

# ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
COAL COMBUSTION WASTE (CCW) ) R14-10  
AND SURFACE IMPOUNDMENT ) (Rulemaking-Water)  
POWER GENERATING ) )  
FACILITIES: PROPOSED NEW ) )  
35 ILL. ADM. CODE 841 ) )

REPORT OF THE PROCEEDINGS held in the above entitled cause before Hearing Officer Timothy Fox, called by the Illinois Pollution Control Board, taken by Steven Brickey, CSR, for the State of Illinois, 100 West Randolph Street, Chicago, Illinois, on the 18th day of June, 2014, commencing at the hour of 11:02 a.m.

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STATE OF ILLINOIS  
Pollution Control Board

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1 HEARING OFFICER FOX: Good morning  
2 and welcome to this Illinois Pollution Control  
3 Board hearing. My name is Tim Fox and I am the  
4 Hearing Officer for this rulemaking entitled Coal  
5 Combustion Waste CCW and Surface Impoundments at  
6 Power Generating Facilities. Proposed new 35 Ill.  
7 Adm. Code 841. The Board Docket number for this  
8 rulemaking is R14-10. Also present today from the  
9 Board are at my immediate right Board Member Jerry  
10 O'Leary who is the lead Board Member for this  
11 rulemaking. To his right is the Board Chairman  
12 Dr. Deanna Glosser. At the far left of this table  
13 is Board Member Jennifer Burke and at my immediate  
14 left is Alisa Liu of the Board's technical staff.

15 Today we are, of course, holding  
16 the third hearing in this rulemaking. We will  
17 continue to address testimony that was pre-filed  
18 by The Environmental Groups from the second  
19 hearing and also pre-filed questions based upon  
20 The Environmental Group's revisions of the  
21 Agency's proposal. There will also be an  
22 opportunity to offer testimony on the Board's  
23 request that the Department of Commerce and  
24 Economic Opportunity perform an Economic Impact

1 Study of the proposal.

2 In an order dated May 21st,  
3 2014, the Hearing Officer scheduled this third  
4 hearing and set a deadline to pre-file questions  
5 addressing The Environmental Group's proposed  
6 changes. First, on June 9th, however, the Board  
7 received from The Environmental Group's comments  
8 regarding those proposed changes. On June 11th of  
9 2014, the Board received timely pre-filed  
10 questions from, first, Ameren Missouri and Ameren  
11 Energy Medina Valley Cogen, second from Dynegy  
12 Midwest Generation, LLC, Illinois Power Generating  
13 Company, Illinois Power Resources Generating, LLC,  
14 and Electric Energy, Inc., third from Midwest  
15 Generation, LLC, fourth from the Illinois EPA.  
16 The Hearing Officer order that day also included  
17 attached questions for the Agency and for The  
18 Environmental Groups.

19 I do want to note that the  
20 Agency on June 11th filed a motion to sever and to  
21 open a subdocket. The response deadline has not  
22 run on that motion and the Board will not take  
23 action on that during this hearing today or  
24 tomorrow although I do want to note that the Board

1 yesterday did receive a response to that motion  
2 filed by The Environmental Groups.

3           As discussed off the record as a  
4 procedural matter before the hearing, we will  
5 resume this hearing with the pre-filed questions  
6 for The Environmental Groups that were filed on  
7 June 11th and we will take those in the order in  
8 which they were filed by the participants  
9 beginning first with Ameren, turning second when  
10 they have exhausted their questions to Dynegy,  
11 turning third when they have exhausted their  
12 questions to Midwest Generation and when they have  
13 exhausted their questions turning then to the  
14 Illinois EPA, which has indicated that it will  
15 take up its pre-filed questions and then resume  
16 the questions that were left at the conclusion of  
17 business at the hearing on Thursday, May 15th,  
18 which are largely, but not exclusively, directed  
19 to Ms. Barkley.

20           At the conclusion of those, the  
21 Board will defer its own questions since it is  
22 conceivable that many of those that the Board  
23 filed may be addressed by the answers or follow  
24 ups to the participant's questions. Any questions

1 about our order of proceeding today?

2 Mr. Armstrong?

3 MR. ARMSTRONG: Before we started,  
4 The Environmental Groups had several documents  
5 that had come up during the last hearing that we  
6 brought copies of today. So if we could move  
7 those in as exhibits now.

8 HEARING OFFICER FOX: That makes  
9 sense to take up those issues, Mr. Armstrong. If  
10 there are no questions, first of all, about our  
11 order of proceeding why don't we turn to that.

12 MR. ARMSTRONG: Thank you. So our  
13 first document was a list of the industrial sites  
14 that had been worked on by The Environmental  
15 Group's expert witness Dr. Keir Soderberg.

16 HEARING OFFICER FOX: This would be  
17 Exhibit 39 is the next consecutive number,  
18 Mr. Armstrong.

19 (Document marked as Hearing  
20 Exhibit No. 39 for  
21 identification.)

22 MR. ARMSTRONG: We move to admit  
23 this as Exhibit 39.

24 HEARING OFFICER FOX: Mr. Armstrong

1 has circulated and moved into the record as  
2 Exhibit 39 a document entitled Industrial Sites  
3 Worked On by Dr. Keir Soderberg. Is there any  
4 objection to the motion?

5                   Neither seeing nor hearing any,  
6 Mr. Armstrong, that will be marked and admitted as  
7 Exhibit 39.

8                   MR. ARMSTRONG: Also in relation to  
9 Dr. Soderberg's testimony at the last hearing we  
10 have document proceedings of the  
11 Ground-Water/Surface-Water Interaction Workshop  
12 from the United States Environmental Protection  
13 Agency Solid Waste and Emergency Response July  
14 2000. And we would move to admit this as Exhibit  
15 40.

16                   (Document marked as Hearing  
17 Exhibit No. 40 for  
18 identification.)

19                   HEARING OFFICER FOX: Mr. Armstrong  
20 has moved into the record as Exhibit No. 40 the US  
21 EPA document entitled Proceedings of the  
22 Ground-Water/Surface-Water Interactions Workshop.  
23 Is there any objection to the motion?

24                   MS. OLSON: I just have --



1 HEARING OFFICER FOX: Ms. Olson?

2 MS. OLSON: -- a few questions. I  
3 might have missed it. Can you state how this came  
4 up in the last hearing again?

5 MR. ARMSTRONG: So there was --  
6 Dr. Soderberg had referenced a 2000 document  
7 regarding ground-water/surface-water interactions  
8 in his testimony. This is the document that was  
9 referred to.

10 MS. OLSON: Thank you.

11 HEARING OFFICER FOX: Nothing  
12 further, Ms. Olson?

13 MS. OLSON: No.

14 HEARING OFFICER FOX: Any other  
15 questions or objections to admission of the  
16 exhibit? Neither seeing nor hearing any,  
17 Mr. Armstrong, it will be marked as Exhibit  
18 No. 40.

19 MR. ARMSTRONG: At the last hearing,  
20 the issue of the currently --

21 MS. DEXTER: Can I take that one  
22 back? We may get this one in later.

23 MR. ARMSTRONG: At the last hearing  
24 the issue of the currently applicable NPDES permit

1 for the ED Edwards Plant came up and we have a  
2 copy of the currently applicable permit for ED  
3 Edwards.

4 HEARING OFFICER FOX: And if I may  
5 clarify for the record NPDES refers to National  
6 Pollutant Discharge Elimination System. Am I  
7 correct, Mr. Armstrong?

8 MR. ARMSTRONG: Yes.

9 HEARING OFFICER FOX: Very good.  
10 Thank you for letting me interrupt you.

11 MR. ARMSTRONG: I would move to  
12 admit this as Exhibit 41.

13 (Document marked as Hearing  
14 Exhibit No. 41 for  
15 identification.)

16 MR. RIESER: Just a second.

17 HEARING OFFICER FOX: Of course.

18 MR. RIESER: May I ask just a few  
19 questions?

20 HEARING OFFICER FOX: Please go  
21 ahead, Mr. Rieser.

22 MR. RIESER: Is this the current  
23 permit for this facility?

24 MS. BARKLEY: I believe so.

1 MR. RIESER: Do you know if there  
2 has been a reapplication for this permit?

3 MS. BARKLEY: It has been reapplied  
4 for. The Agency has not issued a final permit for  
5 ED Edwards.

6 THE AUDIENCE: Could you speak up?

7 MS. BARKLEY: An application has  
8 been submitted. The public hearing process --  
9 we've already been through the public hearing  
10 process and final comment from the -- the Agency  
11 has not issued a final permit to Ameren Edwards.

12 MR. RIESER: Thank you.

13 HEARING OFFICER FOX: Nothing  
14 further, Mr. Rieser?

15 MR. RIESER: No.

16 HEARING OFFICER FOX: Ms. Olson, do  
17 I see your hand?

18 MS. OLSON: There's some penmanship  
19 or handwriting on the top of this document and it  
20 says "previous permit." Can you please indicate  
21 who wrote that on there?

22 MS. BARKLEY: I believe that that  
23 was from IEPA's file.

24 MS. OLSON: Okay.

1 MS. BARKLEY: From our FOIA review  
2 that we conducted. I can't guarantee that,  
3 though.

4 MS. OLSON: Did anyone from The  
5 Environmental Groups write this on the top here?

6 MS. BARKLEY: May I look at a copy?  
7 I don't believe so. That's the copy in the file.  
8 I think that was from the IEPA file.

9 MS. OLSON: That's all I've got.

10 HEARING OFFICER FOX: Ms. Olson, any  
11 other questions?

12 MS. OLSON: No.

13 HEARING OFFICER FOX: Mr. Armstrong  
14 has moved to admit the information with a cover  
15 letter dated January 11th, 2006, a permit issued  
16 to Ameren Energy Resources Generating Company. Is  
17 there any objection to admission of this document  
18 as Exhibit No. 41? Neither seeing nor hearing  
19 any, Mr. Armstrong, it will be so marked and  
20 admitted.

21 MR. ARMSTRONG: Thank you. And,  
22 finally, we have a rather lengthy document here  
23 entitled Geo-Technical Report North Ash Pond and  
24 Old East Ash Pond Vermilion Site Embankment

1 Evaluations, Oakwood, Illinois dated November  
2 18th, 2013, from URS Corporation.

3 This is a plan for the Vermilion  
4 site that we discussed at some length during the  
5 last hearing. Ms. Barkley referenced a plan for  
6 the site. This is a copy of the plan. We have a  
7 paper copy for the Board. We have one extra paper  
8 copy here and then eight copies on CD.

9 MS. DEXTER: We're entering the CD,  
10 but we have the paper copy ones.

11 HEARING OFFICER FOX: Ms. Olson, it  
12 appears you have a question. Please go ahead.

13 MS. OLSON: Can you restate the date  
14 on that document?

15 MR. ARMSTRONG: November 18th, 2013.

16 MS. OLSON: Thank you.

17 HEARING OFFICER FOX: Mr. Rieser?

18 MR. RIESER: You said it was a plan.  
19 It was a plan submitted by the company or by whom?

20 MR. ARMSTRONG: So this is -- on the  
21 cover sheet, it is prepared for Dynegy Midwest  
22 Generation, LLC, prepared by US Corporation and it  
23 is --

24 MR. RIESER: URS Corporation?

1 MR. ARMSTRONG: URS, correct. It is  
2 captioned embankment evaluations and Ms. Barkley  
3 has actually corrected me. It is not so much in  
4 the nature of a plan as a technical evaluation.

5 MS. BARKLEY: It's a technical  
6 evaluation done on the two old unpermitted ash  
7 ponds to evaluate the stability and safety of  
8 those ash pits.

9 MR. RIESER: And it was submitted to  
10 the IEPA?

11 MS. BARKLEY: Yes.

12 MR. RIESER: As part of what  
13 process?

14 MS. BARKLEY: I believe it was  
15 submitted to IEPA as part of the proposed closure  
16 process of the Vermilion plant after it was raised  
17 by both DNR and Illinois EPA concerning potential  
18 stability issues of those two ash pits. And I  
19 would like to point out there are three ash ponds  
20 on site. This is just for the two older ash pits.  
21 Not for the third.

22 HEARING OFFICER FOX: Ms. Olson?

23 MS. OLSON: Do you plan on  
24 testifying from this document or in any way using

1 this document to answer questions that were posed  
2 in pre-filed questions?

3 MS. BARKLEY: Yes.

4 MS. OLSON: In which case, I would  
5 ask we be given a paper copy. We don't have a  
6 computer so we cannot follow along.

7 MS. DEXTER: Do you want the extra  
8 paper copy or are you asking we go and --

9 MS. OLSON: I'm not speaking for the  
10 other parties, but the Agency will be unable to  
11 follow along because it does not have a computer.

12 MS. BUGEL: Is there a copier here  
13 that --

14 MS. DEXTER: We can't copy. Our  
15 office is a couple blocks away, but we can get  
16 more copies. Do you think we're going to be  
17 testifying from it?

18 MR. ARMSTRONG: I think I can make a  
19 clarifying statement in response to your question.  
20 Ms. Barkley has said that she does not intend to  
21 reference particular pages or sections of this  
22 document in answering pre-filed questions. So she  
23 is not going to be referring to particular parts  
24 of this document in any answers to her questions.

1 She just might speak more generally on the  
2 Vermilion site.

3 HEARING OFFICER FOX: Nonetheless  
4 having indicated there is the opportunity to  
5 prepare paper copies perhaps at a lunch break to  
6 which we will go before too much longer, can those  
7 be produced for the participants soon after we  
8 resume?

9 MS. DEXTER: You can have this one.  
10 Does anybody else want a paper copy after the  
11 break?

12 MS. FRANZETTI: I better say yes,  
13 Jessica. I don't know where it's going.

14 MS. DEXTER: Three more?

15 MS. ANTONIOLLI: Yes.

16 MS. DEXTER: We'll get that after  
17 the break.

18 HEARING OFFICER FOX: Mr. Rieser,  
19 Ms. Olson, does that take care of the questions  
20 you had?

21 MR. RIESER: Yes.

22 MS. OLSON: Yes.

23 HEARING OFFICER FOX: Very good.  
24 Mr. Armstrong, I'm going to treat this as two



1 motions. I'll construe it first as a motion to  
2 admit the paper copy of the geo-technical report  
3 to which you have referred acknowledging that  
4 paper copies will shortly after this point be  
5 prepared for and made available to some of the  
6 additional participants. Is there any objection  
7 to the admission of that document as Exhibit No.  
8 42?

9 (Document marked as Hearing  
10 Exhibit No. 42 for  
11 identification.)

12 HEARING OFFICER FOX: Neither seeing  
13 nor hearing any, it will be so marked,  
14 Mr. Armstrong, and I will take up your motion  
15 secondly to introduce as Exhibit No. 43 the  
16 electronic -- the DVD copy of that same report  
17 noting the same concerns with the availability of  
18 the paper copy.

19 (Document marked as Hearing  
20 Exhibit No. 43 for  
21 identification.)

22 HEARING OFFICER FOX: Is there any  
23 objection to the admission of the DVD version of  
24 that document as Exhibit No. 43? Neither seeing

1 nor hearing any, it will be so marked and admitted  
2 into the record.

3 Mr. Armstrong, did you have  
4 any -- procedurally any other documents you wished  
5 to move into the record?

6 MR. ARMSTRONG: Those were the only  
7 documents right now.

8 HEARING OFFICER FOX: Very good. I  
9 think we have come to the point where we can swear  
10 in your witnesses and begin with the pre-filed  
11 questions as we discussed at the top of the  
12 hearing.

13 Ms. Antonioli, on behalf of  
14 Ameren, you were to begin first. Those questions  
15 are in the record, of course, having been timely  
16 filed on June 11th. If we can swear in  
17 Mr. Armstrong, you, Ms. Barkley and any of the  
18 other witnesses that intend to respond to  
19 questions from the other participants we can get  
20 started with those responses right away.

21 MR. ARMSTRONG: It will be  
22 Ms. Barkley and myself.

23 HEARING OFFICER FOX: Very good.

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WHEREUPON:

TRACI BARKLEY and ANDREW ARMSTRONG  
called as a witness herein, having been first duly  
sworn, depose and saith as follows:

HEARING OFFICER FOX:

Ms. Antoniolli, we're ready for you.

MS. ANTONIOLLI: Thank you,  
Mr. Hearing Officer, and good morning members of  
the Pollution Control Board. My name is Amy  
Antoniolli and as Mr. Hearing Officer said I am  
here on behalf of Ameren Missouri and Ameren  
Energy Medina Valley Cogen. I'll hand you my  
card, too.

I have with me Mr. Gary King  
from Arcadis and the both of us will be asking  
questions of The Environmental Groups today. So I  
will start with the first question that we had  
pre-filed beginning with number one.

At hearing Mr. Armstrong stated  
that Subsection (c) was not intended to require  
facilities exempt under Subsection (b) to produce  
a new hydrogeologic site characterization,  
groundwater monitoring plan or statistical

1 analysis under the proposed Part 841 May 14, 2014,  
2 Tr. P. 196. The Environmental Groups' PC 1879 did  
3 not address this issue. Do you agree to  
4 delete the following language: "Justification for  
5 an exemption under Subsection (b) of this Part  
6 also shall be included in any hydrogeologic site  
7 characterization for the exempted unit's power  
8 generating facility, the groundwater monitoring  
9 plan for any unit at the same power generating  
10 facility, and each statistical analysis for any  
11 unit at the same power generating facility"?

12 MR. ARMSTRONG: Thank you. First, I  
13 believe that you're referring to Section 841.105?

14 MS. ANTONIOLLI: Correct.

15 MR. ARMSTRONG: No, The  
16 Environmental Groups do not agree to delete the  
17 proposed language. Nothing in The Environmental  
18 Groups proposed language creates an independent  
19 requirement for a site characterization,  
20 groundwater monitoring plan or statistical  
21 analysis. Instead if there are any of those  
22 documents for the same power generating facility,  
23 then it is our intent that the justification for  
24 the exemption of a unit at that facility should be

1 included.

2 MS. ANTONIOLLI: So even if the  
3 facility or the unit is exempt under the rule and  
4 there happens to be this documentation, that would  
5 need to be submitted under this rule?

6 MR. ARMSTRONG: So is your question  
7 whether there is an exempt unit at a facility and  
8 then there is an independent site  
9 characterization, groundwater monitoring plan or  
10 statistical analysis because of the presence of  
11 another unit whether the exemption has to be  
12 included in that document?

13 MS. ANTONIOLLI: What I'm asking is  
14 whether there is -- if there is a unit at a  
15 facility that is exempt whether separate  
16 documentation maybe that has been created not  
17 subject to this rule needs to be submitted?

18 MR. ARMSTRONG: Could you explain  
19 what you mean by an exempt facility?

20 MS. ANTONIOLLI: An exempt unit.

21 MR. ARMSTRONG: I'm sorry. I'm  
22 having a little bit of trouble understanding your  
23 question because you asked about if there is a  
24 unit at an exempt facility. So --

1 MS. ANTONIOLLI: I don't believe  
2 that facilities would be exempt under this rule.  
3 It applies to each independent unit. So if there  
4 is a unit at a site that is exempt and it has  
5 closed under a separate rule and it is exempt from  
6 the proposed Part 841, would the owner or operator  
7 need to submit information under this rule for  
8 that unit?

9 MR. ARMSTRONG: So our intent is  
10 that if there is a unit at a site that does not  
11 have any other -- if you have a site composed of  
12 entirely exempt units, then the owner or operator  
13 of that site would not have an independent  
14 requirement to submit a site characterization,  
15 groundwater monitoring plan or a statistical  
16 analysis. This requirement that we propose would  
17 only be applicable if you've got a site that has  
18 at least one impoundment subject to the rule.  
19 Does that help?

20 MS. ANTONIOLLI: You can go ahead.

21 MS. FRANZETTI: Mr. Armstrong, is  
22 the intended meaning of this proposed language in  
23 841.105(c) that if you do have at least one  
24 regulated unit, but you also have one or more

1 exempted units then in the hydrological site  
2 characterization for the regulated unit as well as  
3 its groundwater monitoring plan and any  
4 statistical analysis all those documents need to  
5 reference the fact that there are exempt units and  
6 what the justification is for their exemption, is  
7 that correct?

8 MR. ARMSTRONG: You nailed it.

9 MS. FRANZETTI: Thanks.

10 MS. ANTONIOLLI: Okay.

11 MS. OLSON: Just one quick follow  
12 up. So if I understand the proposal if all the  
13 units on a site are exempt, no justification has  
14 to be made?

15 MR. ARMSTRONG: That is not what  
16 we're saying insofar as the rule requires that a  
17 unit that is otherwise exempt from the  
18 requirements of this part under the operation of  
19 Subsection (b) of this section shall maintain  
20 records demonstrating how an exemption in  
21 Subsection (b) applies. However, no justification  
22 needs to be made in a hydrogeologic site  
23 characterization, groundwater monitoring plan or  
24 statistical analysis if there are no units at that

1 site that are subject to that rule because there  
2 is no independent requirement of those documents.

3 MS. OLSON: So they wouldn't have to  
4 submit the record to the Agency if all the units  
5 are exempt on a site, is that correct?

6 MR. ARMSTRONG: They would -- they  
7 would need to maintain records, that's correct.

8 HEARING OFFICER FOX: Anything  
9 further, Ms. Olson?

10 MS. OLSON: No.

11 HEARING OFFICER FOX: Ms.  
12 Antonioli, I think we're back to you.

13 MS. ANTONIOLLI: Okay. We can move  
14 on.

15 MR. KING: My name is Gary King.  
16 Andrew and Traci, I wanted to ask a couple of  
17 questions about a couple of the definitions. The  
18 first definition is a high priority resource  
19 groundwater and in your proposal you deleted that  
20 definition. So the questions I had were -- I'll  
21 just take them in order.

22 Do you think it was  
23 inappropriate for the Board to establish classes  
24 of groundwater in 35 Ill. Adm. Code Part 20 --



1 Part 620 and to differentiate levels of protection  
2 based on those classes?

3 MR. ARMSTRONG: So can I clarify?  
4 Are we moving ahead to pre-filed question number  
5 11?

6 MR. KING: No.

7 MS. ANTONIOLLI: Pre-filed question  
8 number 2(a). It is addressing proposed changes --

9 MR. ARMSTRONG: I'm sorry. Right.

10 MS. ANTONIOLLI: -- to the  
11 definitions in Section 841.110.

12 MR. ARMSTRONG: We, as The  
13 Environmental Groups, do not think it was  
14 inappropriate for the Board to establish classes  
15 of groundwater and to differentiate levels of  
16 protection based on those classes.

17 MR. KING: Do you think that water  
18 that meets the criteria for being drinkable in  
19 Part 620 deserves a higher level of protection  
20 than water that is, for instance, under a  
21 landfill?

22 MR. ARMSTRONG: Generally speaking,  
23 yes. Water that can be drinkable deserves  
24 protection.

1 MR. KING: Deserves a higher level  
2 of protection than water for instance -- the  
3 question was water, for instance, under a  
4 landfill. Would you agree that a drinkable water  
5 deserves a higher level of protection as the  
6 Board's Part 620 rules set that forth?

7 MR. ARMSTRONG: Yes. Though, we  
8 also believe that all groundwater in the state  
9 should be afforded some level of protection.

10 MR. KING: So then why did you  
11 strike the definition of high priority resource  
12 groundwater?

13 MR. ARMSTRONG: In answer to that  
14 immediate question, we struck the definition of  
15 high priority resource groundwater because we  
16 eliminated references to high priority resource  
17 groundwater within the rule.

18 MR. KING: Okay. So then why did  
19 you eliminate those references from the Agency's  
20 proposal?

21 MR. ARMSTRONG: So I think there was  
22 one section which high priority resource  
23 groundwater was referenced in the Agency's  
24 proposal in the preventive response section and

1 I'll just skip ahead to that quickly. Actually,  
2 I'm sorry. The place where it was stricken was  
3 from Section 841.235 statistical analysis as  
4 originally captioned annual statistical analysis  
5 and in 841.235(c) (2) (b) B the rule requires the  
6 owner or operator to conduct further examination  
7 that includes groundwater flow and contaminate  
8 transport modeling if there is not an alternative  
9 cause for the statistically significant increasing  
10 concentration.

11 Originally, the Agency had  
12 stated that further investigation was needed when  
13 the unit is located over a high priority resource  
14 groundwater or class three groundwater -- I'm  
15 sorry.

16 I believe that the Agency's  
17 second red lined proposal was that further  
18 investigation was required only when a unit is  
19 located over high priority resource groundwater  
20 and our intent was that if there is a  
21 statistically significant increasing concentration  
22 of groundwater, then there should be further  
23 investigation at that impoundment regardless of  
24 groundwater class.

1 MR. KING: If we can go to the  
2 definition of surface impoundment. Now, you made  
3 some changes to that definition and in that  
4 context I know you're trying to parallel the  
5 federal CCR definition to some extent. So the  
6 question we had was regarding your proposed  
7 amendment to the definition of surface  
8 impoundment. Do you think that a topographic  
9 depression, excavation or dike area that was not  
10 designed to hold coal combustion waste, but does,  
11 in fact, hold combustion waste -- coal combustion  
12 waste should be exempt from the proposed Part 841?

13 MR. ARMSTRONG: And thank you for  
14 pointing that out. The design two language in The  
15 Environmental Groups proposal is designed to track  
16 the definition of a CCR surface impoundment in US  
17 EPA's proposed rules and I would note that any  
18 questions attached as Attachment A to the Hearing  
19 Officer's order of June 11th, 2014, question two  
20 requests whether the Agency's definition also  
21 should more closely track US EPA's proposed  
22 language.

23 In answer to your question at a  
24 minimum, if a depression, excavation or dike area

1 is being used to hold combustion waste as a  
2 deliberate part of the site's operation, then it  
3 is our view that it would be designed to hold CCW  
4 and would not be exempt under the rule.

5 MR. KING: The Agency's definition  
6 really more closely parallels the state's rules in  
7 Part 720 and Part 810. Don't you think that's a  
8 better approach than to try to parallel the CCW  
9 rule?

10 MR. ARMSTRONG: Well, I think as the  
11 Board also pointed out in its question number two  
12 surface impoundment is defined in 35 Ill. Adm.  
13 Code 720.10 and 810.103 somewhat differently than  
14 the Agency's proposed definition in 841.110. And  
15 just to read further in their question the  
16 definition in Section 710.110 tracks US EPA's  
17 proposed definition of CCR surface impoundments.  
18 So I look forward to reviewing any proposed  
19 language that the Agency might like to propose on  
20 this permit.

21 MR. KING: Okay.

22 MS. ANTONIOLLI: Before we leave the  
23 definition of surface impoundment. By proposing  
24 the additional language at the end permitted under

1 Illinois solid waste disposal rules at 35 Ill.  
2 Adm. Code Part's 813 or 814, was the intent of  
3 that addition to include permits that -- landfills  
4 that are exempt under Part 815 landfill  
5 regulations from this rule?

6 MR. ARMSTRONG: So to answer this  
7 question I'd first say the distinction between,  
8 quote, surface impoundments, unquote, and, quote,  
9 landfills, unquote, is drawn in existing Board  
10 regulations. For example, 35 Ill. Adm. Code  
11 810.103 and that distinction also was recognized  
12 in the Agency's proposed definition of surface  
13 impoundment in its March 25th, 2014, red line as  
14 excluding, quote, landfills, end quote.

15 So our intent is that the rules  
16 being considered should apply to all surface  
17 impoundments that contain coal combustion waste or  
18 leachate. Given the definitions in the Board's  
19 existing regulations and the environmental review,  
20 it's possible to identify whether at a particular  
21 time any particular structure is a, quote, surface  
22 impoundment or, quote, landfill.

23 The reason that we put in an  
24 exemption for permitted landfills was in response

1 to a statement at the last hearing from  
2 Ms. Franzetti that the Agency's proposed rule  
3 quote, the Agency was only proposing to exclude  
4 landfills that -- solid waste landfills that have  
5 a permit, end quote, and further Ms. Franzetti  
6 stated that under The Environmental Groups  
7 proposal, quote, we are going to have a lot of  
8 potentially under your proposal people claiming I  
9 am not a surface impoundment, I am a landfill, I  
10 don't have a permit, but that's okay, I'm putting  
11 stuff into the land so I'm not a surface  
12 impoundment.

13 So, again, The Environmental  
14 Groups believe that the distinction between  
15 surface impoundments and landfills is drawn in  
16 existing regulations and that it can -- the  
17 distinction can be drawn by the Agency, the  
18 regulating Agency, and the public, but that said  
19 if there is going to be an attempt to classify  
20 structures that otherwise would be surface  
21 impoundments as unpermitted landfills in order to  
22 avoid what is viewed as more effective regulation,  
23 then we believe that should be avoided. So,  
24 therefore, we have included an exemption in this

1 definition only for permitted landfills.

2 MS. OLSON: How do you view  
3 landfills operating under Part 815?

4 MR. ARMSTRONG: What part is Part  
5 815?

6 MS. OLSON: Landfills that are  
7 exempt from permitting if they follow the rules in  
8 815.

9 MS. ANTONIOLLI: They're already  
10 exempt under Section 21(d) of the act.

11 MR. ARMSTRONG: So under what  
12 exemption are we talking about?

13 MS. OLSON: Part 815.

14 MR. ARMSTRONG: Any particular  
15 exemption that you believe would be applicable to  
16 an impoundment?

17 MS. OLSON: It's on site landfills  
18 that are regulated under 35 Ill. Adm. Code Part  
19 815.

20 MR. ARMSTRONG: So when you ask how  
21 do I view them, what is your meaning of how do I  
22 view them? Whether they would be regulated by  
23 this rule?

