

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF: )  
 )  
Amendments to 35 Ill. ) No. R18-25  
Adm. Code, Subtitle E: )  
Agriculture Related Pollution)

REPORT OF THE PROCEEDINGS held in the  
above-entitled cause before HEARING OFFICER  
TIMOTHY FOX, called by the Illinois Pollution  
Control Board, 100 West Randolph Street, Chicago,  
Illinois, on the 6th day of January, 2022,  
commencing at the hour of 9:00 a.m.

Reported By: Raelene Stamm, CSR

License No.: 084-004445

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APPEARANCES:

MR. TIMOTHY FOX, Hearing Officer (via video)

MS. JENNIFER VAN WIE, Board Member

MS. MARIE TIPSORE, Board General Counsel

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: MS. SARA TERRANOVA (via video)

1021 North Grand Avenue East

PO Box 19276

Springfield, Illinois 62794

(217) 782-5544

On behalf of the Illinois

Environmental Protection Agency;

HEPLER BROOM, LLC

BY: MS. MELISSA BROWN (via video)

4340 Acer Grove Drive

Springfield, Illinois 62711

(217) 993-6077

On behalf of the Illinois

Environmental Regulatory Group.

ALSO PRESENT: MR. DARIN LECRONE (via video)

1 HEARING OFFICER FOX: Good morning, and welcome  
2 to this Illinois Pollution Control Board hearing.  
3 My name is Tim Fox, and I am acting as the hearing  
4 officer for this rulemaking in place of the  
5 assigned hearing officer, Mark Kaminski.

6 This proceeding is entitled, In the Matter  
7 of Amendments to 35 Illinois Administrative Code,  
8 Subtitle E, Agriculture Related Pollution, and the  
9 board docket number for this rulemaking is R18-25.

10 I am the only representative of the Board  
11 present here in Springfield. I do want to note  
12 that Board Member Jennifer Van Wie, the assigned  
13 Board member for this ruling, is present on the  
14 screen from our Chicago office.

15 Member Van Wie, is there anyone else from  
16 the Board there in the Chicago office with you?

17 MS. VAN WIE: Marie Tipsore is here along with  
18 the court reporter.

19 HEARING OFFICER FOX: Excellent. And if the  
20 record will reflect that Marie is our general  
21 counsel, please.

22 A couple of basic points, I do want to  
23 stress that this hearing is governed by the Board's  
24 procedural rules so that all information that is

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

8 For the sake of our court reporter, please  
9 speak clearly and avoid speaking at the same time  
10 as another person so that we can produce a clear  
11 transcript.

12 There is a notepad or sheet in each of  
13 these two hearing locations so that anyone who  
14 wishes to offer public comment may indicate that  
15 they wish to do so.

16 I can see here in Springfield,  
17 Member Van Wie, that no one has so indicated. Is  
18 there anyone there who wishes to offer a public  
19 comment that you're aware of?

20 MS. VAN WIE: No.

21 HEARING OFFICER FOX: Excellent. Thank you for  
22 your help.

23 I also want to stress that anyone can  
24 submit comments electronically through the clerk's

1 office online or COOL which is available through  
2 the Board's website.

3 The notice for this was posted on  
4 December 2 of 2021 in the Chicago Sun Times and on  
5 December 3 of 2021 in the Journal Register in  
6 Springfield. The first hearing in this docket was  
7 held on November 12 of 2021. In an order on  
8 November 30, the hearing officer directed that any  
9 pretrial testimony for this second hearing was to  
10 have been filed with the Board by December 30 of  
11 2021, but the Board did not receive pre-filed  
12 testimony by that date or since.

13 However, on November 16, 2021, IEPA filed  
14 what were entitled, Preliminary Comments, which the  
15 Board has docketed as Public Comment Number 1 in an  
16 order on January 3 of 2022. The assigned hearing  
17 officer requested IEPA's response to questions  
18 based on that preliminary comment or Public Comment  
19 Number 1.

20 I do understand, and I believe  
21 Ms. Terranova for the agency will correct me, that  
22 the IEPA does not wish to testify today, but they  
23 do have a witness who is prepared to answer any  
24 questions that may arise. And we appreciate his

1 participation today, and we can turn to that, I  
2 think, fairly quickly.

3           The proposed order for our hearing today,  
4 as simple as it is, I think is worth clarifying.  
5 We can see, first of all, if anyone has appeared to  
6 offer any public comments. Since we don't have any  
7 pre-filed testimony, we can turn to the agency's  
8 witness for any questions that may come up. Once  
9 we have resolved those, we can see whether anyone  
10 has appeared to offer a comment that we can take  
11 care of in simple procedural details before we  
12 adjourn for the second hearing.

13           Does that make sense?

14           I'm seeing only agreement on that.

15           Why don't we, as I said, begin just to  
16 clarify whether there is anyone present here either  
17 in Springfield or in Chicago who wishes to offer a  
18 public comment.

19           Member Van Wie, I can clearly see there is  
20 no one here in Springfield that wishes to do so.  
21 Is there anyone there who has appeared that wants  
22 to comment?

23           MS. VAN WIE: No.

24           HEARING OFFICER FOX: Very good. Why don't we

1 at that point then turn to the witness that the  
2 agency has brought to the hearing today. I do  
3 understand there are at least a few questions for  
4 him. Why don't I begin, first of all, by having  
5 Miss Terranova on behalf of the agency identify  
6 herself and the witness for the record. We'll ask  
7 Miss Brown to do the same for the Illinois  
8 Environmental Regulatory Group, and then we can  
9 have the witness sworn in very quickly.

10 MS. TERRANOVA: I am Sarah Terranova, it's  
11 T-e-r-r-a-n-o-v-a, legal counsel for the Illinois  
12 EPA. And here is a witness to answer questions. I  
13 have Darin LeCrone for the agency. And I'm just  
14 gonna let you state your title.

15 MR. LECRONE: I'm the manager of the Permit  
16 Section in the Division of Water Pollution Control,  
17 and my last name is spelled L-e-C-r-o-n-e.

