

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) No. R20-19
) (Rulemaking-Land)
Standards for the Disposal)
of Coal Combustion)
Residuals in Surface)
Impoundments: Proposed new)
35 Ill. Adm. Code 845)

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Vanessa Horton, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, RMR,
for the State of Illinois, 1021 North Grand Avenue
East, Springfield, Illinois, on the 11th day of
August, 2020, commencing at the hour of 9:03 a.m.

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4 MS. MARIE TIPSORD, General Counsel
5 MR. ANAND RAO, Technical Unit
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5 THE WITNESSES: MR. WILLIAM BUSCHER
6 MR. LYNN DUNAWAY
MS. AMY ZIMMER
7 MS. LAUREN MARTIN
MR. CHRIS PRESSNALL
8 MR. ROBERT MATHIS
MR. DARIN LECRONE
9 MS. MELINDA SHAW

10
11 E X H I B I T S

12 Marked for
13 Identification

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1 HEARING OFFICER HORTON: Okay. Good
2 morning and welcome to this Illinois Pollution
3 Control Board meeting. My name is Vanessa Horton
4 and I am the Hearing Officer for this rulemaking
5 proceeding entitled Rulemaking for the Proposed
6 New 35 Illinois Administrative Code 845:
7 Standards for the Disposal of Coal Combustion
8 Residuals in Surface Impoundments. The Board
9 docket number for this rulemaking is R --

10 MS. TIPSORD: Timeout.

11 HEARING OFFICER HORTON: Just to
12 begin, could I ask everyone to mute themselves.
13 We'll just give it one minute. We're muting
14 everybody. Okay. I think we got it. All right.
15 The Board docket number for this rulemaking is
16 R20-19.

17 Also present from the Board
18 today is on Webex Chair Barbara Flynn Currie and
19 here in person is Member Carter and Board staff
20 present here is General Counsel Marie Tipsord,
21 rulemaking coordinator Shannon Bilbruck, myself
22 and on Webex also is Anand Rao, Chief
23 Environmental Scientist for the Board and Essence
24 Brown, Environmental Scientist, as well as several

1 other attorneys for the Board.

2 This hearing is governed by the
3 Board's procedural rules. All information that is
4 relevant and that is not repetitious or privileged
5 will be admitted into the record. Please bear in
6 mind that any questions posed today by the Board
7 and its staff are intended solely to help develop
8 a clear and complete record for the Board's
9 decision and do not reflect any decision on the
10 proposal, testimony or other questions.

11 Due to COVID-19, in addition to
12 the video conferencing, we're allowing Webex
13 participation via computer and phone. As a
14 reminder, pre-filed testimony is available to view
15 on our clerk's office online, or COOL, through the
16 Board's website. Simply search the docket number
17 R20-19.

18 For the sake of our court
19 reporter, please speak clearly and avoid speaking
20 at the same time as another person so that we can
21 help produce a clear transcript. For those
22 participating via Webex on phone or using the call
23 me feature for sound, if you want to speak during
24 the hearing, please take your phone off

1 speakerphone and talk into the phone normally as
2 it will produce a much clearer sound.

3 MS. BUGEL: I'm sorry to interrupt,
4 but I am hearing from people online that they --
5 that it's -- the volume is muddled.

6 MR. RAO: Vanessa, this is Anand.
7 We can hardly hear what you're saying.

8 HEARING OFFICER HORTON: Okay. Can
9 you hear me any better now?

10 MR. RAO: I think they're having
11 problems, too.

12 HEARING OFFICER HORTON: I'm testing
13 the microphone here. Are you having -- is it any
14 better if I speak this way?

15 MR. RAO: A little better now.

16 HEARING OFFICER HORTON: Okay.
17 Sorry. I was not speaking directly into the
18 microphone, but I shall do so now. All right.
19 Continuing on.

20 Okay. So if you wish to speak,
21 you will also have to unmute yourself. All
22 individuals entering the Webex feed are muted upon
23 entry. For those on a computer, you can click the
24 microphone symbol to unmute yourself. For those

1 participating as a call-in user, you must press
2 Star 6 on your keypad to unmute yourself. I would
3 also like to note that there may be a slight delay
4 in the Webex video. So please be mindful of that
5 when communicating with each other.

6 If you are on video or
7 telephone, please identify yourself before
8 speaking. This is a little bit difficult to get
9 used to, but it is very important for our court
10 reporter to be able to know who is speaking. If
11 you need to get my attention and are participating
12 via Webex, please use the chat function or the
13 raised hand function and we will be able to call
14 on you. Shannon is manning the host computer
15 here. So she will be manning the chat and the
16 raised hand function.

17 As we had in-person and Webex
18 participants, these hearings will necessarily be a
19 little slower than usual. Please bear with us.
20 We are moving at a slower pace to make sure we are
21 addressing everyone on video as well as making
22 sure participants are not talking over each other
23 as this makes it impossible for the court reporter
24 to collect an accurate record.

1 Also as a result of using Webex,
2 we are video recording today's hearing to ensure
3 our court reporter is able to get an accurate
4 transcript. Once the Board receives the
5 transcript, the recording will be destroyed. As
6 for the notice, hearings were initially scheduled
7 for July and August, but due to a motion by
8 parties to push back the date of the second
9 hearing and a subsequent motion by IEPA to extend
10 the date to pre-file answers, those initial dates
11 were canceled.

12 On July 14, 2020, the first
13 hearing was rescheduled for today, August 11th,
14 2020. The Board published notice of this hearing
15 on July 17th, 2020, in both the Springfield
16 Journal Register and the Chicago Sun Times.

17 A Hearing Officer order directed
18 participants intending to testify at this hearing
19 to pre-file their testimony on June 2nd, 2020. On
20 June 2nd, 2020, the Board received pre-filed
21 testimony on behalf of the Agency by Stephanie
22 Diers. No other participants pre-filed testimony.
23 Pre-filed questions based on the pre-filed
24 testimony were required to be filed with the Board

1 by June 23rd, 2020. Public comments were also
2 filed by -- were filed by Little Village
3 Environmental Justice Organization on June 15th,
4 2020. Also on June 15th, public comments were
5 filed jointly by the Environmental Law and Policy
6 Center, Prairie Rivers Network and the Sierra
7 Club.

8 Pre-filed questions were filed
9 on June 23rd, 2020, by the Board, the City of
10 Springfield Office of Public Utilities, Little
11 Village Environmental Justice Organization,
12 Midwest Generation, Dynegy, Illinois Environmental
13 Regulatory Group, Environmental Law and Policy
14 Center, Prairie Rivers Network, Sierra Club and
15 Ameren.

16 On June 30th, 2020, based on the
17 volume of pre-filed questions, IEPA requested and
18 was granted an extension of time to file their
19 written answers. Those answers were due on August
20 3rd, 2020. IEPA filed pre-filed answers on August
21 3rd, 2020, to questions from Little Village, ELPC,
22 Prairie Rivers, Sierra Club, City of Springfield,
23 IERG, Ameren and the Board.

24 On August 5th, 2020, IEPA filed

1 a supplement to their pre-filed answers which
2 included answers to questions from Midwest
3 Generation and Questions 1 through 84 from Dynegy.
4 On August 6th, 2020, IEPA filed its second
5 supplement to their pre-filed answers which
6 included answers to the remaining questions raised
7 by Dynegy.

8 Moving the mic even closer.
9 Hopefully this will be better. Okay. Now to the
10 order of today's hearing, the Agency's pre-filed
11 testimony. Section 104.424(f) of the Board's
12 procedural rules provide that this pre-filed
13 testimony will be entered into the record as if
14 read, but the Agency may begin with a brief
15 introduction or summary if it wishes to do so.

16 We will then turn to questions
17 for Agency witnesses beginning with Section
18 845.100 and moving on section by section. I will
19 follow the following order when asking for
20 questions from participants. First, I will call
21 on this group as a whole; Little Village
22 Environmental Justice, Environmental Law and
23 Policy Center, Prairie Rivers Network, Sierra
24 Club; second, I will call on Midwest Generation;

1 third, City of Springfield; fourth, Dynegey; fifth,
2 Illinois Environmental Regulatory Group; sixth,
3 Ameren; seventh, Office of the Illinois Attorney
4 General; eighth, the Pollution Control Board
5 Technical Unit and Board members and then ninth,
6 after all those questions, we can see if there is
7 anyone else who did not pre-file testimony but
8 would like to testify here today.

9 Under Section 102.424(g) of the
10 Board's procedural rules, testimony that is not
11 pre-filed is allowed as time permits and where it
12 will not prejudice another participant. If as a
13 participant you do not have any questions for IEPA
14 witnesses on that particular section, just let me
15 know and we will move on to the next group.

16 We have designated certain times
17 during these hearings for public comment. The
18 first will be tomorrow, August 12th, from 5:00
19 p.m. to 7:30 p.m. Then the second designated time
20 will be Thursday from noon to 1:30 p.m.

21 Are there any questions about
22 the order of proceeding? Yes.

23 MS. BUGEL: Thank you, Vanessa. I
24 do have two questions.

1 HEARING OFFICER HORTON: Can you
2 state your name first?

3 MS. BUGEL: Yes, Faith Bugel
4 representing Sierra Club. I do have two questions
5 about procedures.

6 One is that Sierra Club
7 obviously is working in a coordinated manner with
8 other organizations. As a result, we have
9 multiple attorneys who may have questions for
10 certain witnesses or on certain sections. When --
11 when we have that situation, would you prefer us
12 to go one attorney at a time and finish all their
13 questions or would you prefer to go section by
14 section and even subsection by subsection?

15 HEARING OFFICER HORTON: I think it
16 would work best to go one attorney at a time just
17 for audio purposes. We'll see how that goes and
18 then if that's not working well, then we can
19 switch it up.

20 MS. BUGEL: Very good.

21 HEARING OFFICER HORTON: Let's start
22 that way.

23 MS. BUGEL: And one other question
24 on the same point, similar point. If attorneys

1 have follow-up questions, in the past we have sort
2 of jumped in during a hearing at the time that the
3 relevant topic is being discussed.

4 Would you prefer that or would
5 you rather wait for our turn or wait until the
6 end?

7 HEARING OFFICER HORTON: Let's wait
8 for your turn. Let's try that first. Let's wait
9 for your turn and if there are significant
10 follow-up questions after everyone has gone,
11 perhaps you can call -- you know, raise your hand
12 and we can address those.

13 MS. BUGEL: Okay. Thank you.

14 HEARING OFFICER HORTON: Yes.

15 MS. GALE: I have another request
16 from -- sorry. My name is Kristen Gale. I'm here
17 on behalf of Midwest Generation and my thing is
18 they're still having a hard time hearing you. So
19 if you can do your best effort to be next to the
20 microphone, that would be great.

21 HEARING OFFICER HORTON: I mean, are
22 they hearing better when I'm right here or do we
23 think we should move the table entirely to be
24 closer to the TV?

1 MS. GALE: They didn't tell me.

2 MR. MORE: Can you move the
3 receiving mic closer to the speaker or turn the
4 speaker to the TV?

5 HEARING OFFICER HORTON: All right.
6 We'll try to rearrange that here.

7 MS. TIPSORD: We've lost video.

8 HEARING OFFICER HORTON: Oh. We've
9 lost video. I think it's back up, the video. Is
10 it? I'm testing the audio once more. If people
11 could perhaps write in the chat to see if this
12 works any better, we have angled the speaker
13 closer to the receiving microphone.

14 MS. BUGEL: Much better. This is
15 much better.

16 HEARING OFFICER HORTON: Great.
17 Wonderful. We've got video back up here.

18 MS. BUGEL: Working a lot better.
19 Much better. Thanks.

20 HEARING OFFICER HORTON: Apologies
21 to all. Okay. Any other questions about
22 procedures? Okay.

23 MR. RAO: Hey, Vanessa?

24 HEARING OFFICER HORTON: Yes, Anand?

1 MR. RAO: Can you repeat what you
2 mentioned about the procedures in the last five
3 minutes or so? We could hardly hear what you
4 said.

5 HEARING OFFICER HORTON: Oh, dear.
6 I'll repeat that. Thank you very much.

7 MR. RAO: Thank you very much.

8 HEARING OFFICER HORTON: No problem.
9 So the Agency's pre-filed testimony, Section
10 104.424(f) of the Board's procedural rules provide
11 that the pre-filed testimony will be entered into
12 the record as if read, but the Agency may begin
13 with a brief introduction or summary if it wishes
14 to do so.

15 We will then turn to questions
16 for the Agency's witnesses beginning with Section
17 845.100 and moving on section by section. I will
18 follow the following order when asking for
19 questions from participants.

20 First, I will call on this group
21 as a whole; Little Village Environmental Justice,
22 Environmental Law and Policy Center, Prairie
23 Rivers Network and Sierra Club; second, Midwest
24 Generation; third, City of Springfield; fourth,

1 Dynegy; fifth, Illinois Environmental Regulatory
2 Group; sixth, Ameren; seventh, Office of the
3 Illinois Attorney General; eighth, Pollution
4 Control Board Technical Unit and Board members;
5 and, ninth, after those questions we can see if
6 there is anyone who did not pre-file testimony,
7 but would like to testify here today.

8 Under Section 102.424(g) of the
9 Board's procedural rules, testimony that is not
10 pre-filed is allowed as time permits and where it
11 will not prejudice another participant.

12 MS. TIPSORD: Vanessa, I have a text
13 that you need to slow down.

14 HEARING OFFICER HORTON: I shall
15 slow down now that you can hear me. Okay. If as
16 a participant group you do not have any questions
17 for IEPA witnesses on that particular section,
18 just let me know and we will move on to the next
19 group.

20 We have designated certain times
21 during these hearings for public comments. First
22 will be tomorrow, August 12th, from 5:00 p.m. to
23 7:00 p.m. -- 7:30. I'm sorry. Then the second
24 designated time will be Thursday from noon to 1:30

1 p.m. And we had two or three questions here in
2 the room about the order of proceedings.

3 The first was from Faith Bugel
4 from Sierra Club who noted that she -- the groups
5 asking questions at first are working together and
6 how should they coordinate their questions and so
7 they're going to be going attorney by attorney
8 with their own questions and we'll see how that
9 works and if that is working well, we'll proceed
10 that way. If not, we'll switch it up. Then the
11 second question I forget.

12 MS. TIPSORD: Follow-up.

13 HEARING OFFICER HORTON: Follow-up
14 questions. Yes. So if at the end of all nine
15 sets of questioners if there are follow-up
16 questions, you can ask follow-up questions at the
17 end of your own section and then at the end of the
18 entire section we'll check back and see if there
19 are follow-up questions and we'll see how that
20 works with the first couple of sections and move
21 on from there.

22 All right. Now, moving to
23 testimony. From the Agency, I believe the Agency
24 witnesses will be as follows: William Buscher,

1 Lynn Dunaway, Amy Zimmer, Lauren Martin, Chris
2 Pressnall, Robert Mathis, Darin Lecrone, Melinda
3 Shaw.

4 Shannon, could you unmute the
5 Agency's room?

6 MS. BILBRUCK: Yes.

7 HEARING OFFICER HORTON: We're just
8 unmuting them right now. There we go. So would
9 the witnesses from the Agency prefer to be sworn
10 in as a panel? Sorry. I think you were unmuted
11 there for a second in the White Oaks Room. Would
12 the Agency witnesses prefer to be sworn in as a
13 panel?

14 MS. ZEIVEL: Yes, please.

15 HEARING OFFICER HORTON: All right.
16 Would the court reporter please swear in the
17 Agency witnesses.

18 WHEREUPON:

19 WILLIAM BUSCHER, LYNN DUNAWAY, AMY ZIMMER, LAUREN

20 MARTIN, CHRIS PRESSNALL, ROBERT MATHIS, DARIN

21 LECRONE, MELINDA SHAW

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

24 HEARING OFFICER HORTON: As a point

1 of clarification, our court reporter would like
2 everyone to identify themselves each time that
3 they are speaking so that he will know who is
4 speaking.

5 MS. ZEIVEL: This is Christine
6 Zeivel. We can't hear the court reporter.

7 HEARING OFFICER HORTON: Okay. As
8 mentioned earlier, the pre-filed testimony is
9 entered into the record as if read. Would the
10 Agency like to have the witnesses pre-filed
11 testimony made a hearing exhibit?

12 MS. ZEIVEL: Yes, please.

13 HEARING OFFICER HORTON: For the
14 record, is there any objection to this motion?
15 Neither hearing nor seeing any, I grant the motion
16 and am marking the Agency's pre-filed testimony as
17 Exhibit 1 and entering it into the record.

18 (Document marked as Hearing
19 Exhibit No. 1 for
20 identification.)

21 HEARING OFFICER HORTON: Does the
22 Agency wish to offer a brief introduction or
23 summary?

24 MS. ZEIVEL: No introduction or

1 summary, but we are available to introduce and
2 identify the Agency witnesses for the benefit of
3 the hearing participants.

4 HEARING OFFICER HORTON: That's
5 great. Could you, in the room, go through and
6 state your names.

7 MS. ZEIVEL: Absolutely. I'll
8 start. My name is Cristine Zeivel. I'm counsel
9 for Illinois EPA.

10 MR. BUSCHER: Bill Buscher, Division
11 of Public Water Supplies Groundwater Section.

12 MR. DUNAWAY: Lynn Dunaway, Division
13 of Public Water Supplies Groundwater Section.

14 MR. LECRONE: Darin Lecrone,
15 Division of Water Pollution Control Permits.

16 MS. MARTIN: Lauren Martin, Division
17 of Public Water Supplies Groundwater Section.

18 MS. SHAW: Melinda Shaw, Groundwater
19 Section.

20 MR. PRESSNALL: Chris Pressnall,
21 Illinois EPA, Environmental Justice Coordinator.

22 MR. MATHIS: Bob Mathis, Bureau of
23 Land Financial Assurance Program.

24 MS. DIERS: Stephanie Diers, legal

1 counsel for Illinois EPA.

2 MS. ZEIVEL: Did you hear all of us?

3 THE COURT REPORTER: I'm not going
4 to be able to hear their testimony all day.

5 HEARING OFFICER HORTON: We're just
6 coordinating the microphone here. Could you
7 reintroduce yourself one more time to see if that
8 is better for our court reporter.

9 MS. ZEIVEL: Sure. Christine
10 Zeivel, Legal --

11 HEARING OFFICER HORTON: Much
12 better.

13 MS. ZEIVEL: -- counsel for Illinois
14 EPA.

15 MR. BUSCHER: Bill Buscher, Division
16 of Public Water Supplies Groundwater Section.

17 MR. DUNAWAY: Lynn Dunaway, Division
18 of Public Water Supplies Groundwater Section.

19 MR. LECRONE: Darin Lecrone,
20 Division of Water Pollution Control Permits.

21 MS. MARTIN: Lauren Martin, Division
22 of Public Water Supplies Groundwater Section.

23 MS. SHAW: Melinda Shaw, Division of
24 Public Water Groundwater Section.

1 MR. PRESSNALL: Chris Pressnall,
2 Environmental Justice Coordinator.

3 MR. MATHIS: Bob Mathis, Bureau of
4 Land Financial Assurance Program.

5 MS. DIERS: Stephanie Diers, legal
6 counsel Illinois EPA.

7 HEARING OFFICER HORTON: Wonderful.
8 Did you have one participant via Webex?

9 MS. ZEIVEL: Correct. Her name
10 comes up under Gerard visually on the grid view,
11 but, Amy, can you unmute yourself and introduce
12 yourself.

13 MS. ZIMMER: Can you hear me?

14 HEARING OFFICER HORTON: Yes.

15 MS. ZIMMER: Okay. Amy Zimmer,
16 Groundwater Section Public Water Supplies.

17 HEARING OFFICER HORTON: Okay.
18 Great. Thank you, everyone.

19 So if the Agency is ready, we'll
20 proceed to questions. And we are starting with
21 Section 845.100. So our first set of questioners
22 is Little Village Environmental Justice,
23 Environmental Law and Policy Center, Prairie
24 Rivers Network and Sierra Club.

1 Ms. Bugel, do you have a
2 preferred order to go in?

3 MS. BUGEL: We do have a preferred
4 order. I believe Jenny Cassel of Earthjustice is
5 going first.

6 MS. CASSEL: Good morning. Can you
7 hear me?

8 HEARING OFFICER HORTON: Yes.

9 MS. CASSEL: Okay. Great. I'm
10 sorry. I missed the answer to the question of in
11 the order. I have questions for two different
12 witnesses within Subpart A.

13 Should I direct them to each
14 individual witness one at a time?

15 HEARING OFFICER HORTON: So that's
16 845.100 Subpart A.

17 MS. CASSEL: No, I'm sorry. I
18 didn't understand if we were doing all the
19 questions within a subpart together or just
20 individual section by section. Only one -- I'm
21 sorry.

22 HEARING OFFICER HORTON: Why don't
23 you start with your questions, Ms. Cassel, and ask
24 all of your questions and even if they appear in

1 different subparts of Part 100, then the different
2 Agency witnesses can respond.

3 MS. CASSEL: Okay. Thank you very
4 much. So my first question, and I apologize for
5 not identifying myself, my name is Jennifer
6 Cassel. I'm an attorney with Earthjustice on
7 behalf of Prairie Rivers Network.

8 My first question is for Melinda
9 Shaw. Ms. Shaw, in your response to our Question
10 4(e) on Page 17 of the pre-filed answers, you
11 testified that CCR -- I quote "CCR surface
12 impoundments not subject to Part 257 are not
13 subject to the requirements of Part --

14 THE COURT REPORTER: I can't hear.

15 HEARING OFFICER HORTON: Ms. Cassel,
16 I think you might be shuffling some papers. I'm
17 sorry, but that's picking up on the microphone.

18 MS. TIPSORD: Or the IEPA room.

19 HEARING OFFICER HORTON: Or perhaps
20 the IEPA room is.

21 MR. MORE: Hearing Officer --

22 HEARING OFFICER HORTON: Yes.

23 MR. MORE: -- would it be more
24 convenient if we enter the responses as exhibits?

1 I envision a lot of questions are going to relate
2 to them. It may be easier just to say Page 17 of
3 Exhibit X.

4 HEARING OFFICER HORTON: Certainly.
5 We will enter the pre-filed answers as Exhibit
6 Hearing 2.

7 (Document marked as Hearing
8 Exhibit No. 2 for
9 identification.)

10 MR. MORE: There's three sets. Can
11 we do each one as separate? This is Josh More for
12 Dynegy. I think that will be more efficient.

13 HEARING OFFICER HORTON: So IEPA's
14 first pre-filed answers will be Exhibit 2, the
15 second Exhibit 3 and the third Exhibit 4.

16 (Document marked as Hearing
17 Exhibit No. 3-4 for
18 identification.)

19 MR. MORE: Thank you.

20 HEARING OFFICER HORTON: Ms. Cassel,
21 you can proceed. Sorry.

22 MS. CASSEL: Thanks very much. So
23 to Ms. Shaw the Agency interprets -- my question
24 is the Agency interprets legacy ponds, that is

1 inactive ash ponds that plan no longer burning
2 coal as of October 2015, to be subject to Part
3 845, is that correct?

4 MS. ZEIVEL: Just for a point of
5 clarification from the Agency, if a certain
6 question is directed at a particular witness that
7 another witness here or Amy would like to respond,
8 we are responding as a panel. So if it is
9 directed to a particular person, I have directed
10 the Agency witnesses that anybody may respond.

11 HEARING OFFICER HORTON: Understood.

12 MS. CASSEL: Yes, sure. So my
13 question is the Agency interprets what are known
14 as legacy ponds, that is inactive ash ponds that
15 plan no longer burning coal as of October 19th,
16 2015, to be subject to Part 845, is that correct?

17 MR. DUNAWAY: I --

18 HEARING OFFICER HORTON: If you are
19 responding, please state your name.

20 MR. DUNAWAY: Sorry. Lynn Dunaway.
21 Yes.

22 MS. CASSEL: Second question. Does
23 the Agency interpret CCR surface impoundments that
24 were closed prior to October 19th, 2015, under an

1 Agency-approved closure plan, but have not
2 completed postclosure care to be subject to 845 as
3 well?

4 MR. DUNAWAY: They are -- those
5 would be considered inactive -- I'm sorry. Lynn
6 Dunaway. Those are inactive closed CCR surface
7 impoundments. They are regulated under 845.170.

8 MS. CASSEL: They are subject then
9 to Part 845 under the provision set forth therein?

10 MR. DUNAWAY: Lynn Dunaway.
11 Correct.

12 MS. CASSEL: Okay. Thank you very
13 much. Those were all the questions that I had for
14 Section 845.100, Hearing Officer.

15 HEARING OFFICER HORTON: Thank you,
16 Ms. Cassel. Next, Ms. Bugel, would be?

17 MS. BUGEL: I believe that is all of
18 our questions for 845.100.

19 HEARING OFFICER HORTON: Okay.

20 MS. BUGEL: So we'll move on.

21 MS. GALE: Yes, I'm going to get a
22 microphone. Okie dokie. Does that work? This is
23 Kristen Gale on behalf of Midwest Generation.

24 HEARING OFFICER HORTON: I can hear

1 you fine.

2 MS. GALE: Great. My first question
3 is actually related to the statement of facts.
4 It's actually based on a question that the
5 environmental groups posed.

6 So in the Agency's answer on
7 Page 26 of Exhibit 1, the Agency identified
8 various CCR surface impoundments that it believed
9 had some sort of liner.

10 Is the Agency aware that the two
11 CCR surface impoundments at Waukegan also have a
12 synthetic liner and have had that liner since the
13 1970's?

14 MR. DUNAWAY: Lynn Dunaway. I am
15 aware that the east pond and the west pond at
16 Waukegan do have a synthetic liner.

