

ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
MANAGEMENT OF USED AND)
WASTE TIRES: PROPOSED)
AMENDMENTS TO 35 ILL. ADM.)
CODE 848)

No. R15-19
(Rulemaking-Land)

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable CHAD KRUSE, Hearing Officer, Illinois Pollution Control Board, 1021 North Grand Avenue East, Board Room, Springfield, Illinois, on the 5th day of March, 2015, at the hour of 1:08 p.m.

1 A P P E A R A N C E S:

2 MR. CHAD KRUSE, Hearing Officer
3 MR. ANAND RAO, Board Member
4 MS. DEANNA GLOSSER, Board Member

5 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
6 BY: MR. LARRY MRAZ
7 1021 North Grand Avenue East
8 P.O. Box 19276
9 Springfield, Illinois 62794
10 (217) 524-3306

11 Appeared on behalf of the Illinois
12 Environmental Protection Agency;

13 ALSO PRESENT: MR. TODD MARVEL
14 MR. BRIAN WHITE
15 MR. TERRY GRAY
16 MR. JOHN SHEERIN

17 REPORTED BY:

18 Steven J. Brickey, CSR
19 CSR License No. 084-004675
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1 HEARING OFFICER KRUSE: Good
2 afternoon. Welcome to this Illinois Pollution
3 Control Board hearing. My name is Chad Kruse.
4 I'm the Hearing Officer for this rulemaking
5 proceeding entitled Management of Used and Waste
6 Tires. Proposed Amendments to 35 Ill. Adm. Code
7 848. It's docketed as R15-19 with the Board.
8 Also present today from the Board to my right is
9 Dr. Deanna Glosser, Chairman of the Board, and to
10 my left is Mr. Anand Rao. He is a member of the
11 technical unit with the Board.

12 The Illinois Environmental
13 Protection Agency filed this rulemaking proposal
14 on December 22nd, 2014, under the rulemaking
15 provisions of Section 27 and 28 of the
16 Environmental Protection Act. The rulemaking
17 proposal was submitted to the Board pursuant to
18 Section 55.2 of the Act which was revised by the
19 98th General Assembly just last year. That
20 section of the Act mandates that the Agency
21 propose, and that the Board adopt, revisions to
22 Part 848 within 15 months of the effective date of
23 the revisions.

24 So there are two mandates. One,

1 the Agency met I believe their's was six months
2 from the effective date that they had to propose
3 and the Board then has to adopt nine months from
4 the Agency's proposal.

5 In an order dated January 8th,
6 2015, the Board accepted this proposal for
7 hearing. In an opinion and order dated February
8 5, 2015, the Board directed its clerk to cause
9 publication of the rule for first notice in the
10 Illinois Register and the Board did not comment on
11 the proposal's substance at that time. The
12 proposal appeared in the Illinois Register on
13 February 27th, 2015, beginning at page 2,816.

14 Today, we are holding the first
15 public hearing in this rulemaking. The second
16 hearing is scheduled to take place in Chicago on
17 Wednesday, April 15th, 2015. By Hearing Officer
18 Order dated February 9 of this year, I indicated
19 that participants wishing to pre-file testimony
20 for this hearing must have done so on or before
21 February 19th. The Board received timely
22 pre-filed testimony from Mr. Brian White who is
23 the manager of the compliance unit in the Waste
24 Reduction and Compliance Section of the Agency's

1 Bureau of Land; Mr. Todd Marvel who is the manager
2 of the Used Tire Program in the Agency's Bureau of
3 Land; and Mr. Terry Gray who is president of
4 T.A.G. Resource Recovery, a consulting firm
5 specializing in waste tire management issues.
6 Mr. Gray worked closely with the Agency in
7 developing -- or in development of the proposed
8 rule.

9 We will begin today's hearing
10 with testimony by the Agency and Mr. Gray. As
11 stated in my Hearing Officer Order, all pre-filed
12 testimony will be entered into the record as if
13 read. However, those who pre-filed testimony in
14 advance of today's hearing may make an opening
15 statement along with an introduction or summary of
16 the pre-filed testimony if they would like.
17 Likewise, any additional Agency personnel may be
18 introduced and sworn in at the same time or before
19 providing testimony in response to a question.

20 After introducing and swearing
21 in Mr. White, Mr. Marvel and Mr. Gray, we will go
22 to questions for those gentlemen. In the interest
23 of keeping an orderly transcript and using the
24 Board's pre-filed questions as a guide, we will

1 open with general questions about the rule as a
2 whole. Next, I will open the discussion on each
3 section of the rulemaking proposal from the
4 beginning with Section 848.101 to the end with
5 Section 848.708.

6 In addition, the Board received
7 a set of 20 questions from the Joint Committee on
8 Administrative Rules, or JCAR, on Monday, March
9 2nd, 2015. Since those questions were filed after
10 the date for pre-filing questions in advance of
11 this hearing, I will move to include the list of
12 questions into the record as a hearing exhibit and
13 I will read some or all of the JCAR questions into
14 the record as we move through the section of the
15 rule today. The witnesses may answer the JCAR
16 questions today or file written answers to the
17 JCAR questions no later than April 1, 2015, which
18 is the deadline for pre-filing testimony in
19 advance of the second hearing scheduled for April
20 15, 2015.

21 After the Board has asked and
22 the witnesses have responded to the Board's
23 pre-filed questions and other questions where
24 appropriate, I will open up each section of the

1 rule for additional questions before moving onto
2 the next section. After testimony by and
3 questions of the Agency, I will speak a bit more
4 about the procedures moving forward in this
5 rulemaking. This proceeding is governed by the
6 Board's procedural rules. All information that is
7 relevant and that is not repetitious or privileged
8 will be admitted into the record.

9 Please note that any questions
10 posed today by the Board and its staff are
11 intended solely to assist in developing a clear
12 and complete record for the Board's decision and
13 do not reflect any prejudgment of the proposal.
14 For the benefit of the Board members present and
15 court reporter transcribing today's hearing,
16 please speak clearly and avoid speaking at the
17 same time as another person to help produce a
18 clear hearing transcript. Because this rulemaking
19 was submitted and must be adopted under a
20 statutory timeline, the Board has requested that
21 the timeline for this transcript be expedited.

22 Are there any questions about
23 today's proceeding? Okay. Before turning things
24 over to the Agency, I would like to enter on the

1 Board's own motion the list of JCAR questions
2 received by e-mail on March 2nd, 2015, into the
3 record as a hearing exhibit.

4 Are there any objections to my
5 doing so?

6 MR. MRAZ: No objections.

7 HEARING OFFICER KRUSE: Seeing none,
8 the Board's motion is granted and I am marking the
9 document as Hearing Exhibit 1 and entering it into
10 the record as if read and I have copies I'm
11 sharing with court reporter and I have three
12 copies for you.

13 MR. MARVEL: Thank you.

14 (Document marked as Hearing
15 Exhibit No. 1 for
16 identification.)

17 HEARING OFFICER KRUSE: With that,
18 Mr. Mraz, how would you like your witnesses to be
19 sworn in, one at a time or all together?

20 MR. MRAZ: All together.

21 HEARING OFFICER KRUSE: Would the
22 court reporter please swear in the witnesses.
23
24

1 WHEREUPON:

2 BRIAN WHITE, TODD MARVEL and TERRY GRAY
3 called as witnesses herein, having been first duly
4 sworn, deposeth and saith as follows:

5 HEARING OFFICER KRUSE: Thank you.
6 If the Agency is prepared to do so, we'll proceed
7 with any opening statement that the Agency
8 witnesses may have and then onto questions.

9 MR. MRAZ: We don't have any opening
10 statements.

11 HEARING OFFICER KRUSE: Okay. Does
12 the Agency have any questions that they would like
13 to start with or clarifying questions of their
14 witnesses as we get things started?

15 MR. MRAZ: No questions at this
16 time.

17 HEARING OFFICER KRUSE: Okay. Now,
18 we will move onto general questions about the
19 rulemaking followed by questions organized by
20 section of the rule. If any audience members have
21 a question, please signal me by raising your hand
22 and after I acknowledge you, please state your
23 name, title and any organization you are
24 representing here today before stating your

1 question and as I indicated to many of you in the
2 room, if your -- what you are going to say takes
3 any form other than a question, we may ask you to
4 be sworn in with the court reporter as well.

5 With that, I think we'll just
6 dive right into the questions. As I said, we'll
7 start with general questions about the -- that go
8 to the entire rule as a whole and then proceed
9 section by section. As the Agency is aware, we
10 had three questions in the Hearing Officer Order
11 that were general about the entire rule.

12 The first question states "In
13 the Statement of Reasons, the Agency indicates
14 that this rulemaking proposal was shaped in part
15 by feedback from the Indiana/Illinois Tire Dealers
16 Association. The Board asked that the Agency
17 identify any other businesses or industry groups
18 that provided input on the rulemaking proposal
19 along with the contact information for those
20 groups."

21 MR. MARVEL: We didn't really --
22 there is not a great deal of trade associations or
23 groups represented by the used tire industry in
24 Illinois. So there was really no organization to

1 reach out to. At the time years ago when we
2 started this, the Illinois Tire Dealers and
3 Retreaders Association we met with them to discuss
4 a few primary ideas that we had. You know, one of
5 the main ideas was the exemption for the tire
6 retreaders and stamping and die cutting facilities
7 and got a consensus from them on just a few of the
8 key components.

9 I do recall at one time we had
10 some of the larger processors in here to kind of
11 give them a preview of what we were thinking and
12 didn't really have any issues. So that's about
13 the extent early on in the process and then, of
14 course, later in the process we -- we reached out
15 to a number of organizations. I think those are
16 identified in the Statement of Reasons.

17 HEARING OFFICER KRUSE: And also,
18 Mr. Marvel, your pre-filed testimony indicates a
19 number of organizations. The Board's aim is to
20 simply make all interested parties aware of the
21 proceedings.

22 MR. MARVEL: Absolutely.

23 HEARING OFFICER KRUSE: So the Board
24 requests that the entities identified on page

1 three in your pre-filed testimony if you could
2 provide the Board with contact information for
3 those, a personnel contact.

4 MR. MARVEL: Yes.

5 HEARING OFFICER KRUSE: And we will
6 include them on the service list --

7 MR. MARVEL: Absolutely.

8 HEARING OFFICER KRUSE: -- on the
9 docket and you're welcome to do so obviously in
10 writing in post-hearing comments.

11 MR. MARVEL: Okay. I will do that.

12 MR. RAO: And also does the Agency
13 have any information about individual processes to
14 registration that we could use to put them on the
15 notice list so they know this rulemaking is going
16 on?

17 MR. MARVEL: Yes, we do have that
18 information and we -- as part of our outreach in
19 finalizing our proposal, we sent the -- we
20 outreached to those major commercial processors,
21 but yes.

22 MR. RAO: If you have that contact
23 information, can you provide those?

24 MR. MARVEL: Yes. Absolutely.

1 MR. RAO: Thank you.

2 HEARING OFFICER KRUSE: The next
3 question. The Board requests that the Agency
4 update the record with the approximate number of
5 businesses affected by the rulemaking proposal
6 broken down by business type and business size,
7 again, along the same lines so that we can -- this
8 is more for the economic impact assessment the
9 Board is required to do.

10 MR. MARVEL: Okay. Well, I did a --
11 a query yesterday from our database and we had 322
12 registered storage facilities. We had, let's see,
13 2,780 retailers, tire retailers, which are
14 required to notify. We believe that actual number
15 is much higher. I mean, there's a lot of
16 retailers that haven't notified. So we always
17 throw out an estimate of 3,500, but that's a
18 universe that's virtually impossible -- well, it
19 is impossible to keep track of because so many of
20 those businesses are come and go and don't follow
21 the notification requirements.

22 We had 3,051 what we call
23 storage exempt sites, sites that fall below the
24 storage limitations in the definition of tire

1 storage site. We had 281 registered used tire
2 transporters. We have approximately 20 tire
3 retreading facilities, several with multiple
4 locations and one stamping and die cutting
5 facility. As far as size goes, we can only really
6 comment on that in the storage universe as far as
7 the information that we receive. We have five
8 sites that we know of that definitely have more
9 than 10,000 used tires on site at this time.

10 There is a larger number that
11 would fall within the high volume processing
12 category. That would be closer to 10 to 12 and --
13 yeah, as I said, there is really no further data
14 we have on the size -- I mean, the retreaders are
15 varying and there is varying sizes. About 75 --
16 about 75 percent of the -- of the retreaders
17 nationwide and in Illinois would process more than
18 100 tires per day retreading. So that's the
19 information that we have.

20 HEARING OFFICER KRUSE: You
21 mentioned 3,051 storage exempt facilities, is that
22 under the proposal or is that under the existing
23 regulations?

24 MR. MARVEL: This was under the

1 existing -- well, this is -- that would be under
2 both. That's the statutory definition. So that
3 wouldn't change.

4 HEARING OFFICER KRUSE: The next
5 question. "Provide information on whether the
6 facilities subject to the proposed rulemaking have
7 the infrastructure necessary to comply with the
8 rule in place or if the requirements of the rule
9 will demand significant monetary investment."

10 MR. MARVEL: We believe the rule
11 is -- the provisions in the proposed amendments
12 are consistent with standard industry practice and
13 we believe in large part the used tire industry
14 has the majority of the infrastructure already in
15 place to comply with the regulations.

16 MR. RAO: So does the Agency believe
17 that the new permitting requirements will not
18 place any significant monetary impact on these
19 facilities that require permits?

20 MR. MARVEL: I wouldn't think that
21 it would be a significant monetary impact on the
22 facilities.

23 MR. MRAZ: If I can just add, the
24 permit requirements are imposed by statute.

1 MR. RAO: Okay.

2 HEARING OFFICER KRUSE: Okay. Those
3 are the general questions that we have from the
4 Board. The Joint Commission on Administrative
5 Rules had two questions that I deemed to be
6 general questions so I'll read those now.

7 The first one is "Why does the
8 Agency propose reserving sections of the rule
9 rather than renumbering those sections?" And
10 examples of that instance are Section's
11 848.202(a), 848.400(a), 848.400(c)(2) and
12 848.400(c)(3) and I'd just like to reiterate that
13 the Board does not have an expectation that the
14 Agency respond to these questions today. We've
15 entered those into the record as a hearing
16 exhibit. It's Exhibit 1 today and the expectation
17 is that the Agency respond to these questions
18 before April 1 or with their April 1 submissions.

19 MR. MRAZ: I'm sorry. Which
20 question was that you're referring to?

21 HEARING OFFICER KRUSE: So they are
22 not necessarily ordered in the same order as was
23 submitted to us. Most of the questions that you
24 see in Exhibit 1 are marked out by section. They

1 indicate what section they go towards. I can find
2 the -- that's number eight. It's question number
3 eight on that sheet of 20 questions and just to be
4 clear I had to do some organizing so that they fit
5 within the flow of the hearing. So if they don't
6 come to you today in the order that you see them
7 on the sheet where there is any confusion, I can
8 help you to clear that up.

9 MR. MRAZ: We can respond to that in
10 writing in the post-hearing comments.

11 HEARING OFFICER KRUSE: Okay.
12 Perfect. The second question that I deemed to be
13 general from JCAR "Why does the Agency propose
14 replacing "shall" with "must" in some provisions
15 of the rule?" And examples of that are 848.501(a)
16 and 848.501(c).

17 MR. MRAZ: My understanding is that
18 JCAR prefers use of the term "must" over "shall."

19 HEARING OFFICER KRUSE: Okay.
20 That's all the general questions we have. I'll
21 move onto questions on Section 848.101 of the
22 rule. The Board's February 26th Hearing Officer
23 Order is where I'll turn to get the first few
24 questions on that section. First, is a question

1 asking to clarify whether under the proposed
2 change to subsection (a) of 848.101 an
3 accumulation of two-inch-minus chips would be
4 subject to the requirements of Part 848 if the
5 owner or operator of a facility does not have a
6 valid contract for purchase or sale and the
7 purchase or sale refers to those chips. If a
8 facility has a contract for purchase or sale for a
9 portion of a two-inch-minus chip accumulation,
10 would the exemption apply only to that portion of
11 the accumulation covered by the contract?

12 MR. MARVEL: Do you want me to
13 address that?

14 MR. MRAZ: I can address that. The
15 Agency plans on addressing in post-hearing
16 comments further clarifying the exemption. So the
17 exemption for the two-inch-minus chips that are
18 under contract for purchase or sale, that
19 exemption would only apply to financial
20 assurances, okay, as opposed to being exempt from
21 all of Part 848.

22 MR. RAO: So would the Agency be
23 proposing language changes?

24 MR. MRAZ: Yes.

1 MR. RAO: Okay.

2 HEARING OFFICER KRUSE: Next
3 question. "Provide additional information on
4 whether the Agency has identified any facilities
5 that may accumulate large quantities of
6 two-inch-minus chips without a contract for
7 purchase or sale. If such a facility has been
8 identified, do these accumulations pose the same
9 threat as accumulation of unprocessed used tires?"

10 MR. MARVEL: Yeah, the Agency has
11 encountered several facilities that have
12 accumulated large quantities of two-inch-minus
13 chips and all accumulations of used tires would
14 pose a potential threat.

15 HEARING OFFICER KRUSE: Okay.
16 Anything else?

17 MR. RAO: No.

18 MR. MARVEL: I mean, we've had a
19 facility in Aurora that generated a large
20 accumulation of two-inch-minus chips and stored
21 them offsite and caught fire and we've had -- I'm
22 trying to think of other specific examples.

23 MR. GRAY: Hoopeston.

24 MR. MARVEL: That's a rather obvious

1 one. We had a facility just a couple years ago
2 had a large accumulation of old tires and
3 processed tires, a huge accumulation that caught
4 fire and burned and resulted in the evacuation of
5 24 square city blocks.

6 MR. RAO: If huge accumulation of
7 these two-inch-minus shred tires, if the owner or
8 operator has a contract for purchase, do they
9 still pose the same threat from a fire
10 perspective?

11 MR. MARVEL: Yes.

12 MR. RAO: Then can you explain why
13 those tires which have a purchase contract are
14 exempted from the rule?

15 MR. MRAZ: Can I address that?

16 MR. MARVEL: Go ahead.

17 MR. MRAZ: As I mentioned before in
18 the post-hearing comments, we're proposing what is
19 currently 848.101(a). That exemption which is to
20 all of Part 848 --

21 MR. RAO: That includes?

22 MR. MRAZ: -- would be stricken.

23 MR. RAO: Okay.

24 MR. MRAZ: So the only -- the only

1 exemption for the two-inch-minus chips under
2 contract would be to the financial assurances.

3 MR. RAO: Okay. Thank you.

4 MR. MRAZ: You're welcome.

5 HEARING OFFICER KRUSE: Okay. The
6 next question asks the Agency to comment on
7 whether the addition of the phrase "exact
8 specification" in subsection (b) of 848.101 is
9 consistent with the statutory intent of the
10 definition of converted tires at Section 848.104.
11 And I will read the definition of converted tire
12 if that's necessary.

13 MR. MARVEL: I'm familiar with the
14 definition.

15 HEARING OFFICER KRUSE: Okay.

16 MR. MARVEL: And we have the -- I
17 mean, the Agency's proposed amendment to the
18 definition it doesn't modify the definition. It
19 just clarifies what type of converted tire would
20 be exempt from regulation. So, I mean, it's
21 important to know that just because it's a useable
22 commodity doesn't mean that it will be used,
23 especially in a limited geographic region. So the
24 exact specification of an end user enhances the

1 probability of the actual usage of the commodity
2 dramatically.

3 MR. RAO: So how would this
4 provision be implemented if someone claims an
5 exemption under the subsection? Will the Agency
6 ask for some kind of a certification to make sure
7 that it meets the exact specifications?

8 MR. MARVEL: Yeah, and the fact that
9 it's -- the fact that the material is actually
10 being supplied indicates that it meets the exact
11 specifications. I mean, otherwise, they could
12 make what appears to be a converted tire and claim
13 it's a converted tire, but it remains there
14 without being sold as a commodity.

15 MR. GRAY: Specifications differ
16 from end users. So materials -- so being able to
17 meet their specific specification demonstrated
18 and -- so a purchase order adds more credibility
19 to the claim.

20 MR. RAO: Okay. So you look at the
21 purchase order to ensure?

22 MR. MARVEL: (Affirmative nod.)

23 MR. RAO: Okay. The next question
24 "The Statement of Reasons indicates that

1 subsection (g) is based on the exemption
2 previously located at Section 848.201(d). While
3 subsection (g) exempts used or waste tires managed
4 at municipal waste landfills in accordance with a
5 solid waste permit, the current exemption under
6 Section 848.201(d) applies only to used or waste
7 tires disposed in a permitted landfill. Used or
8 waste tires stored at a permitted landfill are
9 subject to requirements of Part 848. Explain the
10 rationale for the proposed change."

11 MR. MRAZ: This is another question
12 that the Agency proposes to address in
13 post-hearing comments. The Agency is proposing to
14 change the language set forth in 848.101(g) to
15 effectively read that "used or waste tires
16 accepted by an owner or operator of the sanitary
17 landfill in accordance with Section 55 of the Act
18 and in accordance with the solid waste permit
19 issued by the Agency" is how the proposed revised
20 Paragraph G would read.

21 So use of the word "managed"
22 would no longer be included in the definition and
23 the reason for use of the word "accepted" is it's
24 consistent with Section 55 of the Act. Section 55

1 of the Act makes reference to used tires that
2 are -- they can be used at the landfill or the
3 sanitary landfill facility either for final
4 disposal under certain circumstances or for
5 alternative uses. So the idea is to tie it into
6 the requirements of Section 55 of the Act.

7 HEARING OFFICER KRUSE: Okay. The
8 next question "Subsection (i) of 848.101 exempts
9 used or waste tires managed under and in
10 accordance with a beneficial use determination
11 issued pursuant to Section 22.54 of the Act.
12 Indicate whether the Agency has issued beneficial
13 use determinations for used or waste tires. If
14 so, provide the types of beneficial uses that have
15 been approved by the Agency."

16 MR. MARVEL: Well, the Agency has
17 received multiple beneficial use determination
18 applications for used tires for a variety of uses,
19 but only two have been issued and they both have
20 been issued for the same use and that's as a crash
21 barrier at a racetrack. Two separate facilities
22 and two separate BUD's have been issued.

23 HEARING OFFICER KRUSE: Okay. Under
24 the -- Section 848.101(f) provides an exemption

1 for certain tire -- a certain number of tires.
2 However, the Board would like to know if the
3 Agency has any intent for any provisions of this
4 rule to exempt tire handlers from the
5 administrative citation provisions of Section 55
6 of the Act?

7 MR. MRAZ: That's not the intention
8 of the Agency.

9 HEARING OFFICER KRUSE: I just have
10 an additional question under that section.
11 848.101(h) is what the -- is the subsection this
12 question deals with and in order to be exempted do
13 the used or waste tires need to be shredded or
14 sliced, stored and burned as fuel all at one site
15 or can the shredding and burning, for example,
16 take place at different sites. Please clarify the
17 rule language to reflect the Agency's intent.

18 MR. MARVEL: The intent there is
19 that they are altered, shredded or sliced on the
20 same site that they are burned.

21 HEARING OFFICER KRUSE: So all
22 three; altered, shredded and sliced same site as
23 the site at which they are burned?

24 MR. MARVEL: That's correct.

1 MR. RAO: So if a facility accepted
2 shredded tires and stores it at the site before
3 burning it, would that qualify for an exemption?

4 MR. MARVEL: Not -- it would not
5 qualify for that exemption --

6 MR. RAO: Okay.

7 MR. MARVEL: -- because it wasn't
8 processed on the same site that it was burned.

9 MR. RAO: All right. Any reasons
10 why the shredded tires accepted at the facility is
11 not exempted?

12 MR. MARVEL: Well, it would be
13 exempted under -- which is addressed in the
14 errata. It would be exempted from the subpart (d)
15 financial assurance requirements.

16 MR. MRAZ: Yeah, if they're
17 two-inch-minus tires under -- under the contract
18 for purchase or sale, yes, then they would be
19 exempt under the financial assurance requirement.

20 MR. RAO: But not if a facility
21 accepts altered or sliced or shredded tires it
22 does not meet the two-inch-minus?

23 MR. MRAZ: Correct. Under the
24 exemption for financial assurances, they would

1 have to meet the two-inch-minus requirement and be
2 under a purchase contract or contract for purchase
3 or sale.

4 MR. RAO: Okay.

5 MR. GRAY: That material has value
6 and, therefore, doesn't need to have financial
7 assurance. That's the reason for excluding it.

8 MR. RAO: Thank you. We'll take a
9 look at the language.

10 HEARING OFFICER KRUSE: I believe
11 that's all I have on that first Section 101. So
12 moving to Section 848.104. I'll first start with
13 two questions that were in the February 26th
14 Hearing Officer Order.

15 First, the proposed revisions to
16 the definition of "aisle" limits the application
17 of the term to indoor storage only. Clarify
18 whether the term firebreak replaces the term
19 "aisle" for outdoor storage.

20 MR. GRAY: Firebreak applies to all
21 outside storage, aisle to inside storage to be
22 compatible with other regulations that govern that
23 or other rules that govern that, but the term
24 firebreak is -- applies to outdoor storage

1 completely. It has -- outdoor storage has
2 different parameters, different volumes and
3 different concerns compared to indoor storage.

4 HEARING OFFICER KRUSE: Next
5 question. "The proposed definition of the terms
6 "tire retreading facility" and separate term "tire
7 stamping and die cutting facility" include a
8 production threshold of at least 100 tires per
9 operating day. Explain the rationale for choosing
10 the 100 per day operating threshold."

11 MR. MARVEL: Well, our objective
12 there was to establish a continuing business
13 threshold to avoid claiming an exemption just
14 based on the processing of a single tire and by
15 setting this we're capturing probably -- we're,
16 you know, capturing a majority of the facilities.

17 MR. RAO: So is the Agency aware of
18 facilities which have production thresholds less
19 than 100 tires? Are they viable?

20 MR. MARVEL: There are small scale
21 retreading facilities that would process less than
22 100 a day and it's a -- it's a seasonal -- very
23 much a seasonal industry where it's a much higher
24 production in the summer months and much lower in

1 the winter.

2 MR. RAO: So would you say like 80
3 or 90 percent of the facilities would fall under
4 the definition?

5 MR. MARVEL: Yes, that's our
6 estimate. All of the -- well, all of the stamping
7 and die cutting facilities there is a total of one
8 of those that would definitely fall under and the
9 majority -- vast majority of the retreading
10 facilities.

11 MR. RAO: Okay. Thank you.

12 MR. MARVEL: Mm-hmm.

13 HEARING OFFICER KRUSE: The JCAR
14 questions from March 2nd have -- include a number
15 of questions about this section. In fact, I think
16 there is five questions and a few subparts. So
17 I'll read those next and if you have the intent to
18 respond to those questions today, please let me
19 know. Otherwise, I'll just continue on to the
20 next question.

21 First, 848.104 in the opening
22 paragraph states, quote, rules and regulations
23 adopted under the Act, unquote. Does the Agency
24 mean chapter one of Title 35 of the Ill. Adm. Code

1 or does the Agency have a more specific meaning to
2 that language?

3 MR. MRAZ: We can respond to these
4 questions in the post-hearing comments.

5 HEARING OFFICER KRUSE: Would you
6 just like to respond to all the questions you see
7 on this sheet for Section 848.104?

8 MR. MRAZ: In the post-hearing
9 comments, yes.

10 HEARING OFFICER KRUSE: Okay. Thank
11 you. I will not read the other questions then
12 from that Exhibit 1 applying only to 848.104. We
13 will move onto Section 848.106. There are two
14 questions in the February 26th Board Hearing
15 Officer Order and I will read the first one of
16 those.

