

ORIGINAL

Page 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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STATE OF ILLINOIS
Pollution Control Board

REPORT OF THE PROCEEDINGS held in the
above entitled cause before Hearing Officer
Timothy Fox, called by the Illinois Pollution
Control Board, taken by Steven Brickey, CSR, for
the State of Illinois, 100 West Randolph Street,
Chicago, Illinois, on the 19th day of June, 2014,
commencing at the hour of 9:00 a.m.

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MR. JERRY O'LEARY
MS. JENNIFER BURKE
MS. DEANNA GLOSSER
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24

1 HEARING OFFICER FOX: The hour of
2 9:00 having arrived, I want to reconvene this
3 hearing. The second day of the third hearing in
4 the docket entitled Coal Combustion Waste CCW and
5 Surface Impoundments at Power Generating
6 Facilities Proposed New 35 Ill. Adm. Code 841
7 docketed as rulemaking 14-10.

8 My name again for the record is
9 Tim Fox and I am the Hearing Officer and aside
10 from one quick announcement I'd like to go right
11 to the point where we left off in our order of
12 proceedings, which is questions by Ms. Franzetti
13 on the basis of The Environmental Group's proposed
14 amendments to the Agency's proposal.

15 The one announcement I do want
16 to make and candidly repeat is that the Board will
17 hold its regularly scheduled meeting in this room
18 beginning at 11:00 a.m. so that at approximately
19 10:45 we will recess so that can take place here.
20 Certainly you are free to remain in the room for
21 what is of course a public meeting, but I will let
22 you know then when we will plan to resume after
23 the Board meeting is over.

24 With that, are there any

1 questions about our procedural steps at this
2 point? Mr. Armstrong?

3 MR. ARMSTRONG: We had two documents
4 from yesterday that we'd like to enter as
5 exhibits.

6 HEARING OFFICER FOX: Very good. I
7 think you had referred to those yesterday. Why
8 don't we turn to that and address that briefly,
9 Mr. Armstrong. Why don't you let us know what
10 they are first.

11 MR. ARMSTRONG: Yes. The first
12 document is a consent decree in Application Voices
13 versus McCarthy. It is a case from the United
14 States District Court for the District of
15 Columbia. This is the consent decree that we
16 referred to yesterday involving the US EPA's
17 proposed rules on coal ash and under the decree
18 The EPA Administrator shall, by December 19, 2014,
19 sign for publication in the Federal Register a
20 notice taking final action regarding EPA's
21 proposed revision of RCRA Subtitle (d) regulations
22 pertaining to coal combustion residuals.

23 HEARING OFFICER FOX: Let the record
24 reflect that that has been distributed to the

1 participants. Is there a motion you'd like to
2 make with regard to that document, Mr. Armstrong?

3 MR. ARMSTRONG: Yes, we would move
4 to admit it as Exhibit --

5 HEARING OFFICER FOX: Fifty-three
6 would be the next consecutive one.

7 MR. ARMSTRONG: Thank you.

8 HEARING OFFICER FOX: You've heard
9 the motion to admit the consent decree that he has
10 just described as Exhibit No. 53 in this
11 proceeding. Is there any objection? Neither
12 seeing nor hearing any, Mr. Armstrong, it is
13 marked and admitted as Exhibit 53.

14 (Document marked as Hearing
15 Exhibit No. 53 for
16 identification.)

17 MR. ARMSTRONG: We also have the
18 Springfield City Water Light & Power, an
19 environmental compliance study that was entered
20 yesterday as an exhibit, a table of contents from
21 that study and we would move to admit that as
22 Exhibit No. 54.

23 HEARING OFFICER FOX: Mr. Armstrong,
24 just a moment for the distribution of those.

1 Mr. Armstrong, it looks like the distribution is
2 complete. Do you have a motion you'd like to make
3 with regard to that document?

4 MR. ARMSTRONG: Yes, we would move
5 to admit it as Exhibit 54.

6 HEARING OFFICER FOX: You have heard
7 the motion to admit as Exhibit 54 the document
8 entitled Table of Contents. Is there any
9 objection to the motion? Neither seeing nor
10 hearing any, Mr. Armstrong, it is marked and will
11 be admitted as Exhibit 54. Does that exhaust the
12 documents that you had referred to?

13 (Document marked as Hearing
14 Exhibit No. 54 for
15 identification.)

16 MR. ARMSTRONG: Yes.

17 HEARING OFFICER FOX: Very good.
18 That leaves us, Ms. Franzetti, ready to turn to
19 you. When we adjourned yesterday at 6:00 p.m.
20 after a marathon yesterday, we appreciate your
21 efforts in that regard, Mr. Rieser had indicated
22 that he had resolved all of his questions that he
23 had pre-filed and that left us ready to turn to
24 you to begin posing your pre-filed questions.

1 Why don't we swear in the
2 witnesses for the environmental groups and turn
3 back for just a second.

4 WHEREUPON:

5 ANDREW ARMSTRONG and TRACI BARKLEY
6 called as a witness herein, having been first duly
7 sworn, deposeth and saith as follows:

8 HEARING OFFICER FOX: Ms. Franzetti,
9 we're all set.

10 MS. FRANZETTI: Good morning,
11 Mr. Fox and Board Members. Good morning,
12 Mr. Armstrong and Ms. Barkley.

13 MR. ARMSTRONG: Good morning.

14 MS. OLSON: I'm going to skip
15 question one. I think it's already been answered.
16 Moving to question two regarding groundwater
17 quality standards Section 841.125 of the proposed
18 rules.

19 What is the intended purpose and
20 meaning of the proposed revision to Section
21 841.125 groundwater quality standards that
22 requires an owner or operator to comply with the
23 Part 620 groundwater standards, quote, at all
24 times notwithstanding the compliance period

1 established in Section 841.130 of this part, end
2 quote?

3 MR. ARMSTRONG: The Environmental
4 Groups would strike this language. It was
5 intended to respond to the Agency's originally
6 proposed language that would have delayed the
7 compliance period for one year for existing
8 impoundments, but now the compliance period begins
9 with the adoption of the rule.

10 MS. FRANZETTI: You are withdrawing
11 this proposed revision?

12 MR. ARMSTRONG: Correct.

13 MS. FRANZETTI: Moving to question
14 three. On compliance period Section 841.130 in
15 your June 6th, 2014, comments regarding the
16 proposed requirement to submit a closure plan and
17 post-closure care plan within one year of the
18 rule's effective date, you explain that such a
19 requirement is justified because of the existence
20 of, quote, inadequately lined ponds, end quote, in
21 Illinois.

22 Why is the requirement to submit
23 closure and post-closure care plans within one
24 year of the rule's effective date justified for

1 CCW surface impoundments that are adequately
2 lined?

3 MR. ARMSTRONG: We have proposed
4 that closure and post-closure care plans be
5 required within one year for two central reasons.
6 First, we're asking the Board to consider adopting
7 financial assurance requirements for CCW surface
8 impoundments and the closure plan would serve as a
9 basis for those requirements. Second, the closure
10 plan would provide certainty about the manner in
11 which the impoundment will be closed and the CCW
12 ultimately disposed and we believe this is
13 important because it would allow for issues
14 regarding the method of closure and ultimate
15 disposal to be considered upfront.

16 MS. FRANZETTI: Question four. For
17 CCW surface impoundments which have ash
18 periodically removed and are not used as waste
19 disposal sites, is your position the same
20 regarding the proposed requirement to submit
21 closure and post-closure plans within one year of
22 the rule's effective date?

23 MR. ARMSTRONG: Yes, we request that
24 closure plans be submitted first to establish

1 that, in fact, the intent is to close the
2 impoundment by the removal of coal ash and,
3 second, to serve as a basis for financial
4 assurance.

5 MS. FRANZETTI: Five, given The
6 Environmental Group's proposed revisions relating
7 to the preference for closure by removal of CCW,
8 is it also your intent that these closure and
9 post-closure care plans must be based on the
10 assumption that all CCW will be removed from an
11 impoundment?

12 MR. ARMSTRONG: No, it is our intent
13 that closure and post-closure care plans be
14 submitted and proved by the Agency and if the
15 Agency approves closure in place, then that is
16 what the approved closure and post-closure care
17 plan would provide.

18 MS. FRANZETTI: I believe you
19 answered question six yesterday. Moving to
20 question seven on alternative cause demonstrations
21 Section 841.305. In The Environmental Group's
22 June 6th comments on pages 16 to 17, it is stated
23 that the Agency's proposed rule on alternative
24 cause demonstrations conflicts with the

1 groundwater quality standards because the Part 620
2 Subpart (d) regulations in Section 620.410 and
3 620.40 provides that if a constituent is elevated
4 due to natural causes, there is no exceedance.

5 How does The Environmental
6 Groups proposed revisions to Section 841.305
7 address or resolve this alleged conflict between
8 proposed Section 841.305 and the Part 620 Subpart
9 (d) regulations?

10 MR. ARMSTRONG: So The Environmental
11 Group's comments reflected an exchange between the
12 Agency and Dr. Soderberg at the last hearing and
13 we came away with the impression that the Agency
14 interpreted the interaction between the proposed
15 rules and the groundwater quality standards in
16 Part 620 Subpart (d) in such a way if the
17 concentration of a chemical constituent is
18 believed to be elevated due to natural causes,
19 then an owner or operator would not need to
20 perform an alternative cause demonstration if
21 there is an exceedance of the applicable numeric
22 standards for that constituent from Part 620
23 Subpart D.

24 So, in our view, that would be

1 problematic because one of the alternative causes
2 that an owner or operator is required to establish
3 under 841.305 is natural causes. If you can
4 effectively say at the front end, I don't need to
5 perform an alternative cause demonstration to show
6 natural causes because natural causes have
7 increased the applicable standard at my site that
8 seems to write natural causes out of the
9 alternative cause section.

10 And we can suggest some language
11 for consideration, specifically just a new second
12 sentence in Section 841.300, quote, for purposes
13 of this section concentrations of chemical
14 constituents due to natural causes are not
15 considered in determining the applicable
16 groundwater standard.

17 MS. FRANZETTI: Would you say that
18 one more time?

19 MR. ARMSTRONG: Sure. For purposes
20 of this section referring to 841.300,
21 concentrations of chemical constituents due to
22 natural causes are not considered in determining
23 the applicable groundwater standard.

24 MS. FRANZETTI: How does that

1 resolve this issue?

2 MR. ARMSTRONG: So in 841.300, this
3 is the section on confirmation sampling and the
4 first sentence provides "If the results of
5 groundwater monitoring conducted pursuant to this
6 part show an exceedance of the groundwater quality
7 standards in 35 Ill. Adm. Code 620 at the
8 compliance points, the owner or operator shall
9 confirm the detection by resampling the monitoring
10 well or wells." This idea of the exceedances then
11 is carried through to 841.305 on an alternative
12 cause demonstration.

13 So our point is if at 841.300
14 the standard that you're using to determine
15 whether it is an exceedance takes into account
16 natural causes, that creates a problem at the
17 front end here. So if you take out the notion
18 that natural causes can increase the groundwater
19 quality standard, for example, in 620.410, for
20 example, which refers to natural causes
21 potentially allowing for a higher standard, then
22 you remove the difficulty that we came away
23 from -- came away with at the last hearing.

24 MS. FRANZETTI: Moving to question

1 eight. Surface impoundment closures. Section
2 841.400. The proposed revisions to Section
3 841.400(b) require closure by removal of all
4 impounded coal combustion waste, quote, unless the
5 Agency determines that removal is technically
6 feasible or would not result in greater protection
7 of human health and the environment, end quote.
8 Subpart (a), what criteria is the Agency to use in
9 determining whether removal, quote, would not
10 result in greater protection of human health and
11 the environment?

12 MR. ARMSTRONG: As I mentioned
13 yesterday, 35 Ill. Adm. Code 811.325 relates to
14 the selection of corrective action for municipal
15 solid waste landfills and uses the term protective
16 of human health and the environment. That
17 regulation sets out a number of considerations
18 that should be taken into account when determining
19 whether a remedy is protective of human health and
20 the environment and we would submit that similar
21 criteria could be used by the Agency to determine
22 whether a particular -- whether removal would
23 result in greater protection of human health and
24 the environment.

1 MS. FRANZETTI: (b), how will the
2 level of protection of human health and the
3 environment provided by closure in place versus
4 closure by removal be determined?

5 MR. ARMSTRONG: Well, I think that
6 again with reference to those criteria you would
7 look at what impacts you could expect from closure
8 in place from, one, impacts on groundwater and,
9 two, potential threats to surface water and
10 compare those to the impacts on groundwater and
11 surface water that would be expected from closure
12 by removal. Did I say closure by removal twice?

13 MS. FRANZETTI: I'm not sure.

14 MR. ARMSTRONG: I would say you
15 would want to compare closure by removal and
16 closure in place in terms of their impacts on
17 surface water and groundwaters.

18 MS. FRANZETTI: And that is a
19 decision that you are comfortable leaving to the
20 judgment of the Agency?

21 MR. ARMSTRONG: That is correct.
22 With the exception of the second part of the rule
23 which you've talked about before which are the
24 three presumptions.

1 MS. FRANZETTI: Turning to sub
2 question C. If the subject CCW impoundment is
3 adequately lined, under what types of
4 circumstances would closure by removal result in,
5 quote, greater protection of human health and the
6 environment, end quote?

7 MS. BARKLEY: I think we need to
8 look back to 841.400 Section (b) specifically when
9 the unit is located in a 100-year floodplain. I
10 think that's a clear example of when an adequately
11 lined CCW impoundment is not enough when they
12 exist in a floodplain to leave the coal ash -- the
13 coal ash in place. That's when we're asking for
14 closure by removal because when you have coal ash
15 put in a floodplain you can have wear and tear on
16 the retaining structure from the movement of the
17 water, you can have flooding of the river itself
18 over the surface into the adequately lined coal
19 ash pit and you also can have rising of the flood
20 waters back into the water table which can have
21 reverse action on the liner of the coal ash pit
22 and contribute to weaknesses in the liner of the
23 otherwise adequately lined coal ash pit.

24 MS. FRANZETTI: And do you have any

1 real life examples of that occurring with a closed
2 in place adequately lined ash pond?

3 MS. BARKLEY: With an already closed
4 in place?

5 MS. FRANZETTI: Yes. These
6 potential impacts you're talking about in your
7 answer, any real life examples of that occurring
8 with an ash pond -- that ash pond that has a
9 synthetic liner representative of current
10 state-of-the-art liners and has been closed in
11 place and capped, vegetative layer placed on top
12 of it.

13 MS. BARKLEY: I am not aware in
14 Illinois any lined coal ash pits that have been
15 closed in place.

16 MS. FRANZETTI: Not limiting it to
17 Illinois. Anywhere just as you brought an
18 example.

19 MS. BARKLEY: I will have to look
20 into that.

21 MS. FRANZETTI: Okay. Moving to
22 (d). If a CCW impoundment is adequately lined,
23 why is a presumption in favor of closure by
24 removal reasonable? Same answer regarding

1 floodplain?

2 MS. BARKLEY: Same answer.

3 MS. FRANZETTI: (e). When a CCW
4 impoundment is adequately lined, why is the
5 proposed presumption in 841.400(b)(2) that closure
6 by removal is more protective of human health and
7 the environment where the unit is located in a
8 100-year floodplain? Would your answer be the
9 same as the answer you just gave about the impacts
10 of being located in a floodplain?

11 MS. BARKLEY: Yes. And I think
12 largely when you have coal ash located in close
13 proximity to water you're increasing the risk of
14 breach, flood, discharge and leaking.

15 MS. FRANZETTI: Just simply because
16 it is located in close proximity to water?

17 MS. BARKLEY: To a river. Sorry.

18 MS. FRANZETTI: To a river?

19 MS. BARKLEY: To a river.

20 MS. FRANZETTI: And can you give us
21 some idea of what you understand the phrase as you
22 use it close proximity to mean in terms of
23 distance from the river?

24 MS. BARKLEY: I think we've refined

1 our responses from May's hearing to qualify that
2 when we're talking about floodplain, we're talking
3 about the 100-year floodplain. Just in general
4 and I think we'll get into this a little bit later
5 with Lesley's findings is that when you have coal
6 ash that is close proximity to -- it's in the
7 water table or in a floodplain or is in direct
8 contact with the water table you allow for those
9 constituents to be mobilized and released into the
10 environment. So removing coal ash from the
11 floodplain or out of the water table allows for
12 greater protection of human health and the
13 environment.

14 MS. FRANZETTI: What I'm trying to
15 understand is what you mean by close proximity.
16 Is that within less than a quarter of a mile from
17 a river, is it within less than an eighth of a
18 mile from a river?

19 MS. BARKLEY: I think in this
20 response we're saying close proximity. I'll
21 qualify that by saying within the 100-year
22 floodplain.

23 MS. FRANZETTI: I'm not sure -- now,
24 I'm actually a little more confused. So are you

1 saying it has to be both within a 100-year
2 floodplain and in close proximity to a river?

3 MS. BARKLEY: I probably should not
4 have said close proximity. Largely what I meant
5 to say is all my qualifying statements and when
6 you have coal ash that is either in contact with
7 coal ash, able to be in contact with coal ash
8 either in a water table or a floodplain, that
9 100-year floodplain -- and I meant that to be in
10 close proximity. That is where you start having
11 more opportunity to damage or impact human health
12 and the environment because you're mobilizing
13 those constituents. So I should not have said
14 probably close proximity. I'll pull that back and
15 refer more to the 100-year floodplain.

16 MS. BUGEL: In the answer, you just
17 said coal ash and contact with coal ash and I
18 don't think that's what you meant.

19 MS. BARKLEY: Coal ash and contact
20 with water.

21 MS. FRANZETTI: Subparagraph (f).
22 If the level of protection afforded by closure in
23 place and closure by removal is substantially
24 equivalent, why is it not appropriate to consider

1 the reasonableness of the cost of each closure
2 option?

3 MR. ARMSTRONG: Under our proposal,
4 I don't -- I view it as if the level of protection
5 afforded by closure in place and closure by
6 removal is substantially equivalent, then closure
7 by removal would not be required. The standard in
8 the rule is closure by removal has to be more
9 protective, not equivalent.

10 HEARING OFFICER FOX: Ms. Franzetti,
11 Ms. Olson I think indicated that she had a follow
12 up. If we can turn to her for a moment.

13 MS. OLSON: You have one more
14 question and then I'll just do a series on this
15 whole line when you finish.

16 MS. FRANZETTI: Okay. Moving to
17 Subparagraph (g). Under this proposed revision,
18 is the Agency authorized to determine that closure
19 by removal would present environmental concerns
20 such as adverse effects caused by the removal of
21 large amounts of CCW impact on the community from
22 the removal operations and the ultimate offsite
23 disposal of the CCW, which justifies closure in
24 place?

1 MR. ARMSTRONG: Yes, we believe that
2 the Agency is certainly permitted to take into
3 account those considerations and assessments of
4 technical feasibility.

5 MS. FRANZETTI: I have just one more
6 additional question. Given that under the
7 proposed federal CCR rule it is unknown today
8 whether or not coal ash is going to be regulated
9 under Subpart (c) RCRA as a hazardous waste or
10 Subpart (d) as a nonhazardous waste --

11 MR. ARMSTRONG: Right.

12 MS. FRANZETTI: -- in making this
13 proposed rule language with regard to the
14 presumption in favor of removal, did you give
15 consideration to whether or not your proposed
16 language would change if the federal rule in its
17 final form deems coal ash to be a hazardous waste?

18 MR. ARMSTRONG: Whether the language
19 of this rule would change or you mean the language
20 of our proposal?

21 MS. FRANZETTI: Correct. In other
22 words, we're basing it on the presumption that
23 coal ash will be categorized as a nonhazardous
24 waste and, if so, would your thinking change on

1 this proposed revision if, in fact, the federal
2 rule characterizes coal ash as a RCRA hazardous
3 waste?