24 MS. OLSON: Under your definition of



1 surface impoundment, do they fall under this rule?

2 MR. ARMSTRONG: I mean, so are we  
3 talking about in a structure at an electric  
4 generating plant that is serving as a surface  
5 impoundment?

6 MS. OLSON: I'm speaking of  
7 facilities that are operating under Part 815 that  
8 are landfills that are not permitted.

9 MS. ANTONIOLLI: That meet all the  
10 landfill requirements. I think your intent was  
11 not to include landfills under this proposed  
12 section. So it might just take a little bit more  
13 revision to this section to exempt those units as  
14 well.

15 MR. ARMSTRONG: Our intent was to  
16 include all surface impoundments within the  
17 coverage of this rule and as I said before I think  
18 under the existing rules there is a distinction  
19 drawn between surface impoundments and landfills.  
20 I also would note that in the one case of a  
21 structure that is like a surface impoundment the  
22 Joliet Quarry, Lincoln Stone Quarry, there was a  
23 Board decision that rejected the applicability of  
24 the exemption in 21(d) to that structure because

1 of the large amount of waste that was in that  
2 impoundment.

3 HEARING OFFICER FOX: Ms. Franzetti,  
4 did you have a follow up?

5 MS. FRANZETTI: Yes. Mr. Armstrong,  
6 in crafting the revised language of your proposed  
7 surface impoundment definition, did you have the  
8 opportunity -- did you review the Part 815  
9 regulations that these questioners are referring  
10 to?

11 MR. ARMSTRONG: I did review the  
12 Part 815 regulations. I didn't recognize which  
13 ones they were when the question was asked, but I  
14 did review the Part 815 regulations.

15 MS. FRANZETTI: Okay. Did you  
16 previously consider whether or not your language  
17 might go on to exclude from this definition  
18 landfills that are subject to Part 815? Is that  
19 something that you specifically considered and  
20 rejected or is it an issue that you really haven't  
21 yet considered?

22 MR. ARMSTRONG: No, it is an issue  
23 that we considered and what our conclusion was  
24 that we believe that any structure that is serving

1 as a surface impoundment at an electric generating  
2 facility in our view should either be regulated as  
3 a permitted landfill or as a surface impoundment  
4 under these rules.

5 MS. FRANZETTI: Thank you. That  
6 clarifies what your position is.

7 HEARING OFFICER FOX: Ms. Olson, did  
8 you have a follow up?

9 MS. OLSON: Yeah, I'm just going to  
10 jump right in. This is one of our questions and  
11 it is appropriate to ask it here. Based on your  
12 last response, Andrew, it sounds like there will  
13 be landfills that are subject to these proposed  
14 parts and the Agency is asking for a list of all  
15 landfill facilities in Illinois to which the  
16 proposed part would apply based on your testimony  
17 here today.

18 MR. ARMSTRONG: Again, our belief is  
19 that a surface impoundment is a surface  
20 impoundment. Under the applicability of these  
21 rules, we don't say that this rule applies to all  
22 surface impoundments and unregulated landfills or  
23 unpermitted landfills. We say that the rule  
24 applies to surface impoundments.

1                   A landfill is defined by the  
2 Board's existing regulations as not a surface  
3 impoundment. So, therefore, it seems to me that  
4 these categories are mutually exclusive. We do  
5 not know of any, quote, unquote, landfills that  
6 would be subject to the rule at this time.

7                   MS. OLSON: Can I just provide you  
8 an example possibly?

9                   MR. ARMSTRONG: Sure.

10                  MS. OLSON: Are you familiar with  
11 Prairie State Generating?

12                  MR. ARMSTRONG: I personally am not.

13                  MS. OLSON: Do you know whether or  
14 not they have an on site landfill that is  
15 permit-exempt under Part 815?

16                  MS. BARKLEY: I'm familiar with  
17 Prairie State. I know it operates as a dry ash  
18 landfill. It is exempt under Part 815 and we  
19 certainly have issues with the fact that it is not  
20 permitted because it is site-specific  
21 characterization that shows -- we don't believe it  
22 can be handled in a dry manner, but, yes, it is  
23 exempt under Part 815 because it is a dry  
24 landfill.

1 MS. OLSON: Would that unit be  
2 subject to your proposal?

3 MR. ARMSTRONG: Can I ask a  
4 clarifying question about this on site landfill?  
5 Because I'll point out one feature of our  
6 definition of surface impoundment. In our  
7 proposed definition of surface impoundment use a  
8 natural topographic depression, manmade excavation  
9 or diked area that is designed to hold or transfer  
10 liquid waste or waste containing free liquids, I'm  
11 not aware whether the Prairie State impoundment  
12 contains liquid waste or waste containing free  
13 liquids.

14 MS. OLSON: So is your answer no?

15 MR. ARMSTRONG: My answer is because  
16 I'm not aware whether the landfill holds or  
17 transfers liquid waste or waste containing free  
18 liquids I can't answer that question.

19 MS. OLSON: What is your definition  
20 of holding or transferring liquid waste?

21 MS. BARKLEY: Our intent with that  
22 part of the definition was to include those  
23 portions of the ash management system that is  
24 conveying wet coal ash from the boilers to the ash

1 pits. So if there are trenches or dikes that are  
2 unlined and are holding or transferring waste,  
3 that those should fall under this rule.

4 MS. OLSON: Why would the fact that  
5 they're lined make them not subject to this rule?

6 MS. BARKLEY: I probably misspoke  
7 there. I think we were thinking more  
8 comprehensively about the ash management system on  
9 site so it wasn't just a final coal ash  
10 impoundment that was on site that was considered  
11 in this rule, but also the conveyance, part of the  
12 system.

13 MS. OLSON: Would that include  
14 piping?

15 MS. BARKLEY: I believe so although  
16 I haven't thought through what that would mean for  
17 falling under this rule.

18 MS. OLSON: So if a facility were to  
19 have a leachate collection pond that collects  
20 leachate from their landfill where they're storing  
21 coal combustion waste and they were to use that  
22 leachate and apply it to the landfill for dust  
23 suppression, would that meet the definition of  
24 holding or transferring liquid waste?

1 MR. ARMSTRONG: So if leachate was  
2 used to -- was applied to a landfill to -- for  
3 dust suppression purposes?

4 MS. BARKLEY: I think under our  
5 definition, I mean this is -- this is exempting  
6 landfills. I mean, if we're speaking about the  
7 Prairie State example, I understand that's exactly  
8 what is happening there. It is being managed as a  
9 landfill. It is not permitted as a landfill. It  
10 meets the criteria of the landfill, but -- right.  
11 It has a leachate control system that is used for  
12 dust suppression at the sites.

13 MR. ARMSTRONG: We've not considered  
14 the case of Prairie State in discussing this  
15 proposed modification to the rule. So I won't  
16 comment on whether the application of leachate for  
17 dust suppression purposes is holding or containing  
18 liquid waste. We can consider that point.

19 MS. OLSON: Would you be willing to  
20 address that in a post-hearing comment?

21 MR. ARMSTRONG: Sure.

22 HEARING OFFICER FOX: Anything  
23 further, Ms. Olson?

24 MS. OLSON: No.

1 HEARING OFFICER FOX: Ms. Franzetti,  
2 you had a question?

3 MS. FRANZETTI: Mr. Armstrong, now  
4 I'm a bit confused with respect to the scope of  
5 your proposed surface impoundment definition. Let  
6 me begin by asking you what was the purpose of  
7 deleting the reference to earth and materials and  
8 was it for at least a purpose of including even  
9 piping that transfers the CCW to an earth and  
10 surface impoundment?

11 MR. ARMSTRONG: That was not the  
12 intent behind removing the earth and surface  
13 impoundment language. Again, our intent was to  
14 more closely align this definition with the  
15 definition of surface impoundment in US EPA's  
16 proposed rule and as Ms. Barkley stated the real  
17 concern in terms of the language of holding or  
18 transferring is The Environmental Groups wanted to  
19 bring within the applicability of the rule as  
20 Ms. Barkley put it areas in which there was an  
21 unlined transfer of liquid waste to an  
22 impoundment.

23 So we're not as concerned about  
24 the idea of piping. If the definition is



1 overinclusive, we certainly would consider  
2 clarifying language.

3 MS. FRANZETTI: Thank you.

4 HEARING OFFICER FOX: Ms. Olson, it  
5 looks like you have a follow up?

6 MS. OLSON: I do. Andrew, would you  
7 mind reading the definition of surface impoundment  
8 in the federal rule? Just the first sentence,  
9 please.

10 MR. ARMSTRONG: CR -- are we talking  
11 about the definition of CCR surface impoundment?

12 MS. OLSON: Yes.

13 MR. ARMSTRONG: CCR surface  
14 impoundment means a facility or part of a facility  
15 in which a natural topographic depression, manmade  
16 excavation or diked area formed primarily of earth  
17 and materials although it may be lined with  
18 manmade materials which is designed to hold an  
19 accumulation of CCR's containing free liquids  
20 which is not an injection well.

21 HEARING OFFICER FOX: If I may  
22 interrupt, and I'm sorry to do so, Mr. Armstrong,  
23 just for the sake of the record can you provide us  
24 the citation to the Federal Register you were

1 reading from? And I apologize, Ms. Olson. I just  
2 wanted to clarify that part.

3 MR. ARMSTRONG: It is 75 Federal  
4 Register 35.240.

5 HEARING OFFICER FOX: 35.240?

6 MR. ARMSTRONG: Yes.

7 HEARING OFFICER FOX: And that date,  
8 I'm sorry, is?

9 MR. ARMSTRONG: June 21st, 2010. It  
10 is proposed Section 257.40.

11 HEARING OFFICER FOX: Mr. Armstrong,  
12 thank you for providing that. Ms. Olson, I'm  
13 sorry to interrupt. Please go ahead.

14 MS. OLSON: So the federal  
15 definition of CCR surface impoundment requires it  
16 to be primarily -- formed primarily of earth and  
17 materials, is that right?

18 MR. ARMSTRONG: Although it may be  
19 lined with manmade materials.

20 MS. OLSON: So can you, again,  
21 explain why you decided to strike earth and  
22 materials as a requirement from the definition of  
23 surface impoundment?

24 MR. ARMSTRONG: So our definition of

1 surface impoundment with the exception of the  
2 transfer language is -- and the addition of the  
3 landfill exclusion language is identical to the  
4 definition of surface impoundment in 35 Ill. Adm.  
5 Code 615.012. So, specifically, with respect to  
6 striking the earth and materials language, it  
7 is -- it was to align it with that definition.

8 MS. OLSON: So it was not to align  
9 it with the federal definition?

10 MR. ARMSTRONG: Correct. With  
11 respect specifically to the earth and materials  
12 language.

13 MS. OLSON: And why did you elect to  
14 exclude earth and materials from the federal  
15 definition, but then take the rest of it?

16 MR. ARMSTRONG: Well, I think  
17 actually what we did was to take the definition  
18 from 35 Ill. Adm. Code 615.012, which is more akin  
19 to the federal definition than what the Agency had  
20 proposed, but we did not adopt the federal  
21 definition.

22 MS. OLSON: That's all I have.

23 HEARING OFFICER FOX: Mr. Sylvester,  
24 did you have a question?

1 MR. SYLVESTER: Just a follow up on  
2 that.

3 HEARING OFFICER FOX: If you can  
4 quickly identify yourself for the record.

5 MR. SYLVESTER: Sure. Steve  
6 Sylvester with the Illinois Attorney General's  
7 Office. Just in looking at the definition kind of  
8 getting at this the difference between earth and  
9 materials or the federal definition which talks  
10 about manmade. The language you have included  
11 says that it is designed to hold and transfer  
12 liquid waste or waste containing free liquids.  
13 Could that include both earth and materials and/or  
14 manmade materials?

15 MR. ARMSTRONG: Yes.

16 MR. SYLVESTER: That's it.

17 HEARING OFFICER FOX: Thank you.  
18 Anything further, Mr. Rieser? It looks like you  
19 have a question.

20 MR. RIESER: Yes, it's accurate that  
21 neither the federal definition nor the other  
22 state's definition of surface impoundment that you  
23 referenced for which I forgot the citation talk  
24 about transfer of liquid waste. It is merely

1 holding. So transfer of liquid waste is something  
2 that you've added for purposes of this rule?

3 MR. ARMSTRONG: That is correct.

4 MR. RIESER: So that would be  
5 something different than either what the federal  
6 government would require their rules adopt or what  
7 the state requires for other surface impoundments?

8 MR. ARMSTRONG: That is correct.

9 And, Ms. Barkley, if you want to speak to the  
10 concern that motivated The Environmental Groups to  
11 propose this language?

12 MS. BARKLEY: I think the addition  
13 of the transfer language in the definition  
14 acknowledges conditions and operations that we're  
15 aware of in the State of Illinois.

16 MR. RIESER: Which are?

17 MS. BARKLEY: Operations that have  
18 the conveyance systems that may or may not be  
19 contributing to groundwater contamination.

20 MR. RIESER: Do you have any  
21 evidence that they are contributing to the  
22 groundwater contamination?

23 MS. BARKLEY: I can't say at this  
24 time that we do although I do think there are some

1 instances that it is not exactly clear at this  
2 point what is contributing to the groundwater  
3 contamination and it might be that some of those  
4 conveyance systems are part of the problem.

5 MR. RIESER: So the answer is, no,  
6 you don't have any evidence?

7 MS. BARKLEY: Not that I know of  
8 right now.

9 MR. RIESER: Thanks.

10 HEARING OFFICER FOX: Anything  
11 further, Mr. Rieser?

12 MR. RIESER: No.

13 HEARING OFFICER FOX: Are we ready  
14 to turn to Ameren's question four or are there any  
15 further questions on the definitional section?  
16 Ms. Antonioli, I think we're ready for your next  
17 question.

18 MS. ANTONIOLLI: Ready to proceed  
19 onto Section 841.130.

20 MR. KING: Are you ready? Do you  
21 have that in front of you? Good. In Subsection  
22 (b), do you think that the results of groundwater  
23 monitoring can provide relevant information to  
24 assist an owner or operator in preparing a closure

1 plan and establishing background values?

2 MR. ARMSTRONG: Well, as an initial  
3 point, we're not aware that there are any sites in  
4 the state that do not have at least some sort of  
5 groundwater monitoring system in place right now.  
6 We do believe that groundwater monitoring data  
7 could be helpful in preparing the closure plan and  
8 establishing background values. And, in fact,  
9 would be needed to establish background values  
10 under this rule. But The Environmental Groups  
11 believe that the information currently available  
12 and that will be available within one year of the  
13 rule's effective date will be sufficient to allow  
14 the preparation of closure and post-closure care  
15 plans.

16 MR. KING: Okay. So I think you  
17 answered yes on that, right?

18 MR. ARMSTRONG: Generally, the  
19 results of groundwater monitoring can provide  
20 relevant information to assist an owner or  
21 operator in preparing a closure plan and  
22 establishing background values, correct.

23 MR. KING: Okay. Thank you. The  
24 next question. If so, how can an owner or

1 operator that did not have a groundwater  
2 monitoring system in place use that information if  
3 the closure plan must be submitted and background  
4 values must be established before the groundwater  
5 information is obtained?

6 MR. ARMSTRONG: And I think I  
7 answered your -- anticipating your question when I  
8 answered that as an initial point The  
9 Environmental Groups are not aware that there are  
10 any sites in the state that do not have some sort  
11 of groundwater monitoring system in place.

12 MR. KING: So that means --

13 MR. ARMSTRONG: And if I can just  
14 repeat again. We believe that the information  
15 that is currently available would be sufficient to  
16 allow the creation of closure and post-closure  
17 care plans.

18 MR. KING: So, to me, that means we  
19 have a closed universe that all the sites that  
20 have been identified -- are identified there are  
21 no other sites?

22 MR. ARMSTRONG: Well, if there are  
23 sites that IEPA is missing, then -- and there are  
24 sites that are not currently being evaluated, then



1 there needs to be an investigation of those sites.

2 I agree.

3 MR. KING: Okay. So that would  
4 be -- if there are sites that are not currently  
5 monitoring groundwater, they don't have  
6 groundwater monitoring systems because they're  
7 brought in because of something in this rule,  
8 isn't it important to have that groundwater  
9 monitoring information before a closure plan is  
10 submitted?

11 MR. ARMSTRONG: So I'm just trying  
12 to understand your question. Are you referring to  
13 sites or electric generating plants that we're not  
14 aware of at this time, plants that we're not aware  
15 of?

16 MR. KING: I appreciate your  
17 comment. You're saying everything that we know  
18 about has a groundwater monitoring system in  
19 place?

20 MR. ARMSTRONG: Right.

21 MR. KING: If that's true, then we  
22 have a closed universe relative to the surface  
23 impoundment definition and that only those  
24 facilities that have been identified as having

1 groundwater, you know, monitoring systems in place  
2 would be subject to this rule. I mean, if that is  
3 what you're proposing, that is a completely  
4 different regulatory system.

5 MR. ARMSTRONG: Well, what we're  
6 referring to -- what we're stating is that --  
7 we're not stating that there is a closed universe.  
8 However, the applicability of the rule is to all  
9 surface impoundment units at power generating  
10 facilities and at this point I believe we're aware  
11 of all the power -- I could be wrong. I could be  
12 wrong. I'm not IEPA. But I believe we're aware  
13 of all the power generating facilities in the  
14 state and that there is some sort of groundwater  
15 monitoring at those facilities.

16 Again, I could be wrong. In the  
17 case of plants -- sites for which there has been  
18 no sort of investigation before, there is a year  
19 to investigate those particular impoundments and  
20 to prepare a closure plan. So that would be the  
21 requirement of our rule.

22 MR. KING: I just think you've  
23 really identified that you have a fundamental flaw  
24 in the way you setup the system in the regulation

1 here and I don't have any further questions on  
2 that.

3 MR. ARMSTRONG: What was the flaw?

4 MR. KING: I think -- well, we had  
5 that dialogue already.

6 HEARING OFFICER FOX: Mr. King is  
7 here to ask questions rather than to offer  
8 testimony on that position. So maybe it's best,  
9 Ms. Antonioli, if there are no follow ups to --  
10 Ms. Olson, you have a follow up?

11 MS. OLSON: I do. Just real  
12 quickly. Is it anticipated that new facilities,  
13 new surface impoundments, that is where they fall  
14 within the definition and there is no debate about  
15 that, that new units at those facilities would be  
16 I believe subject to this rule?

17 MR. ARMSTRONG: Yes.

18 MS. OLSON: And for those brand new  
19 units that have no groundwater monitoring, how are  
20 they going to propose a closure plan without  
21 having the benefit of done any groundwater  
22 monitoring?

23 MR. ARMSTRONG: So we'll have a  
24 brand new impoundment that hasn't yet caused any

1 groundwater contamination required to do  
2 groundwater monitoring for -- related to whether  
3 it is contaminating the groundwater?

4 MS. OLSON: Well, your rule requires  
5 the submission of a closure plan upfront, is that  
6 right?

7 MR. ARMSTRONG: Correct.

8 MS. OLSON: So for a brand new  
9 facility, not even an existing power plant, a  
10 brand new power plant, with a brand new unit so  
11 there has been absolutely no monitoring done, how  
12 does that impact the facility's ability to prepare  
13 a closure plan before even beginning operation?

14 MR. ARMSTRONG: I believe under the  
15 811 rules, for example, a closure plan and a  
16 post-closure care plan are required as part of the  
17 application for a new landfill, for example. So I  
18 would submit that a similar process could take  
19 place for new impoundments.

20 MS. OLSON: In reference to  
21 Mr. King's question that you agree that the  
22 groundwater monitoring can provide relevant  
23 information which you just testified to, do you  
24 believe that information would be necessary to

1 prepare a closure plan?

2 MR. ARMSTRONG: I believe when we're  
3 talking about closing, for example, an unlined  
4 impoundment that is causing groundwater  
5 contamination, yes, it could be helpful to have  
6 groundwater monitoring data to consider that when  
7 you consider what sort of closure activities are  
8 necessary. When we're talking about a brand new  
9 surface impoundment that would be subject to some  
10 design standards whether it is the new US EPA rule  
11 or more formal design standards that the Agency  
12 has discussed at previous hearings, I think the  
13 groundwater monitoring data would be -- the  
14 site-specific groundwater monitoring data would be  
15 less necessary in preparing a closure plan.

16 MS. OLSON: That's all I have.

17 HEARING OFFICER FOX: Mr. Sylvester,  
18 I see your hand.

19 MR. SYLVESTER: Mr. Armstrong, just  
20 a quick question to follow up on that. If under  
21 the proposed rules that The Environmental Groups  
22 proposed, if the closure plan was submitted for a  
23 new facility and the groundwater monitoring data  
24 came in later, would it be possible to submit an

1 amended closure plan including the groundwater  
2 monitoring data?

3 MR. ARMSTRONG: Yes.

4 MR. SYLVESTER: And that would be  
5 under these rules that The Environmental Groups  
6 had proposed?

7 MR. ARMSTRONG: Yes, the rules do  
8 allow for modification of the closure plan.

9 MR. SYLVESTER: No other questions.

10 HEARING OFFICER FOX: I'm sorry,  
11 Mr. Sylvester?

12 MR. SYLVESTER: No other questions.

13 HEARING OFFICER FOX: Thank you.

14 Are we prepared to turn to Ameren's question five?

15 Seeing no objection to that, Ms. Antonioli, it  
16 looks like we're ready to proceed to your  
17 questions based on Section 841.150.

18 MS. ANTONIOLLI: Thank you.

19 MR. KING: Your proposal added  
20 language to 841.150. I assume you have that in  
21 front of you?

22 MR. ARMSTRONG: Yes.

23 MR. KING: My question is do you  
24 agree it would be inappropriate to require an

1 owner or operator to submit a revised plan if it  
2 has appealed the denial to the Illinois Pollution  
3 Control Board?

4 MR. ARMSTRONG: It is not the intent  
5 of The Environmental Groups to limit any appeal  
6 options that are otherwise allowed by law. It  
7 would be acceptable to The Environmental Groups  
8 that if it is desired by other participants that  
9 our proposed language could be amended to provide  
10 that, quote, if an application to revise an  
11 operating permit or NPDES permit is denied, then  
12 the owner or operator must submit a revised  
13 preventive response, corrective action or closure  
14 plan to the Agency within 90 days of the Agency's  
15 initial denial or the conclusion of an  
16 unsuccessful subsequent appeal by the owner or  
17 operator. Whichever is later.

18 MR. KING: Okay. So I didn't catch  
19 all of that right there, but you're suggesting  
20 there might be a revision that might be  
21 appropriate on that?

22 MR. ARMSTRONG: If that is desired,  
23 but it was not our intent and in the rule as it is  
24 currently presented or in any future rule that any

1 otherwise applicable appeal option could be  
2 limited by this provision.

3 HEARING OFFICER FOX: Mr. Rieser,  
4 you had a question it appears?

5 MR. RIESER: Then why have you added  
6 it?

7 MR. ARMSTRONG: Then why --

8 MR. RIESER: Why did you add this  
9 language if it wasn't intended? If it is a  
10 mandatory requirement to submit a revised  
11 application within a certain timeframe, why is  
12 that necessary?

13 MR. ARMSTRONG: Could you refer me  
14 to the mandatory requirement that you're  
15 describing?

16 MS. ANTONIOLLI: It's the new  
17 language in your proposed section. It's not  
18 the --

19 MR. KING: It is 150.

20 MR. REESE: If it is denied, then  
21 the owner or operator must submit a revised  
22 preventive response, corrective action or closure  
23 plan to the Agency within 90 days.

24 MR. ARMSTRONG: Could you please



1 repeat your question because I'm not sure I  
2 understand it? Why do we add that sentence in the  
3 first place?

4 MR. RIESER: Correct.

5 MR. ARMSTRONG: And you asked why  
6 did we add it because you think there is a  
7 separate provision that would require the  
8 submission of a revised plan?

9 MR. RIESER: It's your proposal.  
10 You tell me.

11 MR. ARMSTRONG: We added the  
12 language because our intent was that if a  
13 preventative response, corrective action or  
14 closure plan that is required under the part  
15 cannot be carried out because one of the necessary  
16 permits to perform the requirements of that plan  
17 will not issue, then our intent was that the owner  
18 or operator should present a new plan to the  
19 Agency.

20 MR. RIESER: So it was your  
21 understanding that absent this language there was  
22 no other requirement to submit a revised plan if  
23 their NPDES permit was denied?

24 MR. ARMSTRONG: I'm not sure there

1 is a timeline in the rules.

2 MR. RIESER: And the Agency wouldn't  
3 have the authority to ask people to submit a  
4 revised plan if the permit that supported the plan  
5 was denied?

6 MR. ARMSTRONG: I'm not sure that is  
7 written into these rules explicitly.

8 MR. RIESER: Thank you.

9 HEARING OFFICER FOX: Ms. Olson, to  
10 you.

11 MS. OLSON: Is it possible if the  
12 NPDES permit was denied that the applicant could  
13 resubmit its NPDES permit with modified treatment  
14 streams?

15 MR. ARMSTRONG: Our intent was that  
16 if there is a preventive response, corrective  
17 action or closure plan that required a specific  
18 type of discharge and that discharge was  
19 disallowed through the NPDES permit process or  
20 some other permitting process, for some reason the  
21 requirements of the plan cannot be carried out,  
22 then the plan should be revised.

23 MS. OLSON: So my question to you,  
24 and I don't think you answered it, was is it

1 possible that a permittee in the industry, an  
2 applicant, could have a closure plan and have a  
3 process for closing, let's say closure by capping,  
4 and the resulting NPDES permit let's say they make  
5 a proposal that will require a certain treatment  
6 process or certain way to handle whatever waste  
7 streams are coming out of there and let's say that  
8 the Agency denies that permit, is it possible for  
9 the applicant to go back and rethink the way that  
10 waste stream is going to be handled independent of  
11 the closure plan and resubmit a different NPDES  
12 permit application?

13 MR. ARMSTRONG: I believe it's  
14 possible. I think it depends on what is in the  
15 closure plan. If the closure plan specifies that  
16 there is going to be this type of treatment and  
17 this type of discharge and that discharge is  
18 disallowed, then that closure plan would need to  
19 be amended.

20 MS. OLSON: So if you disagree then  
21 and it is possible, why would you propose language  
22 that forecloses that option to the industry?

23 MR. ARMSTRONG: I'm not saying it  
24 would be possible in every case. I think it

1 depends on what is in the closure plan. In our  
2 understanding in proposing this language was that  
3 if there is a specified discharge required by the  
4 closure plan and that discharge can't be carried  
5 out, then the closure plan would need to be  
6 amended.

7 MS. OLSON: But the language that  
8 you provided is the denial of the permit as a  
9 trigger and I think you just testified that it is  
10 possible that an applicant could go back and  
11 revise a permit application successfully and  
12 obtain an NPDES permit, is that right?

13 MR. ARMSTRONG: As I said before,  
14 our intent was to take care of the case where  
15 you've got a closure plan that requires a  
16 particular type of discharge. If there are cases  
17 where that will not occur, we will take a look at  
18 our proposed language and try to filter those  
19 cases out in post-hearing comments.

20 MS. OLSON: Do you believe it should  
21 be left to the applicant to determine whether or  
22 not to modify its proposed NPDES permit  
23 application or to modify the corrective action  
24 plan?

1 MR. ARMSTRONG: Do you mean left to  
2 the applicant to make a choice between those two  
3 options?

4 MS. OLSON: Yes.

5 MR. ARMSTRONG: I believe the  
6 applicant could make that call, yes.

7 MS. OLSON: Thank you.

8 MS. ANTONIOLLI: Is it possible that  
9 there might be some instances where an applicant  
10 submits a permit application that not only  
11 addresses the preventative response, corrective  
12 action or closure under this part, but also some  
13 other modifications of the facility that may  
14 impact --

15 MR. ARMSTRONG: An NPDES permit  
16 application?

17 MS. ANTONIOLLI: Right.

18 MR. ARMSTRONG: That is a  
19 possibility as well.

20 MS. ANTONIOLLI: And if that permit  
21 were denied because of some other -- some reason  
22 other than the preventive response, corrective  
23 action or closure under this part, then that  
24 applicant would still need to submit a revised

1 plan under this part?

2 MR. ARMSTRONG: So I agree that an  
3 NPDES permit application could contain an  
4 application for multiple changes to the discharge  
5 and an NPDES permit application -- a specific  
6 NPDES permit application could be denied because  
7 of reasons that are not related to the discharges  
8 required by a closure plan, preventive response or  
9 corrective action plan. And, again, we can  
10 consider some language that would cabin off those  
11 cases in our post-hearing comments.

12 MS. ANTONIOLLI: Okay.

13 HEARING OFFICER FOX: Anything  
14 further on that issue? Ms. Franzetti, you had a  
15 question?

16 MS. FRANZETTI: Mr. Armstrong, can  
17 you explain why it is so important to The  
18 Environmental Groups to regulate down to this  
19 level of detail with respect to the requirement to  
20 submit the revised plan within 90 days rather than  
21 leaving that to the administrative process and the  
22 IEPA's oversight to direct based on all of these  
23 different variations and possibilities of what can  
24 happen?

1 MS. BARKLEY: So largely we want to  
2 make sure that what results from a proposed  
3 closure plan or corrective action plan and may  
4 impact, for example, surface waters through an  
5 outfall or a permit discharge point, that we  
6 are -- that the applicant is doing what they can  
7 to minimize their impact, prevent pollutant  
8 loading and they aren't choosing a plan as part of  
9 their corrective action or closure plan. That --  
10 and puts those wheels in motion prior to the NPDES  
11 process where antideg regulations come into play  
12 and requires assessment of alternatives and really  
13 is working towards minimal impact.

