

Hearing on Proposed Amendments
35 Ill. Adm. Code 201, 202, & 212

Cause No. R23-18

January 19, 2023

Jude Arndt, CSR, CCR, RPR
CSR No. 084-004847
CCR No. 1450

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INDEX OF EXHIBITS

| | |
|-----------|---------|
| Exhibit 1 | Page 73 |
| Exhibit 2 | Page 86 |
| Exhibit 3 | Page 92 |
| Exhibit 4 | Page 96 |

(Exhibits were retained by Hearing Officer Fox.)

1 MR. FOX: Good morning, and welcome to
2 this Illinois Pollution Control Board hearing. My name
3 is Tim Fox, and with Chloe Salk to my right we are the
4 hearing officers assigned by the board to this
5 rulemaking hearing, entitled Amendments to 35 Illinois
6 Administrative Code 201, 202, and 212, which IEPA filed
7 under the fast-track rulemaking provisions of Section
8 28.5 of the Environmental Protection Act. The board
9 docket number for this rulemaking is R23-18.

10 To get started today, I want quickly to go
11 through three preliminary items, introductions, the
12 procedure to date, and then some housekeeping,
13 including the order in which we will plan to proceed
14 today.

15 First, our introductions. Present today from
16 the board at my far right are Board Member Michelle
17 Gibson, who is a lead board member assigned to this
18 proceeding, and at my far left Board Member Jennifer
19 Van Wie, in addition to Chloe Salk, who I introduced.
20 Anand Rao of the board's technical staff is also
21 present here today.

22 Secondly, the procedure to date on December 7th
23 of 2022, IEPA filed this rulemaking proposal as a
24 fast-track proposal under the act, and in an order on

1 December 15th of 2022, the board accepted the proposal
2 for hearing, directed its hearing officers to proceed
3 according to the deadlines under the act, and without
4 comment on the substantive merits, submitted the
5 proposal to first-notice publication in the Illinois
6 Register, where it appeared on Friday, December 30th of
7 2022.

8 On December 16th of 2022, a hearing officer
9 order scheduled the hearings, and we are of course
10 holding the first today. Under Section 28.5F1, this
11 first hearing, quote, shall be confined to testimony by
12 and questions of the agency's witnesses concerning the
13 scope, applicability, and basis of the rule.

14 In the order scheduling these hearings, the
15 hearing officer order directed pre-filing testimony for
16 today, no later than Monday, January 9th, and on that
17 date the board received pre-filed testimony on behalf
18 of IEPA by Mr. Rory Davis, who is present here today.

19 On January 12th of 2023, the board received
20 pre-filed questions, 60, from the Illinois
21 Environmental Regulatory Group, or IERG, and on January
22 18th, the board received 30 questions pre-filed by
23 Dynegy.

24 In a hearing officer order yesterday on January

1 18th, the board submitted three questions in writing
2 for hearing today.

3 The board has posted all of these documents to
4 its clerk's office online, or COOL, under this Docket
5 Number 2318 as they were filed.

6 Finally, our housekeeping for this hearing. It
7 is governed first of all by the board's procedural
8 rules under Section 102.426 of those rules. All
9 information that is relevant and is not repetitious or
10 privileged will be admitted by the hearing officers
11 into the record.

12 Please bear in mind that any questions posed by
13 the board today or its staff are intended solely to
14 help develop a clear and complete record, and -- for
15 the board's decision, and those are not intended to
16 reflect any determination or judgment on the proposal,
17 the testimony, or responses to any questions.

18 Our order of proceeding today, first, the
19 agency's pre-filed testimony. Under Section 28.5 of
20 the act, this pre-filed testimony is entered into the
21 record as if read. There is no point in repeating it
22 or reading it out loud.

23 What we will then do under Section 28.5F1 is to
24 turn to the questions of the agency's witness, Mr.

1 Davis.

2 In discussing off the record with the
3 participants just before we began hearing, we
4 determined that it would be productive to begin first
5 in the order of filing with the questions filed by
6 IERG -- by Ms. Brown on behalf of IERG, to turn
7 secondly to the questions filed by Mr. More on behalf
8 of Dynegy, and then we can turn to anyone who did not
9 pre-file questions that would like to pose them to the
10 agency's witness.

11 If in hearing the answers the agency provides to
12 any of these questions you would like to ask a
13 follow-up question, please indicate, raise your hand,
14 give me a signal of some kind, and for the sake of our
15 court reporter, the first time that you are recognized
16 for a question, please indicate your name and any
17 organization that you may represent just so that we can
18 help to develop as clear a possible -- as clear a
19 record as possible.

20 I do want to stress, and I mentioned this off
21 the record, as noted in the hearing officer, the board
22 at 11:00 AM today will be holding its
23 regularly-scheduled meeting by videoconference from
24 this room. What we will do is recess very shortly

1 before the 11:00 meeting time, and at that time
2 indicate when we will resume the hearing.

3 We have a lot to progress through. Any
4 questions about our order of proceeding, Mr. More?

5 MR. MORE: Could we, before opening the
6 floor for follow-up questions, hear the agency's
7 answers to the board's questions as well?

8 MR. FOX: The -- what the board's intent
9 was, to go last.

10 MR. MORE: To go last. I see. I didn't
11 hear you mention it in the order.

12 MR. FOX: I did not, but we will, as is
13 our custom, simply go last and defer to everyone else
14 and wait for our own questions to be addressed -- the
15 three of them, of course.

16 Any other questions before we proceed? Ms.
17 Vetterhoffer, Mr. Matoesian, is your witness ready to
18 be sworn in and to begin responding to questions?

19 MR. MATOESIAN: Yes, he is.

20 MR. FOX: Very well. If the court
21 reporter would swear in Mr. Davis, we can get underway.

22 [Mr. Davis sworn.]

23 MR. FOX: Ms. Brown, we'll turn to you.

24 The act does provide that the testimony is entered into

1 the record as if read. It does not so provide for your
2 questions.

3 I think it would be helpful for those who may
4 have a follow-up and certainly develop a clear record
5 if you could read your questions so that we can frame
6 those very well and as I said develop a good and clear
7 record.

8 MS. BROWN: That works.

9 MR. FOX: If you're ready to begin with
10 Number 1, Mr. Davis has been sworn in. Please go ahead
11 and we'll get underway.

12 MS. BROWN: Melissa Brown for the Illinois
13 Environmental Regulatory Group, also known as IERG. We
14 would just like to thank Board Member Van Wie and Board
15 Member Gibson for the opportunity to question the
16 agency's witness, as well as Mr. Davis for being here
17 to answer our questions.

18 EXAMINATION

19 BY MS. BROWN:

20 Q. So first we'll jump into Question 1 of
21 IERG's pre-filed questions.

22 The startup, malfunction, and breakdown, also
23 known as SMB, provisions in Sections 201.149, and
24 201.261 through 201.265 were adopted in 1972 in PCBR

1 **71-23, then known as Rules 105A and 105B through F.**

2 **Back in 1971 and 1972, what was the purpose of**
3 **these provisions?**

4 A. The rule-making pursuant to the Clean Air
5 Act and subsequent guidelines for the preparation of
6 implementation plans, established emission standards to
7 address the national ambient air quality standard or
8 NAAQS, NAAQS, is the acronym, and the methodologies by
9 which the state may show that it will attain and
10 maintain such standards.

11 The regulations control emissions of sulfur
12 dioxide, nitrogen dioxides, carbon monoxide,
13 hydrocarbons, and particular matter. The rule-making
14 documents available on the board's website declare that
15 efforts shall be made to reduce the incidence and
16 duration of startups and excessive emissions during
17 startup periods, and that except in special cases,
18 equipment whose pollution controls are out of order
19 should not be operated.

20 The agency's proposal placed case by -- quote,
21 case-by-case discretion in the agency under its
22 permanent powers, providing that its special conditions
23 warrant permission to operate during a malfunction, or
24 if irreducible startup emissions will somewhat exceed

1 the general standards, Illinois EPA may grant
2 permission for such emissions upon application and
3 proof, end quote.

4 Q. Thank you.

5 Question 2. On Page 3 of Illinois EPA's
6 statement of reasons, also referenced as SOR, Illinois
7 EPA explains, and I quote, when the CAA or Clean Air
8 Act was first being enacted, it was widely believed
9 that emission limitations set at levels representing
10 good control of emissions during periods of normal
11 operation could in some cases not be met with the same
12 emission control strategies during periods of startup,
13 shutdown, maintenance, or malfunction.

14 It goes on to state, please pollution control
15 strategies were not thought to be applicable during
16 SSM, states included provisions in their SIPs,
17 providing absolute or conditional exemptions from
18 emission limitations for excess emissions during SSM.

19 Is this reasoning consistent with the origin and
20 purpose of the SMB provisions in Part 201?

21 A. Generally, yes. This was a quotation from
22 a Federal Register in which U.S. EPA was summarizing
23 states' SSM provisions in general. Illinois
24 regulations, however, do not establish absolute or

1 conditional exemptions from emission limits as some
2 other states' provisions do.

3 Our regulations only establish an affirmative
4 defense that a source may rely upon should enforcement
5 be pursued for a violation of the standard.

6 **Q. Question 3. Have there been any**
7 **substantive changes to the SMB rules in Parts 201, 202,**
8 **or 212, since 1972, and if so, please describe the**
9 **changes.**

10 A. The agency conducted a cursory review of
11 the available documents on the board's website, and no
12 substantive changes were found concerning SMB rules at
13 issue.

14 There may have been changes that were not
15 readily apparent, but they were not readily apparent.

16 **Q. So for the most part, since the SMB**
17 **provisions were adopted originally in 1972, they have**
18 **remained substantively unchanged since that time?**

19 A. To the best of my knowledge, yes.

20 **Q. Question 4. On Page 5 of the SOR, the**
21 **agency states, and I quote, the agency has historical**
22 **interpreted these provisions as establishing an**
23 **affirmative defense, should excess emissions result in**
24 **an enforcement action, end quote.**

1 **Has this been the interpretation of the agency's**
2 **permit section since 1972?**

3 A. Again, to the best of our knowledge, yes.

4 **Q. And has this been the interpretation of**
5 **the agency's compliance section since 1972?**

6 A. Same answer. Yes. To the best of our
7 knowledge.

8 **Q. Does this interpretation equate to**
9 **granting permission for irreducible startup emissions,**
10 **what conditions may result in less than optimum**
11 **emission control, as stated in the April of 1972**
12 **Illinois Pollution Control Board decision, and PCBR**
13 **71-23 that adopted the SMB provisions?**

14 A. Yes, it equates to granting a possible
15 affirmative defense.

16 **Q. So in the agencies as follow-up, in the**
17 **agencies interpretation, does granting a possible**
18 **affirmative defense equate to granting permission for**
19 **irreducible startup emissions that may result in these**
20 **less-than-optimal emission control?**

21 A. There is language in the rules themselves
22 that say that, but the effect is granting an
23 affirmative defense.

24 **Q. So the language in the rules has language**

1 to the effect of granting permission, but it's the
2 agency's interpretation that that allows for the
3 granting of an affirmative defense?

4 A. Once -- Part 201.165 explicitly states
5 that those provisions only grant an affirmative defense
6 in the case of an enforcement.

7 Q. Moving onto the question in Subsection C.

8 Please provide examples of SMB language that was
9 included in air operating and construction permits,
10 following the adoption of the SMB provisions in PCBR
11 71-23.

12 A. The agency is not readily able to do so.
13 It does not have any readily -- ability to identify
14 which sources may have applied for SMB provisions or
15 seek the affirmative defense. And accessing documents
16 that old is likely not possible due to records
17 retention and destruction policies. And if those
18 records did exist, they would probably be stored
19 offsite at this point.

20 Q. What is the agency's record retention
21 policy, if you're aware?

22 A. It has changed, and so I believe it was 10
23 years when it was first started. And so documents --
24 yeah, the state -- so it's 10 years, and documents can

1 actually be destroyed.

2 That's not how we do things now. We image all
3 of our documents, and then we don't destroy them.

4 Back then, you know, as early as, say, 1982,
5 1983, doc -- permit application materials would not
6 have been necessarily retained after 10 years.

7 **Q. Have you in your current position at the**
8 **agency or any position that you previously held in your**
9 **recollection reviewed a permit that was maybe an older**
10 **permit that could have been adopt -- or issued within**
11 **10 or so years after the adoption of the rules in**
12 **71-23?**

13 A. I am certain I have seen permits that are
14 of that age.

15 **Q. Do you have any recollection, general**
16 **recollection, of what the SMB language was -- that was**
17 **included during that time in those permits that you**
18 **reviewed?**

19 A. I don't.

20 MR. MORE: Mr. Davis, I understand
21 Question 4C to be seeking generally any example of an
22 SMB language from an air operating permit.

23 Does the agency not have access to any air
24 operating permits that have SMB language in it?

1 A. We interpreted the question as permits
2 that were issued following the adoption.

3 MR. MORE: Immediately following? Is
4 that --

5 A. Well -- sure. As I believe the question
6 is geared toward, has our language changed in permits,
7 from that period to what we might have now.

8 MR. MORE: Does the agency have access to
9 more recent permits that have SMB language?

10 A. Certainly, yes.

11 MR. MORE: I would ask -- I think it would
12 be informative that the agency would -- I would ask
13 that the agency produce some examples of SMB language
14 in permits today.

15 A. Okay, and we can do that. And I should
16 say that I do appreciate everyone who has pre-filed the
17 questions, because it does make it easier to put
18 together a better record for the board. We have some
19 time to, you know, put some thoughts together instead
20 of saying we are going to answer everything we can off
21 the top of our head.

22 So we have put quite a bit effort into getting
23 these done for today. But some things like this we'll
24 have to prepare for post hearing comments.

1 MR. FOX: And Ms. Brown, Mr. More, if I
2 may step in very, very quickly, this may very well not
3 be the only case in which the agency has agreed to
4 submit some additional information into the record.

5 Before we adjourn, let's see whether there's a
6 single date, perhaps the pre-filing deadline for the
7 second hearing, that would be -- pre-filing of
8 testimony for the second hearing -- that would be a
9 suitable time to have the agencies submit that to the
10 board's clerk.

11 A. Okay.

12 BY MS. BROWN:

13 Q. Following up on Mr. More's request, I
14 would just add, it I think would be helpful for all in
15 providing examples of more recent permits with SMB
16 language, if you could provide a variety of permit
17 examples, including CAAPP, FESOP, construction permit?

18 A. Okay.

19 Q. Thank you.

20 Going onto Subquestion D.

21 Has the typical SMB language included an air
22 permits evolved since 1972, and how so, and what has
23 been the basis for such evolution?

24 A. I think that would kind of fall into the

1 same boat as Subsection C. We can see what we can do
2 to put together different permit language to make it --
3 demonstrate how that might have evolved, if it has.

4 **Q. And we appreciate that, and we would just**
5 **request in that, in providing the examples, if the**
6 **agency is also able to provide at that time an answer**
7 **to the question of what the basis for that evolution,**
8 **if there was evolution at that time as well?**

9 A. Okay.

10 MR. MORE: And to that, I think it would
11 be prudent when you are pulling the examples, maybe
12 would you consider doing it within various date ranges,
13 this 10-year period, this -- you know, so that we can
14 all understand and see the evolutions, as opposed to
15 just producing SMB language examples from the recent,
16 you know, past, the last couple years. It would be
17 beneficial if we saw that actual language.

18 A. Okay. We can attempt to do that.

19 MR. MORE: Thank you.

20 BY MS. BROWN:

21 **Q. Moving onto Question 5, where the Part**
22 **201, then known as Rule 105, SMB provisions, taken into**
23 **consideration when proposing and adopting the original**
24 **numeric standards for CO, NOX, PM, SO2, VOM, and PCBR**

1 **71-23 that now reside in Subchapter C?**

2 A. The agency's SMB provisions do not
3 establish exceptions to or exemptions from otherwise
4 applicable emission limits. Even if a source has SMB
5 language in its permit, exceedances of emission limits
6 are considered violations and could be subject -- and
7 could subject the source to enforcement by the agency
8 or others. In this sense, SMB provision should not be
9 taken into account when establishing emission
10 limitations.

11 Having said that, the agency cannot say the
12 extent to which the board, quote, took them into
13 consideration, unquote, in PCBR 71-23.

14 The agency would defer to documents available
15 from that rulemaking.

16 **Q. Question 6.**

17 **Were the original PCBR 71-23 numeric standards**
18 **set at levels representing good control of emissions**
19 **during periods of normal operation?**

20 A. And again, the agency would defer to
21 documents available from that rulemaking regarding
22 conclusions made by the board at that time.

23 **Q. Question 7.**

24 **In 1971, what would have been the basis for**

1 **establishing numerical emission standards for periods**
2 **of startup and shutdown?**

3 A. And the agency is, again, going to defer
4 to the documents available from that rulemaking
5 regarding the conclusions made by the board in that
6 ruling.

7 Q. Were you -- in follow-up to that, are you
8 aware of any permits that were issued shortly after the
9 adoption of the rules in 71-23 that included SMB
10 provisions and conditions that had different numerical
11 emission standards that would apply during periods of
12 startup and shutdown?

13 A. I'm not aware of specific permits that --
14 we didn't look at permits that were issued shortly
15 after there, so I'm not aware of any specific permits
16 that -- with that language. I'm sure there are some.

17 MS. BROWN: Just a quick procedural
18 question, Mr. Hearing Officer, just something to
19 consider when establishing a deadline for follow-up
20 responses by the agency.

21 I anticipate that there may be some follow-up
22 questions that IERG may have in response to their
23 follow-up responses.

24 So I just want to consider later that, when

1 setting deadlines, if there is an opportunity to
2 provide follow-up questions to the agency, or how that
3 would work in the time frame of the hearings.

4 MR. FOX: And I'm guessing, Ms. Brown,
5 that you would specifically like to have responses
6 before a second hearing would take place on February
7 16th; is that correct?

8 MS. BROWN: Yes, but then the
9 consideration of if we had follow-up questions for the
10 agency, whether they would be available at the second
11 hearing, or if the second hearing was just limited to
12 testimony by non-agency witnesses, you know. At what
13 point in time could we get our follow-up questions in
14 front of the agency?

15 MR. FOX: It is specifically limited, but
16 as we have a firmer sense of the documents or other
17 information that the agency is willing to submit to the
18 right group, we can certainly talk about deadlines when
19 that's a clearer picture. I appreciate you raising
20 that.

21 MS. BROWN: Great. Thank you.

22 BY MS. BROWN:

23 **Q. Question 7A.**

24 **Were continuous emission monitoring systems**

1 **existent and widely available at that time, being the**
2 **period of 1971 or around that time?**

3 A. Not to the agency's knowledge, and likely
4 not what we would consider sentence today.

5 Oh, just to be clear for the court reporter, the
6 CEMS is C-E-M-S, and that's continuous emissions
7 monitoring system.

8 Q. **Question B, would stack tests have been**
9 **conducted during periods of non-steady-state operation**
10 **during that time frame, 1971, early 1970s? If yes,**
11 **would it have been the approach back then to require**
12 **averaging of multiple runs -- for example, three**
13 **one-hour test runs?**

14 A. And our answer is simply no.

15 Q. **Question 8 on Page 7 of the SOR, or**
16 **statement of reasons, Illinois EPA discusses the July**
17 **2015 judicial review of the 2015 startup, shutdown, and**
18 **malfunction, or SSM, finding of substantial inadequacy**
19 **and state implementation plan, also known as SIP,**
20 **S-I-P -- SIP call, hereinafter referenced as the 2015**
21 **SIP call.**

22 Illinois EPA explains that the case was first
23 held in abeyance in April 2017.

24 Did the agency consider at any time prior to

1 **April 2017 proceeding with the standard board**
2 **rulemaking to propose amendments to address the 2015**
3 **SIP call?**

4 A. First, the agency is not sure what is
5 meant by a standard board rulemaking. To the extent
6 you're differentiating a standard rulemaking from a
7 fast-track rulemaking?

8 **Q. Correct.**

9 A. The agency discussed the SIP call prior to
10 April 2017, including what any rulemaking to address
11 the SIP call might contain. To my recollection, the
12 agency didn't address the type of rulemaking that would
13 be pursued prior to the abeyance in 2017.

14 **Q. To summarize your answer, or to repeat it,**
15 **so yes, the agency did consider with proceeding with a**
16 **rulemaking to address the 2015 SIP call prior to April**
17 **2017; is that correct?**

18 A. Well, I think the agency was at that time
19 required to proceed with the rulemaking to address the
20 requirements of the SIP call. So yes, we did. We were
21 considering those.

22 **Q. And what -- and the second part of the**
23 **question in Question 8A.**

24 **What was the agency's justification for not**

1 **proceeding with the rulemaking during that period,**
2 **prior to April 2017?**

3 A. The agency discussed the uncertainty
4 around state's options in addressing the SIP call, and
5 the need for additional guidance from U.S. EPA.

6 The agency asked questions of U.S. EPA and
7 requested guidance, particularly about how to establish
8 any potential alternative limits, and the types of
9 limits that would be approvable.

10 The agency did not proceed with a rulemaking at
11 that time, because no such guidance was provided by
12 U.S. EPA prior to the new administration -- prior to
13 the new administration putting the SIP call on hold.
14 And that would be in 2017, and indicating that it would
15 be reconsidering the SIP call.

16 And at that point, Illinois EPA awaited the
17 outcome of that reconsideration.

18 **Q. In follow-up to that, do the Federal**
19 **Registers for the 2015 SIP call provide some guidance**
20 **or clarification or criteria as to the development of**
21 **alternative emission limitations?**

22 A. There is guidance and criteria for what
23 U.S. EPA expected at that time for any alternative
24 limits.

1 **Q. And what additional guidance was the**
2 **agency, Illinois EPA, looking to get from U.S. EPA on**
3 **the topic of alternative emission limitations?**

4 A. And I think -- yeah. Yeah, this is -- we
5 addressed this in a later question, so let me just jump
6 to that.

7 The SIP call set forth basic criteria that
8 alternative emission limitations must meet. The
9 Illinois EPA was seeking elaboration on those criteria,
10 information regarding how U.S. EPA interprets and plans
11 to implement the criteria, guidance on how states could
12 go about developing alternative limits, the technical
13 demonstration that would be needed to support those
14 alternative limits, guidance on how anti-backsliding
15 requirements would be addressed, and examples of
16 approvable alternative limits with approvable
17 justifications.

18 And we received none of that.

19 **Q. In receiving none of that, was it just**
20 **a -- U.S. EPA did not respond to your request at all,**
21 **or provided a response that -- or a different response?**

22 A. In discussions with U.S. EPA Region 5
23 staff, I would say that they had uncertainty about what
24 they could approve.

1 Q. I appreciate you jumping forward to that
2 question. We might have additional questions when we
3 get there, but thank you very much for jumping forward.

4 Going back to Question 9, on Page 7 of the SOR,
5 Illinois EPA states, and I quote, due to the abeyance
6 in U.S. EPA's stated intention to review/reconsider the
7 SIP call, and its overall SSM policy, the agency did
8 not move forward with the rulemaking at that time. It
9 opted to wait and see what U.S. EPA ultimately
10 concluded before acting to respond to the 2015 SSM SIP
11 call, end quote.

12 As noted on Page 7 of the SOR, the judicial
13 review was first held in abeyance in April 2017, and a,
14 quote, activity on SSM at the federal level remained on
15 hold until 2020.

16 Did the agency have an end date in mind to its
17 quoted wait-and-see approach?

18 A. No.

19 Q. And why did it not have an end date in
20 mind, or could you elaborate that further?

21 A. I just don't think that the agency ever
22 established a particular end date that we would, I
23 guess, stop our approach of, you know, observing what
24 was coming on -- in proposals to the EPA and what the

1 responses to them were.

2 **Q. In Subquestion A. Did the agency have**
3 **ongoing internal discussions during the period between**
4 **2017 and 2020 regarding initiating a rulemaking to**
5 **address the 2015 SIP call?**

6 A. The agency did continue discussions in
7 that period.

8 **Q. And Subquestion I. So if yes, please**
9 **summarize discussions and the justification for not**
10 **proceeding with the rulemaking during that period.**

11 A. The agency periodically discussed the
12 status of U.S. EPA's reconsideration, and also
13 continued to check in with U.S. EPA to determine
14 whether they had any new information.

15 **Q. And do you recall what the result was of**
16 **those check-ins with U.S. EPA and if they had any new**
17 **information during that time?**

18 A. Yeah. During -- we have monthly calls
19 with the U.S. EPA, so it's on -- it was on the agenda.

20 Generally during that period, when it was in
21 abeyance or on hold with the administration, in
22 reconsideration, we would ask, you know, do we have any
23 updates on what we think you are doing with SSM, and
24 generally the answer was no, we don't have any updates.

1 Q. Question 10.

2 When did the agency first conclude that removal
3 of the SMB affirmative defense provisions was the path
4 the agency was going to take in response to the January
5 12th, 2022, finding of failure to submit SIP provisions
6 in response to the 2015 SIP call, hereinafter
7 referenced as the 2022 finding of failure?

8 A. Removal of the affirmative defense
9 provisions was required by the SIP call, and the
10 subsequent finding of failure.

11 Q. So would it be correct that the agency
12 concluded as soon as January 12th, 2022, that their
13 path was going to be removal of these SMB provisions?

14 A. Like I said, the removal of the provisions
15 was always going to be required by the SIP call.

16 Yeah, and in following the finding of failure,
17 we just continued to assess, I guess, what our options
18 were in the rulemaking.

19 Q. When did the agency first conclude after
20 January 12th, 2022, that their proposal, the agency's
21 proposal, would only include removal of the affirmative
22 defense provisions, and not proposing any alternative
23 provisions in their place?

24 A. At some time in mid-2022, U.S. EPA pointed

1 out to the agency in that many states had already had
2 their SIPs approved by simply removing the offending
3 provisions, and that removal of those provisions was
4 the only sure way that a SIP would be approved.

5 At that time, they again declined to provide any
6 guidance about development of alternative limits, or
7 the type of limits that would be approvable, if any.

8 **Q. In follow-up to that, why did the agency**
9 **not propose a rulemaking, either a standard board**
10 **rulemaking or fast-track, in mid-2022?**

11 A. Yeah, I think that it just was the time
12 frame our resources allowed to get approval from
13 management, and get a proposal to the board.

14 **Q. So in follow-up to that, it -- from the**
15 **time in mid-2022, when the agency came to the**
16 **conclusion that their proposal would be just removal of**
17 **these provisions and not any -- the addition of any**
18 **additional provisions, it took from mid-2022 through**
19 **December 7th, which was the filing of the agency's**
20 **proposal with the board, to have this proposed path**
21 **approved by agency's management and put the proposal**
22 **together?**

23 A. Well, I would say prior to the outreach
24 that we conducted also, so that it would be more in the

1 November time frame. But yes.

2 Q. Okay. So from mid-2022 through November
3 17th?

4 A. Right.

5 Q. Okay. Question 11.

6 When did the agency come to the conclusion that
7 a fast-track proceeding was necessary for this
8 rulemaking?

9 A. A fast-track rulemaking was always
10 available to the agency to address the SIP call. This
11 is the type of scenario that fast-track rulemakings are
12 designed to address.

13 The agency is required to remove SSM provisions
14 to satisfy the Clean Air Act, and Illinois is subject
15 to sanctions if it fails to do so.

16 The fast-track rulemaking provisions ensure that
17 a rulemaking is adopted in time for the agency to meet
18 its deadlines.

19 So since the SIP call was published, a
20 fast-track rulemaking was the most logical choice to
21 address it, and even more so subsequent to the 2022
22 finding of failure.

23 Q. Even though fast-track was available, is
24 it true that it was not required, and that the agency

1 **had the option to propose these rules under a**
2 **non-fast-track board rulemaking proceeding?**

3 A. I would say no, it is -- it was not
4 required that the agency proceed in a fast-track
5 rulemaking.

6 **Q. And so going back kind of to the root of**
7 **the question.**

8 **When did the agency decide that they were going**
9 **to propose these rules via fast-track rulemaking**
10 **proceeding?**

11 A. As I said, you know, the fast-track was
12 always available, and in -- so even in 2015, 2016,
13 2017, we may have proceeded with a fast-track simply
14 because the fast-track is the only proceeding in which
15 the board is required to act on certain deadlines that
16 ensure that we can get something to -- or put a
17 submittal together for U.S. EPA, yeah, as quickly as
18 possible.

19 And I could point to certain rule-makings that
20 were filed by the agency several years ago that have
21 not been acted on. You know, the fast-track required
22 this action.

23 **Q. Question 12.**

24 **Did the agency at any time after the January**

1 12th, 2022, finding of failure, consider proceeding
2 with a standard or non-fast-track board rulemaking to
3 propose the amendments addressing SMB?

4 A. Assuming your standard rulemaking, you
5 mean one that's not fast-tracked, we did not after the
6 finding of failure.

7 Q. And I think you covered this in your
8 answer to the prior question, but just for clarity of
9 record, for Question 12A, can you please, again,
10 explain why you did not consider a standard board
11 rulemaking, a non-fast-track rulemaking, to propose
12 these amendments?

13 A. Right. A fast-track rulemaking is the
14 wisest choice, considering there's a sanctions clock
15 running, and also as I said, the only proceeding where
16 we have deadlines for action.

17 Q. Question 13.

18 Please summarize the outreach that Illinois EPA
19 conducted with the public and stakeholders on the 2015
20 SSM SIP call prior to January 2022.

21 A. While it's possibly that agency staff
22 might have spoken with a stakeholder or asked questions
23 of one or more stakeholders, I'm not aware of it and
24 don't recall.

1 However, David Bloomberg was the manager of the
2 air quality planning section in 2015 is no longer with
3 the agency. I am not certain what kind of
4 communications he had at those -- at that time.

5 **Q. So you were -- would it be correct to say**
6 **that you were not a part of any outreach conducted on**
7 **the 2015 SSM SIP call prior to January 2022?**

8 A. I was not, no.

9 **Q. And you are not aware of any outreach that**
10 **the agency conducted or David Bloomberg conducted prior**
11 **to January 2022, but it's possible that there was some**
12 **outreach; you're just not aware?**

13 A. It's possible. I was not unaware of the
14 SS -- the SIP call as an issue. I certainly don't
15 recall that we had any kind of formal or informal --
16 informal outreach that was conducted.

17 **Q. Question 14.**

18 **Given the complexity and the potentially broad**
19 **scope of the impact of the 2015 SIP call, did the**
20 **agency conduct an information request with some or all**
21 **permit holders that have SMB provisions in their**
22 **current operating permits? Why or why not? If so**
23 **please summarize the information request or requests**
24 **and response or responses.**

1 A. No, we did not conduct specific
2 information requests. The expectation of U.S. EPA is
3 for states to remove the relevant portions of concern
4 from their pertinent regulations, which is what the
5 Illinois EPA has done in this proposal.

6 In addressing this limited action, information
7 requests were not deemed necessary or relevant by the
8 Bureau of Air.

9 BY MS. BROWN:

10 **Q. Question 15.**

11 **Has the agency conducted information requests in**
12 **the past for purposes of proposing new or revised**
13 **rules -- for example, the NOX RACT, R-A-C-T, rule?**

14 A. In my experience, the agency has conducted
15 information requests with potentially affected sources
16 when that information would inform new or revised
17 rules. In this case, had agency is not undertaking the
18 development of new rules or revising standards.

19 **Q. So in follow-up to that. So because the**
20 **agency's proposal here does not include the proposal of**
21 **new rules or revising emission standards, the agency**
22 **deemed that information requests were not necessary for**
23 **this proposal?**

24 A. That's correct.

1 **Q. Question 16.**

2 **Were there inquiries made to the agency**
3 **regarding the 2015 SIP call by any regulated --**
4 **regulated entities prior to January 2022? If so,**
5 **please describe such instances and the agency's**
6 **responses.**

7 A. Since the question spans around seven
8 years, it's definitely possible that entities inquired
9 about the status of Illinois EPA's efforts to address
10 the SIP call.

11 I don't require -- or sorry. I don't recall a
12 specific instance.

13 **Q. So to clarify, you don't recall being**
14 **involved directly in any outreach during that period,**
15 **or any inquiry by any regulated entity during that**
16 **period?**

17 A. No, I would say there were, as far as --
18 the agency provides staff such as myself to speak at
19 IERG's annual -- I forget the title of it right off my
20 head, off the top of my head. But certainly in those
21 contexts, questions have been asked by industry and
22 IERG members.

23 I think most of those have been directed toward
24 what is the agency considering doing, timing, when we

1 might move forward, and I think to those questions, I
2 think the agency has probably responded that we are --
3 well, during certain times, we are in a wait-and-see,
4 during the abeyance, and that we didn't have any
5 specific information about exactly what any proposal
6 would look like yet.

7 Also, I don't mean to characterize it as, you
8 know, the agency would only be available for questions
9 like that, at a format such as, you know, when we are
10 speaking for IERG.

11 Seminars, in the course of dealing with
12 different sources in other -- in other matters, you
13 know, obviously those things could come up and, you
14 know, questions could be asked, hey, do you have any
15 updates on what you might be planning to do with the
16 SSM SIP call.

17 And I think in most cases, we would have said we
18 do not have any updates.

19 **Q. Question 17.**

20 **Did the agency conduct any outreach to the**
21 **public and stakeholders in response to the 2022 finding**
22 **of failure prior to November 17th, 2022? If so, please**
23 **describe the outreach and response to the outreach.**

24 **A.** Again, to my knowledge, we did not conduct

1 any formal or informal outreach.

2 **Q. And why did you not conduct any formal or**
3 **informal outreach after the 2022 finding of failure and**
4 **prior to November 20 -- November 17th, 2022?**

5 A. Yeah, I think it was mainly the timing.
6 The agency acted as quickly as we could, given our
7 resources and our processes.

8 Following the finding of failure, the agency
9 continued, you know, communications with U.S. EPA to
10 see if they had any additional information to provide,
11 and they did not.

12 And so I don't believe we had any proposal
13 prepared for outreach at that time.

14 **Q. And just for clarity purposes, who -- can**
15 **you please let me know who was part of the agency's**
16 **team in developing their proposal?**

17 MS. VETTERHOFFER: Yeah, I don't have a
18 problem with identifying. It was mainly attorneys,
19 many of which aren't here anymore, and other staff not
20 here anymore. So --

21 A. Right. So that would include David
22 Bloomberg, myself to some extent, before his departure;
23 Dana Vetterhoffer; Antoinette Columbo, who is also not
24 with the agency before; Annette Goddison (ph), who is

1 also not with the agency anymore; and most recently
2 Charles Matoesian.

3 BY MS. BROWN:

4 **Q. Thank you. Question 18.**

5 **Were there inquiries made to the agency**
6 **regarding the 2022 finding of failure by any regulated**
7 **entities prior to November 17th, 2022? If so, please**
8 **describe the instances and the agency's responses.**

9 A. Again, I know that some agencies did
10 inquire about the status of the rule development, and
11 as I said, I think in most cases, you know, we were not
12 able to provide any updates. On specifics of a
13 proposal.

14 **Q. And question 19. What was the basis for**
15 **the agency's pre-proposal outreach being conducted as**
16 **late as November 17th, 2022?**

17 A. And again, given the information
18 forthcoming from U.S. EPA, we acted as quickly as we --
19 as our resources allowed in finalizing the proposal in
20 order to go to outreach in November.

21 Following the finding of failure, the agency,
22 again, continued communications with U.S. EPA and
23 observed results of U.S. EPA's final actions on other
24 state -- other states' SIP call submissions.

1 **Q.** With continuing conversations with U.S.
2 **EPA and observing other states' SIP call submissions,**
3 **did the agency have a date in mind to say, all right,**
4 **we are going to wait and see what other states do, but**
5 **we need to file a proposal by a certain date?**

6 **A.** We didn't have a specific date in mind. I
7 mean, it was, I guess, as soon as possible, was the --
8 was the order of the day.

9 But again, getting a proposal together and
10 approved by management was how we ended up in November.

11 **Q.** **Question 20.**

12 In the pre-proposal outreach e-mail circulated
13 on November 17th, 2022, the agency communicated a
14 deadline of December 6th, 2022, for providing comments
15 on its pre-proposal draft rules.

16 What was the basis for that time frame to
17 provide comments?

18 **A.** In determining the time frame to provide
19 comments, the agency considered the August 2023 SIP
20 submittal deadline and the timing in getting a proposal
21 adopted by the board and submitted by that deadline.

22 **Q.** **Question 22.**

23 On Page 16 of SOR, Illinois EPA states that, and
24 I quote, some commenters express concern with removal

1 of the SSM provisions, which can be explored further in
2 the rulemaking process, end quote.

3 What was the agency's reasoning for not
4 addressing in the SOR the pre-proposal comments
5 received by the agency and the agency's response to the
6 concerns raised in the comments?

7 A. I think you skipped Question 21.

8 Q. I apologize.

9 A. But I can go ahead and answer since you
10 read through that question.

11 The answer for Question 22 is that we don't
12 typically respond in detail in our statement of reasons
13 to comments received during our informal pre-filing
14 outreach.

15 Also, none of the comments led to changes in the
16 agency's proposal.

17 Q. Can you explain the basis for why none of
18 the comments or the concerns raised in the comments
19 changed the agency's proposal?

20 A. I guess I would have to know which
21 specific comments you're speaking about.

22 Yeah, I mean, we can probably provide that in
23 post-hearing comments. I think some of the answers for
24 that will be in the next 40 or so questions. But if --

1 yeah. We can -- if there is something missing, then,
2 you know, we can hopefully provide that.

3 Q. Okay. Thank you. And sorry, going back
4 to Question 21.

5 The agency filed its proposal with the board on
6 December 7th, 2022, which was one day after the
7 deadline of December 6th, 2022, to submit comments on
8 the pre-proposal draft rules.

9 What consideration was given by the agency to
10 comment submitted during the pre-proposal outreach
11 period?

12 A. The agency reviewed the comments we
13 received and engaged in internal discussions concerning
14 them and how they might impact the proposal.

15 Q. Going to Question 23.

16 Please provide copies of comments received
17 during the pre-proposal outreach period.

18 A. The agency has brought those comments and
19 it can provide them electronically if requested also.

20 Do we want to submit these as --

21 MR. FOX: If you have them available to
22 admit as a hearing exhibit and wish to have Ms.
23 Vetterhoffer or Mr. Matoesian make a motion, we can
24 take that up.

1 MR. MATOESIAN: We would be willing to
2 make a motion to introduce these comments as Exhibit 1,
3 hearing Exhibit 1.

4 MR. FOX: Very well. You've heard Mr.
5 Matoesian's motion.

6 Mr. Davis, do I see that you have some copies of
7 those; is that correct?

8 A. Yeah. Six copies of each.

9 MR. FOX: Would you mind sharing those
10 with some of the participants, as long as I have a copy
11 to take back to our office as the hearing exhibit,
12 please?

13 A. Sure.

14 MR. FOX: And we can give folks perhaps a
15 couple of questions of time to look those off and see
16 whether there's any objection, and if not, admit them
17 as a hearing exhibit.

18 MR. MORE: So just for clarification, Mr.
19 Matoesian, you are proposing to enter them, the
20 aggregate as Exhibit 1.

21 MR. MATOESIAN: Yes.

22 MR. MORE: Okay. Just --

23 MS. VETTERHOFFER: Okay. That's the
24 second comment.

1 MR. MORE: Can we go off the record for a
2 moment?

3 THE REPORTER: Yes.

4 [Discussion off the record.]

5 BY MS. BROWN:

6 Q. Going on to Question 24.

7 On Page 10 of the SOR, Illinois EPA states that
8 it sought guidance from U.S. EPA following the 2015 SIP
9 call regarding available options, including
10 establishing alternative emission standards during SMB
11 events, but that no clear guidance was provided at that
12 time.

13 At that time of these discussions, was Illinois
14 EPA considering or discussing any specific alternative
15 emission standards? If so, which ones?

16 A. No specific alternative limits were being
17 considered at that time.

18 Q. And Subquestion A, please summarize the
19 guidance/response received from U.S. EPA during this
20 time.

21 A. I think as I've stated, the agency
22 conducts regular communications with U.S. EPA Region 5
23 staff. Like I said, we have at least a monthly call.
24 And in those discussions, and as stated in response to

1 Question 15, and in the statement of reasons, U.S. EPA
2 indicated that the only guaranteed way toward a SIP
3 approval was the removal of the offending SSM
4 provisions.

5 U.S. EPA also told the agency that it was
6 unaware of any states that had obtained U.S. EPA final
7 approval of alternative emission limits in their SIP
8 submittal.

9 They were also not able to -- able to advise or
10 provide further guidance on the development of
11 alternative limits, or on what kind of alternative
12 limits would be approvable, if any.

13 **Q. Subquestion B.**

14 **In a Federal Register for the 2015 SIP call, did**
15 **U.S. EPA reiterate and provide additional explanation**
16 **as to guidance concerning how states may elect to**
17 **replace existing exemptions for excess submissions**
18 **during SSM events with properly-developed alternative**
19 **emission limitations that apply during periods of SSM?**

20 A. The SIP call speaks for itself on the
21 matter, but generally U.S. EPA provided information
22 regarding state's options.

23 **Q. And for clarity of the record, I know you**
24 **answered this previously, but would you mind restating**

1 your response to Question 24C, which is what additional
2 guidance was Illinois EPA seeking from U.S. EPA
3 development of alternative emission limitations that
4 applied during periods of SSM?

5 A. Sure. The S -- sorry. The SIP call set
6 forth basic criteria that alternative emission limits
7 must meet. The Illinois EPA was seeking elaboration on
8 those criteria, including information regarding how
9 U.S. EPA interprets and plans to implement the
10 criteria, guidance on how states could go about
11 developing alternative limits, the technical
12 demonstration that would be needed to support those
13 alternative limits, guidance on how anti-backsliding
14 requirements would be addressed, and examples of
15 approvable alternative limits with approvable
16 justifications.

17 Without more information, it is not possible to
18 reliably gauge how individual alternative limits will
19 be received by U.S. EPA.

20 Q. Going to Question 25.

21 On Pages 10 through 12 of the SOR, Illinois EPA
22 states that it again sought guidance from U.S. EPA
23 following the 2021 memorandum and 2022 finding of
24 failure, including whether setting alternative emission

1 limits during periods of SMB would be approvable.

2 At the time of these discussions, was Illinois
3 EPA considering or discussing any specific alternative
4 emission standards? If so, which ones?

5 A. The agency was not considering specific
6 alternative emission limits at that time either.

7 Q. So Question A, during those conversations,
8 U.S. EPA did not indicate that setting alternative
9 emission limits would not be approvable; correct?

10 A. Correct. The U.S. EPA did not state that
11 alternative emission limits were prohibited. It also
12 did not provide any assurance that any alternative
13 limits would be approvable.

14 Q. So Question B on Page 11 of the SOR,
15 Illinois EPA states that when discussing options in
16 response to the 2022 finding of failure, U.S. EPA
17 stated that it could make no guarantees as to the
18 approvability of alternative emission limits.

19 The U.S. EPA explain what concerns it had with
20 approval of alternative emission standards, especially
21 when U.S. EPA has promulgated alternate standards for
22 federal rules, including NSPS and MACT, M-A-C-T,
23 standards? If so, please summarize the discussion.