17 MS. GALE: Great. Thank you.
18 Moving on to Exhibit 2, the Agency's answers to
19 Midwest Generation's questions. Sorry.
20 Exhibit -- no, 2 -- 3. Exhibit 3.

21 On Page 6 of the answers,
22 Question 4, the Agency states that its authority
23 to identify CCR surface impoundments is its
24 authority to permit water treatment units, what --

1 where is that authority coming from?

2 MR. BUSCHER: This is Bill Buscher.
3 The authority to identify those actually comes
4 from the act at 22.59. We do administer a permit
5 program. So we are aware of such types of
6 impoundments that exist.

7 MS. GALE: Right, and they were
8 permitted as part of the NPDES permit program, is
9 that what you mean?

10 MR. BUSCHER: That is correct.

11 MS. GALE: Question 7 on Page 7.
12 Midwest Generation asked what were an
13 owner/operators options to challenge the Agency's
14 determination and the Agency answered "The
15 owners/operators will need to determine their
16 options," what does the Agency mean by that?

17 MR. BUSCHER: Bill Buscher. You
18 have options relative to addressing that issue of
19 concern. Can you repeat the question?

20 MS. GALE: Sure. So it's really in
21 reference to the Agency's answer which says, "The
22 Agency's answer to Question 7 which asked what
23 were an owners/operators options to challenge the
24 Agency's determination."

1 The Agency responded with "The
2 owners or operators will need to determine their
3 options" and my question is, what does the Agency
4 mean by that?

5 MR. BUSCHER: Bill Buscher. Our
6 understanding is that that entity needs to
7 determine its own legal options.

8 MS. GALE: So what options do you
9 think are available to an entity?

10 MR. BUSCHER: That, once again,
11 would be up to the entity to follow up on.

12 MS. GALE: With whom?

13 MR. BUSCHER: The Agency.

14 MS. GALE: So the entity has to
15 follow up with the Agency with what its options
16 are?

17 MR. BUSCHER: It's our understanding
18 that -- this is Bill Buscher -- that if you choose
19 to go down that avenue, you have to make the
20 determination as to how to go about that yourself.
21 It is not our position to guide you in that
22 endeavor.

23 MS. GALE: Okay. My next question
24 is actually a question in response to CWLP's

1 questions. So on Exhibit 2, Page 133 -- I'll give
2 everyone a minute.

3 The question is related to
4 Question 17 and CWLP asked if a facility could use
5 the same web page for both sets of information
6 from Illinois and from the federal rule and the
7 Agency states that they intended that the CCR
8 website to be dedicated only to the information
9 required by 845.

10 My question is, does the Agency
11 believe there should be two websites?

12 MS. SHAW: Melinda Shaw. Yes, it is
13 the Agency's intent that there be two websites.
14 One we clearly identified that -- the Illinois CCR
15 rule, compliance data and information.

16 MS. GALE: Won't that contribute to
17 confusion to the public to have two sources of
18 information?

19 MS. SHAW: I think if it's clearly
20 identified, it won't be confusing.

21 MS. GALE: I guess -- was there
22 more?

23 HEARING OFFICER HORTON: I think
24 they're conferring.

1 MS. GALE: Okay. I'm sorry. Is
2 there more or were you finished with the answer?

3 MS. SHAW: That was the answer.

4 MS. GALE: Thanks. Why does the
5 Agency -- why can't the website that the entities
6 have already established cover the common
7 requirements and for any requirements that are
8 Illinois specific just have a separate part and
9 have one website for the public to be able to go
10 to for all of the relevant information?

11 MS. SHAW: Our Agency is responsible
12 for looking at the information that pertains to
13 Part 845, not necessarily all of 257 as well.

14 MS. GALE: Just so I understand the
15 reason for the two websites is so the Agency is
16 able to look at what is just for Part 845?

17 MS. SHAW: Well, this is -- this is
18 Melinda Shaw. Sorry. This is to satisfy the part
19 of 845.

20 MS. GALE: Again, this is just a
21 reminder, but the satisfy the part of 845 is for
22 public information. Where I'm going with that is
23 wouldn't it be simpler for the public to have one
24 source of information?

1 MS. SHAW: The Agency is responsible
2 for -- combined with 845.

3 MS. GALE: Okay. Back to my earlier
4 questions about the Agency's answers about the
5 options available to entities who dispute/disagree
6 with the Agency's determination of CCR surface
7 impoundments.

8 Does the Agency have a
9 preference as to which option an entity would
10 pursue?

11 MR. BUSCHER: No. This is Bill
12 Buscher. No.

13 MS. GALE: I have nothing further
14 for this part.

15 HEARING OFFICER HORTON: Thank you,
16 Ms. Gale. Moving on to City of Springfield who I
17 believe is -- okay.

18 MS. WILLIAMS: I'm going to use this
19 as a test to see if you can hear me. This is
20 Deborah Williams appearing on behalf of the City
21 of Springfield. I don't have any questions on
22 845.100. Are we doing all the 100's now?

23 I got a little -- I know the
24 question that was just asked by Midwest Generation

1 I would have put under a much later section. So I
2 just want to make sure that I'm not missing an
3 opportunity that -- I don't know if we're talking
4 about all the 100's or just Section 100.

5 HEARING OFFICER HORTON: Yes, just
6 100.

7 MS. GALE: Sorry.

8 HEARING OFFICER HORTON: Yes, no
9 problem.

10 MS. WILLIAMS: So I have nothing on
11 the purpose and scope. Thank you.

12 HEARING OFFICER HORTON: It's a
13 learning curve here. So just purpose and scope
14 right now. So, Dynegy.

15 MR. MORE: Josh More on behalf of
16 Dynegy. Before we get to our specific questions,
17 I was wondering if I could do a follow up to the
18 questions that Ms. Gale just asked. I thought
19 since it's fresh in the Agency's mind I would
20 start with that if that's all right.

21 HEARING OFFICER HORTON: And if it's
22 on purpose and scope, then that's fine, yes.

23 MR. MORE: It is. Well, it's a
24 follow up to the question about the website.

1 Would you like me to hold that
2 or keep that --

3 HEARING OFFICER HORTON: Let's hold
4 that if that's -- that's in a later section,
5 correct?

6 MR. MORE: Yes.

7 HEARING OFFICER HORTON: Okay.

8 MR. MORE: It's tied to the purpose
9 and scope in the sense that if the purpose is
10 compliance with the CCR rule, that helps determine
11 what obligations arise in connection with your CCR
12 website and I think that's why Ms. Gale was asking
13 it in this context.

14 HEARING OFFICER HORTON: I'll allow
15 it and then let's try and focus on specific
16 sections moving forward.

17 MR. MORE: Yeah, that's fair. Thank
18 you. So, again, Josh More on behalf of Dynegy.

19 First question for the Agency.
20 Is 845 intended to operate in lieu of the CCR rule
21 40 CFR 257?

22 MR. DUNAWAY: Lynn Dunaway. That is
23 the intent once we have approval from U.S. EPA.
24 However, that has to happen first before it can be

1 in lieu of Part 257.

2 MR. MORE: Thank you. Once you have
3 approval from U.S. EPA, is compliance with Part
4 845 deemed compliance with the CCR rule?

5 MR. DUNAWAY: Lynn Dunaway. That,
6 we don't know. I mean, that's a federal program.
7 So we're not sure exactly how that works since we
8 don't have approval.

9 MR. MORE: Okay. But the
10 expectation would be once you have approval, the
11 owner/operator will be subject to -- the objective
12 is to be subject to 845 and not worry about any
13 conflicting or differing requirements under the
14 CCR rule. They will be focusing on complying with
15 845, much like what you see in the air program
16 with the SIP-approved requirement.

17 MR. DUNAWAY: Lynn Dunaway. I'm not
18 familiar with the air program, but it is our goal
19 that, yes, you would just be subject to 845.

20 MR. MORE: Okay. So, at that time,
21 once we have approval, would it make sense to only
22 have a single website demonstrating all the
23 requirements under 845 because there's differing
24 requirements on what is on a website under the CCR

1 rule. At that time, would an owner/operator be
2 able to go to a single website?

3 MR. DUNAWAY: Lynn Dunaway. That
4 would be our goal, but, as I said, I just don't
5 know how the program will work with U.S. EPA.

6 MR. MORE: Thank you. I'm now going
7 to turn it over to Mr. Bonebrake to ask our
8 specific questions concerning applicability.

9 MR. BONEBRAKE: Good morning. Steve
10 Bonebrake for a number of Dynegy affiliates. I
11 appreciate the opportunity to ask some questions
12 of IEPA this morning. I have a number of
13 questions pertaining to Section 845.100, but some
14 of the provisions in that section are also defined
15 terms within Section 845.120. So I thought it'd
16 be most efficient in asking my questions about
17 845.100 I also picked up some of the remaining --

18 MR. CARTER: One second.

19 HEARING OFFICER HORTON: We got it.
20 Okay.

21 MR. BONEBRAKE: Pertaining to the
22 definitions of the terms that are referenced in
23 845.100 if that's okay with the Hearing Officer.

24 HEARING OFFICER HORTON: I think

1 that's okay.

2 MR. BONEBRAKE: Thank you. And my
3 questions based upon my review of the testimony
4 was not clear with respect to whom at IEPA might
5 be most equipped to respond. So I'll address them
6 to the panel of IEPA folks and they can then
7 respond as appropriate.

8 With respect to Section 845.100,
9 which appears to be essentially an applicability
10 provision, is this section intended to identify
11 the categories of CCR units that are covered by
12 Part 845 as proposed and also expressly identify
13 some units and uses that are not covered by
14 proposed 845? One moment. Okay. Go ahead.

15 MR. DUNAWAY: Lynn Dunaway. If I --
16 could you repeat your question again, please?

17 MR. BONEBRAKE: Sure. The question
18 was with respect to Section 845.100, is that
19 section intended to identify the CCR units that
20 will be subject to proposed Part 845 as well as
21 expressly identify some units and uses that would
22 not be subject to requirements under proposed Part
23 845?

24 MR. DUNAWAY: Yes.

1 MR. BONEBRAKE: In the units -- CCR
2 units that are subject to the requirements of
3 proposed Part 845, are they identified in
4 Subsection's B and C of 845.100?

5 MR. DUNAWAY: Lynn Dunaway. Those
6 CCR surface impoundments are identified in 100(b),
7 (C) and (D).

8 MR. BONEBRAKE: I'm sorry. Did you
9 say (D) as well?

10 MR. DUNAWAY: Yes.

11 MR. BONEBRAKE: Okay. Thank you.
12 Are there any CCR units other than those
13 identified in Subsection's B, C and D of 845.100
14 that would be subject to any requirement under
15 Part 845 as proposed?

16 MR. DUNAWAY: Lynn Dunaway. No.

17 MR. BONEBRAKE: Let's move first to
18 Subsection B. Subsection B refers to new and
19 existing CCR surface impoundments. Subsection C
20 refers to inactive CCR surface impoundments and
21 Subsection D refers to inactive CCR surface
22 impoundments.

23 So all three subsections refer
24 to CCR surface impoundments. So is it correct

1 that a CCR unit must first be a CCR surface
2 impoundment to be considered subject to any
3 requirement under proposed Part 845?

4 MR. DUNAWAY: Lynn Dunaway. Yes.

5 MR. BONEBRAKE: And CCR surface
6 impoundment is defined in Section 845.120, is that
7 correct?

8 MR. DUNAWAY: Lynn Dunaway. Yes.

9 MR. BONEBRAKE: And if we look at
10 that definition in 845.120, there is a reference
11 to 415 ILCS 5- -- excuse me. 5/3.143.

12 What is that statutory reference
13 to?

14 MR. DUNAWAY: Lynn Dunaway. That is
15 Section 3.143 of the Illinois Environmental
16 Protection Act.

17 MR. BONEBRAKE: And was that section
18 added by a recently adopted statute in Illinois
19 that is the driver for this rulemaking?

20 MR. DUNAWAY: Lynn Dunaway. Yes.

21 MR. BONEBRAKE: Okay. I'll refer to
22 that recent Illinois statute as the Illinois CCR
23 Act today, is that okay with the IEPA panel?

24 MR. DUNAWAY: Lynn Dunaway. Yes.

1 MR. BONEBRAKE: So is it correct
2 that the Illinois CCR Act in proposed Part 845
3 defines CCR surface impoundment in identical ways?

4 MR. DUNAWAY: Lynn Dunaway. Yes.

5 MR. BONEBRAKE: And you are familiar
6 with the federal CCR rule Part 257, which is the
7 driver for this rulemaking and is it correct that
8 that Part 257 also defines the term CCR surface
9 impoundment?

10 MR. DUNAWAY: Lynn Dunaway. Yes.

11 MR. BONEBRAKE: And does Part 257
12 define surface impoundment in a manner identical
13 to the definition included in proposed Part 845,
14 Section 120?

15 MR. DUNAWAY: Lynn Dunaway. Yes.

16 MR. BONEBRAKE: So is it IEPA's
17 intent that its proposed Part 845 rules, like the
18 Illinois CCR Act, will define CCR surface
19 impoundments all in the same way?

20 MR. DUNAWAY: Lynn Dunaway. All CCR
21 surface impoundments will be defined the same way.

22 MR. BONEBRAKE: And is it also
23 correct then that IEPA's view is that the federal
24 rules in Part 257 and the proposed state rules in

1 Part 845 will apply to the same CCR surface
2 impoundments?

3 MR. DUNAWAY: Lynn Dunaway. Section
4 22.59 of the act identifies two types of CCR
5 surface impoundments and those are existing and
6 those are new ones. Existing ones under 22.59 of
7 the act is any CCR surface impoundment created
8 after the executive date of the act and new ones
9 are any created after the --

10 THE COURT REPORTER: Created what?

11 HEARING OFFICER HORTON: Would you
12 repeat that, just the last part. Create what?

13 MR. DUNAWAY: New -- new CCR surface
14 impoundments or any CCR surface impoundment
15 created after the executive date of 22.59 of the
16 act.

17 MR. BONEBRAKE: I think my question
18 was a little different in that my question was is
19 Part 845 intended to apply to the same ponds that
20 are subject to requirements under Part 257 given
21 that they both define CCR surface impoundments in
22 an identical fashion?

23 MR. DUNAWAY: Lynn Dunaway. In the
24 Agency's opinion, they will be the same ones.

1 MR. BONEBRAKE: And is it also
2 correct that it is IEPA's view that the CCR
3 surface impoundments that will be part of 845
4 requirements are the same CCR surface impoundments
5 that would be subject to a fee under the CCR
6 surface -- excuse me -- CCR Act?

7 MR. DUNAWAY: Lynn Dunaway. Could
8 you repeat that, please?

9 MR. BONEBRAKE: Sure. Is it the
10 position of IEPA that the CCR surface impoundments
11 that are regulated under Part 845 are the same CCR
12 surface impoundments that are subject to fees
13 under the Illinois CCR Act?

14 MR. DUNAWAY: Lynn Dunaway. These
15 are not part of 845. However, the act does
16 require that the CCR surface impoundments --

17 HEARING OFFICER HORTON: One second.

18 MR. DUNAWAY: -- under this rule do
19 have to pay a fee.

20 HEARING OFFICER HORTON: Could you
21 repeat? Sorry. There was some interference.

22 MR. BONEBRAKE: Thank you.

23 MR. DUNAWAY: Fees are not part of
24 this rule. However, all CCR surface impoundments

1 require a paid fee.

2 MR. BONEBRAKE: Is it IEPA's intent
3 then if a CCR surface impoundment is regulated
4 under Part 845, the owner/operator must pay a fee
5 under the Illinois CCR Act, but if the CCR pond is
6 not regulated under Part 845, no fee -- no fee is
7 due?

8 MR. DUNAWAY: Lynn Dunaway. No.

9 MR. BONEBRAKE: I'm sorry. Did you
10 say no?

11 MR. DUNAWAY: Correct. I said no.

12 MR. BONEBRAKE: So could you explain
13 your negative answer to that question why you
14 answered that question no?

15 MS. ZEIVEL: This is Christine
16 Zeivel. The Agency is going to object to this
17 line of questioning. The fees are not subject of
18 845. There is ongoing outside pending litigation
19 regarding the subject of fees. We will provide --
20 the Agency witnesses will provide responses
21 regarding the interpretation of the definitions of
22 the rule.

23 However, the application to the
24 assessment of fees is a decision that is made

1 outside of Part 845.

2 MR. BONEBRAKE: A follow-up question
3 then. Is the decision regarding fees then by IEPA
4 under the Illinois CCR Act determinative of
5 whether the CCR surface impoundment is subject to
6 Part 845 requirements?

7 MR. DUNAWAY: Lynn Dunaway. Yes.

8 MR. BONEBRAKE: So if the Agency is
9 taking the position that the fee decision under
10 the act is a determination regarding applicability
11 under Part 845, I think the objection regarding
12 the scope of questioning is inappropriate and
13 should be overruled because we're asking
14 questions --

15 MS. ZEIVEL: The interpretation --

16 MR. BONEBRAKE: -- of 845.

17 MS. ZEIVEL: The Agency's objection
18 was not about nor did we -- nor did the response
19 Mr. Dunaway give speak to the applicability of the
20 Agency's decision to 845. It's an interpretation
21 of whether the Agency defined the statutory
22 directive under the same way that 845 will be
23 applied. The answer was a directive of yes.

24 That's an Agency interpretation

1 of a statutory mandate that is happening outside
2 of the 845 context.

3 The question was directed as to
4 whether the Agency would similarly apply 845 to
5 those state entities and the answer was yes, but
6 the Agency would object to the characterization of
7 the fee determination determining applicability of
8 845. One does not beget the other.

9 HEARING OFFICER HORTON: I'll
10 sustain the objection.

11 MR. BONEBRAKE: Just as a matter of
12 clarity, because that was a speaking objection, is
13 it IEPA's position that the decision on fees is
14 not determinative of applicability under Part 845
15 because I understand it's the basis of the
16 objection, but I'm trying to understand the IEPA's
17 position.

18 MS. ZEIVEL: Sorry. Was there a
19 question?

20 MR. BONEBRAKE: Yes, the question
21 was part -- excuse me. The Illinois CCR Act fee
22 decision, is it then -- based upon the objection
23 that I heard, is it IEPA's position that that
24 decision does not determine IEPA's view of whether

1 a unit is or is not subject to Part 845?

2 MS. ZEIVEL: I believe the objection
3 was sustained regarding -- I'm not exactly sure
4 how you are -- you are creating a link between the
5 two that the Agency objects to. We can make a
6 determination of appropriateness regarding fees
7 and the applicability of the rule. Just because
8 they may be the same determination does not mean
9 one speaks for the other and the connection that
10 is being made is not one that the Agency agrees to
11 or will continue down the line of questioning,
12 hence the objection which has been sustained.

13 MR. BONEBRAKE: Thank you. You have
14 answered my question. Because IEPA in Part 845,
15 specifically Section 120 in its definition of CCR
16 surface impoundment is copying the federal Part
17 257 definition of CCR surface impoundments, is it
18 IEPA's view that it is also incorporating U.S.
19 EPA's guidance and interpretations about the scope
20 of CCR surface impoundment under Part 257 as
21 applied under Part 845?

22 MR. DUNAWAY: Lynn Dunaway. Our
23 requirement is that we be as protective and
24 comprehensive as Part 257, but we can go beyond

1 Part 257.

2 MR. BONEBRAKE: So you would follow
3 the IEPA guidance to the extent necessary so that
4 Part 845 is at least as stringent as Part 257?

5 MS. ZEIVEL: Can we ask for
6 clarification? Christine Zeivel. Clarification
7 on the question. You stated IEPA guidance.

8 MR. BONEBRAKE: I'm sorry. I meant
9 U.S. EPA guidance.

10 MS. ZEIVEL: Can you please restate
11 the question with the --

12 MR. BONEBRAKE: Sure. Will IEPA --
13 does IEPA plan to follow U.S. EPA guidance
14 pertaining to the definition of CCR surface
15 impoundment for Part 257 purposes in implementing
16 Part 845 to the extent the U.S. EPA guidance sets
17 the minimum standards for CCR surface
18 impoundments?

19 MR. DUNAWAY: Lynn Dunaway. As I
20 stated before, 845 must be as protective and
21 comprehensive as 257, but we are not limited by
22 Part 257. We have the mandate of 22.59 of the
23 act.

24 MR. BONEBRAKE: So in those

1 instances where IEPA does not plan for Part 845 to
2 go beyond Part 257, will it follow U.S. EPA's
3 guidance regarding the meaning of the term CCR
4 surface impoundment?

5 MR. BUSCHER: Could you repeat that
6 question? This is Bill Buscher.

7 MR. BONEBRAKE: Sure. In those
8 instances where IEPA does not intend Part 845 to
9 go beyond federal Part 257, will IEPA follow U.S.
10 EPA's guidance regarding Part 257?

11 MR. BUSCHER: We will. This is Bill
12 Buscher.

13 HEARING OFFICER HORTON: One second.
14 Can everyone mute themselves? Okay. Please
15 continue.

16 MR. BUSCHER: I believe as was
17 stated we are -- 845 will be applied according to
18 the 845 regulations that we're working on and we
19 will make our own decisions as to how that program
20 works and it needs to be at the very least as
21 protective as U.S. EPA's regulation and we can go
22 beyond that and we plan on making our decisions
23 relative to these regulations based on the
24 information in front of us at the time.

1 MR. BONEBRAKE: I'd like to turn to
2 the definition of CCR surface impoundment in
3 845.120 and this relates to the applicability
4 provision which refers to the term CCR surface
5 impoundment in numerous places.

6 To be a CCR surface impoundment
7 under proposed Part 845 and the Illinois CCR Act,
8 which has the same definition of CCR surface
9 impoundment, the unit must first be a depression,
10 excavation or diked area; second, it must be
11 designed to hold an accumulation of both CCR and
12 liquids; and, third, it must treat, store or
13 dispose of CCR, is that correct?

14 MR. BUSCHER: Bill Buscher. That is
15 correct.

16 MR. BONEBRAKE: To be covered under
17 federal rule Part 257, a unit had to be designed
18 to hold and was, in fact, holding CCR and liquids
19 as of October 2015, is that correct? Unless -- I
20 should qualify that. Unless it was considered to
21 be a new unit under Part 257.

22 MR. DUNAWAY: Lynn Dunaway. Could
23 you repeat that question now that I have the
24 definitions in front of me?

1 MR. BONEBRAKE: Okay. To be an
2 existing CCR surface impoundment or an inactive
3 CCR surface impoundment under Part 257, the unit
4 had to be designed to hold and, in fact, be
5 holding CCR and liquids as of October 2015,
6 correct?

7 MR. DUNAWAY: This is Lynn Dunaway.
8 That is what Part 257 says.

9 MR. BONEBRAKE: Okay. With respect
10 to Part 845, what is the timeframe for the
11 comparable decision as to when a CCR unit needs to
12 be designed to contain liquids and CCR?

13 MR. DUNAWAY: This is Lynn Dunaway.
14 I didn't hear part of -- the first part of your
15 question. Could you repeat it, please?

16 MR. BONEBRAKE: Sure. I just -- I
17 just -- we just had a question and answer
18 regarding the timeframe under Part 257 for the
19 reference to designing to hold and, in fact,
20 containing CCR and liquids and then I moved to a
21 question with respect to Part 845 and its
22 definition of CCR and surface impoundments and my
23 question then is for purposes of Part 845.

24 At what time must a CCR surface

1 impoundment -- excuse me -- must a CCR unit be
2 designed to contain liquids and CCR to be
3 considered a CCR surface impoundment under Part
4 845?

5 MR. DUNAWAY: This is Lynn Dunaway.
6 When it is designed and begins operation.

7 MR. BONEBRAKE: Can that be prior to
8 2015?

9 MR. DUNAWAY: Lynn Dunaway. Yes.

10 MR. BONEBRAKE: Must a unit still be
11 designed to hold liquids and CCR as of October
12 2015 to be considered a CCR surface impoundment
13 under Part 845?

14 MR. DUNAWAY: Lynn Dunaway. No.

15 MR. BONEBRAKE: So in that respect,
16 Part 845 has deviated from the Part 257 paradigm,
17 is that correct?

18 MR. DUNAWAY: Lynn Dunaway. Yes.

19 MR. BONEBRAKE: What is the basis
20 for that different treatment under Part 845?

21 MR. DUNAWAY: Lynn Dunaway. The
22 basis for that treatment is under 22.59 of the act
23 where it defines only existing surface
24 impoundments and new CCR surface impoundments

1 based on the date -- the second date of that act.

2 MR. BONEBRAKE: IEPA is treating all
3 CCR units prior to that date that otherwise
4 qualify as CCR surface impoundments as subject to
5 Part 845?

6 MR. DUNAWAY: Yes.

7 MR. BONEBRAKE: Now, Part 845.100(b)
8 refers to new and existing CCR surface
9 impoundments, did IEPA in Part 845 adopt the U.S.
10 EPA definitions of those terms in Part 257?

11 MR. DUNAWAY: Lynn Dunaway.
12 Illinois EPA did not adopt the same definitions as
13 Part 257 for existing or for inactive CCR surface
14 impoundments.

15 MR. BONEBRAKE: Can you identify for
16 us what changes IEPA made in proposed Part 845 to
17 the comparable definitions for existing and
18 inactive in Part 257?

19 MR. DUNAWAY: Lynn Dunaway. It
20 looks like existing CCR surface impoundment we
21 have used the same definition as Part 257 in Part
22 845 and it appears we have eliminated the
23 requirement that there still be liquids on CCR,
24 and we included active and inactive facilities.

