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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
SITE-SPECIFIC RULE FOR CITY)
OF EFFINGHAM TREATMENT)
PLANT FLUORIDE DISCHARGE,) R03-11
35 ILL. ADM. CODE 304.233) (Site-Specific Rulemaking-Water)

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STATE OF ILLINOIS
Pollution Control Board

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said proceeding was taken on the 11th day of April A.D., 2003, commencing at 10:00 o'clock a.m., at 201 East Jefferson Street, Effingham, Illinois.

1 APPEARANCES:
 ILLINOIS POLLUTION CONTROL BOARD
 2 1717 Philo Road
 Suite 25
 3 Urbana, Illinois 61802
 (217) 278-3111
 4 By: John Knittle, Hearing Officer
 5 BOARD MEMBERS PRESENT:
 Chairman Thomas Johnson
 6 Anand Rao, Senior Environmental Scientist
 Alisa Liu, P.E., Environmental Scientist
 7
 Hodge, Dwyer & Zeman
 8 3150 Roland Avenue
 Springfield, Illinois 62705
 9 By: David M. Walter, Esq.
 Appearing on behalf of the Petitioners
 10
 Illinois Environmental Protection Agency
 11 Division of Legal Counsel
 1021 North Grand Avenue East
 12 Springfield, Illinois 62794
 By: Deborah J. Williams, Esq.
 13 Appearing on behalf of IEPA
 14 Law Office of Matthew R. Hortenstine
 122 East Washington Street
 15 Effingham, Illinois 62401
 By: Matthew R. Hortenstine, Esq.
 16 Appearing on behalf of the City of Effingham
 17 WITNESSES IN ATTENDANCE:
 Scott Twait, Mike Rose, Max Shepard, Greg Bright and
 18 Steve Miller
 19 EXHIBITS MARKED ADMITTED
 Petitioners' Exhibit J Pg. 22 Pg. 25
 20 Petitioners' Exhibit L 25 26
 Petitioners' Exhibit M 26 27
 21 Petitioners' Exhibit N 28 29
 Petitioners' Exhibit O 30 31
 22 Petitioners' Exhibit P 30 31
 Petitioners' Exhibit Q 68 68
 23 IEPA Exhibit Number 1 39 40
 IEPA Exhibit Number 2 42 42
 24 IEPA Exhibit Number 3 43 44

1 HEARING OFFICER KNITTLE: Good morning. My
2 name is John Knittle. I am an attorney assistant to
3 Chairman Tom Johnson at the Illinois Pollution Control
4 Board. I'm also the hearing officer of this rule-making
5 proceeding, which is R03-011, in the matter of the
6 site-specific rule for the City of Effingham Treatment
7 Plant Fluoride Discharge from 35 Illinois Administrative
8 Code 304.233.

9 I want to introduce Chairman Tom Johnson.
10 He will be coordinating this rule making for the Board.
11 I also want to note for the record that we have other
12 board personnel present from the technical unit, Anand
13 Rao and Alisa Liu. And that is it from the Pollution
14 Control Board.

15 I'm going to now give you a little
16 background on this proposal, which hopefully all of you
17 are familiar with. But for the sake of the record, on
18 October 22, 2002, the City of Effingham, Blue Beacon
19 International and Truckomat Corporation filed a petition
20 for the rule-making change regulations governing
21 fluoride, found in the Board's rule at 35 Illinois
22 Administrative Code 302.208(g).

23 BBI and Truckomat operate truck washes in
24 Effingham County in the City of Effingham. And the

1 wastewater from the truck washes contains fluoride
2 resulting from the brighteners used in washing the
3 trucks. Petitioners state that there are no alternative
4 replacements for these brighteners, and discontinuing
5 their use would cause severe negative impact
6 economically. Petitioners further state that the
7 site-specific fluoride level posed will be protective of
8 aquatic life, human health and the environment as a
9 whole.

10 The wastewater discharge flows in an
11 unnamed tributary of Salt Creek, which flows into the
12 Little Wabash River at 37 miles upstream from the City
13 of Flora. The City's current daily fluoride effluent
14 limit is 1.4 milligrams per liter. The same as the
15 water standard, the City seeks an effluent limit of 4.5
16 milligram liters subject to the averaging Rule of 35
17 Illinois Administrative Code 304.104.

18 This hearing was properly noticed pursuant
19 to the Act and the Board's procedural rules.

20 Section 27(b) of the Act requires the Board
21 to request the Department of Commerce and Economic
22 Opportunity -- that was formerly the Department of
23 Commerce and Community Affairs, but the name has been
24 changed. It is now DCEO. We're required to conduct an

1 economic impact study on certain proposed rules prior to
2 the adoption of those rules, and DCEO chose to conduct
3 an economic study. They have 30 to 40 days after the
4 study to produce the impact of the proposed rules. The
5 Board must then make this study or their explanation for
6 not conducting the study available to the public at
7 least 20 days before a public hearing on the economic
8 impact.

9 We've requested, the Board has, recently by
10 letter, dated April 9, 2003, that DCEO conduct an
11 economic impact study. We're waiting for a response.
12 Depending on the response, we're either going to
13 schedule a hearing on the study, or schedule a hearing
14 on the decision not to perform the study. We didn't do
15 this initially in light of the changes that have
16 recently occurred with both the director at what was
17 formerly known as DCCA and the agency itself. We are
18 holding off on these, but now it's in the works, and
19 we'll get this done. Well, we're waiting on a response
20 from DCEO right now. When that is done, I will, of
21 course, let all the parties know, and we will properly
22 notice it publicly pursuant to the Act and the Board's
23 rules.

24 On to the proceedings. I've got sign-up

1 sheets for the service and notice list in if fact there
2 were any members of the public here, but as we've talked
3 about off the record here, there are no members of the
4 public here at this point in time. Everyone is either
5 working with the City or employed by the City or the
6 Agency for this rule making.

7 People on the notice list will receive only
8 board opinions and orders and hearing officer orders.
9 Those on the service list would receive these documents,
10 plus certain other filings, like public comments.

11 Also up front are -- I have copies of the
12 testimony that's been filed and the questions asked by
13 the Board that elucidated some of that testimony, if
14 there is anyone here that wanted to see them, but of
15 course there's not. So if you guys need any, I'd be
16 happy to supply them to the parties.

17 Besides the witnesses for the parties, if
18 anybody wishes to testify today, they would have to sign
19 on the appropriate sign-up sheet here at the front of
20 the room. And time permitting, after the agency's
21 testimony, we would receive the testimony of those
22 people who signed up in the order their names appeared
23 on the sign-up sheet.

24 Also I note that a written public comment

1 period will be set, and if anyone here does not wish to
2 testify today, they will still provide public comment.
3 They could do so via written public comment.

4 As Part 102 of the Board's procedural rules
5 that govern this hearing, all information that is
6 relevant and not repetitious or privileged will be
7 admitted. All witnesses will be sworn and subject to
8 cross examination or questioning.

9 After all testimony is complete, we will
10 allow the parties to provide any closing statements they
11 wish to make. Anyone may ask a question of any
12 witness.

13 And I ask only that during the question
14 periods, if you have a question, raise your hand and
15 wait for me to acknowledge you, state your name and
16 organization. Of course, you guys are all with the
17 parties, so none of that really applies. But if any of
18 you out in the audience wish to ask a question, you're
19 welcome to, as long as you let me know beforehand that
20 you're going to do so.

21 I want everyone to speak one at a time.
22 And if you are speaking over each other, the court
23 reporter cannot accurately transcribe your statements
24 for the record. And for the same reasons, speak loudly

1 and clearly and not too rapidly.

2 Please note that any questions asked by
3 anyone with the Board are intended to help build the
4 record and are not to express any preconceived notion or
5 bias.

6 Does anybody out here have any questions?
7 I'm seeing none.

8 I want to introduce again Chairman Tom
9 Johnson, and ask him if he'd like to make any response
10 at this time.

11 CHAIRMAN JOHNSON: I've introduced myself
12 to you all. I'd like to welcome you here today, and
13 assure you that the Board and myself recognize the
14 importance of this rule making and will do everything in
15 our power to give the matter the attention it deserves,
16 and issue the decision in this matter in a timely
17 fashion. Thanks for coming.

18 HEARING OFFICER KNITTLE: Thank you,
19 Chairman Johnson.

20 We have the petitioners. Could you
21 introduce yourself, the attorney for the Petitioner?

22 MR. WALTER: Yes. Thank you, Mr. Hearing
23 Officer. My name is David Walter.

24 HEARING OFFICER KNITTLE: And for the

1 Agency?

2 MS. WILLIAMS: I'm Deborah Williams.

3 HEARING OFFICER KNITTLE: Mr. Walter, do
4 you have any opening statement you'd like to make?

5 MR. WALTER: Yes, I do, Mr. Hearing
6 Officer.

7 Hearing Officer Knittle, Chairman Johnson,
8 thank you for allowing us to come here and present our
9 petition today, and also technical staff, members of the
10 board.

11 I'm here on behalf of the City of
12 Effingham, Blue Beacon International and Truckomat
13 Corporation. Also with me here today is Matthew
14 Hortenstine, who is the city attorney for the City of
15 Effingham.

16 As the hearing officer has indicated,
17 Petitioners are seeking a site-specific effluent limit
18 for fluoride for discharges from the City's POTW, or
19 publicly owned treatment works, including wastewater
20 from Blue Beacon and Truckomat's Effingham facilities.
21 The Board's effluent regulations require at Section
22 304.105, that effluent from the City not cause an
23 applicable water quality standard to be exceeded. The
24 general numeric water quality standard for fluoride,

1 which is set forth in Section 302.208(g), is 1.4
2 milligrams per liter.

3 Today, through our prefiled testimony and
4 in response to questions, we intend to demonstrate that
5 treatment to a general fluoride water quality standard
6 of 1.4 milligrams per liter is neither technically
7 feasible nor economically reasonable for the unnamed
8 tributary of Salt Creek from the point of the City's
9 discharge to a point approximately 44 miles downstream.

10 We will also demonstrate the elimination of
11 fluoride-based chemicals from Blue Beacon and
12 Truckomat's facilities would have a severe negative
13 economic impact on the industries, as well as the City.

14 Finally, we will demonstrate that the
15 fluoride effluent standard requested will not harm the
16 aquatic life and the waters downstream of the City's
17 discharge or have a negative impact on the current use
18 of surface waters as the public water supply.

19 We have four witnesses to provide
20 testimony. Mr. Steve Miller is the city engineer, and
21 he will provide information about the City in general,
22 including information about the City's wastewater
23 treatment plant, the NPDES permit issued to the City,
24 and sources of fluoride in the City.

1 Mr. Mike Rose, the environmental research
2 and development director for Blue Beacon, who will
3 provide information about the truck washing facilities,
4 including the beneficial economic impact or
5 benefit -- or, rather, the beneficial economic impact of
6 Blue Beacon and Truckomat's operations to the City and
7 surrounding area, and the economic reasonableness of
8 reducing fluoride levels from the truck washes.

9 Mr. Max Shepard, of Shepard Engineering,
10 will testify about the historic flow and fluoride data
11 for the receiving streams and the technical feasibility
12 of reducing fluoride levels from the truck washes, as
13 well as how and why proposed site-specific effluent
14 standard was derived.

15 Mr. Greg Bright of Commonwealth
16 Biomonitoring, Incorporated, will describe the available
17 data concerning the toxicity of fluoride to aquatic life
18 and demonstrate why the site-specific effluent standard
19 for fluoride proposed by Petitioners can be granted
20 without any harm to either aquatic life or the
21 environment.

22 The testimony will demonstrate that
23 Petitioners have worked closely with the Agency on this
24 issue over the course of several months. And we thank

1 the Agency for working with us in trying to resolve this
2 issue, and we appreciate their participation here
3 today.

4 On page one of its pre-filed testimony, the
5 Agency notes that it is the substantial agreement that
6 relief is necessary in this matter.

7 Nevertheless, in its pre-filed testimony,
8 the Agency suggests that the water quality standard for
9 the receiving stream should be modified, instead of the
10 Board simply granting relief from Section 304.105. I
11 would like to briefly address that suggestion, because
12 we do believe that the Board has the authority to grant
13 relief from 304.105 as requested.

14 As the Agency recognizes on page five of
15 its pre-filed testimony, Petitioners' approach in not
16 requesting relief from the water quality standard is
17 consistent with several recent Board decisions.

18 As recently as June 6th of last year, 2002,
19 the Board denied a petitioner's request for relief from
20 Section 302.208(g), or, rather, 302.208, of the Board's
21 regulations, and granted relief from Section 304.105
22 instead. And that was In The Matter of: Material
23 Service Corporation.

24 The Board reasoned that granting relief

1 from the water quality standard would be too expansive
2 and could have the effect of giving other dischargers
3 located on the stream the same relief as the
4 petitioners, even though those individuals had not
5 demonstrated or may not be able to demonstrate that they
6 were entitled to the relief or that the relief is
7 necessary for them.

8 In its prior decisions, the Board has
9 explained that, by granting relief from Section 304.105,
10 instead of from the water quality standards, the relief
11 is limited to the petitioners seeking relief, and other
12 dischargers are still required to meet the generally
13 acceptable -- or generally applicable water quality
14 standards.

15 And a citation for that is the Petition of
16 Rhone-Poulenc Basin Chemical Company, the August 11,
17 1994 opinion, and the adjusted standard 94-7.

18 There's ample precedent for the Board to
19 grant the petitioners the relief from Section 304.105
20 that has been requested, and we believe that such relief
21 is not inconsistent with federal law.

22 Section 402 of the Clean Water Act and
23 Section 39 of the Act do not prohibit issuance of an
24 NPDES permit here, because the site-specific relief

1 granted would prevent the City's discharge from
2 violating the water quality standard.

3 Pursuant to 40 CFR, Section 131.13, the
4 Board has discretion regarding the application and
5 implementation of its water quality standards, including
6 how the standard applies during low flows.

7 Moreover, in Section 27 (a) of the Act, it
8 authorizes the Board to adopt regulations that are
9 specific to either individuals or to sites.

10 In support of its pre-filed testimony, the
11 Agency also relies on correspondence, dated August 26,
12 1985, that it received from the USEPA regarding the
13 site-specific relief from Section 304.105. It was
14 granted to the John Deere Foundry, and that is now
15 codified at 35 Illinois Administrative Code, Section
16 304.205. This letter from the USEPA, however, does not
17 prohibit the Board from granting relief from Section
18 304.105. Instead, the letter provides a pertinent part
19 as follows:

20 Quote, "We would like to avoid disapproval
21 of the water quality standards exemption for John Deere
22 Foundry as currently adopted."

23 Based upon that language, I think that one
24 reasonable interpretation of the letter from the USEPA

1 is that this "end run," as the agency describes it, was
2 based upon the failure for the USEPA to be notified of
3 the site-specific relief that was granted as opposed to
4 the fact that the relief was from 304.105.

5 The Agency's suggestion on page 13 of its
6 pre-filed testimony that "the averaging rule in Part 304
7 merely addresses how compliance with the effluent
8 ultimately placed in a permit is determined" is also
9 incorrect, we would respectfully submit. Section
10 304.104 sets forth a method for interpreting the
11 numerical effluent standards in Part 304. The method
12 for interpreting the effluent standards in Part 304
13 provides, in pertinent part, as follows:

14 "Except as otherwise specifically
15 provided, proof of violation of the numerical standards
16 of this part shall be on the basis of one or more of the
17 following averaging rules."

18 And, again, I think the pertinent language
19 of that language is the words of "this part." That's
20 not to say the compliance with part 304 or effluent
21 limitation pursuant to the averaging rule, does not
22 necessarily mean that the limits of the NPDES permit
23 have not been violated.

24 Proof of violation of the effluent

1 limitations contained in permits shall be based on the
2 language of the permit. And that is set forth in 35
3 Illinois Administrative Code, Section 304.104(d).

4 Thus, the Board may grant Petitioners
5 relief that's been requested. Such relief is in accord
6 with recent Board decisions, and it is consistent with
7 federal law, and it maintains the generally applicable
8 water quality standard, while granting the Petitioners
9 the site-specific relief that has been requested.

10 Again, we thank you.

11 MR. HEARING OFFICER KNITTLE: Thank you.

12 Ms. Williams, do you have anything to open
13 with?

14 MS. WILLIAMS: It's up to you. How do you
15 want to handle it? We do have a brief opening. And
16 then we're prepared to make some responses and
17 clarifications to the questions that were asked by the
18 Board on a few matters. So if you'd rather, we'd just
19 save that for the end of their case. That's fine.

20 HEARING OFFICER KNITTLE: Do you want to
21 save your opening for the end of this case?

22 MS. WILLIAMS: Sure. I have with me Scott
23 Twait of our standard unit.

24 HEARING OFFICER KNITTLE: Can you spell

1 that?

2 MR. TWAIT: T-w-a-i-t.

3 HEARING OFFICER KNITTLE: Thank you. Your
4 call, Ms. Williams, if you want to make your opening now
5 or at the end of their case.

6 MS. WILLIAMS: Well, I'll go ahead and make
7 the opening. And then as long as we can go back and
8 clarify some of the others later.

9 Good morning. My name is Deborah
10 Williams. I'm assistant counsel for the Bureau of Water
11 at the Illinois EPA. Also here with me today is Scott
12 Twait. He's an environmental protection engineer in the
13 standards unit of the division of water pollution
14 control within the bureau of water at the Illinois EPA.

15 Scott, myself and other agency staff
16 participated in the review and comment on drafting the
17 site-specific rule making petitions presented by the
18 Petitioners in this matter prior to their filing with
19 the Board.

20 As indicated in our pre-file testimony, the
21 Agency supports the technical foundation of the relief
22 requested and recommends that regulatory relief in the
23 form of a site-specific rule making be granted to the
24 petitioners.

1 As I will discuss in more detail in a
2 moment, the Illinois EPA strongly disagrees with the
3 format in which that relief has been requested. Prior
4 to filing a site-specific rule making petition with the
5 Board, Petitioners address the technical questions and
6 concerns raised by the Agency and agree to some
7 additional safeguards that are to be implemented as part
8 of the permitting process to provide additional
9 assurance that the proposed site-specific standard will
10 be protective of the existing and potential uses of the
11 impacted region stream.

12 The proposed safeguards include, first,
13 placement of language in the City of Effingham's
14 National Pollutant Discharge Elimination System Permit,
15 or NPDES permit. That requires the publicly owned
16 treatment works to monitor fluoride concentrations at
17 the City of Flora's water supply intake when the Little
18 Wabash River near 7-day, 10-year low-flow conditions to
19 guarantee that the Flora public water supply will not be
20 adversely impacted by the relief requested.

21 Second, the City has agreed to be bound by
22 an effluent limit of 4.5 milligrams per liter in its
23 NPDES permit in order to guarantee that the water
24 quality standards and the receiving stream will not

1 exceed 5.0 milligrams per liter, taking a conservative
2 view of the potential for evaporation into account.

3 In addition to those safeguards agreed to
4 by the Petitioners, the Agency has the opportunity
5 through the permit renewal process to require the
6 Petitioner to review over the coming years any new
7 information on brighteners that may allow for
8 replacement or reduction of fluoride to the wastewater
9 reach in Effingham's POTW.

10 The Illinois EPA pre-filed testimony
11 primarily details the basis for our conclusion that the
12 relief requested by the Petitioners from 35 Illinois
13 Administrative Code, Section 304.105, is inconsistent
14 with federal law. And that the Board should instead
15 grant relief from the general use water quality standard
16 of 1.4 milligrams per liter contained in 35 Illinois
17 Administrative Code 302.208 (g), and replace that with
18 the site-specific water quality standard, applicable to
19 the reach of the unnamed tributary, Salt Creek and the
20 Little Wabash River impacted by Effingham's discharge.
21 The specific limitations that will be applicable to the
22 various stream segments are outlined on pages 13 and 14
23 of the Agency's testimony.

24 I'd be more than happy to answer any

1 questions the Board may have on that testimony and
2 clarify our legal position in this matter. Certainly we
3 don't disagree with Petitioners' contention of the Board
4 precedent relief they requested. I think we also make
5 clear in our testimony that Board precedent can also be
6 used to support a different conclusion, and we've made a
7 concerted effort in this case to provide a detailed
8 outline of our position in hopes to convince the Board
9 to go forward with the consistent precedent in the
10 future.

11 Additionally, the Agency has reviewed the
12 questions presented in the hearing officer order of
13 March 21, 2003 and the answers submitted to the
14 Petitioners on April 4th. And following the
15 presentation of Petitioners' case, the Agency has
16 clarified -- is prepared today to clarify and add some
17 information to those responses, as well as a few
18 exhibits that we've brought that might assist the Board
19 in this matter.

20 So thank you. That's all I have.

21 HEARING OFFICER KNITTLE: Thank you,
22 Ms. Williams.

23 Mr. Walter, do you want to present
24 testimony?

1 MR. WALTER: No. Actually, we can just do
2 a summary of each individual. Can you read basically
3 the summary of the pre-filed testimony? We've already
4 pre-filed the testimony. So we can read the entirety of
5 the testimony into the record.

6 HEARING OFFICER KNITTLE: And you're going
7 to want to present a summary and then offer that
8 testimony as if it were read at hearing, and we'll
9 accept it?

10 MR. WALTER: That's correct.

11 HEARING OFFICER KNITTLE: Can we swear all
12 four up at the same time?

13 [Witnesses sworn.]

14 HEARING OFFICER KNITTLE: Mr. Walter,
15 whichever one you want to begin with.

16 MR. WALTER: Do you want me to mark the
17 pre-filed as exhibits? Or since it's already been
18 filed, how do you want to do that?

19 HEARING OFFICER KNITTLE: Why don't you
20 mark it just for clarification, so we can refer to it in
21 the Board's opinion and order on this.

22 MR. WALTER: Can I approach the witness?

23 HEARING OFFICER KNITTLE: Sure. And let's
24 go off the record for a second.

1 [Off-the-record discussion.]

2 HEARING OFFICER KNITTLE: Back on the
3 record.

4 MR. WALTER: Are we back on the record?

5 HEARING OFFICER KNITTLE: Yes, we are.

6 [Petitioners' Exhibit J was marked for
7 identification.]

8 MR. WALTER: I've marked for identification
9 purposes Petitioners' Exhibit J. I would ask that filed
10 subsequently, the pre-file testimony of Mike
11 Rose -- actually, I'd like to go out of order and have
12 Mr. Miller first. And I've marked as Petitioners'
13 Exhibit J, the pre-filed testimony of Steve Miller.

14 Mr. Miller, could you just summarize and
15 basically read into the record a summary of your
16 testimony.

17 MR. MILLER: Good morning. My name is
18 Steve Miller. I am the city engineer for the City of
19 Effingham. And I am appearing here today on behalf of
20 the Petitioner in support of their proposal for
21 site-specific rule for fluoride discharge associated
22 with the City of Effingham's wastewater treatment
23 plant.

24 I will describe the City's water treatment

1 plant and its permitted fluoride limit. I've also
2 discussed the City's attempt to determine the sources of
3 and to develop local limits for fluoride for the City's
4 discharge.

5 Finally, I will describe how the City has
6 worked with the fluoride dischargers and the IEPA to
7 address the issues that are raised by the fluoride in
8 the City's effluent.

9 Thank you for allowing me to testify here
10 today.

11 MR. WALTER: And with that summary, if we
12 could have the pre-filed testimony of Mr. Miller entered
13 in the record as it's read.

14 HEARING OFFICER KNITTLE: Any objection?

15 MS. WILLIAMS: No.

16 MR. HEARING OFFICER KNITTLE: That will be
17 so admitted.

18 MR. WALTER: Then Mr. Miller is available
19 for any questions.

20 HEARING OFFICER KNITTLE: Let's do, if you
21 don't mind, get it all in the record, the summaries of
22 all three, and then we can ask our questions.

23 MR. WALTER: Sure. That would probably
24 work better.

1 HEARING OFFICER KNITTLE: We'll ask it in a
2 panel format.

3 MR. WALTER: Mr. Rose, could you read from
4 what I've marked as Petitioners' Exhibit J, a summary of
5 your pre-filed testimony.

6 MR. ROSE: Yes. Good morning. My name is
7 Mike Rose. I'm the director of environmental research
8 and development for Blue Beacon International of Salina,
9 Kansas. I'm appearing here today on behalf of
10 Petitioners in support of their proposal for the
11 site-specific rule for fluoride and dischargers
12 associated with the City of Effingham's treatment
13 plants.

14 I will testify regarding the truck washers
15 in Effingham, their economic significance to the City,
16 the lack of available alternatives to these truck
17 washers, and the fact that there is no economically
18 reasonable way to reduce the fluoride levels.

19 Thank you for allowing me to testify here
20 today.

21 MR. WALTER: And, again, with that summary,
22 we'd ask that his pre-filed testimony be entered in the
23 record as read.

24 HEARING OFFICER KNITTLE: Ms. Williams?

1 discharging into the affected water segments downstream
2 in the City's discharge, as well as the entities using
3 water downstream of the City's discharge, fluoride
4 impacts from the City's discharge, available treatment
5 control options for fluoride, fluoride removal
6 technologies and the technical feasibility of reducing
7 fluoride levels.

8 Thank you for allowing me to testify here
9 today.

10 MR. WALTER: We would ask that the
11 pre-filed testimony of Max Shepard also be entered into
12 the record as being read.

13 MS. WILLIAMS: No objection.

14 HEARING OFFICER KNITTLE: So admitted.

15 [Petitioners' Exhibit L was admitted
16 into the record.]

17 MR. WALTER: And finally I will mark as
18 Petitioners' Exhibit M, the pre-filed testimony of Greg
19 Bright as part of the site-specific regulation.

20 [Petitioners' Exhibit M was marked for
21 identification.]

22 MR. WALTER: Mr. Bright, would you please
23 read into the record the summary of your testimony.

24 MR. BRIGHT: Good morning. My name is Greg

1 MS. WILLIAMS: No problem.

2 HEARING OFFICER KNITTLE: That's admitted.

3 [Petitioners' Exhibit J was admitted
4 into the record.]

5 MR. WALTER: I'm now marking as
6 Petitioner's Exhibit L the pre-filed testimony of Max
7 Shepard.

8 [Petitioners' Exhibit L was marked for
9 identification.]

10 MR. WALTER: Mr. Shepard, can you please
11 just read the summary of your testimony.

12 MR. SHEPARD: Good morning. My name is Max
13 Shepard. I'm a chemical engineer and a licensed
14 professional engineer in four states, and President of
15 Shepard Engineering, Incorporated, of Salina, Kansas.

16 I'm appearing here today on behalf of the
17 Petitioners in support of their proposal for a
18 site-specific rule for the fluoride discharge associated
19 with the City of Effingham's treatment plant.

20 I will testify about how the proposed
21 site-specific effluent standard was derived, the
22 condition of the receiving streams for the City's
23 discharge, the historical flow and fluoride data for
24 those receiving streams, the entities presently

1 Bright. I'm the director of Commonwealth Biomonitoring
2 of Indianapolis, Indiana. And I'm appearing here today
3 on behalf of the Petitioners in support of the proposal
4 for a site-specific rule for the fluoride discharge
5 associated with the City of Effingham's treatment
6 plant.

7 I will testify regarding the available data
8 on the toxicity of fluoride to aquatic life in general,
9 the effect of hardness on fluoride toxicity and actual
10 bioassessments of the site.

11 Thank you for allowing me to testify here
12 today.

13 MR. WALTER: Once again, we would ask the
14 pre-filed testimony of Mr. Bright be entered into the
15 record as it's read.

16 HEARING OFFICER KNITTLE: Ms. Williams?

17 MS. WILLIAMS: No objection.

18 HEARING OFFICER KNITTLE: So admitted.

19 [Petitioners' Exhibit M was admitted
20 into the record.]

21 HEARING OFFICER KNITTLE: Anything else
22 from your perspective, Mr. Walter?

23 MR. WALTER: We have the responses to the
24 questions. Would you like for us to read those into the

1 record?

2 HEARING OFFICER KNITTLE: Those were filed
3 with the Board, correct?

4 MR. WALTER: That's correct.

5 HEARING OFFICER KNITTLE: Those are a
6 matter of record. I don't see any reason why we have to
7 read those into the record.

