br>195:23 196:1<br>198:23 199:1,5<br>199:19 210:20      | 147:7<br><b>expecting</b> 33:4<br><b>expert</b> 57:4<br>85:16,24 90:10<br>145:6 194:9                               |
| <b>everyone's</b><br>81:11                        | <b>exceedances</b><br>87:9 88:8                   | 104:14 105:12<br>112:3,6,7,10<br>112:12,14,14      | 189:17,19<br>190:3,18,23<br>191:15,22,24<br>192:4,13                 | <b>explain</b> 59:14<br>61:12 62:5<br>89:15 100:21<br>106:3 166:21  |
| <b>evidence</b> 6:18<br>9:3,4 13:13               | <b>exceeds</b> 137:12                             | 112:18 114:8<br>115:19 117:8<br>117:17,18,20       | 195:16,19,20<br>195:23 196:1<br>198:23 199:1,5<br>199:19 210:20      | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23  |
| 51:17 53:3  | <b>exception</b> 113:6<br>114:11 142:9            | 117:17,18,20<br>117:24 119:9<br>119:13,18,23       | 210:21 212:23<br>213:3,4,8,10<br>213:13,13                           | 211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4   |
| 54:17 60:16                                       | 191:21  | 120:3,11<br>121:19,24<br>123:4 126:3,8             | 214:7,11 216:1<br>216:1,20,22<br>217:9 219:3,18<br>220:19,22,23      | 61:12 62:5<br>89:15 100:21<br>106:3 166:21<br>175:21 209:1<br>211:18<br><b>explained</b><br>100:23                  |
| 61:9 62:10  | <b>excerpt</b> 72:14,15<br>73:12,18 173:5         | 126:11,13,20<br>126:22 127:15<br>128:19,23         | 221:3,7 222:23<br>223:1,3,5,7,9<br>226:6 227:1,22<br>228:5           | 106:3 166:21<br>175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                 |
| 65:10,16 66:23                                    | <b>excluded</b> 107:17                            | 129:9 130:6,19<br>131:12 134:13<br>138:13,16,20    | 226:6 227:1,22<br>228:5<br><b>exhibits</b> 8:15,17<br>58:15 60:12,15 | 89:15 100:21<br>106:3 166:21<br>175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4 |
| 68:18 70:17                                       | <b>Excluding</b><br>105:18                        | 140:6,7 141:2<br>141:6,10<br>147:11,19,21          | 60:12,15<br>62:22 65:19<br>67:3,12,20<br>68:8,22 69:4                | 106:3 166:21<br>175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                 |
| 72:3 92:9   | <b>exclusively</b><br>206:11                      | 147:11,19,21<br>148:1,2,6,6,7<br>149:4,7,9,12      | 68:8,22 69:4<br>70:10,21 71:10<br>73:11 112:19<br>148:11,14          | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 72:3 92:9   | <b>Excerpt</b> 72:14,15<br>73:12,18 173:5         | 149:4,7,9,12<br>149:20 150:5,8<br>150:8,10,15      | 73:11 112:19<br>148:11,14<br>168:17 169:1                            | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 93:23 112:8                                       | <b>excluded</b> 107:17                            |  | 168:17 169:1   | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 117:19,21   | <b>Excluding</b><br>105:18                        |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 120:4 121:20                                      | <b>excerpt</b> 72:14,15<br>73:12,18 173:5         |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 126:14 138:17                                     | <b>exclusively</b><br>206:11                      |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 141:7 148:3                                       | <b>excuse</b> 50:24<br>76:18 127:3                |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 150:12 152:15                                     | 176:21 188:23                                     |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 154:1,8 161:20                                    | <b>exhibit</b> 4:2,18<br>6:2,4,8,16,17            |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 169:5 174:4                                       | 6:24 7:9 8:4,5<br>8:12 10:24                      |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 182:5 183:13                                      | 11:1 13:5<br>14:10 15:12,21                       |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 183:14 184:18                                     | 17:18,19 18:14<br>18:19,20 20:11                  |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 189:20 195:21                                     | 21:19 22:15<br>25:24 26:10                        |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 199:2 213:5                                       | 28:8,8 29:8                                       |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 216:24 220:24<br>223:4                            |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| <b>Evidently</b> 51:22                            |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| <b>exact</b> 10:17<br>60:23,24 61:19              |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 62:4 79:17  |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 86:11 122:24                                      |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 152:18,18   |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 185:20 222:19                                     |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 222:20 225:18                                     |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |
| 225:18 227:16                                     |   |  |  | 175:21 209:1<br>211:18<br><b>explained</b><br>100:23<br><b>explanation</b><br>168:4                                 |

|  |  |  |   |   |
|--|--|--|---|---|
| 160:10,18<br><b>extent</b> 44:12<br>133:22 135:1<br>139:19 200:20<br>213:19 227:15<br><b>extras</b> 67:8<br><b>eye</b> 198:7   | <b>federal</b> 60:1,18<br><b>Feel</b> 117:6<br><b>feeling</b> 208:8<br><b>feet</b> 124:24,24<br>211:24<br><b>felt</b> 134:7 142:11<br><b>fence</b> 116:14,24<br>138:4 139:24<br><b>fenced</b> 116:7,12<br><b>field</b> 8:13 17:13<br>17:17 18:4<br>19:13 20:16,21<br>26:13 31:5,6<br>31:18 44:1<br>62:2 84:6<br>114:15,18,19<br>114:20,21<br>115:3,11,12<br>118:8 178:21<br>214:23 215:4<br>218:21<br><b>fifth</b> 26:1 48:19<br><b>figure</b> 52:11<br>63:5,24 77:12<br>127:22 132:21<br>134:20 135:8<br>135:11 137:21<br>158:13 160:8<br>180:10 203:9<br>218:23<br><b>figures</b> 61:19<br>139:14<br><b>file</b> 162:19<br><b>filed</b> 20:11<br><b>fill</b> 10:16 14:3<br>15:2 16:17<br>53:17<br><b>filled</b> 18:15 19:4<br>19:15,15<br><b>fills</b> 19:12<br><b>final</b> 16:20<br>138:5<br><b>finalized</b> 202:9<br><b>finally</b> 12:17<br>15:11 16:23<br>183:11<br><b>find</b> 9:13 73:15 | 80:16 155:10<br>157:18 168:8<br>174:12 177:7<br>181:12 185:19<br>212:11 226:8<br>227:3,24<br><b>finding</b> 8:20<br><b>fine</b> 19:20 48:2<br>49:6 99:1,10<br>103:13 107:4,7<br>123:3 126:2<br>134:2 208:13<br>210:15 227:19<br>230:19<br><b>finer</b> 133:3<br><b>finish</b> 230:10<br><b>finished</b> 234:23<br><b>firm</b> 40:7 44:1,5<br>221:16 224:11<br>226:1<br><b>firms</b> 226:2<br><b>first</b> 5:7,24<br>10:14,24 11:4<br>13:20 15:1<br>16:11 22:14<br>26:18 27:6<br>36:5 39:7,16<br>39:20 45:17<br>46:9 54:20<br>73:4 88:20<br>94:23 95:3<br>96:10 99:6<br>105:17 109:5<br>111:12 115:5<br>115:18 122:3<br>148:24 149:11<br>167:23 170:6<br>195:12 196:18<br>200:4 213:17<br>217:22 221:7<br>221:22 224:7,9<br>227:21 236:4<br><b>fish</b> 7:2<br><b>fits</b> 82:22<br><b>five</b> 23:5,7 46:13<br>69:10 115:8<br>116:7 118:11 | 118:16 119:3<br>125:3,13,14<br><b>fixes</b> 113:17<br><b>flat</b> 99:17<br><b>flavor</b> 79:21<br><b>flip</b> 12:8<br><b>Floor</b> 1:13<br><b>flow</b> 40:18 84:15<br>86:13 132:14<br>133:6,7 157:5<br>231:17<br><b>flows</b> 133:9<br><b>flush</b> 88:12<br><b>fly</b> 175:4,12<br>177:24 178:9<br><b>focused</b> 77:21<br><b>focusing</b> 203:24<br><b>folder</b> 162:19<br>163:3,4,10<br><b>folders</b> 163:14<br><b>folks</b> 226:1<br><b>follow</b> 193:1<br><b>follow-up</b> 5:5<br>42:1<br><b>followed</b> 22:21<br><b>following</b> 62:13<br>71:18 94:11<br><b>follows</b> 10:4<br>39:17<br><b>foot</b> 50:13 125:1<br><b>footnotes</b> 189:4<br>189:7<br><b>foregoing</b> 236:7<br><b>form</b> 47:5<br>123:17 229:5<br><b>format</b> 86:21<br>167:9 182:18<br>183:19 185:17<br>189:1 190:14<br><b>former</b> 112:21<br>112:22,23<br>118:5 120:14<br>129:4,24 130:9<br><b>formerly</b> 95:9<br>105:21 218:7<br>218:14<br><b>forth</b> 21:22 | <b>forum</b> 159:23<br><b>forward</b> 185:7<br><b>found</b> 102:2<br>111:13 133:3<br>177:11 186:24<br>231:12<br><b>foundation</b><br>13:12 23:18<br>37:18 39:7<br>55:20 134:4<br>167:1,22 169:1<br>200:9,22<br><b>foundry</b> 164:19<br>165:1<br><b>four</b> 16:4,6 46:2<br>87:4,9,17 88:7<br>123:9,22 124:9<br>125:8,13,14<br>151:15 211:2<br>225:5,7 228:22<br>231:2<br><b>fourth</b> 149:9<br>150:20 170:11<br>170:13,20<br>181:1<br><b>frame</b> 15:24<br>44:11 224:13<br><b>frames</b> 225:19<br><b>FRANZETTI</b><br>2:12<br><b>free</b> 117:6<br>127:14<br><b>front</b> 9:16 59:22<br>72:13 82:21<br>103:4 104:14<br>122:1 126:17<br>126:19 130:18<br>138:19 150:14<br>165:12 205:12<br>217:8 226:11<br><b>full</b> 124:6<br>202:11 220:5,6<br>221:23<br><b>fumbling</b> 8:2<br><b>further</b> 57:3<br>62:5 85:7<br>138:2 143:7 |
| <b>F</b>   |  |  |   |   |
| <b>facility</b> 50:1,19<br>51:4 64:8,19<br>65:21 67:23<br>70:23 71:3<br>74:21,21 76:24<br>77:17,20 116:8<br>116:15 156:2<br>201:3<br><b>fact</b> 57:4 85:17<br>104:19,23<br>152:17 154:17<br>211:20<br><b>factors</b> 23:10<br><b>facts</b> 57:5<br>179:10<br><b>failed</b> 31:19<br><b>failing</b> 42:17<br><b>fair</b> 35:1 89:11<br>115:23 125:21<br>134:23 135:3<br>163:13 180:15<br>204:3<br><b>fairly</b> 224:22<br><b>FAITH</b> 2:7,8<br><b>falls</b> 207:18<br><b>familiar</b> 34:20<br>37:2 74:23<br>78:13 133:21<br>141:12 162:15<br>162:17,22<br>163:1 182:17<br>185:5<br><b>far</b> 17:3 37:4<br>42:13 233:24<br><b>FBUGEL@G...</b><br>2:10<br><b>features</b> 115:13<br>115:14 124:24 |  |  |   |   |



|                      |                      |                       |                         |                         |
|----------------------|----------------------|-----------------------|-------------------------|-------------------------|
| 147:18,19            | 119:10,24            | <b>gander</b> 34:23   | 41:24 42:11             | 79:16,21 91:23          |
| 155:2 172:14         | 120:1 121:15         | <b>geed</b> 77:23     | 43:8,14,16,22           | 107:12 130:22           |
| 181:21 210:2,4       | 121:16 123:13        | <b>Gen</b> 6:2 11:1,2 | 44:24 55:19             | 174:11 179:18           |
| 222:4 234:19         | 123:17 124:1         | 11:12,24 12:9         | 56:9,11 57:22           | 206:2 208:11            |
| <b>furthermore</b>   | 126:9 127:1,9        | 13:3,9 15:20          | 59:7,24 61:1            | 216:13 231:15           |
| 184:9 187:16         | 128:24 130:1         | 17:19 18:13,20        | 62:11,12 73:2           | <b>giving</b> 168:15,17 |
| <b>future</b> 58:14  | 134:4 135:1          | 19:4 20:12            | 74:5,8,11               | <b>GMZ</b> 87:11        |
| <hr/>                | 136:18 138:14        | 21:19,23 23:16        | 75:19,22 91:7           | 137:17 140:10           |
| <b>G</b>             | 140:17 141:3         | 24:16 28:8            | 91:15 95:1,7            | 143:13 144:22           |
| <b>G</b> 54:23 68:8  | 143:19 144:1         | 29:8 33:15            | 96:15 105:19            | 145:8 147:8,14          |
| <b>G-n-a-t</b> 39:22 | 144:18 145:5         | 35:10 36:1,20         | 107:8,23 131:6          | 202:3,10,10,16          |
| <b>G2</b> 98:20      | 145:21 147:22        | 72:18 75:11           | 139:5 141:21            | 202:20 203:9            |
| <b>gain</b> 231:19   | 147:23 152:2         | 117:4 119:22          | 145:9 150:16            | 203:13,20               |
| <b>Gale</b> 2:13 3:7 | 152:13 153:10        | 130:20 162:24         | 151:4 156:13            | 204:5 209:14            |
| 39:1 41:21,22        | 153:13,14,15         | 165:10 168:8          | 156:15 182:20           | <b>Gnat</b> 3:5 38:17   |
| 42:5,17 43:9         | 153:17 154:4         | 175:3 186:14          | 191:9 192:17            | 39:15,22,24             |
| 44:12,19 51:12       | 155:18 158:2,9       | 192:3,21,22,24        | 193:12 196:8            | 41:20 43:1,5            |
| 51:13,20,24          | 161:9,16,17          | 193:1,2 196:15        | 196:11 199:13           | 45:10 52:7              |
| 52:23 54:10,12       | 165:21,22            | 207:11 214:17         | 201:12 203:3,8          | 53:8 56:21              |
| 54:13 55:1,20        | 167:1,21             | 216:3 217:9           | 203:12,22               | 64:5 65:18              |
| 56:21 57:3,13        | 169:12,18            | <b>Gen's</b> 200:14   | 204:4,8,16              | 67:2,20 68:20           |
| 57:18 58:19          | 171:16,21            | <b>general</b> 59:13  | 205:6,11 206:4          | 70:19 72:13             |
| 59:18 60:14          | 172:1,4 173:10       | 75:1 79:18            | 206:9,20,24             | 74:19 75:15             |
| 61:10,23 62:23       | 173:13,15            | 97:22 122:20          | 209:15 217:18           | 76:14 78:1,6            |
| 63:8,10,16           | 174:6 176:23         | 123:1 124:18          | 217:21 218:15           | 80:23 84:16             |
| 64:13 65:5,7         | 179:10,20            | 130:8 157:12          | 218:18,19               | 91:18 92:11             |
| 66:17,18 68:7        | 180:3 182:2,3        | 176:15 194:13         | 221:18 223:18           | 94:2 102:15             |
| 70:11,12 71:11       | 183:8 184:16         | <b>generally</b> 43:7 | 224:11,18,22            | 103:17 112:17           |
| 71:12 72:21          | 192:5 193:18         | 44:13 74:23           | 225:8,13,21             | 121:22 128:8            |
| 74:3,15 75:23        | 195:17 197:3         | 75:3 90:22            | 226:2,15 229:3          | 131:11 141:9            |
| 76:2,7 78:3,9        | 197:15,18            | 119:11 142:20         | 229:22 230:3,4          | 145:2,17                |
| 79:11 80:12          | 198:1,20,21          | 159:18 163:17         | 230:14,22               | 146:21 148:5            |
| 81:21 85:16          | 200:9,22             | 193:10                | <b>Generation's</b>     | 152:7,14                |
| 87:11 88:9,12        | 202:12 203:11        | <b>generated</b>      | 6:15 74:6               | 158:18 166:9            |
| 88:23 89:6           | 204:11,20,23         | 229:21                | <b>geologic</b> 53:6,13 | 169:15 175:2            |
| 90:4,16 92:4,5       | 206:12 209:16        | <b>generating</b>     | <b>geologically</b>     | 176:6 183:18            |
| 93:18,19 96:7        | 212:24 213:1         | 75:11,22,24           | 133:5                   | 185:5 190:2,7           |
| 96:17 97:13          | 216:7,8 220:20       | 138:23 141:21         | <b>geologist</b> 198:8  | 190:22 191:14           |
| 98:13 101:10         | 222:24 224:1         | 149:1 150:16          | <b>geologists</b> 84:18 | 199:4 203:16            |
| 102:14,15            | 225:23 227:15        | 198:13 199:17         | <b>geotechnical</b>     | 206:22 207:2            |
| 104:3,5 105:5        | 229:5,18 230:7       | <b>Generation</b> 1:7 | 45:5,15 46:2,4          | 207:10 208:8            |
| 107:9,16 108:2       | 230:10,13            | 5:15 8:10 11:9        | 46:6 52:11              | 214:16 223:16           |
| 110:16,18            | 231:4,24 232:3       | 21:10 22:15           | 197:9 221:16            | 230:2,21                |
| 112:4 113:14         | 232:17 233:18        | 23:7 24:21,23         | <b>getting</b> 6:11     | <b>Gnat's</b> 186:20    |
| 113:24 114:4         | 233:21               | 25:2,10,14,24         | 25:5 86:12              | <b>go</b> 17:4 22:12    |
| 114:23 117:9         | <b>Gale's</b> 103:11 | 26:10 40:21           | 144:6                   | 23:14 28:9,14           |
| 117:10,12            | 168:23 174:23        | 41:1,6,8,14,16        | <b>give</b> 15:23 69:1  | 30:15,17 35:10          |

|                        |                         |                        |                         |                |
|------------------------|-------------------------|------------------------|-------------------------|----------------|
| 38:8,8,11              | 225:4                   | <b>GREG</b> 2:18       | 205:8 206:11            | 9:18 13:4,7,15 |
| 50:21 67:13            | <b>goose</b> 34:23      | <b>greg.wannier...</b> | 211:11,14               | 15:18 19:21    |
| 73:14 75:7             | <b>gosh</b> 7:8 15:13   | 2:20                   | 214:4 215:7             | 20:6,13,17     |
| 104:6 105:4,5          | <b>gotten</b> 222:14    | <b>Gregory</b> 38:20   | 227:1,22                | 23:20 24:11    |
| 128:1 153:1            | <b>governmental</b>     | <b>ground</b> 20:23    | 228:16 229:10           | 25:16,19 27:3  |
| 157:24 162:2           | 208:6                   | 40:12,18 41:2          | 230:24 231:1,6          | 30:13,16,19    |
| 185:2,7,24             | <b>GP-1</b> 98:3,5      | 43:23 44:2,4           | 231:17                  | 32:7,17 33:2   |
| 186:1,3 189:3          | 109:19,21               | 55:13 56:5             | <b>grounds</b> 44:18    | 34:9,22 35:2   |
| 192:5 209:12           | <b>GP-13</b> 110:11     | 61:21 64:17            | 153:7                   | 36:16 37:9,18  |
| 212:11 215:3           | 111:4,16,22             | 71:2 75:20             | <b>group</b> 5:16 40:3  | 38:5,7,11,18   |
| 217:1 222:19           | <b>GP-13A</b> 110:8     | 77:1,10 81:16          | 54:19,23 62:21          | 38:22,24 39:4  |
| 223:16 227:11          | <b>GP-15</b> 111:14     | 83:2,12,20             | 62:24 65:12,20          | 39:10,13 41:21 |
| 227:18 228:6           | <b>GP13</b> 100:9,22    | 84:5,10,12,15          | 67:3 68:5,7,14          | 42:2,19 43:11  |
| 229:23 234:20          | <b>GP13A</b> 100:16     | 84:20 85:2             | 68:21 70:13,20          | 44:17,20 45:7  |
| <b>goal</b> 95:9       | 100:22                  | 86:5,13,18,21          | 71:9,23 91:20           | 48:7 49:9      |
| <b>goes</b> 62:17 81:5 | <b>GPS</b> 122:21       | 87:12,18,20,23         | 93:16 108:21            | 51:12,14,21    |
| 105:23 138:3           | <b>grade</b> 18:11      | 88:9,17 89:19          | 112:18 113:15           | 52:5,24 53:24  |
| 179:2 216:3            | <b>graded</b> 30:4,7    | 89:24 91:22            | 148:6,10                | 54:3,6,11,14   |
| <b>going</b> 8:17 9:2  | <b>gradient</b> 142:20  | 92:18 95:10            | 149:20 150:5,8          | 55:22 56:24    |
| 16:4 25:11             | 143:3,7 172:23          | 99:8 105:21            | 150:19 169:16           | 57:11,16 58:22 |
| 26:11 29:8             | 172:24 180:16           | 131:23 132:1,5         | 181:24 184:5            | 59:19 61:3,23  |
| 31:22 36:4             | 180:19                  | 135:22 136:3           | 213:13,13               | 62:15 63:4,7   |
| 38:11 39:4             | <b>grading</b> 18:10    | 136:17 138:22          | 215:24 216:20           | 63:14,22 64:14 |
| 42:24 43:5             | 30:7                    | 139:6,12,14,17         | <b>grouped</b> 163:15   | 65:4,11 66:17  |
| 44:12 45:3             | <b>grand</b> 75:10      | 139:19 142:21          | <b>grouping</b> 113:20  | 66:19 67:5,10  |
| 51:18,22 55:1          | <b>grant</b> 42:24      | 143:1,16 144:7         | 114:1                   | 67:14,17 68:12 |
| 57:13 62:23            | 103:10                  | 144:8 145:13           | <b>grow</b> 224:17      | 70:12 71:11,20 |
| 72:14 75:7,8           | <b>granular</b> 48:22   | 146:23 147:2           | <b>guess</b> 8:2,24     | 72:4,8,19 73:4 |
| 84:9 94:19             | 49:15                   | 148:24 149:8           | 41:22 43:20             | 73:7,10,14,24  |
| 103:10 104:11          | <b>grappling</b>        | 149:10,14              | 164:17 213:17           | 74:3,12,17     |
| 107:12 113:6           | 132:12                  | 151:1 153:2            | 231:9                   | 76:1,3,8,11    |
| 113:14 114:16          | <b>gravel</b> 15:3      | 156:22 158:11          | <b>guide</b> 97:24      | 78:4,11 79:15  |
| 126:20,21,22           | 16:18 47:4,19           | 158:16,19              | <b>Gunther</b> 17:20    | 80:8,15,20     |
| 138:19 140:17          | 48:3,14,22              | 160:3 161:1,2          | 17:21,24 18:15          | 81:23 85:18    |
| 141:9 149:16           | 49:16 99:14,17          | 161:6 162:8            | 19:6 21:6               | 86:2 87:15     |
| 162:11 175:15          | 100:2                   | 166:13,15,19           | <b>guys</b> 9:4 24:6    | 88:11,24 89:9  |
| 183:8,21 185:6         | <b>gravelly</b> 132:6   | 166:22,23              | 29:10                   | 90:18 92:4,6   |
| 188:8 190:12           | 132:10 135:7,9          | 167:15,19              |                         | 93:19 96:8,18  |
| 191:12 208:9           | 135:9,14,22             | 170:7,10,12,14         | <b>H</b>                | 97:15 101:12   |
| 208:16 210:2,3         | <b>gray</b> 47:19 48:2  | 170:21 180:8,9         | <b>H</b> 4:1 62:21 68:8 | 102:14,22      |
| 210:9 213:9,16         | 49:7 50:11              | 180:24 182:15          | <b>Hairline</b> 222:5,9 | 103:1,10 104:4 |
| 216:9 221:6            | 100:5,18                | 182:19 183:3           | <b>half</b> 109:6       | 104:7 105:6,9  |
| 226:7 231:9            | <b>great</b> 9:20 67:9  | 184:3 187:1,8          | <b>Halloran</b> 1:14    | 107:10,12,20   |
| 233:24                 | 127:23 182:8            | 187:21 190:4,9         | 2:2 5:1,6,8 6:9         | 108:4 112:5,9  |
| <b>good</b> 5:7 34:22  | 235:2                   | 199:7,16 200:2         | 6:15,19 7:3,11          | 112:13 113:22  |
| 34:23 154:23           | <b>greater</b> 16:22,23 | 201:5 203:24           | 7:16,19,21              | 114:5 115:1    |
| 182:6 224:22           | 27:19 125:7             | 204:18,21,24           | 8:19,22 9:6,9           | 117:9,13       |