24 A. They did not express specific concerns,

1 but only expressed their own uncertainty as to what
2 could be approved.

3 MR. MORE: In your experience, working
4 with U.S. EPA in connection with SIP approvals, is it
5 uncommon for U.S. EPA to express uncertainty as to the
6 approvability of an abstract emission standard, absent
7 any specifics regarding the proposed standard?

8 A. I would say that it would be uncommon for
9 them -- that it is uncommon for them to express
10 uncertainty about what they might expect.

11 MR. MORE: Were -- absent a discussion as
12 to whether or not the emission standard would be --
13 when presenting a proposed change to emission standard,
14 absent providing any guidances as to whether or not the
15 emission standard would be stringent or less stringent,
16 would you expect EPA to provide any guidance as to
17 whether it would be potentially approvable or not?

18 A. To back up just a bit. I did want to get
19 across my answer to your previous question, was, yes,
20 this is rather uncommon situation that U.S. EPA is not
21 able to provide much help to us.

22 As far as the specific question to whether a
23 more stringent or less stringent rule or alternative
24 limit may be approvable, it's not just a question of

1 the stringency of the rule, as might be the case in
2 strictly a 110L or anti-backsliding demonstration; but
3 also involves the approvability of the limits and
4 alternative limit according to the criteria set forth
5 in the SIP call.

6 So we view those as two separate things.

7 MR. MORE: And absent --

8 A. And U.S. EPA also does.

9 MR. MORE: And absent providing U.S. EPA
10 any details, in essence, a proposed alternative limit
11 as to a specific standard, would you expect U.S. EPA to
12 be able to provide you any indication whether
13 generically alternative limits are or are not
14 approvable?

15 A. Yes.

16 MR. MORE: You would expect.

17 A. Well --

18 MR. MORE: Let me step back, Mr. Davis.
19 As I understand it, you merely asked U.S. EPA whether
20 alternative limits could or could not be approved; is
21 that right?

22 A. No, not exactly. I wouldn't say that's
23 correct. I think we have requested they provide us --
24 you know, in this line of work, if you can see how

1 something has been approved, you know -- so in other
2 cases, that it's very helpful to say that in -- given
3 State A, that they got an alternative limit approved,
4 and here is what the package looked like. It was a
5 demonstration of this, it was a demonstration of that.
6 This criteria was satisfied by, you know, certain
7 elements that were included and there's kind of a stamp
8 of approval on that.

9 In this case, we repeatedly asked, you know, if
10 they could provide us any examples of states that had
11 an alternative limit included in their SIP and that SIP
12 was approved -- or -- exactly -- or even a model of
13 what that proposal would look like.

14 And, like I said, this is not the usual that we
15 would get, you know, uncertainty from the U.S. EPA
16 about what they could approve. And that is speaking
17 with Region 5 staff members.

18 I could speculate on their appetite for
19 approving this or that. I don't think that's
20 appropriate, but certainly if Illinois was to propose a
21 SIP -- or was to submit a SIP that included an
22 alternative emission limit, the region or whoever
23 approved that for Illinois would be setting precedent
24 in the United States.

1 MR. MORE: And isn't it the case
2 whenever -- whatever state were to go first in this
3 process, they would be setting that precedent. Isn't
4 that correct?

5 A. I believe so. How many SIPs --

6 MR. MORE: And you as -- go ahead.

7 A. Well, with the finding of failure, we are
8 a bit down the -- yeah, I don't have a count of the
9 states. But on Page 11 of the statement of reasons,
10 the SIPs that have been submitted, approved, and are in
11 different states of, I guess, the process, are all
12 listed.

13 So yes, a state would be going first and setting
14 precedent. We do have a large amount of precedent from
15 greater than a majority of the states in the United
16 States. Yeah, right -- all of the states subject to
17 the SIP call.

18 MR. MORE: And the uncertainty you're
19 expressing really is also the uncertainty for the
20 agency to provide -- well, is the agency concerned with
21 its ability to get the SIP approved, if it were to
22 offer an alternative emission?

23 A. Yes.

24 MR. MORE: And then is that because there

1 isn't a model for which it to follow when presenting an
2 alternative emission limit?

3 A. I don't think that would be the only
4 consideration, but -- well, I could just leave it
5 there. I don't think that's the only consideration,
6 that there is no other. And the agency would not
7 support, you know, putting forth rules that we are
8 uncertain as to whether they are approvable at this
9 point.

10 MR. FOX: Anything further, Mr. More, or
11 back to Ms. Brown?

12 MR. MORE: No, that's it.

13 BY MS. BROWN:

14 Q. And just one last follow-up on that.

15 While it would be helpful to have examples of
16 other states having approvable alternative emission
17 limitations, or having a model for U.S. EPA prior to
18 Illinois EPA submitting an alternative emission
19 limitation for approval as part of this SIP, it's not a
20 prerequisite; correct?

21 A. I'm sorry. Could you --

22 Q. To restate, you do not require -- it is
23 not the agency's policy to require having a model from
24 U.S. EPA or examples of approvable alternate emission

1 **limitations prior to submitting?**

2 A. No, that is not a formal or written policy
3 that the agency is charged with.

4 Right. And we do always -- well, almost
5 always -- get assurances from U.S. EPA. We share
6 drafts with them prior to submitting, prior to
7 rule-makings, usually. And if it's not going to be
8 approved, we generally would not submit.

9 I would say in one of your previous questions
10 about information requests from sources, your example
11 was our NOX RACT rules, and that would be an example of
12 rulemaking that we submitted that was not approved.
13 And that is not a situation that the agency wants to
14 recur.

15 **Q. Going on to Question 26.**

16 **On Page 7 of the SOR, Illinois EPA states that**
17 **the 2015 SIP call, and I quote, sets forth options for**
18 **curing the inadequacies, including removal of the**
19 **provisions from the SIPs, inclusion of procedures by**
20 **which air agency personnel can exercise enforcement**
21 **discretion or development of alternative numerical**
22 **limitations or other technological control requirements**
23 **or work practice requirements applicable during startup**
24 **or shutdown events, end quote.**

1 **In Illinois EPA's discussions with U.S. EPA**
2 **following the 2015 SIP call, did Illinois EPA consider**
3 **and/or discuss the option of including procedures by**
4 **which air agency personnel can exercise enforcement**
5 **discretion?**

6 A. To my recollection, the agency did not
7 discuss its discretion and enforcement actions in the
8 context of the SSM SIP call.

9 **Q. And why did the agency not discuss this**
10 **with U.S. EPA?**

11 A. This is not an option Illinois EPA would
12 be interested in pursuing. Illinois EPA is unclear
13 what exactly U.S. EPA meant by procedures by which
14 agency personnel can exercise enforcement discretion,
15 what such regulations may contain, or what would be
16 necessary in order for the regulations to be
17 approvable.

18 It's always unclear how such regulatory
19 provisions would interact with the enforcement
20 discretion, the attorney general's office may exercise
21 in an enforcement matter, independent of the Illinois
22 EPA.

23 **Q. Did the agency ask those questions to U.S.**
24 **EPA?**

1 A. Not to my recollection. I think any of
2 these things would necessarily limit Illinois EPA's
3 enforcement discretion, and I don't believe that's
4 something the agency is interested in.

5 **Q. Question 27.**

6 **In Illinois EPA's discussions with U.S. EPA**
7 **following the 2022 finding of failure, did Illinois EPA**
8 **consider and/or discuss the option of including**
9 **procedures by which air agency personnel can exercise**
10 **enforcement discretion?**

11 A. It would be the same answer as to the
12 previous question. There was not a discussion after
13 the finding of failure either.

14 **Q. Question 28 on Page 11 of the SOR, the**
15 **agency states that U.S. EPA, and I quote, could make no**
16 **guarantees as to the approvability of alternative**
17 **emission standards, end quote.**

18 **Did the agency discuss whether the sanctions**
19 **clock can be stopped by a partial approval?**

20 A. No, we did not.

21 **Q. Is Illinois EPA already aware of whether**
22 **the sanctions clock can be stopped by a partial**
23 **approval?**

24 A. The sanctions clock will be -- can be

1 stopped by the submission of a complete submittal, and
2 I believe we get to the -- the differences between
3 complete and approved and possibly partial approval.

4 **Q. So going on to Question -- Subquestion B.**

5 **Do the federal registers for the 2015 SIP call**
6 **and 2022 finding of failure state that the SIP**
7 **submittal has to be approvable or complete? If**
8 **complete, did the discussions with U.S. EPA lead the**
9 **agency to believe that a complete submittal has the**
10 **same meaning as an approvable submittal?**

11 **A. The finding of failure provided that with**
12 **respect to mandatory sanctions, if the EPA has not**
13 **affirmatively determined that a state has made the**
14 **complete SIP submittal within 18 months of the**
15 **effective date of the final action, then pursuant to**
16 **the Clean Air Act Section 179A and B 40CFR -- that's**
17 **the Code of Federal Regulations, Part 52.31, the offset**
18 **sanction identified in the Clean Air Act Section 179.B2**
19 **will apply in the affected area or state.**

20 **If the EPA has not affirmatively determined that**
21 **the state has made the required complete SIP submittal**
22 **within six months after the offset sanction is imposed,**
23 **then the highway funding sanction will apply in the**
24 **affected area, in accordance with the Clean Air Act**

1 Section 179.B1, and 40CFR52.31.7, the sanctions will
2 not take effect if within 18 months after the effective
3 date of the these findings the EPA affirmatively
4 determines that the state has made a complete SIP
5 submittal addressing the deficiency for which the
6 finding was made.

7 And I have a quotation for the Federal Register
8 that came out of -- I probably should have said quote
9 early on in that answer. But that is at 87 Federal
10 Register, 1682.

11 Illinois EPA, to answer the question, I guess --
12 Illinois EPA did not have discussions with U.S. EPA
13 regarding the difference between a complete or an
14 approvable submittal.

15 Having said that, the agency opposes the
16 adoption of any rule in this proceeding that could
17 potentially result in a disapproval or partial
18 disapproval, thereby creating different emission
19 standards at the federal and state levels.

20 **Q. So just to -- again, just to round out the**
21 **question and confirm the question.**

22 **You did not discuss whether complete has the**
23 **same meaning as approvable with the U.S. EPA, but would**
24 **it be a fair characterization to say it's the agency's**

1 **position that complete means approvable in this**
2 **scenario?**

3 A. I would say we didn't discuss it with U.S.
4 EPA, because I think we both have an idea of what the
5 difference between complete and approvable would be.

6 **Q. And what would --**

7 A. And that's why it wasn't discussed, not
8 that it's not a point worth discussing.

9 MR. MORE: So you agree that there's a
10 distinction between submitting a complete application
11 or submittal and what is quote/unquote approvable?

12 A. I would say there is likely -- yes, there
13 is a difference, obviously, because they are two
14 different things.

15 However, I would say, you know, looking at the
16 Federal Register, it says that the EPA affirmatively
17 determines that the state has made a complete
18 submittal, addressing the deficiency for which the
19 finding was made.

20 And so I suppose submitting a SIP that does not
21 fully address the deficiencies for the finding that
22 U.S. EPA could possibly consider a submittal not to be
23 complete.

24 BY MS. BROWN:

1 Q. Correct. And then, again, just to
2 confirm, it is a complete submission, a complete
3 submittal that would stop the sanctions clock; correct?

4 A. That is correct.

5 Q. Okay. Question 29.

6 Page 2 of your pre-filed testimony states, and I
7 quote, additionally, the agency is unaware of any other
8 state that has promulgated alternative emission
9 limitations, and had those limitations approved by U.S.
10 EPA, as satisfying the SIP call, end quote.

11 What does the agency understand to be
12 unsatisfactory with the other states' alternative
13 emission limitations?

14 A. The agency would direct IERG to the
15 federal registers containing those disapprovals for
16 their full reasoning. Our understanding is that U.S.
17 EPA did not interpret them as satisfying the applicable
18 criteria for alternative limits.

19 And I can point out those Federal Registers.
20 The Georgia November 17th, 2016, disapproval is 87
21 Federal Register, 72941.

22 The West Virginia disapproval, most recently in
23 December 22nd, 2022, was 87 Federal Register 78617.

24 Oh, I'm sorry. Yeah. Sorry. The date for

1 Georgia is November 28th, 2022, not 2016.

2 Q. And to clarify the applicable criteria for
3 alternative emission limitations would be those seven
4 criteria that U.S. EPA outlined in the, I believe, 2013
5 Federal Register, the proposal for the 2015 SIP call,
6 to your understanding?

7 A. Those would be the criteria. I don't know
8 specifically about the 2013 or the final SIP call,
9 wherever you would reference that from.

10 Q. Okay. So Question A.

11 Has the agency discussed whether U.S. EPA's
12 seven criteria for developing alternative emission
13 limitations were met by the states whose alternative
14 emission limitations were not approved by U.S. EPA?

15 A. The agency has read those portions of
16 those disapprovals, including the statements made by
17 U.S. EPA as to why those SIPs were disapproved.

18 Q. In follow-up, has the agency discussed
19 those disapprovals with the U.S. EPA? Specifically
20 Georgia and West Virginia?

21 A. Yes. I would -- yes, we have discussed
22 them. I believe in the case of the most recent, with
23 West Virginia, I don't think it was a detailed
24 discussion. It was just more noting that we saw that

1 there was another disapproval for a state. So --

2 Q. Did those discussions, either the most
3 recent one with West Virginia or if there was a prior
4 discussion regarding Georgia's disapproval, those
5 discussions with U.S. EPA, did they include any
6 discussion of what can be done differently to have an
7 approvable alternative emission limitation?

8 A. I don't know that we did have specific
9 conversations about what would be done differently. I
10 do know that we discussed in general the Georgia
11 disapproval. I just can't recall exactly how in-detail
12 those discussions were.

13 [Discussion off the record.]

14 MR. FOX: I'm sorry, Ms. Brown. Please go
15 ahead where you were before you were interrupted, for
16 which I apologize.

17 BY MS. BROWN:

18 Q. Just to follow up on that and to
19 confirm -- I guess my questions were, assuming that all
20 of these conversations with U.S. EPA were oral
21 conversations over the phone -- I guess my question is,
22 is that correct, or if not were there any written
23 communications, either by letter or e-mail with U.S.
24 EPA?

1 A. Not to my knowledge regarding those.

2 Q. Subquestion B.

3 Do all states have the same numeric standards
4 for pollutants? For example, do all states have the
5 200 PPM CO standard for fuel combustion emission
6 sources and petroleum and petrol chemical processes
7 found in 35 Illinois Administrative Code 216.121 and
8 216.361, respectively?

9 A. No, all states do not have the same
10 numeric standards. I can't speak to the emission
11 limits in all other states for this specific CO
12 standard, but I'm sure there are differences
13 state-to-state for that one also.

14 Q. Question 30.

15 Historically, has U.S. EPA's NSPS and NESHAP --
16 N-E-S-H-A-P -- rules allowed for operation outside of
17 the generally-applicable emission standards during
18 periods of SSM?

19 A. Yes. In some cases.

20 Q. So Question A, if so, has U.S. EPA updated
21 its regulations to remove those provisions?

22 A. In some cases, yes. Not in all cases,
23 though.

24 Q. Are you aware of the difference between

1 the regulations in which they are removing the SSM
2 provisions and the difference between the ones that
3 they are not removing the SSM provisions? Or can you
4 provide an example?

5 A. Well, as far as -- I don't think there is
6 a category of regulation that they are removing -- is
7 that where you are going? Is --

8 Q. If there is or if there isn't. I was just
9 asking.

10 A. I don't believe there is. I think as
11 rules are updated, there are instances where they are
12 removing SSM language, because that is, you know,
13 something that's -- I guess U.S. EPA has been trying to
14 get out of the rules in general, you know, basically
15 with the states, and then, you know, obviously seeing
16 for themselves, you know, their own set of rules should
17 probably head in that direction also.

18 Q. Subquestion B.

19 In some questions, has U.S. EPA included new
20 alternative standards that are applicable during
21 periods of SSM, and if yes, please provide some
22 examples.

23 A. Yes. And I am aware of the example from
24 ERB's Question 29B with the CO standard for petroleum

1 and petrol chemical processes.

2 However, I am also aware that in U.S. EPA's
3 recent disapproval of Georgia's SIP submittal, U.S. EPA
4 acknowledged that while federal rules may provide
5 useful examples of approaches for appropriate and
6 feasible alternative limits during startup and
7 shutdown, it shouldn't be assumed that emission
8 limitation requirements in recent federal NESHAPs and
9 NSPSs are appropriate for all sources regulated by a
10 state's SIP.

11 It indicated that states' alternative limits
12 would be reviewed on a case-by-case basis specific to
13 the state, the source impacted, and the pollutant
14 involved in.

15 **Q. And to clarify that discussion by U.S.**
16 **EPA, again, said it might not be appropriate; it didn't**
17 **say categorically it would not be appropriate for state**
18 **SIP rules; correct?**

19 A. That's correct.

20 **Q. Okay.**

21 A. I'm sorry. It said it shouldn't be
22 assumed. I don't know if it was -- appropriate was not
23 the word used.

24 **Q. Question 31.**

1 Section 28.5 of the Illinois Environmental
2 Protection Act, or act, requires in the fast-track
3 rule-making that the agency provide a list of any
4 documents upon which it directly relied in drafting the
5 rule, or upon which it intends to rely at the hearing,
6 and must provide such documents to the board. The
7 quotation for that is 415 ILCS 5/28.5, Subsection D7.

8 Has the agency directly relied on any documented
9 communications from U.S. EPA Region 5 as the basis for
10 this proposal -- for example, e-mails, letters, meeting
11 notes, or minutes, et cetera?

12 A. The agency's removal of the offending SSM
13 provisions is based on the SIP call and the subsequent
14 finding of failure, along with other documents listed
15 in the agency's submittal.

16 Q. Question 32, per Section 28.5 of the act,
17 the agency must include in its submission a description
18 of the process or processes affected, and
19 identification by classes of entities expected to be
20 affected, and a list of sources expected to be affected
21 by the rule to the extent known to the agency. A
22 citation for that is a 415 ILCS 5/28.5, Subsection D8.

23 Is the agency aware of any process or processes
24 affected by the proposed rule?

1 A. No; as the agency stated in the statement
2 of reasons, the SSM provisions did not excuse
3 noncompliance with any applicable emission limit.

4 The SSM provisions only provided sources with
5 affirmative defense in the event of an emission
6 exceedance that led to enforcement, and the agency's
7 proposal simply removes these provisions as required by
8 the SIP call.

9 **Q. Subquestion A.**

10 **Has agency provided a description of any such**
11 **processes in the proposal? Would this have been**
12 **answered by your prior response?**

13 A. I think that is answered by the previous
14 response.

15 **Q. More generally, Subquestion B.**

16 **What types of operating permits are impacted by**
17 **the proposed rule amendments? For example, ROSS,**
18 **R-O-S-S, lifetime operating permits, LOP, standard**
19 **operating permits or state operating permits, SOP,**
20 **FESOPs, F-E-S-O-P, or CAAPP permits, C-A-A-P-P permits?**

21 A. To clarify, ROSS sources are not permitted
22 sources; they are registered. They are not issued
23 permits and do not possess permits.

24 But potentially all types of operating permits

1 could be impacted.

2 **Q. Would ROSS sources be impacted?**

3 A. I'm not certain. They are generally small
4 sources. But no, no, they would not have SMB
5 provisions in a permit, as they do not have a permit.

6 So I guess I'm a little bit more certain than I
7 was back then, but no, they would not have those
8 provisions in a permit.

9 **Q. Subquestion C.**

10 **Are construction permits impacted by the**
11 **proposed rule amendments?**

12 A. Potentially, yes.

13 **Q. Subquestion D. Does the agency's permit**
14 **section have the ability to prepare a list of which**
15 **facilities have active operating and construction**
16 **permits with SMB provisions? If so, why was that list**
17 **not provided as part of Illinois EPA's proposal**
18 **pursuant to 415 ILCS 5/28.5, Subsection D8, and I'll**
19 **add on if so, can the agency's permit section please**
20 **provide such a list?**

21 A. The provisions at issue must be removed.
22 We may have applied for and obtained SSM provisions and
23 historically issued permits. It's not relevant to the
24 proposal before the board. What is relevant is that

1 the SSM provisions will not be set forth in permits in
2 the future.

3 Moreover, potentially affected universal sources
4 is not simply those who possess a permit with SSM
5 provisions currently, but also all of those who may
6 have requested a permit with SSM provisions in the
7 future.

8 Finally, to create a comprehensive and accurate
9 list of current permits that contain SMB provisions
10 would entail a manual review of every permit issued,
11 and the agency does not have any database where such
12 information is kept in the normal course of business.

13 **Q. Would the agency agree that the sources**
14 **that currently have permits with SMB provisions are**
15 **more than likely to continue to apply for and request**
16 **SMB provisions in the future in renewals or new**
17 **permits?**

18 A. In the future, as far as -- well, I
19 wouldn't know.

20 But in the future, if those provisions were
21 removed, then I don't know what that would look for --
22 look like, as far as applying for those provisions in
23 the future.

24 **Q. So is the agent -- I understand that there**

1 **would be a manual review required.**

2 **So is the agency generally aware of how many**
3 **permits currently existing have SMB provisions?**

4 A. Yeah, I think there was, and you're aware
5 of this from discussions you've had with agency staff.

6 There was a review of the permits in the realm
7 of the CAAPP permits. We believe it's about in the
8 ballpark of 25 percent of them.

9 We -- there is two thousand or so lifetime and
10 FESOP permits. There has been no manual check or
11 search for those, although we think there's far fewer
12 of those that would contain SMB provisions.

13 **Q. Do you have a rough estimate of what 25**
14 **percent of CAAPP permits would look -- what number that**
15 **would look like?**

16 A. Yeah, I think it was -- and this would not
17 be a comprehensive or exhaustive count, but it was in
18 the neighborhood of 119, 120.

19 MS. BROWN: We are getting to, you know,
20 portions where we have, you know, our questions --

21 MR. FOX: We have reached a new section of
22 your questions. That's right.

23 MS. BROWN: Exactly. Yes. So -- yes,
24 thank you.

1 MR. FOX: We've been going for an hour and
2 45 minutes. As we unfortunately interrupted you, a
3 board meeting is about to begin. Why don't we take a
4 break, thank you for your patience.

5 Let's resume here at 11:30 promptly so that we
6 can turn to the questions you had, beginning with
7 Number 33 on the SIPs amendments, Ms. Brown.

8 MS. BROWN: Sounds good. Just a follow-up
9 question on that, after resuming after 11:30, is it
10 anticipated that there will be a lunch break at some
11 point, given that Dynegy hasn't started their
12 questions?

13 MR. FOX: We got quite a bit to go
14 through. Let's look at that as we see how the
15 afternoon unfolds, and perhaps within an hour or 90
16 minutes of resuming, we can consider that. But we do
17 have some questions to go through, and obviously I
18 think all would like to wrap that up today.

19 And when we resume, to change the subject, Mr.
20 Matoesian has moved to admit the comments that were
21 received.

22 MR. MATOESIAN: Yes.

23 MR. FOX: I think Mr. More, you had
24 suggested it would be productive to take a look at that

1 during the break during the board meeting. We can see
2 if there's any objection to the motion when we resume
3 at 11:30 and proceed from there.

4 Mr. Griff --

5 MR. GRIFFITH: Is it safe to assume if
6 we're resuming at 11:30 we can leave all of our
7 material in the room?

8 MR. FOX: That would be absolutely fine.
9 Absolutely fine.

10 And as I said, if you wish to stay for any
11 reason to watch the board meeting, I can stress that
12 it's public and it's open. There are rooms to the
13 right and -- to the right if you want to get something
14 to drink or use the restroom down there.

15 And we can go off the record. Thank you.

16 [A recess was taken.]

17 MR. FOX: The time of 11:30 having come, I
18 appreciate your prompt return from a quick break for
19 the board's regular meeting, which has concluded and
20 adjourned, so that we can resume.

21 One issue I want to take up quickly before we
22 resume, the questions that Ms. Brown had submitted, is
23 the motion that Mr. Matoesian made on behalf of the
24 agency to admit as Hearing Exhibit Number 1 the

1 response to ERB's Question Number 3, to provide copies
2 of comments received during IEPA's pre-proposal
3 outreach.

4 And Mr. Matoesian, forgive me for being tedious,
5 but I want to make absolutely certain that that
6 includes an IERG comment dated December 6th, a Chemical
7 Industry Council of Illinois dated September 6th, an
8 Illinois Manufacturers' Association comment dated
9 December 5th, all of 2022, of course; and the last
10 one-page e-mail from Brad Simms to Rory Davis.

11 Is that the full set of comments that you
12 intended to include in what would be admitted as
13 hearing Exhibit Number 1?

14 MS. VETTERHOFFER: There might be one
15 additional e-mail.

16 MR. FOX: I'm glad I was tedious.

17 MS. VETTERHOFFER: We appreciate it.

18 MR. FOX: Mr. Matoesian is completing my
19 copy of what has been moved for admission as Hearing
20 Exhibit Number 1. This is a second e-mail from Brad
21 Simms to Rory Davis, the first of which dated December
22 5th of 2022; the second of which was dated December 1st
23 of 2022. So that includes a total of one, two -- a
24 total of five comments.

1 Is that the full extent of what the agency, Mr.
2 Matoesian, intended to admit as Hearing Exhibit Number
3 1?

4 MR. MATOESIAN: Yes.

5 MR. FOX: Thanks to you and Ms.
6 Vetterhoffer for supplying copies of those, which I saw
7 you distribute. You've heard the motion by Mr.
8 Matoesian to admit it as Hearing Exhibit Number 1. Is
9 there any objection to the motion?

10 Neither seeing nor hearing any, Mr. Matoesian
11 and Ms. Vetterhoffer, it will be admitted into the
12 hearing record as Exhibit Number 1.

13 MR. MATOESIAN: Thank you.

14 [Exhibit 1 marked for identification.]

15 MR. FOX: Having taken care of that, I
16 believe we're in order for Ms. Brown to resume her
17 questions on behalf of IERG.

18 And Ms. Brown, correct me -- I believe we were
19 at Number 33 under the category SIP submittal.

20 MS. BROWN: That is correct, though if --
21 unless there is any objection, we would like to proceed
22 first with a few follow-up questions, the questions we
23 have already gone through, since it's fresher in Mr.
24 Davis's mind now instead of at the end.

1 MR. FOX: If you would like to begin with
2 one of those, that's in order. Please go ahead.

3 BY MS. BROWN:

4 Q. So turning back to Questions 5 through 7
5 of IERG's pre-filed questions. And those were
6 generally about the original rulemaking, where -- the
7 first set of questions before this were where the SMB
8 provisions were originally adopted, and then the second
9 set was where the original numeric standard -- emission
10 standards were originally adopted.

11 And correct me if I'm wrong, but in response to
12 at least the first two questions, when we were asking
13 whether the SMB provisions were taken into
14 consideration when proposing and adopting the original
15 numeric standards, as well as when asking whether the
16 original numeric standards were set at levels
17 representing good control of emissions during periods
18 of normal operation, the agency's response was to defer
19 to the documents, the board orders, and the other
20 documents in the board's docket for that rulemaking; is
21 that correct?

22 A. That is correct.

23 Q. Okay.

24 Did -- the follow-up question for that is, did

1 the agency propose the original numeric standards to
2 the board in R71-23?

3 A. Yes. I believe so.

4 Q. And did the agency in proposing those
5 original numeric standards to the board, take into
6 consideration the SMB proposed provisions?

7 A. I don't know. Could you repeat that?

8 Q. In proposing -- and the agency proposing
9 the original numeric standards for CO, NOX, PM, SO2,
10 and VOM, did the agency take into consideration when
11 proposing those numeric standards the SMB provisions
12 that they were also proposing in that rulemaking?

13 A. I don't know the answer for sure. We
14 would have to look at the technical support, and
15 whether those were something that the agency
16 characterized as part of a whole or what the language
17 in the support would have said.

18 Q. Would the agency be willing to potentially
19 look into that and follow up, just given the -- how old
20 this docket is, not everything is uploaded on the
21 board's website?

22 MS. VETTERHOFFER: Well, I just want to
23 note, the agency doesn't have -- any documents that
24 aren't on the board's website the agency does not have.

1 They are stored on thousands and thousands of pages of
2 microfilm at the board's offices. I mean, it's
3 literally thousands and thousands of pages that are not
4 in order.

5 So no, the agency can't commit to reviewing
6 those, but the agency could review the documents
7 available on the board's website.

8 MS. BROWN: And could the agency commit
9 to, if there is -- to looking to see if there is
10 anything at -- onsite at the agency's building,
11 potentially -- I don't know if there is anything that
12 you guys keep from that time period about past notes or
13 drafts or anything regarding proposals. But just
14 commit to double-checking to see if there are any of
15 that onsite?

16 MS. VETTERHOFFER: We -- sure, we can. I
17 am almost positive we do not have anything on site. We
18 have looked for things like that in the past. But we
19 can look again.

20 MS. BROWN: Okay.

21 BY MS. BROWN:

22 **Q. And following up to Question 8, as well as**
23 **I think it relates to question -- we pivoted at that**
24 **time to Question 24 as well.**

1 But regarding the agency reaching out to you as
2 CPA for clarity and additional guidance on development
3 of alternative emission limitations, either after the
4 2015 SIP call or after the January 2022 finding of
5 failure, the agency stated that at either of those
6 times, the agency did not provide any additional
7 clarity or guidance.

8 Our question is, could -- during either of those
9 times, could the agency have even without that guidance
10 drafted an example alternative emission limitation and
11 shared that draft with U.S. EPA so you could have had a
12 specific example to discuss with U.S. EPA at that time,
13 or either of those periods?

14 A. I suppose that is possible, yes.

15 Q. And why wasn't that done during either of
16 those time periods?

17 A. Well, yeah, and I think that goes to the
18 resources that it would take to put into -- put forth a
19 hypothetical, or a -- an example.

20 We deal with U.S. EPA a lot, and on some issues
21 there is a lot of back-and-forth, where, you know, the
22 agency will think this satisfies the statute or the
23 language of whatever we are trying to take care of
24 on -- for whatever reason, and it is a lot of -- we

1 would like more information on this. We would like
2 more on this. That is fairly routine in
3 back-and-forths with U.S. EPA.

4 What you are talking about, you know, providing
5 an example, would probably require us saying this is
6 something that might qualify as an alternative limit,
7 and then this is how it might satisfy the seven
8 criteria from the SIP call.

9 Going back and forth with them, especially in
10 this issue, probably would have been resource
11 intensive, and through those years, it was -- we have
12 quite a bit of other priorities happening at any time
13 during the agency.

14 So getting involved in that kind of
15 back-and-forth with U.S. EPA on this issue, especially
16 in light of how I described their own uncertainty as to
17 what would be approvable and their continued response
18 in that manner, I think that kind of hypothetical or
19 example, alternative limit to, you know, attempt to
20 establish, you know, what might be the model for future
21 limits, may have been more than the agency was willing
22 to undertake for just an example.

23 **Q. During that time, did the agency consider**
24 **asking any affected regulated entities for any**

1 assistance or examples of potential alternative
2 emission limitations that would have helped the
3 agency's efforts?

4 A. I'm sorry, could you repeat the question?
5 Was it -- go ahead and repeat. Sorry.

6 Q. Yeah.

7 So given the response that it was
8 resource-intensive to provide an example to the -- to
9 U.S. EPA at that time, did Illinois EPA consider
10 reaching out to affected or potentially-affected
11 entities for assistance in providing an example
12 alternative emission limitation or a potential
13 alternative emission limitation during that time?

14 A. I don't know that up until recently we --
15 we certainly did not reach out for those -- an example
16 from a specific source.

17 It's possible that specific sources, you know,
18 offered an example or had said when -- you know, we
19 think an alternative limit might be appropriate for
20 this or that. I was not up until recently involved
21 with anything that came from industry.

22 But no, we did not request that. And also we --
23 as we have stated, we have not gotten any indication
24 that U.S. EPA will be approving any alternative limits.

1 Q. Understand that you, up until recently,
2 very recently, you might not have been involved in
3 those conversations with entities.

4 Would there be a way for the agency to find out
5 or to gather potentially written communications or
6 notes from oral conversations with your predecessor,
7 with regulated entities on potential alternative
8 emission limitations?

9 A. Well, like I said, I know that the agency
10 did not specifically reach out to sources. If -- I
11 have been involved with the issue; I haven't been
12 heading it up for this entire time. So I would be
13 aware that, you know, we have had those conversations.
14 And I don't recall those.

15 You know, certainly we did not request, and if a
16 source had, you know, provided something in that
17 capacity, then I don't recall that.

18 Q. I guess I would ask then if the agency
19 could -- if there was anything that the agency could
20 look at, either e-mails or notes, that could
21 potentially -- after this hearing could potentially
22 refresh your recollection on if those conversations did
23 occur, and specifically regarding the agency's decision
24 or discussion surrounding whether the agency would take

1 that to U.S. EPA and -- or consider taking it to U.S.
2 EPA as a draft to consider alternative emission
3 limitation.

4 A. Well, I did mention that up until
5 recently, we hadn't been provided with specific -- and
6 I believe there are -- that two of the e-mails that
7 were provided in outreach were from Brad Simms from
8 Exxon, who did have specific ideas about an alternative
9 limit for his source. Not his source -- the Exxon
10 source.

11 Q. Right. Right. Okay.

12 And so then it's your -- just to confirm, it's
13 your recollection prior to those communications? You
14 weren't directly involved in any other regulated
15 industry reaching out to you specifically about --

16 A. Not to my knowledge.

17 Q. Okay. Following up on our -- IERG's
18 pre-filed Question 15. And I just wanted to clarify
19 something for the record.

20 One, just asking whether the agency has
21 conducted information requests in the past for purposes
22 of proposing new or revised rules -- for example, the
23 NOX RACT rule, and I believe the agency's response was
24 yes, we conducted information requests during the NOX

1 **RACT rulemaking, but that's an example of where the**
2 **agency adopted rules that were not -- that were**
3 **disapproved; is that correct?**

4 A. Yeah, that was just an aside. But for a
5 different question, that in nearly all cases, we want
6 to have as solid a confirmation from U.S. EPA that what
7 we are going to submit to them is going to be approved.

8 **Q. And just to clarify, were there**
9 **information requests to the regulated -- or potentially**
10 **affected entities -- after U.S. EPA disapproved the NOX**
11 **RACT rules?**

12 A. That, I don't know. After the rules were
13 adopted by the board, as to your question.

14 **Q. After the rules were adopted by the board**
15 **and disapproved by U.S. EPA.**

16 A. I don't remember going back out for
17 additional information from different sources, but in
18 that case, that was a bit far back, and I was not a
19 participant to those proceedings.

20 **Q. Would it have been Mr. Bloomberg at that**
21 **time, if you recall?**

22 A. I think that would have been Rob Khalil.
23 Who was in the same position as Mr. Bloomberg
24 previously.

1 Q. Going back to Question 32 on our request
2 for the agency to provide some examples of permits that
3 include SMB or SSM provisions.

4 I guess a preface question would be, is the
5 agency aware of any operating permits that have
6 emission limits that apply during periods of SMB that
7 are different than emission limits that apply during
8 periods of steady state operation?

9 A. To the extent -- well, I don't know that,
10 sitting here right now.

11 Yeah, and -- yeah, that would be something that
12 we would have to do a check through all permits that
13 are current.

14 Q. I guess in looking at examples to provide
15 to the board, of permits with SMB provisions, I guess
16 we would just request the agency to provide, again, not
17 only a variety of permit types, but a variety as well
18 in the SMB provisions themselves, just so we could see
19 and so the board can see the various types of SMB
20 provisions.

21 A. Okay.

22 Q. All right. Thank you. I appreciate your
23 willingness to go back and revisit those.

24 We'll go ahead and start with where we left off,

1 on Question 33.

2 And it is on Page 13 of the SOR, the agency
3 states that it will not be submitting a Clean Air Act
4 Section 110 -- is that L?

5 A. L.

6 Q. Anti-backsliding demonstration.

7 What is such a demonstration?

8 A. Section 110L of the Clean Air Act states
9 that the administrator shall not approve a revision of
10 a SIP if the revision would interfere with any
11 applicable requirement concerning attainment and
12 reasonable further progress or any other applicable
13 requirement.

14 The section of the Clean Air Act is commonly
15 referred to as the act -- anti-backsliding provision.

16 While the language itself only states that the
17 administrator shall not approve a revision, it is
18 common for the U.S. EPA to require states to provide a
19 demonstration, or a 110L demonstration, that a SIP
20 revision meets the requirements of the section's
21 language.

22 It is often difficult to gauge how much detail
23 U.S. EPA will require in any particular 110L
24 demonstration. So U.S. EPA is also typically consulted

1 prior to submissions of those also.

2 Q. And question 34 on Page 13 of the SOR,
3 U.S. EPA stated that -- and I quote -- U.S. EPA advised
4 the Illinois EPA that removing the SSM provisions from
5 the SIP is a SIP-strengthening action, and therefore no
6 anti-backsliding considerations to analyze, end quote.

7 Is there any documentation that reflects U.S.
8 EPA's position that Illinois EPA can provide? For
9 example, e-mails, letters, meeting notes, et cetera?

10 A. I guess. And the agency does have e-mail
11 correspondence, and we have a few copies, and also --
12 also be happy to provide those electronically if
13 requested.

14 MR. MATOESIAN: I would like to move that
15 this be entered as Hearing Exhibit Number 2.

16 MR. FOX: Very well. And Mr. Matoesian, I
17 do need a copy to have for the hearing record.

18 MR. MATOESIAN: Sure.

19 MR. FOX: In addition to the other
20 participants. Thank you very much.

21 MR. MATOESIAN: If you want, I can pass
22 these out.

23 MR. FOX: If you would, that would be
24 great.

1 Mr. Matoesian, you have made your motion and put
2 it on the record.

3 Ms. Brown, why don't you go ahead through a
4 question or two so that people have a chance to examine
5 this, and we can see whether there's any objection to
6 marking and admitting this exhibit.

7 MS. BROWN: So would I just get a moment
8 to just review? It's pretty short, before we move on?

9 MR. FOX: That would be fine, actually.

10 MS. BROWN: Thank you.

11 Okay. We appreciate the agency providing that.

12 BY MS. BROWN:

13 **Q. And moving on to Question 35.**

14 MR. FOX: Ms. Brown, if I may, if people
15 had a chance to look at it -- and I apologize for
16 interrupting -- there is a pending motion to admit this
17 as Hearing Exhibit Number 2? Is there any objection to
18 so admitting it into the record of this hearing?

19 Neither seeing nor hearing any, it has been
20 marked as Exhibit Number 2 and will be admitted into
21 the record.

22 And Ms. Brown, please go ahead where I
23 interrupted you.

24 [Exhibit 2 marked for identification.]

1 BY MS. BROWN:

2 Q. In follow-up to this e-mail copy that you
3 provided, did you have any oral communications with
4 U.S. EPA regarding this response about why they would
5 consider removing these provisions at issue, why they
6 would consider that as SIP-strengthening --
7 SIP-strengthening, and that no anti-backsliding
8 analysis would be needed?

9 A. I don't believe we did.

10 Q. Okay. And Question 35.

11 MR. RAO: Ms. Brown, may I ask a
12 follow-up?

13 MS. BROWN: Absolutely.

14 MR. RAO: Mr. Davis, can you speculate as
15 to why U.S. EPA considered this as a SIP-strengthening
16 action?

17 A. If I was to speculate, and I have been
18 asked to, I would say that a simple removal of the
19 offending SSM provisions in our code would not be
20 anticipated to result in any additional emissions from
21 any sources, really.

22 And so I think they -- generally a 110L is that
23 kind of analysis, that will there be additional
24 emissions, will this -- what impacts will those have.

1 But in this case, the proposal as it is is not
2 anticipated to result in any additional emissions
3 anywhere in Illinois, and so a 110L is not necessary
4 and is considered SIP-strengthening.

5 MR. RAO: Do you think there will be any
6 reduction in emissions?

7 A. That is hard to say.

8 Yeah, in theory, the proposal only removes the
9 affirmative defense in the case of an enforcement
10 action. How sources may operate in -- how they may
11 operate after an adoption, I can't really speculate on.

12 MR. RAO: Thank you.

13 MR. MORE: Follow-up question.

14 You said it only removes the affirmative
15 defense. Then why didn't you just strike the 201.265,
16 the affirmative defense provision?

17 A. All of these provisions build on each
18 other and rely on each other. And I am not an
19 attorney. And so as far as the reasoning behind why we
20 would not just do one thing or another, you know,
21 right, was looked at closely.

22 But also those provisions were all in the -- you
23 know, in the SIP call. And again, these things have
24 been shared with U.S. EPA as far as what they believe

1 the offending provisions to be.

2 And so as far as what I have just said, that
3 wouldn't -- I guess the result is removing the
4 affirmative defense, but in order to do so, more than
5 just the provision you cited is required.

6 MR. MORE: And isn't that because U.S. EPA
7 identified concerns with the other provisions, many of
8 the other provisions you are proposing to strike?

9 A. Yes, that's true.

10 MR. MORE: And isn't it correct that in
11 2013 and 2015, U.S. EPA articulated its interpretation
12 of the effect of the offending -- the conditions in
13 question? Isn't that correct?

14 A. Yes. Yes.

15 MR. FOX: Ready for Ms. Brown again, Mr.
16 More?

17 MR. MORE: Yes, thank you.

18 BY MS. BROWN:

19 **Q. Question 35. Would removal of the SSM**
20 **provisions coupled with the addition of alternate**
21 **emission standards for periods of SMB be**
22 **SIP-strengthening as well; why or why not?**

23 A. I can't speak to whether U.S. EPA would
24 consider the combination in question to be

1 SIP-strengthening, particularly without knowing what
2 alternative standard would -- what the standard would
3 be, and whether it may have any emissions impact.

4 An alternative limit -- well, based on my
5 experiences with the 110L or anti-backsliding
6 demonstrations, any rule revisions that could be
7 interpreted as potentially allowing additional
8 emissions would require a 110L demonstration.

9 And generally, that would -- an approved 110L
10 demonstration would only say that the administrator is
11 able to approve a SIP submission, because it does not
12 interfere with non-attainment or any other applicable
13 requirement.

14 The difference between saying could a -- any
15 given limit or any SIP change, change in a SIP at all,
16 be -- you know, have a 110L-approved and calling it
17 SIP-strengthening -- I don't know what U.S. EPA would
18 say the difference between that would be.

19 So I -- so in two ways, I don't know what the
20 limit would be, but I also don't know exactly -- that
21 e-mail uses that language, SIP-strengthening. And so
22 they are not requiring a 110L.

23 But I don't know how -- I don't know that U.S.
24 EPA with anything that had an approvable 110L

1 demonstration, they would call SIP-strengthening.

2 Q. And so did -- is it correct that one of
3 the documents that the agency relied upon in proposing
4 these rules was the June 12th, 2015, final action, the
5 2015 SIP call final rule?