14 So we'd really like for the  
15 antideg process to be moved up so that the  
16 decisions being made at the corrective closure  
17 plan or corrective action plan aren't closing any  
18 potential alternatives that could have been  
19 considered, but aren't right now required to be  
20 considered until that last piece of the puzzle  
21 which is the permitting.

22 MS. FRANZETTI: I understand that  
23 part and I think my question was a little bit  
24 unclear. I was more so focusing on going this

1 next step as you have in your revised language of  
2 strictly requiring there has got to be a  
3 resubmission and it has got to be within 90 days  
4 rather than leaving that to the process and given  
5 all these variables allowing the Agency to  
6 exercise its judgment with respect to what has to  
7 be resubmitted and when it has to be resubmitted.

8 MR. ARMSTRONG: So our intent here  
9 was to fill what could be a gap in the rules,  
10 might not be a gap, but in the section on the  
11 Agency's review, approval and modification of  
12 plans there are provisions for the Agency to  
13 approve a plan or to disapprove a plan.

14 I don't see any regulations in  
15 here on the Agency being able to reopen a plan and  
16 so in this situation what we're talking about is a  
17 case where a closure plan presumably has been  
18 approved, an NPDES permit application is made, a  
19 permit or an NPDES permit or other permit is  
20 denied and a plan that presumably required this  
21 permit can no longer be performed.

22 So the intent of this was to  
23 provide the Agency with a requirement that a  
24 revised plan would need to be provided and provide



1 a 90-day timeline.

2 MS. FRANZETTI: No further  
3 questions.

4 HEARING OFFICER FOX: Anything  
5 further on questions five or six, Ms. Antonioli?

6 MS. ANTONIOLLI: No, we've covered  
7 six as well. That is one of those variables that  
8 we've been discussing so we can move onto the  
9 public notice section. That is proposed Part  
10 841.165.

11 Do you intend for the proposed  
12 changes to Section 841.165 to allow a public  
13 hearing on any alternative cause demonstration,  
14 corrective action plan, closure plan or  
15 post-closure care plan or any modification to any  
16 of those proceeding plans.

17 MR. ARMSTRONG: Potentially, yes, if  
18 the Agency determines that there is a significant  
19 degree of public interest.

20 MS. ANTONIOLLI: And how do you  
21 define a significant degree of public interest?

22 MR. ARMSTRONG: And to clarify my  
23 earlier answer it is a public informational  
24 meeting rather than a hearing, per se.

1 MS. ANTONIOLLI: How does a public  
2 informational meeting differ from a hearing?

3 MR. ARMSTRONG: Do you want me to  
4 answer that question first or your earlier  
5 question first?

6 MS. ANTONIOLLI: That question  
7 first.

8 MR. ARMSTRONG: The public  
9 informational meeting I believe that term is used  
10 in 35 Ill. Adm. Part 164. In answer to the  
11 question about a significant degree of public  
12 interest, that standard that the Agency should  
13 hold a, in this case, public hearing whenever it  
14 finds that there is a significant degree of public  
15 interest is contained in several existing Board  
16 regulations including 35 Ill. Adm. Code 309.115  
17 and that regulation is applicable to public  
18 hearings on NPDES permit applications.

19 Another example is 35 Ill. Adm.  
20 Code 705.182, which relates to the issuance of  
21 Resource Conservation and Recovery Act and  
22 underground injection control permits. So we  
23 believe that the standard should be familiar to  
24 the information. You asked what is the

1 significant degree of public interest, I believe?

2 MS. ANTONIOLLI: Right.

3 MR. ARMSTRONG: We in The  
4 Environmental Groups would argue for a liberal  
5 interpretation of that standard and we believe  
6 that comments from the public would demonstrate a  
7 significant degree of public interest.

8 MS. ANTONIOLLI: Is that term "a  
9 significant degree of public interest" also used  
10 in the Part 164 regulations?

11 MR. ARMSTRONG: I don't have those  
12 in front of me right now.

13 MS. ANTONIOLLI: Okay. Because you  
14 also added the clause that said that those Part  
15 164 regulations are not required to be complied  
16 with. So I just wanted to add that.

17 MR. ARMSTRONG: I can explain that.

18 MS. ANTONIOLLI: You can go ahead  
19 and explain that then.

20 MR. ARMSTRONG: So as for the  
21 statement that the Part 164 requirements would not  
22 apply, The Environmental Groups are not in any way  
23 opposed to requiring that informational hearings  
24 under these regulations be conducted in accordance

1 with those procedures. During the Agency  
2 stakeholder process on these regulations in 2013,  
3 The Environmental Groups had discussed with the  
4 Agency the possibility of hearings with the Agency  
5 and the Agency expressed some concerns at that  
6 time with holding the hearings that complied with  
7 Part 164. So the proposal that we made which was  
8 also made to the Agency during the stakeholder  
9 process was intended to be a concession to the  
10 Agency's concerns. However, if the Agency could  
11 be amenable to complying with the requirements of  
12 Part 164 here, The Environmental Groups would  
13 clearly have no issue with that.

14 HEARING OFFICER FOX: Mr. Rieser, it  
15 looked like you had a follow-up question on that  
16 point.

17 MR. RIESER: Do you have any  
18 estimate of how many additional public  
19 informational meetings will have to be held as a  
20 result of this rule?

21 MR. ARMSTRONG: No. Because I don't  
22 know how many plans or other documents will  
23 generate a significant degree of public interest.

24 MR. RIESER: And would it be The

1 Environmental Groups intent to testify before the  
2 General Assembly in support of additional funding  
3 for the IEPA to carry out these additional public  
4 informational hearings?

5 MR. ARMSTRONG: I can't speak on  
6 the -- what The Environmental Groups will do. I'm  
7 not their representative today of what all The  
8 Environmental Groups will do in the future.

9 MR. RIESER: Okay.

10 MR. ARMSTRONG: I can't address that  
11 today. We can address that in post-hearing  
12 comments.

13 MR. RIESER: All right. Thank you.

14 HEARING OFFICER FOX: Ms. Franzetti,  
15 you had a question?

16 MS. FRANZETTI: Mr. Armstrong, I'm  
17 still not quite following. Based on your proposed  
18 language which does allow the Agency not to follow  
19 the procedures of Part 164, can you describe for  
20 me generally then what does the public  
21 informational meeting look like or how is it  
22 conducted if it is not conducted for the  
23 procedures of Part 164?

24 MR. ARMSTRONG: Sure. So, again, to

1 be clear The Environmental Groups would support  
2 the full applicability of Part 164. If this rule  
3 were adopted as we proposed and if the Agency did  
4 hold hearings pursuant to our proposed language,  
5 The Environmental Groups would suggest that the  
6 Agency could follow the procedures required in  
7 Part 164 with the exception of Section 164.401  
8 requirement of a summary and Agency statement.

9 MS. FRANZETTI: I'm sorry. Was that  
10 164.401?

11 MR. ARMSTRONG: Correct.

12 MS. FRANZETTI: Thank you. Other  
13 than 164.401's requirement for an Agency summary,  
14 is there anything else in the Part 164 procedures  
15 that the Agency would not have to do as part of  
16 this public informational meeting?

17 MR. ARMSTRONG: The other aspects of  
18 the Part 164 rules discuss the issues that you  
19 were talking about in terms of how a hearing is  
20 conducted, the mechanics of it. The Environmental  
21 Groups would expect that those would be complied  
22 with. So in answer to your question, no.

23 MS. FRANZETTI: Okay. No further  
24 questions.

1 HEARING OFFICER FOX: Thank you,  
2 Ms. Franzetti. Ms. Olson, a follow up?

3 MS. OLSON: For these meetings,  
4 would the Agency have to pay for a court reporter?

5 MR. ARMSTRONG: Let me go ahead and  
6 pull up the Part 164 regs on my phone as well.

7 MS. OLSON: I'll just shorten this.  
8 I believe 164 requires the court reporter and so  
9 my question to you is do you believe a court  
10 reporter would be required by the Agency for these  
11 meetings independent of what 164 says?

12 MR. ARMSTRONG: I mean, again, in  
13 our proposed language which we proposed as a  
14 concession to -- concerns expressed by the Agency  
15 we explicitly state in this language that the  
16 requirements of Part 164 don't apply. So nothing  
17 in our proposed language here would require a  
18 court reporter. We believe it would be desirable  
19 and we certainly would support all of the  
20 requirements of Part 164 applying.

21 MS. OLSON: Do you know the  
22 applicability of Part 164 generally now?

23 MR. ARMSTRONG: I believe that the  
24 Part 164 applies to informational and quasi

1 legislative public hearings. Informational and  
2 quasi legislative public hearings.

3 MS. OLSON: And can the director of  
4 the Agency hold a hearing in his discretion when  
5 he feels it is necessary?

6 MR. ARMSTRONG: Is this in the Part  
7 164 rules?

8 MS. OLSON: Yeah. Take a look at  
9 164.101. I'll read it to you. It says "These  
10 procedures are intended to provide an opportunity  
11 for the public to understand and comment on  
12 proposed actions of the Illinois Environmental  
13 Protection Agency." This is not reading from the  
14 text anymore, but those actions would include  
15 decisions on permitting or corrective action plans  
16 or the like.

17 So my question for you is how is  
18 Part 164 not currently applicable to any closure  
19 plan that comes in now even in the absence of any  
20 rules governing closure?

21 MR. ARMSTRONG: So Part 64 applies  
22 to hearings that are -- 164.102 applicability  
23 applies to hearings that are required by law or  
24 when the director of the Agency determines that a



1 public hearing shall be held. The intent with our  
2 rules is to require a public hearing in the event  
3 that the Agency finds that there is a significant  
4 degree of public interest.

5 MS. OLSON: My question is how is  
6 164 not already applicable in evaluating Agency  
7 actions in regards to CCW surface impoundments?  
8 In the event the director were to decide to hold a  
9 public meeting, couldn't the director and the  
10 Agency already proceed under Part 164?

11 MR. ARMSTRONG: Yes.

12 MS. OLSON: So then why is the  
13 amendments that you propose necessary?

14 MR. ARMSTRONG: So our thought is  
15 that if a hearing or meeting is held with respect  
16 to the closure plans or other alternative cause  
17 demonstrations, corrective actions or post-closure  
18 care plans as required under our proposed language  
19 whenever there is a significant degree of public  
20 interest, were that to happen in the regular  
21 course of business, Part 164 would be applicable.

22 MS. OLSON: Can you repeat that?

23 MR. ARMSTRONG: If the Agency held a  
24 public informational meeting -- if our proposal

1 simply stated that the Agency shall hold a public  
2 informational meeting whenever it finds a  
3 significant degree of public interest in a  
4 proposed plan on the basis of public comment, if  
5 our proposal cut off right there, Part 164 in our  
6 belief would apply.

7 MS. OLSON: I think my question was  
8 why was the language needed and I'm not sure I'm  
9 following your response.

10 MR. ARMSTRONG: Well, if I  
11 understand your question, what you're asking is  
12 that why is this language necessary if the Agency  
13 could elect to hold a public hearing on an  
14 alternative cause demonstration, corrective action  
15 plan or closure plan or post-closure care plan or  
16 modifications thereto?

17 MS. OLSON: Under Part 164, that's  
18 correct.

19 MR. ARMSTRONG: Correct. The Agency  
20 could elect to do so in its discretion.

21 MS. OLSON: Correct.

22 MR. ARMSTRONG: The purpose of our  
23 amendment is that the Agency shall be required to  
24 hold a meeting whenever it finds a significant

1 degree of public interest in a proposed plan.

2 MS. OLSON: And who makes the  
3 determination if there is a significant degree of  
4 public interest?

5 MR. ARMSTRONG: As with several  
6 other provisions in the Board's rules, the Agency  
7 determines whether there is a significant degree  
8 of public interest.

9 MS. OLSON: And that would be the  
10 director, correct?

11 MR. ARMSTRONG: That would -- I  
12 can't speak to the Agency's internal processes.

13 MS. OLSON: Who is in charge of the  
14 Agency?

15 MR. ARMSTRONG: I assume that the  
16 director is.

17 MS. OLSON: So under both your  
18 proposal and Part 164 the director would be using  
19 his discretion in whether to hold a public  
20 hearing, is that right?

21 MR. ARMSTRONG: There is nothing in  
22 Part 164 that requires the director to hold any  
23 public hearings on coal ash impoundment plans.

24 MS. OLSON: My question was would

1 the director be exercising his or her discretion  
2 in holding a hearing either under your proposed  
3 language or under Part 164?

4 MR. ARMSTRONG: In both cases, the  
5 Agency is exercising discretion. In our proposal,  
6 there is a standard to guide the exercise of  
7 discretion.

8 MS. OLSON: We have a bunch of  
9 questions on this and we can either come back to  
10 this at a later date and move on with  
11 Ms. Antonioli's questions or we can proceed. I  
12 don't know the best course.

13 HEARING OFFICER FOX: My  
14 recollection is that a number of your questions I  
15 think, Ms. Olson, number 72 approximately  
16 addressed that. Maybe the appropriate thing is to  
17 hold those until you can address those together as  
18 it were if it makes sense to return to those.

19 MS. OLSON: Okay.

20 HEARING OFFICER FOX: Very good.  
21 Thanks, Ms. Olson. Mr. Rieser, I think you had a  
22 question.

23 MR. RIESER: Well, I was going to  
24 say before we left this particular dead horse for

1 good, but I guess we're coming back to it I might  
2 as well go ahead and ask my questions, which is  
3 does the Board have the authority to determine  
4 which Agency hearings the Agency's public hearing  
5 rules apply? And that should be amended to which  
6 Agency public meetings the Agency's public  
7 meetings rules apply. That was my question 17.

8 MR. ARMSTRONG: Thanks. So, again,  
9 to reiterate. We're not opposed to requiring the  
10 hearings are held in accordance with the  
11 procedures of Part 164. And so if there is any  
12 doubt or concern about the Board's authority to  
13 exempt the Agency from Part 164 in any case by all  
14 means The Environmental Groups would support  
15 requiring the Agency to comply with those  
16 requirements.

17 MR. RIESER: So you don't have a  
18 position on the extent of the Board's hearings  
19 with authority -- with respect to Agency public  
20 meetings?

21 MR. ARMSTRONG: Well, I think if the  
22 Board and the Agency as represented by Agency  
23 counsel in this rulemaking were to agree on a  
24 rulemaking that contained informational hearing

1 requirements and Part 164 as applied to a specific  
2 area and the Agency accepted that, I think it is  
3 possible that the revision could be made in this  
4 rulemaking.

5 MR. RIESER: Okay. I'll come back  
6 to that, but I'll leave it for now.

7 HEARING OFFICER FOX: Very good.  
8 Are we ready to return to Ms. Antoniolli? I  
9 believe we are. Ms. Antoniolli, if you want to  
10 continue or go to your next question as the case  
11 may be.

12 MS. ANTONIOLLI: Question eight.  
13 Do you agree that the five-year deadline for  
14 complying with the proposed design criteria should  
15 be extended for units that seek to close within  
16 that deadline, but are under time constraints due  
17 to requests for public hearing on any or all of  
18 the following: Alternative cause demonstration,  
19 corrective action plan, closure plan or  
20 post-closure care plan or any modification  
21 to any of the preceding plans?

22 MR. ARMSTRONG: Well, with respect  
23 to alternative cause demonstrations and corrective  
24 action plans, I'm not sure that I see those as

1 relevant to determining the closure because of a  
2 failure to meet design standards. So with respect  
3 to those my answer would be no. I'd further note  
4 that an informational meeting on closure and  
5 post-closure care would not need to add a great  
6 deal of time to the closure plan approval process,  
7 the relatively overall five-year deadline. So,  
8 generally speaking, I don't think there is a need  
9 for a general extension. On a case by case basis,  
10 I think to the extent that an individual operator  
11 or owner cannot comply with the requirement there  
12 is a possibility for site-specific relief.

13 MS. ANTONIOLLI: But just to  
14 clarify. The way you have proposed it there is no  
15 possibility for an owner or operator under this  
16 part to apply for an extension due to the  
17 constraints in complying with the five-year  
18 deadline due to requested informational meetings?

19 MR. ARMSTRONG: There is no such  
20 proposal in our proposed language.

21 MS. ANTONIOLLI: Okay.

22 HEARING OFFICER FOX: Mr. Sylvester,  
23 please?

24 MR. SYLVESTER: A follow-up

1 question. Mr. Armstrong, do you believe that the  
2 other Board procedural mechanisms such as variance  
3 would be applicable if a regulated entity wanted  
4 additional time?

5 MR. ARMSTRONG: Yes.

6 HEARING OFFICER FOX: Anything  
7 further?

8 MR. SYLVESTER: No, sir.

9 HEARING OFFICER FOX: Very good.  
10 Ms. Antoniolli, I think we're back to you.

11 MS. ANTONIOLLI: Okay. Let's move  
12 onto a new section, Section 841.170. Do you  
13 intend that weekly inspections are required even  
14 for units that are inactive and are no longer  
15 receiving waste, but are not yet capped?

16 MR. ARMSTRONG: Yes.

17 MR. KING: If you can look at your  
18 proposed Subsection (e) in 170. Is the purpose of  
19 the proposed Subsection (e) to assure dam safety?

20 MR. ARMSTRONG: The purpose of that  
21 Subsection (e) is to ensure that the impoundment  
22 is stable and is not causing any threat to surface  
23 or groundwater.

24 MR. KING: So I guess the answer is,



1 no, it is not related to dam safety?

2 MR. ARMSTRONG: Well, I think that  
3 as I said, the purpose -- the reason that we  
4 proposed it is stability and safety.

5 MR. KING: So if you are talking  
6 about dam safety issues, what is the Board's  
7 authority to adopt this requirement given that  
8 there is a separate regulatory structure that IDNR  
9 has?

10 MR. ARMSTRONG: We would submit that  
11 Section 12 of the act related to threats of water  
12 pollution would provide the Board with authority  
13 to adopt a requirement to determine that the  
14 impoundment is stable and is not causing any  
15 threat to surface or groundwater.

16 MR. KING: Okay.

17 HEARING OFFICER FOX: I don't see  
18 any other questions, Mr. King or Ms. Antonioli.  
19 If you have any others or wish to move ahead,  
20 we're ready for that.

21 MS. ANTONIOLLI: I'll move on to  
22 question 12. I think we've addressed the question  
23 in 11. If we look at Section 841.300.

24 MR. KING: In reference to

1 Subsection (b) (2), you made some changes from the  
2 Agency's draft. So the question is in Subsection  
3 (b) (2), do you intend that an owner or operator  
4 should be required to initiate closure before the  
5 Agency has approved the closure plan?

6 MR. ARMSTRONG: So we received some  
7 questions about this closure plan language in  
8 Section 841.300(b) (2) from a number of the  
9 participants. So I would like to clarify what was  
10 meant by the language. The intent of the initiate  
11 closure language in Section 841.300(b) (2) and in  
12 Section 841.305(c) (1) was to require that once  
13 there has been a confirmed exceedance of the  
14 groundwater quality standards, a CCW surface  
15 impoundment is then required to close in  
16 accordance with the timeframes set out in proposed  
17 Section 841.405.

18 So the proposed language for  
19 841.300(b) (2), for example, could be clarified to  
20 read that starting with that Subsection (b) if  
21 confirmation sampling confirms the detection of  
22 concentrations above any groundwater quality  
23 standard, the owner or operator shall, and then  
24 skipping ahead to Subsection 2, submit to the

1 Agency a corrective action plan as provided in  
2 Section 841.310 of this part and close all units,  
3 releases from which have caused an exceedance of  
4 the groundwater water quality standard at the  
5 compliance point, during the time allowed by  
6 Section 841.405 of this part. So it is not our  
7 intent --

8 MR. KING: It's 841 --

9 MR. ARMSTRONG: Point 405. So it is  
10 not our intent that in any case an owner or  
11 operator would be required to close an impoundment  
12 before the Agency had approved a closure plan, but  
13 rather just to make clear that those units were to  
14 close and then in accordance with the timeframes  
15 at 841.405.

16 MR. KING: Okay. For me, that's a  
17 good clarification.

18 HEARING OFFICER FOX: Mr. Rieser,  
19 did you have a question to follow up?

20 MR. RIESER: Yes. What if the --  
21 I'm sorry. Let me start it this way. There is no  
22 question that in order to initiate closure the  
23 applicant has to wait for Agency approval of this  
24 plant, correct?

1 MR. ARMSTRONG: Correct.

2 MR. RIESER: So what if that  
3 approval for whatever reason takes longer than the  
4 timeframes provide in -- was it 400? 841.402?

5 MR. ARMSTRONG: Four-o-five.

6 MR. RIESER: Four-o-five. I'm  
7 sorry.

8 MR. ARMSTRONG: That's an  
9 impossibility as the rule is drafted and I'll  
10 explain.

11 MR. RIESER: Okay.

12 MR. ARMSTRONG: In 841.405, let's  
13 go, for example, to 841.405(1)(c). Our proposed  
14 language is that if category one applies the unit  
15 shall be closed within two years of the Agency's  
16 approval of the closure plan or within two years  
17 of notice that an impact on existing potable water  
18 supply has occurred, whichever occurs later,  
19 unless the Agency approves a longer timeline.

20 So, in this case, the  
21 requirement to close doesn't accrue until the  
22 Agency's approval of the closure plan if that's  
23 the later of the two events.

24 MR. RIESER: Is that true of (2)(b)

1 as well?

2 MR. ARMSTRONG: Yes, and -- I'm  
3 sorry. Yes. Because (2) (b) states that the unit  
4 shall be closed within five years of the Agency's  
5 approval of the closure plan or within five years  
6 from the submission of groundwater monitoring  
7 results confirming an exceedance of applicable  
8 groundwater quality standards attributable to a  
9 release from the approved compliance point,  
10 whichever occurs later.

11 So, again, the closure  
12 requirement is not triggered until the approval of  
13 the closure plan affects the later of the two  
14 events.

15 MR. RIESER: Thank you.

16 HEARING OFFICER FOX: Any other  
17 questions? Ms. Antonioli, it looks like we're  
18 ready to return to you.

19 MS. ANTONIOLLI: Okay. We will skip  
20 over question 13. I believe Mr. Armstrong  
21 answered that as well. So if we move on to  
22 Section 841.310, the corrective action plan.

23 MR. KING: A couple of questions to  
24 get to kind of the bigger policy issues relative

1 to the proposal. Again, this is as we said  
2 Section 841.310. If implementation of the  
3 corrective action plan will mitigate the  
4 exceedance of the groundwater standard, by what  
5 authority could the Board require greater  
6 protection?

7 MR. ARMSTRONG: I'm sorry. Could  
8 you refer me to which specific question that  
9 you're referring to where the language occurs?

10 MR. KING: It's 310. I think if you  
11 look at, for instance, (e) (5). Assessment of  
12 alternatives to the proposed corrective action  
13 including whether any alternative corrective  
14 action could result in greater protection of human  
15 health and the environment.

16 If a proposed corrective action  
17 is going to mitigate an exceedance of the standard  
18 so that there is going to be compliance, where  
19 would the Board's authority be to require  
20 something greater -- a greater protection than  
21 what the compliance with the standards enforce?  
22 That's kind of what your provision is indicating  
23 there.

24 MR. ARMSTRONG: So in (e) (5) here,

1 this is a requirement for what needs to be in a  
2 corrective action plan that is submitted to the  
3 Agency and so the purpose of this provision that  
4 we're discussing is that a corrective action plan  
5 submitted to the Agency should address all  
6 alternatives and what their impact on protection  
7 of human health and the environment would be.

8 So this particular provision The  
9 Environmental Groups are not asking the Board to  
10 require any of these alternatives, but rather for  
11 this information to be included in the corrective  
12 action plan.

13 MR. KING: I mean, that's a pretty  
14 broad concern you've raised. Normally, the goal  
15 of a plan is to demonstrate that the standards are  
16 going to be complied with. This could be -- as  
17 I'm reading, this could be hundreds of different  
18 alternatives that have nothing to do with  
19 compliance with the standard.

20 MR. ARMSTRONG: Well, I'd like to  
21 address two points you raised and the first was  
22 the possibility that it should require an infinite  
23 number of alternatives to be considered and that  
24 is not our intent. What the proposed language

1 states is that an assessment of alternatives to  
2 the proposed corrective action is required  
3 including whether any alternative corrective  
4 action would result in greater protection of human  
5 health and the environment.

6           So if there is a million  
7 different ways to perform a corrective action  
8 based on all sorts of different variables you can  
9 imagine, you don't have to assess every  
10 alternative, but if there is an alternative out  
11 there that would afford greater protection of  
12 human health and the environment, then that  
13 alternative should be discussed.

14           Second, with respect to your  
15 point about the standard of protective of human  
16 health and the environment, the concept of a  
17 corrective action being, quote, protective of  
18 human health and the environment, end quote, is  
19 already used in the Board's rule at 35 Ill. Adm.  
20 Coat 811.325 relating to the selection of  
21 corrective actions for municipal solid waste  
22 landfills. That section includes several factors  
23 to be considered whether a particular corrective  
24 action is, quote, protective of human health and



1 the environment, end quote. So if the  
2 participants or the Agency is interested The  
3 Environmental Groups would not object to  
4 incorporating those factors into this proposed  
5 rule.

6 MS. FRANZETTI: If I may?

7 MR. KING: Go ahead.

8 MS. FRANZETTI: But, Mr. Armstrong,  
9 you're proposing here that the language being  
10 whether any alternative corrective action would  
11 result in greater protection, emphasis on greater  
12 protection of human health and the environment,  
13 and that is where the vagueness comes in in terms  
14 of where is the criteria, how are the scales  
15 balanced to decide what is greater and what is  
16 not.

17 Do you understand the difference  
18 between that and how Section 811.325 may provide  
19 criteria for determining whether or not an  
20 alternative is simply protective of the  
21 environment?

22 MR. ARMSTRONG: So I understand the  
23 difference in the language, but I think it is  
24 important to note that what is being proposed here

1 is simply that the assessment discuss these issues  
2 and whether any particular alternative would  
3 result in something that would be more protective  
4 of human health and the environment.

5 MS. FRANZETTI: To what --

6 MR. ARMSTRONG: To the factor --

7 MS. FRANZETTI: To what purpose?

8 MR. ARMSTRONG: To the purpose?

9 MS. FRANZETTI: Where does --

10 MR. ARMSTRONG: The purpose --

11 MS. FRANZETTI: -- this go?

12 MR. ARMSTRONG: The purpose of this  
13 is so that this information is available to the  
14 Agency and to the public as it assesses a proposed  
15 corrective action plan.

16 MS. FRANZETTI: And so under your  
17 proposed rules the public could, therefore,  
18 comment and say although the proposed corrective  
19 action achieves compliance with the groundwater  
20 standards the plan also identifies something that  
21 we believe provides greater or the plan admits  
22 could arguably provide greater protection and so  
23 that is the alternative that should be required,  
24 is that correct?

1 MR. ARMSTRONG: So in considering a  
2 corrective action plan, we believe it would be  
3 helpful if the Agency is presented with an  
4 analysis of the varying impacts of different  
5 compliance alternatives and what I mean by that is  
6 first of all on the groundwater standard issue,  
7 you know, one alternative might perhaps allow  
8 compliance decades down the road. Another  
9 alternative could allow compliance in a much  
10 shorter timeframe and I think that's information  
11 that the Agency can consider.

12 MS. FRANZETTI: So shorter timeframe  
13 can be greater protection of the environment and  
14 human health, correct?

15 MR. ARMSTRONG: Correct.

16 MS. FRANZETTI: And what if that  
17 shorter timeframe option cost ten times as much as  
18 the longer timeframe option?

19 MR. ARMSTRONG: Under this Section  
20 (e) (5), all that is required is a discussion.

21 MS. FRANZETTI: Okay.

22 HEARING OFFICER FOX: Mr. Rieser, I  
23 think you had indicated that you had a question,  
24 is that correct?

1 MR. RIESER: I did so indicate, but  
2 I'm going to withdraw.

3 HEARING OFFICER FOX: No problem at  
4 all. Ms. Olson?

5 MS. OLSON: This is kind of in  
6 follow up to the line of questioning by  
7 Ms. Franzetti. Does the Agency have the authority  
8 to deny corrective action plans that issue the  
9 groundwater quality standards in a reasonable  
10 amount of time?

11 MR. ARMSTRONG: What is the  
12 definition of a reasonable amount of time?

13 MS. OLSON: You used reasonable in  
14 response to your previous question. So I'm  
15 assuming whatever you meant by reasonable in that  
16 previous question.

17 MR. ARMSTRONG: I think I said --  
18 what I meant to say is that -- just bear with me  
19 one second. Well, with response to your question  
20 about a reasonable amount of time, I'm not aware  
21 of any prohibition on the Agency requiring a  
22 corrective action plan that would achieve  
23 compliance in a shorter amount of time than  
24 another plan.

1 MS. OLSON: My question isn't  
2 focused on the reasonable amount of time. I put  
3 that in there as a qualifier because you responded  
4 to Ms. Franzetti about time. My question is  
5 really getting at can the Agency take an  
6 applicant's request for a corrective action and  
7 deny it when their request meets the groundwater  
8 quality standards and deny it because, well, we  
9 don't think that is the greatest possible way to  
10 clean it up?

11 Is that grounds for the Agency  
12 to make a decision that an applicant can't proceed  
13 in corrective action along the way it wants to  
14 even though their proposed actions would result in  
15 compliance with the groundwater quality standard?  
16 So, in other words, can the Agency say, no, sorry,  
17 your proposal is not good enough because it is not  
18 the greatest thing out there?

