



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of:)
Adamas Construction and Development Services, PLLC, and Nathan Pierce,) Respondents.) Docket No. CWA-07-2019-0262

ORDER SCHEDULING POST-HEARING SUBMISSIONS

The evidentiary hearing in this matter concluded on Wednesday, August 23, 2023. The Headquarters Hearing Clerk has received the official transcript of testimony taken. Electronic copies of the transcript are being provided to the parties simultaneously with this Order.

Any motion to conform the transcript to the actual testimony shall be filed on or before Monday, October 23, 2023. See 40 C.F.R. § 22.25. The parties may file any such motion jointly or separately.

As indicated on the record at the conclusion of the hearing, the parties may file post-hearing briefs. See 40 C.F.R. § 22.26 ("After the hearing, any party may file proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof."). Reply briefs may be filed if the parties deem it necessary. The post-hearing briefs shall be filed and served pursuant to the following schedule:

- Complainant's Initial Post-Hearing Brief Friday, November 3, 2023
Respondents' Initial Post-Hearing Brief Friday, December 1, 2023
Complainant's Reply Post-Hearing Brief Friday, December 15, 2023
Respondents' Reply Post-Hearing Brief Friday, December 29, 2023

All briefs shall contain specific citations to the record and to any legal authorities upon which the filing party relied. If a party does not intend to file an initial or reply post-hearing brief as permitted above, they shall notify Jennifer Almase, an Attorney-Advisor for this Tribunal, at almase.jennifer@epa.gov.

SO ORDERED.

Christine Donelian Coughlin

Christine Donelian Coughlin
Administrative Law Judge

Dated: September 21, 2023
Washington, D.C.

In the Matter of Adamas Construction and Development Services, PLLC, and Nathan Pierce,
Respondents
Docket No. CWA-07-2019-0262

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Scheduling Post-Hearing Submissions**, dated September 21, 2023, and issued by Administrative Law Judge Christine Donelian Coughlin, was sent this day to the following parties in the manner indicated below.



Mary Angeles
Paralegal Specialist

Original by OALJ E-Filing System to:
U.S. Environmental Protection Agency
Office of Administrative Law Judges
https://yosemite.epa.gov/OA/EAB/EAB-ALJ_Upload.nsf

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Dated: September 21, 2023
Washington, D.C.

HEARING

In The Matter of Adamas Construction and Development Services, PLLC, and Nathan Pierce
Docket No. CWA-07-2019-0262

TRANSCRIPT OF PROCEEDINGS
Tuesday, August 22nd, 2023
Wednesday, August 23rd, 2023
9:00 a.m.

CHRISTINE COUGHLIN
Administrative Law Judge Presiding

Federal Courthouse
4th Floor Ella Knowles Courtroom
2601 2nd Avenue North
Billings, Montana

Marla Jeske, CSR, Notary Public
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INDEX

Proceedings Page:
Complainant's (EPA) Opening Statement
By Mr. Muehlberger 40
Respondent's (Adamas Construction) Opening
Statement By Mr. Pierce 42
WITNESSES:
For Complainant EPA
ERIN KLEFFNER
Direct Examination by Mr. Muehlberger 47
Cross Examination by Mr. Pierce 189
Redirect Examination by Mr. Muehlberger 239
Recross Examination by Mr. Pierce 252
JAMES COURTNEY
Direct Examination by Ms. Kacsur 274
Cross Examination by Mr. Pierce 310
Redirect Examination by Ms. Kacsur 350
Recross Examination by Mr. Pierce 360
TOM ROBINSON
Direct Examination by Mr. Muehlberger 371
Cross Examination by Mr. Pierce 372
Redirect Examination by Mr. Muehlberger 381
Recross Examination by Mr. Pierce 384
Redirect Examination by Mr. Muehlberger 388
Recross Examination by Mr. Pierce 390
ERNIE SPRAGUE
Direct Examination by Ms. Kacsur 400
Cross Examination by Mr. Pierce 420
Redirect Examination by Ms. Kacsur 431
WITNESSES:
For Respondent Adamas Construction
EARNIE SPRAGUE
Direct Examination by Mr. Pierce 436
MICHELLE PIERCE
Direct Examination by Mr. Pierce 454
Cross Examination by Ms. Kacsur 469
Continued -

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Sarah Moreno - Paralegal for EPA
Michelle Pierce
Ernie Sprague
Dan Breedlove

INDEX - Continued

NATHAN PIERCE
Direct Examination by the Court 481
Cross Examination by Mr. Muehlberger 496
COMPLAINANT EXHIBITS:
CX1 NCUC Proposal
CX2 Memorandum, dated December 23, 2015
CX3 Letter from James Courtney, EIT,
Dated May 18, 2018
CX4 E-mail to James Courtney
CX5 Certified Letter to Sheri Bement
CX6 Analytical Summary Report
CX7 Subcontractor Agreement
CX8 Letter to Sheri Bement from
James Courtney
CX9 Technical Assistance Record
CX10 Certified Letter to Ms. Peppers
CX11 Certified Letter to Mr. Nathan Pierce
CX12 Certified Letter to Mr. Robichaud
CX13 Email to Mr. Person from Dan Breedlove
CX14 Certified Letter to Nathan Pierce
CX15 Email from Erin Kleffner to
James Courtney
CX16 Email correspondence between
Erin Kleffner and Sara HertzWu
CX17 Email correspondence between
Erin Kleffner and Sara HertzWu
Continued -

- 1 I N D E X - Continued
- 2 CX18 Email correspondence between Sara HertzWu and Chris Gallus
- 3
- 4 CX19 Email correspondence between Sara HertzWu and Adamas Construction
- 5 CX20 Email correspondence between Sara HertzWu and Adamas Construction
- 6
- 7 CX21 Email correspondence between Sara HertzWu Adamas Construction
- 8 CX22 EJScreen Report (Version 2018)
- 9
- 10 CX23 Email to Ms. Hertz Wu from Wyatt Golding
- 11 CX24 Adamas Construction and Development Services PLLC website
- 12
- 13 CX25 Certified Mail Receipt
- 14
- 15 CX26 Adamas Construction and Development Services PLLC and Nathan Pierce Clean Water Act Public Notice
- 16
- 17 CX27 Email correspondence between Sara HertzWu and Adamas Construction
- 18 CX28 Email correspondence between Sara HertzWu and Adamas Construction
- 19
- 20 CX29 Email correspondence between Sara HertzWu and Adamas Construction
- 21 CX30 Certified Letter to Tommy Robinson
- 22 CX31 Certified Letter to Alexa Coolahan and Emie Sprague
- 23
- 24 CX32 Certified Letter to Adam Spang
- 25
- 26 CX33 Environmental Protection Agency 40 CFR Parts 257, 403 and 503
- 27 CX34 LexisNexis
- 28 Continued -

- 1 I N D E X - Continued
- 2 CX49 Email correspondence between James Courtney and Erin Kleffner
- 3
- 4 CX50 Email correspondence between Erin Kleffner and Liz Huson and Sara HertzWu
- 5
- 6 CX51 Certified Letter to Tom Robinson
- 7
- 8 CX52 Redelegation of Authority U.S. EPA Region 7
- 9 CX53 U.S. Environmental Protection Agency, Region 8
- 10
- 11 CX54 Letter to Brian Chestnut from Adam Spang
- 12 CX55 Arbitration demand to Gary Fahlstedt from Adamas Construction
- 13
- 14 CX56 Letter to Gary Fahlstedt from J. Andrew Person
- 15 CX57 Email correspondence between Sheri Bement and Christopher Muehlberger
- 16 CX58 U.S. Environmental Protection Agency, Region 8
- 17
- 18 RESPONDENT EXHIBITS:
- 19 RX1 NCUC Proposal Lame Deer Sewer Lagoon Sludge Removal
- 20
- 21 RX2 Letter from James Courtney, EIT, Dated May 18, 2018
- 22 RX3 E-mail to James Courtney
- 23 RX4 Analytical Summary Report
- 24
- 25 RX5 Subcontractor Agreement
- 26
- 27 Continued -

- 1 I N D E X - Continued
- 2 CX35 EPA Land Application of Sewage Sludge Guide
- 3
- 4 CX36 A Plain English Guide to the EPA Part 503 Biosolids Rule
- 5 CX37 Biosolids Generation, Use, and Disposal in The United States
- 6
- 7 CX38 Environmental Regulations and Technology
- 8 CX39 EPA Technical Support Document for Land Application of Sewage Sludge, Volume I
- 9
- 10 CX40 EPA Technical Support Document for Land Application of Sewage Sludge, Volume II
- 11
- 12 CX41 Information Request Response Form
- 13 CX42 Enclosure B Statement of Certification
- 14
- 15 CX43 Adamas Financial File to EPA
- 16
- 17 CX44 Certified Letter to Christopher Gallus
- 18 CX45 Email correspondence between James Courtney and Liz Huston and Erin Kleffner
- 19 CX46 Email correspondence between James Courtney and Liz Huston and Erin Kleffner
- 20
- 21 CX47 Email correspondence between James Courtney and Liz Huston and Erin Kleffner
- 22
- 23 CX48 Adamas Construction Business Details
- 24
- 25 Continued -

- 1 I N D E X - Continued
- 2 RX6 Letter to Sheri Bement from James Courtney
- 3
- 4 RX7 Technical Assistance Record
- 5
- 6 RX8 Certified Letter to Nathan Pierce From Jeffery Robichaud
- 7 RX9 Certified Letter to Mr. Robichaud from J. Andrew Person
- 8
- 9 RX10 Email from Erin Kleffner to James Courtney
- 10 RX11 Email from Christopher Gallus to Erin Kleffner
- 11
- 12 RX12 Email from Adamas Construction to Sara HertzWu
- 13 RX13 Email from Sara HertzWu to Adamas Construction
- 14
- 15 RX14 Email from Sara HertzWu to Adamas Construction
- 16 RX15 Email from Adamas Construction to Sara HertzWu
- 17
- 18 RX16 EPA Land Application of Sewage Sludge Guide
- 19 RX17 Email from James Courtney to Liz Huston and Erin Kleffner
- 20
- 21 RX18 Letter to Nathan Pierce from Steve Daines
- 22 RX19 Notice to Cease and Desist
- 23 RX20 Letter from Sean Bad Bear
- 24 RX21 Letter from Frank Backbone
- 25
- 26 Continued -

Page 9

1 INDEX - Continued
 2 RX22 Placeholder for 308 Responses
 from Tom Robinson
 3
 4 RX23 Placeholder for 308 Responses
 from D&R Disposal
 5 RX24 Placeholder for 308 Responses
 from NCUC
 6
 7 RX25 Gmail - Compliance with 503
 8
 9 RX26 Gmail - Dion 8-24-2018 Payments
 10
 11 RX27 Gmail - Notice to Cease and Desist
 12
 13 RX28 Letter to Senator Daines from
 Bryce Redgrave
 14
 15 JOINT EXHIBITS:
 16 JX1 GIS Map
 17 JX2 Fixed Price Agreement
 18
 19
 20
 21
 22
 23
 24
 25

Page 11

1 and Nathan Pierce, collectively the respondents,
 2 in a Clean Water Act case, Docket Number
 3 CWA-07-2019-0262.
 4 And today's date is Tuesday, August
 5 22nd. I'm at about five minutes before 9:00 a.m.,
 6 so I think we're getting starting a little ahead of
 7 time.
 8 And at this point, I'm just going to ask
 9 the parties to please identify themselves for the
 10 record. I'll begin with the complainant, Region 7,
 11 in this matter.
 12 MR. MUEHLBERGER: Good morning, Your Honor.
 13 My name is Chris Muehlberger. I'm an attorney
 14 representing the Environmental Protection Agency.
 15 I'll let my other counterparts introduce
 16 themselves.
 17 MS. KACSUR: Good morning, Your Honor. My
 18 name is Kate. I'm also with the Environmental
 19 Protection Agency -- or Kate Kacsur, excuse me.
 20 And I'm also with the Environmental Protection
 21 Agency.
 22 THE COURT: Okay.
 23 MS. MORENO: Good morning. I'm Sarah Moreno.
 24 I'm a paralegal with the Environmental Protection
 25 Agency.

Page 10

1 MORNING SESSION, TUESDAY, AUGUST 22, 2023
 2
 3 * * * * *
 4
 5 (Whereupon, the hearing convened at 8:53
 6 a.m., with all interested parties present, and the
 7 following proceedings were had:)
 8
 9 THE COURT: All right. We are on record.
 10 Good morning again, everyone. I'm
 11 Christine Coughlin. I'm the designated
 12 administrative law judge to preside over this EPA
 13 matter. With me is Jennifer Almase. I think
 14 you've had plenty of dealings with her over the
 15 course of preparation for today's hearing.
 16 I'm going to just begin by introducing
 17 the case, and then I'll ask the parties to please
 18 identify themselves for the record. I'll just
 19 review very basic procedures for the hearing and
 20 take care of any housekeeping matters up front, and
 21 then we'll go ahead and get started.
 22 So I'll open the record by just
 23 identifying that we are here in the Federal
 24 Courthouse in Billings, Montana in the matter of
 25 Adamas Construction and Development Services, PLLC,

Page 12

1 THE COURT: So the C is silent. It's just
 2 Kacsur?
 3 MS. KACSUR: Correct. It's unique.
 4 THE COURT: Okay. I just want to make sure
 5 I'm pronouncing it correctly. So I'm going to try
 6 to make a note phonetically. But I'll apologize in
 7 advance if I botch that. Okay. Thank you.
 8 And for Adamas and Nathan Pierce.
 9 MR. PIERCE: Your Honor, good morning. My
 10 name is Nathan Pierce. I'm here for Adamas and for
 11 myself.
 12 THE COURT: Okay. Thank you.
 13 MS. PIERCE: Michelle Pierce.
 14 THE COURT: Okay. Thank you.
 15 All right. Preliminarily, let me just
 16 explain. Mr. Pierce, I know you're proceeding pro
 17 se. I, you know, have gone through to review the
 18 record a couple of times now since we've had to
 19 postpone and reschedule the hearing. I recognize
 20 you're proceeding pro se, although probably more
 21 sophisticated pro se person we've had by virtue of
 22 some comments I think the attorney assisting you
 23 has made throughout in at least the written
 24 materials. So you may already be familiar with
 25 this process. But I tend to go into a little bit

1 more detail with anyone who is proceeding pro se
 2 just to make sure you have a grasp of how the
 3 hearing goes. And certainly, if you have any
 4 questions at all, you just let me know. I'm happy
 5 to explain.

6 The complainant, or Region 7 -- I kind
 7 of use the terms interchangeably -- bears the
 8 burden in the case. And so they have the burden of
 9 persuasion, and they need to go first when it comes
 10 to presenting their case.

11 So before each witness testifies, I'll
 12 place them under oath so that their testimony is
 13 sworn. The Region will conduct their direct
 14 examination of their witness, after which you will
 15 have an opportunity to cross-examine that witness
 16 based on the testimony that they've offered on
 17 direct. I then give the parties the opportunity
 18 for any redirect and even any recross, if something
 19 comes up, and then usually, end it there. I'll
 20 follow that same process with each of the Region's
 21 witnesses. And I'll actually follow that process
 22 with you and your witnesses once their
 23 case-in-chief rests and you begin your
 24 presentation. You'll be conducting direct.
 25 They'll be conducting cross. Same process.

1 Before we begin with the witnesses, I do
 2 give the parties the opportunity for any brief
 3 opening statements if you wish and any brief
 4 closing remarks before we conclude, if you wish.
 5 You don't have to. You can. It's all considered
 6 argument. So I generally caution to make them
 7 brief because really, what I'm looking at is the
 8 evidentiary record that's going to be created from
 9 this hearing. That will consist of testimonial
 10 evidence when each witness testifies as well as
 11 documentary evidence for any documents that are
 12 admitted into evidence. And I think we've got some
 13 housekeeping to do in that regard in just a minute.
 14 But that will consist of the evidentiary record.

15 And then once the hearing closes, that
 16 concludes any and all evidence. After we
 17 finish -- which, you know, I don't know how long it
 18 will take us. I understand that you've reduced the
 19 number of witnesses to just what you think is
 20 really necessary, and that's great, to preserve
 21 time and resources. So whether that takes us into
 22 two days or three, whatever the case may be, once
 23 we finish, what happens is the transcript, which is
 24 the official record for this proceeding, will then
 25 be sent out to both parties. You'll have an

1 opportunity to file any motions to conform the
 2 transcript. Basically, it's just if there are any
 3 typos or any mistakes that you want to make note
 4 of. I typically rule on that in advance. If
 5 they're really minor, sometimes I'll even
 6 incorporate it into the initial decision.

7 But after that is done, there will be a
 8 briefing period whereby each side has the
 9 opportunity to submit post-hearing briefs. I tend
 10 to stagger them but, you know, we'll just see. But
 11 I -- I let you know about that via post-hearing
 12 briefing order, and it gives you deadlines to
 13 submit your initial brief and then any reply brief.
 14 And once all that's done, then I go about the
 15 business of reviewing everything and writing an
 16 initial decision.

17 This case is going to involve liability
 18 as well as penalty. It will cover both of those
 19 issues. And that can take some time. So we do try
 20 to work efficiently, but we're also pretty detailed
 21 and thorough, and that just takes time. So we do
 22 the best we can.

23 Obviously, any decision I issue is
 24 appealable. Should one side or sometimes both
 25 disagree with my decision, you can appeal to the

1 Environmental Appeals Board and then thereafter
 2 into the -- into an Article III court.

3 Any questions at all about that process,
 4 Mr. Pierce?

5 MR. PIERCE: No, ma'am.

6 THE COURT: Okay. And from the Region?

7 MR. MUEHLBERGER: No, Your Honor.

8 THE COURT: Okay. A couple of housekeeping
 9 notes. The courtroom opens early, earlier than I'm
 10 used to, which is wonderful in case we want to get
 11 started early. I understand that they open at 7.
 12 The doors open at 7 and close at 5. So we can keep
 13 that in mind just for scheduling purposes for
 14 tomorrow and if there's a third day. I'm happy to
 15 start early and work, you know, right up until we
 16 can if that helps shorten the amount of time you'll
 17 have to be here.

18 I know it's stressful on litigants. So
 19 I like to try to do all that I can to minimize that
 20 as much as possible.

21 There's no cafeteria in here, but lots
 22 of lunch spots. So we'll obviously take a break
 23 for lunch. I defer to you all as to how much time
 24 you want. I come prepared either way. So we can
 25 take an hour. We can take less. I'll kind of go

1 over that with you when the time comes. And I try
2 to be mindful of taking comfort breaks throughout
3 the proceedings, but if I get absorbed and forget,
4 please don't hesitate to just let me know you'd
5 like a five, ten-minute break just to collect
6 yourselves, use the restroom, whatever the case may
7 be. Just kind of keep me on track with that, okay,
8 so everyone is comfortable.

9 Any questions about some of those basic
10 logistics?

11 MR. MUEHLBERGER: No.

12 THE COURT: No. Okay. Let me get a quick
13 rundown of the witnesses. I did jot them down.
14 Jennifer shared information with me with this last
15 prehearing conference that she held with you all.
16 But if you would, just to make sure that we're all
17 on the same page. I'll begin with the Region.

18 Can you just give me the names of the
19 witnesses you intend to call as part of your direct
20 case.

21 MR. MUEHLBERGER: Yes, Your Honor. First,
22 I'd like to introduce Erin Kleffner. She will be
23 representing the EPA Region 7, and she is a
24 compliance officer in this case.

25 THE COURT: Okay. Thank you. Welcome.

1 repeated attempts to contact him. So it's unclear
2 whether or not he will be present.

3 THE COURT: Okay. Was service effectuated?

4 MR. MUEHLBERGER: We -- we got -- there was a
5 signature, right, at the -- what was it? Oh, yeah.
6 UPS said that they had left it at the door, but we
7 did not get a signature. So no, we did not get
8 service effectuated.

9 THE COURT: Okay. So what's the plan with
10 that? Are you -- if he doesn't then appear, do
11 you -- you're just going to proceed without him?
12 Or did --

13 MR. MUEHLBERGER: Yes, Your Honor. EPA's
14 position is that we don't need Mr. Robinson's
15 testimony. What we have in the record is
16 sufficient for proving the elements of our case.

17 THE COURT: Okay. All right. Okay. All
18 right. And then we'll talk about Mr. Sprague in
19 just a second.

20 Mr. Pierce, can you review with me the
21 witnesses you intend to present as far as your case
22 on behalf of Adamas and yourself?

23 MR. PIERCE: Yes, Your Honor. I'd
24 be -- Ernie Sprague would be one of the witnesses.
25 Michelle Pierce and myself will be the witnesses on

1 MR. MUEHLBERGER: We also plan to call James
2 Courtney, formerly of IHS, Indian Health Services,
3 now works for the National Park Service. He will
4 be participating via video conference through
5 Teams. We also plan to call Ernie Sprague, who is
6 in attendance right now. And I've got a question
7 about that as well.

8 THE COURT: Okay.

9 MR. MUEHLBERGER: Mr. Sprague has asked if he
10 could attend the full hearing. But I wanted to
11 make it very clear with the Court that he's also a
12 witness that we are -- that we plan to call. And
13 so I want to just leave it to the Court whether or
14 not that you're okay with his attendance.

15 THE COURT: Okay. We'll deal with that in
16 just a second.

17 MR. MUEHLBERGER: Sure.

18 THE COURT: Do you have another witness?

19 MR. MUEHLBERGER: That's everybody.

20 THE COURT: Those three?

21 MR. MUEHLBERGER: Yeah.

22 THE COURT: Okay.

23 MR. MUEHLBERGER: We also -- just for the
24 record, we issued a subpoena to Tom Robinson. We
25 have not heard back from Mr. Robinson after

1 behalf of myself and Adamas.

2 THE COURT: Okay. So I had notes of two
3 other individuals, Sean Bad Bear and Dana
4 Eaglefeathers. You're not planning to call them?

5 MR. PIERCE: Your Honor, Sean Bad Bear is
6 unable to be in attendance, and as well as
7 Mr. Eaglefeather. He has a conflict that does not
8 allow him to be here. And I didn't have time to
9 make motion or subpoena.

10 THE COURT: Are you comfortable proceeding
11 without them?

12 MR. PIERCE: Yes, Your Honor.

13 THE COURT: Okay. So let's talk a moment,
14 then, about Mr. Sprague. Basically, I think it
15 comes down to an issue of sequestration and whether
16 or not either side wishes to have the witnesses
17 sequestered throughout the process. I usually
18 defer to both sides about that rather than sua
19 sponte, on my own. Since you're both calling him,
20 I don't know what the position is on that.

21 Are you comfortable having him remain in
22 the proceeding throughout, Mr. Pierce?

23 MR. PIERCE: Yes, Your Honor.

24 THE COURT: Okay. And Mr. Muehlberger, how
25 about you?

Page 21

1 MR. MUEHLBERGER: Your Honor, given the low
 2 number of witnesses in the case, I think we're fine
 3 with proceeding.
 4 THE COURT: Okay. All right. So
 5 Mr. Sprague, where are you? Okay. So
 6 you're -- good morning. You're welcome to just
 7 remain in the courtroom for now.
 8 MR. SPRAGUE: Thank you.
 9 THE COURT: Okay. And, I mean, this is an
 10 open hearing. But just so I know, who is the other
 11 gentleman in the gallery?
 12 MR. BREEDLOVE: Your Honor, my name is Dan
 13 Breedlove. I'm with the Environmental Protection
 14 Agency.
 15 THE COURT: Oh, you're just observing?
 16 MR. BREEDLOVE: Yes, ma'am.
 17 THE COURT: Okay. No problem.
 18 Okay. So we have that squared away.
 19 Mr. Sprague will remain throughout. Let's just
 20 talk about one final housekeeping matter before we
 21 get started, and that is with regard to the joint
 22 set of stipulated facts, exhibits, and/or
 23 testimony. I think we're going to need to spend
 24 just a few minutes on this because I also need to
 25 review just a few things here based on the final

Page 22

1 exhibits that came in.
 2 So I'm prepared to honor this joint set
 3 of stipulations that was previously submitted,
 4 which would provide for the stipulation of both
 5 sides to the admissibility of all evidence included
 6 in complainant's prehearing exchange and
 7 Supplements 5 on or before July 25, 2022. By my
 8 account, that amounts to CX1 through CX58. Am I
 9 correct?
 10 MR. MUEHLBERGER: Yes.
 11 THE COURT: Okay. And then also a joint
 12 stipulation to the admissibility of all evidence
 13 included in respondent's prehearing exchange and
 14 Supplements 5 on or before the same date of July
 15 25, 2022. And by my account, that was RX1 through
 16 RX28; is that correct?
 17 MR. PIERCE: That's correct. Yes, Your
 18 Honor.
 19 THE COURT: Okay. Any issues with me
 20 admitting this, these exhibits in the beginning
 21 or -- I mean, by stipulating to the admissibility,
 22 it basically dispenses with foundational issues and
 23 that type of thing. Of course, the parties always
 24 have the ability to argue, present argument with
 25 regard to how much weight I should attribute any

Page 23

1 particular piece of evidence. Those are two very
 2 distinct concepts.
 3 If anyone needs me to elaborate, please
 4 say. Even some of the most experienced litigators
 5 aren't always familiar with that distinction.
 6 So even though it comes in and it's a
 7 fairly, I would say, liberal policy with regard to
 8 the evidentiary rule that we follow, EPA has it
 9 identified in our rules. I could read it to you.
 10 There are lots of, like, double negatives, which
 11 kind of drive me crazy. But basically, it goes to
 12 relevance, materiality, not being unduly
 13 repetitive. They're kind of common concepts,
 14 particularly in an administrative context, for what
 15 is allowed, which can also include hearsay. But
 16 that is something distinct from the amount of
 17 weight I afford any particular piece of evidence
 18 based on the totality of the record.
 19 So even if it's in the record and it's
 20 admitted, you can always argue how much weight I
 21 should assign a particular piece of evidence based
 22 on a variety of factors that you want to argue
 23 about. Hearsay, I suppose, being one of them, but
 24 others too.
 25 Is that -- is that clear, Mr. Pierce?

Page 24

1 MR. PIERCE: It is, Your Honor.
 2 THE COURT: Okay. And Mr. Muehlberger or
 3 Ms. Kacsur, any questions about that?
 4 MR. MUEHLBERGER: No, Your Honor.
 5 THE COURT: Okay. All right. So do you want
 6 to just offer all of that in now and get that out
 7 of the way since there aren't any -- it sounds like
 8 there aren't going to be any foundational
 9 challenges to admissibility?
 10 MR. MUEHLBERGER: Complainant continues to
 11 stipulate to the admissibility, Your Honor.
 12 THE COURT: Okay. And how about you,
 13 Mr. Pierce?
 14 MR. PIERCE: Your Honor, I do have some
 15 challenges. But I believe I can -- as you stated,
 16 I can challenge them directly. So I will admit to
 17 the stipulations and then challenge them directly
 18 to the weight.
 19 THE COURT: Okay. All right. So you
 20 understand the concept that I'm getting at with
 21 regard to those two things?
 22 MR. PIERCE: Yes, Your Honor. I can
 23 challenge the entire stipulation or I can challenge
 24 the weight of the evidence as it's presented.
 25 THE COURT: Right. By stipulating,

1 basically, you're acknowledging that you're not
 2 challenging that the evidence can come in, that
 3 it's admissible, which tends to go to issues like
 4 foundation, you know.
 5 If something wasn't stipulated to,
 6 then -- and this would apply to both sides -- you'd
 7 have to have a witness come in, testify about the
 8 document, authenticate it, and cover other
 9 foundational bases before you could then admit it,
 10 offer it for admission into evidence. By
 11 stipulating to the admissibility of that, you're
 12 sort of going past all of that.
 13 But the important point that I wanted to
 14 make is that even though the evidence is in the
 15 record, a separate -- I am separately tasked with
 16 having to review all of that evidence and determine
 17 how much weight I want to place on any piece of it
 18 when I'm coming to a decision in the case.
 19 MR. PIERCE: I appreciate the clarification.
 20 Under that context, there are some challenges that
 21 I would like to make to the stipulations.
 22 THE COURT: You no longer wish to stipulate?
 23 MR. PIERCE: That's correct, Your Honor.
 24 THE COURT: And why is that?
 25 MR. PIERCE: So, Your Honor, when we

1 initially came to the agreement of these
 2 stipulations, it was understood that witnesses
 3 would be available for cross-examination and would
 4 be here at the hearing so that we could
 5 authenticate the particular evidence on hand. I
 6 was notified basically at the 11th hour that many
 7 of those witnesses will not be available for me to
 8 cross-examine and will not be here to testify
 9 today.
 10 And just going based upon the rules of
 11 practice from the administrative law judge, page
 12 39, it seems like those stipulations where they
 13 cannot be here to testify and cross-examine
 14 wouldn't be admissible.
 15 THE COURT: Um, well, I would say this: You
 16 should realize, too -- I mean, it's up to my
 17 discretion --
 18 MR. PIERCE: Sure.
 19 THE COURT: -- whether or not I'm going to
 20 allow you to now no longer stipulate, especially
 21 since we're at the hearing.
 22 MR. PIERCE: Sure.
 23 THE COURT: Because I think you were advised
 24 that if you wanted to make those types of
 25 challenges, it needed to be done in advance of the

1 hearing so that by motion, if you wanted to
 2 withdraw your stipulation so that there was time
 3 for me to rule in advance of the hearing and for
 4 arrangements, you know, obviously, to be made to
 5 deal with that.
 6 But I would also point out that the same
 7 would hold true with regard to your evidence. So
 8 if the stips don't come in, it applies to everybody
 9 here.
 10 MR. PIERCE: Yes, ma'am.
 11 THE COURT: So, you know, it's just something
 12 to keep in mind if you still wish to challenge
 13 that.
 14 MR. PIERCE: I do. And I believe the burden
 15 is on the EPA.
 16 THE COURT: Okay. Mr. Muehlberger, did you
 17 have any -- or Ms. Kacsur -- Kacsur?
 18 MS. KACSUR: Kacsur. It rhymes with Frazier.
 19 THE COURT: Kacsur. Okay. All right. I'm
 20 spelling it phonetically. Thank you.
 21 Any response before I make a ruling?
 22 MR. MUEHLBERGER: Yes, Your Honor. Just a
 23 few points. I would like to point out that under
 24 Part 22, respondents had the same opportunity that
 25 EPA did to call witnesses, to use the subpoena

1 authority under Part 22. To our knowledge,
 2 Mr. Pierce did not contact any of the witnesses,
 3 including Mr. Robinson or Ms. Sheri Bement, that he
 4 named as someone that he wanted to see present at
 5 the hearing.
 6 As far as providing this at the 11th
 7 hour, we've made it very clear in each of our
 8 prehearing conferences where we were with respect
 9 to calling the witnesses and who was going to be
 10 able to attend. I'd also like to add that, you
 11 know, part of our plans to cover this hearing over
 12 a four-day period were based on that motion for
 13 stipulation so that we wouldn't have to lay a
 14 foundation. So I think as far as expediency is
 15 concerned, that that would have a big impact on the
 16 length of the hearing. So for those reasons, we
 17 would oppose any motion at this point to withdraw
 18 stipulations.
 19 THE COURT: Okay. Um, my ruling is going to
 20 be that I'm going to honor this joint set of
 21 stipulated facts, exhibits, and/or testimony. I
 22 think at this moment at the hearing right now,
 23 we're really far beyond withdrawing that. And I
 24 also think it, frankly, behooves both sides for me
 25 to honor this. Because otherwise, there's very

1 little you all could be able to present on both
2 sides with respect to the matter based on your
3 drastically reduced witness list. And I just think
4 it's the fair thing to do at this stage. We're
5 here. We're ready to begin. So any desire or
6 motion to try to withdraw that prior stipulation
7 should have been done before now. So I'm going to
8 honor it.

9 Certainly, if you wanted to disagree
10 with that ruling, I mean, it's something you could
11 always include as a basis for appeal if you wish.
12 But as I said, I think it's really the benefit of
13 both sides for me to do that.

14 So with that said, I will go ahead and I
15 just guess at the outset admit into the record CX1
16 through CX58 and RX1 through RX28.

17 (Whereupon, Complainant Exhibits Nos.
18 CX1 through CX58 were admitted into evidence.)

19 (Whereupon, Respondent Exhibits Nos. RX1
20 through RX28 were admitted into evidence.)

21 THE COURT: I understand that you've
22 submitted those final exhibits to the court
23 reporter, as well as I was able to access them via
24 OneDrive. Is that -- or Share. I get the terms
25 confused. But I basically was able to get ahold of

1 complainant has presented. But let me just -- I
2 just want to make sure we're all on the same page
3 right out of the gate to be very clear up front.
4 Okay?

5 MR. PIERCE: Yes, Your Honor.

6 THE COURT: So I just want to run through
7 these with you. And I'll ask complainant to follow
8 along, too, just so you can make sure that we're
9 all in agreement here.

10 So looking at those final hearing
11 exhibits from respondents, obviously, RX1 through
12 RX18, actually 19, all are -- all begin with that
13 RX designation. There's -- after that, there is an
14 RX20 identified as the TERO letter of Sean Bad
15 Bear, which correlates to what was proposed
16 prehearing. Same with RX21, letter to Frank
17 Backbone. Am I correct so far?

18 MR. PIERCE: Yes, Your Honor.

19 MR. MUEHLBERGER: We've seen these exhibits,
20 Your Honor.

21 THE COURT: Okay. And then jumping up to 22,
22 there's the placeholder. That's RX22. And that
23 remains a placeholder for the 308 responses from
24 Tom Robinson that I believe is contained in
25 complainant's exhibits.

1 them. Am I right?

2 MR. MUEHLBERGER: Yes, Your Honor. That's
3 correct.

4 MR. PIERCE: Yes, Your Honor.

5 THE COURT: Now, with respondent's final
6 exhibits, I need to just cover a couple of quick
7 points. Complainant, did you go through them?

8 MR. MUEHLBERGER: Yes, Your Honor.

9 THE COURT: Okay. Because the way they
10 came -- I basically looked at them. And I
11 appreciate that I think Mr. Pierce took what had
12 been previously submitted as a proposed -- as
13 proposed exhibits, a kind of consolidated document
14 that I think had 25 through 28, and you broke that
15 out into each individual one, which is fine.
16 Great, actually. But the way that they are
17 described here in this, you need to open each one
18 to see what exhibit it is.

19 So I just went through to look to see
20 which one correlated with which. And in doing so,
21 I also noted that there were three documents
22 included that had not, as far as I could tell, been
23 part of the prehearing exchange. Two of them, I
24 don't know how much it matters because I think it's
25 duplicated with what respondent -- or with what

1 MR. PIERCE: That's right.

2 THE COURT: Okay. Agreed, Mr. Pierce?

3 MR. PIERCE: Yes, Your Honor.

4 THE COURT: Okay. And I think that that
5 holds true also for RX23, which is for the D&R
6 Disposal, the 308 response that's contained in
7 complainant's exhibits.

8 MR. PIERCE: Yes, Your Honor.

9 THE COURT: Okay. And also for RX24, which
10 is for the 308 responses from NCUC, also contained
11 in complainant's exhibits.

12 MR. MUEHLBERGER: We agree, Your Honor.

13 THE COURT: Okay.

14 MR. PIERCE: Agreed, Your Honor.

15 THE COURT: Okay. All right. So that brings
16 us to 25, what would be RX25. And that's where I
17 got to the document titled, "Gmail, Compliance with
18 503." That's RX25. That aligns with what was
19 submitted as a proposed exhibit prehearing, right?

20 MR. PIERCE: Correct. Yes, Your Honor.

21 MR. MUEHLBERGER: If I can just take a second
22 to look at the document.

23 THE COURT: Sure.

24 MR. MUEHLBERGER: We're fine with that, Your
25 Honor.

1 THE COURT: Okay. And the document titled,
 2 "Gmail, Dion, August 24, 2018 payments" is what
 3 corresponds to RX26. And that appears in the
 4 document when you open it. I'm just trying to
 5 identify it up front based on the title of it
 6 alone. Is that --
 7 MR. PIERCE: Yes, Your Honor.
 8 THE COURT: Okay.
 9 MR. MUEHLBERGER: We're fine with that
 10 exhibit, Your Honor.
 11 THE COURT: Okay. And then the next document
 12 titled, "Gmail, Notice to cease and desist"
 13 corresponds to RX27; is that right?
 14 MR. PIERCE: That is correct, Your Honor.
 15 MR. MUEHLBERGER: We're fine with that as
 16 well, Your Honor.
 17 THE COURT: Okay. And then lastly, the
 18 letter to Senator Daines for Bryce Redgrave, July
 19 12, 2019, corresponds to RX28.
 20 MR. PIERCE: That's correct. Yes, Your
 21 Honor.
 22 MR. MUEHLBERGER: No objections, Your Honor.
 23 THE COURT: Okay. All right. So we've got
 24 RX1 through 28. Those also are admitted into
 25 evidence. That leaves three remaining documents in

1 here that were sent to the court reporter and to me
 2 that are not actually marked as respondent's
 3 exhibits and have now been offered into evidence by
 4 stipulation or admitted. But I see some
 5 duplication, so I feel like it's worth covering or
 6 pointing out.
 7 The first is with the Plain English
 8 Guide Part 503 Biosolids Rule. It's a PDF in
 9 respondent's final exhibits. From what I could
 10 tell, it appeared to be a duplicate of
 11 complainant's Exhibit 36; is that right?
 12 MR. MUEHLBERGER: That's correct. And we
 13 don't have any issue with entering that into
 14 evidence on the other side.
 15 THE COURT: Well, I'd rather not go down that
 16 road --
 17 MR. MUEHLBERGER: Okay.
 18 THE COURT: -- simply because I think it's
 19 just going to muddy the record. We've got RX1
 20 through 28 coming in. If it's already in your
 21 exhibits, you can refer -- Mr. Pierce, you can
 22 refer to the complainant's exhibits for any
 23 arguments as well. It benefits you in that
 24 regard --
 25 MR. PIERCE: Perfect. Thank you, Your Honor.

1 THE COURT: -- to be able to do it. Okay.
 2 So is it your understanding as well that that Plain
 3 English Guide is a duplicate of their CX36?
 4 MR. PIERCE: Yes, Your Honor.
 5 THE COURT: Okay. All right. And then the
 6 next one is the land application sewage sludge
 7 document. And I made a note to myself that it
 8 looked like it was a possible duplicate of RX16.
 9 Is that right?
 10 MR. PIERCE: I believe so. Yes, Your Honor.
 11 THE COURT: Okay. Is that your
 12 understanding, too? Was that the one? Yeah. I
 13 think there was just a little bit of a page
 14 difference, 103 pages versus 105.
 15 MR. MUEHLBERGER: We're familiar with that
 16 document. And however you want to have that
 17 entered into evidence, we're fine.
 18 THE COURT: Okay. I think it was already
 19 RX16, so I'm just going to leave it alone.
 20 And then -- so I think we're squared
 21 away there. The only other standalone document
 22 that I don't see -- I see as new, actually, is an
 23 NWPR fact sheet overview that has -- that looks to
 24 be or purports to be from EPA's fact sheet,
 25 Navigable Waters Protection Rule, regarding a time

1 frame of January 23, 2020. I'm not really sure how
 2 this is relevant, but... What was the purpose of
 3 including it?
 4 MR. PIERCE: Um, Your Honor, it obviously
 5 talks about navigable water and how that's
 6 determined. The EPA has brought this as a Clean
 7 Water case and has identified a creek that actually
 8 is non-navigable. That would provide guidance for
 9 it. It was also something that was submitted with
 10 a previous motion to dismiss during this
 11 proceeding.
 12 THE COURT: Okay. Well, um, you know, the
 13 navigable waters issue is, even as we speak, under
 14 development based on a recent Supreme Court case.
 15 But more importantly, I believe that the law I have
 16 to apply is the law that was in effect at the time
 17 of the alleged incidences giving rise to this
 18 enforcement action. And my understanding is those
 19 incidences allegedly took place in the July-August
 20 2018 time frame. Am I correct?
 21 MR. MUEHLBERGER: That's correct.
 22 MR. PIERCE: Correct, Your Honor.
 23 THE COURT: Okay. So anything happening
 24 after the fact and still in development I don't
 25 believe is appropriate for me to be considering. I

1 believe I'm obligated to consider the law in effect
2 at the time of the incidences that gave rise to
3 this allegation in this administrative enforcement
4 complaint, not something that's happened after the
5 fact and that may very well be changing as we
6 speak.

7 So I don't see the relevance of it. You
8 can make whatever arguments you wish in briefing
9 and certainly question witnesses as you wish as
10 long as it's relevant to what I have before me.
11 But I think I'm committed to the law that was in
12 effect at the time, not what's happened
13 subsequently. Is there any difference of opinion
14 on that?

15 MR. PIERCE: Yes, Your Honor. I think, based
16 upon the Supreme Court decision you're speaking of,
17 if we only applied the law at the time, the Supreme
18 Court wouldn't have any reason to review that.
19 That decision was made -- their decision is made
20 based upon real-time information, not based upon
21 the law as it was at the time and whether that law
22 was applicable. So if we do it as based upon the
23 law at the time, but that law was not applicable or
24 ruled to not be something that the EPA was allowed
25 to have within their authority, then are we really

1 THE COURT: Okay. So I won't admit this
2 document. But obviously, you can -- you can
3 argue the legal issue as you wish in, you know,
4 post-hearing.

5 MR. PIERCE: Yes, Your Honor.

6 THE COURT: Okay. All right. Okay. So
7 we're squared away with the exhibits. Anything
8 else before I offer the parties the chance for any
9 type of opening statement or to simply begin the
10 case?

11 MR. MUEHLBERGER: None from complainant, Your
12 Honor.

13 THE COURT: Mr. Pierce?

14 MR. PIERCE: No, Your Honor.

15 THE COURT: Okay. All right. Then I'll ask
16 complainant to go ahead and please -- did you want
17 to make an opening statement?

18 MR. MUEHLBERGER: Yes, Your Honor.

19 THE COURT: Okay. Please go ahead.

20 MR. MUEHLBERGER: Thank you, Your Honor.

21 May it please the Court -- is the
22 microphone on? Got it.

23 THE COURT: Okay. Now I can hear you.

24 MR. MUEHLBERGER: Let's try again.

25 ///

1 ruling on a law that is something that should be
2 applied.

3 THE COURT: Yeah. I understand the point
4 with respect to the constitutionality -- of a
5 constitutionality issue. But it's still on the
6 books. The Clean Water Act is still in force.
7 Regulation is still on the books. So I'm not
8 really convinced of that position.

9 But did the Region have anything to say?

10 MR. MUEHLBERGER: Yeah. I've got two
11 comments, Your Honor. First, I'd like to point out
12 the Navigable Waters Protection Rule was vacated in
13 federal district court in I think it was 2022.

14 The other point that I'd like to make is
15 we are prepared to discuss the waters of the United
16 States issue post-Sackett, if that comes up.

17 The Region agrees with your assessment
18 that the applicable regulations are the ones at the
19 time of the violation. Having said that, we're
20 prepared to argue the waters in this kind of
21 post-Sackett environment as well.

22 THE COURT: Okay. And that's -- you know,
23 it's a legal issue, so I assume that's just
24 something that you all can cover in briefing.

25 MR. MUEHLBERGER: Yes, Your Honor.

1 COMPLAINANT'S OPENING STATEMENT

2 MR. MUEHLBERGER: May it please the Court,
3 once again, my name is Chris Muehlberger, and I
4 represent the Environmental Protection Agency.

5 Your Honor, this case involves the
6 preparation and application of sewage sludge on a
7 cropland in 2018 in Lame Deer, Montana. Putting
8 this case in its most simple terms, when
9 respondents Nathan Pierce and his company, Adamas
10 Construction and Development Services, wanted to
11 get paid for managing that sludge project,
12 Mr. Pierce repeatedly and unambiguously asserted
13 that he was in charge and solely responsible for
14 completion of the sludge project. But when it came
15 time to comply with Clean Water Act regulations for
16 which Mr. Pierce was responsible, he repeatedly and
17 unambiguously asserted that it was somebody else's
18 job.

19 It's important to note that respondents
20 repeatedly describe themselves throughout the
21 record as managers and supervisors of the sludge
22 removal and application project. As such, EPA will
23 demonstrate that they were required to create and
24 maintain records under EPA's biosolids regulations.
25 And respondents were required to submit those

1 records to EPA upon request by the agency pursuant
 2 to the Clean Water Act. To date and almost five
 3 years later, EPA has never received the full
 4 records respondents were required to create,
 5 maintain, and submit pursuant to federal law.
 6 Now I want to emphasize something here.
 7 These are not mere paperwork violations. The EPA
 8 regulates biosolids in order to prevent harm to
 9 human health and the environment. Without these
 10 records, there's no way for EPA to determine if
 11 bacteria, other pathogens or heavy metals that can
 12 be found in sewage sludge has the potential to harm
 13 local waterways, aquatic life, or humans that may
 14 come into contact with that sludge.
 15 During these proceedings, respondents
 16 will argue that other parties were responsible for
 17 creating, maintaining, and submitting those
 18 biosolids records. However, EPA will demonstrate
 19 by a preponderance of the evidence that, 1,
 20 respondents repeatedly held themselves out to be
 21 exclusively in charge of the 2018 sludge removal
 22 and application project; 2, respondents demanded
 23 compensation for their leadership role in that
 24 project; 3, respondents repeatedly discussed the
 25 biosolids regulations with other parties and

1 Firstly, I'd like to bring to your
 2 attention that the EPA faces limitations in
 3 presenting substantial number of witnesses who can
 4 provide direct testimony regarding the events in
 5 question. Consequently, the EPA may rely on
 6 hearsay evidence during this proceeding. I wish to
 7 emphasize that hearsay evidence lacks the same
 8 level of reliability and credibility as direct
 9 testimony. Rest assured, though, I will try to due
 10 diligently cross-examine any such evidence to
 11 ensure a thorough examination of the facts.
 12 I'd like to draw your attention to 40
 13 CFR 503.11(h), which defines land application
 14 concerning sewer sludge disposal. The EPA may
 15 contend that I conducted these activities.
 16 However, I firmly assert that the actual work
 17 performed by independent contractors, namely Tom
 18 Robinson and Ernie Sprague, in relation to a
 19 contract that was created by the government, IHS,
 20 with the Northern Cheyenne Utility Commission, to
 21 whom I was a subcontractor. The testimony of Ernie
 22 Sprague will substantiate these facts.
 23 Furthermore, the EPA may allege that I
 24 failed to respond to their information requests. I
 25 want to clarify unequivocally that I not only

1 repeatedly said that they would comply with all
 2 applicable biosolids regulations; respondents -- 4,
 3 respondents performed operator duties at the Lame
 4 Deer Publicly-Owned Treatment Works and repeatedly
 5 held themselves out as POTW operators; and lastly,
 6 as a result, it's EPA's position that respondents
 7 were the only parties in a position to create,
 8 maintain, and produce all of the records required
 9 under the Clean Water Act.
 10 With that, EPA is prepared to call its
 11 first witness.
 12 THE COURT: All right. Thank you,
 13 Mr. Muehlberger.
 14 Mr. Pierce, did you want to make an
 15 opening statement?
 16 MR. PIERCE: Yes, ma'am. Yes, Your Honor. I
 17 sure do.
 18 RESPONDENT'S OPENING STATEMENT
 19 MR. PIERCE: Your Honor, may it please the
 20 Court -- excuse me. May it please the Court, I
 21 stand here before you today as a pro se litigant
 22 seeking fair and equitable resolution to this case.
 23 It's crucial to shed light on certain fundamental
 24 issues that underpin this case, which I believe is
 25 essential to comprehending the situation at hand.

1 responded, but also directed the EPA to the precise
 2 location where the requested information could be
 3 found and the persons who could provide them with
 4 the exact documentation that they were looking for,
 5 the most responsible thing that I could do as I was
 6 not the person who physically did the work that
 7 they were claiming.
 8 Ernie Sprague, who is here today as an
 9 independent contractor, holds a unique perspective
 10 on the events in question. His testimony will
 11 provide valuable insight into the authenticity of
 12 the EPA's request for records and the circumstances
 13 surrounding my involvement in this case. I firmly
 14 believe Mr. Sprague's testimony will demonstrate
 15 that I was unfairly targeted by the EPA and that
 16 the EPA's actions are not in line with the
 17 principles of fairness or transparency. I ask that
 18 you consider Mr. Sprague's independent perspective
 19 as we move forward with these proceedings.
 20 It is imperative to recognize that
 21 although the EPA may argue that I was
 22 charged -- that I was in charge, the factual
 23 context contradicts this assertion. The Northern
 24 Cheyenne Utility Commission was the primary
 25 contractor and maintained control of the facilities

1 throughout the project. I was not the
2 decision-maker in this scenario and was, in fact,
3 denied access to the facilities as well as other
4 contractors, including Mr. Sprague, that was
5 outside of my control.

6 In closing, this hearing gives us an
7 opportunity to rectify the situation and put into
8 the record the true facts beyond what the EPA is
9 attempting to state here today. I thank you for
10 the opportunity to represent myself as well as
11 Adamas Construction in these proceedings.

12 THE COURT: Thank you, Mr. Pierce.

13 Okay. Complainant, if you'd call your
14 first witness.

15 MR. MUEHLBERGER: I will. One question, Your
16 Honor.

17 THE COURT: Sure.

18 MR. MUEHLBERGER: Erin Kleffner will be our
19 first witness, and she'd like to have a copy of the
20 applicable regulations and biosolids guidance with
21 her up at the stand for reference. Is that
22 permissible?

23 THE COURT: Sure.

24 MR. MUEHLBERGER: Thank you.

25 THE COURT: Sure.

1 THE COURT: Yeah. I think just for the
2 purposes of the record, as long as you clearly
3 identify which exhibit number it is that you're
4 questioning about so that the testimony is clear, I
5 think we're good. And then I'll follow along as
6 well.

7 MR. MUEHLBERGER: Thank you.

8 THE COURT: Okay. And if at any point, you
9 know, there's a question, Mr. Pierce, if you need a
10 second to follow or whatever, or if I do, I'll
11 chime in just so we're all staying on track. Okay?

12 MR. PIERCE: Yes, Your Honor.

13 THE COURT: All right. Great.

14 Please go ahead.

15 MR. MUEHLBERGER: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MUEHLBERGER:

19 **Q. Ms. Kleffner, can you provide and spell**
20 **your name for the record, please?**

21 A. My name is Erin Kleffner. And it's
22 spelled E-R-I-N, K-L-E-F-F-N-E-R.

23 **Q. And where do you currently work,**
24 **Ms. Kleffner?**

25 A. I work at EPA Region 7.

1 MR. MUEHLBERGER: We'd like to call Erin
2 Kleffner to the stand, please.

3
4 ERIN KLEFFNER,
5 called as a witness on behalf of the Complainant,
6 having been first duly sworn testified as follows:

7
8 THE COURT: Thank you. Please have a seat.

9 The witness has been sworn. Please go
10 ahead, Mr. Muehlberger.

11 MR. MUEHLBERGER: Thank you. We're going to
12 pull up the exhibits here on the screen. If we
13 could just have a minute here, please.

14 THE COURT: Sure.

15 MR. MUEHLBERGER: One of the housekeeping
16 things while we're working on this that I wanted to
17 point out, as we show the exhibits on the screen
18 and zoom in on some of the text here, you will not
19 see the Complainant's Exhibit Number, which is at
20 the bottom of the screen. If you prefer, we can
21 zoom in so you can see it initially and -- or
22 sorry -- zoom out and then zoom in to the relevant
23 text. I will also, of course, be highlighting what
24 the exhibit is as we go through. So just whatever
25 the -- what you prefer.

1 **Q. Okay. And can you name your title and**
2 **describe your position, please?**

3 A. I'm a compliance officer for Region 7 in
4 the water branch. So typically, what my position
5 does is we will receive inspection reports or
6 complaints, sometimes annual reports for biosolids.
7 We will review those, determine if there are any
8 violations present, and then based on that, we will
9 either provide compliance assistance or take an
10 enforcement action.

11 **Q. Okay. And when you say that you take**
12 **enforcement actions, what does that look like?**
13 **What does the agency do when it is taking an**
14 **enforcement action?**

15 A. So our enforcement actions are usually
16 broken down into two different cases. We can
17 either take a penalty, or we can do a compliance
18 order to help a facility get back into compliance
19 with the regulations, or we can do both of those at
20 the same time.

21 **Q. Thank you.**
22 **Can you describe your educational**
23 **background?**

24 A. I have an undergraduate degree in
25 ecology and conservation from Northwest Missouri

1 State University. And I also received a master's
2 degree in environmental assessment from the
3 University of Kansas.

4 **Q. Okay. And within your studies, was**
5 **there any area of expertise?**

6 A. Yes. So both my undergrad and my
7 master's degree. My master's degree in particular
8 has a foundation in biological sciences. So a lot
9 of the coursework was in water quality, soil
10 science, hydrogeology, that kind of stuff. And
11 then, in addition, on my master's degree, my
12 capstone project was on biosolids land application.

13 **Q. Okay. So you talked about how your**
14 **studies included both a science background and also**
15 **study of the regulations; is that correct?**

16 A. Yes. Yeah. We also had a law in
17 regulations class that we completed.

18 **Q. And can you talk a little bit how this**
19 **overlap between science and the regulation informs**
20 **the work that you do now?**

21 A. So the biological sciences background
22 gives the basis for the regulations. And then it
23 also helps me to determine, whenever there is a
24 lapse in regulations or a violation in regulations,
25 if there are impacts to the environment from that.

1 **Q. So concerning your biosolids work, have**
2 **you taken enforcement cases under biosolids?**

3 A. I have.

4 **Q. Okay. About how many cases do you think**
5 **you've worked on?**

6 A. Approximately ten.

7 **Q. Okay. So let's talk about biosolids.**
8 **What is that?**

9 A. So biosolids, also known as sewage
10 sludge, is basically -- it can be solids, liquids,
11 semisolids. It's basically the leftover from the
12 treatment process at a domestic wastewater
13 treatment facility.

14 **Q. Okay. And what do folks do with**
15 **biosolids?**

16 A. So there's a couple of options on what
17 you can do with biosolids. Most commonly,
18 biosolids are land applied. It's a beneficial use
19 as a replacement for fertilizer. They can also be
20 landfilled. There's also an option for surface
21 disposal. And then some facilities also
22 incinerate.

23 **Q. And why does EPA regulate biosolids**
24 **under the Clean Water Act?**

25 A. So there's two different factors there.

1 **Q. Okay. Can you talk a little bit about**
2 **the work that you did after you completed your**
3 **education?**

4 A. So after I -- well, actually, during my
5 master's degree program, I was an intern for EPA
6 Region 7. After I finished my master's degree, I
7 was converted to a full-time employee.

8 **Q. Did you go straight to EPA, then, after**
9 **you received your degree?**

10 A. Yes. My master's degree, yes.

11 **Q. Okay. How long have you been with the**
12 **agency?**

13 A. About eight years.

14 **Q. Okay. And you testified earlier that**
15 **you work on enforcement cases. About how many**
16 **enforcement cases have you conducted at EPA?**

17 A. Approximately 25.

18 **Q. And can you talk about some of the areas**
19 **of specialization that you work at at EPA?**

20 A. So when I first started as an intern,
21 and for the first couple years, I did a lot of
22 biosolids work. Since then, I've kind of moved on
23 to other parts such as industrial stormwater,
24 construction stormwater, some Section 404, and
25 general NPDES programs.

1 They are regulated under the Clean Water Act
2 because they do come from a point source. It's a
3 byproduct from a wastewater treatment facility.
4 And then, in addition, in particular for land
5 application, once biosolids are land applied, it
6 does have the capacity to potentially affect a
7 water body from runoff.

8 **Q. Okay. Let's talk about that a little**
9 **bit. What are some of the potential environmental**
10 **risks associated with biosolids?**

11 A. So biosolids, in terms of the
12 regulations, there are a couple different factors
13 that are incorporated into it. You have pathogens,
14 metals content, and then also site restrictions and
15 management practices.

16 So for something like metal content, any
17 exposure to metals over a certain amount is
18 detrimental to wildlife and humans both. In terms
19 of wildlife, it has the capacity to change
20 behavior, reproductive growth, that kind of thing.
21 It can also even result in death for some wildlife.

22 In humans, it can cause cancer or other
23 effects that have kind of like an Alzheimer's-type
24 effect. So it can affect memory, cognitive
25 function, that kind of stuff.

1 For pathogens, obviously, any exposure
2 to a pathogen such as fecal coliform, E. coli,
3 salmonella, et cetera, has the capacity to make any
4 human sick. That is also true for some wildlife.
5 It can also displace in a water body more
6 beneficial organisms. So if you introduce
7 salmonella into a water body, that can also replace
8 what would normally be there.

9 And then additionally, for management
10 practices and site restrictions, site restrictions
11 are mostly based on keeping humans away from
12 biosolids. Management practices are more to keep
13 biosolids in place.

14 So if you don't follow an agronomic rate
15 calculation, they're overapplied, they do run off
16 into a water body. That can result in something
17 like -- it's called eutrophication. So that's an
18 overabundance of nitrogen within a water body. And
19 that has several impacts. It can cause an
20 overgrowth of plants and algae in bacterial
21 communities. It can lower the dissolved oxygen
22 content. It just, in general, throws off the
23 balance of a water body.

24 **Q. Thank you.**
25 **And can you walk us through what is a**

1 discrete conveyance. It can be a pipe, a tunnel, a
2 ditch, anything that has a point that discharges
3 into a water body.

4 **Q. Okay. And when you say "water body"**
5 **there, are all waters regulated under the Clean**
6 **Water Act?**

7 A. Not exactly. So for the Clean Water
8 Act, at least outside of wetlands, which are at
9 issue right now but, it would be relatively
10 permanent waterways, and then traditionally
11 navigable waters.

12 **Q. And let's talk a little bit about the**
13 **owner/operator that you talked about. What is an**
14 **operator of a point source?**

15 A. So an operator would be someone that
16 either is at a facility or does an activity that
17 would be covered under the NPDES program.

18 **Q. Okay. And when you say NPDES, what do**
19 **you mean by that?**

20 A. That stands for NPDES. It's the
21 National Pollutant Discharge Elimination System.
22 And that is basically what regulates the discharge
23 of pollutants from a point source into a water of
24 the United States.

25 **Q. Thanks.**

1 **typical biosolids enforcement case? What does that**
2 **look like?**

3 A. So biosolids come to Region 7 through
4 two ways. We do have an annual reporting
5 requirement for facilities that meet that
6 threshold. So there's an annual report for some
7 facilities. We also do take complaints. Once we
8 have gotten that information and reviewed what is
9 available to us, most of the time we will issue a
10 Clean Water Act 308 information request to gather
11 more information to determine if there are
12 violations or if there are more violations than
13 what is indicated in the complaint or annual
14 report. And then based on that, we will determine
15 if we want to do a compliance order or a penalty.

16 **Q. Thanks.**
17 **So let's talk a little bit about that**
18 **Section 308 authority that you just described. Who**
19 **is required under the Clean Water Act to respond to**
20 **a Section 308 request?**

21 A. It would be an owner or operator of a
22 point source.

23 **Q. Okay. Let's break those down a little**
24 **bit. What is a point source?**

25 A. A point source would be any kind of

1 **What kind of duties do operators point**
2 **sources typically perform in your experience?**

3 A. In my experience, an operator basically
4 runs the facility. They do operations and
5 maintenance. That can include the collection
6 system and the wastewater treatment facility
7 itself. So working on lift stations, fixing pumps,
8 making -- adding, you know, any chemicals that need
9 to be added. It can also vary. Something as
10 simple as if it's a lagoon system, it can be mowing
11 the berms. So something simple for maintenance.

12 Generally, treatment operators, unless
13 it's contracted out to a lab, will also take
14 samples. And they're usually present for
15 inspections by the state or the federal government.

16 **Q. In your experience, have you ever seen**
17 **operators do biosolids work at the point source?**

18 A. Yes.

19 **Q. Or the wastewater treatment facility?**

20 A. Uh-huh.

21 **Q. Have you worked with operators in the**
22 **enforcement work that you've done at EPA?**

23 A. I have.

24 **Q. Okay. And can there be more than one**
25 **operator at a regulated point source?**

1 A. Yes. Yeah.

2 **Q. Does an operator have to have some kind**

3 **of official certification in order to be an**

4 **operator?**

5 A. No, they do not.

6 **Q. Can an operator be a contractor of a**

7 **wastewater treatment facility?**

8 A. Yes.

9 **Q. Okay. And just to make one thing clear,**

10 **we've used the terms "wastewater treatment**

11 **facility" and "publicly-owned treatment works." Do**

12 **you consider those terms to be synonymous?**

13 A. Yes.

14 **Q. Okay. So you just testified that an**

15 **operator can be a contractor. Have you ever seen**

16 **that happen in any of the enforcement cases that**

17 **you've worked on?**

18 A. Yes. Generally, it happens a lot more

19 in -- actually, it happens a lot in biosolids and

20 construction stormwater. But for biosolids, I have

21 had a case where a facility contracted out their

22 biosolids operation to a separate company. The

23 company took it. They did some sampling. They

24 further processed the biosolids. So they became a

25 preparer of the biosolids, and they ended up land

1 applying it over the concentration for metals. So

2 they did not have their sample results prior to

3 land application. So they had a metal ceiling

4 concentration violation, and we did take a penalty

5 for that case.

6 **Q. Thanks.**

7 **In your experience as a compliance**

8 **officer, has EPA ever concluded that a contractor**

9 **that was performing operator duties was liable for**

10 **Clean Water Act violations?**

11 A. Yes.

12 **Q. Have you ever seen a contractor doing**

13 **operator duties at a regulated facility that was**

14 **not a certified operator?**

15 A. Yes.

16 **Q. Okay. So let's talk a little bit about**

17 **the recordkeeping requirements in the biosolids**

18 **regulations. Can you generally describe what those**

19 **are?**

20 A. Yeah. So it's broken down into two

21 different parts depending on the role in the

22 biosolids land application. It's broken down into

23 preparer and land applier.

24 A preparer would need to maintain

25 records for metals concentration, pathogens. And

1 then also a vector attraction reduction was met

2 through one of the first eight options within Part

3 503 regulations. They would also need to maintain

4 that.

5 As a land applier, if vector attraction

6 reduction was achieved through a physical means

7 such as incorporation or injection, that would be

8 the responsibility of the land applier. They would

9 also need to maintain information such as site

10 restrictions and management practices. Management

11 practices would include something like an agronomic

12 rate calculation.

13 **Q. Okay. How does one prepare sewage**

14 **sludge?**

15 A. So preparation can be through physical

16 means. It can be dewatering. It can be

17 stabilization. It can be through composting.

18 There are a number of options. But basically,

19 preparation is anything that would change the

20 quality of the biosolids from its initial form.

21 **Q. Okay. What does it mean to dewater**

22 **sewage sludge?**

23 A. So dewatering is just what it sounds

24 like. It is taking excess water out of biosolids

25 to reduce the total solids content.

1 **Q. And how does sewage sludge typically get**

2 **applied when it's land applied?**

3 A. Depending on the solids content, it can

4 be broadcast spread. It can be spread as compost.

5 However you want to get it onto the land, there's

6 any number of options to get it on there.

7 **Q. Okay. So what happens if the preparer**

8 **or applier of sewage sludge does not provide**

9 **records to others involved in the sludge removal**

10 **project?**

11 A. It would be difficult for them. Site

12 restrictions would be probably okay. Vector

13 attraction reduction, if they were to do a physical

14 method, it would probably be okay. It's really

15 kind of an issue whenever it comes to management

16 practices.

17 It is also the responsibility of a land

18 applier to make sure prior, before the land

19 application, that they do meet Part 503

20 regulations. But in addition, it is land applier's

21 responsibility to calculate an agronomic rate, and

22 that information is usually found in the lab

23 results such as nitrogen content.

24 **Q. Thanks.**

25 MR. MUEHLBERGER: I'd like to show the

1 witness 40 CFR 503.12.
 2 BY MR. MUEHLBERGER:
 3 **Q. Ms. Kleffner, do you recognize this set**
 4 **of regulations here?**
 5 A. Yes.
 6 **Q. And could you read what it says there**
 7 **under 503.12(d)?**
 8 A. D?
 9 **Q. Yes, please.**
 10 A. "The person who prepares bulk sewage
 11 sludge that is applied to agricultural land,
 12 forest, a public contact site, or a reclamation
 13 site shall provide the person who applies the bulk
 14 sewage sludge written notification of the
 15 concentration of total nitrogen as nitrogen on a
 16 dry weight basis in the bulk sewage sludge."
 17 **Q. Thank you.**
 18 **Can you read 503.12(f), please?**
 19 A. "When a person who prepares bulk sewage
 20 sludge provides the bulk sewage sludge to a person
 21 who applies the bulk sewage sludge to the land, the
 22 person who prepares the bulk sewage sludge shall
 23 provide the person who applies the sewage sludge
 24 notice and necessary information to comply with the
 25 requirements in this subpart."

1 **Q. Thank you.**
 2 **So how does a preparer or applier of**
 3 **sewage sludge, how do they typically create records**
 4 **during the course of a land application project?**
 5 MR. PIERCE: Your Honor, I guess I have to
 6 object to relevance. We're here for the
 7 application. And that's the assertion of the EPA,
 8 is that there was an issue with the land
 9 application. I don't understand why we're focusing
 10 on a preparer.
 11 THE COURT: Okay. You can respond.
 12 MR. MUEHLBERGER: Your Honor, EPA is arguing
 13 that respondents were both the preparer and applier
 14 of the sewage sludge in this case, and as such,
 15 were responsible for the recordkeeping requirements
 16 for both sections of the regulations.
 17 MR. PIERCE: That's not how their filing
 18 comes off, Your Honor.
 19 THE COURT: Yeah. Let me actually confirm
 20 some things with you. I'm going from memory
 21 here, so I might be mistaken. But I thought when
 22 you -- when the complaint was amended, the
 23 regulatory references were changed. We had a
 24 second amended complaint, and while the proposed
 25 penalty wasn't changed, I thought the regulatory

1 references were changed. And I was under the
 2 impression it went from preparer to applier, so...
 3 MR. MUEHLBERGER: Your Honor, I think
 4 throughout all of the -- all of our filings, EPA
 5 has argued that the respondents were both the
 6 preparer and applier. We're prepared to go through
 7 the regulations, the 503.12 regulations that apply
 8 to this case. It's part of the testimony that we
 9 plan to have Ms. Kleffner testify to.
 10 THE COURT: Well, I just -- you know, I don't
 11 want to go outside the bounds of the complaint of
 12 the charging document because that's what -- that's
 13 what I'm confined to. And so for purposes of not
 14 confusing the record either, I want to make sure
 15 that, one, my understanding is correct.
 16 So should we take a look at -- do you
 17 want to take a look at this second amended
 18 complaint? Am I misremembering that the regs were
 19 changed to refer to appliers rather than preparers?
 20 MR. MUEHLBERGER: Your Honor, if we could
 21 take just about five minutes and take a look at
 22 this --
 23 THE COURT: Sure.
 24 MR. MUEHLBERGER: -- and return, I'd
 25 appreciate that.

1 THE COURT: Yeah, absolutely. Do you want a
 2 break, or do you want me to just stay on the
 3 record?
 4 MR. MUEHLBERGER: Yeah, let's take just a
 5 short break would be great. Thank you.
 6 THE COURT: Okay. Why don't we take ten
 7 minutes, and then I'll address the objection once
 8 you've had a chance to take a look. And I might
 9 take a look myself.
 10 MR. MUEHLBERGER: Thank you.
 11 THE COURT: Okay.
 12 (Whereupon, a brief
 13 recess was taken.)
 14 THE COURT: All right. Back on record after
 15 a brief break. I pulled up a little bit of
 16 information, too, about the second amended
 17 complaint so I can follow along.
 18 So if you could, then, just if you
 19 would, Mr. Muehlberger, go ahead and just, I guess,
 20 respond to the objection. And if you would,
 21 explain a little bit about the preparer language as
 22 it relates to the claims in the second amended
 23 complaint.
 24 MR. MUEHLBERGER: Sure. And thank you for
 25 the break. You can look at a document a thousand

1 times, but you sometimes need to reread it to
2 familiarize yourself.

3 So as for the complaint, EPA states in
4 paragraph 13 in the regulatory and statutory
5 framework the definition of preparer. We allege in
6 paragraphs 35, 46, and 47 that respondents were, in
7 fact, the preparers of sludge.

8 And then as far as the counts are
9 concerned, we allege that respondents failed to
10 create, produce, and submit records under Part
11 503.17 of the biosolids regulations and don't limit
12 it to preparers or appliers.

13 As to changing the regulatory citation
14 for the amended complaint, I'm going to have
15 Ms. Kleffner testify as to why the -- the necessity
16 to change that citation.

17 THE COURT: Okay. So -- okay. Just so that
18 I'm following here, with regard to the first claim
19 of the -- bear with me here just while I pull up a
20 few notes. So with regard to Claim 1, the failure
21 to develop and maintain records, that regulatory
22 provision that applies to that claim is what?

23 MR. MUEHLBERGER: It's 503.17, which applies
24 to both preparers and land appliers of sewage
25 sludge.

1 also references in the complaint under the
2 generalized paragraphs with respect to preparers
3 and appliers, what -- I guess what -- how would any
4 obligations a preparer would have under 503, how
5 would that relate to the specific Claim 1 that's
6 before me? Is there a connection there that I need
7 to be aware of? And I think that that's what's
8 going in Mr. Pierce's objection.

9 MR. MUEHLBERGER: Yes, Your Honor. Under
10 the applicable regulations under 503, a preparer of
11 sewage sludge is required to create records,
12 including doing sampling, and then they are
13 required to provide those results and other records
14 to the applier of the sewage sludge. If they don't
15 provide those records, then the applier can't
16 create, maintain, and produce records under the
17 biosolids regulations. EPA is alleging that the
18 respondents were both the preparers, that they
19 failed to provide the necessary records to the land
20 appliers, and did not submit to the agency the
21 required records under the biosolids regulations
22 and under Clean Water Act Section 308.

23 THE COURT: Okay. So --

24 MR. PIERCE: Your Honor, may I say something?

25 THE COURT: You certainly may. Let me just

1 THE COURT: Okay. Now the markup -- and I'm
2 not trying to argue with you here, but I want to
3 make sure that I'm clear right out of the gate or
4 just to get all the --

5 MR. MUEHLBERGER: Sure.

6 THE COURT: The markup that I have provides
7 for a citation to 503.17(a)(4)(ii). And it says
8 that the following records shall be retained by the
9 person who applies bulk sewage sludge, and then
10 there's a list, A through E?

11 MR. MUEHLBERGER: That's right.

12 THE COURT: Okay. So it was my understanding
13 from this language that the actual records that are
14 alleged to have not been developed and maintained
15 by respondents are records that relate to the
16 person who applies the bulk sewage sludge.

17 MR. MUEHLBERGER: That's right. And our
18 changing of the regulatory citation, we just wanted
19 to make sure that we had the correct recordkeeping
20 requirements based on the class of the sludge, the
21 pathogen -- the potential pathogens that would be
22 in that sludge, and then what an applier would be
23 required to create and maintain under the biosolids
24 regulations.

25 THE COURT: Okay. Recognizing that there is

1 finish one thought to make sure I'm -- at least I
2 think I'm clear.

3 MR. PIERCE: Yes, ma'am.

4 THE COURT: So if I'm understanding the
5 framework, then, is part of the -- and I think
6 you've already answered this. So is part of the
7 relevance, then, with regard to references to a
8 preparer that regardless of who applies the sewage
9 sludge, the preparer is in possession of some
10 information that would then presumably be provided
11 to the applier and be available to be provided in
12 response to a 308 request for information?

13 MR. MUEHLBERGER: That's correct, Your Honor.

14 THE COURT: So that part of it, would that
15 then feed into Claim 2 in this complaint in terms
16 of responding to the 308 request, the preparer
17 responsibilities?