6 A. Yes, we -- yeah. That is what we relied
7 primarily on.

8 Q. And I guess procedurally, I do have a
9 question, because that was one of the documents
10 identified by the agency that they relied upon. I
11 just -- I'm a little unsure if that's already in the
12 record, whether we need to submit it as an exhibit in
13 this proceeding. We do have copies, if that is the
14 easiest way.

15 MR. FOX: If you would wish to submit it
16 as a hearing exhibit, it would be in order to do so.

17 MS. BROWN: Then yes, IERG would move to
18 submit the June 12, 2015, Federal Register, which is
19 80FR33840 into the record. And thank you, we do have
20 copies.

21 And specifically -- well, I guess, should we see
22 if there's any objections to the motion first? Or do
23 you want me to ask the question?

24 MR. FOX: You have moved to admit 80

1 Federal Register 33840 into the record of this hearing
2 as an exhibit. I feel certain not everyone will want
3 to read the entire exhibit to review it.

4 Is there any objection to marking and admitting
5 it as Exhibit Number 3?

6 Neither seeing nor hearing any, it is so marked,
7 Ms. Brown, and is admitted as Exhibit Number 3.

8 MS. BROWN: Thank you.

9 [Exhibit 3 marked for identification.]

10 BY MS. BROWN:

11 Q. And I would specifically direct the agency
12 to Page 33975, which is near the very back.

13 And then specifically on that page, I would
14 direct the agency on Page 33975, there are three
15 columns to the right-hand third column, and
16 specifically the second half of that third column, that
17 starts with Example 2.

18 And if you want to take a minute to read it,
19 please let me know. Otherwise I was just going to read
20 off a portion of it for the record. But I'll give you
21 a minute first.

22 A. Okay.

23 Q. All right. Thank you.

24 A. Sure.

1 Q. And so just for clarity of the record,
2 I'll read a portion of this Federal Register into the
3 record before I ask my question.

4 In this Federal Register, U.S. EPA provides
5 what's labeled as Example 2, and it states, a state
6 elects to revise its SIP provision by replacing an
7 automatic exemption for excess emissions during startup
8 and shutdown events with an appropriate alternative
9 emission limitation, e.g., a different numerical
10 limitation or a different other control requirement
11 that is explicitly applicable during startup and
12 shutdown as a component of the revised emission
13 limitation.

14 Although the EPA must review each SIP revision
15 for compliance with Section 110L and Section 193 on the
16 facts and circumstances of the revision, the agency
17 believes in general that this type of SIP revision
18 shall not entail a complicated analysis to meet the
19 statutory requirements.

20 Presumably, the replacement of an automatic
21 exemption applicable to startup and shutdown with an
22 appropriate alternative emission limitation would not
23 constitute backsliding, would strengthen the SIP, and
24 would be consistent with the overarching requirement

1 that the SIP revision be consistent with the
2 requirements of the CAA, or Clean Air Act.

3 And it goes on to state that the state should
4 develop that alternative emission limitation in
5 accordance with EPA's guidance, recommendations for
6 such provisions, to assure that it would meet CAA
7 requirements.

8 So the question is, at any point did you have a
9 discussion with the U.S. EPA regarding whether a
10 potential alternative emission limitation would be
11 SIP-strengthening?

12 A. We did not have that specific conversation
13 about whether they would consider an alternative, a
14 limit to a rule in Illinois, to be SIP-strengthening,
15 but I would point out that these alternative
16 limitations in Example 2 are, right, directed to
17 automatic exemptions for excess emissions during
18 startup and shutdown events. And in Illinois, that is
19 not what we have. We have limits that apply at all
20 time with an affirmative defense.

21 So for example, if a source previously had no
22 limits during startup and -- well, SMB events, then
23 applying an alternative limit may reduce emissions by
24 applying a limit that was -- had previously not been

1 there.

2 And so I think that's the distinction between
3 why they would say additional limits during those
4 periods would actually be considered SIP-strengthening,
5 because you would anticipate emission reductions.

6 And certainly, you know, they say it wouldn't be
7 a complex 110L, because if you were to show that
8 emissions were being reduced by the alternative limit
9 rather than having an automatic exemption, as it were,
10 then yeah, that would be a consideration in having a
11 simpler 110L to demonstrate.

12 MR. MORE: I would like to move to admit
13 into the record as Exhibit 3 --

14 MR. FOX: It would be 4, Mr. More.

15 MR. MORE: Thank you. Exhibit 4, 78
16 Federal Register 12460, February 22nd, 2013, what's
17 commonly referred to as the 2013 proposed SIP call, and
18 is referenced in INPA's statement of reasons.

19 MR. FOX: Thank you very much.

20 You have heard Mr. More admit to admit 78
21 Federal Register 12460 as Exhibit Number 4 in the
22 record of this hearing. Is there any objection to so
23 admitting it?

24 Neither seeing nor hearing any, Mr. More, it's

1 admitted and marked as Exhibit 4.

2 MR. MORE: Thank you. And I move on to
3 any final questions that Ms. Brown has.

4 [Exhibit 4 marked for identification.]

5 MS. BROWN: And at this time, I don't
6 believe we have any follow-up questions on this
7 specific exhibit, but we wanted it entered as a hearing
8 exhibit. We might confer once we have a break to see
9 if we have any follow-up questions later in the hearing
10 or to address it on any post filings -- post-hearing
11 filings.

12 BY MS. BROWN:

13 Q. So then moving to Question 36 of ERB's
14 pre-filed questions.

15 If Illinois EPA's proposal is adopted by the
16 board, what does the agency anticipate the steps and
17 timing will be for submitting the rules to U.S. EPA for
18 approval as a SIP revision and for U.S. EPA approving
19 or disapproving the submittal?

20 A. The agency anticipates that we would
21 submit the rule revisions to U.S. EPA soon after
22 publication of the final rule in the Illinois register.

23 I can't speak to the timeline for approval once
24 we have submitted it to U.S. EPA.

1 **Q. Does the episode have any additional**
2 **clarification on what soon means?**

3 A. With a sanctions clock ticking, it will be
4 as soon as possible, I would imagine days or weeks.
5 Days.

6 **Q. Moving to Question 37.**

7 In its pre-proposal comment -- and again, in its
8 December 30th, 2022, comment filed with the board, IERG
9 requested that Illinois EPA provide a witness from its
10 permit section at the first hearing.

11 **What was the agency's reasoning for not granting**
12 **the request?**

13 A. The BOA permit staff, permit section
14 staff, has not been involved with the development of
15 the proposed revisions. It is unlikely that the permit
16 section staff would be able to provide valuable
17 information regarding what the permit section may do in
18 any given future hypothetical, other than to confirm
19 that permitting decisions will be made based on the
20 applicable statutory and regulatory requirements.

21 Their past actions are not relevant to the
22 proposal, and future actions cannot be addressed.

23 **Q. Question 38.**

24 **How has the Illinois EPA permit section recently**

1 **been handling renewal of operating permits or revisions**
2 **to construction permits with existing SMB provisions?**

3 A. To my knowledge, no permits have been
4 recently issued by the Bureau of Air that contain SSM
5 provisions.

6 **Q. To your knowledge, when you say recently,**
7 **what time frame are you referring to?**

8 A. I couldn't say exactly. However, the
9 issues of SSM has been well-known since 2013, 2015.
10 But I don't know -- right. Yeah, I don't know exactly
11 when the -- I don't think there has been a policy that
12 the agency has said one way or the other. I think
13 recently, it may be in the last year or so.

14 **Q. And I apologize. In your first response,**
15 **could you repeat your initial response to this**
16 **question, Question 38?**

17 A. I said, to my knowledge, no permits have
18 been recently issued by the Bureau of Air that contain
19 SSM provisions.

20 MR. MORE: And when you refer to SSM, do
21 you mean provisions issued in accordance with what
22 we've been referring to as the SBM provisions?

23 A. Yes, SMB.

24 MR. MORE: SMB. Right. Okay.

1 BY MS. BROWN:

2 Q. Are you aware during this time frame that
3 you're kind of -- you're thinking of within the past
4 year -- that there have been applications for renewal
5 of operating permits, and applications for revisions to
6 construction permits that request to have these SMB
7 provisions in the renewal or the revisions?

8 A. I could say that I would assume that there
9 have been requests, if sources that currently have
10 those provisions in their permit have come up for
11 renewal.

12 I'm not aware of a specific permit, but yes, I
13 would -- I would say that there likely have been permit
14 applications submitted, requesting SMB provisions.

15 BY MS. BROWN:

16 Q. Has there been no permits recently issued
17 by the Bureau of Air that contain SMB provisions,
18 because the Bureau of Air permit section is holding
19 these permits for issuance because they contain --
20 their applications contain requests for the SMB
21 provisions?

22 A. I can't answer that.

23 Q. And who could answer that question?

24 A. We can -- we can, yeah, confer with other

1 staff in the BOA and answer in post-hearing comments
2 for that.

3 Q. We appreciate that.

4 And Question 39, how has the Illinois EPA permit
5 section recently been handling new requests for SMB
6 provisions and operating permit renewals and
7 construction permit revisions?

8 A. It would be the same response. To my
9 knowledge we have not issued recent renewals in
10 construction permits with SMB provisions in them.

11 Q. And I think this gets to our previous
12 question and request, but if the agency could follow up
13 with permit staff and provide a response and post
14 hearing about how even though there has been no permits
15 issued, how the agency has been handling -- the permit
16 section has been handling recent requests for SMB
17 revisions, that would be appreciated.

18 A. Okay.

19 Q. And Question 40.

20 What communications has the Illinois EPA permit
21 section had with CAAPP, C-A-A-P-P, and/or FESOP,
22 F-E-S-O-P, applicants requesting SMB authorizations
23 regarding the completion of application forms regarding
24 compliance, certifications, and/or compliance plans or

1 **schedules of compliance?**

2 A. We aren't aware of any such recent
3 conversations.

4 Q. Would you in post hearing filing be able
5 to confirm with the permit section whether there has
6 been any recent communications with applicants that you
7 may not be aware of?

8 MS. VETTERHOFFER: I just want to clarify.
9 When Rory is answering these questions, he has already
10 done that. So his answers are after that consultation.

11 If you are asking for something additional,
12 though, like the additional question you had regarding
13 the operating permits --

14 MS. BROWN: I appreciate that. Yeah,
15 thank you. I appreciate that clarification.

16 BY MS. BROWN:

17 Q. So then just to confirm, again, so to your
18 knowledge after consulting with the permit section
19 prior to this hearing, there has been no communications
20 from Illinois EPA permit staff with CAAPP or FESOP
21 applicants that are requesting SMB authorizations
22 regarding compliance certifications or compliance plans
23 and schedules with compliance?

24 A. I don't believe so.

1 **Q. Question 41, has the Illinois EPA's permit**
2 **section, SMB approach, changed since the 2022 finding**
3 **of failure? If so, how?**

4 A. No, it has not changed.

5 **Q. Question 42.**

6 **If Illinois EPA's proposal is adopted by the**
7 **board, what will -- what will be the approach of the**
8 **agency's permit section to removing SMB language from**
9 **existing operating and construction permits?**

10 A. Eventually, the SMB provisions will be
11 removed from the permits. This will occur similar to
12 how it does any time a new or revised rule is adopted,
13 that changes permit provisions. That generally happens
14 at the time of renewal, but it could be earlier under
15 certain circumstances.

16 **Q. Can the agency comment on what those**
17 **certain circumstances might be, that it would not be**
18 **addressed during the renewal process?**

19 A. One example would be that there is certain
20 provisions in the CAAPP permitting program for sources
21 being required to apply for permit revisions, if they
22 are more than three years from a renewal. That would
23 be one instance.

24 But as I said, it wouldn't be any different

1 process than the normal process that happens with any
2 new rulemakings.

3 Q. In those circumstances, with CAAPP
4 permits, if a source is more than three years out from
5 their renewal, their next renewal, is the agency
6 considering reaching out to those sources to request
7 that they apply for a revision to address the SMB
8 provisions in their permit?

9 A. Yeah, I'm not certain that that is how the
10 agency handles it generally, that we reach out, or that
11 it's a requirement of the source itself.

12 But again, I would reiterate that it would be
13 the same process that is always in place when rules
14 change, that -- and sources have provisions that have
15 changed in their permits.

16 Q. Okay. Thank you.

17 Question 43. If the board adopts Illinois EPA's
18 proposal, has the agency considered the timing required
19 for engineering, procurement, and permitting for
20 sources that could install control devices to meet
21 generally-applicable standards during periods -- during
22 SMB periods?

23 A. The agency's position is that if sources
24 needed to install control devices to meet existing

1 applicable standards, they should already be in place.
2 Otherwise the source would have been out of compliance.

3 Q. Okay. Then I apologize. I'm going to --
4 it is addressed in a later question. I'm going to jump
5 to it real quick. Jumping to Question 46.

6 On Page 15 of the SOR, the agency states that,
7 and I quote, some sources in Illinois may desire to
8 make changes to source configurations, operations, and
9 practices, or pollution control equipment to meet
10 applicable emission limits at all times, end quote.

11 What is the basis for this statement?

12 A. The agency was acknowledging that there
13 may be sources that have been out of compliance.

14 Q. When you mean out of compliance, you mean
15 out of compliance currently as the regulations stand,
16 or potentially out of compliance if the agency's
17 proposal is adopted?

18 A. Currently.

19 Q. I appreciate you jumping to that question.
20 We may have additional follow-up when we get back
21 there, but thank you for turning to that right now.

22 Moving to Question 44.

23 On Page 15 of the SOR, the agency states that,
24 and I quote, Illinois's SSM provisions never excuse

1 **sources from the obligation to comply with emission**
2 **standards during startup or malfunction events, end**
3 **quote.**

4 **What is the agency's basis for this statement?**

5 A. Section 201.265 clearly states that these
6 SSM provisions only establish a prima facie defense to
7 an enforcement action alleging a violation of an
8 emission standard.

9 This is consistent with how Illinois EPA has
10 historically interpreted and implemented these
11 provisions.

12 **Q. In follow-up to that, the Section 201.149,**
13 **does that make mention of establishing a prima facie**
14 **defense?**

15 A. I'm sorry. What was the question?

16 **Q. Does Section 201.149 as it currently**
17 **stands make any mention of being a prima facie defense?**
18 **Or have --**

19 A. No, it does not.

20 **Q. And does Section 201.149 make any**
21 **reference or cross-reference to Section 201.265?**

22 A. Well -- right. Section 149 does reference
23 the provisions, the SMB provisions that are clarified
24 in 201.265. So they are referenced, but it does not

1 explicitly mention a prima facie defense.

2 Q. And I apologize. Can -- I'm just -- I'll
3 read -- I'm going to read Section 201.149 as it
4 currently exists.

5 And it states, no person shall cause or allow
6 the continued operation of an emission source during
7 malfunction or breakdown of the emission source or
8 related air pollution control equipment if such
9 operation would cause a violation of the standards or
10 limitations set forth in Subchapter C of this chapter,
11 unless the current operating permit granted by the
12 agency provides for operation during a malfunction or
13 breakdown.

14 No person shall cause or allow violations of
15 the -- sorry -- no person shall cause or allow
16 violation of the standards or limitations set forth in
17 that subchapter during startup unless the current
18 operating permit granted by the agency provides for
19 violation of such standards or limitations during
20 startup.

21 So I guess my question is, where in that
22 language does it reference the other SMB provisions,
23 such as Section 201.265?

24 A. Well, it references -- the current

1 operating granted by the agency provides for operation
2 during a malfunction or breakdown, and then also in the
3 latter part of the paragraph, during startup.

4 And -- right. And that references the SMB
5 provisions that are in the permits.

6 Also, this says granted by the agency provides
7 for violation of such standards.

8 And so I guess I would point out that the agency
9 has also interpreted exceedances during those periods
10 as violations.

11 MR. MORE: And Mr. Davis, doesn't this
12 provision then say if the permit granted the agency --
13 if the permit granted by the agency provides for the
14 operation during malfunction or breakdown, then it is
15 allowed, because it says no person shall cause or allow
16 the operation except -- in essence it says unless the
17 permit authorizes the operation.

18 A. The permit -- I guess the way that the
19 agency has always interpreted and implemented is that
20 those are violations, and that it is -- the permit
21 includes all of the SMB provisions that, you know, are
22 referenced either implicitly or explicitly in these
23 different parts that we have proposed to remove,
24 provide for the prima -- the affirmative defense in an

1 enforcement case.

2 BY MS. BROWN:

3 Q. And I guess just following up on that,
4 just the plain language of 201.149 -- and again,
5 referencing unless the current operating permit for the
6 agency provides an operation during a malfunction or
7 breakdown or in cases of startup, unless the current
8 operating permit granted by the agency provides for a
9 violation of such standards or limitations during
10 startup, would the agency agree that that language
11 is -- could be interpreted as broader than just
12 providing a prima facie defense as referenced in
13 201.265?

14 MS. VETTERHOFFER: And I just want to ask
15 for a clarification. Are you asking whether it could
16 be interpreted to apply to perhaps additional permit
17 provisions that are not based on Subpart I of Part 201?

18 MS. BROWN: No. No. We are more getting
19 to -- there is additional permit provisions that relate
20 to periods of startup and malfunction and breakdown
21 that are -- that do not just provide a prima facie
22 defense.

23 A. I don't believe that's accurate. Insofar
24 that during these periods, sources are required to

1 report exceedances as violations, and they report
2 information around those events, whether they be
3 startup or malfunction. And in those cases, have an
4 affirmative defense against -- not against, but have an
5 affirmative defense in any enforcement action that may
6 arise from those events.

7 Right. I will agree that the language is not
8 ideal, but the agency has always interpreted and
9 implemented it this way. And while 149 doesn't
10 specifically reference 265, 265 does clearly say that
11 the permission -- and again, that's not ideal
12 language -- but the granting permission to operate
13 shall be a prima facie defense to an enforcement action
14 alleging a violation of Section 201.149.

15 So 265 references 149, whether 149 hooks back up
16 to 265.

17 MR. MORE: Let's go to Section 202.107,
18 allowable emissions.

19 Do allowable emissions include emissions that
20 exceed an applicable standard?

21 A. Well, the language allowable emissions is
22 defined in 107A, and it means the rate of an emission
23 source calculated using the maximum rated capacity of
24 the emission source, unless the emission source is

1 subject to permit conditions or other enforceable
2 limits which restrict the operating rate, or hours of
3 operation, or both, and the more stringent of the
4 following.

5 MR. MORE: Right. Okay.

6 A. And so your question is, do allowable
7 emissions include SMB events?

8 MR. MORE: Well, I think that answer is
9 clear, if you turn to C. You tell me.

10 A. Yeah, and I'm not sure what the effect of
11 this would be, other than to say that these -- this
12 emission is -- or sorry -- this definition is limited
13 to this section.

14 MR. MORE: Sure. But it's referring to
15 enforceable limits. Subchapter C are enforceable
16 limits; correct?

17 A. That -- I don't know that for sure.

18 MR. MORE: Okay.

19 A. I don't know that we ever enforce against
20 a source that is in violation of a limit of their
21 allowable emissions, from this definition. Usually
22 it's a violation of a specific emission standard.

23 MR. MORE: So if you don't enforce against
24 an exceedance -- I'm sorry -- if you don't -- say that

1 again. You --

2 A. You generally would not be enforcing
3 against a source based on violating the allowable
4 emissions as defined in this part and subpart.

5 MR. MORE: Okay. So you don't enforce
6 against a source that has violated its allowable
7 emissions? Is that -- that's what you said; right?

8 A. As defined in this section.

9 MR. MORE: As defined in this section.
10 And this section says a source is entitled -- allowable
11 emissions includes excess emissions during startup,
12 malfunction, and breakdown; correct?

13 A. That's what it says, yes.

14 MR. MORE: So those are not emissions you
15 would enforce against; correct?

16 A. Not in --

17 MR. MORE: This context; right?

18 A. We would not -- we would not have a
19 violation notice issued based on 201.107C, violation --
20 because certainly a source would have violated a more
21 specific emission standard.

22 MR. MORE: Allowable emissions are not --
23 the content -- sir, this context of allowable emissions
24 is to help define what you treat as allowable for air

1 modelling purposes and other -- air quality
2 assessments; correct?

3 A. That could be, yes.

4 MR. MORE: Allowable emissions are not in
5 and of themselves a standalone enforceable limit;
6 correct? The concept, allowable emissions.

7 A. In this subpart, yes, I would agree.

8 MR. MORE: Right. So if you're --
9 generally as a policy, you do not bring an enforcement
10 action for an exceedance of whatever an allowable
11 emission limit may be -- allowable emissions -- why the
12 heck do you need a prima facie defense then for an SMB
13 event? If you're never going to enforce it, why do I
14 have a prima facie defense?

15 A. Because there would be an applicable limit
16 that applies to an emission unit and a specific
17 pollutant that is generally going to be a numerical
18 value, and not just drawn from a definition of an
19 allowable emissions from our Part 202 alternative
20 control strategies.

21 MR. MORE: But your definition of
22 allowable emissions ties back to that emission limit.

23 A. What I would say is, I don't believe that
24 this definition establishes an emission limit. I

1 believe this establishes what we call allowable
2 emissions in this part.

3 MR. MORE: And what you call allowable
4 emissions is an -- is the maximum -- in essence, it's
5 the maximum amount that a source can emit?

6 A. Unless also restricted by enforceable
7 limits.

8 MR. MORE: And I'm sorry. When I say
9 maximum amount, I should say maximum legally authorized
10 to emit.

11 A. Right.

12 MR. MORE: And this acknowledges then that
13 one is legally authorized to emit, under Subsection C
14 here, emissions in excess of the applicable standard
15 during limited events, startup, malfunction, breakdown,
16 and only if the SMB provisions are applicable; correct?

17 A. I would say you are correct in that this
18 does allow for excess emissions above what this
19 definition of allowable emissions says is allowable
20 emissions for the purposes of alternative control
21 strategies.

22 I don't think that this 202.107C allows for
23 excess emission beyond any emission rate or standard or
24 limit elsewhere in the code.

1 MR. MORE: Would you agree with me that
2 201 -- that 202.107C is consistent with 201.149 in its
3 current form?

4 MS. VETTERHOFFER: Can you clarify what
5 you mean by consistent?

6 MR. MORE: I'll withdraw the question.
7 I'll move on. Let's move on.

8 BY MS. BROWN:

9 Q. Just following up on that conversation.

10 Has the agency ever, to your knowledge, issued a
11 violation notice for emissions exceeding a
12 generally-applicable standard during a startup,
13 malfunction, or breakdown event where that source has
14 an SMB provision in their operating permit, pursuant to
15 these provisions?

16 A. I am not able to answer that right now. I
17 can see where there could be, but I'm not certain
18 whether that's happened -- for sure.

19 Q. Can the agency commit to seeing if there
20 is anything that they can follow up on to see -- maybe
21 with the compliance section -- that would help clarify
22 that response or add any additional detail to that
23 response in post-hearing filings?

24 A. Yes. And to the -- to whether the

1 question is relevant, I would say that a permittee (ph)
2 or source with SMB provisions in their permit, there is
3 more to those provisions often than just the limit and
4 the SMB provisions themselves.

5 I could easily see where a source has SMB
6 provisions in their permit, and then the agency
7 determined that no, this source did not minimize
8 emissions during that period to the maximum extent, and
9 said, well, sure, it was a startup, but this -- that
10 it's no defense for the actions he took. So I --

11 **Q. But in terms of a violation notice for the**
12 **exceedance of whatever standard is applicable generally**
13 **at all times, would the agency have issued a violation**
14 **notice in that scenario?**

15 A. Generally our answer would be that the
16 agency takes all of the circumstances into account when
17 considering an enforcement action.

18 So if you would like the answer to that
19 question, have we ever -- we can check into that. I
20 don't know if that's a special case that you are
21 talking about, where --

22 **Q. I think --**

23 A. It's just the -- it's just the specific
24 limit, and that's all that's happened, because there is

1 always additional factors that would be considered in
2 enforcement actions.

3 Q. Understood. And the question -- and
4 sorry, to clarify, isn't necessarily has -- even though
5 I posed it that way -- has the agency ever, but does
6 the -- could probably be better posed as does the
7 agency typically issue violation notices. I mean, I'm
8 sure we could always find an instance of, you know, in
9 how many plus years that the agency has been operating
10 that a violation notice has been issued.

11 But the question of whether -- you know, does
12 the agency typically issue a violation notice for an
13 exceedance of a generally-applicable standard during a
14 startup, malfunction, or breakdown event, one that
15 source has SMB provisions in their permit, and that
16 just in that limited circumstance would be something
17 that we think would be beneficial for the board to
18 know.

19 And if you can, potentially if you haven't
20 already consulted with compliance section on their
21 thoughts on that question, it would be appreciated.

22 A. We can provide a response.

23 Q. Turning back To Question 44. Specifically
24 44, moving onto 44A.

1 The agency provided their response to Question
2 44, and then our follow-up to that would be, how does
3 the agency's position align with permit conditions that
4 authorize or grant startup and malfunction or breakdown
5 events?

6 A. Right. And I think we got into this a
7 little bit.

8 Our position is that Section 201.265 clarifies
9 the effect or impact of the language noted in this
10 question.

11 **Q. Subquestion B. If the SMB or SSM**
12 **provisions have never excused sources from the**
13 **obligations to comply with emission standards during**
14 **startup or malfunction events, standards, what is U.S.**
15 **EPA's basis and need for the SSM SIP call?**

16 A. And the agency would refer you to the
17 language of the SIP call where U.S. EPA explains that
18 states have varying types of SSM provisions. For
19 example, some state provisions provide affirmative
20 defenses, while others establish automatic or
21 discretionary exemptions from emission limits.

22 U.S. EPA explained why each is inconsistent with
23 the Clean Air Act. Regarding affirmative defense
24 provisions, U.S. EPA stated that affirmative defense

1 causes must be removed from a state's SIP as the Clean
2 Air Act precludes any such provision that would operate
3 to limit a court's jurisdiction or discretion to
4 determine the appropriate remedy in an enforcement
5 action.

6 U.S. EPA stated that these provisions are
7 inappropriate no matter what type of event they apply
8 to or what criteria they contain.

9 **Q. Question 45.**

10 **On Page 15 of the SOR, the agency states, quote,**
11 **the determination that those emission standards are**
12 **technically feasible and economically reasonable would**
13 **have been appropriately addressed by the board in the**
14 **rulemakings that establish those specific standards,**
15 **and should not be revisited here, end quote.**

16 **When were the emission standards referenced by**
17 **the agency originally adopted in relation to the SMB**
18 **provisions that were adopted in PCBR 71-23, either**
19 **about before, during the same time, or after?**

20 A. The agency is not referencing any specific
21 emission standard. All emission standards are vetted
22 by the board before adoption by the board.

23 MR. FOX: Ms. Brown, do you have any
24 follow-ups on Question Number 45?

1 MS. BROWN: Not at this time.

2 MR. FOX: I want to break in and propose
3 we have been back at it for nearly 90 minutes. What I
4 would like to suggest is that we take a 60-minute break
5 so that people at least have a brief chance to get
6 something like a lunch.

7 My intention that I shared with you before the
8 break is that we have our participants present, our
9 room available, progress underway. I would like to
10 resume at 2:00 and continue on so that we wrap up all
11 of the questions based on the agency's testimony later
12 today, and we can assess later when we take a break how
13 long it's requiring, but I think we are making the kind
14 of progress that would allow us to do that.

15 So that is my expectation; I just wanted to be
16 candid about that.

17 Let's see all of one another back here at 2:00
18 P.M., in just a little bit over an hour. Thank you all
19 for your patience.

20 [A recess was taken.]

21 MR. FOX: Ms. Brown, before we took a
22 break to get lunch, we were working on your questions.
23 I believe we are ready to turn to your Question Number
24 47; is that correct?

1 MS. BROWN: I believe Question 46.

2 MR. FOX: 46. My mistake. Please go
3 ahead.

4 MS. BROWN: Thank you.

5 BY MS. BROWN:

6 Q. So I know we have touched on 46 before,
7 but I think we may just go back for the record and ask
8 it again.

9 On Page 15 of the SOR, the agency states that,
10 quote, some sources in Illinois may desire to make
11 changes to source configurations, operations, and
12 practices, or pollution control equipment to meet
13 applicable emission limits at all times, end quote.

14 What is the basis for this statement?

15 A. My answer was the agency was acknowledging
16 that there may be sources that that have been out of
17 compliance.

18 Q. And Subquestion A, has the agency
19 considered what controls are available to control
20 emissions to meet applicable emission limits at all
21 times? If so, please summarize any discussions and
22 provide any documentation concerning such
23 consideration, if not, why not?

24 A. Not in the context of this rulemaking.

1 Emission controls would have been considered during the
2 rulemakings that established the emission limits.

3 If a source believes that an emission limit
4 needs to be revisited, it is the agency's position that
5 a future proceeding would be more appropriate, given
6 the deadline for Illinois to address the SIP call and
7 the uncertainty around the approvability of alternate
8 emission standards.

9 **Q. B, has the agency considered whether it is**
10 **technically feasible in all situations to control**
11 **emissions to meet applicable emission limits at all**
12 **times? If so please summarize any discussions and**
13 **provide any documentation concerning such**
14 **consideration. And if not, why not?**

15 A. And I would offer the same response as for
16 this question that I just gave for 46A.

17 **Q. Question 47. On Page 15 of the SOR, the**
18 **agency states that, quote, the costs associated with**
19 **any such changes are indeterminate due to the**
20 **widely-varied source categories that could potentially**
21 **be affected, and the measures that may be necessary for**
22 **sources to ensure compliance with applicable standards**
23 **and limitations at all times, end quote.**

24 **Has the agency performed any outreach or**

1 information requests, including to permit holders,
2 industry organizations, U.S. EPA, state regulatory
3 agencies, or any other person or organization, to
4 obtain such cost information?

5 A. No, the agency's proposal only removes the
6 affirmative defense provisions provided to sources. It
7 does not alter any applicable emission limits or
8 sources of obligations to comply with them.

9 I believe that answers 47A also, if no why not.

10 Q. Thank you. 48.

11 Has the agency determined that the costs of any
12 control measures and/or equipment that may be necessary
13 to comply with emission standards at all times are
14 outweighed by the benefits of this proposal? If yes,
15 please summarize your findings. If no, why not?

16 A. And the agency, again, would point to the
17 responses in Questions 46 and 47.

18 Q. 49. If the board adopts the agency's
19 proposals, what should companies who rely upon SMB
20 provisions do when their units need to start up or
21 shutdown or when they experience a malfunction?

22 A. Sources' obligations to comply with the
23 applicable rules are not changed by this rulemaking.
24 Sources are still required to comply with the emission

1 limits or else report noncompliance in accordance with
2 the applicable requirements to do so.

3 MS. SALK: 50, if the board adopts the
4 agency's proposal, how much time will companies who had
5 previously relied on the SMB provisions be given to
6 consider alternatives or implement operational or
7 equipment changes in order to achieve compliance with
8 emission standards during periods of SMB.

9 A. The rule will be effective upon adoption
10 by the board.

11 BY MS. BROWN:

12 Q. So stemming from that, the agency's
13 expectation is compliance with the revised provisions
14 must be achieved upon adoption by the board?

15 A. Yes. Compliance is the expectation.

16 Q. Subquestion A.

17 Has the agency taken into consideration the time
18 involved in procuring and installing new control
19 measures and/or equipment that may be necessary as a
20 result of the proposal if adopted? If yes, please
21 summarize. If no, why not?

22 A. And I would, again, refer back to our
23 answers -- answer to Question 47.

24 Q. Question 51.

1 Where operational or other changes needed to
2 achieve compliance with emission standards during
3 periods of SMB are technically infeasible or
4 economically unreasonable, does Illinois EPA expect
5 companies to continue operating during periods of SMB
6 and rely on the agency's use of enforcement discretion?

7 A. In the ordinary course, decisions to
8 operate or not operate are not made by the agency. The
9 expectation is for sources to comply with the
10 applicable requirements or to report noncompliance.

11 Enforcement discretion has always been involved
12 with that expectation, and nothing has changed in that
13 regard by this rulemaking. The agency would also refer
14 you to the language of the SIP call, where -- oh,
15 I'm -- I meant -- okay. So strike that. I'm not
16 referring to the SIP call.

17 And then sources may also seek regulatory relief
18 from otherwise applicable provisions by filing with the
19 board.

20 Q. First kind of follow-up question on that.

21 Is it your understanding that the agency's use
22 of enforcement discretion for exceedances of emission
23 standards during periods of SMB will remain unchanged
24 if the agency's proposal is adopted?

1 A. I would say yes, but I would also caveat
2 that your question said our enforcement policy. I
3 don't know -- right?

4 **Q. Enforcement discretion policy.**

5 A. Discretion policy. I don't know that
6 that's set -- you know, obviously there is discretion
7 involved.

8 So in general, I would say yes. However, I
9 don't know if the way you worded it is how we -- each
10 future enforcement decision or action will be its own
11 separate thing, but --

12 **Q. Correct. Will -- just to clean it up a**
13 **bit.**

14 **Will the agency's use of enforcement discretion**
15 **related to SMB be -- that's currently being used be**
16 **consistent after the agency's proposal is adopted, if**
17 **it's adopted?**

18 A. I believe so. And again, I can't commit
19 to any specifics in future actions.

20 **Q. And then can you provide just some**
21 **examples for clarity of regulatory relief that sources**
22 **may pursue?**

23 A. The options would be adjusted standards or
24 just general rulemakings filed with the board.

1 Site-specific rulemaking.

2 **Q. Question 52.**

3 MR. RAO: May I ask a follow-up regarding
4 the regulatory relief?

5 MS. BROWN: Absolutely.

6 MR. RAO: So any relief granted by the
7 board, would that be approved -- have to be approved by
8 the U.S. EPA?

9 A. Yes, it would. So I would expect in any
10 kind of proceeding, that the board would naturally get
11 the Illinois EPA Bureau of Air involved to ask, you
12 know, is -- would this be approvable with the U.S. EPA,
13 because yes, they would have to be submitted as SIP
14 provisions.

15 MR. RAO: Okay.

16 BY MS. BROWN:

17 **Q. And just to clarify. Do all adjusted**
18 **standards and site-specific rules have to be approved**
19 **by U.S. EPA, or is that specific to ones related to**
20 **SMB?**

21 A. Related to this SIP call, or rules that
22 have been adopted in -- to attain or maintain a
23 standard.

24 Not -- our entire code is not in the SIP. So

1 there are certain instances where we can revise or
2 amend rules, and they are just our rules, and they are
3 not submitted to the U.S. EPA.

4 Q. Going to Question 52.

5 Please explain what the addition of accept -- as
6 specifically provided for by such standard or
7 limitation means in both sentences of the proposed
8 amendments to Section 201.149.

9 A. That would refer to any explicit
10 exceptions that are established by the board when it
11 adopts a standard or limitation.

12 Q. So that would include if an alternative
13 limit -- or alternative emission limit were to be
14 adopted by the board?

15 A. Yes.

16 Q. Okay. 53.

17 Do the general conditions and existing operating
18 permits contain a provision based on Section 201.149?
19 If so, what is that provision?

20 A. If by general conditions you mean standard
21 conditions --

22 Q. I do.

23 A. -- then no. With regard to CAAPP
24 permits. But yes, with regard to lifetime operating

1 permits and FESOPs.

2 In the latter two permit types, provisions in
3 Standard Condition 9 regard Section 201.149.

4 **Q. Do you have a copy of Standard Condition 9**
5 **that you could read into the record?**

6 A. Are they slightly different?

7 MS. VETTERHOFFER: Yeah.

8 A. So there is the FESOP and the lifetime
9 operating permit standard conditions.

10 The FESOP standard condition reads, no person
11 shall cause or allow continued operation during
12 malfunction, breakdown, or startup of any emission
13 source or related air pollution control equipment if
14 such operation would cause a violation of an applicable
15 emission standard or permanent limitation.

16 Should a malfunction, breakdown, or startup
17 occur, which results in emissions in excess of any
18 applicable standard or permit limitation, the permittee
19 shall, A, immediately report the incident to the
20 Illinois EPA's regional field operations section office
21 by telephone, telegraph, or other method as constitutes
22 the fastest available alternative, and shall comply
23 with all reasonable directives of the Illinois EPA with
24 respect to the incident. I think e-mail counts too

1 now.

2 B, maintain the following records for a period
3 of no less than two years, date and duration of the
4 malfunction, breakdown, or startup, full and detailed
5 explanation of the cause, contaminants emitted, and
6 estimate of quantity of emissions, measures taken to
7 minimize the amount of emissions during the
8 malfunction, breakdown, or startup, measures taken to
9 reduce future occurrences and frequency of incidence.

10 So the standard condition from the lifetime
11 operating permits is thankfully shorter. It is, no
12 person shall cause or allow startup of any emission
13 unit or continue to operation during malfunction or
14 breakdown of any emission unit, or related air
15 pollution control equipment.

16 If such startup or continued operation would
17 cause a violation of an applicable emission standard or
18 permit limitation, if such operation is not allowed as
19 a special condition of this permit as required by 35
20 Illinois Administrative Code 201.149.

21 BY MS. BROWN:

22 **Q. Thank you. Question 54.**

23 **If the board adopts the agency's proposal, will**
24 **a provision based on Section 201.149 be included in the**

1 **standard conditions for operating permits issued after**
2 **this rulemaking? If so -- going on to A -- if so, how**
3 **would the applicability of the Section 201.149**
4 **provision after this rulemaking be different than how**
5 **it has been applied previously?**

6 A. Previously Section 201.149 applied unless
7 a source's operating permit contained certain SMB
8 provisions. If the agency's proposal is adopted,
9 Section 201.149 will apply unless the applicable
10 emission limitation adopted by the board contains an
11 applicable exemption.

12 Okay. And in answer to the first part of the
13 question, the agency will continue as described in my
14 prior response to Question 53.

15 **Q. Question 55.**

16 **Is the agency's permit section involved in the**
17 **development of the proposed revisions to Section**
18 **201.157? If so, please describe the permit section's**
19 **involvement?**

20 A. The Bureau of Air's permit section was not
21 directly involved in the drafting of the proposed
22 revisions or with the support provided to the Illinois
23 Pollution Control Board, in such as the statement of
24 reasons for the rulemaking.

1 Q. 56.

2 What metric is used in deciding if emissions
3 during startup are higher than emissions during normal
4 operations? For example, pounds per hour, PPM, heat
5 input, et cetera.

6 A. In this case, I think we should skip to
7 the next question, as I don't think an answer to this
8 will be necessary.

9 Q. Okay. Then 57.

10 If emissions during startup are higher than
11 during normal operations but do not exceed the
12 numerical emission standard, does the applicant have an
13 obligation to address startups in the operating permit
14 application per Section 201.157?

15 A. Okay. With regard to this question --
16 with regard to this question and the next, upon further
17 examination of the language, the agency has proposed
18 adding to 201.157, such language is unnecessary and
19 should be removed from the rulemaking.

20 The only needed -- the only amendment needed to
21 this section is the deletion of the entire sentence
22 beginning if applicable, pursuant to the requirements
23 of subpart I.

24 If emissions during startup are higher than --

1 wait.

2 So in essence, we are -- having read these
3 questions and revisiting this language, the agency is
4 proposing to remove that addition from Section 157.

5 Yeah, and we'll include that in our post-hearing
6 comments as a recommendation to the board to --

7 MR. FOX: You read my mind, Mr. Davis.

8 Thanks.

9 A. Okay.

10 BY MS. BROWN:

11 Q. Just in follow-up to that.

12 So even with the removal of the proposed added
13 language, that added that proposed -- that
14 previously-proposed added language, prefaced and
15 already existing sentence in 201.157, which is, an
16 application for an operating permit shall contain a
17 description of the startup procedure for each emission
18 unit, the duration and frequency of startups, the types
19 and quantities of emissions during startup, and the
20 applicant's efforts to minimize any such startup
21 emissions, duration of individual startups, and
22 frequency of startups.

23 So I guess just a follow-up question related to
24 Question 58 is, with that sentence remaining in Section

1 201.157, after this rulemaking of the agency's proposal
2 is adopted, how will the agency's permit section
3 utilize that emissions information for startups
4 required by 201.157?

5 A. The existing language in the section
6 requires that a permit application include various
7 information regarding startup, which is relevant to the
8 agency with regard to establishing the overall
9 emissions profile, and is also useful in assessing air
10 quality and other permitting-related considerations.

11 Q. And Question 59.

12 Did the agency consider making the effective
13 date of the proposed amendments the date of U.S. EPA
14 approval of the SIP revision, as opposed to the date of
15 board adoption? If so, please summarize the
16 discussions regarding such consideration. If not, why
17 not?

18 A. The agency did consider proposing an
19 effective date later than the board adoption date in
20 response to the comments and discussions during
21 outreach. However, U.S. EPA Region 5 advised the
22 agency that they likely could not deem our submittal
23 complete and stop the sanctions clock if we submit a
24 rule that is not currently effective.

1 Q. So then just for the record, 60 -- would
2 the agency be opposed to making the effective date of
3 the proposed amendments the date of U.S. EPA approval
4 as a SIP provision, as opposed to the date of board
5 adoption? If so, why?

6 A. In light of the previous stated response,
7 the agency does oppose a later effective date.

8 MS. BROWN: Would I be able to have just
9 have one minute to confer to see if we have any
10 additional follow-up questions at this time?

11 MR. FOX: Absolutely. Take your time.

12 MS. BROWN: Thank you.

13 [A recess was taken.]

14 MR. FOX: Ms. Brown, please go ahead.

15 MS. BROWN: Thank you very much.

16 BY MS. BROWN:

17 Q. Going back just briefly to Section
18 201.157, and the requirement for an application for an
19 operating permit shall contain a description of the
20 startup procedure for each emission unit, the duration
21 and frequency of startups, the types and quantities of
22 emissions during startup, and the applicants' efforts
23 to minimize any such startup emissions, duration of
24 individual startups, and frequency of startups.

1 **Just a clarifying question of whether the**
2 **information required there is for each and every**
3 **emission unit, or -- as that language stands, or does**
4 **it mean something else?**

5 A. It does say the startup procedure for each
6 emission unit. I understand that in some cases, you
7 are not going to have really anything to say about
8 that.

9 But it does apply to each emission unit. Is
10 that answering your question, or is it just --

11 **Q. It does, or -- you know, I guess,**
12 **furthering that question, is it the agency's**
13 **interpretation that that would really -- kind of**
14 **getting to your comment, only apply to emission units**
15 **when you know you might have issues during startup?**

16 A. Right. And that -- I think that was the
17 idea behind the language we are -- no longer think is
18 necessary, that if it's necessary -- well, if it's
19 necessary because emissions would be different during
20 startup, then we would like to know. But it's been the
21 standard language for each emission unit for a very
22 long time, and we -- so removing that proposed
23 additional language really made sense to us. And yes,
24 it will just be basically as it always has been, and it

1 always has applied to each unit.

2 I don't know whether -- when a source does an
3 application for a permit, they generally do provide
4 startup procedures for every single unit.

5 If, you know -- it might be well-known that
6 there is no procedure, there is no additional concerns
7 about startup for a unit of that type. And obviously
8 if our permit engineer and the permit section don't ask
9 for additional information about such units because
10 they have experience and know that there is -- there
11 are no concerns upon startup, then I would expect those
12 practices just to continue.