19 MR. ARMSTRONG: I think the Agency  
20 can certainly review the corrective action plan  
21 that is proposed by an applicant and, again, like  
22 I said, I'm not aware of a prohibition on the  
23 Agency requiring a corrective action plan that  
24 would achieve compliance in a shorter amount of

1 time than if it believes that the corrective  
2 action plan proposed is insufficient.

3 MS. OLSON: I think we might be  
4 talking at cross purposes here. I'm not sure I  
5 got a response to my question. Can the Agency  
6 deny a corrective action plan submitted by an  
7 applicant that is designed to meet the groundwater  
8 quality standards and the Agency believes will be  
9 the groundwater quality standard because there is  
10 an alternative out there that may be, quote,  
11 greater -- greater protection of human health and  
12 the environment?

13 MR. ARMSTRONG: I would need to take  
14 that question as you asked it under review.

15 MS. OLSON: Thank you.

16 HEARING OFFICER FOX: Mr. Rieser, I  
17 don't want to overlook you and I can make a note  
18 to return to you. We've been underway for about  
19 two hours and I suspect that virtually everyone  
20 would appreciate a break. Why don't I make a note  
21 to resume with your question if we may.

22 MR. RIESER: Of course. That's  
23 fine.

24 HEARING OFFICER FOX: Very good. I

1 recognize, Ms. Antoniolli, that we've nearly  
2 exhausted your questions, but given the amount  
3 time that's passed let's resume here at 2:00. I  
4 do have one question for Mr. Armstrong and if I  
5 misunderstood what was going on, please correct  
6 me. Did you have brought to you copies of the  
7 geo-technical report that you had submitted as  
8 Exhibit No. 42?

9 MR. ARMSTRONG: Yes, I have.

10 HEARING OFFICER FOX: Why don't we  
11 just on the record note that you have received  
12 those. I know that Mr. Rieser, Ms. Franzetti and  
13 I believe Ms. Antoniolli had each requested a copy  
14 and if we can just reflect that those are being  
15 distributed to them we can take care of that.  
16 Mr. Sylvester, did you have a question before we  
17 go off the record?

18 MR. SYLVESTER: Yeah. I apologize.  
19 I got here a little bit later. I was wondering if  
20 the room next door was available?

21 HEARING OFFICER FOX: Let me check  
22 to see if that reservation begins later this  
23 afternoon. We had been informed that it was not  
24 available for the duration that we wanted today.

1 So I'm not confident, but I will look.

2 MR. SYLVESTER: Thank you.

3 HEARING OFFICER FOX: Again, we'll  
4 see you at 2:00. Thank you, again.

5 (Whereupon, a break was taken  
6 after which the following  
7 proceedings were had.)

8 HEARING OFFICER FOX: The time of  
9 2:00 having come I thank you all for your  
10 promptness in returning. The one thing I wanted  
11 to address was Mr. Sylvester who is not here and  
12 his very good, but ultimately fruitless suggestion  
13 that we look at the room next door, which is  
14 reserved from 2:00 until 4:00 for the governor's  
15 office as it turns out and I don't mean to benign  
16 this crowd, but I think we would lose in any  
17 competition with them for the use of that room.  
18 My sense is even if they're out of the room at  
19 4:00 p.m., at that point the burden of moving  
20 everyone and all of these papers for a little  
21 while longer would not really provide much benefit  
22 to us. So I think we will be here for the rest of  
23 the afternoon.

24 Before we turn to Mr. Rieser,



1 and my notes reflect that you had a question that  
2 you wanted to raise, I wanted to give a bit of a  
3 road map for the rest of this afternoon. Our  
4 intent would be to continue, of course, with  
5 Ms. Antoniolli's questions on behalf of Ameren and  
6 we have made significant progress through those.  
7 I think we're wrapping up Section 10 of the 11 and  
8 we can turn to those in just a moment and probably  
9 make some quick progress through them.

10 As we discussed at the top of  
11 the hearing then, Mr. Rieser, we can turn to your  
12 pre-filed questions, some of which you have  
13 mentioned have already been touched upon and some  
14 that were not addressed, and if you would go  
15 through those one by one we can turn to the  
16 questions you have to ask and then, Ms. Franzetti,  
17 once those are completed we can turn to you as  
18 well.

19 We have no reason to be out of  
20 this room before about 6:00 p.m., which I know is  
21 a long day, but it would be my goal to wrap up  
22 those three sets of questions. I believe each of  
23 you, Mr. Rieser and Ms. Franzetti, have about 20  
24 additional questions and while that may not prove

1 to be possible that's the goal I'd like to try to  
2 stick to if at all possible and then we can turn  
3 to the Agency no later than the top of the hearing  
4 tomorrow at 9:00 a.m. Any questions before we get  
5 underway with Mr. Rieser's follow up.

6 MR. RIESER: I'm good with moving  
7 through. Susan, I don't know about --

8 MS. FRANZETTI: I'm always fine.

9 MR. RIESER: I should be able to cut  
10 short a number of my questions.

11 HEARING OFFICER FOX: I'm not sure  
12 the record will fully reflect the spirit of what  
13 you said.

14 MR. RIESER: Parenthesis laughter.

15 HEARING OFFICER FOX: Exactly. We  
16 are prepared, Mr. Rieser, to turn to you. You had  
17 follow-up questions based on those that  
18 Ms. Antonioli had raised in Roman numeral ten on  
19 her pre-filed questions on behalf of Ameren  
20 regarding corrective action plans. Mr. Armstrong,  
21 and for the record Ms. Barkley, are both now here  
22 and we can turn to them.

23 MR. RIESER: Again, looking at --  
24 where are we so the record is clear?

1 841.310(e)(5) about something resolving in greater  
2 protection of human health and the environment, is  
3 that intended to capture issues other than  
4 groundwater -- environmental issues other than  
5 groundwater?

6 MR. ARMSTRONG: I'm just going to  
7 pull up something from my notes here. In terms of  
8 the corrective action, I guess a summary of what  
9 we would intend is that there would be an  
10 examination of potential for exposures to humans  
11 and the environmental receptors to the waste and  
12 consideration of the potential threat to human  
13 health and the environment due to -- that would be  
14 left by corrective action.

15 MR. RIESER: So an applicant could  
16 also demonstrate that closure by removal would not  
17 result in greater protection by showing the  
18 impacts to the larger environment, for example,  
19 for the use of additional trucks and the traffic  
20 and the impact to the community and the need to  
21 construct additional landfills, would that be part  
22 of that demonstration, too?

23 MR. ARMSTRONG: So are we still on  
24 the corrective action part of it or are we moving

1 on the --

2 MR. RIESER: We're talking about the  
3 alternatives whether that would be part of an  
4 alternative that an applicant could demonstrate.

5 MR. ARMSTRONG: So in this  
6 particular subsection all that we're asking for is  
7 that in the corrective action plan information  
8 about the protectiveness to human health and the  
9 environment is presented in there. So I don't  
10 necessarily know if the issue of closure by  
11 removal would be in play for a corrective action  
12 plan, per se.

13 MR. RIESER: Okay. All right.  
14 Thank you.

15 HEARING OFFICER FOX: Ms.  
16 Antonioli, I think we can return to you if you  
17 have any further questions under your subheading  
18 10.

19 MR. ANTONIOLLI: Question 16.  
20 Looking at Section 841.310(e)(6), would the  
21 addition of an antidegradation demonstration  
22 process require an amendment to the NPDES  
23 permitting rules?

24 MR. ARMSTRONG: No, we would not

1 intend to require an amendment to the NPDES rules.

2 MR. KING: If that's the case then,  
3 doesn't that mean the antidegradation requirements  
4 would have to be gone through twice because you'd  
5 still have those rules in place, that's what  
6 you're intending that process to be gone through  
7 twice?

8 MR. ARMSTRONG: So in our proposal  
9 as it is currently drafted when we look at Section  
10 841.310(g), for example, the idea is that the  
11 antidegradation demonstration that is submitted  
12 under 841.310(e)(6) would be put on public notice  
13 and would be approved by the Agency before a  
14 corrective action plan could be approved. As it  
15 is in the proposal now, we additionally say that  
16 the approved antidegradation demonstrations could  
17 then be deemed complete for purpose of an NPDES  
18 modification that would be necessary to implement  
19 the corrective action plan.

20 MR. KING: But then you'd have this  
21 rule saying that, but then you'd still have the  
22 permitting rules requiring an antidegradation  
23 analysis?

24 MR. ARMSTRONG: Right. I follow

1 what you're saying. So if the antidegradation  
2 regulations were not amended as they are in their  
3 present state, you have an independent requirement  
4 for antidegradation demonstration there that isn't  
5 impacted by this rule. So I see what you're  
6 saying. I agree with your description of how  
7 those two regulations would play out with each  
8 other.

9 MR. KING: But you're really not  
10 intending for there to be that duplicate review?

11 MS. BARKLEY: So I think it might be  
12 at the time of NPDES permitting, but there is more  
13 than duplicate review for antideg than just the  
14 coal ash waste stream and at that point then  
15 antideg would be to continue, but our purpose of  
16 this is not to have a coal ash waste stream go  
17 through the antideg review proposal twice.

18 MR. KING: Twice.

19 MS. BARKLEY: If it hasn't changed.

20 HEARING OFFICER FOX: Ms. Olson, do  
21 you have a follow up?

22 MS. OLSON: I do, but I'll yield.

23 MS. FRANZETTI: Go ahead.

24 MS. OLSON: Do you know whether or

1 not under Part 309 it's possible to do an  
2 antidegradation analysis without having an NPDES  
3 permit mod on file or permit request on file,  
4 application on file? I'm happy to take the  
5 response, you know, in public comments.

6 MR. ARMSTRONG: No, I think what our  
7 response is that there is no current requirement  
8 in these 309 regulations regarding specifically  
9 coal ash impoundment closure plans, et cetera.  
10 I'm sorry. 302. But our intent is that the  
11 antidegradation intent would be included in these  
12 regulations that we're discussing today.

13 HEARING OFFICER FOX: Anything  
14 further, Ms. Olson?

15 MS. OLSON: No, I'm good. Thank  
16 you.

17 HEARING OFFICER FOX: Ms. Franzetti,  
18 you had a question?

19 MS. FRANZETTI: Yes. I understand  
20 from your testimony that you don't -- your purpose  
21 in this proposed revision to 841.310(g) is not to  
22 require two rounds of antidegradation review by  
23 the Agency, but under your proposal that the  
24 antidegradation demonstration has to be approved

1 by the Agency before a corrective action plan can  
2 be approved you really can't prevent the scenario  
3 where you go through antidegradation review with  
4 the Agency, you get approval under antideg, but  
5 then the Agency reviews your corrective action  
6 plan and disapproves the other elements of  
7 whatever the antideg demonstration was a part of.

8                   Doesn't then the process have to  
9 start over when you come back to the Agency with a  
10 revised corrective action plan that as a result  
11 may change some of the factual information you  
12 presented to the Agency under the antidegradation  
13 review which you did pass?

14                   MS. DEXTER: Which part of that was  
15 the question?

16                   MS. FRANZETTI: Do you recognize  
17 that even though you don't intend for there to be  
18 two rounds of antidegradation review to occur  
19 based on your proposed language in 841.310(g) that  
20 because you're requiring the separate upfront  
21 antideg review before the Agency has reviewed and  
22 approved the corrective action plan that upon  
23 their disapproval of the corrective action plan  
24 and hence the need to revise it that can have the



1 domino effect of having a need to revise the  
2 antidegradation submission that you initially made  
3 to the Agency under your original corrective  
4 action proposal, do you agree?

5 MR. ARMSTRONG: So the idea here is  
6 that the antidegradation analysis is going to  
7 happen hand-in-hand with the approval of the  
8 corrective action plan.

9 MS. FRANZETTI: That is what is  
10 intended by the second sentence of (g)? "If  
11 required, the antidegradation demonstration must  
12 be approved by the Agency before a corrective  
13 action plan can be approved."

14 MR. ARMSTRONG: Right. A  
15 demonstration is going to take place prior to the  
16 approval of the corrective action plan, but the  
17 two are going to be considered at the same time.

18 MS. FRANZETTI: No further  
19 questions.

20 HEARING OFFICER FOX: Ms.  
21 Antonioli, I think we're ready to go back to you  
22 if you have any further questions about Section  
23 841.310.

24 MR. ANTONIOLLI: Excuse me. Yes.

1 One more follow up to that. There might be a  
2 scenario, for example, where an owner or operator  
3 proposes to close a surface impoundment and there  
4 is in a way that creates a discharge needing an  
5 NPDES permit and under this proposal that owner or  
6 operator would have to make an antideg  
7 demonstration.

8 If that plan is not approved by  
9 IEPA and instead I would say the corrective action  
10 then requires no discharge the second time around  
11 requiring no NPDES permit and no antideg  
12 demonstration, can you see how that would be  
13 preliminary to require the antideg demonstration  
14 under the first plan?

15 MR. ARMSTRONG: So in your scenario  
16 you have a corrective action plan and you do an  
17 initial antidegradation analysis?

18 MR. ANTONIOLLI: Right. The full  
19 analysis.

20 MR. ARMSTRONG: The full analysis  
21 and it doesn't meet --

22 MR. ANTONIOLLI: With public notice  
23 and everything.

24 MR. ARMSTRONG: Right.

1 MR. ANTONIOLLI: Ultimately, that  
2 corrective action plan is not approved by IEPA.

3 MR. ARMSTRONG: I see. So you've  
4 gone through and done the antidegradation  
5 analysis?

6 MR. ANTONIOLLI: Right. So the  
7 second time around the corrective action is  
8 different and doesn't require a discharge and  
9 you've gone through the process a second time that  
10 if they had gone through the process the first  
11 time with the corrective action and just made that  
12 determination with the IEPA there would have been  
13 no need for an antideg demonstration at that  
14 point.

15 MS. BARKLEY: Largely, I think the  
16 intent of antideg regulations is to avoid  
17 discharges when possible, minimize pollutant  
18 loading and find alternatives. I think that is  
19 the point of going through antideg if there is  
20 another -- if there is another solution that  
21 doesn't require a discharge into surface waters  
22 from -- you know, through the corrective action  
23 and the closure plan, that should first be  
24 considered as an option and I think the whole

1 iterative process corrective action, closure plan  
2 and antideg go hand in hand as we expect there is  
3 a conversation happening between the applicant and  
4 the Agency to figure out so you're going through  
5 the process of writing up these elaborate plans  
6 for something that is going to be completely  
7 rejected by the Agency so you aren't going through  
8 all these academic exercises that aren't going to  
9 be put into practice. I think some of that can be  
10 figured out in the front end so you don't have to  
11 go through that long public process of antideg to  
12 be rejected later on.

13 MR. ANTONIOLLI: Okay. So that's  
14 your intent. We can move on to Section 841.400.

15 MR. KING: These next questions are  
16 focused on the closure by removal mandate in  
17 Section 841.400 that you proposed. Do you think  
18 closure by removal should be mandated under  
19 Subsection (b) in a circumstance where the site  
20 will be capped in accordance with Part 841, there  
21 is no potential for human injection of the  
22 groundwater as a drinking water and the owner or  
23 operator has demonstrated that there is no  
24 measurable or observable impact to a surface

1 water?

2 MR. ARMSTRONG: So under 841.400 (b),  
3 we have the two parts to 841.400 (b). We have  
4 first the requirement that closure should be by  
5 removal of impoundment coal combustion waste and  
6 leachate unless the Agency determines that removal  
7 is technically infeasible or would not result in  
8 greater protection of human health and the  
9 environment, but then we have listed out several  
10 cases where we would say that closure shall be by  
11 removal unless technically infeasible.

12 So in those cases you've got as  
13 we discussed in the last hearing an irrebuttable  
14 presumption that in those cases human health and  
15 the environment would be better protected by  
16 removal. And the first was coal combustion waste  
17 from the units present in the water table. The  
18 second was the unit is located is a 100-year  
19 floodplain or wetlands. Four, the unit is located  
20 above an active or inactive shaft or tunneled  
21 mines or within 200 feet of a fault that has had  
22 displacement in Holocene time unless engineering  
23 measures have been incorporated into the facility  
24 design to ensure that the integrity of the

1 structural components of the facility will not be  
2 disrupted by geological processes.

3 So this is the language in  
4 841.400(b) as clarified in our post-hearing  
5 comments dated June 9th, 2014. So in your  
6 question it does appear from what you've described  
7 that -- you know, the threat to groundwater there  
8 is not going to be a threat to groundwater.

9 However, the stability concerns raised by the  
10 second part of 841.400(b) could be present to the  
11 extent that we believe closure by removal should  
12 be required.

13 MR. KING: Okay.

14 MS. BARKLEY: I think it is also  
15 important you have -- and the owner or operator  
16 has demonstrated that there is no measurable or  
17 observable impact to the surface water and I'm not  
18 aware of owners or operators that are taking  
19 measurements or observations on surface water  
20 conditions aside from NPDES discharge samplings.

21 So it is possible that there are  
22 impacts to the surface waters and to the biology  
23 in those surface waters from coal ash management  
24 or mismanagement that has not been detected by the

1 owner/operator.

2 MR. KING: Okay. Let me follow up  
3 to make sure I'm understanding. Let's assume that  
4 the site I've described -- the situation I've  
5 described is a unit that is located in a  
6 floodplain. It is located in a floodplain, the  
7 site will be capped in accordance with Part 841,  
8 there is no potential for ingestion of  
9 groundwater, there is no observed or measurable  
10 impact to a surface water, are you still saying  
11 that closure by removal should be mandated?

12 MS. BARKLEY: I think I just heard  
13 you re-ask the same question. Are we still under  
14 these conditions under Subsection (b) under these  
15 criteria that you've listed still saying that  
16 closure by removal should be mandated?

17 MR. KING: Right. What I've added  
18 is that it is in a floodplain.

19 MS. BARKLEY: Yes. I think we'd  
20 like to qualify that by saying it's in a 100-year  
21 floodplain and I think the reason why is because  
22 we've seen that even with levies in place that are  
23 supposed to be protecting coal ash ponds like the  
24 one at Edwards that that is not working. For the

1 example of Vermilion where you have coal ash ponds  
2 are built in the floodplain, you can visibly see  
3 the wear and tear from the erosion from the  
4 actions of the river as well as you can see the  
5 water during times of high flood is actually  
6 reaching back into the unlined ash pits and  
7 causing them to take on more water from  
8 underneath.

9                   There are a number of different  
10 mechanisms within a river floodplain that we think  
11 will continue to be -- to exist into the future  
12 because of the dynamic nature of that system and  
13 that says, yes, it should be closed by removal  
14 because those conditions will continue to persist  
15 and wear away and increase stability concerns and  
16 safety concerns at those sites.

17                   MR. KING: So there is no element of  
18 proof to overcome that irrebuttable presumption is  
19 what you're saying, no element of proof?

20                   MR. ARMSTRONG: For the 100-year  
21 floodplain, that is correct as it is proposed in  
22 our rules.

23                   MR. KING: Okay. I'm finished with  
24 that question.



1 HEARING OFFICER FOX: Ms. Olson, you  
2 had a follow up?

3 MS. OLSON: I have a clarifying  
4 question. In response to question 17, and this is  
5 the first time it was asked, kind of asked, you  
6 said you were kind of summarizing the facts that  
7 you were going to make your conclusion and you  
8 said, quote, there is not going to be a threat to  
9 groundwater, can you explain what facts in  
10 question 17 led you to that conclusion?

11 MR. ARMSTRONG: Well, I was actually  
12 summarizing the question. I had scanned it on my  
13 computer and I may have misstated because the  
14 question actually was there's no potential for  
15 human ingestion of the groundwater as a drinking  
16 water and I may have overstated -- I did overstate  
17 my interpretation of that.

18 I mean, even under this scenario  
19 there can be a potential for a threat to  
20 groundwater in the circumstance. There are other  
21 uses of groundwater other than the ingestion.  
22 There are future uses of groundwater to protect.  
23 So I did not mean to characterize this  
24 hypothetical as saying there was no threat to

1 groundwater. That was a mistake on my part.

2 MS. OLSON: That's all I have.

3 HEARING OFFICER FOX: Mr. King, did  
4 you want to proceed with your questions?

5 MR. KING: Yes. Next question. Do  
6 you think it would be appropriate to require  
7 removal of a unit under Subsection (b) in the  
8 circumstance where removal would threaten the  
9 structural integrity of an adjacent levy and thus  
10 threaten thousands of people and businesses with  
11 an invasion of flood waters?

12 MR. ARMSTRONG: No. In that case,  
13 removal would be technical infeasible. You could  
14 not accomplish it consistent with sound  
15 engineering practices.

16 MS. OLSON: Can you repeat that?

17 MR. KING: I'm not -- I don't think  
18 that's consistent with the way you've written this  
19 because if it is in a floodplain, then the way you  
20 have this written then you cannot make a technical  
21 infeasibility demonstration as I read this.

22 MR. ARMSTRONG: I disagree with that  
23 interpretation for this reason. The general rule  
24 is a closure shall be by removal of CCW and

1 leachate unless the Agency determines that it is  
2 either technically infeasible or would not result  
3 in greater protection of human health and the  
4 environment.

5 MR. KING: All right. I missed the  
6 second clause.

7 HEARING OFFICER FOX: Mr. King, I  
8 think we're ready for the next question you may  
9 want to ask.

10 MR. KING: Is it your position that  
11 if an existing surface impoundment closes in place  
12 in accordance with the United States Environmental  
13 Protection Agency's proposed coal combustion  
14 residual rule 40 CFR 257 it must nonetheless be  
15 removed unless the owner can show that the closure  
16 meets the requirements you have set forth in  
17 proposed Section 841.400(b)?

18 MR. ARMSTRONG: That is not our  
19 intent.

20 MR. KING: So if it could close in  
21 accordance with 40 CFR 257, then removal would not  
22 be required?

23 MR. ARMSTRONG: No, I'm referring to  
24 a case where an impoundment has closed. Again,

1 I'm -- I guess -- I'll clarify so I understand the  
2 question you're asking. If you're asking -- are  
3 you asking whether we have a scenario where the US  
4 EPA's proposed coal combustion residual rule is in  
5 effect, but the Board's proposal rules are not in  
6 effect?

7 MR. KING: That would be fine.  
8 Let's start with that one.

9 MR. ARMSTRONG: Okay. So if the US  
10 EPA has adopted its proposed coal combustion rule  
11 and an impoundment is closed in accordance with  
12 that rule before these rules have become  
13 effective, it would not be our intent that once  
14 this rule became effective you would have to uncap  
15 an impoundment and remove the coal combustion  
16 waste from the impoundment.

17 MR. KING: Okay. I have no follow  
18 up on that.

19 HEARING OFFICER FOX: Mr. Rieser  
20 does it appears.

21 MR. RIESER: What about the  
22 circumstances where both rules are in effect and  
23 hasn't closed yet, then we'd have to follow the  
24 Pollution Control Board rules, but not the federal

1 rules, is that correct?

2 MR. ARMSTRONG: Well, in that case,  
3 I think there would be a state standard with  
4 respect to this removal question that would be  
5 more stringent in the federal standard and that  
6 the state standard should be complied with.

7 MR. RIESER: So it's your intent to  
8 adopt a more strict -- a stricter state standard  
9 with this regard than what would be included in  
10 the federal rules?

11 MR. ARMSTRONG: Then I would just  
12 qualify that to say this standard would be  
13 stricter than what is in the federal rules as they  
14 are currently proposed.

15 MR. RIESER: So the federal rules  
16 might be different when they come out. We don't  
17 know exactly what might be in there.

18 MR. ARMSTRONG: I cannot guarantee  
19 what the US EPA will do.

20 MR. RIESER: No one can. I  
21 appreciate that. Thank you.

22 HEARING OFFICER FOX: Ms. Franzetti?

23 MS. FRANZETTI: Mr. Armstrong, did  
24 any of the groups that you're representing here

1 propose in their comments on the federal proposed  
2 rule these same types of provisions regarding  
3 removal as part of the closure?

4 MR. ARMSTRONG: I personally am  
5 unaware of that. I can't answer that today.

6 MS. FRANZETTI: You don't know?

7 MR. ARMSTRONG: I don't know.

8 HEARING OFFICER FOX: Ms. Olson?

9 MS. OLSON: Can you follow up and  
10 provide a response in post-hearing comments?

11 MR. ARMSTRONG: Yes.

12 HEARING OFFICER FOX: Ms. Antonioli  
13 or Mr. King, we're ready to go back to you to wrap  
14 up Section 11 or move to 12 as you've prepared.

15 MR. ANTONIOLLI: We can move on to  
16 Section 841.415 final slope and stabilization.

17 MR. KING: I'm sorry.

18 MR. ARMSTRONG: Please go ahead.

19 MR. KING: Is it your -- this is  
20 841.415(d). Is it your intent in revising  
21 proposed Section 841.415(d) that coal combustion  
22 waste on site cannot be regraded?

23 MR. ARMSTRONG: So to explain a  
24 little bit more about the prohibition on CCW for

1 final grade and slope our expert witness Dr. Keir  
2 Soderberg, who of course was not able to be here  
3 today, testified both in his pre-filed testimony  
4 in response to a number of questions. What our  
5 concern is, number one, is that CCW could be  
6 exposed to erosion. A second concern is that  
7 adding CCW to an impoundment that is already  
8 causing groundwater contamination is not prudent.

9 I guess in terms of the  
10 regrading question as our expert testified our  
11 concern is that there is not CCW exposed to  
12 erosion. The Board in its pre-filed questions for  
13 this hearing in question four attachment eight of  
14 the Hearing Officer order asked the Agency if it  
15 might be willing to provide some clarifying  
16 language for proposed Section 841.415 The  
17 Environmental Groups would certainly consider such  
18 language, but again what we're really concerned  
19 about here is that if CCW is left in a way that is  
20 going to be exposed to erosion that is a concern  
21 for us.

22 MR. KING: So your concern is not  
23 that the coal combustion waste would be regraded  
24 and then covered with the appropriate material,

1 that's not your concern, right?

2 MR. ARMSTRONG: So long as the coal  
3 combustion waste is not graded in any way that it  
4 would be capable of being exposed to erosion or  
5 oxidation.

6 MR. KING: Okay. So that's what  
7 you -- I understand. I think that's something we  
8 can work with. I don't have anything further.

9 HEARING OFFICER FOX: It looks like,  
10 Mr. King or Ms. Antonioli, we would be ready to  
11 move on --

12 MR. RIESER: I have one.

13 HEARING OFFICER FOX: Mr. Rieser,  
14 I'm sorry. I overlooked you.

15 MR. KING: So would the cover -- the  
16 required cover for the regraded slope, would that  
17 provide sufficient protection against being  
18 exposed to erosion?

19 MR. ARMSTRONG: So I would repeat  
20 that our concern was with the possibility of coal  
21 ash being capable of exposure to erosion. I  
22 myself can't testify as to precise technical  
23 details of what would prevent that. We would be  
24 happy to follow up in writing or in some other



1 format with an answer to that question --

2 MR. KING: That would be great.

3 MR. ARMSTRONG: -- when  
4 Dr. Soderberg is available. Unfortunately,  
5 Dr. Soderberg has been out of the country since  
6 last week and we have not had the opportunity to  
7 review any pre-filed questions with him in advance  
8 of today. So I may pull that card a few more  
9 times before the end of the day.

10 MR. RIESER: Understood. Thank you.

11 HEARING OFFICER FOX: Ms. Olson, it  
12 looks like you had a question.

13 MS. OLSON: Andrew, I have a quick  
14 hypothetical for you. If a facility has two  
15 impoundments and they're both half full, under  
16 your proposal would it be acceptable to take the  
17 ash from one of the half full impoundments and put  
18 it in the other half full impoundment to make it  
19 one completely full impoundment?

20 MR. ARMSTRONG: I would be glad to  
21 respond to that question in writing.

22 MS. OLSON: I have another question.

23 MR. ARMSTRONG: Sure.

24 MS. OLSON: Do you know what

1 freeboard is?

2 MR. ARMSTRONG: I'm aware of what  
3 freeboard is, yes.

4 MS. OLSON: Would it be acceptable  
5 to put ash in an impoundment, regrade it, cover  
6 the freeboard, then the amount of space that is  
7 left at the top would accumulate impounded storm  
8 water?

9 MR. ARMSTRONG: So, again, I would  
10 point out that we have two concerns with adding  
11 coal combustion waste to an impoundment to  
12 establish final grade and slope. First, as I said  
13 before, the concern about the possibility of  
14 erosion of the coal combustion waste. The second  
15 is also we have a concern about adding coal  
16 combustion waste -- additional coal combustion  
17 waste to an impoundment that is unlined or has an  
18 inadequate liner. So, in that case, that second  
19 one of our concerns would not be addressed --  
20 would still be present in your hypothetical in any  
21 case.

22 MS. OLSON: Let's assume they're  
23 lined and they're adequate. Does that change your  
24 answer?

1 MR. ARMSTRONG: I think again --

2 MS. BUGEL: Can I interrupt you for  
3 a second and put an objection out here to this  
4 line of questioning because the witness has  
5 already indicated that he is not here as our  
6 technical -- our technical witness on these issues  
7 was Dr. Keir Soderberg. Dr. Soderberg's position  
8 on final grade and slope was very, very clear from  
9 his testimony, which was completely consistent  
10 with our red line. So -- and we've offered to  
11 follow up in writing along this line of questions.

12 HEARING OFFICER FOX: Ms. Bugel,  
13 recognizing your objection let me ask Ms. Olson  
14 this. If you have any additional hypotheticals or  
15 other circumstances you would like Mr. Armstrong  
16 and The Environmental Groups to address in  
17 post-hearing comments, can you put those in the  
18 record at this point?