18 HEARING OFFICER FOX: Thanks to both of you.

19 Miss Brown, if I may ask you to for the  
20 record simply identify yourself.

21 MS. BROWN: Yes. I am Melissa Brown,  
22 M-e-l-i-s-s-a, last name Brown, B-r-o-w-n, and I am  
23 outside counsel for the Illinois Environmental  
24 Regulatory Group, also known as IERG, I-E-R-G.

1 HEARING OFFICER FOX: Member Van Wie, that's  
2 everyone who's present here. If it makes sense to  
3 you, why don't we have the court reporter swear in  
4 Mr. LeCrone.

5 MS. VAN WIE: Sounds good.

6 (WHEREUPON, the witness was  
7 duly sworn.)

8 HEARING OFFICER FOX: Mr. LeCrone, thanks for  
9 your availability today to answer questions.

10 Miss Brown, I think we can turn to you to  
11 raise those questions.

12 MS. BROWN: Thank you.

13 DARIN LECRONE,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MS. BROWN:

18 Q. All right. So as I previously identified  
19 myself, I'm Melissa Brown, outside counsel for the  
20 Illinois Environmental Regulatory Group. I just  
21 have a few questions for you today, Mr. LeCrone.

22 So we noted in some of the agency's  
23 filings as well as the Board order that these  
24 proposed revisions are not substantive. And so I

1 **guess my first question is whether the agency**  
2 **intended those proposed revisions in this**  
3 **rulemaking to be nonsubstantive cleanup revisions?**

4 A. They're intended to be nonsubstantive  
5 cleanup. Cleanup is the language in making it  
6 consistent with a more modern way of kind of  
7 phrasing some of this, but, yeah, that's the  
8 intent.

9 **Q. Okay. And are these proposed revisions**  
10 **subject to US EPA review and approval?**

11 A. I believe they are, yes. I have forwarded  
12 them to Region 5 for review and consideration and  
13 comment. I have not heard back from them yet. I  
14 sent that to them December 2 I believe it was. I  
15 know they have had turnover in their staffing as  
16 well, and so they had two staff that was assigned  
17 to the post up for Illinois, and they both left  
18 Region 5.

19 So they're kind of the same boat I am.  
20 But it is up there. I haven't got any comments yet  
21 but they did express a desire to review and comment  
22 on the proposed changes.

23 **Q. Okay. And prior to submitting the**  
24 **proposed revisions to US EPA on or around**

1     **December 2, was there any prior back-and-forth**  
2     **communications with US EPA and the agency regarding**  
3     **the proposed revisions?**

4           A.     We have regular calls with them regarding  
5     our cable program anyway because of a pending  
6     withdrawal petition on the cable program approval  
7     that's been pending for 10 years or more. So we  
8     have regular calls. I think it's quarterly. And  
9     so it came up on the last one of those. I  
10    discussed it with him, told him I would send him a  
11    link to the Board's docket and did that. And we  
12    discussed it in that manner, but then since I  
13    forwarded them the information I haven't heard  
14    anything back.

15           Q.     Okay. And to the best of your knowledge,  
16    in US EPA's review and hopefully event approval of  
17    those proposed revisions, you know, in that process  
18    I would assume obviously US EPA's reviewing the  
19    proposed revisions that are the subject of this  
20    rulemaking, but is it possible at that time for  
21    US EPA to also kind of take a broader look at these  
22    regulations and express any concern about the  
23    regulations or provisions as a whole and not just  
24    necessarily the proposed minor revisions?

1                   **Do you think that's possible?**

2           A.     They haven't indicated to me that they  
3 intend to do that. I know just from previous  
4 conversations there are some sections of our rules  
5 that they had earlier concerns with, but I don't --  
6 they haven't expressed any desire for them to do  
7 that. I know that this -- the changes to these  
8 rules are very closely tied to our reissuance of  
9 our general permit. A lot of our permit language  
10 is directly quoting sections of the regulations.

11                   And so we had conversations about the  
12 status of our general permit which was ready to be  
13 reissued. We had a public hearing. Response to  
14 the summary was drafted. We got final approval on  
15 the permit for Region 5. And when this rulemaking  
16 changes came up, we did go back, and we need to  
17 cross -- we cross-referenced checks to the entire  
18 general permit now, and they will need to review  
19 that permit again in that context.

20                   So they haven't indicated that they're  
21 gonna look beyond these substantive changes, but  
22 they are gonna look at what the changes may have on  
23 the language that's in our draft permit as it  
24 currently stands.

1           **Q.    When you say on these substantive changes,**  
2 **do you mean nonsubstantive changes?**

3           A.    Yeah, non -- they intended to be  
4 nonsubstantive.  And, you know, the intent of the  
5 Board's proposal and ours was to be nonsubstantive.  
6 I'm assuming that Region 5 will have the same  
7 opinion, but we haven't gotten any formal comment  
8 from them yet.

9           **Q.    And I saw that in the -- one of the**  
10 **agency's filings that they expressed some concern**  
11 **that the Board's proposed -- some of the Board's**  
12 **proposed revisions were indeed substantive**  
13 **revisions; is that correct?**

14          A.    Well, that's the concern that it was an  
15 unintended consequence of some of the changes, that  
16 it was intend to be nonsubstantive, but may, in  
17 fact, have more of an impact than originally  
18 anticipated.  So that's something that Region 5  
19 expressed a desire to double-check to make sure  
20 that that was gonna be the case because so much of  
21 our language is supposed to parallel their own, and  
22 our permit is supposed to reflect both.

23                So that's -- we want to be very careful to  
24 make sure that any of these changes don't have any

1 unintended effect on applicability of some of the  
2 part of the regs.

3 Q. As a process question, if it was, you  
4 know, after EPA reviews and it was determined  
5 potentially that some of the Board's proposed  
6 revisions are indeed substantive, I guess would  
7 that have any effect on this rulemaking since it's  
8 a cleanup rulemaking?