18 MR. MUEHLBERGER: So the regulations are a
19 bit complicated. Under 503, they're required to
20 create and maintain records. Under Section 308,
21 they're required -- an owner/operator of a point
22 source is required to provide records to EPA if
23 there's an allegation of a Clean Water Act
24 violation. And in this case, we are arguing that
25 respondents were preparers and land appliers of

1 sewage sludge and that they performed operator
 2 duties, and combined, they are required to submit
 3 those records to the agency.
 4 THE COURT: Okay. Okay. Mr. Pierce -- thank
 5 you.
 6 Mr. Pierce, go ahead.
 7 MR. PIERCE: Yes, Your Honor. It seems like
 8 if the EPA is claiming that I am the preparer, and
 9 I had an obligation to give it the applier, and I
 10 am also the applier, wouldn't I be giving it to
 11 myself? Which is a pretty obvious question.
 12 But also, the other question that's sort
 13 of glaring is the regulation cited is for land
 14 applier. When they asked and they sent the letter
 15 to me, it was for records for a land applier. So
 16 if you're asking for records under a specific law
 17 and that is for a land applier, I believe that's
 18 the relevance here, and it should stick with land
 19 applier regardless of how they try to tailor it.
 20 THE COURT: Okay. Any response before I
 21 rule?
 22 MR. MUEHLBERGER: Yes. Many of the
 23 requirements for preparers and appliers are the
 24 same. We'll be walking through both of the
 25 citations throughout the course of the testimony,

1 But yeah, I did see a lot of overlap,
 2 but some distinctions as well between the records
 3 that were sought as an applier versus a preparer.
 4 But I think on relevancy grounds, I'm
 5 going to overrule the objection because there are
 6 references in the second amended complaint to a
 7 preparer. But I guess I would just caution that to
 8 the extent you can, just, I guess, be very clear
 9 about, you know, the actual claims that are before
 10 me that I'm ruling on. I've got the two claims in
 11 the complaint, and those are what are charged.
 12 So, you know, just recognizing the
 13 distinctions between some of the general paragraphs
 14 in the complaint and the specifics that are alleged
 15 with regard to the particular records and which
 16 they apply to, and then the 308 request would be
 17 helpful so that when I get back to drafting this
 18 thing, it's not confusing.
 19 MR. MUEHLBERGER: Yeah. Your Honor, given
 20 the complexity of the regulations, we will try our
 21 hardest to walk through each of the citations and
 22 how they apply in this case.
 23 THE COURT: Okay. Thank you so much. As
 24 I've said, I've overruled the objection on
 25 relevancy grounds. And we'll just move forward at

1 so you'll see that many of the recordkeeping
 2 requirements are the same for both preparers and
 3 appliers.
 4 And then I'd just also like to add that
 5 the complaint unambiguously asserts that the
 6 respondents were preparers and appliers and
 7 responsible for submitting records under Section
 8 308. And the counts were not changed as a result
 9 of us changing the regulatory citation in the
 10 complaint, so there's no prejudice against the
 11 respondent here. This has all been clearly laid
 12 out in the complaint.
 13 MR. PIERCE: Your Honor, I don't believe that
 14 the documents required for a preparer are the same
 15 for an applier or the information needed for a
 16 preparer is the same as an applier. So I
 17 don't -- I believe that's inaccurate.
 18 MR. MUEHLBERGER: They're not exactly the
 19 same, but there are many overlaps. And you'll see
 20 this as we go through the regulations.
 21 THE COURT: Yeah. That I do remember because
 22 I -- it's been a bit, you know, because we --
 23 unfortunately, we had to postpone the hearing a few
 24 times, one of which was attributable to me. So
 25 thank you for the indulgence.

1 this point.
 2 MR. MUEHLBERGER: Okay. Thank you.
 3 DIRECT EXAMINATION - Continued
 4 BY MR. MUEHLBERGER:
 5 **Q. Ms. Kleffner, are you ready to pick up**
 6 **where we left off?**
 7 A. Yes.
 8 **Q. Okay. In a biosolids case, can there be**
 9 **more than one preparer?**
 10 A. Yes, there can.
 11 **Q. Can there be more than one land applier?**
 12 A. Absolutely, yes.
 13 **Q. And would it be EPA's position that each**
 14 **preparer and applier could be responsible for the**
 15 **biosolids recordkeeping requirements?**
 16 A. Yes.
 17 **Q. Okay.**
 18 THE COURT: I'm sorry. I just want to make
 19 sure you're getting picked up. I can hear you just
 20 fine, but I want to make sure the mic's picking up.
 21 Are we good?
 22 THE REPORTER: Yes, thank you.
 23 THE COURT: Okay. Perfect. Go right ahead.
 24 BY MR. MUEHLBERGER:
 25 **Q. Ms. Kleffner, do the recordkeeping**

1 requirements change based on the content of the
 2 sewage sludge?
 3 A. Yes, they do.
 4 **Q. Okay. And can you describe how they may**
 5 **differ depending on the content?**
 6 A. Sure. So biosolids are broken up into
 7 two different classes based on the amount of
 8 pathogens that are present. There's Class A
 9 biosolids and Class B biosolids. Class A biosolids
 10 have a lower pathogen content that's allowable, and
 11 because of that the management practices and site
 12 restrictions for Class A are less than Class B. So
 13 Class A, you don't have to have -- you don't -- you
 14 still need to maintain records, but management
 15 practices and site restrictions are nixed in that
 16 recordkeeping requirement.
 17 For Class B, you still need to have
 18 those records maintained.
 19 **Q. Do the recordkeeping requirements change**
 20 **based on where the sewage sludge is applied?**
 21 A. Yes, they do.
 22 **Q. Okay. And what types of lands might**
 23 **change the requirements for biosolids**
 24 **recordkeeping?**
 25 A. So the recordkeeping requirements would

1 change based on whether it's a public contact site
 2 or a non-public contact site. So in this instance,
 3 this was applied to an agricultural field, so you
 4 would still need to maintain some of the site
 5 restrictions and management practices. If it was
 6 on a public contact site, you're assuming that
 7 it's also a Class A so that it would be less
 8 recordkeeping.
 9 **Q. Okay. And do biosolids need to be**
 10 **applied close to water in order for the**
 11 **recordkeeping requirements to kick in?**
 12 A. No. It's just wherever they're applied.
 13 **Q. Okay. Thanks.**
 14 **Are preparers and applicers of sewage**
 15 **sludge required to turn over biosolids records to**
 16 **EPA even if they're not an owner or operator of a**
 17 **point source?**
 18 A. Yes.
 19 **Q. Has EPA ever required preparers or**
 20 **applicers of sewage sludge who were not operators to**
 21 **turn over biosolids records?**
 22 A. We have.
 23 **Q. Okay. What happens if a preparer or**
 24 **land applicer fails to provide records under the**
 25 **biosolids regulations or Clean Water Act Section**

1 **308?**
 2 A. So biosolids in its entirety is a
 3 self-implementing regulation, so we rely heavily on
 4 being able to collect information from a preparer
 5 or a land applicer or as part of the annual
 6 reporting requirement for some facilities. Without
 7 being able to collect those records, we would have
 8 no way to assess whether a facility is in
 9 compliance with Part 503 or not.
 10 **Q. Okay. And how does that speak to the**
 11 **potential harm that may occur from misapplication**
 12 **of sewage sludge, for example?**
 13 A. So without having those records,
 14 something like management practices where you're
 15 doing an agronomic rate calculation, we would not
 16 be able to verify that it wasn't applied too close
 17 to a water body or that there -- you know, there
 18 wasn't public contact with it. All of that, we
 19 would be unable to discern.
 20 **Q. Okay. Let's turn to this case**
 21 **specifically.**
 22 **How did EPA Region 7 first get involved**
 23 **with the case involving Nathan Pierce and Adamas**
 24 **Construction and Development Services?**
 25 A. So this was a referral complaint from

1 Region 8.
 2 MR. MUEHLBERGER: And I want to make sure I'm
 3 pronouncing it correctly. Is it Adamas or Adamas?
 4 MR. PIERCE: Adamas.
 5 MR. MUEHLBERGER: Okay. I apologize.
 6 Adamas.
 7 I'd like to show the witness
 8 Complainant's Exhibit 9, et. page 1.
 9 BY MR. MUEHLBERGER:
 10 **Q. Ms. Kleffner, do you recognize this**
 11 **document?**
 12 A. Yes.
 13 **Q. And can you please read the highlighted**
 14 **portion on page 1?**
 15 A. "A property owner in Lame Deer,
 16 Tommy Robinson" -- followed by a phone
 17 number -- "contacted the IHS on 8/27/2018 to
 18 express dissatisfaction with the sludge application
 19 on his property from the Lame Deer lagoon
 20 desludging operation."
 21 **Q. And when you say IHS, what is IHS?**
 22 A. That would be Indian Health Services.
 23 MR. MUEHLBERGER: I would like to show the
 24 witness Complainant's Exhibit 9, page 4.
 25 ///

1 BY MR. MUEHLBERGER:
 2 **Q. Okay. Ms. Kleffner, to your**
 3 **recollection, is this a continuation of that same**
 4 **inspection report that you received from IHS?**
 5 A. Yes.
 6 **Q. Okay. Can you please read the**
 7 **highlighted portion on this page?**
 8 A. "The subcontractor performing the sludge
 9 removal work, Nathan Pierce from Adamas
 10 Construction."
 11 **Q. And how did EPA get this report from**
 12 **IHS?**
 13 A. So Indian Health Services sent it to
 14 Region 8. Region 8 sent it to Region 7. It
 15 happened that way because Region 7 is the Biosolids
 16 Center of Excellence, so we take all enforcement
 17 and annual report review. We basically run the
 18 program for biosolids nationwide.
 19 **Q. And from your knowledge of this case,**
 20 **can you describe the relationship between Nathan**
 21 **Pierce and Adamas Construction?**
 22 A. He is the owner of Adamas Construction.
 23 **Q. So if we're referring to either Pierce**
 24 **or Adamas in this case, we're referring to the**
 25 **same?**

1 A. Yes.
 2 **Q. Okay.**
 3 MR. MUEHLBERGER: So I'd like to show the
 4 witness Complainant's Exhibit 11, et. page 1.
 5 BY MR. MUEHLBERGER:
 6 **Q. So after you got this report from IHS,**
 7 **what did EPA do next?**
 8 A. So we sent an information request to
 9 Mr. Pierce looking for records, basically, for this
 10 land application project.
 11 **Q. Okay. And why did the agency decide to**
 12 **send this 308 request to Nathan Pierce and Adamas**
 13 **Construction?**
 14 A. He was the person listed in the
 15 complaint.
 16 **Q. Okay. Does the --**
 17 MR. MUEHLBERGER: Actually, I'd like to show
 18 the witness Complainant's Exhibit 11, et. page 6.
 19 BY MR. MUEHLBERGER:
 20 **Q. While we're looking for that document,**
 21 **Ms. Kleffner, can you tell us what kinds of**
 22 **information were you looking for from respondents**
 23 **when you sent them the 308 request?**
 24 A. So for a biosolids case, we kind of -- I
 25 don't want to say a template, but we do have a set

1 of information that we ask for. It includes metals
 2 concentration; pathogen concentration; vector
 3 attraction reduction, what kind was used;
 4 management practices, including agronomic rate
 5 calculations; and site restrictions. We also do
 6 include in there if anything doesn't meet Part 503
 7 requirements, such as metals or pathogens, we ask
 8 either what happened to the biosolids, if it was
 9 landfilled or if it was further processed.
 10 **Q. So the information that you're looking**
 11 **for in this 308 request, does that match the**
 12 **recordkeeping requirements that are under Part 503?**
 13 A. Yes.
 14 **Q. Would respondents have been required to**
 15 **submit the biosolids records to EPA regardless of**
 16 **whether or not they were an owner/operator of a**
 17 **point source?**
 18 A. Yes.
 19 **Q. Okay. Thanks.**
 20 **Okay. Ms. Kleffner, this is page 6 of**
 21 **Complainant's Exhibit 11. In looking at this, is**
 22 **there anything that we missed here as far as**
 23 **information that you were requesting from Nathan**
 24 **Pierce or Adamas Construction?**
 25 A. I don't think so.

1 **Q. Okay. All right. Moving on here.**
 2 MR. MUEHLBERGER: So I'd like to pull up 40
 3 CFR 503.17, please. I think it's the next one
 4 over. There you go.
 5 BY MR. MUEHLBERGER:
 6 **Q. Ms. Kleffner, do you recognize these**
 7 **regulations?**
 8 A. I do.
 9 **Q. Okay. And can you describe what these**
 10 **regulations are?**
 11 A. So this is the Part 503 biosolids
 12 regulations for recordkeeping.
 13 **Q. Okay. And I'd like you to go through**
 14 **what the recordkeeping requirements would be for an**
 15 **applier of sewage sludge.**
 16 A. Okay.
 17 **Q. Go ahead.**
 18 A. Oh, go ahead.
 19 **Q. Under what subpart?**
 20 A. So it would be (a)(4).
 21 **Q. Okay. Could you please read this**
 22 **regulatory citation?**
 23 A. "If the pollutant concentrations in Part
 24 503.13(b)(3) and the Class B pathogen requirements
 25 in 503.32(b) are met when bulk sewage sludge is

1 applied to agricultural land, forest, a public
 2 contact site, or a reclamation site:
 3 "The person who prepares the bulk sewage
 4 sludge shall develop the following information and
 5 shall retain the information for five years:
 6 "The concentration of each pollutant
 7 listed in 503" -- or "in Table 3 of 503.13 in the
 8 bulk sewage sludge.
 9 "The following certifications
 10 statement."
 11 **Q. Go ahead and read the C and D, please.**
 12 A. Okay.
 13 "A description of how the Class B
 14 pathogen requirements in Part 503.32(b) are met.
 15 "When one of the vector attraction
 16 reduction requirements in 503.33(b)(1) through
 17 (b)(8) is met, a description of how the vector
 18 attraction reduction requirement is met."
 19 **Q. Thank you.**
 20 MR. MUEHLBERGER: I'd like to show the
 21 witness Complainant's Exhibit 12, et. 1.
 22 THE COURT: Which exhibit, Mr. Muehlberger?
 23 MR. MUEHLBERGER: Complainant's Exhibit 12,
 24 et. page 1.
 25 THE COURT: CX12. Okay.

1 MR. MUEHLBERGER: Your Honor, I apologize for
 2 asking this, but could we take a quick five-minute
 3 break to get some technological issues straightened
 4 out here as far as the exhibits are concerned?
 5 THE COURT: Sure.
 6 MR. MUEHLBERGER: Thank you.
 7 THE COURT: Yeah. No problem.
 8 (Whereupon, a brief
 9 recess was taken.)
 10 THE COURT: Okay. Brief break. Back on the
 11 record. Please go ahead.
 12 MR. MUEHLBERGER: Thank you, Your Honor. We
 13 apologize for the technical difficulties here.
 14 We're going to be switching over from using the
 15 laptop to show exhibits to the projector up here.
 16 THE COURT: Okay.
 17 MR. MUEHLBERGER: Thank you.
 18 I'd like to show the witness
 19 Complainant's Exhibit 12, page 1. Are you able to
 20 see that okay, Your Honor?
 21 THE COURT: Yes.
 22 MR. MUEHLBERGER: Thank you.
 23 BY MR. MUEHLBERGER:
 24 **Q. So, Ms. Kleffner, earlier you testified**
 25 **that you issued an information request to the**

1 **respondents after you got the complaint from IHS;**
 2 **is that correct?**
 3 A. Yes.
 4 **Q. Okay. So looking at Complainant's**
 5 **Exhibit 12, et. page 1, can you describe what**
 6 **happened after that?**
 7 A. So we received a letter from a law firm.
 8 The date at the top is October 17th, 2018. And it
 9 was basically just asking for a 60-day extension to
 10 respond to the information request.
 11 **Q. And this is an attorney that represented**
 12 **the respondents in this case, correct?**
 13 A. Yes.
 14 **Q. Okay.**
 15 MR. MUEHLBERGER: I'd like to show the
 16 witness Complainant's Exhibit 13, et. page 1.
 17 BY MR. MUEHLBERGER:
 18 **Q. Can you please describe this document?**
 19 A. This is an e-mail from Dan Breedlove of
 20 Region 7. And it's just responding to the attorney
 21 assigned saying that we would extend for 30 days.
 22 **Q. Did EPA receive the information that**
 23 **they requested from respondents within that 30-day**
 24 **period?**
 25 A. We did not.

1 **Q. Okay.**
 2 MR. MUEHLBERGER: I'd like to show the
 3 witness Complainant's Exhibit 14, et. 1.
 4 BY MR. MUEHLBERGER:
 5 **Q. Ms. Kleffner, do you recognize this**
 6 **document?**
 7 A. I do.
 8 **Q. And can you describe it, please?**
 9 A. This is a pre-filing letter. It was
 10 sent on March 4th, 2019, to Mr. Pierce.
 11 **Q. Okay. Can you describe what is a**
 12 **pre-filing letter?**
 13 A. So a pre-filing letter from EPA is just
 14 an offer, basically, to provide information and to
 15 go over any of the potential violations that we
 16 have discussed, and then discuss any settlement
 17 that we would want to do between the two parties.
 18 **Q. Through a pre-file letter, what is EPA**
 19 **seeking in this case?**
 20 A. We were seeking a penalty.
 21 **Q. Okay. Could you please read the**
 22 **highlighted portion on that pre-file letter?**
 23 A. "Under Section 309 of the Clean Water
 24 Act, the EPA is authorized to seek penalties and
 25 mitigation for violations of Sections 308 and 405

1 of the Clean Water Act. To determine the
2 appropriate penalty amount, the EPA considers
3 various factors, such as the nature, extent, and
4 gravity of the violation; any prior history of
5 violations; the economic benefit gained; and the
6 degree of culpability. Based on these factors, the
7 EPA has determined a civil penalty is appropriate
8 in this case. Before assessing a penalty, however,
9 we request a meeting to discuss any measures your
10 company has taken to comply with the Clean Water
11 Act and for you to provide any information that may
12 warrant a reduction in penalty."

13 **Q. Thank you.**

14 MR. MUEHLBERGER: I'd like to show the
15 witness Complainant's Exhibit 5, et. page 1.

16 BY MR. MUEHLBERGER:

17 **Q. Ms. Kleffner, do you recognize this**
18 **document?**

19 A. I do.

20 **Q. And what is this?**

21 A. This is an inspection report. It's
22 dated July 20th of 2018. It was an inspection
23 conducted by EPA Region 8 at Northern Cheyenne
24 Utilities Commission facilities.

25 **Q. The date here says July 20th, 2018. But**

1 collection systems operated by NCUC, and active and
2 planned projects within the Lame Deer collection
3 system and at the lagoon.

4 "Based on our discussion with
5 Mr. Pierce, all manholes within the Lame Deer
6 collection system were inspected for infiltration
7 annually and collection system vacuuming and
8 jetting was performed on an as-needed basis,
9 primarily to address blockages."

10 MR. MUEHLBERGER: I'd like to show the
11 witness Complainant's Exhibit 5, et. page 6.

12 BY MR. MUEHLBERGER:

13 **Q. Is this a continuation of the inspection**
14 **report?**

15 A. Yes.

16 **Q. Could you also read the highlighted**
17 **portions on this page?**

18 A. "Mr. Pierce indicated the grinder had
19 not been sufficiently reducing the size of solids
20 to prevent interference with the lift station
21 pumps."

22 MR. MUEHLBERGER: I'd like to show the
23 witness Complainant's Exhibit 5, et. page 7.

24 BY MR. MUEHLBERGER:

25 **Q. Also part of the same inspection report?**

1 **do you recall when you received this inspection**
2 **report?**

3 A. We received this in April 2019.

4 **Q. Did you receive this inspection report**
5 **after you issued the pre-file letter to the**
6 **respondents?**

7 A. We did.

8 **Q. Okay.**

9 MR. MUEHLBERGER: I'd like to show the
10 witness Complainant's Exhibit 5, et. page 1. I'm
11 sorry, page 5.

12 BY MR. MUEHLBERGER:

13 **Q. Is this a continuation of the inspection**
14 **report that you just referenced?**

15 A. Yes.

16 **Q. Could you please read the highlighted**
17 **portions on this page?**

18 A. "However, Adamas Construction and
19 Development Services, PPLC, Adamas Construction,
20 representative Mr. Nathan Pierce, NCUC contractor,
21 was present and indicated he would be able to
22 address many of our inspection questions.

23 "Mr. Pierce and Mr. Courtney presented
24 an overview of NCUC's wastewater operations,
25 monitoring procedures, and recent SSOs from

1 A. That's correct.

2 **Q. Okay. Could you please read the**
3 **highlighted portions?**

4 A. "During the inspection, Adamas
5 Construction was preparing Cell 2 for sludge
6 removal.

7 "Mr. Pierce stated all gate valves at
8 transfer stations between cells were broken,
9 meaning there was no way to control or retain flow
10 within the lagoon system."

11 "As such, we agreed to request records
12 via e-mail after the inspection. A records request
13 was e-mailed to Ms. Bement on June 21, 2018. As of
14 this report, no records have been received in
15 response to this request."

16 **Q. Ms. Kleffner, what does this inspection**
17 **report tell you about Mr. Pierce's role at the Lame**
18 **Deer POTW?**

19 A. He fulfilled operator duties at the
20 lagoon.

21 **Q. Were the duties that he was performing**
22 **similar to operator duties that you've experienced**
23 **in other EPA enforcement cases?**

24 A. Yes.

25 **Q. Okay. Let's talk a little bit about the**

1 **Lame Deer POTW. What did you learn about the POTW**
 2 **itself from this inspection?**
 3 A. So reviewing this inspection report,
 4 it's a three cell lagoon that operates in sequence.
 5 So as the water goes in, it has detention time in
 6 each lagoon. It continues through each of the
 7 cells before discharging through a point source
 8 into Lame Deer Creek.
 9 **Q. Earlier, you testified about NPDES**
 10 **permits. Does this facility have an NPDES permit?**
 11 A. It does.
 12 **Q. Okay. And why does it need one?**
 13 A. So as a facility that discharges
 14 pollutants from a point source into a water of the
 15 United States, that would fall under the NPDES
 16 program and require it to have a permit.
 17 **Q. Okay.**
 18 MR. MUEHLBERGER: I'd like to toggle over to
 19 the laptop here and show the witness 40 CFR 122.1.
 20 BY MR. MUEHLBERGER:
 21 **Q. Do you recognize this part of the**
 22 **regulations, Ms. Kleffner?**
 23 A. I do.
 24 **Q. And can I have you read 122.1 at (b)(1)?**
 25 A. "The NPDES program requires permits for

1 the discharge of pollutants from any point source
 2 into waters of the United States. The terms
 3 'pollutant,' 'point source,' and 'waters of the
 4 United States' are defined at 122.2."
 5 **Q. So, Ms. Kleffner, is it presumed that a**
 6 **facility that has an NPDES permit, that that**
 7 **facility will discharge into a water of the United**
 8 **States?**
 9 A. Yes.
 10 **Q. Thank you.**
 11 **Okay. Let's get back to the projector**
 12 **here. I'd like to get back to your interaction**
 13 **with respondents after you sent the pre-file**
 14 **letter.**
 15 MR. MUEHLBERGER: And I'd like to show the
 16 witness Complainant's Exhibit 17, et. page 1.
 17 BY MR. MUEHLBERGER:
 18 **Q. Do you recognize this document?**
 19 A. Yes.
 20 **Q. And what is this?**
 21 A. This is an e-mail from Mr. Gallus, who
 22 was representing Mr. Pierce.
 23 **Q. Okay. And could you read the**
 24 **highlighted portion -- I'm sorry. What's the date**
 25 **on this document?**

1 A. June 14th, 2019.
 2 **Q. And could you read the highlighted**
 3 **portion here?**
 4 A. "It is the position of Adamas that the
 5 size of the entity involved excluded 503
 6 regulation, as is being asserted."
 7 MR. MUEHLBERGER: I'd like to show the
 8 witness Complainant's Exhibit 17, et. page 2.
 9 BY MR. MUEHLBERGER:
 10 **Q. Is this a continuation of that same**
 11 **communication from respondent's attorney?**
 12 A. Yes.
 13 **Q. Could you please read the highlighted**
 14 **portion starting with "According to"?**
 15 A. "According to the 'EPA Land Application
 16 of Sewage Sludge' - a Guide for Land Appliers on
 17 the Requirements of the Federal Standards for the
 18 Use or Disposal of Sewage Sludge, 40 CFR Part 503,'
 19 'EQ sludge is considered comparable to standard
 20 fertilizer products. Therefore, land appliers of
 21 EQ sewage sludge have no requirements to meet under
 22 the Rule.'
 23 "According to 2.8 Reporting, 40 CFR
 24 503.18, the reporting requirements under Part 503
 25 apply to major municipal NPDES permittees and Class

1 1 Sludge Management Facilities. Major
 2 municipal" --
 3 MR. MUEHLBERGER: I'd like to show the
 4 witness Complainant's Exhibit 17, et. page 3.
 5 BY MR. MUEHLBERGER:
 6 **Q. Can you keep reading there, please,**
 7 **Ms. Kleffner?**
 8 A. Sure.
 9 -- "NPDES permittees are publically
 10 owned treatment works, POTWs, with a design flow
 11 rate equal to or greater than 1 million gallons per
 12 day and POTWs with a service population of 10,000
 13 people or more.
 14 "Neither my client nor the Lame Deer
 15 Lagoons qualify as a POTW and are therefore exempt
 16 from reporting under the rule."
 17 **Q. Ms. Kleffner, does -- do respondents**
 18 **meet the exemptions of Clean Water Act reporting**
 19 **requirements under the biosolids regulations as**
 20 **outlined in this response?**
 21 A. They do not.
 22 **Q. And why don't they?**
 23 A. So what Mr. Gallus is describing in his
 24 e-mail is talking about annual reporting
 25 requirements, and that is the requirement to report

1 annually to the EPA for the previous year. That
2 does not exempt a facility, even if they don't meet
3 those requirements, from having to report records
4 as requested.

5 **Q. Okay. So is it EPA's position that**
6 **respondents were still required to produce**
7 **biosolids records under the regulations?**

8 A. Yes.

9 **Q. In this response, did EPA receive any of**
10 **the information that they requested in the**
11 **September 25th, 2018 information request?**

12 A. We did not.

13 **Q. Okay.**

14 MR. MUEHLBERGER: I'd like to show the
15 witness Complainant's Exhibit 18, et. page 1.

16 THE COURT: Let me just interject real quick.

17 MR. MUEHLBERGER: Certainly.

18 THE COURT: Because I -- just for clarity for
19 the record. I believe you had inquired before
20 hearing if it was okay to highlight certain
21 sections just to kind of streamline the testimony,
22 and I said that that was fine. I think Ms. Almase
23 communicated that to me it was raised prehearing.

24 So just for clarity, what the final
25 exhibits that you submitted to the court reporter

1 provided to EPA. EPA is unable to prove the
2 veracity of the claims you are making regarding the
3 waste without appropriate documentation.

4 "The reporting requirements under 40 CFR
5 Part 503 apply to any person who prepares sewage
6 sludge that is applied to the land, to any person
7 who applies sewage sludge to the land, to sewage
8 sludge applied to the land, and to the land on
9 which sewage sludge is applied.

10 "EPA requests that compliance with the
11 Clean Water Act Section 308 letter within 10 days."

12 **Q. And did EPA in fact get the records that**
13 **they requested within that 10-day period?**

14 A. We received some documents.

15 **Q. I think it would help if I move on to**
16 **the next exhibit.**

17 A. Yeah, I think so.

18 MR. MUEHLBERGER: I'd like to show the
19 witness Complainant's Exhibit 19, et. page 1.

20 THE WITNESS: Okay.

21 BY MR. MUEHLBERGER:

22 **Q. Do you recognize this document?**

23 A. I do.

24 **Q. Okay. And can you describe it, please?**

25 A. This is an e-mail from Adamas

1 that will be in the official record don't contain
2 this highlighting, right?

3 MR. MUEHLBERGER: That is correct.

4 THE COURT: Okay. So that's just, really, a
5 demonstrative aid when you refer to the
6 highlighting portions on the transcript when it
7 comes out. I just want to make sure that it won't
8 appear as highlighting in the final exhibits.

9 MR. MUEHLBERGER: That's correct, Your Honor.

10 THE COURT: Okay. All right. I just wanted
11 that clarification now for the transcript and for
12 anyone reviewing. Go ahead.

13 MR. MUEHLBERGER: Thanks. I'm showing the
14 witness Complainant's Exhibit 18, et. page 1.

15 BY MR. MUEHLBERGER:

16 **Q. Do you recognize this document?**

17 A. I do.

18 **Q. And what is this?**

19 A. This is an e-mail from Sara Hertz Wu of
20 EPA Region 7 to Mr. Gallus. And the date is June
21 21st, 2019.

22 **Q. Can you read the highlighted portions**
23 **here, please?**

24 A. "The documents requested in the Clean
25 Water Act Section 308 letter still need to be

1 Construction and Development Services to Sara
2 Hertz Wu. The date is July 2nd, 2019.

3 **Q. Can you read the highlighted portion,**
4 **please?**

5 A. "Our company was as given the directive
6 from NCUC GM Sheri Bement and Northern Cheyenne
7 tribal president Jace Killsback to proceed with
8 sludge removal and application, and, a, NCUC would
9 take the sludge samples or would be responsible for
10 sludge samples.

11 "The attached pre-construction meeting
12 minutes show clearly that Indian Health Services
13 informed NCUC they were responsible for all work,
14 and they specifically state at bullet point number
15 4, 'NCUC is ultimately responsible for following
16 503 regulation or requirements.'"

17 **Q. Okay. To your knowledge, did NCUC ever**
18 **perform any sampling of the sludge in this case?**

19 A. No.

20 **Q. Who performed the sampling of the**
21 **sludge?**

22 A. Mr. Pierce.

23 MR. MUEHLBERGER: Okay. I'd like to show the
24 witness Complainant's Exhibit 19, et. page 10. If
25 we could look at the top of the document, please.

1 Thank you.
 2 BY MR. MUEHLBERGER:
 3 **Q. Do you recognize this document?**
 4 A. I do.
 5 **Q. Okay. And can you describe it, please?**
 6 A. This is titled, "Lame Deer Lagoon Sludge
 7 Removal." It's a pre-construction meeting agenda.
 8 And the date is May 17th, 2018.
 9 **Q. And was this document submitted by**
 10 **Nathan Pierce to the EPA?**
 11 A. Yes.
 12 **Q. Okay. And can you please read the**
 13 **highlighted portion?**
 14 A. "Subcontractor: Nathan Pierce, Adamas
 15 PLLC."
 16 MR. MUEHLBERGER: I'd like to show the
 17 witness Complainant's Exhibit 19, et. page 12.
 18 Could we look at the top of the document here?
 19 Thank you.
 20 BY MR. MUEHLBERGER:
 21 **Q. Do you recognize this document?**
 22 A. I do.
 23 **Q. Also submitted by Nathan Pierce to EPA?**
 24 A. Yes.
 25 **Q. Okay. And what is this document?**

1 A. This is lab results from samples taken.
 2 And it's dated August 2nd, 2018. The header has
 3 Adamas Construction.
 4 **Q. Okay.**
 5 MR. MUEHLBERGER: I'd like to show the
 6 witness Complainant's Exhibit 19, et. page 26.
 7 BY MR. MUEHLBERGER:
 8 **Q. Can you describe this document?**
 9 A. This is a chain of custody for the lab
 10 results.
 11 **Q. Okay. And who's listed as the point of**
 12 **contact on this chain of custody?**
 13 A. Adamas Construction and Nathan Pierce.
 14 **Q. Okay. Are there other lab results in**
 15 **the record that also have Adamas Construction**
 16 **listed as the point of contact in the submittal**
 17 **that you received from Mr. Pierce?**
 18 A. No. This is the only submittal we
 19 received.
 20 **Q. Okay. And what does this tell you about**
 21 **Mr. Pierce's involvement with the sludge**
 22 **application project?**
 23 A. So he took both soil and sludge samples
 24 for it.
 25 **Q. Okay. And I think you answered this**

1 **question. But did EPA receive any other sample**
 2 **results from the sludge application project?**
 3 A. We did not.
 4 **Q. Okay. Were the lab results that you**
 5 **received from Mr. Pierce sufficient to answer EPA's**
 6 **questions under the information requests that they**
 7 **sent back in September of 2018?**
 8 A. In part. So the lab results had
 9 nitrogen content, pathogen, and metal sampling.
 10 But it did not include the final agronomic rate
 11 calculations, site restrictions, or other
 12 management practices, or vector attraction
 13 reduction.
 14 MR. MUEHLBERGER: I'd like to show the
 15 witness Complainant's Exhibit 19, et. page 31.
 16 BY MR. MUEHLBERGER:
 17 **Q. Was this also part of the response that**
 18 **you received from Nathan Pierce to EPA?**
 19 A. Yes.
 20 **Q. And can you describe this document,**
 21 **please?**
 22 A. This is an e-mail. It's titled, "Update
 23 LD lagoon project." It's from Adamas Construction
 24 to James Courtney of Indian Health Services. The
 25 date is July 13th, 2018.

1 **Q. Okay. And can you read the highlighted**
 2 **portions, please?**
 3 A. "We pumped and dewatered a significant
 4 amount of sludge on Wednesday.
 5 "We will be on-site today pumping
 6 sludge. We should be ready to begin hauling and
 7 application next week."
 8 **Q. Ms. Kleffner, what do these highlighted**
 9 **references say to you about Mr. Pierce's**
 10 **involvement with the sludge project?**
 11 A. So it mentions dewatering, so that
 12 indicates that he would have been a preparer. And
 13 then it also talks about hauling an application
 14 next week, so that would make him a land applier as
 15 well.
 16 MR. MUEHLBERGER: I'd like to show the
 17 witness 40 CFR 503.17. So if we could toggle over
 18 to the laptop, please.
 19 BY MR. MUEHLBERGER:
 20 **Q. Ms. Kleffner, you testified earlier that**
 21 **both preparers and land appliers of sewage sludge**
 22 **are responsible for recordkeeping requirements**
 23 **under Part 503; is that correct?**
 24 A. That is correct.
 25 **Q. Can you locate the relevant regulations**

1 in 503.17 that apply to preparers?
2 A. So it would be 503.17(a)(4)(i) would be
3 for preparers.

4 **Q. And looking at this information or this**
5 **citation here, what kind of information are**
6 **preparers of sewage sludge required to keep and**
7 **maintain?**

8 A. So they are required to keep and
9 maintain pollutant concentrations. If you scroll
10 down a little bit further, it will say there's a
11 certification for vector attraction reduction,
12 depending, of course, on what option is chosen for
13 that. And then Class B, pathogen requirements.

14 **Q. Thank you.**
15 **Ms. Kleffner, in any of the responses**
16 **that you received from Nathan Pierce or Adamas**
17 **Construction or the attorneys, did you get the**
18 **information that you requested in the September**
19 **25th, 2018 request for information?**

20 A. We only received part of it. We would
21 have gotten what would have been necessary for a
22 preparer, but we were missing a significant amount
23 of information for a land applier.

24 **Q. Can you walk us through what information**
25 **was missing that you requested?**

1 A. Sure. So we -- as a land applier, we
2 were missing site restrictions, verification that
3 vector attraction reduction was achieved through a
4 physical method, and then management practices.
5 The most significant thing for management practices
6 were the agronomic rate calculations, since that
7 was the initial complaint from Region 8 was that
8 the biosolids were overapplied.

9 **Q. Okay. Let's break down each of these**
10 **here.**

11 **Why is it important that EPA receive**
12 **site restriction information from biosolids**
13 **preparers or appliers?**

14 A. Site restrictions are based on
15 public -- not public contact, but contact with the
16 site in general. So site restrictions have a
17 couple different requirements in it. Like if you
18 are going to graze cattle on a site, you need to
19 make sure that it's within a certain amount of time
20 after the land application. If you're growing
21 certain foods or turf grasses, that also needs to
22 be within a certain amount of time after land
23 application. So site restrictions basically keep
24 people and animals away from biosolids for a period
25 of time to ensure that there's no effects from

1 that.
2 **Q. Let's talk about vector attraction.**
3 **What is that and why is it important for EPA to**
4 **receive that information?**

5 A. Vector attraction reduction is what is
6 necessary to reduce the attractiveness of biosolids
7 to wildlife and other potentially disease-carrying
8 organisms. So that would mean that you're keeping
9 away any type of bugs or wild animals. If you have
10 an instance where it's -- the biosolids are really
11 attractive to wildlife, they will get into the
12 biosolids, and then it has the potential to make
13 its way off site and potentially have contact with
14 other animals or humans.

15 **Q. You testified that management practices**
16 **helps to -- EPA to discern whether or not sewage**
17 **sludge was overapplied. Is that correct?**

18 A. Yes.

19 **Q. What else is important about management**
20 **practices for purposes of the biosolids**
21 **regulations?**

22 A. Purposes of management practices is to
23 make sure that the biosolids stay on the site that
24 they were intended to be land applied on. So
25 management practices include making sure that you

1 apply biosolids a certain amount of distance away
2 from a water body, that they're not overapplied,
3 that they're not applied to land that's flooded or
4 frozen. So it's just ensuring that biosolids stay
5 where they are supposed to be on-site.

6 **Q. How does a failure to submit the**
7 **biosolids recordkeeping information impact EPA's**
8 **ability to do its job?**

9 A. So if we don't have the information, it
10 is pretty much impossible for us to determine if a
11 violation is present or if Part 503 has been
12 followed.

13 **Q. How could the agency's inability to do**
14 **its job in that respect have impacts on human**
15 **health or the environment?**

16 A. So there's no way -- there would be no
17 way for us to determine if management practices
18 were followed. We would be unsure if humans have
19 come in contact with it or if the biosolids have
20 washed off into a water body. There's just no way
21 to determine if the biosolids are doing their job
22 in the way that this regulation was designed to do.

23 MR. MUEHLBERGER: I'd like to show the
24 witness Complainant's Exhibit 21, et. page 1.

25 ///

1 BY MR. MUEHLBERGER:
 2 **Q. Ms. Kleffner, do you recognize this**
 3 **document?**
 4 A. I do.
 5 **Q. And can you describe it, please?**
 6 A. This is an e-mail from Sara Hertz Wu of
 7 Region 7 to Christopher Gallus and myself. I'm
 8 sorry. It's CCed to Christopher Gallus and myself.
 9 It was originally sent to Adamas Construction. The
 10 date is Thursday, July 18th, 2019.
 11 **Q. And just as a reminder of these parties,**
 12 **who is Sara Hertz Wu?**
 13 A. She was originally the attorney assigned
 14 from EPA Region 7 for this.
 15 **Q. And Christopher Gallus?**
 16 A. That's the attorney for Mr. Pierce.
 17 **Q. And you are Erin Kleffner?**
 18 A. Yes.
 19 **Q. Could you please read the highlighted**
 20 **portion starting with "Nathan"?**
 21 A. "Nathan: We have reviewed the response
 22 you provided on July 2nd, 2019. Based on what you
 23 submitted, EPA still does not have a response to
 24 Question 7 of the" -- I'm assuming that's supposed
 25 to say 308, but it says 208. "Question 7 states as

1 follows:
 2 "For each land application of biosolids
 3 by Adamas Construction and Development Services,
 4 since January 1, 2018, provide the information
 5 listed below:
 6 "a, The street address or legal
 7 description of the location;
 8 "b, The dates upon which the location
 9 was used for the land application of biosolids;
 10 "c, The number of acres upon which
 11 biosolids were land applied;
 12 "d, The number of loads applied;
 13 "e, A description of how the site
 14 restrictions of 40 CFR 503.32(b)(5) were met; and
 15 "The annual application rate of
 16 biosolids as calculated.
 17 "We request that you provide documents
 18 responsive to this request or let us know that you
 19 do not have these documents by July 23, 2019. As a
 20 land applier, you are not exempt from Section 503
 21 of the regulations and are required to keep this
 22 type of documentation."
 23 **Q. Was this document successful or was this**
 24 **e-mail successful in getting the answers to the**
 25 **questions you were seeking?**

1 A. No.
 2 **Q. So did Pierce ever submit the required**
 3 **information under that September 2018 information**
 4 **request?**
 5 A. No.
 6 MR. MUEHLBERGER: I'd like to show the
 7 witness Complainant's Exhibit 26.
 8 MR. PIERCE: Your Honor, can I get the number
 9 of that last exhibit? Sorry.
 10 THE COURT: Sure. I think it was -- was it
 11 CX21, et. Page 1?
 12 MR. MUEHLBERGER: You are correct. Thank
 13 you.
 14 BY MR. MUEHLBERGER:
 15 **Q. Do you recognize this document,**
 16 **Ms. Kleffner?**
 17 A. Yes.
 18 **Q. Okay. And what is this?**
 19 A. This is the public notice for a
 20 complaint that was filed.
 21 **Q. Okay. So did EPA file an administrative**
 22 **complaint in this case?**
 23 A. We did.
 24 **Q. What violations were alleged in this**
 25 **complaint?**

1 A. Failure to maintain records and failure
 2 to respond.
 3 **Q. Okay. Did the complaint seek any other**
 4 **relief?**
 5 A. There was a penalty associated with
 6 this.
 7 MR. MUEHLBERGER: Okay. I'd like to show the
 8 witness Complainant's Exhibit 30, et. page 1.
 9 BY MR. MUEHLBERGER:
 10 **Q. Ms. Kleffner, did EPA issue any more**
 11 **information requests in this case?**
 12 A. We did. We issued an additional request
 13 to Mr. Robinson, the landowner, Mr. Sprague, the
 14 hauler, and NCUC.
 15 **Q. Okay. And again, what is NCUC?**
 16 A. Northern Cheyenne Utilities Commission.
 17 **Q. Okay. And what's the relationship**
 18 **between NCUC and Mr. Pierce?**
 19 A. So NCUC is the owner of the Lame Deer
 20 Lagoon.
 21 **Q. Okay. Looking at CX30 here, do you**
 22 **recognize this document?**
 23 A. I do.
 24 **Q. Okay. And what is this?**
 25 A. This was the 308 information request

1 that was sent to Mr. Robinson.
 2 MR. MUEHLBERGER: Okay. I'd like to show the
 3 witness Complainant's Exhibit 31, et. 1.
 4 BY MR. MUEHLBERGER:
 5 **Q. Can you describe this document?**
 6 A. This was the information request that
 7 was sent to Mr. Sprague.
 8 MR. MUEHLBERGER: I'd like to show the
 9 witness Complainant's Exhibit 32, et. 1.
 10 BY MR. MUEHLBERGER:
 11 **Q. Can you describe this document, please?**
 12 A. This was the information request that
 13 was sent to Mr. Adam Spang of NCUC.
 14 MR. MUEHLBERGER: I'd like to show the
 15 witness Complainant's Exhibit 43, et. page 1.
 16 BY MR. MUEHLBERGER:
 17 **Q. Can you please describe this document?**
 18 A. This is an e-mail from Mr. Spang to Sara
 19 Hertz Wu. And it was sent on December 13th of
 20 2019.
 21 **Q. Okay. And to your recollection, who is**
 22 **Adam Spang?**
 23 A. He was, I think, the general manager of
 24 NCUC.
 25 MR. MUEHLBERGER: Okay. I'd like to show the

1 invoice for payment."
 2 **Q. Okay. And who is this signed by at the**
 3 **bottom?**
 4 MR. MUEHLBERGER: Can you scroll down there,
 5 please? Thanks.
 6 THE WITNESS: This is signed by Sheri Bement.
 7 BY MR. MUEHLBERGER:
 8 **Q. And what was her role?**
 9 A. She was the general manager for NCUC.
 10 MR. MUEHLBERGER: Okay. I'd like to show the
 11 witness Complainant's Exhibit 43, et. page 28.
 12 BY MR. MUEHLBERGER:
 13 **Q. Is this also part of the response that**
 14 **you received from NCUC?**
 15 A. Yes.
 16 **Q. Okay. And can you describe this**
 17 **document, please?**
 18 A. It's an invoice dated 6/21/2018. The
 19 invoice number is 02-cc-2018.
 20 **Q. Okay. And who is this from?**
 21 A. This is billed -- or it's from Adamas
 22 Construction, and it's billed to NCUC, Sheri
 23 Bement.
 24 **Q. Can you please read the first two**
 25 **highlighted lines on the document?**

1 witness Complainant's Exhibit 43, et. page 2.
 2 BY MR. MUEHLBERGER:
 3 **Q. Does this verify your conclusion that**
 4 **Mr. Spang was the general manager?**
 5 A. Yes.
 6 **Q. Okay. And was this the response that**
 7 **EPA received from its information request to NCUC?**
 8 A. Yes.
 9 MR. MUEHLBERGER: Okay. I'd like to show the
 10 witness Complainant's Exhibit 43, et. page 27.
 11 BY MR. MUEHLBERGER:
 12 **Q. Do you recognize this document?**
 13 A. Yes.
 14 **Q. Can you please read the highlighted**
 15 **portion at the top?**
 16 A. It says, "Request for payment, Invoice
 17 Number 02-cc-2018."
 18 **Q. Can you please read the highlighted**
 19 **portion?**
 20 A. "Pursuant to the authorities outlined in
 21 the General Provisions of the Northern Cheyenne
 22 Utilities Commission and the Sanitation and
 23 Facilities, Indian Health Service Agreement for the
 24 Lame Deer Lagoon Sludge Removal Project, Adamas
 25 Construction has submitted the aforementioned

1 A. It says, "Supervision (sludge pumping)
 2 pay plus benefits. Supervision (sludge
 3 application) pay plus benefits."
 4 **Q. Ms. Kleffner, is sewage pumping a part**
 5 **of preparation of sewage sludge in your experience?**
 6 A. Yes.
 7 **Q. Okay. Does sludge application on this**
 8 **document refer to the land application of sludge?**
 9 A. Yes.
 10 **Q. Okay. Can you read the other two**
 11 **highlighted lines, please?**
 12 A. It says two employees at \$34 per hour
 13 pay plus benefits for sludge application. Three
 14 employees at \$34 per hour pay plus benefits for
 15 sludge pumping.
 16 **Q. Ms. Kleffner, what does this invoice**
 17 **tell you about respondent's involvement in the**
 18 **sludge removal and application project?**
 19 A. So he directed the preparation and the
 20 application.
 21 MR. MUEHLBERGER: I'd like to show the
 22 witness Complainant's Exhibit 43, et. page 7.
 23 BY MR. MUEHLBERGER:
 24 **Q. Can you describe this document, please?**
 25 A. This is another invoice from Adamas

1 Construction billed to NCUC. The received date on
 2 it is December 7th of 2018.
 3 **Q. And can you read the highlighted**
 4 **portions, please?**
 5 A. It details sludge pumping twice and then
 6 sludge application to Robinson Field.
 7 **Q. Were respondents seeking payment for**
 8 **their involvement with the sludge removal and**
 9 **application project?**
 10 A. Yes.
 11 MR. MUEHLBERGER: I'd like to show the
 12 witness Complainant's Exhibit 43, et. page 6.
 13 THE COURT: Just quickly before you move on
 14 to that, can you quickly just identify the exhibit
 15 numbers again for the last two invoices you just
 16 covered?
 17 MR. MUEHLBERGER: Certainly.
 18 THE COURT: I'm trying to keep up, but...
 19 MR. MUEHLBERGER: And I can slow down, too.
 20 THE COURT: It's okay. I don't want to
 21 interrupt and as long as Mr. Pierce is following
 22 along. But I just wanted to make a quick note of
 23 it.
 24 MR. MUEHLBERGER: Sure. The first exhibit is
 25 Complainant's Exhibit 43, et. page 28. The second

1 A. This is an NCUC general fund payment
 2 voucher payable to Adamas Construction.
 3 MR. PIERCE: Your Honor, I object to this
 4 document. It's dated 2017, before the incident
 5 that is in question here.
 6 THE COURT: Okay. It's already in evidence.
 7 Why? What is the -- can you respond to the date
 8 issue?
 9 MR. MUEHLBERGER: Certainly. Your Honor,
 10 this document speaks to Mr. Pierce's involvement as
 11 an operator at the Lame Deer POTW, which would make
 12 him subject to Clean Water Act Section 308
 13 information requests.
 14 MR. PIERCE: Your Honor, the document simply
 15 shows a payment made. It doesn't give any
 16 indication as to an operator status.
 17 THE COURT: Can you respond, Mr. Muehlberger?
 18 MR. MUEHLBERGER: Certainly. May I respond
 19 by asking the witness a question about operators?
 20 THE COURT: Sure.
 21 MR. MUEHLBERGER: Is the operation of a
 22 muffin monster a typical duty of a POTW operator?
 23 THE WITNESS: Yes. It's part of the
 24 operation and maintenance of the system.
 25 MR. PIERCE: Your Honor, I think a more valid

1 is CX43, et. page 7.
 2 THE COURT: Thank you.
 3 MR. MUEHLBERGER: You're welcome.
 4 BY MR. MUEHLBERGER:
 5 **Q. Okay. Looking at CX43, et. page 6. Can**
 6 **you please describe this document?**
 7 A. This is an e-mail from Adamas
 8 Construction and Development to Sheri Bement. The
 9 date on it is Friday, November 24th, 2017.
 10 **Q. Can you please read the highlighted**
 11 **portion?**
 12 A. It says, "Please find the attached
 13 invoice for the muffin monster and east-side
 14 project."
 15 **Q. Ms. Kleffner, can you please define what**
 16 **is a muffin monster?**
 17 A. So a muffin monster is typically used in
 18 treatment facilities. It's essentially a garbage
 19 disposal in some sense. It's a grinder to grind up
 20 solids before it goes into the treatment system.
 21 **Q. Thank you.**
 22 MR. MUEHLBERGER: I'd like to show the
 23 witness Complainant's Exhibit 43, et. page 65.
 24 BY MR. MUEHLBERGER:
 25 **Q. Can you describe this document, please?**

1 question: Can a contractor work on a muffin
 2 monster without being an operator?
 3 THE COURT: Okay. Hold on just a second. I
 4 was about to say that since the exhibit is already
 5 admitted into evidence, I think the question is
 6 certainly an appropriate one just for cross. So
 7 make a note of it, and then just cover it when you
 8 cross-examine, and you can get into the date
 9 relative to the alleged violations. Certainly, I
 10 understand the reason for bringing it up. But the
 11 document is already in evidence, so I think the
 12 best course of action is for you to question about
 13 it and bring those points out through testimony.
 14 MR. PIERCE: Yes, ma'am.
 15 THE COURT: Okay. So please go ahead,
 16 Mr. Muehlberger.
 17 MR. MUEHLBERGER: Thank you.
 18 BY MR. MUEHLBERGER:
 19 **Q. Can you please read the two highlighted**
 20 **lines on this document?**
 21 A. It says, "East side restoration, muffin
 22 monster." And then it says life station, but I'm
 23 assuming it says, "Lift station, Invoice Number
 24 NCUC-05-2017."
 25 **Q. And can you tell us the amount that**

1 **Adamas was seeking through this invoice?**
 2 A. \$1,176.56.
 3 MR. MUEHLBERGER: I'd like to show the
 4 witness CX43, et. 66.
 5 BY MR. MUEHLBERGER:
 6 **Q. And again, Ms. Kleffner, is this all**
 7 **part of the response that you received from NCUC**
 8 **for your information request?**
 9 A. Yes.
 10 **Q. Okay. Can you describe this document,**
 11 **please?**
 12 A. This is a check from NCUC's general fund
 13 made payable to Adamas Construction Services, PLLC,
 14 in the amount of \$1,176.56.
 15 **Q. Does that amount match the invoice that**
 16 **was submitted by Adamas Construction?**
 17 A. Yes.
 18 **Q. Did Adamas Construction receive payment**
 19 **from NCUC for operator duties?**
 20 A. Yes.
 21 MR. MUEHLBERGER: I'd like to show the
 22 witness Complainant's --
 23 MR. PIERCE: Objection, Your Honor.
 24 THE COURT: Uh-huh.
 25 MR. PIERCE: He asked if that was payment for

1 operator duties. She doesn't know whether that
 2 payment was for operator duties or what the payment
 3 was for.
 4 THE COURT: Can you respond to that?
 5 THE WITNESS: I -- based on the invoice that
 6 was listed on there, I would say that the duties,
 7 lift station recovery, muffin monster, those I
 8 would consider operator duties in my professional
 9 judgment.
 10 THE COURT: And what do you base that on I
 11 guess when you say your "professional judgment"?
 12 Is that -- what experience are you drawing from in
 13 forming that conclusion?
 14 THE WITNESS: So, generally, I work
 15 with -- and this happens more often whenever we
 16 have a compliance order that goes out to a
 17 facility. As part of those compliance orders, we
 18 will put in, I guess, requirements for a facility
 19 for upgrades that they need to make as part of
 20 their duties. It's up to them if they want to hire
 21 out that or not. But generally, in a smaller
 22 system like this, upgrades and updates are made by
 23 an operator of a facility.
 24 MR. SPRAGUE: Your Honor?
 25 THE COURT: Yes.

1 MR. SPRAGUE: Can I --
 2 THE COURT: Oh, yeah. No, no, no. I can't
 3 have you chime in.
 4 MR. SPRAGUE: Okay.
 5 THE COURT: Yeah. But -- yeah. No. You're
 6 an observer. Sorry. You haven't been sworn, and
 7 it's really inappropriate. You're just here to
 8 observe.
 9 So you're drawing from experience in
 10 past cases that you've looked at?
 11 THE WITNESS: Yes, ma'am.
 12 THE COURT: Okay. All right. Well, I will
 13 overrule the objection. But I think it's worth you
 14 delving into a little bit on cross, Mr. Pierce, to
 15 kind of further pull out what you might want to
 16 get.
 17 MR. PIERCE: That's your purview, Your Honor.
 18 THE COURT: Okay. Go ahead.
 19 MR. MUEHLBERGER: Thank you. I'd like to
 20 show the witness Complainant's Exhibit 43, et.
 21 page 9.
 22 BY MR. MUEHLBERGER:
 23 **Q. Can you describe this document, please?**
 24 A. This is an e-mail from Dion Killsback to
 25 Adamas Construction and Development. And it's

1 dated Friday, August 24th of 2018.
 2 **Q. And again, was this part of the**
 3 **submittal that NCUC sent to EPA based on its**
 4 **information request?**
 5 A. It is.
 6 **Q. And to your knowledge, who is Dion**
 7 **Killsback?**
 8 A. He was the attorney for NCUC, I think.
 9 **Q. Can you please read the first**
 10 **highlighted line here?**
 11 A. "I have informed you that the NCUC is
 12 responsible for the performance of the sludge
 13 removal and Adamas Construction, as a
 14 subcontractor."
 15 **Q. Does this change -- did this change your**
 16 **mind as far as your determination that Mr. Pierce**
 17 **was responsible for the sludge removal and**
 18 **application project?**
 19 A. No. I mean, it confirmed it that he was
 20 part of that project.
 21 **Q. Can you read the next highlighted line,**
 22 **please?**
 23 A. "It was understood that Adamas
 24 Construction would complete the application of the
 25 remaining stored sludge."

1 **Q. And the next line, please?**
 2 A. "In order to process your payment, there
 3 are several things that must occur. Number 1,
 4 application of sludge should be completed; Number
 5 2, the documentation to support your work should
 6 also be completed."
 7 **Q. What does this document tell you about**
 8 **Mr. Pierce's involvement with the sludge project?**
 9 A. That he directed and did the land
 10 application project.
 11 MR. MUEHLBERGER: I would like to show the
 12 witness CX43, et. 11, please.
 13 BY MR. MUEHLBERGER:
 14 **Q. Was this also part of the submittal from**
 15 **NCUC?**
 16 A. It was.
 17 **Q. And can you describe this document,**
 18 **please?**
 19 A. This is a letter from Mr. Pierce about
 20 the NCUC GM vacancy. And it's dated December 4th
 21 of 2018.
 22 **Q. Can you read the highlighted portion,**
 23 **please?**
 24 A. "I am respectfully submitting my name
 25 for consideration to the open position, as the

1 general manager for the Northern Cheyenne Utility
 2 Commission.
 3 The company owned by my wife and myself
 4 has been operating for the betterment of the NCUC
 5 since the Boys and Girls Club break and assisted in
 6 most of the other water and sewer breaks on the
 7 Northern Cheyenne reservation since that time."
 8 **Q. Did this document indicate to you that**
 9 **Mr. Pierce performed operator duties for NCUC?**
 10 A. Yes.
 11 MR. MUEHLBERGER: I'd like to show the
 12 witness CX43, page 12.
 13 THE COURT: Real quickly, did you ever speak
 14 with Mr. Pierce personally about any of this, or
 15 are you drawing these conclusions just from your
 16 reading of the records?
 17 THE WITNESS: Just from my reading of these
 18 records. The only time that Mr. Pierce -- I talked
 19 to Mr. Pierce was we had a pre-filing negotiation
 20 call. Attorneys were present. But usually, after
 21 somebody is represented by an attorney, I don't
 22 contact respondents.
 23 THE COURT: Okay. So you're drawing
 24 conclusions based on your reading of a document?
 25 THE WITNESS: Yes.

1 THE COURT: Okay. That, in many cases, are
 2 authored by other people?
 3 THE WITNESS: Yes.
 4 THE COURT: Okay. Go ahead.
 5 MR. MUEHLBERGER: Thank you. Showing the
 6 witness CX43, et. page 12.
 7 BY MR. MUEHLBERGER:
 8 **Q. Is this a continuation of that same**
 9 **letter that you were just describing?**
 10 A. Yes.
 11 **Q. And can you read the highlighted**
 12 **portion, please?**
 13 A. "Montana DEQ wastewater Class 1C and 2E
 14 operator."
 15 MR. MUEHLBERGER: I'd like to show the
 16 witness CX43, page 13.
 17 BY MR. MUEHLBERGER:
 18 **Q. Can you read the highlighted portions,**
 19 **please?**
 20 A. It's titled, "Bio/Resume for Nathan
 21 Pierce."
 22 "I have been able to develop the skill
 23 necessary to help foster better water and sewer
 24 systems." And then it goes on to list "Montana
 25 'application' wastewater operator Class 1C and 2E,

1 Operator I.D. Number 8733."
 2 **Q. Is Mr. Pierce holding himself out to be**
 3 **an operator in this document, Ms. Kleffner?**
 4 A. Yes.
 5 MR. MUEHLBERGER: I'd like to show the
 6 witness --
 7 MR. PIERCE: Objection, Your Honor. The
 8 document clearly states application.
 9 THE COURT: Um, I --
 10 MR. PIERCE: Seems like we're leading the
 11 witnesses to draw conclusions as well.
 12 THE COURT: Yeah. I understand. And that's
 13 part of -- you know, there was some clarification I
 14 just did in a couple of the questions I had. So I
 15 think, A, some of this is appropriate for you to
 16 delve into when you cross, and, B, you know, just
 17 remembering what I pointed out earlier, just
 18 because there's evidence in the record is
 19 independent of how much weight I afford it based
 20 on, for example, certain arguments you might be
 21 making and pointing out here.
 22 So it's -- you know, it's not to say
 23 that I'm not taking note of what your objections
 24 are. It's just a question of where best to address
 25 them. The documents are in. They're going to stay

1 in. But certainly, delve into some of these points
 2 on cross and make any arguments you wish about how
 3 much weight I should afford certain pieces of
 4 evidence based on what I have before me and who's
 5 testified about them.
 6 MR. PIERCE: Yes, ma'am.
 7 THE COURT: Okay. Go ahead, Mr. Muehlberger.
 8 MR. MUEHLBERGER: I'd like to go back to
 9 CX43, page 12, please.
 10 BY MR. MUEHLBERGER:
 11 **Q. Ms. Kleffner, can you read starting**
 12 **with, "Currently I have"?**
 13 A. It states, "Currently I have
 14 certification or licenses that include but are not
 15 limited to the following: General contractor,
 16 independent contractor, real estate broker,
 17 asbestos removal and handling, contract law,
 18 Harvard" -- and then it goes on to state the DEQ
 19 operator -- "project management, construction site
 20 safety coordination, confined space operations, NC
 21 TERO" -- and it lists the number -- "design and
 22 installation of water and wastewater systems."
 23 **Q. Does this paragraph indicate that**
 24 **Mr. Pierce holds a certification as a Montana DEQ**
 25 **wastewater Class 1C and 2E operator?**

1 A. Yes.
 2 **Q. Does it say anywhere in this paragraph**
 3 **that this is an application only?**
 4 A. No.
 5 MR. MUEHLBERGER: Okay. I'd like to move on
 6 to Complainant's Exhibit 43, et. page 3.
 7 BY MR. MUEHLBERGER:
 8 **Q. Can you please describe this document?**
 9 A. This is a check from the NCUC general
 10 fund paid to Adamas Construction Services. The
 11 date is 2/7/2018, and it is for \$4,655.
 12 MR. MUEHLBERGER: I'd like to show CX43, et.
 13 page 4.
 14 BY MR. MUEHLBERGER:
 15 **Q. Can you describe this document, please?**
 16 A. This is another check from NCUC Contract
 17 Services to Adamas Construction Services. The date
 18 is 12/12/2018, and it is in the amount of
 19 \$6,620.86.
 20 **Q. And can you read the highlighted portion**
 21 **underneath that?**
 22 A. It says, "Lagoon Project."
 23 MR. MUEHLBERGER: Okay. I'd like to look at
 24 CX43, page 34.
 25 ///

1 BY MR. MUEHLBERGER:
 2 **Q. Can you describe this document, please?**
 3 A. This is a check from NCUC Contract
 4 Services to Adamas Construction Company. The date
 5 is June 8th, 2018. It is in the amount of \$22,950.
 6 And it says at the bottom, "Adamas Construction,
 7 Mobilization Payment Number 1."
 8 MR. MUEHLBERGER: Let's look at CX43, page
 9 39.
 10 BY MR. MUEHLBERGER:
 11 **Q. Can you describe generally what this**
 12 **document is?**
 13 A. This is an invoice from Adamas
 14 Construction to NCUC.
 15 **Q. Can you read what it says under "labor"**
 16 **there, please?**
 17 A. "Technical consulting on various IHS, NC
 18 Tribal Government, and NCUC meetings. Various
 19 project coordinations to include coordination with
 20 PACE to remove two separate sewer line
 21 obstructions."
 22 **Q. And the next line under "labor," please?**
 23 A. "Post office main line break. Three
 24 Adamas Construction employees onsite."
 25 MR. MUEHLBERGER: I'd like to show the

1 witness CX43, et. page 43.
 2 BY MR. MUEHLBERGER:
 3 **Q. Can you describe this document, please?**
 4 A. This is another check from NCUC general
 5 fund made to Adamas Construction Services in the
 6 amount of \$1,419.55.
 7 MR. MUEHLBERGER: Let's look at CX43, et.
 8 page 44.
 9 BY MR. MUEHLBERGER:
 10 **Q. Can you please describe this document?**
 11 A. This is another invoice from Adamas
 12 Construction and Development Services billed to
 13 NCUC.
 14 **Q. Okay. And can you read the highlighted**
 15 **portion, please?**
 16 A. "One-third portion of the shared cost of
 17 the Structural Engineering Assessment and Report
 18 for the Boys and Girls Club, Northern Cheyenne
 19 Nation." And the total is \$1,419.55.
 20 **Q. And does that amount match the check**
 21 **that you just looked at on the previous page?**
 22 A. Yes.
 23 MR. MUEHLBERGER: Looking at Complainant's
 24 Exhibit 43, et. page 48.
 25 ///

1 BY MR. MUEHLBERGER:
 2 **Q. Can you describe this one, please?**
 3 A. This is an invoice from Adamas
 4 Construction and Development Services billed to
 5 NCUC.
 6 **Q. And please read the highlighted portion.**
 7 A. Parts to include 5-inch AC to 4-inch PVC
 8 couplers, 4-inch gate valve, 4-inch PVC pipe,
 9 4-inch PVC, 2- to 4-inch gland packs, 2 to 4-inch
 10 PVC --
 11 THE REPORTER: I'm sorry. Can you slow down
 12 just a little.
 13 THE WITNESS: Oh, sorry. I'll slow down.
 14 I'll start over for that.
 15 Parts to include 5 AC to 4 PVC couplers,
 16 4 gate valve, 4 PVC pipe, 4 PVC, 2 to 4 gland
 17 packs, 2 to 4 PVC threaded gland pack plug. And
 18 then underneath that, it says, "Labor, fuel, and
 19 equipment."
 20 MR. MUEHLBERGER: I'd like to show the
 21 witness CX43, et. page 50.
 22 BY MR. MUEHLBERGER:
 23 **Q. Does this also look like an invoice**
 24 **submitted by Adamas Construction?**
 25 A. Yes.

1 A. This is from James Courtney. The date
 2 on it is August 27th, 2018. And it is a
 3 pre-construction meeting minutes.
 4 **Q. Okay. Can you read the highlighted**
 5 **portion, please?**
 6 A. "I reiterated that NCUC is responsible
 7 for the sludge removal work and that Indian Health
 8 Services' relationship isn't with Adamas PLLC for
 9 this project."
 10 **Q. Does this change your assessment about**
 11 **respondent's acting as an operator or a preparer or**
 12 **an applier of sewage sludge for this project?**
 13 A. It could -- I would say -- so NCUC
 14 ultimately for -- as the owner of the facility
 15 would have some requirements under Part 503. But
 16 if he takes the sludge, changes the quality, that
 17 still makes him a preparer and a land applier under
 18 Part 503.
 19 MR. MUEHLBERGER: Taking a look at CX43, page
 20 132.
 21 BY MR. MUEHLBERGER:
 22 **Q. Is this also part of the information**
 23 **that you received from NCUC pursuant to your**
 24 **information request?**
 25 A. Yes.

1 **Q. To NCUC?**
 2 A. Yes.
 3 **Q. And can you read the highlighted**
 4 **portions, please?**
 5 A. The date is 7/27/2017.
 6 **Q. Thank you.**
 7 A. And it says, "Tech assistance to Lame
 8 Deer lift station repair to include electrical
 9 conduit and wire repair with 2 5hp pump clean out.
 10 Mowing of Lame Deer lagoons to include cutting
 11 cattails."
 12 **Q. Ms. Kleffner, what do all of these**
 13 **invoices and checks that were submitted to Adamas**
 14 **Construction tell you about the respondent's**
 15 **involvement at the Lame Deer POTW?**
 16 A. That he was a contract operator.
 17 **Q. Okay. And the activities that are**
 18 **described in these invoices, are these typical of**
 19 **activities of POTW operators in your experience as**
 20 **a compliance officer for EPA?**
 21 A. Yes.
 22 MR. MUEHLBERGER: I'd like to show the
 23 witness CX43, et. page 113.
 24 BY MR. MUEHLBERGER:
 25 **Q. Can you describe this document, please?**

1 **Q. Okay. Could you please describe this**
 2 **document?**
 3 A. It is a settlement agreement.
 4 **Q. And the settlement agreement is between**
 5 **what parties?**
 6 A. NCUC, and it lists Michelle and Nathan
 7 Pierce of Adamas Construction.
 8 **Q. And what's the date?**
 9 A. September 11th -- I don't see --
 10 **Q. And it doesn't indicate a year, does it?**
 11 A. No, it doesn't have a year on it.
 12 **Q. Could you please read the highlighted**
 13 **portions here?**
 14 A. "Michelle and Nathan Pierce of Adamas
 15 Construction, a professional limited liability
 16 company.
 17 "The company alleges it is owed money
 18 for sludge removal from the Lame Deer Wastewater
 19 Treatment Facility and for disposing of the sludge.
 20 "The company alleges it is owed
 21 \$8,406.60 for work performed on the Lame Deer sewer
 22 main camera and cleaning project.
 23 "The company alleges it is owed \$4,000
 24 for water repair at the United States Postal
 25 Service building in Lame Deer.

1 "The company alleges it is owed a blue
 2 1999 Ford F-650 pump truck as a result of an
 3 agreed-upon exchange for work performed on the Lame
 4 Deer Eastside broken water main."
 5 **Q. What does this document tell you about**
 6 **Mr. Pierce's involvement with the Lame Deer POTW**
 7 **with respect to operator duties?**
 8 A. He's a contract operator.
 9 **Q. What does the document tell you with**
 10 **respect to the sludge removal and application**
 11 **project?**
 12 A. That he completed the project for NCUC.
 13 MR. MUEHLBERGER: Showing the witness
 14 Complainant's Exhibit 43, et. page 128.
 15 BY MR. MUEHLBERGER:
 16 **Q. Is this also part of the NCUC response**
 17 **to EPA's information request?**
 18 A. Yes.
 19 **Q. Can you please describe this document?**
 20 A. It's a letter from NCUC dated July 31st,
 21 2019. And it's from Ziontz Chestnut Law Offices
 22 about Adamas Construction.
 23 **Q. Can you read the highlighted portion,**
 24 **please?**
 25 A. "This check constitutes the final

1 payment for the sludge removal project from Indian
 2 Health Service on behalf of Adamas Construction and
 3 the Northern Cheyenne Utilities Commission."
 4 MR. MUEHLBERGER: Looking at CX 43, et. page
 5 129.
 6 BY MR. MUEHLBERGER:
 7 **Q. Can you describe this document, please?**
 8 A. This is a check. The remitter is
 9 Northern Cheyenne Utility Commissions. It's dated
 10 July 29th, 2019, pay to the order of Ziontz and
 11 Chestnut Law Firm.
 12 **Q. Okay. And to your recollection, who did**
 13 **Ziontz and Chestnut Law Firm represent?**
 14 A. NCUC. Or actually, can I see the
 15 previous?
 16 **Q. Certainly.**
 17 MR. MUEHLBERGER: Let's go back to 43, et.
 18 page 128.
 19 THE WITNESS: Can I see the signature at the
 20 bottom?
 21 Yes.
 22 BY MR. MUEHLBERGER:
 23 **Q. So who was this check for?**
 24 A. It would be for Adamas from NCUC.
 25 **Q. For payment for what?**

1 MR. PIERCE: Objection, Your Honor. Like,
 2 she's not a firsthand witness to that. She has no
 3 firsthand knowledge.
 4 THE COURT: Sustained.
 5 I mean, you can read what's on the
 6 document, but it's -- I mean, I can do that too.
 7 But I understand you're trying to connect some
 8 dots. And, you know, apart from direct evidence,
 9 you're able to furnish circumstantial evidence as
 10 well. So I understand the exercise. But it's a
 11 sustainable objection in that you don't have
 12 personal knowledge of it. But if you want to read
 13 what's on the document, you can certainly do that.
 14 That's what you've been doing with several of
 15 these, so...
 16 BY MR. MUEHLBERGER:
 17 **Q. Ms. Kleffner, from your reading of the**
 18 **documents, did Adamas Construction seek payment for**
 19 **their involvement in the sludge removal and**
 20 **application project?**
 21 A. Yes.
 22 MR. MUEHLBERGER: I'd like to move on to CX41
 23 et. page 1, please.
 24 BY MR. MUEHLBERGER:
 25 **Q. Ms. Kleffner, do you recognize this**

1 **document?**
 2 A. I do.
 3 **Q. Okay. And what is this?**
 4 A. This is the information request response
 5 from Mr. Robinson.
 6 **Q. And could you please read Number 1 on**
 7 **this document?**
 8 A. "Identify the person or persons who
 9 applied sludge-related materials from the Lame Deer
 10 Lagoon to your land." And it lists Mr. Pierce.
 11 **Q. And can you please read Number 4?**
 12 A. "Were you given any information about
 13 the agronomic rate of land application or the
 14 pollutants contained in the sludge that was land
 15 applied on or about August 22, 2018?"
 16 "No" is circled.
 17 **Q. Would Mr. Robinson need this**
 18 **information, this agronomic rate of land**
 19 **application, to comply with biosolids regulations**
 20 **recordkeeping requirements?**
 21 A. Yes.
 22 MR. MUEHLBERGER: Showing the witness
 23 Complainant's Exhibit 7, et. 1.
 24 BY MR. MUEHLBERGER:
 25 **Q. Do you recognize this document?**

1 A. Yes.
 2 **Q. And was this part of the submittal that**
 3 **you got from Tom Robinson pursuant to EPA's**
 4 **information request?**
 5 A. Yes.
 6 **Q. And just to be clear, the previous page,**
 7 **was that a submittal pursuant to EPA's information**
 8 **request to Tom Robinson?**
 9 A. Yes.
 10 **Q. Thanks.**
 11 **And can you please describe this**
 12 **document?**
 13 A. This is a subcontractor agreement
 14 between Adamas Construction and Development
 15 Services and Mr. Robinson.
 16 **Q. And can you please read the highlighted**
 17 **portions?**
 18 A. Receive and apply bio sludge from the
 19 frack tanks located at the Lame Deer Lagoons in
 20 Lame Deer, Montana at an agronomic rate and haul it
 21 to the barley field with pivot line owned or leased
 22 by Tom Robinson in compliance with U.S. 40 EPA 503
 23 regulations.
 24 **Q. And the term "barley field" here, what**
 25 **does this tell you about the type of land on which**

1 **Q. Okay. And can you please read the**
 2 **highlighted portion on page 2?**
 3 A. "I met Nathan with Adamas Construction.
 4 He showed me five frack tanks he wanted off
 5 loaded."
 6 MR. MUEHLBERGER: Showing witness
 7 Complainant's Exhibit 42, et. page 3.
 8 BY MR. MUEHLBERGER:
 9 **Q. Can you read the highlighted portion**
 10 **here?**
 11 A. "I did not have any direct contact with
 12 any tribe workers after that only Tom and Nathan.
 13 Nathan and his team were on both ends of
 14 the job. I saw them taking samples and moving
 15 pipe, etc."
 16 **Q. What does this response from Mr. Sprague**
 17 **tell you about Nathan Pierce's involvement in the**
 18 **sludge application portion -- part -- excuse**
 19 **me -- of the project?**
 20 A. That he directed the project.
 21 **Q. Thank you.**
 22 MR. MUEHLBERGER: Showing the witness CX42,
 23 et. page 4.
 24 BY MR. MUEHLBERGER:
 25 **Q. Do you recognize this?**

1 **this sludge was applied?**
 2 A. This would be an agricultural field.
 3 **Q. Okay. And in this subcontractor**
 4 **agreement, who's listed as the contractor?**
 5 A. Adamas Construction.
 6 **Q. And the subcontractor?**
 7 A. Would be Mr. Robinson.
 8 **Q. In your estimation, then, who is in**
 9 **charge of this -- of the project with respect to**
 10 **this contract?**
 11 A. Adamas.
 12 **Q. Thank you.**
 13 MR. MUEHLBERGER: Showing the witness CX 42,
 14 et. 2.
 15 BY MR. MUEHLBERGER:
 16 **Q. Do you recognize this document,**
 17 **Ms. Kleffner?**
 18 A. Yes.
 19 **Q. And what is this?**
 20 A. This is the information response from
 21 Mr. Sprague.
 22 **Q. Okay. And can you please read the**
 23 **highlighted portion -- and was this information**
 24 **received pursuant to EPA's information request?**
 25 A. Yes.