19 MS. OLSON: I would like them to be  
20 addressed now so I can ask follow-up questions,  
21 but I understand if they can't and they want to  
22 handle it in post-hearing comments. That's fine.

23 HEARING OFFICER FOX: I think they  
24 made clear the reason they're not prepared to do

1 so and stated on the record that their technical  
2 expert witness is not available. So if you do  
3 have additional circumstances or hypotheticals  
4 that you'd like to address by placing them in the  
5 record, please go ahead and do that.

6 MS. OLSON: I'm not sure on my  
7 follow ups because I don't know his response, but  
8 that's all I have for you.

9 MR. ARMSTRONG: I'd just like to add  
10 for the record, too, Dr. Soderberg was here for  
11 two days. The prohibition on using CCW to  
12 establish grade and slope was in his pre-filed  
13 testimony. There was a lot of opportunities to  
14 ask him questions about this at that time.

15 MR. RIESER: Excuse me. We got the  
16 proposal for the rule change the day before -- the  
17 day before that hearing, the night before that  
18 hearing.

19 HEARING OFFICER FOX: I think those  
20 filing dates and I think his presence are well  
21 established in the record, including transcripts.  
22 I think Ms. Olson has exhausted for now the  
23 hypotheticals or circumstances she'd like to  
24 raise. So it's probably time to move on to the

1 next question that Mr. King or Ms. Antoniolli  
2 would like to make.

3 MR. ANTONIOLLI: I'm done. This  
4 last question I'm going to skip for now. I know  
5 it will be addressed in the other questions.

6 HEARING OFFICER FOX: Very good. If  
7 there are no other follow ups at this point, I  
8 think, Mr. Rieser, we're prepared to turn to your  
9 first question. You had two sets. One addressing  
10 the comments that were filed on June 6th and a  
11 second under subheading Roman numeral two that  
12 addressed specific provisions. I'm assuming you'd  
13 like to start with number one, which is my  
14 suggestion.

15 MR. RIESER: We can start at the  
16 very beginning. It's a very good place to start.

17 MS. FRANZETTI: Okay, Julie.

18 MR. RIESER: So number one. What  
19 standards should the Agency use in determining  
20 whether the removal of CCW from a given  
21 impoundment is, quote, technically feasible? Is  
22 it your position that the Agency should be  
23 precluded from considering economic  
24 reasonableness?

1 MR. ARMSTRONG: So to answer the  
2 first question first. The term technically  
3 feasible is used throughout the act in the Board's  
4 regulations and The Environmental Groups believe  
5 that standard can be applied by the Board and the  
6 Agency. As for the characterization of the  
7 standard, The Environmental Groups would submit  
8 that technically feasible means that there are  
9 means that would allow compliance through the  
10 requirement. The Agency should consider that if  
11 the owner or operator is incapable of complying  
12 with the part of closure by removal, then it would  
13 be technically infeasible.

14 MR. RIESER: So would you -- I'm  
15 sorry. Can you please reread the last sentence  
16 back to me?

17 (Whereupon, the record was read  
18 as requested.)

19 MR. RIESER: So that incapability  
20 includes their financial inability to perform the  
21 removal?

22 MR. ARMSTRONG: We believe that if a  
23 company is incapable because it is too expensive  
24 to perform the operation, that would qualify for

1 technical infeasibility.

2 MR. RIESER: On page five of your --  
3 you state -- filed by The Environmental Groups.  
4 What was the basis for rejecting any consideration  
5 of economic reasonableness?

6 MR. ARMSTRONG: So The Environmental  
7 Group's position is that if impoundment presents a  
8 threat of surface or groundwater contamination,  
9 that threat should be addressed and if closure by  
10 removal will address that threat more completely  
11 than closure in place, then closure by removal  
12 should be required unless it is technically  
13 infeasible.

14 MR. RIESER: How is that consistent  
15 with the General Assembly's requirement that the  
16 Board consider both the economic reasonableness  
17 and the technical feasibility in adopting  
18 regulations?

19 MR. ARMSTRONG: Well, we are  
20 prepared to provide some information now about the  
21 economical -- economic reasonableness of closure  
22 by removal in specific cases. So to the extent we  
23 can provide this information at this time, I think  
24 that we can establish that economic reasonableness

1 is established for closure by removal in general.

2 MR. RIESER: So you're going to  
3 provide -- I'm sorry. So the intent is to provide  
4 additional testimony in the context of answering  
5 these questions about economic reasonability?

6 MR. ARMSTRONG: We've received  
7 several questions including from the Board about  
8 the economic impact of closure by removal. So if  
9 you don't want to ask that question now I don't  
10 have to answer it, but I can answer it now or  
11 later.

12 MR. RIESER: It's your proposal so I  
13 guess I would -- I think at some point you have  
14 the burden of explaining to the Board how they can  
15 adopt this consistent with their legislative  
16 direction that they adopt regulations which are  
17 economically reasonable. If you didn't feel that  
18 was your case that you needed to present, it's  
19 certainly not up to me to give you the  
20 opportunity. It's your obligation to present it  
21 at the first point and not in the middle of  
22 questioning after we've gone all over your  
23 proposal and your statement and none of that was  
24 concluded. That wasn't a question. Thank you.



1 MS. FRANZETTI: Could I go?

2 MR. RIESER: Go.

3 MS. FRANZETTI: I want to make sure  
4 I'm understanding up to this point. Is it correct  
5 that what you have just testified to on this issue  
6 of economic reasonableness is somewhat different  
7 than your comments that were filed on June 6th  
8 provided on this issue of economic reasonableness  
9 specifically at page five where it is stated  
10 during the last hearing The Environmental Groups  
11 were asked if they would support an edit of their  
12 proposed revisions to include a reference to,  
13 quote, economic reasonableness, unquote, or a  
14 similar concept The Environmental Groups do not  
15 propose to make that change. The environmental  
16 groups proposal is meant to make the primary  
17 screens for closure alternatives to be technical  
18 feasibility and protection of human health and the  
19 environment. If the Agency concludes in a  
20 particular case that closure by removal is  
21 technically feasible and would clearly afford more  
22 protection to human health and the environment,  
23 then closure should be by removal, end quote.  
24 You seem today to be modifying that position to

1 allow for consideration to some extent, I'm not  
2 sure I'm clear to what extent, of economic  
3 reasonableness, is that correct?

4 MR. ARMSTRONG: No. Let me clarify.  
5 My statement was in response to the question of  
6 the Board's mandate in adopting rules to consider  
7 economic reasonableness under Section 27. We are  
8 not proposing any modification to our proposed  
9 rules. So the passage you just read is still an  
10 accurate summation of our position. However, we  
11 are -- we have with us today to present in  
12 response to the Board's question -- one of the  
13 Board's pre-filed questions information regarding  
14 the costs of closure by removal.

15 MS. FRANZETTI: You did in answer to  
16 one of the prior questions note that if a company  
17 could not afford the cost of closure by removal I  
18 thought you said that that does fall within the  
19 intended meaning of closure by removal being  
20 technically infeasible, did I hear that correctly?

21 MR. ARMSTRONG: The intent is that  
22 if the company -- if a given company is incapable  
23 of complying with the closure by removal  
24 requirement, for example, it simply would be -- it

1 would exhaust --

2 MS. FRANZETTI: The resources?

3 MR. ARMSTRONG: -- the resources and  
4 simply could not be performed, then in that case  
5 it would be technically infeasible. Our thought  
6 of something like that would be in some  
7 hypothetical case if it was just impossible to  
8 perform however as our cost information will show  
9 today the numbers that we're talking about for  
10 closure by removal are not that extraordinarily  
11 high.

12 MS. FRANZETTI: Thank you.

13 HEARING OFFICER FOX: Mr. Rieser, I  
14 think we're back with you to resume your  
15 questions.

16 MR. RIESER: Number three.

17 Regarding the proposed language in 841.400(b), are  
18 the standards regarding the technical  
19 infeasibility for units subject to the criteria  
20 listed in Subsection's 1 through 3 different than  
21 the standards for other units?

22 MR. ARMSTRONG: No, the standard for  
23 technical infeasibility is no different for units  
24 subject to the criteria listed in Subsection's 1

1 through 3 for other units.

2 MR. RIESER: Does the Agency make  
3 the decision regarding the technical infeasibility  
4 for units subject to the criteria in Subsection's  
5 1 through 3? If not, why not? What entity makes  
6 that decision and according to what process?

7 MR. ARMSTRONG: So in answer to your  
8 first question, yes, in all cases the Agency makes  
9 the decision regarding technical infeasibility  
10 under this proposal.

11 MR. RIESER: I think there had been  
12 a discussion at the last hearing that maybe the  
13 Board would make some component of this through  
14 a -- through an adjusted standard or site-specific  
15 rule change. So now we're saying just the Agency  
16 is making these decisions?

17 MR. ARMSTRONG: So -- could you  
18 repeat that question? Did you say that we talked  
19 about this previously?

20 MR. RIESER: Well, Mr. King had  
21 raised some questions about this and I'll go back  
22 to the language here and my recollection, and I  
23 don't have the transcript in front of me, was  
24 that -- and to a certain extent it is carried out

1 by the language.

2 My recollection is that the  
3 first part of (b) closure shall be by removal of  
4 all impounded coal combustion waste, leachate and  
5 coal combustion waste unless the Agency determines  
6 that removal is technically infeasible, which  
7 would not result in greater protection of human  
8 health and the environment. So the Agency is  
9 making the decision. The second clause says "If  
10 any of the following criteria are present, closure  
11 shall be by removal unless technically  
12 infeasible."

13 MS. OLSON: Correct.

14 MR. RIESER: And then we had a  
15 discussion of who -- whether the Agency or the  
16 Board made that second decision and my  
17 recollection was is that there was some discussion  
18 that the Board would do it through a site-specific  
19 rule change, but now I'm understanding that this  
20 is still the Agency making that decision?

21 MR. ARMSTRONG: Correct.

22 MR. RIESER: Okay. Have the groups  
23 estimated the volume of CCW that would need to be  
24 removed from units meeting these criteria or the

1 cost of closing these units by removal of the CCW?

2 MR. ARMSTRONG: So we have -- with  
3 respect to the volume of CCW which would leak  
4 through and need to be removed from the units  
5 meeting the criteria, The Environmental Groups do  
6 not have information regarding the volume of CCW  
7 for many impoundments in this state. So we do not  
8 have an estimate of the total amount of CCW that  
9 would be needed to be removed under the proposed  
10 rule.

11 The best information that we  
12 have about the amount of CCW impoundments right  
13 now is the chart that was attached as Attachment 2  
14 to the Agency's April 30th, 2014, comments and The  
15 Environmental Groups originally had received this  
16 chart as a FOIA response from the Agency and  
17 presented it in this hearing and then sought that  
18 the Agency correct the chart.

19 So that right now is the best  
20 information we have. It has volume information  
21 for some, but not all impoundments. I also would  
22 note in addition the rule does not require any  
23 particular impoundments to close by removal as the  
24 Agency determined that it was technically

1    infeasible to do so at any particular  
2    impoundments.  Therefore, we can't say with  
3    specificity which impoundments would ultimately  
4    need to close by removal under the proposed rule.  
5    We can provide economic information about the  
6    removal of coal ash based on a few data points  
7    which we have with us today.

8                   Josh, do you have the City of  
9    Springfield City Water Light & Power?  So we have  
10   a document entitled Environmental Compliance Study  
11   for Dallman Power Station Prepared for City Water  
12   Light & Power, Springfield, Illinois, December  
13   23rd -- December 2013 prepared by Burns &  
14   McDonnell Engineering Company, Incorporated.

15                   MS. BUGEL:  Forty-four?

16                   HEARING OFFICER FOX:  Mr. Armstrong,  
17   I note that that has been circulated throughout  
18   the room and forgive me if I did not hear, was  
19   there a motion to admit this into the record on  
20   behalf of The Environmental Groups?

21                   MR. ARMSTRONG:  The Environmental  
22   Groups move to admit it as Exhibit 44.

23  
24

1 (Document marked as Hearing  
2 Exhibit No. 44 for  
3 identification.)

4 HEARING OFFICER FOX: That's exactly  
5 the right number. Ms. Olson, you have a question?

6 MS. OLSON: I have some questions.  
7 Does this document contain payment numbers?

8 MR. ARMSTRONG: Yes, and I can  
9 explain. So the full environmental compliance  
10 study is available online from the Springfield  
11 City Water Light & Power website. We have -- it's  
12 a very lengthy document so we attached only the  
13 selected pages from it that address the coal ash  
14 impoundments. We have the cover page and then we  
15 have Section 7.6 on coal combustion residue here,  
16 which is page number 713 through 718 and we also  
17 have in addition Appendix 3 -- I'm sorry.  
18 Appendix E, which is labeled CCR costs breakdowns.

19 MS. OLSON: Do you know what is  
20 covered on pages 711 through 712?

21 MR. ARMSTRONG: We certainly can  
22 provide a table of contents and I can pull it up  
23 right now.

24 MS. OLSON: I have no objection as



1 long as there's a table of contents to show what  
2 is missing from chapter seven.

3 HEARING OFFICER FOX: Mr. Armstrong,  
4 is that something that you can produce even as a  
5 separate exhibit either before we conclude today  
6 or tomorrow for hearing since we're probably going  
7 to extend into Thursday?

8 MR. ARMSTRONG: We can provide it  
9 for tomorrow.

10 HEARING OFFICER FOX: Very good.  
11 Ms. Olson, would providing that even tomorrow  
12 address your concern about the pages that are not  
13 included with the exhibits that have been  
14 submitted?

15 MS. OLSON: That's fine.

16 HEARING OFFICER FOX: Very good.  
17 Neither seeing nor hearing --

18 MR. RIESER: Excuse me. What -- is  
19 this a document -- I know you said it was on the  
20 CWLP website. Is this a document that was filed  
21 with anybody or what was the context of the  
22 production of this document?

23 MR. ARMSTRONG: So I can describe to  
24 you how Springfield City Water Light & Power

1 describes it on their website. City Water Light &  
2 Power states "In spite of the environmental  
3 controls already in place at the Dallman Power  
4 Station, a number of future and developing federal  
5 and state environmental regulations might impact  
6 the coal fire units operating there."

7 City Water Light & Power hired  
8 Burns & McDonnell Engineering Company to conduct  
9 an environmental compliance study to determine  
10 what effects these regulations would have on the  
11 utilities and to analyze the economic impact of  
12 installing additional environmental controls.

13 A report of the results of that  
14 study is available here and to clarify chapter  
15 seven as a whole is dedicated to the compliance  
16 operation -- compliance options and  
17 considerations. So beyond coal combustion residue  
18 they also describe, for example, necessary air  
19 pollution controls, but, again, as I said before  
20 we can provide the table of contents for the  
21 hearing tomorrow.

22 HEARING OFFICER FOX: No objection  
23 is noted from Mr. Rieser or as I recall from  
24 Ms. Olson. Any other questions or objections?

1 MR. RIESER: Just to say I'd like  
2 the opportunity -- I'm probably going to finish my  
3 questions up quickly so I'd like the opportunity  
4 if there are no other questions on this to be able  
5 to ask them tomorrow.

6 HEARING OFFICER FOX: To pose some  
7 follow ups, Mr. Rieser?

8 MR. RIESER: Yes.

9 HEARING OFFICER FOX: Absolutely.

10 MR. RIESER: Thank you.

11 HEARING OFFICER FOX: Mr. Armstrong,  
12 this will be marked and admitted as Exhibit No. 44  
13 with a subsequent exhibit number for the table of  
14 contents, which would be helpful and the Board  
15 appreciates your willingness to provide that.  
16 That is in the record. The document entitled  
17 Environmental Compliance Study for Dallman Power  
18 Station Prepared for City Water Light & Power,  
19 Springfield, Illinois. Again, the exhibit number  
20 is 44 for the record.

21 Mr. Rieser, I think we're ready  
22 to go back to you and the questions you were  
23 posing.

24 MR. RIESER: I had asked about my

1 question four asking about have the groups  
2 estimated among other things the cost of closing  
3 these units by removal of CCW and have the groups  
4 presented this exhibit? So in what way does this  
5 answer the question?

6 MR. ARMSTRONG: Right. So on page  
7 714 the study discusses the compliance alternative  
8 being considered and this is at the last paragraph  
9 I'm starting with the second sentence "Since CWLP  
10 has indicated they do not have land to develop new  
11 slime sludge ponds, the Lakeside Ash Pond Cells 1,  
12 2, 3, 4 (southern cells) were assumed to be  
13 dredged of the lime sludge and ponded CCR  
14 materials and relined with 36 inches of compacted  
15 clay liner overlain by 24 inches of protective  
16 soil layer (for protection of the underlying clay  
17 liner during pool dredging.)

18 The -- and this dredging  
19 activity is discussed elsewhere throughout this  
20 document. In Appendix E, the consultants have a  
21 cost breakdown of costs associated with dredging  
22 the impoundment and if we go to -- the page is not  
23 labeled, but there is a page which is the fifth  
24 page into the appendix Lakeside Ash Pond Lime

1 Sludge Pond Redevelopment of Partial Closure and  
2 under lime sludge pond the development there is a  
3 lime sludge pond area ash dredging to 20 feet  
4 down, quantity of 517,800 cubic yards to be  
5 dredged and a unit price of \$5 per cubic yard.  
6 The document further notes that it assumes that  
7 half of this material will be sent to landfills  
8 and half to a, quote, GOB, G-O-B pile and mine.

9 MR. RIESER: And what is a GOB pile?

10 MS. BARKLEY: I'm not really  
11 familiar with what their proposal is here, but I  
12 believe that they're proposing some path of waste  
13 stream to a mine site where coal ash from the coal  
14 mine is replaced off.

15 MR. RIESER: And that would be  
16 consistent with your proposal?

17 MR. ARMSTRONG: The only reason that  
18 we are putting forward this document today is for  
19 an estimate of the cost of dredging the coal ash  
20 impoundment as a first case.

21 MR. RIESER: Do we know if that \$5  
22 per cubic yard is just the cost of dredging or  
23 does it also include the cost of transporting and  
24 disposal?

1 MR. ARMSTRONG: There are no other  
2 costs provided here for transportation or  
3 disposal. So it does appear only to be dredging  
4 costs because if you go over to the next page  
5 there are O and M costs that include a dredge haul  
6 estimate that is \$8 per cubic yard.

7 MR. RIESER: So what does this tell  
8 the Board?

9 MR. ARMSTRONG: So this is one piece  
10 of information in addition to others that we'll be  
11 bringing out in a second here about the unit cost  
12 of dredging an existing impoundment to 20 feet  
13 depth. \$5 per cubic yard to dredge. This is a  
14 cost estimate that has been put together by the  
15 operator of the Illinois plant.

16 MR. RIESER: Do we know whether  
17 those same costs would be -- whether those costs  
18 would be the same or different in regards to the  
19 state?

20 MR. ARMSTRONG: I'm not putting it  
21 in to establish -- I'm not putting it in there to  
22 establish a -- a given cost that would be  
23 universal. I'm sure there are variations on a  
24 site by site basis. However, this is an analysis

1 put together by the owner and operator or plant  
2 owner.

3 MR. RIESER: It's correct that you  
4 all didn't have anything to do with the  
5 contracting or production of this document?

6 MR. ARMSTRONG: Correct?

7 MR. RIESER: And other than finding  
8 it on the website, you have no information about  
9 it?

10 MR. ARMSTRONG: Correct.

11 MR. RIESER: And don't know what  
12 application I have to other landfill -- I'm  
13 sorry -- surface units in other parts of the  
14 state?

15 MR. ARMSTRONG: Well, I think that  
16 it was put together by a contractor who was trying  
17 to provide an estimate of how much money it would  
18 cost to dredge coal ash from an impoundment. So,  
19 to that extent, I believe it has some relevance to  
20 the idea of how much it will cost to remove coal  
21 ash from the impoundment.

22 MR. RIESER: But not to dispose of  
23 it?

24 MR. ANTONIOLLI: As the O and M

1 costs breakdown insofar as they have an assumption  
2 of the roundtrip, the 20-mile RT, the costs of  
3 disposal certainly will depend upon the amount of  
4 distance that will need to be covered in order to  
5 dispose of the waste.

6 MR. RIESER: So this is the  
7 information you have to answer the question have  
8 the groups estimated the volume of CCW which would  
9 need to be removed from units meeting these  
10 criteria or the cost of closing these units by  
11 removal of CCW?

12 MR. ARMSTRONG: We have additional  
13 information that is responsive to the costs  
14 portion of your question.

15 MR. RIESER: You might as well bring  
16 it out.

17 MR. ARMSTRONG: Very good.

18 MS. OLSON: I have a quick follow up  
19 on this. Do you know whether or not this  
20 document -- the purported CCW that has been  
21 removed has been dewatered and whether or not the  
22 cost estimates have been included in here?

23 I'm not sure if that component  
24 is mentioned in this environmental compliance



1 study, but I will review the narrative to  
2 determine -- to see if they discuss dewatering.

3 HEARING OFFICER FOX: Anything  
4 further, Ms. Olson?

5 MS. OLSON: Will you be getting back  
6 to us on further review?

7 MR. ARMSTRONG: Yes. After  
8 reviewing to determine whether there is any  
9 mention of dewatering, I can address that  
10 question.

11 MS. OLSON: That's it.

12 HEARING OFFICER FOX: Thank you.  
13 Mr. Armstrong, you referred to another exhibit  
14 that you wished to distribute?

15 MR. ARMSTRONG: Yes. Sorry. We  
16 have at least two additional exhibits.

17 HEARING OFFICER FOX: Why don't we  
18 proceed with the first if you're ready to do that.  
19 Mr. Rieser, did you have any follow ups on  
20 Exhibit No. 4?

21 MR. RIESER: As I said, I'm going to  
22 reserve any follow ups for the time when I have an  
23 opportunity to actually look at it.

24 HEARING OFFICER FOX: Very good.

1 Ms. Olson, did you have a question?

2 MS. OLSON: The Agency would also  
3 like to reserve the opportunity tomorrow to ask  
4 questions on the CWLP cost estimates.

5 HEARING OFFICER FOX: So noted.

6 MS. FRANZETTI: Same for Midwest  
7 Generation.

8 HEARING OFFICER FOX: Mr. Armstrong,  
9 are you prepared to circulate an exhibit, is that  
10 the case?

11 MR. ARMSTRONG: So I have a June  
12 7th, 2014, article from the state, a South  
13 Carolina newspaper that was downloaded from the  
14 Internet entitled Santee Cooper's Recycling  
15 Efforts at Myrtle Beach-area Electric Plant, a Win  
16 For Utility and Environmentalists.

17 (Document marked as Hearing  
18 Exhibit No. 45 for  
19 identification.)

20 MR. ARMSTRONG: We would move to  
21 admit this as Exhibit 45.

22 HEARING OFFICER FOX: For the  
23 record, that has plainly been distributed to the  
24 participants. Is there any objection to

1 Mr. Armstrong's motion to admit it as Exhibit 45?  
2 Neither seeing not hearing any, Mr. Armstrong the  
3 article entitled Santee Cooper's Recycling Efforts  
4 at Myrtle Beach-area Electric Plant, a Win For  
5 Utility and Environmentalists will be marked as  
6 Exhibit 45. Ms. Franzetti?

7 MS. FRANZETTI: I'm sorry. You said  
8 earlier, I believe, that you wanted to reserve 45  
9 for the table of contents of --

10 HEARING OFFICER FOX: I'll just use  
11 a subsequent number. If I specified one, I  
12 misspoke. We can certainly add a later number to  
13 that, but thank you, Ms. Franzetti. Mr. Rieser, I  
14 believe we are back to you if you have any  
15 follow-up questions on this or you wish to proceed  
16 with your pre-filed questions.

17 MR. RIESER: In what way does this  
18 exhibit answer the cost question raised in number  
19 four?

20 MR. ARMSTRONG: So this is the  
21 description of the compliance path that has been  
22 pursued by a South Carolina utility dealer and its  
23 coal ash. We mentioned Santee Cooper in the  
24 comments that we filed on June 9th, 2014, and

1 there's some questions about Santee Cooper.

2 This article includes statements  
3 regarding the cost of removal of coal ash from the  
4 Santee Cooper impoundments from Santee Cooper's  
5 executives and just to provide some background  
6 about Santee Cooper, they have pursued a program  
7 under which the company will remove the coal ash  
8 from three plants totaling 11 million tons of coal  
9 ash and the overall cost will be according to  
10 Santee Cooper \$250 million. This is discussed on  
11 the fifth page of this exhibit.

12 MR. RIESER: Does what Santee Cooper  
13 propose to do here which is as I understand on the  
14 very quick read because this was just provided to  
15 us they seem to be proposing to stack the ash  
16 adjacent to the ponds and then sell the ash to a  
17 concrete manufacturer and use it for concrete  
18 over a period of eight years? Would that be  
19 consistent with the proposal that you presented to  
20 the Board?

21 MR. ARMSTRONG: We believe that this  
22 proposal certainly would be acceptable from The  
23 Environmental Group's prospective. If you believe  
24 there is a way that you believe that it is

1 inconsistent with our proposal, we can certainly  
2 discuss that.

3 MR. RIESER: So you would allow  
4 sites to close over a period of time of eight to  
5 ten years?

6 MR. ARMSTRONG: If this -- if there  
7 is going to be closure by removal that is going to  
8 result in complete removal of the coal ash within,  
9 for example, eight to ten years, that is something  
10 The Environmental Groups would support.

11 MR. RIESER: And you would also  
12 support storing the coal ash in piles adjacent to  
13 the existing ponds?

14 MR. ARMSTRONG: Certainly we would  
15 need to know more details about that process.

16 MR. RIESER: Is it accurate that The  
17 Environmental Groups with respect to the EPA's  
18 coal residue -- coal combustion residue proposal  
19 urges the Agency to use the -- to take the  
20 Subtitle (c) approach. In other words, to  
21 identify coal ash as hazardous waste, correct?

22 MR. ARMSTRONG: I know that  
23 environmental groups submitted comments supporting  
24 that, yes.

1 MR. RIESER: If the Agency took that  
2 approach to consider coal waste to hazardous  
3 waste, would this activity be allowed under these  
4 rules?

5 MR. ARMSTRONG: I don't know right  
6 now. We can follow up with that.

7 MR. RIESER: So is it accurate that  
8 the sole point of presenting this exhibit is to  
9 get in the number of \$250 million for the removal  
10 of ash from three ponds is evidence that that is a  
11 reasonable cost?

12 MR. ARMSTRONG: The point of the  
13 exhibit is to present the cost estimates from  
14 Santee Cooper in this article which include \$250  
15 million to remove over 100 -- I'm sorry. Over 10  
16 million tons of coal ash from three impoundments.

17 MR. RIESER: So given that we have  
18 94 impoundments, would it be reasonable to  
19 extrapolate this number out so that the same ratio  
20 would apply?

21 MR. ARMSTRONG: There is a lot of  
22 mathematicians and engineers here that can  
23 probably figure it out. But I think you would  
24 want to do it on a --

1 MR. RIESER: So \$80 million per pond  
2 let's say?

3 MR. ARMSTRONG: Under that analysis  
4 that we've been talking about I think it would be  
5 more accurate to do it on a unit level based upon  
6 the amount of coal ash that is in each impoundment  
7 and, again, we're not counseling that removal is  
8 required to happen at every impoundment.

9 MR. RIESER: Okay. Do you have  
10 another example?

11 MR. ARMSTRONG: We will have three  
12 different exhibits -- I'm sorry. We'll have four  
13 separate exhibits. This is an analysis prepared  
14 by Prairie Rivers Network. So why don't I  
15 distribute these exhibits first. The first is a  
16 map that bears the Prairie Rivers Network logo at  
17 the bottom right-hand corner. The second is a  
18 document entitled General Construction Assumptions  
19 Ash Pond Relocation To On Site Cell. The third is  
20 entitled RSMMeans Data Ash Pond Relocation To On  
21 Site Cell. And the fourth is entitled  
22 Construction Costs Estimate Ash Pond Relocation To  
23 On Site Cell.

24 MS. FRANZETTI: Can we slow it down

1 and get some of these marked?

2 MR. ARMSTRONG: I was going to go  
3 through them one by one. I just wanted to get  
4 them all distributed first.

5 HEARING OFFICER FOX: Ms. Franzetti,  
6 that's an excellent idea. For the sake of clarity  
7 in referring to these, Mr. Armstrong, not admit  
8 them by any means of course, but mark them as  
9 follows. For the time being, the color coded map  
10 that you distributed first in bold 28.5 acres in  
11 the lower left-hand corner will be prospectively  
12 marked as Exhibit 46.

13 (Document marked as Hearing  
14 Exhibit No. 46 for  
15 identification.)

16 HEARING OFFICER FOX: The document  
17 that you circulated second entitled just as you  
18 said General Construction Assumptions Ash Pond  
19 Relocation To On Site Cell prospectively marked as  
20 Exhibit No. 47.

21 (Document marked as Hearing  
22 Exhibit No. 47 for  
23 identification.)

24 HEARING OFFICER FOX: The document



1 that you circulated third which is two sheets,  
2 four pages in length, it extends to a fourth page,  
3 is in the upper left-hand corner RSMMeans Data at  
4 Pond Relocation prospectively Exhibit No. 48.

5 (Document marked as Hearing  
6 Exhibit No. 48 for  
7 identification.)

8 HEARING OFFICER FOX: And the fourth  
9 and final document that you've circulated entitled  
10 in the upper left-hand corner Construction Costs  
11 Estimate Ash Pond Relocation prospectively marked  
12 as Exhibit No. 49.

