

**In The Matter Of:**  
*INDIANA ENVIRONMENTAL RULES BOARD*

---

*July 8, 2020*

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*WILLIAM F. DANIELS, D/B/A ACCURATE REPORTING OF INDIANA  
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BEFORE THE STATE OF INDIANA  
ENVIRONMENTAL RULES BOARD

- - -

PUBLIC MEETING OF JULY 8, 2020

- - -

PROCEEDINGS

before the Indiana Environmental Rules Board,  
Beverly Gard, Chairman, taken before me, Lindy L.  
Meyer, Jr., a Notary Public in and for the State  
of Indiana, County of Shelby, via Zoom Conference  
on Wednesday, July 8, 2020 at 1:30 o'clock p.m.

- - -

William F. Daniels, RPR/CP CM d/b/a  
ACCURATE REPORTING OF INDIANA  
12922 Brighton Avenue  
Carmel, Indiana 46032  
(317) 848-0088

## 1 APPEARANCES:

## 2 BOARD MEMBERS:

3 Beverly Gard, Chairman  
4 Angelique Collier  
5 Paul Gilson  
6 Dr. Ted Niemiec  
7 Joanne Alexandrovich  
8 Karen Valiquett  
9 Ken Rulon  
10 William Etzler  
11 Chris Horn  
12 Michael Schuler  
13 Calvin Davidson  
14 Mark A. Wasky, Proxy, Indiana Economic  
15 Development Corporation  
16 Katherine Nelson, Proxy, Lieutenant  
17 Governor  
18 Bruno Pigott, IDEM Commissioner (nonvoting)

## 19 IDEM STAFF MEMBERS:

20 Ryan Clem  
21 Christine Pedersen  
22 Krystal Hackney  
23 Seth Engdahl  
24 Doug Louks  
25 Jody Arthur  
26 Karla Kindrick

## 27 PUBLIC SPEAKERS:

28 D. Livingston  
29 Indra Frank

30 - - -

31

32

33

1 1:30 o'clock p.m.  
2 July 8, 2020

3 - - -

4 CHAIRMAN GARD: I'm calling the  
5 meeting to order of the July the 8th, 2020  
6 meeting of the Indiana Environmental Rules Board.  
7 A quorum of the Board is present. We welcome all  
8 of you to our first remote meeting. This might  
9 be interesting. We have Ryan Clem, who is the  
10 Communications Director for IDEM and is the real  
11 guru at this, so he's going to walk us through  
12 all of this.

13 Okay. Ryan, let me turn it over to you,  
14 and you can provide the instructions.

15 MR. CLEM: Okay. And I'm letting  
16 people in here to -- making sure these folks get  
17 in, and let me do one more thing, just to turn  
18 off the waiting room so folks can go in. Okay.

19 Well, great. Thank you, Chairwoman Gard.  
20 My name is Ryan Clem, Communications Director at  
21 IDEM. I appreciate everybody joining us today.  
22 Please remember to keep your microphone muted  
23 when not speaking.

We will be taking questions and comments

1 from the public. To ask a question or make a  
2 comment, please use the raised hand or chat  
3 feature to indicate your question, comment, or  
4 that you would like to speak. To access the  
5 raised hand or chat feature, at the bottom or top  
6 of your screen, depending on your device, you'll  
7 see the menu bar, and you may have to move your  
8 mouse or touch your screen to have that menu bar  
9 come up.

10 In the middle of that menu, there's a chat  
11 icon which you can click on, which will show the  
12 chat dialogue. You should also see the raised  
13 hand option there. So, please utilize those two  
14 options, the raised hand or chat feature, if you  
15 have any questions or comments, and you will be  
16 called upon at the appropriate time.

17 For those joining us by phone, if you have  
18 a question or comment, you can, quote, raise your  
19 hand by pressing star nine on your phone, again,  
20 that's star nine for the folks on the phone, and  
21 when called upon, you'll also need to unmute your  
22 phone by pressing star six.

23 So, for everyone in today's meeting,

1 please remember to identify yourself when  
2 speaking. For members of the public asking a  
3 question or making a comment, please clearly  
4 state your name for the record.

5 If any members of the media have joined  
6 us, please utilize the chat feature or e-mail  
7 media at idem.in.gov if you have any questions or  
8 would like to request an interview. This meeting  
9 is being recorded and will be posted on IDEM's  
10 Web site in the near future.

11 And with that, I'll turn the meeting back  
12 over to Chairwoman Gard.

13 CHAIRMAN GARD: Okay. Thank you very  
14 much, Ryan.

15 One thing that will be a little bit  
16 different -- well, several things in this  
17 meeting, but for everything that we normally just  
18 have a voice vote, we are going to have a  
19 roll-call vote, because otherwise, it might be  
20 difficult to determine if there are any nay  
21 votes, since we can't see everybody, and  
22 sometimes we can't hear everybody. So, I will be  
23 calling roll for every -- everything that we have

1 that needs to be recorded.

2 I'm now going to call the roll for the  
3 Board of Directors.

4 Mr. Etzler?

5 (No response.)

6 CHAIRMAN GARD: Bill Etzler here?

7 MR. ETZLER: I'm sorry; I was on  
8 mute.

9 CHAIRMAN GARD: Okay.

10 MR. ETZLER: Present.

11 CHAIRMAN GARD: Dr. Alexandrovich?

12 DR. ALEXANDROVICH: I'm here.

13 CHAIRMAN GARD: Ms. Collier?

14 MS. COLLIER: Here.

15 CHAIRMAN GARD: Mr. Davidson?

16 MR. DAVIDSON: Yes, ma'am.

17 CHAIRMAN GARD: Mr. Gilson?

18 MR. GILSON: Yes.

19 CHAIRMAN GARD: Mr. Horn?

20 MR. HORN: Yes.

21 CHAIRMAN GARD: Dr. Niemiec?

22 DR. NIEMIEC: Yes.

23 CHAIRMAN GARD: Ms. Valiquett?

1 MS. VALIQUETT: Yes.

2 CHAIRMAN GARD: Mr. Wasky?

3 MR. WASKY: I'm here.

4 CHAIRMAN GARD: Ms. Nelson?

5 MS. NELSON: Here.

6 CHAIRMAN GARD: Mr. Schuler?

7 MR. SCHULER: Here.

8 CHAIRMAN GARD: Commissioner --

9 COMM. PIGOTT: Here.

10 CHAIRMAN GARD: -- Pigott?

11 And Mr. Rulon?

12 MR. RULON: Here.

13 CHAIRMAN GARD: And the Chair is  
14 here, so we have one, two, three -- six, seven,  
15 eight, nine, ten, 11, 12, 13, 14, 14 present.

16 Our first order of business today is the  
17 approval of the summary of the January 8th, 2020  
18 Board meeting. Are there any additions or  
19 corrections to the summary as presented?

20 (No response.)

21 CHAIRMAN GARD: Hearing none, I need  
22 a motion to approve.

23 DR. NIEMIEC: This is Ted Niemiec.



1 So moved.

2 CHAIRMAN GARD: Is there a second?

3 MR. RULON: Ken Rulon, second.

4 CHAIRMAN GARD: I'll call the roll.

5 Mr. Etzler?

6 MR. ETZLER: Yes.

7 CHAIRMAN GARD: Dr. Alexandrovich?

8 DR. ALEXANDROVICH: Yes.

9 CHAIRMAN GARD: Ms. Collier?

10 MS. COLLIER: Yes.

11 CHAIRMAN GARD: Mr. Davidson?

12 MR. DAVIDSON: Yes.

13 CHAIRMAN GARD: Mr. Gilson?

14 MR. GILSON: Yes.

15 CHAIRMAN GARD: Mr. Horn?

16 MR. HORN: Yes.

17 CHAIRMAN GARD: Dr. Niemiec?

18 DR. NIEMIEC: Yes.

19 CHAIRMAN GARD: Ms. Valiquett?

20 MS. VALIQUETT: Yes.

21 CHAIRMAN GARD: Mr. Wasky?

22 (No response.)

23 CHAIRMAN GARD: Mr. Wasky?

1 MR. WASKY: Yes.

2 CHAIRMAN GARD: Ms. Nelson?

3 MS. NELSON: Yes.

4 CHAIRMAN GARD: Mr. Schuler?

5 MR. SCHULER: Yes.

6 CHAIRMAN GARD: Mr. Rulon? The Chair  
7 votes aye.

8 MR. RULON: Yes.

9 CHAIRMAN GARD: Fourteen ayes, zero  
10 nays.

11 Comm. Pigott, your report, please.

12 COMM. PIGOTT: Good afternoon,  
13 everyone. Thanks for bearing with us with this  
14 virtual meeting. We're getting used to it at our  
15 Department.

16 First -- I have several things to report.  
17 First, I'd like to throw my congratulations out  
18 to Cam Clark, DNR Executive Director. It's my  
19 understanding that this is his last week at the  
20 Department of Natural Resources, and so it's with  
21 some sadness I say that, and I'm sorry he  
22 couldn't be with us today.

23 He's been a partner of ours for years as

1 the Departments worked together on mutual issues,  
2 and he started in the Department of Natural  
3 Resources as the general counsel. So, he's been  
4 there quite a while. It'll be tough to fill  
5 Cam's shoes, but we are wishing Cam well in  
6 retirement. And if you see Cam out and about,  
7 congratulate him for his work at the Department  
8 of Natural Resources.

9 I also wanted to give you all a little  
10 rundown on the agency's work during this current  
11 COVID pandemic, what we've been doing, and how  
12 we're moving forward. So, when Governor Holcomb  
13 initially shut down the Indiana Government Center  
14 campus in -- I think it was March now -- you  
15 know, we didn't know what to expect.

16 But virtually all IDEM employees started  
17 working from home, and have been working at home  
18 since that time for most of the time. A small  
19 skeleton crew continued to report to the office  
20 to ensure that documents that came into the  
21 office were distributed, and I want to thank  
22 those people that work at the agency that  
23 reported to the agency throughout the pandemic

1 while the offices were closed to ensure that the  
2 offices continued running.

3 Governor Holcomb, as you know, laid out a  
4 plan that is on the Indiana government Web site  
5 called "Back on Track Indiana." We're going  
6 through several phases. You probably heard that  
7 he tapped the brakes a little bit on the plan  
8 last week, talking about Phase 4.5. As part of  
9 all of his back to work and reopening the state  
10 efforts, he tasked each state agency with coming  
11 up with a plan for reopening their offices.

12 And since May, we -- I think May 11th,  
13 actually -- we at the Department of Environmental  
14 Management have been slowly but surely rolling  
15 people back into the office. We still have the  
16 vast majority of our people working from home  
17 most of the time, but currently, once every two  
18 weeks, everybody is reporting to the office. So,  
19 we're continuing to do remote work as we were.

20 In terms of the Government Center campus,  
21 it is open by appointment only currently, and  
22 eventually it will be open not on an  
23 appointment-only basis. If you have business to

1     conduct with the State of Indiana, and  
2     particularly the Department, we'd ask that you  
3     call the employee or employees that you want to  
4     meet with, set up a meeting time, and the  
5     employees will be required when you arrive to  
6     greet you at the front door of our building and  
7     escort you to our offices.

8             We much prefer at this time, given the  
9     fact that Coronavirus is still -- the pandemic is  
10    still in place, of course, meeting via teams or  
11    some other telephonic method. We think we can  
12    accomplish a great deal doing that. And while  
13    you're on campus in the Government Center,  
14    everyone has been mandated by the Governor to  
15    wear masks, so every IDEM employee will be  
16    wearing a mask.

17            If you come into the building, you'll be  
18    offered a mask if you don't have one, and if you  
19    reach our floors without a mask, our receptionist  
20    will kindly ask you to put on a mask, and we'll  
21    provide you with one if you need it. And if it's  
22    not possible, then we'll arrange to have an  
23    electronic meeting with folks.

1           So, in terms of the substantive work we've  
2           been doing during the pandemic, IDEM has  
3           maintained workload issuing permits. I was just  
4           reviewing our permit workload, and on a weekly  
5           basis, our offices are reporting to our agency  
6           what we're issuing, and we're issuing about what  
7           we issued on a regular basis when people were all  
8           in the office.

9           We're operating at about -- we have a  
10          specific number of statutory days we're allowed  
11          to issue a permit within, and we're, generally  
12          speaking, issuing our permits in about 60 percent  
13          of the time allowed under statute. So, we're  
14          still maintaining our good work with our permit  
15          issuance.

16          We also received a report from our  
17          inspection crew, indicating that the inspections  
18          we've been conducting, we're still issuing  
19          reports within the time frames that we've  
20          allocated when we first proposed in 2017 greatly  
21          reducing the time frame for issuing inspection  
22          reports. Currently we're issuing inspection  
23          reports on a rolling average on -- of about five

1 days from the time an inspection's been  
2 conducted.

3 That, again, is a rolling average. So, I  
4 wanted to mention that, because it's important to  
5 note that the Governor still expects us to get  
6 our work done. And so, we're keeping track of  
7 the work we're doing, and we are issuing our  
8 expected work product within time frames that  
9 we've laid out.

10 In terms of inspections, we have, during  
11 the pandemic, prioritized our inspections at  
12 wastewater and drinking water facilities, and in  
13 some facilities that were not related to water or  
14 wastewater, we held back on inspections  
15 altogether.

16 And as the Governor has reopened the  
17 Government Center and as we've all been working  
18 to reopen the state, we've been taking a careful  
19 approach at rolling out our inspections around  
20 the state in a, I think, logical manner, and  
21 we're doing it for each of our inspection groups.

22 Whether it's solid waste facilities,  
23 underground storage tanks, wastewater or wetlands

1 or confined feeding inspections, we have plans  
2 for how to roll those inspections back out, and  
3 we're doing it in a careful manner, because we  
4 want to make sure both the facilities and our  
5 inspectors are safe when they go out into the  
6 field. So, inspectors are now returning to the  
7 field and are conducting inspections.

8 Also during the pandemic, IDEM employees,  
9 about 70 IDEM employees, volunteered to help the  
10 State Department of Health at test sites  
11 throughout the state. As you know, the State  
12 Department of Health has been working hard to  
13 open up test sites throughout the state for  
14 people who suspected that they might have COVID,  
15 and as testing capacity grew, so, too, did the  
16 number of sites, and IDEM's participation in that  
17 process.

18 IDEM has been working at sites throughout  
19 the state performing administrative, logistical,  
20 testing, transportation and other tasks that help  
21 make sure that we can do our part to help the  
22 Department of Health at this time. So, those are  
23 the kinds of activities we've been engaged in



1 during the pandemic.

2 A couple of other issues I'd like to just  
3 mention to you folks, given the fact that they've  
4 either been relevant to the Board or they've been  
5 in the news lately. First, you will remember  
6 that recently the Board faced a vote on a Use  
7 Attainability Analysis for the City of  
8 Indianapolis regarding its combined sewer  
9 systems.

10 And communities throughout the state --  
11 there are 108 of them -- are going through  
12 processes to reduce the number of discharges from  
13 their combined sewers. And as they complete  
14 their projects, they're coming to our agency  
15 asking for the same kind of permission that the  
16 City of Indianapolis has asked for.

17 And tomorrow we will -- the agency will be  
18 issuing a letter to the City of Fort Wayne  
19 approving their Use Attainability Analysis, which  
20 is the analysis that's required to grant the  
21 combined sewer overflow subcategory designation  
22 that the Board voted on for Indianapolis.

23 So, in the upcoming months and in the

1 upcoming years, we will see more of these kinds  
2 of things come to the Environmental Rules Board,  
3 and I just wanted to let you know that Fort Wayne  
4 is the next one up. So, we'll do presentations  
5 and do a little education piece for the Board  
6 before that actually comes up for a vote to  
7 refresh your memory, but I just wanted to put it  
8 on your radar screen that will be coming up in  
9 the future.

10           Secondly, in the news recently the Town of  
11 Andrews, Indiana featured prominently. I know  
12 Bill Etzler worked up in the Fort Wayne area, and  
13 Andrews is near Fort Wayne, in that area, and  
14 Andrews issued an order on June 19th to the  
15 residents of its community not to drink the  
16 water -- not to use the water.

17           And IDEM was alerted to this order a  
18 couple of days later by the State -- the County  
19 Health Department. The town was concerned  
20 because one of the wells -- they have three  
21 drinking water wells, so they receive their  
22 drinking water from wells as opposed to surface  
23 water.

1           And in 2012, one of the three wells was  
2 shut down because a local company, Raytheon, had  
3 contamination. The contamination from its  
4 industrial processes actually reached one of the  
5 wells, and IDEM, in its Office of Land Quality,  
6 had investigated the cleanup efforts by that  
7 company and had talked to the City and -- or Town  
8 of Andrews and told the town that it'd probably  
9 be wise to shut down the first well of the three  
10 drinking water wells in that town. And in 2012,  
11 the town did shut down that well.

12           Little did we know, but earlier this year,  
13 in May, the town restarted that well in an effort  
14 to ensure that it had capacity regarding some  
15 firefighting issues, and it's my understanding  
16 that once it started the well, it didn't shut it  
17 down, and that well the agency knew had  
18 contaminants, volatile organic compounds, and --  
19 in the raw water.

20           That is the water that comes into the well  
21 before it's treated and distributed to residents,  
22 and the town was concerned about that. They had  
23 reopened the well without notifying the agency,

1 it had contaminants in the raw water, they did  
2 not shut down the well, and then they issued an  
3 order to the Department -- I mean to the  
4 residents not to drink the water.

5           When the agency found out about it, we  
6 immediately dispatched investigators, inspectors,  
7 we conducted tests of the raw and the finished  
8 water. As expected, the raw water in the first  
9 well did have contaminants in it. The finished  
10 water that was delivered to people's homes after  
11 blending and treatment did not contain  
12 contaminants.

13           And in the history of the documentation  
14 that had been submitted to our agency on a  
15 regular basis, we had not seen any indications of  
16 violations of the Safe Drinking Water Act or any  
17 data that indicated that the city should shut  
18 down their drinking water. We asked the city  
19 once again to shut down their drinking water well  
20 no. 1. They did shut it down.

21           Then we requested that the city flush the  
22 drinking water treatment lines. It did flush the  
23 drinking water treatment lines, and we retested

1 the water again and found absolutely no  
2 contaminants in the water being delivered to  
3 people's homes. So, they shut down the well that  
4 had contamination. We retested the water. The  
5 company of Raytheon had been out and testing the  
6 water.

7           You should also know that the Raytheon  
8 folks knew that there was contaminants, and the  
9 way that they were dealing with it was to put in  
10 place what is known as an air stripper, which is  
11 a device that helps to strip out volatile organic  
12 compounds and prevent problems from occurring in  
13 water.

14           The town was worried that that air  
15 stripper had failed. It had not failed, and  
16 there was no indication that it had failed.  
17 After several tests and after our results, the  
18 city agreed to take off the do-not-drink-water  
19 order, and the town is now delivering water.  
20 That was in the first place, is currently, and in  
21 all data that's been submitted, this agency has  
22 always been meeting the Safe Drinking Water Act  
23 requirements.

1           So, I know that there's been press about  
2 this. I wanted you to know what we knew about  
3 it, and we continue to stay in touch with both  
4 the town and the company, Raytheon. Raytheon  
5 recently, as of today, sent a letter to the town,  
6 indicating that it would be happy to do --  
7 provide funds to clean out the two additional  
8 wells that currently provide clean and safe  
9 drinking water to residents.

10           There's an increasing concern about  
11 capacity by the town, and in a typical well  
12 situation, every so often the wells need to be  
13 cleaned out to ensure that the same capacity  
14 exists for providing clean and safe water. The  
15 company has offered to provide payment to clean  
16 out those two other wells.

17           So, those -- that's the issue with  
18 Andrews. We continue to stay on top of that, and  
19 our inspectors are out visiting the site and  
20 continuing investigations.