1 MR. BONEBRAKE: What was the
2 rationale for deleting the reference to liquids in
3 the definition of inactive CCR surface
4 impoundments in proposed Part 845?

5 MR. DUNAWAY: Lynn Dunaway. CCR
6 surface impoundments have to be dewatered for
7 closure. You could theoretically say that once
8 you have dewatered that, it no longer contained
9 liquids, therefore it was no longer a CCR surface
10 impoundment and we found that to be not
11 reasonable.

12 MR. BONEBRAKE: Why did you find it
13 to be not reasonable?

14 MR. DUNAWAY: Lynn Dunaway. Because
15 we -- if you're in the process of closing a CCR
16 surface impoundment, you can't stop once you just
17 drain the water out of it.

18 MR. BONEBRAKE: Well, the definition
19 of CCR surface impoundment requires that the unit
20 be designed to hold an accumulation of CCR and
21 liquids, correct?

22 MR. DUNAWAY: Lynn Dunaway.
23 Designed that way, yes.

24 MR. BONEBRAKE: So aren't you

1 creating a conflict in your definition as revised
2 from Part 257 of inactive CCR surface impoundment
3 and your definition of CCR surface impoundment?

4 MR. DUNAWAY: Lynn Dunaway. No, we
5 don't believe so because the dewatering is a
6 process in order to be able to close a CCR surface
7 impoundment.

8 MR. BONEBRAKE: In the definition of
9 inactive CCR surface impoundment in Part 845, did
10 IEPA also change U.S. EPA's reference to receive
11 CCR -- from CCR to -- Strike that. Start over
12 again. That was a bad question.

13 In IEPA's Part 845 definition of
14 inactive CCR surface impoundment, did IEPA change
15 language in Part 257's definition by including the
16 word placed in lieu of the phrase received?

17 MR. DUNAWAY: Lynn Dunaway. Yes.

18 MR. BONEBRAKE: What is the meaning
19 of the word placed as used in the definition of
20 CCR surface impoundment -- inactive CCR surface
21 impoundment.

22 MR. DUNAWAY: Lynn Dunaway. We felt
23 the word placed was more -- more clear than
24 received.

1 MR. BONEBRAKE: Can you give us some
2 indication of the intended meaning of the word
3 placed because I don't see a definition in Part
4 845?

5 MR. DUNAWAY: Lynn Dunaway. The
6 common understanding of the word placed is to put
7 it in the CCR surface impoundment.

8 MR. BONEBRAKE: Well, for instance,
9 is it -- is it IEPA's view that the term means an
10 intentional act of putting CCR into a pond?

11 MR. DUNAWAY: Lynn Dunaway. No, it
12 doesn't have to be intentionally placed there.

13 MR. BONEBRAKE: So under what other
14 circumstances would CCR in a pond be considered
15 placed?

16 MR. DUNAWAY: Lynn Dunaway. It may
17 have been inadvertent placement. They put it in
18 the wrong place, someone at the facility. It
19 could be a surface impoundment that was designed
20 to hold CCR and liquids and while it may or may
21 not have been intentionally placed there, it may
22 have eroded from other areas and entered that
23 pond. Those are some examples.

24 MS. ZEIVEL: This is Christine

1 Zeivel. We're getting into the specific words and
2 definitions of words within a definition in a
3 completely other section.

4 So I'm wondering how long and
5 how deep we will continue into this line of
6 questioning considering we're still on Section
7 845.100?

8 MR. BONEBRAKE: With respect to that
9 particular term, I'm done, but obviously there are
10 references to terms in 845.100 that are picked up
11 in 120. So I'm trying for efficiency sake to
12 combine them where I can so we have an
13 understanding of applicability, which turns on how
14 terms -- how terms are defined.

15 HEARING OFFICER HORTON: I would ask
16 you to refrain from proceeding with questions on
17 specific terms as they are in Section 120 and
18 focusing only on broader questions for 100.

19 MR. BONEBRAKE: Then I'll reserve
20 the right to come back for some additional
21 questions on the definitions.

22 HEARING OFFICER HORTON: Certainly.

23 MR. BONEBRAKE: Did IEPA perform any
24 risk assessment or other study to decide which CCR

1 unit should or should not be covered under Part
2 845's applicability provisions?

3 MR. BUSCHER: This is Bill Buscher.
4 No.

5 MR. BONEBRAKE: Did U.S. EPA conduct
6 a risk assessment in connection with its federal
7 CCR rule in Part 257?

8 MR. BUSCHER: I believe they have.

9 MR. BONEBRAKE: Did U.S. EPA use its
10 risk assessment to determine risk to human health
11 and environment from CCU -- CCR units?

12 MR. BUSCHER: I believe that was
13 their intention.

14 MR. BONEBRAKE: Did U.S. EPA rely on
15 its risk assessment to help identify the CCR units
16 that should be regulated under Part 257?

17 MR. BUSCHER: I think you'd have to
18 ask EPA that.

19 MR. BONEBRAKE: Do you recall
20 related references in the preamble to the Part 257
21 rules?

22 MR. BUSCHER: Generally, yes. Bill
23 Buscher, by the way.

24 MR. BONEBRAKE: And is IEPA relying

1 upon the U.S. EPA risk assessment to support its
2 proposed Part 845?

3 MR. BUSCHER: Our intention is to
4 have a program that meets or exceeds the
5 requirements of 257 -- CCR 257.

6 THE COURT REPORTER: CCR what?

7 HEARING OFFICER HORTON: CCR 257, is
8 that what you stated? Just for the court
9 reporter. He didn't hear.

10 MR. BUSCHER: Yes, that's the
11 federal 257 program on ash -- on coal combustion
12 residuals.

13 HEARING OFFICER HORTON: Thank you.

14 MR. BONEBRAKE: Is it -- is it
15 correct then that Illinois EPA has no risk
16 assessment of its own to support any proposed Part
17 845 requirement that differs from or goes beyond
18 the federal CCR rules?

19 MR. BUSCHER: We have no risk
20 assessment of our own.

21 MR. BONEBRAKE: Did U.S. EPA rely
22 upon its risk assessment to make a distinction
23 between units that contain de minimis amounts of
24 CCR and those that contain significant amounts of

1 CCR and, therefore, warranted regulation under
2 Part 257?

3 MR. BUSCHER: I'm not familiar. I
4 did not review that risk assessment. So I can't
5 really answer the question. Bill Buscher, by the
6 way.

7 MR. BONEBRAKE: I'd like to refer to
8 Exhibit 3 and this would be Dynegy's Question 4 at
9 Page 38 of Exhibit 3. I'll give you a moment to
10 get there.

11 MR. BUSCHER: You said 4?

12 MR. BONEBRAKE: Yes, Question 4. So
13 has IEPA had an opportunity to look at Question 4?

14 MR. BUSCHER: Yes.

15 MR. BONEBRAKE: And you see there a
16 quote from an 80 Federal Register at 21357.

17 In responding to this question,
18 did IEPA confirm the accuracy of that quote?

19 MR. BUSCHER: Did we confirm the
20 accuracy of the quote?

21 MR. BONEBRAKE: Yes, in Question 4
22 or otherwise review it. I'm trying to follow up
23 on my earlier question whether U.S. EPA addressed
24 the risk assessment in its determination of which

1 CCR surface impoundment should be covered under
2 its rule.

3 MR. BUSCHER: I don't think that
4 we -- we review -- this is Bill Buscher. What is
5 your question?

6 MR. BONEBRAKE: So my question is,
7 first of all, does this reflect -- refresh the
8 recollection of IEPA that U.S. EPA relied upon a
9 risk assessment to identify units that were --
10 that warranted regulation under Part 257?

11 MR. BUSCHER: We're aware that they
12 took this course of action, yes.

13 MR. BONEBRAKE: And U.S. EPA found,
14 did it not, that the units that warranted
15 regulation were those that contain a large amount
16 of CCR managed with water under a hydraulic head
17 that promotes the rapid leaching of contaminants?

18 MR. BUSCHER: I think -- I believe
19 that's a qualification they made. My
20 understanding of 257 is they did not only regulate
21 that type of impoundment, they regulated all of
22 the CCR impoundments.

23 MR. BONEBRAKE: What is the basis
24 for that view, Mr. Buscher?

1 MR. BUSCHER: The basis for that
2 view is that they don't have a size limitation on
3 what 257 applies to. They --

4 MR. BONEBRAKE: But U.S. EPA has a
5 require -- go ahead. I didn't mean to cut you
6 off, Mr. Buscher.

7 MR. BUSCHER: Go ahead.

8 MR. BONEBRAKE: I was going to ask a
9 follow-up question.

10 But U.S. EPA does have a
11 requirement that a CCR surface impoundment is not
12 regulated unless it contains liquids as of October
13 2015, correct?

14 MR. BUSCHER: I believe that's U.S.
15 EPA's definition.

16 MR. BONEBRAKE: So is it IEPA's
17 position that Part 257 regulates CCR units that
18 have de minimis quantities of CCR assuming the
19 unit otherwise meets the definition of CCR surface
20 impoundment?

21 MR. DUNAWAY: Well, in the -- this
22 is Bill Buscher.

23 In the process of their
24 promulgation of 257, U.S. EPA did not define de

1 minimis. They left it vague.

2 MR. BONEBRAKE: Is it correct that
3 U.S. EPA addressed the concept of de minimis CCR
4 units in its preamble for its final CCR rule?

5 MR. BUSCHER: They may have.

6 MR. BONEBRAKE: At this point, I'd
7 like to refer to an exhibit that was attached to
8 the environmental groups prehearing exhibit
9 filing. I believe it's Exhibit 5, which is the
10 final April 17, 2015, rule with preamble. I'll
11 give everybody a moment to make sure they have a
12 copy of that exhibit.

13 Does IEPA have a copy of that
14 Exhibit No. 5, which was one of the exhibits in
15 the environmental groups prehearing exhibit
16 filing?

17 (Document marked as Hearing
18 Exhibit No. 5 for
19 identification.)

20 HEARING OFFICER HORTON: So it's
21 Exhibit 5 within the --

22 MR. BONEBRAKE: Within the filing,
23 correct.

24 MR. MORE: And we would have it --

1 MR. BONEBRAKE: One second.

2 MR. BUSCHER: Can you describe it,
3 please?

4 MR. BONEBRAKE: Yes, it's the 80
5 Federal Register. So it's the final rule -- final
6 federal CCR rule April 17, 2015, and it's found at
7 80 Fed Reg and the particular page that I'd like
8 to talk about is 21357, which in the PDF that was
9 filed is Page 187.

10 MR. BUSCHER: 21357.

11 HEARING OFFICER HORTON: So if
12 you've printed it out, it's towards the back is
13 the Federal Register exhibits and you said 21357?

14 MR. BONEBRAKE: That's correct.
15 Page 21357.

16 MR. BUSCHER: Yes, sir.

17 MR. BONEBRAKE: And before we talk
18 about this particular page, I'd like to move this
19 exhibit entered into the record. I think we'd be
20 at Exhibit --

21 HEARING OFFICER HORTON: Yes, we're
22 at 5.

23 MR. BONEBRAKE: Five.

24 HEARING OFFICER HORTON: So moved.

1 MR. BONEBRAKE: I'll give IEPA just
2 a brief opportunity to take a look at this page.
3 I'm going to ask a couple of questions pertaining
4 to whether U.S. EPA, in fact, revised in
5 connection with this discussion its definition of
6 CCR surface impoundment and whether it addressed
7 the concept of de minimis CCR ponds.

8 MR. BUSCHER: It's been reviewed.

9 MR. BONEBRAKE: All right. And if
10 you look at the middle column on Page 21357 at the
11 top in the paragraph that runs over from the prior
12 column on the last sentence, it says, "However,
13 EPA agrees with commentors that units containing
14 only truly, quote, unquote, de minimis levels of
15 CCR are unlikely to present the significant risk
16 that this rule is intended to address," do you see
17 that, Mr. Buscher?

18 MR. BUSCHER: I do. Yes, I do.

19 MR. BONEBRAKE: Is it also correct
20 looking at the left column at the top you'll see a
21 reference to the fact that EPA initially proposed
22 a CCR rule that did not contain a reference to
23 treat, store or dispose of CCR, do you see that?

24 MR. BUSCHER: It's in the first

1 column?

2 MR. BONEBRAKE: Yes. You'll see the
3 definition in the -- "EPA proposed to define a CCR
4 surface impoundment to mean a facility or part of
5 a facility which is a natural topographic
6 depression, manmade excavation or dike area formed
7 primarily of earth and materials" and it goes on
8 from there.

9 MR. BUSCHER: Yes, sir.

10 MR. BONEBRAKE: There is no -- there
11 is no reference in that proposed -- earlier
12 proposed definition to treat, store or dispose of
13 CCR, is there, Mr. Buscher?

14 MR. BUSCHER: That would be -- that
15 would appear to be correct.

16 MR. BONEBRAKE: But, in fact, when
17 the final CCR -- Strike that.

18 In fact, when the final federal
19 Part 257 rule was adopted it included treat, store
20 or dispose of CCR as a required element of a CCR
21 surface impoundment, is that correct.

22 MR. BUSCHER: I believe it is.

23 MR. BONEBRAKE: And that was -- that
24 addition was added, at least in part, to address

1 U.S. EPA's decision to exclude de minimis CCR
2 ponds, isn't that correct?

3 MR. BUSCHER: I can't speak to what
4 U.S. EPA's intentions were. However, if you look
5 at their applicability in 257, U.S. EPA defines
6 a -- a CCR surface impoundment and then they note
7 that if it's not a CCR surface impoundment, it's
8 an open dump. So now that's, I think, my most
9 useful information in this process.

10 MR. BONEBRAKE: What particular page
11 or provision are you referring to, Mr. Buscher?

12 MR. BUSCHER: That would be in the
13 applicability of 257.

14 MR. BONEBRAKE: Okay. Is there a
15 subpart reference you have in mind?

16 MR. BUSCHER: I think in scope and
17 purpose Part 257.50.

18 MR. BONEBRAKE: Okay. Subpart?

19 MR. BUSCHER: I'm going to have to
20 find it. Just a second.

21 257 -- 257.1 Scope and Purpose.
22 It lays out facilities that fail to satisfy
23 certain criteria are considered open dumps which
24 were prohibited under Section 5005 of the act and

1 No. 2 of 257.1 further identifies those open
2 dumps.

3 MR. BONEBRAKE: And you're relying
4 upon those references then to -- for your position
5 that U.S. EPA did not exclude from its definition
6 of CCR surface impoundments ponds that contain
7 only de minimis amounts of CCR?

8 MR. BUSCHER: As I recall, that de
9 minimis discussion was in the preamble.

10 MR. BONEBRAKE: That's correct. You
11 were looking at Page 21537.

12 MR. BUSCHER: I prefer -- I prefer
13 to utilize the actual regulation because I think
14 that's our charge.

15 MR. BONEBRAKE: And, in fact, if 257
16 is intended to exclude ponds with de minimis
17 amounts of CCR from the definition of CCR surface
18 impoundments, then would IEPA agree that Part 845
19 as well excludes such ponds from its definition of
20 CCR surface impoundments?

21 MR. BUSCHER: I don't believe that's
22 our intent, no.

23 MR. BONEBRAKE: So IEPA's intent
24 would be to differ from U.S. EPA's view that de

1 minimis CCR ponds should be excluded, is that
2 correct?

3 MR. BUSCHER: You know, we have --
4 we have very complex systems that we work with and
5 I don't think that you can make an
6 across-the-board designation of what de minimis is
7 and that I think this will be determined on a
8 case-by-case basis and I prefer to utilize
9 regulation as opposed to utilizing the preamble.
10 I'm pretty sure you're familiar with how U.S. EPA
11 257 has changed over time. My preference is to
12 utilize the regulation.

13 MR. BONEBRAKE: Does IEPA have any
14 precedent for adopting a U.S. EPA definition, but
15 at the same time rejecting U.S. EPA's definition
16 of what that really means?

17 MR. BUSCHER: I think our charge
18 here is to provide 845, which is a regulation that
19 closes out impoundments, and to do it in an
20 environmentally sound manner.

21 MR. BONEBRAKE: Given your
22 case-by-case decision-making reference, I need to
23 ask some follow-up questions then pertaining to
24 that decision-making process.

1 In IEPA's view, is any CCR in a
2 pond enough CCR to make that pond a CCR surface
3 impoundment subject to regulation under 845?

4 MR. BUSCHER: I think that would
5 have to be made on a case-by-case basis.

6 MR. BONEBRAKE: Is there any
7 limiting principle that IEPA can offer us as to
8 whether there are some amounts of CCR that simply
9 won't be sufficient?

10 MR. BUSCHER: I think that would
11 need to be determined on a case-by-case basis
12 using our best judgment.

13 MR. BONEBRAKE: Just to clarify then
14 for these de minimis ponds that can have very
15 small concentrations of CCR, IEPA has no risk
16 assessment to support its view that any such ponds
17 should be regulated, is that correct?

18 MR. BUSCHER: Well, I believe it's
19 already been stated that we don't have and we have
20 not completed the risk assessment on this subject
21 matter.

22 MR. BONEBRAKE: So the answer to
23 that question would be IEPA has no assessment that
24 supports its view that ponds containing de minimis

1 amounts of CCR should be subject to regulation
2 under Part 845?

3 MS. ZEIVEL: Objection. The witness
4 already provided his answer. It's been asked and
5 answered.

6 HEARING OFFICER HORTON: Sustained.

7 MR. BONEBRAKE: I'd like to refer to
8 Exhibit 2 and if we go to the back of that exhibit
9 and these are IEPA's first response to questions.

10 Specifically, looking at a table
11 at the back that has -- excuse me -- 74 rows. It
12 appears to identify a number of different ponds
13 and I will give IEPA a chance to look at that
14 table. It's at Page's 181 and 182 of that
15 exhibit.

16 MS. ZEIVEL: We have the table if
17 you'd like to proceed with your question.

18 MR. BONEBRAKE: Can IEPA tell us
19 what information is contained on this table?

20 MR. BUSCHER: These are -- this
21 information is responsive to the Board's
22 questions. I don't recall the number that it was.
23 The first few, Exhibit 1 through 10, or so.
24 Something like that.

1 MR. BONEBRAKE: Does this table
2 purport to list surface impoundments that IEPA
3 views to be subject to 845 requirements?

4 MR. DUNAWAY: Lynn Dunaway. Yes, it
5 does.

6 MR. BONEBRAKE: Okay. So then since
7 there's -- it looks like there's 73 ponds
8 identified, is that correct?

9 MR. DUNAWAY: Lynn Dunaway. That's
10 correct.

11 MR. BONEBRAKE: And is it correct
12 that some of these ponds are subject to current
13 dispute about whether they are regulated CCR
14 surface impoundments?

15 MR. DUNAWAY: Lynn Dunaway. Yes,
16 some of these have been disputed.

17 MR. BONEBRAKE: And these disputes
18 involve legal arguments and factual arguments,
19 correct?

20 MR. DUNAWAY: Lynn Dunaway. Yes.

21 MR. BONEBRAKE: And does the list
22 with 73 ponds include some ponds that were not
23 designed to be direct recipients of CCR?

24 MR. DUNAWAY: Lynn Dunaway. Yes.

1 MR. BONEBRAKE: Does it include
2 ponds in which CCR has not been directly placed by
3 the owner or operator?

4 MR. DUNAWAY: This is Lynn Dunaway.
5 Could you clarify that question, please?

6 MR. BONEBRAKE: Yeah, the question
7 was, did the list include ponds in which CCR has
8 not directly been placed by the owner or operator?

9 MR. DUNAWAY: What do you mean by
10 directly been placed?

11 MR. BONEBRAKE: Part 845 regulations
12 contain the term placed in the definition of
13 inactive ponds. So I'm using that term here.

14 MR. DUNAWAY: This is Lynn Dunaway.
15 To the best of our knowledge, at this point in
16 time, all these ponds are CCR surface impoundments
17 that are defined in Part 845.

18 MR. BONEBRAKE: In light of the fact
19 that they're ongoing disputes, legal and factual,
20 about whether these ponds are subject to
21 regulation, does IEPA agree that it would be
22 inappropriate for the Board to include this table
23 as a list of regulated ponds under Part 845?

24 MS. ZEIVEL: This is Christine

1 Zeivel. I'm going to have to object in terms of
2 what is appropriate for the Board to do. The
3 Board is its own administrative agency and charged
4 with its own duties under the act. The Board
5 requested the table and the Agency provided it and
6 I don't think our witnesses should speak to the
7 appropriateness of placing such a table as
8 requested by the Board in the record.

9 HEARING OFFICER HORTON: Sustained.

10 MR. BONEBRAKE: All right. But it
11 is correct then that there are ongoing disputes.
12 So there has not been a final adjudication by the
13 Board or other tribunal about whether the ponds --
14 73 ponds listed on that table are, in fact,
15 subject to proposed Part 845, correct?

16 MR. DUNAWAY: This is Lynn Dunaway.
17 Yes, that is correct.

18 MR. BONEBRAKE: Just -- just a few
19 more questions and then I will be done.

20 Ameren had asked a question and
21 this is in Exhibit 2, it's their Question 4 at
22 Page 143 question set 4, excuse me, and
23 specifically Question 1.

24 I'll give IEPA just a moment to

1 get to that particular question and answer.

2 HEARING OFFICER HORTON: Down at the
3 bottom of Page 143.

4 MR. BONEBRAKE: 144. Right. The
5 question starts at the bottom of 143 and then
6 rolls over and then sub question 1 within that
7 question set is what I'm interested in and it
8 refers to the 1976 date. Effective date of RCRA.

9 Is IEPA ready for follow up?

10 MS. ZEIVEL: Yes.

11 MR. BONEBRAKE: Part 257 was adopted
12 under authority of RCRA, correct?

13 MR. DUNAWAY: Lynn Dunaway. Yes, it
14 was.

15 MR. BONEBRAKE: And I think IEPA has
16 already agreed that proposed Part 845 is meant to
17 implement and, in fact, if approved by U.S. EPA,
18 replace Part 257 in Illinois, right?

19 MR. DUNAWAY: Lynn Dunaway. Yes.

20 MR. BONEBRAKE: And U.S. EPA decided
21 not to regulate units that closed before October
22 14th, 2015, right, that is ceased accepting CCR
23 and no longer contain liquids in CCR after that
24 date?

1 MR. DUNAWAY: Repeat that question,
2 please.

3 MR. BONEBRAKE: Yes. U.S. EPA
4 decided under Part 257 not to regulate CCR units
5 that closed before October 14th, 2015, that is
6 ceased accepting CCR and no longer contain liquids
7 in CCR after that date, right?

8 MR. DUNAWAY: Lynn Dunaway. I
9 believe that was what Part 257 did.

10 MR. BONEBRAKE: Is there any
11 authority under RCRA for the Board to regulate
12 units that ceased accepting waste even before RCRA
13 was adopted?

14 MR. DUNAWAY: You mean -- Lynn
15 Dunaway. Our authority for regulation came from
16 Section 22.59 of the act.

17 MR. BONEBRAKE: Would IEPA entertain
18 a proposal with rule language to exclude from Part
19 845 units that closed before 1976, the effective
20 date of RCRA?

21 MR. DUNAWAY: Lynn Dunaway. The
22 Agency would certainly consider every revision
23 proposed by the Board.

24 MR. BONEBRAKE: Thank you, panel. I

1 appreciate the responses to my question. That
2 will be all my questions for the time.

3 HEARING OFFICER HORTON: Thank you,
4 Mr. Bonebrake. Let me check with Marie. Let's
5 take a break here for lunch.

6 MS. TIPSORD: Not lunch.

7 HEARING OFFICER HORTON: Not lunch.
8 Let's take a ten-ish minute break. It's 11:04
9 right now. How about let's come back at 11:15 and
10 we'll resume with Illinois Environmental
11 Regulatory Groups questions. Thank you.

12 (Whereupon, a break was taken
13 after which the following
14 proceedings were had.)

15 HEARING OFFICER HORTON: We are
16 back. It is 11:17. Is there a representative of
17 IERG in the room or online? Jennifer Martin or
18 Melissa Brown?

19 MS. BROWN: Yes, this is Melissa
20 Brown. Can you hear me?

21 HEARING OFFICER HORTON: Yes.

22 MS. BROWN: Okay. Perfect. This is
23 Melissa Brown, M-E-L-I-S-S-A. Last name Brown,
24 B-R-O-W-N, for the Illinois Environmental

1 Regulatory Group, or abbreviated IERG. IERG does
2 not have any questions on 845.100 at this time.

3 HEARING OFFICER HORTON: Thank you
4 very much. Moving on to Ameren. Ms. Manning or
5 Anthony Scheuring, S-C-H-E-U-R-I-N-G. If there's
6 a representative on Webex or on a telephone.

7 MS. ZEIVEL: It looks like they are
8 on Webex. They're just muted.

9 HEARING OFFICER HORTON: Okay.
10 Thanks. We'll try to unmute them.

11 MR. SCHEURING: This is Anthony
12 Scheuring.

13 HEARING OFFICER HORTON: Okay.
14 Mr. Scheuring, I think you have speakerphone on.

15 MR. MORE: Ms. Manning -- you're
16 getting feedback from Ms. Manning.

17 HEARING OFFICER HORTON: Ms.
18 Manning, could you mute yourself?

19 MS. MANNING: Okay.

20 HEARING OFFICER HORTON: Mr.
21 Scheuring, Ms. Manning, sorry. I believe you're
22 logged in twice. If you guys are all in the
23 same room --

24 MS. MANNING: Can you hear me?

1 HEARING OFFICER HORTON: Everybody
2 in that room for Ameren --

3 MS. MANNING: Yes, can you hear me?

4 HEARING OFFICER HORTON: I can.
5 Yes, that works perfectly. So just leave one
6 computer unmuted unless -- if you unmute two, then
7 you'll get feedback, but right now it's working
8 great.