8 We have a request from Mr. Rao that we make
9 that an exhibit, and I see no reason why we shouldn't.
10 Can you do that for us, Mr. Walter?

11 MR. WALTER: Yes. I am marking -- you
12 found my orange stickers. I'll mark as Petitioners'
13 Exhibit N the Petitioners' response to written questions
14 set forth in Hearing Officer Order, dated March 21,
15 2003.

16 [Petitioners' Exhibit N was marked for
17 identification.]

18 MR. WALTER: And our witnesses are
19 available for questions at this time.

20 HEARING OFFICER KNITTLE: Okay. And you're
21 offering that into evidence, that Exhibit N?

22 MR. WALTER: That's correct.

23 HEARING OFFICER KNITTLE: Ms. Williams?

24 MS. WILLIAMS: No objection.

1 HEARING OFFICER KNITTLE: For the purposes
2 of identification, we will admit that into the record.

3 [Petitioners' Exhibit N was admitted
4 into the record.]

5 HEARING OFFICER KNITTLE: And do you want
6 to go forward?

7 MR. RAO: Sure.

8 HEARING OFFICER KNITTLE: We're going to
9 ask questions then.

10 MR. WALTER: We also have a large malamard
11 (phonetic) view of the map. I can make that an exhibit
12 if the Board would like that for its purposes.

13 HEARING OFFICER KNITTLE: Sure. Let's make
14 that an exhibit. Okay. That's a nice map. That would
15 help the Board, I'm sure, in its deliberation.

16 MS. WILLIAMS: I think the comment was if
17 the panel nature of the questioning would involve
18 response from our staff, and maybe we can present our
19 case.

20 HEARING OFFICER KNITTLE: Any objection,
21 Mr. Walter?

22 MR. WALTER: No, I don't have any objection
23 to them presenting their case first.

24 MS. WILLIAMS: And the Board is free to ask

1 questions, and Scott can help.

2 HEARING OFFICER KNITTLE: Let's get that
3 exhibit taken care of.

4 CHAIRMAN JOHNSON: Do we admit for
5 identification over there, the pre-filed testimony?

6 HEARING OFFICER KNITTLE: That is the
7 response to the questions that the hearing officer
8 proposed.

9 MR. WALTER: I'm marking what is
10 attachment E as Petitioners' Exhibit O, which is the
11 copy that's available here for the witnesses today to
12 use in answering questions.

13 And I'm marking as Petitioners' Exhibit P,
14 a map which is included with Exhibit B to the petition.

15 [Petitioners' Exhibits O and P were
16 marked for identification.]

17 HEARING OFFICER KNITTLE: Okay. And if the
18 witnesses have any need to mark on those maps, they
19 would be able to do so.

20 MR. WALTER: Yes.

21 HEARING OFFICER KNITTLE: And we'd know who
22 was marking it, and what color they're marking it? And
23 then we'll have it in the record.

24 Ms. Williams, how do you feel about the

1 business of the map?

2 MS. WILLIAMS: We're excited because we're
3 planning on marking on the big map.

4 HEARING OFFICER KNITTLE: There are two
5 exhibits offered into evidence. Any objection?

6 MS. WILLIAMS: No objection.

7 HEARING OFFICER KNITTLE: Both are
8 accepted.

9 [Petitioners' Exhibits O and P were
10 admitted into the record.]

11 HEARING OFFICER KNITTLE: Now we're going
12 to -- before we take questions from the Board,
13 Ms. Williams, would you like to put your case on?

14 MS. WILLIAMS: Yes. The Agency would just
15 like to add a few brief points from a legal perspective
16 and also from a technical perspective that might clarify
17 some of the response to the questions.

18 I don't know if you want to swear me in or
19 not. It's up to you.

20 HEARING OFFICER KNITTLE: Are you going to
21 be providing testimony other than legal argument?

22 MS. WILLIAMS: Probably not. I mean, I
23 consider it legal argument, but --

24 HEARING OFFICER KNITTLE: Well, let's swear

1 you in, just to be safe. And we'll swear Mr. Twait in
2 as well.

3 [Ms. Williams and Mr. Twait were duly sworn.]

4 HEARING OFFICER KNITTLE: Okay.

5 Ms. Williams, proceed.

6 MS. WILLIAMS: The Illinois EPA would like
7 to supplement and clarify some of the responses provided
8 by the Petitioners to the questions posed by the hearing
9 officer in this matter.

10 As with the petition for site-specific rule
11 making itself, the Agency concurs with the bulk of the
12 responses presented by the Petitioners, with one key
13 exception: That the Illinois EPA does not support
14 Petitioners' attempts to justify with prior rulings by
15 the Board, their decision to request relief from
16 304.105, rather than a site-specific water quality
17 standard.

18 The Agency's response to several of the
19 questions posed can be found in the Agency's pre-filed
20 testimony. Responses to questions one and two form the
21 bulk of that testimony.

22 To reiterate, however, as suggested by
23 question one, the Illinois EPA believes that a change to
24 the water quality standard is appropriate relief in this

1 case, and that that change must be submitted to USEPA
2 for approval, and ultimately approved by USEPA to be
3 effective and consistent with federal law. And that the
4 specific standards applicable to the specific reaches of
5 stream should be outlined in the final rule making. Any
6 attempt to grant relief solely from 35 Illinois
7 Administrative Code 304.105 will likely be viewed by
8 USEPA as an attempt to make an end run around the water
9 quality standard setting process and be seen as giving
10 Petitioners an indefinite license to cause existing
11 water quality standards to be violated in the affected
12 receiving streams.

13 The Agency does not disagree that
14 Petitioners' requested relief is consistent with some
15 recent Board precedent in adjusted standard cases.
16 However, as pointed out in the Agency's testimony, a
17 consistent precedent has not developed out of the prior
18 Board's opinions. And the Agency hopes its testimony in
19 this matter will clarify its position on the issue for
20 the Board and help persuade the Board to take the
21 consistent position in the future.

22 It does not serve any of the parties to
23 this matter to grant regulatory relief that either will
24 not be approved by USEPA or will be vulnerable to

1 becoming meaningless if the Agency were forced to
2 promulgate a loading limit under the TMDL program to
3 bring the receiving streams into compliance with the
4 existing general use standard of 1.4 milligrams per
5 liter.

6 In response to question number two,
7 Petitioners state moreover --

8 CHAIRMAN JOHNSON: Just briefly, how do you
9 then address the Board's prior concern, which in my mind
10 has been that by granting this change in the water
11 quality standard, you in fact -- then that ends up being
12 too expansive, and it has the effect of giving other
13 dischargers located along that stream the ability to
14 discharge without seeking that relief?

15 MS. WILLIAMS: Sure. Well, I mean, I think
16 there's a legal answer to that as well as a technical
17 answer, which might be parallel, but not quite the
18 same.

19 I believe the technical staff would
20 respond, and we can ask them to, that in our review of
21 these types of cases where you have a zero 7Q10 streams
22 and you have a water quality base effluent limit, in our
23 technical review, if we come in and recommend favorably
24 on the technical side, we have viewed it as not -- I

1 mean, we paid attention to maybe the adjusted standard
2 requirements or the site-specific rule making
3 requirements, but in addition we've looked at whether
4 this water quality standard is going to be appropriate
5 for this stream regardless of the dischargers.

6 From the legal side, I think the Agency
7 would be satisfied if -- I mean, an acceptable
8 compromised position would be to say we're going to
9 change this water quality standard. If other
10 dischargers want to come in and take advantage of that,
11 they need to apply as well. But to say that we have two
12 different water quality standards in one stream, to us,
13 does not seem very consistent with the federal scheme
14 either from a legal or technical perspective.

15 CHAIRMAN JOHNSON: Okay. But you do
16 understand the prior Board decisions that have done
17 that, have been motivated solely by the desire to make
18 sure that other dischargers located along that
19 particular body of water don't -- are not granted the
20 relief from one petitioner is seeking without having to
21 have gone through the same process?

22 MS. WILLIAMS: Right. And I actually think
23 in this case we can maybe throw that issue aside? A bit
24 in the sense that we're doing a site-specific rule

1 making as opposed to adjusted standard.

2 In an adjusted standard, it does lay out a
3 different, more stringent sort of set of factors that
4 you need to look at, that do focus more heavily on the
5 petitioner. And here we're viewing this as a
6 site-specific rule making, primarily applicable to this
7 piece of stream. We have the authority to go in, and
8 the Board can look at this piece of stream and say what
9 works for this piece of stream regardless of the
10 economic impact on the petitioner.

11 CHAIRMAN JOHNSON: Thank you.

12 MS. WILLIAMS: In response to question
13 number two, Petitioners state that, moreover in such
14 cases where the general water quality standard is not
15 changed, the Board has specifically directed the IEPA to
16 revise the Petitioners' National Pollutant Discharge
17 Elimination System Permit, consistent with the relief
18 granted by the Board from 304.105.

19 The Agency does not dispute that such an
20 order may have been issued in the case cited by the
21 Petitioners, but we do not agree that the Board has
22 consistently done so in all of these types of cases.

23 Additionally, even though such an order may
24 have been issued, and it may not have been appealed, the

1 Agency strongly argues that the site-specific rule
2 making process and even the adjusted standard process is
3 not the appropriate form for the Board to order the
4 Agency to rewrite a permit. We believe the Board will
5 be exceeding its authority in this matter, if as
6 Petitioners potentially seem to suggest, it would
7 include a directive to the Agency to make a specific
8 permitting decision or change as part of a site-specific
9 rule making.

10 The proper procedure would be that
11 following adoption of a site-specific relief in this
12 matter, the City of Effingham will apply to the Agency
13 for a permit modification, which will be granted by the
14 Agency consistent with the Board's relief. Any failure
15 to do so or disagreement with the manner in which this
16 action is taken is properly addressed through a permit
17 appeal.

18 In question number 17, the Board asked the
19 Petitioners to explain the impact of the relief
20 requested on other dischargers to the affected stream
21 segments. In response, the Petitioners state that other
22 dischargers must meet the existing general use of water
23 quality standard of 1.4 milligrams per liter. Although
24 this is an accurate description of the relief requested,

1 it does have the consequence of making it difficult or
2 impossible for other dischargers to demonstrate that the
3 water quality standard for fluoride is being met when
4 Petitioners confirm that it will be violated under low
5 flow conditions.

6 In addition, I just want to add a few
7 points about -- that were raised in the opening
8 statement, I guess, too.

9 We did attach a 1985 correspondence from
10 USEPA that we think is relevant to this issue. And
11 Petitioners are correct that it doesn't -- the factual
12 situation in this case doesn't go along completely in
13 line with what's going on here. We submitted that
14 because we do feel it raises concerns that we believe
15 that we have in this matter. But, really, it's the only
16 thing in writing that we've got from them. So it's
17 really the best that we had to offer.

18 And I think now I'd like to turn it over to
19 Scott Twait. He's prepared to provide some technical
20 response to a few of the questions, and we'll be
21 presenting a few exhibits.

22 MR. TWAIT: I'd like to start with question
23 number three.

24 The Board mentioned two separate reports in

1 question number three. The Petitioner has supplied the
2 facility related stream survey completed in 1999.
3 However, the Agency is not sure that this was their
4 requested document. Therefore the Agency is supplying
5 the February 1998 acute toxicity test results prepared
6 for the City of Effingham by the Advent Group as an
7 exhibit.

8 [IEPA Exhibit Number 1 was marked for
9 identification.]

10 MS. WILLIAMS: And I have this marked here,
11 Illinois EPA Exhibit Number 1, but is that okay?

12 HEARING OFFICER KNITTLE: That is perfectly
13 fine.

14 Is Mr. Walter taking a look at that? Do
15 you have any objection to that? Or are you offering
16 that?

17 MR. WALTER: Can I look at it for just a
18 second?

19 HEARING OFFICER KNITTLE: Oh, you have not
20 seen it? Let's go off the record and let him take a
21 look.

22 [Brief break.]

23 MR. WALTER: We have no objection.

24 HEARING OFFICER KNITTLE: Let's go back on

1 the record.

2 Ms. Williams, are you offering that?

3 MS. WILLIAMS: Yes. I'd like to offer that
4 study.

5 HEARING OFFICER KNITTLE: EPA Exhibit
6 Number 1?

7 MS. WILLIAMS: That's EPA Exhibit
8 Number 1.

9 HEARING OFFICER KNITTLE: Mr. Walter, do
10 you have any objection?

11 MR. WALTER: No, we do not.

12 HEARING OFFICER KNITTLE: That will be
13 admitted.

14 [IEPA Exhibit Number 1 was admitted
15 into the record.]

16 HEARING OFFICER KNITTLE: You can continue,
17 Mr. Twait.

18 MR. TWAIT: In response to question number
19 four, the Agency responded to this issue on pages four
20 and five of the pre-filed testimony of the Illinois
21 Environmental Protection Agency. The Agency's response
22 was, and I quote:

23 "The Illinois EPA has calculated the
24 critical hardness during low flow conditions as 130

1 milligrams per liter to 143 milligrams per liter for the
2 Little Wabash River. This value was calculated by
3 taking the 10th percentile hardness values during the
4 10th percentile low flows. The Illinois EPA does not
5 disagree with Effingham's general conclusion that the
6 water downstream from Effingham's discharge is hard,"
7 unquote.

8 The Agency is supplying critical hardness
9 values from the Little Wabash River as an exhibit. The
10 Agency would also like to point out that the low flow
11 does not always produce the hardest water.

12 MS. WILLIAMS: And we have a listing here
13 of critical hardness values for the various parts of the
14 Wabash River, which I will show Petitioner. And if they
15 don't have any objection, we'd like to have it admitted
16 as exhibit -- Illinois EPA Exhibit Number 2.

17 HEARING OFFICER KNITTLE: Mr. Walter, any
18 objection to this one?

19 MR. WALTER: No, we have no objection to
20 this. We'd just like to note for the record that this
21 appears to be just partial data. It's 1 page, 2 of 13.
22 So we're not sure why this information was included in
23 the report, but we have no objection to this.

24 HEARING OFFICER KNITTLE: With that

1 qualification, we will admit the EPA Exhibit Number 2.

2 [IEPA Exhibit Number 2 was marked and
3 admitted into the record.]

4 MS. WILLIAMS: Thank you.

5 MR. TWAIT: In response to question six,
6 the Agency does not disagree with the Petitioners'
7 response, but would like to add the following:

8 In the case of fluoride, the most sensitive
9 species is a net-spinning caddisfly. The Agency's
10 facility related stream survey indicated that
11 net-spinning caddisflies were present 3.7 miles
12 downstream of the discharge. It is believed that they
13 were not found at the sampling locations closer to the
14 discharge at that time because of low dissolved oxygen
15 concentration that were present. Based on the June 20,
16 2002 rapid bioassessment, the macroinvertebrate
17 community has improved at the site closer to the
18 facility discharge that net-spinning caddisflies are
19 relatively abundant. Based on this information, the
20 Agency does not believe that a fish survey is necessary
21 since the fish are more tolerant of fluoride.

22 In response to question number nine, the
23 Agency would agree that there are no ambient water
24 quality monitoring network stations between Effingham's

1 discharge and ambient water quality and monitoring
2 network station C-19. Station C-21 is on the Little
3 Wabash River upstream of the confluence of Salt Creek.
4 Also there are no recent monitoring data for fluoride at
5 station C-19 and C-21.

6 All the fluoride data for station C-19 is
7 included in the petition. The Agency is submitting as
8 an exhibit the fluoride data for station C-21.

9 The data consists of five fluoride samples
10 taken between November of 1980 and February of 1990 that
11 range between 0.14 milligrams per liter and 0.2
12 milligrams per liter. We would also like you to note
13 that the 7Q10 value of the Little Wabash River at
14 station C-21 is 0 cfs

15 [Illinois EPA Exhibit Number 3 was
16 marked for identification.]

17 MS. WILLIAMS: And I have marked as
18 Illinois EPA Exhibit Number 3 as the fluoride data from
19 station C-21. And if Petitioners have no objection, I'd
20 like to have the exhibit entered into the record.

21 MR. TWAIT: And I could also mark the
22 location of C-19 and C 21 on the map if that's
23 appropriate.

24 MS. WILLIAMS: Would that be good? Did you

1 hear that?

2 HEARING OFFICER KNITTLE: I was going
3 to -- Mr. Walter, do you have any objection to that?

4 MR. WALTER: We have no objection to this
5 exhibit, and we have no objection of him marking that
6 location on the map.

7 HEARING OFFICER KNITTLE: Mr. Twait?

8 And while he's doing that, Exhibit Number 3
9 for the EPA will be admitted.

10 [IEPA Exhibit Number 3 was admitted
11 into the record.]

12 HEARING OFFICER KNITTLE: Mr. Twait, what
13 exactly did you mark?

14 MR. TWAIT: I marked as ambient water
15 quality monitoring network station C-19 located near
16 Louisville and station C-21, which is east of Effingham,
17 and they're both on the Little Wabash River.

18 HEARING OFFICER KNITTLE: Thank you.

19 MR. WALTER: Just for the record, which
20 exhibit was that marked on?

21 MS. WILLIAMS: N?

22 CHAIRMAN JOHNSON: The top one.

23 MR. WALTER: Exhibit O.

24 MR. TWAIT: The Agency would also like to

1 respond to questions 14 and 15.

2 The Agency does not believe that a use
3 attainability analysis is necessary. A UAA is done to a
4 general use water body when there is a downgrading of a
5 use.

6 The uses: Protection of wildlife,
7 agriculture use, secondary contact, industrial use, and
8 the portion of the receiving stream that is protected as
9 primary contact were eliminated from review in early
10 consultations since the fluoride levels do not affect
11 the use.

12 The petition has demonstrated that the
13 aquatic life use and the public and food processing use
14 will be protected. Therefore all existing uses will be
15 maintained and protected. The Agency views the
16 site-specific rule making as a proceeding to establish a
17 water quality standard that is protective of the most
18 sensitive use.

19 In response to question 19, the Petitioner
20 and the Agency have agreed to place a special condition
21 in the Effingham STP NPDES permit requiring fluoride
22 samples to be analyzed at Flora when the stream
23 approaches low-flow conditions.

24 The Agency would also like to respond to

1 question number 22. Through the permit renewal process,
2 the Agency has the authority to require the Petitioner
3 to review any new information concerning its processes
4 of using the brightener for the truck washes.

5 I would also like to add a little bit to
6 Chairman Johnson's question on why another discharger
7 could not take part of this relief.

8 If there was another discharger that would
9 like to discharge a larger amount of fluoride to the
10 receiving stream, their additional amount would either
11 change the concentrations in the receiving stream above
12 what we're granting and or change the length of the
13 adjusted stream. So we don't think another facility
14 could take advantage of this adjusted standard or this
15 site-specific standard.

16 CHAIRMAN JOHNSON: Thank you.

17 MR. TWAIT: And that ends my comments.

18 HEARING OFFICER KNITTLE: Anything further,
19 Ms. Williams?

20 MS. WILLIAMS: That's all we have at this
21 time.

22 HEARING OFFICER KNITTLE: Let's take a
23 five-minute break before we start the questions by the
24 board. We will meet back here at 11:00.

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[Brief break.]

HEARING OFFICER KNITTLE: We are back on the record after a short recess. And we're going to have some questions by the Board for the panel of witnesses. However, first, Mr. Walter informed me that he wants to respond in part to Ms. Williams' argument.

And, Mr. Walter, will you do that now?

MR. WALTER: This is legal argument, but I'd be happy to be sworn on this if you'd like.

HEARING OFFICER KNITTLE: That's not necessary.

MR. WALTER: I would just like to point out to the Board the rationale that is previously expressed in the Rhone-Poulenc Chemical Company case, which I think responds directly both to the remarks of Ms. Williams and Mr. Twait.

In that decision, the Board stated, to understand the circumstance -- and the circumstance being relief from 304.105. To understand the circumstance, it is necessary to recognize first that for water at a concentration of "X," any additional amount of water at concentration "X" may be added, and the resultant concentration will remain at "X."

Thus, for example, under the relief

1 requested, if TCBSD were discharging such as to cause
2 Thorn Creek to have a two thousand one hundred milligram
3 per liter TDS concentration at water treatment plant
4 outfall, all other source of discharge between the TCBSD
5 outfall and the USGS gauge at Thorn Creek could have a
6 TDS concentration of two thousand one hundred milligrams
7 per liter, and all the mixed concentration through the
8 whole reach would remain two thousand one hundred
9 milligram per liter.

10 Moreover, it is within the mathematics of
11 the situation that if TCBSD were to discharge so as to
12 cause Thorn Creek to have a TDS concentration below two
13 thousand one hundred milligrams per liter, the Agency
14 would have TCBSD strive for all other sources of
15 discharge between the outfall, and the USGS gauge could
16 have a TDS concentration above two thousand one hundred
17 milligrams per liter without causing violation of a two
18 thousand one hundred milligram per liter in-stream
19 standard.

20 And, again, this is a case where the
21 petitioner had sought relief from 302.208. And again,
22 the Board granted relief of 304.105.

23 The relief that was being sought by the
24 petitioners here is actually more protective of the

1 environment because it's limiting the amount that can be
2 discharged. And it will also, of course, limit the
3 relief of the dischargers to themselves. And that's the
4 only comments I have.

5 HEARING OFFICER KNITTLE: Also off the
6 record, Ms. Williams mentioned that we had not entered
7 into the record, as if read, the testimony of the
8 Agency. Is that correct, Ms. Williams?

9 MS. WILLIAMS: I forgot that, yes, that's
10 correct. I'd like to do that at this time.

11 HEARING OFFICER KNITTLE: I forgot to do
12 that as well. Would you like to do that now?

13 MS. WILLIAMS: I'd like to do that at this
14 time.

15 HEARING OFFICER KNITTLE: Mr. Walter, any
16 objections?

17 MR. WALTER: No.

18 HEARING OFFICER KNITTLE: That will be
19 admitted as if read. Do you want to mark that as
20 anything?

21 MS. WILLIAMS: Can I mark it as Illinois
22 EPA Exhibit Number 4?

23 HEARING OFFICER KNITTLE: Let's do that,
24 and that is what we're admitting.

1 [IEPA Exhibit Number 4 was marked for
2 identification and admitted into the
3 record.]

4 HEARING OFFICER KNITTLE: Now we've come to
5 the part of the proceedings where the Board has some
6 questions for essentially the City of Effingham, but
7 also possibly for the Agency as well.

8 Is there anything else before we get
9 started from either side, Mr. Walter?

10 MR. WALTER: No.

11 HEARING OFFICER KNITTLE: Ms. Williams?

12 MS. WILLIAMS: No.

13 HEARING OFFICER KNITTLE: Both have
14 indicated "no." So we're going to move on. I'm going
15 to hand it over to our technical unit.

16 MR. RAO: Good morning, everyone. Thank
17 you for the City responding with all the answers. They
18 were very helpful in shedding light on the questions
19 that we had. We do have some follow-up questions based
20 on your responses. So I'll just go over them following
21 the numbers, for the questions that we had.

22 MR. WALTER: May I provide the witnesses
23 with copies of both the questions and our written
24 responses, just so it's probably easier for them to

1 follow?

2 MR. RAO: Yeah, because I'm not sure who is
3 responding to which question here. So that will be
4 easier.

5 MR. WALTER: I've provided them with
6 copies. Thank you.

7 MR. RAO: Yes. We had a follow-up
8 question. And the question is question 1-A.

9 We heard a little bit about, you know, your
10 positions regarding relief from 304.105 or 302.208. If
11 the Board chooses to grant site-specific relief from the
12 water quality standards under 302.208, I just wanted a
13 clarification from the City as to whether it would be
14 appropriate to use the calculated results of maximum
15 fluoride levels as the alternate water quality standards
16 as the Agency's proposing?

17 MR. WALTER: I could probably respond to
18 that question best.

19 We actually provided to the Agency in our
20 original draft very similar language to what they have
21 proposed in their alternate. But I think that that
22 information in terms of the theoretical values was
23 provided to help the Board and the Agency understand
24 what would happen to the receiving stream. I don't

1 think it would be necessary to have that in a water
2 quality standard itself for all those points.

3 As we've tried to indicate in response to
4 question 1-A, if the Board chose to go with that route,
5 and we really believe that it would be more appropriate
6 to go with 304.105, but if the Board did grant relief in
7 the water quality standard, it would be better if it was
8 from -- if you just had a five milligram per liter
9 standard for those first two segments of the stream
10 because it's not going to be any significant impact.
11 And that keeps the City from having to go out
12 potentially and test all the way down. I mean, at some
13 point, as you're moving downstream, the standard is
14 going to keep changing.

15 So from a regulatory standpoint, I think it
16 would be appropriate just to have five milligrams per
17 liter initially.

18 And then for the last segment down by the
19 City of Flora, take a two milligram per liter number, as
20 opposed to having three separate numbers.

21 MS. LIU: Could the Agency respond to that
22 approach?

23 MS. WILLIAMS: I would just like to
24 say -- I mean, I think Scott should respond, but I just

1 want to reiterate that David said that the numbers or
2 the language that we included is virtually identical to
3 draft language that Petitioners were looking at
4 proposing, and we think that that was appropriate
5 language.

6 MR. TWAIT: If the water quality standard
7 gets changed like we had proposed it, we are not
8 suggesting that they go out and monitor each of those
9 points where the water quality standard changes. We
10 would go ahead and put into their permit the daily
11 maximum of 4.5 milligrams per liter.

12 And as we had discussed previously, the
13 only monitoring that we would have to do in the stream
14 would be at the Flora water quality -- or public water
15 supply, and only when 7Q10 values were being
16 approached.

17 And that special condition, I don't think
18 we've talked about here, but I think the Agency looks at
19 that as maybe we have to after the five-year period when
20 the permit gets renewed or maybe after the next one, if
21 we have sufficient data available that says that the
22 water quality standard will not be exceeded at Flora, we
23 could take that special condition out.

24 MR. RAO: In case the Board decides to

1 change the water quality standard, if there is any new
2 discharger in this segment of the stream, then the
3 adjusted water quality standard is the one that would be
4 used by the Agency to calculate the permit levels if a
5 new discharger comes in that segment?

6 MR. TWAIT: If a new discharger came to
7 Salt Creek where the water quality standard was five, I
8 don't think the Agency could give them five in their
9 discharge limit, because that would potentially affect
10 the concentration at Flora. So I think if they wanted
11 it higher than 1.4, that they would have to come before
12 the Board.

13 MS. LIU: Ms. Williams, one of the
14 alternatives that you mentioned in your pre-filed
15 testimony, if we were going to grant relief from the
16 water quality standards, is to do that on a
17 site-specific basis, or anyone else who wanted to take
18 advantage of that would have to file separately. The
19 City has mentioned that there already are several other
20 dischargers along those segments, but they don't need to
21 monitor for fluoride because it's not part of their
22 NPDES permit.

23 Is there any point in time where these
24 other dischargers who have no fluoride in their effluent

1 currently, would ever be required to monitor for it or
2 demonstrate compliance, or show that they are not the
3 ones contributing to the in-stream levels?

4 MS. WILLIAMS: Well, I assume since you've
5 addressed it to me -- I think Scott could probably
6 better answer it.

7 I suppose in theory, an environmental group
8 could maybe suggest that there was some problem and try
9 and bring some sort of suit.

10 My understanding of the technical side of
11 it is that these are all municipalities, primarily
12 municipalities, who the only -- very small
13 municipalities where it's believed that the only
14 fluoride at their discharge comes from the drinking
15 water, which is, you know, monitored on the front end
16 that way. So we think we know what's going on there,
17 unless there were to be some industrial source come
18 along where the nature of their effluent was changing.

19 He can better answer that.

20 MR. TWAIT: I can only think of two reasons
21 why the Agency would go back and have those smaller
22 communities test for fluoride. One would be if they
23 expanded and became a major discharger above one million
24 gallons per day. Then we would routinely put in metals

1 monitoring, and I think it would be twice in each permit
2 that they would have to sample. And so then we would
3 get some fluoride data.

4 And the other thing would be -- the other
5 time that it would be necessary to test them is if the
6 water quality standard was being violated, and we
7 thought that they might be the source of that.