13 (Document marked as Hearing  
14 Exhibit No. 49 for  
15 identification.)

16 MR. ARMSTRONG: So, Ms. Barkley, can  
17 you please describe what the color map labeled  
18 Exhibit 46 is?

19 MS. BARKLEY: So we solicited help  
20 from an engineer to develop an alternative to  
21 Dynegy's proposal to leave their coal ash in place  
22 at the Vermilion station. We did -- I'll get into  
23 it a little bit later. We did put some parameters  
24 on it which resulted in a proposed plan of a lined

1 landfill cell 28.5 acres in size that could  
2 contain the three -- over 3 million cubic yards  
3 that are currently contained in Dynegy Vermilion's  
4 coal ash pits. So that's what the map shows.

5 MR. RIESER: Who prepared the map?

6 MS. BARKLEY: I'm sorry?

7 MR. RIESER: Who prepared the map?

8 MS. BARKLEY: An engineer that is a  
9 volunteer working with Prairie Rivers Network.

10 MR. RIESER: Does that person have a  
11 name?

12 MS. BARKLEY: I'm not at liberty  
13 right now to disclose who prepared the materials  
14 for us.

15 MR. RIESER: Is that person prepared  
16 to testify about what these materials say?

17 MS. BARKLEY: They're not with us  
18 here today. I'm here for Prairie Rivers working  
19 with these volunteers to explain what is in these  
20 materials here.

21 MR. RIESER: So you're prepared to  
22 discuss the engineering assumptions behind these?

23 MS. BARKLEY: I can explain what we  
24 asked our volunteers to do and what the results

1 coming back to us resulted in.

2 MR. RIESER: I'm going to object. I  
3 mean, I know the Board takes all sorts of things.  
4 To receive an engineering evaluation of something  
5 without the engineer being present, not even  
6 knowing the person's name, is a little bit beyond  
7 the pale, I think.

8 HEARING OFFICER FOX: Mr. Armstrong?

9 MR. ARMSTRONG: Ms. Barkley stated  
10 she is here on behalf of Prairie Rivers Network as  
11 a representative of the organization. She  
12 discussed this project with the engineer and,  
13 Ms. Barkley, can you -- would you be able to  
14 explain your communications with the engineer  
15 regarding the project?

16 MS. BARKLEY: Sure. So we have been  
17 evaluating Dynegy's proposed closure plan since I  
18 think the process has started and were not  
19 satisfied with some of the assumptions that were  
20 being made by Dynegy and asked for an engineer to  
21 evaluate alternative scenarios for closing the  
22 site and moving the coal ash. And I can lay out  
23 exactly what the parameters that we laid out were  
24 and what the results were if that is all right.

1 HEARING OFFICER FOX: I'm sorry.  
2 Could you repeat what you just said, Ms. Barkley?

3 MS. BARKLEY: I can lay out exactly  
4 what we asked the volunteers to do for us. That  
5 might help provide some context for what the  
6 project entails.

7 HEARING OFFICER FOX: Let's begin to  
8 proceed with that and see where we go. Ms. Olson,  
9 did you have a question?

10 MS. OLSON: I have two questions.  
11 One, is this engineer a PE?

12 MS. BARKLEY: Yes, state licensed  
13 professional engineer.

14 MS. OLSON: Two, did he provide you  
15 anything other than this map?

16 MS. BARKLEY: So what we have the  
17 next three exhibits are the general construction  
18 assumptions that were used in developing the  
19 landfill cells that would hold the contents of the  
20 ash pit right now. That is Exhibit 47. Exhibit  
21 48 is an estimate of all of the construction costs  
22 from the beginning of building the landfill cell  
23 and this is from the RSMeans database, which I  
24 believe is a standard database used by

1 professional engineers, looking at what the  
2 different tasks are, the description how many  
3 people it would take, what the material is, units  
4 of time, truckloads and follow that through the  
5 process from beginning to end of preparing the  
6 landfill sites, excavating the coal ash out of the  
7 coal ash pits, placing it in the landfill and  
8 capping and closing it.

9 MS. OLSON: So he prepared what is  
10 marked as Exhibit's 46, 47, 48 and 49?

11 MS. BARKLEY: Yes.

12 MS. OLSON: Did he provide any  
13 narrative explaining how these documents are  
14 supposed to be used or brought together, a written  
15 narrative to Prairie Rivers?

16 MS. BARKLEY: We covered that  
17 material in meetings I've summarized in a letter  
18 to the Agency dated -- which I didn't provide  
19 copies of today dated September 10th, 2012.

20 MS. OLSON: So is that, no, he  
21 didn't provide a written narrative explaining how  
22 these were supposed to be interpreted?

23 MS. BARKLEY: Yes. The answer is  
24 no.

1 MS. OLSON: Thanks.

2 MR. ARMSTRONG: Now, to also explain  
3 what this overall thrust of this is this is an  
4 analysis that was prepared by the volunteer  
5 engineer. What does this analysis attempt to show  
6 overall?

7 MS. BARKLEY: So I think it would  
8 help if I go to the beginning and just say what we  
9 asked for because then there's not a whole lot of  
10 narrative needed to understand what is happening  
11 here because he answered -- he did what we asked  
12 him to do and he put a cost estimate on what it  
13 would take.

14 So what we asked our volunteer  
15 to do was to develop an alternative to Dynegy's  
16 proposal to leave the coal ash in place at the  
17 Vermillion sites. The resulting alternative  
18 course of action was designed to meet the  
19 following criteria. One, all coal ash from the  
20 Old East Ash Pond, North Ash Pond and new East Ash  
21 Pond systems must be removed from the floodplain.

22 Two, final disposal site must  
23 contain enough storage capacity for the removed  
24 coal ash to be placed in high and dry lined

1 landfill cells. Three, the site must not require  
2 additional land acquisition. For example, it must  
3 be within Dynegey's property boundaries. These are  
4 boundaries that Prairie Rivers sets. Four,  
5 alternative plans should not require demolition of  
6 the power plant or major land clearing. Five, all  
7 steps and alternative plans must be technically  
8 feasible including development of the new disposal  
9 site, removal of transportation and final disposal  
10 of the coal ash in the operation and management  
11 plan.

12                   Six, environmental impacts  
13 during the process as removal, transfer and final  
14 disposal of coal ash must be minimized. Seven, a  
15 buffer of 400 feet must be maintained for on site  
16 and adjacent Illinois natural heritage landmarks  
17 and, finally, eight cost saving measures should be  
18 included as much as possible in the development of  
19 the alternative plan. The point of this exercise  
20 is to see is there a technically feasible  
21 alternative to leaving the coal ash in place that  
22 would meet the criteria when removing the coal ash  
23 from the floodplain minimizing environmental  
24 impacts and minimize costs to Dynegey by not

1 requiring additional land.

2 MR. ARMSTRONG: And you presented  
3 this request to your volunteer engineer, has your  
4 volunteer engineer provided a response to these  
5 documents?

6 MS. BARKLEY: That's right.

7 MR. ARMSTRONG: And these documents  
8 we have this map here, we have cost estimates, do  
9 the cost estimates disclose the assumptions that  
10 the engineer used when developing the costs?

11 MS. BARKLEY: That is what these  
12 three spreadsheets Exhibit's 47, 48 and 49 do.  
13 They show every step of the process. The time,  
14 the materials, the costs so that you can see all  
15 of the underlying assumptions that were made in  
16 coming up with the final price tag, I think, \$40.2  
17 million for this plan.

18 MR. ARMSTRONG: So in terms of the  
19 cost estimate then nothing is behind the scenes,  
20 all of the costs are laid out in terms of what the  
21 engineer after having received your assignment  
22 believed would be necessary, is that correct?

23 MS. BARKLEY: I believe so. I think  
24 the only thing that is not here and we did not



1 include -- ask the engineer to work on was any  
2 permits or permit fees to be required to carry  
3 this out.

4 MR. ARMSTRONG: So given that this  
5 analysis on its face just simply purports to  
6 describe the costs of specific steps and discloses  
7 all of the assumptions on which it is based, I  
8 would move to admit these four exhibits as  
9 Exhibit's 46 through 49.

10 HEARING OFFICER FOX: Mr. Rieser?

11 MR. RIESER: I still object.  
12 There's nothing behind the scenes other than the  
13 identity of the person who put it together and  
14 their ability to testify and document their  
15 experience in this area and whether they are  
16 capable of doing this in an accurate way.

17 I mean, there is people that do  
18 this for a living and we have no clue who this  
19 person is and whether this is something that they  
20 do. So I strongly object to the inclusion of this  
21 information because it is not supported by the  
22 person who put it together.

23 HEARING OFFICER FOX: Very well.

24 Ms. Olson, any further response to the motion to

1 admit?

2 MS. OLSON: I'd just like it to be  
3 noted that we won't be able to examine -- cross  
4 examine the person who compiled this, but  
5 otherwise I don't have an objection.

6 HEARING OFFICER FOX: Very well.  
7 Anything further? Mr. Armstrong, I appreciate  
8 Ms. Barkley's testimony regarding the request made  
9 for the preparation of this document. It contains  
10 a significant amount of information on significant  
11 points that address a significant element of the  
12 Board's review including economic reasonableness.  
13 I frankly share the trouble that we not only do  
14 not have written testimony on this, that we do not  
15 have a witness who can address any questions on  
16 it, we do not have the identity of that witness  
17 even to assess their experience or expertise for  
18 this. So I will deny the motion to admit what has  
19 been marked as Exhibit's 46, 47, 48 and 49.

20 Mr. Rieser, I believe we would  
21 be prepared to return to you and I believe we were  
22 addressing your question number four, am I  
23 correct?

24 MR. RIESER: Are there other

1 requests that you have to bring to answer the  
2 cause question?

3 MR. ARMSTRONG: We don't have any  
4 further evidence on that point at this time.

5 MR. RIESER: Okay.

6 MR. ANTONIOLLI: Before we leave  
7 that topic, actually we have two economic analyses  
8 that we brought with us today that we'd like to  
9 submit into the record.

10 HEARING OFFICER FOX: Why don't we  
11 turn to that, Ms. Antoniolli. If you have them  
12 prepared to circulate, we can entertain a motion  
13 in a moment or so once that is done.

14 MR. ANTONIOLLI: Okay. So we  
15 brought with us on behalf of Ameren there are two  
16 alternative analyses that were developed as part  
17 of ash pond closure projects. One was for Venice  
18 Ash Ponds Two and Three and the second was for  
19 Hutsonville Pond D. Both of these are publically  
20 available and I'll pass them out and then tell you  
21 a little bit more about them. They are separate.  
22 They don't go together.

23 MS. FRANZETTI: Okay. The first --

24 MR. ANTONIOLLI: The first document

1 I passed out accompanied a letter from Ameren to  
2 IEPA dated March 25th, 2010, for the closure of  
3 ash ponds two and three at Venice station. The  
4 technical memorandum number four accompanied that  
5 letter. It includes table one entitled Closure of  
6 Alternative Screening Summary and that is on the  
7 eighth page of this document. Table one shows an  
8 evaluation of several different alternatives to  
9 close ash ponds two and three. Looking at ash  
10 removal and disposal alternatives so if you go to  
11 the second column it is the third alternative down  
12 there was evaluated the alternative to remove the  
13 ash and dispose of it and that cost was estimated  
14 at \$200 million. The alternative that was  
15 ultimately selected at this site was a final cover  
16 of a geosynthetic membrane. So that second column  
17 it is the fifth alternative down at a cost of  
18 approximately \$11 million.

19 MR. ARMSTRONG: Can I ask a  
20 question?

21 MR. ANTONIOLLI: Mm-hmm.

22 MR. ARMSTRONG: Is this available  
23 online at the moment?

24 MR. ANTONIOLLI: This is available

1 on IEPA's website at the moment. And I would --  
2 Mr. Hearing Officer, how would you like us to  
3 number this next exhibit?

4 HEARING OFFICER FOX: This would be  
5 number 46.

6 MS. OLSON: Question?

7 MR. ANTONIOLLI: Yes.

8 MS. OLSON: For the purposes of the  
9 record, Exhibit's 46, 47, 48 and 49 have been  
10 marked so I would ask that this be Exhibit 50.

11 HEARING OFFICER FOX: Fair request  
12 entirely, Ms. Olson, and if you'll allow me to  
13 correct myself that will -- Ms. Olson, I believe  
14 you're correct in eliminating some risk of  
15 confusion. So 50 it is.

16 (Document marked as Hearing  
17 Exhibit No. 50 for  
18 identification.)

19 MR. ANTONIOLLI: So I would move to  
20 enter this technical memorandum four into the  
21 record as number 50.

22 HEARING OFFICER FOX: The document  
23 to which Ms. Antonioli has referred has certainly  
24 been distributed. I can see people reviewing it.

1 Is there any response to her motion?

2 MS. OLSON: I just have a question.

3 HEARING OFFICER FOX: Ms. Olson?

4 MS. OLSON: Do you know the  
5 estimated volume of ash in ponds two and three  
6 that this \$200 million figure is based on?

7 MR. ANTONIOLLI: Yes. If you can  
8 turn to attachment two of the cost estimation  
9 sheets, on that second page you can see in the  
10 construction costs there is an estimate of --  
11 let's see. There is estimated for both the  
12 excavation and then also transport and disposal,  
13 but we did a little calculation that shows per  
14 ton -- the total cost per ton of ash came out to  
15 about \$67 per ton. So that includes the cost of  
16 disposal and excavation.

17 MR. ARMSTRONG: Can I ask a  
18 question?

19 MR. ANTONIOLLI: You have to  
20 transfer cubic yards into tons on this table.

21 HEARING OFFICER FOX: Mr. Armstrong,  
22 let's see if Ms. Olson is done first.

23 MS. OLSON: That's all I have.

24 HEARING OFFICER FOX: Very good.

1 Mr. Armstrong, go ahead.

2 MR. ARMSTRONG: So it appears the  
3 cost of excavating ash from ponds two and three on  
4 the -- on the second page of attachment two, cost  
5 estimation sheets would be \$5 per cubic yard, is  
6 that correct?

7 MR. ANTONIOLLI: Yes.

8 MR. ARMSTRONG: Thank you.

9 HEARING OFFICER FOX: Anything  
10 further on the motion? Any further objection or  
11 questions? Neither seeing nor hearing --

12 MS. LIU: Ms. Antoniolli, the  
13 calculation you provided with the dollars per ton  
14 conversion, could you write that down for us,  
15 please?

16 MR. ANTONIOLLI: Yes, the conversion  
17 was based on an estimate of 1. -- correct me if  
18 I'm wrong, Mr. Bollinger -- 1.2 yards per ton, but  
19 we can give you --

20 MR. BOLLINGER: Tons per yard.

21 MR. ANTONIOLLI: Say that again.

22 MR. BOLLINGER: Tons per cubic yard.

23 So we can follow up with that in writing, too, to  
24 give you a little clear explanation.

1 HEARING OFFICER FOX: Mr. Sylvester,  
2 I see your hand?

3 MR. SYLVESTER: Yes. I just had a  
4 follow-up question. In determining the total  
5 cost, how could you come to that determination?  
6 Did you have a specific landfill that it would be  
7 taken to and was there different hauling companies  
8 or was the company -- I'm just curious as to how  
9 that number was derived.

10 MR. ANTONIOLLI: Natural Resource  
11 Technology is the consultant that performed that.  
12 So I didn't do the estimates myself. These  
13 assumptions should be in this table and I would  
14 have to take a closer look and provide you an  
15 explanation in follow up.

16 MR. SYLVESTER: Nobody is here from  
17 Natural Resource Technology today?

18 MR. ANTONIOLLI: No, they're not  
19 here today. This is a publically available  
20 document, though. This has been submitted to IEPA  
21 and it's available online as well. There are  
22 additional documents that accompanied the letter  
23 on March 12th, 2010, that might help in explaining  
24 the background.



1 MR. SYLVESTER: Just so I'm clear.  
2 You said you'd be willing to follow up comments  
3 and provide information at some point?

4 MR. ANTONIOLLI: Sure.

5 MR. SYLVESTER: Okay.

6 HEARING OFFICER FOX: Anything  
7 further, Mr. Sylvester?

8 MR. SYLVESTER. No.

9 HEARING OFFICER FOX: Is there any  
10 other questions or is there any objection to the  
11 motion to admit as Exhibit 50? Not hearing any  
12 nor seeing one, it will be marked, Ms. Antoniolli,  
13 as Exhibit No. 50.

14 MR. ANTONIOLLI: The second document  
15 I circulated is a document taken from -- I'm  
16 sorry. It's a document taken from Docket R09-21.  
17 It is the site-specific rulemaking for Hutsonville  
18 Part D. This is chapter five of the technical  
19 support document that was submitted in support of  
20 that rulemaking. This document is entitled Pond D  
21 Closure Alternatives Report. I'll bring your  
22 attention to page -- it is TSD 000073. On page  
23 73, there is a closure alternative screening  
24 summary and it will show you that Ameren evaluated

1 the option of removing, disposing or recycling at  
2 an offsite facility or beneficial reuse facility  
3 the ash in Ash Pond D at an estimated cost that  
4 ranges from \$23 to \$34 million and then ultimately  
5 selected the final cover option of a geomembrane  
6 with an estimated cost of \$4 million. I'll add  
7 that in addition the final closure incorporated a  
8 groundwater collection trench at an additional  
9 cost of about \$1 million. And, with that, I would  
10 move to submit this document into the record as  
11 Exhibit 51.

12 (Document marked as Hearing  
13 Exhibit No. 51 for  
14 identification.)

15 HEARING OFFICER FOX: Very well.

16 Ms. Antonioli, thank you. I see a hand from  
17 Mr. Armstrong.

18 MR. ARMSTRONG: I just have two  
19 questions. First -- I'm sorry if I missed this.  
20 Is this actually part of the Hutsonville D  
21 proceeding before the Board?

22 MR. ANTONIOLLI: Yes.

23 MR. ARMSTRONG: So this is one --  
24 this is part of the technical support document?

1 MR. ANTONIOLLI: Yes, it's chapter  
2 five of the technical support document.

3 MR. ARMSTRONG: Okay. So you  
4 referred to the capital cost of ash removal and  
5 disposal recycling at an offsite facility or  
6 beneficial reuse. Are these costs broken down at  
7 any point in the document here?

8 MR. ANTONIOLLI: Yes, they are  
9 further broken down. If you look ahead at Table  
10 3-2, it shows you the total volume of ash. We did  
11 a similar calculation to arrive at the estimated  
12 cost per cubic ton of ash, which would be about  
13 \$25 per cubic per ton.

14 MR. ARMSTRONG: But that's not on  
15 Table 3-2?

16 MR. ANTONIOLLI: No, we used the CDC  
17 numbers in Table 3-2 to arrive at that number.

18 MR. ARMSTRONG: Is there a further  
19 breakdown of the specific costs associated with  
20 the different steps of removal here as there was  
21 in the other exhibit?

22 MR. ANTONIOLLI: We can also find  
23 that and follow up with you on that.

24 MR. ARMSTRONG: I have nothing

1 further.

2 HEARING OFFICER FOX: Very good.  
3 Anything further on Ms. Antoniolli's motion to  
4 admit what has been designated Chapter 5, Pond D  
5 Closure Alternatives Report as Exhibit 51?  
6 Neither seeing nor hearing any, it will so marked,  
7 Ms. Antoniolli, and admitted.

8 MR. ANTONIOLLI: Thank you.

9 MS. LIU: Ms. Antoniolli, is the  
10 breakdown provided in Appendix B?

11 MR. ANTONIOLLI: TDS page number?

12 MS. LIU: One-fifty-five or in that  
13 area.

14 MR. ANTONIOLLI: Starting on page  
15 155 those are the breakdown costs starting with  
16 the groundwater collection trench and then  
17 progressing through the various alternatives.

18 MR. ARMSTRONG: Can I just ask one  
19 question? Just to understand this. On TSD  
20 000073, there is a cost range of \$23 million to  
21 \$34 million?

22 MR. ANTONIOLLI: Yes.

23 MR. ARMSTRONG: And on TSD 157 it  
24 looks like the total capital costs are \$23

1 million. Can you explain what the basis for the  
2 cost range from \$23 million to \$34 million was?

3 MR. ANTONIOLLI: If you see on page  
4 158, which is the next page, it also evaluated the  
5 \$34 million option. The range is due to different  
6 factors including how much ash is actually  
7 saturated. It is difficult to tell without  
8 actually -- until you begin excavation that  
9 quantity and also depending on where the ash must  
10 be disposed of it would change the cost estimate  
11 for the distance that you need to travel and the  
12 disposal costs.

13 MR. ARMSTRONG: Thank you. No  
14 further questions.

15 HEARING OFFICER FOX: Great. Are we  
16 prepared to go back to Mr. Rieser to wrap up his  
17 questions? Wrap up might be an ambitious goal.

18 MR. RIESER: I was just thinking  
19 wrap up would be an ambitious goal and I'm also  
20 wondering if since we're getting to two hours  
21 since we started whether this would be a good time  
22 for a break?

23 HEARING OFFICER FOX: I think that  
24 is an excellent idea. Why don't we resume here at

1 4:15 and take a break for that duration.

2 MR. RIESER: Thank you.

3 (Whereupon, a break was taken  
4 after which the following  
5 proceedings were had.)

6 HEARING OFFICER FOX: As we did  
7 before the break return to you, Mr. Rieser, and I  
8 think you were on question number five or prepared  
9 to go to number five.

10 MR. RIESER: Amy Antonioli --

11 MR. ANTONIOLLI: Mr. Rieser, do you  
12 mind if I clarify? I've had a chance to talk --

13 MR. RIESER: Of course.

14 MR. ANTONIOLLI: To discuss our  
15 Exhibit 51 on our break and I'm prepared to just  
16 provide a little clarification before we move on.  
17 And that is when we were discussing the range  
18 between the \$23 million versus the \$34 million  
19 estimate for ash removal at Hutsonville Pond D the  
20 \$23 million estimate assumes removing only a third  
21 of the ash and actually lifting the remaining --  
22 replacing the remaining ash back in Hutsonville  
23 Pond D above the water table. It is really the  
24 \$34 million estimate that we need to be looking

1 at. That is the one that assumes a complete  
2 excavation and removal.

3 HEARING OFFICER FOX: Very good.  
4 Anything further?

5 MR. ANTONIOLLI: I also note it is  
6 in 2005 dollars.

7 HEARING OFFICER FOX: Very good.  
8 This is, again, from the Board's docket rulemaking  
9 9-21 and I'll note that for the record.  
10 Ms. Franzetti, it seems you have a question?

11 MS. FRANZETTI: Ms. Antoniolli, can  
12 you also confirm that these dollars besides being  
13 in 2005 are based on the assumption that the ash  
14 can be disposed of as a nonhazardous waste?

15 MR. ANTONIOLLI: That's correct.

16 MS. FRANZETTI: Is that also the  
17 case with Exhibit 50 regarding the Venice station?

18 MR. ANTONIOLLI: That is also  
19 correct.

20 MS. FRANZETTI: So those disposal  
21 costs are based on disposal of nonhazardous waste,  
22 correct?

23 MR. ANTONIOLLI: Correct.

24 MS. FRANZETTI: Thank you.

1 HEARING OFFICER FOX: Mr. Rieser, it  
2 looks like we're prepared to turn to you for,  
3 again, I believe it was question five are we  
4 prepared to turn to?

5 MR. RIESER: Yes, it was.

6 HEARING OFFICER FOX: Thank you.

7 MR. RIESER: When we last left, it  
8 was question five. On the bottom of page five,  
9 your comments identify Board regulations regarding  
10 the siting of certain disposal facilities in  
11 support of your proposal that some units should  
12 always be closed by removal of CCW. Don't these  
13 regulations apply solely to the siting of future  
14 facilities and do any of these require the removal  
15 of waste from existing facilities?

16 MR. ARMSTRONG: First, I would just  
17 like to correct one thing here, a preamble. The  
18 Environmental Groups do not propose that any units  
19 should always be closed by removal of CCW because  
20 there's always the possibility of the Agency  
21 making a technical infeasibility determination on  
22 our proposal, but the answer to your question is,  
23 yes, these regulations apply to the siting of  
24 future facilities. They do not require the



1 removal of waste from the existing facilities.

2 MR. RIESER: Thank you. Six, with  
3 respect to your comments regarding design  
4 standards at page ten, you indicate that you are  
5 proposing standards similar to US EPA's Subtitle  
6 (d) proposal for the disposal of coal ash  
7 residues. In what ways -- in what ways is your  
8 proposal similar to the proposed rules and in what  
9 ways is it different?

10 MR. ARMSTRONG: So in our proposal,  
11 the most immediate difference is that US EPA's  
12 proposed regulations the design criteria for new  
13 CCR surface impoundments and existing CCR surface  
14 impoundments is broken out into two separate  
15 sections, 257.71 and 257.72. On page 75, Federal  
16 Register 35243 to 35244, our design standards  
17 proposed in our rules are as you can see briefer  
18 than US EPA's proposed rule. The intent of our  
19 design standards is to adopt US EPA's proposal of  
20 a requirement of a leachate collection system and  
21 a composite liner without adopting some of the  
22 other details within US EPA's proposed design  
23 standards.

24 You also can note in our

1 proposal there is the allowance of a showing that  
2 a liner system -- another liner system is of  
3 equivalent or superior performance to the  
4 composite liner on the leachate collection system.

5 MR. RIESER: If US EPA's rules are  
6 going to provide the reference point, should the  
7 Board wait for those rules to be adopted before  
8 determining whether they are adequate or  
9 inadequate for the purpose of setting Illinois  
10 standards?

11 MR. ARMSTRONG: So, yes, US EPA's  
12 proposed rules are the reference point here for  
13 our proposal and the Board could elect to wait for  
14 US EPA to issue these rules which under court  
15 order is currently required by the end of this  
16 year. Whether the Board would intentionally wait  
17 for the rules to be issued or not, though -- what  
18 The Environmental Groups are asserting is that  
19 design standards for existing impoundments should  
20 be an essential part of the consideration for  
21 these proposed rules and we discussed this in some  
22 more detail in our response to the Agency's motion  
23 to sever, which we filed yesterday, but to  
24 summarize the majority of impoundments in the

1 state are unlined and could not meet any sort of  
2 design standard that would be imposed. So we  
3 think it is important to figure out if there is  
4 going to be a design standard for existing  
5 impoundments -- for existing impoundments.

6 MR. RIESER: And I think you  
7 testified earlier this afternoon that on some  
8 issues at least the rules that you've proposed are  
9 more stringent than what the US EPA currently has  
10 proposed?

11 MR. ARMSTRONG: With respect to the  
12 closure by removal issue, it is accurate that the  
13 federal rules do not in specific cases require a  
14 closure by removal. In its preamble to the rule,  
15 US EPA indicated that closure by removal was  
16 preferable and even referenced a consideration of  
17 whether closure by removal would be appropriate at  
18 particular sites as the Board noted in one of its  
19 pre-filed questions at the hearing today, but as I  
20 said, it's not explicitly required within the  
21 proposed rules.

22 MS. FRANZETTI: Mr. Armstrong, you  
23 mentioned that the environmental group's proposal  
24 is briefer than the EPA's proposal on design

1 criteria for new and existing ash ponds. Why did  
2 you elect to make yours briefer?

3 MR. ARMSTRONG: Well, we wanted to  
4 capture what we considered to be the essential  
5 points of the design requirement. I mean, the  
6 very, very central points of design requirements  
7 which were the composite liner and leachate  
8 collection system.

9 MS. FRANZETTI: Did you conclude  
10 that it was acceptable to leave flexibility as to  
11 the other details covered in the EPA proposed  
12 rules that are not included in your proposal?

13 MR. ARMSTRONG: When we talk about  
14 other details, the other details, for example, in  
15 257.71(b) relates to the owner or operator of  
16 existing CCR surface impoundments placing into its  
17 operating record certain records. We did not  
18 propose to incorporate that requirement.

19 In addition, a requirement of a  
20 permit identification marker we didn't include  
21 that. The Board mentioned that in their pre-filed  
22 questions. The emergency action plan we did not  
23 include that in our proposal. We're not rejecting  
24 them as unnecessary or anything like that, but our

1 intention was to capture really the most important  
2 aspect of the rule in our view which was the  
3 design standard of a composite liner with a  
4 leachate collection system.

5 I would add one additional point  
6 which was raised by the Board in its pre-filed  
7 questions which respect to siting requirements for  
8 new impoundments. The Environmental Groups would  
9 be interested in siting requirements based on what  
10 is proposed in the US EPA's proposed rule at  
11 257.60 to 257.65.

12 MS. FRANZETTI: No further  
13 questions.

14 MS. LIU: Mr. Armstrong, did I hear  
15 you mention something about a court order  
16 requiring something be adopted by the end of the  
17 year?

18 MR. ARMSTRONG: There is a  
19 settlement between several environmental groups  
20 and the United States Environmental Protection  
21 Agency under which the US EPA is required to issue  
22 the -- these proposed rules that have been in the  
23 Federal Register since 2010 now by the end of the  
24 year and I can -- we can actually provide a -- I

1 don't know if we have the order -- I think we can  
2 provide the actual order tomorrow or, if not that,  
3 at least a link to a website that describes it. I  
4 believe US EPA has posted details of this on their  
5 own website.

6 MS. LIU: Would that be publishing  
7 final notice of a final rule or another proposed  
8 iteration?

9 MR. ARMSTRONG: My understanding is  
10 that they will be issuing the rules in final form  
11 under the agreement, but, again, I can -- I'm not  
12 certain, but we will definitely take a look at it.