9 MS. MANNING: Good morning. Thank
10 you. I just have a few follow-up questions from
11 the extensive questioning done by Dynegy. They
12 asked a lot of the questions we would have asked
13 leaving our job a bit easier.

14 First of all, just for purposes
15 of the record and clarification, the definition of
16 surface impoundment under both Part 245 and under
17 Section 3.143 of the act are identical, is that
18 correct?

19 MS. ZEIVEL: Ms. Manning, I believe
20 you said 245. Were you meaning 257 or can you
21 repeat the question?

22 MS. MANNING: Sure. Sure. I guess
23 what I'm asking is why all the definitions of
24 surface impoundments under federal Part 245 --

1 257, I'm sorry, and this state law at Section
2 3.143 of the CCR Act are identical, they have
3 different implementation dates, correct? The
4 implementation date of the state law being June
5 30th, 2019. The implementation date of the
6 federal law being October 2015, is that correct?

7 MR. DUNAWAY: Lynn Dunaway. Those
8 are dates of those rules you mentioned.

9 MS. MANNING: That's a yes?

10 MR. DUNAWAY: Yes.

11 MS. MANNING: Thank you. What I
12 wanted to ask is with the identification of the 73
13 water treatment units that you identified in your
14 answer to Dynegy, you indicated that they were
15 water treatment units. That particular identifier
16 that identified those 73 units that are listed on
17 Page 181 and 182 of your filing, the exhibit that
18 the Board asked you to create, those water
19 treatment units pre-existed -- the identifiers
20 pre-existed the definition of surface impoundment
21 either as it is put in federal law or in state
22 law, is that correct?

23 MR. DUNAWAY: Yes, those certain CCR
24 surface impoundments existed prior to the

1 existence of Section 22.59 of the act.

2 MS. MANNING: So, in fact, they're
3 definitions that the Agency used prior to the
4 definition of the surface impoundment and, as
5 such, it's the Agency's interpretation of what it
6 believes to be a surface impoundment for purposes
7 of Board regulations in this manner, is that
8 correct?

9 MR. DUNAWAY: Could you repeat that,
10 please?

11 MS. MANNING: Yes. The question is,
12 is it the Agency's particular identifier that
13 identified those 73 units, is the Agency's
14 interpretation of what is or is not a surface
15 impoundment under Section 3.13 of the Illinois
16 Act. In fact --

17 MS. ZEIVEL: I think --

18 MS. MANNING: It's your
19 interpretation of what is a surface impoundment
20 under the act?

21 MR. DUNAWAY: Lynn Dunaway. Yes,
22 that is our interpretation.

23 MS. MANNING: And in the context of
24 this proceeding, the Agency would agree, would it

1 not, that the Board has the authority to determine
2 in the context of this rule of general
3 applicability which of these units that you listed
4 as the 73 units at surface impoundment elements,
5 in fact, are surface impoundments and entitled to
6 be treated as such and regulated as such pursuant
7 to new Part 845, is that correct?

8 MS. ZEIVEL: This is Christine
9 Zeivel. I think the Agency is having difficulty
10 answering your question as asked. The Agency is
11 charged with enforcing Board regulations under the
12 act and the Board has the ability to review
13 eight -- eight determinations, but beyond that
14 legal clarification, we would need you to further
15 reword your question or a response appropriate for
16 a witness without a legal interpretation of the
17 Board's authority.

18 MS. MANNING: The Board is not here
19 challenging -- the Agency is not here challenging
20 the Board's authority to make determinations as to
21 what is and is not a surface impoundment under
22 these new regulations, is it?

23 MS. ZEIVEL: This is Christine
24 Zeivel. Section 22.59 of the act charges the

1 Agency with proposing rules and the Board to adopt
2 such rules regulating surface impoundments.

3 Talking about this --

4 MS. MANNING: Thank you.

5 MS. ZEIVEL: -- proposal is
6 challenging the Board's authority.

7 MS. MANNING: Thank you. In
8 response to Question 7 -- Question 1 -- Question 2
9 posed by Ameren, the IEPA asserted that because of
10 the court's holding in Utility Solid Waste
11 Activities Group versus the EPA commonly known as
12 the WAG decision which was entered by the D.C.
13 circuit court in -- on August 21st, 2018, the
14 IEPA's position is that any CCR surface
15 impoundment that had not completed removal of CCR
16 from the CCR surface impoundment prior to October
17 19th, 2015, the effective date of Part 257, is
18 subject to the requirements of Part 257, including
19 the definition of CCR surface impoundment.

20 My question is, what does the
21 IEPA mean when it says completed removal of CCR?

22 MR. DUNAWAY: Okay. Would you
23 please repeat that question?

24 MS. MANNING: What does the EPA mean

1 in response to my question that is it the Agency's
2 position that any CCR surface impoundment that had
3 not completed removal of CCR from the CCR surface
4 impoundment prior to October 19th, 2015, is
5 subject to these new rules? What does it mean
6 when the IEPA says completed removal of CCR?

7 MR. DUNAWAY: Lynn Dunaway. Because
8 it is the Agency's position that under the USWAG
9 decision that --

10 HEARING OFFICER HORTON: Mr.
11 Dunaway, can you just repeat that, the what
12 decision?

13 MR. DUNAWAY: The USWAG.

14 HEARING OFFICER HORTON: Thanks.

15 MR. DUNAWAY: That whether it be an
16 active or inactive facility is regulated on the
17 data of Part 257. Part 257 requires that in order
18 for a closure to be complete as it is currently
19 written, I should say, Part 257 requires that not
20 only the CCR and any contaminated liners be
21 removed, but also any areas impacted from releases
22 by the CCR surface impoundment must also be
23 remediated.

24 MS. MANNING: So where the IEPA

1 approved removal of CCR pursuant to a plan that
2 was presented prior to October of 2015 and removal
3 had begun prior to October of 2015 it's the IEPA's
4 position that the WAG decision drives the
5 determination that, in fact, it is a surface
6 impoundment, is that correct?

7 MR. DUNAWAY: Lynn Dunaway. The
8 Agency's position is that such impoundment would
9 be regulated under Part 257 and Section 22.59 of
10 the act and, therefore, there would have to be a
11 determination that the groundwater impacted by
12 such a CCR surface impoundment had been remediated
13 pursuant to the requirements of --

14 HEARING OFFICER HORTON: I'm sorry.
15 Could you -- sorry to jump in, but our court
16 reporter had a hard time hearing that last bit.

17 MR. DUNAWAY: This is Lynn Dunaway.
18 The Agency's position is that such a CCR surface
19 impoundment described would be regulated by Part
20 257 and Section 22.59 of the act and as such there
21 is no groundwater monitoring specific to that CCR
22 surface impoundment to demonstrate that as
23 required by Part 257 the groundwater protection
24 standards have been met, then that CCR surface

1 impoundment --

2 HEARING OFFICER HORTON: That last

3 bit. Sorry, Mr. Dunaway --

4 MS. MANNING: Putting aside the fact

5 that Part 257 did not --

6 HEARING OFFICER HORTON: Ms.

7 Manning.

8 MS. MANNING: -- apply to --

9 HEARING OFFICER HORTON: Ms.

10 Manning --

11 MS. MANNING: Yes?

12 HEARING OFFICER HORTON: Our court

13 reporter didn't just get that last bit that

14 Mr. Dunaway said. If you could repeat that.

15 MR. DUNAWAY: This is Lynn Dunaway.

16 HEARING OFFICER HORTON: The video

17 cut out. Mr. Court Reporter, would you be able to

18 tell us where we left off or --

19 (Whereupon, the record was read

20 as requested.)

21 HEARING OFFICER HORTON: The

22 groundwater protection standards have been met and

23 then the CCR surface impoundment and then it cut

24 off. If you can remember.

1 MR. DUNAWAY: Okay. If the -- if
2 there is no surface impoundment monitoring
3 demonstrating that the groundwater protection
4 standards have been met, then closure is not
5 complete.

6 HEARING OFFICER HORTON: Thank you.
7 Ms. Manning?

8 MS. MANNING: And that's based on
9 your application of 2 -- Part 257.100(b)(5), is
10 that correct?

11 MR. DUNAWAY: What section?

12 MS. MANNING: 257.100(b)(5).

13 MR. DUNAWAY: This is Lynn Dunaway.
14 Can you direct us to the reference in the federal
15 register?

16 MS. MANNING: It's your response to
17 our question on Page 139. You say, "As currently
18 written, Part 257 does not deem closure by removal
19 until the CCR and any liner has been removed and
20 decontamination of any area affected by releases
21 from the CCR surface impoundment has been
22 completed pursuant to Part 257.100(b)(5)."

23 MR. DUNAWAY: This is Lynn Dunaway.
24 It looks like we may have had an improper citation

1 in our response. We will have to follow up on
2 that.

3 MS. MANNING: Could it be that what
4 you're citing is the draft rule that is not yet
5 effective in Part 257?

6 MR. DUNAWAY: Lynn Dunaway. We're
7 going to have to follow up on that.

8 MS. MANNING: Okay. Thank you.
9 Could you point me to a specific reference in the
10 WAG decision that discusses closure by removal and
11 requires complete removal of CCR?

12 MR. DUNAWAY: Lynn Dunaway. We'll
13 review that and we'll respond.

14 MS. MANNING: Thank you. Where a
15 company has removed CCR and pursuant to
16 authorization and approval of the Agency and begun
17 removal prior to any effective date of Part 257,
18 is it nonetheless the Agency's position that now
19 any provisions of 257 apply to declare that
20 particular facility to be a surface impoundment?

21 MR. DUNAWAY: I'm sorry. Part of
22 the last part of that question cut out.

23 MS. MANNING: Is it a surface
24 impoundment?

1 MR. DUNAWAY: I'm sorry. I'm going
2 to have to have you repeat the whole question. I
3 can't --

4 MS. MANNING: Let me rephrase it a
5 different way. Is a -- is a unit that has begun
6 to remove CCR no longer -- and no longer contains
7 CCR, prior to any effective date designed to -- or
8 designed to hold CCR and, therefore, be subject to
9 the definition of surface impoundment?

10 MR. DUNAWAY: Lynn Dunaway. It
11 would be if it were a CCR -- if it were -- sorry.
12 I'm too close.

13 It would be if it were designed
14 as a CCR surface impoundment and there was no
15 demonstration that groundwater protection
16 standards have been met, therefore, closure had
17 not been completed.

18 MS. MANNING: Your interpretation of
19 closure not being complete, however, depends on an
20 application of a provision that did not exist at
21 the time the Agency authorized closure and
22 authorized the closure plan, is that correct?

23 MR. DUNAWAY: Are you asking if
24 part -- one moment, please.

1 MS. MANNING: Let me ask it this
2 way. When the WAG decision was decided in 2018, I
3 believe, a facility that no longer contained CCR
4 did not pose the type of risk that is discussed in
5 the WAG decision.

6 Would the Agency agree with
7 that? The type of this being a toxic slurry of
8 coal residues mixed with water as identified on
9 Page 28 of your filing, which is Page 28 of the
10 WAG decision.

11 MR. DUNAWAY: Lynn Dunaway. It
12 depends on whether the areas impacted by the CCR
13 surface impoundment had been decontaminated.

14 MS. MANNING: But if there was no
15 requirement that the area be decontaminated at the
16 time the Agency authorized removal, how is it now
17 applicable?

18 MR. DUNAWAY: Lynn Dunaway. As a
19 point of clarification, are you talking about
20 removal, complete, prior to the effective date of
21 Part 257?

22 MS. MANNING: No, I'm wondering why
23 removal needs to be complete prior to the
24 effective date of 257 if removal was done under

1 the auspices of the EPA and with its authority
2 without any application of or requirement of
3 monitoring groundwater at the time the Agency
4 authorized the removal?

5 MR. DUNAWAY: Lynn Dunaway. The
6 Agency had the authority to make those approvals.
7 Subsequent to those approvals, Part 257 became
8 effective.

9 MS. MANNING: I'm sorry. I missed
10 that, Mr. Dunaway.

11 MR. DUNAWAY: Part -- excuse me.
12 The Agency had the authority to make those
13 approvals and after the Agency made those
14 approvals Part 257 became effective.

15 MS. MANNING: Well, in actuality,
16 portions of Part 257 did not become effective
17 until after the WAG decision was issued, is that
18 correct?

19 MR. DUNAWAY: Repeat that, please.

20 MS. MANNING: Portions of Part 257
21 were not applicable. For example, they were not
22 applicable to an inactive facility and they only
23 became applicable to an inactive facility after
24 the WAG decision was issued in 2018, is that

1 correct?

2 MS. ZEIVEL: The Agency is going to
3 object to the line of questioning based on
4 requesting a legal interpretation. The Agency
5 stands by the written responses as provided and
6 further legal interpretation is not appropriate
7 for the witnesses currently sworn under oath.

8 HEARING OFFICER HORTON: Sustained.

9 MS. MANNING: That's all I have
10 right now. Thank you.

11 HEARING OFFICER HORTON: Okay.
12 Moving on to the Office of the Illinois Attorney
13 General.

14 Any questions that you might
15 have on Section 100?

16 MR. SYLVESTER: The Attorney
17 General's Office doesn't have any questions on
18 Section 100.

19 HEARING OFFICER HORTON: Is this
20 Steve Sylvester?

21 MR. SYLVESTER: Yes, I apologize.

22 HEARING OFFICER HORTON: No problem.
23 Moving on to the Board.

24 Mr. Rao, do you have any

1 questions on Section 100?

2 MR. RAO: I do have some questions.
3 Let me just take a look at it. I have a question
4 regarding the Agency's response to the Board's
5 question on 845.100(e). This is with regard to
6 certain facilities that are exempted under
7 Subsection E.

8 The Agency in the response to
9 Question 4A mentioned that the section is
10 consistent with Section -- the federal rules 257
11 and the Agency noted that the exemption under the
12 Federal Rules make up approximately 1 percent of
13 the coal burned and I'm assuming that 1 percent of
14 the coal burned relates to the whole country and
15 not Illinois.

16 So does the Agency have any
17 information as to the amount of coal burned by
18 exempted facilities in Illinois?

19 MR. DUNAWAY: Lynn Dunaway. No, we
20 don't have any Illinois specific data.

21 MR. RAO: On the next part of the
22 question that is Question 4B, the Agency stated
23 that they were aware of two exempted CCR surface
24 impoundments at one facility that may fall under

1 this exemption.

2 For the record, could you
3 identify, you know, who the owner of this facility
4 is and where the facility is located and also the
5 size of the facility that you're talking about.

6 MR. DUNAWAY: Lynn Dunaway. The
7 other site we're aware of is currently called
8 Pacific Ethanol. It's located in Pekin and I
9 don't know the exact size of the impoundments.
10 They're relatively small.

11 MR. RAO: Is this facility regulated
12 by the Agency under an NPDES permit?

13 MR. LECRONE: Jeremy Lecrone. Yes,
14 they are.

15 MR. RAO: Is the Agency aware of any
16 issues with this facility in terms of any impacts
17 on groundwater?

18 MR. LECRONE: This is Jeremy
19 Lecrone. Yes, I believe there is. I can't
20 remember exactly the details, but they were
21 maintaining a gradient on groundwater at the site.
22 I believe they are no longer burning coal on the
23 site.

24 MR. RAO: So is there any impact to

1 the groundwater -- is there any reason for not
2 regulating the facility under 845? Is it just
3 because the federal rules exempt these facilities,
4 we are following the federal rules or has the
5 Agency assigned the scope to include this
6 particular facility within Section 845?

7 MR. DUNAWAY: Lynn Dunaway. Section
8 22.59 of the act is similar to Part 257. It does
9 say that these rules should be focused towards
10 power generators and utilities and this is an
11 ethanol plant that does not generate power.

12 THE COURT REPORTER: Generate what?

13 HEARING OFFICER HORTON: Generate
14 power.

15 MR. RAO: So, what, do you think the
16 statutory requirements kind of limit this
17 proposal?

18 HEARING OFFICER HORTON: Sorry.
19 We're getting some feedback. Just a second.

20 MR. DUNAWAY: Lynn Dunaway. Yes.

21 HEARING OFFICER HORTON: Anand, can
22 you --

23 MR. RAO: If this facility is
24 impacting groundwater, will the Agency use the

1 NPDES provisions to regulate this facility, is
2 that how it should be done?

3 MR. LECRONE: This is Jeremy
4 Lecrone. The facility has both an NPDES permit
5 and a state operating permit that govern those
6 facilities. I don't remember the status of the
7 state operating permit governing that because they
8 have been taken out of service, but they did have
9 a state operating permit that also governed those
10 operations of NPDES.

11 MR. RAO: Would it be inconsistent
12 to include a facility within 845? When I say
13 inconsistent, with the statutory requirements or
14 can the state be more stringent than the Part 257?

15 MR. DUNAWAY: Lynn Dunaway. Yes, we
16 can be more stringent than Part 257. However, we
17 feel that including non-utilities would be beyond
18 the scope of our legislative authority.

19 MR. RAO: And you mentioned that the
20 impoundments are being taken out of service. So
21 are they in closure right now?

22 MR. DUNAWAY: Lynn Dunaway. No,
23 they are not in closure. They are inactive.

24 MR. RAO: So if they do close, will

1 there be some sort of closure plan approved by the
2 Agency?

3 MR. DUNAWAY: Lynn Dunaway. Yes.

4 MR. RAO: Okay. That's all I have
5 on this section. Thank you.

6 HEARING OFFICER HORTON: All right.
7 Moving onto -- are there any other individuals in
8 the room or on the call who have questions on
9 Section 100? Okay. Hearing none -- sorry.

10 MS. GALE: I have one, if I may.
11 Kristen Gale on behalf of Midwest Generation.
12 Oops. Hang on.

13 HEARING OFFICER HORTON: Grab your
14 microphone.

15 MS. GALE: This is Kristen Gale on
16 behalf of Midwest Generation. I have a follow-up
17 question from the Ameren questions and I tried to
18 write this correctly. So the Agency, please
19 forgive me if I got it wrong.

20 The Agency I believe said if no
21 CCR surface impoundment specific groundwater
22 monitoring demonstrates that groundwater
23 monitoring -- groundwater protection standards
24 have been met, then closure is not complete.

1 So my question is if the CCR
2 surface impoundment, the CCR was removed and it
3 has specific groundwater monitoring that
4 demonstrates the groundwater protection standards
5 have been met, would the Agency consider closure
6 complete?

7 MR. DUNAWAY: Lynn Dunaway. If the
8 monitoring plan was deemed appropriate by the
9 Agency to demonstrate that there was compliance
10 with the groundwater standards after removal, that
11 is a possibility, yes.

12 MS. GALE: So that would be a
13 determination that could be made to the Agency or,
14 excuse me, I guess that could be a proposal made
15 to the Agency that the Agency would look at?

16 MR. DUNAWAY: Lynn Dunaway. Yes.

17 MS. GALE: Okay. Thank you.

18 HEARING OFFICER HORTON: I think in
19 the chat, Ms. Cassel, you had a follow-up question
20 as well. Be sure to unmute yourself.

21 MS. CASSEL: I did. Are you able to
22 hear me?

23 HEARING OFFICER HORTON: Yes.

24 MS. CASSEL: Okay. Great. This is

1 Jennifer Cassel with Earthjustice on behalf of
2 Prairie Rivers Network again. I have some
3 follow-up questions to Mr. Rao's questions.

4 The Agency answered that --
5 well, there was a two-part question Mr. Rao asked
6 which is would it be inconsistent with 22.59 to
7 regulate the exempted facilities that were
8 mentioned and there was a second portion of that
9 which asked if they could go beyond the scope.

10 The Agency answered that they
11 could go beyond the scope, be more stringent.
12 They didn't answer specifically, as I heard,
13 whether it would be inconsistent with 22.59 of the
14 act to regulate those exempted facilities. I
15 wanted to follow up with that, repeat that
16 question, please.

17 MR. DUNAWAY: Lynn Dunaway. Yes, we
18 feel that that is beyond the scope of 22.59 to go
19 beyond utilities and independent power producers.

20 MS. GALE: Mr. Dunaway, I do
21 appreciate that. I do think beyond the scope --
22 going beyond the scope is a little different than
23 whether it would be inconsistent with or
24 impermissible under 22.59 and I don't know whether

1 you're the right person to answer that. I welcome
2 your thoughts or others as to whether the act
3 barred the Agency or the Board from regulating
4 sites such as the one Mr. Rao was mentioning.

5 MR. DUNAWAY: Lynn Dunaway. Our
6 authority is limited by what the legislature
7 provided.

8 MS. CASSEL: Can you point me to the
9 place where the statute limits the authority to
10 regulate those?

11 MS. ZEIVEL: Give us a moment. We
12 are still learning our hearing books and where
13 everything is located. So I apologize for the
14 delay.

15 MR. DUNAWAY: Lynn Dunaway. Section
16 22.59(a)(3).

17 MS. CASSEL: So the decision for the
18 Agency's decision that the statute limits your
19 authority to regulate additional exempted
20 facilities is the statement that the General
21 Assembly finds that CCR's generated by the
22 electric generating industry has caused
23 groundwater contamination and other forms of
24 pollution in active and inactive plants throughout

1 the state, is that the entirety of the basis?

2 MR. DUNAWAY: Lynn Dunaway. That is
3 a portion of the basis. Also later in this same
4 legislation it references that we should make a
5 rule which is at least as protective and
6 comprehensive as Part 257, which is a federal rule
7 that regulates only the electric utilities and
8 independent power producers.

9 MS. CASSEL: So that is 22.59. Are
10 you referring to 22.59 Section G, Subsection G,
11 Mr. Dunaway?

12 MR. DUNAWAY: I believe that's it.

13 MS. CASSEL: So the statement there
14 that you're referencing is that "The Board shall
15 adopt rules establishing construction permit
16 requirements, operating permit requirements,
17 design standards, reporting, financial assurance,
18 and closure and postclosure care requirements for
19 CCR surface impoundments" and it goes on to
20 provide a time limit for that.

21 MR. DUNAWAY: Actually, what I
22 thought it would be would be 259(g)(1)
23 specifically.

24 MS. CASSEL: (G)(1). So that the

1 rules must be at least as protective and
2 comprehensive as the federal regulations or
3 amendments thereto promulgated by the
4 administrator.

5 So what do you understand by
6 comprehensive, Mr. Dunaway?

7 MR. DUNAWAY: Include the same
8 things.

9 MS. CASSEL: And it has the preface
10 of that, right, in that statement?

11 MR. DUNAWAY: It does.

12 MS. CASSEL: Is there any other
13 basis for the assertion that the statute limits
14 your authority to regulate these sites?

15 MR. DUNAWAY: Lynn Dunaway. Also,
16 the section of -- Section 3.142 of the act which
17 defines coal combustion residual, CCR -- coal
18 combustion residual, CCR, meets fly ash, bottom
19 ash, boiler slag, and flue gas desulfurization
20 materials generated from burning coal for the
21 purpose of generating electricity by electrical
22 utilities and independent power producers.

23 MS. CASSEL: That definition doesn't
24 include any statements specifying what the Agency

1 may or may not include in the rules relating to
2 CCR, does it?

3 MR. DUNAWAY: Lynn Dunaway. It does
4 not say what we can or cannot, but it does define
5 where CCR is generated.

6 MS. CASSEL: The Agency has
7 additional authority to regulate polluting
8 entities outside of what was authorized in the
9 Coal Ash Pollution Prevention Act or what has been
10 called earlier today as the Illinois CCR Act, I
11 believe, is that correct?

12 MR. DUNAWAY: Lynn Dunaway. Yes,
13 the Agency has that authority.

14 MS. CASSEL: Thank you very much.
15 That's all my questions.

16 HEARING OFFICER HORTON: Okay. As
17 to more follow-up questions, I'm just going to
18 proceed in the manner that we have been going
19 through. So I will just call on each group and if
20 you can let me know if you have follow-up
21 questions for Section 100. So I believe we're on
22 group number three.

23 City of Springfield, do you have
24 any follow-up questions?

1 MS. WILLIAMS: No.

2 HEARING OFFICER HORTON: No.

3 Dynegy, do you have any follow-up questions?

4 MR. MORE: No.

5 HEARING OFFICER HORTON: No. IERG,
6 do you have follow-up questions?

7 MS. BROWN: We did, but then they
8 were covered in the line of questions. So we're
9 okay.

10 HEARING OFFICER HORTON: And that
11 was Melissa Brown?

12 MS. BROWN: Yes. Sorry. Melissa
13 Brown. Thank you.

14 HEARING OFFICER HORTON: Ameren, any
15 follow-up questions for Section 100?

16 MS. MANNING: No, we might have
17 questions that relate to other sections, but not
18 at this point do we have any further questions on
19 100. Thank you.

20 HEARING OFFICER HORTON: Okay. That
21 was Ms. Manning.

22 All right. Office of the
23 Illinois Attorney General, any follow-up
24 questions?

1 MR. SYLVESTER: This is Steve
2 Sylvester for the Illinois Attorney General's
3 Office. We do not have any follow-up questions.

4 HEARING OFFICER HORTON: Thank you.
5 Mr. Rao for the Board, any follow-up questions?

6 MR. RAO: I don't.

7 HEARING OFFICER HORTON: Okay.
8 Great. So that concludes Section 100. Let's
9 begin Section 110 and we'll take a break for lunch
10 around 12:30. We'll just see where we are and
11 come to a natural stopping point around that time.