8 MR. WALTER: If I could just follow up on a
9 statement that Mr. Twait made earlier.

10 CHAIRMAN JOHNSON: No. The lawyer in me
11 loathes to do this, but you were testifying before. So
12 we better swear you in as well. Don't you think,
13 Hearing Officer Knittle?

14 HEARING OFFICER KNITTLE: Yeah. You had
15 offered it. Why don't we go ahead and do that.

16 [Mr. Walter was duly sworn.]

17 CHAIRMAN JOHNSON: Thank you.

18 MR. WALTER: Would you like me to reiterate
19 my earlier comments? Thank you.

20 I just would like to state for the record
21 that the Petitioners would agree with Mr. Twait's
22 position that any other discharger who would want to
23 take advantage of that 5.0 milligram per liter standard
24 should have to come to the Board.

1 MR. RAO: Would we put that language in the
2 site-specific rule? Or is it understood that, you know,
3 that's the way it works?

4 MS. WILLIAMS: I personally think -- I
5 mean, if we were in an adjusted standard case, I think
6 it would be an easier call where you would just sort of
7 put that -- make that clear in the order, but it applied
8 only to the petitioner. And, you know, then in the
9 future, someone would have the opportunity and
10 incorporate the prior record and add what was
11 necessary.

12 I think the Board needs to consider whether
13 that type of order is as appropriate in a site-specific
14 rule or not. But certainly I think they have authority
15 to limit relief just to Effingham's discharge.

16 MR. RAO: So from the Agency's perspective,
17 I mean if a new discharger comes and such language is
18 not part of the rule, then the Agency would still
19 require them to go through this process?

20 MR. TWAIT: I believe that would be the
21 case.

22 MS. WILLIAMS: I mean, the difference that
23 it makes from our point of view, and I think we would
24 prefer a water quality standard that would just apply to

1 the water body, because that to us seems more consistent
2 with the federal scheme and more technically
3 appropriate.

4 The difference from our perspective if it
5 were just limited to Effingham, we would likely
6 interpret that ruling still as changing the water
7 quality standard, period.

8 Now, if a discharger came in and was
9 getting a permit, and what have you, we might have to
10 make them come back to the Board. But when we are doing
11 our 305-B reports, when we go to determine whether the
12 water body is impaired, we want to be forced to find
13 this water body impaired for fluoride if the water
14 quality standard has been changed.

15 MR. RAO: Thank you.

16 MR. WALTER: Can I just do one brief
17 follow-up on that comment?

18 I think from the City's perspective, we
19 would like some assurances that if the Board does not go
20 with the 304.105 request or relief that we've asked for,
21 that request would obviously, I think, limit it to the
22 Petitioners here today. But if the Board did not go
23 with that, if there were some addition within the rule
24 specifically stated that some other discharger could not

1 take advantage of that 5.0 milligrams per liter, that
2 would be preferable for us. Thank you.

3 CHAIRMAN JOHNSON: While you're talking
4 this over, I don't know who this is appropriate to
5 direct this question to, but I'm looking at this map.
6 Flora is downstream from where this potential discharge
7 is going to occur, and we know they use their water, and
8 they use this water source for drinking, right? And I
9 noticed this one's here from Flora. I just wondered,
10 have they been notified of this rule making?

11 MR. WALTER: Only through the public notice
12 provisions.

13 CHAIRMAN JOHNSON: Does anyone in the
14 Agency -- I mean, does anyone intend to notify them,
15 other than by what we've done by notification by
16 publication?

17 MR. WALTER: Mr. Shepard, do you want
18 to --

19 MS. WILLIAMS: I mean, I can clarify just
20 for the record just a little bit.

21 That we did consult with our public water
22 supply folks that do regulate Flora on that side, and I
23 don't believe that they specifically notified Flora that
24 this was coming. Though informally we certainly would

1 anticipate that to be the case, because of the water
2 monitoring drinking condition that would go into
3 Effingham's permit.

4 CHAIRMAN JOHNSON: That would be after the
5 fact, right?

6 MS. WILLIAMS: Right.

7 HEARING OFFICER KNITTLE: Mr. Shepard, were
8 you just going to testify?

9 MR. WALTER: Yes. Can you just mention the
10 technical effect of notifying?

11 MR. SHEPARD: Sure. Max Shepard.

12 One of the issued we discussed relevant to
13 that was the concept that we were -- this whole process
14 has been predicated on the idea that the secondary
15 drinking water standard would not be exceeded. Under
16 low flow conditions, which is as you all know, would be
17 very infrequent.

18 In addition, I think the Illinois EPA has
19 testified that we've had discussions with them regarding
20 a procedure whereby we would even cut off any chance of
21 that happening by measuring the flow in the stream, and
22 then if that flow even approached that 7Q10 level, we
23 would then initiate sampling at Flora. That's some of
24 the rationale for not approaching the City directly.

1 CHAIRMAN JOHNSON: There might well have
2 been somewhere in the pleadings mention of Louisville,
3 but that's in between Flora and the potential discharge
4 site. Does anyone know whether or not they use that
5 water for drinking as well?

6 MR. HORTENSTINE: They do not use that
7 water for a drinking water source. They did in the
8 past. They have a 40-year contract with EJ Water
9 Corporation, which is a public water source. So they do
10 not draw any water from the river for drinking water,
11 and it's not anticipated that they would in the
12 foreseeable future.

13 CHAIRMAN JOHNSON: Okay.

14 HEARING OFFICER KNITTLE: Yeah, just one
15 quick question.

16 Do you, at the Agency, think Flora ought to
17 be notified? Is that something that should be done?

18 MS. WILLIAMS: I mean, I'm always in favor
19 of openness and letting parties know what's going on.
20 But I think it was our belief that by contacting the
21 public water supply staff, that we were verifying any
22 issues that they might have.

23 HEARING OFFICER KNITTLE: What about you at
24 the City? Do you think they should be notified?

1 MR. WALTER: I can probably respond, no,
2 based on the fact that we're not exceeding secondary
3 water quality standard of 2.0, I don't think it has any
4 practical effect at all on the City of Flora if the
5 relief is granted.

6 HEARING OFFICER KNITTLE: So there's no
7 reason not to notify them, is there?

8 MR. WALTER: No.

9 HEARING OFFICER KNITTLE: You're shaking
10 you head, Ms. Williams.

11 MS. WILLIAMS: No, there's no reason not to
12 notify them.

13 HEARING OFFICER KNITTLE: I didn't know
14 what you wanted.

15 MR. RAO: Just a follow-up to that.

16 We have been talking about granting relief
17 from 208, which will be for the whole stream. So I'm
18 just wondering if how the dischargers know that if, you
19 know, you're wanting to change 304.105 or change the
20 water quality standards, I just wanted to know from the
21 Agency if they know -- all the dischargers to the stream
22 know that there is this rule making going on with making
23 the water quality standard.

24 MS. LIU: As a follow-up, you mentioned one

1 of your contingency plans for some samples at the water
2 supply intake with the 7Q10 was zero. What happens if
3 you do result in a number higher than 2.0?

4 MR. WALTER: Mr. Shepard?

5 MR. SHEPARD: I would have to refer to a
6 letter that we sent to the Illinois EPA, and that may be
7 able to assist with this.

8 But I believe that we have proposed to
9 implement a short-term lower standard. We've discussed
10 with the City and Illinois EPA about implementing a
11 lower standard at the City's effluent, which, frankly,
12 in this case is fairly simple, since we know who the
13 dischargers are. That information could be communicated
14 very quickly to them. And for a short time period, they
15 would have to discontinue discharging fluoride until the
16 stream flow increased again.

17 This is one of the things that, again, the
18 Illinois EPA has been very helpful and the City,
19 Petitioners -- all the Petitioners have been
20 communicating and coming up with creative ideas.

21 That was a great question, and that's
22 something we discussed in detail, and something that we
23 believe could be implemented very readily and
24 efficiently and effectively.

1 And based on the statistics of 7Q10, that
2 would not occur for a long period of time, and could be
3 done, until such time that the flows came back up and
4 the fluoride concentrations drop back down.

5 MS. LIU: Would there be any notification
6 at that time to the City of Flora that your monitoring
7 had indicated that you were above the secondary MCL?

8 MR. SHEPARD: That's a question that I
9 don't know that we've discussed in detail. I'm going to
10 presume that there would be certainly communication.

11 HEARING OFFICER KNITTLE: That would be
12 something that we'd want to know. So perhaps after the
13 hearing, you could submit that in the public comment.
14 Is that correct, Alisa?

15 MR. RAO: That would be helpful.

16 And also as a follow-up what you just
17 explained, the response measures that you can implement,
18 will this be part of the permit? Or how is that
19 required?

20 MR. TWAIT: It was proposed as a special
21 condition for the permit that they would be required
22 to.

23 And in response to whether or not the City
24 of Flora would be notified if it exceeded 2.0 milligrams

1 per liter, the Agency would hope that the City would not
2 let it get to that point, that when low flows are being
3 approached -- they don't go to zero in this case. I
4 don't remember specifically what they were. But as it
5 approaches low flow, we would expect or put into the
6 special condition that they would start taking samples
7 as it approached low flow. And so if they started
8 getting higher fluoride values, then they would turn
9 back or slow down production of the truck washes.

10 HEARING OFFICER KNITTLE: That's not
11 something that you would expect, but that's something
12 that would be in the special condition, right?

13 MR. TWAIT: That would be in the special
14 condition.

15 HEARING OFFICER KNITTLE: So they would
16 have to?

17 MR. TWAIT: Yes. And, Max, I found that
18 letter.

19 MR. SHEPARD: Yeah, I've got it here. Do
20 we want to enter that as an exhibit?

21 MR. WALTER: It's actually already an
22 exhibit. That's part of the petition, the letter to the
23 EPA.

24 HEARING OFFICER KNITTLE: Let's refer to

1 it, though.

2 MR. WALTER: Sure. We can add it as a
3 separate exhibit.

4 HEARING OFFICER KNITTLE: I wasn't saying
5 that. I was suggesting since the Board will know what
6 you're talking about. And can you just identify it?

7 MR. TWAIT: It's a letter from Shepard
8 Engineering on September 9th of 2002.

9 HEARING OFFICER KNITTLE: That's fine,
10 unless you want to mark it.

11 MR. WALTER: No, that's fine.

12 One other comment. I believe Mr. Shepard
13 can probably elaborate on this, but the City of Flora
14 also tests fluoride levels at the intake. So if in fact
15 the levels would exceed 2.0, they should have their own
16 mechanism for detecting that.

17 MR. SHEPARD: Yeah, I can comment on that.

18 We did communicate with the City of Flora
19 from the standpoint of obtaining data that's included in
20 the petition in terms of their fluoride use. They add
21 fluoride to their water, and that information is
22 provided in the petition.

23 And I don't want to state this, because I'm
24 not positive, but I'm pretty sure that they have a

1 fluoride measurement method. Otherwise they wouldn't be
2 able to know how much to add. So I think that's a valid
3 point that they would also be seeing higher numbers if
4 that were to occur.

5 I might also, if I could go back -- in
6 fact, the letter that Scott located that I was referring
7 to, September 9, 2002, is not in the petition. It was
8 in the follow-up letter. There's a July 3rd letter in
9 the petition. So I would suggest entering the September
10 9th letter as an exhibit. It does go into quite a bit
11 of detail about the proposed procedures.

12 MR. RAO: We were just looking, and we
13 didn't find it here.

14 HEARING OFFICER KNITTLE: Correct. The
15 technical staff were on top of that, weren't we?

16 MR. WALTER: With the hearing officer's
17 permission, I'd like to mark Petitioner's Exhibit Q, and
18 this is the letter from Max Shepard to Bob Mosher, dated
19 September 9, 2002.

20 HEARING OFFICER KNITTLE: Ms. Williams, any
21 objection to that being entered?

22 MS. WILLIAMS: No, but I wish I would have
23 read it, but no.

24 HEARING OFFICER KNITTLE: You can read it

1 if you would like.

2 MS. WILLIAMS: That's okay.

3 HEARING OFFICER KNITTLE: All right. We'll
4 admit that.

5 [Petitioners' Exhibit Q was marked for
6 identification and admitted into the
7 record.]

8 MR. HORTENSTINE: I think it might also be
9 a good idea at this point for purposes of clarification
10 of how that mechanism works, to have the city engineer,
11 Steve Miller, respond in as much as if the procedure
12 outlined in that letter is put into place under special
13 condition in the permit, and we're measuring flow, we'll
14 know when we're approaching those levels. And the City
15 has a mechanism in place now under our pretreatment
16 ordinance that we would be able to contact dischargers,
17 i.e. Blue Beacon and the other dischargers of fluoride
18 and require them to cease or otherwise alter their
19 business practice. And he may want to testify to that.
20 I think it would enlighten how that letter really works
21 in practice.

22 MR. MILLER: I think that's how we saw to
23 implement it, or one way to implement those procedures
24 is to make sure that it did get back to the user, which

1 would be Blue Beacon and truck wash -- and Truckomat, or
2 the others could be, as you had indicated, that would be
3 specifically in the NPDES permit.

4 But there is another tier to that. The
5 City would be writing pretreatment permits for Blue
6 Beacon and Truckomat, but that information could also be
7 placed in. That would be reviewed also by the IEPA and
8 USEPA, or the pretreatment program is monitored and
9 yearly. And something that we go through with the IEPA
10 on a yearly basis is to look at our program also. So I
11 think it's something that would be reviewed yearly with
12 pretreatment and possibly at the end of the five-year
13 term with our NPDES permit.

14 MR. HORTENSTINE: Would it not also be
15 measured or monitored any time the flow approaches that
16 low level, such that the city engineering department
17 would then contact these dischargers and have them alter
18 their practice?

19 MR. MILLER: Correct.

20 MR. RAO: Thank you.

21 MS. LIU: Returning to our earlier
22 discussion as to the form of relief, whether in a form
23 of a water quality standard change or an exemption from
24 the effluent limits. If the Board were to include a

1 condition that no other discharger could take advantage
2 of a change in water quality standards, would the City
3 be willing to live with the wording suggested by the
4 Agency?

5 MR. WALTER: Yes.

6 MR. HORTENSTINE: Well, I guess we should
7 clarify that, exactly what you mean. As I understand,
8 you're saying that the language that the Agency proposed
9 relative to the fact that a special condition would be
10 limited only to the City of Effingham, and any other
11 discharger of any nature whatsoever in the stream course
12 would have to come back to the Board for further relief
13 if they discharge fluoride? Is that accurate?

14 MS. LIU: Yes.

15 MR. HORTENSTINE: I believe the answer to
16 that is yes, but I want to refer that to Max and Steven,
17 if I may.

18 Steven, Max?

19 MR. SHEPARD: I don't see any problem with
20 that. Again, it's something that we'll discuss in more
21 detail, but at this point, I don't see an issue with
22 that.

23 MR. MILLER: I think we talked about those
24 issues, and that they can be addressed.

1 MR. WALTER: Legally we have no problem
2 with that type concept.

3 MS. LIU: Are there any practical drawbacks
4 you can think of?

5 MR. WALTER: I think that's what Mr. Miller
6 and Mr. Shepard were addressing.

7 And based on their testimony, do you see
8 any practical -- Mr. Miller, do you see any practical
9 side effects to that approach?

10 MR. MILLER: No. I think it can be handled
11 through the NPDES and the pretreatment permits.

12 MR. HORTENSTINE: Under what scenario?

13 I have thought of one practical problem
14 potentially. And that would be if the request before
15 the Board is not only to give that new discharger
16 relief, but also to amend or otherwise reduce or alter
17 the existing relief previously granted by the Board to
18 the City of Effingham, then I think we would have a
19 problem with that.

20 I think it's reasonable for the City of
21 Effingham at this juncture, when there are no other
22 dischargers, and there is already previously existing
23 dischargers who have invested in their business plan to
24 give them certainty with the relief granted by the

1 Board.

2 So to the extent that that subsequent
3 relief to a new discharger would somehow impair the
4 relief granted ostensibly by this petition, then I think
5 that's a different issue.

6 So long as it does not impair the relief
7 granted in this petition, I would have no problem with
8 that.

9 Would you agree with that?

10 MR. WALTER: I agree. And at least in that
11 scenario, you would have a hearing process in which to
12 address those type of issues.

13 MS. WILLIAMS: I am just not sure that the
14 Board, under the Clean Water Act, can give those kind of
15 assurances to any petitioner.

16 The Clean Water Act requires revisiting all
17 the water quality standards every three years. I mean,
18 I know, you know, how our legal process is set up. And
19 this is permanent in theory, permanent relief.

20 But, you know, like we addressed in our
21 testimony as far as the TMDL process, I don't know that
22 we know how it's going to work if at some point there's
23 a need to come back on people who have been granted
24 permanent relief and find that water quality standards

1 are still not being met.

2 I understand their concerns, and it's
3 certainly not the Agency's intent that this would be
4 anything other than permanent relief, but I'm just not
5 sure the Board can make those kind of assurances.

6 CHAIRMAN JOHNSON: That would happen
7 notwithstanding your --

8 MS. WILLIAMS: Right, whatever it was.

9 MR. HORTENSTINE: And we understand that
10 from the City of Effingham's perspective, we understand
11 that this is the most assurance that we can get under
12 the state laws that exist today.

13 MS. WILLIAMS: I mean, the difference of
14 what they're saying is if they were given, in theory,
15 relief from 304.105, that would be viewed as somehow as
16 permanent license to always violate the water quality
17 standard perpetually in the future. And that relief to
18 them might be more permanent assurances that something
19 weren't to change. But we feel that that type of
20 assurance is not consistent with the Clean Water Act.
21 And that the best that they can be offered to have under
22 the Clean Water Act is what we have proposed.

23 MR. WALTER: Just for the record, on that
24 point, I do disagree with that conclusion. And I would

1 note that as I indicated in my opening statement, that
2 the Board has the authority to grant site-specific
3 relief both under the Code of Federal Regulations and
4 also within the Act itself, Section 27.

5 HEARING OFFICER KNITTLE: This seems to be
6 an issue that keeps coming up, though, at least in the
7 context of this hearing. Are you planning on filing
8 anything after the hearing in terms of briefs or public
9 comments?

10 MR. WALTER: At this point, yes, I think it
11 would be appropriate.

12 HEARING OFFICER KNITTLE: That might be an
13 issue that ought to be covered by both sides
14 afterwards.

15 MS. WILLIAMS: Which issue then is that?

16 HEARING OFFICER KNITTLE: The one we've
17 been going back and forth about.

18 MS. WILLIAMS: I mean, if you're talking
19 about the issue of what type of relief to give, I think
20 that we submitted a very thorough -- all that our
21 testimony covered.

22 HEARING OFFICER KNITTLE: I understood.
23 No, I'm talking about what you were saying earlier about
24 the permanency of that relief, to be causing the issues

1 with the City of Effingham as to whether or not that the
2 EPA thinks that is permanent relief and whether the
3 Board has that authority to do so under the Clean Water
4 Act, and there seems to be a difference of opinion on
5 that. And certainly it would help the Board in reaching
6 its decision to have both sides before it squarely.

7 Mr. Rao?

8 MS. LIU: Moving right along.

9 Good morning, Mr. Bright. Could I ask you
10 a few questions about the biological aspects of this
11 petition?

12 In your report, you had estimated the
13 hardness at 300, and the Agency has mentioned that
14 perhaps a hardness is more accurately portrayed as about
15 130 to 143 milligrams per liter.

16 In the report that you included in the
17 petition, there were some equations that involved using
18 the hardness values to calculate the LC50 as well as the
19 chronic fluoride criterion. And I was wondering if
20 you'd be able to provide some re-calculations using the
21 Agency's hardness figures and perhaps describe how that
22 would affect the numbers that you came up with
23 originally.

24 MR. BRIGHT: Well, of course, given the

1 mathematical equation, anyone can plug a number into
2 that hardness value and come up with a value. It just
3 takes a simple calculator that has some algorithms on
4 it. So it could be done today if you wanted to.

5 MS. LIU: That would be very helpful.
6 Would you expect just in general for those criterion or
7 LC 50 values to be higher or lower using the different
8 hardness figure?

9 MR. BRIGHT: As hardness decreases, the
10 values will go lower, because the toxicity is directly
11 proportional to the hardness value.

12 MS. LIU: It would be helpful if you could
13 recalculate those for us, if not today, perhaps submit
14 it with the post-hearing information.

15 MR. BRIGHT: Okay.

16 MS. LIU: In the rapid bioassessment that
17 you did that appeared in attachment F of the petition,
18 you summarize the results of the Agency's bioassessment
19 back in 1999. The macroinvertebrate data at that time
20 indicated that the water immediately downstream from the
21 treatment plant outfall was severely impaired.

22 And on page one of the bioassessment, CBI
23 poses the question, "Were net-spinning caddisflies
24 absent in 1999 because of fluoride or because of some

1 other water quality characteristic?"

2 And to answer that question, you went out
3 and collected one sample immediately downstream from
4 that treatment plant outfall; is that correct?

5 MR. BRIGHT: Correct.

6 MS. LIU: And the results that you provided
7 indicated a healthier macroinvertebrate life. Do you
8 remember what the in-stream fluoride concentration was
9 at the time that you collected that sample?

10 MR. BRIGHT: No. We didn't take any water
11 quality chemistry samples during that bioassessment.

12 MS. LIU: Do you remember if you measured
13 the flow rate at all?

14 MR. BRIGHT: No, there was no flow rate
15 measured either.

16 MS. LIU: Do you recall if it was during a
17 low flow condition or a high flow condition?

18 MR. BRIGHT: It was very low flow, but I
19 don't have a number.

20 MR. TWAIT: The Agency would like to put on
21 the record that when the Agency field related stream
22 survey was completed, and they noticed the severely
23 impacted conditions, the treatment plant had been
24 expanded and approved since that time. They have

1 upgraded their treatment plant.

2 And also the macroinvertebrate species are
3 not a measurement. If you went out there one day and
4 they were there, we would expect them to be there next
5 week, next month. It's not something that they're all
6 going to go away one day and then come back a couple
7 days later. They're not that mobile of a species.

8 MS. LIU: Okay. Based on your previous
9 experience with working with the USEPA and seeking
10 review and approval of water quality standard changes,
11 is the information that the Petitioners have provided to
12 date sufficient for you to go forward to USEPA?

13 MS. WILLIAMS: I think that we do have
14 enough data to go forward.

15 HEARING OFFICER KNITTLE: Did you want me
16 to address 6? 6-C was one of those questions that we
17 submitted that you objected to.

18 MR. WALTER: Would you like me to elaborate
19 on the basis of the objection?

20 HEARING OFFICER KNITTLE: Well, I'd like to
21 find what I did with my -- here it is. I had set my
22 diet soda on top of it.

23 You objected in terms of relevance. And as
24 I've already stated, I'd be happy to hear the objection

1 here on the record, but unless you've done something and
2 change my mind -- because the Board's asked the
3 questions, and we've already termed that it's relevant,
4 and I've included the question in the hearing officer
5 order. So I am going to find it relevant unless you can
6 tell me why I shouldn't.

7 MR. WALTER: Sure. The objection on
8 relevance is that the evaluation was beyond threatened
9 species, threatened or endangered species. The
10 evaluation was a species in general. There was no
11 attempt to limit it to that. So I don't see how
12 segregating out a segment of species to look for would
13 be relevant to this particular petition, given the
14 broader scope of the investigation.

15 And Mr. Bright, I think, can address the
16 technical aspect of the scope of his bioassessment.

17 HEARING OFFICER KNITTLE: Before we get to
18 that, I think we just generally, I think the Board wants
19 to know whether there was any effort to identify
20 threatened or endangered species that might be sensitive
21 to increased fluoride levels. And I think that's a
22 relevant question.

23 So to that extent, I'd overrule the
24 objection and just ask for an answer to that question.

1 MR. WALTER: Mr. Bright, would you respond
2 to that question?

3 MR. BRIGHT: No, there was no extra
4 attention made to threatened endangered species.

5 HEARING OFFICER KNITTLE: And I think that
6 is sufficient for the Board, unless Anand has a
7 follow-up.

8 MR. RAO: No, just --

9 HEARING OFFICER KNITTLE: Or Alisa, for
10 that matter.

11 MR. RAO: Since they objected to it, we
12 didn't know what your answer would be, but now we know
13 that.

14 I was just wondering if you contacted
15 anybody at the DNR to find out if in this segment of
16 this stream where we are changing the water quality
17 standard, you know, are there any concerns related to
18 threatening any endangered species, because that's
19 something that we need to do.

20 MR. WALTER: Well, Mr. Shepard, do you want
21 to respond to that question, whether or not we think
22 what has been done so far is sufficient?

23 MR. SHEPARD: I'd refer that to Greg, since
24 this is more about a toxicity issue.

1 MR. BRIGHT: Okay. What's the question?

2 MR. RAO: The question was --

3 CHAIRMAN JOHNSON: You have someone to your
4 left. Tell him to answer.

5 MR. RAO: You just responded by saying that
6 you did not, you know, make any efforts to find any
7 threatened or endangered species that might be sensitive
8 to increased fluoride levels.

9 My question was more specifically related
10 to the stream segment where we are changing the water
11 quality standards. If you'd be willing to contact the
12 DNR to see if there are any concerns or any threatened
13 or endangered species that we should be concerned about
14 with this particular set of stream where we are changing
15 the water quality standards.

16 MR. BRIGHT: Well, I think if the question
17 is are we willing, I'm not sure that that's my question
18 to answer.

19 MR. WALTER: Actually, I'll respond to
20 that. I would certainly recommend that we would respond
21 to this in our public comment, as to going to check with
22 DNR.

23 MS. WILLIAMS: And we'll have to go back
24 and look also at whether they were consulted as part of

1 some other process. I mean, the two of us don't
2 necessarily do that. So we need to -- there have been
3 some changes in that process and the time period that
4 this has been going on. So we can let you know in our
5 comments if we did that also.

6 MR. RAO: That would be helpful.

7 MR. BRIGHT: I do have one comment that I
8 could make that I think might help.

9 Your concern, the question addresses a
10 concern about whether threatened or endangered species
11 would be affected by the fluoride discharge. And the
12 technique for determining criterion for fluoride takes
13 into account what's known about all freshwater aquatic
14 species, and then extrapolates to a number that protects
15 all species. So threatening an endangered species
16 should be protected by this technique, but no specific
17 attempt has been made to determine if there are any
18 threatened or endangered species present, but they
19 should still be protected.

20 MR. WALTER: Just because I wasn't very
21 clear in my response. Whether or not we're willing to
22 do that is, of course, a policy decision that the
23 Petitioners will have to decide. And I'm not sure any
24 of us here today can say one way or the other, but we

1 will take your question as a request to provide that
2 information to the Board.

3 MR. RAO: Okay. And if the Agency, you
4 know, has some mechanism to get the same information,
5 that would be helpful, too.

6 MR. TWAIT: Just to clarify --

7 CHAIRMAN JOHNSON: What you're saying is,
8 all species are protected. Therefore because threatened
9 and endangered species are species, underlying species,
10 then they logically fall into that category?

11 MR. BRIGHT: Right. From a practical
12 standpoint, there is -- I can guarantee there won't be
13 any information available about threatened and
14 endangered species sensitivity to fluoride, because
15 these tests are run on animals that are collected from
16 the field, and because they're threatened and
17 endangered, no one is going to test those things.
18 They're not going to be able to take them out and do a
19 laboratory test.

20 MR. MILLER: That wouldn't be very popular.

21 HEARING OFFICER KNITTLE: If they had a
22 specific sensitivity to fluoride, you wouldn't know it?

23 MR. BRIGHT: There would be no way of
24 knowing whether they were particularly sensitive to

1 fluoride.

2 CHAIRMAN JOHNSON: Unless they're
3 brushing.

4 MR. TWAIT: To clarify your question, were
5 you specifically asking -- and maybe Greg brought that
6 up, but were you specifically asking whether there's
7 endangered species present? Or endangered species that
8 are sensitive to fluoride specific?

9 MR. RAO: Both. We wanted to know if there
10 are any endangered species that are sensitive to
11 fluoride. And if such species are in this area, that,
12 you know, if there are any concerns that we need to
13 know. And that's why I thought maybe DNR would be the
14 agency who would have all this information hopefully.