21           Finally, you may know, on a federal level,  
22 the U.S. EPA recently issued a new Waters of the  
23 United States Rule. That rule does provide a

1 different kind of guidance in terms of the  
2 regulation of water bodies and would potentially  
3 narrow the kind of authority for agencies to  
4 regulate specific water bodies.

5           We're studying the rule. It's a big rule,  
6 but we are also operating under a state statute  
7 that defines waters of the State of Indiana that  
8 is sig -- I would say broader than the newly  
9 issued federal rule, and therefore, our  
10 regulatory -- our regulatory processes for the  
11 moment are not changing.

12           Also, we expect -- we expect to see  
13 appeals of this rule in the process for  
14 finalizing that rule, and getting out of the  
15 Federal Courts will be probably a long one, so I  
16 don't expect to see that change the regulatory  
17 landscape in the near future.

18           And that's my report for activity at the  
19 agency, Comm. Gard -- I mean Chairman Gard.

20           CHAIRMAN GARD: Are there -- are  
21 there any questions for the Commissioner?

22                           (No response.)

23           CHAIRMAN GARD: Anybody have

1 questions?

2 MR. ETZLER: Beverly, I -- Bill  
3 Etzler here.

4 CHAIRMAN GARD: Yes, Bill.

5 MR. ETZLER: I don't have a question,  
6 but I have a comment.

7 CHAIRMAN GARD: Yes.

8 MR. ETZLER: The situation with  
9 Andrews, the media coverage certainly does not  
10 mirror your report to the Board, because the  
11 issue as it was reported was that the  
12 contamination had reached all of the homes, and  
13 that it was of great concern to the residents,  
14 and it also did not mention that the well had  
15 been previously shut down in 2012 and then  
16 reopened without the agency's notice -- being  
17 noticed.

18 So, they made a -- I really wish the media  
19 would report all of the facts, I guess, in these  
20 situations, but I'm not sure we can ever hope for  
21 that to happen, unfortunately.

22 CHAIRMAN GARD: No, unfortunately.

23 MR. ETZLER: So, thank you for that



1 information. I appreciate it.

2 COMM. PIGOTT: You're welcome.

3 CHAIRMAN GARD: Are there -- are  
4 there other questions?

5 (No response.)

6 CHAIRMAN GARD: Commissioner, I  
7 had -- I had one question.

8 COMM. PIGOTT: Yes.

9 CHAIRMAN GARD: With a number of the  
10 rules and the other things that you all are  
11 doing, you had work groups. Has this -- having  
12 to do virtual meetings, has that affected your  
13 work -- the number of work groups that are  
14 actually active right now?

15 COMM. PIGOTT: I think that getting  
16 used to the format has probably slowed down the  
17 creation of work groups and the number, but we  
18 are making adjustments along the way, just  
19 getting people used to this format, and we expect  
20 that we'll be able to straighten things out.

21 You know, I don't believe that the COVID  
22 situation is going away any time soon, so I think  
23 our preferred method of organizing and getting

1 together in work groups will continue to be this  
2 kind of format.

3 And different -- people are used to  
4 different systems, of course, and each one is  
5 just slightly different, and there's always a bit  
6 of a glitch, which is why it's great to have  
7 Ryan. But yeah, it's slowed us down a little bit  
8 in terms of putting together work groups and  
9 getting them started.

10 So, if there's folks that are waiting for  
11 a work group to be started, I know that --  
12 especially a rules work group, I know -- just  
13 have a little patience with us. We'll be getting  
14 folks together.

15 CHAIRMAN GARD: Okay. Thank you so  
16 much. And wish Cam Clark the best for us. We  
17 appreciate his attendance at the meetings over  
18 the last few years.

19 COMM. PIGOTT: Thank you.

20 CHAIRMAN GARD: Chris Pedersen,  
21 Rulemaking Report.

22 MS. PEDERSEN: Good afternoon. I'm  
23 Chris Pedersen, in the Rules Development Section

1 of the Office of Legal Counsel. I have several  
2 topics to cover for Board members today.

3 First, I would like to talk about upcoming  
4 Board meetings. We are anticipating two more  
5 meetings this year, one on September 9th and one  
6 on November 18th, to work through the rules that  
7 have been delayed because we've been unable to  
8 hold Board meetings since early this year.

9 Our normal conference room for these  
10 meetings has been canceled for the rest of the  
11 year, so we expect these next two meetings to  
12 probably be held remotely. These plans are  
13 tentative and subject to change, depending on  
14 circumstances and direction from the Governor,  
15 but we will keep everyone informed if there's any  
16 necessary changes.

17 Karla Kindrick will continue to send out  
18 boards to Board members electronically, but if  
19 you want a paper copy also mailed, please be sure  
20 to let her know. If you've already requested a  
21 paper copy for this meeting, we'll assume you  
22 want to continue to receive paper copies for  
23 future meetings, and so, you're already on the

1 list.

2           Second, as far as current office  
3 activities, Bruno touched on this already, but  
4 generally, the IDEM's Rules staff are in the  
5 office one day per two-week period, and working  
6 remotely the rest of the time. Therefore, tasks  
7 that need to be done in the office will be  
8 handles -- will be handled as expeditiously as  
9 possible, but due to the working remotely, any  
10 early requests will be greatly appreciated so  
11 that we can get them done when we're in the  
12 office.

13           Also, the IDEM's Rules staff can access  
14 voicemail messages remotely, but we encourage you  
15 to communicate with us by e-mail. It's the  
16 surest way to reach us as we work remotely. As  
17 always, feel free to contact Karla or myself if  
18 you have any questions related to the rules and  
19 the scheduling.

20           Third, I'd like to briefly describe the  
21 rules that we anticipate being ready for your  
22 consideration in September. First, the emergency  
23 rules being presented today for the Vigo County

1 SO2 redesignation and the Marion County SO2  
2 redesignation are expected to need to be renewed  
3 again. And another one for Lake and Porter  
4 eight-hour ozone will probably be available -- or  
5 will probably be needed for consideration at that  
6 time also.

7 There are two rules that were already  
8 preliminarily adopted that should be ready for  
9 final adoption in September. Those are the NPDES  
10 General Permits Rule, that one was preliminarily  
11 adopted in August of 2019, and the Transfer  
12 Station Reporting Rule, which was preliminarily  
13 adopted in January of this year.

14 Then in addition to those, we have a  
15 rulemaking which is the Vigo County SO2  
16 Redesignation, it may be also including Lake and  
17 Porter Ozone, and then some corrections to PM2.5  
18 effective dates. This -- part of this is the  
19 subject of the emergency rule for Vigo County  
20 that's before you today. The regular rulemaking  
21 we're hoping will be ready to bring to you in  
22 September.

23 For Vigo County, it's the adoption of the

1 federal redesignation for Fayette and Harrison  
2 Townships in Vigo County for the 2010 SO2 standard  
3 from nonattainment to attainment, and this  
4 provides consistency with the current federal  
5 designations.

6 Another one is the Air Permit Fee Updates  
7 Rule. That would be up for preliminary adoption.  
8 The fee increases for the Title V Air Permit  
9 Program that are required by House Enrolled  
10 Act 1278 and that were approved by the Board on  
11 August 14th, 2019, at that time will be put into  
12 the rules formally.

13 We have the fee, the air permit fees, in  
14 the rules, and so this rulemaking simply updates  
15 those fees. The rulemaking does -- the statute  
16 does require that the increases be adopted before  
17 January 1st of 2022, so we're hoping get that  
18 accomplished by that time.

19 We're also hoping to have the NOx  
20 Emissions Monitoring Rule for preliminary  
21 adoption. This rule revises existing monitoring  
22 and reporting requirements for certain fossil  
23 fuel boilers to add an alternative for monitoring

1 and reporting of NOx emissions, and the  
2 alternative that is being proposed is consistent  
3 with the recently released Federal rule.

4 And then finally, we have -- every year we  
5 have the review of nonexpiring rules for each of  
6 our groups, Titles 326, 327 and 329. Review of  
7 nonexpiring rules will be brought before you for  
8 consideration. Each year it's brought to you to  
9 determine if any rulemaking needs to be started  
10 from those, and so, we'll have those ready at the  
11 same time.

12 And that is the end of my report. Be glad  
13 to answer any questions.

14 CHAIRMAN GARD: Are there any  
15 questions for Chris?

16 (No response.)

17 CHAIRMAN GARD: Well, thank you,  
18 Chris.

19 Today we have two emergency rules that the  
20 Board will be asked to adopt: Vigo County SO2  
21 Redesignation and Marion County SO2 Redesignation.  
22 We will also have two presentations from the  
23 agency. The first will be the presentation of

1 the nonrule policy document regarding the  
2 Independent Closure Process. The second  
3 presentation will be the annual 303(d) List  
4 presentation regarding the 2020 List of Impaired  
5 Waters.

6 The rules being considered at today's  
7 meeting will include Board packets -- were  
8 excluded in the Board packets and are available  
9 for public inspection at the Office of Legal  
10 Counsel, 13th Floor, Indiana Government Center.  
11 The entire Board packet is also available on  
12 IDEM's web site at least one week prior to each  
13 Board meeting.

14 A written transcript of today's meeting  
15 will be made. The transcript and any written  
16 submissions will be open for public inspection at  
17 the Office of Legal Counsel. A copy of the  
18 transcript will be posted on the rules page of  
19 the agency Web site when it becomes available.

20 The Board will now consider adoption of an  
21 emergency rule to revise 326 IAC 1-4-85 to  
22 redesignate Vigo County to attainment for the  
23 2010 Sulfur Dioxide National Ambient Air Quality



1 Standards. The draft emergency rule found in  
2 today's Board packet is entered into the record  
3 of the meeting.

4 Krystal Hackney will present the rule.

5 Krystal?

6 MS. HACKNEY: Good afternoon, members  
7 of the Board. Can you hear me okay?

8 CHAIRMAN GARD: Yes.

9 MS. HACKNEY: Okay. My name is  
10 Krystal Hackney, and I'm a rule writer in the  
11 Rules Development Section within the Office of  
12 Legal Counsel.

13 This rule temporarily revises  
14 326 IAC 1-4-85 to redesignate parts of Vigo  
15 County for the 2010 Sulfur Dioxide National  
16 Ambient Air Quality Standard from nonattainment  
17 to attainment for consistency with the federal  
18 redesignation published in the Federal Register  
19 on July 8th of 2019. The parts of Vigo County  
20 that are affected by this rulemaking are Fayette  
21 and Harrison Townships.

22 State air permits must be issued in  
23 accordance with either the designations in

1 326 IAC 1-4 or an effective emergency rule that  
2 supersedes the existing state rule. This  
3 emergency rule will allow IDEM to permit affected  
4 sources under the appropriate air permitting rule  
5 until the formal rulemaking is completed.

6 This emergency rule was most recently  
7 adopted on January 8th of 2020, and included a  
8 change for the status of Lake and Porter Counties  
9 for the 2008 eight-hour ozone standard. The  
10 status of Lake and Porter Counties in relation to  
11 ozone has changed since January, so the Lake and  
12 Porter ozone status will be addressed in a  
13 separate rulemaking. Today's adoption of the  
14 emergency rule is necessary to maintain the  
15 current federal designations under the regular  
16 rulemaking -- or until the regular rulemaking is  
17 completed; sorry.

18 IDEM requests that the Board adopt this  
19 emergency rule as presented, and I'm available to  
20 answer any further questions that you may have.

21 CHAIRMAN GARD: Are there any  
22 questions for Krystal about the emergency rule?

23 (No response.)

1                   CHAIRMAN GARD: Thank you, Krystal.

2                   Any Board discussion?

3                                   (No response.)

4                   CHAIRMAN GARD: I need a motion to  
5 adopt the emergency rule. Is there a motion to  
6 adopt the emergency rule?

7                   MR. DAVIDSON: Calvin Davidson, so  
8 moved.

9                   CHAIRMAN GARD: Is there a second?

10                  DR. ALEXANDROVICH: Joanne  
11 Alexandrovich, second.

12                  CHAIRMAN GARD: I'll call the roll.  
13 Mr. Etzler?

14                  MR. ETZLER: Yes.

15                  CHAIRMAN GARD: Dr. Alexandrovich?

16                  DR. ALEXANDROVICH: Yes.

17                  CHAIRMAN GARD: Ms. Collier?

18                  MS. COLLIER: Yes.

19                  CHAIRMAN GARD: Mr. Davidson?

20                  MR. DAVIDSON: Yes.

21                  CHAIRMAN GARD: Mr. Gilson?

22                  MR. GILSON: Yes.

23                  CHAIRMAN GARD: Mr. Horn?

1 MR. HORN: Yes.

2 CHAIRMAN GARD: Dr. Niemiec?

3 DR. NIEMIEC: Yes.

4 CHAIRMAN GARD: Ms. Valiquett?

5 MS. VALIQUETT: Yes.

6 CHAIRMAN GARD: Mr. Wasky?

7 MR. WASKY: Yes.

8 CHAIRMAN GARD: Mrs. -- Ms. Nelson?

9 MS. NELSON: Yes.

10 CHAIRMAN GARD: Mr. Schuler?

11 MR. SCHULER: Yes.

12 CHAIRMAN GARD: Mr. Rulon?

13 MR. RULON: Yes.

14 CHAIRMAN GARD: And the Chair votes  
15 aye. The vote is 14 ayes, zero nays.

16 The Board will now consider adoption of an  
17 emergency rule to revise 326 IAC 1-4-50 to  
18 redesignate three townships in Marion County to  
19 attainment for the 2010 Sulfur Dioxide National  
20 Ambient Air Quality Standard. The draft  
21 emergency rule found in today's Board packet is  
22 entered into the record of the meeting.

23 Seth Eng -- Engdahl -- I don't know that

1 I'm pronouncing it correctly.

2 MR. ENGDAHL: That's right.

3 CHAIRMAN GARD: -- will present the  
4 rule. And I apologize for the lawn mower. I  
5 can't help their schedule.

6 MR. ENGDAHL: Members of the Board,  
7 good afternoon. Can everybody hear me okay?

8 MR. RULON: Yes.

9 MR. ENGDAHL: My name is Seth  
10 Engdahl, and I'm a rule writer in the Rules  
11 Development Branch within IDEM's Office of Legal  
12 Counsel.

13 The emergency rule currently under  
14 consideration would supersede 326 IAC 1-4-50.  
15 This section is comprised of an attainment status  
16 table for certain air pollutants in Marion  
17 County. The only change being made is the status  
18 of Center, Perry, and Wayne Townships, which is  
19 being changed from nonattainment to attainment  
20 for the 2010 and one-hour primary Sulfur Dioxide  
21 National Ambient Air Quality Standard. We are  
22 making this change to maintain consistency with  
23 the federal designation that was published in the

1 Federal Register on May 21st of this year.

2 IDEM is requesting that the Board approve  
3 this emergency rule so that affected sources can  
4 be permitted under the appropriate state rule  
5 while the regular rulemaking to incorporate these  
6 changes into the Indiana Administrative Code is  
7 completed. If adopted, permits issued to sources  
8 in Center, Perry, and Wayne Townships would be  
9 issued under Prevention of Significant  
10 Deterioration pursuant to 326 IAC 2-2.

11 Currently, sources are issued permits under  
12 Emissions Offset pursuant to 326 IAC 2-3, which  
13 is more restrictive.

14 IDEM requests that the Board approve this  
15 emergency rule as presented, and I'm happy to  
16 answer any questions that you may have.

17 CHAIRMAN GARD: Any questions for  
18 Seth?

19 (No response.)

20 CHAIRMAN GARD: No? Any Board  
21 discussion?

22 (No response.)

23 CHAIRMAN GARD: Well, hearing none, I

1 need a motion to adopt the emergency rule.

2 DR. ALEXANDROVICH: Joanne

3 Alexandrovich, so moved.

4 CHAIRMAN GARD: I need a second.

5 MR. RULON: Ken Rulon, second.

6 CHAIRMAN GARD: I'll call the roll.

7 Mr. Etzler?

8 MR. ETZLER: Yes.

9 CHAIRMAN GARD: Dr. Alexandrovich?

10 DR. ALEXANDROVICH: Yes.

11 CHAIRMAN GARD: Ms. Collier?

12 MS. COLLIER: Yes.

13 CHAIRMAN GARD: Mr. Davidson?

14 MR. DAVIDSON: Yes.

15 CHAIRMAN GARD: Mr. Gilson?

16 MR. GILSON: Yes.

17 CHAIRMAN GARD: Mr. Horn?

18 MR. HORN: Yes.

19 CHAIRMAN GARD: Dr. Niemiec?

20 DR. NIEMIEC: Yes.

21 CHAIRMAN GARD: Ms. Valiquett?

22 MS. VALIQUETT: Yes.

23 CHAIRMAN GARD: Mr. Wasky?

1 MR. WASKY: Yes.

2 CHAIRMAN GARD: Ms. Nelson?

3 MS. NELSON: Yes.

4 CHAIRMAN GARD: Mr. Schuler?

5 MR. SCHULER: Yes.

6 CHAIRMAN GARD: Mr. Rulon?

7 MR. RULON: Yes.

8 CHAIRMAN GARD: The Chair votes aye.  
9 Fourteen ayes, zero nays. The emergency rule is  
10 adopted.

11 Now, today we have a presentation of a  
12 nonrule policy, the Independent Closure Process  
13 Guidance. Mr. Doug Louks will present the policy  
14 to the Board.

15 Mr. Louks?

16 MR. LOUKS: Hello. Can everybody  
17 hear me?

18 CHAIRMAN GARD: Yes.

19 MR. LOUKS: Okay. So, I'm bringing  
20 the Independent Closure Process NPD before the  
21 Board for your approval. This is currently a  
22 process that is being managed out of a separate  
23 section, but with some -- a little bit of



1 informality. We made some changes, or plan to  
2 make changes, to this NPD to provide a little bit  
3 more structure to the program and how it  
4 operates, and also to give a no-further-action  
5 letter once this is completed.

6 Briefly, to describe what this is, it is a  
7 process by which the agency and external  
8 stakeholders involved in investigation and  
9 remediation of petroleum releases that are  
10 considered to be very low threat is to release  
11 some of the regulatory burden and costs both for  
12 the agency and management of that, but also the  
13 external stakeholders to meet the agency's needs  
14 in order to address the contamination as it is.

15 IDEM -- let's see. Yeah. This policy is  
16 mainly just to create a little bit more  
17 consistency and efficiency at facilities where  
18 these releases pose a low threat to human health  
19 and the environment. Responsible persons that  
20 meet the requirements for independent closure  
21 process approval will receive a no-further-action  
22 letter at the conclusion of the release -- or at  
23 the conclusion of the investigation and any

1 remediation that's -- that may be necessary.

2           That's different than how it currently  
3 functions now. They don't get a  
4 no-further-action letter or anything despite that  
5 final. We put this up, and it's worth noting we  
6 did not receive any comments during the comment  
7 period. It's just to define what we will be  
8 utilizing to define things as a low threat.

9           These are solely petroleum releases. They  
10 are petroleum releases to the soil, and where  
11 groundwater and dissolved contamination is --  
12 does not go beyond the facility boundaries, so if  
13 you have any off-site contamination, it is not  
14 going to be eligible for the independent closure  
15 process.

16           It does not create -- the release doesn't  
17 create any completed exposure pathways to  
18 receptors; in other words, there's no direct  
19 contact, there's no tap water where people are  
20 drinking it, and there's no vapor intrusion. And  
21 also, any of the light nonaqueous phase liquids  
22 have been recovered to the extent practicable  
23 before the eligibility of being accepted into

1 this program.

2 Just as a little bit of background, we  
3 had, in 2019, 172 confirmed new releases, and  
4 based on some preliminary research by our  
5 technical staff, right at about approximately 50  
6 percent of those releases would be suitable for  
7 the independent closure process.

8 And basically, as I said before, it limits  
9 a little bit of the IDEM oversight than the  
10 traditional method, which is much more rigid in  
11 iterative investigations and reporting, and  
12 response to IDEM comment letters, it could be  
13 very responsive, could be very cumbersome for  
14 some of these low-threat releases.