12 So we'll begin with 845 Section
13 110 Applicability of Other Regulations and we'll
14 start with our first group. I believe Ms. Cassel
15 will be the first attorney asking questions for
16 Little Village Environmental Justice,
17 Environmental Law and Policy Center, Prairie
18 Rivers Network and Sierra Club.

19 MS. BUGEL: Faith Bugel for Sierra
20 Club. Just to be clear on a couple of points.
21 First, Ms. Cassel won't always be the first
22 attorney questioning for us.

23 HEARING OFFICER HORTON: Sorry.

24 MS. BUGEL: Just to be clear. Also,

1 we were under the impression we were covering all
2 of Subpart A. So initially we did ask all our
3 questions for Subpart A Section's 100 through 170.
4 I would just like to reserve the right for the
5 environmental groups to ask follow-ups to other
6 groups questions.

7 HEARING OFFICER HORTON: That's
8 certainly fine. So moving on we'll go to Midwest
9 Generation.

10 Do you have any questions on
11 Section 110?

12 MS. GALE: I do not.

13 HEARING OFFICER HORTON: That's a no
14 from Ms. Gale. City of Springfield?

15 MS. WILLIAMS: (Negative nod.)

16 HEARING OFFICER HORTON: No.
17 Dynegy, Section 110?

18 MR. MORE: This is Josh More. I'd
19 like to make a similar comment to what Ms. Bugel
20 represented. As of right now, we have no opening
21 questions for Subpart A.

22 HEARING OFFICER HORTON: Okay.

23 MR. MORE: So we reserve the right
24 to ask follow-up questions, but we have no initial

1 questions until we get to Section 200.

2 HEARING OFFICER HORTON: Okay.

3 Ameren?

4 MS. MANNING: This is Claire
5 Manning. We have no follow-up questions for 110.

6 HEARING OFFICER HORTON: Okay.
7 Office of the Illinois Attorney General, any
8 questions on 110?

9 MR. SYLVESTER: This is Steve
10 Sylvester. We don't have any questions.

11 HEARING OFFICER HORTON: Mr. Rao for
12 the Pollution Control Board?

13 MR. RAO: I don't have any questions
14 on 110.

15 HEARING OFFICER HORTON: All right.
16 Moving forward to the definition Section 845.120.

17 Ms. Bugel, so no questions for
18 this?

19 MS. BUGEL: I'm sorry. I just
20 learned I was completely incorrect on that and
21 Jenny Cassel does have questions on 120.

22 HEARING OFFICER HORTON: No problem.
23 Ms. Cassel, then Section 120.

24 MS. CASSEL: All right. Thank you.

1 Are you able to hear me again?

2 HEARING OFFICER HORTON: Yes.

3 MS. CASSEL: Great. Okay. This is
4 Jenny Cassel again. This question is for
5 Mr. Dunaway. I believe this relates to the
6 pre-filed answer to question -- ELPC, Sierra
7 Club's and Prairie Rivers Network question,
8 Question 18 on Page 34 of Exhibit 1 as well as the
9 answer to the Board's question 49.

10 The Agency has testified that it
11 proposes to define release for purposes of Part
12 845 as "Leaching of dissolved constituents at a
13 concentration above the applicable groundwater
14 protection standard as measured at a CCR surface
15 impoundment's point of compliance." That's the
16 first part of the definition or, I quote,
17 "Physical movement of CCR except subject to an
18 Agency-approved closure or corrective action from
19 inside the CCR surface impoundment to outside the
20 CCR surface impoundment."

21 Could you help me understand how
22 the first component of the definition relating to
23 leaching of dissolved constituents above the
24 applicable groundwater protection standards defers

1 from the whole regime set out in Subpart F for
2 groundwater monitoring and corrective action under
3 Part 845?

4 MS. ZEIVEL: The definition
5 referenced by Ms. Cassel is not currently
6 contained in Section 845.120 and perhaps this
7 question would be more appropriately placed in the
8 600 section.

9 MS. CASSEL: I'm happy to ask it
10 later. I mean, there are a number of questions
11 that we have that pertain to subjects or issues
12 that were not included in particular sections as
13 requested. So there is not necessarily a clear
14 section where they fall in. Since this pertains
15 to the definition of the lease, it seemed
16 appropriate here, but I'm happy to defer to later
17 if there's a preference.

18 MS. ZEIVEL: That is the preference.
19 Thank you.

20 MS. CASSEL: Okay. I will reserve
21 the right to save that for later. Thank you.

22 HEARING OFFICER HORTON: Okay.
23 Moving forward. Midwest Generation, any questions
24 on definitions?

1 MS. GALE: No questions.

2 HEARING OFFICER HORTON: City of
3 Springfield?

4 MS. WILLIAMS: Just a couple of
5 quick questions.

6 HEARING OFFICER HORTON: Your name?

7 MS. WILLIAMS: This is Deborah
8 Williams, City of Springfield. One quick follow
9 up for the Agency I guess based on the previous
10 line. I know they asked to have questions about
11 this definition of release deferred to Section 600
12 and I'm fine with that. I just generally wanted
13 to ask if the Agency was going to be submitting an
14 errata sheet with -- I noticed several proposals
15 for new language contained within answers and I
16 would think it would help.

17 Some of those were things the
18 Agency has already confirmed they want to have
19 included in the rule when it's finalized and some
20 they sort of just suggested for the Board. So I
21 want to know if the Agency is going to be
22 presenting its proposed errata for the parties to
23 review?

24 MS. ZEIVEL: Generally, the Agency

1 provides all proposed revisions in the
2 post-hearing comments, not necessarily designated
3 as an errata sheet, but with the same purpose of
4 providing one space where all Agency proposed
5 revisions are provided in writing.

6 HEARING OFFICER HORTON: Okay.

7 MS. WILLIAMS: So I would ask maybe
8 the Board to think about before the close of
9 hearing to see if it would be helpful to have that
10 presented sooner or compiled sooner so people can
11 provide meaningful comment on the language that is
12 out there because it's pretty overwhelming to try
13 to go through each question and answer and find
14 where the new language proposals are, but we can
15 save that for a later day. I just want to flag
16 that for later.

17 HEARING OFFICER HORTON: Noted.

18 MS. WILLIAMS: And I just had one
19 quick question on one of the definitions and it is
20 the Board asked the question about the definition
21 of CCR storage pile in Question 13. I would just
22 like to clarify for the record so that definition
23 of CCR storage pile is used I believe just in one
24 section of the rule itself and I just want to for

1 the record -- for the Agency to confirm that this
2 definition and the rules in 845 generally only
3 apply to a pile that would meet this definition as
4 used in that section of the rule meaning piles
5 generated by removal of CCR from surface
6 impoundments during closure.

7 MR. DUNAWAY: Lynn Dunaway. Yes,
8 that is our intent.

9 MS. WILLIAMS: Okay. Thank you very
10 much. That's all I have.

11 HEARING OFFICER HORTON: Moving onto
12 Dynegy. Do you have any questions about the
13 definitions?

14 MR. MORE: We do not.

15 HEARING OFFICER HORTON: IERG, any
16 questions on Section 120 Definitions? Melissa
17 Brown?

18 MS. BROWN: I apologize. I was on
19 mute. No, we do not have any questions right now.

20 HEARING OFFICER HORTON: No problem.
21 Thank you.

22 Ameren, do you have any
23 questions on definitions Section 120?

24 MS. MANNING: We will save our

1 questions as to how the definitions apply in
2 practice to other sections. Thank you.

3 HEARING OFFICER HORTON: Okay.
4 Great. AG's office?

5 MR. SYLVESTER: Steve Sylvester. We
6 don't have any questions. Thanks.

7 HEARING OFFICER HORTON: Thank you.
8 Mr. Rao from the Board, any questions on
9 definitions?

10 MR. RAO: Yes, I just have a
11 clarification on Agency's response to Board's
12 Question 9 regarding definition of base flood.
13 The Agency in distress ponds said the definition
14 of base flood is consistent with the statutory
15 definition of hundred year flood as defined in
16 Section 3.102 of the act. I just want to clarify
17 whether the definition of base flood is the same
18 as the definition of hundred year flood in the
19 act?

20 MR. DUNAWAY: Lynn Dunaway. The
21 base flood is essentially the same as the hundred
22 year flood if that answers your question. If not,
23 please repeat your question.

24 MR. RAO: No, I just wanted to

1 clarify whether it's, you know, the same whether
2 it's the base flood or the hundred year flood, we
3 were talking about the same flood?

4 MR. DUNAWAY: Yes, and the
5 definition of base flood it says 1 percent chance
6 of being recurring and -- or being equaled or
7 exceeded and 1 out of 100, you know, is 1 percent.
8 So it would be the hundred year flood.

9 MR. RAO: And also in your response
10 you explained what significantly long period
11 means. I wanted to know if it's acceptable to the
12 Agency to replace significantly long period with
13 the meaning of the --

14 HEARING OFFICER HORTON: Mr. Rao,
15 you cut off there just at the end. To replace --

16 MR. RAO: Period with the actual
17 meaning of that phrase.

18 MR. DUNAWAY: This is Lynn Dunaway.
19 Yes, that would be an acceptable change.

20 MR. RAO: That's all I have.

21 HEARING OFFICER HORTON: Okay.

22 Well, we're right at 12:30 right now. So let's
23 say we'll start up with Section 130 at 1:30.

24 We'll take a break for lunch for an hour and we'll

1 reconvene at 1:30.

2 (Whereupon, a break was taken
3 after which the following
4 proceedings were had.)

5 HEARING OFFICER HORTON: Okay,
6 everyone. It's about 1:33. We're going back on
7 the record. We left off with 845 Section 130.
8 And we'll begin again at the start of our
9 questioners. So that would be Little Village
10 Environmental Justice, Environmental Law and
11 Policy Center, Prairie Rivers Network, Sierra
12 Club, if you have any questions on 845.130.

13 MS. BUGEL: Off the top of my head,
14 I do not believe we have any questions on 130. We
15 do not.

16 HEARING OFFICER HORTON: This is a
17 surface impoundment identification. Midwest
18 Generation?

19 MS. GALE: No questions.

20 HEARING OFFICER HORTON: No
21 questions. City of Springfield?

22 MS. WILLIAMS: No questions.

23 HEARING OFFICER HORTON: Dynegy?

24 MR. MORE: No questions.

1 HEARING OFFICER HORTON: IERG?

2 MS. BROWN: This is Melissa Brown.

3 No questions.

4 HEARING OFFICER HORTON: Thank you.

5 Ameren?

6 MS. MANNING: Claire Manning. No

7 questions at this point.

8 HEARING OFFICER HORTON: Thank you.

9 AG's office?

10 MR. SYLVESTER: Steve Sylvester. No

11 questions at this time.

12 HEARING OFFICER HORTON: Thank you.

13 Mr. Rao with the Board, any questions on 130?

14 MR. RAO: No questions.

15 HEARING OFFICER HORTON: Okay.

16 Moving onto 140. Right of Inspection.

17 I'll begin again at the start.

18 Little Village, ELPC, Prairie Rivers, Sierra Club.

19 MS. BUGEL: We have no questions.

20 Thank you.

21 HEARING OFFICER HORTON: Thank you.

22 Midwest Generation?

23 MS. GALE: No questions.

24 HEARING OFFICER HORTON: City of

1 Springfield?

2 MS. WILLIAMS: We don't have any
3 questions left on Subpart A unless -- we'll
4 reserve for some follow up --

5 HEARING OFFICER HORTON: Okay.

6 So --

7 MS. WILLIAMS: -- until Section 200.

8 HEARING OFFICER HORTON: Okay.

9 Dynegy?

10 MR. MORE: We have no questions.

11 HEARING OFFICER HORTON: IERG?

12 MS. BROWN: Melissa Brown. No
13 questions.

14 HEARING OFFICER HORTON: Thank you.

15 AG's office?

16 MR. SYLVESTER: Steve Sylvester. No
17 questions.

18 HEARING OFFICER HORTON: No
19 questions. Mr. Rao? Did I skip Ameren? I don't
20 think so.

21 MS. MANNING: You did, Madam Hearing
22 Officer, but we have no questions.

23 HEARING OFFICER HORTON: I'm so
24 sorry.

1 MS. MANNING: That's all right.

2 HEARING OFFICER HORTON: Mr. Rao
3 from the Board, any questions on 140?

4 MR. RAO: No questions.

5 HEARING OFFICER HORTON: Okay.
6 Thank you. All right.

7 150 Incorporation By Reference.
8 Sierra Club, Little Village, ELPC?

9 MS. BUGEL: 150 we have no
10 questions. Thank you.

11 HEARING OFFICER HORTON: Midwest
12 Generation?

13 MS. GALE: No questions.

14 HEARING OFFICER HORTON: City of
15 Springfield no questions until Section 200, is
16 that correct?

17 MS. WILLIAMS: Mm-hmm.

18 HEARING OFFICER HORTON: Dynegy?

19 MR. MORE: No questions. No
20 questions until 200 as well.

21 HEARING OFFICER HORTON: Okay. I'll
22 skip you guys then if that's okay.

23 MR. MORE: (Affirmative nod.)

24 HEARING OFFICER HORTON: Ameren?

1 MS. MANNING: No questions.

2 HEARING OFFICER HORTON: AG's

3 Office?

4 MR. SYLVESTER: Steve Sylvester. No

5 questions.

6 HEARING OFFICER HORTON: Mr. Rao

7 with the Board?

8 MR. RAO: No questions.

9 HEARING OFFICER HORTON: All right.

10 Moving along to 160. Severability. Little

11 Village?

12 MS. BUGEL: We have no questions.

13 HEARING OFFICER HORTON: Okay.

14 Midwest Generation?

15 MS. GALE: No questions.

16 HEARING OFFICER HORTON: I'm

17 skipping City of Springfield and Dynegy. IERG?

18 MS. BROWN: Melissa Brown. No

19 questions.

20 HEARING OFFICER HORTON: Ameren?

21 MS. MANNING: Claire Manning. No

22 questions.

23 HEARING OFFICER HORTON: AG's

24 office?

1 MR. SYLVESTER: Steve Sylvester. No
2 questions.

3 HEARING OFFICER HORTON: Mr. Rao at
4 the Board?

5 MR. RAO: No questions.

6 HEARING OFFICER HORTON: All right.
7 170. Inactive Closed CCR Surface Impoundments.
8 Little Village?

9 MS. BUGEL: Ms. Castle will be
10 asking questions on behalf of our groups.

11 HEARING OFFICER HORTON: Great.
12 Ms. Castle, Section 170.

13 MS. CASSEL: Thank you very much,
14 Hearing Officer. This is Jenny Cassel with
15 Environmental Justice on behalf of Prairie Rivers
16 Network.

17 My question goes to
18 Mr. Dunaway's response to IERG's Question 1E,
19 which is on Page 137 of, I believe, Exhibit 1, the
20 first set of responses -- or answers. Excuse me.

21 Mr. Dunaway testified I quote
22 "That Subpart F is not listed in Section 845.170
23 and, therefore, does not apply to inactive closed
24 surface -- CCR surface impoundments."

1 The Agency in its chart that it
2 provided to the Board identified four inactive
3 closed CCR surface impoundments. There were two
4 at Venice, one at Hutsonville and one at Prairie
5 Power.

6 Can you please tell me,
7 Mr. Dunaway, what year and month those
8 impoundments you have identified as inactive,
9 closed or surface impoundments completed closure
10 or if they have not completed closure, can you
11 please let me know that, too.

12 MR. DUNAWAY: Lynn Dunaway. I
13 believe we answered that someplace. I don't
14 remember exactly where. If -- perhaps the
15 forms -- the chart -- I'm not positive. Yes, it
16 is in there, in the Board -- in the table that the
17 Board asked for Column E.

18 MS. CASSEL: I believe it says, "See
19 closure date" if I recall correctly.

20 MR. DUNAWAY: Yes. Okay. Yeah,
21 Column H refers you back to Column E where it
22 gives the month and year of completion.

23 MS. CASSEL: Sorry about that. I
24 missed that. Are there any other inactive, closed

1 surface impoundments that the Agency has
2 identified that were not listed on the chart?

3 MR. DUNAWAY: Lynn Dunaway. None
4 that we're aware of.

5 MS. CASSEL: Okay. Thank you. And
6 then my next question relates to the response to
7 the Board Question 20 on Page 154 of the same
8 exhibit.

9 The Board had asked if
10 previously approved postclosure plans may be used
11 only if they meet the requirements of the proposed
12 rule. The Agency answered, quote, yes, they could
13 use the previously approved postclosure plan
14 assuming it meets the requirements of this part.

15 If a previously approved
16 postclosure plan does not meet the requirements of
17 this section, then the applicant may be asked to
18 supplement their plan.

19 So my question is, does the
20 Agency intend to require any owner or operator of
21 an inactive closed CCR surface impoundment that
22 has not completed postclosure care to modify their
23 postclosure care plan to meet the requirements of
24 this part if the previously approved plan does not

1 meet those requirements?

2 MR. DUNAWAY: Lynn Dunaway. We will
3 need to assess those closure plans against any
4 potential changes that may occur to the rule.

5 MS. CASSEL: I'm sorry. Could you
6 explain your answer?

7 MR. DUNAWAY: As it stands now as we
8 have it lined out, I don't anticipate there will
9 be changes made for the inactive closed CCR
10 surface impoundments. However, the rule is not
11 final so I can't unequivocally say that.

12 MS. CASSEL: But when the rules are
13 finalized, if the rules -- once they're finalized,
14 does the Agency intend to require supplements if
15 previously approved postclosure plans don't meet
16 the requirements finalized by the Board for
17 postclosure?

18 MR. DUNAWAY: Lynn Dunaway. We
19 would have to if they don't meet the rule.

20 MS. CASSEL: Okay. Great. And can
21 you -- is there a particular provision you can
22 point me to that sets out that requirement?

23 MR. DUNAWAY: Lynn Dunaway. Section
24 845.173 shows which portions of Subpart G, which

1 is closure, excuse me, and postclosure apply. So
2 if there were changes within those Section's
3 845.780(b), (d) or (e), then there would
4 potentially be changes required.

5 MS. CASSEL: I'm sorry. You said
6 there could potentially be changes required? You
7 would require changes if the postclosure plans
8 were inconsistent with the finalized rule?

9 MR. DUNAWAY: Yes.

10 MS. CASSEL: Thank you. Those are
11 all my questions.

12 HEARING OFFICER HORTON: Okay.
13 Thank you.

14 Midwest Generation, any
15 questions on 170?

16 MS. GALE: No.

17 HEARING OFFICER HORTON: I'm
18 skipping City of Springfield and Dynegy. On to
19 IERG.

20 MS. BROWN: Melissa Brown. Not at
21 this time.

22 HEARING OFFICER HORTON: Thank you.
23 Ameren?

24 MS. MANNING: Claire Manning. Not

1 at this time. Thank you.

2 HEARING OFFICER HORTON: Thank you.

3 AG's office?

4 MR. SYLVESTER: Steve Sylvester.

5 None at this time.

6 HEARING OFFICER HORTON: Thank you.

7 Mr. Rao from the Board?

8 MR. RAO: No questions. Thanks.

9 HEARING OFFICER HORTON: Okay. We
10 move on to Subpart B.

11 845.200 Permit Requirements and
12 Standards of Issuance. We'll again state at the
13 top with Little Village, ELPC, Prairie Rivers and
14 Sierra Club.

15 MS. BUGEL: Yes, we have two
16 attorneys who will be asking questions. I believe
17 we're starting with Jeffrey Hammons of ELPC.

18 HEARING OFFICER HORTON: Okay.

19 Mr. Hammons?

20 MR. HAMMONS: Hello? Can you hear
21 me? I'm using my phone.

22 HEARING OFFICER HORTON: Yes.

23 MR. HAMMONS: Okay. This is Jeff
24 Hammons from the Environmental Law and Policy

1 Center. So I'm going to be asking a few questions
2 on 200, 210, 220 and 230 and I'll be passing it
3 off to my colleague once we get to the later
4 section of 240 and 260 Kiana Courtney.

5 So for 200, I only have one
6 question for the Agency and it's a clarifying
7 follow up to their pre-filed answers to one of
8 Ameren's questions.

9 So Exhibit 2 at Page 140,
10 Question 4, Subpart C Ameren just asked the Agency
11 for its interpretation of Section 22.59(e), which
12 is the Coal Ash Pollution Prevention Act and
13 particularly how it impacts closure and so in the
14 Agency's answer you said that Section 22.59(e) of
15 the act relieves the owner and operators of CCR
16 surface impoundments who had submitted a closure
17 plan on or before May 1st, 2019, and complete
18 closure within 24 months from the requirement of
19 obtaining a construction permit pursuant to Part
20 845 --

21 HEARING OFFICER HORTON: Mr.
22 Hammons?

23 MR. HAMMONS: Yeah?

24 MS. ZEIVEL: Can you pause just for

1 a second so we can catch up to where you were?

2 MR. HAMMONS: Yes. Let us know when
3 you're there.

4 MS. ZEIVEL: Thank you.

5 MR. BUSCHER: Can you repeat the
6 document, please?

7 MR. HAMMONS: Yes, it's Exhibit 2 at
8 Page 140. It's Question 4(c) by Ameren and your
9 pre-filed answer to it. It's 139. Sorry.

10 MS. ZEIVEL: We all have the page.
11 Can you start your question over again, please,
12 sir.

13 MR. HAMMONS: Hang on one second. I
14 think I might have actually referred you to the
15 wrong question. It's Page 142. My apologies. So
16 it's page -- okay. That's where. It's Page 142.
17 It's Question 4(c). I was confused because there
18 were multiple questions because they were directed
19 to witnesses. So I was looking at the wrong page.
20 So it's Page 142.

21 MS. ZEIVEL: Okay.

22 MR. HAMMONS: So my question is just
23 on your answer. At the end of your answer, you
24 indicate that -- that if they submitted closure

1 plans before May 1st, 2019, and completed the
2 closure within 24 months they don't have to get a
3 construction permit pursuant to Part 845.

4 So my question is, is that
5 construction permit only for closure or
6 construction permits for corrective action as
7 well?

8 MR. DUNAWAY: Lynn Dunaway. Section
9 E of 22.59 of the act specifies surface
10 impoundment closure.

11 MR. HAMMONS: Thank you. So just to
12 confirm that exemption is not for corrective
13 action construction permits?

14 MR. DUNAWAY: Lynn Dunaway. Yes.

15 MR. HAMMONS: Thank you. Those were
16 all the questions I had on Section 200.

17 HEARING OFFICER HORTON: Certainly.
18 Then, Ms. Bugel, was there a second attorney
19 for --

20 MS. BUGEL: No, that's later in this
21 subpart.

22 HEARING OFFICER HORTON: Okay. No
23 problem. We will go on to Midwest Generation.
24 Any questions on 200?

1 MS. GALE: No. Midwest Generation
2 does not have any questions for the entire Part B,
3 but reserves its right to do any follow up that
4 may arise.

5 HEARING OFFICER HORTON: Certainly.
6 City of Springfield?

7 MS. WILLIAMS: Deborah Williams. I
8 have one quick follow up on Section 200. We had
9 asked the question -- a question about that
10 section in Question 12 I think it was and the
11 Agency was kind enough to provide some examples of
12 permits -- or of activities that would require a
13 permit under -- under Part 845 that are related to
14 the surface impoundments and I guess I just wanted
15 to clarify for the record for all these examples
16 those activities would be also -- would be
17 pursuant to corrective action, correct, not just
18 in any case that any of those activities occurred,
19 but if they occurred pursuant to corrective
20 action, is that correct?

21 MR. LECRONE: This is Darin Lecrone.
22 Yes, that's correct. It could be any related
23 treatment or mitigation facility.

24 MS. WILLIAMS: And I'm just

1 interested in having as best of an understanding
2 as we can on where the lines will be between
3 permits under NPDES, Clean Water Act and this
4 program.

5 Would you think that any of the
6 examples that you've provided in this answer would
7 also require an operating or construction permit
8 under NPDES or state?

9 MR. LECRONE: This is Darin. The
10 construction permit requirements for this section
11 would supersede the existing requirements of 309
12 that have general applicability in all the
13 wastewater treatment systems.

14 So the permit requirements here
15 are specific to CCR surface impoundments. The
16 NPDES permit requirements there is nothing in here
17 that takes the place of that. That's a separate
18 program for surface water discharge, but for
19 construction permit requirements these specific
20 requirements that are applicable are in CCR
21 surface impoundments only.

22 MS. WILLIAMS: So just to be clear,
23 you said this would take the place of a water
24 construction permit and you'd get a CCR

1 construction permit, is that correct?

2 MR. LECRONE: Sorry. I didn't
3 understand.

4 MS. WILLIAMS: It would take the
5 place of the water construction permit, is that
6 what you're saying?

7 MR. LECRONE: Right. Under 309
8 Subpart B now. This would take the place of
9 those.

10 MS. WILLIAMS: Okay. That's
11 helpful. Thank you. That's all I have on this
12 section.

13 HEARING OFFICER HORTON: Okay.
14 Thank you. Dynegy, any questions on 200?

15 MR. MORE: Yes. Josh More on behalf
16 of Dynegy. I've got a follow-up question about
17 the scope of 22.59(e) of the act, the requirement
18 that a unit -- an owner/operator has submitted a
19 closure plan to the Agency before May of 2019 and
20 who has completed closure prior to 24 months after
21 the effective date is not required to obtain a
22 construction permit.

23 In response to a prior question,
24 the Agency suggested that that exclusion is

1 limited to a closure construction permit. In the
2 event that the prior approved closure plan
3 included groundwater corrective action measures
4 and, in essence, the unit was in postclosure care,
5 would one still have to apply for a new
6 construction permit or does a construction permit
7 for corrective action only arise in the situation
8 if some physical activity were being conducted new
9 in connection with the corrective action?