1 A. Yes.
 2 **Q. Can you describe it, please?**
 3 A. This is a subcontractor agreement
 4 between Adamas Construction and D&R Disposal, Ernie
 5 Sprague.
 6 **Q. And who's listed as the contractor in**
 7 **this document?**
 8 A. Adamas Construction and Development.
 9 **Q. And who's listed as the subcontractor?**
 10 A. D&R Disposal.
 11 **Q. And what does that indicate to you about**
 12 **Adamas Construction's role in the sludge**
 13 **application?**
 14 A. That he was the director of it.
 15 **Q. Can you please read the highlighted**
 16 **portion on the document?**
 17 A. "The said contractor agrees that he will
 18 pay to the said subcontractor the sum of \$320 for
 19 each 2500 gallon load of sludge removed from the
 20 Lame Deer Lagoon and hauled to Tom Robinson's field
 21 and apply at an even rate."
 22 **Q. Again, what does this tell you about**
 23 **Adamas Construction's role in the sludge**
 24 **application?**
 25 A. That he directed it.

1 MR. MUEHLBERGER: Showing the witness
 2 Complainant's Exhibit 45, et. page 1.
 3 BY MR. MUEHLBERGER:
 4 **Q. Ms. Kleffner, in preparing its**
 5 **enforcement case, did EPA review documents from**
 6 **anyone besides NCUC, Ernie Sprague, or Tom**
 7 **Robinson?**
 8 A. We received some additional documents
 9 from Indian Health Service.
 10 **Q. Okay. Can you please describe the**
 11 **document you're looking at here?**
 12 A. This is an e-mail from James Courtney of
 13 Indian Health Services. It was sent Wednesday,
 14 November 20th, 2019, to myself and Liz Huston, who
 15 is an attorney for EPA Region 7.
 16 MR. MUEHLBERGER: Okay. Turning to CX46, et.
 17 page 1.
 18 BY MR. MUEHLBERGER:
 19 **Q. Is this also an e-mail from James**
 20 **Courtney to EPA?**
 21 A. Yes.
 22 MR. MUEHLBERGER: Okay. Turning to
 23 page CX49, et. page 1.
 24 BY MR. MUEHLBERGER:
 25 **Q. Is this also another e-mail from James**

1 standards.
 2 U.S. Environmental Protection Agency,
 3 EPA, including EPA Part 503."
 4 **Q. Is Adamas Construction telling Indian**
 5 **Health Services here or NCUC that they will comply**
 6 **with EPA regulations?**
 7 MR. PIERCE: Objection, Your Honor. He's
 8 trying to have the witness testify for somebody not
 9 the witness.
 10 THE COURT: Um, can you scroll up? This is
 11 from -- I was making a note, so I just want to make
 12 sure. This is from who to who?
 13 THE WITNESS: It's from Adamas Construction
 14 to Sheri Bement, who is the general manager of
 15 NCUC.
 16 THE COURT: Okay. So you're testifying about
 17 what you think Adamas is representing?
 18 THE WITNESS: Yes.
 19 THE COURT: Okay. I think you can -- you
 20 know, you can read the words on the page and draw
 21 certain conclusions, if you wish, just based on
 22 your experience and compliance. But beyond that,
 23 I -- you know, I guess I would say that your
 24 testimony should be somewhat limited in scope to
 25 those parameters, or at least tell me why you're

1 **Courtney of IHS to EPA?**
 2 A. Yes.
 3 **Q. And who is the "to" line on this**
 4 **document?**
 5 A. The "to" is to myself.
 6 **Q. And so you received this directly?**
 7 A. Yes.
 8 MR. MUEHLBERGER: Okay. CX 45, page 33,
 9 please.
 10 BY MR. MUEHLBERGER:
 11 **Q. Can you describe this document?**
 12 A. This is a letter from Adamas
 13 Construction. It was sent Friday, April 20th,
 14 2018, to Sheri Bement.
 15 **Q. Was this part of information that IHS**
 16 **submitted to EPA?**
 17 A. Yes.
 18 **Q. Okay. Could you please read the first**
 19 **highlighted line there?**
 20 A. "It is understood that Adamas and Nathan
 21 Pierce have been subcontracted by NCUC to be the
 22 project manager and technical consultant for this
 23 project."
 24 **Q. Can you please read the second line?**
 25 A. "Work will be completed according to the

1 drawing those conclusions. So I'll sustain with
 2 that in mind.
 3 But you can go ahead. And did you want
 4 her to simply read the rest?
 5 MR. MUEHLBERGER: Certainly.
 6 THE COURT: Okay. Go ahead.
 7 BY MR. MUEHLBERGER:
 8 **Q. Could you read the next highlighted**
 9 **line, please?**
 10 A. Okay. "It is understood that for this
 11 contract, the term 'Adamas Construction and
 12 Development Services' or 'Adamas' includes all of
 13 our subcontractors, sub-consultants, engineers, and
 14 other team members."
 15 **Q. In your experience as a compliance**
 16 **officer for EPA, what does this line tell you about**
 17 **Adamas Construction's involvement with the sludge**
 18 **removal and application project?**
 19 A. Since it's including subcontractors,
 20 consultants, anybody that's under Adamas's purview,
 21 that would tell me that he's directing this
 22 project.
 23 MR. MUEHLBERGER: Looking at CX45, et. page
 24 32.
 25 ///

1 BY MR. MUEHLBERGER:
 2 **Q. Is this also part of information that**
 3 **EPA received from Indian Health Services?**
 4 A. Yes.
 5 **Q. And can you describe this document,**
 6 **please?**
 7 A. It's an e-mail from Adamas Construction
 8 dated April 21st, 2018. And it is sent to Sheri
 9 Bement of NCUC.
 10 **Q. Can you please read the highlighted**
 11 **portion?**
 12 A. "Please find the attached letter
 13 describing our compliance with all federal, tribal
 14 and state laws during this project.
 15 "The lab that will be used to do testing
 16 is Energy Labs in Billings.
 17 "The land application equipment will be
 18 high flow liquid fertilizer wheel injector or other
 19 method allowed by EPA."
 20 **Q. And earlier, you testified that Adamas**
 21 **Construction was the point of contact for**
 22 **submitting sample results for the lab to analyze;**
 23 **is that correct?**
 24 A. Yes, that's correct.
 25 **Q. To your knowledge, did any other parties**

1 **submit samples for lab analysis in this sludge**
 2 **removal and application project?**
 3 A. No.
 4 MR. MUEHLBERGER: Looking at CX45, et. page
 5 37.
 6 BY MR. MUEHLBERGER:
 7 **Q. Is this also part of the information**
 8 **that Indian Health Services sent to EPA?**
 9 A. Yes.
 10 **Q. Can you describe this document, please?**
 11 A. This is an e-mail from Adamas
 12 Construction. It was sent Monday, April 30th,
 13 2018, to James Courtney of Indian Health Services.
 14 Sheri Bement of NCUC was also CCed. And it is
 15 about map for lagoon project.
 16 **Q. Can you please read the highlighted**
 17 **portions?**
 18 A. "Our current plan is to stick with the
 19 recommended liquid fertilizer wheel injector.
 20 "Per Adamas Construction and
 21 Development's policies and procedures, all land
 22 applications will meet or exceed the requirements
 23 of U.S. Environmental Protection Agency, EPA, Part
 24 503...and will demonstrate compliance with
 25 applicable laws, rules and regulations to include

1 but not limited to..."
 2 MR. MUEHLBERGER: Showing the witness
 3 Complainant's Exhibit 45, et. page 17.
 4 BY MR. MUEHLBERGER:
 5 **Q. Is this also information submitted by**
 6 **Indian Health Services?**
 7 A. Yes.
 8 **Q. Can you describe this document, please?**
 9 A. This is a contractor agreement. Adamas
 10 Construction is at the top. And it is dated May
 11 15th, 2018. It's between Adamas and NCUC.
 12 **Q. And can you please read the highlighted**
 13 **portions?**
 14 A. "This agreement made 15th day of May,
 15 2018 by and between Adamas Construction and
 16 Development Services, PLLC, hereinafter called the
 17 contractor, and Northern Cheyenne Utility
 18 Commission hereinafter called the owner/agent."
 19 **Q. Please continue to read.**
 20 A. "The contractor shall furnish all of the
 21 materials and perform all of the work shown on the
 22 drawings and/or described in the specifications
 23 entitled Exhibit A...as it pertains to work to be
 24 performed on property at Lame Deer Sewer Lagoons,
 25 Lame Deer, Montana, on the Northern Cheyenne

1 Reservation."
 2 MR. MUEHLBERGER: Showing the witness CX45,
 3 et. page 18.
 4 BY MR. MUEHLBERGER:
 5 **Q. Does this appear to be a continuation of**
 6 **that contract you were reading?**
 7 A. Yes.
 8 **Q. Could you please read the highlighted**
 9 **portions, please?**
 10 A. "Contractor may at its discretion engage
 11 subcontractors to perform work here in under" -- or
 12 "hereunder...in all instances remain responsible
 13 for the proper completion of this contract.
 14 "Contractor shall at its own expense
 15 obtain all permits necessary for the work to be
 16 performed."
 17 **Q. Ms. Kleffner, what does this tell you**
 18 **about Adamas Construction involvement with the**
 19 **sludge removal and application project?**
 20 A. That he was taking responsibility for
 21 the proper completion of it in its own words from
 22 the contract.
 23 MR. MUEHLBERGER: Showing CX45, et. page 19.
 24 BY MR. MUEHLBERGER:
 25 **Q. Does this appear to be a continuation of**

1 **that same contract?**
 2 A. Yes.
 3 **Q. And who are the signatories to this**
 4 **contract?**
 5 A. The first signature is Sheri Bement of
 6 NCUC. And the second signature for contractor is
 7 Adamas Construction and Development Services.
 8 MR. MUEHLBERGER: Showing the witness CX45,
 9 et. page 34.
 10 BY MR. MUEHLBERGER:
 11 **Q. Earlier you testified that the contract**
 12 **said that the scope of work would be contained in**
 13 **Exhibit A. Does this document say "Exhibit A" at**
 14 **the bottom of the page?**
 15 MR. MUEHLBERGER: Can you please scroll down.
 16 THE WITNESS: Yes, it says "Exhibit A" at the
 17 bottom.
 18 BY MR. MUEHLBERGER:
 19 **Q. Okay. And does it say -- does this**
 20 **include the scope of work for the project?**
 21 A. At the top, yes.
 22 **Q. Okay. Could you please read the first**
 23 **highlighted portion?**
 24 A. "Scope of work. Task 1 - Site Prep and
 25 Mobilization." First bullet point is, "Transport

1 et. page 35.
 2 BY MR. MUEHLBERGER:
 3 **Q. Could you please read the highlighted**
 4 **portion there?**
 5 A. "Sludge will be removed from frack tanks
 6 and land applied allowed by the EPA 503
 7 regulations."
 8 **Q. Is this part of the scope of work that**
 9 **you were reading from in the previous page?**
 10 A. Yes.
 11 **Q. Thank you.**
 12 MR. MUEHLBERGER: Turning to Complainant's
 13 Exhibit 49, et. 27.
 14 BY MR. MUEHLBERGER:
 15 **Q. Is this also information you received**
 16 **from Indian Health Services to EPA?**
 17 A. Yes.
 18 **Q. Can you please describe this document?**
 19 A. This is an e-mail from Adamas
 20 Construction, and it's dated June 21st, 2018. And
 21 it is sent to Sheri Bement of NCUC and James
 22 Courtney of Indian Health Services.
 23 **Q. And can you please read the highlighted**
 24 **portion there?**
 25 A. "Adamas-Nathan Pierce will be the

1 all personnel and heavy equipment to the job site."
 2 Second bullet point is, "Conduct all testing and
 3 survey work."
 4 **Q. Task 2?**
 5 A. "Bio-Solid Sludge Removal and
 6 Dewatering." First point, "Cell Number 2 will be
 7 agitated." Next point says, "FLUMP dredge will be
 8 launched and begin dredging operations to remove
 9 bio-solid sludge from the bottom of Cell Number 2."
 10 And then the next point, "Cleaned water will be
 11 discharged from the tanks into Cell 1 of the lagoon
 12 system."
 13 **Q. Ms. Kleffner, this Task 2, bio-solid**
 14 **sludge removal and dewatering, would this be part**
 15 **of what a preparer of sewage sludge does?**
 16 A. Yes. By definition, dewatering under
 17 Part 503 is considered a treatment process.
 18 **Q. Can you please read Task Number 3?**
 19 A. "Bio-Solid Sludge Transportation and
 20 Land Application." The next point says,
 21 "Transportation tankers and trucks will be used to
 22 haul sludge to the application receiving areas to
 23 be pumped into frack tanks allowing for storage and
 24 onsite demand for land application."
 25 MR. MUEHLBERGER: Showing the witness CX45,

1 project manager for the sludge removal project with
 2 the understanding that no NCUC equipment and/or
 3 staff will be used for this project at the request
 4 of NCUC. Adamas will use their employees only and
 5 reserves the right to hire other labor if needed."
 6 **Q. In your experience as a compliance**
 7 **officer, what does this tell you about Adamas**
 8 **Construction's involvement with the sludge project?**
 9 A. That he directed the sludge project.
 10 MR. MUEHLBERGER: Showing the witness
 11 Complainant's Exhibit 45, et. 11.
 12 BY MR. MUEHLBERGER:
 13 **Q. Can you please describe this**
 14 **e-mail -- or sorry -- this document?**
 15 A. This is an e-mail from Adamas
 16 Construction and Development to Sheri Bement of
 17 NCUC.
 18 **Q. And can you read the highlighted**
 19 **portion, please?**
 20 A. "All tanks, pumps, hoses, dredge, pipe
 21 and fitting are on-site and connected or ready to
 22 be connected. We are ready to begin work on
 23 pumping today, Tuesday, June 26th, 2018."
 24 MR. MUEHLBERGER: Showing the witness CX45,
 25 et. 9.

1 BY MR. MUEHLBERGER:
 2 **Q. Can you describe this document, please?**
 3 A. This is another e-mail from Adamas
 4 Construction sent Friday, July 13th, 2018, to James
 5 Courtney of Indian Health Services.
 6 **Q. Is this also part of information that**
 7 **EPA received from Indian Health Services?**
 8 A. Yes.
 9 **Q. Can you please read the first**
 10 **highlighted portion?**
 11 A. "We pumped and dewatered a significant
 12 amount of sludge on Wednesday."
 13 **Q. You testified earlier that pumping and**
 14 **dewatering is part of sludge preparation under**
 15 **bio-solids regulations; is that correct?**
 16 A. Dewatering is, yes.
 17 **Q. Can you read the second line, please?**
 18 A. "We also took a nitrate sample from the
 19 application site and delivered it to Energy Lab in
 20 Billings."
 21 **Q. Can you please remind us what is the**
 22 **relationship between taking samples to lab with**
 23 **respect to the EPA recordkeeping requirements for**
 24 **biosolids?**
 25 A. So those would be part of the

1 recordkeeping that would be required of a preparer
 2 based on pathogens, metals, and then additional
 3 nitrogen content.
 4 **Q. Can you please read the next line?**
 5 A. "We should be ready to begin hauling and
 6 application next week."
 7 **Q. What does this e-mail from Adamas to IHS**
 8 **tell you about Adamas Construction's involvement**
 9 **with the project?**
 10 A. That he was directly involved since he
 11 uses the words "we."
 12 MR. MUEHLBERGER: Showing the witness
 13 Complainant's Exhibit 45, et. 20.
 14 BY MR. MUEHLBERGER:
 15 **Q. Can you describe this document, please?**
 16 A. This is an e-mail from Adamas sent
 17 Monday, July 30th, to James Courtney of Indian
 18 Health Services --
 19 **Q. And we don't --**
 20 A. -- and Sheri Bement.
 21 **Q. Sorry about that. We don't have this**
 22 **highlighted here. But can you read where it starts**
 23 **saying, "Our company is dedicated"?**
 24 THE COURT: Which paragraph would that be in?
 25 THE WITNESS: Yeah.

1 MR. MUEHLBERGER: I'm looking right now.
 2 That's because it's on the next page.
 3 Could I show the witness Complainant's Exhibit 45,
 4 et. 21, please? Apologies.
 5 BY MR. MUEHLBERGER:
 6 **Q. Could you read where it says Number 6?**
 7 A. "You also requested a copy of the permit
 8 from EPA and required EPA reports. Our company
 9 will always comply with the rules and regulations
 10 necessary to protect the environment and waterways
 11 of the United States."
 12 **Q. The reference to "our company," what is**
 13 **the company in that reference?**
 14 A. That would be Adamas.
 15 **Q. And can you please read the next line?**
 16 A. "Our company is dedicated to ensuring
 17 that this job is complete and that we will make
 18 sure that it is done within the rules and
 19 regulations that apply to the project."
 20 MR. MUEHLBERGER: Showing the witness CX46,
 21 et. page 10.
 22 BY MR. MUEHLBERGER:
 23 **Q. Is this also information you received**
 24 **from Indian Health Services?**
 25 A. Yes.

1 **Q. And can you please describe this**
 2 **document?**
 3 A. This is an e-mail from Adamas
 4 Construction to -- I'm assuming -- it says Dion, so
 5 I'm assuming it's Dion Killsback.
 6 **Q. And who's that?**
 7 A. That's the attorney for NCUC.
 8 **Q. Please read the highlighted portion.**
 9 A. "We sat in the IHS office yesterday and
 10 we all agreed that our company has" -- "has be
 11 credited by Indian Health Services as pumping,
 12 hauling and application of 600,000 gallons. IHS
 13 submitted payment to your office for the work we
 14 did in the past month for over \$6,000."
 15 MR. MUEHLBERGER: Showing the witness CX45,
 16 et. page 5.
 17 MS. MORENO: 46. You said 45.
 18 MR. MUEHLBERGER: I'm sorry. What's that?
 19 MS. MORENO: You said 45.
 20 MR. MUEHLBERGER: I'm sorry. CX46, et. page
 21 5. Apologies.
 22 BY MR. MUEHLBERGER:
 23 **Q. Is this also information received from**
 24 **IHS to EPA?**
 25 A. Yes.

1 **Q. Can you describe this document, please?**
2 A. This is an e-mail from Adamas
3 Construction and Development Services sent August
4 26th, 2018, to Dion Killback of NCUC.

5 **Q. Okay.**
6 THE COURT: And that was CX46 at 5?
7 MR. MUEHLBERGER: That's correct.
8 THE COURT: Okay. And that was part of the
9 308 that went to -- or this is part of what IHS
10 sent to EPA?

11 MR. MUEHLBERGER: That is correct. It was
12 not subject to a 308 request, but information
13 submitted by IHS to EPA.

14 THE COURT: Okay. This exhibit in particular
15 is 432 pages. Is that -- is all of that from IHS
16 to EPA?

17 MR. MUEHLBERGER: Yes, Your Honor.
18 THE COURT: Okay.

19 MR. MUEHLBERGER: Showing the witness CX46,
20 et. page 6.

21 BY MR. MUEHLBERGER:

22 **Q. Can you please read the highlighted**
23 **portion?**

24 A. "As of April of this year, Sheri Bement
25 signed and submitted an application to the state of

1 A. It says, "I am no longer the temporary
2 sewer operator for the NCUC."

3 **Q. And who is the "I" in that statement?**

4 A. That would be Mr. Pierce.

5 MR. MUEHLBERGER: Showing the witness CX45,
6 et. page 13.

7 BY MR. MUEHLBERGER:

8 **Q. Also part of the information that EPA**
9 **received from IHS?**

10 A. Yes.

11 **Q. Please describe this document.**

12 A. This is an e-mail from Gary Fahlstedt of
13 Human Health Services. It was sent April 29th,
14 2019, to Mr. Gallus.

15 **Q. And who's Mr. Gallus?**

16 A. He was the attorney for Adamas and
17 Mr. Pierce.

18 **Q. Okay. And scrolling down to the bottom**
19 **of the page, what does it say?**

20 A. "Christopher Gallus wrote, 'Gary.'"

21 **Q. Okay. So does this appear to be an**
22 **e-mail from Christopher Gallus?**

23 A. Yes.

24 **Q. And again, who is Christopher Gallus**
25 **representing?**

1 Montana naming me the sewer operator for the
2 reservation systems. This seems again I would fall
3 under the NCUC umbrella as the sewer operator. She
4 also represented to EPA Akash Johnson that I was
5 the sewer operator."

6 **Q. Please read the next highlighted**
7 **portion.**

8 A. "The sludge removal project is not the
9 only outstanding invoices or monies owed our
10 company by the NCUC.

11 "We started the sewer camera and
12 cleaning project to include bringing our engineer
13 to the Northern Cheyenne Reservation."

14 **Q. Ms. Kleffner, is sewer camera and**
15 **cleaning project, is that a typical duty of a POTW**
16 **operator?**

17 A. Yes.

18 MR. MUEHLBERGER: Showing the witness CX46,
19 et. page 7.

20 BY MR. MUEHLBERGER:

21 **Q. Does this appear to be a continuation of**
22 **that same e-mail you were just referencing?**

23 A. Yes.

24 **Q. Can you please read the highlighted**
25 **portion?**

1 A. Mr. Pierce.

2 MR. MUEHLBERGER: Showing the witness CX45,
3 et. page 14.

4 BY MR. MUEHLBERGER:

5 **Q. Could you please read the highlighted**
6 **portion?**

7 A. "My client's point is that as
8 circumstances evolved they became the primary
9 project contractor.

10 "NCUC and Indian Health Service made
11 only my client, his workforce and equipment
12 responsible for all the work performed under the
13 project and prohibited him from using any NCUC
14 workforce and equipment on June 21st, 2018, making
15 the primary project contractor."

16 **Q. Please continue reading the highlighted**
17 **portion.**

18 A. "It is important to point out and the
19 distinction should be made, my client didn't just
20 perform 'some of the work,' again, on June 21st,
21 2018, NCUC and Indian Health Services made only my
22 client, his workforce and equipment responsible for
23 all the work performed under the project and
24 prohibited him from using any NCUC workforce and
25 equipment."

1 **Q. Thank you.**
 2 MR. MUEHLBERGER: Skipping ahead to CX 45,
 3 page 16.
 4 BY MR. MUEHLBERGER:
 5 **Q. Could you please read the highlighted**
 6 **portion there?**
 7 A. "It is also important to" -- it says
 8 not, but I'm assuming that says "note the property
 9 owner, Tom Robinson, was the applier of the sludge.
 10 My client, by EPA definition, was the sludge
 11 preparer."
 12 **Q. Based on your experience as a compliance**
 13 **officer, in reviewing this record, Ms. Kleffner,**
 14 **what does this tell you about NCUC's involvement in**
 15 **the sludge project?**
 16 A. They contracted it out to Adamas -- or
 17 Adamas, I'm sorry -- to oversee --
 18 MR. PIERCE: Objection, Your Honor. There's
 19 nothing for the witness to base her opinion on.
 20 And she does not have any firsthand knowledge of
 21 what happened, what she's testified.
 22 THE COURT: So you're basing -- what you are
 23 about to say, you're basing on what?
 24 THE WITNESS: Based on the agreements and the
 25 e-mail traffic and the contract between NCUC and

1 MR. PIERCE: So I guess her scope of
 2 knowledge would be as a compliance officer, not as
 3 a contract specialist and what the contracts
 4 interpreted or mean. So if that means
 5 compliance --
 6 THE COURT: That's my understanding.
 7 Were you representing anything else,
 8 Mr. Muehlberger?
 9 MR. MUEHLBERGER: No, Your Honor.
 10 THE COURT: Okay. It's based on her -- it's
 11 based on her knowledge as a compliance officer.
 12 That's been my take on it throughout.
 13 MR. PIERCE: Yes, Your Honor.
 14 THE COURT: Okay. And again, you can make
 15 the arguments you want to, but it's -- it's not
 16 going to prevent the testimony, I think, at that
 17 point. It's really more arguments about weight.
 18 You can certainly delve into some questions on
 19 cross.
 20 MR. PIERCE: I certainly appreciate that. I
 21 think they could have brought witnesses to speak
 22 directly to this that they failed to bring, and
 23 they identify it as people being crucial to making
 24 this point.
 25 THE COURT: You know, I have what I will have

1 Mr. Pierce, that would tell me that it was
 2 contracted out, the land removal or the sludge
 3 preparation and land application was contracted out
 4 and directed by Mr. Pierce and his company.
 5 THE COURT: Okay. It's kind of going back to
 6 the same thing. I recognize that, based on the
 7 witnesses that are available, they didn't
 8 necessarily offer all of the documents that are
 9 being -- that have been admitted into the record.
 10 So that's just going to apply, I think, probably
 11 throughout the proceeding.
 12 So they're already in. And, you know,
 13 the Region is going to present their case and try
 14 to connect up things as they can. And you're
 15 welcome to cross about it, but I recognize that
 16 already. So it's a sustainable objection, but I'm
 17 going to allow her to testify based on what she
 18 understands from the documents that are before her
 19 as a compliance officer and in that capacity alone
 20 because she obviously didn't author them.
 21 And I assume you didn't speak to these
 22 individuals?
 23 THE WITNESS: No, I did not.
 24 THE COURT: Okay. So it's based on that
 25 scope of knowledge.

1 before me, and that's it. This is the evidentiary
 2 hearing. This is what I'm going to have to base a
 3 decision on. And that's -- and that's really all
 4 of it. So you can -- you know, you can make
 5 whatever arguments you want to. But at the end of
 6 the day, I will be basing my decision on the
 7 evidentiary record created from this proceeding.
 8 Whether there be holes or no holes or
 9 circumstantial evidence or some direct evidence,
 10 I'm left with the record I'm left with, and it's
 11 not always so perfect. So that's -- that's all on
 12 my shoulders. But again, just be mindful of what I
 13 said early on about making arguments about weight
 14 when -- you know, post-hearing. And draw out what
 15 you want on cross.
 16 MR. PIERCE: Yes, ma'am.
 17 THE COURT: Okay. Did you have more
 18 questions?
 19 MR. MUEHLBERGER: I do, Your Honor. For
 20 clarification, was that objection sustained or
 21 overruled?
 22 THE COURT: Well, it's a sustainable
 23 objection, but -- because you don't have personal
 24 knowledge. But I think that it's going to be
 25 recurring issue throughout all of this, right? I

1 mean, these were stipulated to. So challenges with
 2 regard to admissibility I am not entertaining.
 3 So I'm assuming that there's a certain
 4 amount of reliability in what has come into the
 5 record. But that is a separate -- well, I
 6 shouldn't say it's separate. Really, all of the
 7 evidentiary rules are targeted toward reliability.
 8 But I think in an administrative setting, as I said
 9 in the beginning, there's a separate analysis that
 10 falls on me with respect to how much weight I
 11 assign any particular piece of evidence. A piece
 12 of evidence can come into the record, and when I'm
 13 reviewing everything, I may give it no weight.
 14 So I feel like that's something I kind
 15 of need to drive home in a lot of these proceedings
 16 because it's not always understood. There isn't a
 17 jury. It's just me. So I'm able to parse a lot of
 18 those things out, and I have to determine where the
 19 weight of the evidence is and where I can place the
 20 most reliance. So some of these arguments I think
 21 go to that.
 22 I think we're also getting into an area
 23 of contract law, frankly, in terms of
 24 subcontractors agreements, general contractor
 25 responsibilities and liabilities. Those are legal

1 issues. Feel free to delve into them when you
 2 brief the case. I think they're certainly relevant
 3 here. I know I will be. So I would encourage you
 4 to consider that as well.
 5 But with that said, it is a sustainable
 6 objection. But I'm allowing you to read what's on
 7 the page, and based on your expertise and
 8 experience as a compliance officer, you can provide
 9 your opinion of what you think it represents,
 10 understanding you don't have personal knowledge for
 11 each and every one of these documents.
 12 THE WITNESS: Yes.
 13 THE COURT: Okay. Is that clear enough?
 14 MR. MUEHLBERGER: It is, thank you.
 15 THE COURT: Okay.
 16 MR. MUEHLBERGER: And I'd also like to state
 17 it's 12:15 right now, and I just want to let the
 18 Court know that we've got maybe 15, 20 more minutes
 19 left in direct examination here.
 20 THE COURT: Okay. That's great. I
 21 appreciate the timeline. So you can finish up with
 22 your direct. And then, unless you don't want to
 23 break, we can take a break, and then you can pick
 24 up with your cross. But you have time --
 25 MR. PIERCE: I think a break would be great,

1 Your Honor.
 2 THE COURT: Okay. All right. Please go
 3 ahead, Mr. Muehlberger.
 4 DIRECT EXAMINATION - Continued
 5 BY MR. MUEHLBERGER:
 6 **Q. Ms. Kleffner, as compliance officer for**
 7 **EPA, is it your job to make compliance**
 8 **determinations?**
 9 A. Yes.
 10 **Q. Do you make compliance determinations**
 11 **based on records received from other parties?**
 12 A. Yes, we do.
 13 **Q. Does that include other government**
 14 **agencies?**
 15 A. Yes.
 16 **Q. Does that include other EPA regions?**
 17 A. Yes.
 18 **Q. And do you base your conclusions about**
 19 **violations or noncompliance based on a record**
 20 **review?**
 21 A. Yes.
 22 MR. MUEHLBERGER: I'd like to show the
 23 witness Complainant's Exhibit 46, et. page 23.
 24 BY MR. MUEHLBERGER:
 25 **Q. Do you recognize this document?**

1 A. Yes, I do.
 2 **Q. Okay. And was this submitted by IHS to**
 3 **EPA?**
 4 A. Yes.
 5 **Q. And can you please read the first two**
 6 **highlighted lines?**
 7 A. "To whom it may concern. My name is
 8 Michelle Pierce and I am wife and co-owner of
 9 Adamas Construction and Development with my
 10 husband, Nathan Pierce."
 11 **Q. And the next highlighted line, please.**
 12 A. "She even had Nathan sign to be her
 13 sewer operator since none of her crew members
 14 including herself could get certified."
 15 **Q. And who is the "she" in this statement,**
 16 **to your knowledge?**
 17 MR. PIERCE: Objection, Your Honor.
 18 THE WITNESS: In the previous --
 19 THE COURT: Hold on. This is basically a
 20 recurring objection that I think you have based on
 21 personal knowledge, right?
 22 MR. PIERCE: Well, personal knowledge -- and
 23 it seems like we're just leading the witness. In
 24 addition, this is already evidence, and it's
 25 already been included. So, I mean, it's something

1 that you can simply read. We don't need the
 2 witness to draw a conclusion.
 3 THE COURT: Understood. But I do think that
 4 it's important that the point here is you're a
 5 compliance officer, and you had something to do
 6 with the development of this enforcement action,
 7 right?
 8 THE WITNESS: Yes.
 9 THE COURT: So what you considered, what you
 10 focused on, I think is important for me to know.
 11 And your responses in that context, I'm allowing.
 12 So I will -- I guess for the sake of
 13 efficiency moving forward, I will recognize that
 14 you have a standing objection to any testimony
 15 being offered that did not come from personal
 16 knowledge of this witness. But her testimony is
 17 based on her review as a compliance officer, what
 18 she considered, what she drew from the documents
 19 before her from that documentary review in bringing
 20 this action. And it's in that context that I'm
 21 allowing her testimony.
 22 So, I mean, you know, you don't need to
 23 repeat that objection. If you have another
 24 objection, by all means. But I don't need to say
 25 the same thing over and over again because I think

1 I've already beaten it to death.
 2 MR. PIERCE: Sure.
 3 THE COURT: Okay. Go ahead and respond.
 4 THE WITNESS: Okay. So the "she," in it if
 5 you look at the previous paragraph, it talks about
 6 Sheri Bement. So that would be Sheri Bement.
 7 BY MR. MUEHLBERGER:
 8 **Q. And who is Sheri Bement again?**
 9 A. She was the general manager for NCUC.
 10 MR. MUEHLBERGER: Showing the witness
 11 Complainant's Exhibit 46, et. page 24.
 12 BY MR. MUEHLBERGER:
 13 **Q. Is this a continuation of that same**
 14 **letter?**
 15 A. Yes, it is.
 16 **Q. Can you please read the highlighted**
 17 **portion at the bottom?**
 18 A. "It was determined then that Adamas
 19 Construction would do the lagoon project alone with
 20 no use of NCUC equipment or staff, but NCUC would
 21 remain the prime contractor of the contract."
 22 MR. MUEHLBERGER: Showing the witness CX46,
 23 et. page 25.
 24 BY MR. MUEHLBERGER:
 25 **Q. Can you please read the highlighted**

1 **portion on this?**
 2 A. "Sheri did not come to the site to see
 3 what was being pumped, how it was being pumped or
 4 what the crew was doing to meet the contract
 5 needs."
 6 **Q. Again, in your experience as a**
 7 **compliance officer, what does this document tell**
 8 **you about NCUC's involvement with the sludge**
 9 **project?**
 10 A. They had a very hands-off approach to
 11 it. Basically, they contracted it out and were
 12 done with it.
 13 **Q. In your experience, could NCUC have been**
 14 **responsible for the biosolids records in this case?**
 15 A. No. In order for them to have records
 16 to keep, they would have had to have sampled, which
 17 they did not.
 18 MR. MUEHLBERGER: Okay. I'd like to show the
 19 witness Complainant's Exhibit 9, page 1, which is
 20 the very first exhibit that we showed at the
 21 beginning of her testimony.
 22 BY MR. MUEHLBERGER:
 23 **Q. Can you refresh our memory? What is**
 24 **this document?**
 25 A. This is -- it's titled, "Technical

1 Assistance Record." And this is Indian Health
 2 Service's report after they got a complaint from
 3 Mr. Robinson.
 4 **Q. Could you read the sentence that begins,**
 5 **"The subcontractor has also"?**
 6 A. "The subcontractor has also been
 7 refusing to provide the target application rates
 8 for the sludge, laboratory tests, and application
 9 logs."
 10 **Q. In your estimation from this document,**
 11 **who's the subcontractor referred to here?**
 12 A. That would be Mr. Pierce and Adamas.
 13 He's identified later in the document as the
 14 subcontractor.
 15 **Q. Ms. Kleffner, is it your conclusion that**
 16 **Adamas -- I'm sorry, I'm going to keep**
 17 **mispronouncing that -- Adamas and Pierce were**
 18 **operators at the Lame Deer POTW?**
 19 A. Yes.
 20 **Q. Is it your conclusion that Adamas and**
 21 **Pierce prepared sewage sludge?**
 22 A. Yes.
 23 **Q. Is it your conclusion that Adamas and**
 24 **Pierce applied the sewage sludge?**
 25 A. Yes.

1 **Q. Out of all of the parties in this case**
 2 **that we've been referencing here -- Ernie Sprague,**
 3 **Tom Robinson, NCUC, and Adamas and Pierce -- who's**
 4 **the only person that could have created and**
 5 **maintained all the records necessary to respond to**
 6 **EPA and comply with the recordkeeping requirements?**
 7 A. That would have been Adamas.
 8 **Q. And how did you arrive at that**
 9 **conclusion?**
 10 A. So as a preparer, he sampled, he had the
 11 results for the nitrogen contents and for the
 12 metals and pathogen. From that pathogen content,
 13 it was determined it was a Class B, which
 14 determines the recordkeeping requirements.
 15 In addition to that, since he did not
 16 provide any of the lab results to the other
 17 subcontractors, it would have been impossible for
 18 them to calculate agronomic rate without those
 19 results. So, being precluded from having those
 20 results, the other subcontractors couldn't have
 21 fulfilled the agronomic rate recordkeeping
 22 requirement as required by Part 503.
 23 **Q. Thank you.**
 24 **I'd like for you now to walk us through**
 25 **the specific recordkeeping requirements found in**

1 A. "If the pollutant concentrations in
 2 Section 503.13(b)(3) and the Class B pathogen
 3 requirements in 503.32(b) are met when both sewage
 4 sludge is applied to agricultural land, forest, a
 5 public contact site, or reclamation site."
 6 **Q. Okay. Let's break this down a little**
 7 **bit further. So let's look at the very first line**
 8 **of the pollutant concentrations in 503.13(b)(3).**
 9 MR. MUEHLBERGER: So could we look at
 10 503.13(b)(3), please? Thank you.
 11 BY MR. MUEHLBERGER:
 12 **Q. Ms. Kleffner, can you describe how this**
 13 **part of the regulations apply to this specific**
 14 **case?**
 15 A. So for all land application projects, a
 16 sampling for the metals listed in Table 3 is
 17 required as part of that. And this is a monthly
 18 average concentration. This is a relatively small
 19 amount of biosolids that were land applied. So
 20 only a single metal sample is required. Within
 21 this, biosolids cannot be land applied over the
 22 amounts listed in Table 3. So in order to verify
 23 that the biosolids meet Part 503, you would need to
 24 retain the sampling for metals in this instance.
 25 **Q. Thank you.**

1 **Section 503 or Part 503 and how they apply**
 2 **specifically to this case? So could we toggle over**
 3 **to the recordkeeping requirements under Section**
 4 **503.17, 40 CFR 503.17.**
 5 **Earlier, you testified that Adamas and**
 6 **Mr. Pierce are the appliers of sewage sludge in**
 7 **this case; is that correct?**
 8 A. Yes.
 9 **Q. Okay. I'd like you to talk about the**
 10 **relevant requirements under the recordkeeping**
 11 **requirements. So, as the applier, where would you**
 12 **find those requirements on 503.17?**
 13 A. That would be 503.17(a)(4)(ii) --
 14 **Q. Okay.**
 15 A. -- would be the layout application
 16 requirements.
 17 MR. MUEHLBERGER: Okay. I think you just
 18 passed it. Okay. Great. Could we go back to
 19 Subpart 4 there? Thank you.
 20 BY MR. MUEHLBERGER:
 21 **Q. Is this the relevant part of the**
 22 **regulations that applies to land appliers?**
 23 A. Yes.
 24 **Q. Okay. Could you please read what it**
 25 **says after Number 4 there?**

1 MR. MUEHLBERGER: Can we go back to 503.17,
 2 please?
 3 BY MR. MUEHLBERGER:
 4 **Q. Okay. So after 503.13(b)(3), it says,**
 5 **"and the Class B pathogen requirements found in**
 6 **503.32(b)." Could you talk how this specifically**
 7 **applies to this case?**
 8 A. Yes. So, like I talked about earlier,
 9 Class -- there's two different types of biosolids.
 10 There's Class A and Class B. So in order to meet
 11 Class A, there's two requirements. You must both
 12 pass the pathogen test, which has 1,000 NPN dry
 13 weight basis limit. And then in addition to that,
 14 you also need to process the biosolids within a
 15 very specific set of requirements within Part 503.
 16 So both of those requirements are required to meet
 17 Class A.
 18 Class B is a little less stringent. And
 19 based on the lab results that we received from
 20 Mr. Pierce, it would not meet Class A. He didn't
 21 prove up that it was treated in a way that would
 22 make it Class A. And also, the sampling results
 23 did not meet Class A. So it would have met Class
 24 B.
 25 For Class B, there's also a requirement.

1 It's seven samples in a geometric mean of that
2 sample. It only -- a single sample was taken. But
3 based on my best professional judgment and the
4 sample results, I think it was somewhere around
5 28,000 for fecal coliform. That would make it
6 Class B biosolids.

7 So Class B can either be determined
8 through sampling, which is what most facilities do.
9 It's a lot easier than trying to meet the other
10 half, which would have been through a treatment
11 regime. So these were Class B based on the lab
12 results that were initially submitted to us.

13 **Q. Thank you.**

14 **Going back to the relevant regulation**
15 **here, then it goes on to say, "If the pollutant**
16 **concentrations are met when bulk sewage sludge is**
17 **applied." Does this case involve bulk sewage**
18 **sludge?**

19 A. Yes, it would be bulk sewage sludge.
20 Bulk sewage sludge is usually what happens with
21 most biosolids. If it is prepared in a Class A
22 manner and it is sold or given away in containers
23 or bags, it would be considered bagged biosolids.
24 But this is just a broadcast of a relatively large
25 amount of biosolids in relation to what is normally

1 since he prepared, land applied, he directed, he
2 was present for all of that, that was the best
3 contact in order for us to get all of the
4 recordkeeping requirements fulfilled.

5 MR. MUEHLBERGER: Your Honor, could I have
6 one minute, please?

7 THE COURT: Sure. I had a question or two to
8 follow up on, but you go ahead first.

9 MR. MUEHLBERGER: Thanks.

10 (Whereupon, there was a
11 pause in the proceedings.)

12 MR. MUEHLBERGER: Your Honor, whenever you're
13 ready to ask questions, we're ready.

14 THE COURT: Okay. When you mentioned that
15 the respondents didn't give the sampling results,
16 the lab results to anyone else in order for those
17 other individuals or subcontractors to comply, do
18 you know if he shared those lab results with anyone
19 or any entity?

20 THE WITNESS: Not that I'm aware of. I
21 don't think in our discussions with -- well, the
22 attorney's discussions with the other 308
23 respondents, I don't think anybody else had a copy
24 of those lab results.

25 THE COURT: And you got them how?

1 seen, so it would be bulk sewage sludge.

2 **Q. And then finally, the regulation goes on**
3 **to say, "If the sewage sludge is applied to**
4 **agricultural land, forest, a public contact site or**
5 **a reclamation site." What applies in this specific**
6 **case?**

7 A. This would be agricultural land. And
8 we base that off of -- at the initial Indian
9 Health Services inspection report had photographs,
10 it looked like an agricultural field. There
11 were -- it wasn't a golf course or there weren't
12 other homes around. That information. And then
13 whenever we received an additional contract, it
14 also stated that it was going to be applied to a
15 barley field, which would be an agricultural area.

16 **Q. Ms. Kleffner, why did EPA not initiate**
17 **an enforcement action against any of the other**
18 **parties in this case besides Mr. Pierce and Adamas**
19 **Construction?**

20 A. So, based on the sampling, Mr. Pierce
21 conducted the sampling. He did not give any
22 results to any other parties that we're aware of.
23 It would have been very difficult for Mr. Robinson
24 and Mr. Sprague to create and generate the entirety
25 of the Part 503 regulations. In addition to that,

1 THE WITNESS: They were originally turned in
2 to us in June with that e-mail from Mr. Pierce and
3 his attorney, Mr. Gallus.

4 THE COURT: Okay. You may or may not know
5 this in your role, but if you do, let me know. I
6 mean, do you know what the process generally is
7 when someone obtains these samples, where they tend
8 to get sent to?

9 THE WITNESS: Yeah. For -- so as Part 503,
10 and then just usually, Part 136 in general has
11 stipulations on how you can treat biosolids.
12 They're usually sent to labs that are
13 EPA-certified, is another thing that we look for
14 with them. So they'll take a sample. They will
15 preserve them as necessary. And that's all
16 indicated on the chain of custody, which we've
17 covered earlier, and it's sent to the lab for
18 processing. And, of course, it needs to also meet
19 a holding time in addition to that. So that's
20 another Part 136 requirement.

21 So all of that is met. It's processed
22 by the lab. The lab will send it back to whoever
23 submitted the work order or whoever is on the work
24 order for submittal.

25 THE COURT: Was this an EPA-certified lab

1 that these samples -- these results came from?
 2 THE WITNESS: Yes.
 3 THE COURT: Okay. So they would have
 4 possession of the test results as well?
 5 THE WITNESS: Yes. The lab would.
 6 THE COURT: Okay. In addition to the person
 7 requesting them --
 8 THE WITNESS: Yes.
 9 THE COURT: -- who gets -- who gets them?
 10 THE WITNESS: Uh-huh.
 11 THE COURT: Okay. I guess that's all I
 12 really had to follow up on.
 13 Anything else?
 14 MR. MUEHLBERGER: No further questions, Your
 15 Honor.
 16 THE COURT: Did you want to cover,
 17 though -- I think at one point you mentioned
 18 explaining why there was a regulatory cite change
 19 in the amended complaint.
 20 MR. MUEHLBERGER: Sure.
 21 BY MR. MUEHLBERGER:
 22 **Q. Ms. Kleffner, can you describe why we**
 23 **decided to -- why EPA decided to change the**
 24 **regulatory citation in the complaint?**
 25 A. Sure. So when we originally looked at

1 the complaint, we realized we had cited
 2 503.17(a)(5), which applies to cumulative pollutant
 3 loading.
 4 So in some instances where you have
 5 biosolids that are continually applied to a site
 6 over an extended period of time, probably, you
 7 know, decades of biosolids land application, it
 8 becomes important that you maintain those records
 9 and track the cumulative loading for metals on that
 10 site.
 11 So under 503.17(a)(5), that is for
 12 cumulative loading. It has an indefinite
 13 recordkeeping requirement rather than the 5 here,
 14 which is not appropriate for this site. As far as
 15 we knew, this was the first biosolids application
 16 at Mr. Robinson's property. So the cumulative
 17 pollutant loading would not have applied for this.
 18 It was better served under 503.17(a)(4).
 19 **Q. And Ms. Kleffner, did EPA's changing of**
 20 **the citation or amendment of the complaint to**
 21 **change the citation, did it change either of the**
 22 **counts that EPA alleged against Adamas and**
 23 **Mr. Pierce?**
 24 A. It did not.
 25 THE COURT: Okay. I just want to clear

1 something up. Let me take a look here. Okay.
 2 Just bear with me one second.
 3 MR. MUEHLBERGER: Take your time.
 4 THE COURT: I'm just trying to track this.
 5 All right.
 6 MR. MUEHLBERGER: Your Honor, can I ask you a
 7 question?
 8 THE COURT: Sure. I just don't want to
 9 confuse myself, so...
 10 MR. MUEHLBERGER: It seems like maybe some of
 11 the confusion -- if you feel like we've not
 12 adequately gone over how the preparer requirements
 13 of the recordkeeping requirements apply
 14 specifically to this case, I'm happy to have the
 15 witness also testify to that similar to what we
 16 just did with the land applier regulation.
 17 THE COURT: Yeah. I don't think it was that.
 18 I thought -- I actually thought -- and again, this
 19 is going back from memory, so I don't want to
 20 create confusion here if I'm simply misremembering.
 21 I thought there was actually a change in the
 22 particular citation that dictated specifically what
 23 records needed to be developed and maintained. I
 24 thought there was an actual difference in the way
 25 the complaint charged it, which was why I gave

1 respondent the opportunity to file another answer.
 2 And I have to believe that that was the case or I
 3 would not have given him the opportunity to file
 4 another answer. But it's been a while, and so I'm
 5 trying to put my hands on it. But it's a big
 6 record. So I'm trying to go through here.
 7 I can maybe -- you're going to be here.
 8 You're going to be here available for cross. So
 9 rather than delay further, I can take a look at
 10 this over lunch. And if I need to come back and
 11 just ask a question or two, I'll hop in.
 12 MR. MUEHLBERGER: Okay. So I'll have the
 13 witness go through the specific records under the
 14 regulatory provision that we just discussed and
 15 also talk about how that would be different than if
 16 it was under Subpart 5.
 17 MR. PIERCE: Your Honor, I think the review
 18 would be good. I remember exactly the way you
 19 remember, and that is the reason why.
 20 THE COURT: Okay. All right. Yeah. I don't
 21 want to -- I certainly don't want to create more
 22 confusion than might already exist by my questions.
 23 But it's -- you know, it's important because I
 24 always go back to what the charging document is,
 25 and that is what governs everything. So I just

1 want to make sure that there is no ambiguity about
2 the particular, the specific records that the
3 respondents have been charged with not developing
4 and maintaining. And I do recognize the difference
5 between a little I and then a double I between the
6 preparers and the land appliers, and that while
7 there was some overlap, there are a few differences
8 there. I just thought that there was a specific
9 change between those citations in the complaint,
10 but I haven't been able to put my finger on it.

11 So I'll do a little bit of looking over
12 lunch. You all don't need to worry about it unless
13 you want to look, too, and double-check me.

14 MR. MUEHLBERGER: We'll do some looking as
15 well.

16 THE COURT: But yeah, it's just
17 really -- it's really to make sure that my focus is
18 where it needs to be because that's -- you know,
19 that's the whole point. That charging document is
20 key.

21 So, with that in mind, let's go ahead
22 and break for lunch. It's 12:40, 12:41
23 technically. How much time would you all like?
24 Would you like an hour? Would you like less? Up
25 to you all. I think there are places around within

1 look at the first amended complaint, the second
2 amended complaint. And, Ms. Kleffner, your
3 testimony helped clarify the difference for me,
4 what I was thinking I was remembering and what
5 actually took place. So I'll just note that the
6 changes that I had in my head which you clarified
7 actually pertain to changing the regulatory cite
8 in the first amended complaint from 503.17(a)(5)
9 to -- it was actually (a)(5)(ii), I think -- to
10 503.17(a)(4)(ii) in the second amended complaint.
11 And based on that difference between (a)(5) and
12 (a)(4), that's why I felt it appropriate to give
13 respondents the opportunity to file a new answer.

14 So hopefully, that clears up the record
15 with regard to the judge's confusion, and if you
16 all had anything you needed to say about that. If
17 not, we'll just move on.

18 MR. MUEHLBERGER: Nothing from complainant,
19 Your Honor.

20 THE COURT: All right. Anything?

21 MR. PIERCE: Nothing from the respondent,
22 Your Honor.

23 THE COURT: Okay. All right, great. So you
24 are all finished with your direct, right,
25 Mr. Muehlberger?

1 walking distance. I mean, I'm assuming an hour's
2 lunch is enough for lunch, but let me know.

3 MR. MUEHLBERGER: I think an hour is
4 sufficient.

5 THE COURT: Okay.

6 MR. PIERCE: Jake's downtown is really
7 awesome if you want a good steak or a salad.

8 THE COURT: Good to know. All right. So why
9 don't we come back at -- I'm just going to do from
10 15 till. So let's come back at 1:45, and we'll
11 pick up from there.

12 MR. MUEHLBERGER: Thank you.

13 THE COURT: Okay. Thank you so much. We'll
14 be in recess till then.

15 (Whereupon, a lunch recess was from
16 taken from 12:45 p.m. to 1:52 p.m.)

17 AFTERNOON SESSION, TUESDAY, AUGUST 22, 2023

18 (Whereupon, the hearing reconvened at 1:52
19 p.m., with all interested parties present, and the
20 following proceedings were had:)

21 THE COURT: All right. We're back on record
22 after a lunch break. It's about 1:52 local time.

23 So as not to leave anyone hanging with
24 what I was grappling with when we -- before we
25 recessed, I did have a chance to go back and take a

1 MR. MUEHLBERGER: Yes, Your Honor.

2 THE COURT: Okay. All right. So Mr. Pierce,
3 would you like to go ahead and ask questions of
4 Ms. Kleffner based on her direct testimony?

5 MR. PIERCE: Yes, Your Honor, I would.

6 THE COURT: Okay. Please go ahead.

7 MR. PIERCE: I think we're having some issues
8 connecting, Your Honor.

9 THE COURT: Okay. Take your time. If you
10 need a break, just tell me, if you do, but
11 otherwise, take your time.

12 MR. PIERCE: Your Honor, can we take a break
13 so I can maybe work with tech support to figure
14 this out?

15 THE COURT: Sure. Sure.

16 MR. PIERCE: Thank you.

17 THE COURT: Five, 10 minutes or --

18 MR. PIERCE: Five minutes.

19 THE COURT: Okay. I'll be back in five.

20 (Whereupon, a brief
21 recess was taken.)

22 THE COURT: Okay. We're back on record.

23 Just a brief break for technology.

24 So all squared away, Mr. Pierce?

25 MR. PIERCE: I am. Yes, Your Honor.

1 THE COURT: All right. Great.
 2 CROSS-EXAMINATION
 3 BY MR. PIERCE:
 4 **Q. Ms. Kleffner, welcome to Montana. Um,**
 5 **can you read for us what 503.11(h) states?**
 6 A. "Land application is the spraying or
 7 spreading of sewage sludge onto the land surface,
 8 the injection of sewage sludge below the land
 9 surface or the incorporation of sewage sludge in
 10 the soil" --
 11 THE REPORTER: I'm sorry. Can you slow down.
 12 THE WITNESS: I'm sorry. Do you need me to
 13 restart?
 14 THE REPORTER: Just from where you left off.
 15 THE WITNESS: Okay -- - "the injection of
 16 sewage sludge below the land surface, or the
 17 incorporation of sewage sludge into the soil so
 18 that the sewage sludge can either condition the
 19 soil or fertilize crops or vegetation grown into
 20 the soil."
 21 BY MR. PIERCE:
 22 **Q. So you would agree that a person who**
 23 **engages in that activity would be a person who**
 24 **applies sludge to the land?**
 25 A. Yes.

1 MR. PIERCE: I do not, Your Honor.
 2 THE COURT: Okay. Let me just locate it. I
 3 think it's in CX36. Is that what this is that
 4 we're looking at? Does complainant have it up for
 5 you or do you have it up yourself?
 6 MR. PIERCE: I have it up myself, Your Honor.
 7 THE COURT: Okay. I think it said CX36, the
 8 Plain English Guide. And you're on page --
 9 MR. PIERCE: 51, I believe, Your Honor.
 10 THE COURT: Okay. Perfect. Please go ahead.
 11 BY MR. PIERCE:
 12 **Q. So, Ms. Kleffner, can you read this**
 13 **portion for us?**
 14 A. "If the landowner or leaseholder is also
 15 the land applier of the biosolids, that person must
 16 follow the applicable provisions of the Part 503
 17 rule for land appliers as described in this
 18 chapter. If the land-applying operation is of
 19 sufficient size or concern to the permitting
 20 authority, the landowner or leaseholder applier
 21 might also be required to obtain a permit for the
 22 land application activities."
 23 **Q. So you would agree that this states that**
 24 **if the landowner or leaseholder is the person who**
 25 **applies, that they are also responsible for**

1 **Q. Okay.**
 2 THE COURT: And that was 11(h), 503?
 3 MR. PIERCE: 503.11(h), yes, Your Honor.
 4 THE COURT: Okay. Thank you.
 5 MR. PIERCE: Can you switch to the plain
 6 English?
 7 BY MR. PIERCE:
 8 **Q. Do you recognize this document,**
 9 **Ms. Kleffner?**
 10 A. Yes, I do.
 11 **Q. And can you explain to us what this**
 12 **document is?**
 13 A. So this is the Plain English Guide that
 14 was put out by EPA. It's just a description of the
 15 regulations without having to read the regulations.
 16 **Q. So this tries to help citizens sort of**
 17 **get through all of the confusion that is 503,**
 18 **correct?**
 19 A. Correct.
 20 **Q. Okay. And can you read the highlighted**
 21 **portion for us?**
 22 A. Sure.
 23 THE COURT: Just real quickly, just the
 24 exhibit number, too, so we can connect all the
 25 dots. Do you have it handy there, Mr. Pierce?

1 **complying with 503 regulations, correct?**
 2 A. Yes.
 3 **Q. Okay.**
 4 MR. PIERCE: Your Honor, at this point, can I
 5 have my assistant put some slides on the projector
 6 there?
 7 THE COURT: Absolutely.
 8 BY MR. PIERCE:
 9 **Q. While we're doing that, Ms. Kleffner,**
 10 **earlier, you testified that I did not provide**
 11 **anybody the agronomic weight of which the sludge**
 12 **should be applied; is that correct?**
 13 A. Correct.
 14 MR. PIERCE: Can we get the first slide up?
 15 BY MR. PIERCE:
 16 **Q. Ms. Kleffner, the lagoon**
 17 **project -- excuse me. Sorry. The lagoon project,**
 18 **was that project initiated by a government agency?**
 19 A. I would assume it was initiated by NCUC.
 20 I don't know the background behind that.
 21 **Q. So you have not had an opportunity to**
 22 **review the bid contract that IHS put out?**
 23 A. I'm sure it was probably included. I'm
 24 not -- I'd have to see the exhibit to know which
 25 one you're talking about.

1 **Q. I believe it was part of the 430-some**
 2 **pages of exhibits.**
 3 THE COURT: That would have been --
 4 BY MR. PIERCE:
 5 **Q. So you are aware, though, that IHS had a**
 6 **bid packet related to the sewer lagoon project?**
 7 A. Yes. The Indian Health Services, I
 8 think was part of the payment process, yes.
 9 **Q. And Indian Health Services directly**
 10 **entered into a contract with the Northern Cheyenne**
 11 **Utility Commission. Is that not also part of the**
 12 **record?**
 13 A. Yes. That would be because Indian
 14 Health Services works only with tribal entities.
 15 They --
 16 **Q. Thank you for your testimony. Just**
 17 **"yes" or "no" will work. Thank you.**
 18 **So with that contract, was there a**
 19 **representative of IHS that was in contact with you?**
 20 A. After the complaint or during the --
 21 **Q. Before the complaint.**
 22 A. No. We did not contact Indian Health
 23 Services until after the complaint was made. This
 24 did not involve Region 7. That would have been
 25 through Region 8, the home region.

1 **Q. So James Courtney and yourself didn't**
 2 **have any conversations prior to the complaint. Is**
 3 **that your testimony?**
 4 A. To the complaint that EPA Region 7 or
 5 the complaint that was made against -- I think -- I
 6 think we're confusing the term "complaint." The
 7 complaint that came from the landowner or the
 8 complaint that was filed by EPA?
 9 **Q. So the complaint that was filed from**
 10 **EPA. Your testimony earlier was -- from my**
 11 **recollection is that this was brought to you by**
 12 **Region 8, and that's how you became aware of this**
 13 **project; is that correct?**
 14 A. Yes. And we did talk with Mr. Courtney
 15 after we received the complaint, yes.
 16 **Q. Okay.**
 17 MR. PIERCE: So I don't see the slide up
 18 here.
 19 BY MR. PIERCE:
 20 **Q. Going back to the previous question**
 21 **about agronomic rate.**
 22 A. Uh-huh.
 23 **Q. Can you please read the highlighted**
 24 **portion?**
 25 THE COURT: Okay. Hold on just one second,

1 though. Each time you refer to a document you need
 2 to orient me to which one it is. If you don't have
 3 an exhibit number handy, even just identifying what
 4 it is, do you have a --
 5 MR. PIERCE: Can you just scroll to the
 6 bottom real quick?
 7 MS. PIERCE: Uh-huh.
 8 MR. PIERCE: Your Honor, we're dealing with
 9 RX5, page 1.
 10 THE COURT: Perfect. Go right ahead.
 11 BY MR. PIERCE:
 12 **Q. Ms. Kleffner, can you read the**
 13 **highlighted portion to us?**
 14 A. "Receive and apply biosolid sludge from
 15 the frac tanks located at the Lame Deer Lagoons in
 16 Lame Deer, Montana at an agronomic rate and haul it
 17 to the barley field with Pivot line owned or leased
 18 by Tom Robinson, in compliance with U.S. 40 EPA 503
 19 regulations. Subcontractor further agrees to prep
 20 the field and till the sludge incorporating it into
 21 the soil within six hours. Must apply to 50 acres
 22 at a max application rate of 22,000 gallons per
 23 acre."
 24 **Q. Would that last sentence not be an**
 25 **agronomic rate?**

1 A. No. There's -- it is based on an
 2 assumption on what the nitrogen content is. You
 3 would need more information than that to properly
 4 calculate agronomic rate.
 5 **Q. Would you be surprised that this is the**
 6 **exact agronomic rate given by IHS in their bid**
 7 **contract?**
 8 A. I am not aware of an agronomic rate by
 9 Indian Health Services.
 10 **Q. So you would say that you haven't**
 11 **reviewed the record thoroughly enough to make that**
 12 **determination?**
 13 MR. MUEHLBERGER: Objection, Your Honor.
 14 Respondent is testifying.
 15 MR. PIERCE: It's an accurate question as to
 16 whether or not they reviewed the record. They have
 17 claimed they have thoroughly reviewed the record,
 18 Your Honor.
 19 THE COURT: I'll overrule the objection. Is
 20 there anything in the record that you've reviewed
 21 that would permit you to answer his question?
 22 THE WITNESS: That that was the Indian Health
 23 Services calculated rate? I do not recall a
 24 calculation by Indian Health Services.
 25 ///

1 BY MR. PIERCE:
 2 **Q. If Indian Health Services provided an**
 3 **agronomic rate that matched this exact description,**
 4 **would you then consider this to be an agronomic**
 5 **rate provided to other people?**
 6 A. It could be. I would need more
 7 information based on this. I know there was some
 8 discussion with Indian Health Services in prior
 9 dealings whether the dewatering was conducted the
 10 way that it was supposed to. So the total solids
 11 would eventually -- would have changed the
 12 agronomic rate.
 13 And I'm not sure if this contract was
 14 done before or after Indian Health Services. I
 15 think there's a lot of assumptions here about this
 16 agronomic rate. That the sludge was dewatered to a
 17 certain amount, whether or not it was actually
 18 dewatered to that, and then if it was actually
 19 applied --
 20 **Q. Thank you. I appreciate that.**
 21 THE REPORTER: I'm sorry. "If it was
 22 actually applied" --
 23 THE WITNESS: At this rate.
 24 THE REPORTER: Thank you.
 25 MR. PIERCE: Thank you. Can we go to --

1 BY MR. PIERCE:
 2 **Q. Ms. Kleffner, in Ms. Hertz Wu's e-mails**
 3 **and your e-mails and in the requests from the EPA,**
 4 **do you identify primarily records for application**
 5 **or do you identify records for preparation of**
 6 **sludge in your e-mails?**
 7 A. So when we first received the complaint,
 8 as far as we knew based on the information given by
 9 Indian Health Services, that it was just a land
 10 application issue, which is --
 11 **Q. Thank you.**
 12 A. -- why we identified --
 13 THE COURT: No, she needs to finish her
 14 answer. It was an open-ended question.
 15 MR. PIERCE: Okay.
 16 THE COURT: It wasn't a question that called
 17 for "yes" or "no," so she needs to finish.
 18 Go ahead.
 19 THE WITNESS: Right. Sorry, I lost my train
 20 of thought.
 21 So based on the information from the
 22 complaint, we knew that it was, at a minimum, a
 23 land application issue. It wasn't until we
 24 received some other information later on that
 25 indicated that it was dewatered by Mr. Pierce, that

1 we became aware that it was a preparer and land
 2 applier issue or that he was a preparer and land
 3 applier.
 4 BY MR. PIERCE:
 5 **Q. So you would agree that your initial**
 6 **request for information was for the application**
 7 **portion?**
 8 A. So the 308 request that EPA sends out
 9 for biosolids in general just contains usually the
 10 same amount of information. We ask for general
 11 information.
 12 As a land applier, if you weren't the
 13 preparer, we would have expected, based on Part 503
 14 regulations, that you would have the ability to
 15 respond to the metals and pathogen content as well
 16 as a land applier since that would have been given
 17 to you by the preparer and sampler.
 18 MR. PIERCE: Can we get the next slide up?
 19 So this is going to be RX9 et. 1, Your Honor.
 20 THE COURT: Okay.
 21 BY MR. PIERCE:
 22 **Q. Ms. Kleffner, can you read the**
 23 **highlighted portion to us?**
 24 A. "The Northern Cheyenne Utility
 25 Commission, NCUC, was the prime contractor and

1 permit holder on the project referenced for the
 2 request for information. Adamas has asked the NCUC
 3 to provide the requested technical information."
 4 **Q. So can you explain to the Court what**
 5 **this is in relation to?**
 6 A. So this was from -- this is the response
 7 to the information request that EPA sent to you.
 8 **Q. So would you agree that Adamas and/or**
 9 **our attorney pointed to the EPA where the documents**
 10 **you were seeking could be found?**
 11 A. In part, NCUC, if they were just the
 12 preparer -- it was clear from the complaint that
 13 was given to Indian Health Services that NCUC at
 14 most would have been the preparer of the biosolids,
 15 so they would only have part of those records. The
 16 land application portion, which was, again,
 17 indicated in that original complaint, that
 18 information would be available from the land
 19 applier. So that information was never turned in,
 20 and NCUC would not have that information.
 21 **Q. Did you receive the information that**
 22 **you're requesting and that the documents require**
 23 **from Ernie Sprague?**
 24 A. We received part of the information.
 25 **Q. What information is missing?**

1 A. So we received some of the management
2 practices, some of the site restrictions. He did
3 have a location in hauling logs. Mr. Sprague did
4 have an agronomic rate calculation that was
5 included in his response; however, Mr. Sprague's
6 agronomic rate calculation was based off of a
7 septage constant for the state of Montana, which is
8 not accurate in this instance where septage, it is
9 assumed that it's just domestic waste and that
10 there's a solid -- a nitrogen content that can be
11 assumed in general.

12 Whenever you have biosolids that is
13 coming from a domestic wastewater treatment
14 facility, the nitrogen content can vary depending
15 on what the treatment process is. So this is
16 coming from a lagoon rather than a septage, so the
17 calculation for agronomic rate would be different.
18 So we never did get an agronomic rate calculation
19 in response to any of the three requests.

20 **Q. Would it be more accurate to state that**
21 **the agronomic rate calculation you got was**
22 **inaccurate, but you did receive one?**

23 A. It was inaccurate, yes. So I would not
24 consider that an appropriate response. I'm sure
25 Mr. Sprague probably responded the best of his

1 abilities, given that he received an information
2 request from the federal government. But it was
3 not an accurate response.

4 **Q. Did you follow up with Mr. Sprague**
5 **explaining to him that it wasn't accurate and**
6 **asking for any further information?**

7 A. No, I did not follow up with him.

8 **Q. So you were able to locate records, find**
9 **them, find out that they were a bit inaccurate, but**
10 **you didn't follow up afterwards to try to get any**
11 **corrections?**

12 A. No. Based on Mr. Sprague's response and
13 the fact that we knew that he did not have access
14 to the lab results necessary to calculate the
15 agronomic rate, the correct agronomic rate, there
16 was no need to follow up with Mr. Sprague.

17 **Q. How do you know that he didn't have**
18 **access to those lab results?**

19 A. I don't think whenever we've discussed
20 with Mr. Sprague that he said that he received lab
21 results.

22 **Q. Did you ask him?**

23 A. I did not directly ask him, no. That
24 would have come from an attorney.

25 **Q. Did you hear anybody in the room ask him**

1 **whether or not he received those results?**

2 A. Again, I was not privy to all those
3 conversations.

4 **Q. So you don't know whether or not he**
5 **received the results?**

6 A. No.

7 MR. PIERCE: Okay. Can we get the next
8 slide? I think that's the same one.

9 MS. PIERCE: That's just the second page.
10 BY MR. PIERCE:

11 **Q. Ms. Kleffner, when was the complaint**
12 **initially filed from Tom Robinson?**

13 A. That would have been August of 2018. We
14 did not receive it until the beginning of September
15 2018.

16 **Q. So you said August 2018?**

17 A. I think so. I'd have to look at the
18 exact date. But I think it was the end of August
19 when he made that complaint.

20 MR. PIERCE: Can we go up to the date real
21 quick? Okay. And can we go to the bottom? Sorry.
22 I just need to see the exhibit number.

23 MS. PIERCE: Sorry.

24 MR. PIERCE: Your Honor, RX10, et. 1.

25 THE COURT: Okay. Thank you.

1 BY MR. PIERCE:

2 **Q. Ms. Kleffner, do you recognize this**
3 **e-mail?**

4 A. I do.

5 **Q. And is this an e-mail exchange between**
6 **you and Mr. Courtney?**

7 A. Yes.

8 **Q. And can you give us just a brief rundown**
9 **of what you're discussing in this e-mail?**

10 A. So Mr. Courtney contacted me. He had
11 some questions about some biosolids calculations.
12 I'd have to go back and read through it. But I
13 think the gist of it was that he wanted to resolve
14 some issues that you had brought up previously, and
15 he wanted to double-check with EPA as to the
16 validity of those representations.

17 **Q. Can you read the highlighted portion?**

18 A. "Mr. Pierce as an applier should not be
19 changing the quality of the biosolids. A sludge
20 judge should not be used to determine the total
21 solids contents of biosolids as sludge judges are
22 used to determine the amount of freeboard left in
23 the lagoon or grease trap."

24 **Q. Did this e-mail come before the**
25 **complaint from Mr. Robinson?**

1 A. No, this came after. Yes, it came
 2 after. It was April of 2019.
 3 **Q. So are you sure you had this discussion**
 4 **with Mr. Courtney after Mr. Robinson made the**
 5 **complaint?**
 6 A. Um, the complaint that Mr. Robinson made
 7 to Indian Health Services came to EPA in September
 8 of 2018. So this e-mail was from April of 2019.
 9 So, yes.
 10 **Q. Would it surprise you that this e-mail**
 11 **was dealing with the sludge that was in the tanks**
 12 **before it was applied?**
 13 A. I think whenever Mr. Courtney discussed
 14 this with me, this was the issue that was trying to
 15 be resolved between Adamas and Indian Health
 16 Services as to how much the biosolids were
 17 dewatered.
 18 **Q. Correct. So that was a decision**
 19 **between -- a dispute between Indian Health and**
 20 **Adamas as to how much the sludge was dewatered**
 21 **before it was applied, correct?**
 22 A. Yes. And it's not uncommon for
 23 facilities -- unfortunate as it is, for facilities
 24 to land apply prior to having figured out
 25 everything that they need to comply with Part 503.

1 So I am not surprised that there's follow-up --
 2 **Q. So if this conversation happened before**
 3 **the application and Mr. Robinson made the complaint**
 4 **after the application, wouldn't this conversation**
 5 **happen before Mr. Robinson's complaint?**
 6 MR. MUEHLBERGER: Objection, Your Honor.
 7 Calls for speculation.
 8 MR. PIERCE: It's pretty straightforward.
 9 THE COURT: Yeah. Let me -- before I rule,
 10 let me just interject to make sure I'm following.
 11 You're asking questions about this e-mail that
 12 pertains to dewatering, right?
 13 MR. PIERCE: Yes, ma'am.
 14 THE COURT: And is it your position that, if
 15 I'm understanding this correctly -- and I'm not in
 16 this industry, obviously -- that the dewatering
 17 discussions would come before application would
 18 take place?
 19 MR. PIERCE: Correct. Yes, ma'am. And the
 20 testimony of the witness was is they didn't have
 21 any conversations with Mr. Courtney until after the
 22 complaint had happened. This directly refutes what
 23 the witness has already said.
 24 THE COURT: I understand. I'll overrule the
 25 objection. Can you -- do you know, can you respond

1 to that time line if you're following, I guess,
 2 where this is going?
 3 THE WITNESS: Right. So just to clarify the
 4 time line. So the original complaint was made in
 5 August of 2018. It came to EPA Region 7 in
 6 September of 2019. That -- or in 2018. Excuse me.
 7 That same month, September 2018, we sent out our
 8 information request to Mr. Pierce. We did not
 9 receive a sufficient response. We sent it again.
 10 We had this conversation with Mr. Courtney.
 11 I think what has happened, we had
 12 photographs of biosolids on the field from the land
 13 application. So what I'm -- and this is an
 14 assumption on my part, I fully admit that -- is
 15 that the biosolids land application happened. I
 16 don't know if there was sludge left in the tanks
 17 and it still needed to be land applied. But I'm
 18 not -- I'm not sure what the question is asking.
 19 But that's my assumption is that there could be
 20 sludge left in the frack tanks that still needs to
 21 be applied.
 22 THE COURT: Is that what would explain the
 23 dewatering conversation going on after a land
 24 application? Because I think that's -- that was
 25 the point.