15 While the traditional method is necessary  
16 at releases that pose a greater risk, it may  
17 require some unnecessary costs for these releases  
18 where it can be demonstrated that there is no  
19 unacceptable risk of exposure. The cost savings  
20 can be redirected to the facilities and releases  
21 that require substantial investigation and  
22 remediation, and that goes for both the agency's  
23 resources as well as the external resources.

1           It is our opinion that the  
2 no-further-action letter that will culminate in  
3 completion of the ICP process provides a greater  
4 level of comfort for RP's and potential  
5 purchasers, and also lending institutions.

6           Let's see. The regulated community  
7 welcomes the opportunity to independently  
8 investigate and remediate low-threat sites,  
9 because the traditional method, again, can be  
10 cumbersome and onerous, and also time consuming,  
11 and sometimes can be expensive.

12           By improving this customer service and  
13 utilizing our tax dollars more responsibly and  
14 efficiently, we believe this NPD is right in line  
15 for Governor Holcomb's Five Pillars for State  
16 Improvement.

17           And I think -- let's see. Just to  
18 troubleshoot, so prior to initiation and  
19 acceptance into this ICP program, there is still  
20 going to be a 60-day initial investigation  
21 required for any of these releases, to provide  
22 the agency with enough information to make that  
23 determination that it is indeed a low threat and

1 is suitable for that, so nobody's going to be  
2 automatically going in there without us having  
3 investigated it first.

4 Any RP that doesn't comply with the ICP  
5 framework that's laid out in the NPD will be  
6 brought back into the standard project management  
7 of the agency, as with all of the other releases.

8 And I think that's pretty much all of the  
9 notes I have. Oh, the last one, yeah. So, we  
10 will be constantly keeping up with the documents  
11 that are sent in, and in order to ensure that we  
12 are adequately protective, even if someone is in  
13 this independent closure process, we do have --  
14 we're reserving that right to reprioritize any  
15 release, if new information comes about that  
16 shows that it is not a low threat, and, again,  
17 manage that under the traditional project  
18 management approach.

19 And with that, I can take any questions.

20 CHAIRMAN GARD: I have one. What  
21 kind of long-term surveillance or follow-up does  
22 IDEM have to make sure that after closure and  
23 it's through with the process, that there still

1 isn't a risk?

2 MR. LOUKS: Sure. So, the NF -- the  
3 no further action would go through the same  
4 scrutiny based on the information, will go  
5 through our technical services group, as the  
6 traditional -- as a more traditional project  
7 management.

8 So, at the end of the project, we would  
9 still be reviewing all of the information  
10 submitted by the responsible party and their  
11 consultant, and evaluating that based on the risk  
12 factors prior to issuance of any  
13 no-further-action response from the agency. So,  
14 it would be the same -- it would get the same  
15 level of scrutiny as the other traditional  
16 methods would currently.

17 CHAIRMAN GARD: Okay. Thank you.

18 Anyone else have questions?

19 MR. GILSON: Yeah. This is Paul  
20 Gilson, Eli Lilly & Company. Just wondering if  
21 there's any certification requirements for the  
22 consultants who sign the closure completion  
23 report.

1                   MR. LOUKS: Yes, yes, they will. So,  
2 to verify our compliance at closure, we have --  
3 we will have a completion form. It's going to be  
4 signed, with an attestation that what's been  
5 provided is accurate and true by both the  
6 responsible party and a certified environmental  
7 professional.

8                   MR. GILSON: Okay. Thank you.

9                   CHAIRMAN GARD: Anyone else have a  
10 question?

11                  DR. ALEXANDROVICH: Yes. This is  
12 Joanne Alexandrovich.

13                  I'm just wondering, under the policy, you  
14 have the Independent Closure Process Guide. Is  
15 that put together, or are you working on that  
16 still?

17                  MR. LOUKS: I think we are still  
18 putting some final touches on that. I would have  
19 to check with my technical staff to make sure  
20 exactly where we are with that.

21                  CHAIRMAN GARD: Now, can you -- can  
22 you get an answer and get back to  
23 Dr. Alexandrovich with that?

1                   MR. LOUKS: Yes, yeah, definitely we  
2 can follow up with that.

3                   DR. ALEXANDROVICH: Well, I'm just --

4                   CHAIRMAN GARD: Okay.

5                   DR. ALEXANDROVICH: -- wondering if  
6 the -- this process doesn't happen until you have  
7 that guide available for the parties; right?

8                   MR. LOUKS: Right, right, and they  
9 would agree -- and they would agree when they are  
10 going in to follow this guide prior to approval  
11 and when they submit an application for  
12 acceptance into this ICP program -- or ICP  
13 process, I should say.

14                   DR. ALEXANDROVICH: Okay.

15                   That's all I need, Chairman Gard. Thank  
16 you.

17                   CHAIRMAN GARD: Okay.

18                   Anyone else have a question?

19                   MR. CLEM: Chairwoman Gard, this is  
20 Ryan. There was one -- a D. Livingston did not  
21 have a microphone, and I can read her question if  
22 you'd like.

23                   CHAIRMAN GARD: Please.



1                   MR. CLEM: It says, "for ELTF  
2 eligible sites that fall under ICP criteria, how  
3 does the limited IDEM oversight work with IDEM's  
4 move towards cost preapproval for ELTF eligible  
5 work?"

6                   MR. LOUKS: The preapproval process  
7 would work the same as it would right now. So,  
8 once they were accepted into the -- if they had  
9 ICP approval, we would -- they would then submit  
10 any work plans or remediation plans as necessary,  
11 and seek preapproval of those costs in the same  
12 way they would right now.

13                   And they would go through the same -- the  
14 exact same process as under the traditional  
15 method. Obviously the whole -- I guess the  
16 expectation would be that these are lower risk  
17 and there would be perhaps less actual work  
18 required and less burden, so those costs would be  
19 less.

20                   CHAIRMAN GARD: Okay. Any other  
21 questions?

22   (No response.)

23                   CHAIRMAN GARD: Okay. We will move

1 on to the 303(d) List presentation. Today we  
2 have the presentation of the 2020 List of  
3 Impaired Waters and consolidated assessment and  
4 listing methodology under Section 303(d) of the  
5 Clean Water Act, known as 303(d) List. Jody  
6 Arthur will present the list.

7 MS. ARTHUR: Good afternoon, members  
8 of the Board and others in attendance. My name  
9 is Jody Arthur. I work for the Indiana  
10 Department of Environmental management as its  
11 Integrated Report Coordinator, and I'm here to  
12 present the -- Indiana's 2020 303(d) List of  
13 Impaired Waters.

14 Give me just one moment, and I am going to  
15 switch to Screen Share, if -- I may have to have  
16 Ryan's assistance here. Let me see. Share  
17 screen. Okay. Let's try this. All right.

18 CHAIRMAN GARD: There you are.

19 MS. ARTHUR: There I am. So, now I  
20 get to figure out the slideshow part. Okay. I'm  
21 going to play it from start. Okay. There we go.

22 So, I will try to be brief. What I want  
23 to do is give you a little bit of context about

1 what the 303(d) List is and how we develop it,  
2 and then we'll talk about some of the results and  
3 differences between this year's 20 -- the 2020  
4 303(d) List and the one prior, and then I will  
5 leave you with some key takeaways. So, one  
6 moment. I'll get it.

7 All right. So, the Clean Water Act,  
8 303 -- Section 303(d) List of Impaired Waters  
9 requires that states identify waters that are  
10 found to be impaired. That means they are not  
11 supporting of one or more of their designated  
12 uses.

13 There are several designated uses in our  
14 water quality standards, and we do not assess for  
15 all of them; rather, we assess for those that  
16 have the most stringent water quality criteria.  
17 These would be aquatic life use, recreational  
18 use, and public water supply.

19 And our rationale here is that because  
20 these uses have the most stringent criteria of  
21 all of the uses, we can reasonably assume that if  
22 we are protecting for these uses, the other uses  
23 will be likewise protected. So, we focus our

1 efforts on protecting those uses that have the  
2 most stringent water quality criteria.

3 We also assess for fish consumption, and  
4 while this is not a designated use in our water  
5 quality standards, these assessments are required  
6 by U.S. EPA, and they're aimed at providing  
7 better information about the state of our waters  
8 in terms of consuming the fish caught from them.

9 So, a little bit about the 303(d) List  
10 itself. It is submitted to U.S. EPA as part of  
11 Indiana's Integrated Water Monitoring and  
12 Assessment Report every two years. This process  
13 includes a state-mandated 90-day public comment  
14 period. This year we held that public comment  
15 period from January 29th to April 28th. We  
16 received no comments from the public on our  
17 303(d) List this year.

18 The notice of comment basically describes  
19 any changes that we've made to the 303(d) List  
20 since the last submittal, and it also includes  
21 IDEM's methodology, so that people can understand  
22 how we are developing this list and assessing  
23 impairments.

1           So -- whoops. I went backwards. My  
2           apologies. Okay. So, the 303(d) List is  
3           actually part of the state's Consolidated List,  
4           which is a larger list. It summarizes everything  
5           that IDEM knows about water quality on Indiana's  
6           surface waters.

7           So, on this Consolidated List, we put all  
8           surface waters into -- in the state into one of  
9           five main categories for each of those designated  
10          uses I just described. These categories,  
11          Category 1 is for waters where all of those  
12          designated used I described have been assessed  
13          and all of them are fully supporting.

14          I can tell you that we don't have a lot of  
15          waters in Category 1, and that's primarily the  
16          result of -- I mean we just don't have all  
17          water -- it's rare to monitor waters for all of  
18          those uses, just because of the work involved.  
19          We monitor a lot of waters, but to get all four  
20          on the same water is difficult.

21          So, Category 2 is where the designated use  
22          has been assessed and it is fully supporting, and  
23          that there are no other water uses that are

1     impaired to our knowledge.  These waters we  
2     consider are our good waters.  These -- and we  
3     have quite a number of Category 2 waters in the  
4     state.

5             Category 3 is where we -- we put waters  
6     there where we don't have enough information to  
7     assess the uses.  We just don't have the data yet  
8     or the data is insufficient in some way to assess  
9     those uses.

10            Category 4 is where the use is impaired,  
11     but a TMDL is not required.  A TMDL is -- for  
12     those of you who've not heard of that before,  
13     it's the total maximum daily load, which is the  
14     calculation of the maximum amount of a pollutant  
15     that you can have in a water body and still meet  
16     the water quality standards for that pollutant.

17            TMDL's are required by U.S. EPA under  
18     Clean Water Act Section 303(d), hence the name  
19     303(d) List.  So, that's where Cate -- where we  
20     put waters that do not require a TMDL, we put  
21     those in Category 4.

22            Category 5 is where we have an impairment  
23     and a TMDL is still required, and that category,

1 Category 5, is the actual 303(d) List. Now,  
2 while that's the case, Category 5 is the actual  
3 303(d) List, it is important to consider both  
4 Categories 4 and 5 together if you're interested  
5 in understanding the full picture of known  
6 impairments to Indiana waters.

7 So -- whoops. Okay. So, now, IDEM is  
8 currently in the process of submitting its  
9 Integrated Report, which includes the 303(d)  
10 List, through U.S. EPA's new ATTAINS data system.  
11 The ATTAINS is the -- is EPA's Assessment, Total  
12 Maximum Daily Load Tracking and Implementation  
13 System. It's a big mouthful, so we just call it  
14 ATTAINS. This is an on-line database that  
15 automates and streamlines the data management  
16 part in our IR, Integrated Report, submittals,  
17 which include the 303(d) List.

18 In 2018, IDEM moved all of our -- its  
19 water quality assessment data into ATTAINS, but  
20 we still submitted a separate paper report to  
21 U.S. EPA, and in 2020, this is the first cycle  
22 where all of the components of the Integrated  
23 Report have been submitted through this new

1 system.

2 So, ATTAINS, in addition to the better  
3 management and streamlined submittals, ATTAINS  
4 really helps IDEM tell a more accurate picture of  
5 water quality. It makes it easier to track and  
6 report on high quality waters. As I said,  
7 Indiana has a good number of high quality waters  
8 that are in Category 2.

9 However, with the old system, it was  
10 harder to track that information accurately or  
11 with much detail, and ATTAINS fixes that. It  
12 does make it easier to track those waters, and in  
13 the short term, it's going to require some  
14 extensive data management, data management work  
15 and review and pulling all of that information  
16 from past assessments, because remember, the  
17 older system didn't really track that very well.

18 So, we're going to try and get all of that  
19 pulled together, and we hope to have that done  
20 by 2022, all of those past assessments, but now,  
21 as of now, we are entering all fully supporting  
22 information, as opposed to impairments only, into  
23 ATTAINS for all new assessments going forward.



1 So, as we get some of that data management stuff  
2 done, we will be able to tell a more accurate  
3 story about water quality in Indiana. So, it's  
4 kind of a nice thing there.

5 So, shifting gears a bit, let's just take  
6 a look at the Category 5, the 303(d) List itself.  
7 We have roughly 6500 impairments, and those  
8 impairments are -- were found on 42 -- or 4,299  
9 individual water bodies. So, the way we do our  
10 assessments, a water body can have one or more  
11 impairments on a single water body.

12 The vast majority there is obviously -- if  
13 you look at the table below, the vast majority  
14 there -- here are on streams. This is largely,  
15 mostly, a function of how we monitor. We just  
16 simply monitor more on our streams than we do on  
17 our lakes. Nonetheless, we do have some lake  
18 impairments as well.

19 And then Category 4 -- remember, I said  
20 you've got to kind of understand both sides of  
21 that to understand the full picture of  
22 impairment. The total number of impairments in  
23 Category 4 is 3,029 impairments on 2,662

1 individual water bodies, most of those, again,  
2 being streams.

3 I should say, too, the numbers here for  
4 lakes does not include Lake Michigan, which is  
5 154,176 acres, so we don't include Lake Michigan  
6 in this table because it would really skew the  
7 numbers there, but it is impaired for -- there  
8 are two impairments on Lake Michigan, fish  
9 consumption impairments. So, just know that  
10 that's impaired, too, but it's not included on  
11 these tables.

12 So, now, the vast majority of these -- of  
13 Category 4 waters, all but about 200 of those  
14 impairments are in Category 4a. That means that  
15 the TMDL for them has been developed by IDEM and  
16 approved by U.S. EPA, and the rest are in  
17 Category -- those other 200 or so are in  
18 Categories 4b and 4c, which do not require a  
19 TMDL.

20 So -- so, here's a map. This map is just  
21 intended to show you, again, that full picture of  
22 impairment. On the left, you see Category 5  
23 waters. Those are the ones that we have to --

1 that still require a total maximum daily load,  
2 and Category 4 waters are shown on the right.  
3 So, together, those are the impaired waters in  
4 Indiana.

5 Please know that for simplicity's sake, I  
6 don't map all of the waters, because it becomes a  
7 very messy map very quickly, but there -- this is  
8 not the majority of waters in the state. So, we  
9 have a lot of waters that if I were able to map  
10 it and make a nice clean map, you would see a lot  
11 of blue in there as well. So, these are -- this  
12 is the total picture of impairment as of the 2020  
13 cycle.

14 The top causes of impairments. You know,  
15 I've been in this job for almost 15 -- well, in  
16 this position 15 years, and there have been no  
17 changes in the top causes of impairment over that  
18 time. This table never changes, other than, you  
19 know, the numbers change a little bit each cycle,  
20 but these are still the top causes of impairment.

21 The E. Coli in the top is -- that is a  
22 recreational use impairment, the biological  
23 integrity, dissolved oxygen and nutrients are

1 aquatic life use impairments, and the PCB's in  
2 fish tissue and mercury in fish tissue are fish  
3 consumption impairments. So, I've broken it out  
4 here by those for which we've completed TMDL's in  
5 Category 4 and those in Category 5 on the 303(d)  
6 List.

7           So -- also I meant to mention that after  
8 mercury in fish tissue, the numbers of  
9 impairments for any one parameter drops off to  
10 less than a hundred for any one type of  
11 impairment, so those really are the big ones.

12           So, now, in terms of the summary of  
13 changes, there weren't any big changes in 2020.  
14 However, I do think we're going in the right  
15 direction, because there were 210 fewer  
16 impairments and 92 fewer water bodies impaired,  
17 and 31 of those impairments on 26 water bodies  
18 were actually found to have water quality  
19 improvements.

20           Now, the remaining changes were the result  
21 of this ongoing review. We are constantly  
22 looking for errors in the data and making sure  
23 our assessments are accurate, and we invariably,

1 with such a large state, we find problems every  
2 cycle, so we make those changes.

3           The other change -- things that change is,  
4 as we develop TMDL's and once those are approved,  
5 those waters go in -- out of Category 5 and are  
6 moved into Category 4. So, that does not  
7 necessarily mean that they're no longer impaired;  
8 however, we have found water bodies for which a  
9 TMDL is approved that have been -- subsequently  
10 been improved, so that does happen.

11           Okay. So, another -- some of the key  
12 takeaways again, again, there were no major  
13 changes in the types or in the number of  
14 impairments that IDEM has found this cycle. Our  
15 monitoring, assessment and TMDL development  
16 continues.

17           We have almost 3,000 TMDL's now approved  
18 for impaired waters, and we continue to monitor a  
19 significant number of sites every year, 250 to  
20 275. And the map there gives you some idea of  
21 our monitoring activities. Those are the sites  
22 we have monitored in about the last decade, so we  
23 do a lot of monitoring. So, we are producing a

1 lot of data to do our assessments.

2 And another thing I might mention, too,  
3 that isn't shown on this presentation is that  
4 Indiana now leads the country in terms of its  
5 success stories, which are -- which document --  
6 this is a -- success stories are part of EPA's  
7 strategic measures.

8 And they document water quality  
9 improvements as a result from nonpoint source --  
10 typically nonpoint source activities, restoration  
11 activities that are going on in Indiana. And  
12 now, our programs lead -- are leading the country  
13 in those -- in the number of stories published.

14 If anyone is interested in getting that  
15 information or finding out more about those, they  
16 are documented. The most recent ones are  
17 documented in the Integrated Report, and the --  
18 which will be on our Web site soon, or you can  
19 contact me directly.

20 My contact information is here. The Web  
21 site that you see here will be updated shortly,  
22 within the next week or so, with the Integrated  
23 Report materials.

1           And with that, I'll take any questions.

2           CHAIRMAN GARD: Thank you, Jody.

3           That was good.

4           Are there questions for Jody?

5           DR. ALEXANDROVICH: Yeah, I have  
6           questions. This is Joanne Alexandrovich. First,  
7           congratulations on leading the list of success  
8           stories.

9           MS. ARTHUR: Yes.

10          DR. ALEXANDROVICH: My two questions  
11         are: That ATTAIN, is that available to the  
12         public? And then my second question is: Do we  
13         know what the source -- do you have information  
14         on the source of E. Coli contamination?

15          MS. ARTHUR: Okay. So, let's take  
16         those one at a time. ATTAINS is a system that  
17         EPA has built for states to do their data  
18         management. It is part of a larger system, and  
19         the public facing part of ATTAINS -- like as a  
20         state agency, we use ATTAINS to do this data  
21         management stuff.

22                 The information we put into ATTAINS is  
23         served out on a public Web site called, "How's My

1 Waterway?" And it's kind of beta as -- well,  
2 it's a very new Web site. If anyone's familiar  
3 with the old Surf -- Surf Your Watershed  
4 application, it's kind of a new version of that.

5 So, the information that we feed into  
6 ATTAINS feeds right into that system. I have not  
7 looked at that lately to see how good it looks,  
8 so to speak, if it's -- but they've been in --  
9 it's been in development for the last couple of  
10 years.

11 So, yes, the information is available. If  
12 anyone is interested in that, please write down  
13 my contact information and let me know, and I  
14 will get you the link to that site.

15 Now, to your second question about sources  
16 of where -- of E. Coli, I'd have to say no, and  
17 the reason I say no is because we don't -- the  
18 way we monitor, we monitor in order to identify  
19 impairments, to find the impairments, and it's --  
20 that's partly driven by EPA mandates about, you  
21 know, what they want us to be doing with our  
22 monitoring funds that they provide through  
23 their -- our Clean Water Act 106 grant.