13 **Q. And then just quickly, you mentioned the**
14 **possibility of using -- or having the option for**
15 **applying for -- or submitting a proposal for an**
16 **adjusted standard or site-specific rule.**

17 **Did the agency have any conversations with U.S.**
18 **EPA regarding this possibility or the likelihood of the**
19 **use of adjusted standards or site-specific rules or**
20 **variances or are any other regulatory relief**
21 **provisions?**

22 **A. We have been in contact with U.S. EPA**
23 **about possible alternative limits, whether they be an**
24 **adjusted standard or site-specific rulemaking, and**

1 we'll continue to communicate with them, as I'm sure we
2 will have further communications with, you know,
3 sources that may be requesting an alternative limit
4 from the board, or, you know, from the board in this
5 rulemaking.

6 But, you know, our position remains that those
7 should happen in a different proceeding, but Illinois
8 EPA is -- will always listen to, you know, our sources
9 if -- and work with U.S. EPA on their behalf also in
10 any of those kind of proceedings.

11 MS. BROWN: Thank you.

12 That is all we have at this time. Thank you
13 very much. And thank you.

14 MR. FOX: Absolutely, Ms. Brown.

15 And Mr. More, I believe we are in order to turn
16 to you for the questions that you had filed on behalf
17 of Dynegy. As was the case with Ms. Brown, the
18 questions are not admitted into the record as if read.
19 If you would for the sake of our record clarify by
20 reading those aloud for Mr. Davis, that would be
21 appreciated.

22 MR. MORE: My pleasure.

23 EXAMINATION

24 BY MR. MORE:

1 Q. Mr. Davis, Question Number 1.

2 Do all machines work perfectly all the time?

3 A. No.

4 Q. Question 2.

5 Can equipment that is properly designed and
6 maintained fail?

7 A. Yes, it can.

8 Q. Number 3.

9 Does IEPA recognize that in some cases, emission
10 limits during periods of startup, malfunction, or
11 breakdown, otherwise known as SMB, may not be met?

12 A. The agency does recognize that limits and
13 standards may at times be exceeded during periods of
14 SMB.

15 Q. Question Number 4.

16 Are sources with air permits that have
17 conditions governing SMB pursuant to Sections 201.149
18 and 201.261 through 201.265 -- and I'll be referring to
19 those as SMB conditions -- required to report to IEPA
20 the emissions occurring during SMB events that are
21 governed by those conditions?

22 A. If by SMB events you mean where there are
23 exceedances of an applicable standard, yes.

24 Sources are generally required to report any

1 period of exceedance. The precise nature of that
2 reporting may vary from source to source and permit to
3 permit, but as a general matter, regulated sources are
4 required to report exceedances, noncompliances, and
5 violations of their permits.

6 **Q. And generally speaking, how are those SMB**
7 **emissions reported to IEPA?**

8 A. Again, generally those would be reported
9 in deviation reports, but these reports vary by the
10 permit. Reports could be required within a number of
11 days of an event, or in a quarterly, a semiannual, or
12 perhaps even an annual report.

13 **Q. And Question 4AI.**
14 **Can those emissions exceed the applicable**
15 **emission limit and still be eligible for the**
16 **affirmative defense articulated by IEPA in its**
17 **statement of reasons in this proceeding?**

18 A. That question was a bit confusing to us,
19 as only sources that have exceeded a limit would need
20 an affirmative defense.

21 The question is, can those emissions exceed the
22 emission limit and still be eligible, and the answer
23 would be yes, but only sources that have exceeded a
24 limit would need an affirmative defense.

1 Q. Thank you for that clarification. In
2 essence, by definition --

3 A. Yes.

4 Q. -- it occurs that way. I appreciate
5 that.

6 Question Number 5.

7 Is IEPA aware of instances where an applicable
8 emission limit has been exceeded during an SMB event?

9 A. Yes.

10 Q. Is there a cap or limit on the amount of
11 emis -- let me start over.

12 Question Number 6.

13 Is there a cap or limit on the amount of
14 emissions a unit can emit during SMB to be eligible for
15 the SMB affirmative defense articulated by IEPA in its
16 statement of reasons in this proceeding?

17 A. In the event of an emission exceedance
18 during startup or malfunction, a source with SMB
19 provisions in its permit is still required to report it
20 to the agency.

21 The agency would then evaluate that submission,
22 including the quantity of the emissions, to assess
23 whether the source satisfied the requirement to
24 minimize emissions to the maximum extent possible.

1 I'm not sure what's meant by a cap or a limit.
2 The quantity of emissions is relevant, but I don't
3 believe there is a numerical cap or a limit that's
4 stated anywhere.

5 **Q. Question 7.**

6 **When evaluating air quality in the State of**
7 **Illinois, does IEPA consider the emissions from SMB**
8 **events?**

9 A. The agency does in some instances consider
10 those emissions. It's possible. I'm not clear what
11 you're asking.

12 I would say that emissions from SMB events
13 necessarily can impact air quality and air quality
14 evaluations, and the emissions are evaluated, but the
15 extent of the evaluation may vary.

16 This is -- the consideration is necessarily
17 built into the information that is typically requested,
18 including the number of events, the duration of events,
19 the emissions impacts from SMB events, and emissions
20 minimization efforts that will be undertaken, among
21 other considerations.

22 And maybe you could clarify what you meant by
23 evaluating air quality.

24 **Q. I actually think you have answered the**

1 question as I anticipated, so thank you.

2 A. Okay.

3 Q. Question 8.

4 When evaluating air quality in the State of
5 Illinois, does IEPA consider the emissions from SMB
6 events even if the emissions exceed the applicable
7 emission limit?

8 A. The answer would be the same as for
9 Question 7.

10 Q. Thank you. Question 9.

11 When evaluating whether the air shed in the
12 State of Illinois has attained a national ambient air
13 quality standard, otherwise known as a NAAQS -- capital
14 A, capital A, capital A, capital Q, capital S -- does
15 IEPA consider emissions from SMB events?

16 A. For NAAQS, it depends. For example, if
17 the agency is basing its assessment on monitored data,
18 it is only based on what is measured at the monitor.

19 If the assessment is based on modelling,
20 computer modelling, the agency can only rely on the
21 data available and report it to us.

22 Q. So let's tease out a little bit when it's
23 modelling.

24 How does Illinois EPA model emissions from

1 sources that have SMB provisions in their permits? Let
2 me be more precise, Mr. Davis. I'm sorry.

3 How does U.S. EPA model SMB emissions from
4 sources that have SMB provisions in their permits?

5 A. I don't know that we would necessarily
6 model the SMB provisions. However, for instance, our
7 SO2 rulemaking in 2017 -- 2015 to 2017 -- those were
8 modelled areas of non-attainment.

9 And so while we did not try to predict what
10 emissions of SO2 might be at startup for any given
11 unit, we did run the modelling so that each source in
12 the model, each stack, each unit -- we ran a model that
13 provided us attainment of the NAAQS with adequate
14 margin of safety.

15 And so in that case, SO2 being an hourly limit,
16 we did apply pound-per-hour limits to sources, and
17 while those limits may have been at times higher than
18 what their normal operation might have been, those
19 limits were a number of pounds per hour that could not
20 be exceeded, because if they were, we were jeopardizing
21 violating the NAAQS.

22 And so I don't believe we would try to predict
23 what the specific emissions were, but we do -- we have
24 put hourly limits on sources based on modelling that

1 would apply at all times, because if they were
2 exceeded, that's precisely the kind of offense that
3 could lead to a violation of an hourly NAAQS.

4 **Q. Now, in that scenario, why would you model**
5 **emissions during startup, for example, that may be in**
6 **excess of the applicable standard?**

7 A. Well, I don't think we did. I don't think
8 we mod -- that's what I'm saying. I don't think we did
9 model startup events.

10 I think we modelled what the highest total in an
11 hour could be before we would -- without threatening
12 the NAAQS.

13 **Q. Okay.**

14 A. And so other limits apply to those units,
15 and as a fleet. And -- however, with an hourly
16 standard, we needed hour-by-hour limits to ensure the
17 NAAQS in that case.

18 And so any emissions, including startup or
19 malfunction, were included in those rules. Or sorry,
20 in the model.

21 **Q. In the model.**

22 A. Right.

23 **Q. Did I understand correctly that you may**
24 **have used different model inputs for startup?**

1 A. No.

2 **Q. Okay. Or malfunction?**

3 A. No.

4 **Q. Okay.**

5 A. Those wouldn't have been inputs. Just an
6 hourly block of emissions.

7 And that was just an example of where we might
8 model something higher than, you know, you may need
9 based on an annual standard, if you have your pounds
10 per million BTU. That's -- compliance is evaluated on
11 a monthly or a rolling yearly average, or something
12 like that, we absolutely needed an hourly standard to
13 ensure attainment of the NAAQS.

14 **Q. And when you are evaluating the air shed**
15 **using monitor data, does that monitor data include**
16 **emissions occurring during startup, malfunction, and**
17 **breakdown?**

18 A. Yes, if those emissions are picked up by
19 the monitor. The wind could be blowing the other way.

20 **Q. Let's turn to Question 10.**

21 **When evaluating whether a NAAQS has been met or**
22 **maintained, does IEPA consider emissions from SMB**
23 **events?**

24 A. As in my responses to the other question,

1 it depends on the type of assessment being made. But
2 yes, in some senses.

3 Q. Okay. Question 11.

4 The NAAQS help identify if the air quality in an
5 area is generally considered to be safe in regards to
6 public health; correct?

7 A. I wouldn't necessarily use the word safe,
8 but yes. There is other ways of characterizing the air
9 quality in areas that are considered attainment of all
10 of the standards, but yes, for the most part.

11 MR. MATOESIAN: Excuse me. You're not
12 saying it's unsafe?

13 A. I'm not. I'm not. I'm just saying that
14 is not the term of art that would be used for an area
15 of -- that is not in non-attainment for any standard,
16 the air quality is safe.

17 MR. MATOESIAN: I understand.

18 BY MR. MORE:

19 Q. What is the term of art?

20 A. It's an attainment of the standard.

21 Q. Okay. Question 12.

22 If an area is designated attainment for a NAAQS,
23 that means that the air shed in that area is generally
24 considered safe for that pollutant; right?

1 A. In general terms, again, yes, that's
2 correct.

3 Q. 12A.

4 If an area does not meet the NAAQS, then it is
5 designated non-attainment with the NAAQS; correct?

6 A. Yes.

7 Q. 12B.

8 In other words, if an area is designated
9 non-attainment, there are concerns with air quality in
10 that area; correct?

11 A. Again, in general terms, yes. Being
12 designated non-attainment means that there has been a
13 measured or modelled violation of an air quality
14 standard.

15 Q. Question Number 13.

16 Are the opacity standards in Sections 212.122
17 and 212.123 intended to address a NAAQS?

18 A. Opacity standards are intended to limit
19 emissions or particulate matter.

20 Q. 13A.

21 Could you -- if so, which NAAQS?

22 A. There are four different standards for
23 PM10 -- that's particulate matter of aerodynamic
24 diameter, less than 10 microns, and the same

1 designation for PM2.5.

2 **Q. Thank you.**

3 A. And there is four different NAAQS
4 standards for those.

5 **Q. Thank you. I may refer to those as the**
6 **particulate matter NAAQS; is that fair?**

7 A. Yes.

8 **Q. Okay. Question 14.**

9 **Are there any areas in Illinois designated**
10 **non-attainment for a particulate matter NAAQS?**

11 A. Not currently, but U.S. EPA has projected
12 in its recent proposal to reconsider the PM2.5
13 standard, that there will be at least two areas in
14 Illinois that will be non-attainment for that standard.

15 **Q. What are those two areas?**

16 A. That would be Chicago and Metro-East St.
17 Louis areas.

18 MS. VAN WIE: I'm sorry. You said Chicago
19 and what else?

20 A. The Metro-East St. Louis area.

21 MS. VAN WIE: Metro-East. Thank you.

22 BY MR. MORE:

23 **Q. Question 15.**

24 **Is IEPA aware that opacity levels have exceeded**

1 **the limits in Sections 212.122 and 212.123 during**
2 **periods of SMB at one or more coal-fired power plants**
3 **in the state?**

4 A. I don't know what -- in what time frame
5 you're asking about, but I believe the agency is aware
6 of some exceedances during some SMB periods at
7 coal-fired power plants.

8 **Q. Question 16.**

9 **Has the presence of SMB conditions in air**
10 **permits adversely affected the state's ability to**
11 **obtain or maintain any current particulate matter**
12 **NAAQS?**

13 A. The question is a bit vague, and I don't
14 know if I can provide a good answer for that. SMB
15 conditions being in the permit adversely affecting a
16 state's ability to maintain any current particular
17 matter NAAQS -- I don't have that information, but I
18 guess if you're asking, are all areas in the state
19 attaining the NAAQS? They are, but I couldn't say that
20 sources emitting in exceedance of a limit are not
21 impacting our ability to maintain those standards.

22 **Q. As you sit here today, or in connection**
23 **with your efforts to answer this question, are you**
24 **aware of any instances where an SMB event created an**

1 **issue with the state's ability to attain or maintain**
2 **any current particulate matter NAAQS?**

3 A. I'm not aware of a specific instance, no,
4 but I could see where in a case of a specific source
5 that is contributing significantly to monitored
6 concentrations of PM, say, for the 24-hour NAAQS, a
7 single -- a single SMB event could possibly tip a
8 source -- or sorry -- a monitor readings into where we
9 could have non-attainment.

10 So again, the attaining, we are currently
11 attaining all of the standards. We may not be
12 attaining the 2.5 standard when it is adjusted.

13 Maintaining, when you say adversely affecting,
14 it's possible that startup events are the 24-hour
15 period at the monitor in this neighborhood, you know,
16 even if it's -- if that annual average is at eight or
17 24-hour is, you know, only at 30, and it's -- you know,
18 that may be the reason why it's as high as it is.

19 So I -- so while yes, we are at -- we are
20 attaining, impacting maintenance is something I can't
21 commit to saying a startup event is not contributing
22 to.

23 **Q. I appreciate that. And the ambiguity**
24 **resulted in me asking a compound question. So let me**

1 **break it down, because I think your answer is different**
2 **for each.**

3 **Has the presence of SMB conditions and air**
4 **permits adversely affected the state's ability to**
5 **attain the currently particulate matter NAAQS?**

6 A. Not so far, no. Or not currently. We
7 previously did have non-attainment areas, and that may
8 have been impacted by startup events, malfunction
9 events.

10 **Q. And it may not have?**

11 A. May not have. I don't have knowledge of
12 any specific instance.

13 **Q. Question 17.**

14 **Are there emission standards, other than the**
15 **opacity limits in Sections 212.122 and 212.123 that**
16 **IEPA relies upon to attain and maintain the particulate**
17 **matter NAAQS?**

18 A. Yes.

19 **Q. 17A.**

20 **If so, what are they?**

21 A. They would be much of Part 212, aside from
22 Subpart B, where the opacity limits generally reside.

23 Much of Part 212 contains PM limits that are
24 other than opacity.

1 Q. Thank you. Question 18.

2 Were the opacity standards in Section 212.122
3 and 212.123 developed in connection with Section 110 of
4 the Clean Air Act?

5 A. I'm not sure what you mean by in
6 connection, but opacity standards were intended to
7 limit PM emissions in order to attain and maintain the
8 air quality standards in place at the time to my
9 knowledge.

10 Q. And those air quality stan -- the
11 mechanism for -- well, I'm going to move on to Question
12 19.

13 Does Section 110 of the Clean Air Act govern
14 state implementation plans?

15 A. Yes.

16 Q. Otherwise known as SIPs?

17 A. Yes, along with other provisions that also
18 govern SIPs, but, yes.

19 Q. Does Section 110 of the Clean Air Act
20 grant states discretion when designing a SIP?

21 A. Yes, there are flexibilities in how states
22 address SIP requirements.

23 Q. Question 21.

24 Are states allowed to utilize a broad range of

1 **measures to ensure attainment and maintenance of a**
2 **NAAQS?**

3 A. Yes, states are.

4 Q. Question 22.

5 Do the NAAQS create applicable requirements for
6 an individual source?

7 A. Generally, they do not.

8 Q. Question 23.

9 Is it true that SIPs can satisfy the
10 requirements of the Clean Air Act Section 110.A2A by
11 setting emission limits relevant to the subject NAAQS?

12 A. I wouldn't say SIPs can satisfy the
13 requirements. States are required by 110.2A to set
14 enforceable limits as necessary or appropriate to meet
15 the requirements of Section 110.

16 Q. Question 24.

17 Does the United States Environmental Protection
18 Agency, U.S. EPA, have the authority to issue a partial
19 approval of a SIP submittal?

20 A. I believe in some instances they have
21 issued partial approvals. I don't know that it would
22 be considered an authority rather than U.S. EPA
23 approving some elements and not other elements of a
24 state's SIP.

1 **Q. Question 25.**

2 **Has IEPA evaluated whether its proposal would**
3 **impact the operation of an existing coal-fired electric**
4 **generating unit in the state?**

5 A. The Illinois EPA's proposal only removes
6 an affirmative defense from the regulations. It
7 doesn't change any emission limits or sources,
8 obligations to comply with emission limits.

9 So no, Illinois EPA did not specifically
10 evaluate the impact on operation of any given
11 coal-fired EGU or the source category in general.

12 **Q. Question 26.**

13 **Has IEPA evaluated whether its proposal could**
14 **adversely impact the electric power system in Illinois?**

15 A. Again, as in the previous question, the
16 proposal only removes an affirmative defense, and
17 doesn't change emission limits or obligations to
18 comply.

19 So no, Illinois EPA did not perform that
20 evaluation either.

21 **Q. Question 27.**

22 **Has IEPA evaluated whether its proposal could**
23 **adversely impact the mid-continent independent system**
24 **operator, known as MISO, all caps, region?**

1 A. Same answer as to the previous two
2 questions, and I should note that the agency is not
3 charged with such assessments.

4 **Q. Question 28.**

5 **Has IEPA evaluated whether its proposal poses a**
6 **threat to reliable electric generation in Illinois?**

7 A. And again, it would be the same answer to
8 the previous three questions, and again, in this case,
9 those assessments are also not the charge of the
10 Illinois EPA.

11 **Q. Question 29.**

12 **Has IEPA evaluated whether its proposal could**
13 **result in increases in electricity costs?**

14 A. No, and those -- that would also be the
15 same as the previous answers.

16 **Q. Question 30.**

17 **Is IEPA aware of instances where rules have been**
18 **modified or regulatory steps have been taken to address**
19 **concerns with operating a unit in an economically**
20 **viable manner?**

21 A. The agency and the board do consider
22 economic concerns in proposing and adopting
23 regulations.

24 So yes, we are aware.

1 MR. MORE: I have no further questions at
2 this time.

3 MR. FOX: Thank you very much, Mr. More.
4 I believe Ms. Brown has indicated that she has a
5 follow-up question.

6 Please go ahead, Ms. Brown.

7 MS. BROWN: Thank you very much.

8 EXAMINATION

9 BY MS. BROWN:

10 Q. I just have one quick follow-up to
11 Dynegy's Question 3, which is, does IEPA recognize that
12 in some cases emission limitations during periods of
13 startup, malfunction, or breakdown may not be met. The
14 agency's answer was yes.

15 My follow-up is just that is the agency's
16 permitting section authorized to issue an air permit to
17 a source that cannot comply with applicable standards
18 at all times?

19 A. We can follow up with that one, just as
20 far as, you know, precise answer for you.

21 MS. BROWN: Thank you.

22 A. In post-hearing comments.

23 MS. BROWN: Thank you. That's all I have.

24 MS. VETTERHOFFER: Do you mind just

1 repeating that?

2 MS. BROWN: Absolutely.

3 Is the agency's permitting section authorized to
4 issue an air permit to a source that cannot comply with
5 applicable standards at all times?

6 MS. VETTERHOFFER: Thank you.

7 MS. BROWN: Uh-huh.

8 MR. FOX: Ms. Brown, you did indicate that
9 that was the last of your follow-up questions?

10 MS. BROWN: Correct.

11 MR. FOX: Were there any other follow-up
12 questions? Ms. Frede, on behalf of the chemical
13 industry council. Correct.

14 MS. FREDE: I just have a -- yes, sir. I
15 just have a few questions.

16 EXAMINATION

17 BY MS. FREDE:

18 Q. So I represent, obviously, 117 different
19 companies.

20 For industrial processes where the most
21 effective pollution control device cannot be made
22 operational unit said device has reached the minimum
23 operating temperature, what will the processes be to
24 obtain regulatory relief?

1 MS. VETTERHOFFER: Could you repeat that
2 question?

3 MS. FREDE: Sorry, yes.

4 BY MS. FREDE:

5 Q. For industrial processes, where the most
6 effective pollution control device cannot be made
7 operational until said device has reached a minimum
8 operating temperature, what will the process be to
9 obtain regulatory relief?

10 "Until"? I'm sorry. I misread that "until."
11 Let me read that in one more time.

12 For industrial processes where the most
13 effective pollution control unit cannot be made
14 operational until said device has reached minimum
15 operating temperature, what will the process be to
16 obtain regulatory relief? Thank you.

17 A. I think we have discussed that it's the
18 agency's position that, you know, any regulatory relief
19 beyond -- well, sorry. Not beyond, but actions other
20 than removing the offending provisions, SSM provisions,
21 the agency thinks would be more appropriate in a
22 separate proceeding, and those would include
23 site-specific rulemakings or adjusted standards.

24 MR. RAO: May I ask a follow-up question?

1 A. Yes.

2 MR. RAO: Mr. Davis, do you think that the
3 factors that the board considers under Section 28.1, I
4 think, where we have the adjusted standard
5 provisions -- are those factors appropriate for this
6 kind of relief, or should the rule itself specify
7 certain factors that the board needs to consider, if we
8 want to grant relief for SSM?

9 You don't have to answer it right now if you
10 want to take -- think about it.

11 A. Yeah, yeah. Yeah, and I think her
12 question raises your question, in that site --
13 source-specific is source-specific, but in some cases,
14 you know, a source --

15 MR. RAO: Because the hurdle is different
16 under 28.1. So should there be anything specific for
17 this SSM as well?

18 A. That's correct. And so I guess we would
19 have to take a look at that and get back to you.

20 MR. RAO: That would be helpful.

21 A. I assume your question is if this source
22 would benefit from this and another one --

23 MR. RAO: Yeah, and what factors need
24 to -- for the board to grant relief, what factors we

1 need to consider, whether it's under the general --
2 just the standard, or there should be something
3 specific to SSM.

4 A. Okay. We can provide response to that.

5 MR. RAO: Thank you.

6 MR. FOX: Ms. Frede, we can return to you
7 if you have another follow-up you would like to ask.

8 MS. FREDE: Yes, please. Thank you.

9 BY MS. FREDE:

10 Q. I think I -- you may have already answered
11 this, but just for the record, for industrial processes
12 where the most effective pollution control device
13 cannot be utilized during shutdown after its
14 temperature drops below minimum safe operating
15 temperature, what will the process be to obtain
16 regulatory relief?

17 A. I think it would be the same in both
18 cases.

19 MR. FOX: I just have three more
20 questions.

21 BY MS. FREDE:

22 Q. We have talked several times about
23 outreach today. Do you recall what outreach
24 specifically to the chemical companies that you or your

1 **agency has done on this rulemaking?**

2 A. It would have just been the outreach
3 period that we he had starting in November.

4 Q. And then how many of the -- I think you
5 mentioned 119 CAAPP permits are actual chemical
6 companies.

7 A. That I can't say, sitting here right now.

8 Q. And then my last question, how many
9 enforcement actions to date on excess emissions in
10 startups that had SMB relief provisions in their
11 permit?

12 A. Obviously I can't answer that now, but the
13 question is how many --

14 Q. Enforcement actions.

15 A. Enforcement actions have resulted --

16 Q. From excess emissions in startups that had
17 SMB provisions -- SMB provisions and permits, how many
18 enforcement actions?

19 A. Okay, and we can check into that. And
20 that's startups.

21 MS. VETTERHOFFER: And just to -- right.
22 And just to clarify, you're asking about, is there any
23 time frame?

24 MR. RAO: That was not given to me for a

1 time frame.

2 BY MS. FREDE:

3 Q. Okay. And then when you say enforcement
4 actions against permits that have this under
5 provisions, do you mean enforcement actions based on
6 excess emissions during a startup or malfunction event?

7 MS. FREDE: Yes, ma'am.

8 MS. VETTERHOFFER: Okay.

9 A. Well, she asked startup, and not
10 malfunction.

11 MS. VETTERHOFFER: Oh, sorry.

12 MS. FREDE: No, just startups.

13 MR. MORE: But I believe Ms. Brown asked
14 for the broad --

15 MS. BROWN: Right.

16 MR. MORE: Right, it would be covered by
17 one of her requests as well.

18 MR. FREDE: And that's all I have. Thank
19 you.

20 MR. FOX: Ms. Frede, thanks very much.

21 I had not forgotten you, Mr. James, and some
22 questions you had on behalf of the attorney general's
23 office.

24 Were there any other additional follow-up

1 I understand it, offset of emissions and highway
2 funding; is that correct?

3 A. That is correct.

4 Q. All right. Emissions offsets -- do you
5 know whether facilities in Illinois have used those
6 type of offsets in the past?

7 A. Emission offsets apply in non-attainment
8 areas. As far as -- as far as the offsets that would
9 be required in this set of sanctions should they occur,
10 I don't know, would those apply --

11 MS. VETTERHOFFER: Could you clarify what
12 you are asking?

13 BY MR. JAMES:

14 Q. So the -- if sanctions are imposed, they
15 would apply to emissions offsets. And I'm wondering
16 whether the type of offsets that would be sanctioned
17 have been used by facilities in Illinois.

18 A. Yeah, so -- yes, these types of offsets
19 have been used. They would -- the ratio of offset
20 would be increased.

21 Q. And you would expect that these kind of
22 offsets might be used in the future if Illinois
23 continues to be able to use them?

24 A. Be able to use the offsets?

1 **Q. Uh-huh.**

2 A. It's certainly -- I don't believe that the
3 Illinois EPA is welcoming --

4 **Q. Sure.**

5 A. -- increased ratios for offsets without a
6 federal requirement. So in our non-attainment areas we
7 have a ratio of offset that -- you know, it comes from
8 the classification of the non-attainment area. You
9 know, if it's moderate, or serious, or severe, they
10 increase.

11 So I guess your question is whether we would be
12 willing to use --

13 **Q. No, just whether --**

14 A. Similar offsets in the future.

15 **Q. Whether you think it could happen in the**
16 **future.**

17 A. If you're asking whether a facility may
18 need NAAQS or VOM offsets in the future, yes, we
19 will -- well, I'm hopefully we'll get our
20 non-attainment areas into attainment, and that won't be
21 the case.

22 But for the foreseeable future, we will have
23 some ratio of offsets in those areas.

24 **Q. Okay.**

1 A. Regardless of the sanctions.

2 Q. Got it.

3 A. Or hopefully not sanctions.

4 Q. Then the other type of potential sanctions
5 are highway funding; right?

6 A. (Nodding "yes.")

7 Q. And does Illinois use these federal
8 highway funds?

9 A. I would assume so, yes.

10 Q. And has IEPA alerted -- or first of all,
11 do you know whether there are agencies inside Illinois
12 state government that rely on this funding?

13 A. Yes, there are.

14 Q. Is Illinois Department of Transportation
15 one of these agencies?

16 A. Yes.

17 Q. And has IEPA alerted or otherwise let IDOT
18 know -- IDOT, Illinois Department of Transportation --
19 that these sanctions are potentially coming?

20 A. Yeah, I know that the governor's office,
21 our director's office, everybody is well aware of the
22 finding of failure last year.

23 Q. Got it.

24 A. And so necessarily, yes, I have prepared

1 informational bullets about what does this mean, and
2 obviously sanctions would have been part of that, when
3 you have a finding of failure, you have 18 months, and
4 then there is this sanction, this sanction.

5 So yeah, that information has been passed up,
6 and I am confident it has been shared, you know, with
7 the governor's office and then again with the other
8 agencies that it would impact.

9 Q. Got it. Okay. That's all the questions I
10 have about sanctions.

11 You mentioned sort of the sanctions timeline,
12 and the deadlines involved with -- with the finding of
13 failure, effectiveness, et cetera. So I guess I have
14 some questions about that timeline.

15 So the 2015 finding of failure came out under an
16 administrator appointed by President Obama; right?

17 A. 2015 was the SIP call.

18 Q. Oh, yes, correct.

19 A. Right. But yes, that was under the Obama
20 administration.

21 Q. Okay. And then that SIP call was
22 immediately challenged in federal court; right?

23 A. I believe so.

24 Q. And then later it was put into abeyance,

1 **like you said earlier; right?**

2 A. That is correct.

3 **Q. Okay. And when it was put into abeyance,**
4 **do you remember like when that happened?**

5 A. I am -- I think it was 2017. We could
6 provide that, I'm sure.

7 **Q. Sure.**

8 A. I don't know the exact date, but I do
9 believe it was in 2017.

10 **Q. Okay.**

11 A. And then that would have been the first
12 year of the Trump administration.

13 **Q. Right.**

14 A. They said they were going to reconsider
15 it.

16 **Q. So that was what changed U.S. EPA's**
17 **approach to the litigation, the change in**
18 **administration?**

19 A. Yes. Yes.

20 **Q. Okay.**

21 A. At that time, U.S. EPA was not -- so I
22 don't know precisely when the SIPs would have been due
23 off of this 2015 SIP call. I've forgotten that exact
24 date, but I do believe U.S. EPA, if they had wanted to,

1 could have issued findings of failure for states not
2 having submitted SIPs on that original deadline.

3 However since it was in abeyance, and the
4 administration was saying we may reconsider it, which
5 means it could have gone away, then obviously they
6 weren't issuing findings of failure on those.

7 MS. BROWN: And I apologize. Just a quick
8 follow-up on that. Yeah, I believe the abeyance
9 started in April 2017.

10 A. April 24th, yes.

11 MS. BROWN: And I believe the 2015 SIP
12 call had a deadline of November 2016, I believe, to
13 submit the SIP revisions.

14 So I guess the follow-up question is, did the
15 agency consider proposing a rulemaking to address the
16 2015 SIP call in light of that November 2016 deadline,
17 which was prior to the April 2017 abeyance?

18 A. I'm certain we did. Like I said, at that
19 time I was not a lead participant on SSM. But when you
20 have a SIP call and a date that a SIP is due, then yes,
21 I'm sure we were considering putting a SIP proposal
22 together, and attempting to get it in on time, submit
23 it on time.

24 MS. BROWN: And so are you aware of why a

1 SIP submittal wasn't -- or rulemaking, sorry -- wasn't
2 proposed ahead of that November 2016 SIP submittal
3 deadline?

4 A. Yeah, I think we answered that earlier. I
5 think -- there was a number of states that were also
6 asking for additional guidance. So it could have been
7 that at that time we had said we -- I'm not sure what
8 to do with this, give us more guidance. We were kind
9 of probably in the same boat with many states.

10 And so at that time of the April of 2017, we may
11 have been a little late, but still asking for more
12 information. And then when it was, you know, held in
13 abeyance, then we said, well, we're going to kind of
14 put the brakes on.

15 MS. BROWN: Were you aware during that --
16 I say you.

17 Was the agency aware during that time frame that
18 if they did not submit a SIP correcting the
19 deficiencies identified in the 2015 SIP call, that they
20 eventually could be subject to a finding of failure and
21 subject to potential sanctions?

22 A. Yes. That's always the case with a SIP
23 call and findings of failure to submit complete SIPs.

24 MS. BROWN: Thank you. Thank you very

1 much.

2 MR. JAMES: Yeah.

3 BY MR. JAMES:

4 Q. So yeah, I think you mentioned this just a
5 second ago, but like we said, the new U.S. EPA asked
6 for abeyance.

7 Do you know why they asked the court for
8 abeyance?

9 A. To clarify, it was not the new U.S. EPA.

10 MR. FOX: Sure.

11 A. They have always been the same. But the
12 new administration.

13 Yeah, they just announced that they would be
14 reconsidering it. I don't know their particular
15 reasoning. But yeah.

16 BY MR. JAMES:

17 Q. And so -- but IEPA was keeping track of
18 that case and seeing what U.S. EPA was planning to do
19 with the rule, weren't they?

20 A. Yes. Yes. And, like I said, we were in
21 regular communication with the U.S. EPA to see whether
22 there was any updates or whether -- news could have
23 come out in 2018 or 2019 that yes, we have reconsidered
24 it, and we are going to recommend that we withdraw the

1 SIP call.

2 And I don't know what kind of rulemaking process
3 that would have required for U.S. EPA, but that was
4 certainly something that was within the realm of
5 possibility at the time.

6 Q. Got it.

7 A. And so putting a lot of effort into SIP
8 planning for something that possibly could have gone
9 away was -- you know, we weren't putting a lot of
10 effort into the SSM planning at that time.

11 Q. Uh-huh.

12 Those are all of my questions about that topic.

13 Next, you just a little while ago answered a few
14 questions about energy planning and MISO.

15 In the statement of reasons, you list a bunch of
16 different states that have already submitted SIPs that
17 have been approved to U.S. EPA; right?

18 A. (Nodding "yes.")

19 Q. And one of the states is Indiana; right?

20 A. (Nodding "yes.")

21 Q. And Indiana -- just to say he nodded.

22 A. I'm -- we can check that.

23 Q. Sure.

24 A. Have you read our --

1 **Q. Yeah. Yeah.**

2 A. Okay. You're taking that from our
3 document.

4 **Q. Right.**

5 A. I will assume that you read that
6 correctly.

7 **Q. Right. And Indiana is in MISO, isn't it?**

8 A. It is.

9 **Q. That's all for that.**

10 **Next about --**

11 A. One moment.

12 **Q. Oh, sorry.**

13 A. I can't be sure about that. I would have
14 to check.

15 **Q. Okay.**

16 A. I'm thinking of the map in my head, and I
17 believe it is, but I don't want to just say off the top
18 of my head.

19 **Q. Sure. All right. Next about NAAQS. You**
20 **also talked about that just a second ago.**

21 **When you're planning to submit a SIP provision**
22 **to U.S. EPA, do you expect that they'll consider NAAQS**
23 **attainment versus non-attainment when they are deciding**
24 **if a SIP is approvable or not?**

1 A. Could you repeat that?

2 Q. Sure. Well, I can break that down.

3 So the SIP submittal consists of the rules that
4 IEPA has proposed to adopt; right?

5 A. (Nodding "yes.")

6 Q. And in that SIP, does it contain current
7 status of attainment or non-attainment inside of what
8 you're submitting?

9 A. In this particular -- particular
10 submittal, yes, this is going to be -- this is a
11 statewide proposal.

12 And so no, I don't think areas of non-attainment
13 for any pollutant really come into play with this
14 proposal.

15 Q. Okay. Those --

16 A. Or we won't be -- we won't be submitting
17 that to U.S. EPA.

18 Q. Sure.

19 A. And it won't be directed toward any
20 specific NAAQS or non-attainment area.

21 Q. Sure. Okay. That's all for my follow-up
22 questions. I had one other question about
23 environmental justice communities.

24 In the 2002 U.S. EPA finding of failure, they

1 **discuss the environmental justice impacts of their**
2 **decision; right?**

3 A. I think you meant 2022.

4 **Q. Correct.**

5 A. I think in the -- I'm not certain, and we
6 can respond to this.

7 I think in most of U.S. EPA's actions these
8 days, there is an element of including environmental
9 justice impacts in -- like I said, in the finding of
10 failure, that's an action. And they are asking us now
11 to include impacts in everything we send back in the
12 SIP submittal.

13 Yeah. And so yeah, I think you're correct, that
14 in the finding of failure, there are passages about
15 environmental justice impacts.

16 **Q. And in general, what's your understanding**
17 **of what U.S. EPA means when they talk about**
18 **environmental justice and environmental justice**
19 **communities?**

20 A. What's my understanding of -- well, I
21 mean, I am aware of the environmental justice issue. I
22 know the criteria for, you know, what qualifies as an
23 area of environmental justice concern. My group also
24 puts together maps of those areas.

1 I guess my question is, what are you asking
2 about, what am I aware, or what my understanding is.

3 **Q. Well, I guess what I'm getting to is, do**
4 **you think that this proposed rule if adopted will have**
5 **effects on environmental justice communities?**

6 A. It's possible. And I think we probably
7 will include something in our SIP submittal that's not
8 necessarily going to come from the proposal to the
9 board and the adopted rule.

10 But yes, U.S. EPA is pushing for with all
11 actions to consider environmental justice, and to at
12 least include impacts that -- impacts to EJ areas. I
13 don't know exactly what that will contain for this
14 submittal yet, though.

15 **Q. So positive impact, negative impacts?**

16 A. It's certainly not a negative impact.
17 Like we were discussing, this is obviously considered a
18 SIP-strengthening, because we're not aware of any way
19 this would lead to additional emissions.

20 To the extent that there may be fewer or
21 better-controlled startup or malfunction events, there
22 may be positive impacts to environmental justice
23 communities.

24 MR. JAMES: Those are all of my questions.

1 MR. MORE: Follow-up question for me.

2 EXAMINATION

3 BY MR. MORE:

4 Q. How would your proposal, as you have
5 articulated the scope of the SMB provision, result in
6 fewer startups, shutdowns, or malfunctions?

7 A. I didn't mean to speculate that it would.

8 Q. Okay.

9 A. Just that to the extent that it's going to
10 go one way or the other, emissions will not be
11 increasing from the proposal. It's possible that they
12 could decrease.

13 MR. FOX: Mr. More, did you have anything
14 further that you wanted to add to that?

15 BY MR. MORE:

16 Q. Yeah, I'm curious as to how it's possible
17 they could decrease. How is it not neutral to
18 emissions?

19 A. And that may be the case, that it is just
20 neutral. U.S. EPA views it as SIP-strengthening, and I
21 would say in any kind of SIP submittal to U.S. EPA,
22 where we need to at least address how environmental
23 impact -- or environmental justice communities are
24 impacted, that we could say that U.S. EPA views this as

1 SIP-strengthening and not, you know, potentially --
2 there is no potential for additional emissions.

3 Q. And would you agree with me that U.S.
4 EPA's characterization of it as SIP-strengthening may
5 be influenced by the characterization of what the
6 provisions do -- or what the SBM (sic) provisions do or
7 do not authorize?

8 A. Could you repeat that? Sorry.

9 Q. I'll withdraw the question. Sorry.

10 MR. FOX: Mr. More, any more follow-ups on
11 your part?

12 MR. MORE: No, thank you for asking.

13 MR. FOX: Mr. James, thank you for your
14 questions.

15 Were there any follow-up questions based on
16 those that Mr. James had posed to the agency?

17 Neither seeing or hearing any, thank you, Mr.
18 James. Much appreciated on your part.

19 The board, as I mentioned at the top of the
20 hearing, does have three quick questions that it wishes
21 to ask one of the agency's witness, Mr. Davis, as
22 present and sworn, but I want to defer to any of the
23 other participants who have questions that they wish to
24 ask the agency at this hearing dedicated to their

1 testimony and questions based upon -- is there anybody
2 who has questions they wish to ask while he is here and
3 available, or follow-up questions based on his previous
4 answers?

5 I'm neither hearing or seeing any.

6 Mr. Davis, I've got three board questions that
7 were submitted as attachments to a hearing officer
8 order yesterday, and just as the others, those will not
9 be admitted as if read.

10 I'll start with naturally Number 1.

11 The existing language in Section 201.157 states
12 that the, quote, agency may adopt procedures that
13 require data and information in addition to and in
14 amplification of the matters specified in the first
15 sentence of this section that are reasonably designed
16 to determine compliance with this chapter, and ambient
17 air quality standards, and that set forth the format by
18 which all data and information shall be submitted,
19 close quote.

20 Please comment on whether the agency has adopted
21 procedures to implement this provision -- pardon me.

22 If so, does the agency plan to revise those
23 existing procedures to address the changes proposed in
24 this rulemaking? If not, please comment on whether

1 this allowance for the agency to adopt procedures to
2 implement Section 201.157 must be deleted.

3 A. The agency has not adopted procedures to
4 implement this provision, but feel that the section
5 should not be repealed as it may be useful in the
6 future.

7 MR. FOX: And just to follow up, are there
8 any revisions to that language that the agency would
9 recommend to the board?

10 A. Not at this time.

11 MR. FOX: Very good. Thank you.

12 Number 2, on January 17th of 2023, the board
13 received from the Joint Committee on Administrative
14 Rules a comment with 20 suggested changes on the
15 proposed language and the single question, would the
16 agency please comment on those suggested changes and
17 respond to JCAR's question?

18 A. Yes. And I wish this was going to be
19 easier than it is. A couple -- quite a few of the
20 suggestions by JCAR we believe are not on the lines
21 that they have indicated the language changes --

22 MR. FOX: This has occurred before. And I
23 understand precisely what you are referring to, and I
24 apologize that it's complicated, but if you --

1 A. So I can read this in and we can give you
2 copies.

3 MR. FOX: If you have a written response
4 that you would like to make a hearing exhibit -- is
5 that what you're referring to?

6 MR. DAVIS: We can, and I can read them in
7 also for the sake of --

8 MR. FOX: There are not that many. If you
9 don't mind reading them in, let's take care of that,
10 and it will be right in the record.

11 A. It's -- sure. Yeah. Okay.

12 So Part 201, Recommendation Number 1, the
13 recommendations are acceptable to the agency.

14 MR. FOX: And to be clear, Mr. Davis, I'm
15 sorry, there were three suggestions. To none -- none
16 of which present an objection to the agency; correct?

17 A. Yes. For Part 201, there's three.

18 MR. FOX: Very good.

19 A. We do not have objection to any of them;
20 however, for Number 2, the suggested change is not in
21 Lines 214 and 215.

22 We believe JCAR intended to cite Line 212. If
23 that is true, the suggested change is acceptable to the
24 agency.

1 MR. FOX: Thank you for clarifying.

2 A. In the third, the suggested change is not
3 in line -- in Line 334. We believe JCAR intended to
4 cite Line 269.

5 If that is true, the suggested change is
6 acceptable to the agency.

7 MR. FOX: And thank you for that
8 clarification.

9 And if you are ready, there were 3 changes they
10 suggested in Part 202.

11 A. In Part 202, all of those recommendations
12 are acceptable to the agency.

13 MR. FOX: Very good.

14 And then finally, within Part 212, they had
15 proposed 14 -- suggested 14 changes to the language of
16 that part.

17 A. Right. And I believe in each case, the
18 line numbers do not match.

19 For Number 1, the suggested change is not in
20 Line 206. We believe JCAR intended to cite Line 202.
21 If that is true, the suggested change is acceptable to
22 the agency.

23 For the second suggestion, the suggested change
24 is not in Line 208. We believe JCAR intended to cite

1 Line 204. If that is true, the suggested change is
2 acceptable to the agency.

3 For number -- for the third suggestion, the
4 suggested change is not in Line 232. We believe JCAR
5 intended to cite Line 233. If that is true, the change
6 is acceptable to the agency.