1 THE WITNESS: Yeah, it could be. It happens
 2 a lot. Sometimes at facilities -- and this is
 3 totally within the realm of possibility that
 4 facilities know that they don't have the
 5 appropriate land. Or something happens, they need
 6 to reprocess. Whatever happens, they need to
 7 dewater further. We'll store biosolids and then
 8 complete an application at a later time.
 9 So it's not to say that land application
 10 didn't happen in August of 2018. It's entirely
 11 possible that this could be a continuation. But I
 12 don't know for sure.
 13 THE COURT: Okay.
 14 BY MR. PIERCE:
 15 **Q. Ms. Kleffner, can you read the portion**
 16 **right after the highlighted piece there?**
 17 A. "Total solids would be necessary to
 18 calculate the agronomic rate necessary to apply.
 19 However, it's only a small part of the necessary
 20 information needed to calculate the proper
 21 agronomic rate for the site."
 22 **Q. And so in this discussion here, it**
 23 **details that I was trying to explain to James**
 24 **Courtney that the use of a sludge judge was**
 25 **inappropriate and that the total solids wasn't the**

1 **only thing within the sludge concentration in order**
 2 **to come up with the agronomic rate to apply.**
 3 **Wouldn't that indicate that this happened before**
 4 **application?**
 5 A. Not necess -- like, we've already talked
 6 about this, but that it is possible to store and
 7 further concentrate biosolids and break up the
 8 application.
 9 **Q. So you have no --**
 10 MR. PIERCE: I'll move to a different line of
 11 questioning, Your Honor.
 12 THE COURT: Okay.
 13 BY MR. PIERCE:
 14 **Q. If the agronomic rate that was given in**
 15 **the contract that I supplied to Tom Robinson**
 16 **matches that of the IHS and matches the agronomic**
 17 **rate that would be recommended, would it be a**
 18 **change in your testimony that I, in fact, gave that**
 19 **information?**
 20 A. I don't think so. We didn't have any of
 21 the supporting documentation to prove that the
 22 agronomic rate was calculated correctly. Even if
 23 it's written into a contract, that doesn't mean
 24 that it necessarily happened that way. And I know
 25 that, based on some of the information that NCUC

1 **Q. What do you base that information on?**
 2 A. Based on the information that they don't
 3 have the lab results necessary to calculate
 4 agronomic rate appropriately. And I'm not --
 5 **Q. Do you have any evidence to support that**
 6 **claim?**
 7 A. I'm not an attorney. I don't do
 8 contract law. All I know is that typically you
 9 cannot contract away any liability --
 10 **Q. Correct.**
 11 A. -- as a contractor --
 12 **Q. And so NCUC was the main contractor --**
 13 THE REPORTER: I'm sorry. I didn't get the
 14 end of her answer.
 15 THE WITNESS: As a contractor or a
 16 subcontractor, you cannot contract away liability.
 17 BY MR. PIERCE:
 18 **Q. A contractor cannot contract away**
 19 **liability?**
 20 MR. MUEHLBERGER: Objection, Your Honor.
 21 He's asking the witness to make a legal conclusion.
 22 MR. PIERCE: Actually, if I could finish my
 23 question.
 24 THE COURT: Okay. Finish your question.
 25 I think we are getting into a legal

1 and Indian Health Services had given to us, there
 2 was some dispute over how appropriately the
 3 biosolids were dewatered. So I don't know that
 4 that was actually the solids content necessary to
 5 come up with that agronomic rate calculation.
 6 **Q. But you have no proof that it wasn't,**
 7 **correct?**
 8 A. I think it would --
 9 **Q. That would be a "yes" or "no," please.**
 10 A. I'm sorry. Can you repeat the question?
 11 **Q. You have no proof that it wasn't,**
 12 **correct?**
 13 A. No.
 14 **Q. Thank you.**
 15 A. We were not offered any information.
 16 **Q. So when asked earlier about my**
 17 **contractual relationship and the subcontractor**
 18 **relationship with Tom Robinson, you said that Tom**
 19 **Robinson couldn't be held accountable because I was**
 20 **the contractor. Why does that not apply for NCUC**
 21 **when they were the main contractor and I was the**
 22 **subcontractor?**
 23 A. NCUC did not have the information
 24 necessary, and neither did Tom Robinson, to fulfill
 25 those reporting requirements.

1 question. But you finish in case I -- in case
 2 there's more to it that makes it a mixed question,
 3 a fact of law.
 4 BY MR. PIERCE:
 5 **Q. So a contractor -- a contractor cannot**
 6 **contract away liability. Is it possible for NCUC**
 7 **to get out of their reliability because they**
 8 **breached their contract?**
 9 THE COURT: Okay.
 10 MR. MUEHLBERGER: Objection. That calls for
 11 speculation. And he's also making a conclusion
 12 that the witness can't testify to.
 13 THE COURT: I'll sustain the objection.
 14 MR. PIERCE: Are we going to play by even
 15 rules here? Because he was doing the same thing,
 16 and you let it go on.
 17 THE COURT: It's -- no, no. It's a question
 18 of -- it's a question of when we're talking about
 19 contract law, we don't have a contract law expert
 20 here. That's going to require -- that's going to
 21 require legal research and argument. And this is
 22 not an evidentiary hearing for purposes of
 23 establishing the law. It's a fact-finding mission.
 24 So to the extent you have a question that calls for
 25 an answer as to a material fact, that's certainly

1 pertinent. But when it calls for legal
 2 interpretation, that isn't something that's going
 3 to be resolved here. This is -- an evidentiary
 4 hearing, there's really no need for an evidentiary
 5 hearing --
 6 MR. PIERCE: So is it a legal opinion --
 7 THE COURT: -- when it's purely a question of
 8 law. I wouldn't have even scheduled it if that
 9 were the case.
 10 MR. PIERCE: Is it a legal opinion as to
 11 whether a contractor can contract away liability or
 12 not?
 13 THE COURT: I think that that's a legal
 14 question. And I -- and that's why I sort of hinted
 15 earlier on that that's research I'm going to be
 16 delving into, and I would encourage you all to do
 17 the same when it comes to briefing. I think it's
 18 certainly relevant. I just don't know that this
 19 witness or anyone else here can really speak to
 20 that because it's a question of legal research.
 21 MR. PIERCE: Well, I think it also gets to
 22 evidence, Your Honor. I mean, you need evidence to
 23 base on. If I don't ask the question, how do you
 24 know what to look into?
 25 THE COURT: Yeah. You know, let me try

1 that led her to conclude whether someone -- whether
 2 that was either activities or certain terms or
 3 things that would lead her to conclude someone was
 4 functioning as a preparer.
 5 MR. PIERCE: Yes, ma'am.
 6 THE WITNESS: Or as an applier and then as an
 7 operator.
 8 MR. PIERCE: Yes, ma'am.
 9 THE COURT: Then we're getting into certain
 10 elements of the charge violation. So I do think
 11 that's appropriate and appropriate for you to
 12 examine her about. But when it comes to an
 13 interpretation of law and whether -- and contract
 14 law, she can't answer that. I wouldn't -- I
 15 wouldn't really consider it. And I don't think
 16 that she has. So I'm a little concerned if you
 17 feel like the rules aren't being applied fairly.
 18 MR. PIERCE: Well, she's made the
 19 determination that she felt that I was the
 20 contractor.
 21 THE COURT: Well, yeah. No. That -- these
 22 are -- those are different -- those are different
 23 issues. Whether or not you can contract liability
 24 away is something different than whether or not she
 25 pulled information from the documents she had in

1 this -- let me try to explain this a little bit
 2 differently because I think we're conflating ideas.
 3 When something comes down to legal
 4 interpretation, that doesn't require a hearing.
 5 The only purpose for this hearing is to develop
 6 facts. That's why we have witnesses to testify
 7 about what they know. Or in this case, based on
 8 experience as a compliance officer, things that
 9 she's looking at and, you know, drawing information
 10 from in order to determine whether to recommend or
 11 chime in on bringing an enforcement action.
 12 Factual determinations based on perception, what
 13 somebody has witnessed, if they're experts, that's
 14 a whole other -- whole other area.
 15 But this evidentiary hearing is purely
 16 for a factual development. So a question of law
 17 isn't going to be answered here. It's something
 18 you can argue about post-hearing, do research, make
 19 arguments about whether or not liability can be
 20 contracted away. But I don't think she can answer
 21 that question.
 22 MR. PIERCE: Okay.
 23 THE COURT: She answered questions -- my
 24 recollection was that she answered questions on
 25 direct about things that she saw from the documents

1 front of her to conclude in her opinion as a
 2 compliance reviewer that this would be behavior
 3 consistent with somebody who was an operator or
 4 consistent with somebody who was a land applier of
 5 sludge or consistent with behavior or activities
 6 that someone who was a preparer would engage in.
 7 But that's a different -- that's different than
 8 contract law interpretation.
 9 MR. PIERCE: Yes, ma'am.
 10 THE COURT: Okay. Are you following me here?
 11 MR. PIERCE: I'm following you quite well.
 12 THE COURT: Okay. All right. So at this
 13 point, maybe just rephrase your question or ask
 14 another. I'm not entirely sure where you left off.
 15 MR. PIERCE: I think I can just move on from
 16 it.
 17 THE COURT: Okay. But the objection is
 18 sustained. I think I made that clear based on the
 19 legal conclusion.
 20 Go ahead.
 21 BY MR. PIERCE:
 22 **Q. Ms. Kleffner, in your e-mail, this**
 23 **e-mail details sort of some issues that James**
 24 **Courtney had asked you about the use of a sludge**
 25 **judge. Did you recommend that he should not use a**

1 **sludge judge?**
 2 A. Yeah. I think whenever I initially got
 3 this e-mail, I had misread Mr. Courtney's initial
 4 question. So sludge judges can be used to sample
 5 for total solids, but total solids should come from
 6 a lab. It's something that needs to be a process.
 7 You can't just take the depth of a sludge blanket
 8 and then the amount of water that's left on top and
 9 calculate total solids. It needs to come from a
 10 lab.

11 **Q. And so you also state that total solids**
 12 **is a small portion of the agronomic rate; is that**
 13 **correct?**

14 A. Yes. There's several other components
 15 that go into calculating agronomic rate, such as
 16 the nitrogen content of the soil on the site, what
 17 kind of sludge it is, so how available the nitrogen
 18 is, what kind of crops you'll be growing there, if
 19 it's incorporated or if it's surface spread.
 20 There's several other pieces of information that is
 21 necessary for that, yes.

22 **Q. And so if -- in your opinion based upon**
 23 **your experience, if Mr. Courtney was doing his**
 24 **testing wrong, would that -- and he was advising**
 25 **NCUC, would that cause an issue in the overall**

1 **information?**

2 A. Yes. But I'm not aware that they were
 3 provided that information or that the information
 4 was correct.

5 **Q. But you're not aware that it was -- you**
 6 **don't have any information to say it was inaccurate**
 7 **or it wasn't provided to them?**

8 A. No.

9 **Q. So how did you make your determination**
 10 **that it wasn't provided to them?**

11 A. So Mr. Robinson said in his 308
 12 response, which he certified that it was a true and
 13 accurate response, that he did not receive the
 14 necessary information to calculate agronomic rate.
 15 That was part of his response to us, that
 16 Mr. Robinson did not receive that. So I'm
 17 operating off of what was submitted to us as a
 18 certified statement.

19 **Q. What did you do to follow up and verify**
 20 **his claim?**

21 A. We took the 308 information response.
 22 Mr. Robinson, admittedly, is very difficult to get
 23 ahold of. So I did not have any further contact
 24 with him after that.

25 **Q. Is it true that he states in his 308**

1 **agronomic rate?**

2 A. It could. I think I would need to look
 3 at how Mr. Courtney calculated his agronomic rate,
 4 but it could. There's a difference in sampling or
 5 how people calculate it. Yeah, there could be a
 6 difference.

7 **Q. If IHS showed all of the people involved**
 8 **in the contract, the bid contract, and it contained**
 9 **an agronomic rate, would you say that they received**
 10 **a copy of the agronomic rate?**

11 A. Everybody involved. Would that include
 12 the other --

13 **Q. With the application portion of**
 14 **the -- so if Tom Robinson and Ernie Sprague**
 15 **reviewed the IHS bid contract and it contained lab**
 16 **samples and agronomic rates, would you consider**
 17 **them to have received that information?**

18 A. I suppose so. I would assume that
 19 Mr. Sprague and Mr. Robinson would need copies and
 20 the correct knowledge to calculate agronomic rate.

21 **Q. If Mr. Sprague and Mr. Robinson attended**
 22 **a pre-construction meeting at NCUC with all of the**
 23 **project players and the agronomic rate was**
 24 **discussed and lab results were provided, would you**
 25 **agree that they were provided with that**

1 **response that Nathan Pierce was the person who**
 2 **applied the sludge?**

3 A. Yes.

4 **Q. Is it true under Number 2 he goes on to**
 5 **state that Ernie Sprague sprayed the sludge on his**
 6 **land and he used his tractor to till it into the**
 7 **land?**

8 A. Yes. It is possible to have more than
 9 one land applier operating at a time.

10 **Q. Sure. But he did answer that he and**
 11 **Ernie Sprague did that, correct?**

12 A. As directed by you, yes.

13 **Q. Okay. And the definition of land**
 14 **application in 503.11(h), we're clear on what that**
 15 **means, correct?**

16 A. Yes.

17 **Q. Okay. And you would agree that Ernie**
 18 **Sprague and Tom Robinson meets that exact**
 19 **description by the plain reading of the law?**

20 A. In a physical sense, yes. They --

21 **Q. Thank you.**

22 A. -- were physically land applying.

23 **Q. So they would be the persons who**
 24 **physically were out there doing the work. Would**
 25 **you not agree that the persons who were physically**

1 **doing the work would be the persons best able to**
 2 **give you the documents that you were requesting?**
 3 A. Not if they didn't have all the
 4 documents necessary. As I said before, we sent an
 5 information request to Mr. Robinson. And it was
 6 also asserted during the Indian Health Services
 7 complaint that he did not have the information
 8 necessary to calculate agronomic rates. So we
 9 couldn't expect Mr. Robinson or Mr. Sprague to have
 10 the documents necessary if they weren't privy to
 11 the information necessary to create the documents.
 12 **Q. Were you aware that IHS had worked with**
 13 **Mr. Robinson previously years before to apply**
 14 **sludge to the same land from the same lagoon?**
 15 A. No. We did not -- we have not worked or
 16 had any operation with Indian Health Services about
 17 this site prior to the complaint.
 18 **Q. So would you say that Indian Health**
 19 **Services not providing you that information would**
 20 **be -- would it be important for Indian Health to**
 21 **provide you with that information to make your**
 22 **determination?**
 23 A. About who was responsible for
 24 recordkeeping?
 25 **Q. Previous land applications done by**

1 for cumulative metals loading, it would have to be
 2 decades upon decades of annual biosolids
 3 applications to reach the cumulative pollutant
 4 loading for metals. That just doesn't happen very
 5 often for sites that -- there are very few sites
 6 that have that requirement. Like I said, it would
 7 take decades of biosolids land application to
 8 trigger that cumulative pollutant floating.
 9 **Q. But you were unaware of any other**
 10 **application other than the one that happened?**
 11 A. No. I was not aware of any other
 12 applications.
 13 **Q. Thank you.**
 14 **Okay. So with that, you also mentioned**
 15 **that the replacement of this muffin monster**
 16 **indicated that I was -- or Adamas was an operator.**
 17 **Can a service technician service a muffin monster**
 18 **without being an operator?**
 19 A. Sure. Yeah.
 20 **Q. Can an outside contractor work on a**
 21 **sewer system without being an operator?**
 22 A. It is possible, yes. I think in a
 23 cumulative sense, though, looking at all of the
 24 documents that we had and all of the billing and
 25 the information that was listed as completed by

1 **Mr. Robinson to the same land?**
 2 A. Not necessarily, depending on how long
 3 ago it was. Nitrogen only stays in the soil a
 4 certain amount of time. So if Mr. Robinson did
 5 have biosolids land applied to his site previously,
 6 it's entirely possible that that is negligible in
 7 determining agronomic rate.
 8 **Q. But you also talk about a cumulative**
 9 **effect?**
 10 A. Yes. There is some cumulative effect,
 11 but that can be easily overcome with soil sampling.
 12 **Q. So the cumulative effect, without**
 13 **knowing that Mr. Robinson had it previously applied**
 14 **to his property, you couldn't have made that**
 15 **determination, correct?**
 16 A. Are you talking about cumulative metals
 17 loading or --
 18 **Q. So if Mr. Robinson -- I'm sorry. Let me**
 19 **rephrase.**
 20 **If Mr. Robinson had previously applied**
 21 **sludge to his land, could it cause an accumulative**
 22 **effect of metals?**
 23 A. It would have to be -- and this is
 24 generally why we don't have very many cumulative
 25 recordkeeping requirements. To get to the level

1 you, that, to me, told me you were an operator.
 2 **Q. But you do admit that I could -- a**
 3 **person could do the same work and not be an**
 4 **operator?**
 5 A. Yes, it is -- it's --
 6 **Q. Thank you.**
 7 A. Should I finish or --
 8 THE COURT: Do you have anything else to say
 9 to the answer?
 10 THE WITNESS: I was just going to say it is
 11 possible for -- when facilities don't have the
 12 correct technical needs, they can have a third
 13 party come and do work in their system.
 14 BY MR. PIERCE:
 15 **Q. If somebody enters into -- well, let me**
 16 **rephrase this.**
 17 **In the state of Montana, are you**
 18 **required to have an operator's license?**
 19 A. No. Well, actually, I'm not entirely
 20 sure for the state of Montana. I know it's a
 21 federal requirement. We do not write that in the
 22 permits unless it is specifically in a permit that
 23 they have to be a certified operator. The state of
 24 Montana might have that as a provision. That's a
 25 little bit different because this is a tribal

1 entity, so it's a federal permit, so it would have
 2 to be federal guidelines. It's not -- you know,
 3 not operating under Montana's laws.

4 **Q. Do members of the Northern Cheyenne**
 5 **Utility Commission have to get an operator's**
 6 **license from the state of Montana?**

7 A. They wouldn't have to according to the
 8 permit. Now, that can be something that can be
 9 required or put into place by their management if
 10 they wish to have certified operators. But
 11 according to their NPDES permit, that is not a
 12 provision.

13 **Q. So you're unaware of whether or not they**
 14 **have operators registered with the state of**
 15 **Montana?**

16 A. No, I do not know that for sure.

17 **Q. Okay. Let's go to the NPDES permit.**
 18 **You state that that is necessary for discharging**
 19 **into waters of the United States, correct?**

20 A. Yes.

21 **Q. Can you tell us what water of the United**
 22 **States the Lame Deer Lagoon discharges into?**

23 A. So Lame Deer Lagoon -- excuse
 24 me -- discharges into Lame Deer Creek, which flows
 25 into Rosebud Creek, which flows into the

1 Yellowstone River, which is a traditionally
 2 navigable water.

3 **Q. So if I showed you a map that showed**
 4 **that Lame Deer Creek actually terminates about five**
 5 **miles from the discharge point, would that surprise**
 6 **you?**

7 A. In all of the maps that I have reviewed
 8 for the USGS, Lame Deer Creek is a perennial
 9 waterway, which would make it a water of the United
 10 States.

11 **Q. So have you walked Lame Deer Creek?**

12 A. No, I haven't.

13 **Q. Has any member of EPA to your knowledge**
 14 **walked that creek to verify that claim?**

15 A. This would be an assumption on my part,
 16 but for most EPA inspections of a wastewater
 17 treatment facility, an inspector will go observe
 18 the waterway that it is flowing into. So I'm sure
 19 that there's an observation that has been made on
 20 Lame Deer Creek.

21 **Q. But you don't know if that's been done**
 22 **or not?**

23 A. No, I do not know for sure.

24 THE COURT: Is that something that would have
 25 been memorialized in the inspection report?

1 THE WITNESS: Yeah. And I would need to
 2 review the inspection report. It's -- I don't know
 3 for sure because I would need to look through the
 4 photos again, but it's probably likely that there's
 5 a photograph of the discharge point, at least for
 6 our region. In Region 7, we like to have a
 7 photograph of what the receiving stream's condition
 8 is at the time of the inspection.

9 THE COURT: Okay.

10 BY MR. PIERCE:

11 **Q. So earlier you were shown a lab report**
 12 **and a chain of custody that showed a soil sample.**
 13 **Do you know where that soil sample was taken?**

14 A. I would have to -- I would say it's the
 15 land application site.

16 **Q. Is that an assumption or --**

17 A. Well, it says Lame Deer sludge removal.
 18 And if that was the land application site that was
 19 intended to be used, yes. I would deduce that it
 20 was the Robinson field, yes.

21 **Q. Okay. Were you aware that we -- that**
 22 **Adamas and myself had to look for an alternative**
 23 **site?**

24 A. I was not aware of that, no.

25 **Q. So if I tested an alternative site, does**

1 **it mean that I am the applicator?**

2 A. I'm sorry. I don't --

3 **Q. Earlier, you testified that me taking**
 4 **those soil samples indicated that I was the**
 5 **operator or the applier. If I took a soil sample**
 6 **of a site that sludge was not applied to, does that**
 7 **make me the applier?**

8 A. I don't think that there's a connection
 9 there. So the sampling usually, for the biosolids
 10 itself, will come from the preparer. And then the
 11 land applier, it is an option they can -- soil
 12 sampling doesn't necessarily have to be conducted.
 13 You can operate on an assumption of the amount of
 14 nitrogen that is still left in the soil if you have
 15 prior records. So soil sampling isn't totally
 16 necessary to apply on a site. But it is usually
 17 conducted by either the preparer or the land
 18 applier.

19 **Q. Okay. When you send your request for**
 20 **information and it primarily has to deal with**
 21 **application, would it be reasonable for somebody to**
 22 **assume that that is the information you were**
 23 **requesting information about?**

24 A. Yes. I'm sorry. I -- would you repeat
 25 my question?

1 **Q. Okay. When you send out your 503**
 2 **request, you send out information, and typically,**
 3 **there was follow-up in which you guys wanted**
 4 **information regarding the application portion.**
 5 A. Yes.
 6 **Q. Would it be reasonable for a person to**
 7 **draw the inference that that is what you're looking**
 8 **for, is for information regarding the application**
 9 **portion?**
 10 A. Yes. I would say for this, like I said
 11 earlier, the biosolids information request, I don't
 12 want to say we use a template for every instance,
 13 but that's just generally what we ask for for
 14 people, we -- for land appliers and preparers both.
 15 Given the complaint that we received, we were
 16 looking mostly at land application. And at that
 17 point, we didn't have information that he was a
 18 preparer until later on. So it was focused on the
 19 land application portion.
 20 **Q. Okay. Thank you for that.**
 21 **So would you not agree that the person,**
 22 **who is on-site physically doing the work as 503,**
 23 **requires a map of where actual application was done**
 24 **and where the tilling would happen would be best**
 25 **done by the persons physically doing that work?**

1 A. It could be. I would say
 2 it's -- everybody that is participating in a land
 3 application project should be preparing records and
 4 have a piece of the recordkeeping requirement. So
 5 even if you had it subcontracted out to Mr. Sprague
 6 and Mr. Robinson, it would not -- it would be
 7 required of you as well as a preparer -- or as a
 8 land applier directing the land application to have
 9 those records as well.
 10 **Q. Does the requirement for the records**
 11 **keeping -- is it the development of a system or**
 12 **keeping the records?**
 13 A. It's keeping the records, I'm assuming.
 14 I think I get what you're getting at. But it's
 15 keeping the records, yeah. There's a recordkeeping
 16 you need to keep -- you need to generate and
 17 maintain the records for the five years as
 18 determined by Part 503.
 19 MR. PIERCE: Can we pull that statute up by
 20 chance?
 21 BY MR. PIERCE:
 22 **Q. Do you know directly offhand what**
 23 **statute that is?**
 24 A. Okay. Recordkeeping. Okay. So 503.17
 25 for recordkeeping. If we were looking at the

1 (a)(4), let's see. Actually under -- let's see.
 2 Yes. So for (i) and (ii), they both
 3 state similar. "The person who prepares the bulk
 4 sewage sludge shall develop the following
 5 information and shall retain the information for
 6 five years." And then for the land application,
 7 it's the same thing. "Person who applies the bulk
 8 sewage sludge shall develop the following
 9 information and shall retain the information for
 10 five years." So that's within 503.17.
 11 **Q. And would you agree if it was stated in**
 12 **somebody's contract that they provide that**
 13 **information -- and to a subcontractor that they**
 14 **provide that information to a contractor, and if**
 15 **they fail to do so, it would be impossible for the**
 16 **contractor to get that information?**
 17 A. So as a preparer, within Part 503, there
 18 are the requirements notice necessary information
 19 for information to be shared between parties for
 20 the preparer and the land applier. So it would be
 21 difficult as a land applier, yes, if a preparer did
 22 not give those documents or there wasn't documents
 23 shared between preparer and land applier and land
 24 applier and preparer for people to create and
 25 retain those records, yes.

1 **Q. So if the land applier -- let's just**
 2 **take the preparer, and all of that out of the**
 3 **equation for a second. If the land applier was**
 4 **contracted to provide documents and they failed to**
 5 **do so, but the contractor let you know where you**
 6 **could find those documents, wouldn't that be the**
 7 **most responsible thing to do?**
 8 A. It doesn't absolve you of the
 9 recordkeeping requirements to have it in a separate
 10 contract. It's still within Part 503 that you have
 11 to develop and maintain those records regardless of
 12 a contract.
 13 **Q. Does it say where they have to be**
 14 **maintained, with the contractor or subcontractor?**
 15 A. No, because Part 503 does not speak to
 16 contractors or subcontractors. It's just
 17 preparer --
 18 **Q. Developed and maintained?**
 19 A. -- and land applier.
 20 **Q. Would you agree that records were**
 21 **developed, whether they be accurate or not, they**
 22 **were maintained and they were turned over to you**
 23 **when requested?**
 24 A. I don't think that's entirely accurate.
 25 I think -- so you gave us bits and pieces of

1 information. It took several tries to get that
2 information from you. We never did get a final
3 cohesive idea on the agronomic rate as the person
4 who directed it. We did not receive site
5 restrictions, and we did not receive any
6 verification of the other management practices from
7 you.

8 **Q. You testified earlier, though, you**
9 **received those things from Ernie Sprague, correct?**

10 A. Yes. But we did not receive them from
11 you.

12 **Q. You reviewed the subcontract between**
13 **Ernie Sprague and myself?**

14 A. Yes.

15 **Q. And in that contract, it states that he**
16 **would develop and provide those documents, correct?**

17 A. Yes, which he did to EPA.

18 **Q. So you were aware that he had an**
19 **obligation to provide that and Tom Robinson had an**
20 **obligation to provide that to Adamas and NCUC?**

21 A. As part of their contract, yes.

22 **Q. And if they didn't provide that,**
23 **wouldn't that create an issue for NCUC and myself?**

24 A. It could. I'm --

25 MR. MUEHLBERGER: Objection, Your Honor.

1 **English Guide, it gave a pretty good explanation**
2 **that the landowner or lessor had obligations under**
3 **503. Why did you not request that information from**
4 **Mr. Robinson knowing he applied sludge to his own**
5 **land?**

6 A. So based on the complaint that was taken
7 by Indian Health Services and his statement in it
8 that he said he was not given any agronomic rate
9 calculations or sampling, it would have been
10 impossible for him to give us the records if he
11 didn't have the records necessary to generate it,
12 if that makes sense.

13 So if he was missing the metals
14 concentration, pathogen, he could have certified
15 vector attraction reduction since he was present
16 on-site and he was tilling. But he would not have
17 been able to do pathogen, metals, and agronomic
18 rate calculations, which are part of management
19 practices. So he was missing those three.

20 The management practices in particular
21 were of concern to us since that was the complaint.
22 And he wouldn't have had the information necessary
23 to calculate agronomic rate, so it would have been
24 a moot point to ask Mr. Robinson for information
25 that he did not have.

1 This asks for speculation. She can't know how this
2 would affect the respondent.

3 THE COURT: Can you restate the question?
4 Because I was taking a note. What was your
5 question?

6 MR. PIERCE: At this point, we can move on
7 from it, Your Honor. I mean --

8 THE COURT: Okay.

9 MR. PIERCE: -- it's pretty straightforward.
10 And I think I'm getting close to done here.

11 THE COURT: Okay. So you're moving on
12 entirely?

13 MR. PIERCE: Yes. I got a couple more
14 questions. I'm moving on entirely from that
15 question.

16 THE COURT: From that point? Okay.

17 MR. PIERCE: Yes, Your Honor.

18 THE COURT: Then you have an answer. There's
19 no need for me to make a ruling then. I'll
20 consider it a withdrawn question.

21 MR. PIERCE: You know, I think that's
22 probably the line of -- well, I'm sorry. Actually,
23 that is not.

24 BY MR. PIERCE:

25 **Q. Ms. Kleffner, when you read the Plain**

1 **Q. Were you aware of Mr. Robinson's request**
2 **to Mr. Courtney to have the sludge applied to his**
3 **land?**

4 A. Before the complaint or --

5 **Q. Before, during, and after as part of the**
6 **e-mail exchanges.**

7 A. No. I -- we started when we got the
8 complaint. We didn't have any requests before or
9 after or any -- we didn't have knowledge of it
10 prior to the complaint.

11 **Q. So you haven't reviewed the e-mail from**
12 **Tom Robinson to James Courtney requesting that the**
13 **sludge be applied to his land?**

14 A. I don't recall. If he did that, that's
15 fine. Mr. Robinson can do that as a landowner.

16 MR. PIERCE: Okay. I believe that's the gist
17 of my questions for the witness so far, Your Honor.

18 THE COURT: Okay. I have just one follow-up.

19 THE WITNESS: Okay.

20 THE COURT: It's very basic.

21 THE WITNESS: Uh-huh.

22 THE COURT: Might even be foolish, but I
23 don't have much pride left at this stage in my
24 career.

25 Should someone -- I'm trying to just

1 kind of synthesize this even at a broad level, you
 2 know. So if someone is land -- regardless who the
 3 someone is, if someone is land applying sewage
 4 sludge to their land --
 5 THE WITNESS: Uh-huh.
 6 THE COURT: -- can they responsibly do that
 7 if they don't have the agronomic rate by which to
 8 apply it?
 9 THE WITNESS: No. It would be -- I would say
 10 if you wanted to take the chance that you are
 11 relying that's it's a small enough amount of sludge
 12 to a large enough piece of property, you can make
 13 that assumption that you're probably okay.
 14 In terms of Part 503 and the regulations
 15 and having correct recordkeeping requirements, it
 16 would not be responsible. And we have taken cases
 17 against facilities who have land applied without
 18 calculating agronomic rate, with land applying
 19 before their sample results are even ready.
 20 They're just making the assumption that it's okay.
 21 So you're really -- in the spirit of Part 503, you
 22 need to have all the information necessary to land
 23 apply responsibly.
 24 And I think it is somewhere in the
 25 record that Mr. Robinson revoked consent at some

1 point for his land -- for the biosolids land
 2 application. He asked them to stop.
 3 THE COURT: Okay. But it sounds like at
 4 least at some stage, Mr. Robinson applied the
 5 sludge to his land even though he didn't have all
 6 the necessary pieces that one should have before
 7 doing so?
 8 THE WITNESS: As far as I know, Mr. Robinson
 9 was not -- he tilled in the sludge. He didn't do
 10 the spraying or spreading. He was essentially
 11 doing the vector attraction reduction piece of it,
 12 which would be incorporating the biosolids within
 13 six hours. So he completed the vector attraction
 14 reduction part, but I'm not sure that he was
 15 physically driving the truck that was spraying the
 16 biosolids. So he did have a piece of it.
 17 THE COURT: Okay.
 18 THE WITNESS: But not all of it.
 19 THE COURT: Okay. All right. That was
 20 really the only, I guess, follow-up question I had.
 21 Did that raise anything else you wanted to ask?
 22 MR. PIERCE: Um, you know, it does. But I
 23 don't think for this witness, Your Honor.
 24 THE COURT: Okay. Okay. Thank you.
 25 MR. PIERCE: Thank you.

1 THE COURT: Did you have some redirect?
 2 MR. MUEHLBERGER: I do, Your Honor. Could we
 3 have five minutes before the redirect?
 4 THE COURT: Absolutely.
 5 MR. MUEHLBERGER: Thank you.
 6 THE COURT: I'll be back in five minutes.
 7 (Whereupon, a brief
 8 recess was taken.)
 9 THE COURT: All right. Back on record after
 10 a brief break. Ready for some redirect.
 11 MR. MUEHLBERGER: I just have a few
 12 questions, Your Honor.
 13 THE COURT: Okay.
 14 REDIRECT EXAMINATION
 15 BY MR. MUEHLBERGER:
 16 Q. Ms. Kleffner, in your experience as a
 17 compliance officer for EPA, have you ever
 18 experienced an enforcement case where a contractor
 19 hired a subcontractor to do work that was regulated
 20 under the Clean Water Act?
 21 A. Yes.
 22 Q. Have you ever had an experience where
 23 EPA -- or are you aware of a case where EPA found
 24 that a contract -- that the contractor was liable
 25 for Clean Water Act violations? And let me be

1 clear, the contractor that hired the subcontractor.
 2 A. Yes.
 3 Q. Okay. Can you provide any detail about
 4 any particular case that you're thinking about?
 5 A. Yeah. So it really depends for a
 6 contractor and a subcontractor who has the most
 7 control over the facility. So it's not unusual to
 8 have an instance where a small wastewater treatment
 9 facility will hire a contractor to operate their
 10 facility for them. They just don't want to deal
 11 with having to operate the facility.
 12 If the subcontractor comes back to the
 13 facility owner or the original contractor and says,
 14 "Your facility is a mess. We need all of these
 15 upgrades. You need to do this, this, and this,"
 16 and the original contractor says, "Sorry, I'm not
 17 going to do that. I don't want to spend the
 18 money," if we were to take an enforcement case, we
 19 would not go against the subcontractor. They're
 20 doing everything in their power to appropriately
 21 run a facility.
 22 If there are improvements or -- or
 23 there -- the original contractor is aware that
 24 there are deficiencies that need to be addressed
 25 and they're choosing to ignore those deficiencies,

1 that's when we would take the case against the
 2 contractor rather than the subcontractor.
 3 **Q. Thank you.**
 4 **Earlier in your testimony, in the**
 5 **cross-examination testimony, you testified that you**
 6 **received information from Ernie Sprague in response**
 7 **to EPA's information request, correct?**
 8 A. Yes.
 9 **Q. Did you receive all of the information**
 10 **that you needed to confirm compliance with the EPA**
 11 **biosolids recordkeeping requirements?**
 12 A. No. So Mr. Sprague responded. He had
 13 lots of great information. However -- and this is
 14 something I talked about previously -- the
 15 agronomic rate calculation -- oh, sorry -- the
 16 agronomic rate calculation that Mr. Sprague had
 17 provided was based off of a constant that's used
 18 for sewage, for septage. So septage is a little
 19 bit different. It's treated differently than
 20 regular Part 503 biosolids due to the fact that the
 21 nitrogen content, you can just assume it's a
 22 constant for that.
 23 For agronomic rate for biosolids coming
 24 from an actual domestic treatment facility such as
 25 Lame Deer Lagoon, you wouldn't be able to apply

1 different pieces of information. None of it
 2 exactly wind up because each of them were
 3 functioning in each of their own capacity for the
 4 land application project.
 5 For example, Mr. Robinson I think
 6 answered in his 308 response that it was applied to
 7 20 acres of agricultural field. Mr. Sprague
 8 answered that it was 40 acres. I think in another
 9 contract, it was listed as 50 acres. The gallons
 10 applied were different across the board.
 11 Mr. Sprague said it was about 84,000 gallons, but
 12 the contract had a million gallons in it.
 13 I think there were lots of different
 14 numbers thrown around. So nobody had a good idea
 15 of what was actually happening on the site except
 16 for Mr. Pierce because he was directing and
 17 overseeing. He had -- he had access to all the
 18 information necessary to put together the story and
 19 the Part 503 regulation requirements.
 20 **Q. I want to touch a little bit on this**
 21 **waters of the United States arguments that were**
 22 **just raised here. How -- in your role as a**
 23 **compliance officer, how did you make the**
 24 **determination that the portion of Lame Deer Creek**
 25 **by the POTW was a waters of the United States?**

1 that constant to it.
 2 **Q. Thank you.**
 3 **If Robinson or Sprague provided -- or**
 4 **were -- I'm sorry. Let me start again.**
 5 **If Robinson or Sprague received**
 6 **agronomic rate and lab results from Mr. Pierce or**
 7 **Adamas, would that change your conclusion that**
 8 **Pierce, Adamas were the preparers of sewage sludge?**
 9 A. No.
 10 **Q. Would it change your conclusion that**
 11 **Pierce and Adamas were the applier of sewage**
 12 **sludge?**
 13 A. No.
 14 **Q. Why not?**
 15 A. For the preparer part, since Mr. Pierce
 16 was the one who dewatered, that -- that's
 17 regardless. That's a -- that's a treatment
 18 process, so that will always make him a preparer.
 19 For the land applier, since he was there, he
 20 directed the overall land application, that would
 21 still -- I would still consider him a land applier.
 22 And then, in addition to that, so we
 23 sent the 308 information request to Mr. Sprague and
 24 Mr. Robinson. And we also had some contract
 25 information. And we had all these little bits and

1 A. So outside of the fact that it was based
 2 on a NPDES permit, I review -- we have -- and it's
 3 publicly available. The USGS has a map online
 4 available that indicates whether water bodies can
 5 be -- can be considered -- excuse me -- perennial
 6 or ephemeral or, you know, partially flowing.
 7 In this instance, when I looked up Lame
 8 Deer Creek at the point where it discharges, it is
 9 considered a solid blue line, which indicates that
 10 it's a perennial waterway. And its flow from Lame
 11 Deer Lagoon along Lame Deer Creek where it
 12 confluences with Rosebud Creek, it's all a solid
 13 blue line. It's all perennial. And then it also,
 14 quite a ways of distance -- I think it's close to
 15 70 miles -- but it does flow into the Yellowstone
 16 River, which it has a direct connection and it is a
 17 traditionally navigable water. So Lame Deer Creek,
 18 in my professional opinion, would be a
 19 jurisdictional water.
 20 MR. MUEHLBERGER: Your Honor, we have a copy
 21 of the USGS map that Ms. Kleffner relied upon in
 22 making this determination. It's not entered into
 23 evidence, but this is a record that is available to
 24 the public and generally relied upon by regulatory
 25 agencies for making such determinations. I'd like

1 to show the document since it is publicly
 2 available.
 3 THE COURT: Sure.
 4 MR. MUEHLBERGER: Okay. Could you please put
 5 that up? Thank you.
 6 BY MR. MUEHLBERGER:
 7 **Q. Ms. Kleffner, are you able to see what's**
 8 **relevant here for your determination about waters**
 9 **of the United States?**
 10 A. Yes.
 11 **Q. Okay. Could you please describe what**
 12 **you're looking at and how this helped inform that**
 13 **determination?**
 14 A. Sure. So on this map, Lame Deer lagoon
 15 is located in the bottom right-hand corner. You
 16 can see that the lagoon is indicated on the map.
 17 It's two blue splotches. Basically, that's just
 18 indicating where the lagoon is at.
 19 So the discharge point into Lame Deer
 20 Creek is obviously just right where it's abutting
 21 the edge of that lagoon. Lame Deer Creek flows
 22 south to north. And further up on the map, it will
 23 show where the confluence with Rosebud Creek is,
 24 but that is a solid blue line. You can see that
 25 it does have some like peren -- not perennial,

1 A. Yes.
 2 **Q. Okay. Thank you.**
 3 MR. MUEHLBERGER: I'd like to show the
 4 witness Complainant's Exhibit 10, page 1 first.
 5 BY MR. MUEHLBERGER:
 6 **Q. Ms. Kleffner, do you recognize this**
 7 **document?**
 8 A. Yes, I do.
 9 **Q. Okay. Can you describe it, please?**
 10 A. So this is a -- what's called a -- it's
 11 an order for compliance for the Northern Cheyenne
 12 Utilities Commission. And it looks like this was
 13 all the way back in 2015.
 14 MR. MUEHLBERGER: Okay. And can I -- I'd
 15 like to look at the first page of the
 16 administrative complaint -- I'm sorry -- the
 17 findings of violation. Would that be on 3? Yeah.
 18 Thank you. This is CX10, page 3. Could we look at
 19 the caption at the top, please?
 20 BY MR. MUEHLBERGER:
 21 **Q. What is this, Ms. Kleffner?**
 22 A. So this is the compliance order. It's
 23 "Findings of Violation, Order for Compliance." It
 24 lists the statutory authority. And it is in the
 25 matter of Northern Cheyenne Utilities Commission

1 ephemeral or partially flowing streams indicated on
 2 here. That's usually indicated by the dot and dash
 3 on the map. But Lame Deer Creek is a solid blue
 4 line, which would indicate that it's a perennial
 5 water.
 6 THE COURT: And how is this map oriented when
 7 you say north to south?
 8 THE WITNESS: The north side is to the top.
 9 THE COURT: Okay.
 10 THE WITNESS: Yes.
 11 THE COURT: And the two splotches, it's the
 12 solid blue --
 13 THE WITNESS: Yes.
 14 THE COURT: -- areas, right?
 15 THE WITNESS: Yes. That would be where the
 16 lagoons are at.
 17 BY MR. MUEHLBERGER:
 18 **Q. And are you saying that by looking at**
 19 **this map that Lame Deer Creek is a solid blue line**
 20 **all the way to the confluence with the next water?**
 21 A. Yes, that is correct.
 22 **Q. Okay. And that would indicate to you**
 23 **that it's a perennial stream until it hits the next**
 24 **water, discharges into the next water; is that**
 25 **correct?**

1 and the Lame Deer Wastewater Treatment Facility.
 2 And then it goes on to list the NPDES permit.
 3 MR. PIERCE: Objection, Your Honor.
 4 Relevance. This is from 2015.
 5 MR. MUEHLBERGER: I think we'll be able to
 6 establish relevance with the next page.
 7 THE COURT: Okay.
 8 MR. MUEHLBERGER: I'd like to have her look
 9 at Paragraph 8 of the compliance order. And this
 10 is page -- or CX10, page 4.
 11 BY MR. MUEHLBERGER:
 12 **Q. Ms. Kleffner, could you please read the**
 13 **paragraph that starts with Paragraph 8?**
 14 A. "The Facility discharges into Lame Deer
 15 Creek, a perennial stream that has been determined
 16 to be a jurisdictional water of the U.S. by the
 17 U.S. Army Corps of Engineers. Lame Deer Creek
 18 flows north into Rosebud Creek, a tributary of the
 19 Yellowstone River, which flows into the Missouri
 20 River. Lame Deer Creek is a "water of the United
 21 States" within the meaning of 40 CFR Part 122.2,
 22 and therefore, a navigable water within the meaning
 23 of Section 502(7) of the Act, 33 USC 1362(7)."
 24 **Q. Just for clarification, can you describe**
 25 **what the role of the U.S. Army Corps of Engineers**

1 **would be in making such a determination?**
 2 A. So it is the Corps' responsibility to
 3 determine jurisdictional waters. They have the
 4 technical capacity to go out and assess a waterway
 5 to determine whether or not it's jurisdictional.
 6 **Q. Thank you.**
 7 MR. MUEHLBERGER: I don't have any more
 8 questions.
 9 THE COURT: The map that you referred to that
 10 is publicly available, would you both like that?
 11 If you're going to be making arguments about the
 12 waterway and how it runs, is that a document you
 13 would both like me to consider? You can submit it
 14 as a joint exhibit if so.
 15 MR. MUEHLBERGER: I'd be fine with entering
 16 that into evidence if respondent would like that.
 17 MR. PIERCE: I don't believe I need it, Your
 18 Honor.
 19 THE COURT: Okay. Do you have any objection
 20 to it if you want to be able to refer to it?
 21 MR. PIERCE: We have nobody here to validate
 22 its accuracy or authenticity.
 23 THE COURT: Well, it's publicly --
 24 MR. PIERCE: I mean, it's public record,
 25 sure.

1 THE COURT: It's publicly available. I mean,
 2 I suppose an alternative would be to provide a URL
 3 site if you would want to look at it that way. I
 4 mean, I'm assuming you're --
 5 MR. PIERCE: I won't object. We can enter it
 6 into the record.
 7 THE COURT: I'm just assuming you're going to
 8 be making some arguments about that, so --
 9 MR. PIERCE: Yes, Your Honor.
 10 THE COURT: -- I didn't know if it's
 11 something that you too might want to refer to,
 12 but...
 13 MR. PIERCE: You know, I can refer to it.
 14 Yes, Your Honor.
 15 THE COURT: Okay. All right. So do you have
 16 a copy?
 17 MR. MUEHLBERGER: I do. Your Honor, then we
 18 would move to enter this into evidence as CX -- it
 19 would be 59, correct? CX59.
 20 MR. PIERCE: It would be JX, right?
 21 MR. MUEHLBERGER: CX59, right.
 22 MR. PIERCE: JX, joint exhibit?
 23 THE COURT: Yeah. I thought you would do it
 24 as a joint exhibit.
 25 MR. MUEHLBERGER: That works.

1 THE COURT: Okay. So we would just make it
 2 JX1.
 3 MR. MUEHLBERGER: That sounds even better.
 4 THE COURT: Okay. So just, you know, for
 5 housekeeping, do you have one physical copy, maybe,
 6 to give the court reporter?
 7 MR. MUEHLBERGER: We do.
 8 THE COURT: Okay. And then are you able to
 9 scan it and mark it from your computer or no?
 10 MR. MUEHLBERGER: I'm going to defer to our
 11 paralegal on this.
 12 MS. MORENO: Oh. I'm sorry, what is your
 13 question?
 14 THE COURT: Are you able to scan it and mark
 15 it JX1 on your computer?
 16 MS. MORENO: Oh, yes.
 17 THE COURT: And then submit it
 18 electronically?
 19 MS. MORANO: Like after -- after -- this
 20 afternoon or this evening?
 21 THE COURT: Sure.
 22 MS. MORENO: Yes.
 23 THE COURT: By tomorrow.
 24 MS. MORANO: Yes.
 25 THE COURT: Okay. That's great. Why don't

1 you just do that. And then you can just transmit
 2 it electronically to the court reporter and to Jen
 3 and to Mr. Pierce, and then we'll all have it. And
 4 that will be an additional -- an exhibit that's
 5 been admitted, JX1, that map. Okay. Great. Thank
 6 you.
 7 MR. MUEHLBERGER: Thank you.
 8 THE WITNESS: Do you have any other
 9 questions?
 10 THE COURT: One second. Mr. Pierce, did you
 11 have any additional questions for the witness?
 12 MR. PIERCE: I do, Your Honor.
 13 THE COURT: Okay.
 14 THE WITNESS: Okay.
 15 RE-CROSS-EXAMINATION
 16 BY MR. PIERCE:
 17 **Q. Ms. Kleffner, you spoke earlier, and you**
 18 **said that control over the facility was extremely**
 19 **important as to determine between contractor and**
 20 **subcontractor, correct?**
 21 A. Uh-huh. Yes.
 22 **Q. Would you agree that control over the**
 23 **entire facilities, including the sewer lagoons and**
 24 **the application site, would be important?**
 25 A. Yes, depending on what piece we're

1 talking about. For the operator, yes. For the
 2 sewage sludge application, I would be more
 3 concerned about the pumping and the hauling and
 4 actual land application for control.

5 **Q. Okay. And so with that, you also**
 6 **stated that because a -- because Adamas and myself**
 7 **was -- how did you put it? Sorry. I'm trying not**
 8 **to misquote you here. Because we were the**
 9 **contractor and had control over the facility, we**
 10 **were the person who was the applier and the**
 11 **preparer; is that correct?**

12 A. I wouldn't say facility. Of the land
 13 application project, yes.

14 **Q. Did you also testify that Tom Robinson**
 15 **revoked his permission to utilize his land?**

16 A. At some point after biosolids had
 17 been applied, I think -- I'm not sure exactly
 18 if -- how much biosolids had left to be applied.
 19 That's something that can probably be testified to
 20 by someone else. But it was in the inspection
 21 report that, yes, permission was revoked at some
 22 point. Now, I don't know if that actually stopped
 23 the land application. But Mr. Robinson did state
 24 that he wanted land application to stop.

25 **Q. And in your review of the records, did**

1 **you come across anything that would indicate that**
 2 **NCUC had locked out Adamas Construction and/or**
 3 **their subcontractors from the facilities?**

4 A. I think that was included in some of the
 5 other exhibits, that NCUC was not present and
 6 available and didn't -- wasn't there for any of the
 7 land application. I'm not sure about the lockout
 8 and any control he had over another -- how much
 9 control NCUC had over Mr. Robinson's property.

10 **Q. What about over their own facility, the**
 11 **lagoon facility?**

12 A. Yes. As the owner, they have that
 13 right. I'm not sure exactly how much control they
 14 exercised over it and at what point that control is
 15 exerted. But I don't know that I could fully
 16 answer that question.

17 **Q. Okay. And you also stated that for it**
 18 **to be a body of water, it has to be continuously**
 19 **flowing and uninterrupted; is that correct?**

20 A. Yes.

21 MR. PIERCE: Can I pull up my computer, Your
 22 Honor?

23 THE COURT: Sure.

24 MR. PIERCE: You know, I believe last time,
 25 it had something to do with us showing the exhibits

1 up here.

2 THE COURT: Okay. The projector, maybe?

3 MR. PIERCE: Ms. Moreno, can I beg you,
 4 please?

5 MS. MORENO: Are you doing it at that table?

6 MR. PIERCE: Yes, ma'am.

7 MS. MORENO: Okay. Can you see?

8 THE COURT: I can. Thank you.

9 MR. PIERCE: Thank you.

10 Your Honor, is it okay to question from
 11 the table here?

12 THE COURT: Sure. That's fine.

13 BY MR. PIERCE:

14 **Q. Okay. You stated that Lame Deer Creek**
 15 **flows into Rosebud Creek, correct?**

16 A. Yes, it does.

17 MR. PIERCE: Your Honor, what I have up here
 18 on the screen to introduce is a Google Map. This
 19 is public information drawn directly from the
 20 Google Map site. This shows Lame Deer Creek.

21 BY MR. PIERCE:

22 **Q. Ms. Kleffner, does there seem to be a**
 23 **break in Lame Deer Creek in this picture?**

24 A. I would --

25 **Q. Or Rosebud Creek. Excuse me.**

1 A. I would not consider Google Earth
 2 imagery an accurate representation of water flow.
 3 That's not consistent with what USGS has on their
 4 mapping.

5 **Q. That wasn't the question. Does this map**
 6 **appear to have a break in it?**

7 A. It does. But I would not consider
 8 Google Earth or Google Maps appropriate for --

9 THE COURT: Do you -- let me ask -- let me
 10 ask this as a preliminary question: When you're
 11 making that evaluation --

12 THE WITNESS: Uh-huh.

13 THE COURT: -- which I assume that's an
 14 exercise you go through --

15 THE WITNESS: Yes.

16 THE COURT: -- as part of compliance
 17 enforcement. But what do you -- what mapping
 18 sources do you rely upon for determining whether or
 19 not there's jurisdiction and that it's a waterway
 20 over which EPA has jurisdiction?

21 THE WITNESS: Right. We would use government
 22 mapping systems. Google Earth is great for just
 23 general aerial imagery, but we would not rely on
 24 that to establish whether there's a break in a
 25 waterway on Google Earth's mapping.

1 The type of resources that we would use
 2 would be USGS. There's also the -- oh, gosh, I'm
 3 going to get the name wrong -- the My Waters Mapper
 4 is also another one that's publicly available.
 5 There's a wetlands mapper. I think that's put
 6 together by NWI, which is the National Wetlands
 7 Inventory. So we use government -- we don't rely
 8 on Google Earth. I would not consider Google Earth
 9 an accurate representation of a water flow.
 10 THE COURT: Do you know, the Army Corps of
 11 Engineers, the information that they develop as it
 12 relates to these jurisdictional issues --
 13 THE WITNESS: Uh-huh.
 14 THE COURT: -- does their technical
 15 information feed into any of those sources that
 16 you're drawing from?
 17 THE WITNESS: Yes. So I think it's the
 18 wetlands inventory. I will preface that saying
 19 anytime that we are looking for a jurisdictional
 20 determination, it is always preferable to have a
 21 USGS employee there on the site to evaluate it. We
 22 wouldn't rely solely on online mapping. So in this
 23 instance when it was determined to be a
 24 jurisdictional water by the U.S. Army Corps of
 25 Engineer in that 2015 compliance order, that would

1 average or normal for that time of year.
 2 Whenever I ran the precipitation tool,
 3 any time that there was water within Lame Deer
 4 Creek, it was found to be either normal conditions
 5 or drier than normal conditions. The
 6 drier-than-normal conditions tells me that this
 7 waterway is not just solely relying on
 8 precipitation drainage. It probably likely has
 9 some kind of other influence that is adding water
 10 into the stream that supports it being a perennial
 11 waterway.
 12 THE COURT: Okay. All right. So a little
 13 bit of additional information, but it's helpful for
 14 me to understand.
 15 So go ahead.
 16 MR. PIERCE: Just one follow-up to that, Your
 17 Honor.
 18 BY MR. PIERCE:
 19 **Q. Could Lame Deer Lagoon discharge be**
 20 **contributing to that water?**
 21 A. Um, I don't know for sure that it would
 22 be under the influence of Lame Deer Creek enough to
 23 influence the discharge. That would be something
 24 that we would rely on the U.S. Army Corps of
 25 Engineers to determine if that has a significant

1 overrule any mapping that we would potentially use.
 2 So we would like to rely on USGS -- or
 3 not USGS, the Army Corps of Engineers making the
 4 actual determination. We kind of use the mapping
 5 as a -- as a jumping-off point.
 6 THE COURT: And what did you use for this
 7 case?
 8 THE WITNESS: So we -- I started with the
 9 USGS map. And then whenever we reviewed that
 10 compliance order, we found that the Army Corps of
 11 Engineers had already determined that it was a
 12 jurisdictional water.
 13 I also did use something called an
 14 Antecedent Precipitation Tool, which is kind of a
 15 helpful guide that the Army Corps of Engineers puts
 16 out as well. It's publicly available, and it
 17 basically takes rainfall information, drought
 18 information, and then an input of dates. So you
 19 can choose photographs from Google Earth or
 20 DigitalGlobe or whatever you would like to use
 21 where you know for sure that you can view water
 22 within the streambed. So that Antecedent Precip
 23 Tool takes all that information, puts it all
 24 together, and tells you whether or not the flow
 25 within it, within the stream at that point is

1 enough influence. And I'm not entirely sure that
 2 even if it did discharge, that that would change it
 3 as a jurisdictional water.
 4 **Q. So it has a NPDES permit to discharge,**
 5 **correct?**
 6 A. Yes.
 7 **Q. So it would be discharging into the**
 8 **creek?**
 9 A. Yes. But I'm not entirely sure how much
 10 or how often Lame Deer Lagoon discharges. Like I
 11 said, that would be something that -- to determine
 12 jurisdictional waters, we would rely on the Corps
 13 of Engineers, which they've established in their
 14 2015 --
 15 **Q. How often and how much would be in the**
 16 **NPDES permit as well, correct?**
 17 A. Typically. Normally, what an NPDES
 18 permit would have in it would be its design flow, a
 19 maximum flow, and sometimes they'll do a minimum
 20 flow. But generally, for wastewater treatment
 21 facilities, they will have to report their flow.
 22 So what's reported in the NPDES permit isn't
 23 necessarily what the facility is actually
 24 discharging at any point in time.
 25 **Q. You said the tool that you used to**

1 **determine that, you used pictures from Google**
 2 **Earth, correct?**
 3 A. Yes, to show that there's water within
 4 the streambed. So Google Earth is kind of hit or
 5 miss. If you're just using it for general aerial
 6 imagery, it's fine. There's lots of other services
 7 out there like DigitalGlobe. But I would not use
 8 it to determine whether or not a stream is
 9 perennial, ephemeral, or intermittent.
 10 **Q. But it is being used with relation to**
 11 **determining flows, correct?**
 12 A. Just based on a capture of the
 13 conditions at that time. It's an actual
 14 photographic capture of the streambed. What you
 15 are showing was kind of the base map underneath the
 16 photographs, which I would not -- I would not use
 17 that.
 18 **Q. Okay.**
 19 A. The base map does not have any, I don't
 20 think, scientific backing behind the waterways as
 21 they're depicted on Google Earth's base maps.
 22 **Q. Going back to the bodies of the water**
 23 **issue that was brought up again, is there a -- in**
 24 **the recent Supreme -- well, I guess that would call**
 25 **for a legal opinion. Sorry.**

1 THE COURT: Well, you can ask, and then I can
 2 decide if you want to ask it. Are you talking
 3 about Sackett?
 4 MR. PIERCE: Yes, ma'am.
 5 THE WITNESS: Okay.
 6 BY MR. PIERCE:
 7 **Q. In the recent Sackett decision, the**
 8 **EPA -- or the Supreme Court ruled that in order for**
 9 **it to be a body of water, it had to be somewhat**
 10 **near a continuous body of water in the United**
 11 **States; is that correct?**
 12 A. That is talking about wetlands, which
 13 this is not a wetland issue.
 14 **Q. But it was talking about bodies of the**
 15 **water -- or waters of the United States, correct?**
 16 A. In a wetland sense. So the most recent
 17 Supreme Court decision is not changing the
 18 definition of what would be considered a relatively
 19 permanent water or a traditionally navigable water.
 20 So that -- it's mainly concerned with wetlands.
 21 It's not changing anything that would have to do
 22 with how Lame Deer Creek is considered as a
 23 jurisdictional water.
 24 **Q. Okay. And when -- for those who don't**
 25 **know a whole lot about it, when the effluent comes**

1 **out of the Lame Deer Lagoon, as it flows down the**
 2 **stream, does it self-clean?**
 3 A. Well, the point of discharge for any
 4 facility, it needs to have met the permit limits at
 5 the point that it's discharged, where it's sampled.
 6 I don't know that I would say that it self-cleans
 7 once it goes out into the stream. It should
 8 already be treated enough, if they're following
 9 their permit, once it discharges into the waterway.
 10 **Q. So -- but you would say if it traveled**
 11 **over time, that some of the heavier metals or**
 12 **anything would continue to precipitate out or to**
 13 **settle out of the water and become part of the**
 14 **streambed or precipitate out into the air, correct?**
 15 A. So heavy metals are -- it's -- this is
 16 going to get really convoluted and scientific. So
 17 heavy metals is -- the pollutant concentrations are
 18 dependent on the water quality, on hardness
 19 factors. That's usually what's used to determine a
 20 permit limit. Heavy metals have a really bad
 21 reputation for being dissolved metals. So once
 22 they are dissolved into a waterway, they don't
 23 necessarily precipitate out. Some of them do.
 24 They may attach to sediment particles and end up in
 25 the sediment of a streambed. But metals as a

1 dissolved content, those stay in the stream as a
 2 continuous issue until they're either attached to a
 3 sediment particle or they're uptaken by wildlife or
 4 plant life. Dissolved metals stay within a
 5 streambed, which is why they're so bad for a
 6 waterway. You do not want metals within a stream
 7 because they stay around. They are persistent.
 8 **Q. Sure. Okay. And I appreciate the**
 9 **description. I know you and I get it. I know most**
 10 **of the other people probably don't get that. The**
 11 **reason was you said that it was already treated to**
 12 **a level before it was ever discharged into Lame**
 13 **Deer Creek, and then it travels 70 miles to get to**
 14 **the Yellowstone River; is that correct?**
 15 A. Yes, it does.
 16 **Q. So would you consider there is heavy**
 17 **risk of contamination in that aspect as it has**
 18 **already been treated and then discharged?**
 19 A. So I'm going to preface this:
 20 Permitting is not my general background, but I do
 21 have a little bit of knowledge in the permitting
 22 aspect.
 23 So Lame Deer Lagoon, if it is
 24 discharging within that watershed, likely has a
 25 waste load allocation in -- within its permit

1 limits. So that basically says this treatment
2 facility can discharge this much dependent on the
3 quality of the water body and how many other
4 dischargers are within that watershed. So there's
5 probably a waste load allocation within that
6 permit.

7 I wouldn't say that it's discharging.
8 The purpose of a permit is to make sure that the
9 effluent that's being discharged is not going to
10 overwhelm a water body in addition to the other
11 discharges within that same watershed.

12 **Q. Well, it also keeps animals from getting**
13 **into the water body and carrying that to other**
14 **areas, correct?**

15 A. Um, I suppose that's true.

16 **Q. And that's the point of vector reduction**
17 **and pathogen reduction, is that --**

18 A. If you're talking about just biosolids.
19 So I assumed that you were talking about the Lame
20 Deer --

21 **Q. Well, no. It actually gets to both**
22 **points. We have a situation here where it is**
23 **claimed that the actions -- that this isn't just a**
24 **process thing, that the actions could have**
25 **contaminated or caused contamination. And this**

1 **gets directly to that. So the idea is that you**
2 **have the authority over this due to the Lame Deer**
3 **Creek and its discharge into a body of water of the**
4 **United States, and that's why this is a Clean Water**
5 **violation. So if there is no actual harm or damage**
6 **that has ever been done, how would this be a Clean**
7 **Water violation?**

8 A. So I think that's kind of a
9 mischaracterization of the purpose of Part 503.
10 So, yes, there is a NPDES permit. It does
11 discharge into a water of the U.S. Biosolids are
12 coming from the Lame Deer Wastewater Treatment
13 Facility that has a NPDES permit.

14 Biosolids don't have to be land applied
15 within the same watershed. They can be land
16 applied anywhere. They can even be land applied
17 outside of the state that they were generated in.
18 Part 503's real necessity is to make sure that
19 biosolids, wherever they're land applied, however
20 close or far they are from a water body, isn't
21 impacting the environment.

22 So it doesn't -- it is connected to Lame
23 Deer Lagoon, yes. But it's more important for the
24 biosolids regulations at land application site.

25 **Q. Okay. And so you believe that a body of**

1 **water that is 70 miles away from an original**
2 **discharge point is still considered a body of water**
3 **of the United States even given the Sackett**
4 **decision?**

5 A. Yes. It's continuously connected, so
6 yes.

7 MR. PIERCE: Okay. Thank you, Your Honor.

8 THE COURT: Anything else?

9 MR. MUEHLBERGER: No, Your Honor.

10 THE COURT: Okay. Thank you very much for
11 your testimony.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Well, it's quarter to

14 4. Who were you planning to call next? Or is
15 there someone you want to take out of turn to try
16 to utilize some of the time we have? We need to be
17 out of here by 5. So, you know, I would say we
18 probably have another hour to go before we need to
19 start collecting and leaving.

20 And just to clear up, I was given some
21 information about the opening time. It is not 7.
22 We had a couple of points of clarification
23 throughout today's hearing. The earliest we could
24 get started is 8, which I'm happy to do tomorrow
25 morning. But in any event, who -- is there

1 somebody you want to cover or at least start
2 covering?

3 MR. MUEHLBERGER: Your Honor, our plan was to
4 call James Courtney. This was the one that would
5 be through video conference on Teams.

6 THE COURT: Okay.

7 MR. MUEHLBERGER: And we feel confident we
8 can get through the direct examination, at the very
9 least, and possibly even into the cross.

10 THE COURT: Okay. Great.

11 MR. MUEHLBERGER: And as to when the court
12 opens tomorrow morning, we are fine with starting
13 at 8 or whenever the parties agree.

14 THE COURT: Okay. Is 8 okay for you?

15 MR. PIERCE: That's perfectly fine, Your
16 Honor.

17 THE COURT: Okay. So we'll just make a plan
18 to start up at 8 tomorrow morning.

19 MR. PIERCE: Just for clarification, the
20 building will be open, but the courtroom won't be
21 open?

22 THE COURT: Yeah. My understanding is the
23 security is ready to welcome people at 7:30.

24 MR. PIERCE: Okay.

25 THE COURT: Or technically 7. Is it 7:30 or

1 8? We've got a couple of different answers. It
 2 might be 8.
 3 MR. PIERCE: So would it be better to do
 4 8:30?
 5 THE COURT: It might be 8. So why don't we
 6 start at 8:30. I don't know if you need -- do you
 7 need a good bit of time to set up? Do you want to
 8 make it 8:30, 8:15? Whatever.
 9 MR. PIERCE: 8:15 is perfectly fine.
 10 THE COURT: Is that good for you all?
 11 MR. MUEHLBERGER: Works for us as well.
 12 THE COURT: I mean, obviously, I'm flexible.
 13 So if we're all here and you need a few extra
 14 minutes, that's really not a problem.
 15 MR. MUEHLBERGER: Thank you.
 16 THE COURT: Okay.
 17 MR. MUEHLBERGER: So in order to make this
 18 one work, we need the judge to be connected to
 19 Teams as well as Mr. Pierce and complainant. And
 20 we are about to send the links to the Team site
 21 now.
 22 THE COURT: Okay. I'm opening up Teams as we
 23 speak. Mr. Pierce, do you have the ability to open
 24 up Teams?
 25 MR. PIERCE: I do, yes, Your Honor. I'm

1 goes quickly.
 2 THE COURT: We'll keep running the record for
 3 the moment. Thank you for checking.
 4 MS. KACSUR: James? James, can you hear me?
 5 Would it be possible to turn off all of
 6 the microphones? I think it might cause an echo.
 7 Or would that be an issue?
 8 THE COURT: Well, she'll need to be able to
 9 hear something in order to record, I think, so...
 10 MS. KACSUR: Okay.
 11 THE COURT: We can turn off --
 12 MS. MORENO: Shouldn't we still be able to
 13 hear him?
 14 MS. KACSUR: He should be projected in the
 15 room. Does that change things? We're trying to
 16 get it so that we can hear him everywhere.
 17 THE COURT: Okay. Do we need to just
 18 manually push these off?
 19 MS. MORENO: On your actual computer, I
 20 believe. On your actual computer is where you need
 21 to turn off the volume.
 22 THE COURT: So I should mute myself.
 23 MS. MORENO: Testing. You still picked me
 24 up.
 25 THE COURT: Okay. Now I'm muted. Let me

1 trying to look for the e-mail currently.
 2 I do not have it. Did you e-mail that
 3 Teams invite?
 4 MS. MORENO: I'm getting ready to.
 5 MR. PIERCE: Oh, okay. Perfect.
 6 MR. MUEHLBERGER: Ms. Almase -- and I hope
 7 I'm pronouncing that correctly -- would you also
 8 like the link to the --
 9 MS. ALMASE: Yes, please.
 10 MR. MUEHLBERGER: Okay. And also the court
 11 reporter. We can send you a link as well if that
 12 helps.
 13 THE REPORTER: Sure.
 14 MR. MUEHLBERGER: Okay. Thank you.
 15 THE COURT: Otherwise, do you just need to
 16 make sure the mics are picking up the voice?
 17 THE REPORTER: Yes.
 18 THE COURT: Okay.
 19 THE REPORTER: I just wasn't sure if you
 20 wanted to go off the record for the tech --
 21 THE COURT: Oh, I don't think this is going
 22 to take too long. Do we need to go off the record
 23 at all for this or no?
 24 MR. MUEHLBERGER: Well, given that it's
 25 technology, we'll keep our fingers crossed that it

1 know when you're ready. I'll have to unmute to
 2 swear him in.
 3 MS. MORENO: Okay.
 4 THE COURT: Hopefully there won't be an echo.
 5 MS. KACSUR: This is recorded.
 6 It's not projecting. Have you switched
 7 it to this table, Sarah?
 8 MS. MORENO: It's good.
 9 MS. KACSUR: Okay. Can you hear me now,
 10 Mr. Courtney?
 11 THE WITNESS: Yes.
 12 THE COURT: Okay. You're not projecting in
 13 the room yet. Let me see if I can pick it up. Do
 14 I need to turn my speaker off?
 15 MS. MORENO: Yes.
 16 THE COURT: Okay. Hold on. We might be
 17 getting past the mic technological experience here.
 18 I muted myself. I just turn the volume off, right?
 19 MS. MORENO: Do you need help?
 20 THE COURT: I think I'm okay now, right?
 21 You're not hearing anything? Of course, I need to
 22 swear this gentleman in, so I'll have to undo
 23 everything I just did before I do that. But
 24 there's no feedback now. We're good, right?
 25 MS. KACSUR: I don't hear anything. If at

1 any point you need to speak with him, I think you
 2 can just unmute yourself and do it whenever you
 3 need to. I think that should work.
 4 THE COURT: Okay. I have the volume muted as
 5 well.
 6 MS. KACSUR: Me as well. I was hoping it
 7 would be projecting through the room.
 8 Mr. Courtney, can you hear me?
 9 THE WITNESS: Yes.
 10 MS. KACSUR: It's not projecting. Hold on
 11 just one moment, please.
 12 THE COURT: Do you want a few minutes to
 13 figure this out or --
 14 MS. KACSUR: Yes, please, Your Honor. I
 15 apologize.
 16 THE COURT: No worries. No worries. All
 17 right. I'm just going to leave the computer up and
 18 as is, and I'll come back in five. Is that -- do
 19 you think that's enough?
 20 MS. KACSUR: I think that should be enough.
 21 Thank you.
 22 THE COURT: All right. Great.
 23 (Whereupon, a brief
 24 recess was taken.)
 25 THE COURT: We can go ahead and get back on

1 please?
 2 A. Yes. James Courtney; J-A-M-E-S,
 3 C-O-U-R-T-N-E-Y.
 4 Q. And what is your current job,
 5 Mr. Courtney?
 6 A. I'm an engineer.
 7 Q. And who do you work for?
 8 A. The National Park Service.
 9 Q. Have you at any point worked for Indian
 10 Health Service?
 11 A. Yes.
 12 Q. When and for how long did you work
 13 there?
 14 A. Worked from December, 2016, to, I
 15 believe, May of 2022.
 16 Q. And what was your position with IHS?
 17 A. I was an engineer for IHS.
 18 Q. So what does an engineer for IHS do?
 19 A. Various tasks. Design, managing
 20 projects, like construction management.
 21 Q. And who was your supervisor when you
 22 were at IHS?
 23 A. Jim White.
 24 Q. So an engineer for IHS is the position
 25 that you had in 2018, right?

1 the record.
 2 Now can Mr. Courtney hear me?
 3 MS. KACSUR: You are muted.
 4 THE WITNESS: Yes.
 5 THE COURT: You can hear me?
 6 THE WITNESS: I think I'm hearing you through
 7 a counselor's mic. You still seem to be muted.
 8 THE COURT: Okay. Well, I won't mess around
 9 with my controls, then, so I don't generate
 10 feedback. I can hear you. If you can hear me,
 11 then I'm going to place you under oath. So if
 12 you'd raise your right hand.
 13
 14 JAMES COURTNEY
 15 called as a witness on behalf of the complainant,
 16 having been first duly sworn testified as follows:
 17
 18 THE COURT: Okay. Thanks very much.
 19 The witness has been sworn. Please go
 20 ahead.
 21 DIRECT EXAMINATION
 22 BY MS. KACSUR:
 23 Q. Good afternoon, Mr. Courtney. Thank you
 24 for joining us today.
 25 Can you state and spell your full name,

1 A. Yes.
 2 Q. What is the relationship between IHS and
 3 EPA in your field?
 4 A. Indian Health Service often collaborates
 5 with EPA to address sanitation deficiencies. So if
 6 there's violations on a reservation, IHS looks to
 7 the EPA to try to get those addressed. Oftentimes,
 8 IHS will provide technical assistance, sometimes
 9 financial reimbursement agreements with the tribe
 10 to address different sanitation deficiencies.
 11 Q. So what is the role of IHS when it comes
 12 to wastewater treatment specifically?
 13 A. So the role of the program that I was
 14 with was a sanitation facilities construction
 15 program within Indian Health Service. And the role
 16 of this program is to improve health of Indians
 17 through primarily water and wastewater projects.
 18 Q. Are you familiar with wastewater
 19 treatment facilities?
 20 A. Yes.
 21 Q. How are you familiar with them?
 22 A. Both my educational background and work
 23 experience.
 24 Q. How often have you worked with
 25 wastewater treatment facilities?

1 A. Fairly consistently. Not my current
 2 role. But when I was working for Indian Health
 3 Service, it was very common to work with both
 4 community systems and individual on-site wastewater
 5 treatment systems.

6 **Q. Are you familiar with the**
 7 **responsibilities or the duties of someone who**
 8 **operates a wastewater treatment facility?**

9 A. Yes.

10 **Q. Could you describe some of those**
 11 **responsibilities and duties?**

12 A. Yes. So for, say, a plant that's
 13 discharging into a stream, there's reporting
 14 requirements, there's different testing that has to
 15 be done for compliance. On reservations, the
 16 primacy agency is usually the Environmental
 17 Protection Agency.

18 **Q. Are you familiar with the federal**
 19 **regulations regarding biosolids or sewage sludge?**

20 A. Yes, I'm familiar with them.

21 **Q. Do you know what their purpose is?**

22 A. Yes. The purpose is to keep the public
 23 safe.

24 **Q. Do you -- are you familiar with any of**
 25 **the specific requirements of those regulations?**

1 A. Yes. There's requirements for testing
 2 the soil, the receiving soils for the sludge.
 3 There's requirements for testing the sludge for
 4 contaminants before it's applied. Yeah. Those are
 5 a couple of the requirements of that.

6 **Q. Does IHS get involved in the management**
 7 **of biosolids?**

8 A. So for IHS's involvement with biosolids,
 9 there can be funding of projects sometimes to
 10 address, say, a sanitation deficiency. There can
 11 be technical assistance. Those are probably the
 12 two -- two primary ways that Indian Health Service
 13 would get involved in something like that.

14 **Q. Shifting gears a little bit to this case**
 15 **specifically. Are you familiar with the Lame Deer**
 16 **Publicly-Owned Treatment Works?**

17 A. Yes.

18 **Q. What is it, and how are you familiar**
 19 **with it?**

20 A. So that's a community wastewater system.
 21 It consists of wastewater lagoons. So basically
 22 ponds that treat the wastewater that discharges
 23 into a creek at the end of it. I'm familiar with
 24 that system because there was a -- an effluent
 25 deficiency where they're exceeding some

1 contaminants. They wanted to cut down the
 2 concentration levels. So there was a project that
 3 the Indian Health Service was providing funds for
 4 to address the deficiency.

5 **Q. And were you involved in that project?**

6 A. Yes.

7 **Q. Can you describe I guess more generally**
 8 **any other role you might have had at the Lame Deer**
 9 **POTW or Publicly-Owned Treatment Works?**

10 A. So, yeah. Besides the project, I've
 11 been out there on different occasions just for,
 12 say, when -- for inspecting it. I guess if there's
 13 like an EPA inspection, I would go out and look at
 14 the lagoon. That's primarily to identify issues
 15 that the Indian Health Service can assist with,
 16 assist the tribe with.