9 A. I don't honestly know. I was kind of  
10 hoping by now we would have had some comments from  
11 them, but we haven't yet. I know, you know,  
12 they're probably like us, and during the month of  
13 December nobody's around. So it's -- I'm trying to  
14 think -- I don't think I've got another call  
15 scheduled with them, but I will reach out to them  
16 before any post-hearing comments are due and see if  
17 we can get any input from them before that so we  
18 can reflect that on the responses.

19 But I don't -- I don't honestly know what  
20 that would do to this if we would have to come back  
21 with another proposal based on their response.

22 Q. Okay. And then is the December 2, that  
23 submittal, and then US EPA's review that they're  
24 conducting around this time, would that be kind of

1 a preapproval and formal review?

2 Or, I guess what I'm asking is, once these  
3 rules are adopted by the Board, are they then again  
4 submitted to the US EPA for a formal review and  
5 approval?

6 A. I'm not a hundred percent certain, but  
7 that's always been my impression because this is  
8 kind of a delegated program kind of thing that we  
9 would have to submit something to them formally  
10 after the Board adopts whatever changes are made.

11 Q. Okay.

12 A. I know that from the position of the  
13 pending withdrawal petition that the environmental  
14 groups have filed years ago that they definitely  
15 are gonna be involved in any -- with the comments  
16 on this because it affects their ability to get rid  
17 of that withdrawal petition which is this close to  
18 being able to do.

19 So the general permit is kind of the last  
20 piece of that. So they're being a little extra  
21 cautious to make sure that there's no unintended  
22 consequences here, you know, before we finalize the  
23 permit and all the rest of it. So I'm hoping we  
24 get some comments from them, if they have any, on

1 these proposed changes as soon as we can.

2 Q. Okay. And then just last question is, so,  
3 you know, if this is submitted after adopted by the  
4 Board to US EPA for formal review and approval, I  
5 was just wondering do you know generally what time  
6 frames are associated with that process?

7 A. I don't know off the top of my head. And  
8 I think it's typically pretty quick if they're  
9 aware -- I mean, I want to get any comments they  
10 had up front so it wasn't going to be a surprise to  
11 them after the fact. So if we can -- if they have  
12 any comments and we receive them and can address  
13 those in our post-hearing filings, then hopefully,  
14 you know, any kind of formal review from them  
15 afterwards will be a formality and be a quick  
16 turnaround.

17 That's kind of how in general we prefer to  
18 do those things whether it's, you know, rulemaking  
19 or some permit action, to get their comments early  
20 so that the final approval process goes a little  
21 smoother and quicker.

22 MS. BROWN: All right. That is all I have.  
23 Thank you very much, Mr. LeCrone.

24 MR. LECRONE: Thank you.

1 HEARING OFFICER FOX: Member Van Wie, if  
2 there's not another organization or person present  
3 that would wish to ask questions of the agency and  
4 Mr. LeCrone, is there any question you would like  
5 to pose?

6 MS. VAN WIE: No, I don't have any questions  
7 for the agency. But I'm happy to make a clarifying  
8 statement that the Board's proposed changes to the  
9 regulations were also intended to be  
10 nonsubstantive. We have no intent of making  
11 substantive changes, so I think it's just a matter  
12 of finding language that works for both the Board  
13 and Illinois EPA. But the intent was not there to  
14 make any substantive changes on our end either.

15 HEARING OFFICER FOX: Very good.

16 Member Van Wie, is there anyone else there  
17 that they wish to ask a question of the agency?

18 MS. VAN WIE: No.

19 HEARING OFFICER FOX: Very good. We did not  
20 have anyone file pretrial testimony.

21 Member Van Wie, I'm sure I've not found on  
22 the list here that there's no one who might -- who  
23 did not pre-file testimony but who is present there  
24 that would like to testify today; am I correct

1 about that?

2 MS. VAN WIE: That is correct. There's no one  
3 here.

4 HEARING OFFICER FOX: Excellent. And neither  
5 is there anyone here in Springfield.

6 And, Mr. LeCrone, we thank you for your  
7 availability to answer questions. I think we can  
8 have you figuratively, not literally, step down at  
9 this point.

10 I think it's time for us to turn to the  
11 issue of the economic impact study which is  
12 required by the Environmental Protection Act.  
13 Section 27B of the Act provides that the Board must  
14 request from the Department of Commerce and  
15 Economic Opportunity, or DCEO, conduct an economic  
16 impact study of proposed rules before the Board  
17 adopts them. The Board then must either make the  
18 study or the department's explanation for not  
19 conducting one available to the public at least 20  
20 days before a public hearing such as this one.

21 In a letter dated September 17, 2021, the  
22 Board's chair, Barbara Flynn Currie, requested that  
23 DCEO conduct an economic impact study of this  
24 rulemaking proposal, and the Board specifically

1 requested a response no later than November 1 of  
2 2021.

3 On October 22 of 2021, the Board received  
4 a response from the acting director of DCEO which  
5 respectfully declined to request and perform an  
6 economic impact study.

7 Is there anyone either here in Springfield  
8 or Chicago who would like to testify regarding the  
9 Board's request or DCEO's response?

10 I'm neither seeing or hearing any  
11 indication in Springfield.

12 Member Van Wie, is there anyone there who  
13 wishes to testify or comment.

14 MS. VAN WIE: No.

15 HEARING OFFICER FOX: Unsurprisingly. I  
16 appreciate that.

17 Since we do not have anybody wishing to do  
18 so, why don't we, Madam Court Reporter, go quickly  
19 off the record for a moment or two just to tie up  
20 some procedural questions.

21 (WHEREUPON, a discussion was had  
22 off the record.)

23 HEARING OFFICER FOX: Thank you. We did take a  
24 moment just to go off the record to discuss

1 procedural issues specifically involving  
2 post-hearing comments and the deadline to file  
3 those. The Board expects the transcript of this  
4 hearing to be available by Friday, January 14th.  
5 The deadline to file post-hearing comments would be  
6 14 days after that date. We will just set it as  
7 Friday, October -- Friday, January 28, just to  
8 clearly set a date, a deadline for those comments  
9 here and place it on the record.