17 "Regarding the proposed density
18 factors for calculating the weight of used or
19 waste tire accumulations, Mr. Gray states that the
20 proposed density factors are based on extensive
21 experience with estimation and removal of actual
22 stockpiles. Thus, the Board asks the Agency to
23 clarify whether the density factors have been
24 adopted in regulations of other states or

1 published in any trade publications."

2 MR. GRAY: Some --

3 MR. RAO: Before you answer, I just
4 want to let you know that JCAR has questions on
5 that same issue in their list. So I just want you
6 to know there is more on that issue.

7 MR. GRAY: Some are pretty widely
8 accepted such as the quantity of ten passenger
9 tire equivalents per cubic yard for shallow piles
10 of whole tires. Some are cited in the handbook,
11 this Scrap Tire Cleanup Guidebook that I helped
12 write. So some are cited in that. The others I'm
13 not aware of general references where they've been
14 cited, but I've examined over 100 waste tire
15 stockpile sites, many of which have been abated
16 afterwards and we've had actual quantities to put
17 against the measurements to be able to determine
18 this.

19 So those reports where those
20 estimates were made and the results of it are
21 available in state reports, but not in a generally
22 published one that I know of. What we tried to do
23 with this is before the rule had just one density
24 and it was just one density for whole tires in a

1 shallow pile and if they had anything else they
2 still had to apply that density and it led to some
3 really erroneous figures that they had no choice
4 on. So what we tried to do in this was to
5 establish at least the range and a basis for it so
6 that at least they'd be within a reasonable jump
7 from reality. The variations are endless.

8 MR. RAO: That's the reason we asked
9 the question to see if there was any published
10 information and would it be possible for you to
11 submit a report for the record?

12 MR. GRAY: I brought this for you.

13 MR. RAO: Okay.

14 MR. GRAY: So this is yours.

15 MR. RAO: Okay.

16 MR. GRAY: Do you want me to give it
17 to the court reporter or give it to you? Merry
18 Christmas.

19 MR. RAO: It's early.

20 HEARING OFFICER KRUSE: So Mr. Gray
21 is submitting Scrap Tire Cleanup Guidebook for --
22 as a hearing exhibit. Does anyone object to it
23 being entered? Seeing none, we will mark this as
24 Exhibit 2.

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

4 MR. GRAY: That's probably available
5 online, but I don't know where.

6 HEARING OFFICER KRUSE: Are we ready
7 to move on?

8 MR. RAO: Yes.

9 HEARING OFFICER KRUSE: Question 12
10 from the February 26th Hearing Officer Order.
11 "Explain the significance of subsection (b) of
12 Section 848.106. Why would a storage pile be
13 divided in order to make the necessary
14 calculation?"

15 MR. GRAY: It's a lot easier for us
16 engineers to calculate a volume if we have a
17 geometrical shape that we can draw on, but piles
18 aren't formed on the basis of trying to make the
19 calculation easy. So you may have a stockpile
20 that is 15 feet high in one area, 5 feet high in
21 another area. If you break that down into -- it's
22 one stockpile still, but if you break it down into
23 two segments, you can reflect the difference in
24 height. In some others, you may have a very good

1 square or a box or a rectangle in one area and
2 then it may be a triangle in another. So if you
3 use a different geometrical shape, you can do it
4 and when you add those together you have the size
5 of the stockpile, but you've calculated it in a
6 way that civil engineers can understand and do.

7 MR. RAO: It makes sense.

8 MS. GLOSSER: I just want to make a
9 note that the Scrap Tire Cleanup Guidebook is
10 available on the US EPA website. I just can't
11 from my iPhone get you the e-mail -- the website
12 address for that.

13 MR. GRAY: Well, you may have one of
14 15 or 20 that are still out in circulation.

15 MS. GLOSSER: It is available.

16 HEARING OFFICER KRUSE: Mr. Gray,
17 did you express a desire to retain this copy given
18 that it is rare?

19 MR. GRAY: You're welcome to it. If
20 you have the use for it, you're welcome to it.

21 HEARING OFFICER KRUSE: Okay. As
22 Mr. Rao pointed out, JCAR also had some questions
23 to this point. So now I will read a JCAR question
24 from the March 2nd submittal that is Exhibit 1 to

1 the hearing.

2 "Regarding Section 848.106(a),
3 what is the source for the density calculations?
4 Why choose less than 10 feet and more than 10 feet
5 as the height categories? JCAR provides an
6 Internet resource to support this question and
7 should the age of the pile and how much settling
8 may have occurred over the years be taken into
9 account?" And I recognize you have addressed some
10 of that set of questions.

11 MR. GRAY: We talked a little bit
12 about the density. I don't think I need to go
13 back through that, but the 10 feet is kind of a
14 magic number and the reason is in shred piles when
15 you get above 10 feet they can't be stacked by the
16 front end loaders typically. They will only go to
17 10 or 12 feet and then after they will ramp up.
18 They will drive up the pile, kind of have a road
19 going up the pile and be able to dump and create
20 something higher.

21 Experience shows many times that
22 compacted piles of shreds are capable of
23 undergoing auto-ignition. So in shred piles,
24 you're very concerned about piles greater than 10

1 or 12 feet because of the greatly increased
2 probability that they will become -- become a
3 fire. That does not take place in whole tires by
4 the way, just in shreds, but in whole tires if you
5 get beyond the depth of 10 feet, they tend to get
6 more compacted because of the weight above them
7 for one thing and for another they increase the
8 rate of pyrolytic oil formation when they are
9 ignited. They become a greater environmental
10 hazard. So we differentiate the two both from the
11 standpoint of the density and because of the fire
12 risk associated with it. I don't know whether we
13 covered the other points.

14 HEARING OFFICER KRUSE: Would you
15 like me to repeat?

16 MR. GRAY: Is there anything we
17 haven't covered in the other points that were
18 raised?

19 HEARING OFFICER KRUSE: The age of
20 the pile?

21 MR. GRAY: The age of the pile can
22 have some impact, but not as much as you might
23 think. The tires stay pretty firm through it
24 because of the support of the treads section. It

1 is more a depth thing that will lead to greater
2 compaction in whole tires and in shreds.

3 HEARING OFFICER KRUSE: And then the
4 only other aspect that you may have not directly
5 hit is any settling that occurs within piles, but
6 you mentioned dense -- how dense they get over 10
7 and 12 feet, but this specifically asks about how
8 much settling may have occurred over the years and
9 whether that is taken into account.

10 MR. GRAY: Again, it's not as much
11 age as it is what is done with the pile and the
12 depth of it.

13 HEARING OFFICER KRUSE: The second
14 JCAR question from Hearing Exhibit 1 on this
15 subsection states "How high can tires potentially
16 be stacked? Could higher stacks increase the
17 density beyond the factors listed here? Is it
18 possible or desirable to place -- replace these
19 constraints -- these constants -- I'm sorry --
20 with some sort of equation that would allow
21 facilities to calculate more precisely the weight
22 and the number of tire equivalents in a storage
23 unit?"

24 MR. GRAY: Well, do you want to

1 handle this?

2 MR. MARVEL: No.

3 MR. GRAY: You have fairly flat
4 topography here. So the odds of tires being
5 stacked from the ground up very high I guess it
6 could be done if somebody were determined, but you
7 don't see it much on level ground, but the State
8 of California was a client of mine and they filled
9 canyons with them and they would get over 100 feet
10 on one that I was familiar with and the density
11 did increase dramatically when you started to have
12 tires in 100 feet of overburden or more and for a
13 period of 30 or 40 years and in a very hot
14 climate.

15 So all those things led to a
16 higher density, but I don't think we need to spend
17 a lot of time on developing equations for that
18 happening in Illinois because I don't know how
19 many canyons you have that are 150 feet deep or
20 whatever. So I think it's a valid question, but I
21 don't think it's applicable to Illinois.

22 HEARING OFFICER KRUSE: Okay. With
23 that, I think we are ready to move onto Section
24 848.201. Applicability of certain provisions.

1 We'll start with two questions and one of those
2 has subparts from the February 26th Board Hearing
3 Officer Order. The first one states "The proposed
4 revisions to the used tire regulations expands the
5 scope of existing exemptions to tire retreading
6 and tire stamping facilities in response to a
7 comment received during the Agency's regulatory
8 development. In light of this, the Board directs
9 the Agency to, A, update the record with the
10 number of tire retreading and tire stamping
11 facilities affected by the proposed exemptions
12 along with the approximate number of tires managed
13 by each of these facilities and, B, comment on
14 whether the Agency is aware of any environmental
15 health or fire safety concerns associated with the
16 tire retreading and tire stamping facilities."

17 MR. MRAZ: If I can clarify one
18 point before we begin. The Agency is proposing in
19 post-hearing comments to strike what is 848 under
20 the proposed rules 848.201 Paragraph's B and C,
21 which would have exempted those -- those provide
22 the exemptions to the management standards. So
23 that these retreading facilities and the stamping
24 and die cutting facilities would be subject to the

1 management standards set forth in subpart (b).

2 HEARING OFFICER KRUSE: Next
3 question.

4 MR. MARVEL: I was going to address
5 the question on the number of facilities.

6 HEARING OFFICER KRUSE: Yes, sir.

7 MR. MARVEL: As far as we know, we
8 have approximately 20 tire retreading companies in
9 Illinois, some with multiple locations. Most of
10 them process more than 100 casings a day. The
11 largest of our retreaders in peak season they will
12 process about 500 casings a day. They -- we don't
13 see huge accumulations at these retreading
14 facilities. These -- these casings -- the used
15 tires that come in that are being retreaded have
16 value and they belong to someone else and they're
17 paying this company to retread them. So they come
18 in and they go out so we don't see large
19 accumulations typically at those types of
20 facilities and, of course, we're aware of one
21 stamping and die cutting facility and they process
22 about 300 used tire casings a day. So I just want
23 to give you an idea on how many facilities we're
24 talking about.

1 The second question is whether
2 the Agency is aware of any environmental, health
3 or fire safety concerns. Typically not at the
4 retreading facilities. Again, these are -- these
5 tires are managed indoors. They -- there is a
6 strong incentive to keep them dry because wet
7 tires are bad for a retreader. They can't retread
8 a tire when they're wet. They're typically stored
9 in trailers, not in large quantities. At the
10 stamping and die cutting facilities, I mean, this
11 is a -- this is feedstock for their production.

12 So, you know, these tires have
13 value. We have seen some instances at the -- at
14 that facility where we've got -- had an issue with
15 water in the tires and some larger accumulations.
16 So we had a few issues there that we think would
17 be addressed under the -- under the regulations
18 that they will be subject to with the exemption
19 still in place.

20 MR. MRAZ: Just to clarify. The
21 Agency is still proposing to strike 848.201
22 Paragraph's B and C.

23 HEARING OFFICER KRUSE: Next
24 question is question 14 on the Board's February

1 26th Hearing Officer Order. "Proposed revisions
2 to the exemptions for tire retreading and tire
3 stamping facilities with 5,000 or fewer tires at
4 subsections (b) and (c) require such facilities to
5 address the threat of mosquito breeding by
6 requiring compliance with Section's 848.202(b) (3).
7 However, these facilities are exempted from the
8 fire safety requirements proposed at Section
9 848.202(b) that apply to tire storage sites with
10 more than 50 used or waste tires. Therefore, the
11 Board requests that the Agency explain this
12 apparent contradiction in the proposal."

13 MR. MRAZ: And if I can just address
14 that by striking 848.201(b) and (c). That would
15 address that issue raised by the Board.

16 HEARING OFFICER KRUSE: One
17 question. The JCAR communication of March 2nd
18 includes one question on this Section 848.201(b)
19 and (c) which we've already talked about may be
20 struck. I'll read it. "How is the phrase
21 located -- I'm sorry -- quote, located onsite at
22 any one time, end quote, enforced? Will there be
23 inspections or an accounting of shipping
24 manifests? Does, quote, located onsite, end

1 quote, mean stored onsite or could it also mean in
2 the back of a truck that is idling in the facility
3 parking lot?"

4 MR. MRAZ: Once again since
5 848.201(b) and (c) will be stricken, that
6 addresses -- should address those issues raised by
7 JCAR.

8 HEARING OFFICER KRUSE: Okay. We'll
9 move onto Section 848.202. There is one large
10 question in the Board's Hearing Officer Order that
11 is subdivided into five parts and I'll read that
12 now.

13 "The Agency's proposal changes
14 the threshold for additional requirements at
15 subsection (c) of Section 848.202 from sites with
16 more than 500 used or waste tires to more than 60
17 tons of used or waste tires. The 60-ton threshold
18 corresponds to approximately 5,000 passenger tire
19 equivalents. The Statement of Reasons notes that
20 the threshold change tailors the more demanding
21 requirements to the types of sites that have
22 historically had more significant environmental
23 problems. The Board requests that the Agency, A,
24 clarify whether environmental problems, including

1 mosquito breeding and fire safety issues, are
2 mostly associated with tire storage or disposal
3 sites with more than 5,000 used or waste tires."
4 And I'll just break after each one of these to let
5 you address them if you wish.

6 MR. MARVEL: Yeah, the Agency has --
7 although, you know, any site that has used tires
8 poses a threat we've seen the more significant
9 threat at the -- and the most significant -- more
10 significant events at sites where there is more
11 than 5,000 used or waste tires. We've seen -- the
12 sites with less than 60 tons of used tires onsite
13 just have not historically presented the more
14 significant environmental problems. So we think
15 that's an appropriate threshold.

16 HEARING OFFICER KRUSE: The next
17 part of that question asks the Agency to identify
18 whether it has any record of environmental
19 problems at tire storage sites that supports
20 increasing the applicability threshold for
21 additional requirements from 500 to 5,000 used or
22 waste tires.

23 MR. MARVEL: Well, we've had -- I
24 don't know exactly how many. I know we have had

1 more than five to seven major tire fires over the
2 years in the State of Illinois. Every single one
3 of these events has occurred at storage/processing
4 facilities that contain way more than 5,000 used
5 tires. In addition, the Illinois Natural History
6 Survey has conducted mosquito monitoring around a
7 commercial tire processing facility and found that
8 if improperly managed and if noncompliant with the
9 regulations at the time, and primarily we're
10 talking about the tires being allowed to
11 accumulate and hold water for extended periods of
12 time, the study showed that the processing
13 facility, the large storage facility, with a large
14 volume of tires actually contributed to the
15 mosquito proliferation in the area incrementally
16 from around the facility. The closer to the
17 facility, the more proliferation and, you know,
18 there was evidence that it was coming directly
19 from the facility.

20 So, you know, obviously these
21 large facilities are -- they are supposed to be
22 the solution to the problem and not the cause and
23 that's why we've placed requirements on them --
24 proposed to replace the requirements.

1 MR. GRAY: I've been around an awful
2 lot of processing facilities and storage piles and
3 believe me the mosquitos like those if they've
4 been there for any period of time. Illinois' rule
5 of requiring the tires to be rendered so that they
6 can't contain water is a very good idea for worker
7 safety as well as health of people around.

8 HEARING OFFICER KRUSE: The next
9 part of that question asks the Agency to indicate
10 whether any members of the regulating community
11 requested the Agency to change the applicability
12 threshold during the Agency's outreach.

13 MR. MARVEL: Not that I recall.

14 HEARING OFFICER KRUSE: Next part.
15 "Please clarify why a threshold of 60 tons was
16 chosen rather than 55 tons which is closer to
17 5,000 passenger tire equivalents."

18 MR. MARVEL: Well, we -- if you take
19 the old 25 pounds per PTE, that was 62.5 tons. So
20 when we first started, 60 just sounded like a
21 good, round number that would be more easily
22 monitored by the facility to kind of judge when
23 they go from one category to another. We believe
24 60 is a more appropriate number and easier for the

1 regulating community to track.

2 HEARING OFFICER KRUSE: I don't know
3 that I heard. If you can just repeat the first
4 part of what you just said. Did you say that 60
5 tons is a threshold that tracks with another
6 regulation that these facilities are subject to
7 or --

8 MR. MARVEL: No. Under our current
9 rules, PTE is 25 pounds. We're proposing to
10 modify that.

11 HEARING OFFICER KRUSE: Right.

12 MR. MARVEL: So if you take -- the
13 threshold is 5,000 PTE's. So if you take the 25
14 PTE and do the calculations, that's 62.5 tons. So
15 when you first developed the rule -- we propose to
16 just change it to 60 to make it easy -- easier to
17 follow.

18 HEARING OFFICER KRUSE: The next
19 part of that question "Comment on whether it would
20 be appropriate to use a weight-based threshold in
21 other sections of the rules where the
22 applicability threshold is based on a number of
23 used or waste tires rather than the weight-based."

24 MR. MARVEL: I believe that the

1 number is used in the other areas of the rules
2 because it is dictated by statute.

3 MS. GLOSSER: I have a question
4 related to A. The question A asked about
5 environmental problems associated with mosquitos
6 and fire on piles of storage of 5,000 or greater
7 and on page five of the Statement of Reasons it
8 says that sites at which more than 50 used or
9 waste tires are located must be prevented from
10 accumulating water. Is the 50 number in there
11 correct rather than -- so if mosquitos --
12 accumulation of water to prevent the problems from
13 mosquitos are on 50 tires or more, that's the
14 threshold rather than 5,000, correct?

15 MR. MARVEL: Yes.

16 MS. GLOSSER: Okay.

17 MR. RAO: I had a follow up. When
18 the Agency provides the errata sheet, would it be
19 possible for you to highlight the statutory
20 language in the proposal?

21 MR. MRAZ: Yes.

22 MR. RAO: So we can see where --

23 MR. MRAZ: Yes, we can do that.

24 Anything that's related to the statute.

1 MR. RAO: Thank you.

2 HEARING OFFICER KRUSE: There are
3 several questions that are just language
4 clarifying questions. "On this 848.202, the first
5 one is with regard to subsection (b). Subsection
6 (b) provides that, quote, owners and operators of
7 any sites, that's plural, end quote, must comply.
8 Does the Agency intend for this provision to apply
9 only to those owners and operators who own more
10 than one site and, if not, should sites be
11 singular rather than plural?"

12 MR. RAO: This is the JCAR?

13 HEARING OFFICER KRUSE: No, this is
14 my question.

15 MR. RAO: This is your question?

16 HEARING OFFICER KRUSE: Yes, the
17 remaining questions on this 848.202(b) are.

18 MR. RAO: Sorry.

19 HEARING OFFICER KRUSE: There is
20 another instance of this same plural versus
21 singular problem in Section 848.301(a) of the
22 rule. I characterize it as a problem. It's just
23 an issue that I didn't know.

24 MR. MRAZ: In 848.202(b), it would

1 appear site -- it currently reads sites. It
2 should be site singular. So we can address that
3 in the post-hearing comments.

4 HEARING OFFICER KRUSE: Okay. The
5 other subsection is 848.301(a).

6 MR. MRAZ: I apologize. What was
7 the section again?

8 HEARING OFFICER KRUSE: 301(a) and
9 you can certainly just do that in post-hearing as
10 well.

11 The next three questions are
12 questions I came up with in reviewing the proposal
13 so you have not seen those in advance of today.

14 MR. MRAZ: So in 848.301(a), we will
15 also change sites plural to site singular.

16 HEARING OFFICER KRUSE: Okay. Next,
17 with regard to 848.202(b) (4) "In the Statement of
18 Reasons, the Agency indicates that an outright
19 prohibition on accepting used tires from an
20 unpermitted handler may encourage illegal dumping
21 of tires. Hence, the Agency's proposed language
22 in 848.202(b) (4). However, the Board wonders if
23 the process of accepting tires from an unpermitted
24 handler could be even more streamlined and

1 undocumented in order to promote environmentally
2 sound disposal of used tires. Please provide an
3 explanation of why 20 used tires was used as a
4 threshold for this provision and whether it could
5 be further simplified." And, of course, if there
6 are protections of -- we are interested in the
7 protection of the environment obviously, but the
8 Board is interested also and the Agency is not
9 discouraging proper disposal of tires. So in
10 reviewing the rule, I had some confusion about how
11 20 used tires was used as a basis for this
12 provision and how the Agency thought it was
13 addressing that concern.

14 MR. MARVEL: I believe that's the
15 statutory provision, 20 tires.

16 HEARING OFFICER KRUSE: I think
17 it's -- it is not italicized, but in the
18 proposal --

19 MR. GRAY: While they're looking,
20 let me comment on one thing and that is that 20
21 tires in Illinois is a higher threshold than most
22 other states I'm familiar with. Most of the other
23 states are even lower. They're anywhere from six
24 to ten. So they are higher and part of why you

1 try to do this is you really want the haulers to
2 be registered and to be hauling the tires
3 legitimately because of the recordkeeping that
4 guess along with those and the closing of the
5 chain on the manifest or the receipts left for the
6 tires going through it, which tends to decrease
7 the propensity for stockpiling and dumping.

8 So you really want the people to
9 be registered. That's why typically in most
10 states they require them -- when they allow the
11 tires to be received, because they don't want them
12 dumped, they require identification of those
13 parties so that then they can be encouraged to
14 register and fall within the sequence of tire
15 handling.

16 I think I've stalled as long as
17 I can and they still haven't come up with the 20
18 tires, but the 20 tires is a fairly high number.

19 MR. MRAZ: We'll address it further
20 in post-hearing comment.

21 HEARING OFFICER KRUSE: Thank you.
22 Section 848.202(c)(3), the proposed rules goes
23 back and forth between referring to, quote, a
24 site, end quote, any site and the site. Section

1 848.202(c)(3) is an example of a provision where
2 the Board believes a more consistent reference may
3 be helpful. Subsection (c) refers to "any site"
4 as a term while subsection (c)(3) refers to "the
5 site" as a term. The Board requests that the
6 Agency consistently refer to sites affected by the
7 rule unless there is a reason not to.

8 MR. MRAZ: We'll address all of that
9 in the post-hearing comments.

10 HEARING OFFICER KRUSE: Thank you.
11 With regard to Section 848.202(d)(1)(c), the Board
12 suggests that breaking this subsection into parts
13 enumerating the requirements of the, quote,
14 earthen berm or another walled, impermeable
15 aboveground structure, end quote, may be more
16 clear than the current provision.

17 MR. MRAZ: I apologize. Can you
18 repeat that, please?

19 HEARING OFFICER KRUSE: I sure can.
20 This is -- this doesn't necessarily -- this is
21 just a comment of the Board. The Board suggests
22 that breaking this subsection, that's Section
23 848.202(d)(1)(c), into parts enumerating the
24 requirements of the, quote, earthen berm or

1 another walled, impermeable, aboveground
2 structure, end quote, may be more clear than the
3 current provision.

4 MR. MRAZ: We can address that in
5 the post-hearing comments.

6 HEARING OFFICER KRUSE: Thank you.

7 MR. MRAZ: Is it the Board's intent
8 that they be -- that subparagraph (c) be broken
9 down further into subparagraphs?

10 HEARING OFFICER KRUSE: I don't know
11 that there is a specific intent with how you do
12 it. It seems in reading the -- in reading that
13 section, it seems jumbled and I don't know -- the
14 requirements seem like they could apply to one of
15 the ways to raise and divide the --

16 MR. MRAZ: So just to clarify --

17 HEARING OFFICER KRUSE: Yes, sir.

18 MR. MRAZ: -- subparagraph C --

19 MR. GRAY: The objective is just to
20 have a two-foot barrier all the way around to
21 contain water or oils or other generated in the
22 fire and have it -- to control where it goes.

23 HEARING OFFICER KRUSE: Yes.

24 MR. GRAY: That's the objective. If

1 we need to make it clearer -- obviously we do.

2 HEARING OFFICER KRUSE: Okay.

3 Moving onto Section 848.203. I'll read a question
4 from the February 26th Hearing Officer Order.

5 "The Agency proposes to strike all language
6 requiring the contingency plan to be designed to
7 minimize hazards to human health and the
8 environment caused by mosquitos because Section
9 848.202(b)(3) requires all used and waste tires at
10 tire storage and disposal sites at which more than
11 50 tires are located to be kept dry.

12 Since the contingency plan is
13 supposed to address situations where a facility
14 may be faced with a health and safety issue for
15 any number of reasons, including noncompliance
16 with applicable requirements, the Board requests
17 that the Agency explain why it is unreasonable to
18 include a measure preventing mosquito breeding in
19 the contingency plan."

20 MR. MARVEL: Well, we talked about
21 that, but the rules prohibit the accumulation of
22 water. So without the accumulation of water there
23 wouldn't be any mosquito breeding. So that's why
24 we didn't address -- I mean, the mosquito

1 proliferation shouldn't be a problem under the
2 current rules. That's why we didn't address it,
3 but certainly we'll look at that.

4 MR. RAO: I think the concern here
5 was if there is noncompliance, can there be some
6 part that the contingency can address if there is
7 noncompliance with the rule?

8 MR. MRAZ: If it's a concern to the
9 Board, the Agency in its post-hearing comments can
10 modify the contingency and emergency plans to
11 address the mosquito abatement or those issues --
12 those related issues.

13 MR. RAO: Okay.

14 HEARING OFFICER KRUSE: Thank you.
15 This is a question of the Board that is -- was not
16 in the Hearing Officer Order.

17 "With regard to Section
18 848.203(a)(3), should the word "tire" be removed
19 from in front of the word "fire" so that runoff
20 from any sort of fire would trigger the action?
21 Also, should runoff of any sort trigger the same
22 action?"

23 MR. MRAZ: I apologize. The section
24 number again, please?

1 HEARING OFFICER KRUSE: That is
2 848.203(a)(3).

3 MR. MARVEL: Can you repeat that?

4 HEARING OFFICER KRUSE: I will. I'm
5 just getting there myself. "Should the word
6 "tire" be removed from the -- from in front of the
7 word "fire" right there near the end of that
8 section so that runoff from any sort of fire would
9 trigger the action?"

10 So, in other words, are you
11 differentiating for -- with reason between tire
12 fires and just a fire at the facility, which would
13 inevitably be a tire fire? Also, should runoff of
14 any sort trigger the same action? And so this
15 is -- these are outdoor facilities.

16 MR. GRAY: So when you say typically
17 the tires are an integral part of any fire that
18 I've seen occur at a facility, at least one that
19 would trigger any measures being required. I'm
20 not sure how you would differentiate. I just
21 don't know of the other fires that would occur
22 because they very quickly -- I mean, if a bearing
23 gets hot in a motor and there is rubber around it,
24 that rubber ignites and then it becomes a tire

1 fire and the runoff issues of a tire fire are very
2 different than the runoff issues of a woodshed or
3 something like that burning and I don't think the
4 woodshed represents anywhere near the issues that
5 the tire fire would.

6 HEARING OFFICER KRUSE: Okay. Thank
7 you. The JCAR communication from March 1 that is
8 Hearing Exhibit A -- Hearing Exhibit 1, excuse me,
9 also asked a question regarding 848.203(h)(8) and
10 that question is which laws and regulations is the
11 Agency referring to with the phrase, quote, all
12 applicable federal and state laws and regulations,
13 end quote? Since the Illinois Administrative Code
14 is designed for use by ordinary citizens, we
15 cannot presume that those reading this provision
16 would have a complete picture of the federal and
17 state laws affecting their facility without some
18 help from the text.

19 MR. MRAZ: We can address it in the
20 post-hearing comments, but I would just say it is
21 fairly common to require people -- they're
22 obligated to comply with all applicable state and
23 federal law regardless of whether each law is
24 stated in the rule. So they already have that

1 legal obligation. So there is nothing imposed
2 here that they're not already obligated to comply
3 with.

4 HEARING OFFICER KRUSE: Thank you.
5 I think we're ready to move onto Section 848.204
6 and there is one question from the February 26th
7 Hearing Officer Order. The Board requests that
8 the Agency provide rationale for increasing the
9 applicability threshold from 500 used or waste
10 tires to 60 tons or approximately 5,000 passenger
11 tire equivalents for this section requiring a tire
12 storage plan, contingency plan, recordkeeping and
13 reporting.