1           So, most of -- in order to meet most of  
2           our monitoring objectives, we're out there doing  
3           the monitoring to find the problems, but in order  
4           to understand sources of impairment, you have to  
5           do -- it requires a different study design, and  
6           it requires far more robust data than our current  
7           resources are -- provide, and we would need far  
8           more resources to definitively say, "This is the  
9           source of impairment for these impairments."

10           So, basically, early on, in the first  
11           stages of our monitoring and assessment, we're  
12           basically -- you can kind of think of it as a  
13           recon, in a way, that we're re -- that we're out  
14           there and we're finding these impairments.

15           Then once we find these impairments, as  
16           they are placed into the 303(d) List and moved --  
17           and picked up for total maximum daily load  
18           development, that's where that monitoring occurs,  
19           that more robust monitoring occurs. So, we do  
20           get that information, but it isn't at this stage  
21           in the process. It is not at the assessment  
22           stage.

23           Now, when we do water quality assessments,

1 we take into consideration things like land uses,  
2 obser -- field observations, location and records  
3 of permitted facilities, so we take a lot of --  
4 whether a community's sewerage or not -- we take a  
5 lot of those things into consideration when we do  
6 assessments and try to assess the most likely  
7 sources, but those are not definitive or known at  
8 that point.

9 I hope that answers your question. You  
10 know, can I --

11 DR. ALEXANDROVICH: Yes, it did very  
12 much. Thank you. I did think of one other  
13 question.

14 MS. ARTHUR: Sure.

15 DR. ALEXANDROVICH: The nutrient  
16 impairments, does that give us the sense of how  
17 Indiana might affect the dead zones in the Gulf?

18 MS. ARTHUR: Again, no, and the  
19 reason for that is because it's not -- we --  
20 we're using -- well, nutrients, as you probably  
21 already know, is a very complex -- there's  
22 complex interactions that often -- that work  
23 together between the different parameters,

1 nutrient-related parameters, that often are --  
2 they have synergistic kinds of effects at levels  
3 that are below any criteria that you might have,  
4 you know, which -- and we don't have numeric  
5 criteria.

6           So, it's hard to -- it's hard to look at  
7 that within the larger sense of the dead zone and  
8 the next -- that are in the Gulf of Mexico. So,  
9 that sort of thing is better to look at through  
10 modeling, I believe.

11           CHAIRMAN GARD: Other questions?

12           MR. CLEM: Yeah. Madam Chair, this  
13 is Ryan. One question from Indra Frank for Jody.  
14 "Jody, you reported 31 improved impairments  
15 in 2020. Is that improvement relative to 2018?"

16           MS. ARTHUR: Yes. That -- that means  
17 that it was either listed in 2018 or in our -- it  
18 would have been listed in 2018. Now, it might  
19 have been listed in Category 4. I'd have to  
20 parse out those details.

21           But those waters, those 32 waters or so,  
22 are waters that were previously known to be  
23 impaired. We went and collected additional data

1 that shows them meeting the water quality  
2 standards for that use now. So, we had data  
3 saying they were a problem, and now we found --  
4 we've got subsequently collected data that shows  
5 they are no longer a problem.

6 CHAIRMAN GARD: Any other questions,  
7 Ryan, from the public?

8 MR. CLEM: I do not see any now.

9 CHAIRMAN GARD: Okay.  
10 Any other questions from the Board?

11 (No response.)

12 CHAIRMAN GARD: Well, thank you so  
13 much, Jody. That was very good.

14 MS. ARTHUR: My pleasure. Thank you.

15 CHAIRMAN GARD: Now we go to the Open  
16 Forum. Is there anyone who wishes to address the  
17 Board today?

18 And Ryan, you're going to have to take  
19 over that and give us the name of the person.

20 MR. CLEM: Sure. And just as a  
21 reminder, if you'd like to ask, you can unmute  
22 yourself or use the raised hand or chat feature.

23 I don't see any -- any currently.

1                   CHAIRMAN GARD: Okay. Well, we'll  
2 close the Open Forum if no one wants to address  
3 the Board.

4                   Well, the next meeting of the  
5 Environmental Rules Board, as Chris said, is  
6 tentatively set for Wednesday, September the 9th,  
7 2020 at 1:30. We anticipate again that it will  
8 be a remote meeting. If there are any changes,  
9 certainly we will let you know.

10                  So, we want everyone to stay safe, and  
11 we'll see you in September, but we do need a  
12 motion to adjourn and a second, and then a  
13 roll-call vote.

14                  DR. NIEMIEC: So moved. This is Ted  
15 Niemiec.

16                  MR. RULON: Ken Rulon, second.

17                  CHAIRMAN GARD: Okay.

18                  Mr. Etzler?

19                  MR. ETZLER: Yes.

20                  CHAIRMAN GARD: Dr. Alexandrovich?

21                  DR. ALEXANDROVICH: Yes.

22                  CHAIRMAN GARD: Ms. Collier?

23                  MS. COLLIER: Yes.

1 CHAIRMAN GARD: Mr. Davidson?

2 MR. DAVIDSON: Yes.

3 CHAIRMAN GARD: Mr. Gilson?

4 MR. GILSON: Yes.

5 CHAIRMAN GARD: Mr. Horn?

6 (No response.)

7 CHAIRMAN GARD: Mr. Horn?

8 (No response.)

9 CHAIRMAN GARD: He must have left.

10 Dr. Niemiec?

11 DR. NIEMIEC: Yes.

12 CHAIRMAN GARD: Ms. Valiquett?

13 MS. VALIQUETT: Yes.

14 CHAIRMAN GARD: Mr. Wasky?

15 MR. WASKY: Yes.

16 CHAIRMAN GARD: Mr. Nelson?

17 MS. NELSON: Yes.

18 CHAIRMAN GARD: Or Ms. Nelson; I

19 apologize.

20 Mr. Schuler?

21 MR. SCHULER: Yes.

22 CHAIRMAN GARD: Mr. Rulon?

23 MR. RULON: Yes.

1                   CHAIRMAN GARD: And the Chair votes  
2 aye. So, that would be 13 ayes, zero nays. We  
3 are adjourned. Thank you -- thank you,  
4 Commission, and thank you, staff.

5                   COMM. PIGOTT: Thank you.

6                   CHAIRMAN GARD: And especially Ryan,  
7 thank you for getting us through this.

8                   MR. CLEM: Absolutely.

9                   COMM. PIGOTT: Thanks, everyone.

10                                 - - -  
11                   Thereupon, the proceedings of  
12                                 July 8, 2020 were concluded  
13                                 at 2:45 o'clock p.m.  
14                                 - - -

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## 1 CERTIFICATE

2 I, Lindy L. Meyer, Jr., the undersigned  
3 Court Reporter and Notary Public residing in the  
4 City of Shelbyville, Shelby County, Indiana, do  
5 hereby certify that the foregoing is a true and  
6 correct transcript of the proceedings taken by me  
7 on Wednesday, July 8, 2020 in this matter and  
8 transcribed by me.

9  
10 \_\_\_\_\_  
11 Lindy L. Meyer, Jr.,  
12 Notary Public in and  
13 for the State of Indiana.

14  
15 My Commission expires August 26, 2024.

16 Commission No. NP0690003  
17  
18  
19  
20  
21  
22  
23



<b>A</b>	<p><b>15:19;37:6</b>  <b>adopt (5)</b>                  30:20;33:18;34:5, 6;38:1  <b>adopted (7)</b>                  28:8,11,13;29:16; 33:7;37:7;39:10  <b>adoption (7)</b>                  28:9,23;29:7,21; 31:20;33:13;35:16  <b>affect (1)</b>                  65:17  <b>affected (4)</b>                  24:12;32:20;33:3; 37:3  <b>afternoon (5)</b>                  9:12;25:22;32:6; 36:7;49:7  <b>again (13)</b>                  4:19;14:3;19:19; 20:1;28:3;43:9; 44:16;57:1,21;60:12, 12;65:18;68:7  <b>agencies (1)</b>                  22:3  <b>agency (20)</b>                  10:22,23;11:10; 13:5;16:14,17;18:17, 23;19:5,14;20:21; 22:19;30:23;31:19; 40:7,12;43:22;44:7; 45:13;62:20  <b>agency's (4)</b>                  10:10;23:16;40:13; 42:22  <b>agree (2)</b>                  47:9,9  <b>agreed (1)</b>                  20:18  <b>aimed (1)</b>                  51:6  <b>air (12)</b>                  20:10,14;29:6,8, 13;31:23;32:16,22; 33:4;35:20;36:16,21  <b>alerted (1)</b>                  17:17  <b>Alexandrovich (25)</b>                  6:11,12;8:7,8; 34:10,11,15,16;38:2, 3,9,10;46:11,12,23; 47:3,5,14;62:5,6,10; 65:11,15;68:20,21  <b>allocated (1)</b>                  13:20  <b>allow (1)</b>                  33:3  <b>adequately (1)</b>                  44:12  <b>adjourn (1)</b>                  68:12  <b>adjustments (1)</b>                  24:18  <b>administrative (2)</b></p>	<p><b>alternative (2)</b>                  29:23;30:2  <b>altogether (1)</b>                  14:15  <b>always (3)</b>                  20:22;25:5;27:17  <b>Ambient (4)</b>                  31:23;32:16;35:20; 36:21  <b>amount (1)</b>                  53:14  <b>Analysis (3)</b>                  16:7,19,20  <b>Andrews (6)</b>                  17:11,13,14;18:8; 21:18;23:9  <b>annual (1)</b>                  31:3  <b>anticipate (2)</b>                  27:21;68:7  <b>anticipating (1)</b>                  26:4  <b>apologies (1)</b>                  52:2  <b>apologize (2)</b>                  36:4;69:19  <b>appeals (1)</b>                  22:13  <b>application (2)</b>                  47:11;63:4  <b>appointment (1)</b>                  11:21  <b>appointment-only (1)</b>                  11:23  <b>appreciate (3)</b>                  3:20;24:1;25:17  <b>appreciated (1)</b>                  27:10  <b>approach (2)</b>                  14:19;44:18  <b>appropriate (3)</b>                  4:16;33:4;37:4  <b>approval (5)</b>                  7:17;39:21;40:21; 47:10;48:9  <b>approve (3)</b>                  7:22;37:2,14  <b>approved (5)</b>                  29:10;57:16;60:4, 9,17  <b>approving (1)</b>                  16:19  <b>approximately (1)</b>                  42:5  <b>April (1)</b>                  51:15  <b>aquatic (2)</b>                  50:17;59:1  <b>area (2)</b>                  17:12,13  <b>around (1)</b>                  14:19  <b>arrange (1)</b></p>	<p><b>12:22</b>  <b>arrive (1)</b>                  12:5  <b>Arthur (10)</b>                  49:6,7,9,19;62:9, 15;65:14,18;66:16; 67:14  <b>assess (6)</b>                  50:14,15;51:3; 53:7,8;65:6  <b>assessed (2)</b>                  52:12,22  <b>assessing (1)</b>                  51:22  <b>assessment (7)</b>                  49:3;51:12;54:11, 19;60:15;64:11,21  <b>assessments (9)</b>                  51:5;55:16,20,23; 56:10;59:23;61:1; 64:23;65:6  <b>assistance (1)</b>                  49:16  <b>assume (2)</b>                  26:21;50:21  <b>ATTAIN (1)</b>                  62:11  <b>Attainability (2)</b>                  16:7,19  <b>attainment (6)</b>                  29:3;31:22;32:17; 35:19;36:15,19  <b>ATTAINS (13)</b>                  54:10,11,14,19; 55:2,3,11,23;62:16, 19,20,22;63:6  <b>attendance (2)</b>                  25:17;49:8  <b>attestation (1)</b>                  46:4  <b>August (2)</b>                  28:11;29:11  <b>authority (1)</b>                  22:3  <b>automates (1)</b>                  54:15  <b>automatically (1)</b>                  44:2  <b>available (8)</b>                  28:4;31:8,11,19; 33:19;47:7;62:11; 63:11  <b>average (2)</b>                  13:23;14:3  <b>away (1)</b>                  24:22  <b>aye (3)</b>                  9:7;35:15;39:8  <b>eyes (3)</b>                  9:9;35:15;39:9</p>	<p><b>back (8)</b>                  5:11;11:5,9,15; 14:14;15:2;44:6; 46:22  <b>background (1)</b>                  42:2  <b>backwards (1)</b>                  52:1  <b>bar (2)</b>                  4:7,8  <b>based (3)</b>                  42:4;45:4,11  <b>basically (4)</b>                  42:8;51:18;64:10, 12  <b>basis (4)</b>                  11:23;13:5,7;19:15  <b>bearing (1)</b>                  9:13  <b>becomes (2)</b>                  31:19;58:6  <b>below (2)</b>                  56:13;66:3  <b>best (1)</b>                  25:16  <b>beta (1)</b>                  63:1  <b>better (3)</b>                  51:7;55:2;66:9  <b>Beverly (1)</b>                  23:2  <b>beyond (1)</b>                  41:12  <b>big (4)</b>                  22:5;54:13;59:11, 13  <b>Bill (4)</b>                  6:6;17:12;23:2,4  <b>biological (1)</b>                  58:22  <b>bit (13)</b>                  5:15;11:7;25:5,7; 39:23;40:2,16;42:2, 9;49:23;51:9;56:5; 58:19  <b>blending (1)</b>                  19:11  <b>blue (1)</b>                  58:11  <b>Board (38)</b>                  3:5,6;6:3;7:18; 16:4,6,22;17:2,5; 23:10;26:2,4,8,18; 29:10;30:20;31:7,8, 11,13,20;32:2,7; 33:18;34:2;35:16,21; 36:6;37:2,14,20; 39:14,21;49:8;67:10, 17;68:3,5  <b>boards (1)</b>                  26:18  <b>bodies (7)</b>                  22:2,4;56:9;57:1;</p>
			<b>B</b>	

<p>59:16,17;60:8  <b>body (3)</b>                      53:15;56:10,11  <b>boilers (1)</b>                      29:23  <b>both (7)</b>                      15:4;21:3;40:11;                      42:22;46:5;54:3;                      56:20  <b>bottom (1)</b>                      4:5  <b>boundaries (1)</b>                      41:12  <b>brakes (1)</b>                      11:7  <b>Branch (1)</b>                      36:11  <b>brief (1)</b>                      49:22  <b>briefly (2)</b>                      27:20;40:6  <b>bring (1)</b>                      28:21  <b>bringing (1)</b>                      39:19  <b>broader (1)</b>                      22:8  <b>broken (1)</b>                      59:3  <b>brought (3)</b>                      30:7,8;44:6  <b>Bruno (1)</b>                      27:3  <b>building (2)</b>                      12:6,17  <b>built (1)</b>                      62:17  <b>burden (2)</b>                      40:11;48:18  <b>business (2)</b>                      7:16;11:23</p>	<p><b>can (31)</b>                      3:13,17;4:11,18;                      12:11;15:21;23:20;                      27:11,13;32:7;36:7;                      37:3;39:16;42:18,20;                      43:9,11;44:19;46:21,                      21;47:2,21;50:21;                      51:21;52:14;53:15;                      56:10;61:18;64:12;                      65:10;67:21  <b>canceled (1)</b>                      26:10  <b>capacity (4)</b>                      15:15;18:14;21:11,                      13  <b>careful (2)</b>                      14:18;15:3  <b>case (1)</b>                      54:2  <b>Cate (1)</b>                      53:19  <b>categories (4)</b>                      52:9,10;54:4;57:18  <b>Category (25)</b>                      52:11,15,21;53:3,5,                      10,21,22,23;54:1,2;                      55:8;56:6,19,23;                      57:13,14,17,22;58:2;                      59:5,5;60:5,6;66:19  <b>caught (1)</b>                      51:8  <b>causes (3)</b>                      58:14,17,20  <b>Center (7)</b>                      10:13;11:20;12:13;                      14:17;31:10;36:18;                      37:8  <b>certain (2)</b>                      29:22;36:16  <b>certainly (2)</b>                      23:9;68:9  <b>certification (1)</b>                      45:21  <b>certified (1)</b>                      46:6  <b>Chair (5)</b>                      7:13;9:6;35:14;                      39:8;66:12  <b>CHAIRMAN (114)</b>                      3:3;5:13;6:6,9,11,                      13,15,17,19,21,23;                      7:2,4,6,8,10,13,21;                      8:2,4,7,9,11,13,15,17,                      19,21,23;9:2,4,6,9;                      22:19,20,23;23:4,7,                      22;24:3,6,9;25:15,20;                      30:14,17;32:8;33:21;                      34:1,4,9,12,15,17,19,                      21,23;35:2,4,6,8,10,                      12,14;36:3;37:17,20,                      23;38:4,6,9,11,13,15,                      17,19,21,23;39:2,4,6,                      8,18;44:20;45:17;</p>	<p>46:9,21;47:4,15,17,                      23;48:20,23;49:18;                      62:2;66:11;67:6,9,12,                      15;68:1,17,20,22;                      69:1,3,5,7,9,12,14,16,                      18,22  <b>Chairwoman (3)</b>                      3:18;5:12;47:19  <b>change (8)</b>                      22:16;26:13;33:8;                      36:17,22;58:19;60:3,                      3  <b>changed (2)</b>                      33:11;36:19  <b>changes (13)</b>                      26:16;37:6;40:1,2;                      51:19;58:17,18;                      59:13,13,20;60:2,13;                      68:8  <b>changing (1)</b>                      22:11  <b>chat (7)</b>                      4:2,5,10,12,14;5:6;                      67:22  <b>check (1)</b>                      46:19  <b>Chris (5)</b>                      25:20,23;30:15,18;                      68:5  <b>circumstances (1)</b>                      26:14  <b>City (8)</b>                      16:7,16,18;18:7;                      19:17,18,21;20:18  <b>Clark (2)</b>                      9:18;25:16  <b>clean (9)</b>                      21:7,8,14,15;49:5;                      50:7;53:18;58:10;                      63:23  <b>cleaned (1)</b>                      21:13  <b>cleanup (1)</b>                      18:6  <b>clearly (1)</b>                      5:3  <b>Clem (8)</b>                      3:8,14,19;47:19;                      48:1;66:12;67:8,20  <b>click (1)</b>                      4:11  <b>close (1)</b>                      68:2  <b>closed (1)</b>                      11:1  <b>Closure (11)</b>                      31:2;39:12,20;                      40:20;41:14;42:7;                      44:13,22;45:22;46:2,                      14  <b>Code (1)</b>                      37:6  <b>Coli (3)</b></p>	<p>58:21;62:14;63:16  <b>collected (2)</b>                      66:23;67:4  <b>Collier (10)</b>                      6:13,14;8:9,10;                      34:17,18;38:11,12;                      68:22,23  <b>combined (3)</b>                      16:8,13,21  <b>comfort (1)</b>                      43:4  <b>coming (3)</b>                      11:10;16:14;17:8  <b>COMM (8)</b>                      7:9;9:11,12;22:19;                      24:2,8,15;25:19  <b>comment (10)</b>                      4:2,3,18;5:3;23:6;                      41:6;42:12;51:13,14,                      18  <b>comments (4)</b>                      3:23;4:15;41:6;                      51:16  <b>Commissioner (3)</b>                      7:8;22:21;24:6  <b>communicate (1)</b>                      27:15  <b>Communications (2)</b>                      3:9,19  <b>communities (1)</b>                      16:10  <b>community (2)</b>                      17:15;43:6  <b>community's (1)</b>                      65:4  <b>company (6)</b>                      18:2,7;20:5;21:4,                      15;45:20  <b>complete (1)</b>                      16:13  <b>completed (6)</b>                      33:5,17;37:7;40:5;                      41:17;59:4  <b>completion (3)</b>                      43:3;45:22;46:3  <b>complex (2)</b>                      65:21,22  <b>compliance (1)</b>                      46:2  <b>comply (1)</b>                      44:4  <b>components (1)</b>                      54:22  <b>compounds (2)</b>                      18:18;20:12  <b>comprised (1)</b>                      36:15  <b>concern (2)</b>                      21:10;23:13  <b>concerned (2)</b>                      17:19;18:22  <b>conclusion (2)</b>                      40:22,23</p>	<p><b>conduct (1)</b>                      12:1  <b>conducted (2)</b>                      14:2;19:7  <b>conducting (2)</b>                      13:18;15:7  <b>conference (1)</b>                      26:9  <b>confined (1)</b>                      15:1  <b>confirmed (1)</b>                      42:3  <b>congratulate (1)</b>                      10:7  <b>congratulations (2)</b>                      9:17;62:7  <b>consider (4)</b>                      31:20;35:16;53:2;                      54:3  <b>consideration (6)</b>                      27:22;28:5;30:8;                      36:14;65:1,5  <b>considered (2)</b>                      31:6;40:10  <b>consistency (4)</b>                      29:4;32:17;36:22;                      40:17  <b>consistent (1)</b>                      30:2  <b>consolidated (3)</b>                      49:3;52:3,7  <b>constantly (2)</b>                      44:10;59:21  <b>consultant (1)</b>                      45:11  <b>consultants (1)</b>                      45:22  <b>consuming (2)</b>                      43:10;51:8  <b>consumption (3)</b>                      51:3;57:9;59:3  <b>contract (5)</b>                      27:17;41:19;61:19,                      20;63:13  <b>contain (1)</b>                      19:11  <b>contaminants (6)</b>                      18:18;19:1,9,12;                      20:2,8  <b>contamination (8)</b>                      18:3,3;20:4;23:12;                      40:14;41:11,13;                      62:14  <b>context (1)</b>                      49:23  <b>continue (6)</b>                      21:3,18;25:1;                      26:17,22;60:18  <b>continued (2)</b>                      10:19;11:2  <b>continues (1)</b>                      60:16  <b>continuing (2)</b></p>
<p><b>C</b></p>				
<p><b>calculation (1)</b>                      53:14  <b>call (6)</b>                      6:2;8:4;12:3;                      34:12;38:6;54:13  <b>called (4)</b>                      4:16,21;11:5;62:23  <b>calling (2)</b>                      3:3;5:23  <b>Calvin (1)</b>                      34:7  <b>Cam (4)</b>                      9:18;10:5,6;25:16  <b>came (1)</b>                      10:20  <b>campus (3)</b>                      10:14;11:20;12:13  <b>Cam's (1)</b>                      10:5</p>				