10 We have discussed with the agency a single  
11 post-hearing comment that wrapped up all of the  
12 questions that had arisen at hearing that had  
13 arisen in the January 3 hearing officer order and  
14 in the Board's original order submitting this to  
15 public comment, and Miss Terranova, I believe you  
16 indicated that that single response wrapping all of  
17 that up by January 28 was acceptable; is that  
18 correct?

19 MS. TERRANOVA: Yes.

20 HEARING OFFICER FOX: Thank you for your help.

21 Those comments, like any other filings  
22 with the Board, must also be served on the hearing  
23 officer and on those persons who are on the service  
24 list before filing. Please check on the clerk's

1 office online or with the Board's clerk to ensure  
2 you have the most recent version of the service  
3 list.

4 Just to tie up this loose end, is there  
5 anyone there, Member Van Wie, present who may wish  
6 to offer a public comment on this proposal?

7 MS. VAN WIE: No.

8 HEARING OFFICER FOX: Neither seeing or hearing  
9 any here in Springfield, for the participants here,  
10 are there other matters that need to be addressed  
11 on the record before we adjourn?

12 Not seeing any indication that there are,  
13 the second hearing therefore is adjourned. No  
14 further hearings are scheduled.

15 Mr. LeCrone, in particular, thank you for  
16 your participation and responses.

17 We are concluded. Thank you, everyone.

18 (WHEREUPON, the hearing was  
19 adjourned at 9:25 a.m.)  
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1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4           RAELENE STAMM being first duly sworn, on  
5 oath says that she is a court reporter doing  
6 business in the City of Chicago; and that she  
7 reported in shorthand the proceedings of said  
8 hearing, and that the foregoing is a true and  
9 correct transcript of her shorthand notes so taken  
10 as aforesaid, and contains the proceedings given at  
11 said hearing.

12  
13           \_\_\_\_\_

14           Certified Shorthand Reporter

<p style="text-align: center;"><b>A</b></p> <p><b>a.m</b> 1:15 20:19  <b>ability</b> 14:16  <b>able</b> 14:18  <b>above-entitled</b>                      1:11  <b>acceptable</b> 19:17  <b>Acer</b> 2:18  <b>Act</b> 17:12,13  <b>acting</b> 3:3 18:4  <b>action</b> 15:19  <b>address</b> 15:12  <b>addressed</b> 20:10  <b>adjourn</b> 6:12                      20:11  <b>adjourned</b> 20:13                      20:19  <b>Adm</b> 1:6  <b>Administrative</b>                      3:7  <b>admitted</b> 4:2  <b>adopted</b> 14:3 15:3  <b>adopts</b> 14:10                      17:17  <b>aforesaid</b> 21:10  <b>agency</b> 2:7,14                      5:21 7:2,5,13                      9:1 10:2 16:3,7                      16:17 19:10  <b>agency's</b> 6:7 8:22                      12:10  <b>ago</b> 14:14  <b>agreement</b> 6:14  <b>Agriculture</b> 1:7                      3:8  <b>Amendments</b> 1:5                      3:7  <b>answer</b> 5:23 7:12                      8:9 17:7  <b>anticipated</b> 12:18  <b>anybody</b> 18:17  <b>anyway</b> 10:5  <b>APPEARANCES</b>                      2:1  <b>appeared</b> 6:5,10</p>	<p>6:21  <b>applicability</b> 13:1  <b>appreciate</b> 5:24                      18:16  <b>approval</b> 9:10                      10:6,16 11:14                      14:5 15:4,20  <b>arisen</b> 19:12,13  <b>asking</b> 14:2  <b>assigned</b> 3:5,12                      5:16 9:16  <b>associated</b> 15:6  <b>assume</b> 10:18  <b>assuming</b> 12:6  <b>availability</b> 8:9                      17:7  <b>available</b> 5:1                      17:19 19:4  <b>Avenue</b> 2:9  <b>avoid</b> 4:9  <b>aware</b> 4:19 15:9</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>B-r-o-w-n</b> 7:22  <b>back</b> 9:13 10:14                      11:16 13:20  <b>back-and-forth</b>                      10:1  <b>Barbara</b> 17:22  <b>based</b> 5:18 13:21  <b>basic</b> 3:22  <b>bear</b> 4:2  <b>behalf</b> 2:13,21 7:5  <b>believe</b> 5:20 9:11                      9:14 19:15  <b>best</b> 10:15  <b>beyond</b> 11:21  <b>board</b> 1:1,13 2:4,5                      3:2,9,10,12,13                      3:16 4:3 5:10,11                      5:15 8:23 14:3                      14:10 15:4                      16:12 17:13,16                      17:17,24 18:3                      19:3,22 21:1</p>	<p><b>Board's</b> 3:23 4:5                      5:2 10:11 12:5                      12:11,11 13:5                      16:8 17:22 18:9                      19:14 20:1  <b>boat</b> 9:19  <b>Box</b> 2:10  <b>broader</b> 10:21  <b>BROOM</b> 2:16  <b>brought</b> 7:2  <b>Brown</b> 2:17 7:7                      7:19,21,21,22                      8:10,12,17,19                      15:22  <b>business</b> 21:6</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>cable</b> 10:5,6  <b>call</b> 13:14  <b>called</b> 1:12 8:14  <b>calls</b> 10:4,8  <b>care</b> 6:11  <b>careful</b> 12:23  <b>case</b> 12:20  <b>cause</b> 1:11  <b>cautious</b> 14:21  <b>certain</b> 14:6  <b>Certified</b> 21:14  <b>chair</b> 17:22  <b>changes</b> 9:22 11:7                      11:16,21,22 12:1                      12:2,15,24 14:10                      15:1 16:8,11,14  <b>check</b> 19:24  <b>checks</b> 11:17  <b>Chicago</b> 1:13 3:14                      3:16 5:4 6:17                      18:8 21:6  <b>City</b> 21:6  <b>clarify</b> 6:16  <b>clarifying</b> 6:4 16:7  <b>cleanup</b> 9:3,5,5                      13:8  <b>clear</b> 4:4,10  <b>clearly</b> 4:9 6:19</p>	<p>19:8  <b>clerk</b> 20:1  <b>clerk's</b> 4:24 19:24  <b>close</b> 14:17  <b>closely</b> 11:8  <b>Code</b> 1:6 3:7  <b>come</b> 6:8 13:20  <b>commencing</b> 1:15  <b>comment</b> 4:14,19                      5:15,18,18 6:10                      6:18,22 9:13,21                      12:7 18:13                      19:11,15 20:6  <b>comments</b> 4:24                      5:14 6:6 9:20                      13:10,16 14:15                      14:24 15:9,12,19                      19:2,5,8,21  <b>Commerce</b> 17:14  <b>communications</b>                      10:2  <b>complete</b> 4:5  <b>concern</b> 10:22                      12:10,14  <b>concerns</b> 11:5  <b>concluded</b> 20:17  <b>conduct</b> 17:15,23  <b>conducting</b> 13:24                      17:19  <b>consequence</b>                      12:15  <b>consequences</b>                      14:22  <b>consideration</b>                      9:12  <b>consistent</b> 9:6  <b>contains</b> 21:10  <b>context</b> 11:19  <b>Control</b> 1:1,13 3:2                      7:16 21:1  <b>conversations</b>                      11:4,11  <b>COOL</b> 5:1  <b>correct</b> 5:21 12:13                      16:24 17:2</p>	<p>19:18 21:9  <b>counsel</b> 2:5 3:21                      7:11,23 8:19  <b>couple</b> 3:22  <b>court</b> 3:18 4:8 8:3                      18:18 21:5  <b>cross</b> 11:17  <b>cross-referenced</b>                      11:17  <b>CSR</b> 1:22  <b>currently</b> 11:24  <b>Currie</b> 17:22</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>Darin</b> 2:24 7:13                      8:13  <b>date</b> 5:12 19:6,8  <b>dated</b> 17:21  <b>day</b> 1:14  <b>days</b> 17:20 19:6  <b>DCEO</b> 17:15,23                      18:4  <b>DCEO's</b> 18:9  <b>deadline</b> 19:2,5,8  <b>December</b> 5:4,5                      5:10 9:14 10:1                      13:13,22  <b>decision</b> 4:5,6  <b>declined</b> 18:5  <b>definitely</b> 14:14  <b>delegated</b> 14:8  <b>Department</b>                      17:14  <b>department's</b>                      17:18  <b>desire</b> 9:21 11:6                      12:19  <b>details</b> 6:11  <b>determined</b> 13:4  <b>develop</b> 4:4  <b>directed</b> 5:8  <b>directly</b> 11:10  <b>director</b> 18:4  <b>discuss</b> 18:24  <b>discussed</b> 10:10</p>
---	---	---	---	--