10 MR. DUNAWAY: Lynn Dunaway. The
11 requirement for a corrective action construction
12 plan would be for new construction related
13 corrective action.

14 HEARING OFFICER HORTON: Sorry.
15 Could you just repeat the end of that,
16 Mr. Dunaway?

17 MR. DUNAWAY: The requirement for a
18 construction permit for corrective action would be
19 related to new corrective actions.

20 HEARING OFFICER HORTON: Thank you.

21 MR. MORE: Thank you. Does the
22 Agency consider compliance with a permit issued
23 pursuant to Part 845 to be compliance with the
24 requirements set forth in Part 845?

1 MR. DUNAWAY: Lynn Dunaway. There
2 are other requirements of CCR surface impoundments
3 that are not included under the permit.

4 MR. MORE: So would it be fair to
5 say, though, that compliance with the provision --
6 with your 845 permit would constitute compliance
7 with the underlying applicable requirements in 845
8 that are set forth in the permit?

9 MR. LECRONE: This is Darin Lecrone.
10 Compliance with the permit would only cover those
11 activities for which the permit was granted be it
12 construction, corrective action or whatever.

13 MR. MORE: Okay. Thank you. Let's
14 turn to 845 -- we're not there yet. That's all I
15 have for 200.

16 HEARING OFFICER HORTON: Okay. All
17 right. For Section 200, IERG, do you have any
18 questions?

19 MS. BROWN: Melissa Brown. No
20 questions.

21 HEARING OFFICER HORTON: Thank you.
22 For Ameren, Section 200?

23 MS. MANNING: Claire Manning. None
24 at this time. Thank you.

1 HEARING OFFICER HORTON: Thanks.

2 AG's office?

3 MR. SYLVESTER: Hi. This is Steve
4 Sylvester. I did have one question regarding
5 Section 210(a). In Section 210(a), it says, "All
6 permit applications shall be made on such forms as
7 prescribed by the Agency" and I was wondering if
8 that general --

9 HEARING OFFICER HORTON: Mr.
10 Sylvester?

11 MR. SYLVESTER: Yes.

12 HEARING OFFICER HORTON: Could we
13 hold it? We're still on 200. That will be our
14 next section.

15 MR. SYLVESTER: I apologize.

16 HEARING OFFICER HORTON: No problem.
17 All right. Mr. Rao is --

18 MR. SYLVESTER: So --

19 HEARING OFFICER HORTON: I'm sorry.
20 Go ahead.

21 MR. SYLVESTER: Yeah, I just wanted
22 to clear up the record. No questions on 200.

23 HEARING OFFICER HORTON: Okay.
24 Sounds good. Mr. Rao, any questions on Section

1 200?

2 MR. RAO: I have no questions on

3 200.

4 HEARING OFFICER HORTON: Okay. Any
5 follow-up questions in the room on Section 200?

6 MR. HAMMONS: Yes, this is Jeff
7 Hammons. I have one follow-up question for the
8 Agency and this is following up on counsel for
9 Dynegy's question.

10 Just to understand the
11 applicability of Section 22.59(e)'s exemption for
12 those that have submitted closure plans before May
13 1st, 2019, and completed closure within 24 months
14 those impoundments would still be covered by the
15 rule including in the event of corrective action
16 being needed under the rules, right?

17 MR. DUNAWAY: Lynn Dunaway. That's
18 correct.

19 MR. HAMMONS: So in the event there
20 is corrective action at one of those impoundments,
21 they would still need a construction permit for
22 that corrective action?

23 MR. DUNAWAY: Lynn Dunaway. If
24 construction --

1 HEARING OFFICER HORTON: I'm sorry.

2 MR. DUNAWAY: If construction was
3 required for the particular corrective action, a
4 permit would be required, a construction permit.

5 MR. HAMMONS: Can you just give me a
6 type of corrective action that doesn't require
7 some sort of construction?

8 MR. DUNAWAY: Lynn Dunaway. An
9 example might be a change in monitoring frequency.
10 That would be one example.

11 MR. HAMMONS: So if the rules
12 require corrective action at an impoundment, it's
13 possible that a facility could propose just the
14 change in monitoring to resolve the groundwater
15 contamination?

16 MR. DUNAWAY: Lynn Dunaway. No,
17 that's not what I said. It was -- you asked for
18 an example of what change in corrective action
19 might not need a construction permit. Anything
20 that doesn't involve construction of something
21 physical, that was an example. A change in
22 statistical analysis, if we found it wasn't
23 appropriate, would be another example.

24 It's -- it's hard to sit here

1 and envision scenarios where you might have
2 something that didn't require construction, but it
3 is -- if they don't require construction,
4 obviously there couldn't be a construction permit
5 issued.

6 MR. HAMMONS: Okay. Thank you.

7 HEARING OFFICER HORTON: Okay.

8 We'll be moving onto Section 210. General
9 Provisions.

10 Our first set of questioners is
11 Little Village Environmental, ELPC, Prairie Rivers
12 and Sierra Club. Any questions?

13 MS. BUGEL: Yes, Mr. Hammons has
14 questions.

15 HEARING OFFICER HORTON: Okay
16 Mr. Hammons?

17 MR. HAMMONS: Hi. This is Jeff
18 Hammons, Environmental Law and Policy Center.

19 So my first question for the
20 Agency has to do with their pre-filed answer to
21 one of the Board's questions on this section. So
22 this is Exhibit 2, Page 156 and I promise that is
23 the right page this time.

24 This is particularly Board

1 Question 19. Once the Agency has gotten there,
2 just let me know.

3 MS. ZEIVEL: We're ready,
4 Mr. Hammons.

5 MR. HAMMONS: Okay. Thank you. I'm
6 just trying to understand the response to this
7 question a little more. The use of previous
8 assessments is allowed under proposed rule 845.210
9 and in this answer can you confirm that those
10 previous assessments still have to meet the
11 requirements of Part 845 rules?

12 MR. LECRONE: It's Darin Lecrone.
13 Yes, that's correct.

14 MR. HAMMONS: And then one follow
15 up. If the proposed Rule 210 specifically stated
16 that, would it adversely affect the Agency's
17 ability to administer the permitting program?

18 MR. LECRONE: Darin Lecrone. No, it
19 would not.

20 MR. HAMMONS: Thank you. So the
21 next set of questions that -- I'm done with
22 questions on that pre-filed answer.

23 So the next pre-filed answer
24 that I have some follow-up questions on is

1 Question 13 to Darin Lecrone by the environmental
2 groups and this is on Page 78 of Exhibit 2. And
3 this question just isn't for Darin. It's for the
4 Agency. It's just on his pre-filed answer that
5 we're following up on.

6 MS. ZEIVEL: This is Christine
7 Zeivel. For clarification of the record, if you
8 look at Darin Lecrone's responses to the ELPC
9 environmental groups, you'll notice that one of
10 the numbers -- one of the questions lost their
11 number. So on Page 77 what is No. 11 should be
12 No. 12 in the pre-filed questions. So the
13 question above No. 11 is missing a number. That
14 number should have been 11.

15 So in our filed responses, No.
16 11 is actually response No. 12. No. 12 is
17 actually response number 13 and so on. I just
18 wanted to clarify for you all in the record that
19 we recognize there was a numbering error.

20 MR. HAMMONS: Thank you. So the
21 pre-filed question -- pre-filed answer I have a
22 question on is what is on Page 78 and labeled
23 Question 13 in the pre-filed answer.

24 MS. ZEIVEL: Right. That would have

1 been No. 14 in your filed questions just for your
2 clarification.

3 MR. HAMMONS: Okay. Thank you.
4 That makes sense.

5 MS. ZEIVEL: We're ready.

6 MR. HAMMONS: All right. So my
7 question about this is a reference to another
8 answer you provided, but isn't it the case that
9 the Agency relies on certifications by qualified
10 professional engineers to ensure that the various
11 plans and site assessments that are conducted
12 pursuant to Part 845 meet the requirements of Part
13 845.

14 MR. LECRONE: Darin Lecrone. That's
15 correct.

16 MR. HAMMONS: So if the proposed
17 rules were changed to require any use of previous
18 assessments to be accompanied by a certification
19 by a qualified professional engineer that those
20 previous assessments or plans meet the
21 requirements of Part 845, would that adversely
22 affect the Agency's ability to administer a
23 permitting program?

24 MR. LECRONE: We don't think it's

1 necessary that this section -- primarily because
2 whatever the previous assessment, plan, study,
3 whatever the case may be as being requested to be
4 used we're going to look at it on a case-by-case
5 basis. Some previous, you know, studies or
6 hydrogeologic investigation work may be certified
7 by a professional geologist and chances are we
8 would be okay with that work assuming it meets all
9 the other requirements of this. So we don't see
10 the need for kind of that blanket certification
11 requirement.

12 MR. HAMMONS: What if the proposed
13 rule required certification by either a licensed
14 geologist or a qualified professional engineer,
15 would previous assessments and plans meet the
16 requirements of Part 845?

17 MR. LECRONE: I guess the bottom
18 line is we don't see the need to require a
19 certification on these previous assessments
20 because we intend to review each one as the
21 request is made for that previous assessment or
22 plan or whatever to be used. We intend to review
23 each of those on a case-by-case basis. So we
24 don't feel the need for a specific certification.

1 MR. HAMMONS: Okay. One more
2 question. Would that case-by-case review be made
3 easier for those assessment and plans that Part
4 845 requires to be accompanied by a certification
5 if those previous assessments were also
6 accompanied by certification?

7 MR. LECRONE: Can you kind of
8 clarify what you're asking? Are you asking if the
9 old previous assessments are now accompanied by a
10 certification that they meet 845, would that be
11 better? Is that what you're asking?

12 MR. HAMMONS: Yeah. Yeah. So I can
13 give you an example. One of the -- one of the
14 types of assessments that a facility can use that
15 was previously conducted is a structural stability
16 assessment. So under your proposed rules if they
17 were to submit that and it not be previewed, it
18 would be required to have a certification by a
19 qualified professional engineer.

20 So the question is for
21 assessments that have that requirement if they
22 were to be submitted with an application and not
23 be a previous assessment if those previous
24 assessments had to have a similar certification

1 where it's already required if there wasn't a
2 previous required assessment -- so, in other
3 words, if I submit a new structural stability
4 assessment, I have to provide certification, but
5 right now under the rules if I submit a previous
6 one I don't have to submit a certification.

7 My question is, is your
8 case-by-case review made simpler if that is
9 required?

10 MR. LECRONE: The Agency would not
11 be opposed to you suggesting some language for
12 consideration by the Board.

13 MR. HAMMONS: Thank you. Those are
14 all the questions I have on 210.

15 MR. MORE: Can I ask a follow up?

16 MS. GALE: Me, too. Go first.

17 HEARING OFFICER HORTON: Certainly.
18 So Dynegy had a follow up to that question.

19 MR. MORE: Yes. Josh More on behalf
20 of Dynegy.

21 In response to maybe two
22 questions before, I understood the Agency to say
23 that it was not necessary to provide a
24 certification in connection with a previously

1 performed assessment that is submitted with a
2 permit application because in that instance the
3 Agency is going to review the underlying
4 assessment, is that correct?

5 MR. LECRONE: In general, that's
6 correct. The example Mr. Hammons gave of the
7 structural stability assessment is one example
8 that is kind of a little more complicated in that
9 in Illinois damn safety is regulated by another
10 Agency and the -- our Agency intends to consult
11 with them on issues of structural stability. So,
12 for that reason, a certification accompanying that
13 assessment would be useful to our Agency.

14 MR. MORE: Thank you. Mr. LeCrone,
15 can you think of any other assessments where it
16 would be useful given the burden on the owners and
17 operators to go back and recertify all of these
18 assessments? I'd like to understand if we could
19 limit the applicability of a recertification?

20 MR. LECRONE: I guess the issue if
21 you're talking about using a previous
22 certification of that earlier assessment, that
23 certification may have been that it was compliant
24 with Part 257 and any new certification that we

1 would receive or, you know, we would expect it to
2 be certifying in compliance with 845 and, you
3 know, there are, as you know, some minor
4 differences here and there. So use of a previous
5 certification would only be useful to us if it
6 maybe had an addendum that, yes, it also complies
7 with 845.

8 MR. MORE: No more questions.

9 HEARING OFFICER HORTON: Okay. I
10 think I went out of order there for a bit. So
11 Midwest Generation.

12 MS. GALE: Yes, I have a follow up
13 to Mr. Hammons' question and it's back to his
14 first question. Page 156 of Exhibit 2, so the
15 answers to the Board's questions, and looking back
16 at Question 19. I'll wait. I'll let you get
17 there.

18 My follow-up question is really
19 along the lines of if a hydrogeologic site
20 investigation or assessment doesn't completely
21 comply with Part 845, would the Agency accept a
22 supplement or would the Agency require an entirely
23 new investigation? For that, I mean a lot of
24 these sites have a lot of data to it, but may not

1 have every detail because these are new
2 regulations. So would the Agency just allow a
3 supplement?

4 MR. LECRONE: This is Darin Lecrone.
5 Yes, the Agency would allow a supplement.

6 MS. GALE: Thank you. Nothing
7 further.

8 HEARING OFFICER HORTON: Okay.
9 Moving on. City of Springfield, did you have any
10 questions on 210?

11 MS. WILLIAMS: No, not at this time.

12 HEARING OFFICER HORTON: We asked
13 Dynegy. Next up is IERG.

14 MS. BROWN: Melissa Brown. No
15 questions.

16 HEARING OFFICER HORTON: Thank you.
17 Ameren?

18 MS. MANNING: Claire Manning. None
19 at this time. Thank you.

20 HEARING OFFICER HORTON: Thanks.
21 Then I know the AG's office has questions. We're
22 on 210, right? Yes. Go ahead.

23 MR. SYLVESTER: Steve Sylvester. My
24 question did get answered during the previous

1 questioning. So no further questions.

2 HEARING OFFICER HORTON: Okay.

3 Mr. Rao for the Board. Any questions on 210?

4 MR. RAO: Yeah, I have a
5 clarification regarding the issue of
6 investigations are using monitoring wells from
7 which have already been installed. I think it
8 goes to the Board Question 19 and the Agency
9 responded saying that they will allow such
10 information as long as the information meets the
11 requirements of the proposed rules, the 845 rules,
12 and if the 845 rules require certification by a
13 professional engineer, does that mean that, you
14 know, any information submitted from final
15 investigations has to be recertified or certified
16 for the time, for the Agency to accept that
17 information?

18 MR. LECRONE: This is Darin Lecrone.
19 Yeah, we're trying to be as flexible as we can,
20 you know, in allowing this -- these -- whether
21 it's a previous assessment, you know, study,
22 monitoring plan, or whatever dataset to be used
23 some of them may be certified, some of them may be
24 certified by a geologist, engineer, you know,

1 whatever.

2 We're just going to have to kind
3 of go on a case-by-case basis and see what it is
4 and have to review it and, you know, if they
5 certify that, yes, this previous assessment does
6 meet the requirements of 845, great, we're going
7 to have to verify that. And if it's not
8 certified, we're going to have to verify it
9 anyway. So we're just trying to be as flexible as
10 we can and not require people to reinvent the
11 wheel if there is a previous assessment or study
12 that can serve the purpose and meet the
13 requirements of the proposed rule.

14 MR. RAO: For the flexibility that
15 you want to provide, would that be consistent with
16 the Federal Rules under Part 257? For example, I
17 don't think 257 allows certification by a
18 professional geologist. Is that because the
19 Agency accepts information that is certified by a
20 geologist rather than a professional engineer?

21 MR. LECRONE: This is Darin Lecrone.
22 You know, I think part of the reason why the U.S.
23 EPA didn't address the professional geologist
24 issue is because all states don't have licensed

1 geologists. Illinois does. And we want to be
2 able to recognize that work that they have already
3 done and certified under a previous assessment.

4 So we want to allow that to
5 happen and not have owner/operators have to go out
6 and re-do quality work or data collection that has
7 already been completed. So that's why we want to
8 have that ability to review those previous
9 assessments or studies on a case-by-case basis and
10 make that determination whether it's still
11 applicable and we think in most cases if a
12 professional geologist signed off on a
13 hydrogeologic study that that's probably going to
14 be acceptable to us.

15 MR. RAO: If that's the case, it
16 would be helpful if you can add language to the
17 rule under the Section 210 that allows the Agency
18 to do that.

19 Would that be something that
20 you'd want to take a look at and get back to?

21 MR. LECRONE: We're only talking
22 about on these -- on previous assessments, some
23 completed before the rule, right?

24 MR. RAO: Yes.

1 MR. LECRONE: We'll consider it and
2 see if we can come up with something.

3 MR. RAO: Okay. Thank you very
4 much.

5 HEARING OFFICER HORTON: I think
6 that concludes Section 210 as long as there are no
7 follow-up questions. Seeing none, we move on to
8 220. Sorry. I think I was on mute there. That
9 concludes Section 210 as long as there are no
10 follow-up questions. Okay. Seeing none, we move
11 on to 220 Construction Permits.

12 And we'll begin with our first
13 group of questioners Little Village, ELPC, Prairie
14 Rivers, Sierra Club.

15 MS. BUGEL: And I believe
16 Mr. Hammons has questions of this section.

17 HEARING OFFICER HORTON: Okay.

18 MR. HAMMONS: Yes, this is Jeffrey
19 Hammons, Environmental Law and Policy Center. I
20 only have two questions for the Agency and both of
21 them concern pre-filed answers to one of our
22 questions, which is on Exhibit 2 at Page 80,
23 specifically the response to 16(b) as it appears
24 on Page 80.

1 So the pre-filed answer here
2 indicates that under closure alternatives,
3 seasonal variation of groundwater modeling will be
4 taken into account.

5 So my first question is, is the
6 Agency anticipating the data that informs the
7 seasonal variation to be the monthly groundwater
8 elevations required by the rule?

9 MS. ZIMMER: This is Amy Zimmer.
10 Can you hear me?

11 MR. HAMMONS: Yes.

12 MS. ZIMMER: I think part of it will
13 be the groundwater elevation required by the rule.
14 Part of it will probably also be past data.

15 MR. LECRONE: Okay. So other than
16 the monthly elevations required by the rule and
17 any past data for facilities that have ongoing
18 groundwater monitoring, do you anticipate any
19 other inputs for that seasonal variation?

20 MS. ZIMMER: I can't anticipate what
21 all they'll do. Modeling required, precipitation
22 data, Evapotranspiration data, so there's a lot of
23 data required by modeling. There is usually a
24 limit as to how much data is available. So you

1 take the nearest available data and what data you
2 have and you try to put a model together that is
3 accurate.

4 MR. HAMMONS: One follow-up just
5 acknowledging that the data is not perfect.

6 You would envision that the
7 modeling that you do conduct at least uses all of
8 the data that is available?

9 MS. ZEIVEL: Yes.

10 MR. HAMMONS: Thank you. That's the
11 only question I had for 220.

12 HEARING OFFICER HORTON: Moving on
13 to Midwest Generation 220? No questions.

14 MS. GALE: None.

15 HEARING OFFICER HORTON: City of
16 Springfield?

17 MS. WILLIAMS: (Negative nod.)

18 HEARING OFFICER HORTON: No
19 questions. Dynegy 220?

20 MR. MORE: Yes, Jeff More on behalf
21 of Dynegy.

22 HEARING OFFICER HORTON: We're
23 getting some -- okay. I think we got it.

24 MR. MORE: I'd like to turn the

1 Agency's attention to 845.220(a)(2)(a).

2 Why is the Agency requiring a
3 chemical analysis of each type of CCR expected to
4 be in the impoundment?

5 MR. LECRONE: This is Darin Lecrone.
6 The purpose of asking for that is to have a full
7 characterization of the materials that are in the
8 impoundment both for protection of the environment
9 and for public health purposes.

10 MR. MORE: Can you explain how that
11 information would influence how the impoundment is
12 closed?

13 MS. MARTIN: Lauren Martin. The
14 overall classification of material is in your
15 folder and it would go into the chemical analysis
16 or removal versus closure in place for different
17 closure alternatives.

18 HEARING OFFICER HORTON: We're
19 having a little hard time hearing you, Ms. Martin.
20 Could you repeat your answer? Thank you.

21 MS. MARTIN: Sorry about that. Yes.
22 So the chemical analysis will play into the -- can
23 you hear me or should I just take my mask off for
24 a second?

1 HEARING OFFICER HORTON: I think we
2 hear you much better.

3 MS. MARTIN: So the chemical
4 analysis will help with the overall cost analysis
5 for the closure alternatives for each CCR
6 impoundment.

7 MR. MORE: I'm sorry. Did you say
8 cost?

9 MS. MARTIN: Yes.

10 MR. MORE: And can you explain how
11 the chemical analysis will be a factor in
12 evaluating the cost of closure?

13 MS. MARTIN: Yes. Lauren Martin
14 here. So different chemicals that are in there
15 are regulated by OSHA for worker safety, but also
16 could cause a public health issue in the
17 surrounding community if the dust were to get out
18 and also cause issues with the groundwater
19 monitoring.

20 So as a whole picture kind of
21 alternatives analysis in which way we can
22 actually -- I guess the owners or operators will
23 actually be able to close the site without -- with
24 a minimal amount of effect to the public for air,

1 land and groundwater.

2 MR. MORE: I'd like to turn your
3 attention now to 845.220(a)(2)(c).

4 Will collection of the rate at
5 which CCR and non-CCR waste streams currently
6 entering the surface impoundment influence how the
7 impoundment is closed?

8 MR. LECRONE: It could affect, you
9 know, whether the impoundment may be closed or
10 retrofit or replaced. C kind of goes with D. I
11 mean, the rate that it's being generated and the
12 estimated time impoundment would stay in service,
13 those are kind of related.

14 MR. MORE: But that's all
15 information that the owner would take into account
16 when selecting those options that you just
17 mentioned, for example, a decision to retrofit,
18 how does it inform the Agency's approval of the
19 ultimate closure?

20 MR. LECRONE: It would allow us to
21 see that type of data that the owner/operator used
22 in making that determination. They're going to
23 have to look at useful life of the existing
24 facilities, whether retrofit or rebuild is

1 necessary, whether closure in a different method
2 of disposal is warranted.

3 So, you know, all this is data
4 that the owner/operator, yes, is going to be using
5 when making their alternatives analysis, but
6 that's the same reason that the Agency would want
7 that data as well.

8 MR. MORE: Well, I have to admit,
9 I'm not aware of any utility that is measuring the
10 rate of flow which water is discharging to its
11 impoundment.

12 So my next question to you is
13 are you aware of any technology that allows one to
14 make that measurement on a gallons per day and at
15 the same time calculate the dry tonnage of the
16 material that is sleuthed wet to the impoundment
17 on a daily basis?

18 MR. LECRONE: This is Darin Lecrone.
19 They should be able to calculate the amount of ash
20 generated based on combustion chemistry and the
21 tonnage of coal going in, you know, the BT value
22 and how much coal may need to burn to produce X
23 amount of steam. So they ought to be able to
24 calculate, you know, ash generation tonnage from

1 that and then they should know the rate or the
2 amount of water that they use to sleuth that.

3 Most of their NPDES permits have
4 design average flow rates for those sleuth waters.
5 So they, you know, should be able to calculate the
6 amount of ash generated and they should know the
7 water used to sleuth that material through the
8 impoundment.

9 MR. MORE: And it's your opinion
10 that this information in 2C is important for the
11 utility to consider when deciding when to close or
12 how to close?

13 MR. LECRONE: This information is
14 also required for new facilities as well and it
15 can go into that analysis of, you know, closure,
16 what are you going to replace it with, is there
17 other limitations on the site that influence a
18 closure choice. You know, it's part of completing
19 the data that the Agency wants to see on what was
20 used to evaluate those options and alternatives
21 and what is chosen for potential new impoundment
22 and the sizing of that new impoundment based on
23 past generation.

24 MR. MORE: Okay. I'd like to turn

1 your attention to 220(c)(2)(e) and the Agency's
2 response to Dynegey's question to Question 22 which
3 I believe is Exhibit 3 on Page 41. Can you
4 identify for us the specific requirement under the
5 landfill program authorizing the Bureau of Land
6 Permit Section to require an applicant to submit a
7 fully licensed copy of a groundwater computer
8 model?

9 MS. ZEIVEL: This is Christine
10 Zeivel. We don't have any sworn-in witnesses from
11 the Agency within the Bureau of Land Permit
12 Section that would be able to provide a response
13 right now.

14 MR. MORE: Understood. Would you be
15 willing to follow up with an answer?

16 MS. ZEIVEL: Yes.

17 MR. MORE: Thank you. I'd like to
18 now turn your attention to 845.22(f), the duration
19 of construction permits.

20 Is the Agency aware that U.S.
21 EPA's proposed federal permit program allows for
22 permits to be issued without an expiration date?

23 MR. LECRONE: The Agency is aware of
24 EPA's proposed permit program, but we are not

1 aware of all the specifics of it. So I don't know
2 anything about what they have proposed as far as
3 permit durations.

4 MR. MORE: Okay. I'd like to then
5 move to admit into the record Dynegy's proposed
6 Exhibit 1 as Exhibit 6, which is the United States
7 Environmental Protection Agency's CCR rule permit
8 program dated February 20th, 2020.

9 (Document marked as Hearing
10 Exhibit No. 6 for
11 identification.)

12 HEARING OFFICER HORTON: So moved.
13 So that will be Exhibit 6 and that's your first
14 exhibit in your exhibit packet?