14 MR. MARVEL: Yeah, the sites with
15 5,000 or more PTE's or more than 60 tons pose more
16 of a risk for fire and we believe that's a more
17 appropriate threshold for those requirements.
18 We've observed significantly more serious threats
19 to human health and the environment at these
20 larger sites compared to smaller sites.

21 HEARING OFFICER KRUSE: Thank you.
22 Regarding Section 848.204(c)(4) are the two parts
23 of the sentence that make up this provision
24 redundant? So if you look at the provision it

1 starts with a phrase "while conducting they must
2 comply with the NFPA" and the question is simply
3 would it be more clear and more direct if it just
4 started with the "comply with the NFPA 51(b)
5 standards" which it seems like would only apply if
6 they were conducting those activities in the first
7 place.

8 MR. WHITE: Can you repeat the
9 question, please?

10 HEARING OFFICER KRUSE: Sure. Are
11 the two parts of this sentence that make up
12 Section 848.204(c)(4) redundant? Can -- and then
13 I just make a statement -- eliminate the first
14 portion of the provision and begin it with, quote,
15 comply with the NFPA 51(b) standard, end quote, or
16 explain why the first portion of the provision is
17 essential?

18 MR. GRAY: I think that's -- there's
19 redundancy in there as it stands now and it would
20 be appropriate to modify it.

21 HEARING OFFICER KRUSE: The theme of
22 that question is simply to make a more succinct
23 rule.

24 MR. GRAY: And it does because it's

1 redundant right now.

2 MR. MRAZ: We'll modify that in our
3 post-hearing comments then.

4 HEARING OFFICER KRUSE: Thank you.
5 Okay. Next moving to Section 848.301. I'll read
6 a question from the February 26th Hearing Officer
7 Order. "The Board requests that the Agency
8 explain why the proposal exempts tire retreading
9 and tire stamping facilities meeting the threshold
10 requirements specified under subsections (b) and
11 (c) from recordkeeping and reporting requirements
12 of subpart (c)."

13 MR. MARVEL: Well, the Agency
14 believes that the tire retreading and stamping and
15 die cutting facilities have more incentive to
16 properly store their used tire casings and that
17 minimal, but appropriate regulatory requirements
18 should be imposed on -- on those facilities.

19 MR. RAO: Does the Agency believe
20 that some type of minimum recordkeeping
21 requirement should be required for these
22 facilities to show that they meet these thresholds
23 of exemption?

24 MR. MRAZ: We can address that

1 question in the post-hearing comments about
2 verifying whether they qualify --

3 MR. RAO: Thank you.

4 MR. MRAZ: -- or meet the threshold.

5 HEARING OFFICER KRUSE: Next, there
6 is one question in the Board -- in the February
7 26th Hearing Officer Order regarding Section
8 848.303. Subsection (a) of 848.303 requires the
9 daily tire record to be maintained in a form and
10 format prescribed by the Agency. The Board,
11 therefore, requests that the Agency submit a draft
12 daily tire record form to the Board for the record
13 and then there was a note in that question that
14 just stated there are many sections of the
15 proposed rulemaking that call for forms prescribed
16 by the Agency and in the instance that the Board
17 fails to point out any one of those sections in
18 these pre-filed questions the Board requests that
19 the Agency supply the form in the record of this
20 rulemaking.

21 MR. MRAZ: With respect to Section
22 848.303(a), the Board -- I'm sorry -- the Agency
23 rather in its post-hearing comments was proposing
24 to change the wording in subparagraph (a)

1 basically to provide that the form would be in
2 accordance with the requirements under 848.303.
3 So, in other words, it wouldn't be an Agency
4 prescribed form, which would mean the
5 owner/operator would have to submit a form to the
6 Agency that complies with the requirements set
7 forth here in 848.303, but it wouldn't be a form
8 that the Agency is giving to them to submit. It
9 wouldn't be an Agency prepared form.

10 MR. MARVEL: And this particular
11 requirement is required to be maintained onsite.
12 They don't -- they don't submit the daily tire
13 records, but they use the daily tire record to
14 compile their annual tire summary, which is
15 required to be submitted to the Agency. So
16 oftentimes the daily tire record is maintained on
17 a computer spreadsheet and we don't -- we have a
18 form here that's an example of something that they
19 can use that has all the information that we need,
20 but they can use -- we don't intend to make them
21 use a specific form.

22 MS. GLOSSER: Would you be concerned
23 that they wouldn't know -- will they know for sure
24 what they are supposed to send -- what information

1 they are supposed to collect and record? So it
2 doesn't matter about the format, they know
3 specifically what they need to keep track of?

4 MR. MARVEL: It is spelled out in
5 the regulations pretty clearly and we've even
6 simplified it. Before it said weight or volume
7 and now we're requiring weight, which is an
8 industry standard and just weight of tires
9 received during the day, weight of tires removed
10 from the site during the day, weight of tires
11 remaining at the end of the site or onsite at the
12 end of the day and the weight of tires combusted.
13 So there is really four data points that can be
14 collected and it's spelled out in the regs.

15 HEARING OFFICER KRUSE: Mr. Mraz,
16 did you indicate that the phrase "prescribed by the
17 Agency" will not be -- that's going to be taken
18 out?

19 MR. MRAZ: That's correct.

20 HEARING OFFICER KRUSE: Okay.

21 MR. MRAZ: The 848.303(a) would
22 effectively be modified to the effect that the
23 word prescribed would be stricken and it would
24 read something to the effect that with respect to

1 the daily tire records must be maintained in a
2 form and format meeting the requirements of this
3 Section 848.303 or words to that effect.

4 HEARING OFFICER KRUSE: Mm-hmm.

5 Regarding that same section and along the same
6 lines there are a number of instances, this
7 subsection being one, where the rule contains the
8 phrase, quote, in a form and format prescribed by
9 the Agency, and the Board just wonders if that's
10 redundant to say "in a form and format." Unless
11 there is a form that in which case -- in this
12 case, you've said there is not even a form really.
13 That it's more what it contains.

14 MR. MARVEL: Right.

15 HEARING OFFICER KRUSE: So that
16 might cause some confusion. We would just ask
17 that you revisit that.

18 MR. MRAZ: We can clean that up in
19 the post-hearing comments.

20 HEARING OFFICER KRUSE: Thank you.

21 MR. RAO: And whenever you ask for a
22 form to be completed, a form prescribed by the
23 Agency, it would be helpful for us to see a draft
24 of that form. You know, let us know where it

1 could be on your website.

2 MR. MRAZ: Is there an outside date
3 for the Agency to submit proposed forms to the
4 Board?

5 HEARING OFFICER KRUSE: Can you ask
6 that again?

7 MR. MRAZ: Is there an outside date
8 for the Agency to submit those forms to the Board?

9 MR. MARVEL: I have some right here,
10 not all of them, the ones that we have.

11 MR. WHITE: You've asked for us to
12 submit questions by April 1st.

13 MR. MRAZ: By that April 1st date?

14 HEARING OFFICER KRUSE: That would
15 be fantastic. If you want to do it earlier in
16 post-hearing comments -- I mean, April 1st is
17 going to be here before we know it, but, yes.

18 MR. MRAZ: Okay.

19 HEARING OFFICER KRUSE: One other
20 question with regard to Section 848.303(h). This
21 provision is difficult to understand. This is a
22 question that I came up with in reviewing the
23 rule.

24 Could the rule simply require

1 end of day compliance which is an option in this
2 subsection and eliminate the cumbersome and
3 optional method of instantaneous recording, which
4 would inevitably have end of the day compliance
5 and can the phrase, quote, to be made, end quote,
6 be eliminated from the first line of the proposed
7 provision?

8 MR. MRAZ: That section number was
9 I'm sorry?

10 HEARING OFFICER KRUSE: It's
11 subsection (h). Section 848.303(h).

12 MR. RAO: Actually, it's subsection
13 (c), the revised --

14 HEARING OFFICER KRUSE: Revised.
15 I'm sorry. That's correct.

16 MR. MARVEL: Can you repeat the
17 proposed clarification or question?

18 HEARING OFFICER KRUSE: I'll just
19 restate the question in its entirety. This
20 provision is difficult for the reader, and the
21 reader being me, to understand.

22 Could the rule simply require
23 end of day compliance and eliminate the cumbersome
24 and optional method of instantaneous recording?

1 Can the phrase, quote, to be made, end quote, be
2 eliminated from the first line of the proposed
3 provision?

4 MR. MRAZ: And we'll address that in
5 the post-hearing comments.

6 HEARING OFFICER KRUSE: Thank you.
7 Moving to Section 848.304. I'll read a question
8 from the February 26th Hearing Officer Order.
9 Subsection (a) of Section 848.304 requires an
10 annual tire summary to be maintained in a form and
11 format prescribed by the Agency. The Board,
12 therefore, requests that the Agency submit a draft
13 annual tire summary form to the Board for the
14 record.

15 MR. MARVEL: That is a form that is
16 sent to all registered storage sites on our
17 website. We can -- we're actually modifying that
18 form to comply with the new regulations and we
19 will certainly supply that by April 1st.

20 HEARING OFFICER KRUSE: Thank you.

21 MR. MARVEL: Actually, I have that
22 form that we used for the current regulations,
23 that we'll supply -- we'll supply one that we've
24 designed for you.

1 MR. MRAZ: Again, we can submit the
2 forms with the post-hearing comments if that's
3 acceptable.

4 HEARING OFFICER KRUSE: I'm inclined
5 to think that taking some as exhibits today versus
6 you might be confusing --

7 MR. MRAZ: I think it will be easier
8 to track by submitting them all together.

9 HEARING OFFICER KRUSE: Sure. Next,
10 moving to Section 848.305. Subsection (d)
11 requires tire tracking receipts in a form and
12 format prescribed by the Agency. This form is
13 required by Section 848.607(d) of the proposal
14 rulemaking. The Board, therefore, requests that
15 the Agency submit a draft tire tracking receipt
16 form to the Board for the order.

17 MR. MRAZ: Again, we'll submit it
18 with the post-hearing comments.

19 HEARING OFFICER KRUSE: Thank you.
20 The Board has an additional question on this
21 section. Does the receipt requirement of this
22 section apply to used or waste tires received from
23 a vehicle without the subpart (f) placard or from
24 an otherwise unpermitted tire handler? If so,

1 please explain how this provision is consistent
2 with the Agency's desire to discourage illegal
3 dumping of used or waste tires. Is the section
4 consistent with Section 848.202(b) (4)?

5 MR. MRAZ: We'll address that
6 question in the post-hearing comments.

7 HEARING OFFICER KRUSE: Thank you.
8 We'll move onto Section 848.400. I'll start by --
9 with two questions from the February 26th Hearing
10 Officer Order.

11 First, explain why tire
12 retreading and tire stamping facilities with more
13 than 5,000 used or waste tires are exempted from
14 the financial assurance requirements.

15 MR. MARVEL: Well, used tire casings
16 that are located at these types of facilities have
17 a positive value and they represent a value
18 that -- I think I mentioned this before. They
19 represent a valuable feedstock to the process.
20 So, therefore, the Agency believes financial
21 assurances is not warranted for a material that
22 has positive value and is often -- excuse me -- is
23 often maintained under -- at a site under contract
24 with the supplier.

1 HEARING OFFICER KRUSE: Next from
2 the February 26th Hearing Officer Order. Explain
3 whether the exemption under subsection (c) (4)
4 covers tire retreading and tire stamping
5 facilities with 5,000 or fewer used or waste
6 tires.

7 MR. MARVEL: No, the exemption under
8 848.400(c) (4) does not cover what -- I think this
9 can be addressed in the errata, right?

10 MR. MRAZ: Well, the clarification
11 in the -- the clarification that will come out in
12 the post-hearing comments with respect to
13 848.400(c) (4) would qualify the language where it
14 currently reads "other than two-inch-minus chips"
15 would tie it back into the language that other
16 than two-inch-minus chips that are under contract
17 for purchase or sale. Words to that effect.

18 So it would qualify it to "other
19 than two-inch-minus chips under a contract for
20 purchase or other sale" would be the proposed
21 revision to that subparagraph and we'll provide
22 that in our post-hearing comments.

23 MR. RAO: So do you think that
24 change will address tire retreading and tire

1 stamping facilities with 5,000 and fewer used or
2 waste tires --

3 MR. MARVEL: I don't think that
4 section addressed --

5 MR. RAO: -- or is it the Agency's
6 intent that our facilities with fewer than 5,000
7 tires at these facilities be subject to --

8 MR. MRAZ: The Agency wasn't
9 planning -- the Agency wasn't planning on striking
10 subparagraph (7), which it looks like what you're
11 referring to, that they would continue to be
12 exempt from financial assurances. That's what the
13 Agency is continuing to propose and for the
14 reasons stated by Mr. Marvel.

15 MR. MARVEL: Correct.

16 MR. RAO: Okay.

17 MR. MRAZ: Because that commodity is
18 considered to have economic value.

19 HEARING OFFICER KRUSE: Okay. I had
20 just a wording question on Section 848.400(b)(1).
21 Should there be an "or" inserted after the
22 semicolon that concludes one? So it would be one
23 or two.

24 MR. MRAZ: Yes, it should be "or"

1 following 1990- -- the word 19- -- the year
2 rather, I'm sorry, 1992 following subparagraph
3 (b) (1).

4 HEARING OFFICER KRUSE: Thank you.

5 MR. MRAZ: And we'll take care of
6 that or we'll address that rather in the
7 post-hearing comments.

8 HEARING OFFICER KRUSE: JCAR
9 submitted a question along those same lines in the
10 March 2 communication that is Exhibit 1 to today's
11 hearing. That question states "Is the 1992
12 deadline still relevant or can it be deleted from
13 the provision?"

14 MR. MRAZ: We can delete the 1992
15 reference at this point.

16 HEARING OFFICER KRUSE: Okay.
17 Moving onto Section 848.407. I will read a
18 question from the February 26th Hearing Officer
19 Order.

20 Please comment on adding
21 reference to Section 848.406 in the first sentence
22 of this section as follows: An owner or operator
23 may satisfy the requirements of this subpart by
24 establishing more than one financial mechanism

1 listed in Section 848.406 per site. These
2 mechanisms include trust funds, surety bonds
3 guaranteeing payment, and letters of credit.

4 So I did not read language
5 proposed to be stricken from that question and if
6 there is any confusion about how I read it, please
7 let me know, but it was submitted before.

8 MR. WHITE: Yeah, we have no
9 objection to include what's listed in Section
10 848.406 in the first sentence.

11 HEARING OFFICER KRUSE: Thank you.
12 So I think we're ready to move to Section 848.410
13 and there are three questions from the February
14 26th Hearing Officer Order with regard to that
15 section.

16 The first of those being
17 subsection (c) requires that the required trust
18 agreement along with a formal certification of
19 acknowledgement be on forms prescribed by the
20 Agency. The Board, therefore, requests that the
21 Agency provide drafts of these forms in the record
22 of this proposed rulemaking and either include
23 them as appendixes to the rule or direct owners
24 and operators as to where the forms may be found.

1 MR. MRAZ: Again, we'll include all
2 the forms in the post-hearing comments.

3 MR. WHITE: And at the same time the
4 Agency intends to use the forms for the trust
5 agreement that are presently in the regulations
6 and also we intend to use along with that the
7 certificate of acknowledgement that's presently in
8 the regulations, but we will submit those as part
9 of the post-hearing comments.

10 HEARING OFFICER KRUSE: Thank you.
11 The next question. Comment on revising subsection
12 (d) (4) to Section 848.410 as follows -- and I will
13 read what it should say after the language is
14 stricken and added. "The owner or operator must
15 make the first annual payment and submit to the
16 Agency a receipt from the trustee for the first
17 annual payment before used or waste tires are
18 received at a site covered by the trust
19 agreement."

20 MR. WHITE: All right. I'll address
21 that one, too. We want to make sure they have
22 financial assurance prior to storage or disposal.
23 Basically, the pay-in period for the trust fund
24 begins on the date that the tire storage or tire

1 disposal site first receives used or waste tires
2 that no longer qualify for the exemptions that are
3 listed in Section 848.400(c). Therefore, the site
4 must provide proof of financial assurance before
5 the site is no longer exempt from the financial
6 assurance requirements of subpart (d) of Part 848.

7 The effective date of the trust
8 agreement can reflect the day the site anticipates
9 it will no longer qualify for the exemption in
10 848.400(c). It's just before they begin the
11 activity we want to make sure they have financial
12 assurance.

13 MR. RAO: So would you rather keep
14 the language that they are proposing in their
15 subsection?

16 MR. WHITE: Yes.

17 MR. RAO: Okay.

18 HEARING OFFICER KRUSE: The next
19 question from the Hearing Officer Order. Explain
20 the rationale for removing the 60-day limit on the
21 Agency to instruct the trustee to release funds to
22 the owner or operator in subsection (g)2. A
23 similar change is proposed at subsection (h) (2).
24 Explain whether the proposed requirements that

1 require the Agency to take action as soon as
2 practicable extend beyond 60 days.

3 MR. WHITE: Yeah, I think that
4 should read (g) (3) instead of (g) (2).
5 Nonetheless, it provides the opportunity for the
6 Agency to verify the request for the release of
7 funds or approve the alternate or substituted
8 financial assurance and then prepare the necessary
9 paperwork for signoff to instruct the trustee to
10 release the funds.

11 We want to make sure that we
12 have an opportunity to go out there. We'll need
13 to maybe verify it through an inspector to see if
14 they've completed the work and then maybe reassess
15 and see, two, if it follows what the cost for
16 removal is and make sure they're following that
17 not just because a request for release of funds,
18 but we want to make sure -- and kind of with
19 staffing going down all the time stuff, we want to
20 make sure we have enough time to -- to do it
21 and -- and verify that they've done what they've
22 said.

23 MS. GLOSSER: I have a follow-up
24 question. I understand your concern about

1 declining staff, but by going from a 60-day limit
2 to an unlimited amount of time, is that -- will
3 the regulating community find that to be of
4 concern? Could you say as soon as practicable,
5 but not-to-exceed and then do a longer period of
6 time than 60 days? But this could say if it is
7 two years, you know, it is two years. That's
8 practical. So could you do not-to-exceed so the
9 regulating community sees that 60 days it isn't,
10 but maybe --

11 MR. MRAZ: We can certainly --

12 MS. GLOSSER: -- 120 days --

13 MR. MRAZ: We can certainly include
14 a not-to-exceed day.

15 MS. GLOSSER: You have to figure out
16 what would that be. I don't have a suggestion.
17 I'm just --

18 MR. MRAZ: Right. Just so there's
19 an outside day --

20 MS. GLOSSER: Right.

21 MR. MRAZ: We will include that in
22 there so it's not an indefinite time period.

23 MS. GLOSSER: Right.

24 MR. MRAZ: So we'll modify both

1 paragraphs accordingly to put in an outside day
2 and we'll address that in our post-hearing
3 comments.

4 MR. WHITE: So the short answer is
5 yes --

6 MS. GLOSSER: Thank you.

7 MR. WHITE: -- and we'll figure it
8 out.

9 MS. GLOSSER: Thank you.

10 MR. RAO: Thank you.

11 HEARING OFFICER KRUSE: There are
12 two questions submitted by JCAR in the March 2nd
13 e-mail that is Exhibit 1 to today's hearing. The
14 first is with regard to Section 848.410(b). Does
15 the, quote, state Agency, end quote, need to be an
16 Illinois Agency to satisfy the phrase, quote,
17 whose trust operations are regulated and examined
18 by a federal or state agency, end quote, or is the
19 Agency adjusting the provision to allow other
20 states and regulatory agencies to regulate state
21 operations for multistate tire operations?

22 MR. WHITE: And once again the short
23 answer on that is, no, it doesn't just have to be
24 the State of Illinois. It is wherever -- it is

1 wherever the bank is domiciled if it is regulated,
2 if it is chartered in the state. So it's wherever
3 that bank is domiciled. It will be up to that
4 state to review the banks. We can accept
5 something outside the State of Illinois.

6 HEARING OFFICER KRUSE: The next
7 question from JCAR included in Exhibit 1 to
8 today's hearing. With regard to Section
9 848.410(f)(4), how are the days counted in the
10 provision, quote, within 60 days after the
11 increase in the removal cost estimate, end quote?
12 When does the Agency start counting the days? How
13 will this provision be enforced?

14 MR. WHITE: And we'll address that
15 by April 1st.

16 HEARING OFFICER KRUSE: Thank you.

17 MR. RAO: Actually, that sentence
18 refers to (g)(4) because in the provisions you've
19 proposed there is no (f)(4) in that section.

20 MR. WHITE: That makes it a little
21 easier. All right.

22 HEARING OFFICER KRUSE: Section --
23 we'll move onto Section 848.411. There are three
24 questions from the February 26th Hearing Officer

1 Order with regard to that section.

2 The first is subsection (b)
3 provides, quote, the surety company issuing the
4 bonds must at a minimum be among those listed as
5 acceptable sureties on federal bonds in Circular
6 570 of the US Department of the Treasury, end
7 quote.

8 A, explain whether Circular 570
9 is a Department of Treasury publication or a
10 listing on the Department of Treasury's website.
11 If it is a publication, explain whether Circular
12 570 should be incorporated by reference and then,
13 B, explain whether the surety company must be
14 licensed to transact business of insurance by the
15 Illinois Department of Insurance.

16 MR. WHITE: Okay. The most recent
17 addition of the US Department of Treasury Circular
18 570 is published annually. It is published on
19 July 1st or the first business day after July 1st
20 if it falls on a weekend and it is updated
21 periodically on the Federal Register. It is also
22 available online and that has the most up-to-date
23 information on it and it is online and you can
24 also look at it in the Federal Register, too.

1 So -- and we do have a website
2 and the website provides the most up-to-date
3 information regarding approved sureties and
4 underwriting limitations also and although the
5 Circular 570 specifies each surety's underwriting
6 limitations, the surety bond may be issued for an
7 amount greater than the one that's shown. When
8 the penal sum exceeds the underwriting limitation,
9 the surety must bring another surety or insurance
10 company into the agreement to -- to share the risk
11 or for reinsurance.

12 It's not necessary to
13 incorporate by reference 570 -- reference Circular
14 570 in the regulations. The regulations include
15 the following reference in Circular -- to the
16 Circular 570 in 35 Ill. Adm. Code 724.243(b) (1)
17 and this has to do with a hazardous waste site in
18 reference to RCRA Subtitle C and it has to do with
19 a payment bond and it's referenced in other
20 places, too, in Part 724 subpart (h) in the
21 regulations, but it is included as a Board note.

22 It says "The US Department of
23 the Treasury updates Circular 570, "Companies
24 Holding Certificates of Authority as Acceptable

1 Sureties on Federal Bonds and as Acceptable
2 Reinsuring Companies," on an annual basis pursuant
3 to 31 CFR, Code of Federal Regulations, 223.16.
4 Circular 570 is available on the Internet from the
5 following website" and then it gives the website.
6 So in short, yeah, we don't need to incorporate it
7 by reference. Did you get into (b) also?

8 HEARING OFFICER KRUSE: Yes, sir. I
9 did read (b). I'll read it again. Explain
10 whether the surety company must be licensed to
11 transact business of insurance by the Illinois
12 Department of Insurance.

13 MR. WHITE: A surety company must be
14 licensed in the state or other area which provides
15 the bond, but need not be licensed in the state or
16 other area which the principal resides and by
17 principal, I mean that is the Illinois facility on
18 the bond is considered the principal.

19 The term "other area" refers to
20 things that are outside the states like the
21 District of Columbia or maybe some of the US
22 territories and stuff. They can all be part of
23 this 570 Circular and stuff. So they have their
24 own insurance companies that approve these. So,

1 yeah, no, it doesn't have to just be the State of
2 Illinois. It can be any place and if you look at
3 the 570 Circular, too, it will tell you which
4 states have reviewed it.

5 MR. RAO: Okay.

6 HEARING OFFICER KRUSE: The next
7 question. Subsection (c) of Section 848.411
8 requires the surety bond be on standardized forms
9 prescribed by the Agency. The Board, therefore,
10 requests that the Agency submit a draft surety
11 bond form to the Board for the record.

12 MR. MRAZ: That will be submitted
13 with the Agency's post-hearing comments.

14 HEARING OFFICER KRUSE: Thank you.

15 MR. WHITE: Basically, too, what
16 I'll just say real quickly for the record. The
17 Agency will promulgate standardized forms based on
18 the forms in 35 Ill. Adm. Code Section 724.251.

19 THE COURT REPORTER: Wait. What?

20 MR. WHITE: They'll be based on
21 forms referenced in 35 Ill. Adm. Code Section
22 724.251 with such changes in wording as necessary
23 to be specific to the requirements of 35 Ill. Adm.
24 Code Part 848 subpart (d). So we're basically

1 using the forms that we used for the hazardous
2 waste program and just -- and just making the
3 changes necessary for the tire program and that's
4 what we intend to submit.

5 HEARING OFFICER KRUSE: The next
6 question. Explain the rationale for allowing the
7 surety to cancel the bond any time instead of
8 requiring a minimum period of at least one year as
9 required for a letter of credit.

10 MR. WHITE: Okay. It's not unusual
11 for a bond to not expire and is consistent with
12 the requirements of the regulations for RCRA,
13 R-C-R-A, Resource Conservation Recovery Act,
14 subtitle (c), which is the hazardous waste sites,
15 and you can look at 35 Ill. Adm. Code
16 724.243(b)(8) and basically what the -- the
17 important thing for the bond is that it be
18 Evergreen. It can't expire without some kind of
19 notice or some kind of -- and they have to give us
20 a 120-day notice. It keeps on going and they have
21 to give us a 120-day notice before they can cancel
22 the bond and the trustee. And so the principal
23 then will have 90 days in which to go ahead after
24 that and substitute alternate financial insurance.

1 If they don't, then -- then we draw on the bond
2 and neither the surety wants to see that nor the
3 principal.

4 MR. RAO: So does the 90-day --

5 MR. WHITE: The 90-day window gives
6 them an opportunity to try to replace the bond and
7 it is --

8 MR. RAO: Okay.

9 MR. WHITE: -- similar for a letter
10 of credit except the letter of credit has an
11 expiration date, but there is still that 120-day
12 notice and that's where they're similar, not in
13 the fact that they expire.

14 MR. RAO: Okay.

15 HEARING OFFICER KRUSE: Okay. With
16 that, I think we're ready to move onto Section
17 848.413 which deals with the letter of credit.
18 There are four questions or four subparts to a
19 single question included in the February 26th
20 Hearing Officer Order that is Exhibit 1 to the
21 hearing today.

22 That question asks "Subsection
23 (b) provides, quote, the issuing institution must
24 be an entity that has the authority to issue

1 letters of credit and whose letter of credit
2 operations are regulated and examined by a federal
3 or state agency, end quote.

4 A, clarify which federal and
5 state agencies regulate institutions that issue
6 letters of credit."

7 MR. WHITE: Okay. The office of the
8 controller or some people pronounce it comptroller
9 of the currency, or the OCC, regulates nationally
10 chartered commercial banks, nationally licensed
11 foreign banks and banks in Washington DC. The OCC
12 is an independent bureau of the US Department of
13 Treasury. Various state authorities, that is
14 where the bank is domiciled, regulate and license
15 chartered banks for state license formats.

16 HEARING OFFICER KRUSE: Subpart (b)
17 to that question. Explain whether the proposed
18 regulations specify the name of the state agency
19 that regulates institutions issuing the letter of
20 credit.

21 MR. WHITE: No. Because it can come
22 from other states. It just depends where the bank
23 is domiciled.

24 HEARING OFFICER KRUSE: Subsection

1 (c). Explain whether the issuing institution's
2 deposits must be insured by the Federal Deposit
3 Insurance Corporation.