13 HEARING OFFICER FOX: Nothing  
14 further? I think Mr. King had a question first.  
15 I didn't mean to overlook you, Ms. Olson.

16 MS. DEXTER: One more thing.

17 MR. ARMSTRONG: Just to finish that  
18 up. There is a settlement agreement entered by  
19 the court. We, of course, cannot be certain that  
20 the deadline will hold. Certainly in other cases  
21 there is extensions of these types of things, but  
22 that's what it is right now.

23 HEARING OFFICER FOX: Very good.  
24 Mr. Armstrong, thank you. Mr. King, you have a

1 question?

2 MR. KING: Well, I guess this goes  
3 beyond just a question because it kind of gets to  
4 what was being asked and that is in terms of what  
5 is on the record before US EPA. May 19th Earth  
6 Justice and Sierra Club filed extensive comments  
7 to -- with regards to US EPA's proposal, which  
8 would require significant revisions to that  
9 proposal if those comments are accepted. So the  
10 legitimacy that the US EPA is going to do something  
11 as far as adopting a final rule by the end of this  
12 year I think is unclear.

13 HEARING OFFICER FOX: Mr. King, do  
14 you have a question for the environmental group?

15 MR. KING: Yes, I will. The  
16 question goes to how you've incorporated that kind  
17 of basic principle that you've outlined in the  
18 rule because isn't it true that the proposal that  
19 you've set forth here in this proceeding you're  
20 addressing a large group of legacy impoundments  
21 that would not be addressed under the federal rule  
22 if it's adopted as proposed?

23 MR. ARMSTRONG: I don't agree with  
24 that statement. Could you point me to which

1 provision you're referring to within the federal  
2 rule?

3 MR. KING: I can point you to -- if  
4 you take a look at the comments that Earth Justice  
5 and the Sierra Club filed on May 19th of this year  
6 you will see exactly what is being discussed.

7 MR. ARMSTRONG: Okay. I have not  
8 reviewed those comments personally. All I can say  
9 is that in what is proposed in the Federal  
10 Register on 75 Federal Register 35.243 there is  
11 design criteria for existing CCR surface  
12 impoundments. So under what has actually been  
13 proposed, it does address what you've described as  
14 legacy impoundments.

15 MR. KING: Well, take a look at  
16 those comments because that's not what The  
17 Environmental Groups are saying.

18 HEARING OFFICER FOX: Mr. King, can  
19 we turn to Ms. Olson?

20 MS. OLSON: I might be able to help  
21 here. Do you know whether or not the federal  
22 proposed rule has a definition of existing CCR  
23 surface impoundments?

24 MR. ARMSTRONG: The federal rule



1 designs and existing CCR surface impoundment means  
2 a surface impoundment which was in operation or  
3 for which construction commenced prior to the  
4 effective date of the final rule. A CCR surface  
5 impoundment has commenced construction if the  
6 owner or operator has obtained the federal,  
7 state and local approvals or permits necessary to  
8 begin physical construction; and either (1) A  
9 continuous on-site, physical construction program  
10 has begun; or (2) The owner or operator has  
11 entered into contractual obligations, which can  
12 not be cancelled or modified without substantial  
13 loss, for physical construction of the CCR surface  
14 impoundment to be completed within a reasonable  
15 time.

16 MS. OLSON: Is it possible that an  
17 in operation requirement is what Mr. King is  
18 getting at here is that if they were not in  
19 operation before the effective date of this  
20 rule -- on the effective date of the rule, excuse  
21 me, they would not be subject to the federal rule  
22 proposal?

23 MR. ARMSTRONG: I would have to  
24 review the comments that Mr. King is referencing

1 in order to answer that question.

2 HEARING OFFICER FOX: Anything  
3 further, Ms. Olson?

4 MS. OLSON: I had other questions,  
5 but if you're finished with this. Andrew, you  
6 testified that the final rule would have to be  
7 adopted by December. Do you know whether or not  
8 the settlement agreement speaks of the terms of  
9 final action must be taken or does it actually  
10 prescribe the Agency to adopting a rule?

11 MR. ARMSTRONG: I don't know. What  
12 I'm relying upon is personally what I reviewed  
13 this morning was the description on US EPA's  
14 website that it was under court order to issue the  
15 rules in December of this year.

16 MS. OLSON: Issue the ruling.

17 MR. ARMSTRONG: Issue the rule.  
18 Issue the final rule. Well, so as I said what we  
19 can do is try to bring that court order as an  
20 exhibit for tomorrow.

21 MS. OLSON: Thank you.

22 HEARING OFFICER FOX: Mr. Armstrong,  
23 that would be helpful. Thank you for your  
24 willingness to do that. Mr. King, did you have

1 any further questions before we return to  
2 Mr. Rieser?

3 MR. KING: No, I did not.

4 HEARING OFFICER FOX: Mr. Rieser, I  
5 think we're ready for you to resume.

6 MR. RIESER: We will talk about  
7 number seven. The next series of questions deal  
8 with the antidegradation issue that was raised  
9 earlier. I sort of saved these. I'm sort of  
10 coming at it from a different area, but I'll try  
11 to incorporate the fact that you've answered some  
12 of these as we go.

13 Based on your testimony on this  
14 already I think the answer to the first question  
15 in seven with respect -- other than the proposal  
16 to modify the timing for the IEPA to make an  
17 antidegradation assessment, it's not your intent  
18 that the Board modify its current antidegradation  
19 requirements at 35 Ill. Adm. Code 302.105, is that  
20 right.

21 MR. ARMSTRONG: Exactly. We are  
22 not -- we do not intend to modify the current  
23 antidegradation requirements at 35 Ill. Adm. Code  
24 302.105.

1 MR. RIESER: So the application of  
2 those requirements would still be subject to an  
3 exemption at 302.105(d)(3) for response actions  
4 pursuant to CERCLA and corrective actions pursuant  
5 to RCRA or similar state or federal authority  
6 taken to alleviate a release into the environment  
7 of hazardous substances, pollutants or  
8 contaminants, which may pose a danger to public  
9 health or welfare?

10 MR. ARMSTRONG: So as we've proposed  
11 it the antidegradation requirement under our rules  
12 would call for an antidegradation assessment  
13 during this process. So the antidegradation  
14 determination during this phase, during the  
15 closure in the corrective action and other  
16 considerations of plans that are during this phase  
17 or during these regulations, it would not be our  
18 intent that any exemption such as this would be  
19 applicable to our proposed antidegradation  
20 assessment.

21 MR. RIESER: Okay. So, in other  
22 words, you make the antidegradation requirement  
23 applicable to these particular units despite the  
24 Board's determination that they wouldn't normally

1 be subjective to antidegradation assessments?

2 MR. ARMSTRONG: I don't think the  
3 Board has determined that in the context of these  
4 units, per se.

5 MR. RIESER: Is it your position  
6 that the surface impoundments would not be --  
7 corrective action and surface impoundments would  
8 not be an action taken to alleviate a release into  
9 the environment of hazardous substances,  
10 pollutants or contaminants which may pose a danger  
11 to public health or welfare?

12 MR. ARMSTRONG: With respect to this  
13 particular section, we'd like to review and get  
14 back to you about that point.

15 MR. RIESER: Okay. Going onto  
16 eight. What is the basis for treating CCW units  
17 differently than any other source which plans to  
18 seek a new or modified NPDES permit by having this  
19 pre-application for antidegradation activity  
20 requirement?

21 MR. ARMSTRONG: So the intent of The  
22 Environmental Groups proposed modifications is  
23 that if a corrective action or closure plan is  
24 calling for a new or increased discharge as a

1 result of the corrective action or closure plan,  
2 the surface water impact of that corrective action  
3 or closure plan should be determined before the  
4 plan is approved and our intent here is just to  
5 make sure that during this process there is a  
6 consideration of the surface water impacts of the  
7 plan and whether, you know, you view this as  
8 having CCW units treated differently than other  
9 sources what we're responding to in this case is  
10 just the process where we've got a corrective  
11 action or closure plan that could result in  
12 additional surface water discharges and just as  
13 The Environmental Groups responded to the proposal  
14 before us we certainly believe it is appropriate  
15 to consider those surface water impacts.

16 MR. RIESER: How is that different  
17 from any other big, say, waste water treatment  
18 plant? The village goes through a process of  
19 deciding it is going to site a waste water  
20 treatment plant, it goes through all these steps  
21 before they apply for the NPDES permit. So how is  
22 this situation different?

23 MS. BARKLEY: I know both Sierra  
24 Club and Prairie Rivers Network have actually

1 talked with the Agency multiple times over the  
2 last several years about that issue specifically  
3 having to do with facility planning areas that  
4 we'd really like to see antideg taken into account  
5 earlier in the process for the exact same reasons  
6 so that investments that are made are made in a  
7 forward-thinking responsible manner so that you're  
8 not closing those potential alternatives in the  
9 future. So it's very much in line with the way  
10 they worked with other facilities.

11 MR. RIESER: And what has been the  
12 Agency's response to that request?

13 MS. BARKLEY: It hasn't happened  
14 yet. I'll say that. I don't remember  
15 specifically what barriers were in place, but I  
16 know that's something we'd like to see happen.

17 MR. RIESER: Has the Sierra Club  
18 proposed any regulations to the Pollution Control  
19 Board that would apply in the circumstances you  
20 just described?

21 MS. BARKLEY: I can't speak for the  
22 Sierra Club. I can speak for Prairie Rivers  
23 Network.

24 MR. RIESER: I'm sorry. The

1 Environmental Groups in general.

2 MS. BARKLEY: Not to my knowledge.

3 MR. RIESER: Do you see this as  
4 something that is being done for the benefit of  
5 the applicant? In other words, they don't get too  
6 far down the road with what they've got in mind  
7 before this issue gets addressed?

8 MS. BARKLEY: I personally think it  
9 is to the benefit of the applicants, to the  
10 community, to the receiving waters. I think it  
11 ends up being a more responsible, comprehensive  
12 way of moving through the process.

13 MR. RIESER: Nine, is it your intent  
14 that the Agency make and propose publically the  
15 antidegradation determination in the absence of  
16 the information required by the Board for an  
17 application for an NPDES permit or modification?

18 MS. BARKLEY: I think what is  
19 required for antidegradation assessments under  
20 302.105 Subsection (c) to -- under antidegradation  
21 assessments, we would expect the same information  
22 that is required to be submitted to the Agency and  
23 be considered would be the same. So proposed  
24 increase in pollutant loading, identification and



1 characterization of the waterbody affected,  
2 identification and quantification of the proposed  
3 load increases and potential impacts of proposed  
4 activity on the affected waters, the purpose and  
5 anticipated benefits of proposed activity and  
6 assessments of alternatives.

7 MR. RIESER: So the Agency would  
8 have to consider the information you've just  
9 described with respect solely to this particular  
10 component of the discharge and outside of the  
11 context of consideration of other issues relating  
12 to that dischargers impact on water quality?

13 MS. BARKLEY: That is the standard  
14 practice right now. I mean, if a permit is  
15 modified either a new permit or if there is  
16 modifications we don't see all of the impacts at  
17 once taken into account for antideg. It is what  
18 is new, the new increase in pollutant loading to  
19 the surface water.

20 MR. RIESER: Is it standard practice  
21 for the Agency to make a determination on  
22 antidegradation in the absence of all the other  
23 information that is contained in the permit  
24 application or modification application?

1 MS. BARKLEY: Our understanding is  
2 the antidegradation assessment by the Agency is  
3 taking this information into account with respect  
4 to the receiving waters at the discharge proposed  
5 for. I think there is consideration because of  
6 that receiving waterbody on cumulative impacts.  
7 This might be from other waste streams in the  
8 discharge, someone else is coming into that  
9 waterbody, what upstream or downstream uses are.  
10 I mean, that's all part of looking at potential  
11 impacts of that receiving water.

12 MR. RIESER: And all that  
13 information would be contained in the permit  
14 application or modification application, correct?

15 MS. BARKLEY: Yes, and it should be  
16 in the file for an existing facility. So, for  
17 example, Hutsonville. If I use the Hutsonville  
18 example, Hutsonville has an NPDES permit with  
19 information about what the existing discharges  
20 are, what the receiving waterbody is, what the  
21 existing use of that waterbody is. So we would  
22 have liked to have seen before the closure plan  
23 was approved a consideration for what the  
24 anticipated discharge to the Wabash River would

1 have been given receiving stream characteristics,  
2 what the anticipated volume and what chemical  
3 characterization of the waste stream would have  
4 been early in the process to see if that was  
5 met -- met antidegradation requirements and if  
6 that was the right closure plan.

7 So all I want to say is that  
8 that information is available on the file because  
9 it's contained within the NPDES permit in the file  
10 to support the permit in the first place.

11 MR. RIESER: So if all this  
12 information is already in the file, then the  
13 proponent doesn't have to propose anything new for  
14 the Agency to make this decision in this context?

15 MS. BARKLEY: No, I was explaining  
16 that there is already information supporting that  
17 NPDES permit that gives some context to the  
18 position to be made. The new information that  
19 needs to be provided is what is the waste stream,  
20 what volume, what is the characterization, what  
21 are the alternatives, what is the potential impact  
22 of this waste stream on the receiving waterbody.  
23 Everything that I described under Section F under  
24 antidegradation assessment that is the new

1 information that would need to come forward in any  
2 antidegradation assessment.

3 MR. ANTONIOLLI: Can I do a follow  
4 up on that? You raise the issue of Hutsonville  
5 Pond D, do you know whether an antideg analysis  
6 was required for Hutsonville Pond D in their  
7 permit application?

8 MS. BARKLEY: I think I can provide  
9 dates maybe a little bit later, but -- or maybe,  
10 you know, offhand when the site-specific rules  
11 were proposed and approved by the Board, but it  
12 was a few years later that then the modified NPDES  
13 permit was applied for to IEPA and I think we just  
14 saw it on public notice within the last calendar  
15 year and, yes, there was an antidegradation  
16 assessment at that point, but it was years after  
17 the closure plan had been approved and I  
18 understand it's still not worked out.

19 MR. ANTONIOLLI: Do you know whether  
20 it was submitted by Ameren that the closure plan  
21 selected would cause no increase loading to the  
22 Wabash River?

23 MS. BARKLEY: Are you asking me if I  
24 know?

1 MR. ANTONIOLLI: Yes. Do you know  
2 if that was raised?

3 MS. BARKLEY: One moment, please.  
4 Okay. I misspoke. It was determined -- in the  
5 draft public notice dated --

6 MR. ARMSTRONG: So we have a copy of  
7 the draft issued NPDES permit to discharge waters  
8 of the state for the Ameren energy generating  
9 companies, Hutsonville Power Station with the  
10 public notice beginning date of August 29th, 2013,  
11 and a public notice ending date of September 30th,  
12 2013, and we're distributing that right now. We  
13 would move to admit this as Exhibit 52.

14 (Document marked as Hearing  
15 Exhibit No. 52 for  
16 identification.)

17 HEARING OFFICER FOX: Fifty-two it  
18 is. Mr. Armstrong, the exhibit marked as Exhibit  
19 52 has been distributed. Is there any objection  
20 to Mr. Armstrong's motion to admit it as that  
21 exhibit number? Neither seeing nor hearing any,  
22 Mr. Armstrong, it will be so marked and admitted.

23 MS. BARKLEY: So this is the public  
24 notice dated August 29th, 2013, for Hutsonville

1 Power Station. It's a reissued NPDES permit. It  
2 is determined -- I misspoke when I said that an  
3 antidegradation assessment was completed. I  
4 believe the Agency determined that an  
5 antidegradation assessment was not required. The  
6 reasoning was that the groundwater trench was  
7 going to be collecting contaminated groundwater  
8 would contribute water to the ash pond. In the  
9 future, discharges from the site would consist of  
10 a mixture of trench water with ash pond water or  
11 trench water alone and given the greatly reduced  
12 discharge from the ash pond no increases in  
13 pollutant loading will occur from the newly  
14 developed groundwater remediation system.

15 HEARING OFFICER FOX: Ms. Barkley,  
16 just for the record it did appear that you were  
17 reading that permit. Is there a paragraph or page  
18 number you can cite to?

19 MS. BARKLEY: This is page four of  
20 the public notice fact sheet.

21 HEARING OFFICER FOX: Thank you. I  
22 apologize for the interruption.

23 MS. BARKLEY: I do know that we  
24 submitted comments in opposition to this

1 conclusion by the Agency that an antidegradation  
2 assessment was not required. We feel that one  
3 should have been required.

4 MS. ANTONIOLLI: Do you know if this  
5 document which has been accepted as Exhibit 51  
6 accurately represents the discharges to date at  
7 this facility?

8 HEARING OFFICER FOX: For the  
9 record, Ms. Antoniolli, I'm sorry to interrupt.  
10 It was marked and admitted as 52 rather than 51.

11 MS. BARKLEY: Fifty-two. I'm sorry.  
12 Can you repeat your question?

13 MR. ANTONIOLLI: Do you know whether  
14 in the interim between this public notice permit  
15 and today whether the operations of the facility  
16 have since been shutdown, that the discharges have  
17 ceased?

18 MS. BARKLEY: I don't know. Though,  
19 I do think that there was at our May hearings  
20 there was some information entered into the record  
21 as to the occurrence at Hutsonville. I just don't  
22 recall what that was.

23 MR. ANTONIOLLI: Okay. I have  
24 nothing further on this.

1 HEARING OFFICER FOX: Mr. Rieser, it  
2 appears we're back to you.

3 MR. RIESER: We're back on this  
4 public antidegradation decision that the Agency is  
5 making without a full NPDES permit application.  
6 So the Agency makes this antidegradation decision,  
7 is this preliminary antidegradation decision that  
8 it is making consistent with the closure rules?  
9 Would this decision be subject to review by US  
10 EPA?

11 MR. ARMSTRONG: There is no  
12 provision in our rules for review by US EPA. So  
13 the review would occur at the NPDES permitting  
14 stage.

15 MR. RIESER: So the EPA could decide  
16 at the NPDES permitting stage that it wasn't  
17 satisfied with the antidegradation determination  
18 made by the Agency?

19 MR. ARMSTRONG: Yes.

20 MS. BARKLEY: And IEPA could decide  
21 that they didn't like what the closure plan had to  
22 say either at the NPDES stage.

23 MS. OLSON: Pardon? Say that again.

24 MS. BARKLEY: So at the NPDES stage,



1 IEPA, the Agency also, could decide that we didn't  
2 like what was in the closure plan. I think we're  
3 drawing a comparison to US EPA.

4 MR. RIESER: Let me make sure I  
5 understand. When the application for -- when you  
6 say that the Agency can decide at the NPDES stage  
7 that it doesn't like the closure plan, are you  
8 speaking solely of the antidegradation aspects of  
9 it or are you speaking in broader terms of the  
10 closure?

11 MS. BARKLEY: I think what we are  
12 trying to say is that US EPA already has the  
13 opportunity to approve or disapprove NPDES  
14 permits. This is -- we are proposing a change in  
15 timing, but all of the pieces are still there for  
16 the process. So I don't think in that respect  
17 we're proposing any changes on US EPA's role on  
18 antidegradation and in the NPDES permit.

19 MR. RIESER: So the EPA -- the  
20 IEPA's preliminary decision that it's making in  
21 the context of this closure rule would be subject  
22 to challenge whenever the NPDES permit was -- by  
23 the IEPA whenever the NPDES permit was finalized  
24 and reviewed by the EPA?

1 MS. BARKLEY: I believe that still  
2 stands and maybe there is another opportunity for  
3 the US EPA to challenge it. I'm not aware of it.  
4 I don't understand the internal process to the US  
5 EPA and IEPA any more than that.

6 MS. OLSON: I have some questions  
7 kind of on this general topic.

8 MR. RIESER: I want to finish what I  
9 have on the general topic.

10 HEARING OFFICER FOX: Okay.

11 MR. RIESER: Thanks. What procedure  
12 would third-parties use to challenge an Agency's  
13 determination on antidegradation made outside of  
14 the NPDES permit process, if any?

15 MR. ARMSTRONG: So we're not  
16 suggesting that there is a procedure for  
17 third-parties to challenge an Agency determination  
18 made outside of the NPDES permit process, but  
19 there are obviously third-party appeal rights  
20 within the NPDES permit process.

21 MR. RIESER: So if, for example, as  
22 you've discussed with Hutsonville, Prairie Rivers  
23 doesn't like this preliminary decision that the  
24 Agency makes it wouldn't be able to challenge that

1 decision until the Agency actually issues the  
2 NPDES permit, correct?

3 MR. ARMSTRONG: Under the existing  
4 rules, correct.

5 MS. BARKLEY: I would like to add,  
6 though, there is an opportunity for public comment  
7 and I think, you know, at that point we could be  
8 sharing with the facility and with the Agency  
9 things that we -- problems that we anticipate,  
10 problems that we see that we would like -- correct  
11 things that we are anticipating might be a problem  
12 down the road.

13 MR. RIESER: Understood.

14 MS. BARKLEY: And that's part of why  
15 we think the public process is so important so  
16 there is an opportunity for The Environmental  
17 Groups, residents, elected officials, folks to  
18 understand what is being proposed in these  
19 corrective action plans or closure plans and how  
20 that might affect the environment and the use of  
21 the water so they can be informing the Agency,  
22 talking to them, asking the questions, inform the  
23 process before it gets too far down the line.

24 MR. RIESER: Would those same groups

1 be able to challenge the Agency's decision on the  
2 closure plan?

3 MR. ARMSTRONG: So there are -- I'm  
4 sorry. We don't have a position on that right  
5 now.

6 MR. RIESER: And -- okay. I'll  
7 leave it right there. Go ahead.

8 MS. FRANZETTI: Can I ask just one?  
9 Given your comments about the fact that you  
10 wouldn't have the right as an environmental group  
11 to immediately appeal this Agency's determination  
12 on antidegradation made for CCW corrective action  
13 plans and your point that that is what your whole  
14 public notice and informational process is for is  
15 to allow you to get that input on a timely basis,  
16 as part of your proposal would you be willing to  
17 give up your third-party rights of appeal under  
18 the NPDES permit regulations regarding the  
19 antidegradation determination made pursuant to  
20 your proposal here?

21 MR. ARMSTRONG: No.

22 MS. FRANZETTI: I didn't think so.

23 MS. OLSON: I just have a few  
24 questions. So I'm kind of confused about the

1 antideg process so just kind of bear with me as I  
2 ask some foundational questions here.

3           Would you agree that the  
4 information that is contained in the NPDES permit  
5 application is going to be different than the  
6 information contained in a closure or corrective  
7 action plan.

8           MS. BARKLEY: I think a permit  
9 application is going to have more information.  
10 I'm not sure I anticipate it would be different.

11           MS. OLSON: That's great. So it  
12 will have more information, more detail, more  
13 facts probably, is that fair?

14           MS. BARKLEY: Because that permit is  
15 for all of that facility's operations, all of its  
16 waste streams. It is for more than just coal ash.

17           MS. OLSON: And would it be fair to  
18 say the purpose of the corrective action or the  
19 closure plan is to remediate groundwater and/or to  
20 find a way to close the facility either by removal  
21 or by capping and that the focus of the closure  
22 plan and the corrective action plan is not an  
23 NPDES discharge to surface waters?

24           MS. BARKLEY: I think that's what

1 we're -- I think that's the point. That's what  
2 we're trying to incorporate into this rule is  
3 consideration for more than just groundwater, that  
4 there are surface water impacts by the operation  
5 of these facilities and the management of these  
6 facilities.

7 MS. OLSON: Would you agree that the  
8 intent of submitting a closure plan is not to have  
9 a discharge permitted, but to facilitate a way to  
10 close the facility?

11 MR. ARMSTRONG: I think what we're  
12 contending to set the closure plan -- the  
13 essential purpose of the closure plan is to close  
14 the facility. As part of that consideration, we'd  
15 like to see what the impact on surface water  
16 quality would be consequentially.

17 MS. OLSON: Sure. So I think I've  
18 heard you say that the purpose of the closure plan  
19 is to provide a way to close granted under your  
20 proposal it would incorporate impact to surface  
21 water and that the point of an NPDES permit  
22 application is to provide information and data to  
23 discharge to surface waters or water to the state,  
24 is that a fair kind of summary of what we just had

1 here? So if the information in the closure plan  
2 or corrective action plan is not identical to the  
3 information contained in the NPDES permit, how  
4 would you not have to do two antidegradation  
5 assessments?

6 MS. BARKLEY: Are you talking about  
7 two antidegradation assessments for the same waste  
8 stream?

9 MS. OLSON: One under your proposal  
10 and one under 309 -- or 302. Excuse me.

11 MR. ARMSTRONG: So the intent is  
12 that the information that would be necessary to  
13 carry out an antidegradation assessment would be  
14 included in the closure plan, the information that  
15 is referred to in the antidegradation requirement  
16 within Part 302.

17 MS. OLSON: So, in your opinion, if,  
18 for example, a closure plan is submitted and it  
19 contains the information that you believe should  
20 be in it and if an antidegradation assessment is  
21 done and public noticed and then a year later an  
22 NPDES permit application is submitted and it  
23 contains new and additional information specific  
24 to that discharge, is it your position that that

1 NPDES permit application would not have to go  
2 through a second antidegradation assessment?

3 MS. BARKLEY: I think it depends on  
4 what the new additional information is.

5 MS. OLSON: So is it possible?  
6 That's the question. Is it possible that it would  
7 have to go through a second antidegradation  
8 assessment based on the contents of the NPDES  
9 permit application?

10 MS. BARKLEY: I think we've said on  
11 the record that if it is the same discharge we  
12 wouldn't want to see it go through the  
13 antidegradation process twice, but if there is new  
14 or changed information on that waste stream that  
15 it would necessitate an antidegradation assessment  
16 unless it falls within -- yeah, right. I mean, I  
17 think that's what we see every day at facilities.  
18 We see antideg happen often, you know, a couple of  
19 times within one facility because the waste stream  
20 characterization changes or the impact changes or  
21 treatment changes. I don't think that that's a  
22 new or unusual thing for discharges.

23 MS. OLSON: Sure. So new  
24 information would mean a new antidegradation



1 assessment in your opinion?

2 MS. BARKLEY: I think it's hard --  
3 without more detail, it's hard to say. If it  
4 falls within increased pollutant loading to the  
5 receiving stream and it is different than what was  
6 already gone through in the antidegradation  
7 process, then, yes, I think we would want to see  
8 it.

9 MS. OLSON: Perfect. So now my  
10 question is the first antidegradation assessment  
11 that was made, does that have any binding effect  
12 on the Agency in the second antidegradation  
13 assessment?

14 MR. ARMSTRONG: We would not see any  
15 binding impact if you have new information that  
16 has changed the discharge that was earlier  
17 considered during the closure plan and corrective  
18 action process.

19 MS. OLSON: Okay. I've got one more  
20 line of questioning kind of on this. To appeal an  
21 NPDES permit application situation, do you know  
22 what a third-party has to do to be able to appeal?

23 MR. ARMSTRONG: Can you be a bit  
24 more specific in terms of what a third-party needs

1 to do?

2 MS. OLSON: Can a third-party sit by  
3 and watch the entire NPDES process unfold and then  
4 the permit gets issued and then decide it is going  
5 to appeal?

6 MS. BARKLEY: No, we have to  
7 participate in the NPDES process.

8 MS. OLSON: So if the  
9 antidegradation assessment that is done under your  
10 proposal was done under corrective action, is not  
11 done under the NPDES application, is not public  
12 noticed, how would you be able to comment and  
13 participate on that portion thereby giving you  
14 third-party rights to appeal on that issue?

15 MS. BARKLEY: I think if we -- let's  
16 say The Environmental Groups participate in the  
17 antideg the first time for corrective action, that  
18 should exhaust that right to appeal at the NPDES  
19 stage.

20 MS. OLSON: Is there anything in the  
21 regulations or statues that would allow for that?

22 HEARING OFFICER FOX: Ms. Barkley,  
23 if you're preparing an answer, would it be helpful  
24 to have Ms. Olson or the court reporter to repeat

1 the question?

2 MS. BARKLEY: Sure. Yes. Thank  
3 you.

4 MS. OLSON: Would you mind?

5 HEARING OFFICER FOX: Ms. Olson, if  
6 you need help, we can have the court reporter. If  
7 you have it at the tip of your tongue, we can have  
8 you go ahead.

9 MS. OLSON: I believe my question  
10 was can you provide the statute or regulation that  
11 allows third-party rights for appeal for an  
12 antidegradation assessment done outside the  
13 context of an NPDES permit application and the  
14 permitting process and I'm happy to take the  
15 answer in post-hearing comments.

16 HEARING OFFICER FOX: It sounds like  
17 it might be the most productive way for us to  
18 proceed.

19 MS. DEXTER: We're here. I just  
20 need to get somebody else to say it.

21 MS. BARKLEY: I think we can provide  
22 additional testimony in post-hearing comments, but  
23 what I'd like to share is we think this is the  
24 same process. It is just moved in time and we

1 still have the right -- the third-party right to  
2 appeal participating in the process,  
3 antidegradation process at a different time.

4 HEARING OFFICER FOX: Ms. Olson, do  
5 you suggest that that was a sufficient answer?  
6 Are you ready to move onto any further questions  
7 you may have?

8 MS. DEXTER: Can I ask another -- I  
9 want a further answer on that question before we  
10 move on. Just a second.

11 MR. RIESER: Where are we?

12 MS. FRANZETTI: Counsel is  
13 conferring with her witnesses.

14 MS. DEXTER: I'm conferring with my  
15 witnesses.

16 MR. ARMSTRONG: So with respect to  
17 your question the antidegradation analysis studies  
18 performed during the closure action or corrective  
19 action point of the stage is included in the NPDES  
20 permit -- the proposed NPDES permit during the  
21 permitting process. That is what provides the  
22 basis for appealing the antidegradation  
23 demonstration. The Agency can point to its  
24 earlier work on the antidegradation demonstration,

1 but it is still included within the NPDES permit.