|                |                        |                        |                |                        |
|----------------|------------------------|------------------------|----------------|------------------------|
| 119:14,20,24   | 200:11 202:14          | <b>hear</b> 124:15     | 102:14,22      | 188:11,16,20           |
| 120:2,5,23     | 203:15 204:12          | 134:16                 | 103:1,10 104:4 | 189:16 190:1           |
| 121:3,15,17    | 204:22 205:3           | <b>heard</b> 131:16    | 104:7 105:6,9  | 190:19 192:5,7         |
| 123:15,20      | 207:1 208:7            | <b>hearing</b> 1:11,14 | 107:10,12,20   | 192:9 195:18           |
| 126:10,21      | 209:4,8,12,17          | 2:2 5:1,2,4,6,9        | 108:4 112:5,9  | 197:4,16,21            |
| 127:7,11,16,19 | 209:23 210:3           | 5:18 6:9,15,19         | 112:13 113:22  | 198:20,22              |
| 128:1,5,11,14  | 210:11,14,17           | 7:3,11,16,19           | 114:5 115:1    | 200:11 202:14          |
| 128:22 131:11  | 210:20 212:24          | 7:21 8:19,22           | 117:9,13       | 203:15 204:12          |
| 131:15 134:9   | 213:2 214:12           | 9:6,9,18 13:4,7        | 119:14,20,24   | 204:22 205:3           |
| 135:4 136:20   | 216:4,6,9,13           | 13:15 15:18            | 120:2,5,23     | 206:3 207:1            |
| 136:23 137:4,8 | 216:15,19              | 19:21 20:6,13          | 121:3,15,17    | 208:7 209:4,8          |
| 138:15 140:6   | 217:3,5 220:21         | 20:17 23:20            | 123:15,20      | 209:12,17              |
| 141:4 143:21   | 223:1,13 224:3         | 24:11 25:16,19         | 126:10,21      | 210:3,11,14,17         |
| 144:4,23       | 225:10 226:7           | 27:3 30:13,16          | 127:7,11,16,19 | 210:20 212:24          |
| 145:16 146:3,9 | 228:8,10 229:7         | 30:19 32:7,17          | 128:1,5,11,14  | 213:2 214:12           |
| 146:12,15,19   | 229:24 230:12          | 33:2 34:9,22           | 128:22 131:11  | 216:4,6,9,13           |
| 147:22,24      | 230:17 232:6,9         | 35:2 36:16             | 131:15 134:9   | 216:15,19              |
| 148:8,12,13,15 | 232:18,21              | 37:9,18 38:5,7         | 135:4 136:20   | 217:3,5 220:21         |
| 150:7 153:8,12 | 233:11,13,23           | 38:11,18,22,24         | 136:23 137:4,8 | 223:1,13 224:3         |
| 153:14,16      | 234:4,20,23            | 39:1,4,10,13           | 138:15 140:6   | 225:10 226:7           |
| 154:2,5,23     | <b>hand</b> 39:11      | 41:21 42:2,19          | 141:4 143:21   | 228:8,10 229:7         |
| 155:9,13,23    | <b>hand-held</b>       | 43:11 44:17,20         | 144:4,23       | 229:24 230:12          |
| 158:3,17       | 122:21                 | 45:7 48:7 49:9         | 145:16 146:3,9 | 230:17 232:6,9         |
| 161:10,17,23   | <b>handed</b> 67:11    | 51:12,14,21            | 146:12,15,19   | 232:18,21              |
| 162:3 165:12   | 162:17,23              | 52:5,24 53:24          | 147:22,24      | 233:11,13,23           |
| 165:17,21      | <b>handful</b> 224:14  | 54:3,6,11,14           | 148:8,12,15    | 234:4,20,23            |
| 166:1,4 167:3  | 224:16                 | 55:22 56:24            | 150:7 153:8,12 | 236:10                 |
| 167:24 168:11  | <b>handled</b> 156:3   | 57:11,16 58:22         | 153:14,16      | <b>hearsay</b> 180:3   |
| 169:4,9,13     | <b>handling</b> 142:22 | 59:19 61:3             | 154:2,5,23     | <b>Heather</b> 18:3    |
| 172:3,6 173:15 | 143:17 146:24          | 62:15 63:4,7           | 155:9,13,23    | <b>height</b> 30:3     |
| 174:5,21       | 155:17                 | 63:14,22 64:14         | 158:3,17       | <b>help</b> 101:20     |
| 175:14 176:3   | <b>Hang</b> 28:11      | 65:4,11 66:17          | 161:10,17,23   | 177:5 188:13           |
| 176:19,23      | <b>happened</b> 31:11  | 66:19 67:5,10          | 162:3 165:12   | 188:18 211:18          |
| 177:7,10       | 70:14 191:16           | 67:14,17 68:12         | 165:17,21      | 225:1 227:3,23         |
| 179:12 181:7   | <b>happy</b> 119:19    | 70:12 71:11,20         | 166:1,4 167:3  | 228:2 229:15           |
| 181:11,14      | <b>hard</b> 79:16      | 72:4,8,19,21           | 167:24 168:11  | <b>helped</b> 157:1    |
| 182:2,6,9      | 132:13                 | 73:4,7,10,14           | 169:4,9,13     | <b>helpful</b> 73:23   |
| 183:17,23      | <b>hashed</b> 160:17   | 73:24 74:12,17         | 172:3,6 174:5  | <b>helping</b> 205:18  |
| 185:4,10       | 199:24                 | 76:1,3,8,11            | 174:21 176:3   | 229:2                  |
| 186:19,23      | <b>HDP</b> 193:17,21   | 78:4,11 79:15          | 176:19 177:7   | <b>higher</b> 87:19    |
| 187:23 188:3,7 | <b>HDPA</b> 26:2,3,7   | 80:8,15,20             | 177:10 179:12  | 88:15,21 89:3          |
| 188:11,16,20   | <b>HDPE</b> 23:16      | 81:23 85:18            | 181:4,7,11,14  | 89:13 133:1            |
| 189:16 190:1   | 24:2,8,17,21           | 86:2 87:15             | 182:2,6,9      | 181:18                 |
| 190:19 192:7,9 | 24:24 25:10            | 88:11,24 89:9          | 183:17,23      | <b>highlight</b> 89:21 |
| 195:18 197:4   | 26:7                   | 90:18 92:4,6           | 185:4,10       | <b>hired</b> 205:19    |
| 197:16,21      | <b>head</b> 84:12      | 93:19 96:8,18          | 186:19,23      | <b>historic</b> 143:17 |
| 198:20,22      | 163:16                 | 97:15 101:12           | 187:23 188:3,7 | 155:16                 |

|                        |                         |                        |                         |                         |
|------------------------|-------------------------|------------------------|-------------------------|-------------------------|
| <b>historical</b>      | 84:4,8                  | 229:16,21              | 186:2 197:2             | 184:2 185:15            |
| 142:22 144:11          | <b>hose</b> 27:16       | 236:1                  | <b>included</b> 94:13   | 187:15,18,20            |
| 146:23 147:3,4         | <b>hot</b> 136:6        | <b>imagine</b> 26:4    | 94:15 97:22             | 203:7 204:15            |
| 155:6                  | <b>hour</b> 1:12        | 162:19 185:18          | 111:5 113:13            | 205:5,15 206:1          |
| <b>history</b> 82:10   | <b>hours</b> 208:12     | <b>immediately</b>     | 113:20 114:16           | 206:10,20               |
| 95:4 105:17            | <b>housekeeping</b>     | 81:13 96:3             | 114:22 115:16           | 207:18 212:12           |
| 205:23                 | 5:24 6:13,21            | 172:23                 | 121:8 126:5             | 215:20 231:18           |
| <b>hold</b> 63:4,7     | 7:23 128:17             | <b>impact</b> 136:4    | 128:20 151:16           | 232:4                   |
| 126:18 150:17          | <b>hurry</b> 166:5      | <b>impacted</b> 142:21 | 152:12 172:17           | <b>informed</b> 19:4,6  |
| 155:9 173:10           | <b>hydrogeological</b>  | 143:16 144:8           | 184:3 207:13            | 204:16,17               |
| 216:6 230:12           | 231:1                   | 146:23 147:2           | 233:7 234:11            | 205:7                   |
| <b>holding</b> 214:8   | <b>hydrogeology</b>     | <b>impacts</b> 86:18   | <b>includes</b> 40:17   | <b>informs</b> 231:14   |
| <b>holes</b> 17:14     | 231:7                   | <b>implementing</b>    | 45:4 46:1,4             | <b>initial</b> 35:21    |
| 20:23 21:24            |                         | 225:2                  | 54:23 91:20             | 101:14 115:16           |
| <b>hone</b> 168:14     | <b>I</b>                | <b>implies</b> 137:15  | 93:17 98:20             | 124:16 132:11           |
| <b>honestly</b> 113:7  | <b>IAC</b> 88:5         | <b>imply</b> 197:24    | 99:12 102:17            | 203:2,21                |
| 113:12 174:14          | <b>identical</b> 61:2   | 198:5                  | 112:19 115:8            | <b>input</b> 205:9      |
| 206:1                  | <b>identified</b> 69:10 | <b>important</b> 168:4 | 118:8 148:7             | <b>inquire</b> 208:16   |
| <b>Honor</b> 43:3      | 115:24 116:6            | 174:19                 | 151:22 157:5            | <b>inside</b> 17:15     |
| 44:16 45:8             | 116:23 118:11           | <b>impossible</b>      | 169:16 181:24           | 29:12 30:1              |
| 48:6 51:9              | 118:16,21               | 184:24                 | 184:1 213:14            | <b>insides</b> 14:3     |
| 53:21 54:7             | 120:17 122:18           | <b>impoundment</b>     | <b>including</b> 61:14  | <b>inspect</b> 129:23   |
| 57:7 61:12             | 124:9 125:22            | 23:10                  | 140:1 174:17            | 193:13                  |
| 63:3,6 67:7            | 203:23                  | <b>impoundments</b>    | <b>inclusion</b> 7:15   | <b>inspected</b> 222:8  |
| 72:11 73:16            | <b>identify</b> 38:18   | 75:3                   | 71:17 153:5             | <b>inspection</b> 82:7  |
| 76:4 78:10             | 123:9,22 219:9          | <b>inaccurate</b>      | 234:17                  | 90:24 112:20            |
| 79:13 80:6             | <b>identifying</b>      | 194:7                  | <b>incomplete</b>       | 115:6,23 118:5          |
| 85:19 87:14            | 125:10                  | <b>inadmissible</b>    | 102:21                  | 118:8,10,15,20          |
| 92:1 93:15             | <b>IEPA</b> 60:9 147:6  | 72:23                  | <b>incorrect</b> 25:4   | 120:13 123:6            |
| 102:12 112:11          | 147:13,14               | <b>inch</b> 11:14      | 98:19 233:5             | 124:9,19 125:3          |
| 114:3 127:12           | 201:18,23               | <b>inches</b> 10:14,16 | <b>independently</b>    | 127:2,5 129:11          |
| 128:16 131:18          | 203:4,22 204:4          | 10:19 11:17            | 184:14                  | 129:15,19,22            |
| 137:1 145:10           | 205:12                  | 12:2,13,19             | <b>indicate</b> 69:21   | 130:4,5,9,10            |
| 146:18 152:22          | <b>IEPA's</b> 202:7     | 14:2,24 15:1           | 198:11                  | 191:2 192:18            |
| 154:9 161:22           | <b>ignoring</b> 95:6    | 16:12,14,20,22         | <b>indicated</b> 19:13  | 192:19 193:22           |
| 168:1 169:3            | <b>Illinois</b> 1:1,14  | 35:18 125:8            | 66:5 202:19             | 193:24                  |
| 171:22 174:1           | 2:5,9,14 5:9            | <b>incision</b> 124:23 | <b>indicating</b>       | <b>inspections</b>      |
| 174:11,14              | 60:20 77:23             | <b>inclination</b>     | 198:12                  | 17:23 82:10             |
| 180:22 185:2           | 131:6 139:5             | 208:7                  | <b>individual</b> 62:10 | 112:23 113:18           |
| 189:21 206:22          | 141:19,24               | <b>include</b> 19:10   | <b>information</b>      | 129:4,8                 |
| 208:1 214:4            | 142:2,8 143:5           | 57:20 61:1             | 10:8 57:14,15           | <b>installation</b>     |
| 215:9 217:1            | 143:12,14               | 62:9 77:16,19          | 57:17 68:2              | 18:11 26:2              |
| 223:9                  | 144:14 154:14           | 95:8 105:19            | 71:6 93:9               | 194:19 196:10           |
| <b>hop</b> 12:24       | 196:3,8 199:14          | 111:5 114:18           | 109:1 140:23            | <b>installed</b> 23:15  |
| <b>hoping</b> 63:5     | 201:13 203:13           | 116:16 117:7           | 150:1 153:24            | 163:7,9                 |
| <b>Hopping</b> 11:1    | 208:5,5 220:12          | 138:7 140:12           | 167:6 179:8,17          | <b>installing</b> 18:9  |
| <b>horizontal</b> 84:2 | 225:14 227:6            | 152:20 183:3           | 179:24 180:4            | <b>intake</b> 85:5 86:9 |

|  |   |   |  |  |
|--|---|---|--|--|
| <b>intend</b> 62:6<br>197:24<br><b>intended</b> 164:7<br>176:10<br><b>intending</b> 198:5<br><b>intent</b> 101:21,21<br>124:18<br><b>interaction</b><br>202:5<br><b>interest</b> 42:20<br><b>interesting</b><br>194:10<br><b>intermediate</b><br>142:19 143:8<br><b>intern</b> 11:8<br>12:24<br><b>interpretations</b><br>143:5 211:22<br>231:21<br><b>interpreting</b><br>231:17<br><b>introduce</b> 52:1<br>60:19 71:8<br>103:8 127:15<br><b>introduced</b><br>184:5 224:10<br><b>introducing</b><br>51:18 54:21<br>184:10 223:8<br><b>introduction</b><br>65:2 186:14<br><b>involve</b> 206:24<br><b>involved</b> 25:2<br>208:22 226:2<br><b>iron</b> 136:13<br><b>ISE</b> 137:12<br><b>isolated</b> 133:1<br><b>issue</b> 6:23 16:24<br>17:12,14 19:24<br>45:1 52:22<br>122:17 127:24<br>210:9 225:5,7<br><b>issued</b> 23:8 25:6<br>102:16 115:7<br>129:23 225:19<br>225:20<br><b>issues</b> 122:19 | 123:2 205:9<br><b>issuing</b> 52:14<br><b>item</b> 100:12<br>128:21<br><b>items</b> 41:3 123:1<br>143:5<br><b>Its's</b> 174:22<br><hr/> <b>J</b><br><b>J</b> 67:3 68:5<br><b>J222</b> 4:6 68:15<br>68:16<br><b>J228</b> 4:6 68:17<br><b>January</b> 75:18<br>131:6,12,14<br>139:5 151:2,3<br>156:14 196:9<br>199:15 227:8<br>228:2,3,13<br>229:4<br><b>JENNIFER</b><br>2:13<br><b>jn@nijmanfra...</b><br>2:15<br><b>job</b> 168:24<br><b>Joliet</b> 45:22<br>50:18,20 52:13<br>52:19,20 55:2<br>55:13,15,16<br>59:21 60:23<br>64:11 73:22<br>74:20,23 75:4<br>75:11,22 76:5<br>76:6,9,23<br>77:16,20 78:2<br>80:19 81:20<br>83:13,16,21<br>86:19 91:22<br>92:19 94:6<br>95:1,7 96:11<br>103:20 105:14<br>105:19 106:19<br>112:21,23<br>116:7,21 119:4<br>119:5 120:14<br>129:4 227:13<br>227:23 | <b>July</b> 8:11 26:13<br>97:9 108:23<br>127:3<br><b>June</b> 98:21,24<br>109:12 226:15<br>226:16,23<br><b>jury</b> 61:4<br><hr/> <b>K</b><br><b>K</b> 68:21 236:2<br><b>K229</b> 4:6 70:13<br>70:15<br><b>keep</b> 45:7 49:9<br>104:13<br><b>kept</b> 163:14<br><b>key</b> 218:24<br><b>kind</b> 23:11<br>29:19 127:21<br>153:9<br><b>know</b> 17:7,11<br>20:8 28:15<br>31:22 33:6,17<br>33:21,24 34:1<br>34:3,6,13,17<br>35:6,20 37:23<br>55:5 69:2<br>77:19 78:21<br>82:4,10,23<br>84:23 90:4,7<br>91:24 94:7,10<br>96:15 106:12<br>107:1,2 148:17<br>153:8 156:1,3<br>159:15,21<br>162:7,21<br>167:10 168:12<br>168:16,23<br>171:23 174:8<br>176:10,11<br>178:2,3 179:6<br>184:23 187:23<br>189:3 190:14<br>197:14 200:20<br>200:24 201:3<br>202:21 204:24<br>207:1 208:12<br>218:17 222:17 | 225:19 226:7<br><b>knowing</b> 86:11<br>188:23<br><b>knowledge</b><br>46:11,18 50:1<br>50:19 82:14<br>87:8,17 90:3<br>116:19 119:4<br>135:6 162:10<br>168:21 176:16<br>179:16,18<br>201:9 227:12<br><b>knows</b> 107:11<br>108:3,5 197:18<br>197:19<br><b>KPMG</b> 93:13<br>149:22<br><b>KPR</b> 224:10<br><b>KPRG</b> 40:1,2,4<br>98:20,23 99:2<br>109:11,21<br>110:4 113:24<br>116:6 124:9<br>127:3 132:15<br>141:19 157:2<br>163:9 167:12<br>171:19 172:15<br>189:13 192:16<br>193:12 195:4<br>215:16 217:17<br>218:12 224:10<br>228:15<br><b>KPRG's</b> 171:15<br>172:11 183:10<br>215:3<br><b>KRISTEN</b> 2:13<br><hr/> <b>L</b><br><b>L</b> 2:13 70:20<br>71:9,23<br><b>lab</b> 55:3,12,12<br>56:15,16 64:7<br>64:11,11 65:20<br>66:7 67:22<br>69:8 70:22<br>187:20<br><b>label</b> 163:3,4,10 | 165:1 178:10<br><b>labeled</b> 78:21<br>111:17,20<br>178:9 219:13<br><b>labels</b> 46:14<br>79:7,8,10<br>82:18 176:7<br><b>laboratory</b> 46:6<br>62:3 221:17,23<br><b>laborers</b> 26:23<br>27:11<br><b>lack</b> 167:1 200:9<br>200:22<br><b>laid</b> 167:22<br>194:14<br><b>Lake</b> 157:11,22<br>157:24 158:10<br>158:14,20<br>159:4<br><b>land</b> 69:7<br><b>landfill</b> 82:20<br><b>language</b> 137:12<br>142:13,14<br>143:24 144:15<br>144:17,20,21<br>155:7<br><b>large</b> 13:10,18<br>200:24 201:2<br><b>larger</b> 29:10<br>53:20 202:19<br>218:23 219:7<br>224:19<br><b>LaSalle</b> 2:13<br><b>late</b> 230:5<br><b>Lately</b> 168:15<br><b>latitude</b> 107:13<br><b>law</b> 1:3 2:3,7<br>5:12<br><b>lay</b> 194:15<br><b>layer</b> 10:14 15:1<br>15:1,3 16:11<br>16:14,17,20<br>19:3 32:3,14<br>32:21 33:5,12<br>35:18,22 36:5<br>36:6,8,9 37:4,5<br>48:1,24 50:14 |
|--|---|---|--|--|