4 MR. WHITE: The Federal Deposit
5 Insurance Corporation, the FDIC, is an independent
6 agency of the United States Government that
7 protects the funds of depositors in FDIC insured
8 banks. The standard amount is \$250,000 for each
9 depositor per bank for each account ownership
10 category and by ownership category, I mean
11 savings, checking, money market deposit accounts,
12 certificates of deposits. Those all have a
13 \$250,000 per person on their -- if you have two
14 people on the account, it is \$500,000 coverage,
15 but what the FDIC does not do is it does not
16 insure letters of credit or money invested in
17 stocks, bonds or mutual funds.

18 So there is a lot of
19 misconceptions about the FDIC. It kind of gives
20 you a warm fuzzy to see the label on the bank and
21 stuff like that that it is FDIC insured, but it
22 has nothing to do with letters of credit.

23 HEARING OFFICER KRUSE: The last
24 part of that question. "Provide draft forms the

1 Agency intends to use for letters of credit. If
2 such forms are not available at this time, please
3 submit the draft forms into the record before the
4 April 15th, 2015, hearing."

5 MR. MRAZ: Again, we'll --

6 MR. WHITE: Yeah. Again, it will be
7 similar to -- with the guaranteed payment of the
8 bond. The Agency will promulgate standardized
9 forms based on the forms in 35 Ill. Adm. Code
10 Section 724.251 where such changes in wording are
11 necessary to be specific to the requirements of 35
12 Ill. Adm. Code Part 848 Subpart (d). In other
13 words, basically what we're doing is we're
14 using -- we're using the form for a letter of
15 credit from the hazardous waste as a model for the
16 tire program.

17 HEARING OFFICER KRUSE: Thank you.
18 I have one question regarding subsection (b) (2) of
19 Section 848.413 and this, again, is a question I
20 have for the Agency.

21 "When are the requirements of
22 848.413(d) (2) (a) through (d) required? Could this
23 subsection be rephrased for a clearer mandate?
24 For example, quote, if the standby trust is funded

1 pursuant to this section the following are not
2 required, end quote."

3 MR. WHITE: Which number are you
4 looking at?

5 HEARING OFFICER KRUSE: Section
6 848.413(d). So the (d) sets out the meat of that
7 provision, but then I -- in reading the provision,
8 I get confused about when you actually even get to
9 (d)(2)(a) through (d). Instead -- so the way it's
10 laid out is it's not -- it doesn't say "You must
11 do (a) through (d). It says "You don't need to
12 unless," but you know what the.

13 MR. WHITE: Okay.

14 HEARING OFFICER KRUSE: So it may be
15 more easy to --

16 MR. WHITE: I think I can explain it
17 here for you.

18 HEARING OFFICER KRUSE: Have a try.

19 MR. WHITE: Okay. With the letter
20 of credit as with the surety bond, you need a
21 standby trust with it. A standby trust is
22 unfunded. So basically if we do a draw on a bond
23 or a letter of credit, it goes into this trust,
24 this standby trust, and is now funded. So unless

1 we draw on it, there are -- there are things that
2 they don't have to do like give us an annual
3 valuation because there is no money in the trust.

4 So -- so those are the types of
5 things that they're referring to in here. You
6 don't have to update cost estimates. As part of
7 the trust agreement, you have schedules which have
8 cost estimates. Schedule A has cost estimates.
9 Well, you don't have to update those unless you
10 draw -- unless you draw on the letter of credit or
11 the bond and you fund the trust. Right now these
12 trusts are unfunded.

13 HEARING OFFICER KRUSE: But they
14 exist?

15 MR. WHITE: They exist. They exist
16 for the purpose of if we draw on a bond or a
17 letter of credit. In this case, it's a letter of
18 credit. So it's a place to deposit that money.
19 The letter of credit in and of itself is based on
20 the credit worthiness and maybe as much as they
21 secure, the bank will give them a letter of credit
22 not expecting us to draw on it. If we draw on it,
23 the money is then put into a standby trust which
24 is unfunded until the draw.

1 HEARING OFFICER KRUSE: And I see
2 that you did not create this language. It
3 existed -- I think the old version was confusing.
4 So I just wanted to call your question. If it can
5 be improved, we ask that you improve it. If it
6 cannot, then it cannot and that's just how it is.

7 MR. MRAZ: We can work on
8 clarifications in post-hearing comments.

9 HEARING OFFICER KRUSE: Thank you.

10 MR. RAO: And the same language,
11 like you said, appears on the surety bond also.

12 MR. WHITE: The bond, yes.

13 HEARING OFFICER KRUSE: I think
14 we're ready to move onto Section 848.501 and then
15 this was just a question I had in my reading of
16 the proposal.

17 With regard to 848.501(a)(1),
18 Section 55.4 of the Act is cited as the statutory
19 source of the italicized language in this
20 subsection. However, I cannot find the language
21 that is italicized in Section 55.4. So please --
22 if you could please direct the Board to the
23 language or correct the citation.

24 MR. MRAZ: Okay. I'm sorry. Which

1 section was that?

2 HEARING OFFICER KRUSE: That's
3 probably something that lends it to getting back
4 to us.

5 MR. MRAZ: We'll address that in the
6 post-hearing comments.

7 HEARING OFFICER KRUSE: Sure.

8 MR. MRAZ: I just wanted to make
9 sure I knew which section. It's 848.501?

10 HEARING OFFICER KRUSE: 501(a)(1).
11 There is italicized language in the statutory cite
12 that that language is attributed to is 55.4 and
13 Mr. Marvel I think suggested it might be a
14 different statutory section.

15 MR. MRAZ: We'll address that in the
16 post-hearing comments.

17 HEARING OFFICER KRUSE: Thank you.
18 Moving onto Section 848.503. I came up with a
19 question regarding that section as well. With
20 regard to Section 848.503(a)(5), other statutory
21 cites includes the subsection of the statute from
22 which the language was taken. The Board requests
23 that the citation in Subsection 848.503(a)(5) be
24 edited to include subsection (b) of 55.4 of the

1 Act unless the Agency provides a reason for the
2 less precise citation.

3 MR. MRAZ: We can address that in
4 the post-hearing comments as well.

5 HEARING OFFICER KRUSE: Thank you.
6 The February 26th Hearing Officer Order that is
7 Exhibit 1 to today's hearing contains a question
8 on Section 848.602. That question reads -- or
9 requests that the Agency submit draft forms the
10 Agency intends to use for tire registration into
11 the record before the April 15th, 2015, hearing.

12 MR. MARVEL: That will be included
13 with the other forms submitted by April 1st.

14 HEARING OFFICER KRUSE: Thank you.
15 JCAR included a question regarding Section 848.602
16 in its March 2nd -- its March 2nd communication,
17 which I just now realized I've been referring to
18 the Hearing Officer Order as Exhibit 1 to this
19 hearing, but that is actually the communication
20 that's Exhibit 1 to this hearing. So I apologize
21 for that mistake, but the JCAR question reads
22 "Where the rules -- where the rule states, quote,
23 any or all applicable state or federal law or
24 regulation, unquote, in Section's 848.602(a)(3)(b)

1 and 848.602(a)(3)(c), does the Agency mean any
2 state's regulations or just Illinois? What are
3 the applicable state and federal laws and
4 regulations?

5 MR. MRAZ: Well, it goes back to my
6 prior comment that it would be all applicable
7 federal and state law that they're already
8 obligated to comply with. So we don't need to
9 specify every single one. There is no new burden
10 imposed upon them because they're already required
11 to comply with applicable state and federal law.

12 HEARING OFFICER KRUSE: Thank you.
13 Section 848.603. There was a question included in
14 the February 26th Hearing Officer Order that
15 states "Subsection (a) of Section 848.603 requires
16 completion of the tire transporter regulations on
17 a -- I'm sorry -- registrations rather than
18 regulations -- on a form prescribed by the Agency.
19 The Board, therefore, requests that the Agency
20 submit a draft tire transporter registration form
21 to the Board for the record.

22 MR. MRAZ: And, again, that will be
23 with the Agency's post-hearing comments.

24 MR. GRAY: I can do that.

1 MR. MARVEL: And just to point out
2 that the form requested under 33 and 34 are the
3 same thing.

4 HEARING OFFICER KRUSE: Oh,
5 questions 33 and 34?

6 MR. MARVEL: Yes.

7 HEARING OFFICER KRUSE: I just
8 wanted to make sure you're aware of that.

9 MR. MARVEL: I'm sorry. That's not
10 correct. It's 32 and 33 --

11 HEARING OFFICER KRUSE: Okay.

12 MR. MARVEL: -- are the same thing.
13 Thirty-four is different.

14 HEARING OFFICER KRUSE: Okay. There
15 is a Board question with regard to Section 848.605
16 that was not included in the Hearing Officer
17 Order. Section 848.605(a) "Please edit this
18 subsection to list Section 848.603(b) as an
19 exception or explain why the suggested edit is not
20 made."

21 So, in other words, the Board
22 is -- I'm looking for an explanation as to why
23 Subsection 848.603(b) is not an exception.

24 Is that a clear question because

1 you'll notice that Section 848.603(b) is the
2 default if the Agency fails to act and it does
3 provide that that would only last for one calendar
4 year. However, you provide other exceptions in
5 605(a) and so if you feel that --

6 MR. MARVEL: It appears to be a
7 clear question, but I'd like to look at it.

8 HEARING OFFICER KRUSE: Sure.

9 MR. MRAZ: We can address it in the
10 post-hearing comments.

11 MR. RAO: I have a clarification on
12 848.603(b). Is that statutory language where if
13 the Agency doesn't take action for 90 days the
14 person seeking registration is deemed to have the
15 registration approved?

16 MR. MARVEL: I don't know that
17 that's statutory language. It's similar to other
18 Agency language on review of permit applications,
19 which I think legally this registration is the
20 same thing as a permit application is my
21 understanding.

22 MR. WHITE: I'm not familiar if it's
23 expressly stated in the statute, but the language
24 is similar to other provisions within the rules

1 where there's default provisions. So if the
2 Agency fails to act within a certain time, then
3 that's the default provision.

4 MR. RAO: Okay.

5 HEARING OFFICER KRUSE: Moving to
6 848.606. JCAR submitted a question with regard to
7 this section in its March 2nd communication that
8 is Exhibit 1 to this hearing. That question
9 states "Should the phrase, quote, on opposite
10 sides of the vehicle a placard, end quote -- I'm
11 sorry. "Should the phrase that mandates that the
12 sticker, the placard, be put on opposite sides of
13 the vehicle, end quote, instead read, quote,
14 opposite sides of each vehicle, end quote?"

15 MR. MARVEL: Yeah.

16 MR. MRAZ: It should read each
17 vehicle. So we can address that in the
18 post-hearing comments.

19 HEARING OFFICER KRUSE: Thank you.
20 Section 848.607. This is a Board question that
21 was not in the Hearing Officer Order.

22 Would a tire transporter have
23 occasion to receive tires from an unpermitted
24 handler or a vehicle without the subpart (f)

1 vehicle placards? If so, is this section
2 consistent with the Agency's desire to discourage
3 the illegal dumping of used or waste tires?

4 MR. MRAZ: Which section was that
5 you referred to, please?

6 HEARING OFFICER KRUSE: 848.607.

7 MR. MRAZ: We'll address that in the
8 post-hearing comments.

9 HEARING OFFICER KRUSE: With regard
10 to Section 848.608, there is a question in the
11 February 26th Hearing Officer Order and that
12 question reads: Subsection (a) requires
13 submission of a tire transportation report on a
14 form prescribed by the Agency. The Board,
15 therefore, requests that the Agency submit a draft
16 tire transportation report form to the Board for
17 the record.

18 MR. MRAZ: Again, that will be
19 included with the post-hearing comments.

20 HEARING OFFICER KRUSE: Thanks.
21 Section 848.702. There was a question on that
22 section in the February 26th Hearing Officer Order
23 and that question reads "Subsection (b) sets forth
24 that the Agency may prescribe the form and format

1 for tire storage permit application. Discuss why
2 the Agency is not affirmatively requiring
3 information to be submitted on a form prescribed
4 by the Agency. If the Agency decides to do so,
5 please submit the draft form to the Board for the
6 record before the April 15th, 2015, hearing."

7 MR. MARVEL: Yeah, the Agency does
8 intend to use a form prescribed by us as we do
9 with other permits. This language was modeled
10 after the permitting language in Part 807 and that
11 language -- that says the exact same thing that it
12 may. We intend to do so. So we don't have any --

13 MR. MRAZ: So the Agency will modify
14 the proposed language in 848.702 to make it clear
15 that the Agency will be prescribing the forms and
16 they will have to submit them on forms prescribed
17 by the Agency and we will clarify that and make it
18 part of our post-hearing comments.

19 HEARING OFFICER KRUSE: And provide
20 the forms.

21 MR. MRAZ: And provide the forms.
22 Of course.

23 HEARING OFFICER KRUSE: Thank you.
24 I believe the remaining questions that we have for

1 today's hearing all come from the JCAR
2 communication dated March 2nd and labeled Exhibit
3 1 to today's hearing.

4 The first three of those are
5 with regard to Section 848.702. So I will read
6 those. Section 848.702(a). "With regard to the
7 phrase, quote, each application must contain all
8 data and information that is reasonably necessary
9 for the Agency to determine, unquote. How will
10 the Agency determine if the content is sufficient?
11 Is there a way to put the requirements or criteria
12 for consideration in approval in the rule text?"

13 MR. MRAZ: We'll address that in the
14 post-hearing comments.

15 HEARING OFFICER KRUSE: Thank you.
16 With regard the Section 848.702(b), JCAR asks with
17 regard to the phrase, quote, all information
18 required under these regulations shall be
19 submitted, end quote, JCAR asks which part,
20 subpart or section of the regulations the Agency
21 is referring to.

22 MR. MARVEL: We'll clarify that.

23 MR. MRAZ: We'll address that in the
24 post-hearing comments.

1 HEARING OFFICER KRUSE: Thank you.
2 With regard the Section 848.702(e), JCAR asks with
3 regard to the phrase, quote, the content required
4 by these rules, unquote, which sections, parts or
5 subparts of the rule is the Agency referring to?

6 MR. MRAZ: We'll address the
7 questions relative to 848.702 in the post-hearing
8 comments.

9 HEARING OFFICER KRUSE: Thank you.
10 The last section raised by JCAR is Section
11 848.706. With regard to Section 848.706(a), JCAR
12 asks are there any contractual issues raised by
13 retroactively revising permits to match Pollution
14 Control Board regulations or is this something
15 that's already built into the language of the
16 permit?

17 MR. MRAZ: We'll address that in the
18 post-hearing comment.

19 HEARING OFFICER KRUSE: Thank you.
20 The last question with regard to 848.706(a) JCAR
21 asks how much notice does the permittee get that a
22 permit is being revised before the new
23 requirements go into effect?

24 MR. MRAZ: We'll address those as

1 well in the post-hearing comments.

2 HEARING OFFICER KRUSE: Dr. Deanna
3 Glosser has a question as well.

4 MS. GLOSSER: I apologize, but if
5 you'd permit me to go back to question 17. I have
6 been mulling this over in my mind and I have a
7 couple of questions. This is related to 848.204,
8 storage of used and waste tires within buildings.

9 I'm still trying to understand
10 raising the threshold from 500 tires to 5,000 and
11 I'm just trying to understand if your experience
12 over the years with facilities that have problems
13 if you have found that they typically don't occur
14 with facilities that store less than 5,000 if
15 that's the basis for this change. It seems like a
16 huge increase in allowing tires to be stored.

17 MR. MRAZ: From 500 to 5,000?

18 HEARING OFFICER KRUSE: Right.

19 MR. MARVEL: Yeah, that's certainly
20 been our experience. I mean, the sites where
21 we've had the big problems have been sites where
22 there is considerably more than 5,000. We didn't
23 want to raise the level any further than 5,000.
24 We certainly could have. I mean, if you look at

1 the sites where we've seen problems, 500 tires
2 isn't that many tires. I mean, you can put 600
3 tires on a box truck and that's a typical, you
4 know, load that would be hauled around after what
5 we call a milk run from a group of retailers. So
6 that seems like an awfully low threshold to put
7 these requirements or to subject these
8 requirements to it and 5,000 seems more
9 appropriate. There is an exemption in the statute
10 if you're a retailer. If you're a retail
11 facility, you can keep up to 3,900 tires at your
12 facility.

13 MS. GLOSSER: How many?

14 MR. MARVEL: Thirty-nine-hundred as
15 long as you keep them segregated and you're not
16 subject to any of these -- any of these
17 regulations if you're a retailer. So putting --

18 MR. RAO: Is that exemption part of
19 the rule?

20 MR. MARVEL: That's part of the
21 statute.

22 MR. RAO: It's not in the rules?
23 Because a lot of the statutory exemptions are part
24 of the rule.

1 MR. MARVEL: Well, it's in the rule.
2 It's in the definition of tire storage site.

3 MS. GLOSSER: Did the regulating
4 community raise concerns with the threshold being
5 500 or is this something that you proposed based
6 on your experience?

7 MR. MARVEL: It is something that we
8 proposed based on our experience.

9 MS. GLOSSER: Okay. Thank you.

10 MR. MARVEL: Mm-hmm.

11 HEARING OFFICER KRUSE: Retailers do
12 not have tire fires as generally or it's not the
13 Agency's experience?

14 MR. MARVEL: Right. That's -- from
15 my experience, that would be unusual to see a tire
16 fire at a retailer.

17 MR. GRAY: Probably no more than any
18 retail store.

19 HEARING OFFICER KRUSE: Are they
20 required -- retailers required to store the 3,900
21 tires inside/indoors?

22 MR. MARVEL: They're required to
23 store them in a manner that prevents the
24 accumulation of water and how they do that is not

1 mandated. It's just they meet that requirement.

2 MS. GLOSSER: But they don't do a
3 tire storage plan or a contingency plan or do
4 recordkeeping and reporting, right?

5 MR. MARVEL: Right.

6 MS. GLOSSER: They do not?

7 MR. MARVEL: They do not.

8 MS. GLOSSER: Thank you.

9 MR. MARVEL: Mm-hmm.

10 HEARING OFFICER KRUSE: Anything,
11 Anand?

12 MR. RAO: No. Maybe just one
13 question. Following up on Dr. Glosser's question.
14 You mentioned about, you know, problems that you
15 have seen at the bigger facilities and since these
16 regulations have been placed over many years have
17 you had any instances where there were tire fires
18 or issues with lesser than 5,000 tire facilities?
19 Should we even be worried about them?

20 MR. MARVEL: That's unusual that
21 they're smaller -- you know, they typically don't
22 get our attention and can probably -- you know,
23 likely be addressed by a local fire department.
24 Certainly, the ones that we become aware of and

1 get involved in are the ones that -- I mean, we've
2 had fires that have resulted in the response of 27
3 fire departments. So those were obviously much,
4 much larger facilities, but I don't know if you
5 can speak, Terry, on, you know, nationwide, but
6 certainly it's not my experience where you see a
7 lot of those.

8 MR. GRAY: You occasionally see
9 small tire fires and they can generate some black
10 smoke for a little while, but they're typically
11 not high enough that they're not readily put out
12 by the fire department. I mean, I've been
13 involved in some where they even use water bombers
14 and, you know, other things. Some of these are
15 pretty dramatic, but the small ones I'm not saying
16 they don't happen, but they're readily controlled.
17 A tire fire is hard to deal with because typically
18 a tire has an energy content that takes two
19 gallons of gas -- I mean, two gallons of water to
20 extinguish one tire and so it can be very
21 difficult on big fires, but on small fires they're
22 readily manageable.

23 MS. GLOSSER: Well, to put it in
24 perspective, do you know how many tires were at

1 the Hoopston facility with that fire? I have no
2 idea of scale. I mean, we're talking about --

3 MR. GRAY: We think pretty close to
4 one million.

5 MS. GLOSSER: A million? Okay.

6 MR. GRAY: And a lot of it was in
7 shreds as well as whole tires and it was within a
8 building which is a harder thing to fight.

9 MR. MARVEL: And there were many
10 very large tires.

11 MR. GRAY: It was a mess.

12 MR. MARVEL: It was really bad.

13 MS. GLOSSER: Okay. Thank you.

14 MR. RAO: And the requirements that
15 you have proposed under 848.202, the ones that
16 apply to, you know, tire storage facilities with
17 between 500 and 5,000 tires, is the Agency
18 comfortable that they are adequate to addressing
19 fire issues and also health related issues?

20 MR. MARVEL: Yes, we believe so.

21 HEARING OFFICER KRUSE: I have a
22 follow-up question as well. We visited Section
23 848.203(a)(3) when we were talking about how tire
24 fires are really the only sort of fires that occur

1 at these facilities and then we briefly talked
2 about runoff as well.

3 Is the runoff concern one that
4 is because the nature of water hitting the tires
5 and running off or is there a different substance
6 used to fight the fires that causes a runoff
7 concern?

8 MR. GRAY: No, the concern is not
9 what is used to fight the fires. It's the
10 products under combustion that occur. You get
11 pyrolytic oils that can be created in some cases.
12 So some cases the fire fighting water denies
13 oxygen to the burning material and it will
14 generate the oils, the oils will then become
15 immersed in the water and runoff and you're really
16 trying to control pyrolytic oils and the other
17 inorganic materials that are present in the tire
18 that can be washed away with that.

19 So it's not -- sometimes you use
20 chemicals, wetting agents to help with the fire
21 fighting, but that's not the issue. It's the
22 product of combustion, liquid and solid products
23 of combustion being washed away that you're trying
24 to control.

1 HEARING OFFICER KRUSE: Okay.
2 Before we proceed, does anyone else have questions
3 for the Agency? Yes, sir.

4 MR. SHEERIN: I have more of a
5 comment, I believe.

6 HEARING OFFICER KRUSE: Can you
7 please state your name for the record?

8 MR. SHEERIN: Yes, my name is John
9 Sheerin and I am the Director of End of Life Tire
10 Programs for the Rubber Manufacturers Association.
11 The Rubber Manufacturers Association is a trade
12 association comprised of the eight companies that
13 make tires here in the United States; Bridgestone,
14 Cooper, Continental, Good Year, Pirelli, Michelin,
15 Toyo and Yokohama.

16 I'd like to offer just one brief
17 comment on the proposed amendments to the Part 848
18 regulations. The RMA received -- reviewed -- I'm
19 sorry -- and commented on the proposed amendments
20 while they were in development and we support the
21 process and the proposal in development. If we
22 have more specific comments, we'll submit them to
23 the record in writing before the next hearing
24 which I understand is scheduled for Chicago on

1 April the 15th, I gather. Thank you for the
2 opportunity to participate and for your time
3 today.

4 HEARING OFFICER KRUSE: Thank you,
5 Mr. Sheerin. Is there anyone else that would like
6 to make a comment or question today? Seeing
7 none --

8 MR. MRAZ: I apologize for
9 interrupting --

10 HEARING OFFICER KRUSE: I'm sorry?

11 MR. MRAZ: -- but before we adjourn
12 I don't believe we introduced the pre-filed
13 testimony as exhibits.

14 HEARING OFFICER KRUSE: Yes. Okay.
15 Let's do that. Do you have them in three
16 separate --

17 MR. MRAZ: Yes, they're all with
18 exhibit stickers.

19 HEARING OFFICER KRUSE: I have the
20 pre-filed testimony of Mr. Todd Marvel, the
21 pre-filed testimony of Mr. Terry Gray and the
22 pre-filed testimony of Mr. Brian White, which the
23 Agency would like to have entered as exhibits to
24 this hearing 3, 4, 5. Does anyone object to those

1 being entered? Seeing none, we'll mark them as
2 Exhibit's 3, 4 and 5 to today's hearing.

3 (Documents marked as Hearing
4 Exhibit No.'s 3-5 for
5 identification.)

6 HEARING OFFICER KRUSE: Mr. Marvel's
7 testimony is Exhibit 3, Mr. Gray's testimony is
8 Exhibit 4, and Mr. White's testimony is Exhibit 5.
9 So, now, seeing no other questions or comments,
10 I'm going to talk about a few procedural issues.

11 Section 27(b) of the Act
12 provides that the Board must request that the
13 Department of Commerce and Economic Opportunity,
14 or DCEO, conduct an Economic Impact Study of the
15 proposed rules before the Board adopt the rules.
16 In this case, the Board requested an Economic
17 Impact Study of DCEO on January 20th of this year.
18 In a letter dated January 27th of this year, DCEO
19 declined the request to conduct an Economic Impact
20 Study. Therefore, today, I would like to ask if
21 anyone present would like to testify with regard
22 to the Board's request for an Economic Impact
23 Study or DCEO's decision not to conduct an
24 Economic Impact Study?

1 Seeing no one, at this time
2 before concluding today's hearing I would just
3 like to reiterate that anyone may file written
4 public comments to this rulemaking with the clerk
5 of the Board. Filings may be made through the
6 Board's clerk's -- the Board's clerk's office
7 online. Any questions about electronic filing
8 should be directed to the clerk's office at phone
9 number (312) 814-3620. Filings with the Board,
10 whether paper or electronic, must also be served
11 on the Hearing Officer and on those persons on the
12 service list. Before filing, please check the
13 Board's website or with the clerk's office to
14 ensure that you have the most recent version of
15 the service list.

16 Again, the second hearing in
17 this rulemaking is scheduled for April 15th, 2015,
18 at 1:00 p.m. at the James R. Thompson in Chicago.
19 As with today's hearing, persons intending to
20 testify at the second hearing are directed to
21 pre-file testimony and related exhibits no later
22 than Wednesday, April 1, 2015. In addition,
23 participants with questions based on any testimony
24 pre-filed in advance of the second hearing are

1 directed to pre-file written questions no later
2 than Wednesday, April 8th, 2015. Expedited copies
3 of the transcript of today's hearing should be
4 available at the Board's office by, Steven, do you
5 have any idea -- March -- sometime in the week?

6 THE COURT REPORTER: I think it was
7 supposed to be end of day on the 10th.

8 HEARING OFFICER KRUSE: Okay. March
9 11th they will be available in the Board's office.
10 However, we allow some time for the Board's clerk
11 to post those on the Board's website. So we will
12 say by sometime March 13 they will be available at
13 the Board's website for downloading and reviewing.
14 If you have any problems with that, again, the
15 clerk's office number is (312) 814-3620 and you're
16 certainly welcome to call me as well if you have
17 any questions.

18 Are there any other questions
19 that need to be addressed at this time?

20 MR. MRAZ: I just have one question.

21 HEARING OFFICER KRUSE: Yes, sir.

22 MR. MRAZ: April 1st, 2015, is the
23 last day for the Agency to submit its post-hearing
24 comments?

1 HEARING OFFICER KRUSE: So that is
2 the deadline for pre-filing of testimony for the
3 second hearing. The purpose of the second hearing
4 is to get -- wrap up public comments. You know,
5 there will be an opportunity for comment at the
6 second hearing and, of course, post-hearing
7 comments. However, for the greatest consideration
8 of post-hearing comments, I think the answer is
9 yes.

10 MR. MRAZ: And then the follow-up
11 question is what date -- what is the last day that
12 you need to have the contact information to update
13 the service list because I'm assuming that has to
14 be prior to April 1st?

15 HEARING OFFICER KRUSE: Indeed. So
16 we would want to update the service list before
17 receiving the post-hearing comments. There is
18 no -- I mean, there is no statutory date.

19 MR. MRAZ: I understand.

20 HEARING OFFICER KRUSE: So as soon
21 as possible shall we say. Within a week. If you
22 can do it sooner than -- if you can do it before
23 April 1 so that if there are other post-hearing
24 comments --

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MR. MRAZ: We'll try to get them within a week then.

HEARING OFFICER KRUSE: Fantastic. Seeing no other comments or questions, I'd like to thank everyone for participating today and adjourn this hearing. Thank you so much.

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF COOK)
 4

5 I, Steven Brickey, Certified Shorthand
 6 Reporter, do hereby certify that I reported in
 7 shorthand the proceedings had at the trial
 8 aforesaid, and that the foregoing is a true,
 9 complete and correct transcript of the proceedings
 10 of said trial as appears from my stenographic
 11 notes so taken and transcribed under my personal
 12 direction.