17 **Q. Do you know what body of water the Lame**
 18 **Deer POTW discharges into?**

19 A. I believe it discharges into Lame Deer
 20 Creek.

21 **Q. Can you describe the creek for me?**

22 A. It's a creek that I believe runs
 23 year-round. It runs through the town of Lame Deer.

24 **Q. Are you familiar with Sheri Bement?**

25 A. Yes. She's the previous general manager

1 of the Northern Cheyenne Utilities Commission.

2 **Q. What was her role at the Lame Deer POTW?**

3 A. She was basically head of the utility
 4 operations, so water and wastewater on the
 5 reservation. She was supervising different
 6 personnel that would, say, do checks on the system.
 7 I believe she was the contact at one time for EPA.

8 **Q. Was she an engineer or a technical**
 9 **specialist like you?**

10 A. She was not.

11 **Q. Do you know Mr. Nathan Pierce?**

12 A. Could you say that again? You cut out.
 13 Sorry.

14 **Q. Yeah. Do you know Mr. Nathan Pierce?**

15 A. Yes.

16 **Q. And how do you know Mr. Pierce?**

17 A. I believe he was acting as a consultant
 18 for the utility, so I'd see him on different jobs
 19 previously. He gained involvement in the sludge
 20 removal effort at the lagoon.

21 **Q. This sludge removal effort, how familiar**
 22 **are you with that project then? Can you describe**
 23 **it?**

24 A. Yes, I'm fairly familiar with it. It
 25 was basically a project that involved removing

1 settled sludge out of the individual -- the
2 wastewater ponds to allow these aeration treatment
3 units to be installed. These were units that sat
4 on the bottom of these ponds. And it had growth
5 media inside, and it had bubblers, so it would
6 increase the treatment of the system to improve the
7 discharge.

8 **Q. When was this project performed?**

9 A. It was performed around 2018.

10 **Q. And who funded the project?**

11 A. So the Indian Health Service had a
12 reimbursement agreement with the utility for
13 completing the work.

14 **Q. As far as that agreement, who was in
15 charge of the sewage sludge removal and application
16 project?**

17 A. So my understanding is that the utility
18 contracted with Nathan Pierce to remove the sludge.

19 **Q. Did the utility provide a lot of
20 oversight or direction during the project?**

21 A. They provided very minimal oversight.

22 **Q. Who was primarily giving oversight for
23 this project?**

24 A. The work that Nathan Pierce was
25 completing was via a contract with the utility. So

1 **was being applied to, what that was?**

2 A. I believe it was mainly agricultural
3 lands. I think he had cows.

4 MS. KACSUR: Let's take a look at an exhibit.
5 Can we pull up CX45? This is going to be at page
6 33. Do we have the first page of the exhibit? We
7 can just go to the top.

8 BY MS. KACSUR:

9 **Q. Do you recognize this document?**

10 A. Yes. I believe it's an e-mail from me
11 to the EPA.

12 **Q. And what is it dated?**

13 A. It's dated November 20th, 2019.

14 **Q. And what was the purpose of this e-mail?**

15 A. I believe it was at the request
16 of -- the EPA was requesting information about
17 activities surrounding the sludge application.

18 **Q. What all did this e-mail contain?**

19 A. I believe it contained various
20 correspondence that I -- it might have been of
21 interest to the EPA concerning the supposed 503
22 issues.

23 MS. KACSUR: Can you scroll to page 33 of the
24 exhibit.

25 BY MS. KACSUR:

1 the utility had some oversight for trying to see if
2 the contract would be fulfilled.

3 **Q. Can you -- sorry. Go on.**

4 A. Yeah. As far as Indian Health Service
5 is involved, we had a reimbursement agreement with
6 the utility for the work to be completed. So my
7 involvement was to see if that work was being
8 completed according to the agreement that we had
9 with the utility.

10 **Q. Can you -- just taking a step
11 back -- describe, I guess, more generally what this
12 project looked like and all of the steps that were
13 taken in this project?**

14 A. Yes. So for the sludge removal, I mean,
15 there's -- normally, there's different ways to
16 remove sludge. In this case, a dredge was used,
17 and that was pumped into different tanks. Then the
18 sludge was moved from those tanks to a -- moved to
19 lands to be incorporated.

20 **Q. Do you know where the sludge was being
21 applied?**

22 A. It was being applied within Lane Deer or
23 the Northern Cheyenne Reservation -- I believe
24 it was -- the homeowner's name was Tommy Robinson.

25 **Q. Do you know what kind of land that it**

1 **Q. This is CX45 at page 33. Do you
2 recognize this document?**

3 A. Yes. I believe that's a letter from
4 Adamas Construction to Sheri Bement.

5 **Q. And how did you obtain this letter?**

6 A. I think I might have been copied on that
7 or it was shared with me from the tribe. I'm
8 uncertain.

9 **Q. Can I have you read the highlighted text
10 on this page?**

11 MS. KACSUR: Please scroll down.

12 THE WITNESS: Yes. "Work will be completed
13 according to the standards of the Northern Cheyenne
14 Tribal Regulations, U.S. Environmental Protection
15 Agency, including EPA Part 503 Compliant 40 USC 503
16 et. seq."

17 MS. KACSUR: And can I have you go to page 37
18 of CX45?

19 BY MS. KACSUR:

20 **Q. Do you recognize this document?**

21 A. Yes. I believe that's a letter -- or an
22 e-mail from Adamas Construction to me regarding the
23 project.

24 **Q. And when is this e-mail dated?**

25 A. April 30th, 2018.

1 **Q. Was this e-mail part of the set of**
 2 **documents that you sent to EPA on November 20th,**
 3 **2019?**
 4 A. I believe so.
 5 **Q. Can I have you read the highlighted text**
 6 **there?**
 7 A. Yes. "Per Adamas Construction and
 8 Development's policies and procedures, all land
 9 applications will meet or exceed the requirements
 10 of the U.S. Environmental Protection Agency, EPA,
 11 Part 503 Compliant 40 USC 503 et. seq."
 12 **Q. This e-mail was sent before the project**
 13 **began, right?**
 14 A. I believe -- yeah, I believe it was
 15 before the work was commencing.
 16 **Q. Based on this statement, who did you**
 17 **believe to be responsible for compliance with the**
 18 **biosolids regulations in Part 503?**
 19 A. I believe Adamas Construction was
 20 assuming responsibility for 503 compliance.
 21 MS. KACSUR: Let's turn now to CX4. And
 22 we'll start at page 1.
 23 BY MS. KACSUR:
 24 **Q. Do you recognize this document?**
 25 A. Yes, yes. It appears to be an e-mail

1 MS. KACSUR: Can I have you scroll down?
 2 BY MS. KACSUR:
 3 **Q. And can I have you read the highlighted**
 4 **line?**
 5 A. Yes. "We respectfully request payment
 6 for the pumping, hauling and application of the
 7 sludge. If your origination would like us to
 8 remove additional amounts, please send us an
 9 appropriate change order."
 10 **Q. Can you summarize for us what Mr. Pierce**
 11 **was requesting in this e-mail?**
 12 A. So I believe he was requesting for
 13 IHS to make payment to the utility for the
 14 sludge removal that he was -- it seems like he's
 15 seeking additional payment for additional sludge
 16 removal.
 17 MS. KACSUR: Let's look now at CX9, starting
 18 on page 1.
 19 BY MS. KACSUR:
 20 **Q. Do you recognize this document?**
 21 A. Yes. It's a trip report that I produced
 22 from a site visit to the application site.
 23 **Q. Did you write this report at or about**
 24 **the time that you visited the application site?**
 25 A. Yes.

1 from Adamas Construction to me.
 2 **Q. And when is it dated?**
 3 A. July 13th, 2018.
 4 **Q. And can I have you read the three**
 5 **highlighted lines on this e-mail?**
 6 A. Yes. "We pumped and dewatered a
 7 significant amount of sludge on Wednesday.
 8 We took a nitrate sample from the
 9 application site and delivered it to Energy Lab in
 10 Billings.
 11 We will be on-site today pumping sludge.
 12 We should be ready to begin hauling and application
 13 next week."
 14 **Q. Based on this e-mail, who appears to be**
 15 **in charge of the removal and application project?**
 16 A. Adamas Construction.
 17 MS. KACSUR: Let's turn back now to CX45 at
 18 page 43. And for the record, the witness has
 19 established he's familiar with CX45.
 20 BY MS. KACSUR:
 21 **Q. Do you recognize this document?**
 22 A. Yes. It's a letter from Adamas
 23 Construction that was sent to IHS and the utility.
 24 **Q. And what is the date of this?**
 25 A. August 16th, 2018.

1 **Q. Do you usually prepare reports like this**
 2 **when you were working for IHS?**
 3 A. Yes. At the time, it was standard to
 4 write a report every time you visit the field.
 5 **Q. Can I have you read the first paragraph**
 6 **here that's highlighted?**
 7 A. Yes. "A property owner in Lame Deer,
 8 Tommy Robinson, 406-647-8312, contacted Indian
 9 Health Service on August 27th, 2018, to express
 10 dissatisfaction with the sludge application on his
 11 property from the Lame Deer Lagoon desludging
 12 operation. He stated that the sludge did not seem
 13 appropriately spread during the application and
 14 that this made tilling difficult. The
 15 subcontractor has also been refusing to provide the
 16 target application rates for the sludge, laboratory
 17 tests, and application logs."
 18 **Q. Who is the subcontractor referred to in**
 19 **that last sentence?**
 20 A. Adamas Construction.
 21 **Q. And who was he refusing to give records**
 22 **to?**
 23 A. He wasn't providing the records to the
 24 utility.
 25 **Q. As far as you know, did Adamas or**

1 **Mr. Pierce share records with anybody?**
 2 A. I'm not aware of him sharing the
 3 records.
 4 MS. KACSUR: Can we scroll to page 4, also in
 5 CX9?
 6 BY MS. KACSUR:
 7 **Q. And can I have you read the highlighted**
 8 **text here?**
 9 A. Yes. "The subcontractor performing
 10 the sludge removal work, Nathan Pierce from
 11 Adamas Construction, 406-697-3022,
 12 adamas.mt.406@gmail.com, 16550 Cottontail Trail,
 13 Shepherd, Montana 59079, is currently claiming that
 14 the applied sludge is approximately ten times the
 15 original concentration of the sludge removed from
 16 the lagoon."
 17 **Q. As far as you know, did Tom Robinson**
 18 **assist in the application of the sewage sludge?**
 19 A. I'm not aware of him assisting.
 20 **Q. And who submitted this complaint to IHS?**
 21 A. I believe the complaint was with a phone
 22 call with Tommy Robinson where he was complaining
 23 about the sludge.
 24 MS. KACSUR: Let's turn now back to CX45 at
 25 page 13.

1 entertain an objection. Can you hear me,
 2 Mr. Courtney? He can't hear me now.
 3 MS. MORENO: Is your speaker on?
 4 MR. MUEHLBERGER: Unmute your computer.
 5 MS. KACSUR: Unmute your computer.
 6 THE COURT: Okay.
 7 MS. KACSUR: You should be good to go.
 8 THE COURT: Can you hear me now?
 9 THE WITNESS: You're kind of quiet, but I can
 10 still hear.
 11 THE COURT: Okay. Let me make this
 12 adjustment. Is it better now?
 13 THE WITNESS: Yes.
 14 THE COURT: Okay. Yeah. I just wanted you
 15 to pause because there's an objection I need to
 16 address from Mr. Pierce.
 17 Go ahead, Mr. Pierce, if you want to
 18 state your objection.
 19 MR. PIERCE: Your Honor, I mean, this is a
 20 correspondence between my attorney and some other
 21 person at IHS. Mr. Courtney said that he was aware
 22 the document was forwarded to him. He doesn't seem
 23 to be very personally familiar with the document.
 24 And he doesn't have any real, you know, actual
 25 firsthand knowledge that he's providing. The

1 BY MS. KACSUR:
 2 **Q. Do you recognize this document?**
 3 A. Let's see. Yeah. It's an e-mail from
 4 the HHS regional counsel to I believe Adamas
 5 Construction's -- or Nathan Pierce's lawyer.
 6 **Q. And how did you get ahold of this**
 7 **e-mail?**
 8 A. Um, I believe it was forwarded to me
 9 just to be aware of the issues around the projects.
 10 MS. KACSUR: Can we scroll to the bottom of
 11 page 13? Can you toggle it, actually, so the
 12 bottom of page 13 and the top of 14 show?
 13 BY MS. KACSUR:
 14 **Q. Can you describe this e-mail**
 15 **correspondence here that was sent to you?**
 16 MR. PIERCE: Your Honor, I'm going to object.
 17 It's evidence and it's in the record, but
 18 Mr. Courtney is not a firsthand --
 19 THE WITNESS: Yeah. I believe that was
 20 response to the --
 21 MS. KACSUR: Mr. Courtney.
 22 THE WITNESS: -- regional counsel's e-mail
 23 from the --
 24 MR. KACSUR: Mr. Courtney, I apologize.
 25 THE COURT: Hold on just a second. I need to

1 document is already a matter of the record. And if
 2 we're here just to find facts, then it's already a
 3 fact.
 4 MS. KACSUR: Your Honor, I just wanted
 5 Mr. Courtney to identify the e-mail that
 6 specifically started at the bottom of page 13. And
 7 he's familiar with this e-mail chain, as he said.
 8 It was forwarded to him by Regional counsel for the
 9 agency he worked for at the time regarding a
 10 project he was involved in.
 11 THE COURT: Okay. I mean, I guess
 12 Mr. Courtney, go ahead and respond to the
 13 extent -- I'll overrule the objection. But, you
 14 know, respond to the extent that you actually know
 15 or have any personal information. And if it's
 16 something that was simply forwarded to you, then
 17 let me know that, too.
 18 So how familiar are you with this
 19 independently of it having been forwarded to you?
 20 THE WITNESS: I -- my only involvement was
 21 that I was aware of the e-mail by it being
 22 forwarded. So I don't think I was copied on the
 23 e-mail originally, no.
 24 THE COURT: So how did you become familiar
 25 with it?

1 THE WITNESS: I believe it was shared with me
 2 just because it's concerning the project. So it
 3 was something that management thought I should be
 4 aware of and the resulting any issues surrounding
 5 the project.
 6 THE COURT: And I think you touched on this
 7 earlier in your testimony. But why would -- why
 8 would they want to keep you apprised with regard to
 9 the project, its status, any issues, that type of
 10 thing?
 11 THE WITNESS: I believe at the time, Adamas
 12 Construction was seeking payment for the work
 13 still. I think -- I think on this correspondence
 14 as well there were marks on it, if I recall
 15 correctly. So, I mean, it was pertinent to -- it
 16 was pertinent information to a project engineer
 17 because it was a potential payment that needed to
 18 be made to the utility.
 19 THE COURT: And I think you made reference
 20 already of a reimbursable agreement between IHS and
 21 the utility?
 22 THE WITNESS: Yes.
 23 THE COURT: Okay. All right. Thank you.
 24 Go ahead.
 25 BY MS. KACSUR:

1 project and prohibited him from using any NCUC
 2 workforce and equipment on June 21st, 2018, making
 3 the primary project contractor."
 4 **Q. Based on this e-mail from Mr. Pierce's**
 5 **attorney to IHS's attorney, who appears to have**
 6 **supervised and directed the sludge application**
 7 **project?**
 8 A. It appears to be Nathan Pierce.
 9 MS. KACSUR: Can we scroll to page 1 of this
 10 same exhibit.
 11 BY MS. KACSUR:
 12 **Q. Can I have you identify the e-mail that**
 13 **starts in the middle of this page?**
 14 A. Yes. I believe that's an e-mail from me
 15 to the EPA about -- yes. It's information
 16 pertinent to the 503 -- the potential 503 issues
 17 that the EPA was concerned about.
 18 **Q. And can I have you read all of the**
 19 **highlighted text here? Oh, I'm sorry. Preliminary**
 20 **question: Can I have you identify the date of this**
 21 **e-mail?**
 22 A. Yes. It's November 20th, 2019.
 23 **Q. And now can I have you read the**
 24 **highlighted text here?**
 25 A. Yes. "Attached is information described

1 **Q. Mr. Courtney, can I have you identify**
 2 **who sent this e-mail starting at the bottom of page**
 3 **13?**
 4 A. Yeah. I believe that's Nathan Pierce's
 5 lawyer in response to Regional counsel's e-mail.
 6 MS. KACSUR: Can you scroll down?
 7 BY MS. KACSUR:
 8 **Q. And can I have you read the text that's**
 9 **highlighted?**
 10 A. Yes. "My client's point is that as
 11 circumstances evolved they became the primary
 12 project contractor, but I understand your
 13 insistence" -- "instances making this distinction.
 14 It seems from the language of the 'bid packet'
 15 B116N39, Section 00710, General Conditions, Article
 16 22.2, stating that," in quotes, "The contractor
 17 must perform at least 33 percent of the total
 18 amount of work using the contractor's own workforce
 19 and equipment,' as well as the May 18th IHS
 20 pre-construction meeting minutes signed by James
 21 Courtney stating, 'I reiterated that NCUC was
 22 responsible for the work,' that NCUC was
 23 responsible for all work, then NCUC and IHS made
 24 only my client, his workforce and equipment
 25 responsible for all the work performed under the

1 in my e-mail below. Additional information is
 2 attached that may be relevant to your filing.
 3 "The Adamas site safety plan also
 4 indicates responsibility for following 503 for the
 5 project, attached in "Site Safety Plan Adamas,"
 6 page 6.
 7 "An e-mail from Nathan Pierce on April
 8 30, 2018 indicates Adamas Construction would
 9 perform the application and adhere to 503
 10 requirements, attached in 'Re: Map for Lagoon
 11 Project.'
 12 "The schedule submitted by Nathan Pierce
 13 includes 'Begin biosolids/sludge application' and
 14 'Land application complete' as milestones, attached
 15 in 'Updated Schedule.'
 16 "An e-mail from Nathan Pierce on July 9,
 17 2018, stating desire to submit a final payment
 18 request for application and hauling of the sludge,
 19 attached 'Update Lame Deer Sludge Removal.'
 20 "An e-mail from Nathan Pierce on July
 21 16, 2018, stating that Adamas would be beginning
 22 land application of the sludge, attached, 'Re:
 23 Sludge Application on Tom Robinson Property.'
 24 "An e-mail from Nathan Pierce on August
 25 16, 2018, requesting payment for application of the

1 sludge, attached, 'Lame Deer Lagoon Project.'
 2 **Q. Based on your statements in this e-mail,**
 3 **what was your impression in the fall of 2019 about**
 4 **Mr. Pierce's role in the sludge application**
 5 **project?**
 6 A. My impression of his role is that
 7 he -- he was responsible for following 503 and
 8 wasn't.
 9 MS. KACSUR: Let's turn now to CX49, first
 10 page.
 11 BY MS. KACSUR:
 12 **Q. Do you recognize this document?**
 13 A. Yes. That appears to be an e-mail from
 14 me to the EPA.
 15 **Q. And when was it sent?**
 16 A. November 21st, 2019.
 17 **Q. And what was the purpose of this e-mail?**
 18 A. Just for additional information that the
 19 EPA -- that is rolled into the EPA 503 concerns.
 20 MS. KACSUR: Let's look at page 7 now.
 21 BY MS. KACSUR:
 22 **Q. Are you familiar with this document?**
 23 A. Yes. I believe that's a letter from
 24 Senator Daines to the Indian Health Service
 25 Billings area office.

1 Price Construction Agreement, White and Bement had
 2 actual knowledge of and intended that Adamas such
 3 Fixed Price Construction Agreement was a component
 4 of the agreement with Adamas pursuant to which
 5 Adamas would perform the removal and land
 6 application of the biosolids pursuant to the
 7 agreement in exchange for the \$239,000 provided for
 8 under the agreement."
 9 **Q. Based on these statements by Mr. Pierce,**
 10 **who appears to have been responsible for the sludge**
 11 **removal and application project?**
 12 A. It appears that Nathan Pierce is
 13 responsible because he's seeking payment for the
 14 work from the utility.
 15 **Q. Are you familiar with Michelle Pierce?**
 16 A. Yes.
 17 **Q. Was she involved in this project?**
 18 A. I'm not sure what her involvement was.
 19 She -- I believe she attended at least a couple
 20 meetings, but I'm not sure what her specific role
 21 was.
 22 **Q. Last question: Did Mr. Pierce hold**
 23 **himself out to be in charge of Adamas Construction?**
 24 A. Yes.
 25 **Q. Thank you, Mr. Courtney.**

1 **Q. Can I have you read the highlighted text**
 2 **there?**
 3 A. Yes. "Enclosed is a copy of
 4 correspondence I have received from my constituent,
 5 Mr. Nathan Pierce, regarding his concern of
 6 projects for the Northern Cheyenne Reservation
 7 involving an agreement with the Northern Cheyenne
 8 Utilities Commission.
 9 MS. KACSUR: And let's scroll to the next
 10 page.
 11 BY MS. KACSUR:
 12 **Q. Can I have you read the highlighted text**
 13 **there?**
 14 A. Yes. "On May 11, 2018, the Northern
 15 Cheyenne Utilities Commission, NCUC, memorialized
 16 some of the terms of the agreement in a 'Fixed
 17 Price Construction Agreement' with the SFC under
 18 which biosolids were to be removed from the Lame
 19 Deer Wastewater Treatment Facility to certain
 20 agricultural lands, the 'Sludge Project.'
 21 MS. KACSUR: And can we scroll down?
 22 BY MS. KACSUR:
 23 **Q. And can I have you read that highlighted**
 24 **text as well?**
 25 A. Yes. "At the time they signed the Fixed

1 MS. KACSUR: I have no further questions.
 2 THE COURT: Okay. Mr. Pierce, I assume
 3 you're going to need more than five minutes.
 4 MR. PIERCE: Yes, ma'am.
 5 THE COURT: So why don't we go ahead -- I
 6 think this would probably be a good time to break
 7 for today.
 8 Mr. Courtney, we'll need to pick up
 9 tomorrow morning. Are you prepared for that.
 10 THE WITNESS: I didn't get any of that.
 11 Sorry.
 12 THE COURT: Oh, yeah. Sorry. Mr. Courtney,
 13 we're going to need to recess for today and reach
 14 you tomorrow for cross. So we'll be getting
 15 started early. Are you available -- will you be
 16 available around 8:15 or 8:30 to pick up where we
 17 left off?
 18 THE WITNESS: Yes, yes. I'll be available
 19 tomorrow morning.
 20 THE COURT: Okay. Perfect.
 21 MS. KACSUR: Does that work? I know you're
 22 in a different time zone than us. That works for
 23 you?
 24 THE WITNESS: Yes.
 25 MS. KACSUR: Okay.

1 THE COURT: Yeah. I'm referring to local
 2 time. I'm not sure where you're located. But
 3 local time for Billings, Montana. Is that okay?
 4 MS. KACSUR: For 8:15 for Mountain Time,
 5 that's for Billings, Montana, that works for you?
 6 THE WITNESS: Yes. Yes, that's fine.
 7 THE COURT: All right. Let me turn this off
 8 so that I don't continue to echo. Then what we'll
 9 do is we'll go ahead and recess for this evening.
 10 And we'll pick back up tomorrow morning, and you
 11 can begin with your cross.
 12 MR. PIERCE: Thank you, Your Honor.
 13 THE COURT: All right. Thank you all very
 14 much.
 15 (Whereupon, the proceedings recessed for
 16 the day at 4:41 p.m.)
 17 MORNING SESSION, WEDNESDAY AUGUST 23, 2023
 18 (Whereupon, the hearing convened at 8:30
 19 a.m., with all interested parties present, and the
 20 following proceedings were had:)
 21 THE COURT: Okay. We can go ahead and get on
 22 record, please.
 23 All right. Good morning everybody.
 24 We're here for Day 2 of the hearing involving
 25 Adamas or Adamas?

1 MR. PIERCE: Adamas.
 2 THE COURT: Adamas Construction and
 3 Development Services, PLLC, and Nathan Pierce,
 4 respondents. I'll just repeat the docket number,
 5 CWA-07-2019-0262.
 6 Today is Wednesday, August 23rd, and as
 7 I mentioned, Day 2 of the hearing.
 8 We left off yesterday with a
 9 cross -- for Mr. Pierce to begin the cross of
 10 Mr. James Courtney. And it's 8:30 in the morning.
 11 We're ready to get started, I assume, unless
 12 there's anything we need to take care of in
 13 advance. The parties are all here.
 14 From complainant, anything to address
 15 before we begin?
 16 MR. MUEHLBERGER: No, Your Honor.
 17 THE COURT: Okay. And for Mr. Pierce?
 18 MR. PIERCE: Yes, Your Honor. And, in fact,
 19 I would ask that we sequester the witnesses for
 20 this portion, if we could.
 21 THE COURT: And that would be Mr. Sprague?
 22 Is it Sprague or Sprague?
 23 MR. SPRAGUE: Sprague.
 24 THE COURT: Sprague. That would be
 25 Mr. Sprague?

1 MR. PIERCE: And Mrs. Kleffner.
 2 THE COURT: Well, I guess, Mr. Muehlberger,
 3 I'll give you a moment to respond to that. I think
 4 I actually already know the answer to it, but you
 5 go ahead.
 6 MR. MUEHLBERGER: Ms. Kleffner is
 7 representing the agency as the compliance officer,
 8 so EPA's position is that she should stay
 9 throughout the proceedings. EPA does not object
 10 with sequestering Mr. Sprague.
 11 MR. PIERCE: Your Honor, although she's a
 12 compliance officer for the EPA, she is here as a
 13 witness, and some of the issues that we're going to
 14 be discussing with this housekeeping matter has
 15 directly to do with her.
 16 THE COURT: Yeah, and I understand. But
 17 under our rules, the agency is permitted to have a
 18 party representative with them throughout the
 19 process. So they're allowed to choose who's going
 20 to function in that role, and that's Ms. Kleffner.
 21 So she can remain throughout.
 22 Mr. Sprague, I'm happy to go ahead and
 23 invoke that at this point. And he can -- I think
 24 the other gentleman is simply observing, right?
 25 MR. MUEHLBERGER: (Nods head.)

1 THE COURT: Okay. So Mr. Sprague can
 2 certainly be excused.
 3 MR. PIERCE: We don't need to excuse
 4 Mr. Sprague.
 5 THE COURT: Okay. It was just Ms. Kleffner?
 6 MR. PIERCE: Yeah, I didn't want to
 7 individualize -- single out anybody individually.
 8 But being as how we're at this point, I have direct
 9 evidence that would refute what Ms. Kleffner has
 10 said.
 11 THE COURT: Yeah. And that's fine. I mean,
 12 I appreciate the position. It's just -- it's
 13 allowed under our rules. So you would then --
 14 MR. PIERCE: I withdraw the request to
 15 sequester.
 16 THE COURT: You withdraw it. Okay. All
 17 right. Very good. Let's go ahead, I guess then.
 18 Anything else before I get started?
 19 MR. PIERCE: No, Your Honor.
 20 THE COURT: Okay. Let's go ahead and I
 21 guess -- well, first I need to log into Teams
 22 because Mr. Courtney is going to be appearing by
 23 Teams, right? Are we still doing this the same way
 24 we did yesterday?
 25 I need to just -- here's my -- I just

1 want to make sure I'm not making this more
 2 difficult with my settings on my computer. I need
 3 to be able to periodically chime in. For example,
 4 at the outset, I need to remind the witness he's
 5 still under oath from yesterday. And there were
 6 some issues yesterday. It might have been my
 7 fault, but... I muted my mic and I also took the
 8 volume and muted it in order to not have any
 9 feedback whatsoever. I noticed that when I change
 10 the volume, Mr. Courtney could then hear me. There
 11 was a little feedback, but it was manageable. I
 12 think when I tried to unmute myself that was when
 13 there were just terrible echoes going on. And I
 14 don't know if some of that's attributable to the
 15 projection and the sound in the courtroom or not.
 16 But any ideas as to what I should or shouldn't do
 17 to minimize that kind of disruption?
 18 MS. MORENO: I think that if you keep your
 19 volume -- your mic and the settings on your
 20 computer off, he should be able to hear you through
 21 the mics in the courtroom as well we'll be able to
 22 hear him.
 23 THE COURT: Yeah. That was my hope, although
 24 that didn't happen yesterday. I had to
 25 actually -- as I said, what I did was I changed my

1 volume on the speaker on my computer so that it
 2 wasn't zero, zeroed out, and then he could hear me.
 3 I don't really understand the mechanics of it all.
 4 But, I mean, do you think the projection should
 5 pick me up? Because we can try that first, and
 6 then if he can't hear me, I can --
 7 MS. MORENO: I believe it should.
 8 THE COURT: Okay. All right. Well, we'll
 9 give that a whirl. Let me just sign in here. So
 10 I'll leave my mic on here and see if that
 11 doesn't -- I think at one point, I think I shut
 12 this off, too. So maybe leaving my mic on here
 13 will suffice. We'll try that first and see how
 14 that works.
 15 MS. MORENO: Okay.
 16 THE COURT: Is that what you're thinking?
 17 MS. MORENO: Well, we were going to suggest
 18 that you try your mic on your computer.
 19 THE COURT: Instead of this?
 20 MS. MORENO: Yes.
 21 THE COURT: Okay. I can do that. Okay.
 22 So I am in Teams. I accepted the invite, so
 23 I can join now. I'm assuming everybody
 24 else -- Mr. Pierce, did you get the invite on
 25 Teams?

1 MR. PIERCE: Yes, ma'am. I'm logged in.
 2 THE COURT: Okay, great. All right. So I'll
 3 go ahead and join. And let me turn this -- I'm
 4 going to turn my mic from the courtroom off. Okay.
 5 It's connecting. Okay. So I've joined the
 6 meeting. And you want me to unmute my mic?
 7 MS. MORENO: On the computer.
 8 THE COURT: On the computer. Okay.
 9 Mr. Courtney, can you hear me?
 10 THE WITNESS: Yes.
 11 THE COURT: Great. Thank you very much for
 12 the technical support that happened behind the
 13 scenes before you came on. We're going to get
 14 started with -- there's a little bit of feedback.
 15 MR. PIERCE: I believe that's mine, Your
 16 Honor. I'm turning my speaker down.
 17 THE COURT: Okay. All right. We're going to
 18 get started with Day 2. We left off with
 19 Mr. Pierce being able to start his
 20 cross-examination of you, Mr. Courtney. I just
 21 want to remind you that you are still under oath
 22 from yesterday. So your testimony today will be
 23 sworn just as it was yesterday. And I'm going to
 24 give Mr. Pierce the chance to begin his
 25 cross-examination.

1 MR. PIERCE: Thank you, Your Honor.
 2 THE COURT: Mr. Courtney, can you see me?
 3 THE WITNESS: Yes.
 4 THE COURT: One second, Mr. Pierce. All
 5 right. The court reporter was just letting me know
 6 she's unable to see the witness. But I don't think
 7 she really -- I just asked if she needed to for any
 8 reason for the court reporting. She does not. I
 9 can see him.
 10 MS. MORENO: Just a minute.
 11 MS. KACSUR: Your Honor, we -- Sarah and I
 12 had the same issue. We've left the meeting and
 13 rejoined, and we were able to see.
 14 MS. MORENO: Can you hang on just for a
 15 minute?
 16 THE COURT: Yeah. Mr. Courtney now just
 17 disappeared. I can see Mr. Pierce, but I can't see
 18 Mr. Courtney anymore. Should I leave and reconnect
 19 as well? Okay. I can see him in the big screen.
 20 That's fine. I can see him on this monitor. As
 21 long as I can see him somewhere, we're fine. I
 22 just need to be able to see him.
 23 MR. PIERCE: Your Honor, are you ready?
 24 THE COURT: I am. Do we have another
 25 observer or --

1 MR. PIERCE: This would be Tom Robinson.
 2 THE COURT: Oh, okay. All right. Great.
 3 Okay. Go right ahead, Mr. Pierce.
 4 MR. PIERCE: Yes, Your Honor.
 5 Hello, James. Can you hear me?
 6 THE WITNESS: Yes.
 7 MR. PIERCE: Your Honor, I'm not able to hear
 8 him.
 9 James, can you hear me now?
 10 THE WITNESS: Yes.
 11 THE COURT: My mic -- I just muted my mic.
 12 It was unmuted because that was how he was able to
 13 hear me. But should I turn this on?
 14 TECH: No, ma'am.
 15 THE COURT: So I just muted now, and it's --
 16 TECH: Let's try the house mic. Test 1, 2.
 17 John, can you hear us? James. Sorry. James, can
 18 you hear us?
 19 THE WITNESS: Yes, I can hear you.
 20 TECH: My apologies.
 21 THE COURT: Mr. Courtney, can you hear me?
 22 THE WITNESS: Yes, I can hear you.
 23 THE COURT: Okay. Thank you so much,
 24 Michael. Thanks for your help. I think we're good
 25 now. I'm all muted, and I think everything is

1 A. Can you explain what you mean by
 2 "number"?
 3 **Q. So, typically, when you have a bid**
 4 **contract and/or a fixed price agreement, you guys**
 5 **have a BI number that comes with that; is that**
 6 **correct?**
 7 A. There's a project number. That's not
 8 really -- that's not specific to -- that's based on
 9 the projects for the effort. It's not for the
 10 reimbursement agreement. But it can be referenced
 11 by bids. That's based on the project. So there
 12 can be different reimbursement agreements for the
 13 tribe based on the overarching projects.
 14 **Q. So in the fixed price agreement between**
 15 **IHS and NCUC, was there any lab results included**
 16 **with that fixed price agreement that IHS had**
 17 **conducted?**
 18 A. I believe there was -- there was some
 19 background information that I included, some tests
 20 that were done previously.
 21 **Q. So you --**
 22 A. I believe there -- I'm sorry.
 23 **Q. No. Go ahead. I cut you off.**
 24 A. Yeah. I believe there was some tests
 25 with the lagoon sludge. And I think there might

1 working through the courtroom now and I'm not
 2 hearing feedback. So fingers crossed. Okay.
 3 Finally, please go ahead, Mr. Pierce.
 4 CROSS-EXAMINATION
 5 BY MR. PIERCE:
 6 **Q. Good morning, James. And thank you for**
 7 **being here. I got some quick questions for you.**
 8 **Can you explain to us -- yesterday you**
 9 **touched a little bit on the SFC and sort of their**
 10 **mission in the fact that they funded projects. Is**
 11 **that the only thing that the SFC does is fund**
 12 **projects?**
 13 A. No. The SFC program also provides
 14 technical assistance to different tribes.
 15 **Q. So technical assistance. So you**
 16 **administer contracts for them; is that correct?**
 17 A. So for this situation, this was a
 18 reimbursement-type agreement with the utility. So
 19 this was not a contract.
 20 **Q. So was there a fixed price agreement**
 21 **that was entered into from IHS to NCUC?**
 22 A. There was an agreement to reimburse
 23 based on fixed prices from the utility.
 24 **Q. So do you recall what the number of that**
 25 **fixed price agreement was?**

1 have also been some tests of the application side.
 2 **Q. So IHS conducted some tests. Did you**
 3 **come up with an agronomic rate, or did IHS come up**
 4 **with an agronomic rate in the bid packet?**
 5 A. I -- I don't recall.
 6 **Q. If I was able to show you that fixed**
 7 **price agreement, would you be able to recall at**
 8 **that point?**
 9 A. I -- I may.
 10 MR. PIERCE: Your Honor, I would ask that I
 11 be able to show Mr. Courtney a copy of that fixed
 12 price agreement. It is a public record, and I'd
 13 like to be able to recall his memory with that if
 14 possible.
 15 THE COURT: Absolutely. Go right ahead.
 16 MS. MORENO: You're going to have to share
 17 your screen.
 18 MR. PIERCE: So share it through the Teams
 19 part?
 20 MS. MORENO: Yes.
 21 MR. PIERCE: Okay.
 22 MS. MORENO: Right here.
 23 BY MR. PIERCE:
 24 **Q. Are you able to see it now,**
 25 **Mr. Courtney?**

1 A. I can see myself. I can't see the
 2 document.
 3 **Q. Can you read what this document says,**
 4 **the first page?**
 5 A. Yes. "Fixed Price Construction
 6 Agreement between Northern Cheyenne Utilities
 7 Commission, NCUC, the Billings Area Indian Health
 8 Service, Sanitation Facilities Construction, SFC,
 9 for Lame Deer Lagoon, Cell 2 sludge removal."
 10 **Q. So you would agree that this is a fixed**
 11 **price agreement between the Northern Cheyenne**
 12 **Utility Commission and the Billings Area Indian**
 13 **Health Services, correct?**
 14 A. Yes. It appears to be the reimbursement
 15 agreement.
 16 **Q. So if we scroll down here in this**
 17 **reimbursement agreement, did you -- is there land**
 18 **identified in this reimbursement agreement for**
 19 **the --**
 20 A. I believe there was -- I believe Tommy
 21 Robinson's site was suggested for a proposed
 22 application site. But I don't believe it was
 23 restricted to that site specifically.
 24 **Q. So you identified Tom Robinson's pivot**
 25 **wheel line in the -- sorry. Excuse me.**

1 **Can you tell us what this particular**
 2 **document is right here?**
 3 A. It appears to be an analytical summary
 4 report from Energy Labs from Billings, Montana.
 5 **Q. And who is the person who submitted this**
 6 **analytical -- the tests for this analytical report?**
 7 A. Yeah. I believe that's submitted by the
 8 SFC program. I believe the purpose was to
 9 establish -- allowing estimates to be made for what
 10 are my costs as far as for the work to be completed
 11 for this. I believe that was the purpose of the
 12 testing.
 13 **Q. And did you turn these documents over to**
 14 **the EPA with your report?**
 15 A. I don't recall.
 16 **Q. Okay. Moving on.**
 17 **Can you tell us what the bolded portion**
 18 **of this states?**
 19 A. Are you talking about the headings like
 20 client project's web I.D.?
 21 **Q. How about this portion right here that**
 22 **my cursor is moving across?**
 23 A. I can't see your cursor on that screen.
 24 **Q. Okay. So just below the line there, it**
 25 **states, "Biosolids." Can you finish reading that**

1 **portion?**
 2 A. After "nitrogen available from
 3 biosolids"?
 4 **Q. So does this document state right below**
 5 **the line at the heading, "Biosolid application**
 6 **rate, center pivot area"?**
 7 A. Yes. Like I said previously, I believe
 8 this was for estimating purposes. If I recall
 9 correctly, I believe that was stated in the
 10 document that estimates are provided. But
 11 it's for -- IHS wasn't assuming responsibility for
 12 exact quantities.
 13 **Q. Sure. Sure. And it says the site**
 14 **there, Robinson pivot; is that correct?**
 15 A. Yes.
 16 **Q. Can you read the bolded area just below**
 17 **the line on the header?**
 18 A. The "Biosolids application rates, grass
 19 area."
 20 **Q. And at the very bottom of this, there's**
 21 **a max sludge application rate. Can you tell us**
 22 **what that application rate is?**
 23 A. 23,950 gallons per acre.
 24 **Q. Is this considered an agronomic rate?**
 25 A. Yeah. It appears to be an amount of

1 volume of sludge that you can apply per acre.
 2 **Q. So you would agree that this is an**
 3 **agronomic rate?**
 4 A. I don't know what the exact definition
 5 of agronomic rate is, but that appears to be
 6 gallons of sludge supplied per acre.
 7 **Q. So up above here, there's some**
 8 **calculations with regards to nitrogen to the soil,**
 9 **to all of the things that would be required to**
 10 **develop an agronomic rate, correct?**
 11 A. They appear to be calculations to
 12 establish an estimate.
 13 **Q. Excellent. So even if it's just an**
 14 **estimated agronomic rate, you would agree that**
 15 **those calculations seem to be trying to get towards**
 16 **what would be an estimated application rate?**
 17 A. So this was for an application rate for
 18 what was tested in a lagoon. So for the -- for
 19 the -- this application in question in this
 20 hearing, that sludge was concentrated, to my
 21 knowledge, or there was a claim that it was
 22 concentrated. So these calculations really don't
 23 apply to something that's been altered. So that's
 24 something that's important to point out.
 25 THE COURT: Okay. But I think you need to

1 also directly respond to Mr. Pierce's question with
 2 that qualification noted. In direct response to
 3 his question, what is your answer, Mr. Courtney?
 4 THE WITNESS: This is for sludge that was
 5 taken directly out of the lagoon and not processed.
 6 But my understanding is is that Adamas
 7 Construction was claiming that the sludge in the
 8 lagoon was processed concentrated, so these rates
 9 are not really applicable to the work that's
 10 being -- that's in question here because we're
 11 talking about a different kind of sludge.
 12 THE COURT: Okay. Mr. Pierce, you can either
 13 follow up with the same question or ask something
 14 else.
 15 MR. PIERCE: Yeah. I'll just sort of
 16 rephrase a little bit, Your Honor.
 17 THE COURT: Okay.
 18 BY MR. PIERCE:
 19 **Q. Mr. Courtney, if the sludge had not been**
 20 **altered, would you consider this to be an agronomic**
 21 **rate?**
 22 MS. KACSUR: I have an objection, Your
 23 Honor --
 24 THE COURT: Yes.
 25 MS. KACSUR: -- to the relevance of these lab

1 results based on the date of these lab results.
 2 THE COURT: Based on the date?
 3 MS. KACSUR: Yes, ma'am.
 4 THE COURT: What is the date?
 5 MS. KACSUR: These lab results say they were
 6 taken in June of 26, I believe, of 2017. This was
 7 over a year prior to the application project.
 8 MR. PIERCE: Your Honor, the relevance here
 9 is is that the government witness has attempted to
 10 say that no agronomic rate was ever provided. This
 11 is clearly an agronomic rate, and it actually is
 12 higher than the rate in Mr. Robinson's contract.
 13 So it's actually going directly to the case at
 14 hand.
 15 THE COURT: I'm going to overrule the
 16 objection. You can go ahead and rephrase -- or not
 17 rephrase. Just repeat your question, if you would,
 18 so I remember what you just asked.
 19 BY MR. PIERCE:
 20 **Q. Mr. Courtney, if the sludge had not been**
 21 **altered, do you agree that this application rate**
 22 **would be considered an agronomic rate?**
 23 A. I believe this was just a -- this was to
 24 be provided to allow estimates to be made for the
 25 work to be completed. So I don't believe that IHS

1 was specifying how the work was to be done
 2 rate-wise. I believe it's just for estimating
 3 purposes.
 4 **Q. So it's for the estimating purpose that**
 5 **if somebody is looking at a bid packet, they would**
 6 **be able to estimate how much sludge and how -- what**
 7 **the application rate is to a property; is that**
 8 **correct?**
 9 A. Yes, that seems correct. It's for
 10 establishing prices. But it's up to the -- the
 11 person performing the work is responsible for
 12 establishing the rates. So it's just an estimate
 13 that's provided.
 14 **Q. Well, let's talk about your estimates**
 15 **real quick. How did you determine the amount of**
 16 **sludge that was in the sewer lagoon ponds?**
 17 A. I guess I have an objection to that
 18 because these aren't my estimates.
 19 MR. PIERCE: Your Honor, he's a witness.
 20 THE COURT: Yeah. If you're unable to answer
 21 for some reason, you can explain that. But I guess
 22 I would say you need to respond to the question,
 23 but certainly qualify it as you need to based on
 24 your knowledge.
 25 THE WITNESS: Right. Yeah. So these aren't

1 my estimates.
 2 BY MR. PIERCE:
 3 **Q. Well, weren't you there when they were**
 4 **collected?**
 5 A. When the samples were collected, I don't
 6 think so. Not per this -- this document.
 7 **Q. Were you working for IHS for the SFC**
 8 **department when this particular document was**
 9 **created and these samples were taken?**
 10 A. I believe so.
 11 **Q. So you were part of the team --**
 12 A. But I --
 13 THE COURT: Okay.
 14 THE WITNESS: I'm not aware of -- I
 15 don't -- I don't think I was out there when the
 16 samples were collected. I think I got out of the
 17 project after the fact.
 18 BY MR. PIERCE:
 19 **Q. So who was the project engineer in**
 20 **charge of this particular project in question?**
 21 A. For the sludge removal effort, I was
 22 assigned as the project engineer.
 23 **Q. So as the project engineer, you didn't**
 24 **have any information or knowledge of how the**
 25 **samples were collected of the project that you were**

1 **in charge of?**
 2 A. The documentation in the packet seems
 3 self-explanatory. The -- I believe the -- my
 4 understanding is that the samples were collected
 5 by -- by my guess is by Todd Rydquist, the engineer
 6 at SFC, the Billings SFC department.
 7 **Q. Okay. Let's move on to -- did you**
 8 **collect samples during the sludge removal project?**
 9 A. I collected samples for total solids due
 10 to a claim that the sludge was concentrated.
 11 **Q. And how --**
 12 A. To verify those claims.
 13 **Q. How did you collect those samples?**
 14 A. So I collected them with a sludge judge
 15 because that seemed to be the only way to collect
 16 the sludge from the tanks that the sludge was on.
 17 **Q. And so did myself or anybody else object**
 18 **to the use of a sludge judge?**
 19 A. I believe after the fact, there was an
 20 objection, but not during the collection. I
 21 believe you were present during the collection of
 22 the samples.
 23 **Q. Did you write an e-mail to EPA, Erin**
 24 **Kleffner, requesting clarification on the use of a**
 25 **sludge judge?**

1 A. Yes, I believe so.
 2 **Q. And in that e-mail, did she tell you**
 3 **that a sludge judge should not be used as it only**
 4 **measures the freeboard?**
 5 A. I recall the message. I believe that
 6 was -- I -- I disagree with that assessment.
 7 **Q. Sure. But you did receive that message?**
 8 A. Yes.
 9 **Q. Did you ever relay that information to**
 10 **NCUC or anybody else at IHS?**
 11 A. Yes, with a SFC program. I believe the
 12 other engineers were aware of them.
 13 **Q. But did you inform NCUC?**
 14 A. I -- I don't recall.
 15 **Q. Okay. And so when that all began,**
 16 **didn't that actually start a dispute as to how much**
 17 **sludge was pumped from the lagoons?**
 18 A. I don't believe that started the
 19 dispute. I believe the dispute was the claim
 20 concentrations were unrealistic for how sludge can
 21 be concentrated.
 22 **Q. So there was a dispute over the amount**
 23 **of the sludge, correct?**
 24 A. There was a disagreement with what was
 25 being claimed as far as the concentrations.

1 **Q. Did you and I exchange e-mails regarding**
 2 **the math for the concentration on the lagoons?**
 3 A. I recall e-mails being sent discussing
 4 the math.
 5 **Q. And did we also include lab samples?**
 6 A. I believe -- yes, I believe we discussed
 7 total solids sampling.
 8 **Q. Were those lab samples ever turned over**
 9 **to the EPA as part of this case?**
 10 A. I -- I don't recall.
 11 MR. PIERCE: Can I get CX25, please? We have
 12 to display it up there.
 13 MS. PIERCE: I don't think it's on.
 14 BY MR. PIERCE:
 15 **Q. James, so you worked on the Northern**
 16 **Cheyenne Reservation since 2016. Are you aware of**
 17 **any other times where sludge was applied to**
 18 **Mr. Robinson's field?**
 19 A. I don't recall. I wasn't involved in
 20 the other reference.
 21 **Q. So you didn't tell me you remembered him**
 22 **hauling sludge from the lagoons with his tractor to**
 23 **his field?**
 24 A. I don't recall that.
 25 MR. PIERCE: Your Honor, we have a bit of a

1 technical problem.
 2 THE COURT: Okay.
 3 MR. PIERCE: Should we take maybe a
 4 five-minute break to get it figured out?
 5 THE COURT: Sure.
 6 MR. PIERCE: Thank you.
 7 THE COURT: Sure. Do you need -- do you need
 8 Michael's assistance?
 9 MR. PIERCE: I believe so. The problem is is
 10 we need to display something, and it's not -- it
 11 would have to be on my computer, and I don't have
 12 it on my computer.
 13 THE COURT: Oh, okay. So you need to do
 14 the -- use the projection to do it?
 15 MR. PIERCE: Yes, ma'am. And I need for
 16 James to be able to see that.
 17 THE COURT: Okay. All right. Well, I don't
 18 know if that's doable, but find out. We can call
 19 Michael, the gentleman who was here before that was
 20 helping us out --
 21 MR. PIERCE: Yes, ma'am.
 22 THE COURT: -- and/or somebody else and see
 23 if that's how that would work.
 24 MR. PIERCE: Okay.
 25 THE COURT: Okay. So we'll start with five

1 minutes. If it takes longer, it's fine. And we'll
 2 just come back.
 3 MR. PIERCE: Thank you.
 4 THE COURT: Okay. Mr. Courtney, just hang in
 5 there while we take care of some technical issues.
 6 But I'm going to off the record and exit the
 7 hearing room.
 8 THE WITNESS: Okay.
 9 (Whereupon, a brief
 10 recess was taken.)
 11 THE COURT: Back on record?
 12 THE REPORTER: Yes.
 13 THE COURT: Great.
 14 Mr. Courtney, we are back. And
 15 Mr. Pierce will continue with cross.
 16 MR. PIERCE: Thank you, Your Honor.
 17 BY MR. PIERCE:
 18 **Q. James, can you still hear me?**
 19 A. Yes.
 20 **Q. Okay. Thank you.**
 21 **So on this max application rate, we have**
 22 **23,950. Do you recognize -- or can you tell us**
 23 **what this document is?**
 24 A. I don't believe that document was shared
 25 with me previously, but I'm just seeing it for -- I

1 think this is the first time I've seen it. I think
 2 it's an agreement between Tom Robinson and Adamas
 3 Construction.
 4 **Q. So isn't it true that IHS required that**
 5 **a site for application be secured before they**
 6 **initiated the fixed price agreement?**
 7 A. Can you restate your question? Or are
 8 you asking --
 9 **Q. So did IHS require that a land**
 10 **application site be identified in an agreement**
 11 **entered in with the landowner before the fixed**
 12 **price agreement was made?**
 13 A. I don't believe that was a requirement.
 14 I -- for the work to be done. I think if the
 15 sludge was taken to a -- say, a dump, that would
 16 have been an equal product. So I don't -- I don't
 17 believe that was a requirement to my knowledge.
 18 **Q. So did you send an e-mail to Nathan**
 19 **Pierce or Adamas Construction stating that Tom**
 20 **Robinson still wanted to receive the sludge on his**
 21 **property?**
 22 A. I don't recall that e-mail specifically,
 23 but I -- there may have been an e-mail just to
 24 facilitate full location of a site.
 25 **Q. So was Tom Robinson in contact with you**

1 **prior to the contract commencing about the**
 2 **application of sludge to his site -- or with IHS, I**
 3 **should say?**
 4 A. I believe he -- yeah, I believe he was
 5 in contact with IHS previously.
 6 **Q. Excellent.**
 7 **So can you read to us the, I guess,**
 8 **first declaration of this agreement?**
 9 THE COURT: And just for clarification,
 10 you're on RX5, correct?
 11 MR. PIERCE: Yeah, sorry, Your Honor. RX5,
 12 et. 1.
 13 THE COURT: Okay. Thank you.
 14 THE WITNESS: Do you want me to read the
 15 highlighted part or the whole paragraph?
 16 MR. PIERCE: The whole paragraph, please.
 17 THE WITNESS: Can you scroll up a little bit?
 18 Because you want me to read the first -- it's kind
 19 of cutting off.
 20 MR. PIERCE: So where it starts, "First."
 21 THE WITNESS: The top line is cut off on my
 22 end. Can you scroll up just a little bit?
 23 MR. PIERCE: Sure. I'm completely scrolled
 24 to the top.
 25 THE WITNESS: Yeah. It's lagging on my end.

1 I can see the second line. Okay. Yeah, it's fine
 2 right here.
 3 "First, the subcontractor agrees to
 4 furnish all material and perform all work necessary
 5 to complete the" -- "receive and apply biosolid
 6 sludge from the frack tanks located at the Lame
 7 Deer Lagoons in Lame Deer, Montana, at an agronomic
 8 rate and haul it to the barley field with pivot
 9 line owned or leased by Tom Robinson in compliance
 10 with U.S. 40 EPA 503 regulations. The
 11 subcontractor further agrees to prep the field and
 12 till the sludge incorporating it into the soil
 13 within six hour. Must apply 50 acres at a max
 14 application rate of 22,000 gallons per acres."
 15 BY MR. PIERCE:
 16 **Q. So you would agree that that 22,000**
 17 **gallons per acre is actually lower than your**
 18 **estimate of 23,000?**
 19 A. That wasn't an estimate that I was
 20 producing.
 21 **Q. Excuse me. Let me rephrase that.**
 22 **That IHS produced?**
 23 A. Like I said previously, this -- the
 24 sludge that was applied to this property was --
 25 **Q. I don't mean to cut you off but --**

1 A. Yes.
 2 **Q. -- just a quick "yes" or "no."**
 3 THE COURT: So the question is, if I'm
 4 following this, whether this highlighted line that
 5 you just read is at a rate that is --
 6 MR. PIERCE: Less than their --
 7 THE COURT: -- less than what was addressed
 8 in the bid document?
 9 MR. PIERCE: In the fixed price agreement,
 10 yes, Your Honor.
 11 THE COURT: Okay. That the witness indicated
 12 was an estimate. But nonetheless, you're asking
 13 whether that is less than the rate in that
 14 estimate --
 15 MR. PIERCE: Yes, ma'am.
 16 THE WITNESS: -- in the bid?
 17 MR. PIERCE: Yes, ma'am.
 18 THE COURT: Okay. Can you respond to that,
 19 Mr. Courtney?
 20 THE WITNESS: I would say I can't compare the
 21 rates because the sludge is altered. So it's --
 22 MR. PIERCE: Mr. Courtney --
 23 THE WITNESS: I don't think it's -- you're
 24 not comparing the same thing.
 25 ///

1 BY MR. PIERCE:
 2 **Q. -- is 22,000 gallons less than 23,000**
 3 **gallons, yes or no?**
 4 A. I believe -- I believe the number is
 5 less. But we're comparing different quantities --
 6 **Q. Thank you.**
 7 A. -- to the different --
 8 THE REPORTER: I'm sorry. I'm not getting
 9 the end of the witness.
 10 THE COURT: Yeah. Don't -- let him finish
 11 his answer.
 12 MR. PIERCE: I apologize.
 13 THE COURT: If you need to follow up, it's
 14 fine. But the transcript will be a disaster if
 15 there's talk over, so...
 16 MR. PIERCE: Yes, ma'am.
 17 THE COURT: Go ahead and finish,
 18 Mr. Courtney.
 19 THE WITNESS: So the gallons that are being
 20 described here are allegedly different because the
 21 contractor was claiming that the sludge was
 22 concentrated. So I -- I have a hard time answering
 23 that question because it's comparing different
 24 things. That's why I can't simply answer "yes" or
 25 "no" because the gallons that are being described

1 here are changed. The contractor said that he
 2 concentrated to ten times the original
 3 concentration in the lagoon. So the estimated
 4 rates from the reimbursement agreement assume no
 5 concentration of the sludge, but -- yeah. Sorry.
 6 BY MR. PIERCE:
 7 **Q. So, Mr. Courtney, was this agreement**
 8 **made before the application process began?**
 9 A. I -- it would seem so.
 10 **Q. So, realistically, before any of**
 11 **the work began, this agreement was made with**
 12 **Mr. Robinson?**
 13 A. I don't think I was privy to that
 14 agreement. But I believe that the agreement would
 15 have been made before an application was started.
 16 **Q. Can you read the second declaration in**
 17 **this contract?**
 18 A. Yes. "The subcontractor agrees to
 19 promptly begin said work as soon as notified by
 20 said contractors. Estimated begin date is August
 21 8, 2018. Subcontractor will furnish contractor
 22 with logs for each day of application."
 23 **Q. So you would agree that in this document**
 24 **that is signed by Tom Robinson, he agreed to supply**
 25 **Adamas Construction with logs of each day of**

1 **application; is that correct?**
 2 A. It appears so from that text.
 3 **Q. Perfect. Thank you.**
 4 **Can you -- are you -- is this e-mail to**
 5 **you from Sheri Bement?**
 6 A. I believe so.
 7 **Q. Can you give us the date of this e-mail?**
 8 A. May 9th, 2018.
 9 **Q. And can you read the highlighted**
 10 **portion, please?**
 11 A. Yes. "This is to confirm that all land
 12 applications will meet or exceed the requirements
 13 of U.S. Environmental Protection Agency, EPA, Part
 14 503 Compliant 40 USC 503 et. seq, Montana
 15 Department of Environmental Quality, DEQ, including
 16 DEQ Circular 2, Chapter 80 to 89, and will
 17 demonstrate compliance with applicable laws, rules,
 18 and regulations to include, but not limited to, the
 19 Montana Water Quality Act non-degradation and
 20 hazardous waste disposal requirements, Title 75,
 21 Chapter 5, MCA, and the Federal Water Pollution
 22 Control Act, 33 USC 1251 et. seq."
 23 **Q. And you would agree that this e-mail is**
 24 **NCUC General Manager Sheri Bement directly stating**
 25 **to you that she would comply with all federal laws**

1 **and regulations; is that correct?**
 2 A. I believe it's saying that the work that
 3 would be done would comply with the regulations
 4 just because the reimbursement agreement had
 5 stipulations that 503 needed to be followed for
 6 reimbursement to be made to the utility.
 7 **Q. Sure. And --**
 8 THE COURT: Hold on one second. Mr. Pierce,
 9 before you move on, I just wanted you to scroll
 10 down to identify the RX number on that e-mail.
 11 MR. PIERCE: Yes, ma'am.
 12 THE COURT: I think it's at the bottom of the
 13 document, the Gmail, compliance with 503.
 14 MR. PIERCE: Yes, ma'am. Where did we go
 15 here?
 16 THE COURT: It was all the way to the right
 17 when you had them on the bottom. All the way to
 18 the right.
 19 MR. PIERCE: Gmail compliance?
 20 THE COURT: And just scroll. I think it's at
 21 the very bottom.
 22 MR. PIERCE: It's RX25, Your Honor.
 23 THE COURT: Okay. Thank you.
 24 MR. PIERCE: Et. 1. I apologize.
 25 ///

1 sludge removal on NCUC and Adamas Construction
 2 itself."
 3 **Q. And what's the date of this e-mail?**
 4 A. I believe it is August 24th, 2018.
 5 **Q. And Mr. Killsback identifies NCUC as the**
 6 **entity responsible for performing all work; is that**
 7 **correct?**
 8 A. As far as -- as far as a tribal entity
 9 that was waiting the reimbursement agreement, they
 10 had a responsibility for following that agreement
 11 to get reimbursed.
 12 **Q. Can I have you read the highlighted**
 13 **portion again?**
 14 A. Yes. "I have informed you that NCUC is
 15 responsible for the performance of the sludge
 16 removal and Adamas Construction as a subcontractor.
 17 I represented the NCUC's interest in trying to
 18 complete the project and subsequently engage in
 19 attempting to resolve the calculation of overall
 20 sludge removal on NCUC and Adamas Construction
 21 itself" or "Construction's behalf."
 22 **Q. So the attorney for NCUC is recognizing**
 23 **that Adamas Construction is a subcontractor in that**
 24 **sentence; is that correct?**
 25 A. Yes.

1 BY MR. PIERCE:
 2 **Q. James, can you -- was NCUC the main**
 3 **contractor in the fixed price agreement?**
 4 A. I would say no because it was a
 5 reimbursement agreement.
 6 **Q. So NCUC was not the main contractor. Is**
 7 **that your position?**
 8 A. I believe it might be inaccurate to call
 9 them a contractor.
 10 **Q. Okay. Can you read the highlighted**
 11 **portion of this e-mail -- or excuse me -- who's**
 12 **this e-mail from?**
 13 A. I believe Dion Killsback, the NCUC
 14 attorney.
 15 **Q. And Jim White and IHS is CCed on this,**
 16 **correct?**
 17 A. I believe so.
 18 **Q. And so can you read the highlighted**
 19 **portion for us?**
 20 A. Yes. "I have informed you that the NCUC
 21 is responsible for the performance of the sludge
 22 removal and Adamas Construction as a subcontractor.
 23 I represented the NCUC's interest in trying to
 24 complete the project and subsequently engaged in
 25 attempting to resolve the calculation of overall

1 **Q. And he also states that NCUC is**
 2 **responsible for the performance of the sludge**
 3 **removal, correct?**
 4 A. I believe that's stated.
 5 **Q. Okay. Thank you.**
 6 THE COURT: Before you -- we need the RX
 7 number at the bottom just to orient.
 8 MR. PIERCE: RX26, et. 1, Your Honor.
 9 THE COURT: Okay.
 10 MR. PIERCE: RX27, et. 1, Your Honor.
 11 THE COURT: Okay.
 12 BY MR. PIERCE:
 13 **Q. Can you -- Mr. Courtney, do you**
 14 **recognize that this e-mail is from Mr. Killsback as**
 15 **well?**
 16 A. Yes.
 17 **Q. And can you read the date on this for**
 18 **us, please?**
 19 A. Yes. August 29th, 2018.
 20 **Q. So can you please read the highlighted**
 21 **portion?**
 22 A. Yes. "Adamas Construction is no longer
 23 a contractor/consultant for NCUC. Adamas
 24 Construction, its employees and subcontractors are
 25 not permitted to be on NCUC properties and are not

1 permitted to be conducting any work."
 2 **Q. So you would agree that, again, Adamas**
 3 **Construction was recognized as a consultant, but**
 4 **NCUC had control over the facilities?**
 5 A. As far as being a utility, they had
 6 control over their facilities.
 7 **Q. Mr. Courtney, do you recognize this as**
 8 **being from the Indian Health Services?**
 9 A. Yes. That appears to be a letter to
 10 Senator Daines from Indian Health Service.
 11 **Q. Okay. Perfect.**
 12 MR. PIERCE: And, Your Honor, we're at RX28,
 13 et. 1.
 14 THE COURT: Okay.
 15 BY MR. PIERCE:
 16 **Q. And who's this signed by?**
 17 A. Bryce Redgrave. He's the Indian Health
 18 Service area director for the Billings area.
 19 **Q. And do you know him personally?**
 20 A. Not on a personal basis, but he worked
 21 in the same office.
 22 **Q. Okay. Perfect.**
 23 **And so can you read the highlighted**
 24 **portion of what he directly states to Senator Steve**
 25 **Daines?**

1 A. Yes. "The Indian Health Service, IHS,
 2 entered into a project agreement with the Northern
 3 Cheyenne Utility Commission, NCUC, to complete the
 4 lagoon renovation project. The project agreement
 5 was executed by the IHS and NCUC with an effective
 6 date of May 11th, 2018. NCUC then entered into a
 7 separate contract with Adamas on May 15th, 2018, to
 8 perform much of the required work. It is important
 9 to know that there is not a contract between IHS
 10 and Adamas. During the performance of this work, a
 11 dispute arose regarding the amount of sludge that
 12 Adamas had pumped from the lagoons."
 13 **Q. And so you would agree that that dispute**
 14 **from the amount of sludge that was pumped came from**
 15 **the estimation that was in the frack tanks; is that**
 16 **correct?**
 17 A. Yes. I believe the -- what Adamas was
 18 claiming was in the frack tanks seemed to be
 19 unrealistic to what such could be concentrated to.
 20 I believe that was the dispute.
 21 **Q. Okay. And so you would -- you would**
 22 **admit that there was a dispute that arose. Did**
 23 **that dispute arise before you made your complaint**
 24 **to the EPA?**
 25 A. I don't believe I made a complaint to

1 the EPA. I believe my outreach to the EPA was in
 2 response to Adamas Construction trying to seek
 3 payment from NCUC despite apparent 503 violations,
 4 and that outreach to the EPA was to consult the
 5 primacy agency so they could weigh in to 503
 6 compliance.
 7 **Q. Did you send a report to the EPA after**
 8 **Tom Robinson had contacted you regarding the sludge**
 9 **application on his field?**
 10 A. I believe I sent the EPA a trip report.
 11 THE REPORTER: I'm sorry. Can you repeat
 12 that?
 13 THE COURT: Could you repeat that,
 14 Mr. Courtney?
 15 THE WITNESS: Yes. I believe I sent the EPA
 16 a trip report after visiting the Tom Robinson
 17 property.
 18 BY MR. PIERCE:
 19 **Q. So you made a report to the EPA; is that**
 20 **correct?**
 21 A. That's incorrect. That was a trip
 22 report that was common practice for site visits.
 23 That was just relevant to the 503 question.
 24 **Q. And was that report used to initiate the**
 25 **complaint against Adamas or Nathan Pierce?**

1 MS. KACSUR: Objection, Your Honor. No
 2 personal knowledge of when the EPA used this.
 3 THE COURT: Okay. Mr. Courtney, do you
 4 actually know? Do you have the knowledge to be
 5 able to respond to this question or not?
 6 THE WITNESS: I do not. I can't speak to
 7 what the EPA used the documents for.
 8 THE COURT: Okay. Sustained.
 9 MR. PIERCE: Moving on, Your Honor.
 10 THE COURT: Okay.
 11 BY MR. PIERCE:
 12 **Q. Mr. Courtney, can you tell us who George**
 13 **Cummins is?**
 14 A. Yes. He was the construction inspector
 15 for the SFC program.
 16 **Q. And so was he tasked with inspecting the**
 17 **project daily?**
 18 A. He was tasked with inspections. But
 19 there were -- there was issues with coordinating
 20 inspections due to an updated schedule not being
 21 shared.
 22 **Q. So you would agree that there was a**
 23 **member of IHS who was tasked with inspections and**
 24 **performed inspections?**
 25 A. Yes, his was to inspect.

1 **Q. Is George Cummins related to Tom**
 2 **Robinson?**
 3 A. I can't speak to that.
 4 **Q. Okay.**
 5 MR. PIERCE: Your Honor, I believe at this
 6 time, I don't have any -- well, give me one second.
 7 THE COURT: Okay. I have one quick follow-up
 8 if you want me to ask in the meanwhile.
 9 MR. PIERCE: Yes, ma'am.
 10 THE COURT: Okay. Mr. Courtney, I just
 11 wanted to ask if you're able to just elaborate. I
 12 know earlier when you were looking at the bid
 13 document, you made reference to altered sludge.
 14 THE WITNESS: Yes.
 15 THE COURT: Can you tell me what examples of
 16 that alteration would be? I mean, are we
 17 talking -- as somebody not in this industry that
 18 doesn't really understand a lot of the details
 19 about it, would altered mean dewatering, for
 20 example, or is there something else?
 21 THE WITNESS: Yes.
 22 THE COURT: Okay. So dewatering is an
 23 example. Is there anything else that would
 24 constitute altering that you are aware of that
 25 might relate to your prior answer about the sludge

1 having been altered?
 2 THE WITNESS: I'm only aware of it being
 3 dehydrated for the claim that it was -- water was
 4 taken out of the sludge.
 5 THE COURT: The dewatering term?
 6 THE WITNESS: Yes.
 7 THE COURT: Okay. All right. Thanks very
 8 much. That's all I wanted to clarify.
 9 Please go ahead, Mr. Pierce, if you have
 10 anything else.
 11 MR. PIERCE: Yes, Your Honor.
 12 BY MR. PIERCE:
 13 **Q. Mr. Courtney, the sludge removal project**
 14 **wasn't the only project that Adamas and myself**
 15 **worked on on the Northern Cheyenne Reservation; is**
 16 **that correct?**
 17 A. I believe there was some involvement
 18 being a consultant for the utility.
 19 **Q. And so you said yesterday that you felt**
 20 **that my role -- or Adamas's role was a consultant**
 21 **to the utility; is that correct?**
 22 A. I believe that Adamas had a -- or Nathan
 23 Pierce/Adamas had multiple roles with the utility.
 24 **Q. Okay. And real quickly, did you -- did**
 25 **IHS initially make an offer to make Adamas and**

1 **Nathan Pierce the main contractor for this job?**
 2 A. I -- I don't believe so.
 3 **Q. If you learned that they had, would**
 4 **that -- excuse me.**
 5 **So if they had made that agreement, are**
 6 **you aware of whether they followed through with**
 7 **that agreement?**
 8 A. There would be no ability to make an
 9 agreement directly with Adamas Construction between
 10 IHS and Adamas because the reimbursement agreement
 11 was with the utility.
 12 **Q. So the reimbursement agreement was with**
 13 **the utility. So Adamas was required to go through**
 14 **the utility for payment, correct?**
 15 A. I believe Adamas Construction was paid
 16 by the utility for this work.
 17 **Q. So their payment came from the person**
 18 **who was contracted by IHS to do the work. That**
 19 **would be NCUC, correct?**
 20 A. I wouldn't call it contracting. I'd say
 21 that's incorrect.
 22 MR. PIERCE: Your Honor, going back to the
 23 fixed price agreement.
 24 BY MR. PIERCE:
 25 **Q. Mr. Courtney, would you believe that**

1 **this fixed price agreement -- sorry.**
 2 **So are you saying that this fixed price**
 3 **agreement is not a contract between IHS and NCUC to**
 4 **perform work?**
 5 A. I believe it's a reimbursement
 6 agreement.
 7 **Q. You believe, but you don't know whether**
 8 **it is or it isn't?**
 9 A. I -- I believe it is not a contract.
 10 **Q. Okay.**
 11 MR. PIERCE: Your Honor, I think that covers
 12 my questions.
 13 THE COURT: Okay. And the reference to the
 14 fixed price agreement, just for clarity for the
 15 transcript, it's also been referred to as the bid
 16 document.
 17 MR. PIERCE: It's -- all of the documents and
 18 everything in here would also be contained in the
 19 bid packet.
 20 THE COURT: Okay.
 21 MR. PIERCE: So actually, can I have James
 22 just explain to us sort of how that process works?
 23 THE COURT: Sure. So this document, then,
 24 that you published that you used to refresh his
 25 recollection earlier that you said was publicly

1 available, the best way to refer to that would be?
 2 MR. PIERCE: The fixed price agreement.
 3 THE COURT: Okay.
 4 MR. PIERCE: Yes, Your Honor.
 5 THE COURT: Okay.
 6 BY MR. PIERCE:
 7 **Q. So, James, could you just -- for**
 8 **everybody here in the room who isn't a part of**
 9 **this, can you just sort of give us a quick rundown**
 10 **of how these projects come about, what a bid packet**
 11 **is, and what the fixed price agreement does in**
 12 **relation to that?**
 13 A. Yes, of course. So for a document like
 14 this, basically, it's -- it's part of the
 15 reimbursement agreement, like I described, and it's
 16 for establishing prices that will get reimbursed to
 17 the utility. So just to make sure, say -- say more
 18 of a quantity is removed, it establishes prices
 19 that could be reimbursed on. So that's the main
 20 purpose of these documents.
 21 **Q. So -- but can you explain to us what a**
 22 **bid packet is?**
 23 A. I believe that's a document to establish
 24 prices.
 25 **Q. So a bid packet is not a packet that's**

1 THE COURT: Absolutely. That kind of feeds
 2 into a quick inquiry I had, and that is whether
 3 or not you have any -- you, as in complainant,
 4 would have any desire to be able to refer to it at
 5 all after this hearing or -- you know, I mean,
 6 Mr. Pierce used it to refresh the witness's
 7 recollection, but there was a good bit of testimony
 8 about it. So being that it's publicly available,
 9 if you two want to be able to refer to it, you
 10 know, in briefing or anything, let me know.
 11 Otherwise, I'll just leave it alone.
 12 MS. KACSUR: May I have just one moment, Your
 13 Honor?
 14 THE COURT: Sure. But let me also, while
 15 you're doing that, inquire of the URL to respond to
 16 directly.
 17 MR. PIERCE: Yes, Your Honor. I'm looking
 18 for that --
 19 THE REPORTER: "Looking for that"? I'm
 20 sorry, what'd you say? "I'm looking for that"?
 21 MR. PIERCE: I'm looking for the document.
 22 THE COURT: I think you might have said
 23 "post-haste." Yeah. I don't think it's getting
 24 picked up. It might be the mic. But that might be
 25 because of all the --

1 **put together for contractors to look at and**
 2 **evaluate to try to come up with a price**
 3 **determination?**
 4 A. In this case, I would say that's not
 5 what it was used for.
 6 **Q. Is it normally used for that?**
 7 A. I -- I don't have the data to speak to
 8 that. For these situations, this is common
 9 practice.
 10 **Q. So do you know what a bid packet is?**
 11 A. I believe a bid packet is a document
 12 that establishes prices for quantities related to
 13 work.
 14 **Q. So a contractor, would they use that in**
 15 **order to develop a bid for a job?**
 16 A. I believe those are also used by
 17 contractors, yes.
 18 MR. PIERCE: Okay. Thank you, Your Honor.
 19 James, thank you for your testimony.
 20 THE WITNESS: Yep. You're welcome.
 21 THE COURT: Ms. Kacsur, did you have some
 22 redirect?
 23 MS. KACSUR: Yes, Your Honor. May I also
 24 request the URL to this publically available
 25 document?