4 MR. ARMSTRONG: With respect to
5 parts (a), (b) and (c), the presumptions, the
6 regulation of the CCW as a hazardous waste or
7 waste under Subtitle (d) did not play a role in
8 our development of those provisions. Our intent
9 there was that coal ash, however it is regulated,
10 if it is stored in those conditions presents a
11 threat to human health and the environment. With
12 respect to the greater protection of human health
13 and the environment technical feasibility, I think
14 those considerations are flexible enough to
15 accommodate whatever regulatory scheme is
16 ultimately proposed for CCW.

17 MS. FRANZETTI: Because --

18 MR. ARMSTRONG: Go ahead.

19 MS. FRANZETTI: And is that in part
20 because -- or related to your answer to my
21 question in Subparagraph (g) that the Agency can
22 consider things like the adverse effects caused by
23 removal of large amounts of CCW as well as offsite
24 disposal of it?

1 MR. ARMSTRONG: Yes, I believe those
2 can be considered by the Agency in the technical
3 feasibility determination.

4 MS. FRANZETTI: Okay. Moving
5 onto -- I'm sorry. Yes?

6 MS. OLSON: Just a few.

7 MS. FRANZETTI: Ms. Olson?

8 MS. OLSON: Thank you. I want to
9 kind of go back to some of the things that you
10 talked about in response to Ms. Franzetti's
11 questions. You referenced 811.325. And am I
12 correct to say that you're saying that the Agency
13 should look to 811.325 to determine what is meant
14 by greater protection of human health and the
15 environment?

16 MR. ARMSTRONG: I believe the
17 factors that are set out in 811.325 could be used
18 by the Agency to determine what is meant by
19 protective of human health and the environment.
20 If the Agency would find it better to have factors
21 explicitly set out in this rule as to what
22 protective of human health and the environment
23 means, I think that 811.325 would be a good place
24 to start.

1 MS. OLSON: You keep saying
2 protective of human health and the environment.
3 You keep leaving off the word greater. Is that
4 intentional or unintentional?

5 MR. ARMSTRONG: When I say -- when
6 I'm referencing 811.325, 811.325 does not have the
7 word greater in it. So that's why I'm not using
8 it with respect to that regulation.

9 MS. OLSON: So does 811.325
10 reference another standard that must be attained?

11 MR. ARMSTRONG: 811.325 -- so there
12 is several standards that are referenced. Are you
13 referring to an 811.325(b) --

14 MS. OLSON: Yes.

15 MR. ARMSTRONG: -- or elsewhere?
16 Okay. So in 811.325(b) remedies selected under
17 this selection must meet the following
18 requirements. They must be protective of human
19 health and the environment, they must control the
20 sources of release so as to reduce or eliminate to
21 the maximum extent practicable further releases of
22 constituents detected under the assessment
23 monitoring into the environment that may pose a
24 threat to human health or the environment and they

1 must comply with standards for management of waste
2 as specified in Section 911.326(d).

3 MS. OLSON: So is it fair to say
4 that one of the standards that is required for
5 corrective action at municipal solid waste
6 landfills is the attainment of the groundwater
7 quality standards?

8 MR. ARMSTRONG: That is one of the
9 four standards I just read off.

10 MS. OLSON: And that this section
11 that you're reading from does not require in
12 selecting a remedy the Agency to evaluate what
13 corrective action would result in greater
14 protection to human health and the environment?

15 MR. ARMSTRONG: There is no mention
16 of greater protection of human health and the
17 environment, that's correct.

18 MS. OLSON: Do you know whether or
19 not municipal solid waste landfills are closed by
20 removal?

21 MR. ARMSTRONG: In the common
22 course, they are not closed by removal. There
23 could be cases where something would need to be
24 removed from them from a municipal solid waste

1 landfill. I believe there was a case in Illinois
2 involving the removal of a significant amount of
3 benzene from a landfill, for example, but as a
4 matter of practice they are closed by closure in
5 place.

6 MS. OLSON: And why aren't municipal
7 solid waste landfills closed by removal?

8 MR. ARMSTRONG: I don't think I can
9 provide an answer to that today.

10 MS. OLSON: Okay. I'll just kind of
11 throw a question out. Is it because it's a waste
12 disposal operation and if you remove all the
13 waste, the waste would no longer be disposed of at
14 that site? If you don't know, that's fine.

15 MR. ARMSTRONG: That's something I'm
16 not prepared to comment on right now.

17 MS. OLSON: Great. Can you identify
18 where in Section 811.325 the Agency should look to
19 determine whether or not something is -- would
20 result in greater protection of human health and
21 the environment?

22 MR. ARMSTRONG: I'm going to pull up
23 that regulation. I don't have it in front of me.
24 I mean, as I said before, the phrase greater

1 protection of human health and the environment
2 does not appear in that regulation.

3 MS. OLSON: But correct me if I'm
4 wrong. You said that the Agency should look to
5 this section to determine what is meant by greater
6 protection of human health and the environment, is
7 that right?

8 MR. ARMSTRONG: What I said was that
9 the Agency could look to that section for an
10 analysis of what is considered protective of human
11 health and the environment because that's the term
12 that is used in that regulation.

13 MS. OLSON: How does that help the
14 Agency in determining what is meant by greater
15 protection of human health and the environment?

16 MR. ARMSTRONG: Well, I will
17 reference one of the same provisions that I
18 referenced yesterday. For example, the Agency did
19 consider the long and short-term effectiveness and
20 protectiveness of the potential remedies along
21 with the degree of certainty that the remedy will
22 prove successful based on consideration of the
23 following factors including, for example, (f), any
24 potential for exposure of humans and environmental

1 receptors to remaining wastes, considering the
2 potential threat to human health and the
3 environment associated with excavation,
4 transportation, redisposal, or containment.

5 MS. OLSON: Okay.

6 MR. ARMSTRONG: So --

7 MS. OLSON: I'm going to stop you
8 right there. My question is what section is that
9 and I think you're reading from it? So if you can
10 just provide the section and subsection, we can go
11 forward.

12 MR. ARMSTRONG: Sure. That is as an
13 example 811.325(c).

14 MS. OLSON: So do you believe the
15 Agency should look at all of the factors that are
16 in Subsection (c) of 811.325 in determining what
17 is meant by protection of health -- human health
18 and the environment?

19 MR. ARMSTRONG: So, again, we have
20 not proposed that language in our rule. I think
21 this would be an appropriate basis to define what
22 greater protection of human health and the
23 environment means.

24 MS. OLSON: I know that the language

1 doesn't match exactly. The Agency is trying to
2 get a handle on how to evaluate the phrase "the
3 greater protection of human health and the
4 environment" and you said you can look at 811.325.
5 My questions are a follow up to see which parts of
6 811.325 the Agency should be considering and
7 should not be considering.

8 MR. ARMSTRONG: As I said, I believe
9 the Agency could consider all of these factors.

10 MS. OLSON: So would that include
11 (c) (4)?

12 MR. ARMSTRONG: I think this
13 reflects the technical feasibility consideration
14 that we've also proposed.

15 MS. OLSON: Could you please read
16 Section 811.325(c) (4)?

17 MR. ARMSTRONG: The practicable
18 capability of the owner or operator to implement
19 the remedies, including a consideration of the
20 technical and economic capability.

21 MS. OLSON: So are you testifying
22 that the practical capability of the owner and the
23 economic capability of the owner in carrying out
24 the remedy should be considered by the Agency in

1 determining what is meant by greater protection of
2 human health and the environment?

3 MR. ARMSTRONG: So I think --

4 MS. OLSON: I --

5 MR. ARMSTRONG: If I can just answer
6 the question.

7 MS. OLSON: I think a yes or no
8 answer would be perfect.

9 MR. ARMSTRONG: In considering
10 greater protection of human health and the
11 environment, it could be considered in that
12 regard, yes, because you're going to be
13 considering technical feasibility anyways under
14 our rule and this is pretty much what we're
15 talking about when we're talking about technical
16 feasibility.

17 MS. OLSON: So economic capability
18 would mean the regulated entity's ability to pay
19 for the remedy, is that a fair characterization of
20 what economic capability means?

21 MR. ARMSTRONG: Yes. And as I
22 testified yesterday with respect to technical
23 feasibility, if an owner or operator is not
24 capable of actually implementing a requirement

1 because it would be far too expensive, then that
2 is a consideration that can be taken into account
3 under technical infeasibility or in this
4 regulation greater protection of human health and
5 the environment.

6 MS. OLSON: So if economic
7 capability can be considered by the Agency, why
8 isn't that language reflected in your proposal?

9 MR. ARMSTRONG: Well, I think
10 there's a difference between economic capability
11 and economic reasonableness.

12 MS. OLSON: Can you explain the
13 difference?

14 MR. ARMSTRONG: Economic capability
15 in the way that we've talked about it yesterday
16 with technical infeasibility is whether you're
17 capable of performing a particular form of closure
18 or particular corrective action. Economic
19 reasonableness we see as more of a cost benefit
20 analysis and we don't believe that cost benefit
21 analysis should be applied if there is going to be
22 a method of closure or corrective action that is
23 more protective of human health and the
24 environment that is going to better address a

1 threat to surface or groundwater.

2 MS. OLSON: Do you think that having
3 guidance in the rule about what is meant by
4 greater protection of human health and the
5 environment and what is meant by technical
6 infeasibility would be beneficial?

7 MR. ARMSTRONG: If the Agency would
8 be interested in proposing some language, we'd
9 certainly consider it. If the Agency would like
10 us to propose language --

11 MS. OLSON: This is not our proposal
12 so we will not be proposing language on what is
13 meant by technical --

14 MR. ARMSTRONG: Very good.

15 MS. OLSON: -- infeasibility. I
16 think your answer is, no, that you will not be
17 proposing and if I'm incorrect in that statement,
18 please correct me.

19 MR. ARMSTRONG: Well, we will
20 consider it, but as we proposed it, we have not
21 included any criteria on it. It is just from our
22 proposal.

23 MS. OLSON: The other line of
24 questioning I had that is a follow up to

1 Ms. Franzetti is there was some testimony about
2 surface impoundments and floodplains and flood
3 conditions and I think Ms. Barkley was responding
4 to those questions.

5 So the question the Agency has
6 is how does a flood condition in a floodplain
7 affect the stability of a surface impoundment?

8 MS. BARKLEY: I am not a structural
9 engineer, but I do understand, one, that river
10 action does -- as an example at Dynegy Vermilion
11 Plant, river action can -- the energy of the water
12 moving past the impounding walls can eat away and
13 erode at those retaining structures. When you
14 have water rising up on the walls of the
15 impounding walls, you have increased pressure from
16 the outside against the walls that are holding the
17 coal ash back in place.

18 It's especially important if you
19 have fast moving water eating away at the toe
20 which is supposed to be the larger, broader
21 foundation of the impounding walls. I mean, this
22 is exactly what we're seeing at Dynegy Vermilion
23 and why we have concerns about stability at that
24 site.

1 The other part is at -- as an
2 example for the Ameren Edwards Plant when you have
3 floodwaters that are rising and flowing over the
4 levies into the coal ash ponds those are designed
5 to be holding a certain amount of waste behind
6 them, that additional volume of water is, one,
7 increasing the head pressure on the coal ash that
8 is in there and could contribute to an increased
9 leaching of the coal waste through the bottom. It
10 also allows for mixing in a pond that otherwise
11 should be settling the solids out and I believe
12 that Ameren Edwards in their testimony at the
13 public hearing last year -- actually, I think we
14 have a copy of that letter that we submitted into
15 the record they do reference that they need to --
16 they were seeking permission from the Agency to
17 pump flood waters from behind the levy in their
18 ash pits out back into the river because of the
19 stability and safety concerns by having that
20 additional floodwater in their ash ponds -- in
21 that ash pond.

22 MS. FRANZETTI: Can I follow up?

23 MS. OLSON: Sure.

24 MS. FRANZETTI: With regard to all

1 those examples and even some from yesterday and
2 other testimony you've given, I never hear you
3 reference Midwest Generation ash ponds and yet
4 certain of The Environmental Groups have brought a
5 lawsuit pending before the Board specifically
6 against Midwest Gen ash ponds.

7 Can you explain to me why you've
8 singled out the Midwest Generation ash pond when
9 you have all these significant concerns about
10 other ash ponds and you haven't brought any
11 similar case?

12 MS. BARKLEY: No, I can't answer
13 that right now.

14 MS. FRANZETTI: Okay.

15 HEARING OFFICER FOX: Anything
16 further, Ms. Franzetti?

17 MS. FRANZETTI: No.

18 MS. OLSON: I just have two
19 questions to follow up unless -- go ahead.

20 MR. RIESER: I have a question when
21 you're done.

22 MS. OLSON: Okay. So, Ms. Barkley,
23 is it possible that when you have a flood stage or
24 flood condition that the pressure on both sides of

1 the berm would be equalized? So, in other words,
2 the amount of the liquid in the surface
3 impoundment and then the water on the other side
4 of the berm would be equal?

5 MS. BARKLEY: Yes, that's possible.

6 MS. OLSON: And is it possible that
7 you could arm the berms or put in other structural
8 controls to prevent erosion?

9 MS. BARKLEY: Yes, I'm aware that
10 there are structural controls that can be put in
11 place, but I think Dynegy Vermilion is a perfect
12 example. I believe we submitted pictures into the
13 record at the May hearings of structural controls
14 that had been in place for exactly that purpose
15 and have repeatedly failed to the point that the
16 Army Corps of Engineers will no longer permit that
17 as a practice at that site.

18 MS. OLSON: You spoke of water going
19 over the levies into surface impoundments. Can
20 you identify where you're speaking of?

21 MS. BARKLEY: Ameren Edwards and
22 that is why it is in the letter that we submitted
23 as an exhibit in the May hearing that they had --
24 this is a repeated issue for them when the

1 Illinois River floods if there is water that rises
2 back into the Ameren Edwards ash pits.

3 MS. OLSON: It is going over the
4 top?

5 MS. BARKLEY: I'm not sure in their
6 letter if they identify exactly where that water
7 is coming into the ash pit.

8 MS. ANTONIOLLI: Can I just ask a
9 quick question?

10 MS. OLSON: Go ahead.

11 MS. ANTONIOLLI: I know you've
12 referred to several times the Ameren Edwards
13 station. Who is the current owner of Edwards
14 station?

15 MS. BARKLEY: Dynegey.

16 MS. ANTONIOLLI: Thank you.

17 MS. BARKLEY: My pleasure.

18 HEARING OFFICER FOX: Anything
19 further, Ms. Antoniolli?

20 MS. ANTONIOLLI: No.

21 HEARING OFFICER FOX: Mr. Rieser, I
22 haven't forgotten you, but I believe Ms. Olson had
23 another question or two.

24 MS. OLSON: That's it.

1 HEARING OFFICER FOX: She is all
2 set. We can turn to you, Mr. Rieser.

3 MR. RIESER: In response to
4 Ms. Franzetti's question of 8(g) when she asks
5 about the Agency, whether the Agency was
6 authorized -- whether closure by removal would
7 present environmental concerns and she listed
8 several of them, your answer, Mr. Armstrong, was
9 very careful to say that the Agency could consider
10 them as part of a technical feasibility discussion
11 and I was wondering if the Agency could also
12 consider them -- those same types of factors as
13 part of determining what approach would provide
14 greater protection of human health -- greater
15 protection of human health and the environment?

16 MR. ARMSTRONG: Well, to the extent
17 that -- I'm just rereading the question 8(g).

18 MR. RIESER: Mm-hmm.

19 MR. ARMSTRONG: I would view this
20 more as a technical feasibility inquiry. What we
21 had in mind with the greater protection of human
22 health and the environment was with respect to the
23 action at the impoundment and the direct effect of
24 closing the impoundment at the site as opposed to

1 offsite considerations.

2 MR. RIESER: You don't deny there
3 will be offsite environmental consideration
4 associated with the activity of moving millions of
5 pounds of material from the site, this closing
6 impoundment to another site, do you?

7 MR. ARMSTRONG: I don't deny that's
8 a significant endeavor that should be considered.

9 MR. RIESER: You say significant
10 endeavor. Do you deny there are environmental
11 impacts associated with that?

12 MR. ARMSTRONG: No, I don't deny
13 that there are environmental impacts associated
14 with that.

15 MR. RIESER: Is it your position
16 that the Agency shouldn't consider those
17 environmental impacts when it decides what remedy
18 it provides the greater protection?

19 MR. ARMSTRONG: Again, the way I was
20 conceptualizing greater protection of human health
21 and the environment is with respect to the action
22 at the impoundment on site. I can consider that
23 question. I have not thought of it in those terms
24 before. I will view it more as a technical

1 feasibility issue.

2 MR. RIESER: So the answer to the
3 question is you haven't thought about whether the
4 Agency can consider those impacts in evaluating
5 greater impact of -- what remedy presents the
6 greater impact or the Agency should not consider
7 those impacts?

8 MR. ARMSTRONG: No, I have not
9 considered whether -- what -- which of the two
10 categories -- when I considered which of the two
11 categories that we identified, those impacts as
12 fitting into. I had envisioned that as more a
13 technical feasibility category. So I can take
14 your question under consideration and discuss it.

15 MR. RIESER: Thank you.

16 HEARING OFFICER FOX: Anything
17 further, Mr. Rieser?

18 MR. RIESER: No.

19 HEARING OFFICER FOX: Ms. Olson, you
20 have a question?

21 MS. OLSON: I have one. Maybe one
22 follow up. There was a bunch of questions about
23 surface impoundments and floodplains and when ash
24 is removed assuming that the surface impoundment

1 closes by removal from a surface impoundment in a
2 floodplain, must the ash be disposed of in a
3 landfill that is not located in the floodplain?

4 MR. ARMSTRONG: Well, first, I don't
5 think it has to be disposed of in a landfill.
6 There are other disposal methods, beneficial use,
7 other places to put the ash, but your question is
8 if ash is excavated from an impoundment and then
9 deposited in a landfill, should the landfill not
10 be in a floodplain?

11 MS. OLSON: Yes.

12 MS. BARKLEY: Yes.

13 MS. OLSON: So, yes, the landfill
14 should not be in a floodplain?

15 MS. BARKLEY: Yes.

16 MS. OLSON: What if the landfill
17 where the ash is going is existing and permitted
18 under 812 or 813? Is it still your opinion that
19 the ash should not go in that landfill?

20 MS. BARKLEY: Our proposal does not
21 specifically speak to where the removed coal ash
22 should be disposed of as a final disposal place.
23 It would be optimal, in our opinion, if it were
24 not placed in a landfill that were in a

1 floodplain. That would be our recommendation.

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

3 HEARING OFFICER FOX: Thanks,
4 Ms. Olson. Ms. Franzetti, if there are no other
5 follow ups, I think we're ready, including yours
6 of course, to turn to your question number nine.

7 MS. FRANZETTI: Yes. Please provide
8 any precedent you are aware of for the proposed
9 revision to Section 841.400(b).

10 MR. ARMSTRONG: So there is a
11 California regulation on closure standards for
12 units other than landfills, 27 CCR 21.400.
13 Closure requirements for surface impoundments and
14 that regulation in Section (b)(1) requires a
15 mandatory clean closure attempt unless the
16 discharger demonstrates and the RWQCB finds that
17 it is infeasible to attempt clean-closure of the
18 impoundment, then all residual wastes, including
19 sludges, precipitates, settled solids, and liner
20 materials contaminated by wastes, shall be
21 completely removed from the impoundment and
22 discharged to an approved unit and it goes on from
23 there.

24 MS. FRANZETTI: Okay. Give me the

1 cite one more time.