2 MS. OLSON: So, effectively, the  
3 Agency would have to go through public notice in  
4 the antidegradation part of the NPDES permit  
5 twice?

6 MS. BARKLEY: In our proposed rule  
7 on page 32 Subsection (g), we say "The approved  
8 antidegradation demonstration may then be deemed  
9 complete for the purposes of an NPDES modification  
10 necessary to implement the corrective action plan"  
11 and I think the idea here is that then that would  
12 be considered complete, it would be printed in the  
13 public notice fact sheet, there would be a  
14 description that the process has already taken  
15 place and the public was notified, participated,  
16 this is what was arrived at in the draft permit.

17 MS. OLSON: If that language is  
18 adopted by the Board, do you think the Illinois  
19 EPA would have to submit this rule to US EPA as a  
20 modification of its NPDES permitting rules and,  
21 thereby, get approval of these rules for  
22 delegation of the NPDES program?

23 MR. ARMSTRONG: We don't believe so.

24 MS. OLSON: Can you provide a reason

1 or explanation for that, please?

2 MR. ARMSTRONG: We're not proposing  
3 to amend the rules relating to NPDES permits in  
4 Part 302. What we're talking about is adding an  
5 additional step in the closure action, corrective  
6 action procedure.

7 HEARING OFFICER FOX: Anything  
8 further, Ms. Olson?

9 MS. OLSON: No. I'm happy to  
10 concede the floor.

11 HEARING OFFICER FOX: Ms. Franzetti,  
12 I thought I saw your hand.

13 MS. FRANZETTI: Yes, I have some  
14 follow up. So earlier today I believe you  
15 testified that your proposal on antidegradation  
16 was a creature unique to these rules, that these  
17 rules were requiring that that submission and that  
18 review be done earlier than it would ordinarily be  
19 done as part of the NPDES permitting regulations,  
20 isn't that correct?

21 MS. BARKLEY: Mm-hmm.

22 MR. ARMSTRONG: That is correct.

23 MS. FRANZETTI: So how can you say  
24 that this is not a modification of what is

1 required under the NPDES permitting regulations  
2 which would say that that antidegradation  
3 demonstration does not need to get done at this  
4 time, it gets done when there is a submission of  
5 either for a new discharge that doesn't already  
6 have an NPDES permit, a permit application or an  
7 NPDES permit, or if the facility has an existing  
8 NPDES permit a modification of that permit and,  
9 hence, a permit modification application to add  
10 this corrective action discharge?

11 MR. ARMSTRONG: Again, the intent of  
12 the rule is that this antidegradation piece is  
13 broken out and required at the corrective action  
14 closure plan stage.

15 MS. FRANZETTI: Mr. Armstrong, let  
16 me interrupt you for a minute.

17 MR. ARMSTRONG: Sure.

18 MS. FRANZETTI: I understand what  
19 your intent is. The purpose of my questions is to  
20 say I think that today's questioning has  
21 identified issues, whether you call them  
22 procedural or substantive, that you may not have  
23 thought through in making this proposal about how  
24 the antidegradation demonstration is going to

1 proceed for CCW corrective action plans and so  
2 my -- I guess I will shorten my line of  
3 questioning because I think you're understanding  
4 the point by saying based on what you've heard  
5 today through the questioning with regard to  
6 potentially bifurcation of the NPDES permitting  
7 procedure under your proposal, early on decisions,  
8 but then no rights to appeal it until what could  
9 be two or three years later, do you think that you  
10 need more time to think through this  
11 antidegradation concept you've proposed in your  
12 proposed rules?

13 MR. ARMSTRONG: So I would say that  
14 the intent of the -- of moving this  
15 antidegradation piece, the closure action and  
16 corrective action stage, and then allowing that  
17 decision to have -- factoring the actual NPDES  
18 stage, the intent of that was to avoid double work  
19 and we thought that might be more palpable to some  
20 parties. We have heard the concerns raised here  
21 and we're willing to consider it.

22 However, what our intent still  
23 is is that there be a consideration of these  
24 issues during the closure plan stage. So I think



1 to the extent that there is any issues that have  
2 been identified they are with the final sentence  
3 in 841.310(g), for example. That the approved  
4 antidegradation demonstration may then be deemed  
5 complete for the purposes of a NPDES modification  
6 necessary to implement the corrective action plan  
7 and similar language with respect to the other  
8 section where it is mentioned with the closure  
9 plan. We -- that would be where the concerns that  
10 have been raised today would lie, but with respect  
11 to the antidegradation demonstration taking place  
12 during the closure action, corrective action  
13 phases, we still believe that should occur.

14 MS. FRANZETTI: Okay.

15 MR. ARMSTRONG: And we may have more  
16 to say on that in the future.

17 MS. FRANZETTI: No further  
18 questions.

19 HEARING OFFICER FOX: I think,  
20 Mr. Rieser, we are back to you.

21 MR. RIESER: I am at -- where am I?  
22 Eleven. Which compared to what we've done so far  
23 I think is a relative softball. At page 16 of  
24 your comments right above the Roman eight, you

1 state that, quote, the proposed rule would be  
2 applicable to all units receiving storm water, end  
3 quote. Please confirm that the, quote, units, end  
4 quote, referenced in the statement refer only to  
5 surface impoundment units containing CCW or  
6 leachate from coal combustion waste.

7 MR. ARMSTRONG: Yes, that is  
8 correct.

9 MR. RIESER: Nailed it. At page 18  
10 of your comments, you urge the Board to adopt a  
11 rule requiring closure, quote, where the owner or  
12 operator fails to implement a viable corrective  
13 action plan, end quote. Please define what you  
14 mean by viable in this context.

15 MR. ARMSTRONG: So the intent of our  
16 rules is played out in the closure prioritization  
17 section in --

18 MR. RIESER: Four-o-five.

19 MR. ARMSTRONG: -- 405 and as we  
20 discussed earlier today 405 is part of Subpart D,  
21 which is referenced in Section's 841.300(d)(2) and  
22 841.305(c)(1) of our proposal and the intent of  
23 those sections is to require that a confirmed  
24 exceedance of groundwater quality standards then

1 kicks you over to 841.405, which sets out  
2 requirements for timelines for closure and so the  
3 effect of these rules is that when there has been  
4 a confirmed exceedance within -- depending on  
5 which of the categories of the units you were in  
6 once there has been a confirmed exceedance, the  
7 unit shall be closed within a certain period of  
8 time.

9           If you're in category two, for  
10 example, which is other units under our proposal,  
11 the unit shall be closed within five years of the  
12 Agency's approval of the closure plan or within  
13 five years from the submission of groundwater  
14 monitoring results confirming an exceedance of the  
15 applicable groundwater quality standards  
16 attributable to a release from the unit at an  
17 approved compliance point, whichever occurs later.  
18 And I'm reading from 841.405(a)(2)(b) right now of  
19 The Environmental Group's red lined proposal from  
20 June 19th, 2014.

21           The final sentence is "The  
22 requirement to close the impoundment following the  
23 exceedance of an applicable groundwater quality  
24 standard is waived if no groundwater standards are

1 exceeded for four consecutive quarters following  
2 the groundwater monitoring results confirming the  
3 exceedance."

4           So the requirement as it plays  
5 out here is that if corrective action has not been  
6 successful in allowing the non-detects or non --  
7 no groundwater quality standard being exceeded for  
8 four consecutive quarters during that five-year  
9 period, then the impoundment should be closed.

10           MR. RIESER: What if the applicant,  
11 the operator, is able to document that the trend  
12 of exceedances is heading downward, that  
13 corrective action activity, whatever it is, is  
14 achieving a reduction, but hasn't achieved the no  
15 exceedance level, is that considered not viable  
16 under your proposal?

17           MR. ARMSTRONG: Under the proposed  
18 rules, no, that is not viable and the intent  
19 behind the stance we're taking on closure  
20 timelines following exceedance here is informed by  
21 the fact that there are not design standards for  
22 existing impoundments within this rule and so we  
23 believe it is important insofar as the Agency has  
24 asserted that groundwater quality exceedances in

1 the state are largely, predominantly -- or  
2 actually overwhelmingly related to unlined  
3 impoundments because there is no requirements in  
4 these rules that unlined impoundments must close  
5 by a certain time, we believe it is important to  
6 have a very aggressive approach to addresses  
7 groundwater exceedances.

8 MR. RIESER: So even if an operator  
9 let's assume an unlined -- well, let me ask this.

10 From your rules, it doesn't  
11 matter whether it is a lined or unlined pond?

12 MR. ARMSTRONG: That is correct.

13 MR. RIESER: The exceedance is  
14 then -- even if you show that you are able to  
15 control and reduce the level of those exceedances  
16 that is inconsequential, it doesn't matter?

17 MR. ARMSTRONG: If you're unable to  
18 control and reduce them to the point of the  
19 exceedances no longer being there, that's correct.  
20 And you're correct, our rule does not draw a  
21 distinction between lined and unlined impoundments  
22 in this regard.

23 MS. FRANZETTI: And why is that?

24 MR. ARMSTRONG: So the reason for

1 the lack of distinction between unlined and lined  
2 impoundments is that if you have an unlined  
3 impoundment clearly you don't have any protection  
4 against groundwater contamination. There is going  
5 to continue to be groundwater contamination coming  
6 from that impoundment. Whatever happens. I mean,  
7 of course corrective action can be performed, but  
8 so long as that impoundment remains open the issue  
9 of groundwater contamination is only going to  
10 intensify insofar as you're still going to have  
11 leaching of contaminants from that impoundment.  
12 For unlined impoundments, if we have groundwater  
13 exceedances associated --

14 MS. FRANZETTI: Did you mean to say  
15 for unlined because I thought you just discussed  
16 unlined?

17 MR. ARMSTRONG: Good point.

18 MS. FRANZETTI: It's late in the  
19 day.

20 MR. ARMSTRONG: For lined  
21 impoundments. On the other hand, if we have a  
22 groundwater exceedance associated with a lined  
23 impoundment, then it is clear in that case that  
24 the liner has failed and it is not an adequate

1 liner.

2 MS. FRANZETTI: Mr. Armstrong, what  
3 about the situation where -- and you're probably  
4 familiar with certain of the Midwest Generation  
5 ponds where exceedance was detected before the  
6 current state-of-the-art synthetic liner was  
7 installed just in the last couple of years so  
8 those exceedances you're talking about predate the  
9 installation of the new synthetic liner, doesn't  
10 that create a different set of circumstances for  
11 purposes of your proposal that needs to be taken  
12 into account differently with regard to requiring  
13 a shutdown of that newly lined pond within your  
14 proposed time period?

15 MR. ARMSTRONG: Well, if we have the  
16 case of a lined impoundment that has caused a  
17 groundwater quality exceedance, then what The  
18 Environmental Groups expect in that case would be  
19 required in order to reline successfully with the  
20 excavation of the coal ash and leachate from the  
21 impoundment removal of the failed liner, removal  
22 of any coal ash and leachate that had leached out  
23 of the failed liner and then a relining in  
24 accordance with any applicable design standards.

1 So, in effect, that is the same sort of process  
2 that is required under the closure requirement  
3 which is a complete removal of CCW and leachate.

4 MS. FRANZETTI: I don't see how that  
5 addressed my question with the Midwest Gen  
6 scenario where you have already put in a brand new  
7 synthetic liner that would meet your design  
8 criteria for a liner so the existing elevated  
9 levels that you were detecting before the new  
10 liner of course are going to continue for some  
11 period of time, they're not going to immediately  
12 disappear, but it's got nothing to do with the  
13 inadequacy of the brand new liner and, hence,  
14 requiring closure of those ponds seems simply  
15 punitive and not related to any connection with  
16 having to stop a source because the source has  
17 been stopped by the installation of the new liner  
18 under your, you know, line of explanation. That  
19 is why I don't understand your proposal when  
20 applied to an ash pond that has, in fact, after  
21 the detection of elevated levels received a new  
22 adequate synthetic liner like the Midwest  
23 Generation ponds have.

24 MR. ARMSTRONG: So with respect to



1 Midwest Generation, Midwest Generation has in  
2 place groundwater management zones for the  
3 impoundments we're speaking of, I believe. Is  
4 that correct?

5 MS. FRANZETTI: I'm not the one here  
6 to answer questions. Go ahead on that. You can  
7 make your assumption and go ahead and give your  
8 answer.

9 MR. ARMSTRONG: My statement would  
10 be that if we have a situation where we're  
11 referring to 841.300 "If the results of  
12 groundwater monitoring conducted pursuant to this  
13 part show an exceedance of the groundwater quality  
14 standards in 35 Ill. Adm. Code 620 at the  
15 compliance points, the owner or operator shall  
16 confirm the detection by the sampling of the  
17 monitoring well or wells." If there is a  
18 groundwater management zone in place, I'm not sure  
19 that the corrective action for closure  
20 requirements of these rules would come into play.

21 MS. FRANZETTI: I kind of need you  
22 to be sure to understand your proposal and how it  
23 applies to my client.

24 MR. ARMSTRONG: When I'm referring

1 to this part, this is something the Agency has  
2 proposed. So I don't want to speak for their  
3 intent on the rule, but as I read this if we're  
4 talking about the groundwater quality standards in  
5 Part 620 that would include the groundwater  
6 management zone.

7 MS. FRANZETTI: Is it your  
8 position -- I understand. I don't expect you to  
9 be responsible or necessarily accurately  
10 understand the Agency's intent in what they've  
11 proposed, but I want to get your position. In  
12 your proposal then, would it be acceptable in  
13 terms of allowing the Midwest Gen ash pond to  
14 continue operating where they have been lined with  
15 a synthetic liner meeting the impermeability  
16 criteria and as you pointed out there is a  
17 groundwater management zone that has been approved  
18 with regard to any pre-new liner releases from the  
19 pond, are you telling me then under your proposal  
20 Midwest Gen would not need to close that pond  
21 within five years even if the levels of  
22 contaminants in the groundwater had not been  
23 reduced down to the Part 620 standards within the  
24 GMZ area?

1 MR. ARMSTRONG: So with respect --

2 MS. FRANZETTI: I was really hoping  
3 for a yes on that.

4 MR. ARMSTRONG: I want to be very  
5 clear about what I'm agreeing to and what I'm not  
6 agreeing to.

7 MS. FRANZETTI: Okay.

8 MR. ARMSTRONG: So you said would it  
9 be acceptable for the Midwest Gen facilities to  
10 operate within the context solely of this  
11 proposal, just this rulemaking today, just looking  
12 at about how these rules play together Section  
13 841.300 refers to the results of groundwater  
14 monitoring conducted pursuant to this part showing  
15 exceedance of the groundwater quality standards in  
16 35 Ill. Adm. Code 620. So, again, 620 includes  
17 620.250 for groundwater management zones. If  
18 there is not an exceedance of -- if you have a  
19 groundwater management zone in place, the numeric  
20 water quality standards elsewhere in Part 60 --  
21 620 I don't see an exceedance of those numerical  
22 standards then triggering the closure standards  
23 under our rule --

24 MS. FRANZETTI: Thank you.

1 MR. ARMSTRONG: -- our proposed  
2 rule. Only with respect to those individual  
3 points.

4 MS. FRANZETTI: Thank you. No  
5 further questions.

6 HEARING OFFICER FOX: Very good.  
7 Mr. Rieser, before we go back to you Mr. Sylvester  
8 had his hand up at one point. I didn't want to  
9 have forgotten you.

10 MR. SYLVESTER: I just wanted to  
11 follow up on Ms. Franzetti's question regarding  
12 that Section 841.305 provides an ultimate  
13 alternative cause demonstration. I was wondering  
14 if you thought that would be applicable to the  
15 situation with Midwest Gen or potentially  
16 applicable?

17 MR. ARMSTRONG: I think it could be  
18 potentially applicable. The alternative cause  
19 provides that an owner or operator may demonstrate  
20 an exceedance of groundwater quality standards to  
21 confirm a compliance point is not attributable to  
22 a release from the permitting unit. I think I'd  
23 have to consider that to determine exactly whether  
24 it would be applicable in the Midwest Gen case.

1 MS. FRANZETTI: What would be the  
2 alternative cause and when my questions -- for  
3 purposes of the question, assume that the Midwest  
4 Gen ponds before they were lined were the source  
5 of the release. So how can there be an  
6 alternative cause under the line of questioning  
7 you and I just went through with respect to your  
8 proposal?

9 MR. ARMSTRONG: So I see what you're  
10 saying. Attributable to a release from a unit --  
11 I guess one possible way of determining that is if  
12 a unit is not the same unit after -- before and  
13 after it's been relined, but I can see --

14 MS. FRANZETTI: Okay.

15 MR. ARMSTRONG: I didn't mean -- I'm  
16 not arguing that as an interpretation. I'm just  
17 responding to Mr. Sylvester's question, but,  
18 again, under our reading as I stated before I  
19 don't know that you would need an alternative  
20 cause demonstration because you don't have an  
21 exceedance of the standard.

22 MS. FRANZETTI: Mr. Armstrong, so in  
23 answering Mr. Sylvester's question, you were  
24 contemplating that a unit might be a different

1 unit post lining versus pre-lining of that unit?

2 MR. ARMSTRONG: I was just trying --  
3 I was just trying to walk through Mr. Sylvester's  
4 question. I am not adopting that position. I am  
5 not adopting that position, but I am saying that  
6 would be a way one could interpret this section  
7 for it to be applicable, but, again, I'm not  
8 adopting that position.

9 MS. FRANZETTI: I understand you're  
10 not adopting it. Is that the understanding you  
11 had when you answered his question about  
12 alternative cause?

13 MR. ARMSTRONG: When I answered his  
14 question that it could be applicable, I was still  
15 trying to think it through.

16 MS. FRANZETTI: Okay.

17 MR. ARMSTRONG: I hadn't thought of  
18 it before.

19 MS. FRANZETTI: So you really  
20 weren't sure what his question meant, correct?

21 MR. ARMSTRONG: Correct.

22 MS. FRANZETTI: Thank you.

23 HEARING OFFICER FOX: Mr. Sylvester,  
24 anything else?

1 MR. SYLVESTER: (Negative nod.)

2 HEARING OFFICER FOX: No. Very  
3 well. Mr. Rieser, you had a question.

4 MR. RIESER: I just need to step in  
5 real quick. So the answer you just gave  
6 Ms. Franzetti, Ms. Franzetti premised everything  
7 on a pretty specific description of a previously  
8 unlined pond that was not lined, but your answer  
9 with respect to the impact of 620 on the  
10 determination of whether an exceedance had  
11 occurred applies whether -- regardless of whether  
12 there is a liner or not, isn't that correct?

13 MR. ARMSTRONG: Yes, if you have an  
14 unlined impoundment. So, I mean, if you have a  
15 groundwater management zone in place, it would be  
16 my understanding that that corrective action plan  
17 has been put in place for the impoundment already  
18 and I believe I recall seeing before in the  
19 Agency's questions perhaps to pre-filed questions  
20 to Ameren on this point regarding one of their  
21 proposed exceptions a question that implied to me  
22 if there was a groundwater management zone in  
23 place, then there would not necessarily be an  
24 exceedance of groundwater quality standards so

1 that's my understanding.

2 MR. RIESER: Thank you.

3 HEARING OFFICER FOX: Anything  
4 further? Ms. Olson, I see your hand.

5 MS. OLSON: I've got a bunch of  
6 questions and I think we're running out of time so  
7 I just going to ask one and reserve the right to  
8 go back to my notes here tomorrow on the others.

9 So if I understand correctly  
10 within four quarters of the confirmed exceedance,  
11 to come back into compliance with groundwater  
12 quality standards, you don't have to close your  
13 facility, is that right?

14 MR. ARMSTRONG: No.

15 MS. OLSON: That's not right?

16 MR. ARMSTRONG: No. What our  
17 proposal is is that within the five-year period by  
18 which you're required to close when we're in  
19 category two other units in 841.405 if there are  
20 four consecutive quarters within that period  
21 during which there is not an exceedance, then you  
22 are not required to close.

23 MS. OLSON: So four consecutive  
24 quarters any time in that five-year period? So it



1 can happen in the last year?

2 MR. ARMSTRONG: Correct.

3 MS. OLSON: So when it says for four  
4 consecutive quarters following the groundwater  
5 monitoring plan confirming the exceedance, that  
6 does mean these four quarters that follow the  
7 exceedance? That means --

8 MR. ARMSTRONG: It does not mean the  
9 four directly following quarters, no.

10 MS. OLSON: Can you propose language  
11 that clarifies that?

12 MR. ARMSTRONG: I can say the  
13 requirement to close the impoundment following the  
14 exceedance of the applicable groundwater quality  
15 standard -- I can say that the requirement to  
16 close the impoundment following the exceedance of  
17 an applicable groundwater quality standard is  
18 waived if no groundwater quality standard is  
19 exceeded for any four consecutive quarters  
20 following the groundwater monitoring results  
21 confirming the exceedance. And I can -- it is  
22 kind of late in the day. Why don't I take this  
23 under consideration before I --

24 MS. OLSON: Thank you. So my

1 question is related to -- my second question is  
2 related to what it means to have four quarters  
3 where the groundwater quality standards aren't  
4 exceeded. So if on day one there is a groundwater  
5 exceedance in either the numeric standard and  
6 there is no GMZ established, if sometime during  
7 the next four years a GMZ is established, does  
8 that mean that I'm in compliance with my  
9 groundwater quality standard and, therefore, I  
10 don't have to close?

11 MR. ARMSTRONG: I'll take that under  
12 consideration.

13 MS. OLSON: Do you know the answer?

14 MR. ARMSTRONG: As intended in here,  
15 it would be the same groundwater quality standards  
16 that had triggered the initial closure  
17 requirement. That is the intent I think as it is  
18 drafted here. If no groundwater quality standard  
19 is exceeded.

20 MS. OLSON: Even the ones  
21 established by 624.050?

22 MR. ARMSTRONG: Well.

23 MS. OLSON: Or --

24 MR. ARMSTRONG: It is waived if no

1 groundwater quality standard is exceeded. So if  
2 none of the previously exceeded groundwater  
3 quality standards are later exceeded, then that is  
4 what we're referring to.

5 MS. OLSON: So you're not referring  
6 to the actual groundwater quality standard that is  
7 applicable to the water under the unit during the  
8 four quarters of which we're talking about here?

9 MR. ARMSTRONG: We're talking about  
10 the original groundwater quality standards that  
11 were exceeded that triggered the closure  
12 requirement in the first place.

13 MS. OLSON: Even if that is no  
14 longer the groundwater quality standard?

15 MR. ARMSTRONG: Correct.

16 MS. OLSON: Could you possibly  
17 revise this language to make that clear?

18 MR. ARMSTRONG: Sure.

19 HEARING OFFICER FOX: Anything  
20 further, Ms. Olson?

21 MS. OLSON: No.

22 HEARING OFFICER FOX: Mr. Rieser, I  
23 think we are back to you.

24 MR. RIESER: We are and I have two

1 hopefully quick questions and then most of the  
2 other stuff has been asked. So I'm at 14. At  
3 Section 841.130(a), what is your purpose in adding  
4 the language, quote, except as provided in this  
5 section?

6 MR. ARMSTRONG: I'm happy to say  
7 this turns out to be another softball. The -- so  
8 at Section 841.103(a) what is your purpose in  
9 adding "except as provided in this section"?  
10 Actually, that modification was proposed by the  
11 Agency in its March 25th, 2014, comments. So they  
12 would be the ones to ask about that one.

13 MR. RIESER: Fair enough. All  
14 right. That's easy. Sixteen. Why are  
15 alternative -- at Section 841.165, why are  
16 alternative cause demonstrations added to the  
17 public notice requirement?

18 MR. ARMSTRONG: By allowing public  
19 notice for alternative cause demonstrations, the  
20 public would be allowed to contribute information  
21 that it may have regarding groundwater  
22 contamination in the area and we think it's  
23 important for the public to have a voice in these  
24 proceedings and to get information about them

1 because the alternative cause demonstration under  
2 the Agency's proposal will have an impact on  
3 whether corrective action or closure activities  
4 are then required.

5 MR. RIESER: Is it your expectation  
6 that the alternative cause demonstration will be  
7 in addition to, in a separate document from,  
8 corrective action plans, closure plans and  
9 post-closure plans?

10 MR. ARMSTRONG: Under the Agency's  
11 proposal, the alternative cause demonstration is a  
12 separate document as I read the proposal.

13 MR. RIESER: And even if there is  
14 iterations of alternative cause demonstrations  
15 each of these iterations -- if initially the  
16 Agency has comments, it goes back, each of those  
17 iterations has to be posted?

18 MR. ARMSTRONG: I'm just going to  
19 pull up that section. So under 841.305  
20 alternative cause demonstration that requires that  
21 the owner or operator shall submit a report to the  
22 Agency that demonstrates an alternative cause.  
23 Then the Agency shall provide a written response  
24 within 90 days to the owner or operator. That is

1 either a concurrence or a nonconcurrence. And  
2 then in Subsection (c) the owner or operator shall  
3 then either submit a corrective action plan or --  
4 in the Agency's proposal -- submit a closure plan  
5 or appeal the Agency's decision within 35 days.  
6 So there is really only one step there, the  
7 submission of the report and that is the document  
8 that we believe should be publically noticed.

9 MR. RIESER: Okay. Thank you. I'm  
10 actually done.

11 MS. OLSON: I just --

12 MR. RIESER: And I reserve the right  
13 to participate in the questioning tomorrow and  
14 raise issues as they come, but I'm done with my  
15 pre-filed questions.

16 HEARING OFFICER FOX: As you have  
17 today, Mr. Rieser.

18 MS. OLSON: Just really quick.  
19 There would be two documents that would have to be  
20 public noticed, right, under your proposal; the  
21 actual demonstration submitted by the power  
22 producer and then our response?

23 MR. ARMSTRONG: You are correct.  
24 When I said publically noticed, I took

1 Mr. Rieser's question to mean we have to have  
2 multiple hearings on an alternative cause  
3 demonstration. I could have misheard that, but,  
4 yes, the Agency would have to post both the report  
5 and its decision on its web page.

6 MS. OLSON: Thank you.

7 HEARING OFFICER FOX: Anything  
8 further, Ms. Olson?

9 MS. OLSON: No.

10 HEARING OFFICER FOX: Mr. Rieser has  
11 plainly indicated that at least to the extent of  
12 his pre-filed written questions he has concluded.  
13 We have very nearly reached the time of 6:00 p.m.  
14 which was about the point at which we intended  
15 anyway to finish.

16 Ms. Franzetti, I thought we  
17 could get to you today. It didn't workout.

18 MS. FRANZETTI: That's okay. I'm  
19 glad you're not making me start.

20 HEARING OFFICER FOX: And before --

21 MR. RIESER: He hasn't said that  
22 yet.

23 MS. FRANZETTI: I'm trying to  
24 persuade him not to.

1 HEARING OFFICER FOX: Which made my  
2 rising out of the chair a little more ominous.  
3 Before we do adjourn, I do want to restate very,  
4 very quickly we will be in the adjacent room,  
5 9-040, beginning tomorrow at 9:00 a.m. rather than  
6 11:00 a.m. as we began today.

7 Ms. Olson, you had a question it  
8 appears?

9 MS. OLSON: Do you think it would be  
10 acceptable if we put some of our stuff in that  
11 room?

12 HEARING OFFICER FOX: What I've  
13 offered in response to a previous request is to  
14 leave it in our clerk's office. Not that it is  
15 perfectly safe up there, but I think it's a little  
16 more secure from curious hands and fingers and I  
17 can lead a couple of folks up there if they would  
18 like to leave it in what I think is just a little  
19 bit of a more secure place.

20 So Mr. Armstrong had asked. You  
21 had asked. If anyone wishes to leave a box --

22 MR. ANTONIOLLI: I do.

23 HEARING OFFICER FOX: Ms.  
24 Antoniolli. I'm happy to leave that upstairs and



1 mark it out for you so it's a little safer. We'll  
2 see you tomorrow morning at 9:00 and Member  
3 O'Leary wanted to make a brief comment before we  
4 do formally adjourn.

5 MR. O'LEARY: Can everybody listen  
6 up for just a second? I'm making this comment to  
7 everyone. Okay? We've had pre-filed questions,  
8 pre-filed comments here and I think regardless who  
9 is asking the question, who is responding to the  
10 question, as far as the actual pre-filed questions  
11 and comments I would expect you answer the  
12 question. You know the answer to that question  
13 because you've had it in advance. The follow-up  
14 questions I can understand that, but it has taken  
15 entirely too long for a reply back and I'm just  
16 making that comment. I'm expecting tomorrow, you  
17 know, to answer the question and get to the facts  
18 is what I'm expecting. Okay? Thank you.

19 HEARING OFFICER FOX: We're  
20 adjourned. We'll see you in the morning.

21  
22  
23  
24

1 STATE OF ILLINOIS )  
 2 ) SS.  
 3 COUNTY OF COOK )  
 4

5 I, Steven Brickey, Certified Shorthand  
 6 Reporter, do hereby certify that I reported in  
 7 shorthand the proceedings had at the trial  
 8 aforesaid, and that the foregoing is a true,  
 9 complete and correct transcript of the proceedings  
 10 of said trial as appears from my stenographic  
 11 notes so taken and transcribed under my personal  
 12 direction.

13 Witness my official signature in and for  
 14 Cook County, Illinois, on this \_\_\_\_\_ day of  
 15 \_\_\_\_\_, A.D., 2014.

16  
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 24

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