1 MR. PIERCE: I believe I have my mic off,
 2 Your Honor.
 3 MS. KACSUR: Your Honor, we're prepared to
 4 enter this as Joint Exhibit Number 2 if the
 5 respondents are also okay with that.
 6 MR. PIERCE: Perfect, Your Honor.
 7 THE COURT: Okay. We just need a --
 8 Mr. Pierce, do you have a hard copy of it?
 9 MR. PIERCE: I have an electronic copy I can
 10 send to everybody, Your Honor.
 11 THE COURT: Well, if I can impose
 12 on -- unless you're able to create the PDF and
 13 attach the exhibit number -- Ms. Moreno, are you
 14 able to do that?
 15 MR. PIERCE: I can do that, Your Honor.
 16 THE COURT: Okay. If you can do that, then
 17 that's great. And just go ahead and give it JX2.
 18 And since both sides want it, it will be admitted
 19 as Joint Exhibit 2. And you can just circulate it
 20 to complainant, to the court reporter, and then if
 21 you just send a copy to Ms. Almase.
 22 MR. PIERCE: Yes, ma'am.
 23 THE COURT: And then she will transmit to me.
 24 MR. PIERCE: Okay. Perfect.
 25 THE COURT: So I'll have kind of a working

1 copy, really. The court reporter has the official
 2 record. But this way, we all have it to work off
 3 of.
 4 (Whereupon, there was echoing in the room.)
 5 MS. KACSUR: Sorry for that.
 6 THE COURT: Well, I think if you take the
 7 volume on your computer and you put it all the way
 8 down and just work off the mic on the podium, maybe
 9 we'll be okay. Sounds better already.
 10 MS. KACSUR: Mr. Courtney, can you hear me?
 11 I apologize, Your Honor.
 12 THE COURT: That's okay. Can you use the
 13 podium mic or no?
 14 MS. KACSUR: I'm afraid that that will create
 15 echoes whenever you want to speak to him. Let me
 16 reverse this really quickly.
 17 THE COURT: Okay.
 18 MS. KACSUR: Okay. Testing. That's -- I
 19 don't think that's from my microphone.
 20 Mr. Pierce, would you mind muting yours
 21 for just a moment?
 22 MR. PIERCE: Sure.
 23 How's that?
 24 MS. KACSUR: It doesn't say that you're muted
 25 yet, your microphone being muted.

1 THE COURT: Although I'm not hearing any
 2 feedback.
 3 MS. KACSUR: My computer is muted. I'm
 4 afraid if I'm muted then --
 5 THE COURT: Okay. I'll stay out of it and
 6 leave everyone who's younger than me in the room to
 7 figure it out.
 8 MS. KACSUR: Okay. Mr. Courtney, can you
 9 hear me?
 10 THE WITNESS: Yes. Yes, I can hear you.
 11 MS. KACSUR: Great. I think this should
 12 work.
 13 REDIRECT EXAMINATION
 14 BY MS. KACSUR:
 15 **Q. Mr. Courtney, you were asked today to**
 16 **look at some lab results on that publicly available**
 17 **document. Do you remember any date of those lab**
 18 **results?**
 19 A. Not off the top of my head.
 20 MS. KACSUR: Can we show -- have we received
 21 that link? Can we show those lab results?
 22 MS. MORENO: Uh-huh.
 23 THE COURT: So we're in JX2, correct?
 24 MS. KACSUR: Yes, Your Honor.
 25 Can I have you scroll until those

1 results show?
 2 THE COURT: And while you're scrolling, I
 3 just want to quickly identify for the record
 4 it's -- the pages aren't individually numbered. So
 5 I think we can just work off of the physical page,
 6 which seems to line up with the PDF. And that is a
 7 total of 44 pages in that document of JX2.
 8 BY MS. KACSUR:
 9 **Q. I am asking Mr. Courtney to look**
 10 **at -- it's page 30 of 44 here. Can you please read**
 11 **the date that this laboratory analytical report was**
 12 **made?**
 13 A. The report date is June 13th, 2017.
 14 **Q. And what was the date of the application**
 15 **project that we've been talking about? When was**
 16 **that?**
 17 A. It was in the summer of 2018.
 18 **Q. Can these test results from 2017 be used**
 19 **as an accurate representation of information for**
 20 **the 2018 project?**
 21 A. I believe the 503 requirements have a
 22 one-year expiration for lab results.
 23 **Q. Would these be an accurate**
 24 **representation, in your opinion, of the contents of**
 25 **the sludge in the summer of 2018?**

1 A. I don't believe so, because the
 2 contractor was claiming that the sludge was
 3 concentrated.
 4 **Q. To your knowledge, was Tom Robinson a**
 5 **party to this contract, or this bid packet, I**
 6 **should say?**
 7 A. I don't believe so.
 8 **Q. Was Ernie Sprague a party to this?**
 9 A. I don't believe so.
 10 **Q. And why was this -- why was the ultimate**
 11 **contract between NCUC and IHS, why didn't that**
 12 **include Adamas Construction?**
 13 A. Well, it was not a contract. It was a
 14 reimbursement agreement. So the utility was
 15 allowed to use different means to achieve the work.
 16 They chose to contract with Adamas Construction.
 17 **Q. Would IHS have been able to pay Adamas**
 18 **Construction directly for the work that was**
 19 **performed?**
 20 A. IHS would not be able to pay Adamas
 21 Construction for any of this work.
 22 **Q. And why is that?**
 23 A. Because IHS had no contract with Adamas
 24 Construction.
 25 **Q. Did IHS prepare or apply the sludge?**

1 A. IHS did not prepare or apply any sludge.
2 **Q. So IHS would not have been required to**
3 **maintain any records under Part 503, right?**

4 A. I believe that IHS would not have to
5 enter report requirements that was not -- for work
6 that it was not performing itself.

7 **Q. So why did IHS ultimately take samples**
8 **of the sludge?**

9 A. So for the bid packet, it was to
10 establish quantities. So to -- for the utility to
11 have an idea what it's going to cost for what they
12 need to be reimbursed by, it allows an estimate to
13 be made for what the reimbursement would be. It
14 could be higher or it could be lower. But
15 that's -- general practice were before work starts
16 you have an estimate for what the quantities are
17 going to be. I believe that was motivation for the
18 testing.

19 MS. KACSUR: I would now like to show CX29.
20 Can we please scroll to page 5? Can you scroll
21 down just a bit more, please? Thank you.

22 BY MS. KACSUR:

23 **Q. Mr. Courtney, were you asked if the**
24 **contract between Tom Robinson and Adamas**
25 **Construction was signed before the contract between**

1 MS. KACSUR: And can we scroll back down to
2 the next page.

3 BY MS. KACSUR:

4 **Q. And when was this agreement sent**
5 **according to this document?**

6 A. May 11th, 2018.

7 MS. KACSUR: Can I have you show CX7, please?

8 BY MS. KACSUR:

9 **Q. What does this document appear to be?**

10 A. It appears to be a contract between Tom
11 Robinson and Adamas Construction.

12 MS. KACSUR: And can we scroll to the next
13 page. Oh, I'm sorry. Please go back to the first
14 page.

15 BY MS. KACSUR:

16 **Q. What is the date of this agreement?**

17 A. It appears to be August 8, 2018.

18 **Q. So the date of this agreement was after**
19 **the agreement between NCUC and IHS, right?**

20 A. It appears to be so.

21 MS. KACSUR: Let's now look at CX45, et. 32,
22 page 32.

23 BY MS. KACSUR:

24 **Q. Were you asked earlier to read from an**
25 **e-mail wherein NCUC asserted they were responsible**

1 **IHS and NCUC was signed?**

2 A. I don't believe the contract between
3 Adamas Construction and Tom Robinson was shared
4 with me previously.

5 **Q. Can I have you -- let me rephrase.**
6 **Do you recognize what this document**
7 **might be? We can scroll to the top a few pages if**
8 **necessary.**

9 A. Yeah. Yes. I believe that was
10 establishing prices for work for reimbursement to
11 the tribe.

12 MS. KACSUR: Can you go to I think it's
13 page -- up a couple pages.

14 MS. MORENO: Up?

15 MS. KACSUR: Uh-huh. Can you stop on this
16 page.

17 BY MS. KACSUR:

18 **Q. Do you recognize this document,**
19 **Mr. Courtney?**

20 A. Yes. That appears to be texts
21 concerning the agreement between NCUC and the SFC.

22 **Q. You said a text?**

23 A. Well, yeah. Part of the agreement for
24 the -- the reimbursement agreement between IHS and
25 SFC -- or NCUC.

1 **for compliance with 503?**

2 A. Yes. I believe that was only relevant
3 to the reimbursement as far as their
4 responsibility -- as a responsibility for the work
5 to comply with 503 to get reimbursed.

6 **Q. Can I have you just read the first**
7 **sentence of this document? I'm sorry.**

8 A. Yes.

9 **Q. I will back up just a bit. Do you**
10 **recognize this document?**

11 A. Yes. It appears to be an e-mail from
12 Adamas Construction to Sheri Bement, the general
13 manager of the NCUC at the time, dated April 21st,
14 2018.

15 **Q. And how did you get this e-mail?**

16 A. I was copied on it.

17 **Q. Can I have you read the first sentence**
18 **of this e-mail?**

19 A. Yes. Please find the attached letter
20 describing our compliance with federal, tribal, and
21 state laws during this project as well as a quick
22 outline of our project approach, as requested by
23 the IHS team during our meeting on April 20th,
24 2018.

25 MS. KACSUR: Let's look at page 37 of this

1 same exhibit.
 2 BY MS. KACSUR:
 3 **Q. Do you recognize this document?**
 4 A. Yes. This is an e-mail sent by Adamas
 5 Construction to me dated April 30th, 2018.
 6 **Q. And can I have you -- excuse me -- can I**
 7 **have you read the first sentence of the second**
 8 **paragraph?**
 9 A. Yes. Per Adamas Construction and
 10 Development's policies, procedures, all land
 11 applications will meet or exceed the requirements
 12 of the U.S. Environmental Protection Agency, EPA,
 13 Part 503 Compliant 40 USC 503 et. seq. Montana --
 14 **Q. I'll stop you right there. I think**
 15 **that's a really long sentence, and I don't think we**
 16 **need you to read any more from it. Thank you for**
 17 **reading that.**
 18 **So NCUC initially said they were**
 19 **responsible for the project?**
 20 A. They were responsible for the work being
 21 completed in a way that they can be reimbursed by
 22 IHS. So that's NCUC's only responsibility. So if
 23 the work wasn't adhering to the reimbursement
 24 agreement, they wouldn't be reimbursed. That was
 25 the agreement that was made with NCUC.

1 **Q. Who was actually in control of the**
 2 **project?**
 3 A. I believe for this work, NCUC contracted
 4 with Adamas Construction to complete sludge removal
 5 work.
 6 **Q. And Adamas Construction asserted that**
 7 **they would comply with Part 503?**
 8 A. That would appear to be so.
 9 **Q. Earlier, you were asked to read an**
 10 **e-mail -- I'm sorry. Let me phrase that as a**
 11 **question.**
 12 **Were you earlier asked to read an e-mail**
 13 **stating where Adamas said they were no longer a**
 14 **contractor of NCUC?**
 15 A. Yes, I believe so.
 16 **Q. Was that e-mail sent after the**
 17 **preparation application project was completed?**
 18 A. I believe that was -- I believe it
 19 was -- at that time, it was incomplete.
 20 **Q. Can you please describe for me George**
 21 **Cummins' role in this project?**
 22 A. So George Cummins, he was a construction
 23 inspector for the SFC program. His role was to
 24 inspect work.
 25 **Q. Did he have any roles that were more**

1 **than just inspecting?**
 2 A. I don't believe so.
 3 **Q. Does anything shared with you today**
 4 **change your assessment that the respondents were in**
 5 **charge of the application project?**
 6 A. I -- I don't think I've seen anything
 7 that made it seem that, yeah, they weren't in
 8 control of the work.
 9 **Q. Thank you.**
 10 MS. KACSUR: No further questions, Your
 11 Honor.
 12 THE COURT: Okay. Thank you.
 13 MR. PIERCE: Mr. Courtney, can you hear me?
 14 Mr. Courtney, can you hear me?
 15 THE WITNESS: I can't hear anything.
 16 MR. PIERCE: Let's try this. Can you hear me
 17 now? Can you hear me now?
 18 THE WITNESS: (No response.)
 19 MR. PIERCE: Hello?
 20 THE WITNESS: (Shakes head.)
 21 MR. PIERCE: Your Honor, I'm sorry.
 22 Mr. Courtney, can you hear me now?
 23 THE WITNESS: I'm still not getting any auto.
 24 MR. PIERCE: Let's try it here. Hello.
 25 Test, test, test, test. Test, test, test, test.

1 James, can you hear me?
 2 THE WITNESS: Yes.
 3 MR. PIERCE: Okay. Perfect. Sorry for the
 4 delay.
 5 RE-CROSS-EXAMINATION
 6 BY MR. PIERCE:
 7 **Q. In the document that -- in your previous**
 8 **testimony you said that Ernie Sprague and Tom**
 9 **Robinson was not a part of this project; is that**
 10 **correct?**
 11 A. I believe what I was stating was I
 12 didn't see contracts for what their role was.
 13 **Q. Okay. And would you agree that**
 14 **Mr. Robinson's pivot line was identified in that**
 15 **fixed price agreement that I showed you?**
 16 A. I believe that might have been mentioned
 17 as an option, but I don't think a method was
 18 specified explicitly in that agreement.
 19 **Q. But you agreed that it did say "Robinson**
 20 **pivot line" on that document?**
 21 A. I believe so.
 22 **Q. Okay. And then you also testified that**
 23 **you hadn't been shown anything that you -- would**
 24 **change your mind that NCUC was in control and**
 25 **Adamas was not. Is that still true?**

1 A. I believe because NCUC had a contract
 2 with Adamas Construction, that the work completed
 3 by Adamas Construction under that contract is
 4 that -- it's unchanged in my mind. So yeah, the
 5 work under the contract with NCUC, that's -- yeah,
 6 my opinion has not changed about that.
 7 **Q. Do you recognize this document here,**
 8 **Mr. Courtney?**
 9 A. I can't see it up.
 10 MS. MORENO: You need to share.
 11 MR. PIERCE: Oh, shoot.
 12 THE COURT: And then also just identify the
 13 exhibit number, Mr. Pierce.
 14 MR. PIERCE: Yes, ma'am. So we're dealing
 15 with RX2, et. 1, Your Honor.
 16 THE COURT: Thank you.
 17 BY MR. PIERCE:
 18 **Q. Mr. Courtney, can you see the document**
 19 **now?**
 20 A. I cannot.
 21 MS. MORENO: Go back to share.
 22 BY MR. PIERCE:
 23 **Q. How about now?**
 24 A. Yes, I can see it.
 25 **Q. And is this document from you?**

1 A. It is, yes.
 2 **Q. Can you read to us the second bullet**
 3 **point that you wrote on this document?**
 4 A. Yes. "I reiterated that NCUC is
 5 responsible for the sludge removal work and that
 6 IHS's relationship isn't with Adamas, PLLC, for
 7 this project."
 8 **Q. So you would admit that you state**
 9 **directly in this document that NCUC's responsible**
 10 **for all sludge removal work, correct?**
 11 A. They're responsible for the work being
 12 completed according to the reimbursement agreement.
 13 **Q. So what did you mean by responsible for**
 14 **sludge removal work, and IHS's relationship isn't**
 15 **with Adamas Construction on this project?**
 16 A. Yeah. So what that's stating is that
 17 the utility would not be reimbursed for the work if
 18 it's not adhering to that agreement. So if work
 19 doesn't comply with that agreement, which included
 20 the 503 stipulation, IHS would not pay. I mean,
 21 that's basically what that's stating.
 22 **Q. Sure.**
 23 A. And it's just reiterating that we don't
 24 have a relationship with contractors that they use.
 25 **Q. Sure. And then can -- do you remember**

1 **this document from Mr., I believe, Redgrave?**
 2 A. I don't -- I'm not sure if I was shared
 3 that previously. I don't remember seeing that.
 4 MR. PIERCE: RX28, Your Honor.
 5 THE COURT: Hold on. You were speaking over
 6 him.
 7 MR. PIERCE: Sorry.
 8 THE COURT: So let's begin again.
 9 So you just identified this document as
 10 RX28.
 11 MR. PIERCE: RX28.
 12 THE COURT: Yeah. And just go ahead and
 13 restate your question then so that Mr. Courtney can
 14 answer fully.
 15 BY MR. PIERCE:
 16 **Q. So, Mr. Courtney, previously I had**
 17 **shared this document with Mr. Redgrave with you,**
 18 **correct?**
 19 A. Yes.
 20 **Q. And can you read the first line of the**
 21 **highlighted portion? Or excuse me -- the first two**
 22 **lines?**
 23 A. Yes. Yes, of course. Indian Health
 24 Service, IHS, entered into a project agreement with
 25 the Northern Cheyenne Utility Commission, NCUC, to

1 complete the lagoon renovation project. The
 2 project agreement was executed by the IHS and NCUC
 3 with an effective date of May 11th, 2018. NCUC
 4 then entered into a separate contract with Adamas
 5 on May 15th, 2018, to perform much of the required
 6 work. It is important to note that there is no
 7 contract between IHS and Adamas. During
 8 performance --
 9 **Q. Sorry. Go ahead.**
 10 A. "During performance of this work" -- you
 11 keep interrupting me -- "During performance of this
 12 work, a dispute arose regarding the amount of
 13 sludge that Adamas had pumped from the lagoon."
 14 **Q. So does this document seem to indicate**
 15 **from IHS that NCUC was the contractor in charge of**
 16 **the project?**
 17 A. It's indicating that the reimbursement
 18 agreement was with NCUC, that there was a
 19 disagreement with the sludge application or the
 20 sludge concentrations around the reimbursement
 21 agreement.
 22 **Q. Can you actually show us where it says**
 23 **anywhere about reimbursement?**
 24 A. Um, I -- it's been a while since I've
 25 seen the document, so I wouldn't be able to -- I'm

1 not sure where that would be mentioned or if it is
 2 mentioned explicitly.
 3 **Q. So if it's not mentioned, then do you**
 4 **have any documents that would support your**
 5 **allegation that this was simply a reimbursement**
 6 **contract?**
 7 A. Not -- not currently, because I don't
 8 work for Indian Health Service again, so -- or
 9 currently.
 10 **Q. Okay.**
 11 MR. PIERCE: Your Honor, I think that does
 12 it.
 13 THE COURT: Okay.
 14 MR. PIERCE: Thank you.
 15 THE COURT: Thank you. Okay. Anything else,
 16 then, for Mr. Courtney, or can I go ahead and
 17 release him fully from the hearing and
 18 availability?
 19 MS. KACSUR: Nothing from complainant, Your
 20 Honor.
 21 THE COURT: And you're all finished too,
 22 Mr. Pierce?
 23 MR. PIERCE: I am, yes, Your Honor.
 24 THE COURT: All right. Mr. Courtney, thanks
 25 very much for your availability and your testimony

1 of your case?
 2 MR. PIERCE: Yes, ma'am.
 3 THE COURT: Okay. So I think it's out of
 4 turn, but recognizing the subpoena being effective
 5 only today, I think we're going to need to hop
 6 around a little bit just for practicality purposes.
 7 So that sort of feeds into my next
 8 question. Ordinarily, a witness would be
 9 questioned by the party calling them. That would
 10 be the direct testimony. There would be the
 11 opportunity for cross by the opposing side. You're
 12 familiar with that. I mean, we can follow that if
 13 that would be simplest for both sides. Complainant
 14 could call Mr. Robinson first, and we could go
 15 through that process. And then he could stay on
 16 the stand, and you could continue with your
 17 presentation for him.
 18 If we're not that terribly concerned
 19 about scope, we can just have Mr. Robinson take the
 20 stand and both of you ask him whatever questions
 21 you want and then any follow-up, if you will, to
 22 that. And I'm happy to allow as much rotation as
 23 is necessary for both of you, both sides, to be
 24 able to fully elicit the testimony in question
 25 about any of it as you wish.

1 today and for patience while we navigated some
 2 technical issues. Have a good day. Bye-bye.
 3 Okay. Quick housekeeping note, order of
 4 witnesses type of thing. I understand that
 5 Mr. Robinson is here and under subpoena. That
 6 subpoena is for today and today only, so... And I
 7 also believe that it was of interest to both
 8 parties to be able to call him as a witness. So I
 9 guess I would inquire whether it makes sense to go
 10 ahead and get that testimony now. I don't want to
 11 interfere with the presentation of the Region's
 12 case, but while he's here and available, it seems
 13 like this would be a good time to go ahead and get
 14 that testimony. Do you agree or --
 15 MR. MUEHLBERGER: We do. We do agree, Your
 16 Honor.
 17 THE COURT: Okay.
 18 MR. MUEHLBERGER: We'd like to have a
 19 ten-minute break before we proceed. But we would
 20 be prepared to call Tom Robinson after that.
 21 THE COURT: Okay. Perfect.
 22 Here's the other quick question that I
 23 have. Mr. Pierce, I'm working off of an
 24 understanding or assumption, maybe, that you, too,
 25 wanted to be able to question Mr. Robinson as part

1 But it's up to both of you. I want it
 2 to be simplest for you all. I can obviously keep
 3 track of things. But how would you -- what would
 4 be the easiest way for you all to proceed with
 5 regard to the kind of scope order of testimony
 6 thing?
 7 MR. MUEHLBERGER: Your Honor, may we have a
 8 15-minute conference to discuss this matter?
 9 THE COURT: Uh-huh.
 10 MR. MUEHLBERGER: And then I'll have an
 11 answer for you when we return.
 12 THE COURT: Sure. Yeah, no problem. Either
 13 way, he'll be on the stand to cover it however you
 14 all want to cover it.
 15 MR. PIERCE: Your Honor, I'm perfectly fine
 16 with just going through the process as you
 17 suggested of a rotation. I don't know that I would
 18 necessarily need to call Mr. Robinson separate from
 19 the testimony that we could get with a normal
 20 examination, a cross-examination.
 21 THE COURT: Okay. Okay. So I guess just
 22 consider that during the break, and even if you all
 23 want to confer at all amongst yourselves. That may
 24 not be necessary, given what you just said. But
 25 whatever is simplest for you is fine with me.

1 So we'll take 15 minutes, and come back
 2 in 15.
 3 MR. MUEHLBERGER: Thank you, Your Honor.
 4 THE COURT: Thank you.
 5 (Whereupon, a brief
 6 recess was taken.)
 7 THE COURT: Okay. Back on record after a
 8 brief break.
 9 And what's the consensus, then, with
 10 regard to Mr. Robinson's order of testimony?
 11 MR. MUEHLBERGER: Your Honor, if I understand
 12 where we kind of landed before the break,
 13 complainants will examine Mr. Robinson, and
 14 respondents will then cross-examine Mr. Robinson.
 15 And if that's the plan, then EPA is prepared to
 16 call Mr. Robinson.
 17 THE COURT: Okay. And Mr. Pierce, I think we
 18 left off with you basically saying you could cover
 19 whatever you needed in cross versus calling him as
 20 part of your own case. Is that still your belief?
 21 MR. PIERCE: Yes, Your Honor.
 22 THE COURT: Okay, great. So we'll just
 23 proceed in the normal course then.
 24 MR. MUEHLBERGER: In that case, complainant
 25 calls Tom Robinson, please.

1 THE COURT: Mr. Robinson, you're just going
 2 to come right up here.
 3 THE WITNESS: Okay.
 4 THE COURT: I need to place you under oath.
 5 So if you'll raise your right hand.
 6
 7 TOM ROBINSON,
 8 called as a witness on behalf of the complainant,
 9 having being first duly sworn testified as follows:
 10
 11 THE WITNESS: Yes.
 12 THE COURT: Okay. Thanks so much. Please
 13 have a seat.
 14 I'll just identify for the record that
 15 Mr. Robinson has been sworn and he's here under
 16 subpoena. I think you already heard the little
 17 colloquy, if you will. Mr. Muehlberger is
 18 representing the regional office for the
 19 Environmental Protection Agency. He's going to
 20 question you first.
 21 THE WITNESS: Okay.
 22 THE COURT: And then Mr. Pierce will be able
 23 to. And then I give each side the chance to follow
 24 up with more questions.
 25 Please go ahead, Mr. Muehlberger.

1 MR. MUEHLBERGER: Thank you.
 2
 3 DIRECT EXAMINATION
 4 BY MR. MUEHLBERGER:
 5 **Q. Mr. Robinson, thank you for attending**
 6 **today.**
 7 **For the record, could you please state**
 8 **and spell your name.**
 9 A. Tom Robinson; T-O-M, R-O-B-I-N-S-O-N.
 10 **Q. Thank you.**
 11 **Mr. Robinson, did you till sewage sludge**
 12 **into property controlled by you in 2018?**
 13 A. Yes, I did.
 14 **Q. Okay. Is the land that this sewage**
 15 **sludge was tilled into, would you describe that as**
 16 **agricultural land?**
 17 A. Yes.
 18 **Q. Okay. Can you tell us what is grown on**
 19 **that land?**
 20 A. Oh, I've got alfalfa right now growing
 21 on there.
 22 **Q. Okay. And in 2018, was that the same?**
 23 A. No. It was barley.
 24 **Q. Thank you.**
 25 **Mr. Robinson, did you receive agronomic**

1 **rate information from Mr. Pierce or Adamas**
 2 **Construction before you tilled the sewage sludge in**
 3 **2018?**
 4 A. Can you repeat that again?
 5 **Q. Sure. Did you receive agronomic rate**
 6 **information from Mr. Robinson before -- or excuse**
 7 **me -- from Mr. Pierce before you tilled the sewage**
 8 **sludge into the land?**
 9 A. No, I never.
 10 **Q. Okay.**
 11 MR. MUEHLBERGER: Thank you. No further
 12 questions.
 13 CROSS-EXAMINATION
 14 BY MR. PIERCE:
 15 **Q. Mr. Robinson, you just testified here**
 16 **today that you were not given an agronomic rate.**
 17 **Do you recognize --**
 18 MR. PIERCE: Thank you.
 19 BY MR. PIERCE:
 20 **Q. Do you recognize this document that's up**
 21 **on the screen?**
 22 A. Yes.
 23 **Q. Is this a contract between yourself and**
 24 **Adamas Construction?**
 25 A. Yes.

1 **Q. Can you read me the highlighted portion?**
 2 A. "Must apply to 50 acres at a max
 3 application rate of 22,000 gallons per acre."
 4 **Q. Would you consider that to be an**
 5 **agronomic rate?**
 6 A. Yes.
 7 **Q. So you would admit that you were given**
 8 **an agronomic rate?**
 9 A. Yes, I was. I didn't know what he was
 10 talking about.
 11 **Q. Okay, perfect. Right on.**
 12 **And do you remember when we first**
 13 **commenced this project, did you get ahold of James**
 14 **Courtney at all from IHS?**
 15 A. No, I don't think so.
 16 **Q. Did you contact James Courtney regarding**
 17 **a complaint to the sludge being applied to your**
 18 **land?**
 19 A. No.
 20 MR. MUEHLBERGER: Objection, Your Honor.
 21 This is beyond the scope of the direct.
 22 THE COURT: Well, this sort of feeds into
 23 some of what I was getting at earlier.
 24 Technically, you are absolutely correct,
 25 Mr. Muehlberger. And it is a sustainable

1 objection. But I'm going to allow the additional
 2 testimony even though it is beyond the scope
 3 because I do believe earlier on in the process,
 4 Mr. Pierce had identified Mr. Robinson as a
 5 witness. And that was kind -- it kind of even fed
 6 into my decision about the subpoena was that he
 7 seemed material to both parties.
 8 So I'm going to allow that even though
 9 you are technically correct and it's a sustainable
 10 objection otherwise.
 11 MR. MUEHLBERGER: Understood, Your Honor.
 12 THE COURT: Okay. Thank you.
 13 Please go ahead.
 14 MR. PIERCE: You can answer the question now,
 15 Mr. Robinson.
 16 THE WITNESS: What was that now?
 17 BY MR. PIERCE:
 18 **Q. So you did not make a complaint to**
 19 **James Courtney about sludge on your property --**
 20 A. No.
 21 **Q. -- is that correct?**
 22 A. No.
 23 **Q. So did you work with -- directly with**
 24 **Ernie Sprague to receive the sludge to your**
 25 **property and then point out to him where it should**

1 **be placed, and then you tilled it?**
 2 A. Yes.
 3 **Q. Is this the first time you've applied**
 4 **sludge to your property?**
 5 A. No, it wasn't.
 6 **Q. Okay. So there was a**
 7 **previous -- previous time where the lagoons were**
 8 **renovated in Lame Deer?**
 9 A. Yes.
 10 **Q. And you applied sludge at that time to**
 11 **your property as well?**
 12 A. Yes.
 13 **Q. Okay. Real quick, was I on scene while**
 14 **you and Ernie were doing this work?**
 15 A. Oh, I seen you a couple times there.
 16 **Q. Sure. But was I there for the primary**
 17 **time that you guys were doing the work?**
 18 A. No.
 19 **Q. Okay. And you would agree in this -- in**
 20 **this second paragraph here -- excuse me. You would**
 21 **also agree that in this document, you also agreed**
 22 **to provide daily logs on that second declaration,**
 23 **last line, correct?**
 24 A. Where's that at?
 25 **Q. So if we look down here where it says**

1 **second --**
 2 A. Okay.
 3 **Q. -- and then, "The subcontractor agrees**
 4 **to promptly begin." And then the second line**
 5 **there, that says, "Subcontractor will furnish**
 6 **contractor with logs for each day of application."**
 7 **Is that correct?**
 8 A. Yes.
 9 **Q. So you would admit that you agreed to**
 10 **provide those logs?**
 11 A. Yes.
 12 **Q. Did you provide those logs to me?**
 13 A. No, I never.
 14 **Q. Okay.**
 15 MR. PIERCE: That's all I have, Your Honor.
 16 THE COURT: Okay. Did you -- just a little
 17 follow-up. Did you create those logs?
 18 THE WITNESS: Yes.
 19 THE COURT: Okay. Did you supply them to
 20 anyone?
 21 THE WITNESS: No. The job never was done.
 22 BY MR. PIERCE:
 23 **Q. Did the EPA ask you for those logs?**
 24 A. No.
 25 **Q. Did the EPA ask you if you had any logs?**

1 A. No.
 2 **Q. Do you feel that the EPA's information**
 3 **request was legitimately looking for information?**
 4 A. Say that again.
 5 **Q. Do you believe that the information**
 6 **request from the EPA was looking for a way to**
 7 **protect the property, or were they just simply**
 8 **looking?**
 9 MR. MUEHLBERGER: Objection, Your Honor.
 10 Calls for speculation.
 11 THE COURT: I'll sustain that objection. I
 12 think -- and actually, I was going to ask one of
 13 you or do it myself. Can you pull up that
 14 information request that was sent to Mr. Robinson?
 15 I think it would be helpful for him to have it up
 16 on the screen. It was referred to as having been
 17 certified by him, so I think we need to cover that
 18 while he's here and available to testify.
 19 MR. PIERCE: Yes, Your Honor. I'll have to
 20 look through the exhibits and figure out exactly --
 21 THE COURT: Here. Hold on one second. I
 22 think I might be able to help. I have it noted
 23 as -- I think it's CX41. Is that right? I'm
 24 talking about the one with the responses for
 25 Mr. Robinson.

1 MR. PIERCE: Yes.
 2 THE COURT: I have that as CX41; is that
 3 right?
 4 MS. KACSUR: Correct, Your Honor.
 5 THE COURT: Okay, yeah. That's what I was
 6 referring to.
 7 MR. PIERCE: So what do I do here?
 8 THE COURT: You know, you might be able to
 9 just hold it up electronically or even hand it to
 10 him. But we need to just make sure it's
 11 the -- probably working off the electronic is
 12 really the best. Okay.
 13 So can you just move that so I can see
 14 the CX number on there, Mr. Pierce, and we can just
 15 clear that up for the record. Is it marked?
 16 MR. PIERCE: CX41.
 17 THE COURT: Yeah. Where is that showing?
 18 There we go.
 19 MR. PIERCE: Right there, Your Honor.
 20 THE COURT: Okay. So CX41. We're at page 1
 21 of 3. You know, I'm wondering if it might be
 22 simpler now that we've identified the specific
 23 document. Does anybody object if he just -- it
 24 might be easier for Mr. Robinson to simply hold it
 25 and look at it. Is that okay?

1 MR. MUEHLBERGER: That works, Your Honor.
 2 THE COURT: Okay. All right. So we've
 3 identified it. So just have a look over that,
 4 Mr. Robinson, and then I'm going to let the parties
 5 follow up with questions. And if I have any, I'll
 6 jump in.
 7 THE WITNESS: Okay.
 8 THE COURT: Did you look at both sides? Is
 9 it two-sided?
 10 THE WITNESS: There are two sides.
 11 THE COURT: Yeah. Take your time.
 12 THE WITNESS: Okay.
 13 THE COURT: Okay.
 14 BY MR. PIERCE:
 15 **Q. Based upon what we've seen and heard**
 16 **here today, do you believe that that is an accurate**
 17 **record still?**
 18 A. Yes.
 19 **Q. So you believe that the answer that you**
 20 **were not provided an agronomic rate is correct?**
 21 A. No.
 22 **Q. Okay. Okay. I think that -- one quick**
 23 **question: Who's George Cummins?**
 24 A. He's an IHS inspector.
 25 **Q. And then are you guys related?**

1 A. No.
 2 **Q. Okay. And so was he on scene at all**
 3 **when this project was being done?**
 4 A. Yes.
 5 **Q. Okay.**
 6 MR. PIERCE: Thank you.
 7 THE COURT: I just want to hop in with a
 8 question, I guess. Let me just pull it up here
 9 quickly. Bear with me a second.
 10 Okay. Mr. Robinson, so you know,
 11 examining -- having examined this document, I
 12 understood your testimony in response to
 13 Mr. Pierce's question about -- that asked about the
 14 agronomic rate. Going over this document, is there
 15 anything else on it that was not answered
 16 accurately or truthfully, whether intentional or
 17 not, but just not accurate? Any other answers you
 18 gave that were not accurate?
 19 THE WITNESS: No.
 20 THE COURT: Okay. I'm just going to leave it
 21 there for right now. I'd rather defer to the
 22 parties for any follow-up. So go ahead,
 23 Mr. Muehlberger.
 24 ///
 25 ///

1 REDIRECT EXAMINATION
 2 BY MR. MUEHLBERGER:
 3 **Q. I think I'd like to start with**
 4 **Complainant's Exhibit 41 again, which I think is**
 5 **the document that you have in your hand. Is that**
 6 **right, Mr. Robinson?**
 7 A. Yes.
 8 **Q. Okay. I'd like to take a look at page**
 9 **2. So this would be CX41 et. 2. Could you flip**
 10 **that over?**
 11 A. (Witness complies.)
 12 **Q. Could you please read the statement that**
 13 **begins with "I certify under penalty"?**
 14 A. "I certify under penalty of law that
 15 this statement is, to the best of my knowledge and
 16 belief, to be true, accurate, and complete. I'm
 17 aware that there are significant penalties and
 18 submitting false information or statements,
 19 including the possibility of fines or imprisonment
 20 for knowing violations."
 21 **Q. And then did you sign this document,**
 22 **Mr. Robinson?**
 23 A. Yes.
 24 **Q. Could we go back to page 1 of this? Go**
 25 **ahead and flip that back over. Can we go down to**

1 you. I'm sorry, could we go to page 6, please, of
 2 Complainant's Exhibit 30?
 3 BY MR. MUEHLBERGER:
 4 **Q. Let me start by asking, Mr. Robinson,**
 5 **did you receive this letter from EPA in November of**
 6 **2019?**
 7 A. Yes, I did.
 8 **Q. Okay. And could you please read after**
 9 **it says No. 5?**
 10 A. "If you developed or maintained or have
 11 in your possession the following records regarding
 12 the land application of sludge-related materials
 13 during August of 2018, provide the information
 14 listed below: The street address" -- address or
 15 legal description of the location; the dates upon
 16 which the location was used for land application
 17 of" -- I don't know, what does that say,
 18 biosolids -- "the number of acres upon which
 19 biosolids were land applied; the number of loads
 20 applied; a description of how the site restrictions
 21 of 40 CFR were met; and the annual application
 22 rates of biosolids as calculated."
 23 **Q. Thank you.**
 24 **Mr. Robinson, are you familiar with the**
 25 **biosolid regulations that EPA -- are you familiar**

1 **Question 4, please?**
 2 A. (Witness complies.)
 3 **Q. So the question asks if you were given**
 4 **information about the agronomic rate of land**
 5 **application of the pollutants contained in the**
 6 **sludge that was land applied on or about August**
 7 **22nd, 2018. Did you circle "no"?**
 8 A. Yes.
 9 **Q. Okay.**
 10 MR. MUEHLBERGER: I think now I'd like to go
 11 to Complainant's Exhibit 30, please.
 12 BY MR. MUEHLBERGER:
 13 **Q. Mr. Robinson, do you recognize this**
 14 **document?**
 15 A. No, I don't.
 16 **Q. Okay. Let's start at the top there. Is**
 17 **this a letter from the U.S. EPA Region 7 to you?**
 18 A. Yes.
 19 **Q. Okay. And is it dated November 14th,**
 20 **2019?**
 21 A. Yes.
 22 **Q. Okay.**
 23 MR. MUEHLBERGER: Could we go to page 2 of
 24 Complainant's Exhibit 30. Oh, I'm sorry. Let's go
 25 back to the first page. One second, please. Thank

1 **with Part 503, which are biosolids regulations?**
 2 A. No.
 3 **Q. Okay. Did Mr. Pierce explain to you**
 4 **about the recordkeeping requirements under the**
 5 **biosolids regulations connected to this land**
 6 **application project in 2018?**
 7 A. No.
 8 **Q. Did Mr. Pierce talk to you about**
 9 **creating records concerning management practices of**
 10 **the sewage sludge?**
 11 A. No.
 12 **Q. Did he talk to you about creating**
 13 **records concerning site restrictions for sewage**
 14 **sludge?**
 15 A. No.
 16 **Q. Did he talk to you about creating**
 17 **records for vector attraction concerning sewage**
 18 **sludge?**
 19 A. No.
 20 MR. MUEHLBERGER: No further questions.
 21 RE-CROSS-EXAMINATION
 22 BY MR. PIERCE:
 23 **Q. Mr. Robinson, is your field open to the**
 24 **public or easily accessible?**
 25 A. No.

1 **Q. You live in a very rural area of**
 2 **Montana; is that correct?**
 3 A. Yes.
 4 **Q. What's the population of Lame Deer?**
 5 A. Oh, a couple thousand, I think, maybe.
 6 **Q. Okay. And your property actually lies**
 7 **outside of the town of Lame Deer?**
 8 A. Yes.
 9 **Q. Okay. So there's a long dirt road that**
 10 **had to be traveled in order to get even to your**
 11 **field --**
 12 A. Yes.
 13 **Q. -- that goes through multiple other**
 14 **fields; is that correct?**
 15 A. Yes.
 16 **Q. Okay. So, realistically, the public or**
 17 **anybody else couldn't have gained access to your**
 18 **site?**
 19 A. No.
 20 **Q. Okay.**
 21 MR. MUEHLBERGER: Objection, Your Honor,
 22 relevance. This is not relevant to either of the
 23 counts in the complaint.
 24 THE COURT: What's the relevance, Mr. Pierce?
 25 MR. PIERCE: I'm sorry?

1 THE COURT: The relevancy of
 2 the accessibility.
 3 MR. PIERCE: The relevancy is they're trying
 4 to make the point of vector reduction and
 5 contamination -- possible contamination to humans.
 6 I'm pointing out that that is somewhat of a moot
 7 point.
 8 THE COURT: Based on remoteness?
 9 MR. PIERCE: Based on remoteness and
 10 inability to access the portion of the field.
 11 THE COURT: Okay. I'll overrule the
 12 objection and allow it.
 13 Did you want to respond any further to
 14 that with respect to the remoteness or
 15 accessibility of your property?
 16 THE WITNESS: No.
 17 THE COURT: Okay.
 18 BY MR. PIERCE:
 19 **Q. In your testimony just a second ago, you**
 20 **stated that I never gave you any information**
 21 **regarding 503; is that correct?**
 22 A. Yes.
 23 MR. PIERCE: Your Honor, RX5, et. 1.
 24 BY MR. PIERCE:
 25 **Q. Mr. Robinson -- give me just a second**

1 **here. So on this first declaration after it talks**
 2 **about your barley field, could you read the portion**
 3 **right after it says "Tom Robinson"?**
 4 A. On the first?
 5 **Q. Yeah. In the -- the first paragraph**
 6 **there where it says -- if you come down and it**
 7 **says, "barley field with pivot line owned by Tom."**
 8 A. Yeah.
 9 **Q. Can you read the portion right after**
 10 **that?**
 11 A. "In compliance with US 40 EPA 503
 12 regulations."
 13 **Q. So would you now admit that --**
 14 A. Yes.
 15 **Q. -- you were given --**
 16 A. Yes. It's been how many years ago?
 17 **Q. Yes, sir. No, I get that 100 percent.**
 18 **And it's been a long time.**
 19 MR. PIERCE: Thank you.
 20 THE WITNESS: Yes.
 21 THE COURT: Anything else for Mr. Robinson?
 22 MR. MUEHLBERGER: Yeah. Your Honor, I know
 23 this is a little unusual, but I just have a couple
 24 more questions, if that's okay.
 25 THE COURT: It's fine. I think you all

1 should cover everything you'd like with
 2 Mr. Robinson while he's here.
 3 REDIRECT EXAMINATION
 4 BY MR. MUEHLBERGER:
 5 **Q. Mr. Robinson, Mr. Pierce and Adamas**
 6 **Construction, they were in charge of this sewage**
 7 **sludge project, weren't they?**
 8 A. Yes.
 9 **Q. Okay. And Mr. Pierce directed you on**
 10 **how you were supposed to apply the sewage sludge to**
 11 **the land, correct?**
 12 A. All I did is till it in. I didn't apply
 13 it.
 14 **Q. And thank you for that clarification.**
 15 **And was that under the direction of Mr. Pierce?**
 16 A. Yes.
 17 **Q. Thank you.**
 18 MR. MUEHLBERGER: No further questions.
 19 THE COURT: You know, just for my benefit, I
 20 think I actually have a little bit of a grasp from
 21 this from my earlier life agriculture. But when
 22 you say "till it in," can you explain what you
 23 mean?
 24 THE WITNESS: Oh. They would put it on. I
 25 would have so many -- what was it, 45 minutes to

1 work it in.
 2 THE COURT: Into the soil?
 3 THE WITNESS: Yes. So I would work it in 4
 4 inches.
 5 THE COURT: Okay.
 6 THE WITNESS: Till it in.
 7 THE COURT: So you're mixing that sludge --
 8 THE WITNESS: Yes.
 9 THE COURT: -- that's applied to the top of
 10 the soil, and you're mixing it into the soil?
 11 THE WITNESS: Yes.
 12 THE COURT: Okay. All right. Thanks so
 13 much.
 14 Go ahead.
 15 MR. PIERCE: You know what, Your Honor, I
 16 can't think of the question I was trying to come up
 17 with. Can I get a five-minute break?
 18 THE COURT: Sure.
 19 MR. PIERCE: Thank you.
 20 THE COURT: Yeah. No problem. We'll come
 21 back in five.
 22 Mr. Robinson, you can stay there, or you
 23 can just make sure you're back in about five
 24 minutes.
 25 THE WITNESS: Okay.

1 THE COURT: Thank you.
 2 (Whereupon, a brief
 3 recess was taken.)
 4 THE COURT: Okay. Mr. Robinson, you can come
 5 back and take the stand. We're back on record.
 6 Okay. Go right ahead.
 7 MR. PIERCE: Thank you, Your Honor. I
 8 appreciate you allowing me the break.
 9 THE COURT: Sure.
 10 RE-CROSS-EXAMINATION
 11 BY MR. PIERCE:
 12 **Q. Mr. Robinson, were you aware of the IHS**
 13 **bid packet to start this project?**
 14 A. No.
 15 **Q. Did IHS ever contact you about utilizing**
 16 **your land as part of their --**
 17 A. Oh, yes. Yes, they did.
 18 **Q. Okay. And I realize it's been a while,**
 19 **so the recollection is a little hard there. Don't**
 20 **feel bad about that.**
 21 **So when the project began, there was a**
 22 **meeting down at the Northern Cheyenne Utility**
 23 **Commission that you attended; is that correct?**
 24 A. Yes.
 25 **Q. And NCUC general manager Sheri Bement**

1 **was there; is that correct?**
 2 A. Yes.
 3 **Q. And James Courtney from IHS?**
 4 A. Yes.
 5 **Q. Ernie Sprague from D&R Disposal was**
 6 **there as well, correct?**
 7 A. Not when I was there.
 8 **Q. Okay. And then the reason for that**
 9 **meeting was to sort of go over the parameters for**
 10 **the construction project; is that correct?**
 11 A. Yes.
 12 **Q. And NCUC was the main contractor; is**
 13 **that correct?**
 14 A. Yes.
 15 **Q. Okay. Was the -- you earlier stated**
 16 **that the project was incomplete. Why is that?**
 17 A. I don't know.
 18 **Q. So it was -- the project was shut down?**
 19 A. Yes, it was shut down.
 20 **Q. And do you know who shut the project**
 21 **down?**
 22 A. IHS.
 23 **Q. So IHS shut the project down, and NCUC?**
 24 A. Yes.
 25 **Q. Okay. So you said earlier as well in**

1 **your testimony that you tilled the soil then within**
 2 **45 minutes and felt that that was a pretty**
 3 **important thing, the 45 minutes. How did you know**
 4 **to do that?**
 5 A. Oh, I think it was you that told me
 6 or -- I don't recollect.
 7 **Q. Okay.**
 8 A. Somebody was there that told me that I
 9 had to.
 10 **Q. Yeah. And that's perfectly fine. Would**
 11 **it surprise you to learn that the 503 requirements**
 12 **require that to be done within six hours?**
 13 A. No.
 14 **Q. Okay. And you did it within 45?**
 15 A. Yes.
 16 **Q. So you exceeded the expectations of 503?**
 17 A. Yes.
 18 MR. PIERCE: Perfect. Thank you.
 19 THE COURT: I just want to ask you one
 20 question. Do you remember -- I understand your
 21 testimony about tilling it into the soil. Do you
 22 remember who literally put it on the surface of the
 23 soil so that you could then go in and till it in?
 24 THE WITNESS: Yes.
 25 THE COURT: And who put it on the surface of

1 the soil?
 2 THE WITNESS: Ernie Sprague.
 3 THE COURT: Okay. And do you have any -- do
 4 you recall -- and if you don't, just tell me. It's
 5 fine. I understand it's going back quite some
 6 time. Do you recall how often -- and I say how
 7 often because I think you testified that at some
 8 point, you saw Mr. Pierce at your site.
 9 THE WITNESS: Uh-huh.
 10 THE COURT: I think you might have said a
 11 couple of times?
 12 THE WITNESS: Yes.
 13 THE COURT: Okay. So was it just a couple of
 14 times that you saw him or do you remember whether
 15 he was there with any more regularity during the
 16 course of the project?
 17 THE WITNESS: No. It was just a couple of
 18 times when we first got started.
 19 THE COURT: Okay. And when you say, "We
 20 first got started," tell me what that means in
 21 terms of the stages of this project.
 22 THE WITNESS: Oh, he had a big tanker truck
 23 come in, and it had some spray bars on there.
 24 THE COURT: Okay.
 25 THE WITNESS: And he was there. We tried

1 THE COURT: And how about from you?
 2 MR. PIERCE: No, Your Honor.
 3 THE COURT: All right. So he can be released
 4 from the subpoena to go on about his way?
 5 MR. MUEHLBERGER: Yes, Your Honor.
 6 THE COURT: Mr. Pierce?
 7 MR. PIERCE: Yes, Your Honor.
 8 THE COURT: All right. Thanks so much for
 9 appearing today and testifying.
 10 THE WITNESS: Thank you.
 11 THE COURT: Okay. So it's about 11:25. I
 12 think you have one witness left, Mr. Sprague?
 13 MR. MUEHLBERGER: That's correct, Your Honor.
 14 THE COURT: Okay. Do you want to get started
 15 with him or not?
 16 MR. MUEHLBERGER: One second.
 17 THE COURT: Okay.
 18 MR. MUEHLBERGER: Complainant would like to
 19 propose that we take our lunch break now.
 20 THE COURT: Okay. Was an hour good for
 21 everybody, if we stick with that?
 22 MR. MUEHLBERGER: That works.
 23 THE COURT: Okay, great. So we're at 11:25.
 24 I'm just going to call it 11:30. And how about we
 25 just come back at 12:30, okay?

1 that first. It wouldn't work. It kept plugging
 2 up. Then after that he got Ernie Sprague to come
 3 in and dump it on.
 4 THE COURT: Onto the soil?
 5 THE WITNESS: Yes.
 6 THE COURT: Okay.
 7 THE WITNESS: Because that spray bar kept
 8 plugging up.
 9 THE COURT: So --
 10 THE WITNESS: And he was there --
 11 THE COURT: Go ahead.
 12 THE WITNESS: -- when that was going on.
 13 THE COURT: Okay. When Ernie Sprague was
 14 there, too?
 15 THE WITNESS: Yeah. An inspector was there.
 16 THE COURT: Would that be Mr. Cummins?
 17 THE WITNESS: Yes.
 18 THE COURT: Okay. So Mr. Cummins was there,
 19 then, when Mr. Sprague put the sludge on top of the
 20 soil?
 21 THE WITNESS: Yes.
 22 THE COURT: Okay. All right. Thank you.
 23 That's helpful.
 24 Any other questions for Mr. Robinson?
 25 MR. MUEHLBERGER: No, Your Honor.

1 MR. MUEHLBERGER: That sounds good.
 2 THE COURT: All right. See you all then.
 3 Have a good lunch.
 4 (Whereupon, a lunch recess was from taken
 5 from 11:25 a.m. to 12:32 p.m.)
 6 AFTERNOON SESSION, WEDNESDAY, AUGUST 23, 2023
 7 (Whereupon, the hearing reconvened at 12:32
 8 p.m., with all interested parties present, and the
 9 following proceedings were had:)
 10 THE COURT: Okay. We can go ahead and get on
 11 record.
 12 All right. We're back on record after a
 13 lunch break. It's just I guess about 12:32, give
 14 or take. Parties are all back. And I think
 15 we're -- this is your final witness, complainant?
 16 MR. MUEHLBERGER: Yes, Your Honor.
 17 THE COURT: Okay. Mr. Sprague. And I know
 18 that respondents plan to call Mr. Sprague as well.
 19 If -- Mr. Sprague were you planning on remaining
 20 throughout the entire proceeding?
 21 THE WITNESS: Yes, ma'am.
 22 THE COURT: Okay. So if you want, we can
 23 just take -- you can recall him for the respondents
 24 when you want to elicit testimony or he can stay on
 25 the stand. It's this kind of same thing about the

1 scope and all that. I don't mind being far more
 2 relaxed about it, but it's really whatever's the
 3 greatest ease for all of you in terms of how you
 4 present your case.
 5 MR. PIERCE: Your Honor, I think the way that
 6 we handled Mr. Robinson worked fine.
 7 THE COURT: Okay. So he just takes the stand
 8 once, and you all just ask the questions you want?
 9 MR. PIERCE: Yes, Your Honor.
 10 THE COURT: Okay. Does that work for you
 11 all?
 12 THE WITNESS: That's seems to be just fine.
 13 THE COURT: Okay. And for the complainant?
 14 MR. MUEHLBERGER: I'm sorry. Could you
 15 please repeat what the process --
 16 THE COURT: Yeah. No worries. Mr. Pierce
 17 just said that he thought the way it was handled
 18 for Mr. Robinson was fine; that basically, the
 19 witness would just take the stand once and you all
 20 would ask whatever questions you wanted since
 21 you're both calling him. Is that okay with you
 22 all?
 23 MR. MUEHLBERGER: One minute, Your Honor,
 24 please.
 25 THE COURT: Sure.

1 So once the complainant rests, if you want to
 2 just go ahead and question him first so that he
 3 could -- you know, I suppose depending on how long
 4 the testimony is, so that he could be released
 5 today. Would you be open to that, Mr. Pierce?
 6 MR. PIERCE: Yes, Your Honor. I'll do
 7 everything I can to accommodate him.
 8 THE COURT: Okay. How long did you think you
 9 all would be questioning? Do you think it's
 10 reasonable that we could conclude with his
 11 testimony today if we did it in the normal course,
 12 but just took him out of turn with regard to
 13 respondent's case?
 14 MS. KACSUR: Yes, Your Honor.
 15 THE COURT: Okay. Well, let's give that a
 16 whirl and see just so that he doesn't need to be
 17 inconvenienced with another day here.
 18 Okay. All right. So we'll proceed with
 19 complainant calling him on behalf of your case in
 20 the normal course. And then we'll see,
 21 Mr. Sprague, if then after you complete your
 22 testimony on behalf of complainant, you can maybe
 23 just stay right there, and respondents will take
 24 you out of turn.
 25 THE WITNESS: Yes, ma'am.

1 MS. KACSUR: Your Honor?
 2 THE COURT: Yes.
 3 MS. KACSUR: The EPA would -- oh, thank
 4 you -- would like to request that we proceed with
 5 Mr. Sprague, I guess, in a more normal witness
 6 presentation fashion, if that's all right, since he
 7 does intend to be here for the remainder of the
 8 hearing.
 9 THE COURT: That's fine.
 10 THE WITNESS: I have a question. I don't
 11 plan on being here tomorrow. I've already missed
 12 several days of work. And I'll be here all day
 13 today.
 14 THE COURT: Okay. Well --
 15 THE WITNESS: If this goes into tomorrow,
 16 that's fine. But I was supposed to testify
 17 yesterday. So if we could do it the way we did it
 18 with Mr. Robinson, I would be more than happy.
 19 THE COURT: Well, I think -- you know, I
 20 think we might be able to accommodate it for
 21 everybody, and that we still have a good chunk of
 22 time today.
 23 THE WITNESS: Right.
 24 THE COURT: So maybe one alternative would
 25 be to simply call Mr. Sprague perhaps out of turn.

1 THE COURT: Okay. Come on up and I'll place
 2 you under oath.
 3 ERNIE SPRAGUE,
 4 called as a witness on behalf of the complainant,
 5 having being first duly sworn testified as follows:
 6
 7 THE WITNESS: Yes, ma'am.
 8 THE COURT: Thank you. Please have a seat.
 9 Okay. Please go ahead, Ms. Kacsur.
 10 DIRECT EXAMINATION
 11 BY MS. KACSUR:
 12 **Q. Good afternoon, Mr. Sprague. Can you**
 13 **provide and spell your full name, please?**
 14 A. Yes. My name is Ernie Sprague. It's
 15 E-R-N-I-E, S-P-R-A-G-U-E.
 16 **Q. Can you describe your line of work,**
 17 **Mr. Sprague?**
 18 A. Yes. I am a production supervisor at
 19 the Colstrip coal mine as my main job. I also own
 20 and operate D&R Disposal, which is a septic tank
 21 and a porta-potty rental business.
 22 **Q. Have you ever worked in the area of land**
 23 **application of sewage sludge?**
 24 A. Before this, no.
 25 **Q. Before this, meaning?**

1 A. Before this application, no.
 2 **Q. Do you know Mr. Nathan Pierce?**
 3 A. Yes, I do.
 4 **Q. And how do you know Mr. Pierce?**
 5 A. Well, Mr. Pierce contacted me about the
 6 job that we're speaking about.
 7 **Q. Can you describe this job that you're**
 8 **referring to?**
 9 A. Yes. It is removal of sludge waste from
 10 the Lame Deer Lagoon and transferring it to the
 11 property seven and a half miles west of Lame Deer
 12 owned by Northern Cheyenne Reservation and leased
 13 by Tom Robinson.
 14 **Q. Can you describe for us just in some**
 15 **detail all of the steps involved with a project**
 16 **like this, all of the processes that sewage sludge**
 17 **would go through?**
 18 A. All the processes that it would go
 19 through or could go through? Because --
 20 **Q. Did go through.**
 21 A. -- a lot of the testimony is saying
 22 stuff that it could go through.
 23 **Q. I'll correct my question.**
 24 A. But this is exactly what happened. Mr.
 25 Adamas --

1 THE COURT: Okay. Hold on just one second.
 2 I think that's what she's about to ask you, but let
 3 her rephrase her question.
 4 Go ahead, Ms. Kacsur.
 5 MS. KACSUR: What I was getting at was just
 6 more generally, I guess, what a land application
 7 project looks like.
 8 THE COURT: Not specific to this case?
 9 MS. KACSUR: Not specific to this case, no.
 10 THE WITNESS: So you want me to answer what
 11 could happen, not what did happen?
 12 MS. KACSUR: Yes. Let's start with what
 13 could happen.
 14 THE WITNESS: Okay. There's several things
 15 that could happen. One --
 16 MR. PIERCE: Your Honor --
 17 THE COURT: Hold on. Hold on. I can't hear
 18 you.
 19 MR. PIERCE: Your Honor, it calls for
 20 speculation on behalf of the witness. So I object.
 21 THE COURT: Okay. I did have kind of a
 22 threshold question before he responds, potentially.
 23 But I need to rule.
 24 Was this the only sewage sludge
 25 application project you've worked on, meaning the

1 one that Mr. Pierce called you about to do, or have
 2 you done other projects in the past such that you
 3 know what a process would be, generally?
 4 THE WITNESS: I've worked around them, Your
 5 Honor. This is the first one I've actually been
 6 on.
 7 THE COURT: Okay. So you feel you have
 8 personal knowledge to be able to --
 9 THE WITNESS: Yeah. I have --
 10 THE COURT: -- speak to what the process is
 11 generally?
 12 THE WITNESS: -- some knowledge to speak --
 13 THE REPORTER: I'm sorry. Can you just wait
 14 until the judge is finished?
 15 THE WITNESS: I'm sorry.
 16 THE COURT: Yeah. The transcript will be a
 17 mess. I know you've been listening to a lot and
 18 you probably have a lot to say. And I'm going to
 19 hear everything you want to tell me. We just have
 20 to do it in a very clear order.
 21 So do you feel you have enough personal
 22 knowledge to be able to testify about a process
 23 generally, independent of what happened
 24 particularly here?
 25 THE WITNESS: Yes, ma'am.

1 THE COURT: Okay. Then I'm going to overrule
 2 the objection, and you can go ahead and answer.
 3 THE WITNESS: Okay. So the sludge -- or the
 4 lagoons can be pumped out and put into frack tanks
 5 like Mr. Adamas had done and then spread on the
 6 fields in a liquified form, or they can be pumped
 7 out and put into draining tanks where they can be
 8 turned into sludge form and then dumped in a dump
 9 like previous witnesses spoke about where that
 10 sewage is in absolute solid form. And it can go to
 11 a Class 2 dump according to the state of Montana.
 12 MS. KACSUR: Thank you.
 13 THE WITNESS: That is not what -- that was
 14 not solids that my -- my truck is incapable of
 15 hauling solids like that.
 16 BY MS. KACSUR:
 17 **Q. Thank you.**
 18 **Did you -- now speaking more**
 19 **specifically about this project, did you**
 20 **participate in the preparation of the sewage sludge**
 21 **prior to it being transported?**
 22 A. No.
 23 **Q. Were you sent an information request**
 24 **letter from the EPA?**
 25 A. Yes.

1 **Q. And did you provide a response to that**
 2 **letter?**
 3 A. Yes, I did.
 4 MS. KACSUR: Let's show CX42, please.
 5 BY MS. KACSUR:
 6 **Q. Do you recognize this document?**
 7 A. Yes, I do.
 8 **Q. What is this document?**
 9 A. This is the response that I sent to the
 10 EPA for that request.
 11 **Q. Can I have you read -- if we'll go down**
 12 **on the page a bit.**
 13 A. Start right there at 8/9?
 14 **Q. Yes, please. Read the highlighted text**
 15 **there.**
 16 A. Yes. It says, "On 8/9/19" -- which is a
 17 typo. It's meant to be 8/9/18 -- I showed up for
 18 work. I met Nathan with Adamas Construction. He
 19 showed me five frack tanks he wanted offloaded.
 20 Within a few minutes, a man arrived and introduced
 21 himself as George Cummins with Indian Health
 22 Services and Tribal Utilities Commission, and that
 23 he was representing the tribe. There were several
 24 other tribal workers, too. Another was James
 25 Bement from Tribal Utilities. The others I did not

1 ten-mile-an-hour speed, where to dump, you know,
 2 whether it's going to be on pre-tilled or
 3 post-tilled --
 4 THE COURT: Okay.
 5 THE WITNESS: -- stuff.
 6 THE COURT: And who gave those instructions?
 7 THE WITNESS: George Cummins and Mr. Nathan.
 8 They were both there.
 9 THE COURT: Okay. Thank you.
 10 Go ahead, Ms. Kacsur.
 11 MS. KACSUR: Thank you.
 12 BY MS. KACSUR:
 13 **Q. Can we go to the next page, please.**
 14 A. Sure.
 15 **Q. This is also CX42, et. page 3.**
 16 **And can I have you read that highlighted**
 17 **line as well?**
 18 A. Yes. It says, "Nathan and his team were
 19 on both ends of the job. I saw them taking samples
 20 and moving pipe, etc."
 21 **Q. Who did you take directions from during**
 22 **this project?**
 23 A. I took directions from both Nathan
 24 Pierce and George Cummins. George Cummins made
 25 it very clear that he was representing -- I want

1 know, and they did not introduce themselves. I
 2 then went to work offloading my first load. After
 3 I was loaded, the whole group of us drove out to
 4 Tom Robinson's place where we found Tom pre-tilling
 5 the field with a tractor and a disk. Some
 6 instructions [sic] were made. I made a test run
 7 while they walked along beside the truck, and it
 8 was determined that I should maintain a
 9 ten-mile-an-hour speed. Some more rules were
 10 given. One was to stay on top of Tom's disk marks.
 11 That was soon changed to inside his marks. This
 12 was easy because we were working from the outside
 13 in.
 14 THE COURT: Hold on just one second. You had
 15 said some instructions were made. So I'm reading
 16 introductions. Is "introductions" a typo?
 17 THE WITNESS: Excuse me? Yeah, some
 18 introductions were made.
 19 THE COURT: Okay. So not instructions,
 20 introductions.
 21 THE WITNESS: No, they were also given
 22 instructions. We were also given instructions.
 23 THE COURT: Okay.
 24 THE WITNESS: The instructions, like I
 25 started to point out here, like the

1 to clarify something here. There's been a lot
 2 of -- what do I want to say -- just initials thrown
 3 around. NC -- NCUC, NCUC, ISS [sic], all this. He
 4 said that he was in charge of ICUC [sic] and IHS,
 5 he was representing them both, and that Mr. Pierce
 6 was a subcontractor -- was a contractor. So I
 7 took -- and they had a meeting previous that
 8 Mr. Tom Robinson spoke about, and Tom said I was
 9 not there. He was correct. I was not able to
 10 attend that meeting where they went over the rates
 11 and all who was going to be involved. But when I
 12 showed up on --
 13 THE COURT: Now were you referring to the
 14 pre-construction meeting that you were not at?
 15 THE WITNESS: Yes. Yes.
 16 THE COURT: Okay.
 17 THE WITNESS: I was not -- I was not
 18 available to attend that because of my other job.
 19 But when I showed up on 8/9, I made sure that I
 20 didn't touch anything until I had a tribal
 21 representative there. I've had enough dealings
 22 with the tribe to know that you make sure you have
 23 someone there that is representing them. And
 24 Mr. George Cummins said that he represented both
 25 NCUC and IHS and that he was in charge.

1 BY MS. KACSUR:
 2 **Q. Was anyone else involved in the project**
 3 **beyond George Cummins and Nathan Pierce?**
 4 A. Yes. There was several people involved.
 5 And I say here in my statement that there was
 6 several pickups and other people moving around. I
 7 saw other people taking samples. I saw other
 8 people cleaning out screens for the sewage lagoon,
 9 doing daily -- or weekly maintenance, whatever you
 10 want to call it, where they were cleaning the
 11 screens and taking samples, both on the lagoon side
 12 and on the dump side. Now, I've not seen any of
 13 those samples testified yet. Where they've gone, I
 14 don't know.
 15 THE COURT: I'm sorry to keep interrupting.
 16 I just want to make sure that I'm understanding all
 17 of this. And so when you say both on the lagoon
 18 side and on the dump side, can you just elaborate
 19 for my benefit what you mean?
 20 THE WITNESS: Yes. Yes, ma'am. The sewage
 21 lagoon is where the sewage is actually coming from
 22 the city into a lagoon. It's supposed to be a
 23 treatment facility there where it just transfers
 24 from one lagoon to another to another, and then it
 25 dumps into the creek. That is the Lame Deer Creek

1 that everyone has been talking about. But the dump
 2 site is 7.5 miles away to the west on Tom
 3 Robinson's place.
 4 THE COURT: Okay. So the dump site is
 5 Mr. Robinson's property where this was applied?
 6 THE WITNESS: That's correct.
 7 THE COURT: Okay. Okay. Thank you.
 8 Go ahead.
 9 BY MS. KACSUR:
 10 **Q. So the people you've just described**
 11 **taking samples and doing maintenance, are you aware**
 12 **of who they were or who they worked for?**
 13 A. The people that were taking some of the
 14 samples and doing the maintenance were in vehicles
 15 that were UC -- excuse me -- utility vehicles.
 16 **Q. Switching gears a bit.**
 17 **Are you familiar with the biosolids**
 18 **regulations found at Part 503 that have been**
 19 **discussed?**
 20 A. Somewhat, yes.
 21 **Q. What is the extent, I guess, of your**
 22 **familiarity with them?**
 23 A. Well, I know that there's rules you have
 24 to apply -- you have to follow when you're
 25 applying. Some of that is land restrictions, who

1 comes and goes on the land, how far it is away from
 2 water, how far away it is from cattle, people, what
 3 signage you put up, and what your -- your agronomic
 4 dispersal rate. And I also included a rate with my
 5 statement here of 19,000 gallons per acre, which is
 6 less than what the IHS or Utilities had said of
 7 22,000 and 23,000. So I don't know why my
 8 calculations weren't considered, considering that
 9 they're more stringent.
 10 **Q. You mentioned that -- or you responded**
 11 **that you took directions from both Mr. Pierce and**
 12 **Mr. Cummins, correct?**
 13 A. That's correct.
 14 **Q. Did at any point Mr. Pierce discuss the**
 15 **recordkeeping requirements under Part 503 with you?**
 16 A. Yes. That was all discussed in a group
 17 meeting as we stood there that Tom Robinson was
 18 going to keep records, I was going to keep records,
 19 and George Cummins said that he would be collecting
 20 them.
 21 **Q. What kinds of records were you asked to**
 22 **keep?**
 23 A. Dump records for the records that I
 24 haul.
 25 **Q. Can you elaborate on what a dump record**

1 **might contain?**
 2 A. Well, a dump record will contain what
 3 you're hauling, what time you hauled it, what time
 4 you offloaded it, and where you offloaded it.
 5 **Q. Did Mr. Pierce ask you to keep records**
 6 **of management practices?**
 7 A. No. I'm not in the management field.
 8 **Q. Did Mr. Pierce discuss keeping records**
 9 **of vector attraction reduction with you?**
 10 A. No.
 11 **Q. And did Mr. Pierce discuss keeping**
 12 **records of site restrictions with you?**
 13 A. No. But we discussed the site
 14 restrictions when we stood in a circle with me, Tom
 15 Robinson, Mr. Pierce, and George Cummins.
 16 THE COURT: Do you remember what they were,
 17 what the site restrictions were?
 18 THE WITNESS: Yes. I was told not to read
 19 this, but I'm going to read it anyway.
 20 THE COURT: Okay. Who told you not to read
 21 it?
 22 THE WITNESS: I was told I wasn't going to be
 23 discussing it.
 24 THE COURT: Oh.
 25 THE WITNESS: But I'm going to read it

1 anyway.
 2 THE COURT: Okay.
 3 THE WITNESS: It says, "Number 2," it
 4 says --
 5 MR. PIERCE: Your Honor, can we get some
 6 clarification on that, who told him not to discuss
 7 it?
 8 THE WITNESS: Yes. Chris did.
 9 MS. KACSUR: I would like --
 10 THE WITNESS: When we -- when we
 11 discussed -- when we met on Monday, I was told I
 12 was not to read anything other than the
 13 highlighted --
 14 MS. KACSUR: I would like to make just a
 15 point of clarification, Your Honor. Chris and I
 16 made clear that we were going to ask Mr. Sprague to
 17 read highlighted portions, but we did not at any
 18 point say we did not want him to read the
 19 non-highlighted portions.
 20 MR. PIERCE: Is that your understanding,
 21 Mr. Sprague?
 22 THE WITNESS: Yeah. They said that I was
 23 only to read the highlighted portions.
 24 THE COURT: Okay.
 25 MS. KACSUR: That was all we were going to

1 request of you to read.
 2 THE WITNESS: That was all they were going to
 3 request of me, but I would like to read the whole
 4 thing.
 5 THE COURT: Okay. Well, hold on just a
 6 second. You know, I understand what this means
 7 because when you're being called by a party, there
 8 may be particular areas that they want to cover and
 9 maybe not other areas --
 10 THE WITNESS: Right. That they don't want to
 11 cover.
 12 THE COURT: -- that they maybe don't want to
 13 cover.
 14 THE WITNESS: I understand that.
 15 THE COURT: But -- but -- hold on. Hold the
 16 thought. Both sides are going to be able to draw
 17 whatever testimony that they want from you. And
 18 it's very clear to me that there's a good bit you
 19 want to share. And as the judge, I want to hear
 20 it.
 21 THE WITNESS: Okay. Because I haven't -- I
 22 have not even started.
 23 THE COURT: Okay. But there are some
 24 limitations, too, with respect to the issues I have
 25 to decide.