15 MR. TWAIT: Well, like Greg said, I don't
16 think they're going to have whether they're sensitive to
17 or not.

18 HEARING OFFICER KNITTLE: They will just
19 have information as to whether they're present?

20 MR. TWAIT: Whether they're present. And
21 they won't necessarily give us any information, because
22 this is an ongoing situation. If an endangered species
23 is present, then it is surviving in the water as we
24 would expect it. But we did definitely try to address

1 that.

2 MR. RAO: Okay. The next follow-up
3 question I have concerns the economic justification
4 under 12. Let me go to your response.

5 In response to question 12-A, you indicated
6 that an average truck wash costs around \$45. And, you
7 know, most of your competitors meet your price of the
8 truck wash or are up to \$8 less than your price.

9 I was just wondering, you know, for these
10 cheaper truck washes, do they offer the same kind of
11 services? Or is it, you know, a lower quality truck
12 wash?

13 MR. WALTER: Mr. Rose can address that
14 question.

15 MR. ROSE: Yes, sir. To my knowledge, the
16 truck wash industry has really been modeled after Blue
17 Beacon. I mean, we are obviously a leader in the truck
18 wash industry, and they have modeled their truck wash
19 after us. And that pretty much goes with my
20 observations I have made with the different competitors
21 to exactly what would be conducted just at a cheaper
22 price.

23 MR. RAO: Also in your testimony you had
24 indicated how, you know, by putting in a treatment

1 system on-site, it's going to increase the price by
2 around \$5 per wash.

3 Would there be any other kind of incentive
4 you can give to the truck drivers to pay more for your
5 wash if you say, you know, you have this environmentally
6 friendly truck wash? When I say "environmentally
7 friendly," what I'm saying is we're discarding less
8 fluoride. Do they buy that?

9 MR. ROSE: I mean, you're asking me a good
10 question. But with my experience, I have vast
11 experience with different drivers in different locations
12 over the country. You're dealing with more of a blue
13 collar worker. And if you were dealing with more of a
14 white collar worker, I would say, no. Not disrespecting
15 them, but I would say you'd probably get a "no." They
16 want it for the bottom dollar. And you can tell them
17 that, but in my opinion, no it would -- no, absolutely
18 not.

19 MR. RAO: Because I have seen some of these
20 signs in my dry-cleaning places where the signs are out
21 there that say "environmentally friendly" and then they
22 charge me more.

23 HEARING OFFICER KNITTLE: But now do you
24 still go there or somewhere else?

1 MR. RAO: I look, but it's a distance
2 thing.

3 MR. ROSE: Then again, I think it's
4 reflecting back to the type of --

5 HEARING OFFICER KNITTLE: Plus, he's an
6 environmental scientist for the Illinois Pollution
7 Control Board. I would hope you notice those things.

8 MR. RAO: Yeah.

9 CHAIRMAN JOHNSON: All environmental
10 scientists are not driving trucks. And the answer is
11 "yeah."

12 MS. LIU: Mr. Rose, in your pre-file
13 testimony you projected a loss of nearly \$300,000 if the
14 HF brightener wasn't used anymore. Could you describe
15 how you came about that figure?

16 MR. ROSE: Yes, ma'am. Obviously we have
17 different agencies within our company. And I gave that
18 over to our operations department within Blue Beacon.

19 And we had a situation several years ago
20 within our company where we, due to extraneous
21 limitations of metals on our discharge, which we since
22 have worked through and we're down without the
23 brightener, came up with those numbers. And now keep in
24 mind, that was years ago. I mean, my years -- within

1 the last 10 years, we've been in a similar situation,
2 but not with this particular constituent, but we've been
3 there before.

4 MS. LIU: Okay. Thank you.

5 MR. ROSE: Yes.

6 MS. LIU: I have a question for the
7 Agency. I apologize.

8 HEARING OFFICER KNITTLE: It's okay. On
9 19, it's another one of those questions that you
10 objected to, specifically 19-C, and 19 -- no, 19-A. Do
11 you want to reiterate your objection for the record,
12 Mr. Walter?

13 MR. WALTER: Sure. As drafted, I believe
14 the question 19-A calls for speculation, and I don't
15 think anyone here would be able to speculate as to
16 Flora, but I think we have already responded in our
17 testimony that they've not been contacted.

18 HEARING OFFICER KNITTLE: So, in essence,
19 regardless of the objection, your testimony is you don't
20 know how they would feel because they haven't been
21 contacted?

22 MR. WALTER: I believe that's what the
23 testimony has established.

24 HEARING OFFICER KNITTLE: Is there any

1 further questions we want on that?

2 MR. RAO: I think we talked about that.

3 HEARING OFFICER KNITTLE: I think so, too.

4 MS. LIU: Ms. Williams?

5 MS. WILLIAMS: Yes?

6 MS. LIU: Referring to question 20-B, the
7 35 Illinois Administrative Code 303.302, reads that in
8 addition to the general use standards of Subpart B, Part
9 302, waters of the State shall meet the public and food
10 processing water supply standards of Subpart C, Part
11 302, at any point at which water is withdrawn for
12 treatment and distribution as a potable supply or for
13 food processing.

14 My nonlawyer's read of this says that in
15 addition to the general use standards, which include
16 fluoride, water shall also meet the public water supply
17 standards when they're used for that.

18 MS. WILLIAMS: Right.

19 MS. LIU: So does the fluoride general use
20 standard also become a public water supply standard at
21 the City of Flora's water intake?

22 MS. WILLIAMS: Well, I mean, first of all,
23 I think we agree with the response that the Petitioners
24 gave to 20, that there's no specific public and food

1 processing standard more stringent, applicable for
2 fluoride, right? So having laid that out --

3 MS. LIU: But in addition to all of the
4 general water quality standards, there are more public
5 water supply standards. So the entire set make up the
6 public water supply standards, correct?

7 MS. WILLIAMS: Right, right.

8 MS. LIU: So by granting relief from the
9 water quality standards in this case, would be, in
10 essence, granting relief from the public water supply
11 standards for the City of Flora?

12 MS. WILLIAMS: I don't think that we see it
13 that way, no.

14 I'm not sure -- I'm trying to think of the
15 best way to answer the question, given the fact that I
16 think over time that the Board's rules were developed,
17 the public and food processing standards were somewhat
18 overlooked in some ways.

19 I mean, I think we're finding -- I've been
20 looking at revisions to the radium water quality
21 standard, for example. And there are several of the
22 Board's water quality standards that were primarily
23 focussed on the human consumption use, but yet were
24 still not included within that subpart for whatever

1 reason.

2 So I think our view -- and I can revisit it
3 and supplement it in post-hearing comments if necessary,
4 but I think our view is simply that there is no
5 applicable public water supply standard that would
6 contain a fluoride limitation. So it simply would be
7 relief from a general use standard. And maybe I'm
8 misunderstanding your question, but --

9 MR. WALTER: Could I try?

10 MR. RAO: Sure. Go ahead.

11 MR. WALTER: I'd like to try to answer the
12 question, if I could.

13 If you grant relief either from 304.105 or
14 302.208, then the water quality standard, the general
15 water quality standard applicable to this facility would
16 change, and therefore this provision would not be
17 violated either.

18 MR. TWAIT: I would like to --

19 MS. WILLIAMS: I made a technical
20 misstatement. So he'd like to correct me.

21 MR. TWAIT: The fluoride, if I remember
22 correctly, and I haven't looked this up recently, but I
23 believe through my asking and possibly even looking it
24 up, I'm not quite sure, but I believe that fluoride was

1 put into water quality standard of 1.4 milligrams per
2 liter because of aquatic life use. It was not put into
3 water quality standard because of drinking water
4 supplies.

5 MR. MILLER: I would like to add to
6 Mr. Twait's comment. I believe he is correct. The
7 limit on our water treatment plant, the range that we
8 need to stay within to be in compliance with the IEPA
9 is .9 to .12 milligrams per liter.

10 MS. LIU: Could you restate that please?

11 MR. MILLER: For our fluoride that we put
12 into the water, our requirement is .9 milligrams per
13 liter to .12 milligrams per liter.

14 MS. LIU: Is that a public health
15 requirement?

16 MR. MILLER: Yes. We maintain
17 approximately 1 milligram per liter for our drinking
18 water. We put that into the --

19 MS. LIU: Is that a city specific
20 requirement or a federal requirement?

21 MR. MILLER: State.

22 MS. LIU: It's a state requirement?

23 MR. MILLER: Yes.

24 MS. LIU: Thank you.

1 CHAIRMAN JOHNSON: Have you considered
2 charging Flora?

3 MR. HORTENSTINE: That's an excellent
4 idea.

5 MR. MILLER: So it is a cost to us. It is
6 an operational cost as far as chemicals to put fluoride
7 into the --

8 CHAIRMAN JOHNSON: There's several of us
9 here that are old enough to remember when it was a huge
10 public health concern. I think my father thought it was
11 going to make us impotent or something.

12 MS. WILLIAMS: They still think that in
13 Utah.

14 HEARING OFFICER KNITTLE: Do they?

15 MS. WILLIAMS: They don't have fluoride in
16 drinking water in Utah.

17 CHAIRMAN JOHNSON: That's the dentists that
18 are pushing that, I suspect.

19 MS. LIU: If we could move right along into
20 the discussion on the truck wash operations, and the
21 alternatives themselves.

22 Mr. Rose, I was wondering if I could ask
23 you. In the petition, you describe the BBI truck wash
24 opened in 1981, and then a second one opened up in 1993;

1 is that correct?

2 MR. ROSE: Let me go back over this. Yes.

3 MS. LIU: And you also discussed when
4 Truckomat opened in the 1970s. There's mention of the
5 HF Brightener that was used there at the Truckomat since
6 1996. And I was wondering if you knew what Truckomat
7 used to use before 1996, and what BBI used to use before
8 it started using the HF brightener.

9 MR. ROSE: This is going to be a two-part
10 answer, if you don't mind, kind of a combo tag team.

11 MS. LIU: That's fine.

12 MR. ROSE: I can't state to a fact what
13 Truckomat has used. I do know that from day one of Blue
14 Beacon's birth, that we've used our current brightener
15 that we're using now.

16 And then you threw a couple questions in
17 there. So did I answer half of that?

18 MS. LIU: Yes, you did.

19 MR. ROSE: What was the other half?

20 MR. LIU: Is there any way we could find
21 out what Truckomat used to do before they decided to use
22 the HF brightener?

23 MR. ROSE: Well, this is speculation, but
24 Blue Beacon, it's my understanding, is the founder of

1 what we're using, and they have seen how our business
2 did and also started to follow in suit as we did.
3 That's speculation, but I believe that's what it is. So
4 my belief is they didn't use anything.

5 MS. LIU: You mentioned earlier that Blue
6 Beacon International was a nationwide company with
7 stores in several locations. How long has Blue Beacon
8 been around?

9 MR. ROSE: Blue Beacon has been around
10 since May of 1973, I believe.

11 MS. LIU: What was your motivation for
12 using an HF brightener in your process?

13 MR. ROSE: That would have been before me,
14 because I probably would have only been, like, eight.
15 So I mean, I didn't mean to be a smart alek, but I don't
16 know the -- because it works. I know that. But other
17 than that, I don't know.

18 MR. RAO: I have some follow-up questions
19 along the same lines.

20 In response to our questions to you, you
21 explained that Blue Beacon has a comprehensive testing
22 program to test alternative chemicals for truck
23 washing. As a part of this testing program, do you
24 maintain any documentation of the various chemical

1 alternatives that you tested? And if so, would it be
2 possible for you to provide for the record what results
3 you got as part of this testing?

4 MR. ROSE: I am the director of research
5 and development. So I do most, if not all, of the
6 testing with new chemicals of the nature we're talking
7 of. And I'm sorry to say I don't keep a lot of
8 documentation. But I know in my journey in looking
9 everywhere, and I mean everywhere, I know what I've
10 tried and what I haven't tried. And I kind of team with
11 Mr. Shepard here as well, and we're currently looking
12 right now. But, no, I do not have any documentation.

13 But, you know, I'm sure Max can go through
14 a number of things that we've used off the top of his
15 head. He's more scientific than I am.

16 MR. RAO: If Mr. Shepard can chime in,
17 that's fine, too. If you don't have documentation, you
18 know, just for the record, if you can explain what this
19 testing involves and if you recall what chemicals were
20 tested.

21 MR. SHEPARD: Sure. My role, just to
22 clarify, as an environmental consultant is look at the
23 environmental impact of various chemicals. And one of
24 the things that I've done is help Blue Beacon review

1 material safety data sheets, because believe me, they
2 get bombarded probably daily in terms of, "Here. We
3 have got this new chemical. Take a look at it."

4 So one of the things I do is I just help
5 screen them out, because some of the chemicals are
6 clearly more -- or I should say less environmentally
7 friendly than the brightener they were currently using.
8 So we review that. And I don't make the decision
9 whether to use it or not.

10 But then Blue Beacon then -- and Mike can
11 again provide some additional information here. If it
12 looks like something is promising, they can actually set
13 up -- and they set up tests in their truck wash there in
14 Salina where they'll set it up one day, and we'll run
15 trucks through -- it's like the old saying, "Where the
16 rubber meets the road." It's literally true here. They
17 actually wash trucks with some of these other
18 chemicals. And they inspect it, the trucker inspects
19 it, and they make a decision.

20 To go back to the question of
21 documentation. No, there isn't a detailed log sheet
22 that goes through and does that. It's, in essence, a
23 case of does it work or not? And it's usually very
24 readily apparent that it doesn't work as well.

1 As far as chemicals, I know they've tried a
2 lot of citrus-based chemicals, some other acid-based
3 chemicals and organic-based chemicals. And, again, none
4 of them provided the same quality.

5 MR. ROSE: May I add to that a little bit?

6 Normally in the testing procedures, what we
7 do -- and this is going to be seem kind of like a gross
8 procedure, but normally the first thing you do is take
9 like a pump-up sprayer, and you spray air in the truck
10 that would be unnoticeable to the trucker. And if you
11 do see, it's "Hey, look at this." And then you have
12 your current chemical that you're going to use, and you
13 compare it like on the back doors of the truck. And
14 usually what you do is you make an "X" on both doors.

15 And let's say, like -- this is gross, but
16 it works. And you spray your temporary chemical, and
17 you use your current chemical. And if the "X"
18 disappears, then you say, "Okay. We'll throw this into
19 production." And we throw it. And we wash half the
20 trucks with the current chemical and half the trucks
21 with the other chemical. And it's been quite
22 successful, but that was a trial, but it hasn't been
23 successful in finding an alternative chemical.

24 MS. LIU: If you were to rate these other

1 chemicals you've tested on a scale of 1 to 10 with your
2 HF brightener being a 10, a product comes in at a 9 or
3 an 8, would that be something you might consider using
4 at this one location because of the environmental
5 concerns, even though it might not be the best product
6 BBI could provide nationwide? It would resolve an issue
7 that's of local concern?

8 MR. ROSE: That's kind of long.

9 MS. LIU: I'm sorry.

10 MR. ROSE: That's okay. I just wanted to
11 make sure I answered it accurately.

12 Well, believe me, if there is a chemical
13 out there, I'm going to find it. But to date, I have
14 not been able to find a chemical.

15 So an 8 or a 9, I don't know. I don't know
16 what your 8 or 9 is. I mean, I don't know. That's kind
17 of vague to me. I mean, it just would have to pass
18 standards of Blue Beacon as set for the quality of
19 product to be put out. Because when you have quality,
20 then you have profit, and that's what we're in the
21 business to do is to make profit. I don't know if that
22 answers your question, but I hope it does.

23 MS. LIU: Part of the Board's rule-making
24 provisions provide that the petitioner justify that the

1 current regulations are economically or technically not
2 reasonable.

3 Could you provide, say, an economic
4 justification for why using a product that would only
5 rate an eight or a nine would hurt Blue Beacon in such a
6 way that it would become economically unreasonable?
7 Say, if you use that product, you might lose 10 percent
8 of your customers? Could you make an estimate along
9 those lines?

10 MR. WALTER: I'm going to object because
11 I'm not sure I understand the question.

12 MS. LIU: Part of the Board's rule-making
13 provisions require that the petitioner present
14 justification on why the current regulations, in this
15 case, complying with the fluoride water quality
16 standard, would be economically unreasonable or
17 technically infeasible.

18 MS. WILLIAMS: Do you have a cite, Alisa,
19 to which one you mean?

20 MR. RAO: I think it's Section 27 of the
21 Act.

22 MS. WILLIAMS: I guess maybe I want to
23 clarify a point, I guess, and of what David was saying,
24 that in a site-specific rule making, anyway, I

1 understood it to be that we're demonstrating that this
2 standard is technically feasible. I mean, I'm just not
3 sure that we're -- that she's necessarily properly
4 citing to the standard for site-specific rule making.
5 I'm not sure I could do a better job.

6 HEARING OFFICER KNITTLE: Regardless of the
7 exact cite, I think what she's trying to find out that
8 if there is something else that's almost as good. And
9 I'm paraphrasing. Correct me if I'm wrong.

10 You've got something that's almost as good
11 as what you're using now, and she wants to know would it
12 be economically reasonable to use that? How many
13 customers would use it? Have you looked into that?
14 Have you considered whether that's a possibility or
15 not? And I think that's an appropriate question under
16 either standard.

17 MS. WILLIAMS: No, I think that's good, but
18 I like that question better.

19 MS. LIU: The citation is at 102, 210 B.

20 HEARING OFFICER KNITTLE: Is that
21 essentially the question you wanted to ask?

22 MS. LIU: Yes. Thank you.

23 MS. SHEPARD: Can I jump in?

24 MR. WALTER: Sure.

1 MR. SHEPARD: I think I understand the gist
2 of the question.

3 Just to clarify. The economic impact that
4 was included in the petition, and I think in additional
5 information, that economic impact is based on if Blue
6 Beacon and Truckomat had to remove the current
7 HF brightener, that impact assumes that they would then
8 use the next best thing that's available. So as we sit
9 here today, that next best thing that's available would
10 have the severe economic impact that's listed in the
11 petition.

12 MS. LIU: Is that the \$300,000 per year
13 that you referred to?

14 MR. SHEPARD: Yes, and the loss of "X"
15 number of employees.

16 Is that chemical an eight or a nine? I
17 don't know. I don't think Greg -- I don't think Blue
18 Beacon rates them on a scale from 1 to 10.

19 What my understanding is -- and Mike can
20 jump in -- is that Blue Beacon rates the quality based
21 on their view as well as their customers. They have an
22 incredible customer feedback program whereby they know
23 if it doesn't.

24 HEARING OFFICER KNITTLE: But you're saying

1 that the best next chemical next to the HF brightener
2 that's out there would result, regardless of whether
3 it's an eight, nine, six or seven, would result in a
4 \$300,000 loss of profit and a loss of the employees that
5 you've testified to in your pre-filed testimony?

6 MR. SHEPARD: Correct.

7 HEARING OFFICER KNITTLE: So there's
8 nothing in between that and the HF brightener that's any
9 better at cleaning trucks, correct?

10 MR. SHEPARD: Correct.

11 HEARING OFFICER KNITTLE: Does that satisfy
12 the question?

13 MS. LIU: Yes.

14 CHAIRMAN JOHNSON: One of your business
15 goals is to provide, I'm assuming, to provide the
16 uniform product? So it's the same for a trucker driving
17 all the way across the country?

18 MR. ROSE: Correct.

19 [Off-the-record discussion.]

20 MR. RAO: I have one more. I have this for
21 Mike Rose.

22 In your pre-filed testimony when you were
23 talking about the impact of the -- you know, impact of
24 complying with the general standard for fluoride, you

1 mentioned that there would be a total loss of 21 to 24
2 jobs in the city. How many people do you employ now in
3 the City in Effingham's operation of the two truck
4 washes that you have?

5 MR. ROSE: Can I clarify? You said in the
6 city?

7 MR. RAO: First what it means when you say
8 21 to 24 lost jobs in the city.

9 MR. ROSE: And I think I'm going
10 to -- because I think I know this off the top of my
11 head, because I've read this a hundred times, but I
12 think we're talking about when you added that up, it was
13 per location. It would be seven or eight employees per
14 location. Now, I am doing some speculating on Truckomat
15 because I am not Truckomat, and I can't say for
16 Truckomat.

17 But due to the petition and due to the
18 nature of what we're -- the business of being the same,
19 it would be -- and I hope this answers your question, is
20 like seven to eight employees per location. Does that
21 answer your question?

22 MR. RAO: That's fine. That answers part
23 of my question.

24 And the other part was how many people do

1 you employ right now at each location that you have
2 information about?

3 MR. ROSE: Okay. The ones I have
4 information about, which is Blue Beacon, the Exit 159,
5 Exit 160, I believe it's between 35, 40 employees at
6 each location, I believe.

7 MR. RAO: And they're full-time employees?

8 MR. ROSE: I believe that there may be a
9 part-time employee here or there, like a high school
10 student maybe possibly. But still that's employment for
11 the City. So there may be a part-time employee, but
12 most of our employees, I would like to say, roughly 90
13 percent or even higher, would be full time because of
14 the students' schedule. I don't think we do a lot of
15 hiring of students, but I know it does happen. So we're
16 talking full-time jobs.

17 MR. RAO: Okay. Thank you.

18 MS. LIU: Is your testing of alternative
19 cleaners an ongoing process?

20 MR. ROSE: Yes. Yes, it is.

21 MS. LIU: What do you look for in a new
22 cleaner?

23 MR. ROSE: Anyone that would knock on my
24 door and tell me that they would have something, I'll

1 look at it. And I mean, I'm looking all the time.

2 Max and I were just talking last night
3 about when we get back from this journey, looking at
4 another contact we may have. So I'm always looking, but
5 it's not too promising. I'll be honest.

6 MS. LIU: I'm glad to hear that. We did a
7 brief Internet search, and I know you guys are the
8 experts in the industry. We came across several
9 nonalkaline or nonacidic alkaline type brighteners that
10 are manufactured. And I was wondering if you might be
11 able to enter some very brief information on those into
12 the record for your review.

13 MR. ROSE: There would be no problem for me
14 to review anything anyone would have for me. I'd be
15 more than happy to. I can't commit to using it until I
16 look at it in detail and have Max review the MSDS. So
17 that's kind of the process we have.

18 MR. WALTER: Just for the record, I'd like
19 to make an objection as to foundation. I realize this
20 is an informal proceeding, but --

21 HEARING OFFICER KNITTLE: What are we
22 talking about here, Ms. Liu? Do you have a copy of
23 that? What do we have? Has anyone seen this?

24 MS. LIU: No.

1 MR. WALTER: No.

2 HEARING OFFICER KNITTLE: Do you want to
3 take a look at it? Or are you objecting without looking
4 at it?

5 MR. WALTER: I guess I'm objecting to it
6 because it's a board technical staff member presenting
7 evidence. We don't have an opportunity for cross
8 examination. And it's slightly irregular, I guess, for
9 a member of the decision making body to be presenting
10 evidence.

11 MR. RAO: You did say you used a whole lot
12 of alternative chemicals, and we just wanted to know if
13 some of these were the ones that were tested, you know,
14 just to get an idea of what chemicals you tested, other
15 than a general statement that was made. And we are not
16 saying that these are the products you need to use, or
17 you have to test it. We just want to know for the
18 record that there are a whole bunch of alternatives that
19 are out there.

20 And since we didn't receive the
21 information, other than in a general statement, we
22 wanted to know and for you to take a look at it and tell
23 us whether if these were the ones you tested. Or feel
24 free to --

1 MR. HORTENSTINE: That would seem to me to
2 be cross examination of this witness, if they used those
3 particular priors, but I don't think it's appropriate to
4 enter evidence to that effect.

5 MR. RAO: Whatever way is fine.

6 HEARING OFFICER KNITTLE: The thing
7 is -- there's a couple things.

8 You know, if this were an adjudicatory
9 proceeding, I'd sustain that objection without even
10 thinking about it, of course. But this is a rule-making
11 proceeding. We want to get all the information before
12 the Board we can possibly get so we can make a good
13 decision regardless, you know, of the fact that it
14 wouldn't be admissible in a adjudicatory proceeding. I
15 agree that it wouldn't be admissible in a adjudicatory
16 proceeding.

17 If we were -- you know, if Ms. Williams
18 over here were representing the IEPA in a permit appeal
19 and you were representing Truckomat, then I'd say sure.

20 But in light of the fact that it is a
21 regulatory proceeding, we want to get the information
22 before us and reach the right decision, I'm going to
23 accept this and make it part of the record, but I'll
24 note your objection.

1 Why don't you take a look at it? If you
2 want to do further objections after you take a look at
3 it, you'd be more than welcome to put that in your
4 post-hearing comment. And I don't think we're directing
5 you to use or test any of these.

6 MR. RAO: Just for the Board to know that,
7 you know, there are alternatives, which they may have
8 already tested.

9 HEARING OFFICER KNITTLE: Well, I think I'm
10 going to think of it more in terms of Mr. Rao wants to
11 know if this is the type of thing you're looking at in
12 terms of when you test different chemicals. So take a
13 look and let us know have you looked at any of these.
14 Or have you considered -- is this the type of
15 information you consider when you're trying to decide
16 whether that's something better than the HF brightener
17 out there.

18 MR. WALTER: And we would provide those
19 responses in our written comment?

20 HEARING OFFICER KNITTLE: Yeah. Provide it
21 in the written. Is that sufficient?

22 MR. RAO: Yeah.

23 HEARING OFFICER KNITTLE: Is that
24 sufficient to you? Let's go ahead and do that. And if

1 you have objections to this ruling, please feel free to
2 make them with the public comment or even after the
3 hearing, you know.

4 Any hearing officer ruling is appealable to
5 the Board within, I don't know, a certain number of
6 time -- a certain number of days. I don't recall off of
7 the top of my head because I get overturned so rarely.
8 And, no, I don't know what it is. I think it's 14 days,
9 or once the record comes in. And you'd be welcome to do
10 that, and the Board will then consider that. Just
11 because I say it's admissible doesn't mean it's going to
12 be something the Board considers. So if you have an
13 objection to it, they could hear that.

14 So what next now?

15 MS. LIU: Do we need to assign an exhibit
16 number?

17 HEARING OFFICER KNITTLE: No, we'll just
18 take this into the record.

19 Ms. Williams, do you have any comment on
20 this? I neglected to ask your position.

21 MS. WILLIAMS: No, I don't have any
22 comment. I'm just trying to figure out how -- do we
23 have copies for us? That was all. Yeah, if we have
24 copies, that's good.

1 HEARING OFFICER KNITTLE: We'll get you a
2 copy. And then we're going to need copies, too.

3 MR. RAO: We have them.

4 HEARING OFFICER KNITTLE: Is that the
5 extent of the questions? Or do we have a couple more?

6 MR. RAO: We are on 22.

7 HEARING OFFICER KNITTLE: Did you want me
8 to deal with the objections on 22?

9 MR. RAO: Yeah.

10 HEARING OFFICER KNITTLE: I think we've
11 talked about most of that, haven't we?

12 MR. RAO: Yeah.

13 MS. LIU: One last question. In the
14 response to the hearing officer order questions on page
15 14, you mentioned that you would contact the Illinois
16 Waste Management and Research Center to discuss your
17 technical issues. I was wondering if you could give us
18 an idea of when you plan to initiate that contact.

19 MR. WALTER: Mr. Rose?

20 MR. ROSE: Well, can I go ahead and answer?

21 MR. WALTER: Sure.

22 MR. ROSE: I've been not home much. I've
23 been working out of state. But when these questions
24 came in, Mr. Shepard and I already started to discuss

1 it, but we didn't know when the hearing was coming up
2 and when we should do that after or before, but we are
3 discussing that, doing that, and we're working on that
4 currently right now.

5 MS. LIU: Could you describe how you plan
6 to follow through with that then when you get around to
7 it?

8 MR. ROSE: I'll let Max answer that.

9 MR. SHEPARD: What we'll do is we'll
10 discuss when we get back what we need to provide in the
11 way of information to them.

12 As far as the time frame, frankly, it's
13 partly based on -- as Mr. Rose mentioned, he's been out
14 of state for, what, three or four weeks? It's hard to
15 give an exact time frame, but I would say in the very
16 near future we'll be contacting them.