13 Witness my official signature in and for
 14 Cook County, Illinois, on this 10th day of
 15 March, A.D., 2015.

16
 17
 18
 19
 20 *Stef Brickey*



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A				
A.D 117:15	37:9 88:9,14	21:7 45:5	adopt 3:21 4:3	agents 109:20
abated 31:15	accounting	81:17 113:22	112:15	ago 11:1 20:1
abatement	42:23	additional 5:17	adopted 7:19	agreement
56:11	accounts 88:11	7:1 19:3 25:10	29:23 30:24	74:18 75:5,19
able 22:16 31:17	accumulate 19:5	43:14 44:21	advance 5:14	76:8 82:10
35:19	45:11	69:20	6:10,19 50:13	91:7
about 6:1 7:4,22	accumulated	address 18:13	113:24	ahead 20:16
9:18 10:7,11	19:12	18:14 20:15	affected 13:5	85:23
11:12 12:13	accumulating	23:12 34:12	39:11 53:6	aim 11:19
14:15,16 29:15	48:10	40:4 42:5,13	affecting 58:17	aisle 27:16,19,21
35:12,24 37:7	accumulation	42:15 43:6	Affirmative	all 5:11 6:13 7:6
40:12,22,24	18:3,9,11 19:9	44:5 50:2	22:22	8:19,20 11:20
42:19 45:10	19:20 20:2,3,6	52:19 53:8	affirmatively	17:20 18:21
48:4 51:10	48:12 55:21,22	54:4 55:13,24	100:2	19:13 20:20
55:20 62:1	105:24	56:2,6,11	aforesaid 117:8	25:14,21 26:9
64:2 74:6	accumulations	58:19 61:24	after 5:20 6:9,21	27:11,20 29:6
77:24 88:19	19:8,13 30:19	68:4 70:5	7:2 9:22 35:17	29:6 30:6
90:8 106:14,19	40:13,19 41:15	71:24 73:6	44:4 72:21	38:15 53:8
108:2,23 109:2	acknowledge	75:20 79:2	75:13 80:10	54:20 55:5,9
112:10 113:7	9:22	80:14 93:5,15	81:19 85:23	58:11,22 63:19
above 35:15	acknowledge...	94:3 97:9	100:10 104:4	66:10 68:16
36:6	74:19 75:7	98:17 99:7	afternoon 3:2	69:8 75:1,20
above-entitled	act 3:16,18,20	101:13,23	afterwards	77:19 80:21
1:7	23:17,24 24:1	102:6,17,24	31:16	83:22 88:12
aboveground	24:6,11 25:6	addressed 26:13	again 13:7 37:10	94:23 95:6
53:15 54:1	29:23 85:13	35:9 41:17	41:4 43:4 50:7	101:1,7,17
Absolutely	92:18 94:1	71:9 72:4	56:24 66:6	111:17
11:22 12:7,24	97:2 98:2	106:23 114:19	69:1,17 75:1	allow 37:20
accept 80:4	112:11	addresses 43:6	79:22 83:9	52:10 79:19
acceptable 69:3	action 56:20,22	addressing	89:5,6,19	114:10
81:5 82:24	57:9,14 77:1	18:15 51:13	95:22 99:18	allowed 45:10
83:1	97:13	108:18	113:16 114:14	allowing 85:6
accepted 4:6	activities 60:6	adds 22:18	against 31:17	103:16
23:16,23 26:1	activity 76:11	adequate 108:18	age 35:7 36:19	along 5:15 10:19
26:10 31:8	actual 13:14	adjourn 111:11	36:21 37:11	13:7 39:12
accepting 50:19	22:1 30:21	116:5	agencies 79:20	52:4 65:5 73:9
50:23	31:16	adjusting 79:19	87:5	74:18 75:6
accepts 26:21	actually 22:9	Adm 1:4 3:6	Agency's 4:4,24	already 15:14
accordance 23:4	45:14 67:12	29:24 82:16	5:2 21:17	42:19 58:24
23:17,18 24:10	68:17,21 80:17	84:18,21,23	25:17 39:7	59:2 95:7,10
63:2	90:8 94:19	85:15 89:9,12	43:13 46:12	102:15
accordingly	add 15:23 34:4	administrative	50:21 70:2	also 2:9 3:8
79:1	added 75:14	6:8 16:4 25:5	72:5 84:13	11:17 12:12
account 35:9	adding 73:20	58:13	95:23 99:2	34:22 43:1
	addition 6:6	admitted 7:8	105:13	50:15 51:8

56:21 57:13 58:9 75:6 81:21,24 82:4 83:7 92:11 108:19 113:10 altered 25:19,22 26:21 alternate 77:7 85:24 alternative 24:5 although 44:7 82:4 always 13:16 am 8:8 110:9 amendment 21:17 amendments 1:4 3:6 15:11 110:17,19 among 81:4 amount 78:2 82:7 88:8 an 4:5,7 5:14,15 5:23 13:17 16:13 18:2 21:24 22:4 23:16 24:24 25:10 26:3 28:13 35:5 40:23 41:14 42:23 44:15 46:1 49:23 50:18,19,23 51:2 53:1 57:17 63:3,9 63:18 64:7 66:2,7 67:1 68:9 69:20,24 72:21 73:22 77:12,13 78:2 78:19,22 79:1 79:15 82:6 83:2 86:6,10 86:24 87:12 88:5 91:2	96:18,22,23 98:23 104:6,9 107:18 112:14 112:16,19,22 112:23 115:5 Anand 2:2 3:10 106:11 annual 63:14 68:10,13 75:15 75:17 83:2 91:2 annually 81:18 another 7:17 23:11 33:21 34:2 36:7 46:23 47:5 49:20 53:14 54:1 82:9 answer 6:15 31:3 79:4,23 115:8 answers 6:16 anticipates 76:8 any 5:17 7:9,13 7:22 8:4 9:7,9 9:12,20,23 10:3,17 11:12 12:13 15:18 17:7 19:4 25:3 25:3 26:9 31:1 32:9 37:5 39:14 41:2 42:22 44:7,18 46:4,10 49:7 52:24 53:3 55:15,23 56:20 56:21 57:8,14 57:17,19 62:17 74:6 84:2 85:7 94:23 95:1 100:12 102:12 103:23 104:16 104:16 105:17 106:17 113:7 113:23 114:5	114:14,17,18 anyone 32:22 110:2 111:5,24 112:21 113:3 anything 19:16 32:1 36:16 48:24 106:10 anywhere 51:23 58:4 apologize 50:6 53:17 56:23 94:20 103:4 111:8 apparent 42:12 appear 50:1 appeared 2:8 4:12 appears 22:12 92:11 97:6 117:10 appendixes 74:23 applicability 38:24 44:20 46:11 47:22 59:9 applicable 38:21 55:16 58:12,22 94:23 95:3,6 95:11 application 27:16 97:20 100:1 101:7 applications 24:18 97:18 applies 23:6 27:20,24 apply 18:10,19 32:2 42:9 49:8 54:14 60:5 69:22 108:16 applying 30:12 appropriate 6:24 44:15 46:24 47:20	59:17 60:20 61:17 104:9 approval 101:12 approve 77:7 83:24 approved 24:15 82:3 97:15 approximate 13:4 39:12 approximately 14:2 40:8 43:18 59:10 April 4:17 6:17 6:19 16:18,18 66:12,13,16 68:19 80:15 89:4 94:11,13 100:6 111:1 113:17,22 114:2,22 115:14,23 area 33:20,21 34:1 45:15 83:14,16,19 areas 48:1 aren't 33:18 around 45:6,16 46:1,7 54:20 57:23 104:4 ask 10:3 22:6 65:16,21 66:5 92:5 112:20 asked 6:21 10:16 32:8 48:4 58:9 66:11 asking 18:1 asks 21:6 30:22 37:7 44:17 46:9 86:22 101:16,19 102:2,12,21 aspect 37:4 Assembly 3:19 assessment 13:8	assist 7:11 associated 36:12 39:15 44:2 48:5 association 10:16 11:3 110:10,11,12 associations 10:22 assuming 115:13 assurance 26:15 26:19 27:7 70:14 75:22 76:4,6,12 77:8 assurances 18:20 21:2 26:24 70:21 72:12 at 1:6,11 4:11,13 5:18 7:16 8:19 9:15 11:1,9 14:9 21:10 22:20 23:2,4,8 24:2,21 25:14 25:16,23 26:2 26:10 27:9 28:8 32:5,6 40:13,19 41:3 41:9,13,13 42:3,8,21 43:14 44:9,10 44:19 45:3,9 48:8 55:9,10 56:3 57:12,18 57:18 59:19,24 64:11,11 70:16 70:23 72:7 73:15 75:3,18 76:23 81:4,24 84:2 85:8,15 89:2 90:4 97:7 103:24 104:11 105:16 106:15 107:24 109:1
--	--	---	--	--

113:1,8,18,18 113:20 114:4 114:12,19 115:5 117:7 attention 106:22 attributed 93:12 audience 9:20 Aurora 19:19 authorities 87:13 authority 82:24 86:24 auto-ignition 35:23 available 31:21 33:4 34:10,15 81:22 83:4 89:2 114:4,9 114:12 Avenue 1:10 2:5 avoid 7:16 28:13 aware 10:9 11:20 28:17 31:13 39:14 40:20 41:2 96:8 106:24 away 109:18,23 awful 46:1 awfully 104:6	87:14,22 88:9 88:20 91:21 banks 80:4 87:10,11,11,15 88:8 barrier 24:21 54:20 based 23:1 28:14 30:20 47:22 84:17,20 89:9 91:19 105:5,8 113:23 basically 63:1 75:23 84:15,24 85:16 89:13 90:22 basis 32:5 33:18 51:11 83:2 103:15 bearing 57:22 because 7:18 13:19 21:21 26:7 36:1,6,11 36:24 38:18 41:6 48:2 52:3 52:11 55:8 57:22 60:24 72:17 77:17 80:18 87:21 91:3 95:10 96:24 104:23 107:17 109:4 115:13 become 36:2,2,9 106:24 109:14 becomes 57:24 been 9:3 19:7 24:15,19,20,22 30:23 31:13,15 46:1,4 94:17 103:6,20,21 106:16 107:12 before 1:8 4:20 5:18 7:1,23 9:24 16:18	20:17 26:2 31:3,23 39:18 64:6 66:17 70:18 74:7 75:17 76:4,10 85:21 89:3 94:11 100:6 102:22 110:2 110:23 111:11 112:15 113:2 113:12 115:16 115:22 begin 5:9 39:18 60:14 76:10 beginning 4:13 6:4 begins 75:24 behalf 2:8 being 18:20 22:10,14,16 32:23 38:4 40:15 45:10 57:19 65:7 67:21 74:16 102:22 105:4 109:23 112:1 believe 4:1 13:14 15:10,13 15:16 27:10 46:3,23 47:24 51:14 59:16 61:19 100:24 108:20 110:5 111:12 believes 53:2 61:14 70:20 belong 40:16 below 13:23 beneficial 24:10 24:12,14,17 benefit 7:14 berm 53:14,24 between 52:23 57:11 108:17 beyond 36:5	37:17 77:2 big 103:21 107:21 bigger 106:15 bit 7:3 35:11 black 107:9 blocks 20:5 Board 1:1,9,10 2:2,3 3:3,7,8,9 3:11,17,21 4:3 4:6,8,10,21 6:6 6:21 7:10,14 7:20 10:16 11:23 12:2 13:3,9 16:4,13 25:2 30:14,22 39:2,8 42:11 42:15 43:23 50:22 51:8 53:2,5,11,21 53:21 55:16 56:9,15 59:7 61:7 62:6,10 62:12,16,18,22 65:9 66:4,8 68:11,13 69:14 69:16,20 74:20 82:21 84:9,11 92:22 93:22 95:19,21 96:15 96:21 98:20 99:14,16 100:5 102:14 112:12 112:15,16 113:5,9 Board's 5:24 6:22 7:6,12 8:1 8:8 11:19 17:22 41:24 43:10 54:7 112:22 113:6,6 113:13 114:4,9 114:10,11,13 bombers 107:13 bond 82:6,19	83:15,18 84:8 84:11 85:7,11 85:17,22 86:1 86:6 89:8 90:20,22 91:11 91:16 92:11,12 bonds 74:2 81:4 81:5 83:1 88:17 both 15:2 24:19 36:10 78:24 box 2:6 34:1 104:3 break 33:21,22 44:4 breaking 53:12 53:22 breeding 42:5 44:1 55:18,23 Brian 2:10 4:22 9:2 111:22 Brickey 2:13 117:5,20 Bridgestone 110:13 brief 110:16 briefly 109:1 bring 82:9 broken 13:6 54:8 brought 32:12 BUD's 24:22 building 108:8 buildings 103:8 built 102:15 burden 95:9 bureau 5:1,2 87:12 burned 20:4 25:14,20,23 26:8 burning 25:15 26:3 58:3 109:13 business 13:6,6
---	--	---	--	--

B

b 21:8 33:11
39:13,20 40:1
41:22 42:4
49:5,6 61:10
73:3 81:2,13
83:7,9 86:23
87:16 89:18
93:24 99:23
back 35:13 43:2
52:23 71:15
93:3 95:5
103:5
bad 41:7 108:12
bank 80:1,3

28:12 81:14,19 83:11 businesses 10:17 13:5,20 but 12:21 13:17 22:13 24:19 26:20 27:23 31:14,21 33:5 33:17,22 34:5 35:13 36:4,22 37:5,7 38:6,7 38:16,20 51:7 51:17 52:18 55:21 56:3 58:20 61:17 63:7,13,20 66:17 74:7 75:8 77:18 78:1,5,6,10 82:21 83:15 86:11 88:15,21 90:7,12 91:13 94:19,21 97:7 97:23 103:4 106:2 107:4,5 107:10,15,16 107:21 109:21 111:11 by 2:5,12 3:18 4:17 5:10 7:2,5 7:10 8:2 9:19 9:19,21 10:9 10:15,23 13:5 13:6 15:24 16:24 18:11 23:16,19 24:15 28:14 35:15 36:3 39:11,13 42:5,14,15 43:6 46:22 48:2 53:6 55:8 58:14 62:10,16 64:16 65:8,22 66:12,13 68:11 68:19 69:8,12	69:13 70:8 72:14 73:23 74:19 75:18 78:1 79:12,18 80:15 81:12,14 82:13 83:7,11 83:16 84:9 87:2 88:2,10 94:13 95:18 99:14 100:4,8 100:17 102:4 102:10,12 106:23 107:12 114:4,12 <hr/> C c 2:1 39:20 41:22 42:4,14 42:19 43:5,15 53:3,4 54:8,18 61:11,12 67:13 71:3 74:17 82:18 84:7 85:14 88:1 calculate 33:16 37:21 calculated 34:5 calculating 30:18 calculation 33:14,19 calculations 35:3 47:14 calendar 97:3 California 38:8 call 13:22 62:15 92:4 104:5 114:16 called 9:3 came 50:12 66:22 93:18 can 12:23 13:7 14:5 15:23 17:1,7,9 18:14 20:12,15 24:2	25:15 30:3 33:17,23 34:3 34:6 36:21 37:15 39:17 42:13 47:3 48:22,23 50:2 50:9 52:13,17 53:17,19 54:4 56:5,6,9 57:3 58:19 60:8,12 61:24 63:19,20 64:13 65:18 66:5 67:5,16 68:1,17 69:1 71:9 73:12,14 76:8 78:11,13 80:4 81:23 83:22 84:2 85:15,21 87:21 90:16 92:4,7 94:3 95:24 97:9 98:17 104:2,11 106:22 107:5,9 107:20 109:11 109:18 110:6 115:22,22 can't 34:10 35:15 41:7 46:6 85:18 cancel 85:7,21 cannot 58:15 92:6,6,20 canyons 38:9,19 capable 35:22 capturing 28:15 28:16 care 73:5 case 65:11,12 91:17 112:16 cases 109:11,12 casings 40:10,12 40:14,22 61:16 70:15 categories 35:5	category 14:12 46:23 88:10,10 caught 19:21 20:3 cause 1:7 4:8 45:22 65:16 caused 55:8 causes 109:6 certain 24:4 25:1,1 38:24 98:2 certainly 50:9 56:3 68:19 78:11,13 103:19,24 106:24 107:6 114:16 certificate 75:7 certificates 82:24 88:12 certification 22:6 74:18 Certified 117:5 certify 117:6 CFR 83:3 Chad 1:8 2:2 3:3 chain 52:5 Chairman 3:9 change 15:3 18:2 23:10,14 43:20 46:11 47:16 50:15 62:24 71:24 76:23 103:15 changes 18:23 43:13 84:22 85:3 89:10 chapter 29:24 characterize 49:22 chartered 80:2 87:10,15 check 113:12 checking 88:11 chemicals	109:20 Chicago 4:16 110:24 113:18 117:22 chip 18:9 chips 18:3,7,17 19:6,13,20 21:1 71:14,16 71:19 choice 32:3 choose 35:4 choosing 28:9 chosen 46:16 Christmas 32:18 Circular 81:5,8 81:11,17 82:5 82:13,15,16,23 83:4,23 84:3 circulation 34:14 circumstances 24:4 citation 25:5 92:23 93:23 94:2 cite 93:11 cited 31:10,12 31:14 92:18 cites 93:21 citizens 58:14 city 20:5 civil 34:6 claim 22:12,19 claiming 28:13 claims 22:4 clarification 67:17 71:10,11 97:11 clarifications 92:8 clarifies 21:19 clarify 18:1 25:16 27:17 30:23 39:17 41:20 43:24
--	---	--	--	---

46:15 54:16 87:4 100:17 101:22 clarifying 9:13 18:16 49:4 clean 65:18 Cleanup 31:11 32:21 34:9 clear 7:11,18 17:4,8 53:16 54:2 60:3 96:24 97:7 100:14 clearer 55:1 89:23 clearly 7:16 64:5 clerk 4:8 113:4 114:10 clerk's 113:6,6,8 113:13 114:15 client 38:8 climate 38:14 close 108:3 closely 5:6 closer 14:12 45:16 46:16 closing 52:4 Code 1:5 3:6 29:24 58:13 82:16 83:3 84:18,21,24 85:15 89:9,12 collect 64:1 collected 64:14 Columbia 83:21 combusted 64:12 combustion 109:10,22,23 come 13:20 17:6 40:15,17 52:17 71:11 87:21 101:1 comfortable 108:18	coming 45:18 comment 4:10 14:6 21:6 39:7 39:13 47:19 51:20 52:20 53:21 73:20 75:11 95:6 102:18 110:5 110:17 111:6 115:5 commented 110:19 comments 12:10 17:10 18:16 20:18 23:13 30:4,9 39:19 50:3 53:9 54:5 56:9 58:20 61:3 62:1,23 65:19 66:16 68:5 69:2,18 70:6 71:12,22 73:7 75:2,9 79:3 84:13 92:8 93:6,16 94:4 95:23 97:10 98:18 99:8,19 100:18 101:14,24 102:8 103:1 110:22 112:9 113:4 114:24 115:4,7,8,17 115:24 116:4 Commerce 112:13 commercial 12:20 45:7 87:10 Commission 16:4 Committee 6:7 commodity 21:22 22:1,14 72:17	common 58:21 communication 42:17 58:7 73:10 94:16,19 98:7 101:2 community 46:10 47:1 78:3,9 105:4 compacted 35:22 36:6 compaction 37:2 companies 40:8 82:23 83:2,24 110:12 company 40:17 81:3,13 82:10 83:10,13 compared 28:3 59:20 compatible 27:22 compile 63:14 complete 7:12 58:16 117:9 completed 65:22 77:14 completely 28:1 completion 95:16 compliance 4:23 4:24 42:6 67:1 67:4,23 complies 63:6 comply 15:7,15 49:7 58:22 59:2 60:2,4,15 68:18 95:8,11 components 11:8 comprised 110:12 comptroller 87:8 computer 63:17 concern 51:13	56:4,8 77:24 78:4 109:3,7,8 concerned 35:24 63:22 concerns 28:3 39:15 41:3 105:4 concludes 72:22 concluding 113:2 conduct 112:14 112:19,23 conducted 45:6 conducting 60:1 60:6 confused 90:8 confusing 69:6 92:3 confusion 17:7 51:10 65:16 74:6 consensus 11:7 considerably 103:22 consideration 101:12 115:7 considered 72:18 83:18 consistent 15:12 21:9 23:24 53:2 70:1,4 85:11 99:2 consistently 53:6 constants 37:19 constraints 37:19 consulting 5:4 contact 10:19 12:2,3,22 115:12 contain 45:4 46:6 54:21 101:7 contains 65:7,13	94:7 content 101:10 102:3 107:18 Continental 110:14 contingency 55:6,12,19 56:6,10 59:12 106:3 continue 29:19 72:11 continuing 28:12 72:13 contract 18:6,8 18:11,18 19:6 20:8,13 21:2 26:17 27:2,2 70:23 71:16,19 contractual 102:12 contradiction 42:12 contributed 45:14 control 1:1,9 3:3 54:22 102:14 109:16,24 controlled 107:16 controller 87:8 Conversation 85:13 converted 21:10 21:11,19 22:12 22:13 Cook 117:3,14 Cooper 110:14 copies 8:10,12 114:2 copy 34:17 Corporation 88:3,5 correct 25:24 26:23 48:11,14 64:19 67:15
---	---	--	---	---

<p>72:15 92:23 96:10 117:9 corresponds 43:18 cost 77:15 80:11 91:6,8,8 could 12:1,14 22:11 37:16 38:6 43:1 50:24 51:4 54:14 66:1,24 67:22 78:4,6,8 89:22 92:22 103:24 counted 80:9 counting 80:12 County 117:3,14 couple 20:1 103:7 course 11:14 40:20 51:5 100:22 115:6 court 7:15 8:11 8:22 10:4 32:17 84:19 114:6 cover 71:8 coverage 88:14 covered 18:11 36:13,17 75:18 covers 71:4 crash 24:20 create 35:19 92:2 created 109:11 credibility 22:18 credit 74:3 85:9 86:10,10,17 87:1,1,6,20 88:16,22 89:1 89:15 90:20,23 91:10,17,18,19 91:20,21 criteria 101:11 CSR 2:13,14</p>	<p>117:20,23 cubic 31:9 cumbersome 67:2,23 currency 87:9 current 23:5 47:8 53:16 54:3 56:2 68:22 currently 20:19 50:1 71:14 cutting 11:6 14:4 28:7 29:7 39:24 40:21 41:10 61:15</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d 26:14 69:10 75:12 76:6 84:24 89:12,22 90:6,9,9,11 daily 62:9,12 63:12,13,16 65:1 data 14:13 64:13 101:8 database 13:11 date 3:22 4:2 6:10 66:2,7,13 75:24 76:7 86:11 115:11 115:18 dated 4:5,7,18 101:2 112:18 day 1:11 14:18 28:9,10,22 40:10,12,22 64:9,10,12 67:1,4,23 76:8 78:14,19 79:1 81:19 114:7,23 115:11 117:14 days 77:2 78:6,9 78:12 80:9,10 80:12 85:23</p>	<p>97:13 DC 87:11 DCEO 112:14 112:17,18 DCEO's 112:23 deadline 6:18 73:12 115:2 deal 10:22 107:17 Dealers 10:15 11:2 deals 25:12 86:17 Deanna 2:3 3:9 103:2 December 3:14 decides 100:4 decision 7:12 112:23 declined 112:19 declining 78:1 decrease 52:6 deemed 16:5 17:12 97:14 deep 38:19 default 97:2 98:1,3 definitely 14:8 29:8 definition 13:24 15:2 21:10,11 21:14,18,18 23:22 27:16 28:5 29:4 105:2 delete 73:14 deleted 73:12 demand 15:9 demanding 43:20 demonstrated 22:17 denies 109:12 dense 37:6,6 density 30:17,20</p>	<p>30:23 31:23,24 32:2 35:3,12 36:11 37:17 38:10,16 department 81:6,9,10,15 81:17 82:22 83:12 87:12 106:23 107:12 112:13 departments 107:3 depends 87:22 deposeth 9:4 deposit 88:2,4 88:11 91:18 depositor 88:9 depositors 88:7 deposits 88:2,12 depth 36:5 37:1 37:12 designed 55:6 58:14 68:24 desirable 37:18 desire 34:17 70:2 99:2 determination 24:10,17 determinations 24:13 determine 31:17 101:9,10 determined 38:6 developed 47:15 developing 5:7 7:11 38:17 development 5:7 39:8 110:20,21 dictated 48:2 did 4:10 13:10 34:17 38:11 47:4 64:16 74:4 83:7,9 92:2 105:3 didn't 10:21</p>	<p>11:12 49:23 55:24 56:2 103:22 die 11:6 14:4 28:7 29:7 39:24 40:21 41:10 61:15 differ 22:15 difference 33:23 different 25:16 28:2,2,3 34:3 58:2 93:14 96:13 109:5 differentiate 36:10 57:20 differentiating 57:11 difficult 66:21 67:20 107:21 direct 60:3 74:23 92:22 directed 4:8 113:8,20 114:1 direction 117:12 directly 37:4 45:18 Director 110:9 directs 39:8 discourage 70:2 99:2 discouraging 51:9 discuss 11:3 100:1 discussion 6:2 disposal 24:4 44:2 51:2,9 55:10 75:22 76:1 disposed 23:7 District 83:21 dive 10:6 divide 54:15 divided 33:13 do 7:13 9:6 11:9</p>
--	---	---	---	--

12:9,11,17 13:9 17:4 18:12 19:8 20:8 25:12 31:22 32:4,16 34:3,6 37:24 47:14 48:23 50:9 52:1 54:11 55:1 66:15 71:23 77:20 78:5,8 82:1,17,18 88:15,22 90:11 90:22 91:2 95:24 100:4,8 100:12 105:11 105:24 106:2,3 106:6,7 107:24 111:15,15 114:4 115:22 115:22 117:6 docket 12:9 docketed 3:7 document 8:9 8:14 33:1 Documents 112:3 does 9:11 12:12 15:16 16:7,13 17:13 18:5 26:22 29:23 30:1 32:22 36:3 42:24 49:8 60:24 61:19 69:21 71:8 79:14 80:12 86:4 88:15,15 95:1 97:2 100:7 102:21 110:2 111:24 doesn't 21:18,22 27:6 53:20 64:2 79:23 84:1 90:10	97:13 doing 8:5 89:13 domiciled 80:1,3 87:14,23 don't 9:9 13:20 17:5 33:5 35:12 36:12 38:7,16,18,21 40:12,18 44:24 47:2 52:11 54:10,13 57:21 58:3 63:12,12 63:17,20 72:3 78:16 83:6 86:1 90:11 91:2,6,9 95:8 97:16 100:12 103:13 106:2 106:21 107:4 107:16 111:12 done 4:20 37:11 38:6 77:21 down 13:6 33:21 33:22 54:9 77:19 downloading 114:13 Dr 3:9 103:2 106:13 draft 62:11 65:23 68:12 69:15 84:10 88:24 89:3 94:9 95:20 99:15 100:5 drafts 74:21 dramatic 107:15 dramatically 22:2 38:11 draw 33:17 86:1 90:22 91:1,10 91:10,16,22,22 91:24 drive 35:18 dry 41:6 55:11	duly 9:3 dump 35:19 dumped 52:12 dumping 50:20 52:7 70:3 99:3 during 39:7 46:12 64:9,10 <hr/> E <hr/> E 2:1,1 e-mail 8:2 34:11 79:13 each 6:2,24 39:13 44:4 58:23 82:5 88:8,9 98:14 98:16 101:7 earlier 66:15 early 11:13 32:19 earthen 53:14 53:24 easier 33:15 46:24 47:16 69:7 80:21 easily 46:21 East 1:10 2:5 easy 33:19 47:16 90:15 economic 13:8 72:18 112:13 112:14,16,19 112:22,24 edit 96:17,19 edited 93:24 effect 64:22,24 65:3 71:17 102:23 effective 3:22 4:2 76:7 effectively 23:15 64:22 eight 17:2,3 110:12 either 24:3	74:22 electronic 113:7 113:10 eliminate 60:13 67:2,23 eliminated 67:6 68:2 else 19:16 32:1 40:16 110:2 111:5 emergency 56:10 encountered 19:11 encourage 50:20 encouraged 52:13 end 6:4 21:24 22:16 35:16 42:22,24 49:7 52:24 53:15 54:2 57:7 58:13 60:15 64:11,12 67:1 67:4,5,23 68:1 79:15,18 80:11 81:6 87:3 90:2 98:10,13,14 101:19 110:9 114:7 endless 32:7 energy 107:18 enforced 42:22 80:13 engineers 33:16 34:6 enhances 21:24 enough 77:20 107:11 ensure 22:21 113:14 enter 7:24 entered 5:12 16:15 32:23 111:23 112:1	entering 8:9 entire 10:8,11 entirety 67:19 entities 11:24 entitled 3:5 entity 86:24 enumerating 53:13,23 environment 51:7 55:8 59:19 environmental 2:4,8 3:12,16 36:9 39:14 41:2 43:22,24 44:14,18 48:5 environmenta... 51:1 EPA 34:10 equation 37:20 equations 38:17 equivalents 31:9 37:22 43:19 46:17 59:11 errata 26:14 48:18 71:9 erroneous 32:3 especially 21:23 essential 60:17 establish 28:12 32:5 establishing 73:24 estimate 13:17 29:6 80:11 estimates 31:20 91:6,8,8 estimation 30:21 evacuation 20:4 even 50:24 51:23 64:5 65:12 90:8 106:19 107:13 events 44:10 45:3
---	---	--	--	---