15 MR. MORE: Yes.

16 MS. BUGEL: Okay.

17 MR. MORE: I'd like to direct your
18 question to Federal Register Page 9978.

19 MS. ZEIVEL: This is going to be a
20 bit complicated because the Agency does not have
21 the ability for everybody to have a printed copy
22 of these exhibits considering the timeframe. I
23 think we have one in the room. So I just ask your
24 patience as we try to catch up with you.

1 MR. MORE: Yes, take your time and
2 let me just direct you to where I want you to go
3 so maybe we can make it easier. It's the middle
4 column at the top after Item 7. I'll just read it
5 into the record for you.

6 MS. ZEIVEL: Can you repeat the page
7 number again?

8 MR. MORE: 9978.

9 MS. ZEIVEL: Okay. We're there.

10 MR. MORE: Item 7 will not have an
11 expiration date. Permit terms will remain in
12 effect until modified or until the permit is
13 revoked and reissued or terminated and that is
14 proposed Section 257.120(b)(7). And I'd like to
15 turn your attention to Dynegy's Question 98 on
16 Exhibit 4, Page 7 through 8.

17 Is there anything in the
18 Illinois Environmental Protection Act requiring
19 the duration of construction permits issued under
20 Part 845 to be consistent with the term for
21 construction permits issued under different
22 programs?

23 MR. BUSCHER: The Agency is not
24 aware of that, no.

1 MR. MORE: And when companies submit
2 an application for closure, do you anticipate that
3 application will contain a schedule setting forth
4 the expected date by which the construction
5 activity will be completed?

6 MR. LECRONE: Yes. This is Darin
7 Lecrone. Yes.

8 MR. MORE: And if the approved
9 closure activity was expected to take longer than
10 five years, would setting the term of the
11 construction permit consistent with the approved
12 closure activity be detrimental to human health
13 and the environment?

14 MR. LECRONE: This is Darin Lecrone.
15 The answer is it could be if a construction
16 project takes longer than necessary. I guess that
17 would be my answer.

18 MR. MORE: Right. In that instance,
19 the permit would set forth the deadline by which
20 the project must be performed and if it couldn't
21 be performed in time, wouldn't the owner or
22 operator have to go in for either an amendment or,
23 in fact, be in violation of its permit?

24 MR. LECRONE: Well, that's kind of

1 how it is setup now. Construction permits can get
2 renewed or extended. So any timeframe is kind of
3 arbitrary.

4 MR. MORE: And, in fact, what the --
5 let me set this aside. The renewal process and
6 the entire construction permitting process set
7 forth in 845 is pretty onerous. So the question
8 is, if at the front end you're going to approve a
9 construction schedule that sets a six-year
10 deadline to complete the activity and it's going
11 to be written in the permit, why do I have to go
12 in for a renewal six months before year five when
13 you've already approved I have the construction
14 activity that is going to take six years?

15 MR. LECRONE: This is Darin Lecrone.
16 I guess the eight proposed timeframes that we
17 thought was appropriate, especially given the
18 timeframes associated with existing construction
19 permits, if the other participants or the Board
20 feels another timeframe or another option is
21 appropriate, the Agency would be willing to
22 consider it.

23 HEARING OFFICER HORTON: Did you say
24 consider it at the end there?

1 MR. LECRONE: Yes.

2 HEARING OFFICER HORTON: Thank you.

3 MR. LECRONE: We'd be willing to
4 consider another proposal.

5 MR. MORE: Thank you, Mr. Lecrone.
6 I have no more questions on 220.

7 HEARING OFFICER HORTON: Okay. I
8 see it's 3:00. I propose taking a ten-minute
9 break right now and coming back at 3:10,
10 continuing on with 220 and IERG's questions. So
11 we'll pause for a little bit and be back at 3:10.
12 Thank you.

13 (Whereupon, a break was taken
14 after which the following
15 proceedings were had.)

16 HEARING OFFICER HORTON: Welcome
17 back. It's about 3:14. A little bit late. We
18 are resuming here. We have had a suggestion in
19 the room from Dynegy's representatives to perhaps
20 stay until 6:00 p.m. today and start tomorrow at
21 8:00 a.m. knowing that we will have -- hard end
22 tomorrow for testimony because of our public
23 comment section and hopefully be able to complete
24 all the testimony and questions for this hearing

1 on Thursday.

2 So the Board is -- the Board's
3 representatives here are available to do that.
4 Are there any questions or complaints from people
5 in the room?

6 MS. BUGEL: Agency counsel is not
7 present.

8 HEARING OFFICER HORTON: Okay.
9 Agency counsel is not present in their room. So
10 I'll hold off on this question. We'll just wait a
11 few minutes here for the Agency to get back.
12 Okay. Just checking in the Agency's room, are the
13 attorneys back?

14 MR. BUSCHER: We're just discussing
15 real quick.

16 MS. ZEIVEL: This is Christine
17 Zeivel. The Agency doesn't -- isn't opposed to
18 going until 5:30 tonight. We're not able to go
19 until 6:00. We can also agree to start in the
20 morning. However, with the caveat, we may have --
21 certain witnesses may have to leave early or may
22 be slightly late due to childcare and other
23 obligations.

24 If there are questions posed

1 during that timeframe for the appropriate witness,
2 you may have to punt that question until they are
3 back.

4 HEARING OFFICER HORTON: Okay. That
5 sounds good. So we will continue to 5:30 today
6 and begin at 8:00 tomorrow. Sounds good. Moving
7 on we were at Section 220 and we were at IERG.

8 Do you have any questions for
9 Section 220?

10 MS. BROWN: Melissa Brown. Not at
11 this time.

12 HEARING OFFICER HORTON: Thank you.
13 Ameren.

14 MS. MANNING: I do. Thank you. I
15 have a couple of general questions.

16 First of all, as to surface
17 impoundments that have closed where the Agency has
18 accepted closure and are and have been in
19 postclosure care, but because of the Agency's rule
20 proposal the date October 19th, 2015, and the
21 closure was not done by that date, does the Agency
22 intend that the entirety of this section apply to
23 those closed facilities that are effectively
24 closed and in postclosure care?

1 MR. DUNAWAY: Lynn Dunaway. If they
2 don't meet requirements of Part 845.

3 MS. MANNING: I'm sorry. I can't
4 hear you.

5 MR. DUNAWAY: Lynn Dunaway. If a --
6 if the CCR surface impoundment does not meet the
7 requirements of 845.170, then the entire section
8 applies.

9 MS. MANNING: My understanding of
10 845.170 is for inactive closed facilities. I'm
11 asking about facilities that are not considered
12 closed by -- by virtue of the Agency's proposed
13 rules because they were not closed by October
14 19th, 2015.

15 Does the Agency intend that this
16 section apply to those closed facilities that are
17 effectively closed, but not recognized as such
18 pursuant to the Agency's rule proposal?

19 MR. DUNAWAY: Lynn Dunaway. Yes.

20 MS. MANNING: So effectively the
21 Agency is asking that this facility reclose under
22 the Board's new rules that it is proposing?

23 MS. ZEIVEL: When you say this
24 facility, Ms. Manning, are you referring --

1 MS. MANNING: This -- any surface
2 impoundment in the category I described which are
3 those that closed or postclosure care, have been
4 recognized as such, but the closure did not occur
5 prior to October 19th, 2015.

6 So the Agency's proposal would
7 have that surface impoundment that I just
8 described reclose?

9 MR. DUNAWAY: Those that you're
10 describing would fall under the exemption under
11 22.59. I don't recall the -- E, I believe. If
12 they had a motion plan submitted to approve --
13 closure plan submitted by May of I believe it's
14 2019 and they finish their closure they would not
15 need a construction permit for a closure.

16 MS. MANNING: Otherwise, the
17 Agency's testimony is that the rest of 845.220
18 would apply to that facility or would 22.59(e)
19 effectively exempt out that surface impoundment
20 that I just described from this construction
21 permit as described in 845.220?

22 MR. DUNAWAY: They would be -- those
23 CCR surface impoundments would be exempt from the
24 construction permit requirements.

1 MS. MANNING: Thank you. And as to
2 any ash pond that has had its CCR removed pursuant
3 to the Agency's authority oversight and approval,
4 but the Agency is not recognizing it as closed
5 because of the groundwater monitoring requirement,
6 three-year monitoring requirement that is proposed
7 in the Federal Rules, does the Agency intend that
8 this section apply to those ash ponds where the
9 CCR has been removed?

10 MR. DUNAWAY: Lynn Dunaway. To the
11 extent that they are not exempt by 22.59 for
12 having completed closure, yes.

13 MS. MANNING: Okay. Thank you. So
14 that's all I have at this point. Thank you.

15 HEARING OFFICER HORTON: Okay.
16 Thank you. Moving on to the AG's office. Any
17 questions on Section 220?

18 MR. SYLVESTER: Steve Sylvester. No
19 further questions.

20 HEARING OFFICER HORTON: Thank you.
21 Moving on to Mr. Rao from the Board. Any
22 questions on 220?

23 MR. RAO: No, I have no questions.

24 HEARING OFFICER HORTON: Okay.

1 Moving on to Section 230 Operating Permits.

2 MS. GALE: I'm sorry.

3 HEARING OFFICER HORTON: Sorry. I
4 forgot about follow-up questions. Midwest
5 Generation.

6 MS. GALE: I need my mic.

7 MR. HAMMONS: This is Jeff Hammons,
8 Environmental Law and Policy Center. We have a
9 follow-up question.

10 HEARING OFFICER HORTON: Sorry about
11 that. I forgot about that. We'll go with
12 Ms. Gale. Go ahead, Ms. Gale, and then
13 Mr. Hammons.

14 MS. GALE: I just have a follow-up
15 question related to the modeling on Section
16 220(c)(2).

17 So where it says modeling
18 required under corrective action construction,
19 does this require only numerical modeling or will
20 detailed analytical modeling also be acceptable?

21 MS. ZEIVEL: Amy, are you speaking?
22 Because you're muted.

23 MS. ZIMMER: Up --

24 MS. ZEIVEL: I can hear you.

1 MS. ZIMMER: Can you hear me?

2 MS. ZEIVEL: Yes.

3 MR. BUSCHER: Start over.

4 MS. ZIMMER: Okay. I will. Sorry.

5 It didn't show that I was muted. I apologize.

6 This is Amy Zimmer.

7 It would be -- the Agency would
8 view some kind of numerical modeling as the
9 appropriate modeling here, not an analytical
10 model. It would have to be some kind of numerical
11 modelling from a 2D/3D modeling, probably some
12 combination thereof.

13 MS. GALE: And in the Agency's
14 answer I guess we were going with is, does the
15 Agency understand at times it can be a consuming
16 exercise to do a numerical model? For instance, I
17 know one location that took almost over a year to
18 conduct a numerical model.

19 MS. ZIMMER: Yes, it can be very
20 time-consuming. I agree.

21 MS. GALE: So that relates to the
22 other time questions we have related to a
23 construction permit, would the Agency take that
24 into consideration of allowing permitting to go

1 beyond the time that it allows under the
2 regulations?

3 MS. ZEIVEL: Ms. Gale, can you
4 clarify the timeframe you're referencing?

5 MS. GALE: I was just trying to
6 piggyback on what Mr. More was talking about
7 related to the construction permitting in five
8 years and I'm just trying to add on that about the
9 time of doing a numerical model, you know, and
10 would that -- I guess the Agency already answered
11 that question.

12 They would consider it, but
13 would that help in their consideration of
14 adjusting its timelines so that we can get these
15 modeling -- modeling done well and in a timely
16 fashion?

17 MS. ZIMMER: This is Amy Zimmer.
18 Can you all hear me?

19 MS. GALE: Yes.

20 MS. ZIMMER: The Agency is not
21 inclined to consider extensions at this time.

22 MS. GALE: Okay. Then let's turn to
23 220(a)(2)(a). This is related to types of CCR
24 expected in the CCR surface impoundment, including

1 MS. GALE: I see. Nothing further.

2 Thanks.

3 HEARING OFFICER HORTON: Okay. I
4 believe Mr. Hammons had questions -- follow-up
5 questions on 220.

6 MR. HAMMONS: Yes, Jeffrey Hammons,
7 Environmental Law and Policy Center. I had a
8 couple follow-up questions in response to the
9 Agency's questions, some of Dynegy's questions.
10 That was a mouthful. I apologize.

11 My first question for the Agency
12 is whether they can confirm that Exhibit 6 is a
13 proposed rule and not a final rule by the federal
14 EPA?

15 MR. MORE: This is Josh More. I
16 represented in the questioning when I moved to
17 admit it that it was a proposed rule.

18 MR. LECRONE: This is Darin Lecrone.
19 The Agency agrees.

20 MR. HAMMONS: Sorry. The Agency
21 agrees that it's a proposed rule and not a final
22 rule?

23 MR. LECRONE: Yes, correct.

24 MR. HAMMONS: Thank you. So it's

1 possibly the federal EPA permitting program could
2 change when it becomes a final rule?

3 MR. LECRONE: Potentially, yes.

4 MR. HAMMONS: My second question is,
5 is there any requirement that you know of in the
6 Coal Ash Pollution Prevention Act that requires
7 the Agency's permitting program to mirror the
8 federal EPA's permitting program?

9 MR. LECRONE: There was no federal
10 permitting program in place when the act was
11 amended.

12 MR. HAMMONS: Thank you. And my
13 last question has to do with the five-year
14 timeline on construction permits.

15 Isn't it possible that during
16 the five years since the permit is issued that
17 circumstances could change that would warrant
18 changes to those permits?

19 MR. LECRONE: This is Darin Lecrone.
20 That is possible, yes.

21 MR. HAMMONS: So the five-year
22 renewal timeline does provide revolving
23 opportunity to ensure those permits and their
24 implementations still comply with Part 845,

1 correct?

2 MR. LECRONE: It would in those
3 types of circumstances, yes.

4 MR. HAMMONS: Thank you. That's
5 all.

6 HEARING OFFICER HORTON: Follow-up
7 question from Dynegy.

8 MR. MORE: Yes, I apologize for
9 having to go back and forth on this. Under that
10 fact pattern, if the permit term remained at five
11 years if a change in condition happened in year
12 two, would that trigger an obligation to likely
13 amend the permit to recognize that change in
14 condition?

15 MR. LECRONE: This is Darin Lecrone.
16 It could -- after issuance of any construction
17 permit either under existing Agency programs or
18 under this proposal, if some change needs to
19 occur, a revised design, you get into
20 construction, you run into an issue, you have to
21 revise a design of what you're building, then you
22 would need to come in for either a modified or
23 supplemental construction permit.

24 MR. MORE: Thank you, Mr. LeCrone.

1 And that's independent of the term of the permit
2 whether we made it two years or 25 years, correct?

3 MR. LECRONE: That would be correct,
4 yes.

5 MR. MORE: Thank you.

6 HEARING OFFICER HORTON: Any other
7 follow-up questions on Section 220?

8 Ms. Williams from the City of
9 Springfield.

10 MS. WILLIAMS: Deborah Williams.
11 Just a quick follow up. Mr. Hammons asked about
12 whether there was a requirement in the Coal Ash
13 Pollution Prevention Act that the state permit
14 program mirror the federal and I guess I would
15 just like the Agency to let me know if they agree
16 for the record that that act does require the
17 Agency to propose a program that is approvable to
18 stand in place of the federal program in Illinois,
19 is that correct?

20 MR. LECRONE: Can you restate the
21 question, please?

22 MS. WILLIAMS: Does the Coal Ash
23 Pollution Prevention Act require the Agency to
24 propose and the Board to adopt rules establishing

1 a permit program that is federally approvable for
2 Illinois in place of a federal permit program?

3 MR. DUNAWAY: Lynn Dunaway. Will
4 you repeat your question, please, so I answer
5 correctly?

6 MS. WILLIAMS: I'm not trying to
7 trick anybody so if I didn't word it artfully,
8 please feel free to ask a clar- -- what I mean,
9 but I meant it to be a very simple question. If
10 the court reporter will go ahead.

11 MR. DUNAWAY: I would like to hear
12 the question again so I answer what you asked.

13 MS. WILLIAMS: Are you able to do
14 that? Is that doable that you can read it back?

15 (Whereupon, the record was read
16 as requested.)

17 MR. DUNAWAY: Yeah, I think I got
18 that. The -- no. When Section 22.59 was
19 proposed, there was no federally proposed permit
20 program. Therefore, it could not -- could not
21 recognize it had to be -- had to have a permit
22 program approved for that nor does 22.59 say that
23 we must get federal approval for Part 845. It
24 simply requires that we be as protective and -- at

1 least as protective and comprehensive.

2 MS. WILLIAMS: So is it the Agency's
3 position after 845 is adopted the Agency is not
4 required to submit it for federal approval?

5 MR. DUNAWAY: Lynn Dunaway. There
6 is not a requirement in Section 22.59 of the act
7 that requires us to get federal approval for this
8 program.

9 MS. WILLIAMS: And have you looked
10 at whether there's any other sections of the act
11 that might require that?

12 MR. DUNAWAY: No.

13 MS. WILLIAMS: I don't have anything
14 further right now.

15 HEARING OFFICER HORTON: Okay. Any
16 other further follow-up questions on Section 220?
17 Hearing none, we move on to 230 Operating Permits
18 and we'll begin with our first questioners of
19 Little Village, ELPC, Prairie Rivers and Sierra
20 Club. Any questions on Section 230?

21 MS. BUGEL: I believe Mr. Hammons
22 has questions.

23 HEARING OFFICER HORTON: Okay.
24 Mr. Hammons?

1 MR. HAMMONS: Thank you. Jeffrey
2 Hammons, Environmental Law and Policy Center. So
3 my first question for the Agency is in reference
4 to 230(a)(1) to 230(a)(11) and it's also a follow
5 up to our question to Darin Lecrone. Question
6 18(b), which is Exhibit 2 at Page 81.

7 So I'll continue, but if the
8 Agency isn't there, just let me know. This is
9 pre-filed question to answer 18 -- 18(b).

10 MR. LECRONE: Thank you.

11 MR. HAMMONS: In your pre-filed
12 answer, you noted that the -- this has to do with
13 certifications of plans and assessments and that
14 documents supporting those certifications will be
15 placed on the facility's operating record, but are
16 not required to be submitted as part of an
17 operating permit application.

18 So my question for the Agency is
19 whether if the rules did require supporting
20 documentation of those certifications to be
21 submitted alongside the certifications themselves
22 for operating permits if that would harm the
23 Agency's ability to administer its permitting
24 program.

1 MR. LECRONE: This is Darin Lecrone.
2 The Agency intended to rely on the certifications
3 kind of to avoid a duplication of effort and to
4 avoid, you know, having to handle documents that
5 are already intended to be available for the
6 public.

7 MR. HAMMONS: But would the Agency
8 be opposed if the proposed rules did require those
9 supporting documents to be filed alongside the
10 operating permit applications?

11 MR. LECRONE: This is Darin Lecrone.
12 We stand behind the rule as we drafted it.

13 MR. HAMMONS: Thank you. So my next
14 question is a clarifying question to one of your
15 pre-filed answers. This is a pre-filed answer to
16 another question for Darin Lecrone. Question 7,
17 which is on Page 75 of Exhibit 2.

18 So the question asks the Agency
19 how they will ensure that surface impoundments
20 have developed plans and assessments that meet the
21 applicable requirements if those plans and
22 assessments are not required to be submitted to or
23 approved by the Agency and your answer noted that
24 you rely on those certifications by qualified

1 professional engineers to ensure that those plans
2 and assessments do meet the requirements of Part
3 845 and that issues may arise that warrant Agency
4 review of a relevant plan such as on the occasion
5 of complaints received.

6 My question is specifically when
7 you're talking about complaints received, are you
8 referring to complaints made by the public after
9 that plan and permit have already been approved?

10 MR. LECRONE: This is Darin Lecrone.
11 It could be. It could be operational concerns or
12 issues that are brought to the Agency's attention.
13 It could be any number of things that would cause
14 us to go back and take a look at that
15 documentation to make sure that the owner/operator
16 or the permittee is complying with what they
17 committed to, what they certified they would be
18 doing and the permit that was issued.

19 So, yeah, we are relying on
20 those certifications and the PE signature and
21 stamp on them and, you know, would only intend to
22 review those if those issues mentioned do arise.

23 MR. HAMMONS: So in the event that
24 the public has concerns with the sufficiency of

1 the plan that is submitted, if those plans and
2 assessments were submitted as part of an operating
3 permit application, then the public could raise
4 those concerns in part -- as part of the
5 permitting process?

6 MR. LECRONE: The information should
7 be available, you know, on the owner/operators
8 website. If they want to raise those issues or
9 concerns during the permitting process, they can
10 do so.

11 MR. HAMMONS: Okay. So I did have a
12 question related to that, but it is more of an
13 operating record question, but since it is sort of
14 intermixed between these two, is there an explicit
15 requirement anywhere in the rules for when the
16 documents are required to be posted on the
17 facility's operating record, have to be posted on
18 their website?

19 MR. LECRONE: This is Darin Lecrone.
20 845.810(d) requires that it be placed on the
21 website within 30 days of placement in the
22 operating record.

23 MR. HAMMONS: Thank you. One
24 additional question. So my concern is there --

1 that 30-day delay of when it is placed in the
2 operating record from when it's actually posted on
3 the website, I'm not clear and if you can provide
4 me, you know, some assurance in the rules, but
5 when it is actually placed in that operating
6 record there is not a time requirement. The
7 concern being if you have an operating permit
8 application and there is no requirement for when
9 they actually have to post the supporting
10 documents for the assessments and the
11 certification of the plans when the public is able
12 to actually comment on that in a meaningful way.

13 So my question is if those
14 assessments and plans are required to be part of
15 the operating permit application, would the public
16 be able to comment on them in the permitting
17 process?

18 MR. LECRONE: This is Darin Lecrone.
19 Any construction permits for new impoundments, for
20 corrective action or closure, that information is
21 required to be posted on their website 14 days
22 prior to any pre-application public meeting.

23 So that would make that
24 information available to the public prior to the

1 pre-application public meeting so they could
2 participate in those as well as be informed once
3 an application is filed.

4 MR. HAMMONS: Thank you. So that
5 helps me understand how it will work for
6 construction permits, but my question is for
7 230(a)(1) through (a)(11), which are operating
8 permits which require, you know, structural
9 stability assessment, safety factor assessment and
10 emergency action plan and I won't read them all,
11 they're all there, those are also supposed to be
12 in the operating record, but is there any
13 requirement for when those have to be posted for
14 operating permit applications?

15 MR. LECRONE: This is Darin Lecrone.
16 You're correct. The answer is no except for in
17 845.700(c) where it requires no later than 30 days
18 after the effective date of the part the
19 owner/operator must send a category designation
20 including justification for that for each surface
21 impoundment to the Agency.

22 So, you're right, other than
23 that exception in 700(c) for the category
24 designations, there is no deadline.

1 MR. HAMMONS: Thank you. So I'm
2 going to move on now to a different subject and
3 it's -- well, it's a related subject and it has to
4 do with the timing of initial operating permits
5 for existing surface impoundments and their annual
6 inspection report.

7 So this is in reference to
8 pre-filed answers to questions on Exhibit 2, Page
9 70, Question 3. Question No. 3 has a bunch of
10 subparts. So Question 3(b) which has to do with
11 hazard potential classification, assessment
12 certification. I'll wait until you get to Page
13 70.

14 MR. LECRONE: We've got it.

15 MR. HAMMONS: So this is a question
16 about timing. Existing surface impoundments are
17 required to have operating permit -- permits and
18 so my question for the Agency is what do you
19 envision comes first for the existing impoundment,
20 the annual inspection report or their operating
21 permit application?

22 MR. LECRONE: This is Darin Lecrone.
23 The first annual reports would be due January
24 31st, 2022, and the initial operating permit

1 applications would be due in September or July of
2 2021.

3 MR. HAMMONS: So for existing
4 surface impoundments that are required to provide
5 hazard classification, assessment, certification,
6 that certification will be made available after
7 the operating permit applications, correct?

8 MR. LECRONE: This is Darin Lecrone.
9 They would be available after the application.

10 MR. HAMMONS: And should the public
11 want to comment on those hazard potential
12 classifications, assessments, certifications and
13 the supporting documents, would they be able to do
14 that as part of the permit comment process for
15 their operating permit?

16 MR. LECRONE: This is Darin Lecrone.
17 Is the question -- can -- can you state your
18 question again so I'm sure I answer it correctly?

19 MR. HAMMONS: Yes. As the proposed
20 rules are currently written, hazard potential
21 classification, assessment certification,
22 structural stability assessment certification,
23 safety factor assessment certification and in-flow
24 design flood control plan -- in-flow design flood

1 control system plan certification for existing
2 surface impoundments are all required to be posted
3 as part of their annual inspection and as we have
4 previously discussed the annual inspection is
5 going to occur after the operating permits for
6 those existing surface impoundments.

7 So when is the public able to
8 comment on the adequacy of those assessments if
9 they're not part of the operating permit
10 application?

11 MR. LECRONE: This is Darin Lecrone.
12 As it is drafted, there is no opportunity for the
13 public to comment on those certifications and
14 assessments that were part of the annual report.

15 MR. HAMMONS: Thank you. So I'm
16 going to change subjects slightly and talk about
17 the plans. So, in particular, the emergency
18 action plan, the fugitive dust control plan and
19 the safety and health plan that are required for
20 operating permits.

21 Right now -- I guess I'm asking
22 you to confirm my understanding. Right now those
23 plans are not required to be submitted as part of
24 an operating permit application, only a

1 certification that those plans meet the
2 requirements of Part 845?

3 MR. LECRONE: This is Darin Lecrone.
4 As drafted, the application only requires
5 submittal of the certifications.

6 MR. HAMMONS: And since the plans
7 are not required to be part of an operating permit
8 application, at what point can the public comment
9 on the adequacy of those plans and their
10 compliance with Part 845?