|                          |                         |                          |                         |                         |
|--------------------------|-------------------------|--------------------------|-------------------------|-------------------------|
| 53:18,19                 | 142:11,15               | 233:4,4                  | 147:1 159:17            | 162:24 175:2            |
| 100:19 193:17            | 145:2,3 148:10          | <b>lined</b> 122:22      | 176:14 218:22           | 196:21 214:8            |
| 193:18                   | 149:18 154:13           | 193:21                   | 218:24 219:11           | 214:17 217:22           |
| <b>layers</b> 10:8,10    | 154:13,17,19            | <b>liner</b> 17:16 18:9  | 219:12                  | 218:23,23               |
| 10:13 12:5               | 156:13,17               | 18:11 19:1,9             | <b>location</b> 50:4    | 221:22                  |
| 14:2 17:3                | 171:7,8,9,10            | 20:23 21:7               | 79:17 83:5              | <b>looked</b> 132:19    |
| 35:17 37:2,11            | 191:3,12,21,23          | 22:6,20 23:17            | 106:19 110:14           | <b>looking</b> 15:14    |
| 48:1,18 49:18            | 192:2,16,18             | 24:17 26:2               | 110:19 111:6            | 28:23 35:12             |
| 197:1                    | 194:6,24 195:3          | 31:9,12 192:19           | 135:11 179:19           | 45:17 46:22             |
| <b>laying</b> 169:1      | 195:12 196:1,2          | 193:13,18,19             | <b>locations</b> 46:16  | 47:16 56:19             |
| 194:12                   | 196:7,13,14             | 193:21 194:9             | 50:5 75:3               | 59:2,5 80:1             |
| <b>layout</b> 74:24      | 199:13 218:13           | 194:12,13,14             | 83:16 90:12             | 101:17 102:23           |
| 201:3                    | 220:4 221:20            | 194:15,18                | 102:2 108:13            | 103:2,3,4               |
| <b>ldubin@elpc....</b>   | 227:5,8,12,23           | <b>liners</b> 194:10,18  | 108:21 109:11           | 116:3 122:10            |
| 2:5                      | <b>letterhead</b> 75:19 | <b>lines</b> 77:12 84:2  | 125:13,14               | 131:12 133:1            |
| <b>leach</b> 220:9,13    | <b>letters</b> 112:20   | 84:2,4,8,8,11            | 159:22 181:19           | 139:12 155:11           |
| <b>leading</b> 32:16,24  | 227:13,17               | 84:11,13,24              | <b>log</b> 46:23 47:14  | 165:15 166:14           |
| 34:8 36:15               | <b>letting</b> 28:15    | 85:15,20 86:4            | 47:24 48:16             | 177:13 180:8            |
| 37:8,17                  | <b>level</b> 133:2      | 135:17 157:5,5           | 49:1,3 53:6,13          | 187:9 211:22            |
| <b>leaning</b> 174:9     | 135:10,10,23            | 157:8 221:24             | 100:9,16                | 218:5                   |
| <b>learned</b> 153:20    | 157:17 174:16           | <b>list</b> 7:7 10:24    | 109:18,18               | <b>looks</b> 162:20     |
| <b>left</b> 29:15 88:1   | 198:5,7 213:21          | 11:14 76:20              | 110:8,11,13,14          | 183:19 197:20           |
| 136:10 160:13            | <b>levels</b> 85:1      | <b>listed</b> 11:7 21:23 | 111:4 196:18            | <b>lot</b> 124:21 125:6 |
| <b>left-hand</b> 137:2   | 132:13,24               | 122:7,11                 | 196:22 197:11           | 231:12                  |
| 137:11                   | 134:20 157:19           | 167:19 191:23            | 198:8                   | <b>low</b> 74:13 84:15  |
| <b>legal</b> 90:10,10    | 157:20 158:21           | 197:10                   | <b>logged</b> 197:7     | <b>lunch</b> 127:21     |
| 206:17 225:21            | 161:13                  | <b>listen</b> 39:5       | <b>logs</b> 51:4,7 53:9 | 128:1,7,19              |
| <b>legend</b> 97:7       | <b>License</b> 236:12   | <b>literally</b> 200:10  | 98:22,23 110:4          | 129:3                   |
| 98:16                    | <b>lift</b> 26:18 27:6  | <b>litigation</b> 206:18 | 132:20 197:8            | <b>Lux</b> 23:24 24:3   |
| <b>legible</b> 6:7       | 36:24 37:4,5            | 207:22                   | 197:19,20               | 24:5                    |
| <b>legitimate</b> 208:2  | 37:11                   | <b>little</b> 7:22 17:1  | 198:10,13               | <b>Lynn</b> 141:19      |
| <b>let's</b> 26:13 30:15 | <b>lifts</b> 36:2       | 31:21 35:16              | <b>long</b> 41:13 44:10 | 142:7 154:14            |
| 38:8 49:22               | <b>lighter</b> 136:13   | 37:13 39:5               | 63:5 124:24             | 154:18 201:24           |
| 72:4 73:14               | <b>limiting</b> 225:7   | 43:15 50:12              | 221:11 226:9            |                         |
| 99:4 113:7               | <b>Lindsay</b> 2:3 7:6  | 58:14 79:14              | <b>longer</b> 98:3      | <b>M</b>                |
| 128:1 129:8              | 18:16                   | 107:13 111:18            | 185:22                  | <b>M</b> 91:20 93:16    |
| 155:6 162:24             | <b>line</b> 11:13 16:3  | 122:21 132:24            | <b>look</b> 9:7,9 10:23 | <b>Maddox</b> 3:3       |
| 176:18 201:8             | 28:22,24 48:20          | 133:5 138:2              | 11:12 14:10,23          | 5:21 6:22 7:24          |
| 224:9 233:21             | 49:14 50:10             | 145:19 191:7             | 15:11 17:19             | 8:14 10:2               |
| 234:20                   | 53:16 84:15             | 207:4 222:15             | 18:12 20:10             | 27:20 38:8              |
| <b>letter</b> 8:8 14:11  | 99:7,12,15              | 223:17 231:9             | 21:22 28:20             | <b>main</b> 23:11 77:2  |
| 45:5,14 52:3             | 111:23 116:14           | <b>LLC</b> 1:7 5:15      | 29:12 35:23             | <b>maintain</b> 107:18  |
| 114:22 115:4             | 116:24 119:4            | <b>locate</b> 79:23      | 56:17 63:23             | 189:15                  |
| 121:9 127:3              | 137:22 138:1,4          | 80:4                     | 79:23 87:1              | <b>maintenance</b>      |
| 131:5 136:10             | 139:24 142:18           | <b>located</b> 15:13     | 95:3 111:16             | 27:14                   |
| 139:4 141:18             | 196:21 218:5            | 111:22 134:24            | 121:24 141:15           | <b>making</b> 142:16    |
| 141:23 142:6,7           | 220:6 222:4             | 143:2 146:22             | 142:17 148:14           | 143:15 175:24           |

|                      |                        |                         |                        |                        |
|----------------------|------------------------|-------------------------|------------------------|------------------------|
| <b>man</b> 93:20     | 160:2,3,12,14          | 106:10,14               | <b>mentioned</b>       | 75:21 80:1             |
| <b>management</b>    | 160:21,24              | 111:1,4,5,7             | 20:18 22:4             | 91:7,14 94:24          |
| 21:13,13 75:10       | 161:8 164:2,15         | 116:10 198:11           | 24:4 80:2              | 95:7 96:15             |
| 75:21 77:2           | 164:18 165:2           | 218:2                   | 133:12 232:23          | 105:18 107:7           |
| 81:17 83:2           | 173:9,20,21,24         | <b>materials</b> 106:6  | 233:16                 | 107:23 117:4           |
| 87:12,23 88:9        | 174:2,12 175:6         | 201:20                  | <b>mentions</b> 151:12 | 119:22 120:24          |
| 88:18 89:19,24       | 175:9,10,13,22         | <b>matter</b> 5:11 6:14 | <b>metal</b> 151:9     | 130:20 131:5           |
| 138:22 139:7         | 175:24 176:8           | 6:22 41:24              | <b>metals</b> 150:19   | 139:4 141:20           |
| 139:13,15,19         | 177:5,16 178:5         | 42:18 57:5              | 151:1,17               | 145:9 150:15           |
| 144:7 162:8          | 178:10 180:10          | 86:1 130:8              | <b>method</b> 61:24    | 151:3 156:13           |
| 199:7,16,22          | 180:13,18              | 205:17 206:6            | 220:6,9,11             | 156:15 162:24          |
| 200:3 201:5          | 199:21 200:1           | 206:19                  | <b>methods</b> 221:23  | 165:10 168:8           |
| 203:24 204:18        | 205:22 210:23          | <b>matters</b> 5:24     | <b>Michigan</b>        | 175:3 182:20           |
| 204:21,24            | 210:24 211:3           | 7:23                    | 157:12,22,24           | 186:14 191:9           |
| 205:8 206:11         | 211:12,15              | <b>mean</b> 11:16       | 158:10,14,21           | 192:3,17,21,22         |
| 227:2,23             | 212:1,4,12,20          | 19:15 20:3              | 159:4                  | 192:24 193:1,2         |
| <b>manager</b> 171:5 | 218:23 219:7,9         | 22:9 32:5               | <b>mid</b> 230:5       | 193:12 196:7           |
| <b>Manganese</b>     | 219:10                 | 33:10 41:24             | <b>middle</b> 5:1 8:3  | 196:11,15              |
| 136:13               | <b>mapped</b> 133:23   | 46:1 75:13,23           | 28:22 47:1             | 199:13 200:14          |
| <b>map</b> 6:6 15:13 | <b>maps</b> 52:13 74:3 | 84:3 116:13             | 81:12 192:1            | 201:12 203:3,8         |
| 15:22 29:9,11        | 74:5,10 79:19          | 122:23 133:16           | 200:5                  | 203:12,22              |
| 35:12,16 36:5        | 113:12 133:11          | 153:1,2 159:1           | <b>Midland</b> 221:8   | 204:4,8,16             |
| 37:2 46:10,13        | 157:21 159:21          | 167:12 224:2            | 221:14                 | 205:5,11 206:4         |
| 49:24 50:3,18        | 162:14 174:6           | <b>means</b> 37:23      | <b>midwest</b> 1:7     | 206:8,20,24            |
| 50:22 51:3           | 174:15                 | 87:11 205:1             | 5:14 6:2,15 8:9        | 207:11 208:11          |
| 52:13,18 74:7        | <b>marginal</b> 61:24  | <b>meant</b> 19:18      | 11:1,2,9,12,24         | 209:15 214:16          |
| 74:10,20 76:23       | <b>Maria</b> 52:4      | 20:8 26:7               | 12:8 13:3,9            | 216:3 217:9,18         |
| 77:1,5 78:8,18       | 192:17                 | <b>measure</b> 211:17   | 15:20 17:19            | 217:21 218:14          |
| 78:19,21 79:6        | <b>Mark</b> 171:4      | <b>measured</b> 61:16   | 18:13,20 19:4          | 218:18,19              |
| 79:7,9,9,23          | <b>marked</b> 94:4     | 61:18                   | 20:12,18 21:10         | 221:17 223:17          |
| 80:3,5,22            | 103:16 115:18          | <b>measurement</b>      | 21:19,23 22:15         | 224:11,18,22           |
| 82:20 83:6,10        | 120:10 130:19          | 84:5,6 157:11           | 23:7,16 24:16          | 225:8,12,21            |
| 83:21 84:15,16       | 138:20 162:12          | 212:5                   | 24:21,23 25:2          | 226:1,15 229:3         |
| 85:4 86:17           | 166:12 169:16          | <b>measurements</b>     | 25:9,14,23             | 229:22 230:2,4         |
| 88:2 97:1 98:5       | 182:14 190:3           | 157:16                  | 26:10 28:8             | 230:14,22              |
| 98:16,19,20          | 190:23 199:5           | <b>measures</b> 184:7   | 29:8 33:15             | <b>Midwest's</b> 154:6 |
| 102:1 108:9,9        | 221:7                  | <b>medium</b> 47:3      | 35:10 36:1,20          | <b>migration</b> 13:23 |
| 108:11,19            | <b>markers</b> 79:22   | 48:3,22 49:7            | 40:21,24 41:6          | <b>mind</b> 10:23      |
| 109:9,24 111:9       | <b>marking</b> 73:5    | 49:15 50:11             | 41:8,14,15,23          | 14:14,23 15:14         |
| 111:16,17,23         | <b>MARZULLO</b>        | <b>meet</b> 13:22       | 42:11,20 43:8          | 17:18 18:12            |
| 131:23 132:1,5       | 236:4,11               | 23:13 26:19             | 43:14,16,21            | 21:18 22:14            |
| 133:9 135:22         | <b>material</b> 10:16  | 27:7                    | 44:24 55:19            | 26:11 28:7,15          |
| 137:2 139:16         | 13:22 14:3             | <b>meetings</b> 201:18  | 56:9,11 57:21          | 28:23 29:7             |
| 145:13 151:6,9       | 18:10 28:24            | <b>memo</b> 35:22       | 59:6,24 61:1           | 88:20                  |
| 156:23 157:1,5       | 29:2 34:6,13           | 221:8                   | 62:11,12 72:18         | <b>minus</b> 211:24    |
| 158:20,22            | 34:17 47:8,9           | <b>memory</b> 94:12     | 73:2 74:4,6,8          | 212:9                  |
| 159:6,11,14          | 99:22,23 102:5         | 222:20                  | 74:11 75:11,19         | <b>minute</b> 7:2,4    |

|  |   |  |  |   |
|--|---|--|--|---|
| 155:10 216:6<br>216:13<br><b>minutes</b> 127:21<br><b>miscellaneous</b><br>22:20<br><b>mischaracteri...</b><br>90:17 114:1<br>123:18 232:7<br><b>mischaracteri...</b><br>124:2 143:19<br>144:18 203:11<br>230:7,13<br><b>miscommunic...</b><br>113:19<br><b>misreading</b><br>140:20<br><b>missed</b> 179:20<br>198:1<br><b>missing</b> 26:6<br>63:11 113:16<br><b>misspeak</b> 159:23<br>228:18<br><b>misspoke</b> 56:4<br>93:6 100:11<br>121:2 193:19<br>234:9<br><b>misspoken</b><br>164:6<br><b>misstated</b><br>129:14<br><b>misstatement</b><br>151:21<br><b>misstates</b> 24:18<br>43:9 89:6<br>90:16 233:18<br><b>mistrust</b> 195:8<br><b>mix</b> 99:14 100:2<br><b>mixed</b> 27:22<br><b>mixture</b> 48:14<br><b>modeling</b> 43:21<br>43:24 44:2,4,8<br>44:9,24<br><b>modified</b> 26:19<br>27:7,19 142:12<br>216:3<br><b>Mohawk</b> 2:8<br><b>moist</b> 48:14,23 | 49:8,16 50:12<br>100:8 196:23<br>197:12<br><b>moment</b> 148:14<br>161:21 174:12<br>180:22 190:24<br>207:6 210:10<br>228:7 233:9<br><b>monitor</b> 196:19<br><b>monitoring</b><br>55:13 56:6<br>63:19 64:18<br>65:21 66:7<br>71:2,14 77:10<br>83:5,12,15<br>85:2 87:18<br>90:12,14 91:4<br>91:8,12,22<br>92:18 134:13<br>136:8,9 138:8<br>140:1 142:5,10<br>142:19 143:7,9<br>145:12 146:21<br>147:1 149:1,5<br>149:8,10,14<br>151:12,18<br>153:3 159:6,9<br>159:13,14,17<br>160:4,23 161:3<br>161:6 163:6<br>164:22 165:4<br>170:7,10,12,15<br>170:21 172:22<br>172:24 178:12<br>178:14,17,23<br>180:15 181:1<br>182:15 183:3<br>184:1,2,4<br>187:4,16,19<br>211:6,8,9<br>212:17,17<br>214:5 228:16<br>228:17 229:10<br>230:24 231:7<br><b>month</b> 94:11<br><b>months</b> 168:13<br><b>morning</b> 5:7 6:5 | 152:16 184:5<br>186:18 210:5<br><b>motion</b> 43:1<br>72:23 74:15<br>119:16 189:15<br>216:17<br><b>move</b> 6:8 22:11<br>48:5 51:9<br>52:21 54:8<br>60:11 61:10<br>65:1 66:15<br>68:4 70:9 71:8<br>73:1 92:2<br>93:15,16<br>102:12 112:2<br>119:8,16,17,21<br>121:13 126:7<br>138:12 141:1<br>147:20 150:4<br>151:24 161:14<br>165:7,9 173:23<br>176:23 181:23<br>186:13 195:15<br>198:18 210:16<br>212:22 215:24<br>220:18 222:22<br><b>moved</b> 6:1 39:1<br>185:8 188:4<br><b>moves</b> 38:16<br>117:3<br><b>moving</b> 117:7<br>139:23 165:17<br><b>muddering</b> 53:7<br>53:14<br><b>multiple</b> 48:17<br>50:4 183:12<br><b>MW-1</b> 83:8,11<br>142:18<br><b>MW-10</b> 142:19<br>185:22<br><b>MW-11</b> 83:11<br>185:21<br><b>MW-6</b> 163:8<br><b>MW-7</b> 136:9<br>163:8<br><b>MW-9</b> 87:1<br>142:18 | <b>MW1</b> 83:24<br><b>MW12</b> 134:14<br><b>MW14</b> 134:14<br><b>MW15</b> 134:14<br><b>MW17</b> 65:9<br><b>MW6</b> 134:14<br><b>MW8</b> 134:14<br><b>MWG13-15</b><br>102:20<br><b>MWG131524...</b><br>46:8<br><b>MWG510</b> 34:2<br><hr/> <b>N</b><br><hr/> <b>N</b> 3:1 112:18<br><b>Nagle</b> 171:5<br><b>name</b> 5:8 11:7<br>38:20 39:21,22<br>56:2,3 76:19<br>183:10 195:11<br><b>Nancy</b> 117:17<br>121:18 126:11<br>128:23<br><b>near</b> 90:14<br><b>nearby</b> 85:14<br>135:19 157:10<br>157:19 211:16<br><b>necessarily</b> 46:3<br>122:23 125:13<br>187:6 231:16<br><b>necessary</b> 26:20<br>27:8 187:15<br><b>need</b> 39:8 67:10<br>146:5 175:17<br>176:2 181:11<br>191:12 210:4,8<br><b>needed</b> 85:14<br><b>needs</b> 225:2<br><b>network</b> 1:4<br>5:13 151:20<br><b>neutral</b> 220:13<br><b>never</b> 17:10<br>55:20 133:23<br>134:5,6 162:18<br>180:5 194:14<br><b>new</b> 23:12 60:1<br>60:18 68:10 | 102:17 127:24<br>143:7,9 224:11<br><b>Nijman</b> 2:12,13<br>3:4 5:3,23 6:1<br>6:12 7:6 8:7,15<br>8:24 9:13,19<br>13:12 14:18<br>18:16,19,22<br>19:17,19 20:5<br>23:18 24:9,18<br>28:11 30:14,15<br>30:18,19,21,23<br>32:10,17,19<br>33:7 34:9,11<br>34:12 35:5<br>36:17,18 37:12<br>37:20,22 38:3<br>67:8 148:13<br>175:14 206:3<br>207:6,8 208:14<br>209:23 210:8<br>214:10 228:6<br><b>Ninth</b> 1:13<br><b>NLET</b> 220:6<br><b>non-attorneys</b><br>206:23 207:4<br>208:4<br><b>nonresponsive</b><br>48:5<br><b>north</b> 10:11,12<br>11:17 17:6,8<br>29:23 30:1,10<br>122:7 177:19<br>178:7 179:2<br>219:14<br><b>north-south</b><br>81:6<br><b>north/northw...</b><br>133:10<br><b>northeast</b> 82:8<br>82:20 90:22<br>116:1,17<br>133:10 138:1<br>139:23 177:20<br>178:8<br><b>northeast-sout...</b><br>84:10 |
|--|---|--|--|---|