<p>10:12 19:10  <b>discussion</b> 18:21  <b>Division</b> 7:16  <b>docket</b> 3:9 5:6  10:11  <b>docketed</b> 5:15  <b>doing</b> 21:5  <b>double-check</b>  12:19  <b>draft</b> 11:23  <b>drafted</b> 11:14  <b>Drive</b> 2:18  <b>due</b> 13:16  <b>duly</b> 8:7,14 21:4</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>E</b> 1:6 3:8  <b>earlier</b> 11:5  <b>early</b> 15:19  <b>East</b> 2:9  <b>economic</b> 17:11  17:15,15,23 18:6  <b>effect</b> 13:1,7  <b>either</b> 6:16 16:14  17:17 18:7  <b>electronically</b>  4:24  <b>ensure</b> 20:1  <b>entire</b> 11:17  <b>entitled</b> 3:6 5:14  <b>environmental</b>  2:7,14,22 7:8,23  8:20 14:13  17:12  <b>EPA</b> 7:12 9:10,24  10:2,21 13:4  14:4 15:4 16:13  <b>EPA's</b> 10:16,18  13:23  <b>event</b> 10:16  <b>EXAMINATION</b>  8:16  <b>examined</b> 8:15  <b>Excellent</b> 3:19  4:21 17:4</p>	<p><b>expects</b> 19:3  <b>explanation</b> 17:18  <b>express</b> 9:21  10:22  <b>expressed</b> 11:6  12:10,19  <b>extra</b> 14:20</p> <hr/> <p style="text-align: center;"><b>F</b></p> <p><b>fact</b> 12:17 15:11  <b>fairly</b> 6:2  <b>figuratively</b> 17:8  <b>file</b> 16:20 19:2,5  <b>filed</b> 5:10,13  14:14  <b>filing</b> 19:24  <b>filings</b> 8:23 12:10  15:13 19:21  <b>final</b> 11:14 15:20  <b>finalize</b> 14:22  <b>finding</b> 16:12  <b>first</b> 5:6 6:5 7:4  8:14 9:1 21:4  <b>Flynn</b> 17:22  <b>follows</b> 8:15  <b>foregoing</b> 21:8  <b>formal</b> 12:7 14:1,4  15:4,14  <b>formality</b> 15:15  <b>formally</b> 14:9  <b>forwarded</b> 9:11  10:13  <b>found</b> 16:21  <b>Fox</b> 1:12 2:3 3:1,3  3:19 4:21 6:24  7:18 8:1,8 16:1  16:15,19 17:4  18:15,23 19:20  20:8  <b>frames</b> 15:6  <b>Friday</b> 19:4,7,7  <b>front</b> 15:10  <b>further</b> 20:14</p> <hr/> <p style="text-align: center;"><b>G</b></p> <p><b>general</b> 2:5 3:20</p>	<p>11:9,12,18 14:19  15:17  <b>generally</b> 15:5  <b>given</b> 21:10  <b>go</b> 11:16 18:18,24  <b>goes</b> 15:20  <b>going</b> 15:10  <b>gonna</b> 7:14 11:21  11:22 12:20  14:15  <b>good</b> 3:1 6:24 8:5  16:15,19  <b>gotten</b> 12:7  <b>governed</b> 3:23  <b>Grand</b> 2:9  <b>Group</b> 2:22 7:8,24  8:20  <b>groups</b> 14:14  <b>Grove</b> 2:18  <b>guess</b> 9:1 13:6  14:2</p> <hr/> <p style="text-align: center;"><b>H</b></p> <p><b>happy</b> 16:7  <b>head</b> 15:7  <b>heard</b> 9:13 10:13  <b>hearing</b> 1:11 2:3  3:1,2,3,5,19,23  4:13,21 5:6,8,9  5:16 6:3,12,24  7:2,18 8:1,8  11:13 16:1,15,19  17:4,20 18:10,15  18:23 19:4,12,13  19:20,22 20:8,8  20:13,18 21:8,11  <b>hearings</b> 20:14  <b>held</b> 1:10 5:7  <b>help</b> 4:4,22 19:20  <b>HEPLER</b> 2:16  <b>honestly</b> 13:9,19  <b>hopefully</b> 10:16  15:13  <b>hoping</b> 13:10  14:23</p>	<p><b>hour</b> 1:15  <b>hundred</b> 14:6</p> <hr/> <p style="text-align: center;"><b>I</b></p> <p><b>I-E-R-G</b> 7:24  <b>identified</b> 8:18  <b>identify</b> 7:5,20  <b>IEPA</b> 5:13,22  <b>IEPA's</b> 5:17  <b>IERG</b> 7:24  <b>Ill</b> 1:5  <b>Illinois</b> 1:1,12,14  2:7,11,13,19,21  3:2,7 7:7,11,23  8:20 9:17 16:13  21:1  <b>impact</b> 12:17  17:11,16,23 18:6  <b>impression</b> 14:7  <b>indicate</b> 4:14  <b>indicated</b> 4:17  11:2,20 19:16  <b>indication</b> 18:11  20:12  <b>information</b> 3:24  10:13  <b>input</b> 13:17  <b>intend</b> 11:3 12:16  <b>intended</b> 4:4 9:2,4  12:3 16:9  <b>intent</b> 9:8 12:4  16:10,13  <b>involved</b> 14:15  <b>involving</b> 19:1  <b>issue</b> 17:11  <b>issues</b> 19:1</p> <hr/> <p style="text-align: center;"><b>J</b></p> <p><b>January</b> 1:14 5:16  19:4,7,13,17  <b>Jennifer</b> 2:4 3:12  <b>Journal</b> 5:5</p> <hr/> <p style="text-align: center;"><b>K</b></p> <p><b>Kaminski</b> 3:5  <b>kind</b> 9:6,19 10:21</p>	<p>13:9,24 14:8,8  14:19 15:14,17  <b>know</b> 9:15 10:17  11:3,7 12:4 13:4  13:9,11,11,19  14:12,22 15:3,5  15:7,14,18  <b>knowledge</b> 10:15  <b>known</b> 7:24</p> <hr/> <p style="text-align: center;"><b>L</b></p> <p><b>L-e-C-r-o-n-e</b>  7:17  <b>language</b> 9:5 11:9  11:23 12:21  16:12  <b>LeCrone</b> 2:24  7:13,15 8:4,8,13  8:21 15:23,24  16:4 17:6 20:15  <b>left</b> 9:17  <b>legal</b> 7:11  <b>letter</b> 17:21  <b>License</b> 1:23  <b>link</b> 10:11  <b>list</b> 16:22 19:24  20:3  <b>literally</b> 17:8  <b>little</b> 14:20 15:20  <b>LLC</b> 2:16  <b>locations</b> 4:13  <b>look</b> 10:21 11:21  11:22  <b>loose</b> 20:4  <b>lot</b> 11:9</p> <hr/> <p style="text-align: center;"><b>M</b></p> <p><b>M-e-l-i-s-s-a</b> 7:22  <b>Madam</b> 18:18  <b>making</b> 9:5 16:10  <b>manager</b> 7:15  <b>manner</b> 10:12  <b>Marie</b> 2:5 3:17,20  <b>Mark</b> 3:5  <b>matter</b> 1:3 3:6  16:11</p>
--	---	---	--	---