2 MR. ARMSTRONG: 27 CCR 21.400.

3 MS. FRANZETTI: And subparagraph was
4 (b) as in boy?

5 MR. ARMSTRONG: Correct. (b) (1).

6 MS. FRANZETTI: Any other precedent?

7 MR. ARMSTRONG: No.

8 MS. FRANZETTI: Moving -- I'm
9 skipping 10 and 11. I think those questions were
10 basically covered yesterday. Moving to closure
11 prioritization Section 841.405, question 12. For
12 purposes of question 12 given our questions and
13 answers towards the end of the day yesterday
14 regarding groundwater management zones, GMZ's, one
15 I want to clarify that for purpose of question 12
16 please assume there is no approved GMZ.

17 Does the proposed revision to
18 Section 841.405(a) (2) (b) require closure where an
19 exceedance of any groundwater standard at any
20 down-gradient monitor well has not been corrected
21 within a five-year period.

22 MR. ARMSTRONG: Yes.

23 MS. FRANZETTI: Is it correct that
24 this proposed revision does not allow the Agency

1 any discretion to consider the magnitude or
2 severity of the exceedance in question?

3 MR. ARMSTRONG: Yes.

4 MS. FRANZETTI: Skipping 13. I
5 think we covered that yesterday towards the end of
6 the day. Question 14. How does the existence of
7 institutional controls such as deed restrictions
8 prohibiting the use of impacted groundwater affect
9 the application of the proposed revision to
10 Section 841.405(a) (2) (b)?

11 MR. ARMSTRONG: They are not
12 applicable in our proposed revision.

13 MS. FRANZETTI: Why is that so?

14 MR. ARMSTRONG: The intent of our
15 approach to corrective action was to address what
16 The Environmental Groups saw as a weakness of the
17 Agency's proposal specifically to lack of
18 requirements to close unlined CCW impoundments
19 that are causing groundwater contamination even
20 when those impoundments have already stopped
21 receiving CCW or leachate and the Agency has
22 previously testified that with one potential
23 exception identified by The Environmental Groups,
24 Midwest Generation, all groundwater quality

1 exceedances from CCW impoundments are being caused
2 by unlined impoundments. So the purpose of our
3 approach to corrective action here is to try to
4 phase out unlined impoundments that are causing
5 groundwater contamination.

6 MS. FRANZETTI: Now, your reference
7 there to Midwest Gen ponds --

8 MR. ARMSTRONG: Yes.

9 MS. FRANZETTI: -- you have no
10 evidence, do you, that the ponds that have been
11 lined with synthetic liners by Midwest Gen are
12 currently causing exceedances of groundwater
13 standards, isn't that right?

14 MR. ARMSTRONG: I can only give you
15 my personal knowledge on this which is very little
16 because I'm not working directly on that matter.
17 So, personally, I am not aware of whether that is
18 or is not the case.

19 MS. FRANZETTI: Moving on to 15.
20 Please provide any precedent you are aware of for
21 the proposed revision to Section 841.400(b) that
22 requires a release to be corrected within five
23 years of detection or else the source of the
24 release must be shut down or otherwise closed.

1 MR. ARMSTRONG: So as I was saying
2 before our concern here is that unlined
3 impoundments that are causing groundwater
4 contamination --

5 MS. FRANZETTI: I hate to interrupt
6 you, but in the interest of time I know what your
7 concerns are. You've testified to them.

8 MR. ARMSTRONG: Right.

9 MS. FRANZETTI: This question is
10 provide any precedent.

11 MR. ARMSTRONG: Correct. And my --
12 right after that I was going to say that US EPA's
13 proposed standards do allow for corrective action,
14 for example, but it is requiring that unlined
15 impoundments be phased out through design
16 standards. Another example is from the Board's
17 adoption of landfill regulations in 1990.
18 Existing landfills that could not meet minimum
19 safety requirements including a leachate
20 collection system were phased out. In the absence
21 of design standards, our approach here is that if
22 an impoundment is causing groundwater quality
23 exceedances, it is clearly unlined or
24 inadequately -- inadequately lined, those

1 impoundments should be phased out.

2 MS. FRANZETTI: I'm going to move to
3 the financial assurance questions. This relates
4 to Section's 841.600 through 841.610 of The
5 Environmental Group's proposed revisions to the
6 Agency's proposed rules.

7 Question 16. Have there been
8 any incidents in Illinois where the owner or
9 operator of a CCW impoundment has lacked the
10 financial ability to close a CCW impoundment?

11 MR. ARMSTRONG: The Environmental
12 Groups are not aware of any incidents, but it also
13 appears that relatively few ash impoundments have
14 closed at this point.

15 MS. FRANZETTI: Question 17. What
16 state regulations, if any, did The Environmental
17 Groups rely upon to prepare proposed Section's
18 841.600 through .610?

19 MR. ARMSTRONG: Generally, I would
20 reference Part 811(g) and specifically noting --
21 and I can kind of do a group answer to your
22 following questions if that is okay.

23 MS. FRANZETTI: Yes. If it will
24 expedite things, absolutely.

1 MR. ARMSTRONG: 811.706, 811.716 on
2 local government financial tests; 811.717 on local
3 government guarantees; 811.719 on corporate
4 financial test.

5 MS. FRANZETTI: With respect to my
6 questions 18 through 20 which asks for the meaning
7 of those phrases you just made reference to, local
8 government financial tests, local government
9 guarantee and corporate financial test, is the
10 intended meaning of those phrases in your proposal
11 the same as how they are used in the section of
12 811 that you just made reference to?

13 MR. ARMSTRONG: Yes, that would be
14 helpful to include references to those sections.

15 MS. FRANZETTI: Twenty-one. Given
16 the proposed revision by The Environmental Groups
17 to require a presumption in favor of closure by
18 removal under these proposed financial assurance
19 regulations, must an owner or operator base its
20 financial assurance amount upon closure by removal
21 or may it assume closure in place?

22 MR. ARMSTRONG: As proposed in
23 841.605, an owner or operator should base
24 financial assurance upon the activities in an

1 approved closure or post-closure plan. So that
2 can either be closure by removal or closure in
3 place depending what's been approved by the
4 Agency.

5 MS. FRANZETTI: Thank you. I have
6 no further questions.

7 HEARING OFFICER FOX: Ms. Franzetti,
8 obviously -- go ahead, Mr. Rieser. It appears you
9 have a question?

10 MR. RIESER: Yes, just a follow up
11 on that last answer. I'm not as familiar with the
12 811 rules as I am with the federal financial
13 assurance rules, but certainly under the federal
14 financial assurance rules if there is a change in
15 the remedy there has to be a change in the amount
16 of financial assurance, right?

17 MR. ARMSTRONG: Correct.

18 MR. RIESER: So under these
19 circumstances there is a -- I'm sorry. Under the
20 rules you proposed, there is requirements to
21 commit to closure by removal under certain various
22 specific circumstances, correct?

23 MR. ARMSTRONG: Correct.

24 MR. RIESER: So if those

1 circumstances occur whoever is asserting --
2 whoever is using the financial assurance would at
3 that time have to modify that financial assurance
4 in order to cover the additional costs, is that
5 correct?

6 MR. ARMSTRONG: I believe if you
7 modify your closure plan or post-closure care plan
8 and that changes the cost of the plan, then you
9 also would need to modify the amount of financial
10 assurance.

11 MR. RIESER: That might not be
12 something that is apparent at the initial stage
13 when you apply for financial insurance?

14 MR. ARMSTRONG: The modification
15 down the road may not be initially included at the
16 time you apply, correct.

17 MR. RIESER: All right. Thank you.

18 HEARING OFFICER FOX: Nothing
19 further, Mr. Rieser?

20 MR. RIESER: No.

21 HEARING OFFICER FOX: Ms. Franzetti
22 has obviously indicated that she has finished the
23 questions and follow up based on those that she
24 had pre-filed on the 11th. Did anyone wish to

1 raise a follow-up question based on those?

2 Neither seeing nor hearing any, Ms. Olson, we are
3 prepared to turn to the Agency at this point.

4 Can we take up a housekeeping
5 issue, first of all, with the Agency? You had
6 indicated that you wished for the benefit of
7 flexibility, that was very helpful, to hold all of
8 the questions including those that had been
9 pre-filed for the second hearing in May, but not
10 address them until the end, until this point
11 effectively.

12 In looking over the transcript,
13 there were a number of those questions that you
14 had passed over and a number of questions
15 specifically for Ms. Barkley that we had not
16 turned to.

17 Do you have a preference to
18 begin with those or is it your preference to begin
19 with the pre-filed questions specifically for this
20 hearing?

21 MS. OLSON: The Agency's preference
22 would be to begin with the questions filed for
23 this hearing and to take those questions out of
24 order. There are some things that the Agency

1 would like to make sure get covered today and
2 unfortunately we put them at the end of our
3 questions than in the beginning. So we would like
4 to start with question 86 of what was pre-filed.

5 HEARING OFFICER FOX: I'm sorry. I
6 didn't hear the number. Eighty-six?

7 MS. OLSON: Eighty-six if that is
8 okay?

9 HEARING OFFICER FOX: I don't see or
10 hear any objection, so why don't we, with our
11 witnesses obviously sworn in and prepared to
12 answer questions, begin with number 86.
13 Ms. Franzetti, did you have a question?

14 MS. FRANZETTI: Off the record.

15 HEARING OFFICER FOX: Off the
16 record.

17 (Whereupon, a discussion was had
18 off the record.)

19 HEARING OFFICER FOX: Ms. Olson,
20 we're ready to turn to you with your question
21 number 86 pre-filed on the 11th of June which I
22 believe addresses design criteria.

23 MS. OLSON: That's correct. I'd
24 like to ask a precursor question before we get

1 into these and this is based on some of the
2 responses we got yesterday. Are you guys prepared
3 to answer questions regarding design criteria of
4 your proposal?

5 MR. ARMSTRONG: To some extent. I
6 mean, if we're going to be talking about follow-up
7 questions about technical details about liners,
8 I'm not prepared to speak to technical issues. I
9 can talk about how our rule works, but I can't
10 speak to detailed technical questions and if there
11 are technical questions that I'm not able to
12 answer, we are willing to present them to
13 Dr. Soderberg for him to take a crack at.

14 MS. OLSON: Is Ms. Barkley able to
15 answer any of the technical questions?

16 MS. BARKLEY: To some extent. There
17 are -- some of these questions are more
18 appropriately directed towards Dr. Soderberg.

19 MS. OLSON: Is Dr. Soderberg, to
20 your knowledge, qualified to testify on dams and
21 structural components of surface impoundments?

22 MS. BUGEL: Dr. Soderberg is
23 qualified to testify on structural components of
24 surface impoundments.

1 MS. OLSON: Is he licensed in the
2 State of Illinois as a PE?

3 MS. BUGEL: I do not believe so.

4 MS. OLSON: Do you know if his
5 background is in structural engineering?

6 MS. BUGEL: I'm -- first of all, I'm
7 not here as a witness. I don't know if this is
8 creating any difficulty.

9 Second, Dr. Soderberg was here
10 and we went through his background at length. So
11 I think there are two different dynamics here that
12 make this awkward.

13 MS. OLSON: I'm trying to key in
14 Mr. Soderberg's qualification to respond to design
15 criteria because I want to avoid a situation where
16 you guys take these questions and he says "I'm not
17 qualified to answer them. I'm not a structural
18 engineer. I'm not a licensed engineer in the
19 State of Illinois." So I'm just laying these
20 things out in the beginning so we all know how
21 we're proceeding.

22 HEARING OFFICER FOX: Let me try to
23 address this, if I can, as a procedure
24 recognizing, Ms. Olson, it may not completely

1 fulfill the concerns you've raised, Mr. Armstrong
2 and Ms. Barkley have indicated that they are
3 prepared to attempt to answer questions to the
4 best of their expertise and ability although they
5 have recognized that they may not be able to do so
6 completely. They have -- I think it's fair to say
7 committed to submit any questions that they are
8 not prepared to answer to Dr. Soderberg whose
9 qualifications were the subject both of written
10 testimony and significant questioning and
11 cross-examination during the hearing in May during
12 which I believe all of us were present.

13 As a procedural matter, we could
14 request that The Environmental Groups address any
15 questions that they are not prepared to answer
16 here today in writing in post-hearing comments.
17 We can also address a schedule for submitting
18 responses to post-hearing comments so that you can
19 address those if you wish in writing at the
20 conclusion of the hearing.

21 MS. BUGEL: That sounds great.

22 MS. OLSON: Thank you. That's
23 agreeable to us.

24 HEARING OFFICER FOX: Did you wish

1 to go ahead, Ms. Olson?

2 MS. OLSON: Sure. Question 86.

3 Does proposed Section 841.450(a) apply to existing
4 unlined units?

5 MR. ARMSTRONG: Yes.

6 MS. OLSON: If so, please describe
7 the process by which a unit that currently
8 contains CCW would be fit with a composite liner.

9 MR. ARMSTRONG: We're just
10 conferring here. We're reviewing some of these
11 questions and it appears Dr. Soderberg actually
12 did answer some of these questions at the last
13 hearing.

14 MS. OLSON: Can you please provide a
15 citation for the record?

16 MR. ARMSTRONG: Page 211 of the May
17 15, 2014, transcript.

18 MS. BUGEL: Hearing Officer, just to
19 allow me to jump in on this one. He may not have
20 answered all three questions, but the opportunity
21 was there to ask him these questions. He did
22 testify as to design requirements in his pre-filed
23 testimony. The parties were on notice that that
24 was the subject area of his testimony and he was

1 made available to answer these questions and, in
2 fact, answered some of them.

3 MS. OLSON: I would like to respond.

4 HEARING OFFICER FOX: Please go
5 ahead, Ms. Olson.

6 MS. OLSON: I find this amazing
7 because the Agency didn't even have enough time to
8 read through the design criteria to formulate
9 questions for Dr. Soderberg because the
10 counterproposal was filed 12 hours or 16 hours
11 before the hearing was scheduled. Dr. Soderberg's
12 testimony was filed before the counterproposal was
13 filed. So how are we supposed to know
14 Dr. Soderberg's testimony is going to fit The
15 Environmental Groups counterproposal to a T?

16 In fact, on questioning at the
17 last hearing, it was evident that Dr. Soderberg's
18 testimony didn't match the counterproposal and now
19 we're in a position where we're not allowed to ask
20 questions about design criteria that is going to
21 bind the Agency on how these things are built and
22 relined.

23 HEARING OFFICER FOX: Ms. Olson, I
24 want to step in and address your concern that

1 you're not being allowed to ask questions. That
2 is precisely what the Agency is doing right now.
3 The Environmental Groups have made clear that they
4 believe generally at least to some extent that
5 some of these questions have been answered. They
6 certainly may object with the citation for the
7 record if they believe one has been asked and
8 answered.

9 To the extent of the first
10 question, they've provided the citation to the
11 record of the particular day of hearing.
12 Certainly they are free to object in the future to
13 any question on the basis that it has been asked
14 and answered, but we're ready to proceed with your
15 questions and certainly we'll expect The
16 Environmental Groups to respond.

17 MS. OLSON: So looking at page 211.
18 Dr. Soderberg states some earth moving equipment
19 would be necessary to remove the CCW. It is also
20 possible that it could be pumped. The next
21 question I have is where would the CCW go while
22 the surface impoundment is being relined? I'll
23 read question 86.2.

24 If CCW would have to be removed

1 in order to fit an existing unit with a liner,
2 what would be done with the CCW during the
3 construction of the liner.

4 MR. ARMSTRONG: I'm not purporting
5 to speak as an engineer or anything, but I can
6 cite to you the example of the Springfield City
7 Water Light & Power environmental plan that we
8 provided yesterday in which impoundment was going
9 to be dredged, relined with a deposit liner, the
10 material was going to be put in an on site
11 landfill, I believe. So that's one way you could
12 do it. I'm not saying that that's an exhaustive
13 description.

14 MS. OLSON: Under your example would
15 the material have to have been dewatered to be
16 placed in the landfill?

17 MR. ARMSTRONG: I'm just looking at
18 Dr. Soderberg's testimony from last time. I can't
19 give a definitive answer to that right now. That
20 is something we can take back to Dr. Soderberg.

21 MS. OLSON: Question 86.3. How many
22 existing units would be required to construct a
23 new liner?

24 MR. ARMSTRONG: No units would be

1 required to construct a new liner. They would
2 have the option of as under the US EPA's proposed
3 rule either closing or retrofitting a new liner.

4 MS. OLSON: Question 86.4. How much
5 CCW would have to be removed from existing units
6 in order to construct new liners within five years
7 of the effective date of this part?

8 MR. ARMSTRONG: It would really
9 depend on which units were going to be relined and
10 which ones were going to close and that would be
11 determined by site owners.

12 MS. OLSON: So if all the units were
13 to close, would the answer be zero?

14 MR. ARMSTRONG: Yes. Yes. Well, I
15 should clarify. If in response to your question
16 of how much CCW would have to be removed from
17 existing units in order to construct new liners if
18 none are constructing new liners, then zero CCW
19 would be removed, that's correct.

20 MS. OLSON: I'm going to skip 86.5.
21 What is the potential environmental impact for
22 removing CCW from existing units during the
23 construction of a liner?

24 MR. ARMSTRONG: So Dr. Soderberg did

1 answer this question from the last transcript.

2 MS. OLSON: Can you cite --

3 MR. ARMSTRONG: I'm trying to get
4 the citation for you right now. I'm sorry. It
5 might be better to move on to the questions. If
6 we can come back to this one, I can find the
7 citation for you in just a few minutes.

8 MS. OLSON: Question 86.7. Has ELPC
9 conducted an analysis of the economic impacts of
10 requiring that existing CCW surface impoundments
11 that currently house CCW be lined? If so, could
12 ELPC provide that analysis?

13 MR. ARMSTRONG: No, we have not
14 conducted that analysis.

15 MS. OLSON: Question 87. Please
16 explain the following language in the
17 Environmental Groups' proposed Section
18 841.450(a)(2): "The FML component must be
19 installed in direct and uniform contact with the
20 compacted soil component."

21 HEARING OFFICER FOX: For the
22 benefit of the court reporter, Ms. Olson, let me
23 interrupt. FML refers to flexible membrane liner.
24 Sorry for letting me cut in. Mr. Armstrong, that

1 question was to you.

2 MR. ARMSTRONG: I believe that
3 Dr. Soderberg addressed that as well in his
4 testimony and I can get the citation for you.

5 MS. OLSON: Sure. When we asked
6 this question last time, we didn't really -- we
7 didn't have time to really understand the language
8 that you guys proposed because we didn't have time
9 to read it. Having taken it back, we're re-asking
10 this question again because it is going to be
11 setting up all the following questions. So if you
12 can find the citation, that would be great.

13 MR. ARMSTRONG: So I think one way
14 that we would start to address the questions that
15 you have in the sequence after this is to present
16 a design requirement for storage impoundments from
17 another state that might be demonstrative of how
18 some of these things could happen for a storage
19 impound. So we have that here as an exhibit.

20 MS. OLSON: Sure.

21 MR. ARMSTRONG: So we have 25
22 Pennsylvania Code 294.10 storage impoundments
23 design requirements.

24 MS. OLSON: Did you find the

1 citation to Dr. Soderberg's testimony in response
2 to question 87 yet?

3 MR. ARMSTRONG: This is the FML
4 component?

5 MS. OLSON: Yes.

6 MR. ARMSTRONG: So we would move to
7 admit 25 Pennsylvania Code 294.10 as an exhibit.

8 HEARING OFFICER FOX: Fifty-four
9 would be the next number, Mr. Armstrong.
10 Mr. Armstrong has moved to admit that document
11 into the record as Exhibit 54. Is there any
12 objection to the motion?

13 MR. ZAHAROFF: I have 54 as the
14 previous exhibit. I might be wrong.

15 HEARING OFFICER FOX: No, I stand
16 corrected. The table of contents -- I appreciate
17 the correction. I saw a couple of puzzled faces
18 in front of me and that makes sense.
19 Mr. Armstrong, my apologies. It will be Exhibit
20 55 if you move to admit it. I will construe that
21 as a motion to admit as Exhibit 55. Any objection
22 to that motion? Neither seeing nor hearing any,
23 it will be marked and admitted, Mr. Armstrong, as
24 Exhibit 55.