17 And the procedure will most likely be that
18 I'll contact them, and enter into the discussions with
19 them about what their capabilities are, what they might
20 be able to do, to provide in the way of information. So
21 I hesitate to give a specific date at a hearing like
22 this, but as soon as we reach it, we will contact them.

23 MS. LIU: Thank you for your response.

24 MR. RAO: Thank you very much.

1 HEARING OFFICER KNITTLE: And I noted that
2 I skipped 22 C, D and E, which we've talked about in
3 part, but those were objections as well.

4 I think we covered 22-C, which is are you
5 aware of any "environmentally" -- that's in
6 quotes -- friendly truck wash solutions that are
7 commercially available? We've addressed that one
8 sufficiently, right?

9 22 D, I don't know if we did that. Can you
10 please describe any worker or user safety hazards
11 associates with the current truck wash chemicals, since
12 hydrofluoric acidic is highly acidic? You objected to
13 relevance. I think I included that in the hearing
14 officer order that it's relevant. Did we address that
15 at all?

16 MR. SHEPARD: And I don't work as a safety
17 consultant to Blue Beacon, but I have worked with their
18 safety people and Mr. Rose.

19 As far as question D, I guess our best
20 response -- and we can certainly provide an MSD sheet,
21 because existent safety hazards are outlined on the
22 material safety data sheet. And that would be my
23 response, rather than bringing -- I didn't bring it with
24 me to read it, but that can certainly be provided, and I

1 think that would answer that question.

2 MR. RAO: Okay.

3 HEARING OFFICER KNITTLE: Yes? You want
4 that?

5 MR. RAO: Yeah.

6 HEARING OFFICER KNITTLE: Could you submit
7 that with the public comments please?

8 And the last one is 22 E. Are you aware of
9 any wash chemical or brighteners that are safer to use?
10 And have you trial tested any?

11 I think we handled that one sufficiently.

12 MR. RAO: Yeah.

13 HEARING OFFICER KNITTLE: And I think
14 technical agrees. That's all we have.

15 Ms. Williams, any more questions for the
16 City of Effingham? Or for any of the petitioners?

17 MS. WILLIAMS: No, we don't have anything
18 further.

19 HEARING OFFICER KNITTLE: Mr. Walter, do
20 you have anything in terms of asking the Agency or the
21 Board?

22 MR. WALTER: No. I do not.

23 HEARING OFFICER KNITTLE: Let's see where
24 we're at.

1 Still no members of the public, I might
2 want to note for the record.

3 No further witnesses from either side?
4 Nobody here?

5 Do we want to do closing arguments? Or
6 would you like to do that with your briefs -- your
7 public comments?

8 MR. WALTER: For the Petitioners' part,
9 given the fact that we're going to be doing briefs and
10 comments and given the time, I think we'll waive closing
11 arguments.

12 HEARING OFFICER KNITTLE: Ms. Williams?

13 MS. WILLIAMS: That's fine.

14 HEARING OFFICER KNITTLE: If anyone has any
15 questions about the procedural aspects of this rule
16 making, of course this is also geared more to the
17 members of the public, but you can always give me a
18 call. My phone number is, as you know, (217) 278-3111.
19 Or you can email me at knittlej@ipcb.state.il.us.

20 The transcript of today's hearing should be
21 available by -- let's go off the record.

22 [Off-the-record discussion.]

23 HEARING OFFICER KNITTLE: The transcript
24 will be available on October 18th (sic), and copies of

1 the transcript will be available shortly after that on
2 the Board's --

3 MR. RAO: October?

4 HEARING OFFICER KNITTLE: Did I say
5 October?

6 MR. RAO: It sounded like that.

7 HEARING OFFICER KNITTLE: Did I say
8 October? It will be available before that. It will be
9 April 18th. And shortly thereafter -- pardon?

10 CHAIRMAN JOHNSON: You even wrote down
11 October.

12 MR. RAO: Finally spring is here, and he
13 wants it to be winter, right?

14 HEARING OFFICER KNITTLE: I love October.

15 The transcript will be available shortly
16 after that. And the Board's Web site is at
17 www.ipcb.stateil.us.

18 Previous Board and hearing officers should
19 also be available on the Web site. And the hearing
20 officer order that will follow this hearing will
21 describe how to file public comments in this rule
22 making. Such public comments will be due 30 days after
23 April 18th, which is --

24 MS. WILLIAMS: May 19th probably, because

1 there's a Sunday there.

2 MR. HEARING OFFICER KNITTLE: We'll call it
3 May 19th. In fact, forget the 30 days. It will be
4 public comments will be due on May 19th on or before May
5 19, 2003. The mailbox rule will apply. So as long as
6 you get them in the mail on that date, that should be
7 sufficient. That's all I have.

8 Chairman Johnson, anything?

9 CHAIRMAN JOHNSON: No. Thank you for
10 coming.

11 MR. WALTER: I have a procedure question.
12 We can probably discuss this off the record.

13 HEARING OFFICER KNITTLE: Sure. Thank you
14 all, and we're adjourned.

15 [End of proceeding.]

16 [Petitioners' Exhibits J, L, M, O, and
17 P were retained by counsel.]

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COURT REPORTER'S CERTIFICATION

I, Ann Marie Hollo, Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter of the State of Illinois and Notary Public, do hereby certify that said hearing before the Illinois Pollution Control Board, took place on the 11th day of April, A.D., 2003, and held at City of Effingham's City Hall Council Chambers, 201 East Jefferson Street, Effingham, Illinois.

I do hereby certify that I did take stenographic notes of the proceedings and that said notes were reduced to typewritten form under my direction and supervision.

I do further certify that the attached and foregoing is a true, correct and complete copy of my notes and that said testimony is now herewith returned.

I do further certify that I am not related in any way to any of the parties involved in this action and have no interest in the outcome thereof.

Dated at Litchfield, Illinois, this 14th day of April, A.D. 2003 and given under my hand and seal. My commission expires April 5, 2006.


Ann Marie Hollo, CSR, RPR, RMR



A	48:24 51:19 65:21 81:19 97:12,17 acute 39:5 add 20:16 31:15 38:6 42:7 46:5 57:10 66:2,20 67:2 92:5 98:5 added 47:22 104:12 addition 19:3 35:3 38:6 58:23 60:18 89:8,15 90:3 additional 18:7,8 46:10 47:21 97:11 102:4 Additionally 20:11 36:23 address 12:11 18:5 23:7 34:9 72:12 78:16 79:15 84:24 85:13 113:14 addressed 37:16 55:5 70:24 72:20 113:7 addresses 15:7 82:9 addressing 71:6 adjoined 117:14 adjudicatory 108:8,14,15 adjusted 13:17 33:15 35:1 36:1 36:2 37:2 46:13 46:14 54:3 57:5 ADM 1:6 Administrative 3:7,22 4:17 14:15 16:3 19:13,17 33:7 89:7 admissible 108:14,15 110:11 admit 29:2 30:4 42:1 68:4 admitted 2:19 7:7 23:17 25:2 25:3 26:14,15 27:18,19 29:3 31:10 40:13,14 41:15 42:3 44:9 44:10 49:19 50:2 68:6 admitting 49:24 adopt 14:8 adopted 14:22 adoption 5:2	37:11 advantage 35:10 46:14 54:18 56:23 59:1 70:1 Advent 39:6 adversely 18:20 Affairs 4:23 affect 45:10 54:9 75:22 affected 26:1 33:11 37:20 82:11 after 5:3 6:20 7:9 47:3 53:19,20 60:4 64:12 74:8 85:16,19 109:2 110:2 112:2 116:1,16,22 afterwards 74:14 again 8:8 15:18 16:10 24:21 27:13 48:20,21 63:16,17 70:20 87:3 97:11 98:3 agencies 87:17 agency 2:10 5:17 6:6 9:1 11:23 12:1,5,8,14 14:11 15:1 17:15,21 18:6 19:4 20:11,15 31:14 32:11 33:13,18 34:1 35:6 36:19 37:1 37:4,7,12,14 39:3,4 40:19,21 41:8,10 42:6,20 42:23 43:7 44:24 45:2,15 45:20,24 46:2 48:13 49:8 50:7 51:19,23 52:21 53:18 54:4,8 55:21 57:18 59:14 61:16 62:21 65:1 70:4 70:8 75:13 77:20,21 83:3 84:14 88:7 114:20 agency's 6:20 15:5 19:23 32:18,19 33:16 40:21 42:9 51:16 57:16 73:3 75:21 76:18 ago 87:19,24 agree 18:6 36:21 42:23 56:21	72:9,10 89:23 108:15 agreed 18:21 19:3 45:20 agreement 12:5 agrees 114:14 agriculture 45:7 ahead 17:6 53:10 56:15 91:10 109:24 111:20 air 98:9 alek 95:15 algorithms 76:3 Alisa 2:6 3:13 64:14 80:9 100:18 alkaline 106:9 allow 7:10 19:7 allowing 9:8 23:9 24:19 26:8 27:11 almost 101:8,10 along 34:13 35:18 38:12 54:20 55:18 75:8 93:19 95:19 100:8 already 21:3,17 54:19 65:21 71:22 78:24 79:3 88:16 109:8 111:24 alter 68:18 69:17 71:16 alternate 51:15 51:21 alternative 4:3 95:22 98:23 105:18 107:12 alternatives 24:16 54:14 93:21 96:1 107:18 109:7 Although 37:23 always 41:11 61:18 73:16 106:4 115:17 ambient 42:23 43:1 44:14 amend 71:16 amount 46:9,10 47:22 49:1 ample 13:18 analysis 45:3 analyzed 45:22 Anand 2:6 3:12 80:6 animals 83:15 Ann 1:9 118:2,16 another 46:6,8	46:13 69:4 88:9 106:4 answer 19:24 34:16,17 55:6 55:19 70:15 77:2 79:24 80:12 81:4,18 87:10 90:15 91:11 94:10,17 104:21 111:20 112:8 114:1 answered 99:11 answering 30:12 answers 20:13 50:17 99:22 104:19,22 anticipate 60:1 anticipated 61:11 anybody 6:18 8:6 80:15 anymore 87:14 anyone 6:14 7:1 7:11 8:3 54:17 59:13,14 61:4 76:1 88:15 105:23 106:14 106:23 115:14 anything 16:12 27:21 46:18 49:20 50:8 73:4 74:8 95:4 106:14 114:17 114:20 117:8 anyway 100:24 apologize 88:7 apparent 97:24 appeal 37:17 108:18 appealable 110:4 appealed 36:24 APPEARANCES 2:1 appeared 6:22 76:17 appearing 2:9,13 2:16 22:19 24:9 25:16 27:2 appears 41:21 applicable 9:23 13:13 16:7 19:18,21 33:4 36:6 90:1 91:5 91:15 application 14:4 applied 57:7 applies 7:17 14:6 apply 35:11 37:12 57:24 117:5	appreciate 12:2 approach 12:15 21:22 52:22 71:9 approached 53:16 60:22 65:3,7 approaches 45:23 65:5 69:15 approaching 60:24 68:14 appropriate 6:19 32:24 35:4 37:3 43:23 51:14 52:5,16 53:4 57:13 58:3 59:4 74:11 101:15 108:3 approval 33:2 78:10 approved 33:2,24 77:24 approximately 10:9 92:17 April 1:11 5:10 20:14 116:9,23 118:5,14,14 aquatic 4:8 10:16 11:17,20 27:8 45:13 82:13 92:2 area 11:7 84:11 argues 37:1 argument 31:21 31:23 47:6,8 arguments 115:5 115:11 around 33:8 85:6 86:2 95:8,9 112:6 aside 35:23 asked 6:12 8:2 16:17 37:18 58:20 79:2 asking 84:5,6 86:9 91:23 114:20 aspect 79:16 aspects 75:10 115:15 assign 110:15 assist 20:18 63:7 assistant 3:2 17:10 associated 22:21 24:12 25:18 27:5 associates 113:11
----------	---	--	--	---	---

assume 55:4	74:17 76:19	57:20 59:23	17:19 18:5	brightener 46:4	cause 4:5 9:22
assumes 102:7	78:6 81:23 87:4	63:8,23 66:12	19:14 20:1,3,5	87:14,23 94:5,8	33:10 48:1,12
assuming 103:15	94:2 97:20	70:15 88:13,22	20:8,18 28:3	94:14,22 95:12	causing 48:17
assurance 18:9	98:13 106:3	91:23,24 92:6	29:12,15,24	97:7 99:2 102:7	74:24
73:11,20	112:10	95:3,10 97:1	31:12 32:15	103:1,8 109:16	CBI 76:22
assurances	background 3:16	99:12 105:5,6,8	33:15,20,20	brighteners 4:2,4	cease 68:18
58:19 72:15	base 34:22	believed 42:12	35:16 36:8,15	19:7	Center 111:16
73:5,18	based 14:23 15:2	55:13	36:18,21 37:3,4	brightners 106:9	certain 5:1 6:10
assure 8:13	16:1 42:15,19	believes 32:23	37:18 38:24	114:9	110:5,6
attach 38:9	50:19 62:2 64:1	below 48:12	46:24 47:4,13	bring 34:3 55:9	certainly 20:2
attached 118:9	71:7 78:8 102:5	beneficial 11:4,5	47:17 48:22	113:23	57:14 59:24
attachment	102:20 112:13	benefit 11:5	50:5 51:11,23	bringing 113:23	64:10 73:3 75:5
30:10 76:17	basically 21:2	Besides 6:17	52:4,6 53:24	broader 79:14	81:20 113:20
attainability 45:3	22:15	best 38:17 51:18	54:12 56:24	brought 20:18	113:24
attempt 23:2	Basin 13:16	73:21 90:15	57:12 58:10,19	84:5	certainty 71:24
33:6,8 79:11	basis 15:16	99:5 102:8,9	58:22 66:5	brushing 84:3	CERTIFICATION
82:17	19:11 54:17	103:1 113:19	69:24 70:12	build 8:3	118:1
attempts 32:14	69:10 78:19	better 23:24 52:7	71:15,17 72:1	bulk 32:11,21	Certified 118:2
ATTENDANCE	BBI 3:23 93:23	55:6,19 56:12	72:14 73:5 74:2	bunch 107:18	certify 118:4,7,9
2:17	94:7 99:6	101:5,18 103:9	75:3,5 79:18	bureau 17:10,14	118:11
attention 8:15	Beacon 3:18 9:12	109:16	80:6 83:2 87:7	business 31:1	CFR 14:3
35:1 80:4	9:20 10:11 11:2	between 42:24	107:6 108:12	68:19 71:23	cfs 43:14
attorney 3:2 8:21	11:8 24:8 68:17	43:10,11 48:4	109:6 110:5,10	95:1 99:21	Chairman 2:5 3:3
9:14	69:1,6 85:17	48:15 61:3	110:12 114:21	103:14 104:18	3:9 8:8,11,19
audience 7:18	87:18 94:24	103:8 105:5	116:18 118:4	buy 86:8	9:7 30:4 34:8
August 13:16	95:6,7,9,21	beyond 79:8	Board's 3:21 4:19		35:15 36:11
14:11	96:24 97:10	bias 8:5	5:22 7:4 9:21	C	44:22 46:6,16
authority 12:12	99:18 100:5	big 31:3	12:20 21:21	C 43:22 89:10	56:10,17 59:3
36:7 37:5 46:2	102:6,18,20	bioassessment	33:18 34:9	113:2	59:13 60:4 61:1
57:14 74:2 75:3	105:4 113:17	42:16 76:16,18	37:14 79:2	caddisflies 42:11	61:13 73:6 81:3
authorizes 14:8	Beacon's 94:14	76:22 77:11	90:16,22 99:23	42:18 76:23	83:7 84:2 87:9
available 5:6	became 55:23	79:16	100:12 116:2	caddisfly 42:9	93:1,8,17
11:16 23:18	become 89:20	bioassessments	116:16	calculate 54:4	103:14 116:10
24:16 26:4 27:7	100:6	27:10	Bob 67:18	75:18	117:8,9
28:19 30:11	becoming 34:1	biological 75:10	body 35:19 45:4	calculated 40:23	Chambers 118:5
53:21 83:13	before 1:1,9 5:7	Biomonitoring	58:1,12,13	41:2 51:14	chance 60:20
102:8,9 113:7	31:12 46:23	11:16 27:1	107:9	calculator 76:3	change 3:20
115:21,24	50:8 54:11	birth 94:14	bombarded 97:2	call 17:4 57:6	32:23 33:1
116:1,8,15,19	56:11 71:14	bit 35:23 46:5	both 5:16 31:7	115:18 117:2	34:10 35:9 37:8
Avenue 2:8,11	75:6 79:17 88:3	51:9 59:20	44:17 47:15	calls 88:14	46:11,12 54:1
average 85:6	94:7,7,21 95:13	67:10 98:5	50:13,23 74:3	came 54:6 58:8	62:19,19 69:23
averaging 4:16	108:11,22	blue 3:18 9:12,20	74:13 75:6 84:9	64:3 75:22	70:2 73:19 79:2
15:6,17,21	112:2 116:8	10:11 11:2,6	98:14	87:15,23 106:8	91:16
avoid 14:20	117:4 118:4	24:8 68:17 69:1	bottom 86:16	111:24	changed 4:24
aware 113:5	beforehand 7:19	69:5 85:16	bound 18:21	capabilities	36:15 53:7
114:8	begin 21:15	86:12 87:18	break 39:22	112:19	58:14
away 78:6	behalf 2:9,13,16	94:13,24 95:5,7	46:23 47:1	care 30:3	changes 5:15
A.D 1:11 118:5	9:11 22:19 24:9	95:9,21 96:24	brief 16:15 31:15	case 16:19,21	53:9 78:10 82:3
118:14	25:16 27:3	97:10 99:18	39:22 47:1	17:5 20:7,15	changing 52:14
a.m 1:11	being 26:12	100:5 102:5,17	58:16 106:7,11	29:19,23 31:13	55:18 58:6
	34:11 38:3	102:20 105:4	briefly 12:11 34:8	33:1 35:23	80:16 81:10,14
B	47:19 48:23	113:17	briefs 74:8 115:6	36:20 38:12	characteristic
B 30:14 89:8	53:15 56:6 65:2	board 1:1 2:1,5	115:9	42:8 47:14	77:1
101:19	67:21 73:1 99:2	3:4,10,12,14	Bright 2:17 11:15	48:20 53:24	charge 86:22
back 17:7 22:2,4	104:18	4:20 5:5,9 6:8	26:19,22,24	57:5,21 60:1	charging 93:2
39:24 46:24	belief 61:20 95:4	6:13 8:3,13	27:1,14 75:9,24	63:12 65:3 90:9	cheaper 85:10,21
47:2 55:21	believe 12:12	9:10 12:10,12	76:9,15 77:5,10	97:23 100:15	check 81:21
58:10 64:3,4	13:20 34:19	12:17,19,24	77:14,18 79:15	cases 33:15	chemical 13:16
65:9 67:5 68:24	37:4 38:14	13:8,18 14:4,8	80:1,3 81:1,16	34:21 36:14,22	25:13 47:14
70:12 72:23	42:20 45:2 52:5	14:17 16:4,6,18	82:7 83:11,23	category 83:10	95:24 97:3

98:12,16,17,20 98:21,23 99:12 99:14 102:16 103:1 114:9 chemicals 10:11 93:6 95:22 96:6 96:19,23 97:5 97:18 98:1,2,3 98:3 99:1 107:12,14 109:12 113:11 chemistry 77:11 chime 96:16 chooses 51:11 chose 5:2 52:4 chronic 75:19 circumstance 47:18,18,20 citation 13:15 101:19 cite 100:18 101:7 cited 36:20 citing 101:4 citrus-based 98:2 city 1:5 2:16 3:6 3:18,24 4:12,15 6:5,5 9:11,14 9:14,22 10:13 10:20,21,23,24 11:6 18:13,17 18:21 22:18,18 22:22 23:5 24:12,15 25:19 27:5 37:12 39:6 50:6,17 51:13 52:11,19 54:19 60:24 61:24 62:4 63:10,18 64:6,23 65:1 66:13,18 68:10 68:14 69:5,16 70:2,10 71:18 71:20 73:10 75:1 89:21 90:11 92:19 104:2,3,6,8 105:11 114:16 118:5,5 City's 4:13 9:18 10:8,16,22 14:1 22:24 23:2,3,8 25:22 26:2,3,4 58:18 63:11 clarification 21:20 51:13 68:9 clarifications 16:17 clarified 20:16	clarify 17:8 20:2 20:16 31:16 32:7 33:19 59:19 70:7 83:6 84:4 96:22 100:23 102:3 104:5 Clean 13:22 72:14,16 73:20 73:22 75:3 cleaner 105:22 cleaners 105:19 cleaning 103:9 clear 20:5 57:7 82:21 clearly 8:1 97:6 closely 11:23 closer 42:13,17 closing 7:10 115:5,10 Code 1:6 3:8,22 4:17 14:15 16:3 19:13,17 33:7 74:3 89:7 codified 14:15 collar 86:13,14 collected 77:3,9 83:15 color 30:22 combo 94:10 come 9:8 34:23 35:10 50:4 54:11 55:17 56:24 58:10 70:12 72:23 76:2 78:6 comes 54:5 55:14 57:17 99:2 110:9 coming 8:17 19:6 59:24 63:20 74:6 112:1 117:10 commencing 1:11 comment 6:24 7:2,3 17:16 29:16 58:17 64:13 66:12,17 81:21 82:7 92:6 109:4,19 110:2 110:19,22 comments 6:10 46:17 49:4 56:19 74:9 82:5 91:3 114:7 115:7,10 116:21,22 117:4 Commerce 4:21	4:23 commercially 113:7 commission 118:14 commit 106:15 Commonwealth 11:15 27:1 communicate 66:18 communicated 63:13 communicating 63:20 communication 64:10 communities 55:22 community 4:23 42:17 company 13:16 47:14 87:17,20 95:6 compare 98:13 competitors 85:7 85:20 complete 7:9 118:10 completed 39:2 77:22 completely 38:12 compliance 15:7 15:20 34:3 55:2 92:8 complying 100:15 103:24 comprehensive 95:21 compromised 35:8 concentration 42:15 47:21,22 47:23 48:3,6,7 48:12,16 54:10 77:8 concentrations 18:16 46:11 64:4 concept 60:13 71:2 concern 34:9 82:9,10 93:10 99:7 concerned 81:13 concerning 11:17 46:3 concerns 18:6 38:14 73:2 80:17 81:12 84:12 85:3 99:5	concerted 20:7 conclusion 19:11 20:6 41:5 73:24 concurs 32:11 condition 25:22 45:20 53:17,23 60:2 64:21 65:6 65:12,14 68:13 70:1,9 77:17,17 conditions 18:18 38:5 40:24 45:23 60:16 77:23 conduct 4:24 5:2 5:10 conducted 85:21 conducting 5:6 confirm 38:4 confluence 43:3 consequence 38:1 conservative 19:1 consider 31:23 57:12 99:3 109:15 110:10 considered 93:1 101:14 109:14 considers 110:12 consistent 12:17 16:6 20:9 33:3 33:14,17,21 35:13 36:17 37:14 58:1 73:20 consistently 36:22 consists 43:9 constituent 88:2 consult 59:21 consultant 96:22 113:17 consultations 45:10 consulted 81:24 consumption 90:23 contact 45:7,9 68:16 69:17 81:11 106:4 111:15,18 112:18,22 contacted 80:14 88:17,21 contacting 61:20 112:16 contain 91:6 contained 16:1 19:16 contains 4:1	contention 20:3 context 74:7 contingency 63:1 continue 40:16 contract 61:8 contributing 55:3 control 1:1 2:1 3:3,14 17:14 26:5 87:7 118:4 convince 20:8 coordinating 3:10 copies 6:11 50:23 51:6 110:23,24 111:2 115:24 copy 30:11 106:22 111:2 118:10 Corporation 3:19 9:13 12:23 61:9 correct 21:10 28:3,4,22 38:11 49:8,10 64:14 67:14 69:19 77:4,5 90:6 91:20 92:6 94:1 101:9 103:6,9 103:10,18 118:10 correctly 91:22 correspondence 14:11 38:9 cost 93:5,6 costs 85:6 Council 118:5 counsel 2:11 17:10 117:17 country 86:12 103:17 County 1:10 3:24 couple 78:6 94:16 108:7 111:5 course 5:21 6:15 7:16 11:24 49:2 70:11 75:24 82:22 108:10 115:16 court 7:22 118:1 covered 74:13,21 113:4 creative 63:20 Creek 4:11 10:8 19:19 43:3 48:2 48:5,12 54:7 criterion 75:19 76:6 82:12 critical 40:24 41:8,13	Cross 7:8 107:7 108:2 CSR 1:10 118:16 current 4:13 10:17 94:14 98:12,17,20 100:1,14 102:6 113:11 currently 14:22 55:1 96:11 97:7 112:4 customer 102:22 customers 100:8 101:13 102:21 cut 60:20 C-19 43:2,5,6,22 44:15 C-21 43:2,5,8,14 43:19 44:16 D D 113:2,9,19 daily 4:13 53:10 97:2 data 11:10,17 25:23 27:7 41:21 43:4,6,8 43:9,18 53:21 56:3 66:19 76:19 78:14 97:1 113:22 date 78:12 99:13 112:21 117:6 dated 5:10 14:11 28:14 67:18 118:13 David 2:9 8:23 53:1 100:23 day 1:11 55:24 78:3,6 94:13 97:14 118:5,14 days 5:3,7 78:7 110:6,8 116:22 117:3 DCCA 5:17 DCEO 4:24 5:2,10 5:20 deal 111:8 dealing 86:12,13 Deborah 2:12 9:2 17:9 decide 82:23 109:15 decided 94:21 decides 53:24 decision 5:14 8:16 32:15 37:8 47:17 75:6 82:22 97:8,19 107:9 108:13
--	---	---	--	---	---