Evergreen 85:18	exhibit 6:12 8:3	express 34:17	fact 22:8,9 29:15	few 11:4,7 17:23
every 45:2 95:9	8:9,15 16:16	expressly 97:23	86:13	29:16 41:16
everyone 116:5	16:16,24 30:12	extend 77:2	factors 30:18,20	112:10
evidence 45:18	32:22,24 33:2	extended 45:11	30:23 37:17	fewer 42:3 71:5
exact 21:7,24	34:24 37:14	extensive 30:20	fails 62:17 97:2	72:1,6
22:7,10 100:11	58:8,8 73:10	extent 11:13	98:2	fight 108:8
exactly 44:24	79:13 80:7	extinguish	fairly 38:3 52:18	109:6,9
examined 31:14	86:20 94:7,18	107:20	58:21	fighting 109:12
79:17 87:2	94:20 98:8		fall 13:23 14:11	109:21
example 25:15	101:2 111:18	F	29:3,8 52:14	figure 78:15
53:1 63:18	112:4,7,8,8	f 69:23 80:19	falls 81:20	79:7
89:24	Exhibit's 112:2	98:24	familiar 21:13	figures 32:3
examples 16:10	exhibits 69:5	faced 55:14	38:10 51:22	file 6:16 113:3
17:15 19:22	111:13,23	facilities 11:6	97:22	filed 3:13 6:9
exceeds 82:8	113:21	13:12 14:3,21	fantastic 66:15	filing 113:7,12
except 86:10	exist 91:14,15,15	15:6,19,22	116:3	Filings 113:5,9
exception 96:19	existed 92:3	19:4,11 24:21	far 14:5,6 40:7	filled 38:8
96:23	existing 14:22	28:16,18,21	FDIC 88:5,7,15	final 24:3
exceptions 97:4	15:1 39:5	29:3,7,10	88:19,21	finalizing 12:19
excluding 27:7	expands 39:4	37:21 39:6,11	February 4:7,13	financial 18:19
excuse 58:8	expectation	39:13,16,23,24	4:18,21 17:22	21:2 26:15,19
70:22	16:13,16	40:5,14,20,23	27:13 30:14	26:24 27:6
exempt 13:23	expecting 91:22	41:4,10 42:3,4	33:10 39:2	70:14,20 72:12
14:21 18:20	expedited 7:21	42:7 45:4,21	41:24 55:4	73:24 75:22
21:20 25:4	114:2	46:2 47:6	59:6 61:6 62:6	76:4,5,11 77:8
26:19 72:12	experience	57:15 61:9,15	68:8 70:9 71:2	85:24
76:5	30:21 35:21	61:18,22 70:12	73:18 74:13	find 17:1 78:3
exempted 20:14	103:11,20	70:16 71:5	80:24 86:19	92:20
25:12 26:11,13	105:6,8,13,15	72:1,6,7	94:6 95:14	fire 19:21 20:4,9
26:14 39:21	107:6	103:12,14	99:11,22	36:3,11 39:15
42:7 70:13	expiration 86:11	106:15,18	federal 58:12,16	41:3 42:8 44:1
exemption 11:5	expire 85:11,18	107:4 108:16	58:23 79:18	48:6 54:22
18:10,16,17,19	86:13	109:1	81:5,21,24	56:19,20 57:7
20:19 21:1	explain 20:12	facility 14:5	83:1,3 87:2,4	57:8,12,13,17
22:5 23:1,5	23:9 28:9	18:5,8 19:7,19	88:2,4 94:23	58:1,1,5 59:16
24:24 26:3,5	33:11 42:11	20:1 24:3 26:1	95:3,7,11	105:16 106:23
26:24 28:13	55:17 60:16	26:10,20 28:6	feedback 10:15	107:3,12,17
41:18 61:23	61:8 70:1,11	28:7 40:21	feedstock 41:11	108:1,19
71:3,7 76:9	71:2 76:19,24	41:14 43:2	70:19	109:12,20
104:9,18	81:8,11,13	45:7,13,13,16	feel 97:5	firebreak 27:18
exemptions 39:5	83:9 85:6	45:17,19 46:22	feet 33:20,20	27:20,24
39:11,22 42:2	87:17 88:1	55:13 57:12,18	35:4,4,13,15	fires 45:1 57:12
76:2 104:23	90:16 96:19	58:17 83:17	35:17 36:1,5	57:21 105:12
exempts 23:3	explanation	104:11,12	37:7 38:9,12	106:17 107:2,9
24:8 61:8	51:3 96:22	108:1	38:19	107:21,21

108:24,24 109:6,9 firm 5:4 36:23 first 4:9,14 9:3 10:12 16:7 17:23,24 27:11 27:12,15 29:21 30:15 39:3 46:20 47:3,15 49:4 60:6,13 60:16 67:6 68:2 70:11 73:21 74:10,16 75:15,16 76:1 79:14 81:2,19 101:4 fit 17:4 five 14:7 29:16 43:11 45:1 48:7 flat 38:3 flow 17:5 follow 13:20 47:17 48:17 follow-up 77:23 108:22 115:10 followed 9:19 following 73:1,2 77:16 82:15 83:5 90:1 106:13 follows 9:4 73:22 75:12 77:15 foregoing 117:8 foreign 87:11 form 10:3 62:9 62:12,19 63:1 63:4,5,7,9,18 63:21 65:2,8 65:10,11,12,22 65:22,24 68:10 68:13,15,18,22 69:11,12,16 84:11 89:14	95:18,20 96:2 99:14,16,24 100:3,5,8 formal 74:18 format 62:10 64:2 65:2,8,10 68:11 69:12 99:24 formation 36:8 formats 87:15 formed 33:18 forms 62:15 66:3,8 69:2 74:19,21,24 75:2,4 84:8,17 84:18,21 85:1 88:24 89:2,3,9 89:9 94:9,13 100:15,16,20 100:21 forth 23:14 40:1 52:23 63:7 99:23 forward 7:4 found 45:7 74:24 103:13 four 64:13 86:18 86:18 from 3:8 4:2,3 4:22 6:3,7 10:15 11:7 13:11 16:3 17:13 18:20 20:9,14 21:20 22:16 25:4 26:14 29:14 30:12 32:7 33:10 34:11,24 36:10 37:14 38:5 39:2 42:7 43:15 44:21 45:16,19 46:23 48:9,12 50:19 50:23 51:23 55:4 56:19,20	57:6,6,8 58:7 58:18 59:6,9 61:6,11 64:10 67:6 68:2,8 69:22,23 70:9 70:13 71:1 72:12 73:12,18 74:5,13 75:16 76:5,19 78:1 80:7,24 83:4 87:22 89:15 93:21 98:23 101:1 103:10 103:17 104:5 105:14 117:10 front 35:16 56:19 57:6 fuel 25:14 fund 75:23 91:11 funded 89:24 90:24 funds 74:2 76:21 77:7,10,17 88:7,17 further 14:13 18:16 51:5 52:19 54:9 103:23 fuzzy 88:20	generate 107:9 109:14 generated 19:19 54:21 gentlemen 5:22 geographic 21:23 geometrical 33:17 34:3 get 9:14 17:23 34:11 35:15 36:5,5 37:6 38:9 83:7 90:8 90:8 102:21 106:22 107:1 109:10 115:4 116:1 gets 57:23 getting 57:5 93:3 give 11:11 32:16 32:17 40:23 85:19,21 91:2 91:21 given 34:17 gives 83:5 86:5 88:19 giving 63:8 Glosser 2:3 3:9 34:8,15 48:3 48:16 63:22 77:23 78:12,15 78:20,23 79:6 79:9 103:3,4 104:13 105:3,9 106:2,6,8 107:23 108:5 108:13 Glosser's 106:13 go 5:21 10:7 13:20 17:1 20:16 35:12,16 40:18 46:23 77:12 85:23 102:23 103:5	goes 14:5 52:22 54:22 90:23 95:5 going 10:2 12:15 35:19 40:4 52:6 64:17 66:17 77:19 78:1 85:20 112:10 good 3:1 33:24 46:6,21 110:14 got 11:7 41:14 govern 27:22,23 governed 7:5 Government 88:6 Grand 1:9 2:5 granted 8:8 Gray 2:10 5:3,6 5:10,21 9:2 19:23 22:15 27:5,20 30:19 31:2,7 32:12 32:14,16,20 33:4,15 34:13 34:16,19 35:11 36:16,21 37:10 37:24 38:3 46:1 51:19 54:19,24 57:16 60:18,24 95:24 105:17 107:8 108:3,6,11 109:8 111:21 Gray's 112:7 great 10:22 greater 35:24 36:9 37:1 48:6 82:7 greatest 115:7 greatly 36:1 ground 38:5,7 group 104:5 groups 10:17,20 10:23
G				
g 23:1,3,20 77:4 77:4 80:18 g)2 76:22 gallons 107:19 107:19 gas 107:19 gather 111:1 general 3:19 6:1 9:18 10:7,11 16:3,6 17:13 17:20 31:13 generally 31:21 105:12				

<p>guaranteed 89:7 guaranteeing 74:3 guess 38:5 52:4 guide 5:24 Guidebook 31:11 32:21 34:9</p> <hr/> <p style="text-align: center;">H</p> <p>h 67:11 76:23 82:20 had 1:6 4:2 10:10 11:4,9 13:11,12,22 14:1 16:5 17:4 19:18,21 20:1 20:2 31:16,23 32:1,2,3 34:22 41:14,16 43:22 44:23,24 48:17 51:10 72:19 92:15 103:21 106:17 107:2 117:7 hand 9:21 handbook 31:10 handle 38:1 handler 50:20 50:24 69:24 98:24 handlers 25:4 handling 52:15 happen 107:16 happening 38:18 hard 107:17 harder 108:8 has 4:3 6:21 7:20 15:14 18:8 19:4,7,10 20:8 24:12,16 25:3 27:5 28:1 28:1 31:4 39:2 44:6,7,18 45:3</p>	<p>45:6 63:19 69:20 70:22 81:22 82:17,18 86:10,24 88:22 91:8 103:3 107:18 115:13 hauled 104:4 haulers 52:1 hauling 52:2 haven't 13:16 36:17 52:17 having 9:3 hazard 36:10 hazardous 82:17 85:1,14 89:15 hazards 55:7 He 3:10 health 39:15 41:2 46:7 55:7 55:14 59:19 108:19 heard 47:3 height 33:24 35:5 help 7:17 17:8 58:18 109:20 helped 31:11 helpful 53:3 65:23 Hence 50:21 here 9:24 11:10 37:17 38:4 56:4 59:2 63:7 63:18 66:9,17 90:17 91:5 110:13 hereby 117:6 herein 9:3 high 14:11 33:20 33:20 37:15 38:5 52:18 107:11 higher 13:15 28:23 35:20 37:16 38:16</p>	<p>51:21,24 highlight 48:19 historically 43:22 44:13 History 45:5 hit 37:5 hitting 109:4 hold 45:11 holding 4:14 82:24 Honorable 1:8 Hoopeston 19:23 108:1 hot 38:13 57:23 hour 1:11 how 8:18 22:3 23:19 35:7 37:6,7,15 38:18 40:23 42:20 44:24 51:10,12 54:11 57:20 70:1 74:6 80:9,12 92:6 101:9 102:21 104:13 105:24 107:24 108:23 However 5:13 25:2 42:7 50:22 92:20 97:4 114:10 115:7 huge 20:3,6 40:13 103:16 human 55:7 59:19</p> <hr/> <p style="text-align: center;">I</p> <p>I'd 16:12 97:7 110:16 116:4 I'll 16:6 17:20 17:23 27:12 29:17,19 42:20 43:11 44:4 55:3 61:5</p>	<p>67:18 68:7 70:8 75:20 83:9 84:16 I'm 3:4 8:10 16:19 19:21 21:13 31:12 37:19 42:21 51:22 57:4,19 62:22 67:9,15 69:4 73:2 78:17 92:24 95:17 96:9,22 97:22 98:10 103:9,11 107:15 110:18 111:10 112:10 115:13 I've 31:14 46:1 52:16 57:18 94:17 107:12 idea 24:5 40:23 46:6 108:2 114:5 ideas 11:4,5 identification 8:16 33:3 52:12 112:5 identified 11:16 11:24 19:4,8 identify 10:17 44:17 idling 43:2 ignited 36:9 ignites 57:24 Ill 1:4 3:6 29:24 82:16 84:18,21 84:23 85:15 89:9,12 illegal 50:20 70:2 99:3 Illinois 1:1,9,10 2:4,6,8 3:2,12 4:10,12 10:24 11:2 14:17 38:18,21 40:9</p>	<p>45:2,5 51:21 58:13 79:16,24 80:5 81:15 83:11,17 84:2 95:2 117:1,14 117:22 Illinois' 46:4 immersed 109:15 impact 13:8 15:18,21 36:22 112:14,17,19 112:22,24 impermeable 53:14 54:1 implemented 22:4 important 21:21 85:17 imposed 15:24 59:1 61:18 95:10 impossible 13:18,19 improperly 45:8 improve 92:5 improved 92:5 incentive 41:6 61:15 inclined 69:4 include 6:11 12:6 28:7 29:14 55:18 74:2,9,22 75:1 78:13,21 82:14 93:24 included 23:22 80:7 82:21 86:19 94:12,15 95:13 96:16 99:19 includes 20:21 42:18 93:21 including 43:24 55:15</p>
--	---	--	--	--

kept 55:11	100:10,11,14	112:18	74:9 76:3 81:4	majority 15:14
key 11:8	102:15	letters 74:3 87:1	listing 81:10	28:16 29:9,9
kind 11:10 22:6	large 15:13 19:5	87:6 88:16,22	little 35:11	make 5:14 11:20
35:13,18 46:22	19:12,19 20:2	89:1	80:20 107:10	22:6,12 33:13
77:18 85:18,19	40:18 41:9	level 38:7	load 104:4	33:18 34:8
88:19	43:9 45:13,13	103:23	loaders 35:16	47:16 55:1
knew 93:9	45:21 108:10	license 2:14	local 106:23	59:23 60:11,13
know 11:4 12:15	larger 11:10	87:14,15	located 23:2	60:22 63:20
14:8 21:21	14:10 41:15	licensed 81:14	42:21,21,24	75:15,21 76:11
25:2 28:16	59:20 107:4	83:10,14,15	48:9 55:11	77:11,16,18,20
29:19 31:4,6	largest 40:11	87:10	70:16	93:8 96:8
31:22 33:5	LARRY 2:5	Life 110:9	locations 14:4	100:14,17
36:12 38:18	last 3:19 88:23	light 39:8	40:9	110:13 111:6
40:7 41:12	97:3 102:10,20	like 5:16 7:24	long 52:16	makes 24:1 34:7
44:7,24,24	114:23 115:11	8:18 9:12	104:15	80:20
45:17,20 47:2	later 6:17 11:14	16:12 25:2	longer 23:22	making 85:2
49:23 54:10,13	113:21 114:1	29:2 30:6	76:2,5,9 78:5	manageable
57:21 63:23,23	law 58:23,23	36:15 46:3,20	look 22:20 27:9	107:22
64:2 65:24,24	94:23 95:7,11	54:14 58:3	56:3 59:24	managed 23:3
66:17 74:7	laws 58:10,12,17	60:5 72:10	81:24 84:2	23:21 24:9
78:7 90:12	95:3	83:20 88:21	85:15 97:7	39:12 41:5
97:16 104:4	lead 37:1	91:2 92:11	103:24	45:8
106:14,21,22	least 28:8 32:5,6	97:7 103:15	looking 51:19	management
107:4,5,14,24	57:18 85:8	104:6 110:16	90:4 96:22	1:3 3:5 5:5
108:16 115:4	led 32:2 38:15	111:5,23	looks 72:10	39:22 40:1
	left 3:10 52:5	112:20,21	lot 13:15 33:15	manager 4:23
	legal 59:1	113:3 116:4	38:17 43:3	5:1
L	legally 97:19	likely 106:23	46:2 88:18	mandate 89:23
label 88:20	legitimately	Likewise 5:17	104:23 107:7	mandated 106:1
labeled 101:2	52:3	limit 76:20 78:1	108:6	mandates 3:20
laid 90:10	lends 93:3	limitation 82:8	low 104:6	3:24 98:11
Land 5:1,3	less 28:18,21	limitations	lower 28:24	manifest 52:5
landfill 23:7,8	35:4 44:12	13:24 82:4,6	51:23	manifests 42:24
23:17 24:2,3	94:2 103:14	limited 21:23		manner 105:23
landfills 23:4	lesser 106:18	limits 27:16	M	Manufacturers
language 18:23	let 29:18 31:4	line 67:6 68:2	made 31:20 67:5	110:10,11
23:14 25:17	44:4 51:20	lines 13:7 65:6	68:1 96:20	many 10:1 13:19
27:9 30:2	65:24 74:7	73:9	113:5	31:15 35:21
48:20 49:3	let's 13:12	liquid 109:22	magic 35:14	38:19 40:23
50:21 55:5	111:15	list 6:11 8:1 12:6	main 11:5	44:24 62:14
71:13,15 74:4	letter 85:9 86:9	12:15 31:5	maintained 62:9	104:2,13
75:13 76:14	86:10,17 87:1	96:18 113:12	63:11,16 65:1	106:16 107:24
92:2,10,19,20	87:19 89:14	113:15 115:13	68:10 70:23	108:9
92:23 93:11,12	90:19,23 91:10	115:16	major 12:20	March 1:11 6:8
93:22 97:12,17	91:17,17,19,21	listed 37:17 74:1	45:1	8:2 29:14
97:18,23 100:9				

34:24 42:17 58:7 73:10 79:12 94:16,16 98:7 101:2 114:5,8,12 mark 32:23 112:1 marked 8:14 16:24 33:1 112:3 market 88:11 marking 8:8 Marvel 2:9 5:1 5:21 8:13 9:2 10:21 11:18,22 12:4,7,11,17 12:24 13:10 14:24 15:10,20 18:12 19:10,18 19:24 20:11,16 21:13,16 22:8 22:22 24:16 25:18,24 26:4 26:7,12 28:11 28:20 29:5,12 38:2 40:4,7 44:6,23 46:13 46:18 47:8,12 47:24 48:15 51:14 55:20 57:3 59:14 61:13 63:10 64:4 65:14 66:9 67:16 68:15,21 70:15 71:7 72:3,14 72:15 93:13 94:12 96:1,6,9 96:12 97:6,16 98:15 100:7 101:22 103:19 104:14,20 105:1,7,10,14 105:22 106:5,7 106:9,20 108:9	108:12,20 111:20 Marvel's 112:6 match 102:13 material 22:9 27:5 70:21 109:13 materials 22:16 109:17 matter 1:2 64:2 may 5:14,17 6:15 9:8 10:3 19:5 33:19,24 34:2,13 35:8 37:4,8 42:19 50:20 53:2,15 54:2 55:14 73:23 74:24 82:6 90:14 99:24 100:12 113:3,5 maybe 77:13,14 78:10 83:21 91:20 106:12 me 9:21 18:12 29:18 32:16 36:15 46:3 51:20 58:8 67:21 70:22 74:7 103:5 114:16 mean 13:15 14:14 19:18 21:17,20,22 22:11 29:24 41:10 43:1,1 55:24 57:22 63:4 66:16 83:17 88:10 95:1 103:20,24 104:2 107:1,12 107:19 108:2 115:18 meaning 30:1 measure 55:18	measurements 31:17 measures 57:19 meat 90:6 mechanism 73:24 mechanisms 74:2 meet 22:17 26:22 27:1 61:22 62:4 106:1 meeting 61:9 65:2 meets 22:7,10 member 2:2,3 3:10 members 7:14 9:20 46:10 mentioned 14:21 20:17 37:6 70:18 106:14 Merry 32:17 mess 108:11 met 4:1 11:3 method 67:3,24 Michelin 110:14 might 36:22 65:16 69:6 93:13 milk 104:5 million 108:4,5 mind 103:6 mine 38:8 minimal 61:17 minimize 55:7 minimum 61:20 81:4 85:8 misconceptions 88:19 mistake 94:21 Mm-hmm 29:12 65:4 105:10 106:9	model 89:15 modeled 100:9 modified 64:22 modify 21:18 47:10 56:10 60:20 61:2 78:24 100:13 modifying 68:17 Monday 6:8 monetary 15:9 15:18,21 money 88:11,16 91:3,18,23 monitored 46:22 monitoring 45:6 Monroe 117:21 months 3:22 4:1 4:3 28:24 more 7:3 13:8 14:8,17 22:18 30:1 31:6 35:4 36:6 37:1,21 38:12 40:10 42:10 43:16,16 43:20,22 44:3 44:8,9,10,13 45:1,4,17 46:21,24 48:8 48:13 49:9 50:24 53:2,15 54:2 55:10 59:15,15,15,16 59:18 60:3,3 60:22 61:15 65:13 70:12 73:24 90:15 103:22 104:8 105:17 110:4 110:22 mosquito 42:5 44:1 45:6,15 55:18,23,24 56:11 mosquitos 46:3 48:5,11,13	55:8 most 16:23 40:9 44:9 51:21,22 52:9 81:16,22 82:2 113:14 mostly 44:2 motion 1:7 8:1,8 motor 57:23 move 6:11,14 9:18 17:21 30:13 33:7 38:23 43:9 59:5 70:8 74:12 80:23 86:16 92:14 moving 7:1,4 27:12 55:3 61:5 68:7 69:10 73:17 93:18 98:5 MS 2:3 34:8,15 48:3,16 63:22 77:23 78:12,15 78:20,23 79:6 79:9 103:4 104:13 105:3,9 106:2,6,8 107:23 108:5 108:13 much 13:15 28:23,23,24 35:7 36:22 37:8,10 38:7 91:20 102:21 107:3,4 116:6 mulling 103:6 multiple 14:3 24:17 40:9 multistate 79:21 municipal 23:4 must 4:20 7:19 17:14,18 48:9 49:7 60:1 65:1 75:14 76:4 81:4,13 82:9
---	---	--	--	--

83:10,13 86:23 88:2 90:10 101:7 112:12 113:10 mutual 88:17 my 3:3,8,10 5:11 8:4 17:17 34:11 49:14 92:15 95:5 97:20 103:6 105:15 107:6 110:8 117:10 117:11,13 myself 57:5	22:23 24:8 28:4 29:17,20 40:2 41:23 44:16 46:8,14 47:18 50:11,16 61:5 62:5 69:9 71:1 75:11 76:18 80:6 84:6 85:5 110:23 NFPA 60:2,4,15 nine 4:3 no 1:3 2:14 6:17 8:6,15 9:15 10:24 14:13 19:17 23:22 32:3 33:2 38:2 47:8 49:13 71:7 74:8 76:2 76:5,9 79:23 80:19 84:1 87:21 91:3 95:9 105:17 106:12 108:1 109:8 112:9 113:1,21 114:1 115:18,18 116:4 117:23 No.'s 112:4 nod 22:22 noncompliance 55:15 56:5,7 noncompliant 45:8 none 8:7 32:23 111:7 112:1 Nonetheless 77:5 nor 86:2 North 1:9 2:5 not 4:10 7:7,13 10:22 15:17 16:13,22 18:5 25:7 26:4,4,11 26:20,22 30:11	31:13,21 36:3 36:22 37:4,10 41:3,9 44:13 45:22 46:13 49:10 50:13 51:8,17 53:7 56:15 57:20 59:2 64:17 65:12 66:10 70:21 71:8 74:4 77:17 78:22 82:12 83:15 85:10,11 86:12 88:15,15 89:2 90:1,10 91:22 92:2 96:9,16,19,23 97:22 98:21 100:2 104:15 104:22 105:12 105:12,24 106:6,7 107:6 107:11,11,15 109:8,19,21 112:23 not-to-exceed 78:5,8,14 note 7:9 34:9 62:13 82:21 notes 43:19 117:11 nothing 59:1 88:22 notice 4:9 12:15 85:19,20,21 86:12 97:1 102:21 notification 13:21 notified 13:16 notify 13:14 now 9:17 16:6 34:23 43:12 60:19 61:1 64:7 90:24	91:11 94:17 112:9 number 11:15 11:19 13:4,14 14:10 17:2,2 25:1 29:14 35:14 37:22 39:10,12 40:5 46:21,24 47:22 48:1,10 52:18 55:15 56:24 65:6 67:8 90:3 113:9 114:15	official 117:13 offsite 19:21 often 70:22,23 oftentimes 63:16 Oh 96:4 oil 36:8 oils 54:21 109:11,14,14 109:16 okay 7:23 9:11 9:17 12:11 13:10 16:1,2 17:11,19 18:20 19:1,15 20:23 21:3,5,15 22:20,23 24:7 24:23 26:6 27:4 29:11 30:10 32:13,15 34:21 38:22 43:8 48:16 50:4,16 55:2 56:13 58:6 61:5 64:20 66:18 72:16,19 73:16 76:17 81:16 84:5 85:10 86:8,14 86:15 87:7 90:13,19 92:24 96:11,14 98:4 105:9 108:5,13 110:1 111:14 114:8 old 20:2 46:19 92:3 once 43:4 79:22 one 3:24 8:19 11:4,9 14:4 16:7 20:1 25:14 29:7,24 30:15 31:22,23 31:24 33:20,22 34:1,13 36:7 38:10 39:1,3
N			O	
N 2:1 name 3:3 9:23 87:18 110:7,8 nationally 87:9 87:10 nationwide 14:17 107:5 Natural 45:5 nature 109:4 near 57:7 58:4 necessarily 16:22 53:20 necessary 15:7 21:12 33:13 77:8 82:12 84:22 85:3 89:11 101:8 need 25:13 27:6 35:12 38:16 55:1 63:19 64:3 77:12 79:15 83:6,15 90:11,20 95:8 114:19 115:12 neither 86:2 new 15:17 68:18 95:9 102:22 next 6:2 7:2 13:2 15:4 19:2 21:6				