<b>matters</b> 20:10	20:1	19:24	13:21 17:24	<b>regarding</b> 10:2,4
<b>mean</b> 12:2 15:9	<b>officer</b> 1:11 2:3	<b>PO</b> 2:10	20:6	18:8
<b>Melissa</b> 2:17 7:21	3:1,4,5,19 4:21	<b>point</b> 7:1 17:9	<b>proposed</b> 6:3 8:24	<b>Region</b> 9:12,18
8:19	5:8,17 6:24 7:18	<b>points</b> 3:22	9:2,9,22,24 10:3	11:15 12:6,18
<b>member</b> 2:4 3:12	8:1,8 16:1,15,19	<b>Pollution</b> 1:1,7,12	10:17,19,24	<b>Register</b> 5:5
3:13,15 4:17	17:4 18:15,23	3:2,8 7:16 21:1	12:11,12 13:5	<b>regs</b> 13:2
6:19 8:1 16:1,16	19:13,20,23 20:8	<b>pose</b> 16:5	15:1 16:8 17:16	<b>regular</b> 10:4,8
16:21 18:12	<b>Okay</b> 9:9,23 10:15	<b>posed</b> 4:3	<b>Protection</b> 2:7,14	<b>regulations</b> 10:22
20:5	13:22 14:11	<b>position</b> 14:12	17:12	10:23 11:10
<b>mind</b> 4:2	15:2	<b>possible</b> 10:20	<b>provides</b> 17:13	16:9
<b>minor</b> 10:24	<b>once</b> 6:8 14:2	11:1	<b>provisions</b> 10:23	<b>Regulatory</b> 2:22
<b>modern</b> 9:6	<b>online</b> 5:1 20:1	<b>post</b> 9:17	<b>public</b> 4:14,18	7:8,24 8:20
<b>moment</b> 18:19,24	<b>opinion</b> 12:7	<b>post-hearing</b>	5:15,18 6:6,18	<b>reissuance</b> 11:8
<b>month</b> 13:12	<b>Opportunity</b>	13:16 15:13	11:13 17:19,20	<b>reissued</b> 11:13
<b>morning</b> 3:1	17:15	19:2,5,11	19:15 20:6	<b>Related</b> 1:7 3:8
<hr/> <b>N</b> <hr/>	<b>order</b> 5:7,16 6:3	<b>posted</b> 5:3	<hr/> <b>Q</b> <hr/>	<b>relevant</b> 4:1
<b>name</b> 3:3 7:17,22	8:23 19:13,14	<b>potentially</b> 13:5	<b>quarterly</b> 10:8	<b>repetitious</b> 4:1
<b>necessarily</b> 10:24	<b>organization</b> 16:2	<b>pre-file</b> 16:23	<b>question</b> 9:1 13:3	<b>REPORT</b> 1:10
<b>need</b> 11:16,18	<b>original</b> 19:14	<b>pre-filed</b> 5:11 6:7	15:2 16:4,17	<b>reported</b> 1:22
20:10	<b>originally</b> 12:17	<b>preapproval</b> 14:1	<b>questions</b> 4:3,7	21:7
<b>neither</b> 17:4 18:10	<b>outside</b> 7:23 8:19	<b>prefer</b> 15:17	5:17,24 6:8 7:3	<b>reporter</b> 3:18 4:8
20:8	<hr/> <b>P</b> <hr/>	<b>preliminary</b> 5:14	7:12 8:9,11,21	8:3 18:18 21:5
<b>nobody's</b> 13:13	<b>parallel</b> 12:21	5:18	16:3,6 17:7	21:14
<b>non</b> 12:3	<b>part</b> 13:2	<b>prepared</b> 5:23	18:20 19:12	<b>representative</b>
<b>nonsubstantive</b>	<b>participants</b> 20:9	<b>present</b> 2:24 3:11	<b>quick</b> 15:8,15	3:10
9:3,4 12:2,4,5	<b>participation</b> 6:1	3:13 6:16 8:2	<b>quicker</b> 15:21	<b>request</b> 17:14
12:16 16:10	20:16	16:2,23 20:5	<b>quickly</b> 6:2 7:9	18:5,9
<b>North</b> 2:9	<b>particular</b> 20:15	<b>pretrial</b> 5:9 16:20	18:18	<b>requested</b> 5:17
<b>note</b> 3:11	<b>pending</b> 10:5,7	<b>pretty</b> 15:8	<b>quoting</b> 11:10	17:22 18:1
<b>noted</b> 8:22	14:13	<b>previous</b> 11:3	<hr/> <b>R</b> <hr/>	<b>required</b> 17:12
<b>notepad</b> 4:12	<b>percent</b> 14:6	<b>previously</b> 8:18	<b>R18-25</b> 1:5 3:9	<b>resolved</b> 6:9
<b>notes</b> 21:9	<b>perform</b> 18:5	<b>prior</b> 9:23 10:1	<b>Raelene</b> 1:22 21:4	<b>respectfully</b> 18:5
<b>notice</b> 5:3	<b>permit</b> 7:15 11:9	<b>privileged</b> 4:1	<b>raise</b> 8:11	<b>response</b> 5:17
<b>November</b> 5:7,8	11:9,12,15,18,19	<b>probably</b> 13:12	<b>Randolph</b> 1:13	11:13 13:21
5:13 18:1	11:23 12:22	<b>procedural</b> 3:24	<b>reach</b> 13:15	18:1,4,9 19:16
<b>number</b> 3:9 5:15	14:19,23 15:19	6:11 18:20 19:1	<b>ready</b> 11:12	<b>responses</b> 13:18
5:19	<b>person</b> 4:10 16:2	<b>proceeding</b> 3:6	<b>receive</b> 5:11 15:12	20:16
<hr/> <b>O</b> <hr/>	<b>persons</b> 19:23	<b>proceedings</b> 1:10	<b>received</b> 18:3	<b>rest</b> 14:23
<b>oath</b> 21:5	<b>petition</b> 10:6	21:7,10	<b>record</b> 3:20 4:2,5	<b>review</b> 9:10,12,21
<b>obviously</b> 10:18	14:13,17	<b>process</b> 10:17	7:6,20 18:19,22	10:16 11:18
<b>October</b> 18:3 19:7	<b>phrasing</b> 9:7	13:3 15:6,20	18:24 19:9	13:23 14:1,4
<b>offer</b> 4:14,18 6:6	<b>piece</b> 14:20	<b>produce</b> 4:10	20:11	15:4,14
6:10,17 20:6	<b>place</b> 3:4 19:9	<b>program</b> 10:5,6	<b>reflect</b> 3:20 4:6	<b>reviewing</b> 10:18
<b>office</b> 3:14,16 5:1	<b>please</b> 3:21 4:2,8	14:8	12:22 13:18	<b>reviews</b> 13:4
		<b>proposal</b> 4:6 12:5		<b>revisions</b> 8:24 9:2