7 Number 4, the suggested change is not in Line
8 234. We believe JCAR intended to cite -- I don't know,
9 in that case it says Line 234, which would be the same.
10 Yeah, we'll have to double-check that one.

11 If I could move onto --

12 MS. VAN WIE: Ours says 233.

13 MR. MATOESIAN: Yes.

14 A. Oh, the suggestion is for 233?

15 MS. VAN WIE: In line with 233, yes.

16 MR. DAVIS: Right. The suggested change
17 is not in Line 233. We believe it is intended for Line
18 234, and if true, that change is acceptable.

19 For Number 5, the change is not in 298, and we
20 do not know what the correct line number for that
21 should be, and we're not able to locate that one.

22 Number 6, the suggested change is not in Line
23 300. We believe JCAR intended to cite Lines 291 and
24 292. If that is true, that change is acceptable to the

1 agency.

2 Number 7, the suggested change is not in Line
3 303. We believe JCAR intended Line 310. If that is
4 true, the change is acceptable to the agency.

5 Number 8, the change is not in Lines 308 and
6 309, and 312. We do not know what the correct line
7 numbers should be for that suggestion.

8 Number 9, the suggested change is not in Line
9 316. We believe JCAR intended to cite Line 308. If
10 that is true, the change is acceptable to the agency.

11 Number 10, the suggested change is not in Lines
12 318 and 319 and 322, and again, we do not know what the
13 correct line numbers should be for that suggestion.

14 Again, for Number 11, we do not find the
15 suggested change in Line 334, and we do not know where
16 the correct line number is.

17 Again, for Suggestion Number 12, the suggested
18 change is not in Line 338, and again, we don't know
19 where the correct number for that one is also.

20 For Number 13, the suggested change is not in
21 Line 352. We believe JCAR intended to cite Line 342.
22 If that is true, the suggested change is acceptable to
23 the agency.

24 And for Number 14, the suggested change is not

1 in Line 356. We believe JCAR intended to cite Line
2 346. If that is true, the suggested change is
3 acceptable to the agency.

4 MR. FOX: Mr. Davis, thank you for going
5 through those itemized suggestions. There was the
6 single question that JCAR had posed. I realize we have
7 approached this from different directions, but their
8 simple question is, why did the agency and the board
9 fail to address this problem in 2015 when U.S. EPA
10 first required it?

11 If you have a response that we can reflect, I
12 would appreciate it.

13 A. Sure, and I think we have been through
14 this with at least three of the sets of questions.

15 In 2015, the SIP call was issued. The agency
16 did consider acting immediately, I'm sure, but as we
17 said, the agency had requested additional information
18 from U.S. EPA, as had many states and other entities
19 for more information, more guidance.

20 And again, there was the abeyance and the
21 possible reconsideration that occurred starting in 2017
22 that went on until 2021.

23 And during that period, with the possibility
24 that it could be reconsidered and withdrawn, there was

1 not a great amount of movement in that -- planning for
2 a rulemaking then.

3 So I think we have been down this -- or
4 explained this quite a few times, but for JCAR's sake,
5 that would be the answer.

6 MR. FOX: I appreciate your point-to-point
7 summary through that.

8 There was one last one, third board question.

9 The board made several non-substantive changes
10 to IEPA's proposal, and the first notice rules to
11 address obsolete, repetitive, or otherwise unnecessary
12 language.

13 The board has identified additional
14 non-substantive changes shown in yellow highlighting in
15 the attached document, attached to the hearing officer
16 order and questions.

17 Please comment if the non-substantive changes
18 that are highlighted in yellow are acceptable to the
19 agency.

20 A. The agency has no objection to those
21 changes.

22 MR. FOX: I'm sorry. Could you repeat
23 that?

24 A. The agency has no objection to those

1 changes.

2 MR. FOX: Mr. Davis, thanks very much for
3 your responses to those. And I'm going to check one
4 more time to make sure that there is no one else who
5 wishes to pose questions to the agency or has any
6 follow-up questions based on the Q&A that has taken
7 place so far today.

8 I'm neither seeing nor hearing any.

9 If the court reporter would let us go off the
10 record for a few moments.

11 [Discussion off the record.]

12 MR. FOX: In discussing some procedural
13 matters off the record with the participants, I want to
14 clarify a few quick details before we adjourn the
15 hearing.

16 First of all, the transcript of this hearing is
17 expected to be available on an expedited basis by
18 Tuesday, January 24th. And as soon as we receive that,
19 we will get it posted on the clerk's office online, or
20 COOL, on the board's webpage as quickly as possible.

21 Secondly, there were a number of issues that
22 arose during the hearing on which the agency very
23 helpfully agreed to look into their records or locate a
24 document or respond to a question in more detail, which

1 we appreciate. Those were questions based on IERG's
2 Question Number 4C, examples of SMB language; IERG's
3 Question 4D on the evolution of the rule; IERG's
4 Question Number 6 regarding the board's rulemaking
5 Procedure R71-23.

6 A. Yes.

7 BY MR. MORE:

8 Q. IERG's Question Number 8 regarding any
9 communication -- additional communication regarding
10 alternate standards; IERG's Question Number 22 on any
11 comments that were not addressed in the statement of
12 reasons, any comments that the agency received during
13 the outreach that were not addressed in the statement
14 of reasons; IERG's Question Number 32, examples of SMB
15 provisions; IERG's related Questions Number 38 and 39
16 on confirming the procedures that have been followed in
17 permit applications that involve SMB provisions; IERG's
18 Question Number 46 on the issuance of notices of
19 violation based on SMB provisions; also, Dynegy's
20 Question Number 3, which related the issue of the
21 agency's authority to issue a permit to any source that
22 cannot meet standards at all times.

23 There were two questions that were raised by the
24 Chemical Industry Council of Illinois, one on

1 procedures for attaining regulatory relief based on
2 startup -- these SMB provisions; and one on enforcement
3 actions under S -- for SMB provisions when a unit
4 cannot reach its minimum temperature.

5 The board had one question on the standards that
6 should be required to justify an adjusted standard,
7 whether general provisions under Section 28.1 of the
8 act or specific provisions.

9 And finally, the attorney general's office had
10 requested additional information on Indiana and whether
11 it's a part of the MISO; and on the 2022 U.S. EPA
12 findings and the role of environmental justice
13 considerations in that U.S. EPA publication.

14 Those will be submitted with the agency's
15 agreement to the board by Monday, January 30th.

16 If there are any questions based on those
17 follow-ups and additional documents, those are due to
18 be filed with the board by Monday, February 6th, and
19 the agency has agreed to address those in a response
20 which is due to be filed with the board on Tuesday,
21 February 14th.

22 We note that the Monday, February 13th, is a
23 state holiday, and we appreciate your flexibility and
24 willingness of all of the participants to put together

1 that schedule so that we can wrap up the questions and
2 the issues from this first hearing expeditiously.

3 And then finally, we have the issue of the
4 second hearing, which I wanted to address very quickly
5 under Section 28.5F1 of the act, within seven days
6 after the first hearing, any person may request that
7 the second hearing be held.

8 The board on the record requests on its own
9 motion that the second hearing be held. The board must
10 accept testimony or comment on its required requests
11 that DCEO conduct an economic impact study. The board
12 asked DCEO to either prepare one or to decide whether
13 it would do so by Friday January 27th of 2023.

14 So I want to confirm on the record, again with
15 that request, the second hearing will go forward just
16 as it was scheduled in the original hearing officer
17 order, beginning at 9:00 AM on Thursday, February 16th,
18 at the Bilandic Building in Chicago.

19 We will stick of course with the statutory
20 deadline to pre-file testimony for that second hearing.
21 That is Monday, February 6th of 2023, and it requires
22 service of that pre-filed testimony on every
23 participant who was on the board's service list by
24 Wednesday, February 1st, of 2023.

1 That's all in the original hearing officer
2 order. I hope it's helpful to repeat that on the
3 record and to stress that we will go forward.

4 I think Ms. Brown, there was something you
5 wanted to add on the record before we adjourn.

6 MS. BROWN: Yes, thank you.

7 And just for clarity of the record, IERG would
8 like to reiterate that request and move that a second
9 hearing be held in this proceeding. Thank you.

10 MR. FOX: And when -- at the earliest
11 opportunity, my partner hearing officer will issue a
12 hearing officer order, we will put in writing the
13 deadlines that you all very helpfully agreed with,
14 confirm that the second hearing is going forward as
15 scheduled, and if we have not received -- in all
16 likelihood we will have not received the transcript at
17 that point -- we'll remind you of the date on which
18 that is expected.

19 Is there anything else for the good of the cause
20 that we can address before we adjourn?

21 I very much appreciate the agency's testimony,
22 its responses to questions, its cooperation today.

23 The questions have helped to build a much more
24 complete and very helpful record for the board.

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And you were in a very warm room for a very long day, and your patience and your participation is appreciated. We can adjourn, and thank you again.

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C E R T I F I C A T E

I, Jude Arndt, a Certified Shorthand Reporter and Certified Court Reporter, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

JUDE ARNDT, CSR, CCR, RPR

CSR NO. 084-004847

CCR NO. 1450

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|--------------------------|----------------------------|--------------------------|--------------------------|--------------------------|
| A | 124:2 | 191:5 | adequate 143:13 | 126:22 127:14 |
| abeyance 23:23 | achieved 123:14 | added 132:12,13 | adjourn 18:5 | 130:8,10 133:2 |
| 24:13 27:5,13 | acknowledged | 132:14 | 187:14 191:5,20 | 176:4,9 179:20 |
| 28:21 37:4 | 64:4 | adding 131:18 | 192:3 | 180:3 |
| 167:24 168:3 | acknowledges | addition 5:19 | adjourned 71:20 | adopting 19:23 |
| 169:3,8,17 | 113:12 | 30:17 85:19 | adjusted 125:23 | 74:14 155:22 |
| 170:13 171:6,8 | acknowledging | 89:20 127:5 | 126:17 136:16 | adoption 15:10 |
| 185:20 | 104:12 120:15 | 132:4 179:13 | 136:19,24 | 16:11 17:2 21:9 |
| ability 15:13 | acronym 11:8 | additional 18:4 | 150:12 158:23 | 57:16 88:11 |
| 51:21 67:14 | act 5:8,24 6:3 7:20 | 25:5 26:1 27:2 | 159:4 189:6 | 118:22 123:9,14 |
| 149:10,16,21 | 9:24 11:5 12:8 | 30:18 38:10 | Adm 1:5 | 133:15,19 134:5 |
| 150:1 151:4 | 31:14 32:15 | 45:15 46:1 | administration | adopts 103:17 |
| able 15:12 19:6 | 56:16,18,24 65:2 | 72:15 77:2,6 | 25:12,13 28:21 | 122:18 123:3 |
| 39:12 45:9,9 | 65:2,16 84:3,8 | 82:17 87:20,23 | 167:20 168:12 | 127:11 129:23 |
| 48:21 49:12 | 84:14,15 94:2 | 88:2 90:7 95:3 | 168:18 169:4 | adversely 149:10 |
| 90:11 97:16 | 117:23 118:2 | 97:1 101:11,12 | 171:12 | 149:15 150:13 |
| 101:4 114:16 | 152:4,13,19 | 104:20 108:16 | Administrative | 151:4 154:14,23 |
| 134:8 164:23,24 | 153:10 189:8 | 108:19 114:22 | 5:6 62:7 129:20 | advise 45:9 |
| 183:21 | 190:5 | 116:1 134:10 | 180:13 | advised 85:3 |
| absent 48:6,11,14 | acted 32:21 38:6 | 135:23 136:6,9 | administrator | 133:21 |
| 49:7,9 | 39:18 | 162:24 170:6 | 84:9,17 90:10 | aerodynamic |
| absolute 12:17,24 | acting 27:10 | 176:19 178:2 | 167:16 | 147:23 |
| absolutely 71:8,9 | 185:16 | 185:17 186:13 | admission 72:19 | affirmative 13:3 |
| 72:5 87:13 | action 13:24 | 188:9 189:10,17 | admit 42:22 43:16 | 13:23 14:15,18 |
| 126:5 134:11 | 32:22 33:16 | additionally 59:7 | 70:20 71:24 | 14:23 15:3,5,15 |
| 137:14 145:12 | 35:6 56:15 85:5 | address 11:7 24:2 | 73:2,8 86:16 | 29:3,8,21 66:5 |
| 157:2 | 87:16 88:10 | 24:10,12,16,19 | 91:24 95:12,20 | 88:9,14,16 89:4 |
| abstract 48:6 | 91:4 105:7 | 28:5 31:10,12,21 | 95:20 | 94:20 107:24 |
| accept 127:5 | 109:5,13 112:10 | 36:9 58:21 | admitted 7:10 | 109:4,5 117:19 |
| 190:10 | 115:17 118:5 | 96:10 103:7 | 72:12 73:11 | 117:23,24 122:6 |
| acceptable 181:13 | 125:10 175:10 | 121:6 131:13 | 86:20 92:7 96:1 | 139:16,20,24 |
| 181:23 182:6,12 | 193:11,13 | 147:17 152:22 | 137:18 179:9 | 140:15 154:6,16 |
| 182:21 183:2,6 | actions 39:23 54:7 | 155:18 169:15 | admitting 86:6,18 | affirmatively |
| 183:18,24 184:4 | 97:21,22 115:10 | 177:22 179:23 | 92:4 95:23 | 56:13,20 57:3 |
| 184:10,22 185:3 | 116:2 125:19 | 185:9 186:11 | adopt 16:10 174:4 | 58:16 |
| 186:18 | 158:19 161:9,14 | 189:19 190:4 | 179:12 180:1 | aforementioned |
| accepted 6:1 | 161:15,18 162:4 | 191:20 | adopted 10:24 | 2:1 |
| access 16:23 17:8 | 162:5 175:7 | addressed 9:14 | 13:17 14:13 | afternoon 70:15 |
| accessing 15:15 | 176:11 189:3 | 26:5,15 46:14 | 31:17 40:21 | age 16:14 |
| account 20:9 | active 67:15 | 97:22 102:18 | 74:8,10 82:2,13 | agencies 14:16,17 |
| 115:16 | activity 27:14 | 104:4 118:13 | 82:14 96:15 | 18:9 39:9 122:3 |
| accurate 68:8 | actual 19:17 | 188:11,13 | 102:6,12 104:17 | 166:11,15 167:8 |
| 108:23 193:5 | 161:5 | addressing 25:4 | 118:17,18 | agency 8:11 11:21 |
| Acer 2:13 | add 18:14 67:19 | 33:3 35:6 41:4 | 123:20 124:24 | 13:10,21,21 |
| achieve 123:7 | 114:22 177:14 | 57:5 58:18 | 125:16,17 | 15:12 16:8,23 |

| | | | | |
|------------------|----------------------|-------------------------|--------------------------|---------------------------|
| 17:8,12,13 18:3 | 106:18 107:1,6,8 | 76:10 79:3 | 118:2 126:11 | 44:10,14,16 45:7 |
| 19:6 20:7,11,14 | 107:12,13,19 | 80:23 81:23 | 128:13 129:14 | 45:11,11,18 46:3 |
| 20:20 21:3,20 | 108:6,8,10 109:8 | 97:11 102:8 | 133:9 138:16 | 46:6,11,13,15,18 |
| 22:2,10,14,17 | 114:10,19 115:6 | 103:23 104:16 | 141:6,13,13,23 | 46:24 47:3,6,8 |
| 23:24 24:4,9,12 | 115:13,16 116:5 | 105:4 117:3 | 142:4,11,12 | 47:11,12,18,20 |
| 24:15,18 25:3,6 | 116:7,9,12 117:1 | 119:11 121:4 | 145:14 146:4,8 | 48:23 49:4,10,13 |
| 25:10 26:2 27:7 | 117:16 118:10 | 122:5,18 123:4 | 146:16,23 147:9 | 49:20 50:3,11,22 |
| 27:16,21 28:2,6 | 118:17,20 120:9 | 123:12 124:6,21 | 147:13 149:9 | 51:22 52:2,16,18 |
| 28:11 29:2,4,11 | 120:15,18 121:9 | 124:24 125:14 | 151:3 152:4,8,10 | 53:21 55:16 |
| 29:19 30:1,8,15 | 121:18,24 | 125:16 129:23 | 152:13,19 | 59:8,12,18 60:3 |
| 31:6,10,13,17,24 | 122:11,16 | 130:8,16 133:1,2 | 153:10 156:16 | 60:12,13 61:7 |
| 32:4,8,20,24 | 123:17 124:8,13 | 135:12 156:14 | 157:4 179:17 | 63:20 64:6,11 |
| 33:21 34:3,10,20 | 130:13 131:17 | 156:15 157:3 | Air's 130:20 | 77:3,10 78:6,19 |
| 35:11,14,17,21 | 132:3 133:8,12 | 158:18 178:21 | alerted 166:10,17 | 79:1,12,13,19,24 |
| 36:2,18,24 37:2 | 133:18,22 134:2 | 188:21 189:14 | align 117:3 | 80:7 81:2,8 90:2 |
| 37:8,20 38:6,8 | 134:7 136:17 | 191:21 | alleging 105:7 | 90:4 93:8,22 |
| 38:24 39:1,5,21 | 138:12 140:20 | agenda 28:19 | 109:14 | 94:4,10,13,15,23 |
| 40:3,13,19 41:5 | 140:21 141:9 | agent 68:24 | allow 106:5,14,15 | 95:8 112:19 |
| 42:5,9,12,18 | 142:17,20 149:5 | aggregate 43:20 | 107:15 113:18 | 113:20 127:12 |
| 44:21 45:5 47:5 | 153:18 155:2,21 | ago 32:20 171:5 | 119:14 128:11 | 127:13 128:22 |
| 51:20,20 52:6 | 158:21 161:1 | 172:13 173:20 | 129:12 | 136:23 137:3 |
| 53:3,13,20 54:4 | 169:15 170:17 | agree 58:9 68:13 | allowable 109:18 | alternatives 123:6 |
| 54:6,9,14,23 | 178:16,24 | 108:10 109:7 | 109:19,21 110:6 | ambient 11:7 |
| 55:4,9,15,18 | 179:12,20,22 | 112:7 114:1 | 110:21 111:3,6 | 142:12 179:16 |
| 56:9 57:15 59:7 | 180:1,3,8,16 | 178:3 | 111:10,22,23,24 | ambiguity 150:23 |
| 59:11,14 60:11 | 181:13,16,24 | agreed 18:3 | 112:4,6,10,11,19 | amend 127:2 |
| 60:15,18 65:3,8 | 182:6,12,22 | 187:23 189:19 | 112:22 113:1,3 | amendment |
| 65:17,21,23 66:1 | 183:2,6 184:1,4 | 191:13 | 113:19,19 | 131:20 |
| 66:10 68:11,13 | 184:10,23 185:3 | agreement 189:15 | allowance 180:1 | amendments 1:4 |
| 69:2,5 71:24 | 185:8,15,17 | ahead 10:10 41:9 | allowed 30:12 | 5:5 24:2 33:3,12 |
| 73:1 75:1,4,8,10 | 186:19,20,24 | 51:6 61:15 74:2 | 39:19 62:16 | 66:17 67:11 |
| 75:15,18,23,24 | 187:5,22 188:12 | 79:5 83:24 86:3 | 107:15 129:18 | 70:7 127:8 |
| 76:5,6,8 77:1,5 | 189:19 | 86:22 120:3 | 152:24 | 133:13 134:3 |
| 77:6,9,22 78:13 | agency's 6:12 | 134:14 156:6 | allowing 90:7 | amount 51:14 |
| 78:21,23 80:4,9 | 7:19,24 8:10 9:6 | 170:2 | allows 15:2 | 113:5,9 129:7 |
| 80:18,19,24 | 10:16 11:20 | air 11:4,7 12:7 | 113:22 | 140:10,13 186:1 |
| 81:20 82:2 83:2 | 14:1,5 15:2,20 | 15:9 16:22,23 | aloud 137:20 | amplification |
| 83:5,16 84:2 | 20:2 23:3 24:24 | 18:21 31:14 | alter 122:7 | 179:14 |
| 85:10 86:11 | 29:20 30:19,21 | 34:2 35:8 53:20 | alternate 47:21 | analysis 87:8,23 |
| 91:3,10 92:11,14 | 35:20 36:5 | 54:4 55:9 56:16 | 52:24 89:20 | 93:18 |
| 93:16 96:16,20 | 38:15 39:8,15 | 56:18,24 84:3,8 | 121:7 188:10 | analyze 85:6 |
| 98:12 100:12,15 | 41:3,5,16,19 | 84:14 94:2 98:4 | alternative 25:8 | Anand 2:15 5:20 |
| 102:16 103:5,10 | 52:23 57:24 | 98:18 99:17,18 | 25:21,23 26:3,8 | and/or 54:3 55:8 |
| 103:18 104:6,12 | 65:12,15 66:6 | 106:8 111:24 | 26:12,14,16 | 100:21,24 |
| 104:23 106:12 | 67:13,19 74:18 | 112:1 117:23 | 29:22 30:6 | 122:12 123:19 |

| | | | | |
|--|---|---|---|--|
| Annette 38:24 announced 171:13 annual 36:19 139:12 145:9 150:16 answer 10:17 14:6 17:20 19:6 23:14 24:14 28:24 33:8 41:9 41:11 48:19 55:11 57:9,11 75:13 99:22,23 100:1 110:8 114:16 115:15 115:18 120:15 123:23 130:12 131:7 139:22 142:8 149:14,23 151:1 155:1,7 156:14,20 159:9 161:12 186:5 answered 45:24 66:12,13 141:24 160:10 163:22 170:4 172:13 answering 101:9 135:10 answers 8:11 9:7 41:23 101:10 122:9 123:23 155:15 179:4 anti-backsliding 26:14 46:13 49:2 84:6,15 85:6 87:7 90:5 anticipate 21:21 95:5 96:16 anticipated 70:10 87:20 88:2 142:1 anticipates 96:20 Antoinette 38:23 anybody 179:1 anymore 38:19,20 | 39:1 apologize 41:8 61:16 86:15 98:14 104:3 106:2 169:7 180:24 apparent 13:15 13:15 appeared 6:6 appetite 50:18 applicability 6:13 130:3 applicable 12:15 20:4 53:23 59:17 60:2 63:20 66:3 84:11,12 90:12 93:11,21 97:20 104:1,10 109:20 112:15 113:14 113:16 115:12 120:13,20 121:11,22 122:7 122:23 123:2 124:10,18 128:14,18 129:17 130:9,11 131:22 138:23 139:14 140:7 142:6 144:6 153:5 156:17 157:5 applicant 131:12 applicant's 132:20 applicants 100:22 101:6,21 applicants' 134:22 application 12:2 16:5 58:10 100:23 131:14 132:16 133:6 134:18 136:3 applications 99:4 | 99:5,14,20 188:17 applied 15:14 46:4 67:22 130:5,6 136:1 applies 112:16 apply 21:11 45:19 56:19,23 68:15 83:6,7 94:19 102:21 103:7 108:16 118:7 130:9 135:9,14 143:16 144:1,14 164:7,10,15 applying 68:22 94:23,24 136:15 appointed 167:16 appreciate 17:16 19:4 22:19 27:1 71:18 72:17 83:22 86:11 100:3 101:14,15 104:19 140:4 150:23 163:11 185:12 186:6 188:1 189:23 191:21 appreciated 100:17 116:21 137:21 178:18 192:3 approach 23:11 27:17,23 102:2,7 168:17 approached 185:7 approaches 64:5 appropriate 50:20 64:5,9,16,17,22 79:19 93:8,22 118:4 121:5 153:14 158:21 159:5 appropriately 118:13 approvability | 47:18 48:6 49:3 55:16 121:7 approvable 25:9 26:16,16 30:7 45:12 46:15,15 47:1,9,13 48:17 48:24 49:14 52:8,16,24 54:17 56:7,10 57:14,23 58:1,5,11 61:7 78:17 90:24 126:12 173:24 approval 30:12 45:3,7 47:20 50:8 52:19 55:19,23 56:3 96:18,23 133:14 134:3 153:19 approvals 48:4 153:21 approve 26:24 50:16 84:9,17 90:11 approved 30:2,4 30:21 40:10 48:2 49:20 50:1 50:3,12,23 51:10 51:21 53:8,12 56:3 59:9 60:14 82:7 90:9 126:7 126:7,18 172:17 approving 50:19 79:24 96:18 153:23 April 14:11 23:23 24:1,10,16 25:2 27:13 169:9,10 169:17 170:10 area 56:19,24 146:5,14,22,23 147:4,8,10 148:20 165:8 174:20 175:23 areas 143:8 146:9 148:9,13,15,17 | 149:18 151:7 164:8 165:6,20 165:23 174:12 175:24 176:12 ArentFox 3:2 Arndt 1:16 2:2 193:3,18 arose 187:22 art 146:14,19 articulated 89:11 139:16 140:15 177:5 aside 82:4 151:21 asked 25:6 33:22 36:21 37:14 49:19 50:9 87:18 162:9,13 171:5,7 190:12 asking 63:9 74:12 74:15 78:24 81:20 101:11 108:15 141:11 149:5,18 150:24 161:22 164:12 165:17 170:6,11 175:10 176:1 178:12 assess 29:17 119:12 140:22 assessing 133:9 assessment 142:17 142:19 146:1 assessments 112:2 155:3,9 assigned 5:4,17 assistance 79:1,11 associated 121:18 Association 2:18 72:8 assume 71:5 99:8 159:21 166:9 173:5 assumed 64:7,22 assuming 33:4 61:19 |
|--|---|---|---|--|

| | | | | |
|---|---|---|---|---|
| <p>assurance 47:12 assurances 53:5 assure 94:6 attached 186:15 186:15 attachments 179:7 attain 11:9 126:22 150:1 151:5,16 152:7 attained 142:12 attaining 149:19 150:10,11,12,20 189:1 attainment 84:11 143:13 145:13 146:9,20,22 153:1 165:20 173:23 174:7 attempt 19:18 78:19 attempting 169:22 attorney 2:21 54:20 88:19 162:22 163:16 189:9 193:10,12 attorneys 38:18 August 40:19 authority 153:18 153:22 188:21 authorizations 100:22 101:21 authorize 117:4 178:7 authorized 113:9 113:13 156:16 157:3 authorizes 107:17 automatic 93:7,20 94:17 95:9 117:20 available 11:14 13:11 20:14,21 21:4 22:10 23:1</p> | <p>31:10,23 32:12 37:8 42:21 44:9 76:7 119:9 120:19 128:22 142:21 179:3 187:17 Avenue 2:1 average 145:11 150:16 averaging 23:12 awaited 25:16 aware 15:21 21:8 21:13,15 33:23 34:9,12 55:21 62:24 63:23 64:2 65:23 69:2 69:4 80:13 83:5 99:2,12 101:2,7 140:7 148:24 149:5,24 150:3 155:17,24 166:21 169:24 170:15,17 175:21 176:2,18</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>B 23:8 45:13 47:14 56:4,16 62:2 63:18 66:15 117:11 121:9 129:2 151:22 back 11:2 16:4 23:11 27:4 32:6 42:3 43:11 48:18 49:18 52:11 67:7 74:4 78:9 82:16,18 83:1,23 92:12 104:20 109:15 112:22 116:23 119:3,17 120:7 123:22 134:17 159:19 175:11 back-and-forth</p> | <p>77:21 78:15 back-and-forths 78:3 backsliding 93:23 ballpark 69:8 based 65:13 90:4 97:19 108:17 111:3,19 119:11 127:18 129:24 142:18,19 143:24 145:9 162:5 163:18 178:15 179:1,3 187:6 188:1,19 189:1,16 basic 26:7 46:6 basically 63:14 135:24 basing 142:17 basis 6:13 18:23 19:7 20:24 39:14 40:16 41:17 64:12 65:9 104:11 105:4 117:15 120:14 187:17 bear 7:12 began 8:3 beginning 70:6 131:22 190:17 behalf 6:17 8:6,7 71:23 73:17 137:9,16 157:12 162:22 believe 15:22 17:5 38:12 51:5 55:3 56:2,9 60:4,22 63:10 69:7 73:16,18 75:3 81:6,23 87:9 88:24 96:6 101:24 108:23 112:23 113:1 119:23 120:1 122:9 125:18</p> | <p>137:15 141:3 143:22 149:5 153:20 156:4 162:13 165:2 167:23 168:9,24 169:8,11,12 173:17 180:20 181:22 182:3,17 182:20,24 183:4 183:8,17,23 184:3,9,21 185:1 believed 12:8 believes 93:17 121:3 beneficial 19:17 116:17 benefit 159:22 benefits 122:14 best 13:19 14:3,6 better 17:18 116:6 better-controlled 176:21 beyond 113:23 158:19,19 Bilandic 190:18 bit 17:22 48:18 51:8 67:6 70:13 78:12 82:18 117:7 119:18 125:13 139:18 142:22 149:13 block 145:6 Bloomberg 34:1 34:10 38:22 82:20,23 blowing 145:19 BOA 97:13 100:1 board 2:15,17,17 5:2,4,8,16,16,17 5:18 6:1,17,19 6:22 7:1,3,13 8:21 10:14,14 14:12 17:18 20:12,22 21:5 24:1,5 30:9,13</p> | <p>30:20 32:2,15 33:2,10 40:21 42:5 65:6 67:24 70:3 71:1,11 74:19 75:2,5 82:13,14 83:15 83:19 96:16 97:8 102:7 103:17 116:17 118:13,22,22 122:18 123:3,10 123:14 124:19 125:24 126:7,10 127:10,14 129:23 130:10 130:23 132:6 133:15,19 134:4 137:4,4 155:21 159:3,7,24 176:9 178:19 179:6 180:9,12 185:8 186:8,9,13 189:5 189:15,18,20 190:8,9,11 191:24 board's 5:20 7:7 7:15 9:7,8 11:14 13:11 18:10 71:19 74:20 75:21,24 76:2,7 187:20 188:4 190:23 boat 19:1 170:9 Brad 3:6 72:10,20 81:7 brakes 170:14 break 70:4,10 71:1,18 96:8 119:2,4,8,12,22 151:1 174:2 breakdown 10:22 106:7,13 107:2 107:14 108:7,20 111:12 113:15 114:13 116:14</p> |
|---|---|---|---|---|

| | | | | |
|--|---|---|--|--|
| 117:4 128:12,16 129:4,8,14 138:11 145:17 156:13 brief 119:5 briefly 134:17 bring 112:9 broad 34:18 152:24 162:14 broader 108:11 Broom 2:12 brought 42:18 Brown 2:10 8:6 9:23 10:8,12,12 10:19 18:1,12 19:20 21:17 22:4,8,21,22 35:9 39:3 44:5 52:11,13 58:24 61:14,17 69:19 69:23 70:7,8 71:22 73:16,18 73:20 74:3 76:8 76:20,21 86:3,7 86:10,12,14,22 87:1,11,13 89:15 89:18 91:17 92:7,8,10 96:3,5 96:12 99:1,15 101:14,16 108:2 108:18 114:8 118:23 119:1,21 120:1,4,5 123:11 126:5,16 129:21 132:10 134:8,12 134:14,15,16 137:11,14,17 156:4,6,7,9,21 156:23 157:2,7,8 157:10 162:13 162:15 169:7,11 169:24 170:15 170:24 191:4,6 BTU 145:10 build 88:17 | 191:23 building 76:10 190:18 built 141:17 bullets 167:1 bunch 172:15 Bureau 35:8 98:4 98:18 99:17,18 126:11 130:20 business 68:12 <hr/> C <hr/> C 15:7 19:1 20:1 67:9 106:10 110:9,15 113:13 193:1,1 C-A-A-P-P 66:20 100:21 C-E-M-S 23:6 CAA 12:7 94:2,6 CAAPP 18:17 66:20 69:7,14 100:21 101:20 102:20 103:3 127:23 161:5 calculated 109:23 call 23:20,21 24:3 24:9,11,16,20 25:4,13,15,19 26:7 27:7,11 28:5 29:6,9,15 31:10,19 33:20 34:7,14,19 36:3 36:10 37:16 39:24 40:2 44:9 44:23 45:14,20 46:5 49:5 51:17 53:17 54:2,8 56:5 59:10 60:5 60:8 65:13 66:8 77:4 78:8 88:23 91:1,5 95:17 113:1,3 117:15 117:17 121:6 124:14,16 | 126:21 167:17 167:21 168:23 169:12,16,20 170:19,23 172:1 185:15 calling 90:16 calls 28:18 candid 119:16 cap 140:10,13 141:1,3 capacity 80:17 109:23 capital 142:13,14 142:14,14,14 caps 154:24 carbon 11:12 care 73:15 77:23 181:9 case 11:20 15:6 18:3 23:22 35:17 49:1 50:9 51:1 60:22 82:18 88:1,9 108:1 115:20 131:6 137:17 143:15 144:17 150:4 155:8 165:21 170:22 171:18 177:19 182:17 183:9 case-by-case 11:21 64:12 cases 11:17 12:11 37:17 39:11 50:2 62:19,22,22 82:5 108:7 109:3 135:6 138:9 156:12 159:13 160:18 categorically 64:17 categories 121:20 category 63:6 73:19 154:11 cause 1:6 106:5,9 | 106:14,15 107:15 128:11 128:14 129:5,12 129:17 191:19 causes 118:1 caveat 125:1 CCR 1:16,17 193:18,20 CEMS 23:6 certain 16:13 32:15,19 34:3 37:3 40:5 50:6 67:3,6 72:5 92:2 102:15,17,19 103:9 114:17 127:1 130:7 159:7 169:18 175:5 certainly 10:4 17:10 22:18 34:14 36:20 50:20 79:15 80:15 95:6 111:20 165:2 172:4 176:16 certifications 100:24 101:22 Certified 2:3,3 193:3,4 certify 193:5,9 cetera 65:11 85:9 131:5 167:13 challenged 167:22 chance 86:4,15 119:5 change 48:13 70:19 90:15,15 103:14 154:7,17 168:17 181:20 181:23 182:2,5 182:19,21,23 183:1,4,5,7,16 183:18,19,22,24 184:2,4,5,8,10 184:11,15,18,20 | 184:22,24 185:2 changed 15:22 17:6 41:19 102:2,4 103:15 122:23 124:12 168:16 changes 13:7,9,12 13:14 41:15 102:13 104:8 120:11 121:19 123:7 124:1 179:23 180:14 180:16,21 182:9 182:15 186:9,14 186:17,21 187:1 chapter 106:10 179:16 characterization 57:24 178:4,5 characterize 37:7 characterized 75:16 characterizing 146:8 charge 155:9 charged 53:3 155:3 Charles 2:7 39:2 check 28:13 69:10 83:12 115:19 161:19 172:22 173:14 187:3 check-ins 28:16 chemical 2:20 62:6 64:1 72:6 157:12 160:24 161:5 188:24 Chen 2:8 Chicago 3:3 148:16,18 190:18 chief 2:15 Chloe 2:16 5:3,19 choice 31:20 33:14 |
|--|---|---|--|--|

| | | | | |
|---|--------------------------------|-------------------------|--------------------------|--------------------------|
| circulated 40:12 | 44:11 110:9 | 70:20 72:2,11,24 | 104:2,13,14,15 | 14:10 21:10 |
| circumstance 116:16 | 141:10 181:14 | 100:1 132:6 | 104:16 114:21 | 89:12 110:1 |
| circumstances 93:16 102:15,17 103:3 115:16 | clearer 22:19 | 133:20 156:22 | 116:20 120:17 | 117:3 127:17,20 |
| citation 65:22 | clearly 105:5 109:10 | 188:11,12 | 121:22 123:7,13 | 127:21 128:9 |
| cite 181:22 182:4 | clerk 18:10 | commit 76:5,8,14 | 123:15 124:2 | 130:1 138:17,19 |
| 182:20,24 183:5 | clerk's 7:4 187:19 | 114:19 125:18 | 145:10 179:16 | 138:21 149:9,15 |
| 183:8,23 184:9 | clock 33:14 55:19 | 150:21 | complicated | 151:3 |
| 184:21 185:1 | 55:22,24 59:3 | Committee | 93:18 180:24 | conduct 34:20 |
| cited 89:5 | 97:3 133:23 | 180:13 | comply 105:1 | 35:1 37:20,24 |
| City 2:2 | close 179:19 | common 84:18 | 117:13 122:8,13 | 38:2 190:11 |
| clarification 25:20 | closely 88:21 | commonly 84:14 | 122:22,24 124:9 | conducted 13:10 |
| 43:18 97:2 | coal-fired 149:2,7 | 95:17 | 128:22 154:8,18 | 23:9 30:24 |
| 101:15 108:15 | 154:3,11 | communicate | 156:17 157:4 | 33:19 34:6,10,10 |
| 140:1 182:8 | code 1:5 5:6 56:17 | 137:1 | component 93:12 | 34:16 35:11,14 |
| clarified 105:23 | 62:7 87:19 | communicated | compound 150:24 | 39:15 81:21,24 |
| clarifies 117:8 | 113:24 126:24 | 40:13 | comprehensive | conducts 44:22 |
| clarify 36:13 60:2 | 129:20 | communication | 68:8 69:17 | confer 96:8 99:24 |
| 64:15 66:21 | Columbo 38:23 | 171:21 188:9,9 | computer 142:20 | 134:9 |
| 81:18 82:8 | column 92:15,16 | communications | concentrations | Conference 2:2 |
| 101:8 114:4,21 | columns 92:15 | 34:4 38:9 39:22 | 150:6 | confident 167:6 |
| 116:4 126:17 | combination | 44:22 61:23 | concept 112:6 | configurations |
| 137:19 141:22 | 89:24 | 65:9 80:5 81:13 | concern 35:3 | 104:8 120:11 |
| 161:22 164:11 | combustion 62:5 | 87:3 100:20 | 40:24 175:23 | confined 6:11 |
| 171:9 187:14 | come 31:6 37:13 | 101:6,19 137:2 | concerned 51:20 | confirm 57:21 |
| clarifying 135:1 | 71:17 99:10 | communities | concerning 6:12 | 59:2 61:19 |
| 182:1 | 171:23 174:13 | 174:23 175:19 | 13:12 42:13 | 81:12 97:18 |
| clarity 33:8 38:14 | 176:8 | 176:5,23 177:23 | 45:16 84:11 | 101:5,17 190:14 |
| 45:23 77:2,7 | comes 165:7 | companies 122:19 | 120:22 121:13 | 191:14 |
| 93:1 125:21 | coming 27:24 | 123:4 124:5 | concerns 41:6,18 | confirmation 82:6 |
| 191:7 | 166:19 | 157:19 160:24 | 47:19,24 89:7 | confirming |
| classes 65:19 | comment 6:4 | 161:6 | 136:6,11 147:9 | 188:16 |
| classification | 42:10 43:24 | complete 7:14 | 155:19,22 | confusing 139:18 |
| 165:8 | 72:6,8 97:7,8 | 56:1,3,7,8,9,14 | conclude 29:2,19 | connection 48:4 |
| clean 11:4 12:7 | 102:16 135:14 | 56:21 57:4,13,22 | concluded 27:10 | 149:22 152:3,6 |
| 31:14 56:16,18 | 179:20,24 | 58:1,5,10,17,23 | 29:12 71:19 | consider 19:12 |
| 56:24 84:3,8,14 | 180:14,16 | 59:2,2 133:23 | conclusion 30:16 | 21:19,24 23:4,24 |
| 94:2 117:23 | 186:17 190:10 | 170:23 191:24 | 31:6 | 24:15 33:1,10 |
| 118:1 125:12 | commenters | completing 72:18 | conclusions 20:22 | 54:2 55:8 58:22 |
| 152:4,13,19 | 40:24 | completion | 21:5 | 70:16 78:23 |
| 153:10 | comments 17:24 | 100:23 | condition 128:3,4 | 79:9 81:1,2 87:5 |
| clear 7:14 8:18,18 | 40:14,17,19 41:4 | complex 95:7 | 128:10 129:10 | 87:6 89:24 |
| 10:4,6 23:5 | 41:6,13,15,18,18 | complexity 34:18 | 129:19 | 94:13 123:6 |
| | 41:21,23 42:7,12 | compliance 14:5 | conditional 12:17 | 133:12,18 141:7 |
| | 42:16,18 43:2 | 93:15 100:24,24 | 13:1 | 141:9 142:5,15 |
| | | 101:1,22,22,23 | conditions 11:22 | 145:22 155:21 |

| | | | | |
|--|---|---|---|--|
| 159:7 160:1 169:15 173:22 176:11 185:16 consideration 19:23 20:13 22:9 42:9 52:4,5 74:14 75:6,10 95:10 120:23 121:14 123:17 133:16 141:16 considerations 85:6 133:10 141:21 189:13 considered 20:6 40:19 44:17 87:15 88:4 95:4 103:18 116:1 120:19 121:1,9 146:5,9,24 153:22 176:17 considering 24:21 33:14 36:24 44:14 47:3,5 103:6 115:17 169:21 considers 159:3 consistent 12:19 93:24 94:1 105:9 114:2,5 125:16 consists 174:3 constitute 93:23 constitutes 128:21 construction 15:9 18:17 67:10,15 98:2 99:6 100:7 100:10 102:9 consultation 101:10 consulted 84:24 116:20 consulting 101:18 contact 136:22 contain 24:11 54:15 68:9 | 69:12 98:4,18 99:17,19,20 118:8 127:18 132:16 134:19 174:6 176:13 contained 130:7 containing 59:15 contains 130:10 151:23 contaminants 129:5 content 111:23 context 54:8 111:17,23 120:24 contexts 36:21 continue 28:6 68:15 119:10 124:5 129:13 130:13 136:12 137:1 continued 28:13 29:17 38:9 39:22 78:17 106:6 128:11 129:16 continues 164:23 continuing 40:1 continuous 22:24 23:6 contributing 150:5,21 control 2:15 5:2 11:11 12:10,12 12:14 14:11,12 14:20 20:18 53:22 74:17 93:10 103:20,24 104:9 106:8 112:20 113:20 120:12,19 121:10 122:12 123:18 128:13 129:15 130:23 157:21 158:6,13 | 160:12 controls 11:18 120:19 121:1 conversation 94:12 114:9 conversations 40:1 47:7 61:9 61:20,21 80:3,6 80:13,22 101:3 136:17 COOL 7:4 187:20 cooperation 191:22 copies 42:16 43:6 43:8 72:1 73:6 85:11 91:13,20 181:2 copy 43:10 72:19 85:17 87:2 128:4 corner 163:6,11 correct 22:7 24:8 24:17 29:11 34:5 35:24 43:7 47:9,10 49:23 51:4 52:20 59:1 59:3,4 61:22 64:18,19 73:18 73:20 74:11,21 74:22 82:3 89:10,13 91:2 110:16 111:12 111:15 112:2,6 113:16,17 119:24 125:12 146:6 147:2,5,10 157:10,13 159:18 164:2,3 167:18 168:2 175:4,13 181:16 183:20 184:6,13 184:16,19 correcting 170:18 correctly 144:23 173:6 | correspondence 85:11 cost 122:4 costs 121:18 122:11 155:13 council 2:20 72:7 157:13 188:24 counsel 193:10,12 count 51:8 69:17 counts 128:24 couple 19:16 43:15 180:19 coupled 89:20 course 6:9 9:15 37:11 68:12 72:9 124:7 190:19 court 2:3 8:15 9:20 23:5 163:5 167:22 171:7 187:9 193:4 court's 118:3 covered 33:7 162:16 CPA 77:2 create 68:8 153:5 created 149:24 creating 57:18 criteria 25:20,22 26:7,9,11 46:6,8 46:10 49:4 50:6 59:18 60:2,4,7 60:12 78:8 118:8 175:22 cross-reference 105:21 CSR 1:16,16 193:18,19 curing 53:18 curious 177:16 current 16:7 34:22 68:9 83:13 106:11,17 106:24 108:5,7 114:3 149:11,16 | 150:2 174:6 currently 68:5,14 69:3 99:9 104:15,18 105:16 106:4 125:15 133:24 148:11 150:10 151:5,6 curstory 13:10 custom 9:13 <hr/> D <hr/> D 18:20 67:13 D7 65:7 D8 65:22 67:18 Dana 2:8 38:23 data 142:17,21 145:15,15 179:13,18 database 68:11 date 5:12,22 6:17 18:6 19:12 27:16,19,22 40:3 40:5,6 56:15 57:3 59:24 129:3 133:13,13 133:14,19,19 134:2,3,4,7 161:9 168:8,24 169:20 191:17 193:7 dated 72:6,7,8,21 72:22 David 34:1,10 38:21 Davis 2:7 6:18 8:1 9:21,22 10:10,16 16:20 43:6 49:18 72:10,21 87:14 107:11 132:7 137:20 138:1 143:2 159:2 163:4 178:21 179:6 181:6,14 183:16 |
|--|---|---|---|--|