39:17 40:20 42:16,18,22 43:9 44:4 45:2 46:23 49:5,10 51:20 54:14 57:18 59:6 62:6,17 65:7 66:19 68:23 72:22,22 73:24 75:21 82:7 85:8 89:18 95:9 97:3 106:12 107:20 108:4 109:3 110:16 113:1 114:20 ones 66:10 106:24 107:1 107:15 108:15 online 33:5 81:22,23 113:7 only 14:5 18:10 18:19 20:24,24 23:6 24:19 27:17 30:12 35:16 37:4 49:9 60:5 97:3 108:24 onsite 42:21,24 43:1 44:12 63:11 64:11 onto 7:1 9:8,18 17:21 30:13 38:23 43:9 55:3 59:5 70:8 73:17 80:23 86:16 92:14 93:18 open 6:1,2,24 opening 5:14 9:7 9:9 29:21 operating 28:9 28:10 operations 79:17,21,21	87:2 operator 18:5 20:8 23:16 73:22 75:14 76:22 operators 49:6,9 74:24 opinion 4:7 opportunity 77:5,12 86:6 111:2 112:13 115:5 opposed 18:20 opposite 98:9,12 98:14 option 67:1 optional 67:3,24 order 4:5,7,18 5:11 10:10 16:22 17:6,23 22:18,21 25:12 27:14 30:15 33:10,13 39:3 42:1 43:10 51:1 55:4 56:16 59:7 61:7 62:7 68:8 69:16 70:10 71:2 73:19 74:14 76:19 81:1 86:20 94:6,18 95:14 96:17 98:21 99:11,22 ordered 16:22 orderly 5:23 ordinary 58:14 organization 9:23 10:24 organizations 11:15,19 organized 9:19 organizing 17:4 other 6:23 10:3 10:17 19:22	27:22,23 30:11 30:24 36:13,17 37:4 47:21 48:1 50:5 51:22,22 54:21 57:10,21 63:3 66:19 71:14,15 71:18,20 79:19 82:19 83:14,16 83:19 87:22 89:12 93:20 94:13 96:21 97:4,17,24 100:9 107:14 109:16 112:9 114:18 115:23 116:4 others 31:12 33:24 otherwise 22:11 29:19 69:24 our 12:18,19 13:11 28:11 29:5 40:11 47:8 61:2 68:16 71:22 72:6 79:2 100:18 103:20 105:8 106:22 out 11:1,14 13:17 16:24 34:14,22 40:18 62:17 64:4,14 64:18 71:11 77:12 78:15 79:8 90:6,10 96:1 107:11 outdoor 27:19 27:24 28:1 57:15 outreach 12:18 46:12 outreached 12:20 outright 50:18	outside 27:21 66:2,7 78:19 79:1 80:5 83:20 over 7:24 17:18 31:14 35:8 37:6,8 38:9 45:1 103:6,12 106:16 overburden 38:12 own 8:1 49:9 83:24 owner 18:5 20:7 23:16 73:22 75:14 76:22 owner/operator 63:5 owners 49:6,9 74:23 ownership 88:9 88:10 oxygen 109:13	56:6 57:17 75:8 76:6 82:20 83:22 84:24 88:24 89:12 91:6 100:10,18 101:19 104:18 104:20,23 110:17 participants 4:19 113:23 participate 111:2 participating 116:5 particular 63:10 parties 11:20 52:13 parts 43:11 53:12,23 59:22 60:11 102:4 passenger 31:8 43:18 46:17 59:10 pay-in 75:23 paying 40:17 payment 74:3 75:15,17 82:19 89:7 peak 40:11 penal 82:8 people 46:7 52:8 58:21 87:8 88:14 per 14:18 28:8 28:10 31:9 46:19 74:1 88:9,13 percent 14:16 29:3 Perfect 17:12 period 38:13 46:4 75:23 78:5,22 85:8 periodically
--	--	---	--	---

P

P 2:1,1
p.m 1:12 113:18
P.O 2:6
page 4:13 11:24
48:7
paper 113:10
paperwork 77:9
paragraph
23:20 29:22
Paragraph's
39:20 41:22
paragraphs 79:1
parameters 28:2
parking 43:3
part 3:22 10:14
12:18 15:13
18:4,21 20:20
23:9 44:17
46:9,14 47:4
47:19 51:24

81:21	41:19 60:7	12:10 17:10	prepare 77:8	49:21,22 56:1
periods 45:11	84:2 91:18	18:15 20:18	prepared 9:6	problems 43:23
permit 15:24	placed 45:23	23:13 30:4,8	63:9	43:24 44:14,19
23:5,18 97:18	106:16	39:19 50:3,9	prescribe 99:24	48:5,12 103:12
97:20 100:1	places 82:20	52:20 53:9	prescribed	103:21 104:1
102:16,22	plan 55:6,12,19	54:5 56:9	62:10,15 63:4	106:14 114:14
103:5	59:12,12 106:3	58:20 61:3	64:16,23 65:8	procedural 7:6
permittee 102:21	106:3	62:1,23 65:19	65:22 68:11	112:10
permits 15:19	planning 72:9,9	66:16 68:5	69:12 74:19	procedures 7:4
100:9 102:13	plans 18:15	69:2,18 70:6	84:9 95:18	proceed 9:6 10:8
permitted 23:7,8	56:10	71:12,22 73:7	99:14 100:3,8	110:2
permitting	please 7:9,16	75:2,9 79:2	100:16	proceeding 3:5
15:17 100:10	8:22 9:21,22	84:13 92:8	prescribing	7:5,23
person 7:17	25:16 29:18	93:6,16 94:4	100:15	proceedings 1:6
88:13 97:14	46:15 51:2	95:23 97:10	present 2:9 3:8	11:21 117:7,9
personal 117:11	53:18 56:24	98:18 99:8,19	7:14 109:17	process 11:13,14
personnel 5:17	60:9 70:1	100:18 101:14	112:21	14:17 28:21
12:3	73:20 74:6	101:24 102:7	presented 44:13	40:10,12,21
persons 113:11	89:2 92:21,22	102:18 103:1	presently 75:5,7	50:23 70:19
113:19	96:17 99:5	114:23 115:6,8	president 5:3	110:21
perspective	100:5 110:7	115:17,23	presume 58:15	processed 20:3
20:10 107:24	113:12	potential 19:14	pretty 31:7	26:8
phase 64:16	plural 49:7,11	potentially	36:23 64:5	processes 12:13
phone 113:8	49:20 50:15	37:15	107:15 108:3	processing
117:22	point 34:23	pounds 46:19	prevent 48:12	14:11 28:14
phrase 21:7	39:18 62:17	47:9	prevented 48:9	45:7,12 46:2
42:20 58:11	73:15 96:1	practicable 77:2	preventing	processors
60:1 65:8 67:5	pointed 34:22	78:4	55:18	11:10 12:20
68:1 79:16	points 36:13,17	practical 78:8	prevents 105:23	produce 7:17
98:9,11 101:7	64:13	practice 15:12	preview 11:11	product 109:22
101:17 102:3	Pollution 1:1,9	pre-file 4:19	previously 23:2	production 28:8
picture 58:16	3:2 102:13	113:21 114:1	primarily 45:9	28:18,24 41:11
pile 32:1 33:12	portion 18:9,10	pre-filed 4:22	primary 11:4	products 109:10
35:7,18,19	60:14,16	5:11,13,16,24	principal 83:16	109:22
36:20,21 37:11	pose 19:8,14	6:23 11:18	83:17,18 85:22	program 5:2
piles 31:9 33:17	20:9 59:15	12:1 62:18	86:3	85:2,3 89:16
35:14,22,23,24	posed 7:10	111:12,20,21	prior 75:22 95:6	Programs
37:5 46:2 48:6	poses 44:8	111:22 113:24	115:14	110:10
Pirelli 110:14	positive 70:17	pre-filing 6:10	privileged 7:7	prohibit 55:21
placard 69:23	70:22	6:18 115:2	probability 22:1	prohibition
98:10,12	possible 32:10	precise 94:2	36:2	50:19
placards 99:1	37:18 48:19	precisely 37:21	probably 28:15	proliferation
place 4:16 15:8	115:21	prefers 17:18	33:4 93:3	45:15,17 56:1
15:15,18 25:16	post 114:11	prejudgment	105:17 106:22	promote 51:1
36:3 37:18	post-hearing	7:13	problem 45:22	promulgate

<p>84:17 89:8 pronounce 87:8 proof 76:4 propensity 52:7 proper 51:9 properly 61:16 proposal 3:13 3:17 4:4,6,12 6:3 7:13 10:14 10:18 12:19 13:5 14:22 42:12 43:13 48:20 50:12 51:18 61:8 69:13 92:16 110:21 proposal's 4:11 propose 3:21 4:2 16:8 17:13 47:15 72:13 proposed 1:4 3:6 5:7 15:6,11 18:1 21:17 23:10,19 27:15 28:5 30:17,20 39:3,11,20 42:1,8 45:24 50:21 52:22 62:15 66:3 67:6,17 68:2 71:20 74:5,22 76:23,24 80:19 87:17 100:14 105:5,8 108:15 110:17,19 112:15 proposes 23:12 55:5 proposing 18:23 20:18 23:13 39:18 41:21 47:9 62:23 76:14 protection 2:4,8 3:13,16 51:7</p>	<p>protections 51:6 protects 88:7 provide 12:2,23 15:5 19:3 24:14 39:21 51:2 59:8 63:1 71:21 74:21 76:4 88:24 97:3,4 100:19 100:21 provided 10:18 provides 24:24 35:5 48:18 49:6 77:5 81:3 82:2 83:14 86:23 94:1 112:12 providing 5:19 provision 22:4 49:8 51:4,12 51:15 53:1,16 54:3 58:15 59:23,24 60:14 60:16 66:21 67:7,20 68:3 70:1 73:13 79:19 80:10,13 90:7,7 98:3 provisions 3:15 15:11 17:14 25:3,5 38:24 80:18 97:24 98:1 PTE 46:19 47:9 47:14 PTE's 47:13 59:15 public 4:15 113:4 115:4 publication 4:9 81:9,11 publications 31:1 published 31:1 31:22 32:9</p>	<p>81:18,18 purchase 18:6,7 18:8,18 19:7 20:8,13 22:18 22:21 26:18 27:2,2 71:17 71:20 purpose 91:16 115:3 pursuant 3:17 24:11 83:2 90:1 put 12:14 31:16 79:1 91:23 98:12 101:11 104:2,6 107:11 107:23 putting 104:17 pyrolytic 36:8 109:11,16</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualify 26:3,5 62:2 71:13,18 76:2,9 quantities 19:5 19:12 31:16 41:9 quantity 31:8 query 13:11 questions 5:22 5:24 6:1,7,9,10 6:12,13,16,17 6:23,23 7:1,3,9 7:22 8:1 9:8,12 9:13,15,18,19 10:6,7,10 16:3 16:5,6,14,17 16:23 17:3,20 17:21,24 27:13 29:14,15,16,18 30:4,6,11,14 31:4 34:22 35:10 39:1 49:3,4,17</p>	<p>50:11,12 62:18 66:12 70:9 74:13 79:12 80:24 86:18 96:5 100:24 102:7 103:7 110:2 112:9 113:7,23 114:1 114:17,18 116:4 quickly 57:22 84:16 quote 29:22 42:21,22,24 43:1 49:6,7 52:23,24 53:13 53:15,24 54:2 58:11,13 60:14 60:15 65:8 67:5,5 68:1,1 79:15,15,16,18 80:10,11 81:3 81:7 86:23 87:3 89:24 90:2 94:22 98:9,10,13,13 98:14 101:7,17 101:19 102:3</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>R 2:1 113:18 R-C-R-A 85:13 R15-19 1:3 3:7 racetrack 24:21 raise 54:15 103:23 105:4 raised 36:18 42:15 43:6 102:10,12 raising 9:21 103:10 ramp 35:17 range 32:5 Rao 2:2 3:10 12:12,22 13:1</p>	<p>15:16 16:1 18:22 19:1,17 20:6,12,21,23 21:3 22:3,20 22:23 26:1,6,9 26:20 27:4,8 28:17 29:2,11 31:3 32:8,13 32:15,19 33:8 34:7,22 48:17 48:22 49:1,12 49:15,18 56:4 56:13 61:19 62:3 65:21 67:12 71:23 72:5,16 76:13 76:17 79:10 80:17 84:5 86:4,8,14 92:10 97:11 98:4 104:18,22 106:12 108:14 rare 34:18 rate 36:8 rather 16:9 19:24 46:16 47:23 48:11,14 49:11 62:23 73:2,6 76:13 95:17 rationale 23:10 28:9 59:8 76:20 85:6 RCRA 82:18 85:12 reach 11:1 reached 11:14 read 5:13 6:13 8:10 16:6 21:11 23:15,20 29:17 30:11,15 34:23 42:20 43:11 55:3 61:5 64:24 68:7 73:17</p>
--	--	---	--	--

74:4,6 75:13 77:4 83:9,9 98:13,16 101:5 reader 67:20,21 readily 107:11 107:16,22 reading 54:12 54:12 58:15 90:7 92:15 reads 50:1 71:14 94:8,21 99:12 99:23 ready 33:6 38:23 59:5 74:12 86:16 92:14 real 84:16 reality 32:7 realized 94:17 really 10:21,24 11:12 14:5,13 32:3 52:1,8 64:13 65:12 108:12,24 109:15 reason 23:23 27:7 32:8 35:14 53:7 57:11 94:1 reasonable 32:6 reasonably 101:8 reasons 10:13 11:16 22:24 26:9 43:19 48:7 50:18 55:15 72:14 reassess 77:14 recall 11:9 46:13 receipt 69:15,21 75:16 receipts 52:5 69:11 receive 14:7 98:23	received 4:21 6:6 8:2 24:17 39:7 52:11 64:9 69:22 75:18 110:18 receives 76:1 receiving 115:17 recent 81:16 113:14 recognize 35:9 record 5:12 6:12 6:14 7:8,12 8:3 8:10 13:4 16:15 32:11 39:9 44:18 62:9,12,12,19 63:13,16 64:1 68:14 74:21 84:11,16 89:3 94:11 95:21 99:17 100:6 110:7,23 recording 67:3 67:24 recordkeeping 52:3 59:12 61:11,20 106:4 records 63:13 65:1 Recovery 5:4 85:13 rectangle 34:1 Reduction 4:24 redundancy 60:19 redundant 59:24 60:12 61:1 65:10 refer 53:6 reference 24:1 53:2 73:15,21 81:12 82:13,13 82:15,18 83:7 referenced 82:19 84:21	references 31:13 referred 99:5 referring 16:20 52:23 58:11 72:11 91:5 94:17 101:21 102:5 refers 18:7 53:3 53:4 80:18 83:19 reflect 7:13 25:17 33:23 76:8 regard 49:5 50:17 53:11 56:17 66:20 74:14 79:14 80:8 81:1 92:17 93:20 96:15 98:6 99:9 101:5,6 101:16,17 102:2,3,11,20 112:21 regarding 30:17 35:2 58:9 59:22 62:7 65:5 82:3 89:18 93:19 94:15 regardless 58:23 region 21:23 register 4:10,12 52:14 81:21,24 registered 13:12 14:1 52:2,9 68:16 registration 12:14 94:10 95:20 97:14,15 97:19 registrations 95:17 regs 64:14 regulate 79:20	87:5,14 regulated 79:17 80:1 87:2 regulates 87:9 87:19 regulating 46:10 47:1 78:3,9 105:3 regulation 21:20 47:6 94:24 regulations 14:23 15:15 27:22 29:22 30:24 39:4 41:17 45:9 58:10,12 64:5 68:18,22 75:5 75:8 82:14,14 82:21 83:3 85:12 87:18 95:2,4,16,18 101:18,20 102:14 104:17 106:16 110:18 regulatory 39:7 61:17 79:20 reinsurance 82:11 Reinsuring 83:2 reiterate 16:12 113:3 related 48:4,24 56:12 103:7 108:19 113:21 relative 102:7 release 76:21 77:6,10,17 relevant 7:7 73:12 remaining 49:17 64:11 100:24 remains 22:13 removal 30:21 77:16 80:11 removed 56:18	57:6 64:9 removing 76:20 rendered 46:5 renumbering 16:9 repeat 36:15 47:3 53:18 57:3 60:8 67:16 repetitious 7:7 rephrased 89:23 replace 37:18 45:24 86:6 replaces 27:18 replacing 17:14 report 1:6 32:11 99:13,16 reported 2:12 117:6 reporter 7:15 8:11,22 10:4 32:17 84:19 114:6 117:6 reporting 59:13 61:11 106:4 reports 31:19,21 represent 70:17 70:19 represented 10:23 representing 9:24 represents 58:4 request 77:6,17 112:12,19,22 requested 7:20 46:11 96:2 112:16 requests 11:24 13:3 42:11 43:23 53:5 55:16 59:7 61:7 62:11,18 68:12 69:14 74:20 84:10
---	---	--	--	--

<p>93:22 94:9 95:19 99:15 require 15:19 42:4 52:10,12 58:21 66:24 67:22 77:1 required 13:9 13:14 57:19 61:21 63:11,15 69:13 74:17 85:9 89:22 90:2 95:10 101:18 102:3 105:20,20,22 requirement 26:19 27:1 61:21 63:11 69:21 106:1 requirements 13:21 15:8,17 15:24 18:4 23:9 24:6 26:15 42:8 43:14,21 44:21 45:23,24 53:13 53:24 54:14 55:16 59:17 61:10,11,17 63:2,6 65:2 70:14 73:23 76:6,24 84:23 85:12 89:11,21 101:11 102:23 104:7,8 108:14 requires 55:9 62:8 68:9 69:11 74:17 84:8 95:15 99:12 requiring 42:6 46:5 55:6 59:11 64:7 85:8 100:2 reserving 16:8 resides 83:16</p>	<p>resource 5:4 35:6 85:13 respect 62:21 64:24 71:12 respond 16:14 16:17 17:9 29:18 30:3,6 responded 6:22 response 5:19 39:6 107:2 restate 67:19 resulted 20:4 107:2 results 31:20 retail 104:10 105:18 retailer 104:10 104:17 105:16 retailers 13:13 13:13,16 104:5 105:11,20 retain 34:17 retread 40:17 41:7 retreaded 40:15 retreader 41:7 retreaders 11:3 11:6 14:14,16 40:11 retreading 14:3 14:18 28:6,21 29:9 39:5,10 39:16,23 40:8 40:13 41:4 42:2 61:8,14 70:12 71:4,24 retroactively 102:13 review 80:4 97:18 reviewed 84:4 110:18 reviewing 50:12 51:10 66:22 114:13</p>	<p>revised 3:18 23:19 67:13,14 102:22 revising 75:11 102:13 revision 71:21 revisions 3:21 3:23 27:15 39:4 42:1 revisit 65:17 right 3:8 10:6 26:9 47:11 57:7 61:1 65:14 66:9 71:9 75:20 78:18,20,23 80:21 91:11 103:18 105:14 106:4,5 risk 36:12 59:16 82:10 RMA 110:18 road 35:18 room 1:10 10:2 round 46:21 rubber 57:23,24 110:10,11 rule 4:9 5:8 6:1 6:15 7:1 9:20 10:8,11 15:8,8 15:10 16:8 17:15,22 20:14 25:4,17 31:23 46:4 47:15 49:22 51:10 53:7 56:7 58:24 60:23 65:7 66:23,24 67:22 74:23 94:22 101:12 102:5 104:19 104:24 105:1 rulemaking 3:4 3:13,14,16 4:15 6:3 7:5,18</p>	<p>9:19 10:14,18 12:15 13:5 15:6 62:15,20 69:14 74:22 113:4,17 Rulemaking... 1:4 rules 6:8 7:6 16:5 27:23 29:22 39:20 47:9,21 48:1 52:22 55:21 56:2 94:22 97:24 102:4 104:22 112:15 112:15 run 104:5 running 109:5 runoff 56:19,21 57:8,13 58:1,2 109:2,3,6,15</p>	<p>sanitary 23:16 24:3 satisfy 73:23 79:16 savings 88:11 say 10:2 29:2 47:4 57:16 58:20 65:10 75:13 78:4,6 84:16 90:10 114:12 115:21 saying 107:15 says 48:8 82:22 90:11 100:11 scale 28:20 108:2 Schedule 91:8 scheduled 4:16 6:19 110:24 113:17 schedules 91:7 scope 39:5 Scrap 31:11 32:21 34:9 season 40:11 seasonal 28:22 28:23 second 4:15 6:19 17:12 37:13 41:1 113:16,20 113:24 115:3,3 115:6 Section's 16:10 42:6 94:24 sections 16:8,9 47:21 62:14,17 102:4 secure 91:21 see 13:12 16:24 17:6 30:6 32:9 38:7 40:13,18 48:22 65:23 77:13,15 86:2 88:20 92:1 105:15 107:6,8</p>
--	--	--	---	--

<p>seeing 8:7 32:23 111:6 112:1,9 113:1 116:4 seeking 97:14 seem 54:14 seems 54:12,13 60:5 103:15 104:6,8 seen 41:13 44:8 44:11 50:13 57:18 104:1 106:15 sees 78:9 segments 33:23 segregated 104:15 semicolon 72:22 send 63:24 sense 34:7 sent 12:19 68:16 sentence 59:23 60:11 73:21 74:10 80:17 separate 24:21 24:22 28:6 111:16 sequence 52:14 serious 59:18 served 113:10 service 12:6 113:12,15 115:13,16 set 6:7 23:14 35:10 40:1 63:6 sets 90:6 99:23 setting 28:15 settling 35:7 37:5,8 seven 45:1 several 14:3 19:11 49:3 shall 17:14,18 101:18 115:21 shallow 31:9</p>	<p>32:1 shape 33:17 34:3 shaped 10:14 share 82:10 sharing 8:11 Sheerin 2:11 110:4,8,9 111:5 sheet 17:3,7 30:7 48:18 shipping 42:23 short 79:4,22 83:6 shorthand 117:5 117:7 should 35:7 43:6 49:10 50:2 56:18,21 57:5 57:13 61:18,21 72:21,24 75:13 77:4 81:12 98:9,11,16 106:19 113:8 114:3 shouldn't 56:1 show 61:22 showed 45:12 shown 82:7 shows 35:21 shred 20:7 35:14 35:23 shredded 25:13 25:19,22 26:2 26:10,21 shredding 25:15 shreds 35:22 36:4 37:2 108:7 sides 98:10,12 98:14 signal 9:21 signature 117:13 significance</p>	<p>33:11 significant 15:9 15:18,21 43:22 44:8,9,10,14 significantly 59:18 signoff 77:9 similar 76:23 86:9,12 89:7 97:17,24 simplified 51:5 64:6 simply 11:20 60:2,22 66:24 67:22 since 6:9 43:4 55:12 58:13 106:15 single 28:14 45:2 86:19 95:9 singular 49:11 49:21 50:2,15 sir 40:6 54:17 83:8 110:3 114:21 site 14:1,9 25:14 25:20,22,23 26:2,8 44:7 49:10 50:1,2 50:15 52:24,24 52:24 53:3,5 64:10,11 70:23 74:1 75:18 76:1,3,5,8 82:17 105:2 sites 13:23,23 14:8 25:16 31:15 42:9 43:15,21 44:3 44:10,12,19 48:8 49:7,10 50:1,15 53:6 55:10 59:14,20 59:20 68:16</p>	<p>85:14 103:20 103:21 104:1 situations 55:13 six 4:1 51:23 size 13:6 14:5,14 34:4 sizes 14:15 sliced 25:14,19 25:22 26:21 small 28:20 107:9,15,21 smaller 59:20 106:21 smoke 107:10 sold 22:14 solely 7:11 solid 23:5,18 109:22 solution 45:22 some 6:13 11:10 17:4,14 22:6 31:2,7,10,12 32:2 33:24 34:22 35:9 36:22 37:20 40:9 41:13,15 51:10 56:5 58:17 61:20 65:16 66:9 69:5 83:21 85:18,19 87:8 107:9,13,14 109:11,12 114:10 somebody 38:6 someone 22:4 40:16 something 35:20 58:3 63:18 64:24 80:5 93:3 102:14 105:5,7 sometime 114:5 114:12 sometimes</p>	<p>109:19 soon 77:1 78:4 115:20 sooner 115:22 sorry 16:19 37:19 42:21 49:18 62:22 67:9,15 73:2 92:24 95:17 96:9 98:11 110:19 111:10 sort 37:20 56:20 56:21 57:8,14 108:24 sound 51:2 sounded 46:20 source 35:3 92:19 speak 7:3,16 107:5 speaking 7:16 specializing 5:5 specific 19:22 22:17 30:1 54:11 63:21 84:23 89:11 110:22 specifically 37:7 64:3 specification 21:8,24 22:17 specifications 22:7,11,15 specified 61:10 specifies 82:5 specify 87:18 95:9 spelled 64:4,14 spend 38:16 spreadsheet 63:17 Springfield 1:10 2:6 square 20:5 34:1 SS 117:2</p>
--	--	---	--	---

<p>stacked 35:15 37:16 38:5 stacks 37:16 staff 7:10 78:1 staffing 77:19 stalled 52:16 stamping 11:6 14:4 28:7 29:6 39:6,10,16,23 40:21 41:10 42:3 61:9,14 70:12 71:4 72:1 standard 15:12 60:15 64:8 88:8 standardized 84:8,17 89:8 standards 39:22 40:1 60:5 standby 89:24 90:21,21,24 91:23 standpoint 36:11 stands 60:19 start 9:13 10:7 27:12 39:1 70:8 80:12 started 9:14 11:2 38:11 46:20 60:4 starts 60:1 state 9:22 31:21 38:7 45:2 58:12,17,22 79:15,18,20,24 80:2,4,5 83:14 83:15 84:1 87:3,5,13,15 87:18 94:23 95:3,7,11 110:7 117:1 state's 95:2 stated 5:11</p>	<p>58:24 62:14 72:14 97:23 statement 5:15 9:7 10:13 11:16 22:24 43:19 48:7 50:17 60:13 statements 9:10 states 10:12 29:22 30:19,24 37:15 39:3 51:22,23 52:10 73:11 79:20 83:20 84:4 87:22 88:6 94:22 95:15 98:9 110:13 stating 9:24 statue 97:23 statute 15:24 48:2,24 93:21 104:9,21 statutory 7:20 15:2 21:9 48:19 51:15 92:18 93:11,14 93:20 97:12,17 104:23 115:18 stay 36:23 stenographic 117:10 Steven 2:13 114:4 117:5,20 sticker 98:12 stickers 111:18 still 20:9 32:2 33:22 34:14 41:19,21 52:17 73:12 86:11 103:9 stockpile 31:15 33:19,22 34:5 stockpiles 30:22 stockpiling 52:7 stocks 88:17</p>	<p>storage 13:12,23 13:24 14:1,6 14:21 27:17,19 27:21,21,24 28:1,3 33:12 37:22 42:9 44:2,19 45:13 46:2 48:6 55:10 59:12 68:16 75:22,24 100:1 103:8 105:2 106:3 108:16 storage/proces... 45:3 store 61:16 103:14 105:18 105:20,23 stored 19:20 23:8 25:14 41:8 43:1 103:16 stores 26:2 streamlined 50:24 Street 117:21 stricken 20:22 43:5 64:23 74:5 75:14 strike 39:19 41:21 55:5 striking 42:14 72:9 strong 41:6 struck 42:20 structure 53:15 54:2 study 45:12 112:14,17,20 112:23,24 stuff 77:19 83:22,23 88:21 subdivided 43:11 subject 15:6</p>	<p>18:4 23:9 39:24 41:18 47:6 72:7 104:7,16 submission 99:13 submissions 16:18 submit 32:11 62:11 63:5,8 63:12 66:3,8 66:12 68:12 69:1,15,17 75:8,15 84:10 85:4 89:3 94:9 95:20 99:15 100:5,16 110:22 114:23 submittal 34:24 submitted 3:17 7:19 16:23 63:15 73:9 74:7 79:12 84:12 94:13 98:6 100:3 101:19 submitting 32:21 69:8 subparagraph 54:8,18 62:24 71:21 72:10 73:2 subparagraphs 54:9 subpart 26:14 40:1 61:12 69:23 73:23 76:6 82:20 84:24 87:16 89:12 98:24 101:20 subparts 29:16 39:2 86:18 102:5 subsection 18:2</p>	<p>21:8 22:5 23:1 23:3 24:8 25:11 33:11 37:15 43:15 49:5,5 50:5 53:3,4,12,22 62:8 65:7 67:2 67:11,12 68:9 69:10 71:3 74:17 75:11 76:15,22,23 81:2 84:7 86:22 87:24 89:18,23 92:20 93:21,23,24 95:15 96:18,23 99:12,23 subsections 42:4 61:10 substance 4:11 109:5 substitute 85:24 substituted 77:7 subtitle 82:18 85:14 succinct 60:22 such 19:7 31:8 42:4 84:22 89:2,10 sufficient 101:10 suggested 93:13 96:19 suggestion 78:16 suggests 53:12 53:21 Suite 117:21 sum 82:8 summary 5:15 63:14 68:10,13 summer 28:24 supplied 22:10 supplier 70:24 supply 62:19 68:19,23,23</p>
---	---	---	---	---