<p>108:22 decisions 12:17 13:8 16:6 35:16 decreases 76:9 Deere 14:14,21 definitely 84:24 deliberation 29:15 demonstrate 10:4,10,14 11:18,22 13:5 38:2 55:2 demonstrated 13:5 45:12 demonstrating 101:1 denied 12:19 dentists 93:17 department 4:21 4:22 69:16 87:18 Depending 5:12 derived 11:14 25:21 describe 11:16 22:24 23:5 75:21 87:14 93:23 112:5 113:10 116:21 describes 15:1 description 37:24 deserves 8:15 desire 35:17 detail 18:1 63:22 64:9 67:11 70:21 106:16 detailed 20:7 97:21 details 19:11 detecting 66:16 determine 23:2 58:11 82:17 determined 15:8 determining 82:12 develop 23:3 developed 33:17 90:16 development 11:2 24:8 96:5 diet 78:22 difference 57:22 58:4 73:13 75:4 different 20:6 35:12 36:3 72:5 76:7 85:20 86:11,11 87:17 109:12 difficult 38:1</p>	<p>direct 59:5 directed 36:15 directing 109:4 direction 118:8 directive 37:7 directly 47:15 60:24 76:10 director 5:16 11:2 24:7 27:1 96:4 disagree 20:3 33:13 41:5 42:6 73:24 disagreement 37:15 disagrees 18:2 disappears 98:18 disapproval 14:20 discarding 86:7 discharge 1:6 3:7 4:10 10:9,17 14:1 18:14 19:20 22:21 23:4 25:18,23 26:2,3,4 27:4 34:14 36:16 41:6 42:12,14 42:18 43:1 46:9 48:4,11,15 54:9 55:14 57:15 59:6 61:3 70:13 82:11 87:21 discharged 49:2 discharger 46:6 46:8 54:2,5,6 55:23 56:22 57:17 58:8,24 70:1,11 71:15 72:3 dischargers 13:2 13:12 23:6 24:11 34:13 35:5,10,18 37:20,22 38:2 49:3 54:20,24 62:18,21 63:13 68:16,17 69:17 71:22,23 discharges 9:18 discharging 26:1 48:1 63:15 discontinue 63:15 discontinuing 4:4 discretion 14:4 discuss 18:1 70:20 111:16 111:24 112:10 117:12</p>	<p>discussed 23:2 53:12 60:12 63:9,22 64:9 94:3 discussing 112:3 discussion 22:1 69:22 93:20 103:19 115:22 discussions 60:19 112:18 dispute 36:19 disrespecting 86:14 dissolved 42:14 distance 87:1 distribution 89:12 division 2:11 17:13 DNR 80:15 81:12 81:22 84:13 document 39:4 documentation 95:24 96:8,12 96:17 97:21 documents 6:9 doing 35:24 44:8 58:10 104:14 112:3 115:9 dollar 86:16 done 5:19,20 35:16 36:22 45:3 59:15 61:17 64:3 76:4 79:1 80:22 96:24 door 105:24 doors 98:13,14 down 52:12,18 64:4 65:9 87:22 116:10 downgrading 45:4 downstream 10:9 10:16 26:1,3 41:6 42:12 52:13 59:6 76:20 77:3 draft 51:20 53:3 drafted 88:13 drafting 17:16 draw 61:10 drawbacks 71:3 drinking 55:14 59:8 60:2,15 61:5,7,10 92:3 92:17 93:16 drivers 86:4,11 driving 87:10 103:16</p>	<p>drop 64:4 dry-cleaning 86:20 due 87:20 104:17 104:17 116:22 117:4 duly 32:3 56:16 during 7:13 14:6 40:24 41:3 77:11,16 Dwyer 2:7 E E 30:10 113:2 114:8 each 7:22 21:2 53:8 56:1 105:1 105:6 earlier 56:9,19 69:21 74:23 95:5 early 45:9 easier 50:24 51:4 57:6 east 1:11 2:11,14 44:16 118:5 economic 4:21 5:1,3,7,11 10:13 11:4,5,7 24:15 36:10 85:3 100:3 102:3,5,10 economically 4:6 10:7 24:17 100:1,6,16 101:12 effect 13:2 27:9 34:12 60:10 62:4 108:4 effective 33:3 effectively 63:24 effects 71:9 efficiently 63:24 Effingham 1:5,12 2:15,16 3:6,18 3:24,24 9:12,15 9:20 22:19 24:15 37:12 39:6 44:16 45:21 50:6 58:5 70:10 71:18,21 75:1 114:16 118:6 Effingham's 18:13 19:9,20 22:22 24:12 25:19 27:5 41:5 41:6 42:24 57:15 60:3 73:10 104:3</p>	<p>118:5 effluent 4:13,15 9:17,21,22 10:15 11:13,18 15:7,11,12,20 15:24 18:22 23:8 25:21 34:22 54:24 55:18 63:11 69:24 effort 20:7 79:19 efforts 81:6 eight 95:14 100:5 102:16 103:3 104:13,20 either 5:12 6:4 11:20 14:9 33:23 35:14 46:10 50:9 77:15 91:13,17 101:16 115:3 EJ 61:8 elaborate 66:13 78:18 eliminated 45:9 elimination 10:10 18:14 36:17 elucidated 6:13 email 115:19 employ 104:2 105:1 employed 6:5 employee 105:9 105:11 employees 102:15 103:4 104:13,20 105:5,7,12 employment 105:10 end 15:1 16:19 16:21 17:5 33:8 55:15 69:12 117:15 endangered 79:9 79:20 80:4,18 81:7,13 82:10 82:15,18 83:9 83:14,17 84:7,7 84:10,22 ends 34:11 46:17 engineer 10:20 17:12 22:18 25:13,14 68:10 engineering 11:9 25:15 66:8 69:16 enlighten 68:20 enough 78:14</p>	<p>93:9 enter 65:20 108:11 108:4 112:18 entered 23:12 24:22 26:11 27:14 43:20 49:6 67:21 entering 67:9 entire 90:5 entirety 21:4 entities 25:24 26:2 entitled 13:6 environment 4:8 11:21 49:1 environmental 2:6,6,10 11:1 17:12 24:7 40:21 55:7 87:6 87:9 96:22,23 99:4 environmentally 86:5,6,21 97:6 113:5 EPA 17:11,14 18:2 19:10 32:6 32:13,23 39:11 40:5,7,23 41:4 41:16 42:1 43:15,18 44:9 49:22 60:18 63:6,10,18 65:23 75:2 equation 76:1 equations 75:17 Esq 2:9,12,15 essence 88:18 90:10 97:22 essentially 50:6 101:21 establish 45:16 established 88:23 estimate 100:8 estimated 75:12 evaluation 79:8 79:10 evaporation 19:2 even 13:4 36:23 37:2 60:20,22 91:23 99:5 105:13 108:9 110:2 116:10 ever 55:1 every 72:17 everyone 6:4 7:21 50:16 everything 8:14 everywhere 96:9</p>
---	---	--	---	---	--

<p>96:9 evidence 28:21 31:5 107:7,10 108:4 exact 101:7 112:15 exactly 44:13 70:7 85:21 examination 7:8 107:8 108:2 example 47:24 90:21 exceed 19:1 66:15 exceeded 9:23 53:22 60:15 64:24 exceeding 37:5 62:2 excellent 93:3 Except 15:14 exception 32:13 excited 31:2 exemption 14:21 69:23 exhibit 2:19,20 2:20,21,21,22 2:22,23,23,24 22:6,9,13 24:4 25:3,6,8 26:15 26:18,20 27:19 28:9,13,16,21 29:3,11,14 30:3 30:10,13,14 39:7,8,11 40:5 40:7,14 41:9,16 41:16 42:1,2 43:8,15,18,20 44:5,8,10,20,23 49:22 50:1 65:20,22 66:3 67:10,17 68:5 110:15 exhibits 2:19 20:18 21:17 30:15 31:5,9 38:21 117:16 exist 73:12 existent 113:21 existing 18:10 33:10 34:4 37:22 45:14 71:17,22 Exit 105:4,5 expanded 55:23 77:24 expansive 13:1 34:12 expect 65:5,11 76:6 78:4 84:24</p>	<p>experience 78:9 86:10,11 experts 106:8 expires 118:14 explain 37:19 96:18 explained 13:9 64:17 95:21 explanation 5:5 express 8:4 expressed 47:13 extent 72:2 79:23 111:5 extra 80:3 extraneous 87:20 extrapolates 82:14</p> <p style="text-align: center;">F</p> <p>F 76:17 facilities 9:20 10:12 11:3 facility 39:2 42:10,18 46:13 91:15 fact 6:1 15:4 24:17 34:11 60:5 62:2 66:14 67:6 70:9 90:15 94:12 108:13 108:20 115:9 117:3 factors 36:3 factual 38:11 failure 15:2 37:14 fairly 63:12 fall 83:10 familiar 3:17 far 72:21 80:22 93:6 98:1 112:12 113:19 fashion 8:17 father 93:10 favor 61:18 favorably 34:23 feasibility 11:11 26:6 feasible 10:7 101:2 February 39:5 43:10 federal 13:21 16:7 19:14 33:3 35:13 58:2 74:3 92:20 feedback 102:22 feel 30:24 38:14 73:19 88:20</p>	<p>107:23 110:1 few 16:18 20:17 31:15 38:6,20 38:21 75:10 field 77:21 83:16 figure 76:8 87:15 110:22 figures 75:21 file 54:18 116:21 filed 3:19 6:12 21:18 22:9 28:2 filing 17:18 18:4 74:7 filings 6:10 final 33:5 finally 10:14 23:5 26:17 116:12 find 58:12 67:13 72:24 78:21 79:5 80:15 81:6 94:20 99:13,14 101:7 finding 90:19 98:23 fine 16:19 39:13 66:9,11 94:11 96:17 104:22 108:5 115:13 first 18:12 22:12 29:23 47:5,20 52:9 89:22 98:8 104:7 fish 42:20,21 five 12:14 40:20 43:9 52:8,16 54:7,8 five-minute 46:23 five-year 53:19 69:12 Flora 4:13 18:19 45:22 52:19 53:14,22 54:10 59:6,9,22,23 60:23 61:3,16 62:4 64:6,24 66:13,18 88:16 90:11 93:2 Flora's 18:17 89:21 flow 11:10 25:23 38:5 40:24 41:10 60:16,21 60:22 63:16 65:5,7 68:13 69:15 77:13,14 77:17,17,18 flows 4:10,11 14:6 41:4 64:3 65:2</p>	<p>fluoride 1:6 3:7 3:21 4:1,7,13 9:18,24 10:5,15 10:24 11:8,10 11:12,17,19 18:16 19:8 22:21 23:1,3,6 23:7 24:11,18 25:18,23 26:3,5 26:5,7 27:4,8,9 38:3 42:8,21 43:4,6,8,9,18 45:10,21 46:9 51:15 54:21,24 55:14,22 56:3 58:13 63:15 64:4 65:8 66:14 66:20,21 67:1 68:17 70:13 75:19 76:24 77:8 79:21 81:8 82:11,12 83:14 83:22 84:1,8,11 86:8 89:16,19 90:2 91:6,21,24 92:11 93:6,15 100:15 103:24</p> <p>fluoride-based 10:11 focus 36:4 focussed 90:23 folks 59:22 follow 51:1 56:8 95:2 112:6 116:20 following 1:9 15:17 20:14 37:11 42:7 50:20 follows 14:19 15:13 follow-up 50:19 51:7 58:17 62:15,24 64:16 67:8 80:7 85:2 95:18 food 45:13 89:9 89:13,24 90:17 forced 34:1 58:12 foregoing 118:10 foreseeable 61:12 forget 117:3 forgot 49:9,11 form 17:23 32:20 37:3 69:22,22 118:8 format 18:3 24:2 formerly 4:22</p>	<p>5:17 forth 10:1 15:10 16:2 28:14 74:17 forward 20:9 29:6 78:12,14 found 3:21 28:12 32:19 42:13 65:17 foundation 17:21 106:19 founder 94:24 Foundry 14:14,22 four 10:19 21:12 25:14 40:19,19 112:14 frame 112:12,15 frankly 63:11 112:12 free 29:24 107:24 110:1 freshwater 82:13 friendly 86:6,7,21 97:7 113:6 from 3:7,12,13 4:1,2,12 5:20 9:18,20,22 10:8 10:11 11:8,12 12:10,13,16,19 12:21 13:1,9,10 13:19 14:1,12 14:13,16,17,17 14:24 15:4 19:12,15 24:3 26:4 27:22 28:8 29:18 31:12,15 31:16 32:15 33:6 35:6,14,20 36:18 38:9,16 41:6,9 43:18 45:9 47:19 48:21 50:9 51:10,11,13 52:8,11,15 54:15 55:14 57:16,23 58:4 58:18 59:6,9 61:10 62:17,20 66:7,19 67:18 69:23 73:10,15 76:20 77:3 83:11,15 90:8 90:10 91:7,13 94:13 102:18 106:3 115:3 front 6:11,19 55:15 full 105:13 full-time 105:7 105:16</p>	<p>further 4:6 46:18 70:12 89:1 109:2 114:18 115:3 118:9,11 future 20:10 33:21 57:9 61:12 73:17 112:16</p> <p style="text-align: center;">G</p> <p>g 19:17 gallons 55:24 gauge 48:5,15 gave 87:17 89:24 geared 115:16 general 9:24 10:5 10:21 19:15 27:8 34:4 36:14 37:22 41:5 45:4 76:6 79:10 89:8 89:15,19 90:4 91:7,14 103:24 107:15,21 generally 13:12 13:13 16:7 79:18 gets 53:7,20 getting 58:9 65:8 gist 102:1 give 3:15 8:15 54:8 71:15,24 72:14 74:19 84:21 86:4 111:17 112:15 112:21 115:17 given 73:14 75:24 79:13 90:15 115:9,10 118:14 giving 13:2 33:9 34:12 glad 106:6 go 17:6,7 20:9 21:24 22:11 29:6 36:7 38:12 39:20,24 50:20 52:4,6,11 53:8 53:10 55:21 56:15 57:19 58:11,19,22 60:2 65:3 67:5 67:10 69:9 76:10 78:6,12 78:14 81:23 85:4 86:24 91:10 94:2 96:13 97:20 109:24 111:20 115:21 goals 103:15</p>
---	---	--	---	--	---

<p>goes 85:19 97:22 going 3:15 5:12 7:20 21:6 29:8 31:11,20 35:4,8 38:13 44:2 47:3 50:14,14 52:10 52:14 54:15 55:16 59:7 60:8 61:19 62:22 64:9 72:22 74:17 78:6 79:5 81:21 82:4 83:17,18 84:16 86:1 93:11 94:9 98:7,12 99:13 100:10 104:9 108:22 109:10 110:11 111:2 115:9 gone 35:21 good 3:1 17:9 22:17 24:6 25:12 26:24 43:24 50:16 68:9 75:9 86:9 101:8,10,17 108:12 110:24 govern 7:5 governing 3:20 Grand 2:11 grant 12:12 13:19 16:4 19:15 33:6,23 51:11 52:6 54:15 74:2 91:13 granted 11:19 12:21 14:1,14 15:3 17:23 35:19 36:18 37:13 48:22 62:5 71:17,24 72:4,7,23 granting 12:10 12:24 13:9 14:17 16:8 34:10 46:12 62:16 90:8,10 great 63:21 Greg 2:17 11:15 26:18,24 80:23 84:5,15 102:17 gross 98:7,15 group 39:6 55:7 guarantee 18:19 18:23 83:12 guess 38:8 70:6 100:22,23 107:5,8 113:19 guys 6:15 7:16</p>	<p>106:7 H half 94:17,19 98:19,20 Hall 118:5 hand 7:14 50:15 118:14 handle 16:15 handled 71:10 114:11 happen 51:24 73:6 105:15 happening 60:21 happens 63:2 happy 6:16 19:24 47:9 78:24 106:15 hard 41:6 112:14 hardest 41:11 hardness 27:9 40:24 41:3,8,13 75:13,14,18,21 76:2,8,9,11 harm 10:15 11:20 having 35:20 52:11,20 90:2 hazards 113:10 113:21 head 62:10 96:15 104:11 110:7 health 4:8 92:14 93:10 healthier 77:7 hear 44:1 78:24 106:6 110:13 heard 51:9 heavily 36:4 held 118:5 help 8:3 29:15 30:1 33:20 51:23 75:5 82:8 96:24 97:4 helpful 50:18 63:18 64:15 76:5,12 82:6 83:5 herewith 118:10 hesitate 112:21 Hey 98:11 HF 87:14 94:5,8 94:22 95:12 99:2 102:7 103:1,8 109:16 high 77:17 105:9 higher 54:11 63:3 65:8 67:3 76:7 105:13 highly 113:12 him 8:9 39:20</p>	<p>44:5 81:4 hiring 105:15 historic 11:10 historical 25:23 Hodge 2:7 holding 5:18 Hollo 1:10 118:2 118:16 home 111:22 honest 106:5 hope 65:1 87:7 99:22 104:19 hopefully 3:16 84:14 hopes 20:8 33:18 Hortensine 2:14 2:15 9:14 61:6 68:8 69:14 70:6 70:15 71:12 73:9 93:3 108:1 huge 93:9 human 4:8 90:23 hundred 48:2,6,8 48:13,16,18 104:11 hurt 100:5 hydrofluoric 113:12 I idea 60:14 68:9 93:4 107:14 111:18 ideas 63:20 identical 53:2 identification 22:7,8 25:9 26:21 28:17 29:2 30:5,16 39:9 43:16 50:2 68:6 identify 66:6 79:19 IEPA 2:13,23,23 2:24 23:6 36:15 39:8 40:14 42:2 44:10 50:1 69:7 69:9 92:8 108:18 ILL 1:6 Illinois 1:1,10,12 2:1,3,8,10,12 2:15 3:3,7,21 4:17 14:15 16:3 17:11,14 18:2 19:10,12,16 32:6,13,23 33:6 39:11 40:20,23 41:4,16 43:15 43:18 49:21</p>	<p>60:18 63:6,10 63:18 87:6 89:7 111:15 118:3,4 118:6,13 Immediately 76:20 77:3 impact 4:5 5:1,4 5:8,11 10:13,17 11:4,5 36:10 37:19 52:10 96:23 102:3,5,7 102:10 103:23 103:23 impacted 18:11 18:20 19:20 77:23 impacts 26:4 impair 72:3,6 Impaired 58:12 58:13 76:21 implement 63:9 64:17 68:23,23 implementation 14:5 implemented 18:7 63:23 implementing 63:10 Importance 8:14 impossible 38:2 impotent 93:11 improved 42:17 incentive 86:3 include 18:12 37:7 69:24 89:15 included 30:14 41:22 43:7 53:2 66:19 75:16 79:4 90:24 102:4 113:13 Including 9:19 10:22 11:4 14:5 Inconsistent 13:21 19:13 incorporate 57:10 Incorporated 11:16 25:15 incorrect 15:9 increase 86:1 increased 63:16 79:21 81:8 incredible 102:22 Indefinite 33:10 Indiana 27:2 Indianapolis 27:2 indicate 52:3 indicated 9:16</p>	<p>17:20 42:10 50:14 64:7 69:2 74:1 76:20 77:7 85:5,24 individual 21:2 individuals 13:4 14:9 Industrial 45:7 55:17 Industries 10:13 industry 85:16,18 106:8 infeasible 100:17 Informal 106:20 Informally 59:24 Information 7:5 10:21,22 11:3 19:7 20:17 41:22 42:19 46:3 51:22 63:13 66:21 69:6 76:14 78:11 83:2,4,13 84:14,19,21 97:11 102:5 105:2,4 106:11 107:21 108:11 108:21 109:15 112:11,20 informed 47:5 infrequent 60:17 Initially 5:15 52:17 initiate 60:23 111:18 inspect 97:18 inspects 97:18 instead 12:9,22 13:10 14:18 19:14 intake 18:17 63:2 66:14 89:21 intend 10:4 59:14 intended 8:3 Intent 73:3 Interest 118:12 International 3:19 9:12 24:8 95:6 Internet 106:7 interpret 58:6 Interpretation 14:24 interpreting 15:10,12 introduce 3:9 8:8 8:21 introduced 8:11 invested 71:23 investigation</p>	<p>79:14 involve 29:17 involved 75:17 118:12 Involves 96:19 in-stream 48:18 55:3 77:8 irregular 107:8 issuance 13:23 issue 8:16 11:24 12:2 33:19 35:23 38:10 40:19 70:21 72:5 74:6,13,15 74:19 80:24 99:6 issued 10:23 36:20,24 60:12 issues 23:7 61:22 70:24 72:12 74:24 111:17 i.e 68:17 J J 2:12,19 22:6,9 22:13 24:4 25:3 117:16 Jefferson 1:12 118:6 job 101:5 jobs 104:2,8 105:16 John 2:4 3:2 14:14,21 Johnson 2:5 3:3 3:9 8:9,11,19 9:7 30:4 34:8 35:15 36:11 44:22 46:16 56:10,17 59:3 59:13 60:4 61:1 61:13 73:6 81:3 83:7 84:2 87:9 93:1,8,17 103:14 116:10 117:8,9 Johnson's 46:6 Journey 96:8 106:3 July 67:8 jump 101:23 102:20 juncture 71:21 June 12:18 42:15 just 16:18 21:1 21:20 22:14 25:11 31:14 32:1 34:8 38:6 39:17 41:20,21 44:19 47:12</p>
---	---	---	--	---	--

50:20,24 51:12 52:8,16,23,24 56:8,20 57:6,15 57:24 58:5,16 59:9,19,20 60:8 60:9 61:14 62:15,18,20 64:16 66:6 67:12 72:13 73:4,23 76:2,6 79:18,24 80:8 80:14 81:5 82:20 83:6 84:18 85:9,21 96:18,21 97:4 99:10,17 101:2 102:3 106:2,18 107:12,14,17 109:6 110:10 110:17,22 justification 85:3 100:4,14 justify 32:14 99:24	98:1 99:15,15 99:16,21 101:11 102:17 102:22 103:23 104:10 105:15 106:7 107:12 107:13,17,22 108:8,13,17 109:6,7,11,13 110:3,5,8 112:1 113:9 115:18 knowing 83:24 knowledge 85:15 known 5:17 82:13	68:12,20 letting 61:19 let's 21:23 23:20 29:13 30:2 31:24 39:20,24 46:22 49:23 65:24 98:15 109:24 114:23 115:21 level 4:7 60:22 69:16 levels 11:8,12 24:18 26:7 45:10 51:15 54:4 55:3 66:14 66:15 68:14 79:21 81:8 license 33:10 73:16 licensed 25:13 life 4:8 10:16 11:17,20 27:8 45:13 77:7 92:2 light 5:15 50:18 108:20 like 6:10 8:9,12 9:4 12:11 14:20 22:11 27:24 29:12 31:13,15 32:6 38:18,22 40:3 41:10,15 41:20 42:7 43:12,20 44:24 45:24 46:5,9 47:9,12 49:10 49:12,13 52:23 53:7 56:18,20 58:19 67:17 68:1 72:20 77:20 78:18,20 84:15 91:11,18 91:20 92:5 95:14 97:12,15 98:7,9,13,15 101:18 104:20 105:9,12 106:18 112:21 115:6 116:6 likely 33:7 58:5 112:17 limit 4:14,15 9:17 18:22 23:1 34:2 34:22 49:2 54:9 57:15 58:21 79:11 92:7 limitation 15:21 91:6 limitations 16:1 19:21 87:21 limited 13:11	58:5 70:10 limiting 49:1 limits 15:22 23:3 69:24 line 38:13 lines 95:19 100:9 list 6:1,7,9 listed 102:10 listing 41:12 Litchfield 118:13 liter 4:14 10:2,6 18:22 19:1,16 34:5 37:23 41:1 41:1 43:11,12 48:3,7,9,13,17 48:18 52:8,17 52:19 53:11 56:23 59:1 65:1 75:15 92:2,9,13 92:13,17 literally 97:16 liters 4:16 little 3:15 4:12 18:17 19:20 41:2,9 43:2,13 44:17 46:5 51:9 59:20 98:5 Liu 2:6 3:13 52:21 54:13 62:24 64:5 69:21 70:14 71:3 75:8 76:5 76:12,16 77:6 77:12,16 78:8 87:12 88:4,6 89:4,6,19 90:3 90:8 92:10,14 92:19,22,24 93:19 94:3,11 94:18,20 95:5 95:11 98:24 99:9,23 100:12 101:19,22 102:12 103:13 105:18,21 106:6,22,24 110:15 111:13 112:5,23 live 70:3 loading 34:2 loathes 56:11 local 23:3 99:7 located 13:3 34:13 35:18 44:15 67:6 location 43:22 44:6 99:4 104:13,14,20 105:1,6 locations 42:13	86:11 95:7 log 97:21 logically 83:10 long 7:19 17:7 64:2 72:6 95:7 99:8 117:5 look 36:4,8 39:14 39:17,21 69:10 79:12 81:24 87:1 96:22 97:3 98:11 105:21 106:1,16 107:3 107:22 109:1,2 109:13 looked 35:3 91:22 101:13 109:13 looking 53:3 59:5 67:12 90:20 91:23 96:8,11 106:1,3,4 107:3 109:11 looks 53:18 97:12 lose 100:7 loss 87:13 102:14 103:4,4 104:1 lost 104:8 lot 96:7 98:2 105:14 107:11 loudly 7:24 Louisville 44:16 61:2 love 116:14 low 14:6 38:4 40:24 41:4,10 42:14 60:16 65:2,5,7 69:16 77:17,18 lower 63:9,11 76:7,10 85:11 low-flow 18:18 45:23	maintained 45:15 maintains 16:7 major 55:23 make 5:5 7:11 8:9 9:4 16:16 17:4,6 20:4 28:8 29:11,13 33:8 35:17 37:7 57:7 58:10 68:24 73:5 81:6 82:8 90:5 93:11 97:8,19 98:14 99:11,21 100:8 106:19 108:12 108:23 110:2 makes 57:23 making 3:10 6:6 8:14 17:17,23 18:4 32:11 33:5 35:2 36:1,6 37:2,9 38:1 45:16 59:10 62:22,22 100:24 101:4 107:9 115:16 116:22 malamard 29:10 Management 111:16 manner 37:15 manufactured 106:10 many 101:12 104:2,24 map 29:11,14 30:14 31:1,3 43:22 44:6 59:5 maps 30:18 March 20:13 28:14 Marie 1:10 118:2 118:16 mark 21:16,20 26:17 28:12 30:18 43:21 44:13 49:19,21 66:10 67:17 marked 2:19 22:6 22:8,12 24:4 25:8 26:20 28:16 30:16 39:8,10 42:2 43:16,17 44:14 44:20 50:1 68:5 marking 25:5 28:11 30:9,13 30:22,22 31:3 44:5 material 12:22
K Kansas 24:9 25:15 keep 52:14 87:23 96:7 keeps 52:11 74:6 key 32:12 kind 72:14 73:5 85:10 86:3 94:10 96:10 98:7 99:8,16 106:17 knew 94:6 knittlej@ipcb.s... 115:19 knock 105:23 know 5:21 7:19 30:21 31:18 51:9 55:15,16 57:2,8 59:4,7 60:16 61:4,19 62:13,18,19,20 62:21,22 63:12 64:9,12 66:5 67:2 68:14 72:18,18,20,21 72:22 79:19 80:12,12,17 81:6 82:4 83:4 83:22 84:9,12 84:13 85:7,9,11 85:24 86:5 88:20 94:13 95:16,16,17 96:8,9,13,18	L L 2:20 25:6,8 26:15 117:16 laboratory 83:19 lack 24:16 laid 90:2 language 14:23 15:18,19 16:2 18:13 51:20 53:2,3,5 57:1 57:17 70:8 large 29:10 larger 46:9 last 12:18 52:18 88:1 106:2 111:13 114:8 later 17:8 78:7 law 2:14 13:21 16:7 19:14 33:3 laws 73:12 lawyer 56:10 lay 36:2 LC 76:7 LC50 75:18 leader 85:17 least 5:7 72:10 74:6 left 81:4 legal 2:11 20:2 31:15,21,23 34:16 35:6,14 47:8 72:18 Legally 71:1 length 46:12 less 85:8 86:7 97:6 let 5:21 7:19 39:20 65:2 82:4 85:4 94:2 109:13 112:8 letter 5:10 14:16 14:18,24 63:6 65:18,22 66:7 67:6,8,8,10,18	light 5:15 50:18 108:20 like 6:10 8:9,12 9:4 12:11 14:20 22:11 27:24 29:12 31:13,15 32:6 38:18,22 40:3 41:10,15 41:20 42:7 43:12,20 44:24 45:24 46:5,9 47:9,12 49:10 49:12,13 52:23 53:7 56:18,20 58:19 67:17 68:1 72:20 77:20 78:18,20 84:15 91:11,18 91:20 92:5 95:14 97:12,15 98:7,9,13,15 101:18 104:20 105:9,12 106:18 112:21 115:6 116:6 likely 33:7 58:5 112:17 limit 4:14,15 9:17 18:22 23:1 34:2 34:22 49:2 54:9 57:15 58:21 79:11 92:7 limitation 15:21 91:6 limitations 16:1 19:21 87:21 limited 13:11	liter 4:14 10:2,6 18:22 19:1,16 34:5 37:23 41:1 41:1 43:11,12 48:3,7,9,13,17 48:18 52:8,17 52:19 53:11 56:23 59:1 65:1 75:15 92:2,9,13 92:13,17 literally 97:16 liters 4:16 little 3:15 4:12 18:17 19:20 41:2,9 43:2,13 44:17 46:5 51:9 59:20 98:5 Liu 2:6 3:13 52:21 54:13 62:24 64:5 69:21 70:14 71:3 75:8 76:5 76:12,16 77:6 77:12,16 78:8 87:12 88:4,6 89:4,6,19 90:3 90:8 92:10,14 92:19,22,24 93:19 94:3,11 94:18,20 95:5 95:11 98:24 99:9,23 100:12 101:19,22 102:12 103:13 105:18,21 106:6,22,24 110:15 111:13 112:5,23 live 70:3 loading 34:2 loathes 56:11 local 23:3 99:7 located 13:3 34:13 35:18 44:15 67:6 location 43:22 44:6 99:4 104:13,14,20 105:1,6 locations 42:13	looking 53:3 59:5 67:12 90:20 91:23 96:8,11 106:1,3,4 107:3 109:11 looks 53:18 97:12 lose 100:7 loss 87:13 102:14 103:4,4 104:1 lost 104:8 lot 96:7 98:2 105:14 107:11 loudly 7:24 Louisville 44:16 61:2 love 116:14 low 14:6 38:4 40:24 41:4,10 42:14 60:16 65:2,5,7 69:16 77:17,18 lower 63:9,11 76:7,10 85:11 low-flow 18:18 45:23	many 101:12 104:2,24 map 29:11,14 30:14 31:1,3 43:22 44:6 59:5 maps 30:18 March 20:13 28:14 Marie 1:10 118:2 118:16 mark 21:16,20 26:17 28:12 30:18 43:21 44:13 49:19,21 66:10 67:17 marked 2:19 22:6 22:8,12 24:4 25:8 26:20 28:16 30:16 39:8,10 42:2 43:16,17 44:14 44:20 50:1 68:5 marking 25:5 28:11 30:9,13 30:22,22 31:3 44:5 material 12:22