| | | | | |
|---|--|--|---|--|
| 185:4 187:2 Davis's 73:24 day 40:8 42:6 192:2 days 97:4,5 139:11 175:8 190:5 DCEO 190:11,12 deadline 18:6 21:19 40:14,20 40:21 42:7 121:6 169:2,12 169:16 170:3 190:20 deadlines 6:3 22:1 22:18 31:18 32:15 33:16 167:12 191:13 deal 77:20 dealing 37:11 December 5:22 6:1,6,8 30:19 40:14 42:6,7 59:23 72:6,9,21 72:22 97:8 decide 32:8 190:12 deciding 131:2 173:23 decision 7:15 14:12 80:23 125:10 175:2 decisions 97:19 124:7 declare 11:14 declined 30:5 decrease 177:12 177:17 dedicated 178:24 deem 133:22 deemed 35:7,22 defense 13:4,23 14:15,18,23 15:3 15:5,15 29:3,8 29:22 66:5 88:9 | 88:15,16 89:4 94:20 105:6,14 105:17 106:1 107:24 108:12 108:22 109:4,5 109:13 112:12 112:14 115:10 117:23,24 122:6 139:16,20,24 140:15 154:6,16 defenses 117:20 defer 9:13 20:14 20:20 21:3 74:18 178:22 deficiencies 58:21 170:19 deficiency 57:5 58:18 163:24 define 111:24 defined 109:22 111:4,8,9 definitely 36:8 definition 110:12 110:21 112:18 112:21,24 113:19 140:2 deleted 180:2 deletion 131:21 demonstrate 19:3 95:11 demonstration 26:13 46:12 49:2 50:5,5 84:6 84:7,19,19,24 90:8,10 91:1 demonstrations 90:6 Department 166:14,18 departure 38:22 depends 142:16 146:1 describe 13:8 36:5 37:23 39:8 130:18 | described 78:16 130:13 description 65:17 66:10 132:17 134:19 designated 146:22 147:5,8,12 148:9 designation 148:1 designed 31:12 138:5 179:15 designing 152:20 desire 104:7 120:10 destroy 16:3 destroyed 16:1 destruction 15:17 detail 41:12 84:22 114:22 187:24 detailed 60:23 129:4 details 49:10 187:14 determination 7:16 118:11 determine 28:13 118:4 179:16 determined 8:4 56:13,20 115:7 122:11 determines 57:4 58:17 determining 40:18 develop 7:14 8:18 10:4,6 94:4 developed 152:3 developing 26:12 38:16 46:11 60:12 development 25:20 30:6 35:18 39:10 45:10 46:3 53:21 77:2 97:14 130:17 | deviation 139:9 device 157:21,22 158:6,7,14 160:12 devices 103:20,24 diameter 147:24 difference 57:13 58:5,13 62:24 63:2 90:14,18 differences 56:2 62:12 different 19:2 21:10 26:21 37:12 51:11 57:18 58:14 82:5,17 83:7 93:9,10 102:24 107:23 128:6 130:4 135:19 137:7 144:24 147:22 148:3 151:1 157:18 159:15 172:16 185:7 differentiating 24:6 differently 61:6,9 difficult 84:22 dioxide 11:12 dioxides 11:12 direct 59:14 92:11 92:14 directed 6:2,15 36:23 94:16 174:19 direction 63:17 directions 185:7 directives 128:23 directly 36:14 65:4,8 81:14 130:21 director's 166:21 disapproval 57:17 57:18 59:20,22 61:1,4,11 64:3 | disapprovals 59:15 60:16,19 disapproved 60:17 82:3,10,15 disapproving 96:19 discretion 11:21 53:21 54:5,7,14 54:20 55:3,10 118:3 124:6,11 124:22 125:4,5,6 125:14 152:20 discretionary 117:21 discuss 54:3,7,9 55:8,18 57:22 58:3 77:12 175:1 discussed 24:9 25:3 28:11 58:7 60:11,18,21 61:10 158:17 discusses 23:16 discussing 8:2 44:14 47:3,15 58:8 176:17 187:12 discussion 44:4 47:23 48:11 55:12 60:24 61:4,6,13 64:15 80:24 94:9 187:11 discussions 26:22 28:3,6,9 42:13 44:13,24 47:2 54:1 55:6 56:8 57:12 61:2,5,12 69:5 120:21 121:12 133:16 133:20 distinction 58:10 95:2 distribute 73:7 doc 16:5 |
|---|--|--|---|--|

| | | | | |
|---|--|---|--|--|
| <p>docket 5:9 7:4 74:20 75:20</p> <p>document 173:3 186:15 187:24</p> <p>documentation 85:7 120:22 121:13</p> <p>documented 65:8</p> <p>documents 7:3 11:14 13:11 15:15,23,24 16:3 20:14,21 21:4 22:16 65:4,6,14 74:19,20 75:23 76:6 91:3,9 189:17</p> <p>doing 19:12 28:23 36:24 163:11</p> <p>Donovan 2:19</p> <p>double-check 183:10</p> <p>double-checking 76:14</p> <p>draft 40:15 42:8 77:11 81:2</p> <p>drafted 77:10</p> <p>drafting 65:4 130:21</p> <p>drafts 53:6 76:13</p> <p>drawn 112:18</p> <p>drink 71:14</p> <p>Drive 3:3</p> <p>Driver 2:11</p> <p>drops 160:14</p> <p>due 15:16 27:5 121:19 168:22 169:20 189:17 189:20</p> <p>duration 11:16 129:3 132:18,21 134:20,23 141:18</p> <p>Dynegy 3:1 6:23 8:8 70:11 137:17</p> | <p>Dynegy's 156:11 188:19</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>E 193:1,1</p> <p>e-mail 40:12 61:23 72:10,15 72:20 85:10 87:2 90:21 128:24</p> <p>e-mails 65:10 80:20 81:6 85:9</p> <p>e.g 93:9</p> <p>earlier 102:14 163:19 168:1 170:4</p> <p>earliest 191:10</p> <p>early 16:4 23:10 57:9</p> <p>easier 17:17 180:19</p> <p>easiest 91:14</p> <p>easily 115:5</p> <p>East 2:1</p> <p>economic 155:22 190:11</p> <p>economically 118:12 124:4 155:19</p> <p>effect 14:22 15:1 57:2 89:12 110:10 117:9</p> <p>effective 56:15 57:2 123:9 133:12,19,24 134:2,7 157:21 158:6,13 160:12</p> <p>effectiveness 167:13</p> <p>effects 176:5</p> <p>effort 17:22 172:7 172:10</p> <p>efforts 11:15 36:9 79:3 132:20 134:22 141:20</p> | <p>149:23</p> <p>EGU 154:11</p> <p>eight 150:16</p> <p>either 30:9 47:6 55:13 61:2,23 77:3,5,8,13,15 80:20 107:22 118:18 154:20 190:12</p> <p>EJ 176:12</p> <p>elaborate 27:20</p> <p>elaboration 26:9 46:7</p> <p>elect 45:16</p> <p>electric 154:3,14 155:6</p> <p>electricity 155:13</p> <p>electronically 42:19 85:12</p> <p>elects 93:6</p> <p>element 175:8</p> <p>elements 50:7 153:23,23</p> <p>eligible 139:15,22 140:14</p> <p>Emily 2:9</p> <p>emis 140:11</p> <p>emission 11:6 12:9,12,18 13:1 14:11,20 20:4,5 20:9 21:1,11 22:24 25:21 26:3,8 35:21 44:10,15 45:7,19 46:3,6,24 47:4,6 47:9,11,18,20 48:6,12,13,15 50:22 51:22 52:2,16,18,24 55:17 57:18 59:8,13 60:3,12 60:14 61:7 62:5 62:10,17 64:7 66:3,5 74:9 77:3 77:10 79:2,12,13</p> | <p>80:8 81:2 83:6,7 89:21 93:9,12,22 94:4,10 95:5 104:10 105:1,8 106:6,7 109:22 109:24,24 110:12,22 111:21 112:11 112:16,22,24 113:23,23 117:13,21 118:11,16,21,21 120:13,20 121:1 121:2,3,8,11 122:7,13,24 123:8 124:2,22 127:13 128:12 128:15 129:12 129:14,17 130:10 131:12 132:17 134:20 135:3,6,9,14,21 138:9 139:15,22 140:8,17 142:7 151:14 153:11 154:7,8,17 156:12 164:7</p> <p>emissions 11:11 11:16,24 12:2,10 12:18 13:23 14:9,19 20:18 23:6 74:17 87:20,24 88:2,6 90:3,8 93:7 94:17,23 95:8 109:18,19,19,21 110:7,21 111:4,7 111:11,11,14,22 111:23 112:4,6 112:11,19,22 113:2,4,14,18,19 113:20 114:11 115:8 120:20 121:11 128:17 129:6,7 131:2,3</p> | <p>131:10,24 132:19,21 133:3 133:9 134:22,23 135:19 138:20 139:7,14,21 140:14,22,24 141:2,7,10,12,14 141:19,19 142:5 142:6,15,24 143:3,10,23 144:5,18 145:6 145:16,18,22 147:19 152:7 161:9,16 162:6 164:1,4,15 176:19 177:10 177:18 178:2</p> <p>emit 113:5,10,13 140:14</p> <p>emitted 129:5</p> <p>emitting 149:20</p> <p>employee 193:10 193:12</p> <p>enacted 12:8</p> <p>ended 40:10</p> <p>energy 172:14</p> <p>enforce 110:19,23 111:5,15 112:13</p> <p>enforceable 110:1 110:15,15 112:5 113:6 153:14</p> <p>enforcement 13:4 13:24 15:6 20:7 53:20 54:4,7,14 54:19,21 55:3,10 66:6 88:9 105:7 108:1 109:5,13 112:9 115:17 116:2 118:4 124:6,11,22 125:2,4,10,14 161:9,14,15,18 162:3,5 189:2</p> <p>enforcing 111:2</p> <p>engaged 42:13</p> |
|---|--|---|--|--|

| | | | | |
|----------------------------|------------------------|---------------------------|---------------------------|---------------------------|
| engineer 136:8 | 49:8,9,11,19 | 28:12 36:9 | 145:10 154:2,13 | example 16:21 |
| engineering | 50:15 52:17,18 | 39:23 54:1 55:2 | 154:22 155:5,12 | 23:12 35:13 |
| 103:19 | 52:24 53:5,16 | 55:6 60:11 | evaluating 141:6 | 53:10,11 62:4 |
| ensure 31:16 | 54:1,2,10,11,12 | 62:15 64:2 | 141:23 142:4,11 | 63:4,23 65:10 |
| 32:16 121:22 | 54:13,22,24 55:6 | 67:17 85:8 94:5 | 145:14,21 | 66:17 77:10,12 |
| 144:16 145:13 | 55:7,15,21 56:8 | 96:15 102:1,6 | evaluation 141:15 | 77:19 78:5,19,22 |
| 153:1 | 56:12,20 57:3,11 | 103:17 117:15 | 154:20 | 79:8,11,15,18 |
| entail 68:10 93:18 | 57:12,12,23 58:4 | 128:20 154:5 | evaluations | 81:22 82:1 85:9 |
| enter 43:19 | 58:16,22 59:10 | 168:16 175:7 | 141:14 | 92:17 93:5 |
| entered 7:20 9:24 | 59:17 60:4,14,17 | 178:4 | event 66:5 112:13 | 94:16,21 102:19 |
| 85:15 96:7 | 60:19 61:5,20,24 | episode 97:1 | 114:13 116:14 | 117:19 131:4 |
| entire 80:12 92:3 | 62:20 63:13,19 | equate 14:8,18 | 118:7 139:11 | 142:16 144:5 |
| 126:24 131:21 | 64:3,16 65:9 | equates 14:14 | 140:8,17 149:24 | 145:7 |
| entities 3:1 36:4,8 | 77:11,12,20 78:3 | equipment 11:18 | 150:7,21 162:6 | examples 15:8 |
| 39:7 65:19 | 78:15 79:9,9,24 | 104:9 106:8 | events 44:11 | 17:13 18:15,17 |
| 78:24 79:11 | 81:1,2 82:6,10 | 120:12 122:12 | 45:18 53:24 | 19:5,11,15 26:15 |
| 80:3,7 82:10 | 82:15 84:18,23 | 123:7,19 128:13 | 93:8 94:18,22 | 46:14 50:10 |
| 185:18 | 84:24 85:3,3,4,8 | 129:15 138:5 | 105:2 109:2,6 | 52:15,24 63:22 |
| entitled 5:5 | 87:4,15 88:24 | ERB's 63:24 72:1 | 110:7 113:15 | 64:5 79:1 83:2 |
| 111:10 | 89:6,11,23 90:17 | 96:13 | 117:5,14 138:20 | 83:14 125:21 |
| entity 36:15 | 90:24 93:4,14 | especially 47:20 | 138:22 141:8,12 | 188:2,14 |
| environmental | 94:9 96:17,18,21 | 78:9,15 | 141:18,18,19 | exceed 11:24 |
| 2:10 5:8 6:21 | 96:24 97:9,24 | essence 49:10 | 142:6,15 144:9 | 109:20 131:11 |
| 10:13 65:1 | 100:4,20 101:20 | 107:16 113:4 | 145:23 150:14 | 139:14,21 142:6 |
| 153:17 174:23 | 105:9 117:17,22 | 132:2 140:2 | 151:8,9 176:21 | exceedance 66:6 |
| 175:1,8,15,18,18 | 117:24 118:6 | establish 12:24 | eventually 102:10 | 110:24 112:10 |
| 175:21,23 176:5 | 122:2 124:4 | 13:3 20:3 25:7 | 170:20 | 115:12 116:13 |
| 176:11,22 | 126:8,11,12,19 | 78:20 105:6 | everybody 166:21 | 139:1 140:17 |
| 177:22,23 | 127:3 128:23 | 117:20 118:14 | evolution 18:23 | 149:20 |
| 189:12 | 133:13,21 134:3 | established 11:6 | 19:7,8 188:3 | exceedances 20:5 |
| EPA 2:6 12:1,7,22 | 136:18,22 137:8 | 27:22 121:2 | evolutions 19:14 | 107:9 109:1 |
| 23:16,22 25:5,6 | 137:9 142:24 | 127:10 | evolved 18:22 | 124:22 138:23 |
| 25:12,16,23 26:2 | 143:3 148:11 | establishes 112:24 | 19:3 | 139:4 149:6 |
| 26:2,9,10,20,22 | 153:18,22 154:9 | 113:1 | exact 168:8,23 | exceeded 138:13 |
| 27:5,9,24 28:13 | 154:19 155:10 | establishing 13:22 | exactly 37:5 49:22 | 139:19,23 140:8 |
| 28:16,19 29:24 | 163:23 165:3 | 20:9 21:1,19 | 50:12 54:13 | 143:20 144:2 |
| 32:17 33:18 | 168:21,24 171:5 | 44:10 105:13 | 61:11 69:23 | 148:24 |
| 35:2,5 38:9 | 171:9,18,21 | 133:8 | 90:20 98:8,10 | exceeding 114:11 |
| 39:18,22 40:2,23 | 172:3,17 173:22 | estimate 69:13 | 176:13 | Excellent 163:9 |
| 44:7,8,14,19,22 | 174:17,24 | 129:6 | examination | exceptions 20:3 |
| 45:1,5,6,15,21 | 175:17 176:10 | et 65:11 85:9 | 10:18 131:17 | 127:10 |
| 46:2,2,7,9,19,21 | 177:20,21,24 | 131:5 167:13 | 137:23 156:8 | excess 12:18 13:23 |
| 46:22 47:3,8,10 | 185:9,18 189:11 | evaluate 140:21 | 157:16 163:14 | 45:17 93:7 |
| 47:15,16,19,21 | 189:13 | 154:10 | 177:2 | 94:17 111:11 |
| 48:4,5,16,20 | EPA's 12:5 27:6 | evaluated 141:14 | examine 86:4 | 113:14,18,23 |

| | | | | |
|--------------------------|--------------------------|--------------------------|---------------------------|-----------------------------|
| 128:17 144:6 | expeditiously | 159:3,5,7,23,24 | 57:19 58:16 | 166:22 167:3,12 |
| 161:9,16 162:6 | 190:2 | facts 93:16 | 59:15,19,21,23 | 167:15 170:20 |
| excessive 11:16 | experience 35:14 | fail 138:6 185:9 | 60:5 64:4,8 | 174:24 175:9,14 |
| excuse 66:2 | 48:3 122:21 | fails 31:15 | 91:18 92:1 93:2 | findings 57:3 |
| 104:24 146:11 | 136:10 | failure 29:5,7,10 | 93:4 95:16,21 | 122:15 169:1,6 |
| excused 117:12 | experiences 90:5 | 29:16 31:22 | 165:6 166:7 | 170:23 189:12 |
| exemption 93:7 | explain 33:10 | 33:1,6 37:22 | 167:22 | finds 163:23 |
| 93:21 95:9 | 41:17 47:19 | 38:3,8 39:6,21 | feel 92:2 180:4 | fine 71:8,9 86:9 |
| 130:11 | 127:5 | 46:24 47:16 | FESOP 18:17 | 163:8 |
| exemptions 12:17 | explained 117:22 | 51:7 55:7,13 | 69:10 100:21 | firmer 22:16 |
| 13:1 20:3 45:17 | 186:4 | 56:6,11 65:14 | 101:20 128:8,10 | first 5:15 6:10,11 |
| 94:17 117:21 | explains 12:7 | 77:5 102:3 | FESOPs 66:20 | 7:7,18 8:4,15 |
| exercise 53:20 | 23:22 117:17 | 166:22 167:3,13 | 128:1 | 10:20 12:8 |
| 54:4,14,20 55:9 | explanation 45:15 | 167:15 169:1,6 | fewer 69:11 | 15:23 23:22 |
| exhaustive 69:17 | 129:5 | 170:20,23 | 176:20 177:6 | 24:4 27:13 29:2 |
| exhibit 4:2,2,3,3 | explicit 127:9 | 174:24 175:10 | field 128:20 | 29:19 51:2,13 |
| 42:22 43:2,3,11 | explicitly 15:4 | 175:14 | file 40:5 | 72:21 73:22 |
| 43:17,20 71:24 | 93:11 106:1 | fair 57:24 148:6 | filed 5:6,23 7:5 | 74:7,12 91:22 |
| 72:13,20 73:2,8 | 107:22 | fairly 78:2 | 8:5,7 32:20 42:5 | 92:21 97:10 |
| 73:12,14 85:15 | explored 41:1 | fall 18:24 | 97:8 125:24 | 98:14 124:20 |
| 86:6,17,20,24 | express 40:24 | far 5:16,18 36:17 | 137:16 189:18 | 130:12 163:22 |
| 91:12,16 92:2,3 | 47:24 48:5,9 | 48:22 63:5 | 189:20 | 166:10 168:11 |
| 92:5,7,9 95:13 | expressed 48:1 | 68:18,22 69:11 | filing 8:5 30:19 | 179:14 185:10 |
| 95:15,21 96:1,4 | expressing 51:19 | 82:18 88:19,24 | 101:4 124:18 | 186:10 187:16 |
| 96:7,8 181:4 | extent 20:12 24:5 | 89:2 151:6 | filings 96:10,11 | 190:2,6 |
| Exhibits 4:1,4 | 38:22 65:21 | 156:20 164:8,8 | 114:23 | first-notice 6:5 |
| exist 15:18 | 73:1 83:9 115:8 | 187:7 | final 39:23 45:6 | five 72:24 |
| existent 23:1 | 140:24 141:15 | fast-track 5:7,24 | 56:15 60:8 91:4 | fleet 144:15 |
| existing 45:17 | 176:20 177:9 | 24:7 30:10 31:7 | 91:5 96:3,22 | flexibilities 152:21 |
| 69:3 98:2 102:9 | Exxon 81:8,9 | 31:9,11,16,20,23 | finalizing 39:19 | flexibility 163:11 |
| 103:24 127:17 | ExxonMobil 3:5 | 32:4,9,11,13,14 | finally 7:6 68:8 | 189:23 |
| 132:15 133:5 | | 32:21 33:13 | 182:14 189:9 | floor 2:2 9:6 |
| 154:3 179:11,23 | F | 65:2 | 190:3 | folks 43:14 163:1 |
| exists 106:4 | F 11:1 193:1 | fast-tracked 33:5 | financially 193:13 | follow 52:1 61:18 |
| expect 48:10,16 | F-E-S-O-P 66:20 | fastest 128:22 | find 80:4 116:8 | 75:19 100:12 |
| 49:11,16 124:4 | 100:22 | feasible 64:6 | 184:14 | 114:20 156:19 |
| 126:9 136:11 | facie 105:6,13,17 | 118:12 121:10 | finding 23:18 29:5 | 180:7 |
| 164:21 173:22 | 106:1 108:12,21 | February 22:6 | 29:7,10,16 31:22 | follow-up 8:13 9:6 |
| expectation 35:2 | 109:13 112:12 | 95:16 189:18,21 | 33:1,6 37:21 | 10:4 14:16 21:7 |
| 119:15 123:13 | 112:14 | 189:22 190:17 | 38:3,8 39:6,21 | 21:19,21,23 22:2 |
| 123:15 124:9,12 | facilities 67:15 | 190:21,24 | 46:23 47:16 | 22:9,13 25:18 |
| expected 25:23 | 164:5,17 | federal 12:22 | 51:7 55:7,13 | 30:8,14 35:19 |
| 65:19,20 187:17 | facility 165:17 | 25:18 27:14 | 56:6,11 57:6 | 52:14 60:18 |
| 191:18 | fact 163:10 | 45:14 47:22 | 58:19,21 65:14 | 70:8 73:22 |
| expedited 187:17 | factors 116:1 | 56:5,17 57:7,9 | 77:4 102:2 | 74:24 87:2,12 |

| | | | | |
|--------------------------|---------------------------|---------------------------|---------------------------|--------------------------|
| 88:13 96:6,9 | 191:3,14 | front 22:14 | 138:24 139:6,8 | 21:3 27:4 29:4 |
| 104:20 105:12 | found 13:12 62:7 | fuel 62:5 | 146:5,23 151:22 | 29:13,15 32:6,8 |
| 117:2 124:20 | four 147:22 148:3 | full 59:16 72:11 | 153:7 | 40:4 42:3,15 |
| 126:3 132:11,23 | Fox 2:16 4:4 5:1,3 | 73:1 129:4 | generally-appli... | 44:6 46:20 |
| 134:10 156:5,10 | 9:8,12,20,23 | fully 58:21 | 62:17 103:21 | 51:13 53:7,15 |
| 156:15 157:9,11 | 10:9 18:1 22:4 | funding 56:23 | 114:12 116:13 | 56:4 63:7 70:1 |
| 158:24 160:7 | 22:15 42:21 | 164:2 166:5,12 | generating 154:4 | 78:9 82:7,7,16 |
| 162:24 163:21 | 43:4,9,14 52:10 | funds 166:8 | generation 155:6 | 83:1 92:19 |
| 169:8,14 174:21 | 61:14 69:21 | further 27:20 41:1 | generically 49:13 | 104:3,4 106:3 |
| 177:1 178:15 | 70:1,13,23 71:8 | 45:10 52:10 | Georgia 59:20 | 112:13,17 127:4 |
| 179:3 187:6 | 71:17 72:16,18 | 84:12 131:16 | 60:1,20 61:10 | 130:2 134:17 |
| follow-ups 118:24 | 73:5,15 74:1 | 137:2 156:1 | Georgia's 61:4 | 135:7 152:11 |
| 178:10 189:17 | 85:16,19,23 86:9 | 177:14 193:9 | 64:3 | 168:14 170:13 |
| followed 188:16 | 86:14 89:15 | furthering 135:12 | getting 17:22 40:9 | 171:24 174:10 |
| following 15:10 | 91:15,24 95:14 | future 68:2,7,16 | 40:20 69:19 | 176:8 177:9 |
| 17:2,3 18:13 | 95:19 118:23 | 68:18,20,23 | 78:14 108:18 | 180:18 185:4 |
| 29:16 38:8 | 119:2,21 120:2 | 78:20 97:18,22 | 135:14 176:3 | 187:3 191:14 |
| 39:21 44:8 | 132:7 134:11,14 | 121:5 125:10,19 | Gibson 2:17 5:17 | good 5:1 10:6 |
| 46:23 54:2 55:7 | 137:14 156:3 | 129:9 164:22 | 10:15 | 12:10 20:18 |
| 76:22 81:17 | 157:8,11 160:6 | 165:14,16,18,22 | give 8:14 43:14 | 70:8 74:17 |
| 108:3 110:4 | 160:19 162:20 | 180:6 | 92:20 170:8 | 149:14 180:11 |
| 114:9 129:2 | 163:9 171:10 | G | 181:1 | 181:18 182:13 |
| foregoing 193:5 | 177:13 178:10 | gather 80:5 | given 34:18 38:6 | 191:19 |
| foreseeable | 178:13 180:7,11 | gauge 46:18 84:22 | 39:17 42:9 50:2 | gotten 79:23 |
| 165:22 | 180:22 181:3,8 | geared 17:6 | 70:11 75:19 | govern 152:13,18 |
| forget 36:19 | 181:14,18 182:1 | general 2:21 12:1 | 79:7 90:15 | governed 7:7 |
| forgive 72:4 | 182:7,13 185:4 | 12:23 16:15 | 97:18 121:5 | 138:21 |
| forgotten 162:21 | 186:6,22 187:2 | 61:10 63:14 | 123:5 143:10 | governing 138:17 |
| 168:23 | 187:12 191:10 | 93:17 125:8,24 | 154:10 161:24 | government |
| form 114:3 | frame 10:5 22:3 | 127:17,20 139:3 | glad 72:16 | 166:12 |
| formal 34:15 38:1 | 23:10 30:12 | 147:1,11 154:11 | go 5:10 9:9,10,13 | governor's 166:20 |
| 38:2 53:2 | 31:1 40:16,18 | 160:1 175:16 | 10:10 26:12 | 167:7 |
| format 37:9 | 98:7 99:2 149:4 | 189:7 | 39:20 41:9 44:1 | Grand 2:1 |
| 179:17 | 161:23 162:1 | general's 54:20 | 46:10 51:2,6 | grant 12:1 15:5 |
| forms 100:23 | 170:17 | 162:22 163:17 | 61:14 70:13,17 | 117:4 152:20 |
| forth 26:7 46:6 | Frede 2:20 157:12 | 189:9 | 71:15 74:2 79:5 | 159:8,24 |
| 49:4 52:7 53:17 | 157:14,17 158:3 | generally 12:21 | 83:23,24 86:3,22 | granted 106:11,18 |
| 68:1 77:18 78:9 | 158:4 160:6,8,9 | 16:21 28:20,24 | 109:17 120:2,7 | 107:1,6,12,13 |
| 106:10,16 | 160:21 162:2,7 | 45:21 53:8 | 134:14 156:6 | 108:8 126:6 |
| 179:17 193:8 | 162:12,18,20 | 66:15 67:3 69:2 | 177:10 187:9 | granting 14:9,14 |
| forthcoming | frequency 129:9 | 74:6 87:22 90:9 | 190:15 191:3 | 14:17,18,22 15:1 |
| 39:18 | 132:18,22 | 102:13 103:10 | Goddison 38:24 | 15:3 97:11 |
| Fortier 2:9 | 134:21,24 | 111:2 112:9,17 | goes 12:14 77:17 | 109:12 |
| forward 27:1,3,8 | fresher 73:23 | 115:12,15 136:3 | 94:3 | great 22:21 85:24 |
| 37:1 190:15 | Friday 6:6 190:13 | | going 17:20 18:20 | 186:1 |

| | | | | |
|---------------------------|-------------------------|---------------------------|--------------------------|--------------------------|
| greater 51:15 | happen 137:7 | 23:23 27:13 | 119:18 131:4 | 36:22 37:10 |
| Griff 71:4 | 165:15 | 170:12 190:7,9 | 143:19 144:11 | 59:14 72:6 |
| Griffith 2:19 71:5 | happened 114:18 | 191:9 | hour-by-hour | 73:17 91:17 |
| group 2:10 6:21 | 115:24 168:4 | help 7:14 8:18 | 144:16 | 97:8 191:7 |
| 10:13 22:18 | happening 78:12 | 48:21 111:24 | hourly 143:15,24 | IERG's 10:21 |
| 163:2 175:23 | happens 102:13 | 114:21 146:4 | 144:3,15 145:6 | 36:19 74:5 |
| GroveDrive 2:13 | 103:1 | helped 79:2 | 145:12 | 81:17 188:1,2,3 |
| guaranteed 45:2 | happy 85:12 | 191:23 | hours 110:2 | 188:8,10,14,15 |
| guarantees 47:17 | hard 88:7 | helpful 10:3 18:14 | housekeeping | 188:17 |
| 55:16 | head 17:21 36:20 | 50:2 52:15 | 5:12 7:6 | IL 2:13 3:3 |
| guess 27:23 29:17 | 36:20 63:17 | 159:20 191:2,24 | hurdle 159:15 | ILCS 65:7,22 |
| 40:7 41:20 | 173:16,18 | helpfully 187:23 | hydrocarbons | 67:18 |
| 51:11 57:11 | heading 80:12 | 191:13 | 11:13 | Ill 1:5 |
| 61:19,21 63:13 | health 146:6 | Hepler 2:12 | hypothetical | Illinois 2:2,6,10 |
| 67:6 80:18 83:4 | hear 9:6,11 | hereinafter 23:20 | 77:19 78:18 | 2:15,18,20,21 |
| 83:14,15 85:10 | heard 43:4 73:7 | 29:6 | 97:18 | 5:2,5 6:5,20 |
| 89:3 91:8,21 | 95:20 | hereinbefore | | 10:12 12:1,5,6 |
| 106:21 107:8,18 | hearing 1:4 2:16 | 193:8 | I | 12:23 14:12 |
| 108:3 132:23 | 2:16 4:4 5:2,4,5 | hey 37:14 | idea 58:4 135:17 | 23:16,22 25:16 |
| 135:11 149:18 | 6:2,2,8,11,15,24 | high 150:18 | ideal 109:8,11 | 26:2,9 27:5 |
| 159:18 165:11 | 7:2,6,10 8:3,11 | higher 131:3,10 | ideas 81:8 | 31:14 33:18 |
| 167:13 169:14 | 8:21 9:2 17:24 | 131:24 143:17 | identification | 35:5 36:9 40:23 |
| 176:1,3 | 18:7,8 21:18 | 145:8 | 65:19 73:14 | 44:7,13 46:2,7 |
| guessing 22:4 | 22:6,11,11 42:22 | highest 144:10 | 86:24 92:9 96:4 | 46:21 47:2,15 |
| guidance 25:5,7 | 43:3,11,17 65:5 | highlighted | identified 56:18 | 50:20,23 52:18 |
| 25:11,19,22 26:1 | 71:24 72:13,19 | 186:18 | 89:7 91:10 | 53:16 54:1,2,11 |
| 26:11,14 30:6 | 73:2,8,10,12 | highlighting | 170:19 186:13 | 54:12,21 55:2,6 |
| 44:8,11 45:10,16 | 80:21 85:15,17 | 186:14 | identify 15:13 | 55:7,21 57:11,12 |
| 46:2,10,13,22 | 86:17,18,19 | highway 56:23 | 146:4 | 62:7 65:1 67:17 |
| 48:16 77:2,7,9 | 91:16 92:1,6 | 164:1 166:5,8 | identifying 38:18 | 72:7,8 79:9 85:4 |
| 94:5 170:6,8 | 95:22,24 96:7,9 | historical 13:21 | IDOT 166:17,18 | 85:8 88:3 94:14 |
| 185:19 | 97:10 100:14 | historically 62:15 | IEPA 5:6,23 6:18 | 94:18 96:15,22 |
| guidance/respo... | 101:4,19 178:17 | 67:23 105:10 | 138:9,19 139:7 | 97:9,24 100:4,20 |
| 44:19 | 178:20,24 179:5 | hold 25:13 27:15 | 139:16 140:7,15 | 101:20 102:1,6 |
| guidances 48:14 | 179:7 181:4 | 28:21 | 141:7 142:5,15 | 103:17 104:7 |
| guidelines 11:5 | 186:15 187:8,15 | holders 34:21 | 145:22 148:24 | 105:9 120:10 |
| Guosen 2:8 | 187:16,22 190:2 | 122:1 | 151:16 154:2,13 | 121:6 124:4 |
| guys 76:12 | 190:4,6,7,9,15 | holding 6:10 8:22 | 154:22 155:5,12 | 126:11 128:20 |
| | 190:16,20 191:1 | 99:18 | 155:17 156:11 | 128:23 129:20 |
| H | 191:9,11,12,14 | holiday 189:23 | 166:10,17 | 130:22 137:7 |
| half 92:16 | hearings 6:9,14 | hooks 109:15 | 171:17 174:4 | 141:7 142:5,12 |
| hand 8:13 | 22:3 | hope 191:2 | IEPA's 72:2 | 142:24 148:9,14 |
| handles 103:10 | heat 131:4 | hopefully 42:2 | 186:10 | 154:5,9,14,19 |
| handling 98:1 | heck 112:12 | 165:19 166:3 | IERG 6:21 8:6,6 | 155:6,10 163:16 |
| 100:5,15,16 | held 2:1 16:8 | hour 70:1,15 | 10:13 21:22 | 163:24 164:5,17 |

| | | | | |
|--|--|---|---|---|
| 164:22 165:3 166:7,11,14,18 188:24 Illinois's 104:24 image 16:2 imagine 97:4 immediately 17:3 128:19 167:22 185:16 impact 34:19 42:14 90:3 117:9 141:13 154:3,10,14,23 167:8 176:15,16 177:23 190:11 impacted 64:13 66:16 67:1,2,10 151:8 177:24 impacting 149:21 150:20 impacts 87:24 141:19 175:1,9 175:11,15 176:12,12,15,22 implement 26:11 46:9 123:6 179:21 180:2,4 implementation 11:6 23:19 152:14 implemented 105:10 107:19 109:9 implicitly 107:22 impose 163:23 imposed 56:22 164:14 in-detail 61:11 inadequacies 53:18 inadequacy 23:18 inappropriate 118:7 incidence 11:15 129:9 | incident 128:19 128:24 include 29:21 35:20 38:21 61:5 65:17 72:12 83:3 109:19 110:7 127:12 132:5 133:6 145:15 158:22 175:11 176:7,12 included 12:16 15:9 16:17 18:21 21:9 50:7 50:11,21 63:19 129:24 144:19 includes 72:6,23 107:21 111:11 including 5:13 18:17 24:10 44:9 46:8,24 47:22 53:18 54:3 55:8 60:16 122:1 140:22 141:18 144:18 175:8 inclusion 53:19 inconsistent 117:22 increase 165:10 increased 164:20 165:5 increases 155:13 increasing 177:11 independent 54:21 154:23 indeterminate 121:19 INDEX 4:1 Indiana 172:19,21 173:7 189:10 indicate 8:13,16 9:2 47:8 157:8 indicated 45:2 64:11 156:4 | 180:21 indicating 25:14 indication 49:12 79:23 163:3 individual 46:18 132:21 134:24 153:6 industrial 2:20 157:20 158:5,12 160:11 industry 36:21 72:7 79:21 81:15 122:2 157:13 188:24 infeasible 124:3 influenced 178:5 inform 35:16 informal 34:16 38:1,3 41:13 information 7:9 18:4 22:17 26:10 28:14,17 34:20,23 35:2,6 35:11,15,16,22 37:5 38:10 39:17 45:21 46:8,17 53:10 68:12 78:1 81:21,24 82:9,17 97:17 109:2 122:1,4 133:3,7 135:2 136:9 141:17 149:17 167:5 170:12 179:13,18 185:17,19 189:10 informational 167:1 informative 17:12 initial 98:15 initiating 28:4 INPA's 95:18 input 131:5 inputs 144:24 | 145:5 inquire 39:10 inquired 36:8 inquiries 36:2 39:5 inquiry 36:15 inside 166:11 174:7 Inssofar 108:23 install 103:20,24 installing 123:18 instance 36:12 102:23 116:8 143:6 150:3 151:12 instances 36:5 39:8 63:11 127:1 140:7 141:9 149:24 153:20 155:17 intended 7:13,15 72:12 73:2 147:17,18 152:6 181:22 182:3,20 182:24 183:5,8 183:17,23 184:3 184:9,21 185:1 intends 65:5 intensive 78:11 intent 9:8 intention 27:6 119:7 interact 54:19 interested 54:12 55:4 193:13 interfere 84:10 90:12 internal 28:3 42:13 interpret 59:17 interpretation 14:1,4,8,17 15:2 89:11 135:13 interpreted 13:22 17:1 90:7 | 105:10 107:9,19 108:11,16 109:8 interprets 26:10 46:9 interrupted 61:15 70:2 86:23 interrupting 86:16 introduce 43:2 introduced 5:19 introductions 5:11,15 involve 188:17 involved 36:14 64:14 78:14 79:20 80:2,11 81:14 97:14 123:18 124:11 125:7 126:11 130:16,21 167:12 involvement 130:19 involves 49:3 irreducible 11:24 14:9,19 issuance 99:19 188:18 issue 13:13 34:14 67:21 71:21 78:10,15 80:11 87:5 116:7,12 150:1 153:18 156:16 157:4 175:21 188:20 188:21 190:3 191:11 issued 16:10 17:2 21:8,14 66:22 67:23 68:10 98:4,18,21 99:16 100:9,15 111:19 114:10 115:13 116:10 130:1 153:21 169:1 |
|--|--|---|---|---|

| | | | | |
|--|---|--|--|---|
| 185:15 issues 77:20 98:9 135:15 187:21 190:2 issuing 169:6 itemized 185:5 items 5:11 | June 91:4,18 jurisdiction 118:3 justice 174:23 175:1,9,15,18,18 175:21,23 176:5 176:11,22 177:23 189:12 justification 24:24 28:9 justifications 26:17 46:16 justify 189:6 | 79:17,18 80:9,13 80:15,16 82:12 83:9 88:20,23 90:16,17,19,20 90:23,23 92:19 95:6 98:10,10 107:21 110:17 110:19 115:20 116:8,11,18 120:6 125:3,5,6 125:9 126:12 135:11,15,20 136:2,5,10 137:2 137:4,6,8 143:5 145:8 149:4,14 150:15,17,17 153:21 156:20 158:18 159:14 164:5,10 165:7,9 166:11,18,20 167:6 168:8,22 170:12 171:7,14 172:2,9 175:22 175:22 176:13 178:1 183:8,20 184:6,12,15,18 knowing 90:1 knowledge 13:19 14:3,7 23:3 37:24 62:1 81:16 98:3,6,17 100:9 101:18 114:10 151:11 152:9 known 10:13,23 11:1 19:22 23:19 65:21 138:11 142:13 152:16 154:24 | 14:24 15:8 16:16,22,24 17:6 17:9,13 18:16,21 19:2,15,17 20:5 21:16 63:12 75:16 77:23 84:16,21 90:21 102:8 106:22 108:4,10 109:7 109:12,21 117:9 117:17 124:14 131:17,18 132:3 132:13,14 133:5 135:3,17,21,23 179:11 180:8,15 180:21 182:15 186:12 188:2 large 51:14 late 39:16 170:11 lead 5:17 56:8 144:3 169:19 176:19 leave 52:4 71:6 led 41:15 66:6 left 5:18 83:24 legally 113:9,13 less-than-optimal 14:20 let's 18:5 70:5,14 109:17 114:7 119:17 142:22 145:20 181:9 letter 61:23 letters 65:10 85:9 level 27:14 levels 12:9 20:18 57:19 74:16 148:24 lifetime 66:18 69:9 127:24 128:8 129:10 light 78:16 134:6 169:16 likelihood 136:18 191:16 | limit 48:24 49:4 49:10 50:3,11,22 52:2 55:2 66:3 78:6,19 79:19 81:9 90:4,15,20 94:14,23,24 95:8 110:20 112:5,11 112:15,22,24 113:24 115:3,24 118:3 121:3 127:13,13 137:3 139:15,19,22,24 140:8,10,13 141:1,3 142:7 143:15 147:18 149:20 152:7 limitation 52:19 61:7 64:8 77:10 79:12,13 81:3 93:9,10,13,22 94:4,10 127:7,11 128:15,18 129:18 130:10 limitations 12:9 12:18 20:10 25:21 26:3,8 45:19 46:3 52:17 53:1,22 59:9,9,13 60:3 60:13,14 77:3 79:2 80:8 94:16 106:10,16,19 108:9 121:23 156:12 limited 22:11,15 35:6 110:12 113:15 116:16 limits 13:1 20:4,5 25:8,9,24 26:12 26:14,16 30:6,7 44:16 45:7,11,12 46:6,11,13,15,18 47:1,6,9,11,13 47:18 49:3,13,20 59:18 62:11 |
| <hr/> J <hr/> James 2:22 162:21 163:3,7 163:13,15,16 164:13 171:2,3 171:16 176:24 178:13,16,18 January 1:10 2:1 6:16,19,21,24 29:4,12,20 32:24 33:20 34:7,11 36:4 77:4 180:12 187:18 189:15 190:13 Jason 2:22 163:16 JCAR 180:20 181:22 182:3,20 182:24 183:4,8 183:23 184:3,9 184:21 185:1,6 JCAR's 180:17 186:4 Jennifer 2:17 5:18 jeopardizing 143:20 Joint 180:13 Joshua 3:1 Jude 1:16 2:2 193:3,18 judgment 7:16 judicial 23:17 27:12 July 23:16 jump 10:20 26:5 104:4 jumping 27:1,3 104:5,19 | <hr/> K <hr/> keep 76:12 keeping 171:17 Kelly 2:11 kept 68:12 Khalil 82:22 kind 8:14 18:24 32:6 34:3,15 45:11 50:7 78:14,18 87:23 99:3 119:13 124:20 126:10 135:13 137:10 144:2 159:6 164:21 170:8,13 172:2 177:21 know 16:4 17:19 19:13,16 22:12 27:23 28:22 32:11,21 37:8,9 37:13,14 38:9,15 39:9,11 41:20 42:2 45:23 49:24 50:1,6,9 50:15 52:7 58:15 60:7 61:8 61:10 63:12,14 63:15,16 64:22 68:19,21 69:19 69:20 75:7,13 76:11 77:21 78:4,19,20 79:14 | <hr/> L <hr/> L 84:4,5 labeled 93:5 Ladonna 2:11 language 14:21,24 | | |