|                         |                         |                |                         |                |
|-------------------------|-------------------------|----------------|-------------------------|----------------|
| <b>northern</b> 111:23  | 114:12 120:23           | 44:19 51:13    | 206:12 208:8            | 20:6,13,17     |
| <b>northwest</b> 79:1   | 130:20 139:11           | 52:23 54:10,13 | 213:1 216:8,18          | 23:20 24:11    |
| 79:5,13 80:3            | 140:18 149:18           | 55:20 56:21    | 220:20 222:24           | 25:16,19 27:3  |
| 81:3,13 91:11           | 170:23 173:8            | 59:18 61:5,6   | 224:1 227:15            | 30:13,16,19    |
| 96:1,3                  | 191:1 222:20            | 62:16 63:9,22  | 229:18 230:7            | 32:7,17 33:2   |
| <b>Nos</b> 54:24 61:7   | <b>numbers</b> 87:4,9   | 64:13 65:5     | 231:24 232:17           | 34:9,22 35:2   |
| 66:21 68:5,16           | 87:17 88:7              | 66:18 68:13    | 233:18                  | 36:16 37:9,18  |
| 70:15 72:1              | 113:20 141:11           | 70:11 72:22    | <b>objections</b> 7:14  | 38:5,7,11,18   |
| 150:10 186:14           | 152:18 165:10           | 76:1 78:3,9    | <b>obscured</b> 151:6   | 38:22,24 39:1  |
| <b>note</b> 12:10 18:14 | <b>numerous</b> 23:9    | 79:11 81:21    | <b>observation</b>      | 39:4,10,13     |
| 26:13 31:19,24          | <b>NWG13-15</b>         | 85:16 87:11    | 175:8                   | 41:21 42:2,19  |
| 33:8,9,12,22            | 127:6                   | 88:9,23 89:6   | <b>observations</b>     | 43:11 44:17,20 |
| 62:16 68:22             | <b>NWG510</b> 33:15     | 90:4,16 92:5   | 172:13,14,16            | 45:7 48:7 49:9 |
| 71:21 128:17            |                         | 93:18 96:7,17  | 172:18 193:14           | 51:12,14,21    |
| 174:23                  | <b>O</b>                | 97:13 98:13    | 194:21,22,24            | 52:5,24 53:24  |
| <b>noted</b> 63:23 65:5 | <b>O</b> 148:6,10       | 101:10 103:11  | 197:10                  | 54:3,6,11,14   |
| 68:13 115:14            | 149:13,14,18            | 104:3,5 107:9  | <b>obtain</b> 85:10     | 55:22 56:24    |
| 125:11 146:4            | 149:20 150:5,8          | 107:16,18      | 95:14 135:18            | 57:11,16 58:22 |
| 189:17 222:5            | 236:2,2                 | 108:2 110:16   | 157:9,14                | 59:19 61:3     |
| 222:10                  | <b>o'clock</b> 1:12     | 112:4 114:23   | 211:15 212:10           | 62:15 63:4,7   |
| <b>notes</b> 9:7,10,10  | 72:5 182:9              | 117:12,18      | <b>obtained</b> 158:14  | 63:14,22 64:14 |
| 18:4 19:10,14           | 210:5                   | 119:10 120:1   | <b>obtaining</b>        | 65:4,11 66:17  |
| 97:7 114:15,18          | <b>Oakland</b> 2:19     | 121:16 123:13  | 158:21                  | 66:19 67:5,10  |
| 114:19,20,21            | <b>object</b> 44:12,17  | 123:16 124:1   | <b>obviously</b>        | 67:14,17 68:12 |
| 115:3,8,11,12           | 57:3 58:19              | 125:19 126:9   | 118:23 211:24           | 70:12 71:11,20 |
| 118:8 119:11            | 60:14 62:24             | 128:24 130:1   | <b>occur</b> 111:13     | 72:4,8,19,21   |
| 236:8                   | 63:17 65:7              | 134:4 135:1    | <b>October</b> 1:11     | 73:4,7,10,14   |
| <b>noteworthy</b>       | 68:8 71:12              | 136:18,21      | 5:18 21:4,7             | 73:24 74:12,17 |
| 172:16                  | 74:9 75:23              | 138:14 141:3   | 45:14 234:24            | 76:1,3,8,11    |
| <b>notice</b> 1:13 8:10 | 102:15 113:14           | 143:19 144:1   | 235:1                   | 78:4,11 79:15  |
| 13:1,2 21:3             | 123:17,17               | 144:18 145:5   | <b>offer</b> 51:22      | 80:8,15,20     |
| 22:16 77:22             | 127:12 140:17           | 146:4 147:23   | 103:11 153:2            | 81:23 85:18    |
| 124:16 226:14           | 152:2 153:6             | 152:13 154:6   | 169:5,8,11,22           | 86:2 87:15     |
| 230:16                  | 173:18,20,21            | 155:18 158:2,9 | 173:5                   | 88:11,24 89:9  |
| <b>notices</b> 132:18   | 175:14 183:8            | 159:20 161:9   | <b>offered</b> 64:1,3   | 90:18 92:4,6   |
| 204:1 205:19            | 183:15 209:6            | 161:16 165:22  | <b>offering</b> 169:19  | 93:19 96:8,18  |
| 206:15 207:21           | 229:5                   | 167:1,21       | 173:11                  | 97:15 101:12   |
| 225:9,13                | <b>objected</b> 7:1     | 168:24 171:16  | <b>offhand</b> 106:17   | 102:14,22      |
| 226:18 229:17           | 173:15                  | 171:21 174:21  | 114:17 157:13           | 103:1,10 104:4 |
| 230:5                   | <b>objecting</b> 19:20  | 174:23 180:3   | 201:2 212:14            | 104:7 105:6,9  |
| <b>NRT</b> 14:11        | <b>objection</b> 6:2,10 | 182:3 188:11   | <b>officer</b> 1:14 2:2 | 107:10,12,20   |
| 17:22 22:9              | 9:11 13:12              | 195:17 197:3   | 5:1,4,6,9 6:9           | 108:4 112:5,9  |
| <b>NSRP</b> 173:17      | 19:17,19 20:5           | 197:15,17      | 6:15,19 7:3,11          | 112:13 113:22  |
| <b>number</b> 15:16     | 23:18 24:9,18           | 198:21 200:9   | 7:16,19,21              | 114:5 115:1    |
| 15:22 25:17,21          | 32:6,16,24              | 200:22 202:12  | 8:19,22 9:6,9           | 117:9,13       |
| 35:24 72:18             | 34:8,19 36:15           | 203:11 204:11  | 9:18 13:4,7,15          | 119:14,20,24   |
| 76:17 109:5             | 37:8,17 43:9            | 204:20,23      | 15:18 19:21             | 120:2,5,23     |

|                |                       |                |                         |                        |
|----------------|-----------------------|----------------|-------------------------|------------------------|
| 121:3,15,17    | 208:7 209:4,8         | 108:16,24      | 226:11 227:18           | 65:12 68:14            |
| 123:15,20      | 209:12,17             | 109:9 110:3,10 | 228:15 234:4            | 71:22 74:13            |
| 126:10,21      | 210:3,11,14,17        | 111:9,11 113:9 | <b>once</b> 19:3,11     | 78:11 79:15            |
| 127:7,11,16,19 | 210:20 212:24         | 114:4,5,9      | 82:16 162:6             | 86:2 104:7             |
| 128:1,5,11,14  | 213:2 214:12          | 116:3,23 117:2 | 174:1 212:16            | 108:4 134:9            |
| 128:22 131:11  | 216:4,6,9,13          | 117:10,13      | 224:23                  | 144:4 158:17           |
| 131:15 134:9   | 216:15,19             | 118:10 119:7   | <b>ones</b> 63:9 134:13 | 174:22 176:4           |
| 135:4 136:20   | 217:3,5 220:21        | 119:15 120:12  | 134:21 159:19           | 202:14 203:16          |
| 136:23 137:4,8 | 223:1,13 224:3        | 120:16 121:1   | <b>operation</b> 28:5   | 209:18                 |
| 138:15 140:6   | 225:10 226:7          | 121:11 123:3   | 74:6                    | <b>oversized</b> 6:6   |
| 141:4 143:21   | 228:8,10 229:7        | 124:14 127:16  | <b>operational</b>      | <b>owned</b> 200:15    |
| 144:4,23       | 229:24 230:12         | 129:10 130:8   | 116:15                  | <b>owner</b> 40:6      |
| 145:16 146:3,9 | 230:17 232:6,9        | 130:24 131:8   | <b>opinion</b> 85:24    |                        |
| 146:12,15,19   | 232:18,21             | 131:15,22      | 145:6                   | <b>P</b>               |
| 147:22,24      | 233:11,13,23          | 133:21 134:22  | <b>opinions</b> 171:18  | <b>P</b> 1:14 2:2 4:14 |
| 148:8,12,15    | 234:4,20,23           | 135:12 136:2   | 171:21 172:2,5          | 169:16 181:24          |
| 150:7 153:8,12 | <b>oh</b> 7:8 15:13   | 136:11,16      | 172:11                  | 182:4                  |
| 153:14,16      | 18:18 29:17           | 137:4,9 139:8  | <b>opposed</b> 85:21    | <b>package</b> 152:10  |
| 154:2,5,23     | <b>okay</b> 9:8 11:23 | 140:4,12       | <b>opposing</b> 7:1 8:9 | 153:22 186:4           |
| 155:9,13,23    | 13:7 26:5 31:2        | 141:16 142:16  | <b>options</b> 21:14    | 203:19                 |
| 158:3,17       | 31:16,24 33:11        | 146:19 147:6   | <b>order</b> 22:12      | <b>page</b> 3:2 11:24  |
| 161:10,17,23   | 33:16 39:24           | 147:13,24      | 185:23 192:4            | 12:8 14:15,18          |
| 162:3 165:12   | 40:4,8,13,20          | 148:19 155:5   | <b>organic</b> 196:23   | 15:14,15 18:13         |
| 165:17,21      | 41:9,13,18            | 156:9,21       | 197:12                  | 18:17 20:12            |
| 166:1,4 167:3  | 44:20 45:3,17         | 159:17 160:1   | <b>organized</b> 227:4  | 21:20 25:14,24         |
| 167:24 168:11  | 46:20 47:1,21         | 164:2,5,17,24  | <b>orient</b> 175:23    | 26:11 28:9,14          |
| 169:4,9,13     | 49:23 50:3,9          | 165:6,12 166:4 | 177:5                   | 28:21 34:2             |
| 172:3,6 174:5  | 50:15,17,24           | 169:12,24      | <b>oriented</b> 176:1   | 35:10 45:17            |
| 174:21 176:3   | 51:2,6 52:17          | 170:19 171:3   | <b>orienting</b> 178:4  | 46:7,8 52:16           |
| 176:19 177:7   | 53:11 55:9,18         | 172:15,21      | <b>original</b> 103:7   | 53:11 76:17,18         |
| 177:10 179:12  | 56:8,14,19            | 173:3,13 178:6 | 113:13                  | 76:22 81:1             |
| 181:5,7,11,14  | 58:13 59:14           | 180:8,21 181:2 | <b>originally</b>       | 83:4,18,19             |
| 182:2,6,9      | 66:12 68:1            | 181:6,14 183:2 | 205:18                  | 86:15,16 94:22         |
| 183:17,23      | 69:3 70:3             | 186:12 188:7   | <b>outlet</b> 30:5      | 94:23 96:22            |
| 185:4,10       | 71:20 73:14           | 188:16 189:16  | <b>outline</b> 29:14    | 98:2 105:18            |
| 186:19,23      | 75:6 76:3,22          | 192:21 193:7,9 | <b>outlines</b> 29:14   | 108:8 109:5,6          |
| 187:23 188:3,7 | 78:1 81:2,7,11        | 193:16 194:3   | 176:11                  | 109:15 110:10          |
| 188:11,16,20   | 82:13 83:18           | 195:2 196:12   | <b>outside</b> 34:17    | 115:5,10 121:5         |
| 189:16 190:1   | 84:23 85:13           | 197:14 199:20  | 79:17 116:7,12          | 122:3,6 126:2          |
| 190:19 192:5,7 | 86:8,23 87:3          | 200:20 201:4   | 134:7                   | 127:6 131:20           |
| 192:9 195:18   | 90:11 91:10,17        | 204:13 209:5,8 | <b>overall</b> 53:19    | 131:20 132:5           |
| 197:4,16,21    | 91:17 92:13           | 209:11,21      | <b>overrule</b> 61:5    | 132:21 134:13          |
| 198:20,22      | 93:12 94:21           | 210:6,17 211:5 | 185:6                   | 134:22 136:1           |
| 200:11 202:14  | 95:5 97:1,4,10        | 212:15 214:7   | <b>overruled</b> 13:16  | 140:4,13               |
| 203:15 204:12  | 99:24 102:9           | 219:12 220:3   | 32:8 33:2 43:2          | 141:13 151:5,7         |
| 204:22 205:3   | 104:12,16,22          | 220:16 221:19  | 48:7 57:11              | 155:7 156:20           |
| 206:3 207:1    | 105:3 107:4,20        | 223:23 225:16  | 59:19 63:23             | 159:24 160:9           |

|   |   |   |   |  |
|---|---|---|---|--|
| 160:20 165:13<br>170:23 172:5<br>177:14,23<br>178:11,21<br>181:3 185:16<br>185:21 186:17<br>196:15 201:8<br>210:19 211:5<br>211:10 212:15<br>213:20 214:13<br>219:5,17 220:4<br>221:22<br><b>pages</b> 15:21<br>21:20,21 35:11<br>46:10 102:20<br>114:11,12<br>115:18 117:6,7<br>128:20 140:12<br>162:17,22<br>163:2 168:3,18<br>184:14 185:18<br>186:20 188:21<br>189:2,4,10,12<br>192:1,2,23<br>214:22<br><b>PAMELA</b> 236:4<br>236:11<br><b>paragraph</b><br>13:10,18,20<br>26:12,18 95:3<br>116:4,5 124:5<br>124:6,17 220:5<br>221:23<br><b>parameter</b><br>214:23 215:4<br><b>parameters</b><br>86:24 136:7<br>160:7 212:20<br><b>paraphrase</b><br>142:8 146:2<br>218:10<br><b>paraphrased</b><br>142:11<br><b>paraphrasing</b><br>144:2,20<br>155:19<br><b>parcel</b> 232:19 | <b>parsing</b> 90:8<br>231:10<br><b>part</b> 40:6 44:6<br>53:22 56:9<br>61:13 65:19<br>66:1,4,8 70:2<br>71:15 74:10<br>75:2 79:1,6<br>82:4,12 85:4<br>88:5 111:17,23<br>114:21 115:3<br>116:16,20,21<br>117:7 119:11<br>134:3 135:14<br>137:12 143:10<br>151:20 152:11<br>160:18 162:18<br>164:18 176:15<br>185:23 200:17<br>202:16 203:2,5<br>205:14 213:16<br>215:8 225:4<br>232:18<br><b>particular</b> 87:22<br>102:3 111:8<br>205:22 212:6<br><b>parties</b> 214:6<br><b>parts</b> 222:14<br><b>patients</b> 193:8<br><b>Patrick</b> 163:5<br>197:7,18<br>213:22,23<br>214:21 215:6<br>215:14,21<br>229:9 230:24<br>231:6,10<br>232:24<br><b>pattern</b> 99:8<br>168:19<br><b>Pause</b> 148:16<br>207:7 216:14<br><b>PCB</b> 1:6 5:16<br><b>penalized</b> 62:13<br><b>people</b> 42:8<br>194:13,14<br><b>percent</b> 22:6<br>26:20 27:8,19 | 30:4,4<br><b>performed</b> 17:8<br>17:22 18:8<br>108:21,22<br>109:12 224:15<br>224:18<br><b>Permeability</b><br>221:24<br><b>permit</b> 151:17<br><b>perpendicular</b><br>84:13<br><b>persaunt</b> 60:20<br><b>person</b> 194:8<br>197:7,8,11<br>198:12<br><b>personnel</b> 21:14<br><b>phase</b> 73:24<br>175:11<br><b>photo</b> 163:23<br>164:1,3,9,12<br>212:16<br><b>photograph</b><br>80:24 136:5<br>160:5 212:19<br><b>photos</b> 79:20<br><b>phrase</b> 137:5,6<br><b>physical</b> 157:11<br>157:16<br><b>physically</b><br>211:17<br><b>picture</b> 61:21<br>175:18<br><b>pictures</b> 121:5,6<br>121:8 126:4<br><b>pieces</b> 205:24<br><b>pile</b> 81:4,9,14<br>91:11 96:4<br>177:21<br><b>piles</b> 106:11<br><b>pitch</b> 133:24<br><b>place</b> 75:8 91:8<br>91:15 127:23<br>138:19 141:9<br>156:5 162:11<br>167:23 191:8<br>213:12 217:8<br>221:6 | <b>placed</b> 82:21<br>95:10 96:11<br>105:21 126:19<br><b>placement</b> 78:7<br>81:19 90:15,21<br>105:23 115:21<br>115:24<br><b>placing</b> 19:3<br>45:3 53:5<br>54:18 62:21<br>65:18 67:2<br>68:20 70:20<br>72:13 91:19<br>94:3 103:15<br>112:18 126:17<br>130:18 148:5<br>150:14 154:12<br>166:9,11<br>169:15 182:13<br>190:2,22<br>195:24 199:4<br>213:7 221:2<br><b>Plaines</b> 85:8,9<br>116:10<br><b>Plaintiff</b> 72:14<br>75:8 92:20<br>169:16 176:18<br><b>Plaintiff's</b> 20:11<br>45:4 51:10<br>79:24 91:21<br>150:15 173:5<br>189:17<br><b>plaintiffs</b> 6:23<br>62:20 94:3<br>150:4<br><b>plan</b> 82:5<br><b>planning</b> 127:20<br><b>plant</b> 11:20 51:4<br>218:1 219:1<br><b>please</b> 7:24 11:1<br>14:9,14 21:18<br>21:19 23:21<br>34:10 38:19<br>39:20 45:12<br>46:7 49:10<br>50:15 52:9,15<br>54:3,4 55:23 | 57:1 58:23<br>63:7 76:8 83:4<br>83:18 84:3<br>86:15 87:1<br>94:22 96:22<br>105:16 107:21<br>108:8 109:13<br>109:15 113:3<br>113:23 114:7<br>117:23 120:10<br>121:22 123:4<br>123:20 124:14<br>126:16 131:20<br>136:1,9 137:18<br>139:11 140:4<br>146:16 148:9<br>148:23 156:12<br>156:20 159:24<br>170:4,23<br>172:19 177:11<br>192:21 193:7,8<br>199:11,18<br>210:19 214:16<br>216:7 219:2,9<br>225:10 226:5<br><b>pleased</b> 218:12<br><b>plot</b> 86:21<br>212:19<br><b>plus</b> 68:23<br>211:24 212:9<br><b>poind</b> 177:17<br><b>point</b> 14:24<br>17:12 31:19<br>78:17 80:10<br>116:4 135:13<br>153:10,17<br>172:20 173:4<br>175:15 181:16<br>187:9 193:21<br>224:21<br><b>pointing</b> 79:17<br>180:12<br><b>points</b> 14:16,17<br>14:21,22 45:18<br>45:23 58:18<br>86:6<br><b>Policy</b> 1:3 2:3 |
|---|---|---|---|--|

|                          |                         |                          |                         |                         |
|--------------------------|-------------------------|--------------------------|-------------------------|-------------------------|
| 5:12                     | <b>posted</b> 84:5      | 93:12 152:23             | 206:5,14,21             | 60:4 97:24              |
| <b>Pollution</b> 1:1 5:9 | 157:23                  | 171:9,10                 | 207:9,14,17,23          | 225:1                   |
| <b>pond</b> 11:3,17      | <b>potential</b> 56:17  | 173:17                   | 208:2,3,20,23           | <b>project</b> 17:22,23 |
| 12:1,6,9,11,16           | 101:18 218:3            | <b>preparing</b> 18:10   | 209:2 210:1             | 21:13 40:16,19          |
| 12:18 13:11,19           | <b>pound</b> 30:1       | 97:12 157:4              | 229:19                  | 43:17,18 44:3           |
| 14:12 15:8               | 178:22                  | 171:8 211:14             | <b>privileged</b> 56:23 | 95:4 105:17             |
| 16:1,9 17:2,16           | <b>powder</b> 99:10     | <b>present</b> 18:5      | 57:9,14,17              | <b>projects</b> 224:14  |
| 18:1 19:4,16             | 100:5,18 102:3          | 65:20 78:2               | 225:24                  | 224:14,15,16            |
| 22:20,23,24              | <b>power</b> 51:3       | 128:8 132:23             | <b>privy</b> 201:15,22  | 224:20                  |
| 23:3,8 24:7              | 131:24                  | 133:18 164:18            | <b>proactive</b>        | <b>proof</b> 103:12     |
| 26:14,15,23,24           | <b>Powerton</b> 45:22   | 165:1 207:16             | 224:23                  | 169:8,11                |
| 27:11,12,14,17           | 63:10 64:7,18           | <b>presented</b> 123:5   | <b>probably</b> 37:7    | <b>properly</b> 193:1   |
| 27:21 28:4               | 130:22 136:4            | 172:12                   | 41:16 44:10             | 202:8                   |
| 29:16,16,20,21           | 137:20 138:23           | <b>presenting</b>        | 84:17 90:9              | <b>property</b> 79:2    |
| 29:22,23 30:2            | 139:13 141:21           | 191:2                    | 96:13 133:4             | 82:12 116:21            |
| 30:3,7,10 34:7           | 149:1,5,8,11            | <b>presumably</b>        | 149:19 194:14           | 119:4,5 138:4           |
| 34:14,16,18              | 149:15 150:16           | 204:8                    | <b>problem</b> 8:21     | 139:24 200:14           |
| 35:24,24 77:7            | 151:4 227:14            | <b>preventing</b>        | 25:9 153:11,18          | 200:14,15               |
| 77:8,8 82:8              | 228:5                   | 13:23                    | <b>problems</b>         | <b>proposal</b> 22:16   |
| 90:22 116:1              | <b>Poz-O-Pac</b> 10:8   | <b>previous</b> 95:4     | 153:19                  | 22:19 107:3,5           |
| 176:12,12                | 10:10,13,14,19          | 97:8,17,18               | <b>proceed</b> 5:3      | 220:1                   |
| 177:17 178:15            | 11:14,18 12:2           | 105:17 109:14            | 13:16 19:22             | <b>proposed</b> 77:1    |
| 178:18 179:3             | 12:5,13,19,22           | 110:10 198:4             | 30:14,19 39:14          | 77:13,14 81:16          |
| 192:19 219:13            | 13:22 14:2,4            | 211:18 215:1,5           | 55:6 62:18              | 83:2 137:19,23          |
| 222:17,19,20             | 15:1,2,4 16:12          | 223:22 233:20            | 64:1 155:14             | 139:12,14               |
| <b>ponds</b> 10:9        | 16:15,21 17:4           | <b>previously</b> 10:1   | 177:11 185:11           | 160:10,18               |
| 13:21 14:5               | 23:17 24:2,7            | 10:3 63:12               | 223:14                  | 162:7 199:21            |
| 19:12 28:2               | 24:16,19 32:3           | 73:18 82:3               | <b>proceeding</b> 45:1  | 200:2 201:4             |
| 45:6 60:2                | 33:5,13 35:18           | 90:13,15 98:6            | 173:16                  | 202:3,10                |
| 76:23 77:4,21            | 36:6,9 37:24            | 114:10 115:21            | <b>proceedings</b>      | 203:23                  |
| 78:7 82:2                | 222:12,17               | 157:6 184:8              | 1:11 235:3              | <b>provide</b> 9:12     |
| 116:16 143:9             | <b>Prairie</b> 1:3 5:13 | 230:3                    | 236:6,7,9               | 25:11 44:5              |
| 172:23 176:14            | <b>prefer</b> 159:18    | <b>previously-est...</b> | <b>process</b> 44:10    | 56:12,18 57:21          |
| 193:13,16                | <b>prejudices</b> 71:17 | 160:15                   | 215:12                  | 58:2,8 72:15            |
| 211:2,7 218:20           | <b>prejudicial</b>      | <b>primarily</b>         | <b>proctor</b> 26:19    | 103:5 119:19            |
| <b>pool</b> 212:8,12     | 60:16,24 62:11          | 111:13,18                | 27:7,19                 | 120:6 174:16            |
| <b>portion</b> 79:14     | 153:9                   | <b>principal</b> 40:6    | <b>procure</b> 161:2    | 186:17 188:8,9          |
| 81:8 96:1,11             | <b>preparation</b>      | <b>printed</b> 214:5     | <b>produced</b>         | 188:21 193:14           |
| 116:15 186:8             | 115:4 206:16            | <b>printing</b> 29:10    | 141:14 163:20           | 203:7 204:15            |
| 200:13                   | 206:18                  | 87:5,6                   | 168:2,9 191:12          | 205:5,19                |
| <b>posited</b> 19:11     | <b>prepare</b> 84:16    | <b>prior</b> 41:17 85:2  | 192:4                   | 216:11 218:12           |
| <b>position</b> 143:1    | 149:22 157:1            | 185:22 193:21            | <b>production</b>       | 226:9,10                |
| 144:16 145:11            | 215:16,16               | 193:24 197:20            | 173:19 184:11           | <b>provided</b> 6:5     |
| 145:12 146:1             | 220:1                   | 229:10                   | 184:12,15               | 13:2 57:23              |
| 204:9 207:2              | <b>prepared</b> 11:5    | <b>privilege</b> 56:22   | <b>professional</b>     | 58:10 60:5              |
| <b>possible</b> 87:9     | 11:11 69:13             | 56:22 132:15             | 17:21                   | 74:4 142:12             |
| 146:13 197:1             | 84:17 85:20             | 205:10,16,21             | <b>program</b> 59:23    | 174:15 205:15           |