1 (Document marked as Hearing
2 Exhibit No. 55 for
3 identification.)

4 MR. ARMSTRONG: So we are searching
5 for the citation to Dr. Soderberg's testimony.
6 But just to explain what the standard is this is a
7 Pennsylvania regulation that contains design
8 standards for coal ash storage impoundments and
9 according to the regulation the storage
10 impoundment must include four layers. Starting
11 from the bottom the first layer is a sub base,
12 which is the prepared layer of soil or earth and
13 material upon which the remainder of the liner
14 system is constructed. The second is a leachate
15 detection zone, which also collects leachate. The
16 third layer is a composite liner consisting of a
17 synthetic liner over earth and material. The
18 fourth layer is a leachate collection zone, which
19 includes a leachate collection system separated
20 from the coal ash by a, quote, protective cover,
21 end quote. So it seems like the way your
22 questions are going is to inquire as to how a
23 leachate collection system could be incorporated
24 with a composite liner for a coal ash impoundment

1 and this would be our example of how that would be
2 accomplished.

3 MS. OLSON: We need to take a minute
4 to look at this.

5 MR. ARMSTRONG: Certainly.

6 HEARING OFFICER FOX: Ms. Olson, in
7 the meantime, Mr. King has indicated that he has a
8 question. Why don't we turn to him.

9 MR. KING: Andrew, the Pennsylvania,
10 standard, is that applicable to both new and
11 existing sites or existing impoundments?

12 MR. ARMSTRONG: You know, I am not
13 clear as to which sites this applies to exactly as
14 between new and existing. The purpose of
15 including it is to show how a liner system like
16 the type that US EPA is proposing and like the
17 type The Environmental Groups have proposed have
18 worked for a coal ash impoundment. So I'm not
19 presenting it as, you know, this is what they do
20 for X amount. It is just as an example of how
21 design requirements can apply to a coal ash
22 impoundment.

23 MR. KING: Okay.

24 HEARING OFFICER FOX: Anything

1 further, Mr. King?

2 MR. KING: If I could, while those
3 folks are looking at it. One of the questions I
4 guess that I really posed in my mind was we were
5 talking yesterday about the Santee River site
6 brought up and there was -- that was an example of
7 a closure by removal and I believe -- I believe
8 the information was that that process was going to
9 take eight to ten years.

10 MR. ARMSTRONG: So we actually do
11 have the consent decree for that site. So it
12 might be helpful to produce that because that
13 actually had the deadlines for the removal
14 process.

15 MR. KING: Okay.

16 MR. ARMSTRONG: So --

17 MR. KING: I mean, I don't know that
18 we need it. I was just trying to get a reflection
19 of how long that process was taking.

20 MR. ARMSTRONG: So this actually has
21 the dates laid out in there. So we might as well
22 produce this. So this is a document captioned
23 Settlement Agreement -- Settlement Agreement.
24 It's a settlement agreement entered between the

1 Winyah Rivers Foundation, several other
2 environmental groups and the South Carolina Public
3 Service Authority, or Santee Cooper, executed by
4 the various parties and this is Exhibit 56.

5 MS. OLSON: I have not had a chance
6 to look at the document so we request a minute. I
7 have a question.

8 HEARING OFFICER FOX: Ms. Olson,
9 referring to what I assume Mr. Armstrong has moved
10 into the record as the next exhibit, is that
11 correct?

12 MR. ARMSTRONG: (Affirmative nod.)

13 HEARING OFFICER FOX: Please go
14 ahead.

15 MS. OLSON: On page 14, on the
16 bottom, it says generated by CamScanner. What is
17 CamScanner?

18 MR. ARMSTRONG: I do not know. I
19 received this document from counsel for The
20 Environmental Groups.

21 MS. OLSON: I believe there is a
22 lack of foundation authenticity to this document.
23 With those elements noted, I have no objection.

24 HEARING OFFICER FOX: Let the record

1 reflect Mr. Rieser just received a copy of it. We
2 don't want to move on before he's had a chance to
3 look it over.

4 MS. OLSON: I can provide all the
5 information I have about this document.

6 HEARING OFFICER FOX: Mr. Armstrong,
7 let's take just a moment. Mr. Rieser, have you
8 had a chance to look this over to form any
9 question or objection?

10 MR. RIESER: I have. I don't have
11 any objection.

12 HEARING OFFICER FOX: Is there any
13 other objection to admission other than those
14 noted by Ms. Olson? Neither seeing nor hearing,
15 Ms. Olson, your objections are on the record. I
16 will grant the motion, however, and mark and admit
17 it as Exhibit No. 56.

18 (Document marked as Hearing
19 Exhibit No. 56 for
20 identification.)

21 MR. ARMSTRONG: So in response to
22 your question, Mr. King, on page two paragraph one
23 undertakings taken by Santee Cooper, Santee Cooper
24 agrees to implement the following action with

1 respect to Grainger. They will deposit no more
2 coal ash or other coal combustion materials to
3 Grainger. Subpart (b) no later than December
4 31st, 2023, Santee Cooper shall excavate all the
5 coal ash from ponds one and two at Grainger, one
6 foot of underlying soil beneath the ash and
7 additional underlying soil if required by DHEC and
8 shall remove all the excavated ash and soil from
9 the Grainger site to be sold, recycled or placed
10 in a Class 3 or better landfill. Subsection (c)
11 is that they will make good faith efforts to
12 complete the excavation and removal of the coal
13 ash and soil from the Grainger site by December
14 31st, 2000. So what we're looking at here is to
15 finish this --

16 MR. KING: 2020. You said 2000. I
17 think you meant 2020.

18 MR. ARMSTRONG: I definitely meant
19 2020.

20 MR. KING: Okay. So it indicates a
21 multiyear process, right?

22 MS. BARKLEY: Right.

23 MS. OLSON: Correct.

24 MR. KING: It takes a significant

1 amount of time. Now, when you're talking about
2 these design standards, that means if you're going
3 to at an existing site remove that material you're
4 talking about a multiyear process for removing
5 that material and then it has to be placed
6 somewhere and it has to be -- I would assume your
7 thought process would be that you don't just place
8 it on bare ground, but that you'd actually have to
9 place it in an engineered facility that has a
10 liner while you then go back and then install the
11 permanent liner for the original facility.

12 MR. ARMSTRONG: Well, I think you
13 can do a number of things to the coal ash. You
14 don't necessarily have to reserve it to put it
15 back in the impoundment. You can -- as has
16 happened in this case, you can sell it, recycle
17 it, take it to a landfill to dispose of, but I
18 hear your question as being how are you going to
19 get this done in five years necessarily, is that
20 what you're asking?

21 MR. KING: I'm just thinking through
22 the complexity of if you're removing it you have
23 to place it in a lined facility, a temporary lined
24 facility, that has to be an engineered facility

1 and then you have to move all the material there
2 so that you can put the permanent liner back at
3 the original facility and then move that material
4 back there and then you'd have to decommission the
5 temporary facility. I mean, that's the process
6 being envisioned here it seems to me, am I correct
7 in that's what you're thinking?

8 MR. ARMSTRONG: I don't think that
9 you would need to do that in any particular case
10 unless the owner or operator elected to. You
11 could just close the impoundment all together.
12 You could remove the CCW from that impoundment,
13 dispose of it elsewhere, for example, an on site
14 landfill, and then reline the existing impoundment
15 to serve for future use or you could pursue the
16 strategy that you described, but I don't think the
17 strategy you described is necessary in any
18 particular case.

19 MS. BARKLEY: I think there is also
20 an opportunity at some of these sites where there
21 are multiple cells where there might be capacity
22 in one of the cells to remove the coal ash from
23 the cell to be lined to another cell temporarily
24 while you're lining that either to complete

1 filling that half filled or unfilled cell or to
2 move it back into the new lined cell. That's
3 another possibility.

4 MR. KING: That, in your
5 perspective, would be an acceptable way to
6 proceed?

7 MR. ARMSTRONG: I think it depends.

8 MS. BARKLEY: It depends on the site
9 specific conditions. I mean, there are
10 opportunities to use multiple cells, dispose
11 offsite, reuse or just close and develop another
12 facility all together.

13 MR. KING: Thank you.

14 HEARING OFFICER FOX: Thank you,
15 Mr. King.

16 MS. OLSON: Are we back to me?

17 HEARING OFFICER FOX: We are indeed.

18 MS. OLSON: I would like to return
19 to question 87. Please explain what is meant by
20 the phrase the FML component must be installed in
21 direct and uniform contact with the compact soil
22 component.

23 MS. BUGEL: I'm going to jump in
24 here. We were reviewing the transcript from the

1 previous hearing. Dr. Soderberg provided this
2 exact language in his testimony on May 15th at
3 page 239. So there was an opportunity to ask him
4 how this would have worked or explain that
5 language, but he did provide this exact language.
6 In addition, we have been looking -- there had
7 been a question on the record about dewatering, a
8 line of questions -- the Agency asked
9 Dr. Soderberg a line of questions about dewatering
10 in these circumstances on May 15th at page 212 in
11 the transcript and that is beginning at page 212.

12 MS. OLSON: This is a leading
13 question for the rest -- it is a foundational
14 question for the rest of my questions. So if you
15 can please review the transcript and tell me what
16 is meant by the FML component must be installed in
17 direct and uniform contact with the compact soil
18 component? I would appreciate that.

19 MS. BUGEL: My point is that
20 Dr. Soderberg used this exact language so you
21 could have asked this exact question of him as a
22 follow up on that day.

23 MS. OLSON: The Agency did not have
24 enough time to fully evaluate the design criteria

1 that had been proposed. So we did not know to ask
2 this line of questioning to Dr. Soderberg at the
3 last hearing. The question I'm asking you is a
4 foundational question that will be used in all of
5 the proceeding questions. So while it may be in
6 the transcript, an answer would be appreciated for
7 ease of questioning.

8 MR. ARMSTRONG: And I don't want to
9 claim to be an expert about how any sort of liners
10 work, but for purposes of this question moving
11 forward and offering to take back any points that
12 we could clarify to Dr. Soderberg to see if he can
13 offer any additional thoughts on this in our
14 post-hearing comments, I would direct you to the
15 Pennsylvania code that we provided Subsection 1.3
16 which describes the composite layer as a
17 continuous layer of synthetic material over earth
18 and material.

19 So I don't -- as a non-engineer
20 I don't exactly myself know how continuous contact
21 or whatever that is means, but what I'm stating is
22 we have a composite liner here which is a
23 continuous layer of synthetic material over earth
24 and material.

1 MS. OLSON: Can you tell me whether
2 or not that means the two layers must be touching?

3 MR. ARMSTRONG: I don't know. I
4 mean, in this standard it appears they are, but we
5 will take that back to Dr. Soderberg.

6 MS. OLSON: Do you feel comfortable
7 proceeding on this line of questioning that when
8 you wrote in your proposal direct and uniform
9 contact that you meant the liners must be
10 touching?

11 MR. ARMSTRONG: I am not about to
12 answer that question right now.

13 MS. OLSON: Do you feel anyone on
14 the panel is capable of explaining in detail how a
15 leachate collection system works?

16 MR. ARMSTRONG: We cannot explain in
17 detail how a leachate collection system work, no.

18 MS. OLSON: Can you provide details
19 on the design of the drainage layer component of
20 the leachate collection system?

21 MR. ARMSTRONG: No, we cannot
22 provide details about the drainage layer.

23 MS. OLSON: Do you know whether or
24 not a leachate collection system should be

1 designed and function differently depending on the
2 expected amounts of leachate to be collected?

3 MR. ARMSTRONG: I don't know.

4 MS. OLSON: Do you know the
5 anticipated amounts of CCW leachate collected from
6 a CCW surface impoundment?

7 MR. ARMSTRONG: I do not know.

8 MS. OLSON: Do you know the depth of
9 leachate typically found in a CCW surface
10 impoundment?

11 MR. ARMSTRONG: I do not know.

12 MS. OLSON: Does anyone on the panel
13 know?

14 MR. ARMSTRONG: No.

15 MS. BARKLEY: No.

16 MS. OLSON: I'm sorry. Did you guys
17 provide an answer to that question?

18 MS. BARKLEY: I said no.

19 MR. ARMSTRONG: We both said no.

20 MS. OLSON: Question 88.4.

21 HEARING OFFICER FOX: Ms. Olson, I
22 want to interrupt if I can. As I announced --
23 this may not be the most perfect time to recess.
24 As I announced at the top of the day, we do need

1 to recess for the Board to hold its regularly
2 scheduled meeting in this room that is scheduled
3 to begin in approximately 15 minutes.

4 What we would like to do is
5 break at this point and resume here at this point
6 in our proceedings at 12:00 noon. I'm sorry. Let
7 me correct that for the record, please. We'll
8 resume at 12:15 in this room after the conclusion
9 of the Board meeting. Thank you.

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

13 HEARING OFFICER FOX: The time of
14 12:15 having just passed we are back on the
15 record. Having gone back on the record, I want to
16 jump right now and address some procedural issues.
17 I fully acknowledge that what I'm about to say
18 will come as a surprise to you, but I want you to
19 understand that it is not out of any desire purely
20 to be surprising, but to come up with a procedural
21 path that is productive and efficient to wrap up
22 the pre-filed questions on this testimony and
23 bring the hearings on this proposal and the
24 proposed amendments to a productive and

1 expeditious close.

2 Based on our observations so far
3 it seems to be a nearly 100 percent certainty that
4 we don't have a realistic chance of wrapping up
5 all of the Agency's pre-filed questions today.
6 That is not a criticism of the Agency or the
7 number of its questions. I think it's simply a
8 recognition of the fact that there are a number of
9 them that we have not addressed, dozens of them,
10 in fact, and the pace we've established at this
11 point makes it virtually certain that we cannot
12 wrap them up today.

13 Since it seems to be perfectly
14 clear that we need to schedule an additional day
15 of hearing what the Board would like to
16 strenuously suggest to the parties -- the
17 participants rather. I'm sorry. This is not an
18 adversarial adjudicatory proceeding. The
19 participants. That we frankly adjourn after there
20 are any questions that you have to ask about
21 procedural issues, schedule that hearing that
22 seems certain to be necessary for Thursday, July
23 24th in this room beginning at 9:00 a.m. and in
24 the meantime that we would ask The Environmental

1 Groups to prepare written responses to the
2 questions by the Agency that we have not -- which
3 I think we've frankly barely began to touch, the
4 last five or six questions that were asked that we
5 have. That The Environmental Groups place in the
6 record by Thursday, July 17th written responses to
7 those questions and, Ms. Olson, I bet I can
8 anticipate your question.

9 We ask you to do the same for
10 the questions that were directed to Ms. Barkley
11 for the second hearing that we have not yet turned
12 to and the questions that the Board had filed as
13 well for this hearing which I believe there are
14 about 15 and, forgive me, I don't know the exact
15 number. I think that's an accurate estimate.

16 What we would like to do then is
17 resume promptly at 9:00 a.m. on July 24th in this
18 room and begin with the written responses that had
19 been filed on July 17th and proceed through them
20 with any follow ups that the participants wish to
21 have.

22 Does -- does that raise any
23 questions that the participants wish to bring
24 forth?

1 MS. BUGEL: Hearing Officer, we were
2 going to make a proposal as well. Our proposal
3 was going to be we have a list of questions
4 that -- from the Agency's questions that can be
5 best answered by Dr. Soderberg. We were going to
6 recommend pull those out. There are 16 of them.
7 So out of the 93 questions, it is not voluminous.
8 Mr. Armstrong is prepared to answer the remaining
9 70 plus questions. Might I suggest since we're
10 all here today and since this is the fourth day
11 that Ms. Barkley sat through and not answered
12 questions yet of hearings, would there be any
13 opposition to continuing this afternoon with
14 either questions for Ms. Barkley or questions for
15 Mr. Armstrong that he's prepared to answer and we
16 have prepared the list that we think are
17 appropriate for Dr. Soderberg instead of
18 Mr. Armstrong?

19 HEARING OFFICER FOX: Ms. Bugel, we
20 appreciate your willingness to do that. We think
21 in the larger picture that having a full record of
22 written responses would be far more efficient and
23 would allow us to streamline the hearing procedure
24 so we can confidently address them in one

1 additional day.

2 I do recognize implicitly
3 there's a burden on Ms. Barkley to return.
4 Certainly she has been an active participant in
5 each of the hearings she has attended. So it is
6 not our wish unnecessarily to burden you,
7 Ms. Barkley. We do appreciate your expertise and
8 your answers, but the Board's preference is to
9 proceed with written responses to all of the
10 questions on the grounds that would simply be more
11 effective and effectively jumping ahead to the
12 follow-up questions. So I appreciate the spirit
13 of that offer, but our original intention isn't
14 changed.

15 MS. BUGEL: Understood. Thank you.

16 HEARING OFFICER FOX: Ms. Olson, did
17 you have a question?

18 MS. OLSON: I'm just curious is the
19 date set or is it possible to move the date? I'm
20 okay with the answer that it is set. I just want
21 to know if it is absolutely set.

22 HEARING OFFICER FOX: Let me put it
23 this way. It is not irrevocably set in stone, but
24 that would be a strong preference for the Board to

1 proceed on that date because it would allow us to
2 move about as quickly as possible and still meet
3 our requirements to provide public notice under
4 the act.

5 MS. OLSON: We're fine with the
6 24th.

7 HEARING OFFICER FOX: Very good.
8 Ms. Antonioli or Ms. Franzetti, you've been
9 silent. I don't want to overlook you if you've
10 had any questions or concerns you wanted to raise
11 on the record.

12 MS. ANTONIOLLI: I don't.

13 MS. FRANZETTI: I don't either.

14 HEARING OFFICER FOX: Very good.
15 Mr. Rieser, for your benefit, I think I saw you
16 just come into the room.

17 MR. RIESER: Yes, I'm sorry. I
18 understand there is a discussion about having a
19 hearing?

20 HEARING OFFICER FOX: There is. And
21 I have many editors who will correct me if I
22 misstate in reviewing any of the key details.
23 Since it is apparently inevitable that we will
24 require an additional day of hearing, we would

1 propose to do that on Thursday, July 24th
2 beginning in this room at 9:00 a.m. That is a
3 Board meeting day. We will have to interrupt
4 ourselves for a short time as we did today for the
5 regularly scheduled meeting and we have asked and
6 I believe at least tentatively The Environmental
7 Groups have agreed to submit written answers to
8 the questions both filed by the Agency on the 11th
9 and those remaining for Ms. Barkley from the
10 second hearing and those that were filed by the
11 Board on June 11th as well for this hearing. So I
12 mentioned that I reviewed that quickly so if you
13 have any comment or objection we can make that
14 part of the record in the conversation.

15 MR. RIESER: No comment or
16 objection.

17 HEARING OFFICER FOX: Very good.

18 MS. ANTONIOLLI: Did we agree on a
19 date when those written questions would be due?

20 HEARING OFFICER FOX: I had
21 proposed, and if I spoke quickly I apologize, July
22 17th which would allow almost exactly -- it would
23 allow four weeks, nearly a month, and allow a week
24 of review of the written answers before the

1 hearing so that follow-up questions can be
2 considered and even drafted to expedite the
3 discussion of those written answers more. I'm not
4 seeing any more questions or, Ms. Franzetti, is
5 that an indication --

6 MS. FRANZETTI: It is. This may be
7 premature, but I just want to throw out the
8 concept and it can be taken up perhaps in July,
9 not now, but what would be helpful before we have
10 to file post-hearing comments which now obviously
11 are going to be sometime after July 24th is for
12 those who have proposals on the rules, so it's the
13 Agency and The Environmental Groups, that they be
14 prepared shortly after that July 24th hearing to
15 file what is their final proposed revisions
16 because I know right now it feels a bit like it's
17 a moving target that -- that is a criticism, but
18 just, you know, even today there was one where
19 we're withdrawing that and that is at least clear,
20 but also in testimony something that is not clear
21 saying we'll consider that or we may do that.