<p>97:1 113:22 mathematical 76:1 mathematics 48:10 matter 1:4,9 3:5 8:15,16 12:6,22 17:18 20:2,19 28:6 32:9 33:19 33:23 37:5,12 38:15 80:10 matters 16:18 Matthew 2:14,15 9:13 Max 2:17 11:9 25:6,12 26:11 60:11 65:17 67:18 70:16,18 96:13 106:2,16 112:8 maximum 51:14 53:11 may 7:11 13:5 16:4 19:7 20:1 36:20,23,24 47:22 50:22 63:6 68:19 70:17 95:10 98:5 105:8,11 106:4 109:7 116:24 117:3,4 117:4 maybe 29:18 35:1,23 53:19 53:20 55:8 84:5 84:13 91:7 100:22 105:10 ma'am 87:16 MCL 64:7 mean 15:22 31:22 34:15 35:1,7 52:12,24 57:5,17,22 59:14,19 61:18 70:7 72:17 73:13 74:18 82:1 85:17 86:9 87:24 89:22 90:19 95:15,15 96:9 99:16,17 100:19 101:2 106:1 110:11 meaningless 34:1 means 104:7 measured 69:15 77:12,15 measurement 67:1 78:3 measures 64:17</p>	<p>measuring 60:21 68:13 mechanism 66:16 68:10,15 83:4 meet 13:12 37:22 46:24 85:7 89:9 89:16 meets 97:16 member 107:6,9 members 2:5 6:2 6:3 9:9 115:1 115:17 mention 60:9 61:2 94:4 mentioned 38:24 49:6 54:14,19 62:24 75:13 95:5 104:1 111:15 112:13 merely 15:7 Merit 118:3 met 38:3 73:1 metals 55:24 87:21 method 15:10,11 67:1 might 20:18 31:16 34:17 56:7 58:9 61:1 61:22 67:5 68:8 73:18 74:12 79:20 81:7 82:8 99:3,5 100:7 106:10 112:19 115:1 Mike 2:17 11:1 22:10 24:7 97:10 102:19 103:21 miles 4:12 10:9 42:11 Miller 2:18 10:20 22:12,13,14,17 22:18 23:12,18 68:11,22 69:19 70:23 71:5,8,10 83:20 92:5,11 92:16,21,23 93:5 milligram 4:16 48:2,9,18 52:8 52:19 56:23 92:17 milligrams 4:14 10:2,6 18:22 19:1,16 34:4 37:23 41:1,1 43:11,12 48:6 48:13,17 52:16</p>	<p>53:11 59:1 64:24 75:15 92:1,9,12,13 million 55:23 mind 23:21 34:9 79:2 87:24 94:10 misstatement 91:20 misunderstand... 91:8 mixed 48:7 mobile 78:7 modeled 85:16 85:18 modification 37:13 modified 12:9 moment 18:2 monitor 18:16 53:8 54:21 55:1 monitored 55:15 69:8,15 monitoring 42:24 43:1,4 44:15 53:13 56:1 60:2 64:6 Montgomery 1:10 month 78:5 months 11:24 more 15:16 18:1 19:24 36:3,4 42:21 48:24 52:5 58:1,2 70:20 73:18 75:14 80:24 81:9 86:4,12,13 86:22 90:1,4 96:15 97:6 103:20 106:15 109:3,10 111:5 114:15 115:16 moreover 14:7 34:7 36:13 48:10 morning 3:1 17:9 22:17 24:6 25:12 26:24 50:16 75:9 Mosher 67:18 most 42:8 45:17 73:11 85:7 96:5 105:12 111:11 112:17 motivated 35:17 motivation 95:11 move 50:14 93:19 moving 52:13 75:8</p>	<p>MSD 113:20 MSDS 106:16 much 67:2 68:11 85:19 111:22 112:24 municipalities 55:11,12,13 must 5:5 33:1 37:22 myself 8:11,13 17:15 N N 2:21 28:13,16 28:21 29:3 44:21 name 3:2 4:23 7:15 8:23 17:9 22:17 24:6 25:12 26:24 names 6:22 National 18:14 36:16 nationwide 95:6 99:6 nature 29:17 55:18 70:11 96:6 104:18 near 18:18 44:15 112:16 nearly 87:13 necessarily 15:22 82:2 84:21 101:3 necessary 12:6 13:7 42:20 45:3 47:11,20 52:1 56:5 57:11 91:3 need 6:15 30:18 35:11 36:4 54:20 72:23 80:19 82:2 84:12 92:8 107:16 110:15 111:2 112:10 needs 57:12 negative 4:5 10:12,17 neglected 110:20 neither 10:6 network 42:24 43:2 44:15 net-spinning 42:9 42:11,18 76:23 Nevertheless 12:7 new 19:6 46:3 54:1,5,6 57:17 71:15 72:3 96:6 97:3 105:21</p>	<p>next 53:20 78:4,5 85:2 102:8,9 103:1,1 110:14 nice 29:14 night 106:2 nine 42:22 100:5 102:16 103:3 Nobody 115:4 nonacidic 106:9 nonalkaline 106:9 none 7:17 8:7 98:3 nonlawyer's 89:14 normally 98:6,8 North 2:11 notary 1:10 118:3 note 3:11 6:24 8:2 41:20 43:12 74:1 108:24 115:2 noted 113:1 notes 12:5 118:7 118:8,10 nothing 103:8 notice 5:22 6:1,7 59:11 87:7 noticed 4:18 59:9 77:22 notification 59:15 64:5 notified 15:2 59:10,23 61:17 61:24 64:24 notify 59:14 62:7 62:12 notifying 60:10 notion 8:4 notwithstanding 73:7 November 43:10 NPDES 10:23 13:24 15:22 18:15,23 45:21 54:22 69:3,13 71:11 number 2:23,23 2:24 34:6 36:13 37:18 38:23 39:1,8,11 40:6 40:8,14,18 41:16 42:1,2,22 43:15,18 44:8 44:10 46:1 49:22 50:1 52:19 63:3 76:1 77:19 82:14 96:14 102:15 110:5,6,16</p>	<p>115:18 numbers 50:21 52:20 53:1 67:3 75:22 87:23 numeric 9:24 numerical 15:11 15:15 O O 2:21 30:10,15 31:9 44:23 117:16 object 100:10 objected 78:17 78:23 80:11 88:10 113:12 objecting 107:3,5 objection 23:14 26:13 27:17 28:24 29:20,22 31:5,6 39:15,23 40:10 41:15,18 41:19,23 43:19 44:3,4,5 67:21 78:19,24 79:7 79:24 88:11,19 106:19 108:9 108:24 110:13 objections 49:16 109:2 110:1 111:8 113:3 observations 85:20 obtaining 66:19 obviously 58:21 85:17 87:16 occur 59:7 64:2 67:4 occurred 5:16 October 3:18 115:24 116:3,5 116:8,11,14 off 5:18 6:3 21:24 39:20 49:5 60:20 96:14 104:10 110:6 115:21 117:12 offer 21:7 38:17 40:3 85:10 offered 31:5 56:15 73:21 offering 28:21 39:15 40:2 Office 2:14 officers 116:18 officer's 67:16 Off-the-record 22:1 103:19 115:22 Oh 39:19</p>
--	---	---	--	--	---

<p>okay 28:20 29:14 30:17 32:4 35:15 39:11 61:13 68:2 76:15 78:8 81:1 83:3 85:2 88:4 88:8 98:18 99:10 105:3,17 114:2 old 93:9 97:15 once 27:13 110:9 one 7:21 12:4 14:23 15:16 21:15 32:12,20 32:23 35:12,20 41:18 44:22 48:2,6,8,13,16 48:18 53:20 54:3,13 55:22 55:23 58:16 60:12 61:14 62:24 63:17 66:12 68:23 71:13 74:16 76:22 77:3 78:3 78:6,16 82:7,24 83:17 88:9 93:24 94:13 96:23 97:4,14 99:4 100:19 103:14,20 111:13 113:7 114:8,11 ones 55:3 105:3 107:13,23 one's 59:9 ongoing 84:22 105:19 only 6:7 7:13 38:15 49:4 53:13,15 55:12 55:13,20 57:8 59:11 70:10 71:15 95:14 100:4 on-site 86:1 open 16:12 opened 93:24,24 94:4 opening 9:4 16:15,21 17:4,7 38:7 74:1 openness 61:19 operate 3:23 operation 104:3 operational 93:6 operations 11:6 87:18 93:20 opinion 13:17 21:21 75:4</p>	<p>86:17 opinions 6:8 33:18 opportunity 4:22 19:4 57:9 107:7 opposed 15:3 36:1 52:20 options 26:5 orange 28:12 order 6:22 18:23 20:12 21:21 22:11 28:14 36:20,23 37:3 57:7,13 79:5 111:14 113:14 116:20 orders 6:8,8 ordinance 68:16 organic-based 98:3 organization 7:16 original 51:20 originally 75:23 ostensibly 72:4 other 3:11 6:10 7:22 13:2,11 17:15 31:21 34:12 35:9,18 37:20,21 38:2 48:4,14 54:19 54:24 56:4,4,22 58:24 59:15 66:12 68:17 70:1,10 71:21 73:4 77:1 82:1 82:24 86:3 94:19 95:16 97:17 98:2,21 98:24 104:24 107:14,21 others 17:8 69:2 otherwise 15:14 67:1 68:18 71:16 ought 61:16 74:13 out 7:18 8:6 22:11 33:16,17 36:2 41:10 47:12 52:11 53:8,23 77:2 78:3 79:12 80:15 83:18 86:20 90:2 94:21 97:5 99:13,19 101:7 103:2 107:19 109:17 110:22 111:23 112:13</p>	<p>outcome 118:12 outfall 48:4,5,15 76:21 77:4 outline 20:8 outlined 19:22 33:5 68:12 113:21 over 7:22 11:24 19:6 30:5 38:18 50:15,20 59:4 86:12 87:18 90:16 94:2 108:18 overlooked 90:18 overrule 79:23 overturned 110:7 own 66:15 owned 9:19 18:15 oxygen 42:14 o'clock 1:11 P P 2:22 30:13,15 31:9 117:17 page 12:4,14 15:5 41:21 76:22 111:14 pages 19:22 40:19 paid 35:1 panel 24:2 29:17 47:4 parallel 34:17 paraphrasing 101:9 pardon 116:9 part 7:4 14:18 15:6,11,12,13 15:16,19,20 18:7 26:19 37:8 46:7 47:6 50:5 54:21 57:18 64:18 65:22 81:24 89:8,10 95:23 96:3 99:23 100:12 104:22,24 108:23 113:3 115:8 partial 41:21 participated 17:16 participation 12:2 particular 35:19 79:13 81:14 88:2 108:3 particularly 83:24</p>	<p>parties 5:21 6:16 6:17 7:10,17 33:22 61:19 118:12 partly 112:13 parts 41:13 part-time 105:9 105:11 pass 99:17 past 61:8 pay 86:4 people 6:7,22 72:23 104:2,24 113:18 per 4:14 10:2,6 18:22 19:1,16 34:4 37:23 41:1 41:1 43:11,12 48:3,7,9,13,17 48:18 52:8,16 52:19 53:11 55:24 56:23 59:1 65:1 75:15 86:2 92:1,9,12 92:13,17 102:12 104:13 104:13,20 percent 100:7 105:13 percentile 41:3,4 perfectly 39:12 perform 5:14 perhaps 64:12 75:14,21 76:13 period 7:1 53:19 58:7 63:14 64:2 82:3 periods 7:14 permanency 74:24 permanent 72:19 72:19,24 73:4 73:16,18 75:2 permission 67:17 permit 10:23 13:24 15:8,22 16:2 18:14,15 18:23 19:5 36:17 37:4,13 37:16 45:21 46:1 53:10,20 54:4,22 56:1 58:9 60:3 64:18 64:21 68:13 69:3,13 108:18 permits 16:1 69:5 71:11 permitted 23:1 permitting 6:20 18:8 37:8</p>	<p>perpetually 73:17 personally 57:4 personnel 3:12 perspective 27:22 31:15,16 35:14 57:16 58:4,18 73:10 persuade 33:20 pertinent 14:18 15:13,18 petition 3:19 9:9 13:15 18:4 30:14 32:10 43:7 45:12 65:22 66:20,22 67:7,9 72:4,7 75:11,17 76:17 79:13 93:23 102:4,11 104:17 petitioner 8:21 19:6 22:20 35:20 36:5,10 39:1 41:14 45:19 46:2 48:21 57:8 72:15 99:24 100:13 petitioners 2:9 2:19,20,20,21 2:21,22,22 4:3 4:6 8:20 9:17 11:19,23 12:15 13:4,11,19 16:4 16:8 17:18,24 18:5 19:4,12 20:3,14,15 22:6 22:9,12 24:4,10 25:3,8,17 26:15 26:18,20 27:3 27:19 28:12,13 28:16 29:3 30:10,13,15 31:9 32:8,12,14 33:10,14 34:7 36:13,16,21 37:6,19,21 38:4 38:11 42:6 43:19 48:24 53:3 56:21 58:22 63:19,19 68:5 78:11 82:23 89:23 114:16 115:8 117:16 petitioner's 12:19 25:6 67:17 petitions 17:17</p>	<p>Pg 2:19,19 Philo 2:2 phone 115:18 phonetic 29:11 piece 36:7,8,9 place 45:20 68:12,15 118:4 placed 15:8 69:7 placement 18:13 places 86:20 plan 71:23 111:18 112:5 planning 31:3 74:7 plans 63:1 plant 1:6 3:7 10:23 22:23 23:1 25:19 27:6 48:3 76:21 77:4 77:23 78:1 92:7 plants 24:13 pleadings 61:2 please 8:2 25:10 26:22 92:10 110:1 113:10 114:7 plug 76:1 plus 6:10 87:5 point 6:4 10:8,9 41:10 47:12 52:13 54:23 57:23 65:2 67:3 68:9 70:21 72:22 73:24 74:10 89:11 100:23 pointed 33:16 points 31:15 38:7 52:2 53:9 policy 82:22 Pollutant 18:14 36:16 pollution 1:1 2:1 3:3,13 17:13 87:6 118:4 popular 83:20 portion 45:8 portrayed 75:14 posed 4:7 32:8 32:19 poses 76:23 position 20:2,8 33:19,21 35:8 56:22 110:20 positions 51:10 positive 66:24 possibility 101:14 possible 96:2 possibly 50:7</p>
---	--	---	---	--	---

69:12 91:23 105:10 108:12 post-hearing 76:14 91:3 109:4 potable 89:12 potential 18:10 19:2 59:6 61:3 potentially 37:6 52:12 54:9 71:14 POTW 9:18 19:9 power 8:15 practical 62:4 71:3,8,8,13 83:11 practice 68:19 68:21 69:18 precedent 13:18 20:4,5,9 33:15 33:17 preconceived 8:4 predicated 60:14 prefer 57:24 preferable 59:2 prefiled 10:3 prepared 16:16 20:16 38:19 39:5 present 2:5 3:12 9:8 20:23 21:7 29:18 42:11,15 82:18 84:7,19 84:20,23 100:13 presentation 20:15 presented 17:17 20:12 32:12 presenting 29:23 38:21 107:6,9 presently 25:24 President 25:14 presume 64:10 pretreatment 68:15 69:5,8,12 71:11 pretty 66:24 85:19 prevent 14:1 previous 78:8 116:18 previously 47:13 53:12 71:17,22 pre-file 17:20 22:10 87:12 pre-filed 12:4,7 12:15 14:10 15:6 19:10 21:3 21:4,17 22:13	23:12 24:5,22 25:6 26:11,18 27:14 30:5 32:19 40:20 54:14 103:5,22 price 85:7,8,22 86:1 primarily 19:11 36:6 55:11 90:22 primary 45:9 prior 5:1 13:8 17:18 18:3 32:14 33:17 34:9 35:16 57:10 priors 108:3 privileged 7:6 probably 23:23 31:22 50:24 51:17 55:5 62:1 66:13 86:15 95:14 97:2 116:24 117:12 problem 25:1 55:8 70:19 71:1 71:13,19 72:7 106:13 procedural 4:19 7:4 115:15 procedure 37:10 60:20 68:11 98:8 112:17 117:11 procedures 67:11 68:23 98:6 proceed 32:5 proceeding 1:11 3:5 45:16 106:20 108:9 108:11,14,16 108:21 117:15 proceedings 5:24 50:5 118:7 process 18:8 19:5 33:9 35:21 37:2,2 46:1 57:19 60:13 72:11,18,21 82:1,3 95:12 105:19 106:17 processes 46:3 processing 45:13 89:10,13 90:1 90:17 produce 5:4 41:11 product 99:2,5 99:19 100:4,7	103:16 production 65:9 98:19 products 107:16 professional 25:14 118:3 profit 99:20,21 103:4 program 34:2 69:8,10 95:22 95:23 102:22 prohibit 13:23 14:17 projected 87:13 promising 97:12 106:5 promulgate 34:2 proof 15:15,24 proper 37:10 properly 4:18 5:21 37:16 101:3 proportional 76:11 proposal 3:16 22:20 24:10 25:17 27:3 proposed 5:1,4 11:13,19 18:9 18:12 25:20 30:8 51:21 53:7 63:8 64:20 67:11 70:8 73:22 proposing 51:16 53:4 protected 45:8 45:14,15 82:16 82:19 83:8 protection 2:10 17:12 40:21 45:6 protective 4:7 18:10 45:17 48:24 protects 82:14 provide 7:2,10 10:19,21 11:3 18:8 20:7 38:19 50:22 75:20 83:1 96:2 97:11 99:6,24 100:3 103:15,15 109:18,20 112:10,20 113:20 provided 15:15 32:7 51:5,19,23 66:22 77:6 78:11 98:4	113:24 provides 14:18 15:13 providing 31:21 provision 91:16 provisions 59:12 99:24 100:13 public 1:10 5:6,7 6:2,4,10,24 7:2 7:3 10:18 18:19 45:13 53:14 59:11,21 61:9 61:21 64:13 74:8 81:21 89:9 89:16,20,24 90:4,6,10,17 91:5 92:14 93:10 110:2 114:7 115:1,7 115:17 116:21 116:22 117:4 118:4 publication 59:16 publicly 5:22 9:19 18:15 pump-up 98:9 purposes 22:9 29:1,12 68:9 pursuant 4:18 5:22 14:3 15:21 pushing 93:18 put 31:13 53:10 55:24 57:1,7 65:5 68:12 77:20 92:1,2,11 92:18 93:6 99:19 109:3 putting 85:24 P.E 2:6 Q qualification 42:1 quality 9:23,24 10:5 12:8,16 13:1,10,13 14:2 14:5,21 16:8 18:24 19:15,18 32:16,24 33:9 33:11 34:11,22 35:4,9,12 36:14 37:23 38:3 42:24 43:1 44:15 45:17 51:12,15 52:2,7 53:6,9,14,22 54:1,3,7,16 56:6 57:24 58:7 58:14 62:3,20	62:23 69:23 70:2 72:17,24 73:16 77:1,11 78:10 80:16 81:11,15 85:11 90:4,9,20,22 91:14,15 92:1,3 98:4 99:18,19 100:15 102:20 question 7:11,13 7:14,18 32:23 34:6 36:12 37:18 38:22 39:1 40:18 42:5 42:22 45:19 46:1,6 51:3,8,8 51:8,18 52:4 59:5 61:15 63:21 64:8 76:23 77:2 79:4 79:22,24 80:2 80:21 81:1,2,9 81:16,17 82:9 83:1 84:4 85:3 85:5,14 86:10 88:6,14 89:6 90:15 91:8,12 97:20 99:22 100:11 101:15 101:18,21 102:2 103:12 104:19,21,23 111:13 113:19 114:1 117:11 questioning 7:8 29:17 questions 6:12 8:2,6 10:4 16:17 18:5 20:1 20:12 23:19,22 27:24 28:13,19 29:9 30:1,7,12 31:12,17 32:8 32:19,20 38:20 45:1 46:23 47:4 50:6,18,19,21 50:23 75:10 78:16 79:3 88:9 89:1 94:16 95:18,20 111:5 111:14,23 114:15 115:15 quick 61:15 quickly 63:14 quite 34:17 67:10 91:24 98:21 quote 14:20 40:22 quotes 113:6	R R 2:14,15 radium 90:20 raise 7:14 raised 18:6 23:7 38:7 raises 38:14 range 43:11 92:7 Rao 2:6 3:13 28:8 29:7 50:16 51:2 51:7 53:24 57:1 57:16 58:15 62:15 64:15 67:12 69:20 75:7 80:8,11 81:2,5 82:6 83:3 84:9 85:2 85:23 86:19 87:1,8 89:2 91:10 95:18 96:16 100:20 103:20 104:7 104:22 105:7 105:17 107:11 108:5 109:6,10 109:22 111:3,6 111:9,12 112:24 114:2,5 114:12 116:3,6 116:12 rapid 42:16 76:16 rapidly 8:1 rarely 110:7 rate 77:13,14 98:24 100:5 rates 102:18,20 rather 11:5 12:20 16:18 32:16 113:23 rationale 47:13 60:24 reach 19:9,19 48:8 108:22 112:22 reaches 33:4 reaching 75:5 read 21:2,4,8 22:15 23:13 24:3,23 25:11 26:12,23 27:15 27:24 28:7 49:7 49:19 67:23,24 89:14 104:11 113:24 readily 63:23 97:24 reads 89:7 realize 106:19 really 7:17 38:15 38:17 52:5
--	--	---	--	---	--

68:20 85:16 reason 28:6,9 62:7,11 91:1 reasonable 10:7 14:24 24:18 71:20 100:2 101:12 reasonableness 11:7 reasoned 12:24 reasons 7:24 55:20 recalculate 76:13 recall 77:16 96:19 110:6 receive 6:7,9,21 107:20 received 14:12 receiving 11:11 12:9 18:24 25:22,24 33:12 34:3 45:8 46:10 46:11 51:24 recent 12:17 16:6 33:15 43:4 recently 5:9,16 12:18 91:22 recess 47:3 recognize 8:13 47:20 recognizes 12:14 recommend 34:23 81:20 recommends 17:22 record 3:11,17 6:3 7:24 8:4 21:5,24 22:3,4 22:15 23:13,21 24:23 25:4 26:12,16,23 27:15,20 28:1,6 28:7 29:2,4 30:23 31:10 39:20 40:1,15 41:20 42:3 43:20 44:11,19 47:3 49:6,7 50:3 56:20 57:10 59:20 68:7 73:23 77:21 79:1 88:11 96:2,18 106:12,18 107:18 108:23 110:9,18 115:2 115:21 117:12 reduce 24:18 71:16	reduced 118:8 reducing 11:8,12 26:6 reduction 19:8 refer 21:20 63:5 65:24 70:16 80:23 referred 102:13 referring 67:6 89:6 reflecting 87:4 regarding 14:4 14:12 24:14 27:7 51:10 60:19 regardless 35:5 36:9 88:19 101:6 103:2 108:13 region 18:11 Registered 118:3 118:3 regulate 59:22 regulation 26:19 regulations 3:20 9:21 12:21 14:8 74:3 100:1,14 regulatory 17:22 33:23 52:15 108:21 reiterate 32:22 53:1 56:18 88:11 related 39:2 42:10 77:21 80:17 81:9 118:11 relative 70:9 relatively 42:19 relevance 78:23 79:8 113:13 relevant 7:6 38:10 60:12 79:3,5,13,22 113:14 relief 12:6,10,13 12:16,19,21,24 13:3,6,6,9,10 13:11,19,20,24 14:13,17 15:3,4 16:5,5,9 17:21 17:22 18:3,20 19:12,15 20:4 32:15,24 33:6 33:14,23 34:14 35:20 36:17 37:11,14,19,24 46:7 47:19,24 48:21,22,23 49:3 51:10,11	52:6 54:15 57:15 58:20 62:5,16 69:22 70:12 71:16,17 71:24 72:3,4,6 72:19,24 73:4 73:15,17 74:3 74:19,24 75:2 90:8,10 91:7,13 relies 14:11 remain 47:23 48:8 remarks 47:15 remember 65:4 77:8,12 91:21 93:9 removal 26:5 remove 102:6 renewal 19:5 46:1 renewed 53:20 repetitious 7:6 replace 19:17 replacement 19:8 replacements 4:4 report 41:23 75:12,16 reporter 7:23 118:3,3,3 REPORTER'S 118:1 reports 38:24 58:11 representing 108:18,19 request 4:21 12:19 28:8 32:15 58:20,21 71:14 83:1 requested 5:9 10:15 12:13 13:20 16:5,9 17:22 18:3,20 19:12 20:4 33:14 37:20,24 39:4 48:1 requesting 12:16 require 9:21 19:5 46:2 57:19 68:18 100:13 required 4:24 13:12 55:1 64:19,21 requirement 92:12,15,20,20 92:22 requirements 35:2,3	requires 4:20 18:15 72:16 requiring 45:21 research 11:1 24:7 96:4 111:16 resolve 12:1 99:6 respectfully 15:9 respond 34:20 45:1,24 47:6 51:17 52:21,24 62:1 68:11 80:1 80:21 81:19,20 responded 40:19 81:5 88:16 responding 50:17 51:3 responds 47:15 response 5:11,12 5:19 8:9 10:4 28:13 29:18 30:7 31:17 32:18 34:6 36:12 37:21 38:20 40:18,21 42:5,7,22 45:19 52:3 64:17,23 82:21 85:4,5 89:23 95:20 111:14 112:23 113:20,23 responses 16:16 20:17 27:23 32:7,12,20 50:20,24 109:19 restate 92:10 result 63:3 103:2 103:3 resultant 47:23 resulting 4:2 results 39:5 51:14 76:18 77:6 96:2 retained 117:17 returned 118:10 Returning 69:21 review 17:16 19:6 34:20,23 45:9 46:3 78:10 96:24 97:8 106:12,14,16 reviewed 20:11 69:7,11 revise 36:16 revisions 90:20 revisit 91:2 revisiting 72:16 rewrite 37:4 re-calculations	75:20 Rhone-Poulenc 13:16 47:14 right 5:20 35:22 59:8 60:5,6 65:12 68:3 73:8 75:8 83:11 89:18 90:2,7,7 93:19 96:12 105:1 108:22 112:4 113:8 116:13 river 4:12 18:18 19:20 41:2,9,14 43:3,13 44:17 61:10 RMR 1:10 118:16 road 2:2 97:16 Roland 2:8 role 96:21 room 6:20 Rose 2:17 11:1 22:11 24:3,6,7 85:13,15 86:9 87:3,12,16 88:5 93:22 94:2,9,12 94:19,23 95:9 95:13 96:4 98:5 99:8,10 103:18 103:21 104:5,9 105:3,8,20,23 106:13 111:19 111:20,22 112:8,13 113:18 roughly 105:12 route 52:4 routinely 55:24 RPR 1:10 118:16 rubber 97:16 rule 1:5 3:6,10,21 4:16 6:6 8:14 15:6,21 17:17 17:23 18:4 22:21 24:11 25:18 27:4 32:10 33:5 35:2 35:24 36:6 37:1 37:9 45:16 57:2 57:14,18 58:23 59:10 62:22 100:24 101:4 115:15 116:21 117:5 Rulemaking-W... 1:6 rules 4:19 5:1,2,4 5:23 7:4 15:17 90:16 rule-making 3:4	3:20 99:23 100:12 108:10 ruling 58:6 110:1 110:4 rulings 32:14 run 15:1 33:8 83:15 97:14 R03-011 3:5 R03-11 1:6 S safe 32:1 safeguards 18:7 18:12 19:3 safer 114:9 safety 97:1 113:10,16,18 113:21,22 sake 3:17 Salina 24:8 25:15 97:14 Salt 4:11 10:8 19:19 43:3 54:7 same 4:14 7:24 13:3 21:12 34:18 35:21 83:4 85:10 95:19 98:4 103:16 104:18 sample 56:2 77:3 77:9 samples 43:9 45:22 63:1 65:6 77:11 sampling 42:13 60:23 satisfied 35:7 satisfy 103:11 save 16:19,21 saw 68:22 saying 66:4 70:8 73:14 74:23 81:5 83:7 86:7 97:15 100:23 102:24 107:16 says 53:21 89:14 scale 99:1 102:18 scenario 71:12 72:11 schedule 5:13,13 105:14 scheme 35:13 58:2 school 105:9 scientific 96:15 scientist 2:6,6 87:6 scientists 87:10 scope 79:14,16
--	--	--	---	---	--