9:3,9,24 10:3,17 10:19,24 12:12 12:13 13:6 <b>rid</b> 14:16 <b>right</b> 8:18 15:22 <b>rulemaking</b> 3:4,9 9:3 10:20 11:15 13:7,8 15:18 17:24 <b>rules</b> 3:24 11:4,8 14:3 17:16 <b>ruling</b> 3:13	<b>solely</b> 4:4 <b>soon</b> 15:1 <b>Sounds</b> 8:5 <b>speak</b> 4:9 <b>speaking</b> 4:9 <b>specifically</b> 17:24 19:1 <b>spelled</b> 7:17 <b>Springfield</b> 2:11 2:19 3:11 4:16 5:6 6:17,20 17:5 18:7,11 20:9 <b>staff</b> 4:4 9:16 <b>staffing</b> 9:15 <b>Stamm</b> 1:22 21:4 <b>stands</b> 11:24 <b>state</b> 7:14 <b>statement</b> 16:8 <b>status</b> 11:12 <b>step</b> 17:8 <b>Street</b> 1:13 <b>stress</b> 3:23 4:23 <b>study</b> 17:11,16,18 17:23 18:6 <b>subject</b> 9:10 10:19 <b>submit</b> 4:24 14:9 <b>submittal</b> 13:23 <b>submitted</b> 14:4 15:3 <b>submitting</b> 9:23 19:14 <b>substantive</b> 8:24 11:21 12:1,12 13:6 16:11,14 <b>Subtitle</b> 1:6 3:8 <b>summary</b> 11:14 <b>Sun</b> 5:4 <b>supposed</b> 12:21 12:22 <b>sure</b> 12:19,24 14:21 16:21 <b>surprise</b> 15:10 <b>swear</b> 8:3 <b>sworn</b> 7:9 8:7,15 21:4	<hr/> <b>T</b> <hr/> <b>T-e-r-r-a-n-o-v-a</b> 7:11 <b>take</b> 6:10 10:21 18:23 <b>taken</b> 21:9 <b>Terranova</b> 2:8 5:21 7:5,10,10 19:15,19 <b>testified</b> 8:15 <b>testify</b> 5:22 16:24 18:8,13 <b>testimony</b> 4:7 5:9 5:12 6:7 16:20 16:23 <b>thank</b> 4:21 8:12 15:23,24 17:6 18:23 19:20 20:15,17 <b>thanks</b> 7:18 8:8 <b>thing</b> 14:8 <b>things</b> 15:18 <b>think</b> 6:2,4 8:10 10:8 11:1 13:14 13:14 15:8 16:11 17:7,10 <b>tie</b> 18:19 20:4 <b>tied</b> 11:8 <b>Tim</b> 3:3 <b>time</b> 4:9 10:20 13:24 15:5 17:10 <b>Times</b> 5:4 <b>TIMOTHY</b> 1:12 2:3 <b>Tipsore</b> 2:5 3:17 <b>title</b> 7:14 <b>today</b> 4:3 5:22 6:1 6:3 7:2 8:9,21 16:24 <b>told</b> 10:10 <b>top</b> 15:7 <b>transcript</b> 4:11 19:3 21:9 <b>true</b> 21:8	<b>trying</b> 13:13 <b>turn</b> 6:1,7 7:1 8:10 17:10 <b>turnaround</b> 15:16 <b>turnover</b> 9:15 <b>two</b> 4:13 9:16 18:19 <b>typically</b> 15:8	<hr/> <b>U</b> <hr/> <b>understand</b> 5:20 7:3 <b>unintended</b> 12:15 13:1 14:21 <b>Unsurprisingly</b> 18:15	<hr/> <b>V</b> <hr/> <b>Van</b> 2:4 3:12,15 3:17 4:17,20 6:19,23 8:1,5 16:1,6,16,18,21 17:2 18:12,14 20:5,7 <b>version</b> 20:2 <b>video</b> 2:3,8,17,24	<hr/> <b>W</b> <hr/> <b>want</b> 3:11,22 4:23 12:23 15:9 <b>wants</b> 6:21 <b>wasn't</b> 15:10 <b>Water</b> 7:16 <b>way</b> 9:6 <b>We'll</b> 7:6 <b>website</b> 5:2 <b>welcome</b> 3:1 <b>West</b> 1:13 <b>Wie</b> 2:4 3:12,15 3:17 4:17,20 6:19,23 8:1,5 16:1,6,16,18,21 17:2 18:12,14 20:5,7 <b>wish</b> 4:15 5:22 16:3,17 20:5	<b>wishes</b> 4:14,18 6:17,20 18:13 <b>wishing</b> 18:17 <b>withdrawal</b> 10:6 14:13,17 <b>witness</b> 5:23 6:8 7:1,6,9,12 8:6 8:14 <b>wondering</b> 15:5 <b>works</b> 16:12 <b>worth</b> 6:4 <b>wrapped</b> 19:11 <b>wrapping</b> 19:16	<hr/> <b>X</b> <hr/>	<hr/> <b>Y</b> <hr/>	<b>yeah</b> 9:7 12:3 <b>years</b> 10:7 14:14	<hr/> <b>Z</b> <hr/>	<hr/> <b>0</b> <hr/>	<b>084-004445</b> 1:23	<hr/> <b>1</b> <hr/>	<b>1</b> 5:15,19 18:1 <b>10</b> 10:7 <b>100</b> 1:13 <b>1021</b> 2:9 <b>12</b> 5:7 <b>14</b> 19:6 <b>14th</b> 19:4 <b>16</b> 5:13 <b>17</b> 17:21 <b>19276</b> 2:10	<hr/> <b>2</b> <hr/>	<b>2</b> 5:4 9:14 10:1 13:22 <b>20</b> 17:19 <b>2021</b> 5:4,5,7,11,13 17:21 18:2,3 <b>2022</b> 1:14 5:16 <b>217</b> 2:12,20 <b>22</b> 18:3
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<b>27B</b> 17:13 <b>28</b> 19:7,17 <hr/> <b>3</b> <hr/> <b>3</b> 5:5,16 19:13 <b>30</b> 5:8,10 <b>35</b> 1:5 3:7 <hr/> <b>4</b> <hr/> <b>4340</b> 2:18 <hr/> <b>5</b> <hr/> <b>5</b> 9:12,18 11:15 12:6,18 <hr/> <b>6</b> <hr/> <b>62711</b> 2:19 <b>62794</b> 2:11 <b>6th</b> 1:14 <hr/> <b>7</b> <hr/> <b>782-5544</b> 2:12 <hr/> <b>8</b> <hr/> <hr/> <b>9</b> <hr/> <b>9:00</b> 1:15 <b>9:25</b> 20:19 <b>993-6077</b> 2:20				
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