|  |   |   |   |  |
|--|---|---|---|--|
| <p>206:9 207:11<br/>218:6 233:6<br/>234:16<br/><b>provides</b> 58:11<br/><b>providing</b> 58:9<br/><b>proviso</b> 216:2<br/><b>pull</b> 8:3 176:22<br/><b>pump</b> 20:23<br/>22:1 27:16<br/>31:8<br/><b>pumped</b> 26:22<br/>27:10,21 31:13<br/><b>purpose</b> 95:12<br/>95:14 101:20<br/>106:3,5 110:24<br/>120:21 124:18<br/>125:2 217:23<br/><b>purposes</b> 118:19<br/><b>pursuant</b> 1:12<br/>60:17 69:22<br/>206:17<br/><b>pushed</b> 19:2<br/>192:2<br/><b>put</b> 21:24 62:20<br/>72:17 73:10<br/>75:6 94:2<br/>107:2 126:19<br/>146:1 167:10<br/><b>putting</b> 58:18</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <p><b>QAQC</b> 190:15<br/><b>qualifiers</b> 56:17<br/><b>quality</b> 224:24<br/><b>quarter</b> 62:8,9<br/>92:21,24 93:4<br/>93:5,7 149:2,6<br/>149:9,11,15<br/>150:20 170:8<br/>170:11,13,16<br/>170:20 181:1<br/>228:19 229:11<br/><b>quarterly</b> 60:7<br/>92:18 148:24<br/>149:4,7,10,14<br/>150:19 170:7<br/>170:10,12,14</p> | <p><b>quarters</b> 215:1,5<br/><b>question</b> 25:13<br/>29:7 35:4<br/>37:19 42:1<br/>54:1,2,4 57:1,2<br/>57:16 104:6<br/>109:14 123:18<br/>129:2 130:14<br/>135:21 145:17<br/>145:18,22<br/>146:6,8,14,17<br/>155:2 158:24<br/>159:20 179:20<br/>181:13 183:8<br/>185:13 198:1,4<br/>204:17 205:14<br/>207:3 209:6,24<br/>210:7,8,16<br/>213:17 231:4<br/>232:2 234:2,3<br/><b>questionable</b><br/>168:15<br/><b>questioned</b><br/>26:23 27:11<br/><b>questions</b> 9:3<br/>16:24 22:11<br/>30:12 39:5<br/>64:10 73:21,22<br/>94:20 103:23<br/>104:1 115:17<br/>127:13 146:10<br/>147:18,19<br/>176:1 181:21<br/>187:11 188:4<br/>203:5 208:17<br/>209:2 223:10<br/>234:19<br/><b>quicker</b> 50:21<br/><b>quickly</b> 139:2<br/>160:20 217:15<br/><b>quite</b> 158:24<br/>176:12</p> <hr/> <p style="text-align: center;"><b>R</b></p> <p><b>R-a-c-e</b> 52:5<br/><b>Race</b> 52:4<br/>192:17</p> | <p><b>radius</b> 30:2<br/><b>raise</b> 39:10<br/>153:4<br/><b>Randolph</b> 1:13<br/><b>range</b> 52:2<br/>117:4 188:14<br/>216:2<br/><b>reach</b> 32:9 212:9<br/><b>reached</b> 32:11<br/><b>read</b> 6:4 31:4,24<br/>33:9 53:22<br/>54:4,5 56:24<br/>57:2 105:3<br/>146:13,17<br/>222:4 233:21<br/>234:5<br/><b>reading</b> 137:1<br/><b>reads</b> 102:3<br/><b>ready</b> 5:4 30:14<br/>30:18 55:5<br/>69:1,2 91:24<br/>94:7 148:18<br/>169:17<br/><b>realize</b> 103:6<br/><b>really</b> 28:1 33:6<br/>35:8 152:20<br/>168:20 208:14<br/><b>reason</b> 24:5 51:6<br/>56:14 61:13<br/>64:22 66:12<br/>68:1 70:6 71:5<br/>93:8 98:10<br/>99:1 110:3<br/>140:22 146:14<br/>149:24 152:20<br/>167:18 183:6<br/>185:14,17<br/>194:5 195:8<br/>197:6 215:19<br/><b>reasonably</b><br/>175:18 177:1<br/><b>reasoning</b> 62:5<br/><b>Rebecca</b> 3:3<br/>7:24 10:2 11:5<br/>11:8 35:21<br/><b>recall</b> 10:17 17:5<br/>17:11 18:2</p> | <p>21:13 23:9<br/>25:5 27:23<br/>29:4 37:6<br/>64:10 230:18<br/><b>receive</b> 56:16<br/>156:17<br/><b>received</b> 58:5<br/>80:18 131:8,10<br/>139:8 156:19<br/>179:17,24<br/>225:9,17,20<br/>226:15<br/><b>receiving</b> 27:2<br/>27:13<br/><b>Recess</b> 128:4<br/>182:11<br/><b>recognition</b><br/>190:16<br/><b>recognize</b> 45:10<br/>52:7 53:8<br/>55:10 64:5<br/>65:23 67:20<br/>69:4 70:24<br/>74:19 75:15<br/>92:11,14<br/>103:17 113:1,5<br/>113:7 114:14<br/>118:2 131:1<br/>138:24 141:17<br/>148:21 150:22<br/>154:15 156:10<br/>167:5 170:2<br/>175:9 188:24<br/>190:7,8 191:4<br/>191:14 196:4<br/>199:9 213:15<br/>213:16 215:13<br/>217:13 221:10<br/>226:13<br/><b>recognized</b><br/>114:10<br/><b>recollection</b><br/>104:24 105:2<br/>122:17 226:17<br/><b>recommend</b><br/>19:8 118:21<br/>209:10,14</p> | <p><b>recommendati...</b><br/>21:11,12,16<br/><b>recommended</b><br/>209:19<br/><b>recompact</b><br/>26:21 27:9<br/><b>record</b> 5:7,19<br/>7:17,18,20,22<br/>13:14 29:13<br/>30:16 38:9,10<br/>38:12,13 39:21<br/>45:13 52:9<br/>53:22 54:5<br/>55:9 59:16<br/>61:13 62:16<br/>65:6 66:6<br/>67:13,15,16,18<br/>68:13 72:6,7,9<br/>73:15 75:17<br/>76:5,9 80:11<br/>80:13 101:1<br/>104:11 105:5,7<br/>105:8,10 106:4<br/>113:4 127:1,20<br/>127:20 128:3,6<br/>132:8 138:6<br/>139:21 146:3,8<br/>149:3,17<br/>152:19 156:12<br/>161:24 162:1,2<br/>162:4 164:6<br/>169:22 170:5<br/>182:10 189:18<br/>191:2 192:6,8<br/>192:10 199:12<br/>206:4 210:12<br/>210:13 217:2,4<br/>217:6,16<br/>223:14 228:6,9<br/>228:11 233:11<br/>233:12,14,22<br/>234:5,21,22<br/><b>records</b> 234:14<br/><b>recoverable</b><br/>61:16 187:9<br/><b>rectangle</b> 16:4,6<br/>28:20 29:19,20</p> |
|--|---|---|---|--|

|                         |                         |                       |                        |                        |
|-------------------------|-------------------------|-----------------------|------------------------|------------------------|
| 179:1                   | 104:20,23               | 167:14 201:2          | 107:6 108:10           | 76:4 87:9,18           |
| <b>rectangular</b>      | 105:13                  | 202:20 212:7          | 109:2 114:16           | 101:1 108:12           |
| 178:21 180:1            | <b>related</b> 56:23    | 212:13 225:18         | 115:8,16               | 108:18 109:10          |
| 180:16                  | 57:15 61:11             | 227:16                | 119:12 120:16          | 191:16                 |
| <b>redacted</b> 45:19   | 73:2,3 74:16            | <b>removal</b> 18:10  | 120:21 123:10          | <b>representation</b>  |
| <b>redactions</b> 95:6  | 113:17 144:10           | <b>remove</b> 17:15   | 123:22 124:17          | 84:14 86:5             |
| 105:18                  | 147:3 173:23            | 19:8 190:15           | 125:12 126:5           | 113:16 184:17          |
| <b>Redirect</b> 3:4     | 176:24                  | <b>removed</b> 128:20 | 129:23 130:5           | <b>representative</b>  |
| 30:22                   | <b>relates</b> 63:18    | <b>renew</b> 72:21,23 | 130:11,22              | 95:15                  |
| <b>refer</b> 30:7 76:5  | <b>relating</b> 155:7   | 74:15                 | 142:5 149:1,5          | <b>represented</b>     |
| 214:7                   | 162:14 208:4            | <b>repair</b> 118:21  | 149:8,10,15            | 102:16 109:24          |
| <b>reference</b> 15:24  | <b>relation</b> 41:11   | 119:1 125:10          | 151:3 152:4            | <b>representing</b>    |
| 213:24 214:19           | 114:20                  | <b>repairs</b> 113:21 | 170:7,10,13,15         | 91:22 94:5             |
| <b>referenced</b>       | <b>relationship</b>     | 125:6 129:17          | 172:14 182:22          | 112:20 130:21          |
| 94:12 163:17            | 41:5,6 101:8            | <b>reparation</b>     | 185:19 190:11          | 138:21 141:10          |
| 214:1 215:8             | 101:11                  | 115:13                | 194:1 213:19           | 150:18 156:6           |
| <b>referred</b> 5:15    | <b>relative</b> 145:12  | <b>repeat</b> 15:16   | 214:1,3 215:8          | 162:13 173:8           |
| 130:5,10                | 158:19 202:20           | 35:3 123:16           | 215:14 217:17          | 196:1 199:6            |
| 187:22                  | 205:22                  | 148:8 198:2           | 217:23 218:6           | 213:8 217:10           |
| <b>referring</b> 76:6   | <b>relied</b> 12:4      | <b>rephrase</b> 23:20 | 218:13 221:15          | 221:3,8 227:22         |
| 98:22 155:17            | 230:23 232:3            | 24:13 32:18           | 221:15 231:14          | <b>represents</b> 58:4 |
| 189:10 215:6            | 232:15                  | 34:10 36:17           | 231:18,20              | 108:14 139:17          |
| 222:11                  | <b>reline</b> 23:8 24:6 | 43:12 44:21           | <b>reported</b> 19:24  | 154:13                 |
| <b>refers</b> 98:16     | <b>relined</b> 12:11    | 55:22 58:23           | 21:6 236:6             | <b>request</b> 8:13    |
| <b>reflect</b> 142:24   | 22:23,24 23:3           | 81:22 87:14           | <b>reporter</b> 7:23   | 17:14,17 20:11         |
| <b>reflected</b> 63:20  | 193:17                  | 88:24 89:10           | 39:11 146:16           | 20:16,21 21:11         |
| <b>reflects</b> 143:5   | <b>relining</b> 13:11   | 90:19 96:8            | 233:24 236:5           | 22:16,19 41:22         |
| <b>refresh</b> 222:20   | 13:19 14:12             | 97:15 107:10          | <b>reporting</b> 41:2  | 141:24 145:7           |
| 226:17                  | 18:1 24:24              | 107:20 123:20         | <b>reports</b> 55:7,18 | 207:12                 |
| <b>regard</b> 218:6,13  | 26:14                   | 143:21 145:20         | 59:2,15,16             | <b>requested</b> 41:4  |
| 229:16                  | <b>relocated</b> 101:24 | 146:18 172:7          | 64:11,12,17            | 144:21 147:15          |
| <b>regarding</b> 14:11  | 102:7                   | 179:13 229:6          | 65:8 69:12,15          | 193:12                 |
| 45:15 52:10             | <b>relocation</b> 52:12 | 232:9                 | 69:21 70:7             | <b>requesting</b>      |
| 64:11 75:20             | <b>rely</b> 55:18 97:10 | <b>replaced</b> 6:7   | 91:23 92:19            | 142:2                  |
| 139:6 141:20            | 97:13 229:2             | <b>replacement</b>    | 93:10,12 118:9         | <b>require</b> 86:12   |
| 156:14 169:10           | 231:6,19,22             | 22:20                 | 122:18 149:22          | <b>requirement</b>     |
| 192:18 196:9            | 232:13 234:7            | <b>report</b> 1:11    | 150:2 152:5,8          | 60:21                  |
| 199:15 201:21           | <b>relying</b> 11:21    | 46:17 51:7            | 152:9,15 154:1         | <b>requirements</b>    |
| 217:19 221:17           | <b>remained</b> 24:19   | 52:11 56:2,3          | 183:12,12              | 62:14 71:19            |
| <b>region</b> 219:16    | <b>remaining</b> 30:10  | 56:13 72:24           | 184:3 186:3            | 151:18                 |
| 219:17                  | 117:6 215:13            | 93:2 94:9,10          | 187:2,14,17,18         | <b>requires</b> 44:4   |
| <b>regulations</b>      | <b>remember</b> 28:1    | 94:13,14,19           | 187:21 214:5           | <b>reread</b> 146:8    |
| 23:10,12,14             | 57:20,23 59:10          | 95:13 97:12,23        | 215:17,20              | 233:22                 |
| <b>rehabilitate</b>     | 69:16 113:12            | 98:23 100:23          | 230:24 231:11          | <b>rerolling</b> 27:18 |
| 146:5                   | 114:17 115:20           | 102:17,18,19          | 233:5,17               | <b>residue</b> 111:18  |
| <b>reissuance</b> 52:10 | 129:21 130:7            | 102:21 103:6,8        | 234:11                 | <b>respect</b> 44:24   |
| <b>reissued</b> 94:14   | 130:13 157:12           | 105:14 106:4,5        | <b>represent</b> 70:22 | 143:2 206:6            |

|                          |                        |                          |                         |                         |
|--------------------------|------------------------|--------------------------|-------------------------|-------------------------|
| 207:8,18                 | 84:20 91:23            | <b>river</b> 85:8,9,10   | 43:10 55:17             | 53:17 83:8              |
| 208:23 218:19            | 97:17,20               | 86:9 116:10              | 59:22,23,23             | 85:5,8 88:4             |
| <b>respond</b> 61:23     | 108:24 130:23          | 212:9,13                 | 60:4,6,7 66:2,5         | 94:24 95:7              |
| 208:11 225:9             | 162:16 195:6           | <b>Rivers</b> 1:3 5:13   | 66:8 70:2 71:4          | 99:7,7,10,24            |
| 225:13                   | 215:11 229:13          | <b>road</b> 2:8 81:5,9   | 71:15 85:3              | 100:3,6,13,14           |
| <b>Respondent</b> 1:8    | <b>reviewed</b> 84:19  | 81:10 179:2              | 95:14 106:21            | 100:18 105:18           |
| 2:16 4:18 6:17           | 109:1 157:3            | <b>roads</b> 79:20       | 132:3 150:20            | 116:6 124:8             |
| <b>respondent's</b>      | 184:11 231:10          | <b>role</b> 40:4 171:8   | 151:2 152:11            | 137:12,14               |
| 10:24 14:10              | <b>reviewing</b>       | <b>roller</b> 26:21 27:9 | 160:3 166:19            | 164:18 166:15           |
| <b>responding</b>        | 132:16 192:23          | <b>roughly</b> 81:12     | 166:22 187:8            | 166:18,19               |
| 143:14 145:7             | <b>revised</b> 94:8,10 | 106:23 178:21            | 214:24 218:21           | 181:17 196:22           |
| <b>response</b> 8:10     | 94:14 102:23           | 180:12 200:1             | 219:10                  | 196:24 200:5            |
| 13:2 63:2                | 102:24 103:3,5         | <b>row</b> 47:17 48:12   | <b>sand</b> 47:4,19     | 214:23 218:5            |
| 132:17 141:23            | 103:7,8,19             | 49:5 54:22               | 48:2,3,13,22            | 218:11 220:6            |
| 183:18,20                | <b>revived</b> 103:2   | <b>Ruining</b> 1:4       | 49:7,16 50:12           | 222:4,7 236:5           |
| 186:6 229:16             | <b>RFP</b> 23:5,8      | 5:13                     | 99:14 100:2,7           | <b>Schwartz</b> 11:5,8  |
| 229:20,21                | <b>Rhodes</b> 196:2,8  | <b>rule</b> 60:1,3       | 100:14,19               | 35:21 36:11,22          |
| 230:4,15                 | 199:14                 | <b>rules</b> 60:18       | 102:4 132:6,10          | <b>science</b> 222:8    |
| <b>responses</b> 229:3   | <b>Richard</b> 3:5     | <b>run</b> 43:8 49:21    | 135:7,9,14,22           | <b>scope</b> 171:23     |
| 233:8                    | 38:16 39:15,22         | 220:12,13                | <b>sand-size</b> 100:13 | 201:13,19,22            |
| <b>rest</b> 165:23       | <b>Rick</b> 17:20,21   | <b>runoff</b> 19:2       | <b>sands</b> 133:3,20   | 203:3,9 204:5           |
| 188:21                   | <b>rid</b> 127:14      | 112:21,23                | <b>sandy</b> 15:2       | 204:10,18               |
| <b>restate</b> 118:14    | <b>right</b> 5:21 7:13 | 118:4,4,5                | 16:17 100:8             | 205:7 206:10            |
| 135:3 233:20             | 12:23 21:1             | 120:13 123:6             | 133:8 135:8             | 207:8,19,23             |
| <b>resultant</b> 95:9    | 23:1 38:3              | 127:5 129:3,8            | <b>sat</b> 105:1 133:23 | 208:2 209:14            |
| 105:20                   | 39:11 51:20            | 129:15                   | <b>satisfaction</b>     | 209:14 224:5            |
| <b>results</b> 16:8 47:9 | 75:8 81:10             | <b>runs</b> 81:5         | 203:18                  | <b>score</b> 73:2 127:6 |
| 55:3,13 56:15            | 85:7 93:14             |                          | <b>satisfies</b> 207:21 | <b>scratch</b> 221:5    |
| 56:16 61:15,17           | 98:8 99:18             | <b>S</b>                 | <b>save</b> 127:14      | 223:7                   |
| 61:22 62:7,7             | 100:16 107:16          | <b>S</b> 4:1 26:17       | <b>saw</b> 10:7 69:24   | <b>screen</b> 72:16     |
| 64:7,23 65:8             | 122:14,22,23           | <b>sake</b> 123:14       | 101:16 129:18           | <b>screened</b> 132:22  |
| 65:21 66:7               | 153:1 165:24           | <b>Sam</b> 26:17         | 197:10 198:10           | 133:3,19                |
| 67:22 69:8               | 180:10 185:10          | <b>sames</b> 100:2       | <b>saying</b> 58:7      | <b>second</b> 11:13     |
| 70:22 71:2               | 188:5 191:18           | <b>sample</b> 15:10      | 134:17 204:4            | 14:24 15:1              |
| 87:18 89:3               | 196:14 215:3           | 35:6 96:14               | 205:15 214:10           | 16:14 31:3              |
| 92:21 170:21             | 216:15 222:6           | 101:15,16,19             | <b>says</b> 11:13,13    | 33:8,9 36:8             |
| 181:1 182:19             | 223:24                 | 101:21 102:4             | 12:1,10,13,18           | 47:17 48:12             |
| 190:5,9 212:17           | <b>rightmost</b>       | 106:5 220:2              | 13:20 14:24             | 62:8,9 76:18            |
| <b>retain</b> 200:17     | 177:24                 | <b>sampled</b> 152:11    | 16:11,14,17,20          | 76:19 91:23             |
| <b>retains</b> 200:6     | <b>rill</b> 125:7      | 187:4                    | 19:1 20:22              | 93:5,6 95:19            |
| <b>retention</b> 29:20   | <b>rilling</b> 116:9   | <b>samples</b> 28:10     | 26:2 27:6               | 105:5 124:5             |
| 29:22,22                 | 118:12,17              | 46:5 56:6,8              | 28:24 30:2              | 149:2,6,15              |
| <b>reuse</b> 79:5 95:17  | 120:18 123:11          | 62:3 64:18,20            | 32:14,20 33:4           | 151:7 170:15            |
| 106:8,9 111:3            | 123:23 124:10          | 64:21 69:9               | 33:9 35:18              | 172:20 181:16           |
| 218:3                    | 125:4                  | 79:2 82:11               | 37:14 47:2,3            | 204:3 217:2             |
| <b>reused</b> 101:23     | <b>rip</b> 117:6 166:1 | 95:15 222:7              | 47:18 48:13,21          | 218:5 220:4,5           |
| <b>review</b> 29:5       | 166:3                  | <b>sampling</b> 41:2     | 49:6,15 50:11           | 222:4 228:19            |