22 I just don't want to spend time
23 preparing comments on an issue only to find in the
24 simultaneously filed comments by the parties whose

1 proposal I'm commenting on, they've changed it or
2 they've withdrawn it. So I'd like us to get at
3 least people's best and final proposed language
4 and then have enough time after that to file
5 post-hearing comments.

6 HEARING OFFICER FOX: As a general
7 matter, I think you're correct that having a final
8 red line version proposal is helpful, but I also
9 recognize your implicit point that we haven't
10 quite gotten to that point.

11 MS. FRANZETTI: It will give people
12 time to think about it.

13 HEARING OFFICER FOX: You've given
14 them as much as 60 days, but we can certainly
15 revisit that and it's in the nature of a request
16 that I suspect has been heard.

17 MS. OLSON: Just to kind of build on
18 what Ms. Franzetti was saying that if in response
19 to the questions that were pre-filed changes were
20 to be made or proposed by The Environmental
21 Groups, I think it would be very, very helpful if
22 we had a draft that was consolidated so we weren't
23 trying to piece together different parts of the
24 proposal to try to get an understanding of what

1 exactly we're talking about. So I think it would
2 be helpful for everybody if there is going to be
3 changes or substantial changes that we see that
4 language in time to evaluate it on the 24th of
5 July.

6 MR. ARMSTRONG: We will provide an
7 up-to-date, consolidated draft of everything we've
8 discussed today with the July 17th answers.

9 MS. OLSON: Thank you.

10 HEARING OFFICER FOX: Mr. Armstrong,
11 thank you for that flexibility. That would be
12 very helpful. Any further questions? What I will
13 do is, again, acknowledge that this has come as a
14 surprise and I appreciate your flexibility and
15 your questions in clarifying all of this.

16 I will follow up by issuing a
17 Hearing Officer order that does confirm the time,
18 date and location of the hearing that does address
19 the deadline to pre-file the written answers,
20 again, to the questions that were pre-filed by the
21 Agency. The questions for you, Ms. Barkley, that
22 remain from the second hearing here in Chicago and
23 also the Board's questions and I think there were
24 approximately 15 in number that were filed on June

1 11th for this hearing. Have I overlooked any of
2 the issues -- I don't think I have, but I want to
3 confirm that I have not overlooked any issue that
4 has not yet been resolved?

5 MR. RIESER: And I just want to
6 confirm the purpose of the hearing is to finish up
7 what we're doing, it is not for additional
8 testimony?

9 HEARING OFFICER FOX: That's
10 correct. Mr. Rieser, that is a very good point.
11 My full intent is to wrap up the questions that
12 are in the record based on the proposal that was
13 filed by The Environmental Groups and not to
14 introduce additional testimony on the part of any
15 of the participants. Mr. Armstrong?

16 MR. RIESER: Thank you.

17 MR. ARMSTRONG: Just one last
18 question about the questions that we'll be
19 answering. There was another subset of questions
20 from the last hearing, questions that were asked
21 of Dr. Soderberg or directed to Dr. Soderberg and
22 then reserved for this hearing.

23 HEARING OFFICER FOX: I -- I'm
24 sorry, Mr. Armstrong.

1 MR. ARMSTRONG: We just wanted to
2 confirm whether we'd be answering those as well,
3 if the Agency would like us to?

4 HEARING OFFICER FOX: That's a
5 question for you, Ms. Olson. My review of the
6 transcript from May 15th shows that there were
7 questions number 24 to 28, 31 and 33 to 38, but I
8 think you determined that you wanted to skip past
9 for the purposes of concluding that second
10 hearing.

11 Have those been answered to your
12 satisfaction or are you seeking written answers to
13 those as well?

14 MS. OLSON: Unfortunately, I can't
15 recall whether or not those questions -- I can't
16 recall what those questions are.

17 HEARING OFFICER FOX: It's not
18 helpful, I know, simply to recite numbers that
19 were dealt with more than a month ago. So I don't
20 have anything else to share with you.

21 MS. OLSON: Sure. I'm willing if
22 you guys feel those have been answered, that's
23 fine. But if there is a question that hasn't been
24 answered, if you can address it, that would be

1 appreciated.

2 MR. ARMSTRONG: We'll review them.

3 MS. OLSON: Thank you.

4 HEARING OFFICER FOX: As I said, I
5 will issue a Hearing Officer order that confirms
6 the time, the date and the location that confirms
7 the date to pre-file questions. The deadline of
8 July 17th to do that and if there is nothing
9 further -- Ms. Olson, did I see you indicated you
10 had a question?

11 MS. OLSON: (Negative nod.)

12 HEARING OFFICER FOX: No. But
13 Mr. Rieser does.

14 MR. RIESER: I'm sorry. One of -- I
15 think part of -- you know, it's been sort of a
16 rolling process in terms of how information has
17 come in and I think it would be useful to the
18 extent that -- and I guess it's hard. I was going
19 to say it would be useful to the extent that
20 people who are answering questions are going to be
21 providing exhibits to have those exhibits in
22 advance or to let people know what they are so
23 some of the discussion here has to do with getting
24 things -- getting exhibits.

1 Now, it is also to the point if
2 there is going to be more questions, there may be
3 more exhibits and one couldn't do that, but if
4 there is some way to have the exhibits pre-filed
5 as well or at least a list or something so that we
6 can complete our work that would be useful, too.

7 HEARING OFFICER FOX: Of course
8 hearings always roll in their own fashion as you
9 have suggested, but what I hear you requesting is
10 to the extent there are exhibits either in the
11 nature of documents, maps or other items in
12 support of written answers that your estimation is
13 it would be appropriate to attach it perhaps or
14 add it as an appendix to the written answers?

15 MR. RIESER: Correct.

16 HEARING OFFICER FOX: As a general
17 principle, I certainly agree with you.

18 MR. RIESER: Thank you.

19 HEARING OFFICER FOX: I don't see
20 any further questions. Again, I certainly
21 acknowledge that I have surprised you with this
22 development. I appreciate your willingness to
23 consider these issues and revisions to the
24 calendar.

1 If there are no further
2 questions on our procedure here, we can adjourn
3 with the admonition to look for a Hearing Officer
4 order and to see you then on July 24th. Nothing
5 further apparently. Thanks to all of you.

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

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

13 Witness my official signature in and for
14 Cook County, Illinois, on this 1st day of
15 July, A.D., 2014.
16
17
18

19
20 
21 STEVEN BRICKEY, CSR
22 8 West Monroe Street
23 Suite 2007
24 Chicago, Illinois 60603
Phone: (312) 419-9292
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A				
A.D 94:15	57:14,17,19	22:18 23:2	36:10	90:22,24
a.m 1:9 4:18	59:24 64:14	24:21 25:2,12	alternative	answering 89:19
80:23 81:17	79:16 82:24	25:18,20 27:12	11:20,23 12:20	90:2 91:20
85:2	88:18 90:24	28:18 29:4,9	13:1,5,9 14:11	answers 45:13
ability 32:18	addressed 64:3	29:14,18 30:15	amazing 59:6	83:8 85:7,24
49:10 57:4	80:9	31:1,6,9,24	amendments	86:3 88:8,19
able 21:7 55:11	addresses 54:22	33:7 34:7,9	4:14 79:24	90:12 92:12,14
55:14 57:5	adequately 10:1	35:5 36:16	Ameren 36:2,12	anticipate 81:8
absence 48:20	17:3,10,18,23	40:5,5,9,11	38:21 39:2,12	anticipated 78:5
absolutely 49:24	18:2,22 19:4	41:16 42:4,6	amount 28:2	Antoniolli 2:20
83:21	adjourn 80:19	45:24 46:21	36:5 38:2	39:8,11,16,19
acceptable 74:5	93:2	51:4 53:3,5,24	50:20 51:15	39:20 84:8,12
accommodate	adjourned 7:19	59:7,21 60:2	52:9 67:20	85:18
24:15	adjudicatory	75:8,23 80:6	72:1	anyways 32:13
accomplished	80:18	81:2 85:8	amounts 22:21	apologies 65:19
67:2	Adm 1:5 4:6	86:13 88:21	24:23 78:2,5	apologize 85:21
account 14:15	14:7 15:13	90:3	AMY 2:7,20	apparent 52:12
15:18 23:3	Administrator	Agency's 4:14	analysis 29:10	apparently
33:2	5:18	9:5 11:23	33:20,21 63:9	84:23 93:5
accurate 81:15	admission 70:13	46:17 49:6	63:12,14	appear 29:2
acknowledge	admit 6:4,9,21	53:21 80:5	Andrew 2:11	appears 49:13
79:17 88:13	7:5,7 65:7,10	82:4	8:5 67:9	51:8 58:11
92:21	65:20,21 70:16	ago 90:19	announced	77:4 94:10
act 84:4	admitted 6:13	agree 85:18	78:22,24	appendix 92:14
action 5:20	7:11 65:23	92:17	announcement	applicable 12:21
15:14 17:21	admonition 93:3	agreeable 57:23	4:10,15	13:7,15,23
27:5,13 33:18	adopting 10:6	agreed 85:7	answer 18:7,24	46:12 67:10
33:22 35:10,11	adoption 9:9	agreement	19:2,8,9 21:16	application 5:12
40:23 41:21	48:17	68:23,23,24	24:20 28:9	46:9
46:15 47:3	advance 91:22	agrees 70:24	32:5,8 34:16	applied 33:21
48:13 70:24	adversarial	ahead 24:18	37:12 40:8	applies 67:13
active 83:4	80:18	37:19 39:10	42:2 49:21	apply 52:13,16
activities 50:24	adverse 22:20	51:8 58:1 59:5	51:11 54:12	58:3 67:21
activity 41:4	24:22	69:14 83:11	55:3,12,15	appreciate 7:20
add 92:14	affect 35:7 46:8	ALISA 2:2	56:17 57:3,8	65:16 75:18
addition 75:6	Affirmative	alleged 12:7	57:15 58:12	82:20 83:7,12
additional 23:6	69:12	allow 10:13 20:8	59:1 61:19	88:14 92:22
36:6,20 52:4	afforded 21:22	45:24 48:13	62:13 63:1	appreciated
71:7 76:13	22:5	58:19 82:23	76:6 77:12	76:6 91:1
80:14 83:1	aforesaid 94:8	84:1 85:22,23	78:17 82:8,15	approach 40:13
84:24 89:7,14	afternoon 82:13	85:23	83:20	46:15 47:3
address 5:8 12:7	Agency 2:5	allowed 59:19	answered 8:15	48:21
33:24 46:15	11:14,15 12:12	60:1	11:19 58:20	appropriate
53:10 56:23	12:13 15:5,8	allowing 14:21	59:2 60:5,8,14	21:24 30:21
	15:21 16:20	allows 20:11	82:5,11 90:11	82:17 92:13

appropriately 55:18 approved 11:16 44:22 45:16 51:1,3 approves 11:15 approximately 4:18 79:3 88:24 ARCADIS 3:1 area 58:24 arm 38:7 Armstrong 2:11 5:2,3,9,11 6:2 6:3,7,12,17,23 7:1,4,10,16 8:5 8:12,13 9:3,12 10:3,23 11:12 12:10 13:19 14:2 15:12 16:5,14,21 22:3 23:1,11 23:18 24:4,18 25:1,16 26:5 26:11,15 27:8 27:15,21 28:8 28:15,22 29:8 29:16 30:6,12 30:19 31:8,12 31:17 32:3,5,9 32:21 33:9,14 34:7,14,19 40:8,16,19 41:7,12,19 42:8 43:4 44:10 45:2,5,7 45:22 46:3,11 46:14 47:8,14 48:1,8,11 49:11,19 50:1 50:13,22 51:17 51:23 52:6,14 55:5 57:1 58:5 58:9,16 61:4 61:17,24 62:8	62:14,24 63:3 63:13,24 64:2 64:13,21 65:3 65:6,9,10,19 65:23 66:4 67:5,12 68:10 68:16,20 69:9 69:12,18 70:6 70:21 71:18 72:12 73:8 74:7 76:8 77:3 77:11,16,21 78:3,7,11,14 78:19 82:8,15 82:18 88:6,10 89:15,17,24 90:1 91:2 Army 38:16 arrived 4:2 ash 5:17 10:17 11:2 17:12,13 17:14,19,21,23 18:2,8,8,14 19:12 20:6,10 21:6,7,7,17,17 21:19 23:8,17 23:23 24:2,9 35:17 36:4,7 36:18,20,21 37:3,6,8,10 39:2,7 42:23 43:2,7,8,17,19 43:21 49:13 66:8,20,24 67:18,21 71:2 71:5,6,8,13 72:13 73:22 aside 4:9 asked 60:7,13 64:5 75:8,21 81:4 85:5 89:20 asking 10:6 17:13 72:20 76:3	asks 40:4 50:6 asserting 52:1 assessment 26:22 assessments 23:3 associated 30:3 41:4,11,13 assume 45:16 50:21 69:9 72:6 assuming 42:24 assumption 11:10 assurance 10:7 11:4 49:3 50:18,20,24 51:13,14,16 52:2,3,10 attach 92:13 attained 26:10 attainment 27:6 attempt 44:15 44:17 57:3 attended 83:5 ATTORNEY 3:8 authenticity 69:22 Authority 69:3 authorized 22:18 40:6 available 59:1 Avenue 2:8 avoid 56:15 aware 18:13 38:9 44:8 47:17,20 49:12 awkward 56:12 B b 2:11 16:1 17:8 24:5 44:14 45:4,5 71:3 back 8:3 17:8,20	21:14 25:9 35:17 36:18 39:2 61:20 63:6 64:9 72:10,15 73:2 73:4 74:2,16 76:11 77:5 79:14,15 background 56:5,10 bare 72:8 barely 81:3 Barkley 8:5,12 17:7 18:3,13 18:19 19:2,11 19:17,19,24 20:19 21:3,19 35:3,8 37:12 37:22 38:5,9 38:21 39:5,15 39:17 43:12,15 43:20 53:15 55:14,16 57:2 71:22 73:19 74:8 78:15,18 81:10 82:11,14 83:3,7 85:9 88:21 base 50:19,23 66:11 based 11:9 29:22 52:23 53:1 55:1 80:2 89:12 basically 45:10 basing 23:22 basis 4:13 10:9 11:3 30:21 60:13 began 81:3 beginning 4:18 54:3 56:20 75:11 80:23 85:2 begins 9:8	believe 10:12 11:18 23:1 25:1,16 28:1 30:14 31:8 33:20 36:11 38:12 39:22 52:6 54:22 56:3 57:12 60:4,7 61:11 64:2 68:7,7 69:21 81:13 85:6 believed 12:18 beneath 71:6 beneficial 34:6 43:6 benefit 33:19,20 53:6 63:22 84:15 benzene 28:3 berm 38:1,4 berms 38:7 best 57:4 82:5 87:3 bet 81:7 better 25:20 33:24 63:5 71:10 bind 59:21 bit 20:4 86:16 Board 1:1,8 4:16 4:23 8:11 10:6 37:5 79:1,9 80:15 81:12 83:24 85:3,11 Board's 48:16 83:8 88:23 bottom 36:9 66:11 69:16 Box 2:9 boy 45:4 breach 19:14 break 79:5,10 Brickey 1:8 3:14 94:5,20
--	---	--	--	---

briefly 5:8	case 5:13 28:1	certainly 4:20	44:17	35:17 36:4,7,9
bring 79:23	37:11 47:18	23:2 34:9	clear 17:10 60:3	43:21 66:8,20
81:23	72:16 73:9,18	51:13 60:6,12	67:13 80:14	66:24 67:18,21
broad 35:20	cases 27:23	60:15 67:5	86:19,20	71:2,2,5,12
brought 18:17	categories 42:10	83:4 87:14	clearly 48:23	72:13 73:22
37:4,10 68:6	42:11	92:17,20	close 11:1 19:12	COBB 2:8
Bugel 2:12	categorized	certainty 10:10	19:16,22 20:6	code 1:5 4:6
21:16 55:22	23:23	29:21 80:3	20:15,20 21:2	14:7 15:13
56:3,6 57:21	category 42:13	Certified 94:5	21:4,10,14	64:22 65:7
58:18 74:23	cause 1:7 11:20	certify 94:6	46:18 49:10	76:15
75:19 82:1,19	11:24 12:20	chance 69:5	62:10,13 73:11	collected 78:2,5
83:15	13:5,9 14:12	70:2,8 80:4	74:11 80:1	collection 48:20
build 87:17	caused 22:20	change 23:16,19	closed 10:11	66:18,19,23
built 59:21	24:22 47:1	23:24 51:14,15	18:1,3,10,15	77:15,17,20,24
bunch 42:22	causes 12:4,18	changed 83:14	27:19,22 28:4	collects 66:15
burden 83:3,6	13:1,3,6,6,8,14	87:1	28:7 47:24	Columbia 5:15
BURKE 2:3	13:22 14:16,18	changes 52:8	49:14	combustion 1:3
	14:20	87:19 88:3,3	closes 43:1	4:4 5:22 15:4
C	causing 46:19	characterizati...	closing 40:24	71:2
c 2:1 17:2 23:9	47:4,12 48:3	32:19	41:5 62:3	come 63:6 79:18
24:5 30:16	48:22	characterizes	closure 9:16,23	79:20 84:16
31:11 71:10	CCR 23:7 44:12	24:2	10:4,8,9,14,21	88:13 91:17
calendar 92:24	45:2	chemical 12:17	10:24 11:7,8	comfortable
California 44:11	CCW 1:3 4:4	13:13,21	11:13,15,16	16:19 77:6
called 1:7 8:6	10:1,7,11,17	Chicago 1:9	15:3 16:3,4,7	coming 39:7
CamScanner	11:7,10 17:2	2:14,18,21 3:6	16:11,12,15,16	commencing 1:9
69:16,17	17:11 18:22	3:10 88:22	17:4,14 18:23	comment 28:16
candidly 4:16	19:3 22:21,23	94:22	19:5 21:22,23	85:13,15
capability 31:18	24:6,16,23	circumstances	22:1,5,5,6,8,18	commenting
31:20,22,23	46:18,21 47:1	17:4 51:19,22	22:23 28:4	87:1
32:17,20 33:7	49:9,10 58:8	52:1 75:10	33:17,22 40:6	comments 9:15
33:10,14	60:19,21,24	citation 58:15	44:11,13,15	11:22 12:11
capable 32:24	61:2 62:5,16	60:6,10 63:4,7	45:10,18 50:17	57:16,18 76:14
33:17 77:14	62:18,22 63:10	64:4,12 65:1	50:20,21 51:1	86:10,23,24
capacity 73:21	63:11 73:12	66:5	51:2,2,21 52:7	87:5
capped 18:11	78:5,6,9	cite 45:1 61:6	68:7	commit 51:21
captioned 68:22	cell 73:23,23	63:2	closures 15:1	committed 57:7
care 9:17,23	74:1,2	City 6:18 61:6	coal 1:3 4:4 5:17	common 27:21
10:4 11:9,13	cells 73:21,22	claim 76:9	5:22 11:2 15:4	community
11:16 52:7	74:10	clarify 45:15	17:12,13,14,18	22:21
careful 40:9	CENTER 2:11	62:15 76:12	17:21,23 18:14	compact 74:21
Carolina 69:2	central 10:5	clarifying 88:15	19:12 20:5,10	75:17
CARRIE 2:4	certain 36:5	Class 71:10	21:6,7,7,17,17	compacted
carried 14:11	37:4 51:21	clean 44:15	21:19 23:8,17	63:20
carrying 31:23	80:11,22	clean-closure	23:23 24:2,9	compare 16:10