1 THE WITNESS: Right.
 2 THE COURT: So as long as it's relevant to
 3 the issues I have to decide, I want you to feel
 4 comfortable sharing them. But out of courtesy to
 5 the parties and the testimony that they want to
 6 elicit, right now I just want you to answer the
 7 questions that they're asking you, and then maybe
 8 I'll follow up or just give you the opportunity to
 9 open-endedly share whatever maybe wasn't drawn
 10 out --
 11 THE WITNESS: Okay.
 12 THE COURT: -- from their questions. Okay?
 13 So you have the chance to share what you think is
 14 important as it relates to this case --
 15 THE WITNESS: Okay.
 16 THE COURT: -- but we need to do this in an
 17 orderly fashion. So just hang tight for a little
 18 bit and compose your thoughts. And you've got
 19 things written down, so I'm assuming you won't
 20 forget what you want to share. But right now, just
 21 respond to the questions by Ms. Kacsur, and we'll
 22 get there eventually. Okay.
 23 Go ahead.
 24 BY MS. KACSUR:
 25 **Q. Mr. Sprague, I'd like to invite you to**

1 **read the part of your statement that you would like**
 2 **to read.**
 3 A. Okay. It says -- you asked me what some
 4 of the restrictions were. Number 2, it says, "Keep
 5 the gates closed so that cattle did not get in or
 6 out." There was also a sign on the gate that had
 7 "No trespassing." There's no dumping in bad
 8 weather. Tom and I would control the dump -- Tom
 9 would control the dump area by pre-disking. And I
 10 did not have any contact with the tribe workers
 11 after that, only Tom and Nathan. I was also
 12 directed by Mr. George Cummins through Nathan
 13 that I was not allowed to do any work on weekends,
 14 so... Because they had to be there to control it.
 15 MS. KACSUR: I'd like to turn now to CX42.
 16 MS. MORENO: What page?
 17 MS. KACSUR: Page 4.
 18 BY MS. KACSUR:
 19 **Q. Do you recognize this document,**
 20 **Mr. Sprague?**
 21 A. Yes, I do.
 22 **Q. What is this document?**
 23 A. This is a contract between me and Adamas
 24 Construction.
 25 **Q. Can I have you read the highlighted text**

1 **there?**
 2 A. Yes. It says, Subcontractor agrees to
 3 furnish all materials to perform all work necessary
 4 to complete the pumping, removal and hauling of
 5 biosolid sludge from the frack tanks located at the
 6 Lame Deer Lagoons in Lame Deer, Montana, and haul
 7 it to Tom Robinson's pivot, approximately 15 miles
 8 roundtrip.
 9 **Q. Who is the contractor mentioned in this**
 10 **paragraph?**
 11 A. Adamas Construction.
 12 **Q. And who is the subcontractor?**
 13 A. D&R Disposal.
 14 **Q. In reality, when this project was**
 15 **happening, did you furnish all material and perform**
 16 **all work regarding the pumping, removing and**
 17 **hauling of the sludge?**
 18 A. I removed the sludge from the tanks. I
 19 did not put the sludge from the lagoon into the
 20 tanks.
 21 **Q. Did anybody else participate in the**
 22 **pumping, removal or hauling of the sludge?**
 23 A. Yes. There was another company from
 24 Hardin that had a tanker truck, and they had a hard
 25 time offloading. But I do not know the name of

1 that company. They were there for -- I do know
 2 that they were there for two days and then left.
 3 **Q. They were -- by "there," you mean at the**
 4 **application site?**
 5 A. Yes. They were at the application for
 6 two days.
 7 **Q. Do you know who hired that company?**
 8 A. No, I don't.
 9 THE COURT: Was that -- you heard
 10 Mr. Robinson's testimony when he talked about the
 11 two occurrences, the first time that didn't involve
 12 you. Was that -- what you're just referring to,
 13 was that the first time, do you think, or do you
 14 not know?
 15 THE WITNESS: I was the first one to start
 16 pumping out of the tanks --
 17 THE COURT: Okay.
 18 THE WITNESS: -- because they were -- they
 19 were full when I started. What Mr. Robinson, I'm
 20 sure, was talking about is when this tanker showed
 21 up on the -- they showed up on the 8/16, on August
 22 16th. And they -- I don't know how much they
 23 hauled, but I do know that I had talked to the
 24 driver the next day. I wasn't able to be there on
 25 the 16th. I was there on the 17th, and I had

1 offloaded the truck for them.
 2 THE COURT: Okay.
 3 THE WITNESS: So...
 4 THE COURT: Okay. What does that mean
 5 exactly, you had to offload the truck for them?
 6 THE WITNESS: Well, solids, biowaste, all
 7 that comes in different liquid forms.
 8 THE COURT: Okay.
 9 THE WITNESS: If it's too thick, you're not
 10 able to pump it, and you're not able to extract it
 11 or move it. So you add water to it, you're able to
 12 move it. So their exits were too small for the
 13 sludge to go out of or liquify to go out of. And
 14 their trailer wasn't set up for application either.
 15 THE COURT: Okay.
 16 THE WITNESS: So they were trying to dump
 17 through a cone belly, and every time they opened
 18 it, they were getting sprayed, so...
 19 THE COURT: Okay. Thank you.
 20 BY MS. KACSUR:
 21 **Q. Who gave you instructions to work with**
 22 **this other company?**
 23 A. Nathan Pierce asked me if I would help
 24 offload the truck.
 25 MS. KACSUR: Thank you, Your Honor. No

1 further questions.
 2 THE COURT: Okay.
 3 CROSS-EXAMINATION
 4 BY MR. PIERCE:
 5 **Q. Mr. Sprague, you testified that**
 6 **IHS -- you believe IHS had control over the**
 7 **project; is that correct?**
 8 A. According to George Cummins, he said he
 9 represented IHS and Northern Tribal Utilities.
 10 **Q. And he said that he was in control of**
 11 **the project?**
 12 A. Yes, he said he was in control of the
 13 project.
 14 **Q. Who is Sheri Bement?**
 15 A. Sheri Bement is the general manager for
 16 the utilities company -- or not utilities company,
 17 but Northern Cheyenne Utilities.
 18 **Q. And did you meet with Sheri?**
 19 A. Beforehand, no.
 20 **Q. Did you meet with Sheri after?**
 21 A. I had a -- I did go meet with Sheri the
 22 day that one of the utility trucks showed up and
 23 locked me out of the lagoon. I was actually
 24 leaving Tom Robinson's place. I was with Tom
 25 Robinson a few moments earlier. Tom Robinson and I

1 worked hand-in-hand in communicating every day,
 2 make sure he was there, make sure I was there, so
 3 that the field could be disked right after
 4 application.
 5 I had left Tom Robinson in the field.
 6 As I was heading back to Lame Deer, the
 7 utilities -- Northern Cheyenne Utilities pickup
 8 stopped me and told me that I was to cease work
 9 immediately and that I was not -- I was no longer
 10 allowed on the property. So I stopped in and I
 11 spoke with Ms. Sheri Bement where she unleashed on
 12 me for not having a current TERO card and said that
 13 that was the reason that I was locked off the
 14 property, and that Adamas Construction did not have
 15 a TERO card, and they were being locked off the
 16 property.
 17 THE COURT: And can you elaborate on what
 18 that means, a TERO card?
 19 THE WITNESS: A TERO card, yes. A TERO card,
 20 if you do any kind of construction for the
 21 reservation, they have this TERO card. I don't
 22 remember the -- that's the acronym, T-E-C-O
 23 or -- but what you have to do is you have to pay a
 24 penalty to work on the reservation. You also have
 25 to hire so many natives if you work on the

1 reservation. And that was her argument for kicking
 2 us off the site, was that there was not enough
 3 natives working.
 4 And I told her I was a one-man band. I
 5 do not have employees, and I don't have to hire
 6 anybody, you know. And she told me that I did. I
 7 said, "Well, then, they're going to stand around
 8 and look at me work, and I'm not doing that." And
 9 she said she was bound -- she was confident that
 10 Mr. Pierce was not hiring enough Native Americans
 11 and not paying his TERO fee.
 12 So an example -- I don't have a TERO
 13 sheet on me. I quit being a member of TERO over
 14 this. I refuse to do work for the tribe anymore.
 15 But an example, at that time -- I'm going to use
 16 rough numbers here, but like a \$100,000 job, you
 17 would have to pay \$10,000 to TERO along with you
 18 have to hire so many natives for the job. And they
 19 keep track of that. And then that just goes into a
 20 pool. They disburse it out.
 21 Well, Sheri Bement went down -- she told
 22 me she went to the office basically to get her cut,
 23 and it was not there.
 24 THE COURT: Okay. We'll leave it there for
 25 now. Thank you.

1 Go ahead, Mr. Pierce.
 2 BY MR. PIERCE:
 3 **Q. So you say that she locked you out of**
 4 **the facility and out of the project. Can you**
 5 **explain what that means?**
 6 A. Well, they physically paddle locked the
 7 gate. And I had hoses that were still left in
 8 there that belong on my truck so I can do daily
 9 work. And I went right to her office. That's when
 10 this whole conversation happened. And I told her
 11 that I was going to access the property and get my
 12 hoses. She told me she would have me arrested. I
 13 told her if anyone tried to stop me, I was going to
 14 hit them in the head with a hammer. And I was that
 15 dead serious about it.
 16 **Q. Sure.**
 17 A. I was not about to be bullied.
 18 She told me give her one minute. She
 19 went and got on the phone, called her attorney. I
 20 was overhearing some of what was said, and her
 21 attorney said that I could access the property.
 22 She then asked me if she could speak to
 23 me in private, took me around behind the building,
 24 and asked me if I would be interested in making
 25 money with her doing the lagoon project.

1 **Q. So she asked you to continue the lagoon**
 2 **project with her?**
 3 A. Yes. Yes.
 4 **Q. And that would have been outside of**
 5 **Adamas Construction and myself?**
 6 A. Yes.
 7 **Q. So would you say that she had control of**
 8 **the project?**
 9 A. Well, Northern Utilities had control of
 10 the project. But she asked me if I would continue
 11 pumping, but under her. She wanted to set up her
 12 own company to hire herself.
 13 **Q. Can you tell me who Jim Bement is?**
 14 A. Jim Bement is her husband.
 15 **Q. And what role did he have?**
 16 A. He was on-site. I don't -- he was
 17 on-site in a pickup almost all days.
 18 **Q. Okay. And then --**
 19 A. I would like to add one thing.
 20 **Q. Sure.**
 21 A. I was on-site a total of eight days,
 22 Your Honor. Okay. So eight days was the total.
 23 And it says right in my statement that I've given,
 24 it's from 8/9 to 10/16. I was on-site for eight
 25 days. But if the tanker trailer was there the one

1 day I was there or if it was the day before, we
 2 have nine days total. So with Tom Robinson's
 3 testimony that he saw George Cummins just a few
 4 times, the whole project took less than ten days.
 5 THE COURT: And I think this is clear. But
 6 your role in this was actually putting the sludge
 7 on the soil for Mr. Robinson to till in.
 8 THE WITNESS: Yes. Transporting it from the
 9 frack tanks to the field where Mr. Robinson then
 10 tilled it in.
 11 THE COURT: Okay. And the frack tanks are
 12 where the lagoon is?
 13 THE WITNESS: Yes. Well, they brought frack
 14 tanks into the lagoon. Normally, there would not
 15 be frack tanks there. They brought frack tanks
 16 into the lagoon, and then Adamas Construction
 17 brought in a dredger. They brought in a big
 18 dredger and filled the frack tanks full of
 19 biosolids. And then it was my responsibility to
 20 then transport it from the frack tanks to the
 21 field. And it was Mr. Robinson's responsibility to
 22 till it within six hours.
 23 THE COURT: From those tanks?
 24 THE WITNESS: Yes.
 25 THE COURT: Okay. And it sounds like in

1 pulled, like you have a truck that connects to it
 2 and pulls it, or no?
 3 THE WITNESS: Well, there is a winch truck
 4 that can hook up to a frack tank and pull it.
 5 THE COURT: Okay.
 6 THE WITNESS: What I have is a septic tank
 7 truck. I have a small -- and it's a 2500-gallon
 8 tank, but I can only haul 2300 gallons. I have to
 9 leave 200 gallons for vacuum pressure. I would
 10 remove 2300 gallons out of each one of these tanks
 11 and work my way one to one to one. So 20,000 -- I
 12 would take at least nine trips to empty one tank.
 13 Now, when the sludge or when the -- when
 14 the bio-sludge was pumped in there from the lagoon,
 15 it had settled in the bottom, and some of it was
 16 too thick for me to pump. So I had to have
 17 Mr. Pierce fire up his dredger again and re-agitate
 18 the solids and liquify them. I mean -- yeah,
 19 liquify the solids. So they're not coming out as a
 20 solid. It has to be liquid.
 21 THE COURT: Out of those frack tanks?
 22 THE WITNESS: Yeah, out of those frack
 23 tanks. If it's a solid, that has to come out of
 24 a -- either hauled with a dump truck or haul -- or
 25 sucked out with a large vac truck that's different

1 addition to hauling those tanks to Mr. Robinson's
 2 property --
 3 THE WITNESS: Hauling the components of the
 4 tank -- the volume inside the tanks, yes.
 5 THE COURT: Okay. It was also then spread on
 6 top of the soil?
 7 THE WITNESS: Yes. That's what --
 8 THE COURT: That's what you did?
 9 THE WITNESS: Yes. Yes.
 10 THE COURT: Okay. Okay. Sorry, but it helps
 11 me to just kind of --
 12 MR. PIERCE: No. No, problem, Your Honor.
 13 THE COURT: -- understand some of this.
 14 Because I thought I had an idea of what a frack
 15 tank was, but I'm not so sure I do anymore. So can
 16 you just tell me what it is?
 17 THE WITNESS: Okay.
 18 THE COURT: Like, kind of visually set this
 19 up so I can --
 20 THE WITNESS: A frack tank is a large tank.
 21 It has one wheel in the back. They load it up with
 22 a winch truck. It's a large rectangle-shaped tank.
 23 THE COURT: Okay.
 24 THE WITNESS: It holds 20,000 gallons, so...
 25 THE COURT: Okay. And then is that literally

1 than mine. My vac truck only sucks up liquids
 2 with, you know, partial solids. And I can't suck
 3 up solids.
 4 THE COURT: Okay. That was helpful, thank
 5 you.
 6 Go ahead.
 7 BY MR. PIERCE:
 8 **Q. Mr. Sprague, were you and Tom Robinson**
 9 **the only ones to do the tilling and the spraying?**
 10 A. Um, yes, to my knowledge. Like I said,
 11 that tanker had showed up the day before. Whether
 12 they offloaded anything, from my recollection, that
 13 truck driver told me they couldn't get the product
 14 out of their tank. When I got there in the
 15 morning, their tank was still sitting there full,
 16 so I offloaded it then.
 17 **Q. Did you observe myself or anybody from**
 18 **my company do the work of spraying or tilling?**
 19 A. No, no. I did all the application.
 20 Like I said, the tanker transported some of it out
 21 there, but I still did the same thing I would have
 22 done -- I did the same thing to the tanker truck
 23 that I would have done to the frack tank. I had to
 24 suck it out of the tanker truck and then apply it.
 25 THE COURT: And that's the spraying you're

1 talking about?
 2 THE WITNESS: Yeah. That's spraying, yes.
 3 THE COURT: Okay.
 4 THE WITNESS: And on the day that I was
 5 talking about with Mrs. Bement, when she locked me
 6 out, I went back in and got my hose. I went uptown
 7 and got something to eat at the gas station, and I
 8 ran into Mr. Tom Robinson, and he had no idea. He
 9 was asking me when I'm showing up for the next
 10 load, so...
 11 BY MR. PIERCE:
 12 **Q. So Tom Robinson had no idea the project**
 13 **had been shut down?**
 14 A. No. Just like he stated earlier today,
 15 he didn't know why it was shut down. When I talked
 16 to him, he had no idea that it had been shut down,
 17 so...
 18 **Q. Okay. Real quick -- and this will be**
 19 **pretty much my last question -- can you read the**
 20 **highlighted portion for us?**
 21 A. Right here?
 22 **Q. Yes.**
 23 A. It says, "Land application is spraying
 24 or spreading of sewage sludge onto a land surface,
 25 the injection of sewage sludge below a land

1 surface, or the incorporation of sewage sludge into
 2 the soil so that the sewage sludge can either
 3 be" -- "either condition the soil or fertilize
 4 crops or vegetation growth in the soil."
 5 **Q. And would you say that you and Tom**
 6 **Robinson meet that description?**
 7 A. Yes.
 8 **Q. Would you say that Adamas meets that**
 9 **description?**
 10 A. Well, I would say that the land
 11 application was done properly.
 12 **Q. Sure.**
 13 A. And it was definitely done within state
 14 regulations.
 15 **Q. Sure. So you think that you and Tom**
 16 **Robinson are the ones who meet that description?**
 17 A. Yes. Now --
 18 **Q. Do I meet that description, as I did not**
 19 **apply or spray?**
 20 A. Well, you did not apply or spray. You
 21 sucked it out of the lagoon into the tanks, as I
 22 said before. But Tom Robinson and I did do a land
 23 application.
 24 **Q. In your experience, is sucking biosolids**
 25 **from a treatment pond and putting it into a frack**

1 **tank a treatment process or a preparation process?**
 2 A. It's a preparation process.
 3 **Q. Thank you.**
 4 RE-DIRECT EXAMINATION
 5 BY MS. KACSUR:
 6 **Q. Mr. Sprague, we discussed earlier you**
 7 **had a contract with Mr. Pierce, correct?**
 8 A. Yes.
 9 **Q. Who gave you that contract for this**
 10 **project?**
 11 A. Who gave me the contract?
 12 **Q. Uh-huh.**
 13 A. I signed it with Mr. Pierce.
 14 **Q. Did you draft the contract?**
 15 A. No. Mr. Pierce drafted the contract.
 16 **Q. So would you say that he hired you for**
 17 **this project?**
 18 A. Yes, as a subcontractor.
 19 **Q. Did Sheri Bement give you any directions**
 20 **for this project?**
 21 A. No.
 22 **Q. And the issues with her and with being**
 23 **locked out happened after the application project,**
 24 **correct? Or mid-application project?**
 25 A. Right. It happened during the

1 application project.
 2 MS. KACSUR: Thank you. No further
 3 questions.
 4 THE COURT: I have a few. How many frack
 5 tanks were there?
 6 THE WITNESS: Five.
 7 THE COURT: And do you know who was
 8 responsible for the decision to lock you out or
 9 terminate the project?
 10 THE WITNESS: Yeah. Sheri Bement.
 11 THE COURT: And how do you know that?
 12 THE WITNESS: Because she told me. Because I
 13 drove --
 14 THE COURT: When you had the conversation?
 15 THE WITNESS: -- I drove right to her office
 16 the moment they notified me that I was locked out.
 17 And I went there -- I went there to get my hose so
 18 I could -- you know, I could do septic systems for
 19 residents, stuff like that. And as soon as I went
 20 there and noticed the gate was locked, I drove
 21 right to her office, and I got it right from her
 22 mouth.
 23 THE COURT: About locking -- locking it out
 24 and the reasons you gave?
 25 THE WITNESS: Yes.

1 THE COURT: What prompted you to go straight
 2 to her office? How did you know where to go when
 3 you got locked out?
 4 THE WITNESS: Well, I had an incident with
 5 Mrs. Sheri Bement approximately six months earlier
 6 than that when she was with an EPA officer. And I
 7 was dumping in the Birney lagoon for ten septic
 8 tanks for the Northern Cheyenne Tribal Housing
 9 Authority, okay? And I had stopped at her
 10 office -- which I have done lots of work for
 11 Mrs. Bement before. I had stopped at her office,
 12 and I had obtained a dump permit to dump in the
 13 lagoon. Because when people have septic tanks, we
 14 dump it out and it has to go somewhere.
 15 So at that time, I obtained -- I prepaid
 16 for ten septic tanks to be dumped in the lagoon.
 17 And as I was dumping in the lagoon, she happened to
 18 show up with an inspector, and she says that I was
 19 illegally dumping, and they wanted to seize my
 20 equipment. And I went back -- so after I got in
 21 the discussion with her, I knew I had prepaid the
 22 day before for these. I asked a friend of mine to
 23 go to my house, get my -- get my records, and I
 24 drove directly to her office that day, too.
 25 THE COURT: And so where I was going with

1 MR. PIERCE: Yes, ma'am.
 2 THE COURT: Okay. So I think we're going to
 3 be taking you out of turn once the complainant
 4 rests with the presentation of their case, and then
 5 Mr. Pierce will have the chance to ask you
 6 questions. But before we get there, is there
 7 anything else as it relates to the project that is
 8 before me to decide that you want to be sure to
 9 tell me about that you haven't already?
 10 THE WITNESS: If it doesn't come up, I will
 11 bring it up later.
 12 THE COURT: Okay. Fair enough. All right.
 13 So you can just stay right there.
 14 THE WITNESS: Okay.
 15 THE COURT: Mr. Pierce, do you want to go
 16 ahead -- well, I'm assuming here. Let me ask the
 17 plaintiff directly. Are you resting at this point
 18 with your direct presentation? With your case in
 19 chief, I should say, absent rebuttal.
 20 MR. MUEHLBERGER: Yes, Your Honor.
 21 Complainant rests.
 22 THE COURT: Okay. Thank you very much.
 23 Mr. Pierce, then we'll leave
 24 Mr. Robinson [sic] up here. And if you would, just
 25 go ahead and ask whatever you'd like to ask on

1 this question was more in the sense of -- I mean, I
 2 appreciate some context there with a past
 3 encounter. But what I'm wondering about is what
 4 led you to go to speak to her in particular as
 5 opposed to anybody else in the project.
 6 THE WITNESS: Okay. Because I know that
 7 she's in charge of NCUC.
 8 THE COURT: Okay.
 9 THE WITNESS: She is the manager there.
 10 THE COURT: Okay. And that's what prompted
 11 you to go speak to her about this shutdown of the
 12 project?
 13 THE WITNESS: Right.
 14 THE COURT: Okay.
 15 THE WITNESS: Right. So I knew -- I knew who
 16 to go and contact. I knew who was in charge of the
 17 site, so I went directly to her office.
 18 THE COURT: Okay. I just want to check in
 19 with the parties quickly. Anything -- any other
 20 questions that you have for Mr. Sprague now?
 21 MR. PIERCE: On my -- my.
 22 THE COURT: Re-cross.
 23 MR. PRICE: No re-cross or anything, Your
 24 Honor.
 25 THE COURT: Just when you call him?

1 direct.
 2 MR. PIERCE: Mr. Sprague, yes, ma'am.
 3 THE COURT: I'm sorry. I'm sorry. Yes.
 4 Mr. Pierce asking Mr. Sprague.
 5 DIRECT EXAMINATION
 6 BY MR. PIERCE:
 7 **Q. Mr. Sprague, how many years have you**
 8 **been doing sewer projects?**
 9 A. Since 2009. Well, I've owned my own
 10 business since 2009. You're talking about sewer
 11 projects, I usually stick to septic.
 12 **Q. Okay.**
 13 A. Residential septic.
 14 **Q. So you've worked in the septic and sewer**
 15 **industry since 2009?**
 16 A. Yes. I've owned my own business since
 17 2009.
 18 **Q. Okay. And I think you already touched**
 19 **on this earlier, but your truck cannot haul solid**
 20 **sludge; is that correct?**
 21 A. That's correct.
 22 **Q. So it has to be watered down?**
 23 A. That's correct.
 24 **Q. And you testified that Sheri Bement was**
 25 **in control. Why wouldn't you come to me when you**

1 **got locked out? Why did you go to Sheri?**
 2 A. Well, you weren't the one locking me
 3 out. Sheri was the one that was locking me out,
 4 and she was in control of the site. It's
 5 her -- I've done many business dealings with
 6 Sheri, and she's the one you have to go through to
 7 get permission to dump on the site. She's the one
 8 you have to get permission to go to access the
 9 site. As I was saying earlier, when I was accused
 10 of illegally dumping, her -- thank goodness her
 11 secretary had it in her handwriting the day before
 12 where they had approved me to dump on the lagoon.
 13 Which I see the 2017 deal from the EPA on the
 14 screen yesterday says that they weren't supposed to
 15 be allowing any extra. And that's how I knew.
 16 **Q. So it seems in your opinion, would you**
 17 **say that there's some common violations that occur**
 18 **with the NCUC in regard to environmental laws?**
 19 A. I think the people at NCUC are in over
 20 their head. They call on subcontractors at the
 21 spur of the moment. They've called me in the
 22 middle of the night to come help them fix projects.
 23 And, you know, they grasp for help wherever they
 24 can, but by no means when I come and show up and
 25 help in the middle of the night am I an operator.

1 no. But like I said, I have that on my phone if
 2 you'd like to see it.
 3 BY MR. PIERCE:
 4 **Q. So NCUC controlled the times that you**
 5 **were able to work?**
 6 A. NCUC said that they had to be there to
 7 inspect when I was working. Otherwise, there
 8 wouldn't have been a tanker truck called if I could
 9 have worked weekends. But George Cummins said
 10 absolutely not. Northern Utilities had to have a
 11 representative there at all times.
 12 **Q. Were you present at negotiations with**
 13 **NCUC, IHS, and Adamas Construction at the IHS**
 14 **office in 2019?**
 15 A. Yes, I was.
 16 **Q. And what was your impression of that**
 17 **meeting?**
 18 A. My impression of that meeting was IHS
 19 said that they were in a contract with NCUC for
 20 paying NCUC for work that Adamas Construction had
 21 done, and IHS did not believe that they owed Adamas
 22 Construction any money because they had only
 23 removed three percent solids. Well, they said that
 24 it was only three percent solids in the frack tanks
 25 when they went and tested them. When they went and

1 I'm a subcontractor, you know.
 2 **Q. And you're touching on that, and that's**
 3 **a good thing to touch on. Can a subcontractor also**
 4 **subcontract other people during a contract?**
 5 A. Yes.
 6 **Q. So it's possible for NCUC to contract me**
 7 **and then for me to subcontract somebody else?**
 8 A. Yes. That happens all the time.
 9 **Q. Who's in control at that point, though?**
 10 A. Well, NCUC has final say.
 11 **Q. And in this case, did they have the**
 12 **final say?**
 13 A. Yes. On several instances, NCUC
 14 overruled you.
 15 THE COURT: With respect to this project
 16 that's before me?
 17 THE WITNESS: Yes, yes.
 18 THE COURT: And how do you know that?
 19 THE WITNESS: Because I specifically asked to
 20 work weekends. Mr. Adamas told me I could. And
 21 Mr. George Cummins, who said he was in charge, said
 22 no. And I have that on my phone.
 23 THE COURT: Were there any other examples
 24 that you have at the top of your head to share?
 25 THE WITNESS: Right off the top of my head,

1 did the field test site, they went and tested the
 2 last remaining frack tank that was left, and they
 3 said it only had three percent sludge in it. That
 4 way, they figured they didn't need to pay
 5 Mr. Adamas because he did not remove enough sludge.
 6 And on the other hand, they said, "Oh, you're
 7 hauling too much sludge. You know, we're shutting
 8 you down."
 9 **Q. So you would say that IHS wasn't**
 10 **consistent in their assessment of whether it was**
 11 **too much or too little or too thick?**
 12 A. That's correct. And I also had a
 13 conversation there with -- let me make sure I get
 14 his name right -- James Courtney at that meeting.
 15 James Courtney spoke about how they did the samples
 16 out of the frack tanks and how they were coming up
 17 with a -- he wasn't even saying he was coming up
 18 with an agronomic rate. He was just saying that
 19 Mr. Adamas' technique for pumping from the lagoon
 20 into the frack tanks was inadequate, and it only
 21 came up with three percent solids, which is about
 22 equivalent to a cup of hot cocoa, so...
 23 **Q. Did you observe -- what you observed in**
 24 **those frack tanks, did it -- to your opinion, was**
 25 **it three percent solids?**

1 A. No. The tanks that settled in the
2 bottom of the tanks were so stiff, I could stick a
3 shovel in them until we rolled them, and then I was
4 able to suck them out. And they would be basically
5 the consistency of a milkshake.

6 **Q. Does adding water to sludge dilute the
7 sludge?**

8 A. Yes. "The solution to
9 pollution" -- "The solution to pollution is
10 dilution" is an old quote.

11 **Q. So by adding water, Adamas actually
12 didn't increase the potency of the sludge, they
13 decreased it?**

14 A. That's correct.

15 **Q. Okay. So as the person who was applying
16 or spraying the sludge on the land, you would have
17 been the person best to develop out the map and the
18 records of where that happened, correct?**

19 A. Yeah. I could show you exactly where
20 they're dumped out.

21 **Q. And you developed those records and
22 maintained them?**

23 A. I did not develop the records for a map.
24 I developed records of where it was dumped at, but
25 I did not make a map.

1 A. For the most part, no.

2 **Q. So you and Tom did it independently?**

3 A. For the most part, you stayed on the
4 lagoon side. Tom Robinson and I were on the
5 offload side.

6 **Q. And when the EPA sent you the request
7 for documents, it was to do with the application,
8 correct?**

9 A. They had a list of half a dozen
10 questions they had. And it did -- it did -- it was
11 the application and others, yes.

12 **Q. Okay, perfect.**

13 **Based upon your experience in
14 contracting, was the contract between you and I
15 difficult to understand?**

16 A. No.

17 **Q. Were the terms and conditions difficult
18 to understand?**

19 A. No.

20 **Q. Do you feel they were adequately
21 explained to you so that you could do your job
22 appropriately?**

23 A. Yes.

24 **Q. You've heard a lot of testimony here in
25 this room. Is there anything that you would like**

1 **Q. Okay. So when the EPA requested the
2 information from you, you provided them all of the
3 information they requested?**

4 A. That is -- and more. That's correct.

5 **Q. And that was based on Adamas -- Adamas
6 Construction's instructions to you to develop
7 those, correct?**

8 A. Yes.

9 **Q. So you mentioned earlier that we were on
10 both ends of the job. I just want to get a little
11 better clarification with that. When you mean both
12 ends of the job, were we actually working in Tom
13 Robinson's field?**

14 A. No. Well, depends on what you call
15 work. I was doing the work, and you were
16 observing. But you set the speed for the truck.
17 We set the valve gates for the truck, how much
18 would be coming out at what speed, and whether to
19 be on top of soiled or non-soiled -- or excuse me,
20 not soiled -- tilled or non-tilled.

21 **Q. And so outside of that, you testified
22 that you worked directly with Tom Robinson?**

23 A. That's correct.

24 **Q. Was I on-site during the other -- during
25 that process?**

1 **to address that hasn't been addressed?**

2 A. May I take a look at my notes?

3 THE COURT: You may.

4 THE WITNESS: No. I think I've covered
5 everything.

6 BY MR. PIERCE:

7 **Q. Perfect. A couple more quick questions,
8 and I think we'll be done.**

9 **Do you feel personally that the request
10 for information was to protect property or people?**

11 A. No, I don't.

12 **Q. What do you feel the request was about?**

13 A. I think the request was siccing one
14 government agency on another government agency to
15 stall payment.

16 **Q. Stall payment to who?**

17 A. To stall payment to Adamas Construction.
18 Because in the meeting that I was with at the IHS
19 building where they said that they would pay
20 UCNC [sic] for the completion of it, then they
21 didn't want to be in it anymore, they were on both
22 sides of the factor. First, they were saying that
23 there was too much sludge hauled, and then they
24 were saying there wasn't any hauled.

25 So my personal feeling is that this is

1 less to do about being in compliance and more to do
2 with corruption. And that's why I made my
3 statement. And that's what was directly told to
4 me, that it was about TERO fees. That's why Tom
5 Robinson didn't know anything about the project
6 being stopped, because he didn't have a clue, you
7 know.

8 **Q. So it's your impression that Tom**
9 **Robinson, as he testified here today, didn't make**
10 **the report James Courtney alleges he made?**

11 A. Well, they may have asked him to make
12 that report. But Tom Robinson asked me what I was
13 doing not showing back up for the rest of the day
14 after I had been locked out by Northern Cheyenne
15 Utilities for not having a TERO card.

16 **Q. Perfect.**
17 **One last thing. Can you tell us a**
18 **little bit about Lame Deer Creek?**

19 A. Lame Deer Creek?

20 **Q. Yes.**

21 A. Lame Deer Creek flows through -- is in
22 Lame Deer, flows through -- it flows through Lame
23 Deer. But it's -- what do you want to know about
24 it? I wouldn't -- I wouldn't drink --

25 **Q. Is there portions of it that dry out?**

1 creek. The creek is very dirty. And most -- most
2 of the water comes from the lagoon, the sewage
3 lagoon that spills over into the creek. Above the
4 creek, above the lagoon, there's -- there is water.

5 THE COURT: And is this -- are these
6 observations based on you driving that road? Can
7 you see the water from there?

8 THE WITNESS: I cross the water -- I cross
9 the water all the time to go to customers' houses.

10 THE COURT: Okay.

11 THE WITNESS: I cross -- I cross the water
12 all the time.

13 THE COURT: Okay. So I guess based on that
14 knowledge --

15 THE WITNESS: Right.

16 THE COURT: -- and what you have actually
17 observed, the area that you've actually observed --

18 THE WITNESS: Right.

19 THE COURT: -- what can you say about the
20 water levels or variations of it throughout the
21 seasons?

22 THE WITNESS: Well, the water increases after
23 it goes past the lagoon. Now, to Mr. Adamas'
24 question, does it stop, I can't answer that.

25 THE COURT: Okay.

1 MS. KACSUR: Objection, lack of personal
2 knowledge.

3 THE WITNESS: There's --

4 MR. PIERCE: He lives there.

5 THE COURT: Hold on one second. Hold on one
6 second.

7 THE WITNESS: I've lived --

8 THE COURT: Let's start with some kind of
9 basis here. How are you -- are you familiar with
10 Lame Creek?

11 THE WITNESS: Lame Deer Creek?

12 THE COURT: Yes, Lame Deer Creek.

13 THE WITNESS: Yes, ma'am. I've lived there
14 my entire life.

15 THE COURT: And how close to the actual creek
16 do you live?

17 THE WITNESS: Well, I live 22 miles north of
18 the creek right now. I have a ranch just over the
19 hill from that. Probably where the crow flies, 10
20 miles. I drive -- I drive that road at least four
21 or five times a week.

22 THE COURT: And when you say "that road," is
23 that a road --

24 THE WITNESS: Well, the road -- the creek
25 follows the road. So I don't go play in that

1 THE WITNESS: So...

2 MR. PIERCE: Perfect.

3 THE COURT: That's fine. That's all you need
4 to say. Thank you.

5 THE WITNESS: Yep.

6 MR. PIERCE: Your Honor, I think that's all I
7 have for now.

8 THE COURT: Okay. Opportunity for cross. I
9 just wanted to -- this is really more for purposes
10 of the transcript. Because I've heard a variety of
11 acronyms, and at times, I'm thinking maybe there's
12 been a misspeak of certain acronyms. So I just
13 want to go over it.

14 I've heard IHS, Indian Health Services,
15 NCUC. So when you were talking about what I think
16 were those entities, are those the correct acronyms
17 to be using for those two?

18 THE WITNESS: Yes. And when I say
19 "utilities," it's NCUC.

20 THE COURT: Okay. All right.

21 THE WITNESS: They go by "utilities" on their
22 door and then NCUC when they do billing statements,
23 stuff like that. But those are the same.

24 THE COURT: Okay.

25 MR. PIERCE: The full acronym, Your Honor, is

1 the Northern Cheyenne Utility Commission.
 2 THE COURT: Okay. Yeah. Thank you. I think
 3 that there might be some points in the transcript
 4 where some -- and, you know, it's late, and people
 5 are fatigued. I just think there have been maybe
 6 some reversals of certain letters or pronunciation
 7 that might not be entirely clear. And that's why I
 8 just wanted to review that, that we're talking
 9 about NCUC, IHS. And then, of course, Adamas
 10 and --
 11 THE WITNESS: Right.
 12 THE COURT: Okay. All right.
 13 THE WITNESS: And I'm sorry, I say his
 14 company's name wrong all the time, just like he
 15 says my name wrong. But it's the same.
 16 THE COURT: No worries. Okay. All right.
 17 Thank you.
 18 Who'd like to cross on behalf of
 19 complainant?
 20 MS. KACSUR: Your Honor, we have no
 21 cross-examination questions.
 22 THE COURT: Okay. All right. So this is it,
 23 Mr. Sprague. Anything else you want to share
 24 before we release you entirely?
 25 THE WITNESS: No. That's all I had.

1 THE COURT: All right. Thank you so much for
 2 your testimony.
 3 THE WITNESS: Thank you.
 4 THE COURT: Okay. So I think at this point,
 5 if my memory hasn't completely gone south, we're
 6 left with Mr. Pierce and Mrs. Pierce, right?
 7 MR. PIERCE: Yes, Your Honor. And I think at
 8 this point we have enough information in the record
 9 to go off of. I don't know that either one of our
 10 testimony would change anything that's in the
 11 record.
 12 THE COURT: Okay. Let me offer some thoughts
 13 to consider before you make any firm decisions
 14 about whether or not you want to testify. You know
 15 there's a liability piece, of course, right? But
 16 the second prong that I'm going to have to decide
 17 is also penalty and -- assuming liability is
 18 established, of course. But this is the hearing,
 19 so this is the one opportunity for me to gather
 20 information on both of those issues.
 21 So with respect to the penalty factors,
 22 I mean, there's been some testimony offered through
 23 complainant's witnesses. But it's something maybe
 24 just to ponder and think about in terms of whether
 25 you might like to offer any testimony yourself

1 about any of this from your perspective and that
 2 type of thing.
 3 So would you like a little break just to
 4 kind of think and --
 5 MR. PIERCE: Yes, Your Honor. Thank you.
 6 THE COURT: Okay. Yeah. And do you have
 7 those -- do you have -- I know I probably put them
 8 in some order, and they're elsewhere. They come
 9 out of the Clean Water Act itself.
 10 MR. PIERCE: The penalties?
 11 THE COURT: The factors to consider with
 12 regard to penalty. Do you have those handy?
 13 MR. PIERCE: I don't, Your Honor.
 14 THE COURT: Let's put our hands on that
 15 quickly.
 16 MR. MUEHLBERGER: Your Honor, the factors are
 17 listed in the pre-file letter that was sent to
 18 Mr. Pierce. They lay out the statutory penalty
 19 factors. So if you want to look at that exhibit --
 20 THE COURT: Okay.
 21 MR. MUEHLBERGER: -- that has those factors.
 22 THE COURT: Great. Thank you so much. What
 23 exhibit number was that, Mr. Muehlberger?
 24 MR. MUEHLBERGER: Give me just a second.
 25 THE COURT: Sure. Thank you.

1 Okay. So we have two sources for you to
 2 take a look at. Ms. Almase is recalling that in
 3 the second amended complaint in Paragraph 60, it
 4 apparently doesn't cite the Clean Water Act
 5 provision, but it sets out what the factors are
 6 with regard to penalty. And then we'll also point
 7 you to Complainant's Exhibit --
 8 MR. MUEHLBERGER: CX14, et. 1.
 9 THE COURT: Okay. Thank you,
 10 Mr. Muehlberger.
 11 MR. MUEHLBERGER: You're welcome.
 12 THE COURT: So we don't need to stay on the
 13 record. I'm going to take a break. I don't want
 14 you to rush through this because it's important.
 15 So, you know, think about it. If you have some
 16 questions for me when we come back, ask them.
 17 I'm not an advocate, but obviously, I
 18 know you're proceeding pro se and, you know, I just
 19 want to make sure that I've got everything that
 20 everybody wants me to have to make a decision in
 21 the case. And I realize that you've got arguments
 22 in opposition to liability. I recognize that.
 23 But, you know, I have to plan for contingencies,
 24 too. So in the event liability should be
 25 established -- I'm not saying that it is, but

1 should it be, then I do have to reach penalty, and
 2 I need to consider those factors. And this is the
 3 hearing for that -- for that factual development as
 4 well. So that's why I'm putting it out there.
 5 With that said, I'm going to stop
 6 talking, and we'll take a break. How much time
 7 would you like to kind of go through this and
 8 chat --
 9 MR. PIERCE: I think ten minutes is fine,
 10 Your Honor.
 11 THE COURT: Okay. I'm going to give you 15.
 12 MR. PIERCE: Perfect. Thank you.
 13 THE COURT: So we'll come back in 15 minutes
 14 at 2:00 o'clock. Okay?
 15 MR. PIERCE: Thank you.
 16 THE COURT: All right.
 17 (Whereupon, a brief
 18 recess was taken.)
 19 THE COURT: Okay. We can get back on record.
 20 After a brief break, just a few minutes past 2:00.
 21 Okay. So the Pierces, did you have any questions,
 22 or have you made any decisions?
 23 MR. PIERCE: Yes, ma'am. I am going to call
 24 Michelle Pierce.
 25 THE COURT: Okay.

1
 2 MICHELLE PIERCE,
 3 called as a witness on behalf of the Respondent,
 4 having been first duly sworn testified as follows:
 5
 6 THE WITNESS: I do.
 7 THE COURT: Thank you. Please have a seat.
 8 DIRECT EXAMINATION
 9 BY MR. PIERCE:
 10 **Q. Hi. Michelle, can you give us your full**
 11 **name and spell it, please.**
 12 A. Michelle Pierce; M-I-C-H-E-L-L-E,
 13 P-I-E-R-C-E.
 14 **Q. And just to state the obvious, what is**
 15 **your relationship to the respondent?**
 16 A. I'm his wife.
 17 **Q. Did you -- were you part of the process**
 18 **with NCUC, IHS, and Adamas Construction for the**
 19 **sludge removal project of the Lame Deer Lagoon?**
 20 A. Yes. For some of it, not all of it.
 21 **Q. Okay. Do you recall whether or not**
 22 **Adamas and NCUC or IHS came to any agreement for**
 23 **Adamas to provide daily records?**
 24 A. Yes. We were required to give
 25 documentation every day to Sheri Bement, who was

1 on-site, amount of gallons pumped. And all samples
 2 were to be given to her.
 3 **Q. And so were samples given to her?**
 4 A. Yes.
 5 **Q. And that was done on a daily basis?**
 6 A. Every day or every other day, depending
 7 on what the project we were doing at the time.
 8 **Q. And to your knowledge, NCUC was the main**
 9 **contractor contracted by IHS; is that correct?**
 10 A. That is correct. And that is why we
 11 were supposed to give all documentation to NCUC.
 12 **Q. Was NCUC the ones required to pay Adamas**
 13 **Construction?**
 14 A. Yes.
 15 **Q. Did NCUC at any time put Adamas**
 16 **Construction solely in charge of the project?**
 17 A. So IHS actually gave Adamas Construction
 18 the authority to finish the sewer lagoon project,
 19 and then took Sheri Bement and her team and had her
 20 do the site projects because her knowledge of the
 21 sewer lagoons and what was required was not
 22 adequate, is what they told us, and that they felt
 23 more comfortable having Adamas continue the project
 24 and finish it.
 25 **Q. Did they ever switch the contract over?**

1 A. No.
 2 **Q. After that, did Sheri Bement send an**
 3 **e-mail to Adamas Construction stating that she was**
 4 **still in charge and that all decisions needed to go**
 5 **through her?**
 6 A. Yes. Immediately the next day.
 7 **Q. Did she also instruct that we follow**
 8 **James Courtney's math and numbers with relation to**
 9 **the sludge concentration of the lagoons?**
 10 A. Yes.
 11 **Q. So, quick question: Are you and your**
 12 **husband wealthy?**
 13 A. No.
 14 **Q. What did this project result in the**
 15 **company and financial -- did it cause any financial**
 16 **hardship for you and your husband?**
 17 A. Very much so. After our so-called
 18 settlement with NCUC and the tribe, we were
 19 required after the payment to not have any work for
 20 five years on any reservations, therefore
 21 eliminating and bankrupting the company. We had to
 22 completely refinance our home into a HELOC, so my
 23 mortgage doubled. And that was in 2000 -- mid-2019
 24 in order to survive. Still paying that \$90,000
 25 off. Don't worry. But yeah, there was no

1 compensation. In fact, we still owe contractors
 2 from that project at this time.

3 **Q. Is Adamas Construction a viable business**
 4 **anymore?**

5 A. No.

6 **Q. That business has been closed down for**
 7 **close to four years now; is that correct?**

8 A. Correct.

9 **Q. So you would say you gained no economic**
 10 **benefit from this particular job?**

11 A. This particular job actually cost us
 12 almost \$200,000.

13 **Q. How much money has you and your husband**
 14 **spent on attorneys defending this action?**

15 A. Not counting the 200,000 that we owed in
 16 contracts, probably close to \$75,000.

17 **Q. So you guys have spent close to \$75,000**
 18 **in defense of this?**

19 A. Yes. That is why you are doing pro se
 20 today and not having an attorney.

21 **Q. Was your husband ever the water or sewer**
 22 **operator for the Northern Cheyenne tribe?**

23 A. They tried to make you the sewer
 24 operator and water person, but it was given and
 25 taken back within a 24-hour period. So I don't

1 days, we were completely locked out of the
 2 business. Within four days, we had a cease and
 3 desist. Within five days, the entire project was
 4 taken from us. But we were still liable for all of
 5 the contracts that we had put out for the business
 6 for that project.

7 BY MR. PIERCE:

8 **Q. So you and your husband attempted to**
 9 **help NCUC. And so you hired other contractors to**
 10 **help with that, and you were obligated for that,**
 11 **correct?**

12 A. Correct.

13 **Q. By NCUC not paying, that prevented you**
 14 **from paying those contractors, correct?**

15 A. Correct.

16 **Q. Okay. What other projects did your**
 17 **husband perform on the reservation?**

18 A. So the first time you got called out was
 19 the girls -- Boys and Girls Club had a sewer break.
 20 What had happened is a waterline next to the Boys
 21 and Girls Club had actually broke. The utility
 22 company had actually dug to the waterline, but
 23 couldn't get the water turned off, couldn't find
 24 their gate valves, and actually took an excavator
 25 through power lines over this water hole and left

1 know exactly how that all played out. But
 2 she -- basically, Sheri did one of her Tasmanian
 3 devil behaviors.

4 **Q. And did your husband send an e-mail to**
 5 **Sheri saying he was no longer interested in the**
 6 **operator position?**

7 A. Yes.

8 THE COURT: Do you know when that happened?
 9 Just rough time frame.

10 THE WITNESS: Probably right during the
 11 lagoon project. It would have been mid-August.

12 THE COURT: Around in 2018?

13 THE WITNESS: Yeah. What had happened is
 14 Sheri's husband Jim was in charge of the site
 15 projects. George Cummins came to Nathan and said,
 16 "They're not doing safety, and I would like for you
 17 to talk to the team." And so Nathan came to Sheri
 18 and told her that they needed to have the proper
 19 safety equipment to do the site project properly.
 20 They were digging in a hole without a cover and
 21 box, basically a big metal box to keep the dirt
 22 from falling in on them.

23 And once that happened and that was
 24 confronted to her husband, basically everything
 25 went spiraled out of control. And then within two

1 the power on. And when you were called and brought
 2 in, you actually got the tools and supplies you
 3 needed within 24 hours, got that water turned off,
 4 fixed, and their water back on.

5 **Q. How long was their water off before**
 6 **that?**

7 A. Four days.

8 **Q. And that was the entire community of**
 9 **Lame Deer?**

10 A. The entire community of Lame Deer had no
 11 water for four days.

12 **Q. Were there other projects that your**
 13 **husband had worked on similar?**

14 A. Yes. They had called several times,
 15 usually in the middle of the night, with broken
 16 lines. There was one where, in the middle of
 17 winter, you guys were out there for two to three
 18 days in the freezing cold with a line break. And I
 19 believe it was outside of Birney. I can't know
 20 exactly, but it was on the Northern Cheyenne
 21 somewhere.

22 There was a time where you were
 23 called to do a project for the -- I don't even want
 24 to -- I'll just call it Paul's old house, I guess,
 25 where he used to live. A trailer house where

1 sewage was actually coming directly out of the
 2 house onto the property, not going anywhere into
 3 the sewer lagoons or to the proper thing. And we
 4 actually built and had to dig up an entire line
 5 there.

6 There was a time where you had to do a
 7 main waterline on the east side, which took several
 8 days. You did that with the NCUC crews. And
 9 basically, they had all walked off on the end of
 10 that shift, and you and I and our son, actually,
 11 yes, who was 16 at the time stayed until 3:30 in
 12 the morning to get their water up and running so
 13 that they had water for their Sun Dance.

14 **Q. Perfect. So you would say that my**
 15 **duties and obligations weren't just simply going**
 16 **down and dealing with sewer. It was dealing with a**
 17 **lot of different issues on the reservation,**
 18 **correct?**

19 A. Correct.

20 MR. PIERCE: Your Honor, I think that's all I
 21 have.

22 THE COURT: Okay. Just a little bit of
 23 follow-up before I turn it over. In terms of the
 24 company, the LLC, PLLC --
 25 THE WITNESS: Uh-huh.

1 THE COURT: -- do you know more particularly
 2 when it was dissolved?

3 THE WITNESS: End of 2018, beginning of 2019,
 4 I believe. Basically, this project killed this
 5 company.

6 THE COURT: And how long had the company
 7 existed prior to this?

8 THE WITNESS: 2016. So about two and a half
 9 years.

10 THE COURT: Okay. And did you have a role in
 11 the company? Did you have an office or position
 12 or?

13 THE WITNESS: No. I was just my husband's
 14 wife. I just helped him when I could on my days
 15 off. I worked as a registered nurse. I did three
 16 12-hour shifts in surgery, plus I was a clinical
 17 supervisor for them for over 15 years, a nurse for
 18 over 20 years.

19 THE COURT: Okay. So was your husband the
 20 president, then, of Adamas?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And you didn't -- you
 23 weren't like a VP or secretary, treasurer, nothing
 24 like that?

25 THE WITNESS: No. Just his wife.

1 THE COURT: Okay. Okay.

2 THE WITNESS: Just his helper.

3 THE COURT: Okay. No worries. And I just
 4 wanted to follow up on one part of your testimony
 5 to make sure I'm sort of understanding perhaps the
 6 chronology. Because I think at one point,
 7 Mr. Pierce asked about whether he was ever an
 8 operator, and I think you said something about they
 9 tried and it was taken away in a 24-hour period.
 10 So can you elaborate and give me some time frame?

11 THE WITNESS: So what had happened is Sheri
 12 was told by IHS that she had to have a water
 13 operator and a sewer operator on-site. They had
 14 just recently fired their water operator, and so
 15 they had no water operator and no sewer operator.
 16 So Sheri went and did the classes to do the -- to
 17 become that water and sewer operator and failed the
 18 test and called Nathan and myself and asked if he
 19 would be willing to take those tests.

20 He actually did the class. Never did
 21 take the test, but he had applied. And she had
 22 written in a contract that he was going to be the
 23 operator, and then within 12 to 24 hours later,
 24 sent a notification that, nope, she wasn't going to
 25 do that or couldn't do that. And then he was no

1 longer the operator of NCUC.

2 So it was just -- and it was just like a
 3 temporary thing anyway. But it was just one of
 4 those, like, "We need it for this, for IHS, and we
 5 needed it immediately today." And so she basically
 6 used his name and then took it away.

7 THE COURT: And roughly when did this happen?

8 THE WITNESS: It would have been before the
 9 sewer lagoon projects, actually. So it would have
 10 been probably April or May, spring.

11 THE COURT: Of 2018?

12 THE WITNESS: 2018.

13 THE COURT: Okay.

14 THE WITNESS: I believe that's when the
 15 classes were, when you did those classes. I could
 16 be wrong.

17 THE COURT: Okay. That's okay. I mean, just
 18 as much as --

19 THE WITNESS: Somewhere in there, yeah. It
 20 was -- it was a couple months before any of the
 21 lagoon projects started.

22 THE COURT: Okay. All right. Thank you.

23 THE WITNESS: And he never did take the test
 24 after that. He was just like, "Well, I'm done
 25 helping you at this point. Like, I will do the

1 contracting stuff, but I'm not going to intermix
 2 them, the business."
 3 THE COURT: Okay. And to your knowledge, has
 4 there been any prior history of violations
 5 involving Adamas Corporation or Nathan Pierce
 6 individually with respect to EPA?
 7 THE WITNESS: Not that I know of.
 8 THE COURT: Okay. And when you mentioned the
 9 daily documents that were to go to Sheri Bement --
 10 THE WITNESS: Yes.
 11 THE COURT: -- do you know whether or not
 12 Adamas or Nathan Pierce individually supplied that
 13 to her?
 14 THE WITNESS: Yes, I know that they were
 15 supplied daily.
 16 THE COURT: They were supplied --
 17 THE WITNESS: They were handwritten, spiral
 18 notebook that they came in and would write the
 19 amounts, who worked that day, and if any samples
 20 were given and taken, and they would be left next
 21 to the notebook. And they -- NCUC said that they
 22 would take and send everything to the lab and keep
 23 all the results and records. And she made it very
 24 clear that that was their obligation and not ours,
 25 and that she was going to take care of that.

1 THE COURT: And when you say she made that
 2 very clear, can you give me some context? Was it
 3 like a meeting? Was it a phone call? How was that
 4 conveyed?
 5 THE WITNESS: It was conveyed almost every
 6 time they were on-site, that she was in control and
 7 that everything went through NCUC and went through
 8 her.
 9 THE COURT: Was this like a verbal --
 10 THE WITNESS: This was a verbal thing almost
 11 daily --
 12 THE COURT: Okay.
 13 THE WITNESS: -- that she was -- she was
 14 definitely the power of everything. And she made
 15 that very clear every day.
 16 THE COURT: Okay. And so in terms of that
 17 logbook, I think you previously mentioned the daily
 18 information supplied to Ms. Bement, gallons pumped,
 19 and samples taken?
 20 THE WITNESS: Yeah.
 21 THE COURT: Okay. Anything else?
 22 THE WITNESS: And crew that was working that
 23 day, because sometimes it would change. Like,
 24 there would be days that I would go and help, but
 25 there were days I wasn't there because I was

1 nursing. There were days our son would be there to
 2 help, but there were days he was in school. There
 3 was other employees that we would bring onto the
 4 site, but only as needed.
 5 THE COURT: Okay.
 6 THE WITNESS: And so that's how she kept
 7 track of who was working and how many hours were
 8 worked.
 9 THE COURT: Okay.
 10 THE WITNESS: And I don't know what happened
 11 to that book, to be honest. We never saw it after
 12 we got locked out of the site.
 13 THE COURT: Okay.
 14 THE WITNESS: And never given any information
 15 about what happened to it, where the samples went,
 16 nothing. Or even if they were resubmitted.
 17 THE COURT: Okay. Okay. I'm going to give
 18 complainant the opportunity to ask you some
 19 questions about what you said thus far in your
 20 testimony. Was there anything else you wanted to
 21 be sure that I know about when I review all of this
 22 and come to a decision, whether that be liability
 23 alone or liability and penalty?
 24 THE WITNESS: You know, honestly, I think the
 25 biggest thing is just that we went there to try to

1 help on many occasions. And the sewer lagoon
 2 project started because NCUC wanted the contract
 3 for that and wanted the say in how that was done
 4 instead of letting IHS just hire contractors for
 5 them. She had asked Nathan to do the project with
 6 her.
 7 THE COURT: Now, "she" is?
 8 THE WITNESS: Sheri Bement.
 9 THE COURT: Okay.
 10 THE WITNESS: And so he told her he would
 11 help her build it and do it, and they walked
 12 through together on how it was going to be done.
 13 And within -- the first check got submitted. Money
 14 started disappearing. We contacted her for
 15 payment. Didn't get anywhere. We contacted IHS to
 16 kind of help maybe get our payment so that we could
 17 pay for the contractors. Because we had the frack
 18 tanks on-site, but couldn't get the FLUMP to do the
 19 dredging to put the sewage into the frack tanks
 20 until that payment was there because we couldn't
 21 pay the \$25,000 down for that delivery of that
 22 FLUMP. And so once we addressed the money, that's
 23 when things started spinning out of control.
 24 THE COURT: Okay. All right. Anything else
 25 that comes to mind?

1 THE WITNESS: No.
 2 THE COURT: Okay. All right.
 3 Complainant, who would like to question?
 4 MS. KACSUR: Yes, Your Honor. We just have a
 5 few questions.
 6 THE COURT: Sure. Take your time.
 7 CROSS-EXAMINATION
 8 BY MS. KACSUR:
 9 **Q. Mrs. Pierce, do you recognize this**
 10 **document?**
 11 A. I do.
 12 **Q. Can you describe it for me?**
 13 A. It was a -- I believe a letter to -- I
 14 could -- I believe IHS. I could be wrong. I'm not
 15 sure directly who it was. But it was kind of
 16 explaining the situation that was going on with
 17 Sheri Bement and the situation that I knew about.
 18 **Q. So you wrote this letter?**
 19 A. Yes.
 20 MS. KACSUR: I'm sorry. For clarification,
 21 we're on page 24 of CX46.
 22 BY MS. KACSUR:
 23 **Q. Can I have you scroll to the bottom of**
 24 **this page. In the last paragraph, there is a**
 25 **sentence right in the middle that begins, "Nathan**

1 **that project, correct?**
 2 A. That's what we were told by Jim and
 3 James Courtney.
 4 THE COURT: And the last part of that?
 5 THE WITNESS: James Courtney.
 6 THE COURT: Okay.
 7 THE WITNESS: And Jim White.
 8 BY MS. KACSUR:
 9 **Q. You also testified that NCUC tried -- or**
 10 **briefly did make Nathan Pierce the operator, right?**
 11 A. Yes, for less than 24 hours. Or tried
 12 to, anyway.
 13 **Q. So, in your opinion, would Nathan Pierce**
 14 **possess the requisite knowledge to be an operator**
 15 **of a lagoon?**
 16 A. No, because he did not have access to
 17 all of their records. In order to be an operator,
 18 you have to be able to document and have access to
 19 their equipment and things. He did not have that.
 20 He was just there to help.
 21 **Q. But he had the requisite experience and**
 22 **capabilities, other than the records, to be an**
 23 **operator, correct?**
 24 A. He had taken the class.
 25 **Q. The dispute with NCUC arose after the**

1 **and Sheri and IHS (Quintin Allen.)" Can I have you**
 2 **read that sentence for me?**
 3 A. "Nathan and Sheri and IHS (Quintin
 4 Allen) then had a conference call to deal with the
 5 issues of contract breach, and it was determined
 6 then that Adamas Construction would do the lagoon
 7 project alone with no use of NCUC equipment or
 8 staff, but NCUC would still remain the primary
 9 contractor of the contract. Adamas Construction
 10 would work with only NCUC crew and equipment for
 11 the camera and cleaning projects, and Sheri would
 12 be the project manager for the site work projects."
 13 **Q. Thank you.**
 14 **Can we go to the next page? And in that**
 15 **first paragraph there -- for the record, this is**
 16 **page 25 -- there is a sentence in the first**
 17 **paragraph that begins, "Sheri did not come." Can I**
 18 **have you read just that sentence?**
 19 A. "Sheri did not come to the site to see
 20 what was being pumped, how it was being pumped, or
 21 what the crew was doing to meet the contract
 22 needs."
 23 **Q. Thank you.**
 24 **You testified earlier that Sheri wasn't**
 25 **familiar enough with the lagoons to be in charge of**

1 **sludge had already begun to be applied, correct?**
 2 A. No.
 3 **Q. When did the NCUC dispute begin?**
 4 A. When the site prospect errors were
 5 starting to be addressed.
 6 **Q. And when was that, approximately?**
 7 A. Beginning of August.
 8 **Q. Adamas did not claim to no longer be a**
 9 **contractor with NCUC until after the application**
 10 **project began, correct?**
 11 A. Correct.
 12 MS. KACSUR: Can we look now at CX56, et.
 13 page 1.
 14 BY MS. KACSUR:
 15 **Q. Do you recognize this document?**
 16 A. I do not.
 17 **Q. Do you recognize the law firm at the top**
 18 **of this document?**
 19 A. I do not. I believe it was from a
 20 gentleman that maybe Nathan had reached out to when
 21 we got the first issues with IHS and EPA. I could
 22 be wrong. I don't know exactly. That was not my
 23 purview. I didn't do any of the lawyer stuff.
 24 That was him.
 25 MS. KACSUR: Can we go to the second page?

1 BY MS. KACSUR:
 2 **Q. And can I have you read the --**
 3 MS. KACSUR: Can you scroll up a bit?
 4 MR. PIERCE: Your Honor, I mean, I know that
 5 we're building a record here, and I think some of
 6 these highlighted and skipped over portions are
 7 creating not an accurate description of what's
 8 going on in this document. We seem to be
 9 cherry-picking them and skipping over certain words
 10 and then adding portions of other sentences, and it
 11 seems like it's getting very confusing.
 12 THE COURT: In terms of what's actually being
 13 read into the record?
 14 MR. PIERCE: That's correct.
 15 THE COURT: Okay. Well, you can -- I mean,
 16 I'm going to have it all, obviously. I realize
 17 that there are certain points that the parties want
 18 to emphasize, but that's not what I'm limited to.
 19 MR. PIERCE: Sure.
 20 THE COURT: That being said, though, one
 21 option would be to, when you have the opportunity
 22 to redirect, if you will, if you want to point out
 23 some of those other areas that you think might
 24 provide some context, you're welcome to.
 25 MR. PIERCE: Sure.

1 THE COURT: Otherwise, you know, all I can
 2 say is I'll be looking at everything in its
 3 entirety.
 4 Okay. Please go ahead.
 5 BY MS. KACSUR:
 6 **Q. Can I have you read the first bullet?**
 7 A. "When IHS and NC Tribal Council signed
 8 the fixed price agreement with NCUC, IHS and the
 9 Tribal Council were aware that NCUC did not have
 10 the technical expertise or equipment contacts to do
 11 this project without the participation of Adamas in
 12 the projects."
 13 MS. KACSUR: Thank you.
 14 We have no further questions.
 15 THE COURT: Okay. I actually just had two
 16 quick follow-ups if you don't mind me hopping in
 17 before I forget.
 18 When you mentioned, Mrs. Pierce, that in
 19 early August I think you said there were site
 20 errors, and when those were addressed was when
 21 problems started. That --
 22 THE WITNESS: Yes.
 23 THE COURT: -- may not be a verbatim quote.
 24 But what site errors?
 25 THE WITNESS: So part of the lagoon project,

1 there was also what they called scattered site
 2 projects. So they worked on things like opening
 3 and access to their gate valves because the utility
 4 company didn't know where the locations of most of
 5 their gate valve was. In fact, Nathan and Sean
 6 Bad Bear actually found old maps and located all of
 7 the gate valves throughout the city of Lame Deer
 8 and actually had to un-bury several of them to the
 9 point where even when they pulled one up, there was
 10 a snake inside and had to kill the snake. And
 11 yeah, it was bad. But anyway.
 12 THE COURT: Okay. So that triggered a lot of
 13 this in your opinion?
 14 THE WITNESS: Yes. Well, what had happened
 15 was because Cummins went to Nathan and said
 16 there's -- "They are not meeting protocol for
 17 safety." And so when Nathan brought that up to
 18 Sheri and Jim, who was her husband, they became
 19 very defensive. And then after that, that first
 20 payment came in for the lagoon project, and the
 21 money started disappearing and didn't go to the
 22 contractors. And when addressed, that's -- it was
 23 all within, like, a week period. It was just
 24 literally, like -- I don't know how to -- it was
 25 like watching a wildfire, just -- I mean, it

1 just -- it started, and within two weeks it was an
 2 utter chaos.
 3 THE COURT: Okay.
 4 THE WITNESS: Literally a complaint from
 5 George about the site projects. He went to her and
 6 Jim. After that, a confrontation started, and it
 7 just continued.
 8 THE COURT: Okay. And the only other quick
 9 question I had with regard to operator -- operator
 10 qualifications.
 11 THE WITNESS: Okay.
 12 THE COURT: I know that you -- I've heard
 13 this a couple of times through your testimony that
 14 you talked about taking classes.
 15 THE WITNESS: Yes.
 16 THE COURT: And then taking a test.
 17 THE WITNESS: He took the classes for the
 18 water and sewer. So it was a two-day class offered
 19 through -- I don't know who it was through. But it
 20 was at the city college there on the west end of
 21 Billings, and he was gone for two days, which they
 22 did water and sewer. Basically, they went over the
 23 manual, I guess. I don't know. And then he was
 24 supposed to take the test. But then she put him in
 25 as the operator and then took it away. And after

1 that he decided he wasn't going to do the test or
 2 deal with that aspect of it whatsoever to even help
 3 them.
 4 THE COURT: Okay. So "he" is Nathan Pierce?
 5 THE WITNESS: Yes. Sorry.
 6 THE COURT: And "she" is Sheri Bement, right?
 7 THE WITNESS: Yes.
 8 THE COURT: Okay. So Sheri removed
 9 Mr. Pierce as operator?
 10 THE WITNESS: After she told IHS he was.
 11 THE COURT: Okay. And that's what fed into
 12 the decision, to your knowledge, that he wasn't
 13 going to bother taking the test?
 14 THE WITNESS: Yes. Because he got
 15 notification. I don't even know who told him. But
 16 he was like, basically, "She just put me down as
 17 the operator. She didn't ask my permission for it.
 18 She just did it." And then so then he went to her
 19 the next day, and she was, like, "Well, I'm just
 20 going to take it off." But through IHS, they still
 21 had him documented as the operator even though he
 22 wasn't ever.
 23 THE COURT: And do you know where that was
 24 documented or memorialized? Do you know what kind
 25 of form?

1 THE WITNESS: I don't know. It could have
 2 been an e-mail. I just know it was back and forth.
 3 And this was things that him and I talked about
 4 outside of home.
 5 THE COURT: Okay. Got it. Got it.
 6 THE WITNESS: It wasn't -- it wasn't like I
 7 was a part of it. I just know the drama it brought
 8 to our house.
 9 THE COURT: Okay. Understood. And so this
 10 may actually answer my next question, but do you
 11 know -- personally, do you know whether or not
 12 passing that test would have been a requirement in
 13 order to finalize becoming an operator?
 14 THE WITNESS: Yes. Because I believe in the
 15 state of Montana you do have to have an operator
 16 license.
 17 THE COURT: Okay.
 18 THE WITNESS: I could be wrong, but I do
 19 believe that. It's kind of like having a nursing
 20 license or, you know, you have to have that license
 21 done before you can actually practice.
 22 THE COURT: And that was the state test that
 23 Ms. Bement failed?
 24 THE WITNESS: Yes.
 25 THE COURT: Okay. Got it. Okay. Thank you

1 so much.
 2 Please go ahead, Mr. Pierce.
 3 MR. PIERCE: You know, I think we've
 4 covered everything, Your Honor. You sort of nailed
 5 down --
 6 THE COURT: Yeah. I didn't mean to do that.
 7 I just wanted to follow up while it was still in my
 8 brain because it may not be there for long, so...
 9 MR. PIERCE: You saved me. So I think we've
 10 covered it. And I have no further questions.
 11 THE COURT: Okay. All right. Very good.
 12 Thank you so much, Mrs. Pierce. I
 13 appreciate your testimony.
 14 THE WITNESS: Thank you.
 15 THE COURT: How about you? Are you -- are
 16 you all -- where's respondent stand here? Are you
 17 done or do you want to --
 18 MR. PIERCE: Your Honor, I think, based upon
 19 everything that's here today. I mean, I appreciate
 20 the -- you know, the nature and the extent and
 21 prior history. I mean, I don't know that we can
 22 really -- I don't know how I could question myself
 23 and give testimony at the same time.
 24 THE COURT: Well, just -- and I'm not saying
 25 this to urge or not, you know. If you want to just

1 offer some statements for me to consider under
 2 oath, you can do that.
 3 MR. PIERCE: Sure.
 4 THE COURT: If you don't, that's okay, too.
 5 I mean, I -- you know, generally, I cover just some
 6 basics. But you don't have to feel as though
 7 you've got to act as the questioner and the
 8 responder all in one. You can, under oath, share
 9 what you'd like me to consider or not. That's your
 10 call.
 11 MR. PIERCE: Yes, ma'am. I guess I can give
 12 a quick statement under oath.
 13 THE COURT: Okay. Do you want to come up
 14 here though?
 15 MR. PIERCE: Oh, yes, ma'am.
 16 THE COURT: Make it fully official. And, you
 17 know, by doing so, you'll be subject to cross. You
 18 know that, right?
 19 MR. PIERCE: Yes, ma'am.
 20 THE COURT: Okay. All right. Okay. If you
 21 would raise your right hand.
 22 NATHAN PIERCE,
 23 called as a witness on behalf of the Respondent,
 24 having been first duly sworn testified as follows:
 25

1 THE WITNESS: Yes, ma'am.
 2 THE COURT: Okay. Please have a seat,
 3 Mr. Pierce. And --
 4 EXAMINATION
 5 MR. PIERCE: For the record, my name is
 6 Nathan Pierce. N-A-T-H-A-N, P-I-E-R-C-E.
 7 THE COURT: And just a few kind of
 8 preliminary things. With regard to the
 9 corporation, what was your role in Adamas
 10 Construction and Development Services?
 11 THE WITNESS: I was the owner, operator, and
 12 manager. General manager, excuse me.
 13 THE COURT: And roughly how long did the
 14 business exist?
 15 THE WITNESS: So the business existed for
 16 about four years.
 17 THE COURT: And I think Mrs. Pierce spoke to
 18 this, but if you want to corroborate or if you are
 19 able to be more specific, do you know when it was
 20 dissolved?
 21 THE WITNESS: 2019, I believe, is when it was
 22 dissolved.
 23 THE COURT: Okay. And did the basis for
 24 dissolution stem from this particular project or
 25 were there other things that factored into it?

1 looked at pretty heavily is the intent, was the
 2 intended violation there? But moreover, we've
 3 heard here from other testimony that the person who
 4 is in control of the site and the overall facility
 5 as well as contract -- a contractor cannot contract
 6 away their liability. There's been multiple
 7 documents that have been shown here today that
 8 shows NCUC ultimately accepted that responsibility.
 9 There's multiple documents here today that point
 10 out, regardless of what the EPA is trying to
 11 assert, that, in fact, NCUC was the main contractor
 12 and person in control of this entire operation.
 13 And so when asked for documents, the
 14 documents that I didn't have, I responded to the
 15 EPA immediately and tried to provide them access to
 16 the information or documents that they needed. So,
 17 to me, if a person, you know, is asking for
 18 documents or records and you don't have them, I
 19 think the most responsible thing you can do is
 20 point out where they can access or find those
 21 records. They were able to do so. So the idea
 22 that I didn't respond I think is completely
 23 disingenuous on its face. They may not have liked
 24 the response, but the response was given.
 25 THE COURT: Okay. Did you withhold

1 THE WITNESS: No, ma'am. It was directly
 2 from this project.
 3 THE COURT: Okay.
 4 THE WITNESS: Not getting paid for close to
 5 90 -- you know, 90 to 120 days just steamrolled
 6 everything downhill.
 7 THE COURT: And I guess are there -- the
 8 documents that -- I mean, this is a big record.
 9 THE WITNESS: Yes, ma'am.
 10 THE COURT: So the documents, I'll just say
 11 broadly -- if you're not comfortable answering,
 12 it's okay. But the documents that -- as I go
 13 through, that appear to be attributed to
 14 you -- e-mails from you, things that appear to bear
 15 your signature -- any question about that, or do
 16 you acknowledge that they are from you?
 17 THE WITNESS: They're from me if they have my
 18 signature, Your Honor.
 19 THE COURT: Okay. Or your e-mail?
 20 THE WITNESS: That's correct, Your Honor.
 21 THE COURT: Okay. All right. So what would
 22 you like to make sure that I know about with
 23 respect to both liability and penalty?
 24 THE WITNESS: So I think when it comes to the
 25 liability aspect, one of the things that should be

1 anything --
 2 THE WITNESS: No, ma'am.
 3 THE COURT: -- from them?
 4 THE WITNESS: In fact, I tried to point them
 5 to every place that they could find the information
 6 they were seeking.
 7 THE COURT: Okay. With regard to this
 8 project, can you either just confirm or reiterate
 9 for me what aspects of it you physically did?
 10 THE WITNESS: Sure. Yes, Your Honor. The
 11 aspect that I physically did is I took the FLUMP,
 12 which is a -- basically, it's a boat that has a
 13 head on it, and I put it inside the ponds. I ran
 14 that back and forth, and it pumped from the ponds
 15 into the frack tanks.
 16 Other than that, I worked as a technical
 17 consultant as per my stated contract with NCUC.
 18 And I believe that's the same thing that James
 19 Courtney described as a consultant.
 20 THE COURT: And then what I'm kind of piecing
 21 together, then, is Mr. Sprague came in with regard
 22 to removing the sludge from the frack tanks --
 23 THE WITNESS: Yes, ma'am.
 24 THE COURT: -- into his equipment --
 25 THE WITNESS: Yes, ma'am.

1 THE COURT: -- in order to then transport it
 2 to Mr. Robinson's property?
 3 THE WITNESS: That's correct. Yes, Your
 4 Honor.
 5 THE COURT: And then Mr. Sprague then sprayed
 6 or spread out that sludge that Mr. Robinson then
 7 tilled into the soil?
 8 THE WITNESS: Yes, ma'am. That's correct.
 9 THE COURT: Okay. So with regard to
 10 Mr. Sprague's piece of this, to what extent -- I
 11 realize there's the subcontractor agreement. To
 12 what extent did you supervise his work, his piece
 13 of it?
 14 THE WITNESS: Very limited, Your Honor.
 15 THE COURT: Okay.
 16 THE WITNESS: I went out for the initial
 17 meeting as he spoke, that sort of ten-person
 18 circle. And that was pretty much the extent of my
 19 control as to where he dumped, when he dumped, what
 20 time he went. That was all independently and up to
 21 him.
 22 THE COURT: In that circle, was that a
 23 one-meeting thing?
 24 THE WITNESS: Yes, ma'am.
 25 THE COURT: Do you remember about when that

1 happened?
 2 THE WITNESS: Boy. I'm going to say it would
 3 have to be close to the time that I signed the
 4 contract with Tom Robinson. So around 8/18-ish,
 5 somewhere in that time frame.
 6 THE COURT: Okay. And to the best of your
 7 recollection, who was in the initial circle?
 8 THE WITNESS: So George Cummins, Sheri
 9 Bement, Jim Bement, myself, Spencer Lande, Sean
 10 Bad Bear, Ernie Sprague, and Tom Robinson -- Ernie
 11 Sprague -- excuse me -- and Tom Robinson. And I
 12 don't -- I think that was the gist of it.
 13 THE COURT: Okay.
 14 THE WITNESS: I don't think there was anybody
 15 else.
 16 MS. PIERCE: Frank Backbone?
 17 MR. PIERCE: Sorry?
 18 MS. PIERCE: Frank.
 19 MR. PIERCE: Frank Backbone. Yes, ma'am.
 20 THE COURT: Okay. And what -- as it relates
 21 to what I need to evaluate, what all was covered in
 22 that initial circle meeting?
 23 THE WITNESS: So the primary -- there were
 24 two actual meetings. There was one meeting at the
 25 Northern Cheyenne Utility Commission. That had all

1 of the project players there. That had Sheri
 2 Bement. That had engineers from Pioneer Technical
 3 Services. That had engineers from IHS. Meaning
 4 there were lots of different people, including
 5 tribal council members, because we're dealing with
 6 the Northern Cheyenne Reservation here.
 7 THE COURT: Is that meeting the one that's
 8 been referred to as the pre-construction meeting?
 9 THE WITNESS: No, ma'am.
 10 THE COURT: Okay.
 11 THE WITNESS: There were lots of
 12 pre-construction. There was a -- I think there was
 13 probably a total of six meetings prior to the
 14 project ever being signed into agreement. Then
 15 there was probably three different types of
 16 pre-construction meetings, one at IHS. And so that
 17 was the pre-construction meeting between IHS,
 18 myself, and NCUC to where they sort of explained.
 19 There were three different contracts
 20 that we were dealing with here. The sewer lagoon
 21 renovation project, the sewer camera and cleaning
 22 project, and then as my wife mentioned, the
 23 scattered site project. Which scattered site
 24 projects have to do with installing septic, wells,
 25 building homes for the -- individual homes on a

1 reservation. It's money that's provided by IHS
 2 through a funding program.
 3 So we had that meeting. Then we had
 4 another pre-construction meeting at the Northern
 5 Cheyenne Utility Commission office. And again, a
 6 lot of the main players were there. And there was
 7 pretty much a layout of the project, how it was
 8 going to go, who was going to do what, what all the
 9 records and obligations were.
 10 I believe at that point, James Courtney
 11 had reiterated the 503 requirements for NCUC. And
 12 I believe he memorialized in his meeting notes that
 13 he had told them they were ultimately responsible
 14 for the 503 requirements and to follow and make
 15 sure that those were followed.
 16 THE COURT: Okay. And then so going back
 17 then to this, what I'm calling an initial
 18 circle meeting that sounds like was relating
 19 to the hauling and applying of the sludge on
 20 Mr. Robinson's property --
 21 THE WITNESS: Yes, ma'am.
 22 THE COURT: Did -- was there discussion about
 23 the 503 requirements and what records would have to
 24 be developed, and who would develop them, and who
 25 would keep them, and were there any conversations

1 about the records piece?
 2 THE WITNESS: Yes, ma'am. And I believe
 3 Mr. Sprague had confirmed that earlier in his
 4 testimony as well.
 5 THE COURT: And so did some of that come from
 6 you, then, to these individuals with whom you
 7 subcontracted?
 8 THE WITNESS: So a good majority of the 503
 9 information came from James Courtney and/or George
 10 Cummins. I did provide 503 information in my
 11 contracts, as you have seen, to reiterate to
 12 everybody that there were obligations, and that
 13 they needed to go ahead and follow those, and that
 14 we were expecting them to follow those obligations.
 15 THE COURT: Did you ever follow up with any
 16 of your subcontractors to determine whether they
 17 were developing the records and to be able to
 18 comply with 503?
 19 THE WITNESS: Yeah. I followed up with both
 20 Ernie and Tom before the contract to ensure that
 21 they were doing those. We were also developing out
 22 records at NCUC for them and were instructed that
 23 they were going to -- as they were ultimately
 24 responsible for the 503 and they were the NPDES
 25 permit holder, they were going to be the ones who

1 THE COURT: So with respect to that
 2 requirement and this project, did you ever collect
 3 any records from anybody that would need to be
 4 maintained and potentially turned over to NCUC?
 5 THE WITNESS: I did not, because I felt they
 6 were already in NCUC's possession.
 7 THE COURT: Okay. Were there any, you know,
 8 meetings or discussions that you had with NCUC to
 9 confirm whether they had the 503 records or
 10 anything?
 11 THE WITNESS: The meetings and discussions
 12 for settlement with IHS, that was brought up and
 13 discussed at that time.
 14 THE COURT: Okay.
 15 THE WITNESS: So...
 16 THE COURT: But not when all of this was
 17 transpiring?
 18 THE WITNESS: So let me rephrase. The
 19 meeting, meaning the settlement meeting, with IHS.
 20 So after all of this sort of fell apart, Dion
 21 Killsback memorialized that he represented Adamas
 22 and NCUC in negotiations with IHS for payment of
 23 the contract. At that point, it was discussed with
 24 IHS that NCUC had those records.
 25 THE COURT: Okay. Anything else you want to

1 were taking care of the records and making sure
 2 that those got stored appropriately for the
 3 project.
 4 THE COURT: "They" being NCUC?
 5 THE WITNESS: NCUC, yes, ma'am.
 6 THE COURT: Did you ever collect records from
 7 Tom Robinson or Ernie Sprague?
 8 THE WITNESS: No, ma'am. After I got served
 9 with the initial request for information, I did
 10 reach out to them and explain that they needed to
 11 go ahead and provide that information. My attorney
 12 also sent a letter to Dion Killsback from the
 13 Northern Cheyenne Utility Commission, attorney for
 14 the Northern Cheyenne Utility Commission, asking
 15 him to provide that information to the EPA and
 16 explaining that we had received their request and
 17 we are now asking for you to provide the documents
 18 that are in your control.
 19 THE COURT: Okay. And did you ever collect
 20 any documents and maintain that?
 21 THE WITNESS: So I guess did I collect
 22 documents and maintain them? Yes, ma'am.
 23 THE COURT: With regard to 503. Because I'm
 24 really focused on these claims in this.
 25 THE WITNESS: Right.