|                          |                          |                         |                         |                          |
|--------------------------|--------------------------|-------------------------|-------------------------|--------------------------|
| 229:11                   | 211:2,6 214:18           | <b>seven</b> 164:21,22  | 17:2,3 37:11            | <b>six</b> 36:2 45:18    |
| <b>section</b> 31:5,7,18 | 219:15 220:6             | <b>shade</b> 136:13     | 61:18 187:12            | 115:9 125:8              |
| 171:18 172:9             | 221:19 222:2             | <b>shaped</b> 160:14    | 198:9                   | 146:10                   |
| 172:17                   | 228:1                    | <b>share</b> 134:2      | <b>similarly</b> 68:7   | <b>six-inch</b> 35:22    |
| <b>sections</b> 176:9    | <b>seeing</b> 79:19      | <b>shared</b> 56:8      | <b>Simon</b> 18:3       | 36:2,5,8                 |
| <b>secure</b> 159:1      | 125:2,9                  | <b>Sharene</b> 217:18   | <b>simply</b> 57:5 58:4 | <b>sixth</b> 116:23      |
| <b>see</b> 13:10 14:15   | <b>seen</b> 26:15 76:14  | <b>Shealey</b> 217:18   | 58:8,17 71:18           | <b>size</b> 6:3 100:14   |
| 14:21 15:5,22            | 84:18 164:2,3            | <b>sheet</b> 116:8      | 74:9 85:17,20           | 106:1 202:15             |
| 15:22 16:1,3             | 164:15,16                | 118:11,16               | 145:7 146:1             | 203:1                    |
| 23:11 26:1,13            | 167:8 173:22             | 120:17 123:10           | 175:23 198:16           | <b>sized</b> 124:24      |
| 29:14,19 31:3            | 175:10 180:5             | 123:23 124:10           | 203:14                  | <b>skipped</b> 149:19    |
| 32:20 35:17              | 182:24 194:19            | 125:4                   | <b>single</b> 53:19     | <b>skipping</b> 169:18   |
| 36:1,6,7,9,19            | <b>segments</b> 16:5,6   | <b>shifted</b> 102:1    | 127:5 163:2,14          | <b>slag</b> 30:10 47:2,3 |
| 37:13,15,21              | <b>selected</b> 85:21    | 111:6                   | 168:6                   | 47:5,5,11 49:8           |
| 42:17 45:18,21           | 101:16                   | <b>shorthand</b> 236:6  | <b>sir</b> 13:6 96:24   | 50:11 53:17              |
| 46:13 47:1,18            | <b>senior</b> 198:8      | 236:8                   | 109:8 137:8             | 95:8 99:15,18            |
| 48:9,12,21               | <b>sent</b> 131:9        | <b>shortly</b> 96:13    | 183:20                  | 99:22 100:6              |
| 49:5,14 50:3             | 141:18,23                | 106:20,22               | <b>sit</b> 205:10       | 105:20 116:9             |
| 50:10,22 53:11           | 145:2 195:3              | 226:19,23               | <b>site</b> 17:24 18:5  | 118:12,18                |
| 53:12,16 72:5            | 196:14 222:12            | <b>showed</b> 102:2     | 22:9 31:8               | 120:19 123:12            |
| 76:19 77:7,10            | 222:15 225:13            | <b>showing</b> 12:21    | 46:11,16,23             | 123:24 124:11            |
| 79:22 81:3               | 227:6,8,12               | <b>shown</b> 176:13     | 47:14 50:7              | 197:13 221:4             |
| 83:8,23 84:2             | 228:12                   | <b>shows</b> 87:23      | 52:19 55:14             | <b>slash</b> 77:12       |
| 85:4,7 87:4              | <b>sentence</b> 13:20    | 159:6 182:21            | 73:22 74:6,24           | <b>slashed</b> 137:22    |
| 88:2,4 94:24             | 143:4                    | <b>side</b> 31:9 35:16  | 75:4 78:2 79:6          | 139:16                   |
| 95:7 99:6                | <b>separate</b> 165:15   | 138:1 168:3             | 80:3 81:20              | <b>slight</b> 218:9      |
| 102:1 105:16             | 187:13                   | <b>sides</b> 194:20     | 82:11 83:6,13           | <b>slightly</b> 48:23    |
| 107:19 108:16            | <b>separated</b> 28:21   | <b>sidewalk</b> 195:7   | 90:12 96:2,12           | 49:8,16 50:12            |
| 116:6,11 122:2           | <b>September</b>         | <b>Sierra</b> 1:3 2:17  | 98:3 106:19             | 122:19 136:13            |
| 122:5,10 123:9           | 22:17 123:7              | 2:21 5:12               | 107:24 108:9            | 172:24 177:20            |
| 124:8,12,21              | 129:11 141:20            | 38:21                   | 116:17,20               | 196:23 197:12            |
| 125:7,11,14              | 217:19                   | <b>sift</b> 154:2       | 130:22 131:24           | 219:16                   |
| 136:12 137:11            | <b>sequential</b> 189:2  | <b>signatory</b>        | 132:23 156:8            | <b>slope</b> 21:24       |
| 139:16 142:18            | <b>series</b> 59:2 61:21 | 195:12                  | 160:11 172:24           | 26:19,21 27:7            |
| 142:23 151:12            | 64:10 162:13             | <b>signed</b> 8:13 21:1 | 174:3,16,18             | 27:9,17,18               |
| 159:19 164:17            | 182:14                   | 60:9 171:6,7            | 176:15 200:21           | <b>slopes</b> 31:9       |
| 164:21 165:1,4           | <b>serves</b> 94:12      | 171:10                  | 200:24 201:6            | <b>slow</b> 27:3         |
| 166:14,15,18             | <b>services</b> 221:17   | <b>silky</b> 132:22     | 201:10 202:11           | <b>small</b> 15:13,23    |
| 168:22 171:4             | <b>set</b> 70:19 112:17  | 133:7                   | 210:24 212:18           | 124:23 224:13            |
| 175:3,6 177:16           | 121:6 154:11             | <b>silt</b> 49:7 50:12  | 218:8,18,19             | 224:14                   |
| 177:19,24                | 159:16 189:7             | 132:9 133:13            | 219:10,12,21            | <b>smaller</b> 202:19    |
| 178:4,6,12,21            | <b>sets</b> 61:1         | 134:3 135:18            | 222:18                  | <b>soil</b> 43:6,19 45:6 |
| 180:9,12                 | <b>settlement</b>        | <b>silty</b> 132:2      | <b>sites</b> 46:2 50:22 | 45:15 46:5               |
| 181:16 182:9             | 175:13                   | 133:22 134:12           | 108:13 174:20           | <b>soils</b> 40:12,17    |
| 189:8 194:3              | <b>settling</b> 45:6,16  | 134:21 196:22           | 231:2                   | <b>somewhat</b> 81:4     |
| 196:12 197:13            | 175:5 176:9              | 197:12                  | <b>situation</b> 86:14  | <b>sorry</b> 8:7 14:18   |
| 198:13 200:5             | 178:1,9                  | <b>similar</b> 6:13,21  | 118:22 231:2            | 18:16 25:20              |



|                        |                          |                         |                         |                         |
|------------------------|--------------------------|-------------------------|-------------------------|-------------------------|
| 31:6 35:3              | 173:1 180:13             | 88:14,15,21             | 75:11,22,24             | 73:1 74:15              |
| 38:20 46:9             | <b>southeast</b> 81:8    | 89:14,18 90:1           | 92:19 105:19            | 109:13 121:12           |
| 47:23 50:16            | 84:9 219:13,15           | 137:16,17               | 105:24 130:22           | 126:17 147:7            |
| 51:19,20 55:9          | <b>southwest</b>         | 221:9,14                | 136:4 137:20            | 160:22 165:7            |
| 56:3 58:7              | 178:18                   | <b>standards</b> 13:23  | 138:23 141:21           | 173:23 176:23           |
| 63:14 66:3             | <b>speak</b> 180:1       | 87:13,20,21,23          | 149:2,5,9,11            | <b>strip</b> 138:8      |
| 74:8 84:9              | 225:10                   | 88:10,13 89:4           | 149:15 150:16           | <b>struggling</b> 8:24  |
| 92:11 93:6             | <b>speaking</b> 69:24    | 89:7,8 136:17           | 151:4 156:16            | <b>study</b> 97:8,18    |
| 100:9,10               | <b>speal</b> 5:6         | 170:10                  | 156:23 162:14           | 101:20,21,22            |
| 101:15,19              | <b>specialize</b> 40:11  | <b>standing</b> 69:7    | 170:8,11,13,15          | 102:6 108:11            |
| 103:2 104:4            | <b>specialized</b>       | 122:23 207:24           | 171:5 182:20            | 108:12 110:24           |
| 112:22 116:4           | 43:24                    | <b>start</b> 11:4 85:2  | 190:10 192:20           | 111:8                   |
| 118:5,14               | <b>specializes</b> 44:2  | 127:24 128:17           | 193:14 196:11           | <b>stuff</b> 168:16,17  |
| 121:12,22              | <b>specific</b> 86:22,24 | 171:1 224:9             | 199:8,17                | <b>style</b> 189:13     |
| 122:3 123:15           | 136:6 160:7              | 225:16 228:15           | 217:11,21               | <b>styled</b> 189:13    |
| 126:18 127:9           | 209:3,20 212:4           | 228:16,20               | 218:15 221:18           | <b>sub-bullet</b> 32:1  |
| 128:13 129:14          | 230:22                   | 231:3                   | 228:2                   | 33:10                   |
| 131:3 134:16           | <b>specifically</b> 70:1 | <b>started</b> 9:20     | <b>stations</b> 44:14   | <b>subheading</b>       |
| 140:5 146:12           | 77:7 92:20               | 44:10 224:9,12          | 95:1,8 225:5,7          | 33:10                   |
| 147:18 150:16          | 106:9 142:17             | <b>starting</b> 5:2     | 228:22                  | <b>subject</b> 18:11    |
| 153:13,17              | 180:5 184:11             | 114:12 115:4            | <b>statute</b> 220:15   | 44:14 205:16            |
| 154:3,4 157:4          | <b>specifics</b> 57:8    | <b>starts</b> 26:18     | <b>statutes</b> 220:12  | 206:21 216:21           |
| 157:14 162:8           | <b>specified</b> 220:11  | 214:13                  | <b>stay</b> 99:4 225:2  | <b>submission</b>       |
| 164:4 166:10           | <b>speculation</b>       | <b>state</b> 39:20 65:4 | <b>staying</b> 178:11   | 142:3                   |
| 171:18 172:3           | 19:19,20 24:9            | 75:17 104:11            | 178:20 194:3            | <b>submit</b> 6:7       |
| 173:7 179:20           | 28:1 32:6 33:1           | 118:14 139:21           | <b>steady</b> 42:16     | 118:9 169:7             |
| 180:22 188:16          | 34:19,24 96:17           | 159:18 172:13           | <b>stemming</b>         | <b>submittal</b> 77:3   |
| 191:8 193:10           | 155:18 161:9             | 184:9 205:2             | 124:13                  | 138:5 142:13            |
| 193:18 196:15          | 197:3 204:11             | 236:1                   | <b>step</b> 62:2        | 202:2                   |
| 198:1 204:22           | <b>speculative</b>       | <b>stated</b> 34:3      | <b>sticking</b> 16:3    | <b>submitted</b> 8:13   |
| 209:10 213:9           | 107:9 108:2              | 44:18 89:3              | 162:6                   | 13:1 142:3              |
| 214:12 216:4           | <b>speed</b> 228:4       | 114:10 119:11           | <b>stood</b> 26:3       | <b>subsequent</b>       |
| 221:5 230:3,11         | <b>spoke</b> 51:19       | 152:16 206:12           | <b>stop</b> 127:24      | 151:16                  |
| 232:20 234:9           | <b>spots</b> 136:6       | 206:13                  | 136:24 225:23           | <b>subsequently</b>     |
| <b>sort</b> 16:2 43:6  | 160:6                    | <b>statement</b>        | <b>storage</b> 81:4,13  | 118:23 119:1            |
| 61:4 225:6             | <b>square</b> 81:12      | 110:16 124:16           | 106:11 178:7            | <b>substantive</b>      |
| <b>source</b> 28:10    | 205:11                   | 142:24 155:20           | <b>store</b> 28:4       | 73:21                   |
| <b>south</b> 2:13 12:6 | <b>square-shaped</b>     | 186:20 197:24           | <b>storm</b> 82:5,5     | <b>subsurface</b>       |
| 12:9,11,17             | 200:1                    | 198:6                   | 90:24                   | 40:11,14 43:6           |
| 13:19 14:12            | <b>SS</b> 236:2          | <b>statements</b>       | <b>streamlining</b>     | 231:15                  |
| 15:8 16:1 17:9         | <b>stack</b> 185:19      | 194:7                   | 76:12                   | <b>sufficient</b> 42:20 |
| 17:10 18:1             | <b>stamp</b> 107:15      | <b>states</b> 31:4      | <b>Street</b> 1:13 2:13 | <b>sufficiently</b>     |
| 26:17,19 27:7          | 109:15 165:18            | 123:19 124:2            | 2:18                    | 176:1                   |
| 27:17,24 28:3          | <b>stamped</b> 117:14    | 140:9                   | <b>strength</b> 222:1   | <b>suggest</b> 32:23    |
| 28:4 29:17,17          | 166:6 188:12             | <b>stating</b> 168:22   | <b>stretch</b> 212:8    | <b>suggested</b>        |
| 30:2,11 33:18          | <b>stand</b> 5:22 128:8  | <b>station</b> 21:13,17 | <b>strike</b> 48:5      | 168:12 174:6            |
| 33:21 35:24            | <b>standard</b> 87:10    | 45:22 56:7              | 53:12 61:10             | <b>suggests</b> 134:21  |

|                        |                        |                        |                          |                      |
|------------------------|------------------------|------------------------|--------------------------|----------------------|
| <b>suitable</b> 27:15  | 169:10                 | 185:20,23              | 23:15                    | 15:13 28:21          |
| <b>suite</b> 2:4,14,19 | <b>survey</b> 110:5    | 190:12 214:19          | <b>telephone</b>         | 30:1 109:3           |
| <b>summaries</b>       | 163:6                  | 214:23 215:2,3         | 201:24                   | <b>thank</b> 6:10,19 |
| 53:10                  | <b>surveyed</b> 138:4  | 215:6,21 233:6         | <b>tell</b> 43:18 69:12  | 7:19 12:17           |
| <b>summarized</b>      | <b>sustain</b> 208:8   | <b>tables</b> 56:18    | 209:24                   | 17:1,12 18:22        |
| 109:2 215:1,4          | <b>sustained</b> 36:16 | 94:13,16               | <b>ten</b> 127:21 211:8  | 20:18 25:19          |
| <b>summarizing</b>     | 37:9 43:11             | 102:19 140:23          | 211:9 212:17             | 29:10 30:13,15       |
| 195:1                  | 44:21 58:22            | 182:15,24              | <b>tend</b> 60:19        | 30:20,21 31:14       |
| <b>summary</b> 26:14   | 64:14 78:4             | 183:1,7 184:24         | 132:24                   | 33:14 35:2,9         |
| 45:14 56:18            | 89:9 101:12            | 185:1 189:5            | <b>term</b> 36:24 37:4   | 37:20 38:2,4,7       |
| 109:3,4 115:7          | 115:1 135:4            | 213:22 231:12          | 90:5,7 97:13             | 38:12,24 39:13       |
| 127:3 140:9,13         | 136:21 144:23          | 232:4 233:1,2          | 99:21 137:3              | 39:20 43:2,3         |
| 150:20 151:2           | 167:3,24               | 233:7,17 234:7         | 171:16,21                | 44:20 45:3           |
| 171:12 172:9           | 168:23 179:12          | 234:8,14               | <b>terminology</b>       | 49:11 51:14,24       |
| 186:3 191:3            | 197:16,21              | <b>tag</b> 186:4       | 36:21 37:1               | 52:15 54:4,6,7       |
| 192:18 214:17          | 204:12 209:6           | <b>take</b> 14:9 15:11 | 78:22 82:23              | 54:11 55:2           |
| 217:17 218:13          | 224:3 232:6,21         | 20:10 21:17            | 120:20 174:17            | 60:10 62:16,18       |
| <b>superior</b> 23:16  | <b>swear</b> 7:24      | 62:15 63:23            | 174:19                   | 63:8,24 64:21        |
| <b>supervision</b>     | 39:11                  | 71:21 72:4             | <b>terms</b> 143:2       | 65:11 66:19          |
| 207:13                 | <b>Swires</b> 194:17   | 103:11 113:7           | 178:3 208:18             | 68:12 70:12          |
| <b>support</b> 94:5    | 195:3,9                | 136:24 157:16          | 208:19 231:10            | 71:20 72:11          |
| 103:20,24              | <b>switch</b> 24:7,16  | 162:16 166:5           | <b>Terry</b> 32:1        | 75:13 76:3,11        |
| 217:11,20              | 25:10                  | 169:1 182:6,8          | <b>test</b> 55:3,8 56:10 | 80:20 81:23          |
| <b>sure</b> 7:6 14:19  | <b>switching</b> 24:2  | 185:16 190:20          | 187:19 220:10            | 86:15 87:15          |
| 15:17 18:18            | 200:16                 | 211:20 218:22          | 220:13,14,16             | 90:11 91:18          |
| 25:18 26:5             | <b>sworn</b> 10:1,4    | <b>taken</b> 62:2      | 221:23                   | 92:6 93:7,19         |
| 53:22 59:17            | 39:9,12,17             | 108:15 114:21          | <b>tested</b> 48:18      | 102:11 112:5         |
| 71:21 80:8             | 236:4                  | 115:3 128:4            | <b>testified</b> 10:4    | 112:11 117:13        |
| 100:23 132:11          | <b>symbols</b> 97:5,6  | 169:11 182:11          | 39:17 85:19              | 117:19 120:7         |
| 139:4 145:20           | 108:17 109:9           | 211:24 236:9           | 155:19 158:15            | 121:3,17 123:3       |
| 146:6,15               | 109:10                 | <b>talk</b> 57:5 58:13 | 179:11 183:22            | 126:2,10 128:2       |
| 161:23 166:24          | <b>system</b> 132:14   | 223:16                 | 198:3 230:3              | 128:15,16            |
| 175:7,24               |                        | <b>talked</b> 35:21    | <b>testify</b> 135:2     | 130:18 131:17        |
| 182:23 190:11          | <b>T</b>               | 37:6                   | 168:20                   | 132:4 133:12         |
| 197:14 203:17          | <b>T</b> 2:13 4:1      | <b>talking</b> 8:5,18  | <b>testifying</b> 138:7  | 138:11,15            |
| 210:11 213:18          | <b>tab</b> 10:24 14:10 | 36:1 40:21             | <b>testimony</b> 24:18   | 140:19 147:24        |
| 214:2 217:3            | 15:18,20 18:21         | 44:13,13               | 43:9 61:10               | 148:12 149:16        |
| 233:23,24              | 20:14 21:19            | 136:23 153:12          | 73:1 74:16               | 150:7 154:9          |
| 234:13                 | 22:15 25:15,23         | 155:3 158:9,10         | 89:7 143:20              | 155:13 159:6         |
| <b>surface</b> 85:13   | 26:9 29:9              | 207:4 208:3            | 144:19 169:10            | 161:17 162:4         |
| 86:10,12 95:10         | 30:24 31:14            | <b>Tannery</b> 69:6    | 173:23 176:24            | 162:11 169:13        |
| 105:21 135:19          | 35:9                   | <b>target</b> 108:17   | 203:12 230:8             | 170:17 171:7         |
| 157:9,19,19            | <b>table</b> 102:17    | <b>targeting</b> 102:6 | 230:13 232:8             | 172:7,19             |
| 158:14 211:15          | 140:9,13 163:5         | 111:7                  | 232:10 233:18            | 177:10 178:11        |
| 211:21 212:3,5         | 166:13 167:6           | <b>team</b> 44:6       | <b>testing</b> 61:24     | 181:14,22            |
| <b>surrounding</b>     | 168:6,7 182:18         | 225:22                 | 221:9,15,16,17           | 182:10 189:21        |
| 14:2 45:6,16           | 182:19 185:18          | <b>technology</b>      | <b>text</b> 11:13 14:15  | 190:19 192:10        |

|                         |                         |                         |                      |                          |
|-------------------------|-------------------------|-------------------------|----------------------|--------------------------|
| 193:7 195:18            | 78:7 94:12              | 122:24 124:23           | 52:15 69:18          | 201:9 220:5              |
| 198:17,22               | 151:18 214:5            | 131:13 136:10           | 78:16 81:2           | <b>twice</b> 144:2       |
| 205:3 210:17            | 215:11                  | 142:17 183:10           | 82:16 83:4,18        | <b>two</b> 10:10 14:1    |
| 211:9 213:2             | <b>three-dimensi...</b> | <b>topic</b> 77:2,22    | 86:15 88:1           | 14:16 15:21              |
| 216:15 218:17           | 43:21,23 44:4           | <b>topographic</b>      | 94:22 96:22          | 16:4 21:20               |
| 220:21 228:15           | 44:7,23                 | 157:21                  | 98:2 99:4            | 22:7,8,9 26:16           |
| 229:24 234:18           | <b>threshold</b> 74:13  | <b>total</b> 61:16      | 100:9,15             | 29:12 35:11              |
| 234:20 235:1            | <b>throw</b> 205:12     | 187:9                   | 105:16 108:8         | 45:18 46:10              |
| <b>Thanks</b> 229:7     | <b>tied</b> 86:11       | <b>totally</b> 185:4    | 109:13,15            | 62:13 67:10              |
| <b>theirs</b> 41:12     | <b>time</b> 8:6 11:11   | <b>tract</b> 200:6,18   | 110:7,10 114:7       | 71:18 85:11              |
| <b>thing</b> 23:11 37:7 | 12:12 14:7              | <b>transcript</b> 53:23 | 117:23 120:10        | 86:10 95:21              |
| 95:20 111:12            | 24:22 33:22             | 236:8                   | 120:22 121:11        | 97:4,6 115:21            |
| <b>things</b> 78:20     | 41:19 44:11             | <b>transcription</b>    | 121:22 122:2,9       | 120:17 121:7             |
| 98:1 167:10             | 56:20 57:21             | 184:23 231:12           | 123:4 126:2,16       | 122:19 123:1,2           |
| 168:13,14               | 58:3 59:13              | 232:5                   | 129:8 131:3,20       | 126:4 128:20             |
| 175:21,22               | 60:24 61:22             | <b>transmittal</b>      | 132:4 136:1,9        | 133:4,11                 |
| <b>think</b> 24:4,12    | 69:2 76:5               | 141:18                  | 137:18 139:11        | 141:13 163:7,8           |
| 42:19 57:17             | 78:23 107:2             | <b>transport</b>        | 140:4 142:17         | 175:4 176:9              |
| 61:3 98:13              | 113:22 127:14           | 116:10                  | 151:5 155:6          | 177:24 187:7             |
| 101:11 104:8            | 132:13 142:10           | <b>trapped</b> 17:15    | 156:20 159:24        | 191:20 192:1,2           |
| 115:8 119:12            | 152:24 153:5,6          | <b>treat</b> 43:1       | 160:9 163:22         | 192:23 208:4             |
| 135:2 136:20            | 158:21 161:4            | <b>trends</b> 56:20     | 164:4 170:17         | 222:13                   |
| 136:22 158:10           | 162:16 182:6,8          | <b>trouble</b> 8:19     | 170:23 171:12        | <b>type</b> 40:9 43:5    |
| 171:22 175:19           | 195:2 212:3,6           | <b>truck</b> 27:1,13    | 172:19 176:18        | 43:18 47:7,7             |
| 182:7 185:7             | 221:11 224:11           | <b>true</b> 18:10       | 177:13,23            | 79:17 111:7              |
| 197:6,23 198:3          | 224:13 225:19           | 100:24 145:4            | 192:14,21            | 152:7                    |
| 205:23 206:1            | 228:23,24               | 145:23 168:21           | 193:7,8 195:11       | <b>types</b> 97:5 152:8  |
| 207:2,4 208:1           | <b>timeframes</b>       | 236:8                   | 196:18 199:18        | <b>typical</b> 189:13    |
| 210:15 213:23           | 225:18                  | <b>truth</b> 144:16     | 201:8 210:19         | 224:17                   |
| 213:24 223:8            | <b>title</b> 137:21     | <b>try</b> 79:9 80:24   | 211:5,10             | <b>typically</b> 152:4,8 |
| 223:11 233:9            | <b>titled</b> 78:21     | 101:17 153:1            | 212:15 214:16        | 153:22                   |
| <b>thinking</b> 106:13  | 190:8 192:18            | 168:13 174:12           | 214:21 219:2,5       | <b>typo</b> 26:4         |
| <b>third</b> 5:18 15:3  | <b>titles</b> 69:15     | 191:15 202:8            | 220:3 226:5,24       |                          |
| 16:17 18:24             | <b>today</b> 5:17 63:5  | 209:5                   | 227:21               | <u>U</u>                 |
| 26:12 31:18             | 153:20 223:6            | <b>trying</b> 80:15     | <b>turning</b> 14:14 | <b>unclear</b> 145:16    |
| 32:3,14,21              | 234:24                  | 85:20,23,24             | 15:15 21:18          | <b>underlying</b>        |
| 33:5,12 49:5            | <b>told</b> 144:2,14    | 89:21 125:17            | 22:14 30:24          | 116:9 118:18             |
| 50:10 170:8             | 146:2 152:14            | 127:13 145:10           | 31:14 34:2           | 120:19 123:11            |
| 196:21                  | <b>tomorrow</b>         | 158:13 175:23           | 35:9 47:21           | 123:24 124:11            |
| <b>thought</b> 12:5     | 119:19 186:18           | 177:7 202:21            | 48:9 49:2            | 125:23 133:8             |
| 20:17 113:20            | 208:9 209:7,22          | 203:8 209:3             | 53:11 69:17          | 133:19                   |
| 131:15 232:10           | 210:2,4,5               | 230:23 232:15           | 76:17,22 79:24       | <b>underneath</b>        |
| <b>thoughts</b> 193:15  | 234:24                  | <b>turn</b> 11:24 12:23 | 91:10 105:12         | 18:21 19:1               |
| 205:20                  | <b>top</b> 16:5 32:15   | 13:9 46:7,9,20          | 111:9 122:9          | 21:7 25:15               |
| <b>three</b> 13:21 14:3 | 35:17 46:22             | 47:13,17 48:19          | 134:22 160:20        | 26:9 29:9 32:1           |
| 14:16,21,22             | 73:6 87:1               | 48:19 49:21,22          | 164:24 180:21        | <b>underscore</b>        |
| 16:4 21:21              | 100:19 109:6            | 50:8,15,24              | 180:23 181:3         | 102:20                   |