<p>11:19;21:20  <b>Coordinator (1)</b>                      49:11  <b>copies (1)</b>                      26:22  <b>copy (3)</b>                      26:19,21;31:17  <b>Coronavirus (1)</b>                      12:9  <b>corrections (2)</b>                      7:19;28:17  <b>correctly (1)</b>                      36:1  <b>cost (2)</b>                      42:19;48:4  <b>costs (4)</b>                      40:11;42:17;48:11, 18  <b>counsel (6)</b>                      10:3;26:1;31:10, 17;32:12;36:12  <b>Counties (2)</b>                      33:8,10  <b>country (2)</b>                      61:4,12  <b>County (14)</b>                      17:18;27:23;28:1, 15,19,23;29:2;30:20, 21;31:22;32:15,19; 35:18;36:17  <b>couple (3)</b>                      16:2;17:18;63:9  <b>course (2)</b>                      12:10;25:4  <b>Courts (1)</b>                      22:15  <b>cover (1)</b>                      26:2  <b>coverage (1)</b>                      23:9  <b>COVID (3)</b>                      10:11;15:14;24:21  <b>create (3)</b>                      40:16;41:16,17  <b>creation (1)</b>                      24:17  <b>crew (2)</b>                      10:19;13:17  <b>criteria (6)</b>                      48:2;50:16,20; 51:2;66:3,5  <b>culminate (1)</b>                      43:2  <b>cumbersome (2)</b>                      42:13;43:10  <b>current (5)</b>                      10:10;27:2;29:4; 33:15;64:6  <b>currently (12)</b>                      11:17,21;13:22; 20:20;21:8;36:13; 37:11;39:21;41:2; 45:16;54:8;67:23</p>	<p><b>customer (1)</b>                      43:12  <b>cycle (5)</b>                      54:21;58:13,19; 60:2,14</p> <p style="text-align: center;"><b>D</b></p> <p><b>daily (4)</b>                      53:13;54:12;58:1; 64:17  <b>data (18)</b>                      19:17;20:21;53:7, 8;54:10,15,19;55:14, 14;56:1;59:22;61:1; 62:17,20;64:6;66:23; 67:2,4  <b>database (1)</b>                      54:14  <b>dates (1)</b>                      28:18  <b>Davidson (12)</b>                      6:15,16;8:11,12; 34:7,7,19,20;38:13, 14;69:1,2  <b>day (1)</b>                      27:5  <b>days (3)</b>                      13:10;14:1;17:18  <b>dead (2)</b>                      65:17;66:7  <b>deal (1)</b>                      12:12  <b>dealing (1)</b>                      20:9  <b>decade (1)</b>                      60:22  <b>define (2)</b>                      41:7,8  <b>defines (1)</b>                      22:7  <b>definitely (1)</b>                      47:1  <b>definitive (1)</b>                      65:7  <b>definitively (1)</b>                      64:8  <b>delayed (1)</b>                      26:7  <b>delivered (2)</b>                      19:10;20:2  <b>delivering (1)</b>                      20:19  <b>demonstrated (1)</b>                      42:18  <b>Department (12)</b>                      9:15,20;10:2,7; 11:13;12:2;15:10,12, 22;17:19;19:3;49:10  <b>Departments (1)</b>                      10:1  <b>depending (2)</b>                      4:6;26:13</p>	<p><b>describe (2)</b>                      27:20;40:6  <b>described (2)</b>                      52:10,12  <b>describes (1)</b>                      51:18  <b>design (1)</b>                      64:5  <b>designated (6)</b>                      50:11,13;51:4; 52:9,12,21  <b>designation (2)</b>                      16:21;36:23  <b>designations (3)</b>                      29:5;32:23;33:15  <b>despite (1)</b>                      41:4  <b>detail (1)</b>                      55:11  <b>details (1)</b>                      66:20  <b>Deterioration (1)</b>                      37:10  <b>determination (1)</b>                      43:23  <b>determine (2)</b>                      5:20;30:9  <b>develop (2)</b>                      50:1;60:4  <b>developed (1)</b>                      57:15  <b>developing (1)</b>                      51:22  <b>Development (6)</b>                      25:23;32:11;36:11; 60:15;63:9;64:18  <b>device (2)</b>                      4:6;20:11  <b>dialogue (1)</b>                      4:12  <b>differences (1)</b>                      50:3  <b>different (8)</b>                      5:16;22:1;25:3,4,5; 41:2;64:5;65:23  <b>difficult (2)</b>                      5:20;52:20  <b>Dioxide (4)</b>                      31:23;32:15;35:19; 36:20  <b>direct (1)</b>                      41:18  <b>direction (2)</b>                      26:14;59:15  <b>directly (1)</b>                      61:19  <b>Director (3)</b>                      3:9,19;9:18  <b>Directors (1)</b>                      6:3  <b>discharges (1)</b>                      16:12  <b>discussion (2)</b></p>	<p>34:2;37:21  <b>dispatched (1)</b>                      19:6  <b>dissolved (2)</b>                      41:11;58:23  <b>distributed (2)</b>                      10:21;18:21  <b>DNR (1)</b>                      9:18  <b>document (3)</b>                      31:1;61:5,8  <b>documentation (1)</b>                      19:13  <b>documented (2)</b>                      61:16,17  <b>documents (2)</b>                      10:20;44:10  <b>dollars (1)</b>                      43:13  <b>done (5)</b>                      14:6;27:7,11; 55:19;56:2  <b>do-not-drink-water (1)</b>                      20:18  <b>door (1)</b>                      12:6  <b>Doug (1)</b>                      39:13  <b>down (14)</b>                      10:13;18:2,9,11, 17;19:2,18,19,20; 20:3;23:15;24:16; 25:7;63:12  <b>Dr (33)</b>                      6:11,12,21,22; 7:23;8:7,8,17,18; 34:10,15,16;35:2,3; 38:2,9,10,19,20; 46:11,23;47:3,5,14; 62:5,10;65:11,15; 68:14,20,21;69:10,11  <b>draft (2)</b>                      32:1;35:20  <b>drink (2)</b>                      17:15;19:4  <b>drinking (12)</b>                      14:12;17:21,22; 18:10;19:16,18,19, 22,23;20:22;21:9; 41:20  <b>driven (1)</b>                      63:20  <b>drops (1)</b>                      59:9  <b>due (1)</b>                      27:9  <b>during (6)</b>                      10:10;13:2;14:10; 15:8;16:1;41:6</p>	<p>18:12  <b>early (3)</b>                      26:8;27:10;64:10  <b>easier (2)</b>                      55:5,12  <b>education (1)</b>                      17:5  <b>effective (2)</b>                      28:18;33:1  <b>effects (1)</b>                      66:2  <b>efficiency (1)</b>                      40:17  <b>efficiently (1)</b>                      43:14  <b>effort (1)</b>                      18:13  <b>efforts (3)</b>                      11:10;18:6;51:1  <b>eight (1)</b>                      7:15  <b>eight-hour (2)</b>                      28:4;33:9  <b>either (3)</b>                      16:4;32:23;66:17  <b>electronic (1)</b>                      12:23  <b>electronically (1)</b>                      26:18  <b>Eli (1)</b>                      45:20  <b>eligibility (1)</b>                      41:23  <b>eligible (3)</b>                      41:14;48:2,4  <b>else (3)</b>                      45:18;46:9;47:18  <b>ELTF (2)</b>                      48:1,4  <b>e-mail (2)</b>                      5:6;27:15  <b>emergency (20)</b>                      27:22;28:19;30:19; 31:21;32:1;33:1,3,6, 14,19,22;34:5,6; 35:17,21;36:13;37:3, 15;38:1;39:9  <b>Emissions (3)</b>                      29:20;30:1;37:12  <b>employee (2)</b>                      12:3,15  <b>employees (5)</b>                      10:16;12:3,5;15:8, 9  <b>encourage (1)</b>                      27:14  <b>end (2)</b>                      30:12;45:8  <b>Eng (1)</b>                      35:23  <b>engaged (1)</b>                      15:23  <b>Engdahl (5)</b></p>
			<b>E</b>	
			<b>earlier (1)</b>	

<p>35:23;36:2,6,9,10  <b>enough (2)</b>                  43:22;53:6  <b>Enrolled (1)</b>                  29:9  <b>ensure (5)</b>                  10:20;11:1;18:14;                  21:13;44:11  <b>entered (2)</b>                  32:2;35:22  <b>entering (1)</b>                  55:21  <b>entire (1)</b>                  31:11  <b>environment (1)</b>                  40:19  <b>Environmental (6)</b>                  3:5;11:13;17:2;                  46:6;49:10;68:5  <b>EPA (8)</b>                  21:22;51:6,10;                  53:17;54:21;57:16;                  62:17;63:20  <b>EPA's (3)</b>                  54:10,11;61:6  <b>errors (1)</b>                  59:22  <b>escort (1)</b>                  12:7  <b>especially (1)</b>                  25:12  <b>Etzler (18)</b>                  6:4,6,7,10;8:5,6;                  17:12;23:2,3,5,8,23;                  34:13,14;38:7,8;                  68:18,19  <b>evaluating (1)</b>                  45:11  <b>even (1)</b>                  44:12  <b>eventually (1)</b>                  11:22  <b>everybody (6)</b>                  3:20;5:21,22;                  11:18;36:7;39:16  <b>everyone (5)</b>                  4:23;9:13;12:14;                  26:15;68:10  <b>exact (1)</b>                  48:14  <b>exactly (1)</b>                  46:20  <b>excluded (1)</b>                  31:8  <b>Executive (1)</b>                  9:18  <b>existing (2)</b>                  29:21;33:2  <b>exists (1)</b>                  21:14  <b>expect (6)</b>                  10:15;22:12,12,16;                  24:19;26:11</p>	<p><b>expectation (1)</b>                  48:16  <b>expected (3)</b>                  14:8;19:8;28:2  <b>expects (1)</b>                  14:5  <b>expeditiously (1)</b>                  27:8  <b>expensive (1)</b>                  43:11  <b>exposure (2)</b>                  41:17;42:19  <b>extensive (1)</b>                  55:14  <b>extent (1)</b>                  41:22  <b>external (3)</b>                  40:7,13;42:23</p>	<p>27:17  <b>fees (2)</b>                  29:13,15  <b>few (1)</b>                  25:18  <b>fewer (2)</b>                  59:15,16  <b>field (3)</b>                  15:6,7;65:2  <b>figure (1)</b>                  49:20  <b>fill (1)</b>                  10:4  <b>final (3)</b>                  28:9;41:5;46:18  <b>finalizing (1)</b>                  22:14  <b>Finally (2)</b>                  21:21;30:4  <b>find (4)</b>                  60:1;63:19;64:3,15  <b>finding (2)</b>                  61:15;64:14  <b>finished (2)</b>                  19:7,9  <b>firefighting (1)</b>                  18:15  <b>first (16)</b>                  3:7;7:16;9:16,17;                  13:20;16:5;18:9;                  19:8;20:20;26:3;                  27:22;30:23;44:3;                  54:21;62:6;64:10  <b>fish (7)</b>                  51:3,8;57:8;59:2,2,                  2,8  <b>five (3)</b>                  13:23;43:15;52:9  <b>fixes (1)</b>                  55:11  <b>Floor (1)</b>                  31:10  <b>floors (1)</b>                  12:19  <b>flush (2)</b>                  19:21,22  <b>focus (1)</b>                  50:23  <b>folks (8)</b>                  3:15,17;4:20;                  12:23;16:3;20:8;                  25:10,14  <b>follow (2)</b>                  47:2,10  <b>follow-up (1)</b>                  44:21  <b>form (1)</b>                  46:3  <b>formal (1)</b>                  33:5  <b>formally (1)</b>                  29:12  <b>format (3)</b></p>	<p>24:16,19;25:2  <b>Fort (4)</b>                  16:18;17:3,12,13  <b>Forum (2)</b>                  67:16;68:2  <b>forward (2)</b>                  10:12;55:23  <b>fossil (1)</b>                  29:22  <b>found (10)</b>                  19:5;20:1;32:1;                  35:21;50:10;56:8;                  59:18;60:8,14;67:3  <b>four (1)</b>                  52:19  <b>Fourteen (2)</b>                  9:9;39:9  <b>frame (1)</b>                  13:21  <b>frames (2)</b>                  13:19;14:8  <b>framework (1)</b>                  44:5  <b>Frank (1)</b>                  66:13  <b>free (1)</b>                  27:17  <b>front (1)</b>                  12:6  <b>fuel (1)</b>                  29:23  <b>full (3)</b>                  54:5;56:21;57:21  <b>fully (3)</b>                  52:13,22;55:21  <b>function (1)</b>                  56:15  <b>functions (1)</b>                  41:3  <b>funds (2)</b>                  21:7;63:22  <b>further (2)</b>                  33:20;45:3  <b>future (4)</b>                  5:10;17:9;22:17;                  26:23</p>	<p>19,21,23;39:2,4,6,8,                  18;44:20;45:17;46:9,                  21;47:4,15,17,19,23;                  48:20,23;49:18;62:2;                  66:11;67:6,9,12,15;                  68:1,17,20,22;69:1,3,                  5,7,9,12,14,16,18,22  <b>gears (1)</b>                  56:5  <b>general (2)</b>                  10:3;28:10  <b>generally (2)</b>                  13:11;27:4  <b>Gilson (13)</b>                  6:17,18;8:13,14;                  34:21,22;38:15,16;                  45:19,20;46:8;69:3,4  <b>given (2)</b>                  12:8;16:3  <b>gives (1)</b>                  60:20  <b>glad (1)</b>                  30:12  <b>glitch (1)</b>                  25:6  <b>goes (1)</b>                  42:22  <b>Good (11)</b>                  9:12;13:14;25:22;                  32:6;36:7;49:7;53:2;                  55:7;62:3;63:7;67:13  <b>Government (6)</b>                  10:13;11:4,20;                  12:13;14:17;31:10  <b>Governor (7)</b>                  10:12;11:3;12:14;                  14:5,16;26:14;43:15  <b>grant (2)</b>                  16:20;63:23  <b>great (4)</b>                  3:18;12:12;23:13;                  25:6  <b>greater (2)</b>                  42:16;43:3  <b>greatly (2)</b>                  13:20;27:10  <b>greet (1)</b>                  12:6  <b>grew (1)</b>                  15:15  <b>groundwater (1)</b>                  41:11  <b>group (3)</b>                  25:11,12;45:5  <b>groups (7)</b>                  14:21;24:11,13,17;                  25:1,8;30:6  <b>guess (2)</b>                  23:19;48:15  <b>guidance (2)</b>                  22:1;39:13  <b>Guide (3)</b>                  46:14;47:7,10</p>
	<b>F</b>			
	<p><b>faced (1)</b>                  16:6  <b>facilities (7)</b>                  14:12,13,22;15:4;                  40:17;42:20;65:3  <b>facility (1)</b>                  41:12  <b>facing (1)</b>                  62:19  <b>fact (2)</b>                  12:9;16:3  <b>factors (1)</b>                  45:12  <b>facts (1)</b>                  23:19  <b>failed (3)</b>                  20:15,15,16  <b>fall (1)</b>                  48:2  <b>familiar (1)</b>                  63:2  <b>far (3)</b>                  27:2;64:6,7  <b>Fayette (2)</b>                  29:1;32:20  <b>feature (5)</b>                  4:3,5,14;5:6;67:22  <b>featured (1)</b>                  17:11  <b>federal (11)</b>                  21:21;22:9,15;                  29:1,4;30:3;32:17,                  18;33:15;36:23;37:1  <b>Fee (3)</b>                  29:6,8,13  <b>feed (1)</b>                  63:5  <b>feeding (1)</b>                  15:1  <b>feeds (1)</b>                  63:6  <b>feel (1)</b></p>	<p style="text-align: center;"><b>G</b></p> <p><b>GARD (118)</b>                  3:3,18;5:12,13;6:6,                  9,11,13,15,17,19,21,                  23;7:2,4,6,8,10,13,                  21;8:2,4,7,9,11,13,15,                  17,19,21,23;9:2,4,6,                  9;22:19,19,20,23;                  23:4,7,22;24:3,6,9;                  25:15,20;30:14,17;                  32:8;33:21;34:1,4,9,                  12,15,17,19,21,23;                  35:2,4,6,8,10,12,14;                  36:3;37:17,20,23;                  38:4,6,9,11,13,15,17,</p>		