16:15 complete 7:2 71:12 73:24 92:6 94:9 completely 44:21 56:24 57:6 complexity 72:22 compliance 6:19 8:24 9:7,8,14 14:8 comply 8:22 27:1 component 63:18,20 65:4 74:20,22 75:16 75:18 77:19 components 55:21,23 composite 58:8 66:16,24 76:16 76:22 concentration 12:17 concentrations 13:13,21 concept 86:8 conceptualizing 41:20 concern 48:2 59:24 concerns 22:19 35:23 36:19 37:9 40:7 48:7 57:1 84:10 concluding 90:9 conclusion 57:20 79:8 condition 35:6 37:24 conditions 24:10 35:3 74:9 conducted 14:5 63:9,14	conferring 58:10 confidently 82:24 confirm 14:9 88:17 89:3,6 90:2 confirmation 14:3 confirms 91:5,6 conflict 12:7 conflicts 11:24 confused 20:24 consecutive 6:6 consent 5:12,15 6:9 68:11 consider 10:6 21:24 24:22 29:19 31:9 34:9,20 40:9 40:12 41:16,22 42:4,6 46:1 86:21 92:23 consideration 13:11 23:15 29:22 31:13,19 33:2 41:3 42:14 considerations 15:17 23:3 24:14 41:1 considered 10:15 13:15,22 25:2 29:10 31:24 32:11 33:7 41:8 42:9 42:10 86:2 considering 30:1 31:6,7 32:9,13 consisting 66:16 consolidated 87:22 88:7 constituent 12:3 12:17,22 constituents	13:14,21 20:9 21:13 26:22 construct 61:22 62:1,6,17 constructed 66:14 constructing 62:18 construction 61:3 62:23 construe 65:20 contact 20:8 21:6,7,17,19 63:19 74:21 75:17 76:20 77:9 containment 30:4 contains 58:8 66:7 contaminated 44:20 contamination 46:19 47:5 48:4 contents 6:20 7:8 65:16 continuing 82:13 continuous 76:17,20,23 contribute 17:22 36:8 control 1:1,8 26:19 controls 38:8,10 38:13 46:7 conversation 85:14 Cook 94:3,14 Cooper 69:3 70:23,23 71:4 copy 36:14 70:1 corporate 50:3,9 Corps 38:16	correct 9:12 16:21 23:21 25:12 27:17 29:3 34:18 45:5,23 48:11 51:17,22,23 52:5,16 54:23 62:19 69:11 71:23 73:6 79:7 84:21 87:7 89:10 92:15 94:9 corrected 45:20 47:22 65:16 correction 65:17 corrective 15:14 27:5,13 33:18 33:22 46:15 47:3 48:13 cost 22:1 33:19 33:20 52:8 costs 52:4 counsel 69:19 counterpropo... 59:10,12,15,18 County 94:3,14 couple 65:17 course 4:21 27:22 44:6 92:7 court 5:14 63:22 cover 52:4 66:20 covered 45:10 46:5 54:1 crack 55:13 creates 14:16 creating 56:8 criteria 15:8,21 16:6 34:21 54:22 55:3 56:15 59:8,20 75:24 criticism 80:6 86:17 cross-examina...	57:11 CSR 1:8 3:14,14 94:20,23 curious 83:18 current 18:9 39:13 currently 47:12 58:7 63:11 cut 63:24 D d 5:21 12:2,9,16 12:23 18:22 23:10 24:7 damage 21:11 dams 55:20 date 9:18,24 10:22 62:7 83:19,19 84:1 85:19 88:18 91:6,7 dates 68:21 DAVID 2:16 day 1:9 4:3 45:13 46:6 60:11 75:22 78:24 80:14 82:10 83:1 84:24 85:3 94:14 days 87:14 deadline 88:19 91:7 deadlines 68:13 dealt 90:19 DEANNA 2:4 December 5:18 71:3,13 decides 41:17 decision 16:19 decommission 73:4 decree 5:12,15 5:17 6:9 68:11 deed 46:7
---	---	--	--	---

deems 23:17	77:18,22 84:22	44:16	draft 87:22 88:7	efforts 7:21
define 30:21	detected 26:22	discretion 46:1	drafted 86:2	71:11
definitely 71:18	detection 14:9	discuss 42:14	drainage 77:19	eight 15:1 68:9
definitive 61:19	47:23 66:15	discussed 88:8	77:22	eighth 20:17
degree 29:21	determination	discussion 40:10	dredged 61:9	Eighty-six 54:6
delayed 9:6	25:3	54:17 84:18	Drive 2:13,17,20	54:7
demonstrates	determine 14:14	86:3 91:23	3:2	either 21:6,8
44:16	15:21 22:18	disposal 10:15	due 12:4,18	51:2 62:3
demonstration	25:13,18 28:19	10:19 22:23	13:14,21 85:19	73:24 82:14
12:20 13:5	29:5	24:24 28:12	duly 8:6	84:13 92:10
14:12	determined 16:4	43:6,22	DUNAWAY 2:6	elected 73:10
demonstrations	62:11 90:8	dispose 72:17	dynamics 56:11	elements 69:23
11:20,24	determines 15:5	73:13 74:10	Dynegy 35:10	elevated 12:3,18
demonstrative	determining	disposed 10:12	35:22 38:11	eliminate 26:20
64:17	13:15,22 15:9	28:13 43:2,5	39:15	ELPC 63:8,12
deny 41:2,7,10	15:18 29:14	43:22		endeavor 41:8
41:12	30:16 32:1	distance 19:23	E	41:10
depend 62:9	40:13	distributed 5:24	e 2:1,1,6,12 19:3	energy 35:11
depending 51:3	develop 74:11	distribution	earth 60:18	engineer 35:9
78:1	development	6:24 7:1	66:12,17 76:17	56:18,18 61:5
depends 74:7,8	24:8 92:22	District 5:14,14	76:23	engineered 72:9
deposeth 8:7	dewatered 61:15	docket 4:4	ease 76:7	72:24
deposit 61:9	dewatering 75:7	docketed 4:7	East 2:8,13	engineering
71:1	75:9	document 5:12	eat 35:12	56:5
deposited 43:9	DEXTER 2:13	6:2,14 7:3,7,13	eating 35:19	Engineers 38:16
depth 78:8	DHEC 71:7	65:10 66:1	economic 31:20	enter 5:4
describe 58:6	difference 33:10	68:22 69:6,19	31:23 32:17,20	entered 6:19
described 6:10	33:13	69:22 70:5,18	33:6,10,11,14	68:24
73:16,17	different 56:11	documents 5:3	33:18 63:9	entitled 1:7 4:4
describes 76:16	87:23	7:12 92:11	editors 84:21	7:8
description	differently 78:1	doing 60:2 89:7	Edwards 36:2	entity's 32:18
61:13	difficulty 14:22	down-gradient	36:12 38:21	environment
design 48:15,21	56:8	45:20	39:2,12,13	15:7,11,16,20
54:22 55:3	direct 20:7	dozens 80:9	effect 40:23	15:24 16:3
56:14 58:22	40:23 63:19	Dr 12:12 55:13	effective 9:18,24	17:6 19:7
59:8,20 64:16	74:21 75:17	55:18,19,22	10:22 62:7	20:10,13 21:12
64:23 66:7	76:14 77:8	56:9 57:8	83:11	24:11,13 25:15
67:21 72:2	directed 55:18	58:11 59:9,11	effectively 13:4	25:19,22 26:2
75:24 77:19	81:10 89:21	59:14,17 60:18	53:11 83:11	26:19,23,24
designed 36:4	direction 94:12	61:18,20 62:24	effectiveness	27:14,17 28:21
78:1	directly 47:16	64:3 65:1 66:5	29:19	29:1,6,11,15
desire 79:19	discharge 19:14	75:1,9,20 76:2	effects 22:20	30:3,18,23
detail 77:14,17	discharged	76:12 77:5	24:22	31:4 32:2,11
detailed 55:10	44:22	82:5,17 89:21	efficient 79:21	33:5,24 34:5
details 55:7	discharger	89:21	82:22	40:15,22 41:21

environmental 2:5,11 4:13 6:19 8:2 9:3 11:6,21 12:5 12:10 22:19 29:24 37:4 40:7 41:3,10 41:13,17 46:16 46:23 49:5,11 49:16 50:16 57:14 59:15 60:3,16 61:7 62:21 63:17 67:17 69:2,20 80:24 81:5 85:6 86:13 87:20 89:13	exact 75:2,5,20 75:21 81:14 exactly 31:1 35:22 38:14 39:6 67:13 76:20 85:22 88:1 example 14:19 14:20 17:10 18:18 28:3 29:18,23 30:13 35:10 36:2 38:12 48:14,16 61:6,14 67:1 67:20 68:6 73:13 examples 18:1,7 37:1 excavate 71:4 excavated 43:8 71:8 excavation 30:3 71:12 exceedance 12:4 12:21 14:6,15 45:19 46:2 exceedances 14:10 47:1,12 48:23 exception 16:22 46:23 exchange 12:11 executed 69:3 exhaust 7:11 exhaustive 61:12 exhibit 6:4,10,13 6:15,20,22 7:5 7:7,11,14 38:23 64:19 65:7,11,14,19 65:21,24 66:2 69:4,10 70:17 70:19 exhibits 5:5	91:21,21,24 92:3,4,10 exist 17:12 existence 9:19 46:6 existing 9:7 43:17 48:18 58:3 61:1,22 62:5,17,22 63:10 67:11,11 67:14 72:3 73:14 expect 16:7 60:15 expected 16:11 78:2 expedite 49:24 86:2 expeditious 80:1 expensive 33:1 expert 76:9 expertise 57:4 83:7 explain 9:18 33:12 37:7 63:16 66:6 74:19 75:4 77:16 explaining 77:14 explicitly 25:21 exposure 29:24 extent 26:21 40:16 55:5,16 60:4,9 91:18 91:19 92:10	59:2,16 80:8 80:10 factors 25:17,20 29:23 30:15 31:9 40:12 failed 38:15 fair 27:3 32:19 57:6 faith 2:12 71:11 familiar 51:11 far 33:1 80:2 82:22 fashion 92:8 fast 35:19 favor 18:23 23:14 50:17 feasibility 23:4 24:13 25:3 31:13 32:13,16 32:23 40:10,20 42:1,13 feasible 15:6 federal 5:19 23:7,16 24:1 51:12,13 feel 77:6,13 90:22 feels 86:16 Fifty-four 65:8 Fifty-three 6:5 file 86:10,15 87:4 filed 53:22 59:10 59:12,13 81:12 81:19 85:8,10 86:24 88:24 89:13 filled 74:1 filling 74:1 final 5:20 23:17 43:22 86:15 87:3,7 financial 10:7 11:3 49:3,10 50:2,4,8,9,18	50:20,24 51:12 51:14,16 52:2 52:3,9,13 find 25:20 59:6 63:6 64:12,24 86:23 findings 20:5 finds 44:16 fine 28:14 84:5 90:23 finish 22:15 71:15 89:6 finished 52:22 first 5:10,11 8:6 10:6,24 14:4 43:4 53:5 56:6 60:9 66:11 fit 58:8 59:14 61:1 fitting 42:12 five 11:5 47:22 62:6 72:19 81:4 five-year 45:21 flexibility 53:7 88:11,14 flexible 24:14 63:23 flood 17:19 19:14 35:2,6 36:17 37:23,24 flooding 17:17 floodplain 17:9 17:12,15 19:1 19:8,10 20:2,3 20:7,11,22 21:2,8,9,15 35:6 43:2,3,10 43:14 44:1 floodplains 35:2 42:23 floods 39:1 floodwater 36:20 floodwaters
--	---	---	---	--

36:3 Floor 3:10 flowing 36:3 FML 63:18,23 65:3 74:20 75:16 folks 68:3 follow 22:11 31:5 34:24 36:22 37:19 42:22 44:5 51:10 52:23 75:22 81:20 88:16 follow-up 53:1 55:6 83:12 86:1 following 26:17 29:23 49:22 63:16 64:11 70:24 79:11 follows 8:7 foot 71:6 foregoing 94:8 forgive 81:14 forgotten 39:22 form 23:17 33:17 70:8 formulate 59:8 forth 81:24 forward 30:11 76:11 found 78:9 foundation 35:21 69:1,22 foundational 75:13 76:4 four 10:16 27:9 66:10 85:23 fourth 66:18 82:10 Fox 1:7 2:2 4:1,9 5:6,23 6:5,8,23 7:6,17 8:8,11 22:10 37:15	39:18,21 40:1 42:16,19 44:3 51:7 52:18,21 54:5,9,15,19 56:22 57:24 59:4,23 63:21 65:8,15 67:6 67:24 69:8,13 69:24 70:6,12 74:14,17 78:21 79:13 82:19 83:16,22 84:7 84:14,20 85:17 85:20 87:6,13 88:10 89:9,23 90:4,17 91:4 91:12 92:7,16 92:19 frankly 80:19 81:3 Franzetti 3:4,5 4:12 7:18 8:8 8:10 9:10,13 10:16 11:5,18 13:17,24 14:24 16:1,13,18 17:1,24 18:5 18:16,21 19:3 19:15,18,20 20:14,23 21:21 22:10,16 23:5 23:12,21 24:17 24:19 25:4,7 35:1 36:22,24 37:14,16,17 44:4,7,24 45:3 45:6,8,23 46:4 46:13 47:6,9 47:19 48:5,9 49:2,15,23 50:5,15 51:5,7 52:21 54:13,14 84:8,13 86:4,6 87:11,18 Franzetti's	25:10 40:4 free 4:20 60:12 front 13:4 14:17 28:23 65:18 fulfill 57:1 full 82:21 89:11 fully 75:24 79:17 function 78:1 further 26:21 37:16 39:19 42:17 51:6 52:19 68:1 88:12 91:9 92:20 93:1,5 future 60:12 73:15 G g 22:17 24:21 GARY 3:1 Gen 37:6 47:7 47:11 general 20:3 87:6 92:16 GENERAL'S 3:8 generally 49:19 60:4 generated 69:16 Generating 1:4 4:5 Generation 37:3 37:8 46:24 getting 91:23,24 give 19:20 23:14 44:24 47:14 61:19 87:11 given 11:5 23:6 37:2 45:12 50:15 87:13 GLOSSER 2:4 GMZ 45:16 GMZ's 45:14 go 4:10 24:18	25:9 30:10 37:19 39:10 43:19 51:8 58:1 59:4 60:21 69:13 72:10 goes 44:22 going 8:14 23:8 28:22 30:7 32:12 33:21,24 38:18 39:3 43:17 48:12 49:2 55:6 59:14,20 61:8 61:10 62:9,10 62:20 64:10 66:22 68:8 72:2,18 74:23 82:2,3,5 86:11 88:2 91:18,20 92:2 good 5:6 7:17 8:10,11,13 25:23 34:14 71:11 84:7,14 85:17 89:10 gotten 87:10 government 50:2,3,8,8 Grainger 71:1,3 71:5,9,13 Grand 2:8 grant 70:16 great 28:17 57:21 64:12 greater 15:6,10 15:23 17:5 20:12 24:12 25:14 26:3,7 27:13,16 28:20 28:24 29:5,14 30:22 31:3 32:1,10 33:4 34:4 40:14,14 40:21 41:18,20	42:5,6 ground 72:8 grounds 83:10 groundwater 8:16,21,23 12:1,15 13:16 13:23 14:5,6 14:18 16:8,10 27:6 34:1 45:14,19 46:8 46:19,24 47:5 47:12 48:3,22 groundwaters 16:17 group 49:21 Group's 4:13 11:6,21 12:11 49:5 groups 8:2 9:4 12:6 37:4 46:16,23 49:12 49:17 50:16 57:14 59:15 60:3,16 67:17 69:2,20 81:1,5 85:7 86:13 87:21 89:13 Groups' 63:17 guarantee 50:9 guarantees 50:3 guess 68:4 91:18 guidance 34:3 guys 55:2 56:16 64:8 78:16 90:22 H half 74:1 handle 31:2 happen 64:18 happened 72:16 hard 91:18 HARDIN 2:19 hate 48:5 hazardous 23:9
--	--	---	--	---

23:17 24:2,6 head 36:7 health 15:7,10 15:16,19,23 16:2 17:5 19:6 20:12 21:11 24:11,12 25:14 25:19,22 26:2 26:19,24 27:14 27:16 28:20 29:1,6,11,15 30:2,17,17,22 31:3 32:2,10 33:4,23 34:4 40:14,15,22 41:20 hear 37:2 54:6 54:10 72:18 92:9 heard 6:8 7:6 87:16 hearing 1:7 2:2 4:1,3,3,9 5:6 5:23 6:5,8,12 6:14,23 7:6,10 7:13,17 8:8 12:12 14:23 20:1 22:10 36:13 37:15 38:23 39:18,21 40:1 42:16,19 44:3 51:7 52:18,21 53:2 53:9,20,23 54:5,9,15,19 56:22 57:11,20 57:24 58:13,18 59:4,11,17,23 60:11 63:21 65:8,15,22 66:1 67:6,24 69:8,13,24 70:6,12,14,18 74:14,17 75:1 76:3 78:21	79:13 80:15,21 81:11,13 82:1 82:19,23 83:16 83:22 84:7,14 84:19,20,24 85:10,11,17,20 86:1,14 87:6 87:13 88:10,17 88:18,22 89:1 89:6,9,20,22 89:23 90:4,10 90:17 91:4,5 91:12 92:7,16 92:19 93:3 hearings 38:13 79:23 82:12 83:5 92:8 held 1:6 help 29:13 helpful 50:14 53:7 68:12 86:9 87:8,21 88:2,12 90:18 higher 14:21 hold 4:17 53:7 79:1 holding 35:16 36:5 hour 1:9 4:1 hours 59:10,10 house 63:11 housekeeping 53:4 human 15:7,10 15:16,19,23 16:2 17:5 19:6 20:12 21:11 24:11,12 25:14 25:19,22 26:2 26:18,24 27:14 27:16 28:20 29:1,6,10,15 30:2,17,22 31:3 32:2,10 33:4,23 34:4	40:14,15,21 41:20 humans 29:24 I idea 14:10 19:21 identification 6:16 7:15 66:3 70:20 identified 42:11 46:23 identify 28:17 38:20 39:6 Ill 1:5 4:6 14:7 15:13 Illinois 1:1,7,8,9 2:5,9,14,18,21 3:3,6,8,10 9:21 18:14,17 28:1 39:1 49:8 56:2 56:19 94:1,14 94:22 impact 21:11 22:21 42:5,6 62:21 impacted 46:8 impacts 16:7,8 16:10,16 18:6 19:9 41:11,13 41:17 42:4,7 42:11 63:9 implement 31:18 70:24 implementing 32:24 implicit 87:9 implicitly 83:2 important 10:13 35:18 impound 64:19 impounded 15:4 impounding 35:12,15,21 impoundment 1:3 10:11 11:2	11:11 15:1 17:2,11 18:22 19:4 35:7 38:3 40:23,24 41:6 41:22 42:24 43:1,8 44:18 44:21 48:22 49:9,10 60:22 61:8 66:10,24 67:18,22 72:15 73:11,12,14 78:6,10 impoundments 4:5 9:8 10:1,8 10:17 35:2 38:19 42:23 44:13 46:18,20 47:1,2,4 48:3 48:15 49:1,13 55:21,24 63:10 64:16,22 66:8 67:11 impression 12:13 inadequately 9:20 48:24,24 incidents 49:8 49:12 include 31:10 50:14 66:10 included 34:21 52:15 includes 66:19 including 29:23 31:19 44:5,18 48:19 53:8 67:15 incorporated 66:23 incorrect 34:17 increase 14:18 increased 13:7 35:15 36:8 increasing 19:13 36:7	indicated 7:21 22:11 52:22 53:6 57:2 67:7 91:9 indicates 71:20 indication 86:5 inevitable 84:23 infeasibility 33:3,16 34:6 34:15 infeasible 44:17 information 68:8 70:5 91:16 initial 52:12 initially 52:15 inquire 66:22 inquiry 40:20 install 72:10 installed 63:19 74:20 75:16 institutional 46:7 insurance 52:13 intended 8:19 9:5 50:10 intent 11:1,8,12 24:8 46:14 89:11 intention 83:13 intentional 26:4 interaction 12:14 interest 48:6 interested 34:8 interpreted 12:14 interrupt 48:5 63:23 78:22 85:3 introduce 89:14 involving 5:16 28:2 irrevocably 83:23
---	---	--	---	--