|  |   |   |  |  |
|--|---|---|--|--|
| <p><b>understand</b> 5:23<br/>11:10 40:20<br/>49:18 58:15<br/>85:21 142:8<br/>144:7 145:11<br/>145:17 153:6<br/>155:21 158:7<br/>160:21,24<br/>163:21 168:6<br/>169:3 174:5<br/>177:6 179:15<br/>184:16,20<br/>186:16 202:8<br/>202:21 207:2<br/>223:19 230:23<br/>231:1,7 232:13<br/>232:15</p> <p><b>understanding</b><br/>14:5,8 15:7<br/>31:10 47:6<br/>48:17 62:6<br/>79:7 82:17<br/>86:13 97:23<br/>116:22 132:14<br/>142:14 145:21<br/>147:6,14 152:4<br/>160:16 176:8<br/>193:20 202:6<br/>202:23 204:7<br/>219:20 231:15<br/>231:19</p> <p><b>understandings</b><br/>62:1</p> <p><b>understood</b> 45:8<br/>46:7 57:18<br/>59:14 60:10<br/>73:12 76:10<br/>77:4 78:24<br/>83:1 94:17<br/>113:15 116:19<br/>118:24 125:16<br/>161:5 163:19<br/>198:16 201:21<br/>203:20 215:9<br/>225:6 231:22</p> <p><b>unfortunately</b><br/>151:6</p> | <p><b>unit</b> 28:6 122:21<br/>132:6,9,10,22<br/>133:2,7,8,14<br/>133:17,18,22<br/>133:24 134:3<br/>134:12,18,21<br/>134:24 135:9,9<br/>135:18</p> <p><b>units</b> 132:2<br/>133:4 134:2</p> <p><b>updated</b> 144:15</p> <p><b>updating</b> 143:23</p> <p><b>upgrade</b> 202:24</p> <p><b>upgraded</b> 142:5</p> <p><b>upgrading</b><br/>142:10</p> <p><b>upper</b> 164:17</p> <p><b>use</b> 26:24 27:12<br/>37:1 56:11,17<br/>62:6 69:7<br/>72:22 73:17<br/>74:9,14 75:7<br/>78:22 80:22<br/>99:21 120:20<br/>122:21,21<br/>136:18 173:20<br/>173:21 174:7<br/>174:13 175:15<br/>177:4 183:15<br/>220:16</p> <p><b>useful</b> 8:18</p> <p><b>uses</b> 44:1 137:2<br/>183:19</p> <p><b>usually</b> 79:23<br/>114:17 118:9<br/>186:2 189:5</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>v-</b> 1:6</p> <p><b>vague</b> 24:9<br/>44:19 59:18<br/>64:13 78:3,9<br/>81:21 88:23<br/>96:7 97:14<br/>107:9 130:1<br/>145:5 158:2,11<br/>205:1 224:1</p> | <p>229:5 232:11</p> <p><b>vagueness</b> 58:19</p> <p><b>validation</b> 157:9<br/>157:12,13</p> <p><b>validator</b> 234:10<br/>234:13</p> <p><b>value</b> 211:23</p> <p><b>values</b> 88:5<br/>136:12,16,16<br/>233:5 234:12</p> <p><b>variety</b> 40:10,24</p> <p><b>various</b> 210:23<br/>212:20</p> <p><b>verbatim</b> 137:1</p> <p><b>verify</b> 66:10</p> <p><b>version</b> 29:11<br/>52:14 94:8<br/>103:19 128:18</p> <p><b>versus</b> 5:14 37:4<br/>37:5 57:21<br/>58:3 59:13<br/>212:12</p> <p><b>vertical</b> 84:2</p> <p><b>viewed</b> 229:14</p> <p><b>violation</b> 8:10<br/>13:1,2 77:22<br/>90:3,5,7<br/>132:17 204:1<br/>205:18 206:14<br/>207:20 225:9<br/>225:13 226:14<br/>226:18 229:17<br/>230:5,16</p> <p><b>violations</b> 62:10<br/>90:9</p> <p><b>virtually</b> 61:2</p> <p><b>visit</b> 22:7,8</p> <p><b>visited</b> 22:9</p> <p><b>VNs</b> 204:1<br/>225:19,20</p> <p><b>voice</b> 45:7 49:9</p> <p><b>voir</b> 3:7 42:2,4</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>Wacker</b> 2:4</p> <p><b>wait</b> 23:7 181:4<br/>221:4</p> | <p><b>waive</b> 206:4</p> <p><b>waiving</b> 206:13</p> <p><b>walk</b> 82:6<br/>116:17,20</p> <p><b>walk-over</b> 82:4</p> <p><b>walked</b> 195:7</p> <p><b>wandering</b><br/>167:15</p> <p><b>Wannier</b> 2:18<br/>3:6 38:16,20<br/>38:21,22,23,23<br/>39:8,19 41:19<br/>43:3,4,12,13<br/>44:16,22 45:8<br/>45:9 48:5,8<br/>49:11,13 51:18<br/>52:1,6,21 53:4<br/>53:21 54:2,7<br/>54:18 55:2,4<br/>56:1 57:7 58:1<br/>59:1 60:11<br/>61:12 62:19<br/>63:2,6 64:3,4<br/>64:15,16 65:1<br/>65:17 66:15<br/>67:1,7,13,19<br/>68:4,19 70:9<br/>70:18 71:8<br/>72:9,11,12,20<br/>73:6,9,12,16<br/>74:2,14,18<br/>76:4,10,13<br/>78:5,10,15<br/>79:13 80:6,9<br/>80:14,17,21<br/>81:22 82:1<br/>85:18,19 86:7<br/>87:14,16 89:1<br/>89:2,11,12<br/>90:6,20 92:10<br/>93:15 94:1<br/>96:9,21 97:16<br/>98:15 102:12<br/>102:22,24<br/>103:5,13,14<br/>104:6,10<br/>105:11 107:11</p> | <p>107:22 108:3,7<br/>112:2,11 114:2<br/>114:6 115:2<br/>117:3,11,22<br/>119:8,14,15,20<br/>119:21 120:9<br/>120:24 121:2,4<br/>121:13,21<br/>123:21 124:4<br/>125:15,19,20<br/>126:7,15,24<br/>127:11,12,18<br/>127:23 128:10<br/>128:10,11,13<br/>128:16 129:1<br/>130:3 131:17<br/>131:19 134:6<br/>134:15 135:3,5<br/>136:22 137:1,6<br/>137:9,10<br/>138:12,18<br/>140:7,8,19,21<br/>141:1,8 143:22<br/>144:13 145:1<br/>145:10 146:7<br/>146:11,13,18<br/>146:20 147:18<br/>148:4,10,20<br/>149:21 150:4<br/>150:13 151:24<br/>152:6,22 154:9<br/>154:10,21<br/>155:1,12,15,21<br/>156:4 158:6,13<br/>158:23 161:14<br/>161:21 162:2,5<br/>163:18 165:7<br/>165:14,20,24<br/>166:3,8 167:4<br/>168:1 169:3,7<br/>169:21 170:1<br/>171:17,22<br/>172:8 173:4,11<br/>173:14 174:1<br/>174:11 175:1<br/>175:23 176:5<br/>176:20 177:4,9</p> |
|--|---|---|--|--|

|                |                        |                |                         |                         |
|----------------|------------------------|----------------|-------------------------|-------------------------|
| 177:12 179:11  | <b>Wannier's</b> 42:24 | 83:20 84:5,11  | 228:16 229:10           | 75:8 85:23              |
| 179:14,22,23   | 145:18                 | 84:12,15,20    | 230:24 231:1,6          | 91:17 103:15            |
| 180:7 181:8,9  | <b>want</b> 8:3 30:17  | 85:1,2,11 86:5 | 231:17                  | 105:6,9 107:14          |
| 181:13,15,23   | 58:15 63:8             | 86:10,12,13,18 | <b>waterer</b> 27:1     | 117:7 119:19            |
| 182:8,12       | 89:9 90:18             | 86:21 87:12,18 | <b>watering</b> 27:18   | 120:7 126:17            |
| 183:21,24      | 107:17 112:9           | 87:20,20,21,23 | 187:2                   | 126:20,21               |
| 185:2,9,12     | 121:23 125:24          | 88:9,18 89:19  | <b>waterways</b>        | 127:20,24               |
| 186:6,7,13     | 160:21 165:22          | 89:24 90:1,24  | 85:14 157:10            | 128:2,5,6               |
| 187:1,3 188:1  | 172:6 173:14           | 91:22 92:18    | 211:16                  | 138:19 145:10           |
| 188:6,9,14,17  | 175:7 208:15           | 131:24 132:1,5 | <b>Waukegan</b>         | 150:14,18               |
| 188:22 189:9   | 228:18                 | 132:12,24      | 45:21 46:10,17          | 152:23 161:23           |
| 189:15,21      | <b>wanted</b> 10:21    | 133:1 134:20   | 53:7 65:21              | 162:3,11                |
| 190:16,20,21   | 11:4 15:11             | 135:10,13,19   | 67:23 69:6              | 165:15 168:9            |
| 192:11 193:19  | 16:24 26:5             | 135:22 136:4   | 156:8,16,23             | 169:15,19               |
| 193:23 195:15  | 59:9 69:14             | 136:17 137:15  | 159:7,10                | 174:1 180:1             |
| 195:22 197:17  | 125:18 129:7           | 138:22 139:7   | 160:11 162:9            | 182:13 190:22           |
| 197:22 198:3   | 143:13 198:16          | 139:12,15,19   | 162:14 166:13           | 191:12 192:9            |
| 198:15,18      | 202:24                 | 142:21 143:1   | 167:16 170:7            | 194:24 196:1            |
| 199:3 200:10   | <b>wants</b> 171:23    | 143:16 144:7,9 | 170:11,13,15            | 206:13 208:3            |
| 200:19,23      | <b>warning</b> 19:3    | 145:13 146:23  | 176:15 182:16           | 210:1,3,15              |
| 202:13 203:6   | <b>wash</b> 116:8      | 147:2 148:24   | 182:20 183:3            | 211:21 213:7            |
| 203:14 204:2   | 118:11,16              | 149:8,10,14    | 190:4,9 191:3           | 216:9 217:5             |
| 204:13,14      | 120:17 123:10          | 150:20 151:2   | 192:20 193:14           | 221:2,8 223:8           |
| 205:2,4 206:7  | 123:23 124:10          | 153:3 156:22   | 195:23 196:11           | 223:10 228:10           |
| 206:22 208:1   | 125:4                  | 157:5,17,19,20 | 227:13 228:2            | 233:13,24               |
| 208:13 209:4,5 | <b>wasn't</b> 11:10    | 158:11,14,16   | 228:21                  | 234:23,24               |
| 209:9,13,21    | 21:15 26:5             | 158:20,21      | <b>way</b> 26:17 47:7   | <b>we've</b> 5:19 42:15 |
| 210:6,10,14,15 | 32:13 158:24           | 160:3 161:1,2  | 137:5,5,7               | 90:12 107:13            |
| 210:18,21,22   | 202:15,16              | 161:6,13 162:8 | 138:3 168:10            | 168:7,24                |
| 212:22 213:6   | 203:4,5 205:14         | 166:13,15,19   | 174:9 187:6             | 180:17                  |
| 214:4,15 215:9 | 208:22                 | 166:22,23      | 189:5 191:11            | <b>Webster</b> 2:18     |
| 215:10,24      | <b>water</b> 5:17      | 167:15,19      | 198:9 231:16            | <b>week</b> 153:19      |
| 216:5,11,17    | 17:15 19:1,9           | 170:7,10,12,15 | <b>ways</b> 26:16       | <b>weeks</b> 22:7,8,9   |
| 217:1,7,12     | 20:23 21:6             | 170:21 180:8,9 | 86:11 187:8             | 107:2                   |
| 220:18 221:1   | 22:1,5 26:20           | 180:24 182:15  | <b>we'll</b> 9:20 12:23 | <b>weight</b> 62:17     |
| 222:22 223:5   | 26:22,24 27:8          | 182:19 183:3   | 50:7,24 107:18          | 185:3                   |
| 223:15 224:4   | 27:10,12,13,14         | 184:3 187:8,21 | 210:16 216:11           | <b>welcome</b> 6:12     |
| 225:11 226:4,9 | 27:17,20,21            | 190:4,9 199:7  | <b>we're</b> 5:1,2,4,7  | <b>wells</b> 53:7 60:23 |
| 226:12 227:18  | 28:6 30:5 31:9         | 199:16,21      | 5:22 7:18,21            | 63:1,9,19,19            |
| 227:20 228:14  | 31:11 33:18            | 200:2 201:5    | 8:2,5,18 9:2            | 63:20 64:18             |
| 229:6,8,23     | 40:12,18 41:2          | 203:24 204:18  | 16:5 30:6,16            | 65:21 66:1,4,7          |
| 230:1,9,11,19  | 43:24 44:2,4           | 204:21,24      | 38:11,12 39:4           | 68:10,11 69:10          |
| 230:20 231:5   | 55:12,13 56:5          | 205:8 206:11   | 40:3,20 43:18           | 69:11,16 71:14          |
| 232:1,7,12,19  | 61:21 64:17            | 211:11,14,21   | 51:18 52:13             | 83:5,12 90:14           |
| 232:20,22      | 71:2 75:10,21          | 212:3,5 213:21 | 61:13 67:14,17          | 91:4,8,12,15            |
| 233:9,15,19,22 | 77:1,10 81:17          | 214:4 215:7    | 72:5,8,14               | 132:11,20               |
| 234:2,6,19     | 82:5,5 83:2,12         | 227:1,22       | 73:21,23 75:7           | 133:2,13 134:7          |

|   |   |  |   |   |
|---|---|--|---|---|
| 134:8,11,17,19<br>134:23 135:6,7<br>135:8,9,12<br>142:10,18,19<br>143:1,8,16<br>144:8 146:22<br>147:1 151:13<br>151:15,18,19<br>151:20,22<br>159:7,9,10,13<br>159:15,16,22<br>160:23 161:3,6<br>163:6,7,8<br>164:22 165:4<br>167:15 172:22<br>178:12 180:16<br>181:18 182:15<br>184:2 187:2,4<br>187:19 189:6<br>211:6,8,9<br>212:17 228:17<br><b>went</b> 21:10<br>105:1 132:11<br>136:20 156:18<br>233:4<br><b>west</b> 1:13 122:7<br>122:12 133:8<br>176:12,14<br>177:16 178:15<br>178:15,18,22<br>178:22,22<br>179:3 192:19<br>193:13,16<br><b>western</b> 160:18<br><b>wet</b> 79:1<br><b>white</b> 14:16,22<br>81:12 87:5<br>160:14<br><b>wide</b> 125:1<br><b>willing</b> 190:17<br><b>Wilmette</b> 2:9<br><b>wind</b> 106:10<br><b>withdraw</b><br>112:10,12<br>119:16 126:20<br>126:22,23<br>154:21 190:17 | 213:10<br><b>withdrawing</b><br>192:12<br><b>withdrawn</b> 76:2<br>112:14 127:17<br><b>witness</b> 3:2 9:13<br>9:14 10:1,3<br>19:18 20:8<br>23:19 25:20<br>32:9,16,24<br>33:4 34:8,20<br>35:3 36:15<br>37:8,11,17,21<br>38:17 39:2,6<br>39:12,16 41:20<br>42:18 43:1<br>49:12 52:4<br>54:19 57:4,4<br>57:19 59:21<br>72:10 73:20,22<br>75:24 78:13<br>79:16 80:7<br>85:17 86:4<br>88:13 96:20<br>101:13 104:9<br>108:6 119:10<br>121:1 131:14<br>134:11 135:2<br>144:6 148:19<br>153:21 156:1<br>158:5,19<br>161:12 169:24<br>173:22 175:20<br>175:24 177:3,5<br>177:6 180:4<br>186:22 187:11<br>187:21 188:17<br>188:19,23<br>191:13 193:20<br>197:6 198:7<br>200:13 202:15<br>203:17 207:17<br>209:19 214:8,9<br>214:13 221:9<br>223:12 226:1<br>226:11 227:16<br>228:12 229:20 | <b>wonder</b> 7:13<br><b>wondering</b> 26:3<br>39:2 152:3<br>198:4<br><b>word</b> 88:2 99:15<br>105:1,1,3,4<br>130:1<br><b>wording</b> 143:4<br>143:11,11<br><b>words</b> 53:23<br>82:20 90:8<br>99:12<br><b>work</b> 22:21<br>23:13 39:24<br>40:1,13,14,14<br>40:16,22,24<br>41:1 42:8 43:5<br>43:8,14,16<br>56:9,21 95:4<br>105:17 107:5<br>168:13 191:13<br>195:6 207:11<br>207:15,19<br>208:24 223:17<br>223:19,23<br>224:5,7,12,24<br>224:24 225:4<br>225:16 230:4<br><b>work-product</b><br>206:5 207:9,13<br>208:23<br><b>worked</b> 17:22<br><b>working</b> 41:13<br>41:15 42:21<br>84:18 157:1<br>194:18 223:21<br>225:8,12<br><b>worried</b> 107:14<br><b>wouldn't</b> 21:12<br>27:24<br><b>written</b> 8:8<br>12:12 15:9<br>26:16 171:4<br>194:21 201:23<br><b>wrote</b> 36:12,13<br>147:8 154:13<br>154:17 194:8 | 196:2<br><b>WS</b> 46:23<br><b>WS-DT-1</b> 46:14<br><b>WS-GT-1</b> 46:23<br><b>WSGT3</b> 47:14<br><b>WSGT4</b> 48:10<br><b>WSGT5</b> 49:3<br><hr/> <b>X</b><br><b>X</b> 3:1 4:1<br><hr/> <b>Y</b><br><b>yard</b> 200:16<br><b>Yeah</b> 118:24<br><b>year</b> 24:24 42:15<br>42:23 129:20<br>158:8,12 159:5<br><b>years</b> 23:5,7<br>107:1<br><b>yesterday</b> 5:5<br>6:1,23 9:5 10:7<br>18:15 22:5<br>24:5 31:8 36:3<br>37:6<br><hr/> <b>Z</b><br><b>zero</b> 149:18<br><b>zone</b> 75:21 77:2<br>77:11 83:2<br>87:12,23 88:10<br>88:18 89:20<br>90:1 139:7,13<br>139:15,19<br>162:8 199:7,16<br>199:22,24<br>200:3 201:5<br>203:23,24<br>204:18,21,24<br>205:8 227:2,23<br><hr/> <b>0</b><br><b>0</b> 14:24<br><b>05</b> 172:23<br><b>07</b> 172:24<br><b>084-001624</b><br>236:12<br><b>09</b> 115:6 | <b>1</b><br><b>1</b> 12:6 15:15<br>17:8,9,10<br>29:17,17,23<br>30:1,2,10,10<br>77:7 87:20,21<br>88:10,14,15<br>89:8,13,18<br>90:1 136:17<br>137:15 141:13<br>143:8 144:8<br>145:12 146:22<br>147:1 159:15<br>160:4 164:22<br>165:4 185:18<br>189:2 218:23<br>219:13<br><b>1:20</b> 128:2<br><b>1:25</b> 128:2,6<br><b>10</b> 2:13 3:4<br>143:8 144:8<br>145:12 146:22<br>147:1<br><b>10:00</b> 38:14<br><b>100</b> 1:13<br><b>1004</b> 2:8<br><b>107</b> 4:13<br><b>11</b> 8:22 14:10<br>15:20 26:10<br>31:14 35:9<br>68:10 71:14<br>83:9,24 226:15<br><b>11:00</b> 72:5<br><b>11:02</b> 72:9<br><b>112</b> 4:8<br><b>11233</b> 141:11<br><b>11235</b> 141:15<br><b>11236</b> 142:17<br>155:8<br><b>11237</b> 141:11<br><b>116B</b> 9:6<br><b>117</b> 4:9<br><b>11B</b> 8:8,23 9:15<br>13:1,5<br><b>11D</b> 8:4<br><b>11th</b> 141:20 |
|---|---|--|---|---|