<p><b>Gulf (2)</b> 65:17;66:8 <b>guru (1)</b> 3:10</p>	<p>23:20;55:19;65:9 <b>hoping (3)</b> 28:21;29:17,19 <b>Horn (10)</b> 6:19,20;8:15,16; 34:23;35:1;38:17,18; 69:5,7</p>	<p><b>Implementation (1)</b> 54:12 <b>important (2)</b> 14:4;54:3 <b>improved (2)</b> 60:10;66:14 <b>Improvement (2)</b> 43:16;66:15 <b>improvements (2)</b> 59:19;61:9 <b>improving (1)</b> 43:12 <b>include (4)</b> 31:7;54:17;57:4,5 <b>included (2)</b> 33:7;57:10 <b>includes (3)</b> 51:13,20;54:9 <b>including (1)</b> 28:16 <b>incorporate (1)</b> 37:5 <b>increases (2)</b> 29:8,16 <b>increasing (1)</b> 21:10 <b>indeed (1)</b> 43:23 <b>Independent (8)</b> 31:2;39:12,20; 40:20;41:14;42:7; 44:13;46:14 <b>independently (1)</b> 43:7 <b>Indiana (17)</b> 3:5;10:13;11:4,5; 12:1;17:11;22:7; 31:10;37:6;49:9; 54:6;55:7;56:3;58:4; 61:4,11;65:17 <b>Indianapolis (3)</b> 16:8,16,22 <b>Indiana's (3)</b> 49:12;51:11;52:5 <b>indicate (1)</b> 4:3 <b>indicated (1)</b> 19:17 <b>indicating (2)</b> 13:17;21:6 <b>indication (1)</b> 20:16 <b>indications (1)</b> 19:15 <b>individual (2)</b> 56:9;57:1 <b>Indra (1)</b> 66:13 <b>industrial (1)</b> 18:4 <b>informality (1)</b> 40:1 <b>information (18)</b></p>	<p>24:1;43:22;44:15; 45:4,9;51:7;53:6; 55:10,15,22;61:15, 20;62:13,22;63:5,11, 13;64:20 <b>informed (1)</b> 26:15 <b>initial (1)</b> 43:20 <b>initially (1)</b> 10:13 <b>initiation (1)</b> 43:18 <b>inspection (6)</b> 13:17,21,22;14:21; 31:9,16 <b>inspections (8)</b> 13:17;14:10,11,14, 19;15:1,2,7 <b>inspection's (1)</b> 14:1 <b>inspectors (4)</b> 15:5,6;19:6;21:19 <b>institutions (1)</b> 43:5 <b>instructions (1)</b> 3:13 <b>insufficient (1)</b> 53:8 <b>Integrated (7)</b> 49:11;51:11;54:9, 16,22;61:17,22 <b>integrity (1)</b> 58:23 <b>intended (1)</b> 57:21 <b>interactions (1)</b> 65:22 <b>interested (3)</b> 54:4;61:14;63:12 <b>interesting (1)</b> 3:8 <b>interview (1)</b> 5:8 <b>into (25)</b> 10:20;11:15;12:17; 15:5;18:20;29:11; 32:2;35:22;37:6; 41:23;43:19;44:6; 47:12;48:8;52:8,8; 54:19;55:22;60:6; 62:22;63:5,6;64:16; 65:1,5 <b>intrusion (1)</b> 41:20 <b>invariably (1)</b> 59:23 <b>investigate (1)</b> 43:8 <b>investigated (2)</b> 18:6;44:3 <b>investigation (4)</b> 40:8,23;42:21;</p>	<p>43:20 <b>investigations (2)</b> 21:20;42:11 <b>investigators (1)</b> 19:6 <b>involved (2)</b> 40:8;52:18 <b>IR (1)</b> 54:16 <b>issuance (2)</b> 13:15;45:12 <b>issue (3)</b> 13:11;21:17;23:11 <b>issued (9)</b> 13:7;17:14;19:2; 21:22;22:9;32:22; 37:7,9,11 <b>issues (3)</b> 10:1;16:2;18:15 <b>issuing (9)</b> 13:3,6,6,12,18,21, 22;14:7;16:18 <b>iterative (1)</b> 42:11</p>
<p><b>H</b></p>	<p><b>I</b></p>			<p><b>J</b></p>
<p><b>Hackney (4)</b> 32:4,6,9,10 <b>hand (6)</b> 4:2,5,13,14,19; 67:22 <b>handled (1)</b> 27:8 <b>handles (1)</b> 27:8 <b>happen (3)</b> 23:21;47:6;60:10 <b>happy (2)</b> 21:6;37:15 <b>hard (3)</b> 15:12;66:6,6 <b>harder (1)</b> 55:10 <b>Harrison (2)</b> 29:1;32:21 <b>Health (5)</b> 15:10,12,22;17:19; 40:18 <b>hear (4)</b> 5:22;32:7;36:7; 39:17 <b>heard (2)</b> 11:6;53:12 <b>Hearing (2)</b> 7:21;37:23 <b>held (3)</b> 14:14;26:12;51:14 <b>Hello (1)</b> 39:16 <b>help (4)</b> 15:9,20,21;36:5 <b>helps (2)</b> 20:11;55:4 <b>hence (1)</b> 53:18 <b>here's (1)</b> 57:20 <b>high (2)</b> 55:6,7 <b>history (1)</b> 19:13 <b>Holcomb (2)</b> 10:12;11:3 <b>Holcomb's (1)</b> 43:15 <b>hold (1)</b> 26:8 <b>home (3)</b> 10:17,17;11:16 <b>homes (3)</b> 19:10;20:3;23:12 <b>hope (3)</b></p>	<p><b>House (1)</b> 29:9 <b>How's (1)</b> 62:23 <b>human (1)</b> 40:18 <b>hundred (1)</b> 59:10</p> <p><b>IAC (7)</b> 31:21;32:14;33:1; 35:17;36:14;37:10, 12 <b>icon (1)</b> 4:11 <b>ICP (7)</b> 43:3,19;44:4; 47:12,12;48:2,9 <b>idea (1)</b> 60:20 <b>IDEM (25)</b> 3:9,20;10:16; 12:15;13:2,15;8,9, 18;17:17;18:5;33:3, 18;37:2,14;40:15; 42:9,12;44:22;48:3; 52:5;54:7,18;55:4; 57:15;60:14 <b>idemingov (1)</b> 5:7 <b>IDEM's (8)</b> 5:9;15:16;27:4,13; 31:12;36:11;48:3; 51:21 <b>identify (3)</b> 5:1;50:9;63:18 <b>immediately (1)</b> 19:6 <b>Impaired (14)</b> 31:4;49:3,13;50:8, 10;53:1,10;57:7,10; 58:3;59:16;60:7,18; 66:23 <b>impairment (10)</b> 53:22;56:22;57:22; 58:12,17,20,22; 59:11;64:4,9 <b>impairments (26)</b> 51:23;54:6;55:22; 56:7,8,11,18,22,23; 57:8,9,14;58:14;59:1, 3,9,16,17;60:14; 63:19,19;64:9,14,15; 65:16;66:14</p>			<p><b>January (6)</b> 7:17;28:13;29:17; 33:7,11;51:15 <b>Joanne (4)</b> 34:10;38:2;46:12; 62:6 <b>job (1)</b> 58:15 <b>Jody (7)</b> 49:5,9;62:2,4; 66:13,14;67:13 <b>joined (1)</b> 5:5 <b>joining (2)</b> 3:20;4:17 <b>July (3)</b> 3:1,5,4;32:19 <b>June (1)</b> 17:14</p> <p style="text-align: center;"><b>K</b></p> <p><b>Karla (2)</b> 26:17;27:17 <b>keep (2)</b> 3:21;26:15 <b>keeping (2)</b> 14:6;44:10 <b>Ken (3)</b> 8:3;38:5;68:16 <b>key (2)</b> 50:5;60:11 <b>kind (10)</b> 16:15;22:1,3;25:2; 44:21;56:4,20;63:1, 4;64:12</p>

<p><b>kindly (1)</b> 12:20</p> <p><b>Kindrick (1)</b> 26:17</p> <p><b>kinds (3)</b> 15:23;17:1;66:2</p> <p><b>knew (3)</b> 18:17;20:8;21:2</p> <p><b>knowledge (1)</b> 53:1</p> <p><b>known (5)</b> 20:10;49:5;54:5; 65:7;66:22</p> <p><b>knows (1)</b> 52:5</p> <p><b>Krystal (5)</b> 32:4,5,10;33:22; 34:1</p>	<p><b>lending (1)</b> 43:5</p> <p><b>less (4)</b> 48:17,18,19;59:10</p> <p><b>letter (6)</b> 16:18;21:5;40:5, 22;41:4;43:2</p> <p><b>letters (1)</b> 42:12</p> <p><b>letting (1)</b> 3:14</p> <p><b>level (3)</b> 21:21;43:4;45:15</p> <p><b>levels (1)</b> 66:2</p> <p><b>life (2)</b> 50:17;59:1</p> <p><b>light (1)</b> 41:21</p> <p><b>likely (1)</b> 65:6</p> <p><b>likewise (1)</b> 50:23</p> <p><b>Lilly (1)</b> 45:20</p> <p><b>limited (1)</b> 48:3</p> <p><b>limits (1)</b> 42:8</p> <p><b>line (1)</b> 43:14</p> <p><b>lines (2)</b> 19:22,23</p> <p><b>link (1)</b> 63:14</p> <p><b>liquids (1)</b> 41:21</p> <p><b>list (28)</b> 27:1;31:3,4;49:1,2, 5,6,12;50:1,4,8;51:9, 17,19,22;52:2,3,4,7; 53:19;54:1,3,10,17; 56:6;59:6;62:7;64:16</p> <p><b>listed (3)</b> 66:17,18,19</p> <p><b>listing (1)</b> 49:4</p> <p><b>little (15)</b> 5:15;10:9;11:7; 17:5;18:12;25:7,13; 39:23;40:2,16;42:2, 9;49:23;51:9;58:19</p> <p><b>Livingston (1)</b> 47:20</p> <p><b>load (4)</b> 53:13;54:12;58:1; 64:17</p> <p><b>local (1)</b> 18:2</p> <p><b>location (1)</b> 65:2</p> <p><b>logical (1)</b> 14:20</p>	<p><b>logistical (1)</b> 15:19</p> <p><b>long (1)</b> 22:15</p> <p><b>longer (2)</b> 60:7;67:5</p> <p><b>long-term (1)</b> 44:21</p> <p><b>look (4)</b> 56:6,13;66:6,9 63:7</p> <p><b>looking (1)</b> 59:22</p> <p><b>looks (1)</b> 63:7</p> <p><b>lot (8)</b> 52:14,19;58:9,10; 60:23;61:1;65:3,5</p> <p><b>Louks (10)</b> 39:13,15,16,19; 45:2;46:1,17;47:1,8; 48:6</p> <p><b>low (5)</b> 40:10,18;41:8; 43:23;44:16</p> <p><b>lower (1)</b> 48:16</p> <p><b>low-threat (2)</b> 42:14;43:8</p>	<p><b>Management (13)</b> 11:14;40:12;44:6, 18;45:7;49:10;54:15; 55:3,14,14;56:1; 62:18,21</p> <p><b>mandated (1)</b> 12:14</p> <p><b>mandates (1)</b> 63:20</p> <p><b>manner (2)</b> 14:20;15:3</p> <p><b>map (7)</b> 57:20,20;58:6,7,9, 10;60:20</p> <p><b>March (1)</b> 10:14</p> <p><b>Marion (4)</b> 28:1;30:21;35:18; 36:16</p> <p><b>mask (4)</b> 12:16,18,19,20</p> <p><b>masks (1)</b> 12:15</p> <p><b>materials (1)</b> 61:23</p> <p><b>maximum (5)</b> 53:13,14;54:12; 58:1;64:17</p> <p><b>may (12)</b> 4:7;11:12,12; 18:13;21:21;28:16; 33:20;37:1,16;41:1; 42:16;49:15</p> <p><b>mean (4)</b> 19:3;22:19;52:16; 60:7</p> <p><b>means (3)</b> 50:10;57:14;66:16</p> <p><b>meant (1)</b> 59:7</p> <p><b>measures (1)</b> 61:7</p> <p><b>media (4)</b> 5:5,7;23:9,18</p> <p><b>meet (5)</b> 12:4;40:13,20; 53:15;64:1</p> <p><b>meeting (22)</b> 3:4,5,7;4:23;5:8, 11,17;7:18;9:14; 12:4,10,23;20:22; 26:21;31:7,13,14; 32:3;35:22;67:1; 68:4,8</p> <p><b>meetings (8)</b> 24:12;25:17;26:4, 5,8,10,11,23</p> <p><b>members (7)</b> 5:2,5;26:2,18;32:6; 36:6;49:7</p> <p><b>memory (1)</b> 17:7</p> <p><b>mention (5)</b> 14:4;16:3;23:14; 59:7;61:2</p>	<p><b>menu (3)</b> 4:7,8,10</p> <p><b>mercury (2)</b> 59:2,8</p> <p><b>messages (1)</b> 27:14</p> <p><b>messy (1)</b> 58:7</p> <p><b>method (6)</b> 12:11;24:23;42:10, 15;43:9;48:15</p> <p><b>methodology (2)</b> 49:4;51:21</p> <p><b>methods (1)</b> 45:16</p> <p><b>Mexico (1)</b> 66:8</p> <p><b>Michigan (3)</b> 57:4,5,8</p> <p><b>microphone (2)</b> 3:21;47:21</p> <p><b>middle (1)</b> 4:10</p> <p><b>might (7)</b> 3:7;5:19;15:14; 61:2;65:17;66:3,18</p> <p><b>mirror (1)</b> 23:10</p> <p><b>modeling (1)</b> 66:10</p> <p><b>moment (3)</b> 22:11;49:14;50:6</p> <p><b>monitor (7)</b> 52:17,19;56:15,16; 60:18;63:18,18</p> <p><b>monitored (1)</b> 60:22</p> <p><b>Monitoring (13)</b> 29:20,21,23;51:11; 60:15,21,23;63:22; 64:2,3,11,18,19</p> <p><b>months (1)</b> 16:23</p> <p><b>more (18)</b> 3:16;17:1;26:4; 37:13;40:3,16;42:10; 43:13;45:6;50:11; 55:4;56:2,10,16; 61:15;64:6,8,19</p> <p><b>most (11)</b> 10:18;11:17;33:6; 50:16,20;51:2;57:1; 61:16;64:1,1;65:6</p> <p><b>mostly (1)</b> 56:15</p> <p><b>motion (5)</b> 7:22;34:4,5;38:1; 68:12</p> <p><b>mouse (1)</b> 4:8</p> <p><b>mouthful (1)</b></p>
<b>L</b>		<b>M</b>		
<p><b>laid (3)</b> 11:3;14:9;44:5</p> <p><b>Lake (9)</b> 28:3,16;33:8,10, 11;56:17;57:4,5,8</p> <p><b>lakes (2)</b> 56:17;57:4</p> <p><b>Land (2)</b> 18:5;65:1</p> <p><b>landscape (1)</b> 22:17</p> <p><b>large (1)</b> 60:1</p> <p><b>largely (1)</b> 56:14</p> <p><b>larger (3)</b> 52:4;62:18;66:7</p> <p><b>last (7)</b> 9:19;11:8;25:18; 44:9;51:20;60:22; 63:9</p> <p><b>lately (2)</b> 16:5;63:7</p> <p><b>later (1)</b> 17:18</p> <p><b>lawn (1)</b> 36:4</p> <p><b>lead (1)</b> 61:12</p> <p><b>leading (2)</b> 61:12;62:7</p> <p><b>leads (1)</b> 61:4</p> <p><b>least (1)</b> 31:12</p> <p><b>leave (1)</b> 50:5</p> <p><b>left (2)</b> 57:22;69:9</p> <p><b>Legal (5)</b> 26:1;31:9,17; 32:12;36:11</p>	<p><b>ma'am (1)</b> 6:16</p> <p><b>Madam (1)</b> 66:12</p> <p><b>mailed (1)</b> 26:19</p> <p><b>main (1)</b> 52:9</p> <p><b>mainly (1)</b> 40:16</p> <p><b>maintain (2)</b> 33:14;36:22</p> <p><b>maintained (1)</b> 13:3</p> <p><b>maintaining (1)</b> 13:14</p> <p><b>major (1)</b> 60:12</p> <p><b>majority (5)</b> 11:16;56:12,13; 57:12;58:8</p> <p><b>makes (1)</b> 55:5</p> <p><b>making (5)</b> 3:15;5:3;24:18; 36:22;59:22</p> <p><b>manage (1)</b> 44:17</p> <p><b>managed (1)</b> 39:22</p>			

<p>54:13  <b>move (3)</b>                  4:7;48:4,23  <b>moved (7)</b>                  8:1;34:8;38:3;                  54:18;60:6;64:16;                  68:14  <b>moving (1)</b>                  10:12  <b>mower (1)</b>                  36:4  <b>Mrs (1)</b>                  35:8  <b>much (8)</b>                  5:14;12:8;25:16;                  42:10;44:8;55:11;                  65:12;67:13  <b>must (2)</b>                  32:22;69:9  <b>mute (1)</b>                  6:8  <b>muted (1)</b>                  3:21  <b>mutual (1)</b>                  10:1  <b>myself (1)</b>                  27:17</p>	<p>39:2,3;69:16,17,18  <b>new (8)</b>                  21:22;42:3;44:15;                  54:10,23;55:23;63:2,                  4  <b>newly (1)</b>                  22:8  <b>news (2)</b>                  16:5;17:10  <b>next (5)</b>                  17:4;26:11;61:22;                  66:8;68:4  <b>NF (1)</b>                  45:2  <b>nice (2)</b>                  56:4;58:10  <b>Niemiec (14)</b>                  6:21,22;7:23,23;                  8:17,18;35:2,3;38:19,                  20;68:14,15;69:10,11  <b>nine (3)</b>                  4:19,20;7:15  <b>nobody's (1)</b>                  44:1  <b>no-further-action (5)</b>                  40:4,21;41:4;43:2;                  45:13  <b>nonaqueous (1)</b>                  41:21  <b>nonattainment (3)</b>                  29:3;32:16;36:19  <b>none (2)</b>                  7:21;37:23  <b>Nonetheless (1)</b>                  56:17  <b>nonexpiring (2)</b>                  30:5,7  <b>nonpoint (2)</b>                  61:9,10  <b>nonrule (2)</b>                  31:1;39:12  <b>normal (1)</b>                  26:9  <b>normally (1)</b>                  5:17  <b>note (1)</b>                  14:5  <b>notes (1)</b>                  44:9  <b>notice (2)</b>                  23:16;51:18  <b>noticed (1)</b>                  23:17  <b>notifying (1)</b>                  18:23  <b>noting (1)</b>                  41:5  <b>November (1)</b>                  26:6  <b>NOx (2)</b>                  29:19;30:1  <b>NPD (4)</b>                  39:20;40:2;43:14;</p>	<p>44:5  <b>NPDES (1)</b>                  28:9  <b>number (12)</b>                  13:10;15:16;16:12;                  24:9,13,17;53:3;                  55:7;56:22;60:13,19;                  61:13  <b>numbers (4)</b>                  57:3,7;58:19;59:8  <b>numeric (1)</b>                  66:4  <b>nutrient (1)</b>                  65:15  <b>nutrient-related (1)</b>                  66:1  <b>nutrients (2)</b>                  58:23;65:20</p>	<p>18:1,4;22:15;24:7;                  25:4;26:5,5;27:5;                  28:3,10;29:6;31:12;                  44:9,20;47:20;49:14;                  50:4,5,11;52:8;                  56:10;59:9,10;62:16;                  65:12;66:13;68:2  <b>one-hour (1)</b>                  36:20  <b>onerous (1)</b>                  43:10  <b>ones (3)</b>                  57:23;59:11;61:16  <b>ongoing (1)</b>                  59:21  <b>on-line (1)</b>                  54:14  <b>only (3)</b>                  11:21;36:17;55:22  <b>open (6)</b>                  11:21,22;15:13;                  31:16;67:15;68:2  <b>operates (1)</b>                  40:4  <b>operating (2)</b>                  13:9;22:6  <b>opinion (1)</b>                  43:1  <b>opportunity (1)</b>                  43:7  <b>opposed (2)</b>                  17:22;55:22  <b>option (1)</b>                  4:13  <b>options (1)</b>                  4:14  <b>order (11)</b>                  3:4;7:16;17:14,17;                  19:3;20:19;40:14;                  44:11;63:18;64:1,3  <b>organic (2)</b>                  18:18;20:11  <b>organizing (1)</b>                  24:23  <b>others (1)</b>                  49:8  <b>otherwise (1)</b>                  5:19  <b>ours (1)</b>                  9:23  <b>out (27)</b>                  9:17;10:6;11:3;                  14:9,19;15:2,5;19:5;                  20:5,11;21:7,13,16,                  19;22:14;24:20;                  26:17;39:22;44:5;                  49:20;59:3;60:5;                  61:15;62:23;64:2,13;                  66:20  <b>over (5)</b>                  3:12;5:12;25:17;                  58:17;67:19  <b>overflow (1)</b></p>	<p>16:21  <b>oversight (2)</b>                  42:9;48:3  <b>oxygen (1)</b>                  58:23  <b>ozone (5)</b>                  28:4,17;33:9,11,12</p>
<b>P</b>				
<p style="text-align: center;"><b>N</b></p> <p><b>name (7)</b>                  3:19;5:4;32:9;                  36:9;49:8;53:18;                  67:19  <b>narrow (1)</b>                  22:3  <b>National (4)</b>                  31:23;32:15;35:19;                  36:21  <b>Natural (3)</b>                  9:20;10:2,8  <b>nay (1)</b>                  5:20  <b>nays (3)</b>                  9:10;35:15;39:9  <b>near (3)</b>                  5:10;17:13;22:17  <b>necessarily (1)</b>                  60:7  <b>necessary (5)</b>                  26:16;33:14;41:1;                  42:15;48:10  <b>need (12)</b>                  4:21;7:21;12:21;                  21:12;27:7;28:2;                  34:4;38:1,4;47:15;                  64:7;68:11  <b>needed (1)</b>                  28:5  <b>needs (3)</b>                  6:1;30:9;40:13  <b>Nelson (11)</b>                  7:4,5;9:2,3;35:8,9;</p>	<p><b>objectives (1)</b>                  64:2  <b>obser (1)</b>                  65:2  <b>observations (1)</b>                  65:2  <b>Obviously (2)</b>                  48:15;56:12  <b>occurring (1)</b>                  20:12  <b>occurs (2)</b>                  64:18,19  <b>o'clock (1)</b>                  3:1  <b>off (3)</b>                  3:17;20:18;59:9  <b>offered (2)</b>                  12:18;21:15  <b>office (15)</b>                  10:19,21;11:15,18;                  13:8;18:5;26:1;27:2,                  5,7,12;31:9,17;32:11;                  36:11  <b>offices (5)</b>                  11:1,2,11;12:7;                  13:5  <b>Offset (1)</b>                  37:12  <b>off-site (1)</b>                  41:13  <b>often (3)</b>                  21:12;65:22;66:1  <b>old (2)</b>                  55:9;63:3  <b>older (1)</b>                  55:17  <b>once (7)</b>                  11:17;18:16;19:19;                  40:5;48:8;60:4;64:15  <b>one (34)</b>                  3:16;5:15;7:14;                  12:18,21;17:4,20;</p>	<p><b>packet (3)</b>                  31:11;32:2;35:21  <b>packets (2)</b>                  31:7,8  <b>page (1)</b>                  31:18  <b>pandemic (7)</b>                  10:11,23;12:9;                  13:2;14:11;15:8;16:1  <b>paper (4)</b>                  26:19,21,22;54:20  <b>parameter (1)</b>                  59:9  <b>parameters (2)</b>                  65:23;66:1  <b>parse (1)</b>                  66:20  <b>part (10)</b>                  11:8;15:21;28:18;                  49:20;51:10;52:3;                  54:16;61:6;62:18,19  <b>participation (1)</b>                  15:16  <b>particularly (1)</b>                  12:2  <b>parties (1)</b>                  47:7  <b>partly (1)</b>                  63:20  <b>partner (1)</b>                  9:23  <b>parts (2)</b>                  32:14,19  <b>party (2)</b>                  45:10;46:6  <b>past (2)</b>                  55:16,20  <b>pathways (1)</b>                  41:17  <b>patience (1)</b>                  25:13  <b>Paul (1)</b>                  45:19  <b>payment (1)</b>                  21:15  <b>PCB's (1)</b>                  59:1  <b>Pedersen (3)</b>                  25:20,22,23  <b>people (10)</b>                  3:15;10:22;11:15,                  16;13:7;15:14;24:19;                  25:3;41:19;51:21</p>		