issue 14:1 38:24 42:1 53:5 86:23 89:3 91:5 issues 10:13 55:8 79:16 80:21 89:2 92:23 issuing 88:16 items 92:11	74:15 know 4:22 5:9 27:18 28:14 30:24 39:11 48:6 56:4,7,20 59:13 67:12,19 68:17 69:18 76:1,20 77:3 77:23 78:3,4,7 78:8,11,13 81:14 83:21 86:16,18 90:18 91:15,22 knowledge 47:15 55:20	LAW 2:11 lawsuit 37:5 layer 18:11 66:11,12,16,18 76:16,17,23 77:19,22 layers 66:10 77:2 laying 56:19 leachate 46:21 48:19 66:14,15 66:18,19,23 77:15,17,20,24 78:2,5,9 leaching 36:9 leading 75:12 leaking 19:14 leave 17:12 leaves 7:18 leaving 16:19 26:3 left 4:11 7:23 length 56:10 Lesley's 20:5 let's 70:7 letter 36:14 38:22 39:6 letting 63:24 level 16:2 21:22 22:4 levies 36:4 38:19 levy 36:17 License 3:14 licensed 56:1,18 life 18:1,7 Light 6:18 61:7 limiting 18:16 line 22:15 34:23 75:8,9 76:2 77:7 87:8 lined 9:20 10:2 17:3,11,18,23 18:2,14,22 19:4 47:11 48:24 63:11	72:23,23 73:23 74:2 liner 17:21,22 18:9 44:19 58:8 61:1,3,9 61:23 62:1,3 62:23 63:23 66:13,16,17,24 67:15 72:10,11 73:2 76:22 liners 18:10 47:11 55:7 62:6,17,18 76:9 77:9 lining 73:24 liquid 38:2 list 82:3,16 92:5 listed 40:7 little 20:4,24 47:15 LIU 2:2 LLC 3:1 LLP 2:19 3:4 local 50:2,2,7,8 located 17:9 19:7,10,12,16 43:3 location 88:18 91:6 long 29:19 68:19 longer 28:13 38:16 look 16:7 17:8 18:19 25:13 28:18 29:4,9 30:15 31:4 67:4 69:6 70:3 70:8 93:3 looking 53:12 60:17 61:17 68:3 71:14 75:6 looks 7:1 LYNN 2:6	M M 2:6 3:5 magnitude 46:1 making 23:12 management 27:1 45:14 mandatory 44:15 manner 10:10 maps 92:11 marathon 7:20 mark 70:16 marked 6:13,14 7:10,13 65:23 66:1 70:18 match 31:1 59:18 material 41:5 61:10,15 66:13 66:17 72:3,5 73:1,3 76:17 76:18,23,24 materials 44:20 71:2 matter 1:2 28:4 47:16 57:13 87:7 maximum 26:21 May's 20:1 McCarthy 5:13 mean 19:22 20:15 23:19 28:24 32:18 35:21 55:6 68:17 73:5 74:9 77:4 meaning 8:20 50:6,10 means 25:23 30:23 32:20 72:2 76:21 77:2 meant 21:4,9,18 25:13,18 29:5 29:14 30:17
J J 3:14 JAMES 2:7 JENNIFER 2:3 JENNINGS 2:7 JERRY 2:3 JESSICA 2:13 JOANNE 2:6 JOSH 2:12 judgment 16:20 July 80:22 81:6 81:17,19 85:1 85:21 86:8,11 86:14 88:5,8 91:8 93:4 jump 58:19 74:23 79:16 jumping 83:11 June 1:9 9:15 11:22 54:21 85:11 88:24 justified 9:19,24 justifies 22:23	L L 2:7,16 lack 46:17 69:22 lacked 49:9 laid 68:21 landfill 28:1,3 43:3,5,9,9,13 43:16,19,24 48:17 61:11,16 71:10 72:17 73:14 landfills 15:15 27:6,19 28:7 44:12 48:18 language 9:4,6 13:10 23:13,16 23:18,19 30:20 30:24 33:8 34:8,10,12 63:16 64:7 75:2,5,5,20 87:3 88:4 large 22:21 24:23 largely 19:12 21:4 larger 35:20 82:21 LaSalle 3:5	K keep 26:1,3 key 56:13 84:22 kind 25:9 28:10 49:21 87:17 King 3:1 67:7,9 67:23 68:1,2 68:15,17 70:22 71:16,20,24 72:21 74:4,13		

32:1 34:3,5,13 71:17,18 74:19 75:16 77:9 meet 26:17 48:18 84:2 meeting 4:17,21 4:23 79:2,9 85:3,5 Members 8:11 membrane 63:23 mention 27:15 mentioned 15:12 85:12 method 10:14 33:22 methods 43:6 Midwest 37:3,6 37:8 46:24 47:7,11 mile 20:16,18 millions 41:4 mind 40:21 68:4 minimum 48:18 minute 67:3 69:6 minutes 63:7 79:3 misstate 84:22 mixing 36:10 Mm-hmm 40:18 mobilized 20:9 mobilizing 21:12 modification 52:14 modify 52:3,7,9 moment 6:24 22:12 70:7 monitor 45:20 monitoring 14:5 14:9 26:23 Monroe 94:21 month 85:23 90:19	morning 8:10,11 8:13 motion 6:1,9 7:2 7:7,9 65:12,21 65:22 70:16 move 6:3,21 7:4 49:2 63:5 65:6 65:20 70:2 73:1,3 74:2 83:19 84:2 moved 65:10 69:9 movement 17:16 moving 8:16 9:13 11:19 14:24 18:21 22:16 25:4 35:12,19 41:4 45:8,10 47:19 60:18 76:10 86:17 multiple 73:21 74:10 multiyear 71:21 72:4 municipal 15:14 27:5,19,24 28:6 N N 2:1 name 4:8 natural 12:4,18 13:3,6,6,8,14 13:22 14:16,18 14:20 nature 87:15 92:11 nearly 80:3 85:23 necessarily 72:14,19 necessary 60:19 73:17 80:22 need 12:19 13:4	17:7 27:23 36:15 52:9 67:3 68:18 73:9 78:24 80:14 Negative 91:11 Neither 6:11 7:9 53:2 65:22 70:14 never 37:2 new 1:4 4:6 13:11 61:23 62:1,3,6,17,18 67:10,14 74:2 NIJMAN 3:4 nine 44:6 nod 69:12 91:11 non-engineer 76:19 nonhazardous 23:10,23 noon 79:6 North 2:8,17 noted 69:23 70:14 notes 94:11 notice 5:20 58:23 84:3 noting 49:20 notion 14:17 notwithstandi... 8:24 number 15:17 44:6 53:13,14 54:6,12,21 65:9 72:13 80:7,8 81:15 88:24 90:7 numbers 90:18 numeric 12:21 O O'LEARY 2:3 object 60:6,12 objection 6:11	7:9 54:10 65:12,21 69:23 70:9,11,13 85:13,16 objections 70:15 observations 80:2 obviously 51:8 52:22 54:11 86:10 occur 52:1 occurring 18:1,7 offer 76:13 83:13 offering 76:11 OFFICE 3:8 Officer 1:7 2:2 4:1,9 5:6,23 6:5,8,23 7:6,17 8:8 22:10 37:15 39:18,21 40:1 42:16,19 44:3 51:7 52:18,21 54:5 54:9,15,19 56:22 57:24 58:18 59:4,23 63:21 65:8,15 67:6,24 69:8 69:13,24 70:6 70:12 74:14,17 78:21 79:13 82:1,19 83:16 83:22 84:7,14 84:20 85:17,20 87:6,13 88:10 88:17 89:9,23 90:4,17 91:4,5 91:12 92:7,16 92:19 93:3 official 94:13 offsite 22:22 24:23 41:1,3 74:11 okay 18:21	22:16 25:4 26:16 28:10 30:5 37:14,22 44:24 49:22 54:8 67:23 68:15 71:20 83:20 Olson 2:6 8:14 22:11,13 25:6 25:7,8 26:1,9 26:14 27:3,10 27:18 28:6,10 28:17 29:3,13 30:5,7,14,24 31:10,15,21 32:4,7,17 33:6 33:12 34:2,11 34:15,23 36:23 37:18,22 38:6 38:18 39:3,10 39:22,24 42:19 42:21 43:11,13 43:16 44:2,4 53:2,21 54:7 54:19,23 55:14 55:19 56:1,4 56:13,24 57:22 58:1,2,6,14 59:3,5,6,23 60:17 61:14,21 62:4,12,20 63:2,8,15,22 64:5,20,24 65:5 67:3,6 69:5,8,15,21 70:4,14,15 71:23 74:16,18 75:12,23 77:1 77:6,13,18,23 78:4,8,12,16 78:20,21 81:7 83:16,18 84:5 87:17 88:9 90:5,14,21 91:3,9,11
--	--	--	---	---

ones 62:10	pace 80:10	perfectly 80:13	placed 18:11	38:5,6 60:20
operation 28:12	page 58:16	perform 12:20	43:24 61:16	83:19 84:2
operations	60:17 69:15	13:5	71:9 72:5	post-closure
22:22	70:22 75:3,10	performing	places 43:7	9:17,23 10:4
operator 8:22	75:11	33:17	plan 4:22 9:16	10:21 11:9,13
12:19 13:2	pages 11:22	period 8:24 9:7	9:17 10:8,10	11:16 51:1
14:8 31:18	panel 77:14	9:8,14 45:21	11:17 51:1	52:7
32:23 49:9	78:12	periodically	52:7,7,8 61:7	post-hearing
50:19,23 73:10	paragraph	10:18	plans 9:23 10:4	57:16,18 76:14
opinion 43:18	70:22	permanent	10:21,24 11:9	86:10 87:5
43:23	part 8:23 9:1	72:11 73:2	11:13	potential 16:9
opportunities	12:1,8,16,22	permission	Plant 35:11 36:2	18:6 29:20,24
74:10	14:6 16:22	36:16	play 24:7	30:2 46:22
opportunity	24:19 36:1	permit 38:16	please 31:15	62:21
21:11 58:20	40:10,13 49:20	permitted 23:2	34:18 44:7	potentially
73:20 75:3	62:7 85:14	43:17	45:16 47:20	14:21
opposed 40:24	89:14 91:15	personal 47:15	58:6,14 59:4	pounds 41:5
opposition	participant 83:4	94:11	63:15 69:13	Power 1:4 4:5
82:13	participants 6:1	personally 47:17	74:19 75:15	6:18 61:7
optimal 43:23	80:17,19 81:20	perspective 74:5	79:7	practicable
option 22:2 62:2	81:23 89:15	pertaining 5:22	pleasure 39:17	26:21 31:17
order 4:11 52:4	particular 15:22	phase 47:4	plus 82:9	practical 31:22
53:24 61:1	33:17,18 60:11	phased 48:15,20	point 4:11 5:2	practice 28:4
62:6,17 88:17	73:9,18	49:1	14:13 38:15	38:17
91:5 93:4	parties 58:23	Phone 94:22	49:14 53:3,10	pre-file 88:19
original 72:11	69:4 80:16	phrase 19:21	75:19 79:5,5	91:7
73:3 83:13	86:24	28:24 31:2	80:11 87:9,10	pre-filed 7:23,24
originally 9:5	parts 24:5 31:5	74:20	89:10 92:1	52:24 53:9,19
outside 35:16	87:23	phrases 50:7,10	points 14:8	54:4,21 58:22
overlook 84:9	passed 53:14	picture 82:21	76:11	79:22 80:5
overlooked 89:1	79:14	pictures 38:12	POLICY 2:11	87:19 88:20
89:3	path 79:21	piece 87:23	Pollution 1:1,7	92:4
owner 8:22	pay 32:18	pit 17:19,21,23	pond 18:2,8,8	precedent 44:8
12:19 13:2	PE 56:2	39:7	36:10,21 37:8	45:6 47:20
14:8 31:18,22	pending 37:5	pits 18:14 36:18	ponds 9:20 36:4	48:10
31:23 32:23	Pennsylvania	39:2	36:20 37:3,6	precipitates
39:13 49:8	64:22 65:7	place 4:19 11:15	37:10 47:7,10	44:19
50:19,23 73:10	66:7 67:9	16:3,8,16	71:5	precisely 60:2
owners 62:11	76:15	17:13 18:2,4	pose 26:23	precursor 54:24
	people 87:11	18:11,15 21:23	posed 68:4	preference 11:7
	91:20,22	22:5,24 25:23	posing 7:24	53:17,18,21
P	people's 87:3	28:5 35:17	position 10:19	83:8,24
P 2:1,1,8	percent 80:3	38:11,14 43:22	41:15 59:19	premature 86:7
P.C 2:16	perfect 32:8	50:21 51:3	possibility 74:3	prepare 49:17
p.m 7:19	38:11 78:23	72:7,9,23 81:5	possible 37:23	81:1
P.O 2:9				

prepared 28:16 53:3 54:11 55:2,8 57:3,8 57:15 66:12 82:8,15,16 86:14 preparing 86:23 present 22:19 40:7 55:12 57:12 64:15 presenting 67:19 presents 24:10 42:5 pressure 35:15 36:7 37:24 presumption 18:23 19:5 23:14,22 50:17 presumptions 16:24 24:5 pretty 32:14 prevent 38:8 previous 65:14 75:1 previously 46:22 principle 92:17 prioritization 45:11 probably 21:3 21:14 problem 14:16 problematic 13:1 procedural 5:1 57:13 79:16,20 80:21 procedure 56:23 82:23 93:2 proceed 60:14 74:6 81:19 83:9 84:1 proceeding 6:11 56:21 76:5 77:7 80:18	proceedings 1:6 4:12 79:6,12 94:7,9 process 58:7 68:8,14,19 71:21 72:4,7 73:5 91:16 produce 68:12 68:22 productive 79:21,24 prohibiting 46:8 promptly 81:17 proposal 4:14 22:3 23:20 33:8 34:11,22 43:20 46:17 50:10 55:4 77:8 79:23 82:2,2 87:1,8 87:24 89:12 proposals 86:12 propose 34:10 85:1 proposed 1:4 4:6,13 5:17,21 8:17,20 9:6,11 9:16 10:3,20 11:6,23 12:6,8 12:14 15:2 19:5 22:17 23:7,13,15 24:1,16 30:20 31:14 34:20 44:8 45:17,24 46:9,12 47:21 48:13 49:5,6 49:17 50:16,18 50:22 51:20 58:3 62:2 63:17 64:8 67:17 76:1 79:24 85:21 86:15 87:3,20 proposing 34:8	34:12,17 67:16 protection 2:5 15:6,10,23 16:2 17:5 20:12 21:22 22:4 24:12 25:14 27:14,16 28:20 29:1,6 29:15 30:17,22 31:3 32:1,10 33:4 34:4 40:14,15,21 41:18,20 protective 15:15 15:19 19:6 22:9 25:19,22 26:2,18 29:10 33:23 66:20 protectiveness 29:20 prove 29:22 proved 11:14 provide 10:10 11:17 28:9 30:10 40:13 44:7 47:20 48:10 58:14 63:12 70:4 75:5 77:18,22 78:17 84:3 88:6 provided 16:3 60:10 61:8 75:1 76:15 provides 12:3 14:4 41:18 providing 91:21 provisions 24:8 29:17 proximity 19:13 19:16,22 20:6 20:15,20 21:2 21:4,10,14 public 4:21 36:13 69:2	84:3 publication 5:19 pull 21:14 28:22 82:6 pump 36:17 pumped 60:20 purely 79:19 purporting 61:4 purpose 8:19 38:14 45:15 47:2 67:14 89:6 purposes 13:12 13:19 45:12 76:10 90:9 pursuant 14:5 pursue 73:15 put 17:15 38:7 38:10 43:7 54:2 61:10 72:14 73:2 83:22 puzzled 65:17	37:20 39:9,23 40:4,17 41:23 42:3,14,20 43:7 44:6 45:11,12,15 46:2,6 48:9 49:7,15 51:9 53:1 54:4,13 54:20,24 58:2 60:10,13,21,23 61:21 62:4,15 63:1,8,15 64:1 64:6,10 65:2 67:8 69:7 70:9 70:22 72:18 74:19 75:7,13 75:14,21 76:3 76:4,10 77:12 78:17,20 81:8 83:17 89:18 90:5,23 91:10 questioning 34:24 57:10 59:16 76:2,7 77:7 questions 4:12 5:1 7:22,24 25:11 31:5 35:4 37:19 42:22 45:9,12 49:3,22 50:6 51:6 52:23 53:8,13,14,19 53:22,23 54:3 54:12 55:3,7 55:10,11,15,17 56:16 57:3,7 57:15 58:11,12 58:20,21 59:1 59:9,20 60:1,5 60:15 63:5 64:11,14 66:22 68:3 75:8,9,14 76:5 79:22 80:5,7,20 81:2
--	---	--	--	---

81:4,7,10,12 81:23 82:3,4,7 82:9,12,14,14 83:10,12 84:10 85:8,19 86:1,4 87:19 88:12,15 88:20,21,23 89:11,18,19,20 90:7,15,16 91:7,20 92:2 92:20 93:2 quick 4:10 39:9 quickly 84:2 85:12,21 quite 87:10 quote 8:23 9:2 9:20,20 13:12 15:4,7,9 17:5,6 66:20,21	reasonableness 22:1 33:11,19 reasons 10:5 recall 90:15,16 received 69:19 70:1 receiving 46:21 receptors 30:1 recess 4:19 78:23 79:1 recite 90:18 recognition 80:8 recognize 83:2 87:9 recognized 57:5 recognizing 56:24 recommend 82:6 recommendati... 44:1 reconvene 4:2 record 4:8 5:23 36:15 38:13 54:14,16,18 58:15 60:7,11 65:11 69:10,24 70:15 75:7 79:7,15,15 81:6 82:21 84:11 85:14 89:12 recycle 72:16 recycled 71:9 red 87:8 redisposal 30:4 reduce 26:20 refer 21:15 reference 16:6 26:10 29:17 36:15 37:3 47:6 49:20 50:7,12 referenced 25:11 26:12	29:18 references 50:14 referencing 26:6 referred 5:7,16 7:12 39:12 referring 13:20 26:13 69:9 refers 14:20 63:23 refined 19:24 reflect 5:24 70:1 reflected 12:11 33:8 reflection 68:18 reflects 31:13 regard 6:2 7:3 7:21 23:13 32:12 36:24 regarding 5:20 8:16 9:15 10:14,20 18:24 45:14 55:3 Register 5:19 regularly 4:17 79:1 85:5 regulated 23:8 24:9 32:18 regulation 15:17 24:6 26:8 28:23 29:2,12 33:4 44:11,14 66:7,9 regulations 5:21 12:2,9 48:17 49:16 50:19 regulatory 24:15 related 24:20 relates 15:13 49:3 relating 11:6 relatively 49:13 release 26:20 47:22,24 released 20:9	releases 26:21 reline 73:14 relined 59:22 60:22 61:9 62:9 rely 49:17 remain 4:20 88:22 remainder 66:13 remaining 30:1 82:8 85:9 remedies 26:16 29:20 31:19 remedy 15:19 27:12 29:21 31:24 32:19 41:17 42:5 51:15 removal 11:2,7 15:3,5,9,22 16:4,12,12,15 17:4,14 18:24 19:6 21:23 22:6,7,8,19,20 22:22 23:14 24:23 27:20,22 28:2,7 40:6 43:1 50:18,20 51:2,21 68:7 68:13 71:12 remove 14:22 28:12 60:19 71:8 72:3 73:12,22 removed 10:18 11:10 27:24 42:24 43:21 44:21 60:24 62:5,16,19 removing 20:10 62:22 72:4,22 repeat 4:16 repeated 38:24 repeatedly	38:15 REPORT 1:6 reported 3:13 94:6 reporter 63:22 94:6 representative 18:9 request 10:23 57:14 69:6 87:15 requesting 92:9 require 15:3 27:11 45:18 50:17 84:24 required 10:5 13:2 22:7 27:4 61:22 62:1 71:7 requirement 9:16,19,22 10:20 32:24 64:16 requirements 10:7,9 26:18 44:13 46:18 48:19 51:20 58:22 64:23 67:21 84:3 requires 8:22 44:14 47:22 requiring 48:14 63:10 rereading 40:17 resampling 14:9 reserve 72:14 reserved 89:22 residual 44:18 residuals 5:22 resolve 12:7 14:1 resolved 7:22 89:4 respect 24:4,12 26:8 32:22
R R 2:1 R14-10 1:3 raise 53:1 81:22 84:10 raised 57:1 Randolph 1:8 3:9 RCRA 5:21 23:9 24:2 re-asking 64:9 read 27:9 31:15 59:8 60:23 64:9 reading 27:11 30:9 ready 7:18,23 44:5 54:20 60:14 real 18:1,7 realistic 80:4 really 62:8 64:6 64:7 68:4 reasonable 18:24				