11 MR. LECRONE: The way it is
12 currently drafted, only the certifications are
13 required to be submitted and there would be no
14 opportunity for them to review those.

15 MR. HAMMONS: And just for the
16 record, those are the plans, the emergency action
17 plan, the fugitive dust control plan and the
18 safety and health plan?

19 MR. LECRONE: Yes. Sorry. That's
20 correct.

21 MR. HAMMONS: Thank you. So my next
22 question also has to do with plans, but slightly
23 different topic and it's just a clarification of
24 one of your pre-filed answers to our Question 12

1 that was directed at Darin Locrone, but it's more
2 a question for clarification of the Agency
3 generally.

4 So this is on Page 77, the
5 bottom of Page 77, the top of Page 78 for Exhibit
6 2.

7 So our Question 12 asked whether
8 compliance with the plans that we -- that I just
9 recently listed, the three plans, would be a
10 condition of a permit and in your pre-filed answer
11 you said that whether or not a plan or a portion
12 of a plan would be part of a permit would be
13 determined on a case-by-case basis.

14 So my question is whether the
15 Agency's ability to administer the permitting
16 program would be harmed if the rules just required
17 as a default that those plans are enforceable
18 conditions of permits?

19 MR. LECRONE: This is Darin Locrone.
20 The Agency is opposed to making those plans all
21 enforceable permit conditions, primarily due to
22 potential jurisdictional overlaps between other --
23 our agency and other state and federal agencies.

24 MR. HAMMONS: Can you give me an

1 example of that overlap and why it affects whether
2 a plan is a condition of a permit or not?

3 MR. LECRONE: This is Darin Lecrone.
4 Two examples would be the IDNR damn safety program
5 and OSHA requirements.

6 MR. HAMMONS: I'm just trying to
7 understand a little bit more. So for the
8 emergency action plan, fugitive dust control plan
9 and safety and health plan, there is potential
10 jurisdictional conflict with either IDNR or OSHA,
11 is that what you're saying?

12 MS. MARTIN: Lauren Martin here.
13 There is a jurisdictional overlap with OSHA.
14 EAP's, or emergency action plans, are required
15 under 1910.120, which is for all RCRA corrective
16 action which this falls under.

17 THE COURT REPORTER: Which is for
18 what?

19 MS. MARTIN: 29 CFR 1910.120.

20 HEARING OFFICER HORTON: Could you
21 repeat? Our court reporter didn't hear. For all
22 what action?

23 MS. MARTIN: That emergency action
24 plan is required under OSHA 29 CFR 1910.120.

1 MR. MORE: She said for all RCRA
2 corrective action.

3 MS. MARTIN: Yes.

4 HEARING OFFICER HORTON: Thank you.

5 MR. MORE: RCRA.

6 MR. HAMMONS: So one follow up to
7 that.

8 Does the federal CCR rules
9 require emergency action plans?

10 MS. MARTIN: Lauren Martin here. So
11 the fugitive dust plan and the EAP are required on
12 257. However, the safety and health plan is not
13 in 257. It is required by 29 CFR 1910 and 29 CFR
14 1926.

15 MR. HAMMONS: Thank you. So for the
16 emergency action plan and the fugitive dust
17 control plan, would the Agency's ability to
18 administer its permitting program be adversely
19 affected if the rules might make those two plans
20 enforceable conditions of permits?

21 MR. LECRONE: This is Darin Lecrone.
22 The Agency is not prepared to be able to answer
23 that question today, but we can follow up.

24 MR. HAMMONS: Thank you. And I just

1 have one more question on that topic.

2 If the emergency action plan is
3 not made a condition of a permit, how can the
4 Agency or how does the Agency plan to enforce that
5 plan in the event that the facility doesn't follow
6 it?

7 MR. LECRONE: This is Darin Lecrone.
8 The Agency's only role here at this point is to
9 ensure that a plan is developed and that it meets
10 the requirements of 845. Implementation of that
11 plan and/or failure to implement that plan kind of
12 falls outside the scope of the 845 rule as
13 drafted.

14 MR. HAMMONS: Thank you. So my next
15 question, and I promise I only have a few more,
16 has to do with a pre-filed answer to Question 9(b)
17 and that's on Page 76 of Exhibit 2.

18 Specifically, the pre-filed
19 answer referred to the Illinois DNR which is the
20 Illinois Department of Natural Resources.

21 My question is just generally
22 what role do you see the Illinois DNR playing in
23 the CCR impoundment permitting program?

24 MR. LECRONE: This is Darin Lecrone.

1 As I stated here, IDNR has existing -- has an
2 existing damn safety program that they are
3 responsible for and it's not our intention in Part
4 845 to interfere with that existing program.

5 MR. HAMMONS: Thank you. So my last
6 set of questions has to deal with liner
7 certifications and this is also follow-up to a
8 pre-filed answer of yours on Page 81 of Exhibit 2
9 and the question that it was in response to was
10 Question 20, Subpart A which asks about liner
11 certifications.

12 In particular, your answer --
13 the pre-filed answer stated that surface
14 impoundments closing prior to July 30th, 2021, are
15 not required to submit liner certifications to the
16 Agency.

17 So my first question is, are
18 those impoundments still subject to the
19 groundwater monitoring and corrective action
20 subpart of the Part 845 rules?

21 MR. LECRONE: Can you repeat your
22 question, please?

23 MR. HAMMONS: Yes. I'm trying to
24 figure out the applicability of Subpart F, which

1 is groundwater monitoring corrective action, as it
2 relates to those surface impoundments you're
3 referring to in the answer. So this is surface
4 impoundments closing prior to July 30th, 2021.

5 So are those surface
6 impoundments still subject to Subpart F,
7 groundwater monitoring and corrective action?

8 MR. LECRONE: This is Darin Lecrone.
9 The answer is, yes, those impoundments closed
10 prior to July 2021 that are not inactive, closed
11 would be required to comply with Subpart F.

12 MR. HAMMONS: Thank you. So one
13 follow-up question.

14 In the event those surface
15 impoundments are required to conduct corrective
16 action under Subpart F, would a liner
17 certification for those impoundments be useful as
18 part of that corrective action application?

19 MR. LECRONE: This is Darin Lecrone.
20 The answer would be no. The site would have to
21 develop appropriate corrective action based on
22 those unique site characteristics.

23 MR. HAMMONS: So whether or not that
24 impoundment has a liner that meets the

1 requirements of 845.400 Subpart B or C is not
2 relevant or useful in determining whether or not
3 the corrective action application complies with
4 the rules?

5 MR. LECRONE: Are you asking about
6 the impoundments that closed prior to July 30th,
7 2021?

8 MR. HAMMONS: Yes.

9 MR. LECRONE: This is Darin Lecrone.
10 If either of these impoundments closed under an
11 Agency-approved closure plan prior to July of
12 2021, a liner certification at a later date based
13 on a corrective action assessment wouldn't --
14 wouldn't necessarily do any good.

15 MR. HAMMONS: All right. Thank you.
16 Those are all my questions for 230.

17 HEARING OFFICER HORTON: Okay.
18 Thank you, Mr. Hammons. Moving on for Section --

19 MS. ZEIVEL: Vanessa, we've been at
20 this for over two hours. Are we planning on
21 breaking again before 5:30 or are we going
22 straight to 5:30?

23 HEARING OFFICER HORTON: Oh, sure.
24 We can take a ten-minute break. Sure. It's 4:40

1 right now. So let's break until 4:50.

2 MS. ZEIVEL: That would be
3 excellent. Thank you.

4 HEARING OFFICER HORTON: No problem.

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

8 HEARING OFFICER HORTON: Hello,
9 everyone. We're at 4:51. Okay. I think we're at
10 Midwest Generation for questions for Section 230.

11 MS. GALE: At this time, I reserve
12 the right for follow up.

13 HEARING OFFICER HORTON: For follow
14 up. City of Springfield, any questions on 230?

15 MS. WILLIAMS: I think I have to go
16 back and follow up if that's okay. I'm pretty
17 sure it's from this section, but if it was from
18 220, I apologize, but I really want to follow up
19 on Mr. Dunaway's answer earlier about whether it
20 was required to submit these rules to U.S. EPA for
21 approval.

22 So I guess I would just like to
23 have the Agency witnesses take a look at Page 10
24 of the statement of reasons. And I would just

1 like to read from the first sentence in the last
2 paragraph that goes on to the next page.

3 The third purpose and effect of
4 the proposed rule is to adopt the federal CCR
5 rules in Illinois and obtain federal approval of
6 Illinois CCR -- Illinois CCR surface impoundment
7 program.

8 I just want to make sure based
9 on the previous answer to clarify that this is
10 still the position of the Agency of the purpose of
11 why these rules were submitted to the Board?

12 MS. ZEIVEL: Okay. We were muted.

13 HEARING OFFICER HORTON: Okay. We
14 can hear you.

15 MR. DUNAWAY: Lynn Dunaway. It is
16 the Agency's intent to have 845 operate under Part
17 257, but there was no requirement that we do so.

18 MS. WILLIAMS: I appreciate that
19 answer. I think I would ask the Agency to go back
20 and look or ask the Board to consider whether 4(1)
21 of the act would require it also, but I just
22 appreciate clarifying for the record that it's the
23 Agency's intent to do so. Thank you.

24 HEARING OFFICER HORTON: Okay.

1 Dynegy, questions on Section 230?

2 MR. MORE: Yes, this is Josh More.

3 I have some follow-up questions to those presented
4 by Mr. Hammons. The Agency may recall that
5 Mr. Hammons asked a number of questions about the
6 emergency action plan, the safety and health plan
7 and the fugitive dust plan and whether or not
8 those plans would be available for public review
9 and comment and I want to explore that a little
10 bit.

11 Is it the Agency's understanding
12 that those plans all have to be posted to the
13 company's website and made available to the
14 public?

15 MR. LECRONE: This is Darin Lecrone.
16 Yes.

17 MR. MORE: At that time, would the
18 public then have an opportunity to review the
19 plans?

20 MR. LECRONE: Once they are posted
21 to the company's website, yes.

22 MR. MORE: And should a member of
23 the public have a comment on those plans, can they
24 send that comment to the Agency at any point in

1 time?

2 MR. LECRONE: Yes.

3 MR. MORE: And should the Agency in
4 response to that comment determine that the plan
5 doesn't meet a requirement of Part 845, can the
6 Agency bring an enforcement action at that time?

7 MR. LECRONE: Yes.

8 MR. MORE: And when these plans are
9 posted to the website and made available for
10 everyone to review, should the Agency on its own
11 accord determine that a plan is insufficient to
12 meet the requirements of Part 845, can it bring an
13 enforcement action at that time?

14 MR. LECRONE: Could you restate your
15 question, please?

16 MR. MORE: Yeah, it's just a
17 variation of a prior question. Once the plans are
18 made available to the Agency and the public on the
19 website, should the Agency on its own accord
20 decide to review a plan and determine it is
21 insufficient to meet the minimum requirements of
22 845, it can bring an enforcement action, correct?

23 MR. LECRONE: Yes.

24 MR. MORE: Okay. Now, let's turn to

1 845.230(e), excuse me, the term of the operating
2 permit. I'm sorry. Before we go there.

3 There is a concept under Section
4 230 called a postclosure care permit which is
5 230 -- 230(c), do you see that postclosure care
6 operating permit?

7 MR. LECRONE: Yes, we see it.

8 MR. MORE: Okay. And then
9 845.230(e) sets forth the term of all operating
10 permits at five years.

11 When a unit is approved to close
12 in place in accordance with Part 845, there is a
13 minimum of a 30-year postclosure care period,
14 correct?

15 MR. LECRONE: I'm sorry. You cut
16 out there. We didn't hear the entirety of your
17 question.

18 MR. MORE: Thank you. When a unit
19 closes in accordance with the closure in place
20 requirements, it is then subject to a minimum of a
21 30-year postclosure care period, correct?

22 MR. LECRONE: Correct.

23 MR. MORE: Now, when a facility
24 closes in place, enters that postclosure care

1 period, would setting the term of the operating
2 permit at that point in time to 30 years to
3 coincide with the postclosure care period -- the
4 minimum term of the postclosure care period be
5 detrimental to human health and the environment?

6 MR. LECRONE: This is Darin Lecrone.
7 The Agency believes the 30-year operating permit
8 term for those in postclosure excessive and the
9 reason for that being it would not allow the
10 Agency an opportunity to rebid permit conditions
11 based on monitoring and inspections during that
12 permit term.

13 A five-year permit term would
14 allow the Agency to reissue a permit and update
15 operating conditions based on the reporting and
16 monitoring during that five-year term.

17 MR. MORE: And is there a limit to
18 what is a minimum or I should say maximum permit
19 term that the Agency would view as being
20 acceptable to allow it to review ongoing
21 monitoring data and evaluate whether changes were
22 necessary?

23 MR. LECRONE: This is Darin Lecrone.
24 The Agency believes the five-year permit term as

1 proposed is appropriate.

2 MR. MORE: Okay. No further
3 questions on 230.

4 HEARING OFFICER HORTON: Okay.
5 Moving on to IERG. First, any questions on
6 Section 230?

7 MS. BROWN: Melissa Brown. No
8 questions at this time.

9 HEARING OFFICER HORTON: Thank you.
10 Moving on to Ameren.

11 MS. MANNING: Yes, thank you. As to
12 surface impoundments that have been closed where
13 the Agency has approved and accepted the closure
14 and they are now and have been in postclosure
15 care, but since closure occurred after the
16 effective date of part of the federal rule, but
17 before July 30th, 2019, they are not considered
18 closed by the Agency in terms of its proposed
19 rules.

20 So I'm wondering what, if any,
21 provisions in the operating permits these closed
22 facilities that are in postclosure care would need
23 to -- would need to -- would apply to those
24 situations.

1 HEARING OFFICER HORTON: The Agency
2 can continue if they're ready.

3 MR. BUSCHER: Certain aspects of the
4 operating permits would be applicable. This is
5 Bill Buscher, by the way.

6 MS. MANNING: I'm sorry. Can you
7 repeat that?

8 MR. BUSCHER: Sure. This is Bill
9 Buscher.

10 Certain aspects of the operating
11 permit would be applicable.

12 MS. MANNING: Could you identify
13 which ones, Mr. Buscher?

14 MR. BUSCHER: Certainly. Four --
15 that is 845.234 Evidence That Permanent Markers
16 Have Been Installed, a groundwater monitoring
17 program would be applicable.

18 MS. MANNING: What particular
19 section is that? E of --

20 MR. BUSCHER: That is
21 845.230(a)(12). These are the ones that are, you
22 know, striking me now. This may not be an
23 all-inclusive list. Those are the ones that seem
24 applicable at this time.

1 MS. MANNING: As to an ash pond
2 where the CCR has been removed, and it's not
3 considered closed even though it was approved
4 closed by the Agency prior to the effective date
5 of the act, but based on the Agency's rules it's
6 not considered closed, I ask the same question.

7 What -- which of these operating
8 permits would the ash pond be required to obtain
9 where there is no longer any CCR?

10 MR. BUSCHER: 845.230(a)(4) and
11 845.230(a)(12), which is groundwater monitoring.

12 HEARING OFFICER HORTON: Any
13 further -- any further questions from Ameren?

14 MS. MANNING: If the Agency is done
15 with that question, I have no further question as
16 to that question, but I would remind the Agency in
17 earlier questions they were going to get back to
18 me in terms of the answer to my questions --
19 Ameren's question on Page -- No. 2 on Page 139 and
20 I would also ask that when they get back to me
21 that they also look at their response on 139 to
22 Question 4 and identify, if you will, what
23 amendment to Part 247 gives basis proposed to
24 Section 845.740(b) apply and if you'll have that

1 ready not necessarily tomorrow morning. If you
2 could get back to us, I would appreciate knowing
3 what amendment you're referring to.

4 MS. ZEIVEL: Ms. Manning, you said
5 247. Did you mean 257?

6 MS. MANNING: Yes, I'm sorry. I
7 meant 257. Thank you.

8 MS. ZEIVEL: And then regarding your
9 most recent question, we were still considering a
10 response. There was confusion as to whether you
11 were referring to a postclosure construction
12 permit or, I'm sorry, an initial operating permit.

13 MR. LECRONE: Postclosure care
14 operating permit.

15 MS. ZEIVEL: A postclosure care
16 operating permit.

17 MS. MANNING: So, Mr. Buscher, are
18 you saying the postclosure care operating permit
19 will be required for a surface impoundment that
20 has --

21 MR. BUSCHER: My --

22 MS. MANNING: Go ahead.

23 MR. BUSCHER: Go ahead and finish.

24 MS. MANNING: For a surface

1 impoundment that has closed under the Agency's
2 authority, but has not closed prior to October
3 2015, are they going to need a postclosure
4 operating permit when they're already in
5 postclosure care?

6 MR. BUSCHER: Yes.

7 MS. MANNING: That's it for now.

8 Thank you.

9 MS. ZEIVEL: Another point of
10 clarification on your ask for the Agency to
11 respond to you. It seems as you were asking us to
12 respond to you first thing tomorrow morning.

13 MS. MANNING: No, whatever -- I
14 would like you to respond if you could so we can
15 ask questions to you, follow-up questions.

16 MS. ZEIVEL: Okay. I just wanted to
17 note that we are going late this evening. We also
18 have Agency staff who have family and childcare
19 situations and we are starting at 8:00 a.m. in the
20 morning which does not allow for the Agency to put
21 in additional time outside of the hearing due to
22 the extended hearing hours. So it is going to be
23 problematic and difficult considering we are going
24 until 7:30 tomorrow night as well.

1 MS. MANNING: At some point,
2 Ms. Zeivel, I'd like you to put on the record the
3 amendment that you referred to that you base
4 Section 845.740(b) upon.

5 MS. ZEIVEL: Absolutely. We will
6 commit to doing that.

7 MS. MANNING: Thank you.

8 HEARING OFFICER HORTON: Okay.
9 Moving on to the AG's office. Questions on
10 Section 230?

11 MR. SYLVESTER: This is Steve
12 Sylvester. We don't have any questions. Thanks.

13 HEARING OFFICER HORTON: Okay.
14 Mr. Rao for the Board?

15 MR. RAO: No questions. Thanks.

16 HEARING OFFICER HORTON: Okay. I
17 think we can move on to Section -- sorry.
18 Follow-up questions on Section 230?

19 MR. HAMMONS: Yes, Jeffrey Hammons,
20 Environmental Law and Policy Center. I know we're
21 getting close to time. I have two real quick
22 follow-up questions for the Agency. These are
23 following up on a couple of Dynegy's follow-ups to
24 my previous questions.

1 Outside of the permit context,
2 if I'm reviewing a plan and I think it's
3 inadequate and I e-mail the Agency, is the Agency
4 legally required to respond to my e-mail?

5 MR. DUNAWAY: Lynn Dunaway. No.

6 MR. HAMMONS: Now, if I identified
7 comments on a proposed permit application and
8 raised concerns about that plan, is the Agency
9 legally required to respond to my comments?

10 MR. LECRONE: As drafted, we're not
11 legally required to respond, but in practice the
12 Agency intends to.

13 MR. HAMMONS: Thank you. That is
14 all.

15 HEARING OFFICER HORTON: Okay. Any
16 other follow-up questions on Section 230? Okay.
17 We can start with 240 Pre-Application, Public
18 Notification and Public Meeting and we'll return
19 again to Mr. Hammons.

20 MR. HAMMONS: Thank you. And I'm
21 done -- I'm done questioning for the subparts. So
22 I will now defer to my colleague Kiana Courtney.

23 HEARING OFFICER HORTON: Certainly.
24 Ms. Courtney, do you have any questions on Section

1 240?

2 MS. COURTNEY: Yes. Hi. Can you
3 hear me?

4 HEARING OFFICER HORTON: Yes.

5 MS. COURTNEY: Hi. This is Kiana
6 Courtney for the Environmental Law and Policy
7 Center.

8 My questions primarily refer to
9 page -- a question that was responded to by Chris
10 Pressnall on Page 96 of Exhibit 2. If the Agency
11 is there --

12 MS. ZEIVEL: We have Page 96.

13 MS. COURTNEY: So in response to
14 question 10A, you recognize that the Coal Ash
15 Pollution Prevention Act requires that the rules
16 must specify meaningful public participation,
17 right?

18 MR. LECRONE: This is Darin Lecrone.
19 Yes.

20 MS. COURTNEY: And this line of
21 questioning is in relation to Section 845.240(e).
22 So that part of the rule states that there are 14
23 days to review the documents before a
24 pre-application meeting, correct?

1 MR. LECRONE: This is Darryl
2 Lecrone. Correct.

3 MS. COURTNEY: And those materials,
4 so construction permit applications, include
5 complex technical documents and analysis, right?

6 MR. LECRONE: Correct.

7 MS. COURTNEY: This is generally
8 speaking. So taking -- taking all of that into
9 account, could the public engage more meaningfully
10 with more time to review those complex documents?

11 MR. LECRONE: This is Darin Lecrone.
12 Additional time would always be better. The
13 Agency, you know, kind of has to balance the needs
14 of -- each of the participants in one of these to
15 keep things moving, move, you know, ponds that
16 need to close, towards closure, and this is just
17 kind of step one in the process. So we thought 14
18 days initially would be adequate for this first
19 step in the public participation process.

20 So then those materials would be
21 still available. Once an application is filed,
22 we're going to provide notification we received
23 the application and there's going to be a 30-day
24 public notice period that will allow for the

1 public to raise any questions and issues that they
2 have identified even for those materials that they
3 first became aware of prior to that public
4 meeting.

5 MS. COURTNEY: So just to clarify,
6 would giving more time to the public generally
7 allow for more meaningful public participation?

8 MS. ZEIVEL: The question has been
9 asked and answered.

10 MS. COURTNEY: Thank you. Would it
11 harm the Agency's ability to execute this program
12 if the public received more than 14 days in
13 advance of the public meeting to review documents?

14 MR. LECRONE: The Agency is of the
15 position that it could affect our ability to -- to
16 move this program. The timelines are already
17 going to be tight for when applications are due
18 and if we allow too much time prior to this
19 initial public meeting, the pre-application public
20 meeting, it may affect when those application
21 filing deadlines can happen because of the
22 timeframes associated with the meeting
23 requirements prior to them filing an application
24 with the Agency.

1 MS. COURTNEY: I have a follow-up
2 question to that. So would an additional -- so
3 would making it 30 days rather than 14 days be
4 harmful to that timeline or adversely affect that
5 timeline?

6 MR. LECRONE: It's possible that it
7 could. We stand by the 14 days as proposed.

8 MS. COURTNEY: Thank you. I would
9 like to turn you to Board Question 26 at Page 159.
10 And this is at Exhibit 2.

11 MR. LECRONE: You said Question 26
12 on Page 159?

13 MS. COURTNEY: Yes.

14 MR. LECRONE: Okay. We got it.

15 MS. COURTNEY: And the response to
16 the question was in part or was in total the
17 Agency intentionally did not include a time limit
18 for final Agency permit determination pursuant to
19 the exemption carved out by the legislature in
20 Section 39(a) of the act. The proposed permitting
21 process was modeled after the NPDES permit program
22 and so on. I'm going to go to the last couple of
23 sentences.

24 So the complex nature of these

1 applications, public notice requirements and the
2 opportunity for a public hearing make it difficult
3 to complete the process with a defined timeframe.
4 Like the NPDES program, robust public
5 participation is an essential part of this
6 proposal. Not having a specific decision deadline
7 allows for the maximum flexibility during the
8 public notice and hearing processes. That's what
9 it says, correct?

10 MR. LECRONE: That's what it says,
11 correct.

12 MS. COURTNEY: And so in giving the
13 public more time than, say, the 30 days to be able
14 to meaningfully participate, would that align --
15 would that concept align with that answer?

16 MR. LECRONE: This is Darin Lecrone.
17 That answer really has to do with how long the
18 Agency's decision-making process is once it
19 receives an application. So it had more to do
20 with that than what happens prior to receipt by
21 the Agency.

22 MS. COURTNEY: Okay. I want to go
23 back to Page 96, Question 10(a)(a)(1).

24 MR. LECRONE: We've got it.

1 MS. COURTNEY: Is public
2 participation meaningful under your definition of
3 meaningful involvement in this -- in this answer
4 if the owner or operator is not obligated to
5 consider feedback from the public offered at the
6 public meeting?

7 MS. ZEIVEL: We will respond to your
8 question. I just wanted to note we've hit 5:30
9 and we have Agency staff that are otherwise
10 committed so we will need to stick to the 5:30
11 timeline. We will respond to this question, but
12 then the Agency will need to finish this for
13 today.

14 HEARING OFFICER HORTON: I agree
15 with you. So if you could provide an answer to
16 this question, we'll continue with Ms. Courtney
17 tomorrow morning at 8:00.

18 MR. LECRONE: This is Darin Lecrone.
19 The Agency believes that the timeframes we have
20 laid out in our rule as proposed provide for
21 meaningful public participation as drafted.

22 HEARING OFFICER HORTON: Okay.
23 We're at our stopping point. It's 5:30. We'll
24 adjourn for today and we'll pick up tomorrow at

1 8:00 a.m. with Ms. Courtney's questions on Section
2 240. Thank you, all.
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1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3 I, Steven Brickey, Certified Shorthand
4 Reporter, do hereby certify that I reported in
5 shorthand the proceedings had at the trial
6 aforesaid, and that the foregoing is a true,
7 complete and correct transcript of the proceedings
8 of said trial as appears from my stenographic
9 notes so taken and transcribed under my personal
10 direction.

11 Witness my official signature in and for
12 Cook County, Illinois, on this _____ day of
13 _____, A.D., 2020.

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