<p><b>people's (2)</b> 19:10;20:3</p> <p><b>per (1)</b> 27:5</p> <p><b>percent (2)</b> 13:12;42:6</p> <p><b>performing (1)</b> 15:19</p> <p><b>perhaps (1)</b> 48:17</p> <p><b>period (4)</b> 27:5;41:7;51:14,15</p> <p><b>permission (1)</b> 16:15</p> <p><b>permit (7)</b> 13:4,11,14;29:6,8,13;33:3</p> <p><b>permits (6)</b> 13:3,12;28:10;32:22;37:7,11</p> <p><b>permitted (2)</b> 37:4;65:3</p> <p><b>permitting (1)</b> 33:4</p> <p><b>Perry (2)</b> 36:18;37:8</p> <p><b>person (1)</b> 67:19</p> <p><b>persons (1)</b> 40:19</p> <p><b>petroleum (3)</b> 40:9;41:9,10</p> <p><b>Phase (2)</b> 11:8;41:21</p> <p><b>phases (1)</b> 11:6</p> <p><b>phone (4)</b> 4:17,19,20,22</p> <p><b>picked (1)</b> 64:17</p> <p><b>picture (5)</b> 54:5;55:4;56:21;57:21;58:12</p> <p><b>piece (1)</b> 17:5</p> <p><b>PIGOTT (8)</b> 7:9,10;9:11,12;24:2,8,15;25:19</p> <p><b>Pillars (1)</b> 43:15</p> <p><b>place (3)</b> 12:10;20:10,20</p> <p><b>placed (1)</b> 64:16</p> <p><b>plan (4)</b> 11:4,7,11;40:1</p> <p><b>plans (4)</b> 15:1;26:12;48:10,10</p> <p><b>play (1)</b> 49:21</p> <p><b>Please (11)</b> 3:21;4:2,13;5:1,3,</p>	<p>6;9;11;26:19;47:23;58:5;63:12</p> <p><b>pleasure (1)</b> 67:14</p> <p><b>pm (1)</b> 3:1</p> <p><b>PM2.5 (1)</b> 28:17</p> <p><b>point (1)</b> 65:8</p> <p><b>policy (5)</b> 31:1;39:12,13;40:15;46:13</p> <p><b>pollutant (2)</b> 53:14,16</p> <p><b>pollutants (1)</b> 36:16</p> <p><b>Porter (5)</b> 28:3,17;33:8,10,12</p> <p><b>pose (2)</b> 40:18;42:16</p> <p><b>position (1)</b> 58:16</p> <p><b>possible (2)</b> 12:22;27:9</p> <p><b>posted (2)</b> 5:9;31:18</p> <p><b>potential (1)</b> 43:4</p> <p><b>potentially (1)</b> 22:2</p> <p><b>practicable (1)</b> 41:22</p> <p><b>preapproval (3)</b> 48:4,6,11</p> <p><b>prefer (1)</b> 12:8</p> <p><b>preferred (1)</b> 24:23</p> <p><b>preliminarily (3)</b> 28:8,10,12</p> <p><b>preliminary (3)</b> 29:7,20;42:4</p> <p><b>present (8)</b> 3:6;6:10;7:15;32:4;36:3;39:13;49:6,12</p> <p><b>presentation (7)</b> 30:23;31:3,4;39:11;49:1,2;61:3</p> <p><b>presentations (2)</b> 17:4;30:22</p> <p><b>presented (4)</b> 7:19;27:23;33:19;37:15</p> <p><b>press (1)</b> 21:1</p> <p><b>pressing (2)</b> 4:19,22</p> <p><b>pretty (1)</b> 44:8</p> <p><b>prevent (1)</b> 20:12</p>	<p><b>Prevention (1)</b> 37:9</p> <p><b>previously (2)</b> 23:15;66:22</p> <p><b>primarily (1)</b> 52:15</p> <p><b>primary (1)</b> 36:20</p> <p><b>prior (5)</b> 31:12;43:18;45:12;47:10;50:4</p> <p><b>prioritized (1)</b> 14:11</p> <p><b>probably (8)</b> 11:6;18:8;22:15;24:16;26:12;28:4,5;65:20</p> <p><b>problem (2)</b> 67:3,5</p> <p><b>problems (3)</b> 20:12;60:1;64:3</p> <p><b>process (21)</b> 15:17;22:13;31:2;39:12,20,22;40:7,21;41:15;42:7;43:3;44:13,23;46:14;47:6,13;48:6,14;51:12;54:8;64:21</p> <p><b>processes (3)</b> 16:12;18:4;22:10</p> <p><b>producing (1)</b> 60:23</p> <p><b>product (1)</b> 14:8</p> <p><b>professional (1)</b> 46:7</p> <p><b>Program (5)</b> 29:9;40:3;42:1;43:19;47:12</p> <p><b>programs (1)</b> 61:12</p> <p><b>project (4)</b> 44:6,17;45:6,8</p> <p><b>projects (1)</b> 16:14</p> <p><b>prominently (1)</b> 17:11</p> <p><b>pronouncing (1)</b> 36:1</p> <p><b>proposed (2)</b> 13:20;30:2</p> <p><b>protected (1)</b> 50:23</p> <p><b>protecting (2)</b> 50:22;51:1</p> <p><b>protective (1)</b> 44:12</p> <p><b>provide (10)</b> 3:13;12:21;21:7,8,15,23;40:2;43:21;63:22;64:7</p> <p><b>provided (1)</b> 46:5</p>	<p><b>provides (2)</b> 29:4;43:3</p> <p><b>providing (2)</b> 21:14;51:6</p> <p><b>public (12)</b> 4:1;5:2;31:9,16;50:18;51:13,14,16;62:12,19,23;67:7</p> <p><b>published (3)</b> 32:18;36:23;61:13</p> <p><b>pulled (1)</b> 55:19</p> <p><b>pulling (1)</b> 55:15</p> <p><b>purchasers (1)</b> 43:5</p> <p><b>pursuant (2)</b> 37:10,12</p> <p><b>put (11)</b> 12:20;17:7;20:9;29:11;41:5;46:15;52:7;53:5,20,20;62:22</p> <p><b>putting (2)</b> 25:8;46:18</p>	<p>64:13</p> <p><b>reach (2)</b> 12:19;27:16</p> <p><b>reached (2)</b> 18:4;23:12</p> <p><b>read (1)</b> 47:21</p> <p><b>ready (4)</b> 27:21;28:8,21;30:10</p> <p><b>real (1)</b> 3:9</p> <p><b>really (5)</b> 23:18;55:4,17;57:6;59:11</p> <p><b>reason (2)</b> 63:17;65:19</p> <p><b>reasonably (1)</b> 50:21</p> <p><b>receive (4)</b> 17:21;26:22;40:21;41:6</p> <p><b>received (2)</b> 13:16;51:16</p> <p><b>recent (1)</b> 61:16</p> <p><b>recently (6)</b> 16:6;17:10;21:5,22;30:3;33:6</p> <p><b>receptionist (1)</b> 12:19</p> <p><b>receptors (1)</b> 41:18</p> <p><b>recon (1)</b> 64:13</p> <p><b>record (3)</b> 5:4;32:2;35:22</p> <p><b>recorded (2)</b> 5:9;6:1</p> <p><b>records (1)</b> 65:2</p> <p><b>recovered (1)</b> 41:22</p> <p><b>recreational (2)</b> 50:17;58:22</p> <p><b>redesignate (3)</b> 31:22;32:14;35:18</p> <p><b>redesignation (7)</b> 28:1,2,16;29:1;30:21,21;32:18</p> <p><b>redirected (1)</b> 42:20</p> <p><b>reduce (1)</b> 16:12</p> <p><b>reducing (1)</b> 13:21</p> <p><b>refresh (1)</b> 17:7</p> <p><b>regarding (4)</b> 16:8;18:14;31:1,4</p> <p><b>Register (2)</b> 32:18;37:1</p> <p><b>regular (6)</b></p>
<b>Q</b>				
<p><b>Quality (20)</b> 18:5;31:23;32:16;35:20;36:21;50:14,16;51:2,5;52:5;53:16;54:19;55:5,6,7;56:3;59:18;61:8;64:23;67:1</p> <p><b>quickly (1)</b> 58:7</p> <p><b>quite (2)</b> 10:4;53:3</p> <p><b>quorum (1)</b> 3:6</p> <p><b>quote (1)</b> 4:18</p>				
<b>R</b>				
<p><b>radar (1)</b> 17:8</p> <p><b>raise (1)</b> 4:18</p> <p><b>raised (5)</b> 4:2,5,12,14;67:22</p> <p><b>rare (1)</b> 52:17</p> <p><b>rather (1)</b> 50:15</p> <p><b>rationale (1)</b> 50:19</p> <p><b>raw (4)</b> 18:19;19:1,7,8</p> <p><b>Raytheon (5)</b> 18:2;20:5,7;21:4,4</p> <p><b>re (1)</b></p>				