<p>Scott 2:17 16:22 17:11,15 30:1 38:19 52:24 55:5 67:6 screen 97:5 seal 118:14 search 106:7 second 18:21 21:24 39:18 93:24 secondary 45:7 60:14 62:2 64:7 Section 4:20 9:21 10:1 12:10 12:20,21 13:9 13:19,22,23 14:3,7,13,15,17 15:9 16:3 19:13 74:4 100:20 see 6:14 28:6,9 70:19,21 71:7,8 79:11 81:12 90:12 98:11 114:23 seeing 8:7 67:3 seeking 9:17 13:11 34:14 35:20 78:9 seeks 4:15 seem 35:13 37:6 98:7 108:1 seems 58:1 74:5 75:4 seen 33:9 39:20 86:19 95:1 106:23 segment 52:18 54:2,5 79:12 80:15 81:10 segments 19:22 26:1 37:21 52:9 54:20 segregating 79:12 Senior 2:6 sense 35:24 sensitive 42:8 45:18 79:20 81:7 83:24 84:8 84:10,16 sensitivity 83:14 83:22 sent 63:6 separate 38:24 52:20 66:3 separately 54:18 September 66:8 67:7,9,19 serve 33:22 service 6:1,9</p>	<p>12:23 services 85:11 set 7:1 10:1 16:2 28:14 36:3 72:18 78:21 81:14 90:5 97:12,13,14 99:18 sets 15:10 setting 33:9 seven 103:3 104:13,20 several 11:24 12:17 32:18 54:19 87:19 90:21 93:8 95:7 106:8 severe 4:5 10:12 102:10 severely 76:21 77:22 shaking 62:9 shedding 50:18 sheet 6:19,23 97:21 113:20 113:22 sheets 6:1 97:1 Shepard 2:17 11:9,9 25:7,10 25:12,13,15 26:11 59:17 60:7,11,11 63:4 63:5 64:8 65:19 66:7,12,17 67:18 70:19 71:6 80:20,23 96:11,16,21 101:23 102:1 102:14 103:6 103:10 111:24 112:9 113:16 short 47:3 63:14 Shorthand 118:2 shortly 116:1,9 116:15 short-term 63:9 show 41:14 55:2 sic 115:24 side 34:24 35:6 50:9 55:10 59:22 71:9 115:3 sides 74:13 75:6 sign 6:18 signed 6:22 significance 24:15 significant 52:10 signs 86:20,20 sign-up 5:24 6:19</p>	<p>6:23 similar 51:20 88:1 simple 63:12 76:3 simply 12:10 91:4,6 since 21:17 42:21 45:10 55:4 63:12 66:5 77:24 80:11,23 87:21 94:5 95:10 107:20 113:11 sir 85:15 sit 102:8 site 27:10 42:17 61:4 116:16,19 sites 14:9 site-specific 1:5 1:6 3:6 4:7 9:17 11:13,18 13:24 14:13 15:3 16:9 17:17,23 18:4,9 19:18 22:21 24:11 25:18,21 26:19 27:4 32:10,16 35:2 35:24 36:6 37:1 37:8,11 45:16 46:15 51:11 54:17 57:2,13 74:2 100:24 101:4 situation 38:12 48:11 84:22 87:19 88:1 six 42:5 103:3 skipped 113:2 slightly 107:8 slow 65:9 small 55:12 smaller 55:21 smart 95:15 soda 78:22 solely 33:6 35:17 solutions 113:6 some 6:13 16:16 17:8 18:6 20:16 31:17 32:7 33:14 38:19 47:4 50:5,19 52:12 55:8,9,17 56:3 58:19,23 58:24 60:23 63:1 72:22 75:17,20 76:3 76:24 82:1,3 83:4 86:19 90:18 95:18</p>	<p>97:5,11,17 98:2 104:14 106:11 107:13 somehow 72:3 73:15 someone 57:9 81:3 something 61:17 63:22,22 64:12 65:11,11 69:9 69:11 70:20 73:18 78:5 79:1 80:19 93:11 97:12 99:3 101:8,10 105:24 109:16 110:12 somewhat 90:17 somewhere 61:2 86:24 soon 112:22 sorry 96:7 99:9 sort 36:3 55:9 57:6 sought 48:21,23 sounded 116:6 source 48:4 55:17 56:7 59:8 61:7,9 sources 10:24 23:2 48:14 speak 7:21,24 speaking 7:22 special 45:20 53:17,23 64:20 65:6,12,13 68:12 70:9 species 42:9 78:2,7 79:9,9 79:10,12,20 80:4,18 81:7,13 82:10,14,15,15 82:18 83:8,9,9 83:9,14 84:7,7 84:10,11,22 specific 14:9 19:21 33:4,4 37:7 82:16 83:22 84:8 89:24 92:19 112:21 specifically 15:14 36:15 58:24 59:23 65:4 69:3 81:9 84:5,6 88:10 speculate 88:15 speculating 104:14 speculation</p>	<p>88:14 94:23 95:3 spell 16:24 spray 98:9,16 sprayer 98:9 spring 116:12 Springfield 2:8 2:12 squarely 75:6 staff 9:9 17:15 29:18 34:19 61:21 67:15 107:6 standard 4:15 9:23,24 10:5,15 11:14,18 12:8 12:16 13:1,17 14:2,6 16:8,23 18:9 19:15,18 25:21 32:17,24 33:9,15 34:4,11 35:1,4,9 36:1,2 36:14 37:2,23 38:3 45:17 46:14,15 48:19 52:2,7,9,13 53:6,9,22 54:1 54:3,7 56:6,23 57:5,24 58:7,14 60:15 62:3,23 63:9,11 69:23 73:17 78:10 80:17 89:20,20 90:1,21 91:5,7 91:14,15 92:1,3 100:16 101:2,4 101:16 103:24 standards 13:10 13:14 14:5,21 15:11,12,15 17:13 18:24 33:4,11 35:12 51:12,15 54:16 62:20 70:2 72:17,24 81:11 81:15 89:8,10 89:15,17 90:4,5 90:6,9,11,17,22 99:18 standpoint 52:15 66:19 83:12 start 38:22 46:23 65:6 started 50:9 65:7 94:8 95:2 111:24 state 1:10 4:3,6 7:15 34:7 36:13 37:21 56:20 66:23 73:12</p>	<p>89:9 92:21,22 94:12 111:23 112:14 118:3 stated 47:17 58:24 78:24 statement 9:4 38:8 56:9 74:1 107:15,21 statements 7:10 7:23 states 25:14 station 43:2,2,5 43:6,8,14,19 44:15,16 stations 42:24 statistics 64:1 stay 92:8 stenographic 118:7 stenographically 1:9 Steve 2:18 10:20 22:13,18 68:11 Steven 70:16,18 stickers 28:12 still 7:2 13:12 57:18 58:6 73:1 82:19 86:24 90:24 93:12 105:10 115:1 stores 95:7 STP 45:21 stream 12:9 13:3 18:11,24 19:22 33:5 34:13 35:5 35:12 36:7,8,9 37:20 39:2 42:10 45:8,22 46:10,11,13 51:24 52:9 53:13 54:2 60:21 62:17,21 63:16 70:11 77:21 80:16 81:10,14 streams 11:11 25:22,24 33:12 34:3,21 Street 1:12 2:14 118:6 stringent 36:3 90:1 strive 48:14 strongly 18:2 37:1 student 105:10 students 105:14 105:15 study 5:1,3,4,5,6 5:11,13,14 40:4</p>
---	---	---	--	--	---

<p>subject 4:16 7:7 submit 15:9 64:13 76:13 114:6 submitted 20:13 33:1 38:13 74:20 78:17 submitting 43:7 subpart 89:8,10 90:24 subsequent 72:2 subsequently 22:10 substantial 12:5 successful 98:22 98:23 sufficient 53:21 78:12 80:6,22 109:21,24 117:7 sufficiently 113:8 114:11 suggest 37:6 55:8 67:9 suggested 32:22 70:3 suggesting 53:8 66:5 suggestion 12:11 15:5 suggests 12:8 suit 55:9 95:2 Suite 2:2 summaries 23:21 summarize 22:14 76:18 summary 21:2,3 21:7 22:15 23:11 24:4,21 25:11 26:23 Sunday 117:1 supervision 118:8 supplement 32:7 91:3 supplied 39:1 supplies 92:4 supply 6:16 10:18 18:17,19 53:15 59:22 61:21 63:2 89:10,12,16,20 90:5,6,10 91:5 supplying 39:4 41:8 support 14:10 20:6 22:20 24:10 25:17 27:3 32:13 supports 17:21</p>	<p>suppose 55:7 sure 16:22 21:23 23:23 29:7,13 29:15 34:15 35:18 39:3 41:22 51:2 60:11 66:2,24 68:24 72:13 73:5 79:7 81:17 82:23 88:13 90:14 91:10,24 96:13,21 99:11 100:11 101:3,5 101:24 108:19 111:21 117:13 surface 10:18 surrounding 11:7 survey 39:2 42:10,20 77:22 surviving 84:23 suspect 93:18 sustain 108:9 swear 21:11 31:18,24 32:1 56:12 sworn 7:7 21:13 32:3 47:9 56:16 system 18:14 36:17 86:1 T tag 94:10 take 31:12 33:20 35:10 39:20 46:7,14,22 52:19 53:23 54:17 56:23 59:1 70:1 77:10 83:1,18 97:3 98:8 107:3,22 109:1,2,12 110:18 118:7 taken 1:9,11 30:3 37:16 43:10 takes 76:3 82:12 taking 19:1 39:14 41:3 65:6 talked 6:2 53:18 70:23 89:2 111:11 113:2 talking 59:3 62:16 66:6 74:18,23 96:6 103:23 104:12 105:16 106:2 106:22 TCBSD 48:1,4,11 48:14 TDS 48:3,6,12,16 team 94:10 96:10</p>	<p>technical 3:12 9:9 11:11 17:21 18:5 26:6 31:16 34:16,19,23,24 35:14 38:19 50:15 55:10 60:10 67:15 79:16 91:19 107:6 111:17 114:14 technically 10:6 58:2 100:1,17 101:2 technique 82:12 82:16 technologies 26:6 tell 79:6 81:4 86:16 105:24 107:22 temporary 98:16 term 69:13 termed 79:3 terms 51:22 66:20 74:8 78:23 97:2 109:10,12 114:20 test 39:5 52:12 55:22 56:5 83:17,19 95:22 107:17 109:5 109:12 tested 96:1,20 99:1 107:13,14 107:23 109:8 114:10 testified 60:19 103:5 testify 6:18 7:2 11:10 23:9 24:14,19 25:20 26:8 27:7,11 60:8 68:19 testifying 56:11 testimony 6:12 6:13,21,21 7:9 10:3,20 11:22 12:4,7,15 14:10 15:6 17:20 19:10,23 20:1,5 20:24 21:3,4,5 21:8 22:10,13 22:16 23:12 24:5,22 25:6,11 26:11,18,23 27:14 30:5 31:21 32:20,21 33:16,18 40:20 49:7 54:15 71:7</p>	<p>72:21 74:21 85:23 87:13 88:17,19,23 103:5,22 118:10 testing 95:21,23 96:3,6,19 98:6 105:18 tests 66:14 83:15 97:13 thank 8:18,22 9:8 11:24 16:10,11 17:3 20:20,21 23:9 24:19 26:8 27:11 36:11 42:4 44:18 46:16 50:16 51:6 56:17,19 58:15 59:2 69:20 88:4 92:24 101:22 105:17 112:23 112:24 117:9 117:13 Thanks 8:17 their 4:5 5:5 6:22 12:2 16:19 17:5 17:18 22:20 24:10,15 25:17 29:23 32:15 39:3 46:10 51:21 53:10 54:8,21,24 55:14,18 59:7 66:15,20,21 68:18 69:18 71:7,23 73:2 78:1 85:18 97:13 102:21 102:21 112:19 113:17 themselves 49:3 93:21 theoretical 51:22 theory 55:7 72:19 73:14 thereof 118:12 thing 38:16 56:4 87:2 98:8 102:8 102:9 108:6 109:11 things 63:17 83:17 87:7 96:14,24 97:4 108:7 think 14:23 15:18 20:4 29:16 34:15 35:6,22 38:10,18 46:13 47:15 51:21</p>	<p>52:1,15,24 53:4 53:17,18 54:8 54:10 55:5,16 55:20 56:1,12 57:4,5,12,14,23 58:18,21 60:18 61:16,20,24 62:3 67:2 68:8 68:20,22 69:11 70:23 71:4,5,10 71:18,20 72:4 74:10,19 78:13 79:15,18,18,21 80:5,21 81:16 82:8 84:16 87:3 88:15,16 89:2,3 89:23 90:12,14 90:16,19 91:2,4 93:10,12 100:20 101:7 101:15,17 102:1,4,17,17 104:9,10,12 105:14 108:3 109:4,9,10 110:8 111:10 113:4,13 114:1 114:11,13 115:10 thinking 108:10 thinks 75:2 Thomas 2:5 Thorn 48:2,5,12 thorough 74:20 though 13:4 36:23 59:24 66:1 74:6 99:5 thought 56:7 71:13 84:13 93:10 thousand 48:2,6 48:8,13,16,18 threatened 79:8 79:9,20 80:4 81:7,12 82:10 82:18 83:8,13 83:16 threatening 80:18 82:15 three 23:22 38:23 39:1 52:20 72:17 112:14 threw 94:16 through 10:3 19:5 35:21 37:16 46:1 48:7 57:19 59:11 69:9 71:11 87:22 91:23</p>	<p>96:13 97:15,22 112:6 throw 35:23 98:18,19 tier 69:4 time 6:4,20 7:21 8:10 21:12 28:19 42:14 46:21 49:10,14 54:23 56:5 63:14 64:2,3,6 69:15 76:19 77:9,24 82:3 90:16 105:13 106:1 110:6 112:12,15 115:10 timely 8:16 times 104:11 TMDL 34:2 72:21 today 6:18 7:2 8:12 9:9,13 10:3 12:3 17:11 20:16 22:19 23:10 24:9,20 25:16 26:9 27:2 27:12 30:11 58:22 73:12 76:4,13 82:24 102:9 today's 115:20 tolerant 42:21 Tom 3:3,9 8:8 top 44:22 67:15 78:22 96:14 104:10 110:7 total 104:1 toxicity 11:17 27:8,9 39:5 76:10 80:24 transcribe 7:23 transcript 1:9 115:20,23 116:1,15 treatment 1:5 3:6 9:19 10:5,23 18:16 22:22,24 24:12 25:19 26:4 27:5 48:3 76:21 77:4,23 78:1 85:24 89:12 92:7 trial 98:22 114:10 tributary 4:11 10:8 19:19 tried 52:3 96:10 96:10 98:1 truck 3:23 4:1 11:3,8,12 24:14</p>
---	---	---	---	---	---

24:16 46:4 65:9 69:1 85:6,8,10 85:11,16,17,18 86:4,6 93:20,23 95:22 97:13 98:9,13 104:3 113:6,11 trucker 97:18 98:10 103:16 Truckomat 3:19 3:23 9:12 69:1 69:6 94:4,5,6 94:13,21 102:6 104:14,15,16 108:19 Truckomat's 9:20 10:12 11:6 trucks 4:3 87:10 97:15,17 98:20 98:20 103:9 true 97:16 118:10 try 55:8 84:24 91:9,11 trying 12:1 90:14 101:7 109:15 110:22 turn 38:18 65:8 Twait 2:17 16:23 17:2,12 32:1,3 38:19,22 40:17 40:18 42:5 43:21 44:7,12 44:14,24 46:17 47:16 53:6 54:6 55:20 56:9 57:20 64:20 65:13,17 66:7 77:20 83:6 84:4 84:15,20 91:18 91:21 Twait's 56:21 92:6 twice 56:1 two 31:4 32:20 34:6 35:11 36:13 38:24 48:2,6,8,12,16 48:17 52:9,19 55:20 82:1 104:3 two-part 94:9 type 57:13 71:2 72:12 73:19 74:19 87:4 106:9 109:11 109:14 types 34:21 36:22 typewritten	118:8 T-w-a-i-t 17:2 U UAA 45:3 ultimately 15:8 33:2 under 34:2 38:4 47:24 51:12 60:15 68:12,15 71:12 72:14 73:11,21 74:3 75:3 85:4 101:15 118:8 118:14 underlying 83:9 understand 35:16 47:18,19 51:23 70:7 73:2 73:9,10 100:11 102:1 understanding 55:10 94:24 102:19 understood 57:2 74:22 101:1 uniform 103:16 unit 3:12 16:23 17:13 50:15 unless 55:17 66:10 79:1,5 80:6 84:2 unnamed 4:11 10:7 19:19 unnoticeable 98:10 unquote 41:7 unreasonable 100:6,16 until 63:15 64:3 106:15 upgraded 78:1 upstream 4:12 43:3 Urbana 2:3 use 4:5 10:17 19:15 30:12 34:4 37:22 45:2 45:4,5,7,7,11 45:13,13,18 51:14 59:7,8 61:4,6 66:20 89:8,15,19 90:23 91:7 92:2 94:7,7,21 95:4 97:9 98:12,17 100:7 101:12 101:13 102:8 107:16 109:5 114:9	used 4:2 20:6 54:4 87:14 89:17 94:5,7,7 94:13,14,21 96:14 107:11 108:2 USEPA 14:12,16 14:24 15:2 33:1 33:2,8,24 38:10 69:8 78:9,12 user 68:24 113:10 uses 18:10 45:6 45:14 USGS 48:5,15 using 26:2 46:4 75:17,20 76:7 94:8,15 95:1,12 97:7 99:3 100:4 101:11 106:15 usually 97:23 98:14 Utah 93:13,16 V vague 99:17 valid 67:2 value 41:2 43:13 76:2,2,11 values 41:3,9,13 51:22 53:15 65:8 75:18 76:7 76:10 various 19:22 41:13 95:24 96:23 vast 86:10 verifying 61:21 very 35:13 50:18 51:20 55:12 60:17 63:14,18 63:23 74:20 76:5 77:18 82:20 83:20 97:23 106:11 112:15,24 via 7:3 view 19:2 29:11 57:23 91:2,4 102:21 viewed 33:7 34:24 73:15 viewing 36:5 views 45:15 violate 73:16 violated 15:23 33:11 38:4 56:6 91:17 violating 14:2 violation 15:15	15:24 48:17 virtually 53:2 vulnerable 33:24 W Wabash 4:12 18:18 19:20 41:2,9,14 43:3 43:13 44:17 wait 7:15 waiting 5:11,19 waive 115:10 want 3:9,11 7:21 8:8 16:15,20 17:4 20:23 21:7 21:15,16,18 29:5 31:18 35:10 38:6 49:19 53:1 56:22 58:12 59:17 64:12 65:20 66:10,23 68:19 70:16 78:15 80:20 86:16 88:11 89:1 100:22 107:2,17 108:11,21 109:2 111:7 114:3 115:2,5 wanted 6:14 51:12 54:10,17 62:14,20 76:4 84:9 99:10 101:21 107:12 107:22 wanting 62:19 wants 47:6 79:18 101:11 109:10 116:13 wash 69:1 85:6,8 85:12,16,18,18 86:2,5,6 93:20 93:23 97:13,17 98:19 113:6,11 114:9 washers 24:14 24:17 washes 3:23 4:1 11:8,12 46:4 65:9 85:10 104:4 washing 4:2 11:3 95:23 Washington 2:14 wasn't 66:4 82:20 87:14 Waste 111:16 wastewater 4:1 4:10 9:19 10:22	19:8 22:22 waters 10:16,18 89:9 way 24:18 52:12 55:16 57:3 68:23 82:24 83:23 90:13,15 94:20 100:6 103:17 108:5 112:11,20 118:12 ways 90:18 Web 116:16,19 week 78:5 weeks 112:14 welcome 7:19 8:12 109:3 110:9 well 5:19 10:13 11:13 17:6 20:17 26:2 31:24 32:2 34:15,16 35:11 49:12 50:7 55:4 56:12 61:1,5 70:6 75:18,24 78:20 80:20 81:16 84:15 89:22 94:23 96:11 97:24 99:12 102:21 109:9 111:20 113:3 went 77:2 78:3 were 6:2 13:6 16:17 21:8 28:2 30:15 31:9 32:3 34:1 38:7 42:11 42:13,15 45:9 48:1,11 50:18 53:3,15 54:15 55:17 56:11 57:5 58:5,23 60:7,13 61:21 64:7 65:4 67:4 67:12,15 69:24 71:6 73:14 74:23 75:17 76:23 78:4 81:24 83:24 84:4,6 86:13 90:16,17,22,23 96:19 97:7 98:24 103:22 106:2 107:13 107:13,23 108:8,17,18,19 113:3 117:17 118:8 weren't 67:15	73:19 we'll 5:19 21:8 24:1 30:23 32:1 38:20 68:3,13 70:20 81:23 97:14 98:18 110:17 111:1 112:9,9,16 115:10 117:2 we're 4:24 5:11 5:12,19 16:16 29:8 31:2,2,11 35:8,24 36:5 41:22 46:12 47:3 49:24 50:14 62:2 68:13,14 82:21 86:7 87:22 90:19 94:15 95:1 96:6,11 99:20 101:1,3 104:12,18 105:15 109:4 111:2 112:3 114:24 115:9 117:14 we've 5:9 6:2 20:6,18 21:3 35:3 38:16 50:4 52:3 53:18 58:20 59:15 60:19 63:9 64:9 74:16 79:3 88:1 88:2 94:14 96:14 111:10 113:2,7 whatsoever 70:11 whichever 21:15 while 16:8 44:8 59:3 white 86:14 whole 4:9 48:8 60:13 62:17 107:11,18 wildlife 45:6 Williams 2:12 9:2 9:2 16:12,14,22 17:4,6,10 20:22 23:15 24:24 25:1 26:13 27:16,17 28:23 28:24 29:16,24 30:24 31:2,6,13 31:14,22 32:3,5 32:6 34:15 35:22 36:12 39:10 40:2,3,7 41:12 42:4 43:17,24 44:21
--	---	--	---	--	---

46:19,20 47:6 47:16 49:6,8,9 49:13,21 50:11 50:12 52:23 54:13 55:4 57:4 57:22 59:19 60:6 61:18 62:10,11 67:20 67:22 68:2 72:13 73:8,13 74:15,18 78:13 81:23 89:4,5,18 89:22 90:7,12 91:19 93:12,15 100:18,22 101:17 108:17 110:19,21 114:15,17 115:12,13 116:24 willing 70:3 81:11,17 82:21 winter 116:13 wish 7:1,11,18 67:22 wishes 6:18 withdrawn 89:21 witness 7:12 21:22 108:2 witnesses 2:17 6:17 7:7 10:19 21:13 28:18 30:11,18 47:5 50:22 115:3 wondered 59:9 wondering 62:18 75:19 80:14 85:9 93:22 94:6 106:10 111:17 wording 70:3 words 15:19 work 23:24 72:22 97:23,24 113:16 worked 11:23 23:6 87:22 113:17 worker 86:13,14 113:10 working 6:5 12:1 78:9 111:23 112:3 works 5:18 9:19 18:16 36:9 57:3 68:10,20 95:16 98:16 wouldn't 67:1 83:20,22 108:14,15 writing 38:16	69:5 written 6:24 7:3 28:13 50:23 109:19,21 wrong 101:9 wrote 116:10 www.ipcb.stat... 116:17 X X 47:21,22,23 98:14,17 102:14 Y yeah 51:2 56:14 61:14 65:19 66:17 87:8,11 109:20,22 110:23 111:9 111:12 114:5 114:12 year 12:18 102:12 yearly 69:9,10,11 years 19:6 72:17 87:19,24,24 88:1 Z Zeman 2:7 zero 34:21 63:2 65:3 \$ \$300,000 87:13 102:12 103:4 \$45 85:6 \$5 86:2 \$8 85:8 0 0 43:14 0.14 43:11 0.2 43:11 1 1 2:23 39:8,11 40:6,8,14 41:21 92:17 99:1 102:18 1-A 51:8 52:4 1.4 4:14 10:1,6 19:16 34:4 37:23 54:11 92:1 10 88:1 99:1,2 100:7 102:18 10th 41:3,4 10-year 18:18	10:00 1:11 102 7:4 101:19 1021 2:11 11 13:16 11th 1:11 118:4 11:00 46:24 12 85:4 92:9,13 12-A 85:5 122 2:14 13 15:5 19:22 41:21 130 40:24 75:15 131.13 14:3 14 19:22 45:1 110:8 111:15 14th 118:13 143 41:1 75:15 15 45:1 159 105:4 160 105:5 17 37:18 1717 2:2 18th 115:24 116:9,23 19 45:19 88:9,10 117:5 19th 116:24 117:3,4 19-A 88:10,14 19-C 88:10 1970s 94:4 1973 95:10 1980 43:10 1981 93:24 1985 14:12 38:9 1990 43:10 1993 93:24 1994 13:17 1996 94:6,7 1998 39:5 1999 39:2 76:19 76:24 2 2 2:23 41:16,21 42:1,2 2.0 62:3 63:3 64:24 66:15 20 5:7 42:15 89:24 20-B 89:6 2002 3:18 12:18 42:16 66:8 67:7 67:19 2003 1:11 5:10 20:13 28:15 117:5 118:5,14 2006 118:14 201 1:11 118:5 208 62:17	21 20:13 28:14 43:22 104:1,8 210 101:19 217 2:3 115:18 22 2:19 3:18 46:1 111:6,8 113:2,9 114:8 22-C 113:4 24 104:1,8 25 2:2,19,20 26 2:20,20 14:11 27 2:20 14:7 74:4 100:20 27(b) 4:20 278-3111 2:3 115:18 28 2:21 29 2:21 3 3 2:24 43:15,18 44:8,10 3rd 67:8 3.7 42:11 30 2:21,22 5:3 116:22 117:3 300 75:13 302 89:9,11 302.208 12:20 19:17 48:21 51:10,12 91:14 302.208(g) 3:22 10:1 12:20 303.302 89:7 304 15:6,11,12 15:20 304.104 4:17 15:10 304.104(d) 16:3 304.105 9:22 12:10,13,21 13:9,19 14:13 14:18 15:4 19:13 32:16 33:7 36:18 47:19 48:22 51:10 52:6 58:20 62:19 73:15 91:13 304.205 14:16 304.233 1:6 3:8 305-B 58:11 31 2:21,22 3150 2:8 35 1:6 3:7,21 4:16 14:15 16:2 19:12,16 33:6 89:7 105:5 37 4:12 39 2:23 13:23	4 4 49:22 50:1 4th 20:14 4.5 4:15 18:22 53:11 40 2:23 5:3 14:3 105:5 40-year 61:8 402 13:22 42 2:23,23 43 2:24 44 2:24 10:9 5 5 118:14 5.0 19:1 56:23 59:1 50 76:7 6 6 78:16 6th 12:18 6-C 78:16 61802 2:3 62401 2:15 62705 2:8 62794 2:12 68 2:22,22 7 7Q10 34:21 43:13 53:15 60:22 63:2 64:1 7-day 18:18 8 8 99:3,15,16 9 9 5:10 67:7,19 92:9,12 99:2,15 99:16 9th 66:8 67:10 90 105:12 94-7 13:17
---	---	--	---	---