<p>support 35:6 36:24 110:20 supports 44:19 supposed 45:21 55:13 63:24 64:1 114:7 sure 22:6 53:19 57:20 60:10 63:23 69:9 75:21 76:11 77:11,16,18,20 93:7,9 96:8 97:8 sureties 81:5 82:3 83:1 surety 74:2 81:3 81:13 82:6,9,9 83:10,13 84:8 84:10 85:7 86:2 90:20 92:11 surety's 82:5 Survey 45:6 swear 8:22 swearing 5:20 sworn 5:18 8:19 9:4 10:4</p> <hr/> <p style="text-align: center;">T</p> <p>T.A.G 5:4 tailors 43:20 take 4:16 25:16 27:8 36:3 46:18 47:12,13 73:5 77:1 97:13 taken 35:8 37:9 64:17 93:22 117:11 takes 10:2 107:18 taking 69:5 talk 112:10 talked 35:11 42:19 55:20</p>	<p>109:1 talking 40:24 45:10 108:2,23 technical 3:11 tell 84:3 ten 31:8 51:24 tend 36:5 tends 52:6 term 17:18 27:17,18,18,23 28:6 53:4,5 83:19 terms 28:5 territories 83:22 Terry 2:10 5:3 9:2 107:5 111:21 testify 112:21 113:20 testimony 4:19 4:22 5:10,12 5:13,16,19 6:18 7:2 11:18 12:1 111:13,20 111:21,22 112:7,7,8 113:21,23 115:2 text 58:18 101:12 than 6:17 10:3 14:9,17 16:9 28:19,21 35:4 35:4,24 40:10 42:10 43:16,16 44:3,11,12 45:1,4 46:16 47:23 48:8,11 48:14 49:10,11 51:21 53:16 54:2 55:10 58:2 59:15 70:13 71:14,16 71:19 72:6 73:24 78:6</p>	<p>82:7 95:17 103:14,22,23 105:17 106:18 113:22 114:2 115:22 thank 8:13 9:5 13:1 21:3 27:8 29:11 30:10 49:1 52:21 53:10 54:6 56:14 58:6 59:4,21 61:4 62:3 65:20 68:6,20 69:19 70:7 73:4 74:11 75:10 79:6,9,10 80:16 84:14 89:17 92:9 93:17 94:5,14 95:12 98:19 100:23 101:15 102:1,9,19 105:9 106:8 108:13 111:1,4 116:5,6 Thanks 99:20 that's 11:12 13:17,18 14:18 15:2 17:2,20 19:24 21:12 24:20 25:7,24 27:7,11 29:5 32:8 33:4 44:15 45:23 47:14 48:13,24 49:7 51:14 52:9 53:22 54:24 55:23 56:2 59:16 60:18 63:18 64:17,19 65:9 67:15 69:2 72:12 75:7 78:7 82:7 85:3</p>	<p>86:12 92:6 93:2 94:20 96:9 97:17 98:3 102:15 103:15,19 104:3,20 105:14 106:20 109:21 their 9:13 16:18 22:17 31:5 41:11 58:17 61:16 63:14 76:14 83:23 88:13 their's 4:1 them 11:3,7,11 12:6,14 17:6 19:21 36:6 38:9 40:10,17 41:6 44:5 45:23 52:10,11 63:8,20 66:10 69:8 74:23 86:6 91:21 95:10 100:16 104:15 105:23 106:19 110:22 111:15 112:1 116:1 theme 60:21 then 4:3 9:8 10:8 11:13 20:12 26:18 30:11 34:2 35:17 37:3 52:13 57:24 60:12 61:3 62:13 77:8,14 78:5 81:12 83:5 85:23 86:1,1 90:7 91:23 92:6,14 98:2 109:1,14 115:10 116:2 there 3:24 7:22</p>	<p>8:4 10:22,24 14:10,13,15 17:7 22:13 25:18 28:12,20 29:7,16 30:13 31:6 32:9 36:16 41:5,16 42:22 43:9 44:10 45:18 46:4 48:10 49:2,19 51:5 53:7 54:11 55:22 56:5,5,6 57:5,7,23 59:1 59:6 60:19 62:5,13,14 64:13 65:6,11 65:12 66:2,7 72:21 74:6,13 77:12 78:22 79:11 80:19,23 86:11,18 88:18 91:1,1,3 93:11 95:9,13 96:14 99:10,21 101:11 102:12 103:22 104:9 106:17 108:9 109:5 111:5 114:18 115:5 115:17,18,23 there's 13:15 60:18 78:18 98:1 therefore 27:6 42:10 62:11 68:12 69:14 70:20 74:20 76:3 84:9 95:19 99:15 112:20 these 15:18 16:14,17 19:8 20:7 30:3 37:18,19 39:13</p>
---	---	---	---	---

39:23 40:13,14 40:14 41:4,4 41:12 42:7 44:4 45:3,20 47:6 57:15 59:19 61:21,22 62:18 70:16 72:7 74:1,21 83:24 91:11 101:18 102:4 104:7,7,16,16 106:15 107:14 109:1 they'd 32:6 They'll 84:20 they're 26:16 40:16 41:8,8 51:19,23 58:21 59:2 77:16 86:12 91:5 95:7,10 105:22 106:21 107:10 107:11,16,21 111:17 they've 31:13 46:3 77:14,21 77:21 thing 36:7 37:1 51:20 85:17 96:3,12 97:20 100:11 108:8 things 7:23 9:14 38:15 83:20 91:1,5 107:14 think 10:5 11:15 15:20 19:22 29:15 35:12 36:23 38:16,20 38:21,23 41:16 44:14 51:16 52:16 56:4 58:3 59:5 60:18 69:5,7 70:18 71:8,23 72:3 74:12	77:3 86:16 90:16 92:3,13 93:13 97:19 108:3 114:6 115:8 thinking 11:11 Thirty-four 96:13 Thirty-nine-h... 104:14 Thompson 113:18 those 5:13,22 6:9 10:19 11:15 12:3,20 12:23 13:20 16:2,6,9,15 18:7 20:13 29:8,17,18 30:16 31:19,19 34:4 38:15 39:1,21,21 40:19 43:6 46:3 49:9 50:13 52:4,12 56:11,12 58:15 59:17 60:6 61:18 62:17 66:8 73:9 74:16 75:8 81:4 88:12 91:4,9 101:4,6 102:24 107:3,7 111:24 113:11 114:11 thought 51:12 threat 19:9,14 20:9 42:5 44:8 44:9 threats 59:18 three 8:11 10:10 12:1 25:22 50:11 74:13 80:23 101:4 111:15	threshold 28:8 28:10,13 43:14 43:17,20 44:15 44:20 46:12,15 47:5,13,20,22 48:14 51:4,21 59:9,17 61:9 62:4 103:10 104:6 105:4 thresholds 28:18 61:22 through 6:14 35:13 36:23 52:6 77:13 89:22 90:9,11 113:5 throw 13:17 Thus 30:22 tie 24:5 71:15 time 4:11 5:18 7:17 8:19 9:16 11:1,9 14:9 38:17 42:22 45:9,12 46:4 75:3 77:19,20 78:2,6,22 85:7 89:2 98:2 111:2 113:1 114:10,19 timeline 7:20,21 timely 4:21 times 31:10 35:21 title 9:23 29:24 today 3:8 4:14 6:15,16 7:10 9:24 16:14,16 17:6 29:18 50:13 69:5 86:21 111:3,6 112:20 116:5 today's 5:9,14 7:15,23 73:10 79:13 80:8 94:7 101:1,3	112:2 113:2,19 114:3 Todd 2:9 5:1 9:2 111:20 together 8:19,20 34:4 69:8 tons 43:17 44:12 46:15,16,19 47:5,14 59:10 59:15 too 75:21 81:24 82:20 84:3,15 topography 38:4 total 29:7 towards 17:1 Toyo 110:15 track 13:19 47:1 64:3 69:8 tracking 69:11 69:15 tracks 47:5 trade 10:22 31:1 110:11 trailers 41:9 transact 81:14 83:11 transcribed 117:11 transcribing 7:15 transcript 5:23 7:18,21 114:3 117:9 transportation 99:13,16 transporter 95:16,20 98:22 transporters 14:2 treads 36:24 Treasury 81:6,9 81:17 82:23 87:13 Treasury's 81:10	trial 117:7,10 triangle 34:2 tried 31:22 32:4 trigger 56:20,21 57:9,14,19 truck 43:2 104:3 true 117:8 trust 74:2,17 75:4,18,23 76:7 79:17 89:24 90:21,21 90:23,24 91:3 91:7,11,23 trustee 75:16 76:21 77:9 85:22 trusts 91:12 try 52:1 86:6 90:18 116:1 trying 19:22 33:18 103:9,11 109:16,23 turn 17:23 turning 7:23 two 3:24 16:5 24:19,21,22 27:13 30:13 33:23 36:10 39:1 59:22 60:11 70:9 72:23 77:15 78:7,7 79:12 88:13 107:18 107:19 two-foot 54:20 two-inch-minus 18:3,9,17 19:6 19:12,20 20:7 21:1 26:17,22 27:1 71:14,16 71:19 type 13:6 21:19 61:20 types 24:14 40:19 43:21
---	---	--	--	---

70:16 91:4 typical 104:3 typically 35:16 40:19 41:3,8 52:9 57:16 103:13 106:21 107:10,17	unless 53:7 65:10 90:12,24 91:9,10 94:1 unlimited 78:2 unpermitted 50:20,23 69:24 98:23 unprocessed 19:9 unquote 29:23 94:24 101:9 102:4 unreasonable 55:17 until 91:24 unusual 85:10 105:15 106:20 up 6:24 17:8 35:17,18,19 38:5 48:17 50:12 52:17 59:23 60:11 65:18 66:22 80:3 93:18 104:11 106:13 115:4 up-to-date 81:22 82:2 update 13:4 39:9 91:6,9 115:12,16 updated 81:20 updates 82:23 upon 95:10 us 16:23 33:15 34:10 65:23,24 66:11 81:6,17 82:22 83:21 85:19,21 87:12 91:2,22 93:4 100:8 usage 22:1 use 12:14 17:18 23:21,23 24:10 24:13,17,20	34:3,20 47:20 58:14 63:13,19 63:20,21 75:4 75:6 89:1 94:10 100:8 107:13 109:19 useable 21:21 used 1:3 3:5 5:2 10:23 14:1,9 15:13 19:9,13 21:22 23:3,6,7 23:15 24:1,2,9 24:13,18 25:13 30:18 39:4 40:14,22 42:10 43:16,17 44:3 44:7,11,12,21 45:4 47:23 48:1,8 50:19 51:2,3,3,11,11 55:9 59:9 61:16 68:22 69:22 70:3,13 70:15 71:5 72:1 75:17 76:1 85:1 99:3 103:8 109:6,9 user 21:24 users 22:16 uses 24:5,14,18 using 5:23 85:1 89:14,14	vast 29:9 vehicle 69:23 98:10,13,14,17 98:24 99:1 verify 77:6,13 77:21 verifying 62:2 version 92:3 113:14 versus 49:20 69:5 very 28:22 33:24 35:24 38:5,13 46:6 57:22 58:1 107:20 108:10 viable 28:19 virtually 13:18 visited 108:22 volume 14:11 33:16 45:14 64:6 volumes 28:2	16:20,22 26:8 28:12 31:24 32:4,9 38:8,10 40:4 45:18,18 46:15,19 50:6 51:3,11,12 56:5,15 62:13 62:23 67:8 74:7 92:3,15 93:1,22 95:13 96:16 98:21 99:4,21 100:9 108:6,7,11,12 114:6 washed 109:18 109:23 Washington 87:11 wasn't 26:7 72:8 72:9 waste 1:4 3:5 4:23 5:5 23:3,4 23:5,6,8,15,18 24:9,13 25:13 30:19 31:14 42:10 43:16,17 44:3,11,22 47:23 48:9 55:9 59:9 69:22 70:3,13 71:5 72:2 75:17 76:1 82:17 85:2,14 89:15 99:3 103:8 water 41:15 45:11 46:6 48:10,12 54:21 55:22,22 105:24 107:13 107:19 109:4 109:12,15 way 34:6 36:4 45:4 54:20 90:9 101:11	
U					
under 3:14 7:19 14:22,22,24 15:1 18:1,18 21:1 22:5 23:5 24:4,9,23 25:10 26:13,17 26:17,19,23 27:2 29:3,8,23 39:19 41:17,17 47:8 56:1 61:10 63:2 70:23,23 71:3 71:7,16,19 96:2 101:18 108:15 109:10 117:11 undergoing 35:23 understand 34:6 66:21 67:21 77:24 103:9,11 110:24 115:19 understanding 17:17 97:21 underwriting 82:4,5,8 undocumented 51:1 unfunded 90:22 91:12,24 unit 3:11 4:23 37:23 United 88:6 110:13 universe 13:18 14:6	V				
W					
Wait 84:19 walled 53:14 54:1 want 18:12 31:4 31:5 32:16 34:8 37:24 40:22 52:1,8 52:11 66:15 75:21 76:11 77:11,18,19 103:23 115:16 wanted 92:4 93:8 96:8 wants 86:2 warm 88:20 warranted 70:21 was 3:17,18 4:1 7:19 10:14,24 11:5 14:24					

ways 54:15	64:12	95:2 104:4	which 3:18 6:17	why 16:7 17:13
we'll 9:6 10:5,6	weight-based	109:9 115:11	13:13 16:19	20:12 26:10
27:8 39:1 43:8	47:20,23	115:11	20:13,19 25:23	33:12 35:4
52:19 53:8	welcome 3:2	what's 74:9	26:13 28:18	45:23 46:15
56:3 61:2 68:4	12:9 21:4	whatever 38:20	31:15 39:21	51:3,24 52:9
68:23,23 69:17	34:19,20	when 11:1 34:4	42:19 46:16	55:17,23 56:2
70:5,8 71:21	114:16	35:14 36:8	48:8 52:6	60:16 61:8
73:5,6 75:1	well 10:4 13:10	38:11 41:8	55:10 57:12	70:11 96:19,22
77:12 78:24	13:18 15:1	46:20,22 47:15	58:10 60:5	100:1
79:2,7 80:14	24:16 26:12	48:17 52:10	63:4,14 64:7	widely 31:7
80:23 89:5	28:11 29:6	57:16 80:12	65:11 67:1,3	will 5:9,12,21,24
93:5,15 99:7	34:13 37:24	82:7 89:21	72:10 83:14,16	6:2,11,13,24
101:13,22,23	44:23 46:7,18	90:8 108:23	84:3 85:14,23	7:3,8 9:18 12:5
102:6,17,24	50:10 55:20	whenever 65:21	86:17 87:4	12:11 15:9,17
110:22 112:1	61:13 70:15	where 6:23 17:7	90:3 91:7,23	21:11,22 22:5
116:1	71:10 91:9	17:23 28:23	92:24 93:9,22	30:11,13,15
we're 20:18	93:19 94:4	31:13,19 33:5	94:17 97:19	32:23 34:23
28:15,15 40:20	95:5 103:1,3	41:14 44:10	99:4 101:19	35:16,17,18
40:23 45:9	105:1 107:23	47:21 48:22	102:4 108:8	36:2 37:1
47:9 59:5 64:7	108:7,22 109:2	53:1 54:22	110:24 111:22	40:11 41:18
68:17 74:12	114:16	55:13 65:7,24	while 23:2 51:19	42:22 43:5
84:24 86:16	were 6:9 10:11	71:13 74:24	53:4 60:1	50:14 57:4
89:13,13,14	11:11 27:13	86:12 87:14,22	107:10 110:20	63:23 64:17
92:14 108:2	31:20 36:17	89:10 94:22,22	White 2:10 4:22	68:19 69:7
we've 16:14	38:6 60:6	97:12 98:1	5:21 9:2 60:8	71:11,24 73:17
19:18,21 31:16	106:17 107:3	103:20,21	66:11 74:8	75:8,12 76:9
41:14 42:19	107:24 108:9	104:1 106:17	75:3,20 76:16	78:2,21 80:3
44:8,11,23	108:23 110:20	107:6,13	77:3 79:4,7,22	80:13 84:3,12
45:23 59:18	West 117:21	WHEREUPON	80:14,20 81:16	84:17 85:23
64:5 68:23	wet 41:6,8	9:1	83:13 84:15,20	89:6,8 91:21
103:21 104:1	wetting 109:20	wherever 79:24	85:10 86:5,9	94:12 95:22
107:1	what 10:2 11:11	80:1,2	87:7,21 88:4	99:18 100:13
website 34:10,11	13:22 17:1	whether 15:5	89:6 90:3,13	100:15,16,17
66:1 68:17	20:18 21:19	18:1 19:4 21:7	90:16,19 91:15	101:5,9 109:13
81:10 82:1,2	22:12 25:11	24:12 27:18	92:12 97:22	109:14 114:9
83:5,5 113:13	31:22 32:4	30:23 36:12	111:22	114:11,12
114:11,13	35:3 37:11	37:9 39:14	White's 112:8	115:5
Wednesday 4:17	39:19 47:4	41:1 43:24	who 4:22 5:1,3	window 86:5
113:22 114:2	50:6 63:24,24	44:18 46:10	5:13 49:9	winter 29:1
week 114:5	64:3 65:13	47:19 51:4	whole 6:2 10:8	wish 44:5
115:21 116:2	71:8 72:10,12	58:23 62:2	31:10,24 36:3	wishing 4:19
weekend 81:20	75:13 77:15,21	71:3 76:24	36:4 37:2	within 3:22
weight 30:18	78:16 84:15,19	81:8,11,13	108:7	14:11 17:5
36:6 37:21	85:4,16 88:15	83:10 87:17	whose 79:17	32:6 37:5
64:6,7,8,9,10	89:13 90:12	88:1 113:10	87:1	52:14 80:10

97:24 98:2 103:8 108:7 115:21 116:2 without 19:6 22:14 55:22 58:17 69:23 85:18 98:24 Witness 117:13 witnesses 6:15 6:22 8:18,22 9:3,8,14 wonders 50:22 65:9 woodshed 58:2 58:4 word 23:21,23 56:18,19 57:5 57:7 64:23 73:1 wording 62:24 72:20 84:22 89:10 words 57:10 63:3 65:3 71:17 89:13 96:21 work 77:14 92:7 worked 5:6 worker 46:6 worried 106:19 worthiness 91:20 would 5:16 7:24 8:18,21 9:12 14:11,12,17 15:1,21 18:3 18:10,19,22 19:13 20:22 21:2,19 22:3 23:20,22 25:2 26:3,4,12,14 26:18,24 28:21 29:2,3,8 30:5 32:10 33:12 36:14 37:20	38:9 39:21,24 41:16 42:14 46:21 47:19 48:18 49:24 56:20 57:8,12 57:19,20,21 58:5,16,20 60:3,5,19 63:1 63:4,5,22 64:21,23,23 65:16,23 66:14 67:4 71:13,15 71:18,20 72:11 72:22 76:13 78:16 95:6 97:3 98:22 104:4 105:15 111:5,23 112:20,21 113:2 115:16 wouldn't 15:3 15:20 55:23 63:3,7,9,23 wrap 115:4 write 31:12 writing 12:10 17:10 110:23 written 6:16 113:3 114:1 <hr/> X <hr/> Y <hr/> yard 31:9 yeah 14:13 19:10 22:8 26:16 44:6 59:14 74:8 77:3 83:6 84:1 89:6 98:15 100:7 103:19 year 3:19 4:18 73:1 85:8 97:4 110:14 112:17 112:18	years 11:1 20:1 35:8 37:8 38:13 45:2 78:7,7 103:12 106:16 yes 12:4,17,21 12:24 18:24 20:11 26:18 29:5 30:9 33:8 40:6 48:15,21 48:23 49:16 54:17,23 66:17 72:24 76:16 79:5 83:8 92:12 96:6 108:20 110:3,8 111:14,17 114:21 115:9 yesterday 13:11 Yokohama 110:15 you'd 103:5 you'll 97:1 you're 12:9 16:20 21:4 34:19,20 35:24 72:10 96:8 104:10,10,15 104:17 109:15 109:23 114:15 you've 34:5 65:12 66:11 80:18 your 8:18 9:21 9:22,24 10:2 11:18 12:1 49:15 66:1 77:24 92:4 103:11 104:11 105:6 110:7 111:2 yours 32:14 <hr/> Z <hr/>	<hr/> 0 <hr/> 084-004675 2:14 117:23 <hr/> 1 <hr/> 1 6:17 8:9,15 16:16,18,18,24 30:12 34:24 37:14 58:7,8 73:3,10 79:13 80:7 86:20 94:7,18,20 98:8 101:3 113:22 115:23 1:00 113:18 1:08 1:11 10 14:12 35:4,4 35:13,15,17,24 36:5 37:6 10,000 14:9 100 14:18 28:8 28:10,19,22 31:14 38:9,12 40:10 101 27:11 1021 1:9 2:5 10th 114:7 11th 114:9 12 14:12 33:9 35:17 36:1 37:7 120 78:12 120-day 85:20 85:21 86:11 13 114:12 14 41:24 15 3:22 6:20 33:20 34:14 150 38:19 15th 4:17 89:4 94:11 100:6 111:1 113:17 17 103:5 19-73:1 19276 2:6	1990-73:1 1992 73:2,11,14 19th 4:21 1st 66:12,13,16 68:19 80:15 81:19,19 94:13 114:22 115:14 <hr/> 2 <hr/> 2 32:24 33:2 73:10 76:23 77:4 89:18 90:9 2,780 13:13 2,816 4:13 20 6:7 14:2 17:3 34:14 40:8 51:3,11,15,20 52:17,18 2007 117:21 2014 3:14 2015 1:11 4:6,8 4:13,17 6:9,17 6:20 8:2 89:4 94:11 100:6 113:17,22 114:2,22 117:15 20th 112:17 217 2:7 22.54 24:11 223.16 83:3 22nd 3:14 24 20:5 25 46:19 47:9,13 250,000 88:8,13 26th 17:22 27:13 30:14 33:10 39:2 42:1 55:4 59:6 61:6 62:7 68:8 70:9 71:2 73:18 74:14 80:24 86:19 94:6 95:14 99:11,22
--	---	---	--	--

27 3:15 107:2	44:3,11,21	62794 2:6	49:4 108:15	848.406 73:21
27(b) 112:11	45:4 46:17		848.202(a) 16:11	74:1,10
27th 4:13 112:18	47:13 48:6,14	<u>7</u>	848.202(b) 42:9	848.407 73:17
28 3:15	59:10,15 70:13	7 72:10	49:17,24	848.410 74:12
281 14:1	71:5 72:1,6	724 82:20	848.202(b)(3)	75:12
2nd 6:9 8:2	103:10,14,17	724.243(b)(1)	42:6 55:9	848.410(b)
29:14 34:24	103:22,23	82:16	848.202(b)(4)	79:14
42:17 79:12	104:8 106:18	724.243(b)(8)	50:17,22 70:4	848.410(f)(4)
94:16,16 98:7	108:17	85:16	848.202(c)(3)	80:9
101:2	50 42:10 48:8,10	724.251 84:18	52:22 53:1	848.411 80:23
<u>3</u>	48:13 55:11	84:22 89:10	848.202(d)(1)(c)	84:7
3 53:4 77:4	500 40:12 43:16	75 14:15,16	53:11,23	848.413 86:17
111:24 112:2,7	44:21 59:9	<u>8</u>	848.203 55:3	89:19
3-5 112:4	103:10,17	8 117:21	848.203(a)(3)	848.413(d) 90:6
3,051 13:22	104:1 105:5	80 29:2	56:18 57:2	848.413(d)(2)(a)
14:21	108:17	807 100:10	108:23	89:22
3,500 13:17	500,000 88:14	814-3620 113:9	848.203(h)(8)	848.501 92:14
3,900 104:11	501(a)(1) 93:10	114:15	58:9	93:9
105:20	51(b) 60:4,15	848 1:5 3:7,22	848.204 59:5	848.501(a) 17:15
30 38:13	524-3306 2:7	18:4,21 20:20	103:7	848.501(a)(1)
300 40:22	55 23:17,24,24	23:9 39:19	848.204(c)(4)	92:17
301(a) 50:8	24:6 25:5	76:6 84:24	59:22 60:12	848.501(c) 17:16
31 83:3	46:16	89:12 110:17	848.301 61:5	848.503 93:18
312 113:9	55.2 3:18	848.101 6:4	848.301(a) 49:21	848.503(a)(5)
114:15 117:22	55.4 92:18,21	17:21 18:2	50:5,14	93:20,23
32 96:10	93:12,24	21:8 24:8	848.303 62:8,8	848.602 94:8,15
322 13:11	570 81:6,8,12,18	848.101(a) 20:19	63:2,7 65:3	848.602(a)(3)(b)
33 96:2,5,10	82:5,13,14,16	848.101(f) 24:24	848.303(a) 62:22	94:24
34 96:2,5	82:23 83:4,23	848.101(g) 23:14	64:21	848.602(a)(3)(c)
35 1:4 3:6 29:24	84:3	848.101(h)	848.303(h)	95:1
82:16 84:18,21	5th 1:11	25:11	66:20 67:11	848.603 95:13
84:23 85:15	<u>6</u>	848.104 21:10	848.304 68:7,9	95:15
89:9,11	60 43:16 44:12	27:12 29:21	848.305 69:10	848.603(b)
<u>4</u>	46:15,20,24	30:7,12	848.400 70:8	96:18,23 97:1
4 71:3 75:12	47:4,16 59:10	848.106 30:13	848.400(a) 16:11	97:12
80:18,19	59:15 77:2	33:12	848.400(b)(1)	848.605 96:15
111:24 112:2,8	78:6,9 80:10	848.106(a) 35:2	72:20	848.605(a) 96:17
40 38:13	60-day 76:20	848.201 38:24	848.400(c) 76:3	848.606 98:6
419-9292 117:22	78:1	39:20 41:21	76:10	848.607 98:20
<u>5</u>	60-ton 43:17	848.201(b)	848.400(c)(2)	99:6
54:8 33:20	600 104:2	42:14,18 43:5	16:11	848.607(d)
111:24 112:2,8	605(a) 97:5	848.201(d) 23:2	848.400(c)(3)	69:13
5,000 42:3 43:18	60603 117:22	23:6	16:12	848.608 99:10
	62.5 46:19 47:14	848.202 43:9,15	848.400(c)(4)	848.702 99:21
			71:8,13	100:14 101:5

102:7 848.702(a) 101:6 848.702(b) 101:16 848.702(e) 102:2 848.706 102:11 848.706(a) 102:11,20 848.708 6:5 8th 4:5 114:2				
<hr/> 9 <hr/>				
9 4:18 90 29:3 85:23 97:13 90-day 86:4,5 98th 3:19				