<p>13:7;19:15;28:20; 33:15,16;37:5 <b>regulate (1)</b> 22:4 <b>regulated (1)</b> 43:6 <b>regulation (1)</b> 22:2 <b>regulatory (4)</b> 22:10,10,16;40:11 <b>related (2)</b> 14:13;27:18 <b>relation (1)</b> 33:10 <b>relative (1)</b> 66:15 <b>release (4)</b> 40:10,22;41:16; 44:15 <b>released (1)</b> 30:3 <b>releases (12)</b> 40:9,18;41:9,10; 42:3,6,14,16,17,20; 43:21;44:7 <b>relevant (1)</b> 16:4 <b>remaining (1)</b> 59:20 <b>remediate (1)</b> 43:8 <b>remediation (4)</b> 40:9;41:1;42:22; 48:10 <b>remember (5)</b> 3:21;5:1;16:5; 55:16;56:19 <b>reminder (1)</b> 67:21 <b>remote (3)</b> 3:7;11:19;68:8 <b>remotely (5)</b> 26:12;27:6,9,14,16 <b>renewed (1)</b> 28:2 <b>reopen (1)</b> 14:18 <b>reopened (3)</b> 14:16;18:23;23:16 <b>reopening (2)</b> 11:9,11 <b>report (19)</b> 9:11,16;10:19; 13:16;22:18;23:10, 19;25:21;30:12; 45:23;49:11;51:12; 54:9,16,20,23;55:6; 61:17,23 <b>reported (3)</b> 10:23;23:11;66:14 <b>reporting (6)</b> 11:18;13:5;28:12; 29:22;30:1;42:11</p>	<p><b>reports (3)</b> 13:19,22,23 <b>reprioritize (1)</b> 44:14 <b>request (1)</b> 5:8 <b>requested (2)</b> 19:21;26:20 <b>requesting (1)</b> 37:2 <b>requests (3)</b> 27:10;33:18;37:14 <b>require (7)</b> 29:16;42:17,21; 53:20;55:13;57:18; 58:1 <b>required (9)</b> 12:5;16:20;29:9; 43:21;48:18;51:5; 53:11,17,23 <b>requirements (4)</b> 20:23;29:22;40:20; 45:21 <b>requires (3)</b> 50:9;64:5,6 <b>research (1)</b> 42:4 <b>reserving (1)</b> 44:14 <b>residents (5)</b> 17:15;18:21;19:4; 21:9;23:13 <b>Resources (7)</b> 9:20;10:3,8;42:23, 23;64:7,8 <b>response (16)</b> 6:5;7:20;8:22; 22:22;24:5;30:16; 33:23;34:3;37:19,22; 42:12;45:13;48:22; 67:11;69:6,8 <b>Responsible (3)</b> 40:19;45:10;46:6 <b>responsibly (1)</b> 43:13 <b>responsive (1)</b> 42:13 <b>rest (3)</b> 26:10;27:6;57:16 <b>restarted (1)</b> 18:13 <b>restoration (1)</b> 61:10 <b>restrictive (1)</b> 37:13 <b>result (3)</b> 52:16;59:20;61:9 <b>results (2)</b> 20:17;50:2 <b>retested (2)</b> 19:23;20:4 <b>retirement (1)</b> 10:6</p>	<p><b>returning (1)</b> 15:6 <b>review (4)</b> 30:5,6;55:15;59:21 <b>reviewing (2)</b> 13:4;45:9 <b>revise (2)</b> 31:21;35:17 <b>revises (2)</b> 29:21;32:13 <b>right (15)</b> 24:14;36:2;42:5; 43:14;44:14;47:7,8, 8;48:7,12;49:17; 50:7;58:2;59:14;63:6 <b>rigid (1)</b> 42:10 <b>risk (5)</b> 42:16,19;45:1,11; 48:16 <b>robust (2)</b> 64:6,19 <b>roll (6)</b> 5:23;6:2;8:4;15:2; 34:12;38:6 <b>roll-call (2)</b> 5:19;68:13 <b>rolling (4)</b> 11:14;13:23;14:3, 19 <b>room (2)</b> 3:17;26:9 <b>roughly (1)</b> 56:7 <b>RP (1)</b> 44:4 <b>RP's (1)</b> 43:4 <b>rule (39)</b> 21:23,23;22:5,5,9, 13,14;28:10,12,19; 29:7,20,21;30:3; 31:21;32:1,4,10,13; 33:1,2,3,4,6,14,19,22; 34:5,6;35:17,21;36:4, 10,13;37:3,4,15;38:1; 39:9 <b>Rulemaking (12)</b> 25:21;28:15,20; 29:14,15;30:9;32:20; 33:5,13,16,16;37:5 <b>Rules (22)</b> 3:5;17:2;24:10; 25:12,23;26:6;27:4, 13,18,21,23;28:7; 29:12,14;30:5,7,19; 31:6,18;32:11;36:10; 68:5 <b>Rulon (17)</b> 7:11,12;8:3,3;9:6, 8;35:12,13;36:8; 38:5,5;39:6,7;68:16, 16;69:22,23</p>	<p><b>rundown (1)</b> 10:10 <b>running (1)</b> 11:2 <b>Ryan (9)</b> 3:8,12,19;5:14; 25:7;47:20;66:13; 67:7,18 <b>Ryan's (1)</b> 49:16</p> <p style="text-align: center;"><b>S</b></p> <p><b>sadness (1)</b> 9:21 <b>safe (6)</b> 15:5;19:16;20:22; 21:8,14;68:10 <b>sake (1)</b> 58:5 <b>same (11)</b> 16:15;21:13;30:11; 45:3,14,14;48:7,11, 13,14;52:20 <b>savings (1)</b> 42:19 <b>saying (1)</b> 67:3 <b>schedule (1)</b> 36:5 <b>scheduling (1)</b> 27:19 <b>Schuler (10)</b> 7:6,7;9:4,5;35:10, 11;39:4,5;69:20,21 <b>screen (5)</b> 4:6,8;17:8;49:15, 17 <b>scrutiny (2)</b> 45:4,15 <b>second (12)</b> 8:2,3;27:2;31:2; 34:9,11;38:4,5; 62:12;63:15;68:12, 16 <b>Secondly (1)</b> 17:10 <b>Section (7)</b> 25:23;32:11;36:15; 39:23;49:4;50:8; 53:18 <b>seek (1)</b> 48:11 <b>send (1)</b> 26:17 <b>sense (2)</b> 65:16;66:7 <b>sent (2)</b> 21:5;44:11 <b>separate (3)</b> 33:13;39:22;54:20 <b>September (6)</b> 26:5;27:22;28:9,</p>	<p>22;68:6,11 <b>served (1)</b> 62:23 <b>service (1)</b> 43:12 <b>services (1)</b> 45:5 <b>set (2)</b> 12:4;68:6 <b>Seth (3)</b> 35:23;36:9;37:18 <b>seven (1)</b> 7:14 <b>several (6)</b> 5:16;9:16;11:6; 20:17;26:1;50:13 <b>sewer (2)</b> 16:8,21 <b>sewered (1)</b> 65:4 <b>sewers (1)</b> 16:13 <b>Share (2)</b> 49:15,16 <b>shifting (1)</b> 56:5 <b>shoes (1)</b> 10:5 <b>short (1)</b> 55:13 <b>shortly (1)</b> 61:21 <b>show (2)</b> 4:11;57:21 <b>shown (2)</b> 58:2;61:3 <b>shows (3)</b> 44:16;67:1,4 <b>shut (11)</b> 10:13;18:2,9,11, 16;19:2,17,19,20; 20:3;23:15 <b>sides (1)</b> 56:20 <b>sig (1)</b> 22:8 <b>sign (1)</b> 45:22 <b>signed (1)</b> 46:4 <b>Significant (2)</b> 37:9;60:19 <b>simplicity's (1)</b> 58:5 <b>simply (2)</b> 29:14;56:16 <b>single (1)</b> 56:11 <b>site (10)</b> 5:10;11:4;21:19; 31:12,19;61:18,21; 62:23;63:2,14 <b>sites (8)</b></p>
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<p>15:10,13,16,18; 43:8;48:2;60:19,21 <b>situation (3)</b> 21:12;23:8;24:22 <b>situations (1)</b> 23:20 <b>six (2)</b> 4:22;7:14 <b>skeleton (1)</b> 10:19 <b>skew (1)</b> 57:6 <b>slideshow (1)</b> 49:20 <b>slightly (1)</b> 25:5 <b>slowed (2)</b> 24:16;25:7 <b>slowly (1)</b> 11:14 <b>small (1)</b> 10:18 <b>SO2 (6)</b> 28:1,1,15;29:2; 30:20,21 <b>soil (1)</b> 41:10 <b>solely (1)</b> 41:9 <b>solid (1)</b> 14:22 <b>someone (1)</b> 44:12 <b>sometimes (2)</b> 5:22;43:11 <b>soon (2)</b> 24:22;61:18 <b>sorry (3)</b> 6:7;9:21;33:17 <b>sort (1)</b> 66:9 <b>source (5)</b> 61:9,10;62:13,14; 64:9 <b>sources (7)</b> 33:4;37:3,7,11; 63:15;64:4;65:7 <b>speak (2)</b> 4:4;63:8 <b>speaking (3)</b> 3:22;5:2;13:12 <b>specific (2)</b> 13:10;22:4 <b>staff (4)</b> 27:4,13;42:5;46:19 <b>stage (2)</b> 64:20,22 <b>stages (1)</b> 64:11 <b>stakeholders (2)</b> 40:8,13 <b>standard (6)</b> 29:2;32:16;33:9;</p>	<p>35:20;36:21;44:6 <b>Standards (5)</b> 32:1;50:14;51:5; 53:16;67:2 <b>star (3)</b> 4:19,20,22 <b>start (1)</b> 49:21 <b>started (6)</b> 10:2,16;18:16; 25:9,11;30:9 <b>state (25)</b> 5:4;11:9,10;12:1; 14:18,20;15:10,11, 11,13,19;16:10; 17:18;22:6,7;32:22; 33:2;37:4;43:15; 51:7;52:8;53:4;58:8; 60:1;62:20 <b>state-mandated (1)</b> 51:13 <b>States (3)</b> 21:23;50:9;62:17 <b>state's (1)</b> 52:3 <b>Station (1)</b> 28:12 <b>status (5)</b> 33:8,10,12;36:15, 17 <b>statute (3)</b> 13:13;22:6;29:15 <b>statutory (1)</b> 13:10 <b>stay (3)</b> 21:3,18;68:10 <b>still (16)</b> 11:15;12:9,10; 13:14,18;14:5;43:19; 44:23;45:9;46:16,17; 53:15,23;54:20;58:1, 20 <b>storage (1)</b> 14:23 <b>stories (4)</b> 61:5,6,13;62:8 <b>story (1)</b> 56:3 <b>straighten (1)</b> 24:20 <b>strategic (1)</b> 61:7 <b>streamlined (1)</b> 55:3 <b>streamlines (1)</b> 54:15 <b>streams (3)</b> 56:14,16;57:2 <b>stringent (3)</b> 50:16,20;51:2 <b>strip (1)</b> 20:11 <b>stripper (2)</b></p>	<p>20:10,15 <b>structure (1)</b> 40:3 <b>study (1)</b> 64:5 <b>studying (1)</b> 22:5 <b>stuff (2)</b> 56:1;62:21 <b>subcategory (1)</b> 16:21 <b>subject (2)</b> 26:13;28:19 <b>submissions (1)</b> 31:16 <b>submit (2)</b> 47:11;48:9 <b>submittal (1)</b> 51:20 <b>submittals (2)</b> 54:16;55:3 <b>submitted (6)</b> 19:14;20:21;45:10; 51:10;54:20,23 <b>submitting (1)</b> 54:8 <b>subsequently (2)</b> 60:9;67:4 <b>substantial (1)</b> 42:21 <b>substantive (1)</b> 13:1 <b>success (3)</b> 61:5,6;62:7 <b>suitable (2)</b> 42:6;44:1 <b>Sulfur (4)</b> 31:23;32:15;35:19; 36:20 <b>summarizes (1)</b> 52:4 <b>summary (3)</b> 7:17,19;59:12 <b>supersede (1)</b> 36:14 <b>supersedes (1)</b> 33:2 <b>supply (1)</b> 50:18 <b>supporting (4)</b> 50:11;52:13,22; 55:21 <b>sure (11)</b> 3:15;15:4,21; 23:20;26:19;44:22; 45:2;46:19;59:22; 65:14;67:20 <b>surely (1)</b> 11:14 <b>surest (1)</b> 27:16 <b>Surf (2)</b> 63:3,3</p>	<p><b>surface (3)</b> 17:22;52:6,8 <b>surveillance (1)</b> 44:21 <b>suspected (1)</b> 15:14 <b>switch (1)</b> 49:15 <b>synergistic (1)</b> 66:2 <b>system (8)</b> 54:10,13;55:1,9, 17;62:16,18;63:6 <b>systems (2)</b> 16:9;25:4</p>	<p>22:1;25:8;51:8; 59:12;61:4 <b>test (2)</b> 15:10,13 <b>testing (3)</b> 15:15,20;20:5 <b>tests (2)</b> 19:7;20:17 <b>Thanks (1)</b> 9:13 <b>therefore (2)</b> 22:9;27:6 <b>Third (1)</b> 27:20 <b>threat (5)</b> 40:10,18;41:8; 43:23;44:16 <b>three (5)</b> 7:14;17:20;18:1,9; 35:18 <b>throughout (5)</b> 10:23;15:11,13,18; 16:10 <b>throw (1)</b> 9:17 <b>tissue (3)</b> 59:2,2,8 <b>Title (1)</b> 29:8 <b>Titles (1)</b> 30:6 <b>TMDL (8)</b> 53:11,11,20,23; 57:15,19;60:9,15 <b>TMDL's (4)</b> 53:17;59:4;60:4,17 <b>today (11)</b> 3:20;7:16;9:22; 21:5;26:2;27:23; 28:20;30:19;39:11; 49:1;67:17 <b>tax (1)</b> 43:13 <b>teams (1)</b> 12:10 <b>technical (3)</b> 42:5;45:5;46:19 <b>Ted (2)</b> 7:23;68:14 <b>telephonic (1)</b> 12:11 <b>temporarily (1)</b> 32:13 <b>ten (1)</b> 7:15 <b>tentative (1)</b> 26:13 <b>tentatively (1)</b> 68:6 <b>term (1)</b> 55:13 <b>terms (8)</b> 11:20;13:1;14:10;</p>
		<b>T</b>		
		<p><b>table (4)</b> 36:16;56:13;57:6; 58:18 <b>tables (1)</b> 57:11 <b>takeaways (2)</b> 50:5;60:12 <b>talk (2)</b> 26:3;50:2 <b>talked (1)</b> 18:7 <b>talking (1)</b> 11:8 <b>tanks (1)</b> 14:23 <b>tap (1)</b> 41:19 <b>tapped (1)</b> 11:7 <b>tasked (1)</b> 11:10 <b>tasks (2)</b> 15:20;27:6 <b>tax (1)</b> 43:13 <b>teams (1)</b> 12:10 <b>technical (3)</b> 42:5;45:5;46:19 <b>Ted (2)</b> 7:23;68:14 <b>telephonic (1)</b> 12:11 <b>temporarily (1)</b> 32:13 <b>ten (1)</b> 7:15 <b>tentative (1)</b> 26:13 <b>tentatively (1)</b> 68:6 <b>term (1)</b> 55:13 <b>terms (8)</b> 11:20;13:1;14:10;</p>		

<p>27:3  <b>touches (1)</b>                  46:18  <b>tough (1)</b>                  10:4  <b>towards (1)</b>                  48:4  <b>Town (13)</b>                  17:10,19;18:7,8,10,                  11,13,22;20:14,19;                  21:4,5,11  <b>Townships (5)</b>                  29:2;32:21;35:18;                  36:18;37:8  <b>Track (6)</b>                  11:5;14:6;55:5,10,                  12,17  <b>Tracking (1)</b>                  54:12  <b>traditional (8)</b>                  42:10,15;43:9;                  44:17;45:6,6,15;                  48:14  <b>transcript (3)</b>                  31:14,15,18  <b>Transfer (1)</b>                  28:11  <b>transportation (1)</b>                  15:20  <b>treated (1)</b>                  18:21  <b>treatment (3)</b>                  19:11,22,23  <b>troubleshoot (1)</b>                  43:18  <b>true (1)</b>                  46:5  <b>try (4)</b>                  49:17,22;55:18;                  65:6  <b>turn (3)</b>                  3:12,16;5:11  <b>two (13)</b>                  4:13;7:14;11:17;                  21:7,16;26:4,11;                  28:7;30:19,22;51:12;                  57:8;62:10  <b>two-week (1)</b>                  27:5  <b>type (1)</b>                  59:10  <b>types (1)</b>                  60:13  <b>typical (1)</b>                  21:11  <b>typically (1)</b>                  61:10</p>	<p>42:19  <b>under (14)</b>                  13:13;22:6;33:4,                  15;36:13;37:4,9,11;                  44:17;46:13;48:2,14;                  49:4;53:17  <b>underground (1)</b>                  14:23  <b>unfortunately (2)</b>                  23:21,22  <b>United (1)</b>                  21:23  <b>unmute (2)</b>                  4:21;67:21  <b>unnecessary (1)</b>                  42:17  <b>up (13)</b>                  4:9;11:11;12:4;                  15:13;17:4,6,8,12;                  29:7;41:5;44:10;                  47:2;64:17  <b>upcoming (3)</b>                  16:23;17:1;26:3  <b>updated (1)</b>                  61:21  <b>Updates (2)</b>                  29:6,14  <b>upon (2)</b>                  4:16,21  <b>use (14)</b>                  4:2;16:6,19;17:16;                  50:17,18;51:4;52:21;                  53:10;58:22;59:1;                  62:20;67:2,22  <b>used (5)</b>                  9:14;24:16,19;                  25:3;52:12  <b>uses (13)</b>                  50:12,13,20,21,22,                  22;51:1;52:10,18,23;                  53:7,9;65:1  <b>using (1)</b>                  65:20  <b>utilize (2)</b>                  4:13;5:6  <b>utilizing (2)</b>                  41:8;43:13</p>	<p><b>via (1)</b>                  12:10  <b>Vigo (9)</b>                  27:23;28:15,19,23;                  29:2;30:20;31:22;                  32:14,19  <b>violations (1)</b>                  19:16  <b>virtual (2)</b>                  9:14;24:12  <b>virtually (1)</b>                  10:16  <b>visiting (1)</b>                  21:19  <b>voice (1)</b>                  5:18  <b>voicemail (1)</b>                  27:14  <b>volatile (2)</b>                  18:18;20:11  <b>volunteered (1)</b>                  15:9  <b>vote (6)</b>                  5:18,19;16:6;17:6;                  35:15;68:13  <b>voted (1)</b>                  16:22  <b>votes (4)</b>                  5:21;9:7;35:14;                  39:8</p>	<p>49:3,13;50:8,9;51:7;                  52:6,8,11,15,17,19;                  53:1,2,3,5,20;54:6;                  55:6,7,12;57:13,23;                  58:2,3,6,8,9;60:5,18;                  66:21,21,22  <b>Watershed (1)</b>                  63:3  <b>Waterway (1)</b>                  63:1  <b>way (8)</b>                  20:9;24:18;27:16;                  48:12;53:8;56:9;                  63:18;64:13  <b>Wayne (6)</b>                  16:18;17:3,12,13;                  36:18;37:8  <b>wear (1)</b>                  12:15  <b>wearing (1)</b>                  12:16  <b>Web (8)</b>                  5:10;11:4;31:12,                  19;61:18,20;62:23;                  63:2  <b>Wednesday (1)</b>                  68:6  <b>week (4)</b>                  9:19;11:8;31:12;                  61:22  <b>weekly (1)</b>                  13:4  <b>weeks (1)</b>                  11:18  <b>welcome (2)</b>                  3:6;24:2  <b>welcomes (1)</b>                  43:7  <b>wells (9)</b>                  17:20,21,22;18:1,5,                  10;21:8,12,16  <b>weren't (1)</b>                  59:13  <b>wetlands (1)</b>                  14:23  <b>what's (1)</b>                  46:4  <b>whole (1)</b>                  48:15  <b>whoops (2)</b>                  52:1;54:7  <b>who've (1)</b>                  53:12  <b>wise (1)</b>                  18:9  <b>wish (2)</b>                  23:18;25:16  <b>wishes (1)</b>                  67:16  <b>wishing (1)</b>                  10:5  <b>within (7)</b>                  13:11,19;14:8;</p>	<p>32:11;36:11;61:22;                  66:7  <b>without (4)</b>                  12:19;18:23;23:16;                  44:2  <b>wondering (3)</b>                  45:20;46:13;47:5  <b>words (1)</b>                  41:18  <b>work (29)</b>                  10:7,10,22;11:9,                  19;13:1,14;14:6,7,8;                  24:11,13,13,17;25:1,                  8,11,12;26:6;27:16;                  48:3,5,7,10,17;49:9;                  52:18;55:14;65:22  <b>worked (2)</b>                  10:1;17:12  <b>working (9)</b>                  10:17,17;11:16;                  14:17;15:12,18;27:5,                  9;46:15  <b>workload (2)</b>                  13:3,4  <b>worried (1)</b>                  20:14  <b>worth (1)</b>                  41:5  <b>write (1)</b>                  63:12  <b>writer (2)</b>                  32:10;36:10  <b>written (2)</b>                  31:14,15</p>
			<b>W</b>	
		<p><b>waiting (2)</b>                  3:17;25:10  <b>walk (1)</b>                  3:10  <b>wants (1)</b>                  68:2  <b>Wasky (11)</b>                  7:2,3;8:21,23;9:1;                  35:6,7;38:23;39:1;                  69:14,15  <b>waste (1)</b>                  14:22  <b>wastewater (3)</b>                  14:12,14,23  <b>water (62)</b>                  14:12,13;17:16,16,                  21,22,23;18:10,19,                  20;19:1,4,8,8,10,16,                  18,19,22,23;20:1,2,4,                  6,13,19,22;21:9,14;                  22:2,4;41:19;49:5;                  50:7,14,16,18;51:2,4,                  11;52:5,17,20,23;                  53:15,16,18;54:19;                  55:5;56:3,9,10,11;                  57:1;59:16,17,18;                  60:8;61:8;63:23;                  64:23;67:1  <b>Waters (35)</b>                  21:22;22:7;31:5;</p>	<p><b>years (11)</b>                  18:12;26:5,8,11;                  28:13;30:4,8;37:1;                  51:14,17;60:19  <b>years (6)</b>                  9:23;17:1;25:18;                  51:12;58:16;63:10  <b>year's (1)</b>                  50:3</p>	
	<b>V</b>			<b>Y</b>
	<p><b>Valiquett (10)</b>                  6:23;7:1;8:19,20;                  35:4,5;38:21,22;                  69:12,13  <b>vapor (1)</b>                  41:20  <b>vast (4)</b>                  11:16;56:12,13;                  57:12  <b>verify (1)</b>                  46:2  <b>version (1)</b>                  63:4</p>			
<b>U</b>				<b>Z</b>
<p><b>unable (1)</b>                  26:7  <b>unacceptable (1)</b></p>				<p><b>zero (3)</b>                  9:9;35:15;39:9  <b>zone (1)</b>                  66:7  <b>zones (1)</b>                  65:17</p>
				<b>1</b>
				<p><b>1 (3)</b>                  19:20;52:11,15  <b>1:30 (2)</b>                  3:1;68:7  <b>106 (1)</b></p>

63:23 <b>108 (1)</b> 16:11 <b>11 (1)</b> 7:15 <b>11th (1)</b> 11:12 <b>12 (1)</b> 7:15 <b>1278 (1)</b> 29:10 <b>13 (1)</b> 7:15 <b>13th (1)</b> 31:10 <b>14 (3)</b> 7:15,15;35:15 <b>1-4 (1)</b> 33:1 <b>1-4-50 (2)</b> 35:17;36:14 <b>1-4-85 (2)</b> 31:21;32:14 <b>14th (1)</b> 29:11 <b>15 (2)</b> 58:15,16 <b>154,176 (1)</b> 57:5 <b>172 (1)</b> 42:3 <b>18th (1)</b> 26:6 <b>19th (1)</b> 17:14 <b>1st (1)</b> 29:17	3:1.5,4;7:17;31:4; 33:7;49:2,12;50:3; 54:21;58:12;59:13; 66:15;68:7 <b>2022 (2)</b> 29:17;55:20 <b>210 (1)</b> 59:15 <b>21st (1)</b> 37:1 <b>2-2 (1)</b> 37:10 <b>2-3 (1)</b> 37:12 <b>250 (1)</b> 60:19 <b>26 (1)</b> 59:17 <b>275 (1)</b> 60:20 <b>28th (1)</b> 51:15 <b>29th (1)</b> 51:15	<b>42 (1)</b> 56:8 <b>4a (1)</b> 57:14 <b>4b (1)</b> 57:18 <b>4c (1)</b> 57:18		
		<b>5</b>		
		<b>5 (8)</b> 53:22;54:1,2,4; 56:6;57:22;59:5;60:5 <b>50 (1)</b> 42:5		
		<b>6</b>		
		<b>60 (1)</b> 13:12 <b>60-day (1)</b> 43:20 <b>6500 (1)</b> 56:7		
	<b>3</b>	<b>7</b>		
	<b>3 (1)</b> 53:5 <b>3,000 (1)</b> 60:17 <b>3,029 (1)</b> 56:23 <b>303 (1)</b> 50:8 <b>303d (21)</b> 31:3;49:1,4,5,12; 50:1,4,8;51:9,17,19; 52:2;53:18,19;54:1,3, 9,17;56:6;59:5;64:16	<b>70 (1)</b> 15:9		
		<b>8</b>		
		<b>8 (1)</b> 3:1.5 <b>8th (4)</b> 3:4;7:17;32:19; 33:7		
<b>2</b>		<b>9</b>		
<b>2 (3)</b> 52:21;53:3;55:8 <b>2,662 (1)</b> 56:23 <b>20 (1)</b> 50:3 <b>200 (2)</b> 57:13,17 <b>2008 (1)</b> 33:9 <b>2010 (5)</b> 29:2;31:23;32:15; 35:19;36:20 <b>2012 (3)</b> 18:1,10;23:15 <b>2017 (1)</b> 13:20 <b>2018 (4)</b> 54:18;66:15,17,18 <b>2019 (4)</b> 28:11;29:11;32:19; 42:3 <b>2020 (13)</b>	<b>31 (2)</b> 59:17;66:14 <b>32 (1)</b> 66:21 <b>326 (8)</b> 30:6;31:21;32:14; 33:1;35:17;36:14; 37:10,12 <b>327 (1)</b> 30:6 <b>329 (1)</b> 30:6	<b>90-day (1)</b> 51:13 <b>92 (1)</b> 59:16 <b>9th (2)</b> 26:5;68:6		
	<b>4</b>			
	<b>4 (10)</b> 53:10,21;54:4; 56:19,23;57:13;58:2; 59:5;60:6;66:19 <b>4,299 (1)</b> 56:8 <b>4.5 (1)</b> 11:8			