| | | | | |
|---|--|---|---|---|
| 64:6,11 78:21 79:24 83:6,7 94:19,22 95:3 104:10 110:2,15 110:16 113:7 117:21 120:13 120:20 121:2,11 122:7 123:1 136:23 138:10 138:12 143:16 143:17,19,24 144:14,16 149:1 151:15,22,23 153:11,14 154:7 154:8,17 line 49:24 181:22 182:3,3,4,18,20 182:20,24 183:1 183:4,5,7,9,15 183:17,17,20,22 184:2,3,6,8,9,13 184:15,16,18,21 184:21 185:1,1 lines 180:20 181:21 183:23 184:5,11 Lisa 2:20 list 65:3,20 67:14 67:16,20 68:9 172:15 190:23 listed 51:12 65:14 listen 137:8 literally 76:3 litigation 168:17 little 67:6 91:11 117:7 119:18 142:22 170:11 172:13 locate 183:21 187:23 logical 31:20 long 43:10 119:13 135:22 192:1 longer 34:2 135:17 | look 21:14 37:6 43:15 50:13 68:21,22 69:14 69:15 70:14,24 75:14,19 76:19 80:20 86:15 159:19 187:23 looked 50:4 76:18 88:21 looking 26:2 58:15 76:9 83:14 LOP 66:18 lot 9:3 77:20,21 77:24 172:7,9 loud 7:22 Louis 148:17,20 lunch 70:10 119:6 119:22 <hr/> M <hr/> M-A-C-T 47:22 ma'am 162:7 machines 138:2 MACT 47:22 maintain 11:10 126:22 129:2 149:11,16,21 150:1 151:16 152:7 maintained 138:6 145:22 Maintaining 150:13 maintenance 12:13 150:20 153:1 majority 51:15 making 119:13 133:12 134:2 malfunction 10:22 11:23 12:13 23:18 105:2 106:7,12 107:2,14 108:6 | 108:20 109:3 111:12 113:15 114:13 116:14 117:4,14 122:21 128:12,16 129:4 129:8,13 138:10 140:18 144:19 145:2,16 151:8 156:13 162:6,10 176:21 malfunctions 177:6 management 30:13,21 40:10 manager 34:1 mandatory 56:12 manner 78:18 155:20 manual 68:10 69:1,10 Manufacturers 2:18 Manufacturers' 72:8 map 173:16 maps 175:24 margin 143:14 marked 73:14 86:20,24 92:6,9 96:1,4 marking 86:6 92:4 match 182:18 material 71:7 materials 16:5 Matoesian 2:7 9:17,19 39:2 42:23 43:1,19,21 70:20,22 71:23 72:4,18 73:2,4,8 73:10,13 85:14 85:16,18,21 86:1 146:11,17 183:13 Matoesian's 43:5 | matter 11:13 45:21 54:21 118:7 139:3 147:19,23 148:6 148:10 149:11 149:17 150:2 151:5,17 matters 37:12 179:14 187:13 maximum 109:23 113:4,5,9,9 115:8 140:24 mean 33:5 37:7 40:7 41:22 76:2 98:21 104:14,14 114:5 116:7 127:20 135:4 138:22 152:5 162:5 167:1 175:21 177:7 meaning 56:10 57:23 means 58:1 97:2 109:22 127:7 146:23 147:12 169:5 175:17 meant 24:5 54:13 124:15 141:1,22 175:3 measured 142:18 147:13 measures 121:21 122:12 123:19 129:6,8 153:1 mechanism 152:11 meet 26:8 31:17 46:7 93:18 94:6 103:20,24 104:9 120:12,20 121:11 147:4 153:14 188:22 meeting 8:23 9:1 65:10 70:3 71:1 71:11,19 85:9 | meets 84:20 Melissa 2:10 10:12 member 2:17,17 5:16,17,18 10:14 10:15 members 36:22 50:17 memorandum 46:23 mention 9:11 81:4 105:13,17 106:1 mentioned 8:20 136:13 161:5 167:11 171:4 178:19 merely 49:19 merits 6:4 met 12:11 60:13 138:11 145:21 156:13 method 128:21 methodologies 11:8 metric 131:2 Metro-East 148:16,20,21 Michelle 2:17 5:16 microfilm 76:2 microns 147:24 mid-2022 29:24 30:10,15,18 31:2 mid-continent 154:23 million 145:10 mind 7:12 27:16 27:20 40:3,6 43:9 45:24 73:24 132:7 156:24 163:10 181:9 minimization 141:20 minimize 115:7 |
|---|--|---|---|---|

| | | | | |
|-------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 129:7 132:20 | months 56:14,22 | nature 139:1 | 69:21 81:22 | notices 116:7 |
| 134:23 140:24 | 57:2 167:3 | near 92:12 | 100:5 102:12 | 188:18 |
| minimum 157:22 | More's 18:13 | nearly 82:5 119:3 | 103:2 123:18 | noting 60:24 |
| 158:7,14 160:14 | morning 5:1 | necessarily 16:6 | 171:5,9,12 | November 31:1,2 |
| 189:4 | motion 42:23 43:2 | 55:2 116:4 | news 171:22 | 37:22 38:4,4 |
| minute 92:18,21 | 43:5 71:2,23 | 141:13,16 143:5 | nitrogen 11:12 | 39:7,16,20 40:10 |
| 134:9 | 73:7,9 86:1,16 | 146:7 166:24 | nodded 172:21 | 40:13 59:20 |
| minutes 65:11 | 91:22 190:9 | 176:8 | Nodding 166:6 | 60:1 161:3 |
| 70:2,16 119:3 | move 27:8 37:1 | necessary 31:7 | 172:18,20 174:5 | 169:12,16 170:2 |
| MISO 154:24 | 85:14 86:8 | 35:7,22 54:16 | non-agency 22:12 | NOX 19:24 35:13 |
| 172:14 173:7 | 91:17 95:12 | 88:3 121:21 | non-attainment | 53:11 75:9 |
| 189:11 | 96:2 114:7,7 | 122:12 123:19 | 90:12 143:8 | 81:23,24 82:10 |
| misread 158:10 | 152:11 163:6 | 131:8 135:18,18 | 146:15 147:5,9 | NSPS 47:22 62:15 |
| missing 42:1 | 183:11 191:8 | 135:19 153:14 | 147:12 148:10 | NSPSs 64:9 |
| mistake 120:2 | moved 70:20 | need 25:5 40:5 | 148:14 150:9 | number 5:9 7:5 |
| mod 144:8 | 72:19 91:24 | 85:17 91:12 | 151:7 164:7 | 10:10 69:14 |
| model 50:12 52:1 | movement 186:1 | 112:12 117:15 | 165:6,8,20 | 70:7 71:24 72:1 |
| 52:17,23 78:20 | moving 15:7 | 122:20 139:19 | 173:23 174:7,12 | 72:13,20 73:2,8 |
| 142:24 143:3,6 | 19:21 86:13 | 139:24 145:8 | 174:20 | 73:12,19 85:15 |
| 143:12,12 144:4 | 96:13 97:6 | 159:23 160:1 | non-fast-track | 86:17,20 92:5,7 |
| 144:9,20,21,24 | 104:22 116:24 | 165:18 177:22 | 32:2 33:2,11 | 95:21 118:24 |
| 145:8 | 163:10 | needed 26:13 | non-steady-state | 119:23 138:1,8 |
| modelled 143:8 | multiple 23:12 | 46:12 87:8 | 23:9 | 138:15 139:10 |
| 144:10 147:13 | | 103:24 124:1 | non-substantive | 140:6,12 141:18 |
| modelling 112:1 | N | 131:20,20 | 186:9,14,17 | 143:19 147:15 |
| 142:19,20,23 | N-E-S-H-A-P | 144:16 145:12 | noncompliance | 170:5 179:10 |
| 143:11,24 | 62:16 | needs 121:4 159:7 | 66:3 123:1 | 180:12 181:12 |
| moderate 165:9 | NAAQS 11:8,8 | negative 176:15 | 124:10 | 181:20 182:19 |
| modified 155:18 | 142:13,16 | 176:16 | noncompliances | 183:3,7,19,20,22 |
| moment 44:2 86:7 | 143:13,21 144:3 | neighborhood | 139:4 | 184:2,5,8,11,14 |
| 173:11 | 144:12,17 | 69:18 150:15 | normal 12:10 | 184:16,17,19,20 |
| moments 187:10 | 145:13,21 146:4 | neither 73:10 | 20:19 68:12 | 184:24 187:21 |
| Monday 6:16 | 146:22 147:4,5 | 86:19 92:6 | 74:18 103:1 | 188:2,4,8,10,14 |
| 189:15,18,22 | 147:17,21 148:3 | 95:24 178:17 | 131:3,11 143:18 | 188:15,18,20 |
| 190:21 | 148:6,10 149:12 | 179:5 187:8 | North 2:1 | numbers 182:18 |
| monitor 142:18 | 149:17,19 150:2 | 193:9,11 | note 75:23 155:2 | 184:7,13 |
| 145:15,15,19 | 150:6 151:5,17 | NESHAP 62:15 | 189:22 | numeric 19:24 |
| 150:8,15 | 153:2,5,11 | NESHAPs 64:8 | noted 8:21 27:12 | 20:17 62:3,10 |
| monitored 142:17 | 165:18 173:19 | neutral 177:17,20 | 117:9 | 74:9,15,16 75:1 |
| 150:5 | 173:22 174:20 | never 104:24 | notes 65:11 76:12 | 75:5,9,11 |
| monitoring 22:24 | name 5:2 8:16 | 112:13 117:12 | 80:6,20 85:9 | numerical 21:1,10 |
| 23:7 | national 11:7 | new 25:12,13 | notice 111:19 | 53:21 93:9 |
| monoxide 11:12 | 142:12 | 28:14,16 35:12 | 114:11 115:11 | 112:17 131:12 |
| monthly 28:18 | naturally 126:10 | 35:16,18,21 | 115:14 116:10 | 141:3 |
| 44:23 145:11 | 179:10 | 63:19 68:16 | 116:12 186:10 | |

| O | | | | |
|---------------------------|----------------------------|--------------------------|--------------------------|---------------------------|
| Obama 167:16,19 | 54:20 128:20 | 173:2,15 174:15 | 128:11,14 | 20:17 74:6,9,14 |
| objection 43:16 | 162:23 163:17 | 174:21 177:8 | 129:13,16,18 | 74:16 75:1,5,9 |
| 71:2 73:9,21 | 166:20 167:7 | 181:11 | 143:18 154:3,10 | 169:2 190:16 |
| 86:5,17 92:4 | 187:19 189:9 | old 15:16 75:19 | operational 123:6 | 191:1 |
| 95:22 181:16,19 | officer 2:16,16 4:4 | older 16:9 | 124:1 157:22 | originally 13:17 |
| 186:20,24 | 6:8,15,24 8:21 | once 15:4 96:8,23 | 158:7,14 | 74:8,10 118:17 |
| objections 91:22 | 21:18 179:7 | one-hour 23:13 | operations 104:8 | outcome 25:17 |
| obligation 105:1 | 186:15 190:16 | one-page 72:10 | 120:11 128:20 | outlined 60:4 |
| 131:13 | 191:1,11,12 | ones 44:15 47:4 | 131:4,11 | outreach 30:23 |
| obligations | officers 5:4 6:2 | 63:2 126:19 | operator 154:24 | 33:18 34:6,9,12 |
| 117:13 122:8,22 | 7:10 | ongoing 28:3 | opportunity 10:15 | 34:16 36:14 |
| 154:8,17 | offices 76:2 | online 7:4 187:19 | 22:1 191:11 | 37:20,23,23 38:1 |
| observed 39:23 | offset 56:17,22 | onsite 76:10,15 | oppose 134:7 | 38:3,13 39:15,20 |
| observing 27:23 | 164:1,19 165:7 | opacity 147:16,18 | opposed 19:14 | 40:12 41:14 |
| 40:2 | 166:21 | 148:24 151:15 | 133:14 134:2,4 | 42:10,17 72:3 |
| obsolete 186:11 | offsets 164:4,6,7,8 | 151:22,24 152:2 | opposes 57:15 | 81:7 121:24 |
| obtain 122:4 | 164:15,16,18,22 | open 71:12 | opted 27:9 | 133:21 160:23 |
| 149:11 157:24 | 164:24 165:5,14 | opening 9:5 | optimum 14:10 | 160:23 161:2 |
| 158:9,16 160:15 | 165:18,23 | operate 11:23 | option 32:1 54:3 | 188:13 |
| obtained 45:6 | offsite 15:19 | 88:10,11 109:12 | 54:11 55:8 | outside 62:16 |
| 67:22 | oh 23:5 59:24 | 118:2 124:8,8 | 136:14 | outweighed |
| obviously 37:13 | 124:14 162:11 | operated 11:19 | options 25:4 | 122:14 |
| 58:13 63:15 | 167:18 173:12 | operating 15:9 | 29:17 44:9 | overall 27:7 133:8 |
| 70:17 125:6 | 183:14 | 16:22,24 34:22 | 45:22 47:15 | overarching 93:24 |
| 136:7 157:18 | okay 17:15 18:11 | 66:16,18,19,19 | 53:17 125:23 | |
| 161:12 167:2 | 18:18 19:9,18 | 66:24 67:15 | oral 61:20 80:6 | P |
| 169:5 176:17 | 31:2,5 42:3 | 83:5 98:1 99:5 | 87:3 | P.M 119:18 |
| occur 80:23 | 43:22,23 59:5 | 100:6 101:13 | order 5:13,24 6:9 | package 50:4 |
| 102:11 128:17 | 60:10 64:20 | 102:9 106:11,18 | 6:14,15,24 7:18 | page 4:2,2,3,3 |
| 164:9 | 74:23 76:20 | 107:1 108:5,8 | 8:5 9:4,11 11:18 | 12:5 13:20 |
| occurred 180:22 | 81:11,17 83:21 | 110:2 114:14 | 39:20 40:8 | 23:15 27:4,12 |
| 185:21 | 86:11 87:10 | 116:9 124:5 | 54:16 73:16 | 40:23 44:7 |
| occurrences 129:9 | 92:22 98:24 | 127:17,24 128:9 | 74:2 76:4 89:4 | 47:14 51:9 |
| occurring 138:20 | 100:18 103:16 | 129:11 130:1,7 | 91:16 123:7 | 53:16 55:14 |
| 145:16 | 104:3 110:5,18 | 131:13 132:16 | 137:15 152:7 | 59:6 84:2 85:2 |
| occurs 140:4 | 111:5 124:15 | 134:19 155:19 | 179:8 186:16 | 92:12,13,14 |
| offending 30:2 | 126:15 127:16 | 157:23 158:8,15 | 190:17 191:2,12 | 104:6,23 118:10 |
| 45:3 65:12 | 130:12 131:9,15 | 160:14 | orders 74:19 | 120:9 121:17 |
| 87:19 89:1,12 | 132:9 142:2 | operation 12:11 | ordinary 124:7 | pages 46:21 76:1 |
| 158:20 | 144:13 145:2,4 | 20:19 23:9 | organization 8:17 | 76:3 |
| offense 144:2 | 146:3,21 148:8 | 62:16 74:18 | 122:3 | paragraph 107:3 |
| offer 51:22 121:15 | 160:4 161:19 | 83:8 106:6,9,12 | organizations | pardon 179:21 |
| offered 79:18 | 162:3,8 163:12 | 107:1,14,16,17 | 122:2 | part 12:20 13:16 |
| office 7:4 43:11 | 165:24 167:9,21 | 108:6 110:3 | origin 12:19 | 15:4 19:21 |
| | 168:3,10,20 | | original 19:23 | 24:22 34:6 |

| | | | | |
|--------------------------|---------------------------|-------------------------|---------------------------|---------------------------|
| 38:15 52:19 | 118:18 | 101:20 102:1,8 | 102:20 103:19 | 63:21 67:19 |
| 56:17 67:17 | pending 86:16 | 102:13,21 103:8 | 156:16 157:3 | 74:2 86:22 |
| 75:16 107:3 | people 86:4,14 | 106:11,18 | permitting-rela... | 92:19 120:2,21 |
| 108:17 111:4 | 119:5 | 107:12,13,17,18 | 133:10 | 121:12 122:15 |
| 112:19 113:2 | percent 69:8,14 | 107:20 108:5,8 | person 106:5,14 | 123:20 127:5 |
| 130:12 146:10 | perfectly 138:2 | 108:16,19 110:1 | 106:15 107:15 | 130:18 133:15 |
| 151:21,23 167:2 | perform 154:19 | 114:14 115:2,6 | 122:3 128:10 | 134:14 156:6 |
| 178:11,18 | performed 121:24 | 116:15 117:3 | 129:12 190:6 | 160:8 179:20,24 |
| 181:12,17 | period 17:7 19:13 | 122:1 128:2,9,18 | personnel 53:20 | 180:16 186:17 |
| 182:10,11,14,16 | 23:2 25:1 28:3,7 | 129:18,19 130:7 | 54:4,14 55:9 | pleasure 137:22 |
| 189:11 | 28:10,20 36:14 | 130:16,18,20 | pertinent 35:4 | plus 116:9 |
| partial 55:19,22 | 36:16 42:11,17 | 131:13 132:16 | petrol 62:6 64:1 | PM 19:24 75:9 |
| 56:3 57:17 | 76:12 115:8 | 133:2,6 134:19 | petroleum 62:6 | 150:6 151:23 |
| 153:18,21 | 129:2 139:1 | 136:3,8,8 139:2 | 63:24 | 152:7 |
| participant 82:19 | 150:15 161:3 | 139:3,10 140:19 | ph 38:24 115:1 | PM10 147:23 |
| 169:19 190:23 | 185:23 | 149:15 156:16 | phone 61:21 | PM2.5 148:1,12 |
| participants 8:3 | periodically 28:11 | 157:4 161:11 | picked 145:18 | point 7:21 15:19 |
| 43:10 85:20 | periods 11:17 | 188:17,21 | picture 22:19 | 22:13 25:16 |
| 119:8 178:23 | 12:10,12 20:19 | permittee 115:1 | pivoted 76:23 | 32:19 52:9 58:8 |
| 187:13 189:24 | 21:1,11 23:9 | 128:18 | place 22:6 29:23 | 59:19 70:11 |
| participation | 45:19 46:4 47:1 | permits 15:9 | 103:13 104:1 | 94:8,15 107:8 |
| 192:2 | 62:18 63:21 | 16:13,17,24 17:1 | 152:8 187:7 | 122:16 163:1 |
| particular 11:13 | 74:17 77:13,16 | 17:6,9,14 18:15 | 193:7 | 191:17 |
| 27:22 84:23 | 83:6,8 89:21 | 18:22 21:8,13,14 | placed 11:20 | point-to-point |
| 149:16 171:14 | 95:4 103:21,22 | 21:15 34:22 | plain 108:4 | 186:6 |
| 174:9,9 | 107:9 108:20,24 | 66:16,18,19,19 | plan 5:13 23:19 | pointed 29:24 |
| particularly 25:7 | 123:8 124:3,5,23 | 66:20,20,23,23 | 179:22 | policies 15:17 |
| 90:1 | 138:10,13 149:2 | 66:24 67:10,16 | planning 34:2 | policy 15:21 27:7 |
| particulate | 149:6 156:12 | 67:23 68:1,9,14 | 37:15 171:18 | 52:23 53:2 |
| 147:19,23 148:6 | permanent 11:22 | 68:17 69:3,6,7 | 172:8,10,14 | 98:11 112:9 |
| 148:10 149:11 | 128:15 | 69:10,14 83:2,5 | 173:21 186:1 | 125:2,4,5 |
| 150:2 151:5,16 | permission 11:23 | 83:12,15 98:1,2 | plans 11:6 26:10 | pollutant 64:13 |
| parties 193:11 | 12:2 14:9,18 | 98:3,17 99:5,6 | 46:9 100:24 | 112:17 146:24 |
| partner 191:11 | 15:1 109:11,12 | 99:16,19 100:10 | 101:22 152:14 | 174:13 |
| parts 13:7 107:23 | permit 14:2 16:5 | 100:14 101:13 | plants 149:2,7 | pollutants 62:4 |
| pass 85:21 | 16:9,10,22 18:16 | 102:9,11 103:4 | play 174:13 | pollution 2:15 5:2 |
| passages 175:14 | 18:17 19:2 20:5 | 103:15 107:5 | please 7:12 8:13 | 11:18 12:14 |
| passed 167:5 | 34:21 67:5,5,8 | 127:18,24 128:1 | 8:16 10:10 | 14:12 104:9 |
| path 29:3,13 | 67:13,19 68:4,6 | 129:11 130:1 | 12:14 13:8 15:8 | 106:8 120:12 |
| 30:20 | 68:10 83:17 | 138:16 139:5 | 28:8 33:9,18 | 128:13 129:15 |
| patience 70:4 | 97:10,13,13,15 | 143:1,4 149:10 | 34:23 36:5 | 130:23 157:21 |
| 119:19 192:2 | 97:17,24 99:10 | 151:4 161:5,17 | 37:22 38:15 | 158:6,13 160:12 |
| PCBR 10:24 | 99:12,13,18 | 162:4 | 39:7 42:16 | portion 92:20 |
| 14:12 15:10 | 100:4,6,7,13,15 | permitted 66:21 | 43:12 44:18 | 93:2 |
| 19:24 20:13,17 | 100:20 101:5,18 | permitting 97:19 | 47:23 61:14 | portions 35:3 |

| | | | | |
|--|--|--|---|---|
| 60:15 69:20 pose 8:9 187:5 posed 7:12 116:5 116:6 178:16 185:6 poses 155:5 position 16:7,8 58:1 82:23 85:8 103:23 117:3,8 121:4 137:6 158:18 positive 76:17 176:15,22 possess 66:23 68:4 possibility 136:14 136:18 172:5 185:23 possible 8:18,19 14:14,17 15:16 32:18 34:11,13 36:8 40:7 46:17 77:14 79:17 97:4 136:23 140:24 141:10 150:14 176:6 177:11,16 185:21 187:20 possibly 33:21 56:3 58:22 150:7 172:8 post 17:24 96:10 100:13 101:4 post-hearing 41:23 96:10 100:1 114:23 132:5 156:22 posted 7:3 187:19 potential 25:8 79:1,12 80:7 94:10 166:4 170:21 178:2 potentially 34:18 35:15 48:17 57:17 66:24 67:12 68:3 | 75:18 76:11 80:5,21,21 82:9 90:7 104:16 116:19 121:20 166:19 178:1 potentially-affe... 79:10 pound-per-hour 143:16 pounds 131:4 143:19 145:9 power 149:2,7 154:14 powers 11:22 PPM 62:5 131:4 practice 53:23 practices 104:9 120:12 136:12 pre-file 8:9 190:20 pre-filed 6:17,20 6:22 7:19,20 10:21 17:16 59:6 74:5 81:18 96:14 190:22 pre-filing 6:15 18:6,7 41:13 pre-proposal 39:15 40:12,15 41:4 42:8,10,17 72:2 97:7 precedent 50:23 51:3,14,14 precise 139:1 143:2 156:20 precisely 144:2 168:22 180:23 precludes 118:2 predecessor 80:6 predict 143:9,22 preface 83:4 prefaced 132:14 preliminary 5:11 preparation 11:5 prepare 17:24 67:14 190:12 | prepared 38:13 166:24 prerequisite 52:20 presence 149:9 151:3 present 2:5 5:15 5:21 6:18 119:8 163:2 178:22 181:16 presenting 48:13 52:1 President 167:16 Presumably 93:20 pretty 86:8 previous 48:19 53:9 55:12 66:13 100:11 134:6 154:15 155:1,8,15 179:3 previously 16:8 45:24 82:24 94:21,24 123:5 130:5,6 151:7 previously-prop... 132:14 prima 105:6,13,17 106:1 107:24 108:12,21 109:13 112:12 112:14 primarily 91:7 prior 23:24 24:9 24:13,16 25:2,12 25:12 30:23 33:8,20 34:7,10 36:4 37:22 38:4 39:7 52:17 53:1 53:6,6 61:3 66:12 81:13 85:1 101:19 130:14 169:17 priorities 78:12 privileged 7:10 probably 15:18 37:2 41:22 57:8 | 63:17 78:5,10 116:6 170:9 176:6 problem 38:18 163:7 185:9 procedural 7:7 21:17 187:12 procedurally 91:8 procedure 5:12,22 132:17 134:20 135:5 136:6 188:5 procedures 53:19 54:3,13 55:9 136:4 179:12,21 179:23 180:1,3 188:16 189:1 proceed 5:13 6:2 9:16 24:19 25:10 32:4 71:3 73:21 proceeded 32:13 proceeding 5:18 7:18 9:4 24:1,15 25:1 28:10 31:7 32:2,10,14 33:1 33:15 57:16 91:13 121:5 126:10 137:7 139:17 140:16 158:22 191:9 proceedings 2:1 82:19 137:10 193:6 process 41:2 51:3 51:11 65:18,23 102:18 103:1,1 103:13 158:8,15 160:15 172:2 processes 38:7 62:6 64:1 65:18 65:23 66:11 157:20,23 158:5 158:12 160:11 procurement | 103:19 procuring 123:18 produce 17:13 producing 19:15 productive 8:4 70:24 profile 133:9 program 102:20 progress 9:3 84:12 119:9,14 prohibited 47:11 projected 148:11 prompt 71:18 promptly 70:5 promulgated 47:21 59:8 proof 12:3 properly 138:5 properly-develo... 45:18 proposal 5:23,24 6:1,5 7:16 11:20 29:20,21 30:13 30:16,20,21 35:5 35:20,20,23 37:5 38:12,16 39:13 39:19 40:5,9,20 41:16,19 42:5,14 50:13 60:5 65:10 66:7,11 67:17,24 88:1,8 96:15 97:22 102:6 103:18 104:17 122:5,14 123:4,20 124:24 125:16 129:23 130:8 133:1 136:15 148:12 154:2,5,13,16,22 155:5,12 169:21 174:11,14 176:8 177:4,11 186:10 proposals 27:24 76:13 122:19 propose 24:2 30:9 |
|--|--|--|---|---|

| | | | | |
|---|---|---|--|--|
| 32:1,9 33:3,11 50:20 75:1 119:2 proposed 1:4 30:20 48:7,13 49:10 65:24 66:17 67:11 75:6 95:17 97:15 107:23 127:7 130:17,21 131:17 132:12 132:13 133:13 134:3 135:22 170:2 174:4 176:4 179:23 180:15 182:15 proposing 19:23 29:22 35:12 43:19 74:14 75:4,8,8,11,12 81:22 89:8 91:3 132:4 133:18 155:22 169:15 Protection 5:8 65:2 153:17 provide 9:24 10:1 15:8 18:16 19:6 22:2 25:19 30:5 38:10 39:12 40:17,18 41:22 42:2,16,19 45:10 45:15 47:12 48:16,21 49:12 49:23 50:10 51:20 63:4,21 64:4 65:3,6 67:20 72:1 77:6 79:8 83:2,14,16 84:18 85:8,12 97:9,16 100:13 107:24 108:21 116:22 117:19 120:22 121:13 125:20 136:3 149:14 160:4 | 168:6 provided 25:11 26:21 44:11 45:21 56:11 66:4,10 67:17 80:16 81:5,7 87:3 117:1 122:6 127:6 130:22 143:13 provides 8:11 36:18 93:4 106:12,18 107:1 107:6,13 108:6,8 providing 11:22 12:17 18:15 19:5 40:14 48:14 49:9 78:4 79:11 86:11 108:12 provision 20:8 84:15 88:16 89:5 93:6 107:12 114:14 118:2 127:18,19 129:24 130:4 134:4 173:21 177:5 179:21 180:4 provisions 5:7 10:23 11:3 12:16,20,23 13:2 13:17,22 14:13 15:5,10,14 19:22 20:2 21:10 29:3 29:5,9,13,14,22 29:23 30:3,3,17 30:18 31:13,16 34:21 41:1 45:4 53:19 54:19 62:21 63:2,3 65:13 66:2,4,7 67:5,8,16,21,22 68:1,5,6,9,14,16 68:20,22 69:3,12 74:8,13 75:6,11 | 83:3,15,18,20 85:4 87:5,19 88:17,22 89:1,7 89:8,20 94:6 98:2,5,19,21,22 99:7,10,14,17,21 100:6,10 102:10 102:13,20 103:8 103:14 104:24 105:6,11,23,23 106:22 107:5,21 108:17,19 113:16 114:15 115:2,3,4,6 116:15 117:12 117:18,19,24 118:6,18 122:6 122:20 123:5,13 124:18 126:14 128:2 130:8 136:21 140:19 143:1,4,6 152:17 158:20,20 159:5 161:10,17,17 162:5 178:6,6 188:15,17,19 189:2,3,7,8 prudent 19:11 public 33:19 37:21 71:12 146:6 publication 6:5 96:22 189:13 published 31:19 pulling 19:11 purpose 11:2 12:20 163:4 purposes 35:12 38:14 81:21 112:1 113:20 pursuant 11:4 56:15 67:18 114:14 131:22 138:17 pursue 125:22 | pursued 13:5 24:13 pursuing 54:12 pushing 176:10 put 17:17,19,22 19:2 30:21 32:16 77:18,18 86:1 143:24 167:24 168:3 170:14 189:24 191:12 puts 175:24 putting 25:13 52:7 169:21 172:7,9 <hr/> Q Q&A 187:6 qualifies 175:22 qualify 78:6 quality 11:7 34:2 112:1 133:10 141:6,13,13,23 142:4,13 146:4,9 146:16 147:9,13 152:8,10 179:17 quantities 132:19 134:21 quantity 129:6 140:22 141:2 quarterly 139:11 question 8:13,16 10:15,20 12:5 13:6,20 15:7 16:21 17:1,5 19:7,21 20:16,23 21:18 22:23 23:8,15 24:23,23 26:5 27:2,4 29:1 31:5 32:7,23 33:8,9,17 34:17 35:10 36:1,7 37:19 39:4,14 40:11,22 41:7,10 41:11 42:4,15 | 44:6 45:1 46:1 46:20 47:7,14 48:19,22,24 53:15 55:5,12,14 56:4 57:11,21,21 59:5 60:10 61:21 62:14,20 63:24 64:24 65:16 70:9 72:1 74:24 76:22,23 76:24 77:8 79:4 81:18 82:5,13 83:1,4 84:1 85:2 86:4,13 87:10 88:13 89:13,19 89:24 91:9,23 93:3 94:8 96:13 97:6,23 98:16,16 99:23 100:4,12 100:19 101:12 102:1,5 103:17 104:4,5,19,22 105:15 106:21 110:6 114:6 115:1,19 116:3 116:11,21,23 117:1,10 118:9 118:24 119:23 120:1 121:16,17 123:23,24 124:20 125:2 126:2 127:4 129:22 130:13 130:14,15 131:7 131:15,16 132:23,24 133:11 135:1,10 135:12 138:1,4 138:15 139:13 139:18,21 140:6 140:12 141:5 142:1,3,9,10 145:20,24 146:3 146:21 147:15 148:8,23 149:8 |
|---|---|---|--|--|

| | | | | |
|--------------------------|--------------------------|---------------------------|---------------------------|---------------------------|
| 149:13,23 | 176:24 178:14 | 82:1,11 | real 104:5 | 171:24 180:9 |
| 150:24 151:13 | 178:15,20,23 | raise 8:13 | realize 185:6 | recommendation |
| 152:1,11,23 | 179:1,2,3,6 | raised 41:6,18 | really 51:19 87:21 | 132:6 181:12 |
| 153:4,8,16 154:1 | 185:14 186:16 | 163:20 188:23 | 88:11 135:7,13 | recommendations |
| 154:12,15,21 | 187:5,6 188:1,15 | raises 159:12 | 135:23 174:13 | 94:5 181:13 |
| 155:4,11,16 | 188:23 189:16 | raising 22:19 | realm 69:6 172:4 | 182:11 |
| 156:5,11 158:2 | 190:1 191:22,23 | ran 143:12 | reason 71:11 | reconsider 148:12 |
| 158:24 159:12 | quick 21:17 71:18 | range 152:24 | 77:24 150:18 | 168:14 169:4 |
| 159:12,21 161:8 | 104:5 156:10 | ranges 19:12 | reasonable 84:12 | reconsideration |
| 161:13 163:19 | 169:7 178:20 | Rao 2:15 5:20 | 118:12 128:23 | 25:17 28:12,22 |
| 165:11 169:14 | 187:14 | 87:11,14 88:5,12 | reasonably 179:15 | 185:21 |
| 174:22 176:1 | quickly 5:10 18:2 | 126:3,6,15 | reasoning 12:19 | reconsidered |
| 177:1 178:9 | 32:17 38:6 | 158:24 159:2,15 | 41:3 59:16 | 171:23 185:24 |
| 180:15,17 185:6 | 39:18 71:21 | 159:20,23 160:5 | 88:19 97:11 | reconsidering |
| 185:8 186:8 | 136:13 187:20 | 161:24 | 171:15 | 25:15 171:14 |
| 187:24 188:2,3,4 | 190:4 | rate 109:22 110:2 | reasons 12:6 | record 7:11,14,21 |
| 188:8,10,14,18 | quite 17:22 70:13 | 113:23 | 23:16 41:12 | 8:2,19,21 10:1,4 |
| 188:20 189:5 | 78:12 180:19 | rated 109:23 | 45:1 51:9 66:2 | 10:7 15:20 |
| questions 6:12,20 | 186:4 | ratio 164:19 165:7 | 95:18 130:24 | 17:18 18:4 33:9 |
| 6:22 7:1,12,17 | quotation 12:21 | 165:23 | 139:17 140:16 | 44:1,4 45:23 |
| 7:24 8:5,7,9,12 | 57:7 65:7 | ratios 165:5 | 172:15 188:12 | 61:13 71:15 |
| 9:4,6,7,14,16,18 | quote 6:11 11:20 | reach 79:15 80:10 | 188:14 | 73:12 81:19 |
| 10:2,5,17,21 | 12:3,7 13:21,24 | 103:10 189:4 | recall 28:15 33:24 | 85:17 86:2,18,21 |
| 17:17 21:22 | 20:12 27:5,11,14 | reached 69:21 | 34:15 36:11,13 | 91:12,19 92:1,20 |
| 22:2,9,13 25:6 | 40:24 41:2 | 157:22 158:7,14 | 61:11 80:14,17 | 93:1,3 95:13,22 |
| 27:2 33:22 | 53:17,24 55:15 | reaching 77:1 | 82:21 160:23 | 120:7 128:5 |
| 36:21 37:1,8,14 | 55:17 57:8 59:7 | 79:10 81:15 | receive 187:18 | 134:1 137:18,19 |
| 41:24 43:15 | 59:10 85:3,6 | 103:6 | received 6:17,19 | 160:11 181:10 |
| 53:9 54:23 | 104:7,10,24 | read 7:21 10:1,5 | 6:22 26:18 41:5 | 187:10,11,13 |
| 61:19 63:19 | 105:3 118:10,15 | 41:10 60:15 | 41:13 42:13,16 | 190:8,14 191:3,5 |
| 69:20,22 70:6,12 | 120:10,13 | 92:3,18,19 93:2 | 44:19 46:19 | 191:7,24 |
| 70:17 71:22 | 121:18,23 | 106:3,3 128:5 | 70:21 72:2 | records 15:16,18 |
| 73:17,22,22 74:4 | 179:12,19 | 132:2,7 137:18 | 180:13 188:12 | 129:2 187:23 |
| 74:5,7,12 96:3,6 | quote/unquote | 158:11 172:24 | 191:15,16 | recur 53:14 |
| 96:9,14 101:9 | 58:11 | 173:5 179:9 | receiving 26:19 | reduce 11:15 |
| 119:11,22 | quoted 27:17 | 181:1,6 | recess 8:24 71:16 | 94:23 129:9 |
| 122:17 132:3 | | readily 13:15,15 | 119:20 134:13 | reduced 95:8 |
| 134:10 137:16 | R | 15:12,13 | recognize 138:9 | reduction 88:6 |
| 137:18 155:2,8 | R 3:1 193:1 | reading 7:22 | 138:12 156:11 | reductions 95:5 |
| 156:1 157:9,12 | R-A-C-T 35:13 | 137:20 181:9 | recognized 8:15 | refer 98:20 117:16 |
| 157:15 160:20 | R-O-S-S 66:18 | readings 150:8 | recollection 16:9 | 123:22 124:13 |
| 162:22 163:1,4 | R23-18 1:6 5:9 | reads 128:10 | 16:15,16 24:11 | 127:9 148:5 |
| 163:18,21,22 | R71-23 75:2 188:5 | ready 9:17 10:9 | 54:6 55:1 80:22 | reference 60:9 |
| 167:9,14 172:12 | RACT 35:13 | 89:15 119:23 | 81:13 | 105:21,22 |
| 172:14 174:22 | 53:11 81:23 | 163:9 182:9 | recommend | 106:22 109:10 |

| | | | | |
|---|--|---|---|---|
| referenced 12:6 23:20 29:7 95:18 105:24 107:22 108:12 118:16 | 93:2,4 95:16,21 96:22 registered 66:22 registers 25:19 56:5 59:15,19 regular 44:22 71:19 171:21 regularly-sched... 8:23 regulated 36:3,4 36:15 39:6 64:9 78:24 80:7 81:14 82:9 139:3 regulation 63:6 regulations 11:11 12:24 13:3 35:4 54:15,16 56:17 62:21 63:1 104:15 154:6 155:23 regulatory 2:10 6:21 10:13 54:18 97:20 122:2 124:17 125:21 126:4 136:20 155:18 157:24 158:9,16 158:18 160:16 189:1 reiterate 45:15 103:12 191:8 relate 108:19 related 106:8 125:15 126:19 126:21 128:13 129:14 132:23 188:15,20 relates 76:23 relation 118:17 relative 193:10,12 relevant 7:9 35:3 35:7 67:23,24 97:21 115:1 133:7 141:2 | 153:11 reliable 155:6 reliably 46:18 relied 65:4,8 91:3 91:6,10 123:5 relief 124:17 125:21 126:4,6 136:20 157:24 158:9,16,18 159:6,8,24 160:16 161:10 189:1 relies 151:16 rely 13:4 65:5 88:18 122:19 124:6 142:20 166:12 remain 124:23 remained 13:18 27:14 remaining 132:24 remains 137:6 remedy 118:4 remember 82:16 168:4 remind 191:17 removal 29:2,8,13 29:14,21 30:3,16 40:24 45:3 53:18 65:12 87:18 89:19 132:12 remove 31:13 35:3 62:21 107:23 132:4 removed 67:21 68:21 102:11 118:1 131:19 removes 66:7 88:8 88:14 122:5 154:5,16 removing 30:2 63:1,3,6,12 85:4 87:5 89:3 102:8 135:22 158:20 | renewal 98:1 99:4 99:7,11 102:14 102:18,22 103:5 103:5 renewals 68:16 100:6,9 repealed 180:5 repeat 24:14 75:7 79:4,5 98:15 158:1 174:1 178:8 186:22 191:2 repeatedly 50:9 repeating 7:21 157:1 repetitious 7:9 repetitive 186:11 replace 45:17 replacement 93:20 replacing 93:6 report 109:1,1 123:1 124:10 128:19 138:19 138:24 139:4,12 140:19 142:21 reported 139:7,8 reporter 2:3,3 8:15 9:21 23:5 44:3 163:5 187:9 193:4,4 reporting 139:2 reports 139:9,9,10 represent 8:17 157:18 representing 12:9 20:18 74:17 163:2 request 18:13 19:5 26:20 34:20,23 68:15 79:22 80:15 83:1,16 97:12 99:6 100:12 103:6 190:6,15 | 191:8 requested 25:7 42:19 49:23 68:6 85:13 97:9 141:17 185:17 189:10 requesting 99:14 100:22 101:21 137:3 requests 34:23 35:2,7,11,15,22 53:10 81:21,24 82:9 99:9,20 100:5,16 122:1 162:17 190:8,10 require 23:11 36:11 52:22,23 78:5 84:18,23 90:8 179:13 required 24:19 29:9,15 31:13,24 32:4,15,21 56:21 66:7 69:1 89:5 102:21 103:18 108:24 122:24 129:19 133:4 135:2 138:19,24 139:4,10 140:19 153:13 164:9 172:3 185:10 189:6 190:10 requirement 84:11,13 90:13 93:10,24 103:11 134:18 140:23 165:6 requirements 24:20 26:15 46:14 53:22,23 64:8 84:20 93:19 94:2,7 97:20 123:2 124:10 131:22 152:22 153:5,10 153:13,15 |
|---|--|---|---|---|