40:22 41:21 50:5 71:1 respond 9:5 56:14 59:3 60:16 responding 35:3 response 20:20 25:10 40:3 62:15 65:1 70:21 87:18 responses 20:1 55:2 57:18 81:1,6,18 82:22 83:9 rest 75:13,14 restrictions 46:7 result 15:6,10,23 17:4 27:13 28:20 results 14:4 resume 4:22 79:5,8 81:17 retaining 17:16 35:13 retrofitting 62:3 return 74:18 83:3 reuse 74:11 reverse 17:21 review 75:15 85:24 90:5 91:2 reviewed 85:12 reviewing 58:10 74:24 84:22 revision 5:21 8:20 9:11 22:17 24:1 44:9 45:17,24 46:9,12 47:21 50:16 revisions 11:6 12:6 15:2 49:5 86:15 92:23 revisit 87:15	RICHARD 2:8 Rieser 2:16 7:21 37:20 39:21 40:2,3,18 41:2 41:9,15 42:2 42:15,17,18 51:8,10,18,24 52:11,17,19,20 70:1,7,10 84:15,17 85:15 89:5,10,16 91:13,14 92:15 92:18 right 4:10 23:11 28:16 29:7 30:8 37:13 47:13 48:8,12 51:16 52:17 60:2 61:19 63:4 71:21,22 77:12 79:16 86:16 rises 39:1 rising 17:19 35:14 36:3 risk 19:13 river 17:17 19:17,18,19,23 20:17,18 21:2 35:9,11 36:18 39:1 68:5 Rivers 69:1 road 52:15 Roanoke 3:2 role 24:7 roll 92:8 rolling 91:16 room 4:17,20 79:2,8 80:23 81:18 84:16 85:2 rule 9:9 11:23 16:22 22:8 23:7,13,16,19 24:2 25:21	30:20 32:14 34:3 55:9 62:3 rule's 9:18,24 10:22 rulemaking 4:7 Rulemaking... 1:3 rules 5:17 8:18 12:15 49:6 51:12,13,14,20 86:12 RWQCB 44:16 S S 2:1 safety 36:19 48:19 saith 8:7 sampling 14:3 Santee 68:5 69:3 70:23,23 71:4 sat 82:11 satisfaction 90:12 saw 46:16 65:17 84:15 saying 20:20,21 21:1 25:12 26:1 48:1 61:12 86:21 87:18 says 56:16 69:16 schedule 57:17 80:14,21 scheduled 4:17 59:11 79:2,2 85:5 scheme 24:15 SCHIFF 2:19 searching 66:4 second 4:3 8:3 10:9 11:3 13:11 16:22 53:9 56:9 66:14 81:11	85:10 88:22 90:9 section 8:17,20 9:1,14 11:21 12:2,6,8 13:9 13:12,13,20 14:3 15:1,2 17:8 27:2,10 28:18 29:5,9 30:8,10 31:16 44:9,14 45:11 45:18 46:10 47:21 50:11 58:3 63:17 Section's 49:4 49:17 sections 50:14 see 31:5 33:19 54:9 76:12 88:3 91:9 92:19 93:4 seeing 6:12 7:9 35:22 53:2 65:22 70:14 86:4 seeking 36:16 90:12 selected 26:16 selecting 27:12 selection 15:14 26:17 sell 72:16 sense 65:18 sentence 13:12 14:4 separated 66:19 sequence 64:15 series 22:14 serve 10:8 11:3 73:15 Service 69:3 set 8:9 25:17,21 40:2 83:19,20 83:21,23 sets 15:17	setting 64:11 settled 44:19 settlement 68:23 68:23,24 settling 36:11 seven 11:20 severity 46:2 share 90:20 SHELIST 2:16 short 85:4 short-term 29:19 shorthand 94:5 94:7 shortly 86:14 show 13:5 14:6 67:15 shows 90:6 shut 47:24 side 38:3 sides 37:24 sign 5:19 signature 94:13 significant 28:2 37:9 41:8,9 57:10 71:24 silent 84:9 similar 15:20 37:11 simply 19:15 80:7 83:10 90:18 simultaneously 86:24 singled 37:8 site 13:7 28:14 35:24 38:17 40:24 41:5,6 41:22 61:10 62:11 68:5,11 71:9,13 72:3 73:13 74:8 sites 10:19 67:11 67:13 73:20 situation 56:15
--	---	--	--	--

six 11:19 81:4	specifically 13:11 17:8	stating 76:21	24:21 45:3	3:9
skip 8:14 62:20	37:5 43:21	station 39:13,14	Subpart 12:2,8	synthetic 18:9
90:8	46:17 49:20	stenographic 94:10	12:16,23 15:8	47:11 66:17
skipping 45:9	53:15,19	step 59:24	23:9,10 71:3	76:17,23
46:4	specified 27:2	STEPHEN 3:9	subsection 30:10	system 48:20
sludges 44:19	spend 86:22	steps 5:1	30:16 71:10	66:14,19,23
Soderberg 12:12	spirit 83:12	Steven 1:8 3:14	76:15	67:15 77:15,17
55:13,18,19,22	spoke 38:18	94:5,20	subset 89:19	77:20,24
56:9 57:8	85:21	stone 83:23	substantial 88:3	
58:11 59:9	Springfield 2:9	stop 30:7	substantially 21:23 22:6	T
60:18 61:20	3:3 6:18 61:6	stopped 46:20	Subtitle 5:21	T 59:15
62:24 64:3	SS 94:2	storage 64:16,18	24:7	table 6:20 7:8
75:1,9,20 76:2	stability 35:7,23	64:22 66:8,9	successful 29:22	17:20 20:7,8
76:12 77:5	36:19	stored 24:10	suggest 13:10	20:11 21:8
82:5,17 89:21	stage 37:23	strategy 73:16	80:16 82:9	65:16
89:21	52:12	73:17	suggested 92:9	take 4:19 14:17
Soderberg's	stand 65:15	streamline 82:23	Suite 2:14,17,21	23:2 42:13
56:14 59:11,14	standard 13:7	Street 1:8 3:5,9	3:2,6 94:21	53:4,23 55:13
59:17 61:18	13:16,23 14:14	94:21	support 92:12	56:16 61:20
65:1 66:5	14:19,21 22:7	strenuously 80:16	supposed 35:20	67:3 68:9 70:7
soil 63:20 66:12	26:10 45:19	strike 9:4	59:13	72:17 76:11
71:6,7,8,13	66:6 67:10	strong 83:24	sure 13:19 16:13	77:5
74:21 75:17	77:4	structural 35:8	20:23 30:12	taken 1:8 15:18
sold 71:9	standards 8:17	38:7,10,13	36:23 39:5	33:2 64:9
solid 15:15 27:5	8:21,23 12:1	55:21,23 56:5	54:1 58:2 64:5	70:23 79:10
27:19,24 28:7	12:15,22 14:7	56:17	64:20 90:21	86:8 94:11
solids 36:11	26:12 27:1,4,7	structure 17:16	surface 1:3 4:5	takes 14:15
44:19	27:9 44:11	structures 35:13	10:1,7,17 15:1	71:24
sorry 19:17 25:5	47:13 48:13,16	study 6:19,21	16:9,11,17	talk 55:9
51:19 54:5	48:21 66:8	sub 17:1 66:11	17:18 34:1	talked 16:23
63:4,24 78:16	72:2	subject 17:2	35:2,7 38:2,19	25:10 33:15
79:6 80:17	start 21:10	57:9 58:24	42:23,24 43:1	talking 18:6
84:17 89:24	25:24 54:4	submit 9:16,22	44:13 55:21,24	20:2,2 32:15
91:14	64:14	10:20 15:20	60:22 63:10	32:15 55:6
sort 76:9 91:15	Starting 66:10	57:7 85:7	78:6,9	68:5 72:1,4
sounds 57:21	state 1:8 49:16	submitted 10:24	surprise 79:18	88:1
source 47:23	56:2,19 64:17	11:14 36:14	88:14	target 86:17
sources 26:20	94:1	38:12,22	surprised 92:21	tear 17:15
South 2:20 3:5	state-of-the-art 18:10	submitting 57:17	surprising 79:20	technical 23:4
69:2	stated 11:22	subparagraph 21:21 22:17	SUSAN 3:5	24:13 25:2
speak 43:21	statement 34:17		suspect 87:16	31:13,20 32:13
55:8,10 61:5	statements 21:5		swear 8:1	32:15,22 33:3
speaking 38:20	states 5:14 60:18		sworn 8:7 54:11	33:16 34:5,13
specific 51:22			SYLVESTER	40:10,20 41:24
74:9				42:13 55:7,8

55:10,11,15 technically 15:5 tell 75:15 77:1 temporarily 73:23 temporary 72:23 73:5 ten 68:9 tentatively 85:6 term 15:15 29:11 terms 16:16 19:22 41:23 91:16 test 50:4,9 testified 32:22 46:22 48:7 testify 55:20,23 58:22 testifying 31:21 testimony 35:1 36:12 37:2 57:10 58:23,24 59:12,14,18 61:18 64:4 65:1 66:5 75:2 79:22 86:20 89:8,14 tests 50:2,8 thank 6:7 25:8 39:16 42:15 51:5 52:17 57:22 74:13,14 79:9 83:15 88:9,11 89:16 91:3 92:18 Thanks 44:3 93:5 things 24:22 25:9 49:24 53:24 56:20 59:21 64:18 72:13 91:24 think 5:7 8:15 16:5 17:7,10	19:11,24 20:4 20:19 21:18 22:11 24:13 25:23 28:8 30:9,20 31:12 32:3,7 33:9 34:2,16 35:3 36:13 38:11 43:5 44:5 45:9 46:5 56:11 57:6 64:13 71:17 72:12 73:8,16,19 74:7 80:7 81:3 81:15 82:16,20 84:15 87:7,12 87:21 88:1,23 89:2 90:8 91:15,17 thinking 23:24 72:21 73:7 third 4:3 66:16 thought 41:23 42:3 72:7 thoughts 76:13 threat 24:11 26:24 30:2 34:1 threats 16:9 three 9:14 16:24 58:20 throw 28:11 86:7 Thursday 80:22 81:6 85:1 Tim 4:9 time 13:18 45:1 48:6 52:3,16 59:7 61:18 64:6,7,8 72:1 75:24 78:23 79:13 85:4 86:22 87:4,12 88:4,17 91:6 times 8:24 39:12	Timothy 1:7 2:2 today 23:7 28:9 54:1 57:16 80:5,12 82:10 85:4 86:18 88:8 toe 35:19 top 18:11 39:4 78:24 touch 81:3 touching 77:2 77:10 TRACI 8:5 transcribed 94:11 transcript 53:12 58:17 63:1 74:24 75:11,15 76:6 90:6 94:9 transportation 30:4 trial 94:7,10 true 94:8 try 47:3 56:22 87:24 trying 20:14 31:1 56:13 63:3 68:18 87:23 turn 5:8 7:18,23 8:2 22:12 40:2 44:6 53:3 54:20 67:8 turned 53:16 81:11 Turning 17:1 Twenty-one 50:15 twice 16:12 two 5:3 8:16 10:5 16:9 37:18 39:23 42:9,10 56:11 70:22 71:5 77:2	type 67:16,17 types 17:3 40:12 typically 78:9 U ultimate 10:14 22:22 ultimately 10:12 24:16 underlying 71:6 71:7 understand 19:21 20:15 35:9 64:7 79:19 84:18 understanding 87:24 Understood 83:15 undertakings 70:23 unfilled 74:1 unfortunately 54:2 90:14 uniform 63:19 74:21 75:17 77:8 unintentional 26:4 unit 17:9 19:7 44:22 58:7 61:1 United 5:13 units 44:12 58:4 61:22,24 62:5 62:9,12,17,22 unknown 23:7 unlined 46:18 47:2,4 48:2,14 48:23 58:4 unnecessarily 83:6 up-to-date 88:7 upfront 10:15 ups 44:5 81:20	use 15:8 19:22 43:6 46:8 73:15 74:10 useful 91:17,19 92:6 uses 15:15 V various 51:21 69:4 vegetative 18:11 Vermillion 35:10 35:22 38:11 version 87:8 versus 5:13 16:3 view 12:24 22:4 40:19 41:24 virtually 80:11 Voices 5:12 volume 36:6 voluminous 82:7 W Wacker 2:13,17 2:20 walls 35:12,14 35:15,16,21 want 4:2,15 16:15 25:8 45:15 56:15 59:24 70:2 76:8 78:22 79:15,18 83:20 84:9 86:7,22 89:2,5 wanted 84:10 90:1,8 waste 1:3 4:4 10:18 15:4,15 23:9,10,17,24 24:3,6,7 27:1,5 27:19,24 28:7 28:11,13,13 36:5,9 wastes 30:1
---	---	---	---	--

44:18,20	94:21	X 67:20	12:00 79:6	86:11,14 88:4
water 6:18 16:9	willing 55:12		12:15 79:8,14	93:4
16:11,17 17:17	90:21	Y	13 46:4	25 64:21 65:7
17:20 19:13,16	willingness	year 9:7,17,24	14 46:6 69:15	251-5590 3:7
20:7,8,11 21:8	82:20 92:22	10:5,21 36:13	14-10 4:7	258-5550 2:22
21:20 35:11,14	Winyah 69:1	years 47:23 62:6	15 47:19 58:17	27 44:12 45:2
35:19 36:6	wish 52:24	68:9 72:19	79:3 81:14	28 90:7
38:3,18 39:1,6	57:19,24 81:20	yesterday 5:4,7	88:24	294.10 64:22
61:7	81:23 83:6	5:16 6:20 7:19	15th 75:2,10	65:7
waters 17:20	wished 53:6	7:20 11:19	90:6	
36:17	withdrawing	15:13 29:18	16 11:22 49:7	3
way 12:16 33:15	9:10 86:19	32:22 33:15	59:10 82:6	3 71:10
41:19 61:11	withdrawn 87:2	37:1 45:10,13	1600 2:14	31 90:7
64:13 66:21	witness 8:6 56:7	46:5 55:2 61:8	17 11:22 49:15	312 2:15,18,22
74:5 83:23	94:13	68:5	17th 81:6,19	3:7,11 94:22
92:4	witnesses 8:2		85:22 88:8	31st 71:4,14
we'll 20:4 60:15	54:11	Z	91:8	33 90:7
79:7 86:21	wondering	ZAHAROFF	18 50:6	35 1:5 2:13 4:6
89:18 91:2	40:11	2:12 65:13	1800 2:17	14:7 15:13
we're 8:9 10:6	word 26:3,7	ZALESKI 2:4	19 5:18	3600 3:6
17:13 20:2,2	words 23:22	zero 62:13,18	191 2:17	38 90:7
20:20 23:22	38:1	ZIMMER 2:7	19276 2:9	
32:14,15 35:22	work 76:10	zone 66:15,18	1990 48:17	4
44:5 54:20	77:17 92:6	zones 45:14	19th 1:9	4 31:11
55:6 56:21	worked 67:18			419-9292 94:22
58:9,10 59:19	75:4	0	2	
59:19 60:14	working 47:16	084-004675 3:14	20 50:6	5
64:9 71:14	works 55:9	94:23	2000 71:14,16	521-2717 2:18
82:9 84:5	77:15		2007 94:21	53 6:10,13,15
86:19 88:1	wrap 79:21	1	2014 1:9 5:18	54 6:22 7:5,7,11
89:7	80:12 89:11	1 44:14 45:5	9:15 58:17	7:14 65:11,13
we've 19:24	wrapping 80:4	1.3 76:15	94:15	55 65:20,21,24
31:14 33:15	write 13:8	10 3:5 45:9	2020 71:16,17	66:2
80:10 81:3	writing 57:16,19	10:45 4:19	71:19	56 69:4 70:17,19
88:7	written 57:9	100 1:8 3:9 80:3	2023 71:4	
weakness 46:16	81:1,6,18	100-year 17:9	21.400 44:12	6
weaknesses	82:22 83:9	19:8 20:3,21	45:2	6:00 7:19
17:22	85:7,19,24	21:1,9,15	211 58:16 60:17	60 87:14
wear 17:15	86:3 88:19	1021 2:8	212 75:10,11	60601 2:14 3:10
week 85:23	90:12 92:12,14	11 45:9	217 2:10 3:3	60603 3:6 94:22
weeks 85:23	wrong 29:4	11:00 4:18	233 2:20	60606 2:18,21
wells 14:10	65:14	11th 3:10 52:24	239 75:3	610 49:18
went 56:10	wrote 77:8	54:21 85:8,11	24 90:7	620 8:23 12:1,8
weren't 87:22		89:1	24th 80:23 81:17	12:16,22 14:7
West 1:8 3:9	X	12 45:11,12,15	84:6 85:1	620.40 12:3
		59:10		620.410 12:2

14:19	44:9 47:21			
62702 3:3	841.400(b)(2)			
62794 2:9	19:5			
6600 2:21	841.405 45:11			
6th 9:15 11:22	841.405(a)(2)(b)			
	45:18 46:10			
<u>7</u>	841.450(a) 58:3			
70 82:9	841.450(a)(2)			
782-5544 2:10	63:18			
787-7398 3:3	841.600 49:4,18			
795-3738 2:15	841.605 50:23			
	841.610 49:4			
<u>8</u>	86 54:4,12,21			
8 94:21	58:2			
8(g) 40:4,17	86.2 60:23			
811 50:12 51:12	86.3 61:21			
811(g) 49:20	86.4 62:4			
811.325 15:13	86.5 62:20			
25:11,13,17,23	86.7 63:8			
26:6,6,9,11	87 63:15 65:2			
28:18 30:16	74:19			
31:4,6	88.4 78:20			
811.325(b)				
26:13,16	<u>9</u>			
811.325(c) 30:13	9:00 1:9 4:2			
811.325(c)(4)	80:23 81:17			
31:16	85:2			
811.706 50:1	911.326(d) 27:2			
811.716 50:1	93 82:7			
811.717 50:2	947 3:2			
811.719 50:3				
812 43:18				
813 43:18				
814-3000 3:11				
841 1:5 4:6				
841.125 8:17,21				
841.130 9:1,14				
841.300 13:12				
13:20 14:2,13				
841.305 11:21				
12:6,8 13:3				
14:11				
841.400 15:2				
17:8				
841.400(b) 15:3				