|                        |                         |                        |                       |                        |
|------------------------|-------------------------|------------------------|-----------------------|------------------------|
| 226:23                 | 165:10,15,18            | 74:1                   | 26:17 27:24           | 123:7 129:13           |
| <b>12</b> 10:14,16,19  | 166:6                   | <b>194</b> 104:13      | 30:4 35:24            | 129:14,16,18           |
| 14:2 15:1,2            | <b>14525</b> 163:4      | <b>1944</b> 122:3      | 73:24 77:8            | 132:3 161:4            |
| 16:20,22 29:9          | <b>14526</b> 163:5      | <b>19442</b> 117:4,10  | 87:12 88:10           | 221:16 223:24          |
| 71:14 101:14           | <b>14529</b> 164:7,24   | 122:4                  | 92:21,24              | 224:5 226:15           |
| 107:1 151:13           | <b>14530</b> 164:4,12   | <b>19444</b> 117:4,11  | 102:17 138:8          | 226:21,23              |
| 151:20                 | <b>14531</b> 163:1      | <b>19445</b> 117:14    | 140:1 153:3           | 230:5                  |
| <b>12-12-2012</b>      | 165:10,16,20            | <b>19448</b> 115:4     | 175:11 182:19         | <b>2013</b> 23:3 26:13 |
| 132:6                  | <b>14532</b> 165:23     | <b>19451</b> 114:14    | 185:18,23             | 75:18 92:21            |
| <b>12-inch</b> 14:2    | <b>148</b> 4:12         | <b>19452</b> 114:14    | 214:19,23             | 127:2,4,8,10           |
| <b>120</b> 4:9         | <b>14A</b> 101:2,4,9,9  | <b>19455</b> 114:12    | 215:2,3,6             | 131:12,14              |
| <b>121</b> 4:10        | 102:9 111:22            | 119:17,22              | <b>2-6-3</b> 228:1    | 139:5 141:20           |
| <b>12129</b> 193:3     | <b>15</b> 100:24        | <b>19456</b> 122:10    | <b>2-north</b> 21:24  | 149:2 156:14           |
| <b>12130</b> 193:3     | 111:16 124:24           | <b>19457</b> 119:17,22 | <b>2-south</b> 22:1,1 | 170:8 196:9            |
| <b>1255</b> 147:21     | 151:19,22               | <b>1946</b> 104:17     | <b>20</b> 74:1 84:7   | 199:15 227:9           |
| <b>126</b> 4:10        | 196:9                   | <b>19470</b> 124:6     | <b>20-foot</b> 30:2   | 228:13,19              |
| <b>12822</b> 191:1     | <b>15-minute</b> 72:5   | <b>19473</b> 126:3     | <b>200</b> 51:23      | 229:4,11               |
| <b>12827</b> 191:8,10  | <b>150</b> 4:12         | <b>19483</b> 127:6     | <b>2000</b> 41:16     | <b>2014</b> 170:11,20  |
| <b>12828</b> 193:2     | <b>154</b> 4:13 165:10  | <b>19487</b> 104:22    | 42:23                 | 181:1 182:22           |
| <b>12829</b> 193:4,5   | <b>15424</b> 163:10     | <b>19489</b> 102:20    | <b>2001</b> 41:16     | 183:12                 |
| 195:11                 | <b>15425</b> 163:13     | <b>19490</b> 102:20    | 42:23 223:20          | <b>2015</b> 92:24      |
| <b>12830</b> 192:22    | <b>15429</b> 163:23     | <b>19495</b> 96:22,23  | 224:8                 | 149:6 217:19           |
| 193:5                  | 164:7,9                 | <b>19499</b> 98:2 99:5 | <b>2002</b> 224:13    | <b>2016</b> 62:9 93:2  |
| <b>12831</b> 192:3,22  | <b>15430</b> 164:4      | <b>195</b> 4:15        | <b>2003</b> 131:6,16  | 149:9 170:13           |
| 192:24                 | <b>15431</b> 163:13     | <b>19511</b> 100:10    | 224:13                | <b>20165</b> 150:21    |
| <b>12832</b> 192:24    | 166:6                   | <b>19512</b> 100:10    | <b>2004</b> 97:9      | <b>2017</b> 1:12 93:4  |
| 194:3                  | <b>15764</b> 140:13     | <b>19513</b> 100:15    | 108:23                | 149:11,15              |
| <b>12th</b> 132:2      | <b>15765</b> 140:15     | <b>19576</b> 104:17,19 | <b>2005</b> 45:15     | 151:3 170:16           |
| <b>13</b> 15:18 45:14  | <b>15766</b> 140:16,18  | 109:7                  | 98:21,24              | <b>202</b> 4:3 52:2,22 |
| 101:8,15               | <b>15A</b> 101:6 102:9  | <b>19577</b> 104:22,23 | 106:24 109:12         | 52:24 53:2             |
| 110:14,20              | 111:22                  | 109:7                  | 192:18                | <b>203</b> 4:4 53:6    |
| 151:18,22              | <b>16</b> 68:10 143:7   | <b>19585</b> 108:8     | <b>2006</b> 44:11     | 54:9,15,16             |
| <b>13-15</b> 1:6 5:16  | 151:13 159:16           | 111:10                 | <b>2008</b> 22:17,21  | <b>204G</b> 4:4 54:24  |
| 73:2                   | 160:23 161:7            | <b>19591</b> 109:16    | 23:24 24:23           | 60:12,15 61:5          |
| <b>13.2</b> 105:24     | <b>1600</b> 2:4         | <b>19604</b> 110:11    | <b>2009</b> 21:4,8    | 61:7                   |
| <b>1300</b> 2:19       | <b>17</b> 63:1,19 74:1  | <b>19605</b> 110:8     | 22:23,24 24:24        | <b>209G</b> 4:4 54:24  |
| <b>138</b> 4:11        | <b>18</b> 63:1,19 65:9  | <b>1961</b> 164:13     | 25:3,10 113:8         | 60:13,15 61:6          |
| <b>13832</b> 193:8     | 74:1 139:5              | <b>1974</b> 163:23     | 130:16                | 61:8                   |
| <b>13A</b> 102:7       | 156:14 199:15           | 164:1,9                | <b>201</b> 4:3 45:4   | <b>20D</b> 72:14,18,19 |
| 110:13,23              | 228:2,3,13              | <b>198</b> 4:15        | 51:11,15,16,21        | 72:20,22 73:3          |
| <b>13th</b> 226:16     | <b>18-foot</b> 53:19,20 | <b>19D</b> 173:7       | <b>2010</b> 118:6,7   | <b>2101</b> 2:18       |
| <b>14</b> 68:10 100:24 | <b>182</b> 4:14         | <b>1A</b> 226:6        | 130:14 182:21         | <b>210H</b> 4:5 62:22  |
| 101:1,9 111:16         | <b>189</b> 4:14         |                        | 183:11                | 63:11 65:2,12          |
| 151:19                 | <b>18th</b> 75:18 131:6 | <u>2</u>               | <b>2011</b> 120:14    | 65:14                  |
| <b>141</b> 4:11        | 131:12,14               | <b>2</b> 12:9,11 14:12 | 129:12,22             | <b>2111</b> 63:11      |
| <b>14522</b> 165:13    | 227:8 229:4             | 15:8 16:1              | 130:8                 | <b>212</b> 4:16 63:11  |
| <b>14524</b> 163:1,3   | <b>19</b> 63:1,19 65:9  | 22:19,23 23:3          | <b>2012</b> 8:11 84:7 | <b>213</b> 63:11       |

|  |  |                                 |                       |                         |
|--|--|---------------------------------|-----------------------|-------------------------|
| <b>214</b> 63:12                       | <b>24290</b> 50:16                       | <b>254</b> 4:11 138:20          | 188:12 189:17         | 105:12 112:3,6          |
| <b>215</b> 63:12                       | <b>24292</b> 50:15                       | 140:6,7 141:2                   | 189:19                | 112:7,14                |
| <b>215H</b> 4:5 62:22<br>65:3,13,15    | <b>24300</b> 51:1,2                      | 141:4,6 147:11                  | <b>272</b> 190:3      | <b>2S</b> 23:8 26:14,15 |
| <b>216</b> 4:16                        | <b>24302</b> 50:24                       | <b>255</b> 4:12 141:10          | <b>273</b> 190:23     | 26:17 29:16,16          |
| <b>216I</b> 4:5 65:19<br>66:16,20,21   | <b>24387</b> 52:3                        | 148:1,2 154:20                  | 191:22 192:13         | <b>3</b>                |
| <b>21st</b> 127:7,10                   | <b>24388</b> 52:16                       | 155:4,12                        | <b>274</b> 4:15 191:9 | <b>3</b> 12:18 13:19    |
| <b>220</b> 4:17                        | <b>24392</b> 52:3                        | <b>256</b> 4:12 150:5,8         | 191:15,24             | 17:2 18:1               |
| <b>220I</b> 4:5 65:19<br>66:16,20,22   | <b>243M</b> 4:8 91:21<br>92:21 93:17,20  | 150:10                          | 192:4,14              | 22:20,24 28:3           |
| <b>221</b> 169:22,23                   | 93:22                                    | <b>2560</b> 148:7,11            | 195:16,19,20          | 28:4,6 33:18            |
| <b>222J</b> 67:3 68:5                  | <b>244M</b> 92:24                        | 149:3,4                         | <b>275</b> 4:15 196:1 | 33:21 77:8              |
| <b>223</b> 4:17                        | <b>245M</b> 93:2                         | <b>2570</b> 149:4               | 198:19,23             | 87:12 88:10             |
| <b>228</b> 68:15                       | <b>246</b> 93:4                          | <b>2580</b> 149:7               | 199:1                 | 102:17 122:10           |
| <b>228J</b> 67:4 68:6                  | <b>246M</b> 91:21<br>93:17,20            | <b>2590</b> 149:9               | <b>276</b> 4:16 199:5 | 122:11 124:22           |
| <b>229</b> 68:23                       | <b>247</b> 94:4 102:13                   | <b>25th</b> 1:12 5:18<br>234:24 | 210:20,21             | 131:16 138:8            |
| <b>229K</b> 68:22<br>70:10             | 104:14 112:10                            | <b>26</b> 180:21                | 212:23 213:3,4        | 140:2 210:19            |
| <b>22nd</b> 21:7<br>221:16             | 112:12,14                                | <b>260</b> 4:12 150:6,9         | 219:3,4 227:1         | <b>3:00</b> 182:9       |
| <b>231K</b> 69:19                      | <b>247.5</b> 103:9                       | 150:11                          | <b>277</b> 213:8,10   | <b>30</b> 3:4           |
| <b>23339</b> 72:18<br>73:3             | <b>2473</b> 46:10                        | <b>2600</b> 148:7               | <b>278</b> 216:1,2    | <b>302</b> 8:5,12 17:18 |
| <b>2345</b> 46:14                      | <b>248</b> 114:8<br>121:23 122:2         | <b>260O</b> 148:11              | <b>278Q</b> 4:16      | 20:11,15                |
| <b>235</b> 68:23                       | <b>248N</b> 4:9 112:19                   | 149:12                          | 213:14,19             | <b>308</b> 6:24 7:6,7   |
| <b>235.5</b> 4:6 68:23<br>70:13,16     | 115:19 117:5                             | <b>261</b> 4:13 150:15          | 216:20,21,22          | 7:11                    |
| <b>235.5K</b> 68:22<br>70:4,10         | 117:17,18,20                             | 154:6,7 166:6                   | <b>281Q</b> 4:16      | <b>30th</b> 21:4        |
| <b>236L</b> 4:7 70:21<br>71:10,23 72:1 | <b>249</b> 117:24                        | <b>262</b> 154:12,22            | 213:14 216:2          | <b>312-251-4610</b>     |
| <b>23rd</b> 5:19                       | 119:9 121:24                             | <b>263</b> 4:13 156:6           | 216:20,23             | 2:15                    |
| <b>24</b> 15:2,3 92:7<br>151:3         | 130:6                                    | 161:15,18,19                    | <b>28350</b> 7:10     | <b>312-282-9119</b>     |
| <b>241L</b> 4:7 70:21<br>71:10,24 72:2 | <b>249.5M</b> 119:18                     | 162:7 176:22                    | <b>284</b> 4:17 217:9 | 2:9                     |
| <b>242</b> 4:7 49:21<br>75:9 80:1,16   | <b>249N</b> 4:9 119:18                   | 177:8,13                        | 220:19,22,23          | <b>31st</b> 26:13       |
| 92:3,8 227:22                          | 119:23 120:3                             | <b>264</b> 162:13               | <b>285</b> 221:3      | 192:17                  |
| <b>24275</b> 46:20                     | 122:9 128:19                             | 165:11,18                       | <b>286</b> 4:17 221:7 | <b>34</b> 216:5         |
| <b>24277</b> 47:13                     | 128:23                                   | <b>265</b> 166:12               | 222:23 223:2,3        | <b>34271</b> 14:15,19   |
| <b>24278</b> 47:21<br>48:9             | <b>24th</b> 5:19 115:6                   | 169:10                          | <b>287</b> 223:7      | 31:15                   |
| <b>24279</b> 49:2                      | <b>25</b> 124:24 148:6                   | <b>266</b> 169:18               | <b>28850</b> 20:12    | <b>34281</b> 26:11      |
| <b>24282</b> 49:22                     | <b>250N</b> 4:10<br>120:11 121:14        | <b>267</b> 182:1                | <b>29</b> 45:22 50:20 | 33:15                   |
| <b>24284</b> 50:8                      | 121:18,19                                | <b>267P</b> 169:17<br>170:6     | 52:13,20 55:15        | <b>34311</b> 28:9       |
|  | <b>251N</b> 4:10 123:4<br>123:5 126:8,11 | 170:6                           | 55:16 59:21           | <b>34317</b> 28:14,21   |
|  | 126:13 129:9                             | <b>268</b> 170:18               | 60:23 74:21,24        | 34:3                    |
|  | <b>252</b> 126:22                        | <b>268P</b> 170:9               | 75:4,11,23,24         | <b>34426</b> 15:15,17   |
|  | <b>252N</b> 112:19                       | 180:23 181:9                    | 76:6,9,23             | 35:11,11                |
|  | <b>253</b> 4:11 130:19<br>131:12,14      | <b>269P</b> 170:11              | 86:19 92:19           | <b>34428</b> 35:13      |
|  | 138:13,16                                | <b>26th</b> 235:1               | 94:6 95:1,8           | 36:5 37:14              |
|  | 228:5                                    | <b>27</b> 8:11 113:8            | 96:11 103:20          | <b>35</b> 88:5 137:12   |
|  |  | <b>270</b> 182:1                | 105:14,19,24          | <b>36</b> 11:17 12:2,13 |
|  |  | <b>270P</b> 169:17<br>170:14    | 112:21,23             | 12:19 15:3              |
|  |  | <b>271</b> 4:14 152:1           | 116:8 119:5           | <b>3600</b> 2:14        |
|  |  | 182:14 186:15                   | 120:14 129:4          | <b>365</b> 2:4          |
|  |  |                                 | 227:13,23             | <b>39</b> 3:6           |
|  |  |                                 | <b>293</b> 4:8 103:16 |                         |



|                        |                        |                        |                         |                   |
|------------------------|------------------------|------------------------|-------------------------|-------------------|
| <b>3987-85</b> 220:7   | <b>45331</b> 171:2     | <b>60</b> 42:16        | <b>721</b> 132:5        | <b>9458</b> 120:7 |
| <b>3rd</b> 53:16       | <b>45649</b> 53:12     | <b>60601</b> 2:5       | 134:22                  | <b>9459</b> 120:7 |
| <b>3S</b> 13:11 14:6   | <b>458</b> 175:3       | <b>60603</b> 2:14      | <b>722</b> 136:1        | <b>94612</b> 2:19 |
| <hr/> <b>4</b> <hr/>   | 186:16                 | <b>60691</b> 2:9       | <b>723</b> 130:20       |                   |
| <b>4</b> 28:6 87:13    | <b>45816</b> 173:6,8   | <b>608</b> 156:20      | 137:18                  |                   |
| 88:10                  | 175:3                  | 160:20 177:14          | <b>727</b> 139:11       |                   |
| <b>4-1</b> 52:11       | <b>49565</b> 217:10    | 178:12,21              | <b>749</b> 140:5,5,6    |                   |
| <b>4130.068</b> 122:7  | <b>49569</b> 219:17    | <b>609</b> 159:24      | <b>766</b> 140:18,20    |                   |
| 122:12                 | <b>49666</b> 220:3     | 160:2                  | <hr/> <b>8</b> <hr/>    |                   |
| <b>415-877-5646</b>    | <hr/> <b>5</b> <hr/>   | <b>61</b> 4:4          | <b>8</b> 12:9 18:21     |                   |
| 2:20                   | <b>5</b> 11:2,12 30:4  | <b>610</b> 160:9       | 20:14 21:19             |                   |
| <b>42</b> 3:7 35:23    | 178:12,14              | <b>620</b> 88:5 137:13 | 22:17 25:15,23          |                   |
| <b>425</b> 13:10       | 180:16 181:18          | <b>625</b> 199:18      | 30:24 36:1,1            |                   |
| <b>43849</b> 186:14,20 | <b>50</b> 42:16        | <b>643</b> 201:8 219:5 | 53:7 65:21              |                   |
| 188:15,16              | <b>500</b> 11:1 35:22  | <b>644</b> 211:5       | 66:1,4,7,11             |                   |
| <b>43856</b> 186:21    | 35:23 36:12,14         | <b>645</b> 211:10      | 159:16,17               |                   |
| <b>43857</b> 185:16    | 36:20                  | <b>646</b> 212:15      | 160:23 161:6            |                   |
| 186:15,23              | <b>506</b> 22:15       | <b>65</b> 4:5          | 184:2,4 187:17          |                   |
| 188:17 189:18          | <b>507</b> 17:19 18:14 | <b>66</b> 4:5          | 187:19 189:6            |                   |
| <b>43858</b> 185:22    | 18:20 21:19            | <b>6668</b> 76:17      | 217:19                  |                   |
| 186:9,11               | 25:14,24               | <b>667</b> 75:12       | <b>80248</b> 25:24      |                   |
| 188:13                 | <b>51</b> 4:3          | <b>6670</b> 216:3,4    | <b>8248</b> 25:15,18    |                   |
| <b>43859</b> 185:21    | <b>510</b> 14:10 15:21 | <b>6671</b> 214:17     | <b>8250</b> 18:13,18    |                   |
| 189:18                 | 26:10 28:8,9           | <b>67</b> 216:4        | <b>8254</b> 21:21 31:1  |                   |
| <b>44145</b> 120:22    | 35:10 37:2             | <b>670</b> 76:22 80:2  | <b>856</b> 189:11       |                   |
| <b>4415</b> 121:11     | <b>511</b> 4:19 6:2,8  | <b>6734</b> 213:20     | <b>857</b> 186:22       |                   |
| <b>44155</b> 120:24    | 6:16,17 29:8           | 216:3                  | 189:11                  |                   |
| <b>446</b> 114:13      | <b>53</b> 4:3          | <b>68</b> 4:6          | <b>858</b> 186:16       |                   |
| 117:14                 | <b>54</b> 4:4          | <b>687</b> 81:1        | <b>8806.419</b> 122:7   |                   |
| <b>447</b> 114:13      | <b>55</b> 121:1        | <b>688</b> 83:4 90:11  | 122:12                  |                   |
| 117:14                 | <b>576</b> 109:5       | <b>689</b> 83:18       | <hr/> <b>9</b> <hr/>    |                   |
| <b>448</b> 114:13      | <b>577</b> 109:6       | <b>690</b> 86:16       | <b>9</b> 53:7,14 65:22  |                   |
| 117:14                 | <b>579</b> 211:24      | <hr/> <b>7</b> <hr/>   | 66:1,4,7,11             |                   |
| <b>449</b> 114:13      | 212:9                  | <b>7</b> 11:24 22:15   | 75:22 143:8             |                   |
| 117:15                 | <b>582.5</b> 30:3      | 159:15 160:4           | 144:8 145:12            |                   |
| <b>45</b> 181:3 191:10 | <b>58589</b> 151:5     | 164:22 165:4           | 146:22 147:1            |                   |
| <b>450</b> 114:13      | <b>596</b> 196:15      | 178:12,17              | 184:2,4 185:18          |                   |
| 117:15                 | <b>597</b> 196:18      | 180:16 181:18          | 187:17,19               |                   |
| <b>451</b> 117:15      | <b>598</b> 196:16      | 194:3                  | 189:2,6                 |                   |
| <b>452</b> 117:15      | <hr/> <b>6</b> <hr/>   | <b>7:00</b> 210:5      | <b>9-page</b> 185:23    |                   |
| <b>45328</b> 181:10    | <b>6</b> 4:19 14:24    | <b>70</b> 4:6 22:6     | <b>9:00</b> 1:12 235:1  |                   |
| <b>45329</b> 170:24    | 15:1 16:11,14          | <b>711</b> 75:12       | <b>9:05</b> 5:20        |                   |
| 171:12,13              | 21:24 35:18            | <b>712</b> 130:20      | <b>90</b> 26:20 27:8,19 |                   |
| 172:10                 | 178:23 196:19          | <b>72</b> 4:7          | <b>91</b> 4:7           |                   |
| <b>45330</b> 171:14,15 | <b>6-6</b> 11:14       | <b>720</b> 131:21      | <b>93</b> 4:8           |                   |
| 172:5,19 181:4         |                        | 132:21 134:13          |                         |                   |