| | | | | |
|--|--|---|--|--------------------------|
| requires 65:2 133:6 190:21 | restricted 113:6 | 98:1 99:5,7 | 67:2 | rules 7:8,8 11:1 |
| requiring 90:22 119:13 | restroom 71:14 | 100:7,17 102:21 | rough 69:13 | 13:7,12 14:21,24 |
| reside 20:1 151:22 | result 13:23 14:10 14:19 28:15 | 130:17,22 | round 57:20 | 16:11 21:9 32:1 |
| resource 78:10 | 57:17 87:20 | 169:13 180:8 | routine 78:2 | 32:9 35:13,17,18 |
| resource-intensi... 79:8 | 88:2 89:3 | revisit 83:23 | RPR 1:16 193:18 | 35:21 40:15 |
| resources 30:12 38:7 39:19 | 123:20 155:13 | revisited 118:15 121:4 | rule 6:13 19:22 35:13 39:10 | 42:8 47:22 52:7 |
| 77:18 | 177:5 | revisiting 132:3 | 48:23 49:1 | 53:11 62:16 |
| respect 56:12 128:24 | resulted 150:24 161:15 | right 5:3,16 22:18 31:4 33:13 | 57:16 65:5,21,24 | 63:11,14,16 64:4 |
| respectively 62:8 | results 39:23 128:17 | 36:19 38:21 | 66:17 67:11 | 64:18 81:22 |
| respond 26:20 27:10 41:12 | resume 9:2 70:5 70:19 71:2,20,22 | 40:3 49:21 | 81:23 90:6 91:5 | 82:2,11,12,14 |
| 175:6 180:17 | 73:16 119:10 | 51:16 53:4 | 94:14 96:21,22 | 91:4 96:17 |
| 187:24 | resuming 70:9,16 71:6 | 69:22 71:13,13 | 102:12 123:9 | 103:13 122:23 |
| responded 37:2 | retained 4:4 16:6 | 81:11,11 83:10 | 133:24 136:16 | 126:18,21 127:2 |
| responding 9:18 | retention 15:17 15:20 | 83:22 88:21 | 159:6 171:19 | 127:2 136:19 |
| response 21:22 26:21,21 29:4,6 | return 71:18 160:6 | 92:23 94:16 | 176:4,9 188:3 | 144:19 155:17 |
| 34:24 37:21,23 | review 13:10 23:17 27:13 | 98:10,24 104:21 | rule-making 11:4 11:13 65:3 | 174:3 180:14 |
| 41:5 44:24 46:1 | 68:10 69:1,6 | 105:22 107:4 | rule-makings 32:19 53:7 | 186:10 |
| 47:16 66:12,14 | 76:6 86:8 92:3 | 109:7 110:5 | rule-makings 32:19 53:7 | ruling 21:6 |
| 72:1 74:11,18 | 93:14 | 111:7,17 112:8 | rulemaking 5:5,7 5:9,23 20:15,21 | run 143:11 |
| 78:17 79:7 | review/reconsider 27:6 | 113:11 114:16 | 21:4 24:2,5,6,7 | running 33:15 |
| 81:23 87:4 | reviewed 16:9,18 42:12 64:12 | 117:6 125:3 | 24:10,12,16,19 | runs 23:12,13 |
| 98:14,15 100:8 | reviewing 76:5 | 135:16 144:22 | 25:1,10 27:8 | |
| 100:13 114:22 | revise 93:6 127:1 179:22 | 146:24 159:9 | 28:4,10 29:18 | S |
| 114:23 116:22 | revised 35:12,16 81:22 93:12 | 161:7,21 162:15 | 30:9,10 31:8,9 | S 2:10 46:5 |
| 117:1 121:15 | 102:12 123:13 | 162:16 164:4 | 31:16,17,20 32:2 | 142:14 189:3 |
| 130:14 133:20 | revising 35:18,21 | 166:5 167:16,19 | 32:5,9 33:2,4,11 | S-I-P 23:20 |
| 134:6 160:4 | revision 84:9,10 84:17,20 93:14 | 167:22 168:1,13 | 33:11,13 41:2 | safe 71:5 146:5,7 |
| 181:3 185:11 | 93:16,17 94:1 | 172:17,19 173:4 | 53:12 74:6,20 | 146:16,24 |
| 189:19 | 96:18 103:7 | 173:7,19 174:4 | 75:12 82:1 | 160:14 |
| responses 7:17 21:20,23 22:5 | 133:14 | 175:2 181:10 | 120:24 122:23 | safety 143:14 |
| 28:1 34:24 36:6 | revisions 90:6 96:21 97:15 | 182:17 183:16 | 124:13 126:1 | sake 8:14 137:19 |
| 39:8 122:17 | | right-hand 92:15 | 130:2,4,24 | 181:7 186:4 |
| 145:24 187:3 | | Rob 82:22 | 131:19 133:1 | Salk 2:16 5:3,19 |
| 191:22 | | role 189:12 | 136:24 137:5 | 123:3 |
| restate 52:22 | | rolling 145:11 | 143:7 161:1 | sanction 56:18,22 |
| restating 45:24 | | room 2:2 8:24 71:7 119:9 | 169:15 170:1 | 56:23 167:4,4 |
| restrict 110:2 | | 192:1 | 172:2 179:24 | sanctioned 164:16 |
| | | rooms 71:12 | 186:2 188:4 | sanctions 31:15 |
| | | root 32:6 | rulemakings 31:11 103:2 | 33:14 55:18,22 |
| | | Rory 2:7 6:18 72:10,21 101:9 | 118:14 121:2 | 55:24 56:12 |
| | | ROSS 66:17,21 | 125:24 158:23 | 57:1 59:3 97:3 |
| | | | | 133:23 163:23 |
| | | | | 163:24 164:9,14 |
| | | | | 166:1,3,4,19 |
| | | | | 167:2,10,11 |

| | | | | |
|--|--|---|--|---|
| 170:21 satisfied 50:6 140:23 satisfies 77:22 satisfy 31:14 78:7 153:9,12 satisfying 59:10 59:17 saw 19:17 60:24 73:6 saying 17:20 78:5 90:14 144:8 146:12,13 150:21 169:4 says 58:16 107:6 107:15,16 111:10,13 113:19 183:9,12 SBM 98:22 178:6 scenario 31:11 58:2 115:14 144:4 schedule 190:1 scheduled 6:9 190:16 191:15 schedules 101:1 101:23 scheduling 6:14 Schiff 3:2 scientist 2:15 scope 6:13 34:19 177:5 search 69:11 seat 163:12 second 18:7,8 22:6,10,11 24:22 43:24 72:20,22 74:8 92:16 171:5 173:20 182:23 190:4,7,9 190:15,20 191:8 191:14 secondly 5:22 8:7 187:21 section 5:7 6:10 | 7:8,19,23 14:2,5 34:2 56:16,18 57:1 65:1,16 67:14,19 69:21 84:4,8,14 93:15 93:15 97:10,13 97:16,17,24 99:18 100:5,16 100:21 101:5,18 102:2,8 105:5,12 105:16,20,21,22 106:3,23 109:14 109:17 110:13 111:8,9,10 114:21 116:20 117:8 127:8,18 128:3,20 129:24 130:3,6,9,16,17 130:20 131:14 131:21 132:4,24 133:2,5 134:17 136:8 152:2,3,13 152:19 153:10 153:15 156:16 157:3 159:3 179:11,15 180:2 180:4 189:7 190:5 section's 84:20 130:18 Sections 10:23 138:17 147:16 149:1 151:15 see 9:10 18:5 19:1 19:14 27:9 38:10 40:4 43:6 43:15 49:24 70:14 71:1 76:9 76:14 83:18,19 86:5 91:21 96:8 114:17,20 115:5 119:17 134:9 150:4 171:21 seeing 63:15 73:10 86:19 | 92:6 95:24 114:19 163:3 171:18 178:17 179:5 187:8 seek 15:15 124:17 seeking 16:21 26:9 46:2,7 seen 16:13 semiannual 139:11 Seminars 37:11 send 175:11 sense 20:8 22:16 135:23 163:5 senses 146:2 sentence 23:4 131:21 132:15 132:24 179:15 sentences 127:7 separate 49:6 125:11 158:22 September 72:7 serious 165:9 service 190:22,23 set 12:9 20:18 26:7 46:5 49:4 63:16 68:1 72:11 74:7,9,16 106:10,16 125:6 153:13 164:9 179:17 193:8 sets 53:17 185:14 setting 22:1 46:24 47:8 50:23 51:3 51:13 153:11 seven 36:7 60:3,12 78:7 190:5 severe 165:9 share 53:5 shared 77:11 88:24 119:7 167:6 sharing 43:9 shed 142:11 145:14 146:23 | short 86:8 shorter 129:11 Shorthand 2:3 193:3 shortly 8:24 21:8 21:14 show 11:9 95:7 shown 186:14 shutdown 12:13 21:2,12 23:17 53:24 64:7 93:8 93:12,21 94:18 122:21 160:13 shutdowns 177:6 sic 178:6 signal 8:14 significantly 150:5 similar 102:11 165:14 Simms 72:10,21 81:7 simple 87:18 185:8 simpler 95:11 simply 9:13 23:14 30:2 32:13 66:7 68:4 Sims 3:6 single 18:6 136:4 150:7,7 180:15 185:6 SIP 23:19,20,21 24:3,9,11,16,20 25:4,13,15,19 26:7 27:7,10 28:5 29:5,6,9,15 30:4 31:10,19 33:20 34:7,14,19 36:3,10 37:16 39:24 40:2,19 44:8 45:2,7,14 45:20 46:5 48:4 49:5 50:11,11,21 50:21 51:17,21 | 52:19 53:17 54:2,8 56:5,6,14 56:21 57:4 58:20 59:10 60:5,8 64:3,10 64:18 65:13 66:8 73:19 77:4 78:8 84:10,19 85:5 88:23 90:11,15,15 91:5 93:6,14,17,23 94:1 95:17 96:18 117:15,17 118:1 121:6 124:14,16 126:13,21,24 133:14 134:4 152:20,22 153:19,24 167:17,21 168:23 169:11 169:13,16,20,20 169:21 170:1,2 170:18,19,22 172:1,7 173:21 173:24 174:3,6 175:12 176:7 177:21 185:15 SIP-strengtheni... 85:5 87:6,7,15 88:4 89:22 90:1 90:17,21 91:1 94:11,14 95:4 176:18 177:20 178:1,4 SIPs 12:16 30:2 51:5,10 53:19 60:17 70:7 152:16,18 153:9 153:12 168:22 169:2 170:23 172:16 sir 111:23 157:14 sit 149:22 site 76:17 159:12 |
|--|--|---|--|---|

| | | | | |
|--|---|---|---|--|
| site-specific 126:1 126:18 136:16 136:19,24 158:23 sitting 83:10 161:7 situation 48:20 53:13 situations 121:10 six 43:8 56:22 skip 131:6 skipped 41:7 slightly 128:6 small 67:3 SMB 10:23 12:20 13:7,12,16 14:13 15:8,10,14 16:16 16:22,24 17:9,13 18:15,21 19:15 19:22 20:2,4,8 21:9 29:3,13 33:3 34:21 44:10 47:1 67:4 67:16 68:9,14,16 69:3,12 74:7,13 75:6,11 83:3,6 83:15,18,19 89:21 94:22 98:2,23,24 99:6 99:14,17,20 100:5,10,16,22 101:21 102:2,8 102:10 103:7,22 105:23 106:22 107:4,21 110:7 112:12 113:16 114:14 115:2,4,5 116:15 117:11 118:17 122:19 123:5,8 124:3,5 124:23 125:15 126:20 130:7 138:11,14,17,19 138:20,22 139:6 140:8,14,15,18 | 141:7,12,19 142:5,15 143:1,3 143:4,6 145:22 149:2,6,9,14,24 150:7 151:3 161:10,17,17 177:5 188:2,14 188:17,19 189:2 189:3 SO2 19:24 75:9 143:7,10,15 solely 7:13 solid 82:6 somewhat 11:24 soon 29:12 40:7 96:21 97:2,4 187:18 SOP 66:19 SOR 12:6 13:20 23:15 27:4,12 40:23 41:4 44:7 46:21 47:14 53:16 55:14 84:2 85:2 104:6 104:23 118:10 120:9 121:17 sorry 36:11 42:3 46:5 52:21 59:24,24 61:14 64:21 79:4,5 105:15 106:15 110:12,24 113:8 116:4 143:2 144:19 148:18 150:8 158:3,10 158:19 162:11 170:1 173:12 178:8,9 181:15 186:22 sort 167:11 sought 44:8 46:22 Sounds 70:8 source 13:4 20:4,7 64:13 79:16 80:16 81:9,9,10 | 94:21 103:4,11 104:2,8 106:6,7 109:23,24,24 110:20 111:3,6 111:10,20 113:5 114:13 115:2,5,7 116:15 120:11 121:3,20 128:13 136:2 139:2,2 140:18,23 143:11 150:4,8 153:6 154:11 156:17 157:4 159:14,21 188:21 source's 130:7 source-specific 159:13,13 sources 15:14 35:15 37:12 53:10 62:6 64:9 65:20 66:4,21,22 67:2,4 68:3,13 79:17 80:10 82:17 87:21 88:10 99:9 102:20 103:6,14 103:20,23 104:7 104:13 105:1 108:24 117:12 120:10,16 121:22 122:6,8 122:24 124:9,17 125:21 137:3,8 138:16,24 139:3 139:19,23 143:1 143:4,16,24 149:20 154:7 Sources' 122:22 South 3:3 spans 36:7 speak 36:18 62:10 89:23 96:23 speaking 37:10 41:21 50:16 | 139:6 speaks 45:20 special 11:17,22 115:20 129:19 specific 21:13,15 35:1 36:12 37:5 40:6 41:21 44:14,16 47:3,5 47:24 48:22 49:11 61:8 62:11 64:12 77:12 79:16,17 81:5,8 94:12 96:7 99:12 110:22 111:21 112:16 115:23 118:14,20 126:19 143:23 150:3,4 151:12 159:16 160:3 174:20 189:8 specifically 22:5 22:15 60:8,19 80:10,23 81:15 91:21 92:11,13 92:16 109:10 116:23 127:6 154:9 160:24 specifics 39:12 48:7 125:19 specified 179:14 specify 159:6 speculate 50:18 87:14,17 88:11 177:7 spoken 33:22 Springfield 2:2,13 SS 34:14 SSM 12:16,18,23 23:18 27:7,10,14 28:23 31:13 33:20 34:7 37:16 41:1 45:3 45:18,19 46:4 54:8 62:18 63:1 | 63:3,12,21 65:12 66:2,4 67:22 68:1,4,6 83:3 85:4 87:19 89:19 98:4,9,19 98:20 104:24 105:6 117:11,15 117:18 158:20 159:8,17 160:3 169:19 172:10 St 148:16,20 stack 23:8 143:12 staff 5:20 7:13 26:23 33:21 36:18 38:19 44:23 50:17 69:5 97:13,14,16 100:1,13 101:20 stakeholder 33:22 stakeholders 33:19,23 37:21 stamp 50:7 stan 152:10 stand 104:15 standalone 112:5 standard 11:7 13:5 24:1,5,6 30:9 33:2,4,10 48:6,7,12,13,15 49:11 62:5,12 63:24 66:18 74:9 90:2,2 105:8 109:20 110:22 111:21 113:14,23 114:12 115:12 116:13 118:21 126:23 127:6,11 127:20 128:3,4,9 128:10,15,18 129:10,17 130:1 131:12 135:21 136:16,24 138:23 142:13 144:6,16 145:9 |
|--|---|---|---|--|

| | | | | |
|--|--|--|--|---|
| 145:12 146:15 146:20 147:14 148:13,14 150:12 159:4 160:2 189:6 standards 11:6,10 12:1 19:24 20:17 21:1,11 35:18,21 44:10 44:15 47:4,20,21 47:23 55:17 57:19 62:3,10,17 63:20 74:10,15 74:16 75:1,5,9 75:11 89:21 103:21 104:1 105:2 106:9,16 106:19 107:7 108:9 117:13,14 118:11,14,16,21 121:8,22 122:13 123:8 124:2,23 125:23 126:18 136:19 138:13 146:10 147:16 147:18,22 148:4 149:21 150:11 151:14 152:2,6,8 156:17 157:5 158:23 179:17 188:10,22 189:5 stands 105:17 135:3 start 83:24 122:20 140:11 163:20 179:10 started 5:10 15:23 70:11 169:9 starting 161:3 185:21 starts 92:17 startup 10:22 11:17,24 12:12 14:9,19 21:2,12 23:17 53:23 | 64:6 93:7,11,21 94:18,22 105:2 106:17,20 107:3 108:7,10,20 109:3 111:11 113:15 114:12 115:9 116:14 117:4,14 128:12 128:16 129:4,8 129:12,16 131:3 131:10,24 132:17,19,20 133:7 134:20,22 134:23 135:5,15 135:20 136:4,7 136:11 138:10 140:18 143:10 144:5,9,18,24 145:16 150:14 150:21 151:8 156:13 162:6,9 176:21 189:2 startups 11:16 131:13 132:18 132:21,22 133:3 134:21,24,24 161:10,16,20 162:12 177:6 state 2:2 11:9 12:14 15:24 23:19 39:24 47:10 50:3 51:2 51:13 56:6,13,19 56:21 57:4,19 58:17 59:8 61:1 64:13,17 66:19 83:8 93:5 94:3,3 117:19 122:2 141:6 142:4,12 149:3,18 152:14 154:4 166:12 189:23 state's 25:4 45:22 64:10 118:1 149:10,16 150:1 | 151:4 153:24 state-to-state 62:13 stated 14:11 27:6 44:21,24 47:17 66:1 77:5 79:23 85:3 117:24 118:6 134:6 141:4 statement 12:6 23:16 41:12 45:1 51:9 66:1 95:18 104:11 105:4 120:14 130:23 139:17 140:16 172:15 188:11,13 statements 60:16 states 12:16 13:21 15:4 26:11 27:5 30:1 35:3 40:4 40:23 44:7 45:6 45:16 46:10,22 47:15 50:10,24 51:9,11,15,16,16 52:16 53:16 55:15 59:6 60:13 62:3,4,9 62:11 63:15 84:3,8,16,18 93:5 104:6,23 105:5 106:5 117:18 118:10 120:9 121:18 152:20,21,24 153:3,13,17 169:1 170:5,9 172:16,19 179:11 185:18 states' 12:23 13:2 39:24 40:2 59:12 64:11 statewide 174:11 status 28:12 36:9 39:10 174:7 | statute 77:22 statutory 93:19 97:20 190:19 stay 71:10 steady 83:8 stemming 123:12 stenographically 193:6 step 18:2 49:18 Stephen 3:5 steps 96:16 155:18 stick 190:19 stop 27:23 59:3 133:23 stopped 55:19,22 56:1 stored 15:18 76:1 strategies 12:12 12:15 112:20 113:21 strengthen 93:23 stress 8:20 71:11 191:3 strictly 49:2 strike 88:15 89:8 124:15 stringency 49:1 stringent 48:15,15 48:23,23 110:3 study 190:11 subchapter 20:1 106:10,17 110:15 subject 20:6,7 31:14 51:16 70:19 110:1 153:11 170:20 170:21 submission 56:1 59:2 65:17 90:11 140:21 submissions 39:24 40:2 45:17 85:1 submit 18:4,9 | 22:17 29:5 42:7 42:20 50:21 53:8 82:7 91:12 91:15,18 96:21 133:23 169:13 169:22 170:18 170:23 173:21 submittal 32:17 40:20 45:8 56:1 56:7,9,10,14,21 57:5,14 58:11,18 58:22 59:3 64:3 65:15 73:19 96:19 133:22 153:19 170:1,2 174:3,10 175:12 176:7,14 177:21 submitted 6:4 7:1 40:21 42:10 51:10 53:12 71:22 96:24 99:14 126:13 127:3 169:2 172:16 179:7,18 189:14 submitting 52:18 53:1,6 58:10,20 84:3 96:17 136:15 174:8,16 subpart 108:17 111:4 112:7 131:23 151:22 Subquestion 18:20 28:2,8 44:18 45:13 56:4 62:2 63:18 66:9,15 67:9,13 117:11 120:18 123:16 Subsection 15:7 19:1 65:7,22 67:18 113:13 subsequent 11:5 29:10 31:21 65:13 |
|--|--|--|--|---|

| | | | | |
|---|--|---|--|---|
| <p>substantial 23:18 substantive 6:4 13:7,12 substantively 13:18 suggest 119:4 suggested 70:24 180:14,16 181:20,23 182:2 182:5,10,15,19 182:21,23 183:1 183:4,7,16,22 184:2,8,11,15,17 184:20,22,24 185:2 suggestion 182:23 183:3,14 184:7 184:13,17 suggestions 180:20 181:15 185:5 suitable 18:9 Suite 2:13 3:3 sulfur 11:11 summarize 24:14 28:9 33:18 34:23 44:18 47:23 120:21 121:12 122:15 123:21 133:15 summarizing 12:22 summary 186:7 supplying 73:6 support 26:13 46:12 52:7 75:14,17 130:22 suppose 58:20 77:14 sure 17:5 21:16 24:4 30:4 43:13 46:5 62:12 75:13 76:16 85:18 92:24 110:10,14,17</p> | <p>114:18 115:9 116:8 137:1 141:1 152:5 163:7 165:4 168:6,7 169:21 170:7 171:10 172:23 173:13 173:19 174:2,18 174:21 181:11 185:13,16 187:4 surrounding 80:24 swear 9:21 sworn 9:18,22 10:10 178:22 system 23:7 154:14,23 systems 22:24</p> <hr/> <p style="text-align: center;">T</p> <p>T 193:1,1 table 163:6 take 22:6 29:4 42:24 43:11 57:2 70:3,24 71:21 75:5,10 77:18,23 80:24 92:18 119:4,12 134:11 159:10 159:19 163:12 181:9 taken 19:22 20:9 71:16 73:15 74:13 119:20 123:17 129:6,8 134:13 155:18 187:6 193:6 takes 115:16 talk 22:18 175:17 talked 160:22 163:19 173:20 talking 78:4 115:21 team 38:16 tease 142:22</p> | <p>technical 5:20 26:12 46:11 75:14 technically 118:12 121:10 124:3 technological 53:22 tedious 72:4,16 telegraph 128:21 telephone 128:21 tell 110:9 temperature 157:23 158:8,15 160:14,15 189:4 term 146:14,19 terms 115:11 147:1,11 test 23:13 testimony 6:11,15 6:17 7:17,19,20 9:24 18:8 22:12 59:6 119:11 179:1 190:10,20 190:22 191:21 tests 23:8 thank 10:14 12:4 18:19 19:19 22:21 27:3 39:4 42:3 69:24 70:4 71:15 73:13 83:22 85:20 86:10 88:12 89:17 91:19 92:8,23 95:15,19 96:2 101:15 103:16 104:21 119:18 120:4 122:10 129:22 134:12,15 137:11,12,13 140:1 142:1,10 148:2,5,21 152:1 156:3,7,21,23 157:6 158:16 160:5,8 162:18</p> | <p>163:13 170:24 170:24 178:12 178:13,17 180:11 182:1,7 185:4 191:6,9 192:3 thankfully 129:11 thanks 73:5 132:8 162:20 187:2 themselves 115:4 theory 88:8 thing 88:20 125:11 things 16:2 17:23 37:13 49:6 55:2 58:14 76:18 88:23 think 10:3 17:11 18:14,24 19:10 24:18 26:4 27:21 28:23 30:11 33:7 36:23 37:1,2,17 38:5 39:11 41:7 41:23 44:21 49:23 50:19 52:3,5 55:1 58:4 60:23 63:5,10 66:13 69:4,11,16 70:18,23 76:23 77:17,22 78:18 79:19 82:22 87:22 88:5 95:2 98:11,12 100:11 110:8 113:22 115:22 116:17 117:6 119:13 120:7 128:24 131:6,7 135:16 135:17 141:24 144:7,7,8,10 151:1 158:17 159:2,4,10,11 160:10,17 161:4 165:15 168:5</p> | <p>170:4,5 171:4 174:12 175:3,5,7 175:13 176:4,6 185:13 186:3 191:4 thinking 99:3 173:16 thinks 158:21 third 92:15,16 182:2 183:3 186:8 Thompson 2:11 thought 12:15 thoughts 17:19 116:21 thousand 69:9 thousands 76:1,1 76:3,3 threat 155:6 threatening 144:11 three 5:11 7:1 9:15 23:12 92:14 102:22 103:4 155:8 160:19 178:20 179:6 181:15,17 185:14 Thursday 190:17 ticking 97:3 ties 112:22 Tim 5:3 time 8:15 9:1,1 13:18 16:17 17:19 18:9 19:6 19:8 20:22 22:3 22:13 23:1,2,10 23:24 24:18 25:11,23 27:8 28:17 29:24 30:5,11,15 31:1 31:17 32:24 34:4 38:13 40:16,18 43:15 44:12,13,17,20</p> |
|---|--|---|--|---|

| | | | | |
|--------------------------|--------------------------|-------------------------|-------------------------|--------------------------|
| 47:2,6 71:17 | top 17:21 36:20 | 66:24 83:17,19 | 134:3 136:17,22 | unfolds 70:15 |
| 76:12,24 77:12 | 173:17 178:19 | 117:18 128:2 | 137:9 143:3 | unformal 34:15 |
| 77:16 78:12,23 | topic 26:3 163:20 | 132:18 134:21 | 148:11 153:18 | unfortunately |
| 79:9,13 80:12 | 172:12 | 163:24 164:18 | 153:22 163:23 | 70:2 |
| 82:21 94:20 | topics 163:18 | typical 18:21 | 168:16,21,24 | unit 112:16 |
| 96:5 98:7 99:2 | total 72:23,24 | typically 41:12 | 171:5,9,18,21 | 129:13,14 |
| 102:12,14 | 144:10 | 84:24 116:7,12 | 172:3,17 173:22 | 132:18 134:20 |
| 118:19 119:1 | touched 120:6 | 141:17 | 174:17,24 175:7 | 135:3,6,9,21 |
| 123:4,17 134:10 | track 171:17 | | 175:17 176:10 | 136:1,4,7 140:14 |
| 134:11 135:22 | transcript 187:16 | <u>U</u> | 177:20,21,24 | 143:11,12 154:4 |
| 137:12 138:2 | 191:16 193:6 | U.S 12:22 25:5,6 | 178:3 185:9,18 | 155:19 157:22 |
| 149:4 152:8 | Transportation | 25:12,23 26:2,10 | 189:11,13 | 158:7,13 189:3 |
| 156:2 158:11 | 166:14,18 | 26:20,22 27:6,9 | Uh-huh 157:7 | United 50:24 |
| 161:23 162:1 | treat 111:24 | 28:12,13,16,19 | 165:1 172:11 | 51:15 153:17 |
| 168:21 169:19 | true 31:24 89:9 | 29:24 32:17 | ultimately 27:9 | units 122:20 |
| 169:22,23 170:7 | 153:9 181:23 | 35:2 38:9 39:18 | unaware 34:13 | 135:14 136:9 |
| 170:10,17 172:5 | 182:5,21 183:1,5 | 39:22,23 40:1 | 45:6 59:7 | 144:14 |
| 172:10 180:10 | 183:18,24 184:4 | 44:8,19,22 45:1 | uncertain 52:8 | universal 68:3 |
| 187:4 193:7 | 184:10,22 185:2 | 45:5,6,15,21 | uncertainty 25:3 | unnecessary |
| timeline 96:23 | 193:5 | 46:2,9,19,22 | 26:23 48:1,5,10 | 131:18 186:11 |
| 167:11,14 | Trump 168:12 | 47:8,10,16,19,21 | 50:15 51:18,19 | unquote 20:13 |
| times 37:3 77:6,9 | try 143:9,22 | 48:4,5,20 49:8,9 | 78:16 121:7 | unreasonable |
| 104:10 115:13 | trying 63:13 | 49:11,19 50:15 | unchanged 13:18 | 124:4 |
| 120:13,21 | 77:23 | 52:17,24 53:5 | 124:23 | unsafe 146:12 |
| 121:12,23 | Tuesday 187:18 | 54:1,10,13,23 | unclear 54:12,18 | unsatisfactory |
| 122:13 138:13 | 189:20 | 55:6,15 56:8 | uncommon 48:5,8 | 59:12 |
| 143:17 144:1 | turn 7:24 8:6,8 | 57:12,23 58:3,22 | 48:9,20 | unsure 91:11 |
| 156:18 157:5 | 9:23 70:6 110:9 | 59:9,16 60:4,11 | understand 16:20 | updated 62:20 |
| 160:22 186:4 | 119:23 137:15 | 60:14,17,19 61:5 | 19:14 49:19 | 63:11 |
| 188:22 | 145:20 163:9 | 61:20,23 62:15 | 59:11 68:24 | updates 28:23,24 |
| timing 36:24 38:5 | turning 74:4 | 62:20 63:13,19 | 80:1 135:6 | 37:15,18 39:12 |
| 40:20 96:17 | 104:21 116:23 | 64:2,3,15 65:9 | 144:23 146:17 | 171:22 |
| 103:18 | two 49:6 58:13 | 77:11,12,20 78:3 | 164:1 180:23 | uploaded 75:20 |
| Timmins 3:5 | 69:9 72:23 | 78:15 79:9,24 | understanding | use 71:14 124:6 |
| Timothy 2:16 | 74:12 81:6 86:4 | 81:1,1 82:6,10 | 59:16 60:6 | 124:21 125:14 |
| tip 150:7 | 90:19 128:2 | 82:15 84:18,23 | 124:21 175:16 | 136:19 146:7 |
| title 36:19 | 129:3 148:13,15 | 84:24 85:3,3,7 | 175:20 176:2 | 164:23,24 |
| today 5:10,14,15 | 155:1 163:24 | 87:4,15 88:24 | Understood 116:3 | 165:12 166:7 |
| 5:21 6:10,16,18 | 188:23 | 89:6,11,23 90:17 | undertake 78:22 | useful 64:5 133:9 |
| 7:2,13,18 8:22 | type 24:12 30:7 | 90:23 93:4 94:9 | undertaken | 180:5 |
| 17:14,23 23:4 | 31:11 93:17 | 96:17,18,21,24 | 141:20 | uses 90:21 |
| 70:18 119:12 | 118:7 136:7 | 117:14,17,22,24 | undertaking | usual 50:14 |
| 149:22 160:23 | 146:1 164:6,16 | 118:6 122:2 | 35:17 | usually 53:7 |
| 187:7 191:22 | 166:4 | 126:8,12,19 | underway 9:21 | 110:21 |
| told 45:5 | types 25:8 66:16 | 127:3 133:13,21 | 10:11 119:9 | utilize 133:3 |

| | | | | |
|---|--|--|---|---|
| 152:24 utilized 160:13 | 115:13 116:7,10 116:12 128:14 129:17 144:3 147:13 188:19 | 177:10 ways 90:19 146:8 we'll 9:23 10:11 10:20 17:23 83:24 132:5 137:1 165:19 183:10 191:17 we're 71:6 73:16 163:9 170:13 176:18 183:21 | 187:5 withdraw 114:6 171:24 178:9 withdrawn 185:24 witness 7:24 8:10 9:17 10:16 97:9 178:21 witnesses 6:12 22:12 wonder 163:4 wondering 164:15 word 64:23 146:7 worded 125:9 words 147:8 work 22:3 49:24 53:23 137:9 138:2 working 48:3 119:22 works 10:8 worth 58:8 wouldn't 49:22 68:19 89:3 95:6 102:24 145:5 146:7 153:12 163:10 wrap 70:18 119:10 190:1 | 79:6 82:4 83:11 83:11 88:8 91:6 95:10 98:10 99:24 101:14 103:9 110:10 128:7 132:5 159:11,11,11,23 163:8 164:18 166:20 167:5 169:8 170:4 171:2,4,13,15 173:1,1 175:13 175:13 177:16 181:11 183:10 year 98:13 99:4 166:22 168:12 yearly 145:11 years 15:23,24 16:6,11 19:16 32:20 36:8 78:11 102:22 103:4 116:9 129:3 yellow 186:14,18 yesterday 6:24 179:8 |
| <hr/> V <hr/> | | | | <hr/> Z <hr/> |
| vague 149:13 valuable 97:16 value 112:18 Van 2:17 5:19 10:14 148:18,21 183:12,15 variances 136:20 variety 18:16 83:17,17 various 19:12 83:19 133:6 vary 139:2,9 141:15 varying 117:18 versus 173:23 vetted 118:21 Vetterhoffer 2:8 9:17 38:17,23 42:23 43:23 72:14,17 73:6,11 75:22 76:16 101:8 108:14 114:4 128:7 156:24 157:6 158:1 161:21 162:8,11 164:11 viable 155:20 videoconference 8:23 view 49:6 views 177:20,24 violated 111:6,20 violating 111:3 143:21 violation 13:5 105:7 106:9,16 106:19 107:7 108:9 109:14 110:20,22 111:19,19 114:11 115:11 | violations 20:6 106:14 107:10 107:20 109:1 139:5 Virginia 59:22 60:20,23 61:3 VOM 19:24 75:10 165:18 <hr/> W <hr/> | wait 9:14 27:9 40:4 132:1 wait-and-see 27:17 37:3 want 5:10 8:20 21:24 42:20 48:18 71:13,21 72:5 75:22 82:5 85:21 91:23 92:2,18 101:8 108:14 119:2 159:8,10 173:17 178:22 187:13 190:14 wanted 81:18 96:7 119:15 168:24 177:14 190:4 191:5 wants 53:13 warm 192:1 warrant 11:23 wasn't 58:7 77:15 170:1,1 watch 71:11 way 30:4 45:2 80:4 91:14 98:12 107:18 109:9 116:5 125:9 140:4 145:19 176:18 | Wednesday 190:24 weeks 97:4 welcome 5:1 welcoming 165:3 well-known 98:9 136:5 went 185:22 weren't 81:14 169:6 171:19 172:9 West 59:22 60:20 60:23 61:3 widely 12:8 23:1 widely-varied 121:20 Wie 2:17 5:19 10:14 148:18,21 183:12,15 willing 22:17 43:1 75:18 78:21 165:12 willingness 83:23 189:24 wind 145:19 wisest 33:14 wish 42:22 71:10 91:15 178:23 179:2 180:18 wishes 178:20 | year 98:13 99:4 166:22 168:12 yearly 145:11 years 15:23,24 16:6,11 19:16 32:20 36:8 78:11 102:22 103:4 116:9 129:3 yellow 186:14,18 yesterday 6:24 179:8 <hr/> 0 <hr/> |
| | | | | 084-004847 1:16 193:19 <hr/> 1 <hr/> |
| | | | | 1 4:2 10:10,20 43:2,3,20 71:24 72:13,20 73:3,8 73:12,14 138:1 179:10 181:12 182:19 10 15:22,24 16:6 16:11 29:1 44:7 46:21 145:20 147:24 184:11 10-year 19:13 102.426 7:8 |
| | | | | <hr/> X <hr/> |
| | | | | <hr/> Y <hr/> |
| | | | | yeah 15:24 26:4,4 28:18 29:16 30:11 32:17 38:5,17 41:22 42:1 43:8 51:8 51:16 59:24 69:4,16 77:17 |

| | | | | |
|---------------------------|---------------------------|--------------------------|---------------------------|---------------------------|
| 1021 2:1 | 15 35:10 45:1 | 2:00 119:10,17 | 2016 32:12 59:20 | 152:2 |
| 105 19:22 | 81:18 104:6,23 | 20 38:4 40:11 | 60:1 169:12,16 | 212.123 147:17 |
| 105A 11:1 | 118:10 120:9 | 180:14 | 170:2 | 149:1 151:15 |
| 105B 11:1 | 121:17 148:23 | 200 62:5 | 2017 23:23 24:1 | 152:3 |
| 107A 109:22 | 157 132:4 | 2002 174:24 | 24:10,13,17 25:2 | 214 181:21 |
| 11 31:5 47:14 51:9 | 15th 6:1 | 201 1:5 5:6 12:20 | 25:14 27:13 | 215 181:21 |
| 55:14 146:3 | 16 36:1 40:23 | 13:7 19:22 | 28:4 32:13 | 216.121 62:7 |
| 184:14 | 149:8 | 108:17 114:2 | 143:7,7 168:5,9 | 216.361 62:8 |
| 11:00 8:22 9:1 | 1682 57:10 | 181:12,17 | 169:9,17 170:10 | 217-993-6077 |
| 11:30 70:5,9 71:3 | 16th 6:8 22:7 | 201.107C 111:19 | 185:21 | 2:14 |
| 71:6,17 | 190:17 | 201.149 10:23 | 2018 171:23 | 22 40:22 41:11 |
| 110 84:4 152:3,13 | 17 37:19 151:13 | 105:12,16,20 | 2019 171:23 | 153:4 188:10 |
| 152:19 153:15 | 179.B1 57:1 | 106:3 108:4 | 202 1:5 5:6 13:7 | 22nd 59:23 95:16 |
| 110.2A 153:13 | 179.B2 56:18 | 109:14 114:2 | 112:19 182:10 | 23 42:15 153:8 |
| 110.A2A 153:10 | 179A 56:16 | 127:8,18 128:3 | 182:11,20 | 2318 7:5 |
| 110L 49:2 84:8,19 | 17A 151:19 | 129:20,24 130:3 | 202.107 109:17 | 232 183:4 |
| 84:23 87:22 | 17th 31:3 37:22 | 130:6,9 138:17 | 202.107C 113:22 | 233 3:3 183:5,12 |
| 88:3 90:5,8,9,22 | 38:4 39:7,16 | 201.157 130:18 | 114:2 | 183:14,15,17 |
| 90:24 93:15 | 40:13 59:20 | 131:14,18 | 2020 27:15 28:4 | 234 183:8,9,18 |
| 95:7,11 | 180:12 | 132:15 133:1,4 | 2021 46:23 185:22 | 24 44:6 76:24 |
| 110L-approved | 18 39:4 56:14 57:2 | 134:18 179:11 | 2022 5:23 6:1,7,8 | 153:16 |
| 90:16 | 152:1 167:3 | 180:2 | 29:5,7,12,20 | 24-hour 150:6,14 |
| 117 157:18 | 18th 6:22 7:1 | 201.165 15:4 | 31:21 33:1,20 | 150:17 |
| 119 69:18 161:5 | 19 1:10 2:1 39:14 | 201.261 10:24 | 34:7,11 36:4 | 24C 46:1 |
| 12 32:23 46:21 | 152:12 | 138:18 | 37:21,22 38:3,4 | 24th 169:10 |
| 91:18 146:21 | 193 93:15 | 201.265 10:24 | 39:6,7,16 40:13 | 187:18 |
| 184:17 | 1970s 23:10 | 88:15 105:5,21 | 40:14 42:6,7 | 25 46:20 69:8,13 |
| 120 69:18 | 1971 11:2 20:24 | 105:24 106:23 | 46:23 47:16 | 154:1 |
| 1244 2:2 | 23:2,10 | 108:13 117:8 | 55:7 56:6 59:23 | 26 53:15 154:12 |
| 12460 95:16,21 | 1972 10:24 11:2 | 138:18 | 60:1 72:9,22,23 | 265 109:10,10,15 |
| 12A 33:9 147:3 | 13:8,17 14:2,5 | 2013 60:4,8 89:11 | 77:4 97:8 102:2 | 109:16 |
| 12B 147:7 | 14:11 18:22 | 95:16,17 98:9 | 175:3 189:11 | 269 182:4 |
| 12th 6:19 29:5,12 | 1982 16:4 | 2015 23:17,17,20 | 2023 1:10 2:1 6:19 | 27 55:5 154:21 |
| 29:20 33:1 91:4 | 1983 16:5 | 24:2,16 25:19 | 40:19 180:12 | 27th 190:13 |
| 13 33:17 84:2 85:2 | 1st 2:2 72:22 | 27:10 28:5 29:6 | 190:13,21,24 | 28 55:14 155:4 |
| 147:15 184:20 | 190:24 | 32:12 33:19 | 204 183:1 | 28.1 159:3,16 |
| 13A 147:20 | | 34:2,7,19 36:3 | 206 182:20 | 189:7 |
| 13th 189:22 | <u>2</u> | 44:8 45:14 | 208 182:24 | 28.5 5:8 7:19 65:1 |
| 14 34:17 148:8 | 2 4:2 12:5 59:6 | 53:17 54:2 56:5 | 21 41:7 42:4 | 65:16 |
| 182:15,15 | 85:15 86:17,20 | 60:5 77:4 89:11 | 152:23 | 28.5F1 6:10 7:23 |
| 184:24 | 86:24 92:17 | 91:4,5,18 98:9 | 212 1:5 5:6 13:8 | 190:5 |
| 1450 1:17 193:20 | 93:5 94:16 | 143:7 167:15,17 | 151:21,23 | 28th 60:1 |
| 149 105:22 109:9 | 138:4 180:12 | 168:23 169:11 | 181:22 182:14 | 29 59:5 155:11 |
| 109:15,15 | 181:20 | 169:16 170:19 | 212.122 147:16 | 291 183:23 |
| 14th 189:21 | 2.5 150:12 | 185:9,15 | 149:1 151:15 | 292 183:24 |

| | | | |
|---------------------------|---------------------------|---------------------------|-----------------------|
| 298 183:19 | | 57 131:9 | 142:10 184:8 |
| 29B 63:24 | 4 | 58 132:24 | 9:00 190:17 |
| | 4 4:3 13:20 95:14 | 59 133:11 | 90 70:15 119:3 |
| | 95:15,21 96:1,4 | 5th 72:9,22 | 92 4:3 |
| 3 | 138:15 183:7 | | 96 4:3 |
| 3 4:3 12:5 13:6 | 40 41:24 100:19 | 6 | 9th 6:16 |
| 72:1 92:5,7,9 | 40CFR 56:16 | 6 20:16 140:12 | |
| 95:13 138:8 | 40CFR52.31.7 | 183:22 188:4 | |
| 156:11 182:9 | 57:1 | 60 6:20 134:1 | |
| 188:20 | 41 102:1 | 60-minute 119:4 | |
| 30 6:22 62:14 | 415 65:7,22 67:18 | 60606 3:3 | |
| 150:17 155:16 | 42 102:5 | 62711 2:13 | |
| 300 183:23 | 43 103:17 | 6th 40:14 42:7 | |
| 303 184:3 | 4340 2:13 | 72:6,7 189:18 | |
| 308 184:5,9 | 44 104:22 116:23 | 190:21 | |
| 309 184:6 | 116:24 117:2 | | |
| 30th 6:6 97:8 | 44A 116:24 | 7 | |
| 189:15 | 45 70:2 118:9,24 | 7 20:23 23:15 27:4 | |
| 31 64:24 | 46 104:5 120:1,2,6 | 27:12 53:16 | |
| 310 184:3 | 122:17 188:18 | 74:4 141:5 | |
| 312 184:6 | 46A 121:16 | 142:9 184:2 | |
| 312-258-5769 3:4 | 47 119:24 121:17 | 71-23 11:1 14:13 | |
| 316 184:9 | 122:17 123:23 | 15:11 16:12 | |
| 318 184:12 | 47A 122:9 | 20:1,13,17 21:9 | |
| 319 184:12 | 48 122:10 | 118:18 | |
| 32 65:16 83:1 | 49 122:18 | 7100 3:3 | |
| 188:14 | 4AI 139:13 | 72941 59:21 | |
| 322 184:12 | 4C 16:21 188:2 | 73 4:2 | |
| 33 70:7 73:19 84:1 | 4D 188:3 | 78 95:15,20 | |
| 334 182:3 184:15 | | 78617 59:23 | |
| 338 184:18 | 5 | 7A 22:23 | |
| 33840 92:1 | 5 13:20 19:21 | 7th 5:22 30:19 | |
| 33975 92:12,14 | 26:22 44:22 | 42:6 | |
| 34 85:2 | 50:17 65:9 74:4 | | |
| 342 184:21 | 133:21 140:6 | 8 | |
| 346 185:2 | 183:19 | 8 23:15 76:22 | |
| 35 1:5 5:5 62:7 | 5/28.5 65:7,22 | 142:3 184:5 | |
| 86:13 87:10 | 67:18 | 188:8 | |
| 89:19 129:19 | 50 123:3 | 80 91:24 | |
| 352 184:21 | 51 123:24 | 80FR33840 91:19 | |
| 356 185:1 | 52 126:2 127:4 | 86 4:2 | |
| 36 96:13 | 52.31 56:17 | 87 57:9 59:20,23 | |
| 37 97:6 | 53 127:16 130:14 | 8A 24:23 | |
| 38 97:23 98:16 | 54 129:22 | | |
| 188:15 | 55 130:15 | 9 | |
| 39 100:4 188:15 | 56 131:1 | 9 27:4 128:3,4 | |