1 share with me about the records piece, the 503
 2 records, developing and maintaining records?
 3 THE WITNESS: No, Your Honor. I mean, I
 4 think the plain English reading of the law is
 5 pretty -- it states that the applier or person who
 6 applies shall maintain those records.
 7 THE COURT: Okay. So turning just for a
 8 minute to, like, the operator piece, if I can call
 9 it that. I heard some testimony from Mrs. Pierce
 10 about that. Would you like to elaborate or fill in
 11 any gaps or --
 12 THE WITNESS: Yes, ma'am.
 13 THE COURT: Okay.
 14 THE WITNESS: So Sheri Bement actually -- the
 15 reference of naming me as the operator actually
 16 came in front of the EPA Region 8 inspectors. She
 17 attempted to hold me out as the operator, which I
 18 did correct that position. She wanted me to be the
 19 operator for the sewer and water system of the
 20 Lame -- of the Northern Cheyenne Reservation. We
 21 had developed out an initial verbal agreement that
 22 I would become the temporary operator.
 23 Within a 24-hour period, she came back
 24 to me and said that her board of directors did not
 25 want that to happen. She also explained to me some

1 of the other, I guess, chaos with her board, I
 2 guess, and the tribal council as well. And so I
 3 decided at that point that I was no longer
 4 interested, and I didn't want to pursue that
 5 position, and that I would not operate -- be their
 6 operator.

7 I had gone through the classes, as my
 8 wife had mentioned. In the state of Montana
 9 you're required to go through classes, and then you
 10 are -- you have to take a test to show that you
 11 have the skills necessary to meet the operator
 12 limits. Depending on the size of the system, the
 13 requirements can be extremely, extremely stringent
 14 or strict. So there's a lot of different
 15 determination there.

16 Once you pass that test and make
 17 application to the state, the state will issue an
 18 operator's license and send that to you. I did not
 19 complete the application process. I did not
 20 complete the test process.

21 THE COURT: And as it relates to, you know,
 22 the claims that are made here in Claim 2, is there
 23 anything that you wanted to share on your own with
 24 me to consider about the allegations with respect
 25 to you being an operator?

1 THE WITNESS: So, I mean, in order to -- you
 2 can say anybody's activities with regard to a sewer
 3 system could be an operator, but an operator has
 4 very specific duties. They have very specific
 5 obligations as to the system, as to the
 6 recordkeeping requirements, testing, sampling, the
 7 reporting for the NPDES permit. I mean, there are
 8 a lot of things that an operator has to do. And
 9 simply being a subcontractor who works on similar
 10 projects does not automatically make one an
 11 operator.

12 At no time did I ever hold myself out to
 13 be the operator of the NCUC system or the Northern
 14 Cheyenne systems, and I am not an operator. The
 15 Northern Cheyenne Utility Commission had a
 16 temporary operator that was working there named
 17 Raymond Pine. He was their foreman and operator
 18 on a temporary basis. He was also somebody that
 19 Sheri Bement made me give daily reports to.
 20 Unfortunately, Mr. Pine passed away.

21 THE COURT: Okay. Anything else you wanted
 22 to share with regard to that?

23 THE WITNESS: No, Your Honor.

24 THE COURT: Okay. And then with respect to
 25 the, you know, penalty factors, I know that you

1 said before taking the stand you didn't really
 2 think there was anything more that you could add.
 3 But anything come to mind that you want to offer
 4 testimony about?

5 THE WITNESS: Hard to get blood from a
 6 turnip, I mean.

7 THE COURT: With regard to the history of
 8 prior violations, any?

9 THE WITNESS: None.

10 THE COURT: Okay. There's what I kind of
 11 call a catch-all, if you will, that often appears
 12 in penalty consideration, whether it's the Clean
 13 Water Act or other statutes that I encounter,
 14 called "other matters as justice may require." So
 15 anything else you want to tell me under oath that
 16 you would like me to consider if I reach the issue
 17 of penalty and penalty mitigation?

18 THE WITNESS: No, Your Honor.

19 THE COURT: Okay. Anything else at all
 20 before I turn it over?

21 THE WITNESS: No, ma'am.

22 THE COURT: Okay.

23 Any questions for Mr. Pierce?

24 MR. MUEHLBERGER: Yes, Your Honor.

25 THE COURT: Please.

1 CROSS-EXAMINATION

2 BY MR. MUEHLBERGER:

3 **Q. Mr. Pierce, I know this is well-tread**
 4 **ground at this point. But there's some parts of**
 5 **the record that I want to talk about, and then I've**
 6 **just got a few follow-up questions here.**

7 **You just said that you never held**
 8 **yourself out as an operator. But didn't you say in**
 9 **an e-mail to IHS and NCUC in August of 2018, "I**
 10 **would fall under the NCUC umbrella as the sewer**
 11 **operator"? Did you not say that?**

12 A. I did say that.

13 **Q. Okay. And then you said, "I'm no longer**
 14 **the temporary sewer operator for the NCUC." Did**
 15 **you say that?**

16 A. That's correct, yes.

17 **Q. Okay. Concerning the sludge removal and**
 18 **application project, you told NCUC and IHS that**
 19 **Adamas Construction was responsible for completing**
 20 **the project, correct?**

21 A. I told them that we would follow the 503
 22 regulations.

23 **Q. Well, let's be clear about this. In**
 24 **addition to telling them that you would follow the**
 25 **503 regulations, didn't you also say that Adamas**

1 **would complete the project itself?**
 2 A. So I did not say Adamas would complete
 3 the project itself. I said that we would complete
 4 the project --
 5 **Q. Okay.**
 6 A. -- in the terms of the agreement we had
 7 with the Northern Cheyenne Utility Commission.
 8 MR. MUEHLBERGER: Can we look at
 9 Complainant's Exhibit 45, et. 33? Okay. Thank
 10 you.
 11 BY MR. MUEHLBERGER:
 12 **Q. Could you read that third bullet point**
 13 **that's highlighted there, please?**
 14 A. "It is understood for this contract, the
 15 term 'Adamas Construction and Development Services'
 16 or 'Adamas' includes all of our subcontractors,
 17 subconsultants, engineers and other team members."
 18 **Q. So you were taking responsibility for**
 19 **your subcontractors through this statement, right?**
 20 A. I am stating out here that that term
 21 includes all of those people.
 22 **Q. Okay. You also --**
 23 A. I didn't say that I accept liability for
 24 them. I just said the term includes.
 25 **Q. Okay. So by including the**

1 Pierce have been subcontracted by NCUC to be the
 2 project manager and technical consultant for this
 3 project."
 4 **Q. Can you read the second line, please?**
 5 A. "Work will be completed according to the
 6 standards of the Northern Cheyenne Regulations,
 7 U.S. Environmental Protection Agency Part 503."
 8 **Q. In June of 2018, you wrote an e-mail to**
 9 **NCUC and IHS that there would be no NCUC equipment**
 10 **or staff that would be used in the sludge removal**
 11 **and application project, right?**
 12 A. So can you ask that question again? I'm
 13 sorry.
 14 **Q. Sure. In June -- to be specific, June**
 15 **21st, 2018, you sent an e-mail to IHS and to NCUC,**
 16 **and you said, "Nathan Pierce will be the project**
 17 **manager for the sludge removal project with the**
 18 **understanding that no NCUC equipment or staff will**
 19 **be used."**
 20 A. That agreement was never honored.
 21 **Q. But you said that?**
 22 A. I did say it, but it was never honored.
 23 **Q. Okay. And after the project was**
 24 **complete --**
 25 A. The project was never completed.

1 **subcontractors in the term "Adamas," you are**
 2 **representing to NCUC and IHS that the**
 3 **subcontractors are, in fact, Adamas?**
 4 A. The subcontractors would have been
 5 subcontracted to NCUC.
 6 **Q. Now, Mr. Pierce, the two contractors**
 7 **that we've talked about at length here between you**
 8 **and Tom Robinson and between you and Ernie Sprague,**
 9 **is NCUC a party to those contracts?**
 10 A. So NCUC would be a party to the contract
 11 because they're a party to Adamas' contract, and
 12 those subcontractors are a party to that contract.
 13 **Q. Those two contracts that we've gone over**
 14 **many, many times here, is NCUC a party to those**
 15 **contracts?**
 16 A. NCUC is a party to the contracts by what
 17 you're inferring here.
 18 **Q. Was NCUC a signatory to either of the**
 19 **contracts between you and Mr. Sprague or you and**
 20 **Mr. Robinson?**
 21 A. No. Without the NCUC approval, those
 22 contracts would never be possible.
 23 **Q. Could you please read the first**
 24 **highlighted line on this document?**
 25 A. "It is understood that Adamas and Nathan

1 **Q. After the sludge had been applied to**
 2 **Mr. Robinson's property in August of 2018,**
 3 **afterwards, your attorney said in an e-mail in**
 4 **April 2019, that Adamas Construction completed all**
 5 **of the work with the sludge removal and application**
 6 **project, correct?**
 7 A. That's what my attorney said to the IHS,
 8 I believe.
 9 **Q. Thank you.**
 10 **Your attorney also said -- or one of**
 11 **your attorneys after this project also said that**
 12 **NCUC didn't have the expertise or the equipment to**
 13 **complete the project, right?**
 14 A. I believe that was rejected by IHS, and
 15 that argument was --
 16 **Q. Did your attorney say that NCUC didn't**
 17 **have the expertise or equipment to complete the**
 18 **project?**
 19 A. He said that, but he has no firsthand
 20 knowledge.
 21 **Q. Okay. Earlier, Mrs. Pierce testified**
 22 **that during the sludge removal -- during the sludge**
 23 **preparation part of the project, that you were**
 24 **producing daily records and giving them to NCUC.**
 25 **This wasn't -- none of these records were found in**

1 **your 308 response or in your prehearing exchange,**
 2 **right?**
 3 A. Well, I gave them to NCUC.
 4 **Q. You didn't keep any copies for yourself?**
 5 A. We were writing them down, as she said,
 6 in a spiral notebook assigned by NCUC. We asked
 7 for them afterwards. My attorney sent a letter,
 8 which you have a copy of that letter, requesting
 9 those documents, and they didn't turn them over.
 10 My attorney asked them to send them directly to
 11 you.
 12 **Q. Okay. I also want to make something**
 13 **clear. Earlier, you seemed to indicate that IHS**
 14 **was responsible for producing some of the records**
 15 **under the 503 recordkeeping requirements. Did I**
 16 **hear that correctly?**
 17 A. I guess I can't recall whether or not
 18 that was something that was said, so I can't
 19 confirm or deny whether that was correct.
 20 **Q. Okay. Well, let's be clear here. So**
 21 **IHS was not a preparer of sludge, correct?**
 22 A. I disagree. They were in charge, as
 23 Ernie Sprague had testified.
 24 **Q. Did any person that works for IHS do any**
 25 **of the physical labor that was part of preparing**

1 **said they would take responsibility for the project**
 2 **and comply with the regulations, correct?**
 3 A. The records don't indicate that. The
 4 records indicate that, in fact, NCUC and IHS did
 5 not follow through with that agreement. The record
 6 also indicates that I did not take over the
 7 project. The record also indicates from the
 8 testimony here today that IHS and NCUC remained and
 9 retained control of the project and the site.
 10 **Q. Okay. Yet, your attorney asserted**
 11 **afterwards that Adamas completed all of the work**
 12 **for the sewage sludge project?**
 13 A. That was something the government had
 14 already rejected.
 15 **Q. Okay.**
 16 A. I think you're a bit estopped on that
 17 situation.
 18 **Q. Okay. This dispute between NCUC and the**
 19 **subcontractors, most of this took place after the**
 20 **sludge had already been applied to Mr. Robinson's**
 21 **land, right?**
 22 A. That's not correct.
 23 **Q. Okay. Around the time that it got**
 24 **applied?**
 25 A. Near the time that it got applied, yes.

1 **the sludge?**
 2 A. George Cummins came out and did
 3 inspections. He did all kinds of things. So yeah.
 4 **Q. Inspections?**
 5 A. Correct, yes. And he was also in
 6 charge.
 7 **Q. Okay. And was IHS an applier of sludge?**
 8 A. So IHS caused the sludge to be applied.
 9 **Q. Because they initiated the project?**
 10 A. That's correct.
 11 **Q. But Adamas said that they would take**
 12 **full responsibility for that --**
 13 A. That is not correct. NCUC said they
 14 would take full responsibility.
 15 **Q. As we've already talked about in the**
 16 **scope of work and in this document, you said that**
 17 **you were taking full responsibility for --**
 18 A. That's not true.
 19 **Q. -- this project.**
 20 THE COURT: Hold on. He needs to finish his
 21 question, and then you can answer.
 22 THE WITNESS: Sure.
 23 THE COURT: Go ahead, Mr. Muehlberger.
 24 BY MR. MUEHLBERGER:
 25 **Q. Okay. The records indicate that Adamas**

1 **Q. Okay. So let's be clear about one**
 2 **thing. At the time that the sludge was being put**
 3 **down on Mr. Robinson's property, you were still**
 4 **expecting to get paid for that project, correct?**
 5 A. I was expecting to get paid for the work
 6 I performed during the project.
 7 **Q. Okay. So earlier Mr. Sprague and**
 8 **Mr. Robinson testified that you never directed**
 9 **either of them to create records associated with**
 10 **sludge application management practices, right?**
 11 A. No, they did not.
 12 **Q. Yes -- okay. Mr. Robinson testified**
 13 **that you never discussed with him creating records**
 14 **for management practices, site restrictions, or**
 15 **vector attraction.**
 16 A. And after being reminded, he changed
 17 that testimony.
 18 **Q. I think he changed his testimony that he**
 19 **received information about agronomic rates,**
 20 **correct?**
 21 A. I believe he changed his testimony as to
 22 whether or not the answer should be "no" still.
 23 **Q. Okay. When I asked if you had directed**
 24 **him to create records for management practices,**
 25 **site restrictions, and vector attraction, he said**

1 no.

2 A. Okay. That's what he said.

3 **Q. Okay. And Mr. Sprague testified that**

4 **you never told him that he needed to create records**

5 **concerning vector attraction and management**

6 **practices, but that you had a verbal conversation**

7 **about site restrictions; is that correct?**

8 A. That's correct.

9 **Q. Okay. So, to date, you have never**

10 **submitted any records to EPA concerning sludge**

11 **application management practices as required by**

12 **Part 503, correct?**

13 A. Part 503 doesn't apply to me. You

14 haven't proved that it ever did.

15 **Q. Could you please answer the question?**

16 **To date, have you ever submitted any**

17 **sludge application management practices -- practice**

18 **records?**

19 A. Any sludge management practice records?

20 **Q. Sorry.**

21 A. No.

22 **Q. Sludge application management practices?**

23 A. No.

24 **Q. And to date, have you ever submitted any**

25 **records to EPA concerning sludge application site**

1 **restrictions?**

2 A. No.

3 **Q. And to date, have you ever submitted any**

4 **records to EPA concerning vector attraction?**

5 A. No. Actually, that's not correct. I

6 have submitted to the EPA my subcontract with Tom

7 Robinson that explains to him he needs to follow

8 those 503 parts. And it also explains to him that

9 he needed to till the -- till the sludge into the

10 soil within six hours, and that is a vector

11 reduction practice.

12 **Q. Earlier, you testified that you**

13 **communicated to Mr. Sprague and Mr. Robinson about**

14 **producing records after you received the EPA 308**

15 **request. Those communications aren't reflected in**

16 **the record, right?**

17 A. I believe Mr. Sprague testified that we

18 had spoke.

19 **Q. But there's no communication in the**

20 **record to indicate that you asked Mr. Sprague or**

21 **Mr. Robinson to produce records after EPA issued**

22 **you the 308 request, right?**

23 A. I guess there's nothing in the record

24 that would indicate that, no.

25 MR. MUEHLBERGER: One minute, please. EPA

1 has no further questions, Your Honor.

2 THE COURT: All right. Thank you,

3 Mr. Muehlberger.

4 Two quick follow-ups, and then if

5 there's anything you want to add, you can. I know

6 there's nobody here to question you in redirect,

7 but...

8 With respect to the testimony about the

9 project wasn't complete despite representations

10 made by your attorney, why wasn't the project

11 complete?

12 THE WITNESS: Your Honor, as Mr. Sprague had

13 already testified, we were locked out of the entire

14 project. And Tom Robinson also testified that the

15 project was not complete.

16 THE COURT: Okay. Do you -- do you

17 know -- and Mr. Robinson may have testified to

18 this, I just can't remember. That's why we have

19 the -- or Mr. Sprague may have testified to this.

20 But we have the transcript to go back to. But do

21 you happen to know about when that lockout occurred

22 relative to the length of time the project was

23 supposed to take?

24 THE WITNESS: So the lockout occurred

25 probably about midway through the project.

1 THE COURT: Okay.

2 THE WITNESS: As Mr. Sprague said, there was

3 about eight days of actual activity that happened

4 on the project. And then everybody sort of got

5 locked out, and the whole project went belly-up

6 from there.

7 THE COURT: Okay. And with respect to your

8 testimony in response to Mr. Muehlberger's

9 questions about a dispute that arose near the

10 time -- I think I wrote this down wrong. If I did,

11 my apologies. But that there was a dispute that

12 arose near the time the sludge was being applied to

13 Mr. Robinson's land. What dispute was that?

14 THE WITNESS: So the dispute that had

15 happened, and what my wife had alluded to, again, I

16 was hired as a technical consultant and project

17 manager. The scattered site projects, there was a

18 waterline break that needed to be repaired. And

19 when you dig a trench, safety requirements provide

20 that if it's so many feet below the surface, that

21 you should have a trench box, which is a big metal

22 box. That way, if it sloughs in, you don't get

23 buried.

24 I was called over to that project, and

25 the NCUC workers were down in the -- about a

1 14-foot hole with no safety equipment whatsoever.
 2 And so I explained to them that we needed to get a
 3 trench box, get it put in there to do the project
 4 safe and to do it in the proper manner.
 5 That sort of created a little friction
 6 between me and Jim Bement, Sheri Bement's husband.
 7 He was also their foreman. And so he felt like,
 8 "Screw you. I don't need to listen to you." And I
 9 was supposed to be the project manager and
 10 technical consultant.
 11 After that, there was a discussion about
 12 IHS taking over the scattered site projects -- or
 13 excuse me -- NCUC taking over the scattered site
 14 projects, my company taking over the sewer camera
 15 and cleaning project and taking over the sewer
 16 lagoon project. That was never brought to
 17 fruition. And in fact, the very next day,
 18 everybody said, "Nope, that's not going to happen."
 19 And Sheri told me, "I'm still in charge. You're
 20 going to report to me."
 21 THE COURT: Okay. Okay. So the scattered
 22 site, that's really a separate project from this?
 23 THE WITNESS: Yes, ma'am.
 24 THE COURT: That's what the dispute was
 25 about?

1 THE WITNESS: Yes, ma'am. And then there
 2 started to become issues with payment, so...
 3 THE COURT: Payment with the sludge project?
 4 THE WITNESS: Right. We had a mobilization
 5 payment that was supposed to come in. And so
 6 mobilization payment is just to get all the main
 7 equipment there and everything that's needed to
 8 actually do the job. Well, we noticed that the
 9 money wasn't quite right, and that created friction
 10 between Sheri. She was the only person who had
 11 access to request the money. We couldn't even
 12 request payments.
 13 THE COURT: Why was that?
 14 THE WITNESS: She was the main contractor.
 15 THE COURT: Okay.
 16 THE WITNESS: And her contract was with IHS.
 17 And I was not the contractor. And IHS points that
 18 out in their letter to my attorney.
 19 THE COURT: Okay. Those were the only two
 20 follow-ups I had. Was there anything else you
 21 wanted to offer, you know, in response to what
 22 you've said thus far or --
 23 THE WITNESS: I just think there is a lot of
 24 focus on circumstance and not a lot of focus on the
 25 facts as they are. I mean, there's some

1 circumstances pointing to possibly being an
 2 operator, but there -- I was never an operator.
 3 There's circumstance that I supposedly took over
 4 the project, but I was never allowed to take over
 5 the project. So there's a lot of circumstantial
 6 evidence here. But I think the facts really bear
 7 out that I was one of the only people involved in
 8 this entire project and tried to follow the
 9 regulations and tried to get everybody else to
 10 follow the regulations.
 11 THE COURT: Okay. Anything else?
 12 THE WITNESS: No, ma'am.
 13 THE COURT: All right. Did that raise
 14 anything else from complainant?
 15 MR. MUEHLBERGER: No, Your Honor. No further
 16 questions.
 17 THE COURT: All right. Thank you very much
 18 for your testimony, Mr. Pierce.
 19 THE WITNESS: Thank you.
 20 THE COURT: Okay. So anything else, then,
 21 from respondents with regard to the presentation of
 22 your case?
 23 MR. PIERCE: Respondents rest, Your Honor.
 24 THE COURT: Okay. And any rebuttal?
 25 MR. MUEHLBERGER: No, Your Honor. There is

1 one issue the complainants would like to raise
 2 while we're still on the record.
 3 THE COURT: Sure.
 4 MR. MUEHLBERGER: Earlier, Mr. Sprague made
 5 an assertion about EPA telling him that he could
 6 not say certain things that were in the record.
 7 And since that is now part of the record, I'm
 8 certainly prepared to address that if -- if you
 9 want to hear about that. You kind of handled as it
 10 was happening. But I just want to make sure, since
 11 it's in the record, that it's -- that it's dealt
 12 with properly.
 13 THE COURT: Okay.
 14 MR. PIERCE: Your Honor, can I chime in a
 15 little bit?
 16 THE COURT: You can.
 17 MR. PIERCE: I understand his position. But
 18 without Mr. Sprague being here to further clarify
 19 what he meant, I think we're trying to change a
 20 narrative.
 21 THE COURT: Well, I guess what I was
 22 interpret -- and maybe I'm mistaken here, but what
 23 I was interpreting you to want to say was simply to
 24 present your position with respect to what you were
 25 going to focus on with the witness. But was there

1 something else you were going to say?
 2 MR. MUEHLBERGER: I just want to make sure
 3 that the record is clear that EPA in no way told
 4 any witness that they are prevented from saying
 5 anything that is in the record or speaking to or
 6 reading anything that is in the record. In fact,
 7 EPA made it very clear that, at the beginning of
 8 our meeting, that we were not telling them what
 9 they could or could not say during testimony.
 10 THE COURT: Okay. Thank you. I think it
 11 suffices. You know, I understand that parties will
 12 have a particular focus of what they want to draw
 13 out in a witness. And with regard to Mr. Sprague,
 14 since he was identified, I believe, as somebody
 15 both sides were going to call, you know, I -- I
 16 assumed, and I think what played out, is that you
 17 both drew out everything you wanted, and
 18 Mr. Sprague got a lot off his chest of some things
 19 that he wanted to be sure to share with the
 20 tribunal, too. So I don't -- I mean, I feel like
 21 it was important to give you the opportunity to say
 22 that, because you're licensed attorneys, and there
 23 are ethics issues. And I understand wanting to
 24 clear the air, so to speak. But I think -- I think
 25 the record is clear unless anybody needs to say

1 anything else about it.
 2 MR. MUEHLBERGER: Thank you, Your Honor.
 3 MR. PIERCE: I have nothing, Your Honor.
 4 THE COURT: Okay. All right. So then are
 5 you prepared to close? Do you wish to make any
 6 closing arguments? Do you want to waive closing?
 7 It's up to you.
 8 MR. MUEHLBERGER: Complainant will not be
 9 producing a closing statement.
 10 THE COURT: Okay. And --
 11 MR. PIERCE: Neither will the respondent,
 12 Your Honor.
 13 THE COURT: Okay. All right. So then I
 14 guess we're at the point of concluding. I don't
 15 want to take a lot of time. I'm sure everybody is
 16 tired. But just quickly, once I close the record,
 17 which I'll do here momentarily, that closes the
 18 evidentiary record. No further evidence. I think
 19 we've got -- I will just very quickly -- I think
 20 it's really pretty clear we have into evidence
 21 CX -- hold on one second. I don't want to mess
 22 this up. I've got all of complainant's exhibits,
 23 which take me from CX1 through CX58. I have all of
 24 respondent's exhibits that take me from RX1 through
 25 RX28. And then we have two joint exhibits; 1, the

1 map, the GIS map, and 2, the fixed price agreement.
 2 MR. PIERCE: Yes, ma'am.
 3 THE COURT: Okay. So are we all -- I'm not
 4 missing anything. That's what I want to make sure.
 5 I've got everything that you all expect me to have.
 6 Are we on the same page, Mr. Pierce?
 7 MR. PIERCE: We are, yes, Your Honor.
 8 THE COURT: Okay. And from complainant?
 9 MS. KACSUR: Your Honor, we would just like
 10 to request again a URL for JX2 just so we can
 11 verify it's a publicly available document.
 12 THE COURT: Oh, sure.
 13 MR. PIERCE: Sure. I can get that, Your
 14 Honor. But it is a government document.
 15 THE COURT: Yeah. Do you have that handy to
 16 be able to produce it?
 17 MR. PIERCE: I don't have it right on me, but
 18 I can certainly get that for you. I do have it on
 19 my computer at home, so I can -- I can e-mail.
 20 THE COURT: Is that okay or do you want to be
 21 able to have it on the record?
 22 MS. KACSUR: Would it be possible to have it
 23 on the -- to admit JX2 contingent on us obtaining
 24 the URL and then that document being --
 25 MR. PIERCE: It's already been admitted,

1 hasn't it?
 2 THE COURT: Yeah. You know, that would
 3 require me to hold the record open, and I really
 4 don't like to do that. Let me ask you this: Is
 5 there a way, I mean, to do a quick Google search
 6 and pull that up?
 7 MR. PIERCE: We can try, Your Honor. It
 8 was difficult in finding in the fact that it's
 9 so -- so old, I mean. So all bids from the United
 10 States government are public records.
 11 THE COURT: Okay. Do you want to take a
 12 little break to look for it? Would that help?
 13 MR. PIERCE: Yes, Your Honor.
 14 THE COURT: Okay. So, I mean, we're good on
 15 time. Why don't we just take 15 minutes as a
 16 comfort break to find the URL. We'll clear that
 17 up, and then I'll be concluding shortly thereafter.
 18 Does that work?
 19 MR. MUEHLBERGER: That works.
 20 THE COURT: Okay. All right. We'll do that.
 21 I'll see you back in about 15.
 22 (Whereupon, a brief
 23 recess was taken.)
 24 THE COURT: We're back on record after just a
 25 brief break to try to obtain that URL. Any luck,

1 Mr. Pierce?
 2 MR. PIERCE: Your Honor, I actually found the
 3 document on the EPA's own website, but when I click
 4 on the document, it takes me to a different
 5 document. So I don't -- I'm not finding the URL
 6 that I have, but...
 7 THE COURT: Were you able to show that to
 8 complainant?
 9 MR. PIERCE: I did show that to them.
 10 MS. KACSUR: I wasn't able to view the
 11 document itself. I was just listening. I just
 12 believe in what he was telling me.
 13 THE COURT: Okay. All right. Well, so where
 14 is the document? Is it on your computer at home,
 15 you said?
 16 MR. PIERCE: So the URL that I searched would
 17 be on my computer at home.
 18 THE COURT: Okay.
 19 MR. PIERCE: So the document itself is right
 20 here on my computer.
 21 THE COURT: Right. Well, that's already in.
 22 Well, are you -- I mean, it was admitted. I didn't
 23 necessarily know that there was a problem, but I
 24 also understand your point. Are you uncomfortable
 25 with me considering it until you've had a chance to

1 we'll have it as well. We might be able to somehow
 2 add that to our case tracking system or something
 3 like that just to kind of memorialize the
 4 circulation of it.
 5 MR. MUEHLBERGER: Your Honor, if I could just
 6 add if Mr. Pierce is unable to produce the URL, I
 7 would just like to have it in the record that it is
 8 not then a publicly available document as asserted.
 9 THE COURT: Are you --
 10 MR. PIERCE: That's fine, Your Honor.
 11 THE COURT: -- willing to so stipulate?
 12 MR. PIERCE: That's fine, Your Honor.
 13 THE COURT: Okay. All right. All right. I
 14 think that's good. That's fine.
 15 Okay. So at this point, I will, in just
 16 a minute, be closing the record. It will take me a
 17 little bit just to sort of pack up. I have to find
 18 where this is plugged in and all of that. So I
 19 will just ask you all to not have any further
 20 discussions with me because we'll be off record.
 21 But I appreciate all of you being here. I
 22 appreciate the courtesy and professionalism you've
 23 shown one another and the tribunal throughout the
 24 hearing. So thank you. We'll be issuing -- once
 25 we get the transcript, we'll be sending that out to

1 pull it up publicly?
 2 MR. MUEHLBERGER: So, Mr. Pierce, you were
 3 saying that you could produce this URL from home
 4 and send it to us?
 5 MR. PIERCE: I believe, yes, I can do that.
 6 MR. MUEHLBERGER: Okay. We're comfortable
 7 with that approach.
 8 THE COURT: Okay. So it will remain in the
 9 record?
 10 MR. MUEHLBERGER: Right.
 11 THE COURT: Okay. All right. That's fine.
 12 Thank you. That will maybe streamline things.
 13 And, you know, I would say just for transparency,
 14 maybe just circulate it not only to complainant but
 15 to Ms. Almase. And are you able to supply that to
 16 the court reporter?
 17 MR. PIERCE: Sure. Yeah. I mean, I have her
 18 e-mail address.
 19 THE COURT: Okay. Great.
 20 MR. PIERCE: I can certainly send that to
 21 her.
 22 THE COURT: That would be great. And that
 23 way, it's just kind of memorialized as having been
 24 circulated. And if the court reporter has it, it
 25 can be noted somehow, maybe, in the record. And

1 both sides. And then as I mentioned at the outset,
 2 we'll issue, like, a post-hearing kind of briefing
 3 order that sets some deadlines for any motions to
 4 conform the transcript and then the briefing -- the
 5 briefing schedule. And then once all those things
 6 are submitted, I'll be reviewing everything and
 7 coming to a decision, a written decision that will
 8 be sent out to everybody. And that is appealable
 9 to the EAB should either side disagree.
 10 Any questions before we wrap it up,
 11 then?
 12 MR. MUEHLBERGER: No, Your Honor.
 13 THE COURT: No.
 14 MR. PIERCE: No, thank you, Your Honor.
 15 THE COURT: All right. Thank you all. Safe
 16 travels home. I'll conclude the hearing. Thank
 17 you very much to the court reporter. I'll conclude
 18 the hearing, and we'll go off the record.
 19 (Whereupon, Joint Exhibits Nos. JX1 and
 20 JX2 were admitted into evidence.)
 21
 22 (Whereupon, the proceedings concluded at
 23 3:46 p.m.)
 24
 25 * * * * *

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CERTIFICATE

STATE OF MONTANA)

) ss.

COUNTY OF GALLATIN)

I, Marla Jeske, Court Reporter - Notary
Public, CSR, in and for the County of Gallatin,
State of Montana, do hereby certify:

That the hearing was taken before me at
the time and place herein named; that the hearing
was reported by me in shorthand and later
transcribed into typewriting under my direction,
and the foregoing pages contain a true record of
the testimony of the witness, all done to the best
of my skill and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my notarial seal this ____ day
of _____, 2023.

Notary Public for the State of Montana
residing at: Bozeman
My commission expires: February 04, 2027

A				
a.m 1:9 10:6	72:12 192:7	482:16	activity 55:16	142:12,20
11:5 301:19	239:4 312:15	acknowledging	189:23 508:3	143:4,13,17
396:5	347:1 373:24	25:1	actual 43:16	144:11,17
abilities 202:1	439:10	acre 195:23	66:13 71:9	145:7,20
ability 22:24	absolve 232:8	315:23 316:1,6	183:24 229:23	146:11,20
104:8 199:14	absorbed 17:3	328:17 373:3	241:24 253:4	147:9,11,15
269:23 343:8	abutting 245:20	411:5	258:4 261:13	148:18 149:7
521:15	AC 129:7,15	acres 106:10	266:5 271:19	151:19 152:4,7
able 28:10 29:1	accept 497:23	195:21 243:7,8	271:20 291:24	152:15 153:3
29:23,25 35:1	accepted 306:22	243:9 328:13	299:2 446:15	154:7,8,16
75:4,7,16	483:8	328:14 373:2	486:24 508:3	155:14 156:3
82:19 86:21	access 29:23	383:18	Adam 5:21 7:10	157:2 159:16
123:22 135:9	45:3 202:13,18	acronym 421:22	109:13,22	161:16,17
165:17 185:10	243:17 385:17	448:25	Adamas 1:3	168:9 170:18
202:8 221:1	386:10 423:11	acronyms	2:12 3:4,20 5:4	172:12,16,17
235:17 241:25	423:21 437:8	448:11,12,16	5:5,7,10,12,15	172:20,23
245:7 248:5	471:16,18	act 5:13 11:2	5:16,18 6:14	173:3,7 174:5
249:20 251:8	475:3 483:15	38:6 40:15	6:23 7:11 8:10	178:18 182:22
251:14 271:8	483:20 510:11	41:2 42:9	8:12,14,15	200:2,8 205:15
271:12 305:3	accessibility	51:24 52:1	10:25 12:8,10	205:20 223:16
305:20,21	386:2,15	54:10,19 55:6	19:22 20:1	227:22 233:20
307:19 308:13	accessible	55:8 58:10	40:9 45:11	242:7,8,11
308:22 309:7	384:24	67:22 68:23	75:23 76:3,3,4	253:6 254:2
309:12 312:6,7	accommodate	74:25 84:24	76:6 77:9,21	284:4,22 285:7
312:11,13,24	398:20 399:7	85:1,11 92:18	77:22,24 78:12	285:19 286:1
319:6 324:16	account 22:8,15	94:25 95:11	79:24 86:18,19	286:16,22
340:5 341:11	accountable	115:12 239:20	88:4 91:4	288:20,25
347:4,9 348:12	210:19	239:25 248:23	95:25 97:14	289:11 290:4
348:14 352:17	accumulative	332:19,22	98:3,13,15	293:11 296:3,5
352:20 364:25	222:21	451:9 452:4	99:23 101:16	296:8,21 299:2
366:8,25	accuracy 249:22	480:7 495:13	105:9 106:3	299:4,5,23
367:24 370:22	accurate 196:15	acting 131:11	110:24 111:21	301:25,25
377:22 378:8	201:8,20 202:3	280:17	112:25 114:7	302:1,2 317:6
398:20 403:8	202:5 219:13	action 36:18	115:2 117:1,13	326:2,19
403:22 408:9	232:21,24	48:10,14	117:16,18	331:25 334:22
414:16 418:24	256:2 257:9	116:12 169:6	119:25 120:13	335:1,16,20,23
419:10,10,11	351:19,23	169:20 178:17	120:23 126:10	336:22,23
439:5 441:4	379:16 380:17	214:11 457:14	126:17 127:4,6	337:2 338:7,10
471:18 481:19	380:18 381:16	actions 44:16	127:13,24	338:12,17
483:21 489:17	473:7	48:12,15	128:5,11 129:3	339:2,25
515:16,21	accurately	265:23,24	129:24 130:13	342:14,22,25
517:7,10	380:16	active 87:1	131:8 132:7,14	343:9,10,13,15
518:15 519:1	accused 437:9	activities 43:15	133:22 134:2	352:12,16,17
absent 435:19	achieve 352:15	130:17,19	134:24 135:18	352:20,23
absolute 404:10	achieved 59:6	191:22 215:2	137:14 138:5	353:24 354:3
absolutely 64:1	102:3	216:5 283:17	138:11 139:3	355:11 356:12
	acknowledge	494:2	140:4,8,12,23	357:4,9 358:4

358:6,13	176:13 178:25	165:2	11:14,19,21,25	282:5,8 293:20
360:25 361:2,3	180:19 181:6	admissible 25:3	21:14 40:4	298:7,16 299:1
362:6,15 364:4	242:22 265:10	26:14	41:1 48:13	299:3,4,7,8
364:7,13 372:1	426:1 496:24	admission 25:10	50:12 67:20	310:18,20,22
372:24 388:5	additional	admit 24:16	69:3 78:11	310:25 311:4
401:25 404:5	108:12 141:8	25:9 29:15	143:2 146:23	311:10,14,16
405:18 416:23	154:2 178:13	39:1 207:14	192:18 277:16	312:7,12 313:6
417:11 421:14	252:4,11	224:2 338:22	277:17 284:15	313:11,15,17
424:5 425:16	259:13 287:8	362:8 373:7	285:10 292:9	313:18 326:2,6
430:8 438:20	287:15,15	376:9 387:13	303:7,17	326:10,12
439:13,20,21	296:1 297:18	515:23	332:13 339:5	327:8 329:9
440:5 441:11	374:1	admitted 14:12	357:12 370:19	331:4,7,11,14
442:5,5 444:17	additionally	23:20 29:18,20	444:14,14	331:14 333:4
449:9 454:18	53:9	33:24 34:4	499:7	334:3,5 335:9
454:22,23	address 64:7	116:5 162:9	agency's 104:13	335:10 338:2,4
455:12,15,17	86:22 87:9	252:5 348:18	agenda 97:7	343:5,7,9,10
455:23 456:3	106:6 124:24	515:25 517:22	agitated 150:7	343:12,23
457:3 462:20	276:5,10	520:20	ago 222:3	344:1,3,6,14
465:5,12 470:6	278:10 279:4	admittedly	386:19 387:16	345:2,11,15
470:9 472:8	291:16 302:14	219:22	agree 32:12	352:14 354:21
474:11 481:9	383:14,14	admitting 22:20	189:22 191:23	354:23,24
491:21 496:19	444:1 512:8	advance 12:7	199:5 200:8	355:4,16,18,19
496:25 497:2	518:18	15:4 26:25	218:25 220:17	357:24,25
497:15 498:1,3	addressed	27:3 302:13	220:25 229:21	360:15,18
498:25 500:4	240:24 276:7	advised 26:23	231:11 232:20	362:12,18,19
502:11,25	329:7 444:1	advising 217:24	252:22 268:13	363:24 364:2
503:11	468:22 472:5	advocate 452:17	313:10 316:2	364:18,21
Adamas' 144:12	474:20 475:22	aeration 281:2	316:14 318:21	454:22 474:8
440:19 447:23	adequate 455:22	aerial 256:23	328:16 331:23	485:11 487:14
497:16 498:11	adequately	261:5	332:23 337:2	492:21 497:6
Adamas's	183:12 443:20	affect 52:6,24	338:13 340:22	499:20 503:5
144:20 342:20	adhere 296:9	234:2	360:13 366:14	515:1
Adamas-Nath...	adhering 357:23	affixed 521:17	366:15 375:19	Agreement'
151:25	362:18	afford 23:17	375:21	298:17
adamas.mt.40...	adjustment	124:19 125:3	agreed 32:2,14	agreements
2:14 289:12	291:12	aforementioned	88:11 156:10	161:24 165:24
add 28:10 70:4	administer	110:25	331:24 360:19	276:9 311:12
419:11 424:19	310:16	afraid 349:14	375:21 376:9	agrees 38:17
495:2 507:5	administrative	350:4	agreed-upon	140:17 195:19
519:2,6	1:11 2:16	afternoon	133:3	328:3,11
added 56:9	10:12 23:14	186:17 251:20	agreement 4:11	331:18 376:3
adding 56:8	26:11 37:3	274:23 396:6	7:23 9:13 26:1	417:2
259:9 441:6,11	107:21 165:8	400:12	31:9 110:23	agricultural
473:10	247:16	agencies 167:14	132:3,4 137:13	61:11 74:3
addition 49:11	admissibility	244:25	138:4 140:3	81:1 138:2
52:4 60:20	22:5,12,21	agency 2:3,6	147:9,14	175:4 178:4,7
168:24 173:15	24:9,11 25:11	5:22 7:8,16	281:12,14	178:10,15

243:7 283:2 298:20 371:16 agriculture 388:21 agronomic 53:14 59:11 60:21 75:15 79:4 99:10 102:6 136:13 136:18 137:20 173:18,21 192:11 194:21 195:16,25 196:4,6,8 197:3,4,12,16 201:4,6,17,18 201:21 202:15 202:15 208:18 208:21 209:2 209:14,16,22 210:5 211:4 217:12,15 218:1,3,9,10 218:16,20,23 219:14 221:8 222:7 233:3 235:8,17,23 237:7,18 241:15,16,23 242:6 312:3,4 315:24 316:3,5 316:10,14 317:20 318:10 318:11,22 328:7 371:25 372:5,16 373:5 373:8 379:20 380:14 382:4 411:3 440:18 504:19 ahead 10:21 11:6 29:14 39:16,19 46:10 47:14 64:19 69:6 72:23 80:17,18 81:11 82:11 94:12	116:15 119:18 123:4 125:7 144:3,6 161:2 167:3 170:3 179:8 185:21 188:3,6 191:10 195:10 198:18 216:20 259:15 273:25 274:20 291:17 292:12 293:24 300:5 301:9,21 303:5 303:22 304:17 304:20 307:3 309:3 310:3 311:23 312:15 318:16 330:17 342:9 348:17 363:12 364:9 365:16 366:10 366:13 370:25 374:13 380:22 381:25 389:14 390:6 394:11 396:10 399:2 400:9 402:4 404:2 407:10 410:8 415:23 423:1 428:6 435:16,25 474:4 479:2 489:13 490:11 502:23 ahold 29:25 219:23 290:6 373:13 aid 94:5 air 263:14 513:24 Akash 158:4 Alexa 5:20 alfalfa 371:20 algae 53:20 aligns 32:18 allegation 37:3 68:23 365:5 allegations	493:24 allege 43:23 65:5,9 alleged 36:17 66:14 71:14 107:24 116:9 182:22 allegedly 36:19 330:20 alleges 132:17 132:20,23 133:1 445:10 alleging 67:17 Allen 470:1,4 allocation 264:25 265:5 allow 20:8 26:20 162:17 281:2 318:24 367:22 374:1,8 386:12 allowable 73:10 allowed 23:15 37:24 145:19 151:6 303:19 304:13 352:15 416:13 421:10 511:4 allowing 150:23 166:6 169:11 169:21 314:9 390:8 437:15 allows 353:12 alluded 508:15 Almase 2:16 10:13 93:22 270:6,9 348:21 452:2 518:15 alteration 341:16 altered 316:23 317:20 318:21 329:21 341:13 341:19 342:1 altering 341:24 alternative 227:22,25 250:2 398:24	Alzheimer's-t... 52:23 ambiguity 185:1 amended 62:22 62:24 63:17 64:16,22 65:14 71:6 181:19 187:1,2,8,10 452:3 amendment 182:20 Americans 422:10 amount 16:16 23:16 52:17 73:7 85:2 100:4 101:22 102:19,22 104:1 116:25 117:14,15 126:18 127:5 128:6,20 153:12 165:4 175:19 177:25 197:17 199:10 204:22 217:8 222:4 228:13 237:11 286:7 294:18 315:25 319:15 322:22 338:11,14 364:12 455:1 amounts 22:8 175:22 287:8 465:19 analysis 146:1 165:9 analytical 4:10 7:22 314:3,6,6 351:11 analyze 145:22 and/or 21:22 28:21 147:22 152:2 200:8 254:2 311:4 324:22 489:9 Andrew 7:13	8:6 animals 102:24 103:9,14 265:12 annual 48:6 54:4,6,13 75:5 77:17 92:24 106:15 223:2 383:21 annually 87:7 93:1 answer 99:5 184:1,4 187:13 196:21 198:14 211:14 212:25 214:20 215:14 220:10 224:9 234:18 254:16 303:4 317:3 319:20 330:11 330:24 341:25 363:14 368:11 374:14 379:19 402:10 404:2 415:6 447:24 478:10 502:21 504:22 505:15 answered 68:6 98:25 214:17 214:23,24 243:6,8 380:15 answering 330:22 482:11 answers 106:24 269:1 380:17 Antecedent 258:14,22 anybody 144:20 179:23 192:11 202:25 289:1 304:7 321:17 322:10 378:23 385:17 417:21 422:6 428:17 434:5 486:14 491:3 513:25 anybody's 494:2
---	---	--	--	---

anymore 308:18 422:14 426:15 444:21 457:4	applicable 37:22 37:23 38:18 42:2 45:20 67:10 146:25 191:16 317:9 332:17	231:6 238:2 242:20 243:4 252:24 253:2,4 253:13,23,24 254:7 266:24 281:15 283:17 286:9,12,15 287:6,22,24 288:10,13,16 288:17 289:18 295:6 296:9,14 296:18,22,23 296:25 297:4 299:6,11 312:1 313:22 315:5 315:18,21,22 316:16,17,19 318:7,21 319:7 325:21 326:5 326:10 327:2 328:14 331:8 331:15,22 332:1 339:9 351:14 358:17 359:5 364:19 373:3 376:6 382:5 383:12 383:16,21 384:6 400:23 401:1 402:6,25 418:4,5 419:14 421:4 428:19 429:23 430:11 430:23 431:23 432:1 443:7,11 472:9 493:17 493:19 496:18 499:11 500:5 504:10 505:11 505:17,22,25	applied 37:17 38:2 51:18 52:5 60:2,2 61:11 73:20 74:3,10,12 75:16 81:1 95:6,8,9 103:24 104:3 106:11,12 136:9,15 138:1 151:6 172:24 175:4,19,21 177:17 178:3 178:14 179:1 182:5,17 192:12 197:19 197:22 205:12 205:21 207:17 207:21 215:17 220:2 222:5,13 222:20 228:6 235:4 236:2,13 237:17 238:4 243:6,10 253:17,18 266:14,16,16 266:19 278:4 282:21,22 283:1 289:14 323:17 328:24 373:17 375:3 375:10 382:6 383:19,20 389:9 410:5 463:21 472:1 500:1 502:8 503:20,24,25 508:12	100:14 101:23 102:1 106:20 131:12,17 161:9 174:11 183:16 191:15 191:20 199:2,3 199:12,16 200:19 204:18 215:6 216:4 220:9 228:5,7 228:11,18 230:8 231:20 231:21,23,24 232:1,3,19 242:11,19,21 253:10 492:5 502:7
apart 135:8 491:20	application 6:2 6:8,10 8:16 35:6 40:6,22 41:22 43:13 49:12 52:5 58:3,22 60:19 62:4,7,9 76:18 78:10 91:15 96:8 98:22 99:2 100:7,13 102:20,23 106:2,9,15 112:3,7,8,13 112:18,20 113:6,9 120:18 120:24 121:4 121:10 124:8 126:3 133:10 135:20 136:13 136:19 139:18 140:13,24 144:18 145:17 146:2 148:19 150:20,22,24 153:19 154:6 156:12 157:25 162:3 172:7,8 174:15 175:15 182:7,15 189:6 191:22 195:22 198:4,10,23 199:6 200:16 206:3,4,17 207:13,15,24 208:8,9 209:4 209:8 218:13 220:14 223:7 223:10 227:15 227:18 228:21 229:4,8,16,19 229:23 230:3,8	231:6 238:2 242:20 243:4 252:24 253:2,4 253:13,23,24 254:7 266:24 281:15 283:17 286:9,12,15 287:6,22,24 288:10,13,16 288:17 289:18 295:6 296:9,14 296:18,22,23 296:25 297:4 299:6,11 312:1 313:22 315:5 315:18,21,22 316:16,17,19 318:7,21 319:7 325:21 326:5 326:10 327:2 328:14 331:8 331:15,22 332:1 339:9 351:14 358:17 359:5 364:19 373:3 376:6 382:5 383:12 383:16,21 384:6 400:23 401:1 402:6,25 418:4,5 419:14 421:4 428:19 429:23 430:11 430:23 431:23 432:1 443:7,11 472:9 493:17 493:19 496:18 499:11 500:5 504:10 505:11 505:17,22,25	applier 58:23 59:5,8 60:8,18 62:2,13 63:2,6 66:22 67:14,15 68:11 69:9,10 69:14,15,17,19 70:15,16 71:3 72:11,14 74:24 75:5 80:15	applier's 60:20 appliers 63:19 65:12,24 67:3 67:20 68:25 69:23 70:3,6 74:14,20 91:16 91:20 100:21 102:13 174:6 174:22 185:6 191:17 229:14 applies 27:8 61:13,21,23 65:22,23 66:9 66:16 68:8 95:7 174:22 176:7 178:5 182:2 189:24 191:25 231:7 492:6 apply 25:6 36:16 63:7 71:16,22 91:25 95:5 101:1 104:1 137:18 140:21 155:19 162:10 174:1 175:13 183:13 195:14 195:21 205:24 208:18 209:2 210:20 221:13
anytime 257:19				
anyway 412:19 413:1 464:3 471:12 475:11				
apologies 155:4 156:21 309:20 508:11				
apologize 12:6 76:5 82:1,13 273:15 290:24 330:12 333:24 349:11				
apparent 339:3				
apparently 452:4				
appeal 15:25 29:11				
appealable 15:24 520:8				
Appeals 16:1				
appear 19:10 94:8 148:5,25 158:21 159:21 256:6 316:11 355:9 358:8 482:13,14				
APPEARAN... 2:1				
appeared 34:10				
appearing 2:2 2:10 304:22 395:9				
appears 33:3 285:25 286:14 295:5,8 297:13 299:10,12 313:14 314:3 315:25 316:5 332:2 337:9 354:20 355:10 355:17,20 356:11 495:11				
		application' 123:25 296:13		
		applications 146:22 221:25 223:3,12 285:9 332:12 357:11		
		applicator 228:1		

228:16 237:8 237:23 241:25 316:1,23 328:5 328:13 352:25 353:1 373:2 388:10,12 410:24 428:24 430:19,20 505:13 applying 58:1 220:22 237:3 237:18 410:25 441:15 488:19 appreciate 25:19 30:11 63:25 163:20 166:21 197:20 264:8 304:12 390:8 434:2 479:13,19 519:21,22 apprised 293:8 approach 171:10 356:22 518:7 appropriate 36:25 85:2,7 95:3 116:6 124:15 182:14 187:12 201:24 208:5 215:11 215:11 256:8 287:9 appropriately 210:2 211:4 240:20 288:13 443:22 490:2 approval 498:21 approved 437:12 approximately 50:17 51:6 289:14 417:7 433:5 472:6 April 86:3 142:13 145:8 146:12 157:24	159:13 205:2,8 284:25 296:7 356:13,23 357:5 464:10 500:4 aquatic 41:13 Arbitration 7:11 area 49:5 165:22 178:15 214:14 297:25 313:7 313:12 315:6 315:16,19 337:18,18 385:1 400:22 416:9 447:17 areas 50:18 150:22 246:14 265:14 414:8,9 473:23 argue 22:24 23:20,22 38:20 39:3 41:16 44:21 66:2 214:18 argued 63:5 arguing 62:12 68:24 argument 14:6 22:24 212:21 422:1 500:15 arguments 34:23 37:8 124:20 125:2 163:15,17 164:5,13 165:20 214:19 243:21 249:11 250:8 452:21 514:6 Army 248:17,25 257:10,24 258:3,10,15 259:24 arose 338:11,22 364:12 471:25 508:9,12	arrangements 27:4 arrested 423:12 arrive 173:8 arrived 405:20 Article 16:2 294:15 as-needed 87:8 asbestos 125:17 asked 18:9 69:14 117:25 200:2 210:16 216:24 238:2 308:7 318:18 350:15 353:23 355:24 358:9 358:12 380:13 411:21 416:3 419:23 423:22 423:24 424:1 424:10 433:22 438:19 445:11 445:12 463:7 463:18 468:5 483:13 501:6 501:10 504:23 506:20 asking 69:16 82:2 83:9 115:19 202:6 206:11 207:18 211:21 326:8 329:12 351:9 383:4 415:7 429:9 436:4 483:17 490:14 490:17 asks 234:1 382:3 aspect 264:17,22 477:2 482:25 484:11 aspects 484:9 assert 43:16 483:11 asserted 40:12 40:17 91:6 221:6 355:25	358:6 503:10 519:8 assertion 44:23 62:7 512:5 asserts 70:5 assess 75:8 249:4 assessing 85:8 assessment 38:17 49:2 128:17 131:10 322:6 359:4 440:10 assign 23:21 165:11 assigned 83:21 105:13 320:22 501:6 assist 279:15,16 289:18 assistance 4:14 8:3 48:9 130:7 172:1 276:8 278:11 310:14 310:15 324:8 assistant 2:5 192:5 assisted 122:5 assisting 12:22 289:19 associated 52:10 108:5 504:9 assume 38:23 162:21 192:19 218:18 228:22 241:21 256:13 300:2 302:11 331:4 assumed 201:9 201:11 265:19 513:16 assuming 74:6 105:24 116:23 156:4,5 161:8 165:3 186:1 230:13 250:4,7 285:20 306:23	315:11 415:19 435:16 450:17 assumption 196:2 207:14 207:19 226:15 227:16 228:13 237:13,20 366:24 assumptions 197:15 assured 43:9 attach 263:24 348:13 attached 96:11 114:12 145:12 264:2 295:25 296:2,5,10,14 296:19,22 297:1 356:19 attempted 318:9 459:8 492:17 attempting 45:9 334:25 335:19 attempts 19:1 attend 18:10 28:10 408:10 408:18 attendance 18:6 18:14 20:6 attended 218:21 299:19 390:23 attending 371:5 attention 43:2 43:12 attorney 11:13 12:22 83:11,20 91:11 105:13 105:16 120:8 122:21 141:15 156:7 159:16 180:3 200:9 202:24 211:7 291:20 295:5,5 334:14 335:22 423:19,21 457:20 490:11 490:13 500:3,7
---	--	--	--	--

500:10,16	authenticity	322:12 323:16	478:2 484:14	118:5 120:3
501:7,10	44:11 249:22	341:24 342:2	488:16 492:23	122:24 124:19
503:10 507:10	author 162:20	343:6 381:17	507:20 516:21	125:4 143:21
510:18	authored 123:2	390:12 410:11	516:24	154:2 161:12
attorney's	authorities	474:9	Backbone 8:23	161:24 162:6
179:22	110:20	awesome 186:7	31:17 486:16	162:17,24
attorneys 2:2	authority 7:6		486:19	163:10,11
101:17 122:20	28:1 37:25	B	background	166:7 167:11
457:14 500:11	54:18 191:20	b 6:13 73:9,12	48:23 49:14,21	167:19 168:20
513:22	247:24 266:2	73:17 80:24	192:20 264:20	169:17 176:19
attraction 59:1	433:9 455:18	81:13,17 89:24	276:22 311:19	177:3,11
59:5 60:13	authorized	101:13 106:8	backing 261:20	178:20 187:11
79:3 81:15,18	84:24	124:16 173:13	bacteria 41:11	188:4 196:1
99:12 101:11	auto 359:23	175:2 176:5,10	bacterial 53:20	197:7 198:8,21
102:3 103:2,5	automatically	176:18,24,25	bad 8:22 20:3,5	199:13 201:6
235:15 238:11	494:10	177:6,7,11	31:14 263:20	202:12 209:25
238:13 384:17	availability	back 18:25	264:5 390:20	211:2 214:7,12
412:9 504:15	365:18,25	48:18 64:14	416:7 475:6,11	216:18 217:22
504:25 505:5	available 26:3,7	71:17 82:10	486:10	235:6 241:17
506:4	54:9 68:11	90:11,12 99:7	bagged 177:23	244:1 261:12
attractive	162:7 184:8	125:8 134:17	bags 177:23	285:16 286:14
103:11	200:18 217:17	162:5 174:18	balance 53:23	295:4 297:2
attractiveness	244:3,4,23	176:1 177:14	band 422:4	299:9 310:23
103:6	245:2 249:10	180:22 183:19	bankrupting	311:8,11,13
attributable	250:1 254:6	184:10,24	456:21	318:1,2 319:23
70:24 305:14	257:4 258:16	186:9,10,21,25	bar 394:7	379:15 386:8,9
attribute 22:25	300:15,16,18	188:19,22	barley 137:21	442:5 443:13
attributed	315:2 345:1	194:20 204:12	137:24 178:15	447:6,13
482:13	346:24 347:8	239:6,9 240:12	195:17 328:8	479:18
August 1:8,8	350:16 366:12	247:13 261:22	371:23 387:2,7	bases 25:9
10:1 11:4 33:2	377:18 408:18	273:18,25	bars 393:23	basic 10:19 17:9
98:2 120:1	515:11 519:8	282:11 286:17	base 118:10	236:20
131:2 136:15	Avenue 1:14	289:24 301:10	161:19 164:2	basically 15:2
157:3 186:17	average 175:18	325:2,11,14	167:18 178:8	20:14 22:22
203:13,16,18	259:1	343:22 355:1	211:1 213:23	23:11 25:1
207:5 208:10	aware 67:7	355:13 356:9	261:15,19,21	26:6 29:25
286:25 288:9	178:22 179:20	361:21 369:1,7	based 13:16	30:10 51:10,11
296:24 301:17	193:5 194:12	381:24,25	21:25 23:18,21	55:22 56:3
302:6 331:20	196:8 199:1	382:25 389:21	26:10 28:12	59:18 77:17
335:4 336:19	219:2,5 221:12	389:23 390:5,5	29:2 33:5	78:9 83:9
355:17 382:6	223:11 227:21	393:5 395:25	36:14 37:15,20	84:14 102:23
383:13 396:6	227:24 233:18	396:12,14	37:20,22 48:8	168:19 171:11
418:21 472:7	236:1 239:23	421:6 426:21	53:11 54:14	245:17 258:17
474:19 496:9	240:23 289:2	429:6 433:20	66:20 73:1,7	265:1 278:21
500:2	289:19 290:9	445:13 452:16	73:20 74:1	280:3,25
authenticate	291:21 292:21	453:13,19	85:6 87:4	345:14 362:21
25:8 26:5	293:4 320:14	457:25 460:4	102:14 105:22	369:18 397:18

422:22 441:4 458:2,21,24 461:9 462:4 464:5 476:22 477:16 484:12 basics 480:6 basing 161:22 161:23 164:6 basis 29:11 49:22 61:16 87:8 176:13 337:20 446:9 455:5 481:23 494:18 bear 8:22 20:3,5 31:15 65:19 183:2 380:9 475:6 482:14 486:10 511:6 bears 13:7 beaten 170:1 becoming 478:13 beg 255:3 began 285:13 322:15 331:8 331:11 390:21 472:10 beginning 22:20 165:9 171:21 203:14 296:21 462:3 472:7 513:7 begins 172:4 381:13 469:25 470:17 begun 472:1 behalf 2:2 19:22 20:1 46:5 134:2 274:15 335:21 370:8 399:19,22 400:4 402:20 449:18 454:3 480:23 behavior 52:20 216:2,5	behaviors 458:3 behooves 28:24 belief 369:20 381:16 believe 24:15 27:14 31:24 35:10 36:15,25 37:1 42:24 44:14 69:17 70:13,17 93:19 184:2 191:9 193:1 236:16 249:17 254:24 266:25 271:20 275:15 279:19 279:22 280:7 280:17 282:23 283:2,10,15,19 284:3,21 285:4 285:14,14,17 285:19 287:12 289:21 290:4,8 290:19 293:1 293:11 294:4 295:14 297:23 299:19 306:7 307:15 311:18 311:22,24 313:20,20,22 314:7,8,11 315:7,9 318:6 318:23,25 319:2 320:10 321:3,19,21 322:1,5,11,18 322:19 323:6,6 324:9 325:24 326:13,17 327:4,4 330:4 330:4 331:14 332:6 333:2 334:8,13,17 335:4 336:4 338:17,20,25 339:1,10,15 341:5 342:17 342:22 343:2	343:15,25 344:5,7,9 345:23 346:11 346:16 348:1 351:21 352:1,7 352:9 353:4,17 354:2,9 356:2 358:3,15,18,18 359:2 360:11 360:16,21 361:1 363:1 366:7 374:3 377:5 379:16 379:19 420:6 439:21 460:19 462:4 464:14 469:13,14 472:19 478:14 478:19 481:21 484:18 488:10 488:12 489:2 500:8,14 504:21 506:17 513:14 517:12 518:5 belly 419:17 belly-up 508:5 belong 423:8 Bement 4:9,12 7:14 8:2 28:3 88:13 96:6 111:6,23 114:8 142:14 143:14 145:9 146:14 149:5 151:21 152:16 154:20 157:24 170:6,6 170:8 279:24 284:4 299:1 332:5,24 356:12 390:25 405:25 420:14 420:15 421:11 422:21 424:13 424:14 429:5 431:19 432:10 433:5,11	436:24 454:25 455:19 456:2 465:9 466:18 468:8 469:17 477:6 478:23 486:9,9 487:2 492:14 494:19 509:6 Bement's 509:6 beneficial 51:18 53:6 benefit 29:12 85:5 388:19 409:19 457:10 benefits 34:23 112:2,3,13,14 berms 56:11 best 15:22 116:12 124:24 177:3 179:2 201:25 221:1 229:24 345:1 378:12 381:15 441:17 486:6 521:14 better 123:23 182:18 251:3 269:3 291:12 349:9 442:11 betterment 122:4 beyond 28:23 45:8 143:22 373:21 374:2 409:3 BI 311:5 BI16N39 294:15 bid 192:22 193:6 196:6 218:8,15 294:14 311:3 312:4 319:5 329:8,16 341:12 344:15 344:19 345:10 345:22,25 346:10,11,15 352:5 353:9	390:13 bids 311:11 516:9 big 28:15 184:5 308:19 393:22 425:17 458:21 482:8 508:21 biggest 467:25 billed 111:21,22 113:1 128:12 129:4 billing 223:24 448:22 Billings 1:15 10:24 145:16 153:20 286:10 297:25 301:3,5 313:7,12 314:4 321:6 337:18 476:21 bio 137:18 bio-sludge 427:14 bio-solid 150:5,9 150:13,19 bio-solids 153:15 Bio/Resume 123:20 biological 49:8 49:21 biosolid 195:14 315:5 328:5 383:25 417:5 biosolids 6:4,5 34:8 40:24 41:8,18,25 42:2 45:20 48:6 49:12 50:22 51:1,2,7 51:9,15,17,18 51:23 52:5,10 52:11 53:12,13 54:1,3 56:17 57:19,20,22,24 57:25 58:17,22 59:20,24 65:11
--	--	---	---	---

66:23 67:17,21 72:8,15 73:6,9 73:9,9,23 74:9 74:15,21,25 75:2 77:15,18 78:24 79:8,15 80:11 92:19 93:7 102:8,12 102:24 103:6 103:10,12,20 103:23 104:1,4 104:7,19,21 106:2,9,11,16 136:19 153:24 171:14 175:19 175:21,23 176:9,14 177:6 177:21,23,25 180:11 182:5,7 182:15 191:15 199:9 200:14 201:12 204:11 204:19,21 205:16 207:12 207:15 208:7 209:7 210:3 222:5 223:2,7 228:9 229:11 238:1,12,16 241:11,20,23 253:16,18 265:18 266:11 266:14,19,24 277:19 278:7,8 285:18 298:18 299:6 314:25 315:3,18 383:18,19,22 384:1,5 410:17 425:19 430:24 biosolids/sludge 296:13 biowaste 419:6 Birney 433:7 460:19 bit 12:25 35:13 49:18 50:1	52:9 54:17,24 55:12 58:16 64:15,21 68:19 70:22 88:25 101:10 119:14 175:7 185:11 202:9 214:1 224:25 241:19 243:20 259:13 264:21 269:7 278:14 307:14 310:9 317:16 323:25 327:17 327:22 347:7 353:21 356:9 367:6 388:20 405:12 410:16 414:18 415:18 445:18 461:22 473:3 503:16 512:15 519:17 bits 232:25 242:25 blanket 217:7 blockages 87:9 blood 495:5 blue 133:1 244:9 244:13 245:17 245:24 246:3 246:12,19 board 16:1 243:10 492:24 493:1 boat 484:12 bodies 244:4 261:22 262:14 body 52:7 53:5,7 53:16,18,23 55:3,4 75:17 104:2,20 254:18 262:9 262:10 265:3 265:10,13 266:3,20,25 267:2 279:17 bolded 314:17 315:16	book 467:11 books 38:6,7 botch 12:7 bother 477:13 bottom 46:20 111:3 127:6 134:20 149:14 149:17 150:9 159:18 170:17 195:6 203:21 245:15 281:4 290:10,12 292:6 294:2 315:20 333:12 333:17,21 336:7 427:15 441:2 469:23 Boulevard 2:7 bound 422:9 bounds 63:11 box 1:22 458:21 458:21 508:21 508:22 509:3 Boy 486:2 Boys 122:5 128:18 459:19 459:20 Bozeman 1:23 521:21 brain 479:8 branch 48:4 breach 470:5 breached 212:8 break 16:22 17:5 54:23 64:2,5,15,25 82:3,10 102:9 122:5 127:23 166:23,23,25 175:6 185:22 186:22 188:10 188:12,23 209:7 239:10 255:23 256:6 256:24 300:6 324:4 366:19 368:22 369:8	369:12 389:17 390:8 395:19 396:13 451:3 452:13 453:6 453:20 459:19 460:18 508:18 516:12,16,25 breaks 17:2 122:6 Breedlove 2:18 4:18 21:12,13 21:16 83:19 Brian 7:9 Bridger 1:22 bridgercourtr... 1:24 brief 14:2,3,7 15:13,13 64:12 64:15 82:8,10 166:2 188:20 188:23 204:8 239:7,10 273:23 325:9 369:5,8 390:2 453:17,20 516:22,25 briefing 15:8,12 37:8 38:24 213:17 347:10 520:2,4,5 briefly 471:10 briefs 15:9 bring 43:1 116:13 163:22 435:11 467:3 bringing 116:10 158:12 169:19 214:11 brings 32:15 broad 237:1 broadcast 60:4 177:24 broadly 482:11 broke 30:14 459:21 broken 48:16 58:20,22 73:6	88:8 133:4 460:15 broker 125:16 brought 36:6 163:21 194:11 204:14 261:23 425:13,15,17 425:17 460:1 475:17 478:7 491:12 509:16 Bryce 9:10 33:18 337:17 bubblers 281:5 bugs 103:9 build 468:11 building 132:25 268:20 423:23 444:19 473:5 487:25 built 461:4 bulk 61:10,13 61:16,19,20,21 61:22 66:9,16 80:25 81:3,8 177:16,17,19 177:20 178:1 231:3,7 bullet 96:14 149:25 150:2 362:2 474:6 497:12 bullied 423:17 burden 13:8,8 27:14 buried 508:23 business 6:23 15:15 400:21 436:10,16 437:5 457:3,6 459:2,5 465:2 481:14,15 Bye-bye 366:2 byproduct 52:3 <hr/> C <hr/> c 12:1 81:11 106:10 521:2,2
--	--	--	--	--

C-O-U-R-T-N... 275:3 cafeteria 16:21 calculate 60:21 173:18 196:4 202:14 208:18 208:20 211:3 217:9 218:5,20 219:14 221:8 235:23 calculated 106:16 196:23 209:22 218:3 383:22 calculating 217:15 237:18 calculation 53:15 59:12 75:15 196:24 201:4,6,17,18 201:21 210:5 241:15,16 334:25 335:19 calculations 79:5 99:11 102:6 204:11 235:9,18 316:8 316:11,15,22 411:8 call 17:19 18:1,5 18:12 20:4 27:25 42:10 45:13 46:1 122:20 261:24 267:14 268:4 289:22 324:18 334:8 343:20 366:8,20 367:14 368:18 369:16 395:24 396:18 398:25 409:10 434:25 437:20 442:14 453:23 460:24 466:3 470:4 480:10 492:8 495:11 513:15	called 46:5 53:17 147:16 147:18 198:16 247:10 258:13 274:15 370:8 400:4 403:1 414:7 423:19 437:21 439:8 454:3 459:18 460:1,14,23 463:18 475:1 480:23 495:14 508:24 calling 20:19 28:9 367:9 369:19 397:21 399:19 488:17 calls 206:7 212:10,24 213:1 369:25 377:10 402:19 camera 132:22 158:11,14 470:11 487:21 509:14 cancer 52:22 capabilities 471:22 capacity 52:6,19 53:3 162:19 243:3 249:4 capstone 49:12 caption 247:19 capture 261:12 261:14 card 421:12,15 421:18,19,19 421:21 445:15 care 10:20 302:12 325:5 465:25 490:1 career 236:24 carrying 265:13 case 10:17 11:2 13:8,10 14:22 15:17 16:10 17:6,20,24	19:16,21 21:2 25:18 36:7,14 39:10 40:5,8 42:22,24 44:13 54:1 57:21 58:5 62:14 63:8 68:24 71:22 72:8 75:20,23 77:19 77:24 78:24 83:12 84:19 85:8 96:18 107:22 108:11 141:5 162:13 166:2 171:14 173:1 174:2,7 175:14 176:7 177:17 178:6 178:18 183:14 184:2 212:1,1 213:9 214:7 239:18,23 240:4,18 241:1 258:7 278:14 282:16 318:13 323:9 346:4 366:12 367:1 369:20,24 397:4 399:13 399:19 402:8,9 415:14 435:4 435:18 438:11 452:21 511:22 519:2 case-in-chief 13:23 cases 48:16 50:15,16 51:2 51:4 57:16 88:23 119:10 123:1 237:16 catch-all 495:11 cattails 130:11 cattle 102:18 411:2 416:5 cause 52:22 53:19 217:25	222:21 271:6 456:15 caused 265:25 502:8 caution 14:6 71:7 CCed 105:8 146:14 334:15 cease 8:21 9:8 33:12 421:8 459:2 ceiling 58:3 cell 88:5 89:4 150:6,9,11 313:9 cells 88:8 89:7 center 77:16 315:6 certain 42:23 52:17 93:20 102:19,21,22 104:1 124:20 125:3 143:21 165:3 197:17 215:2,9 222:4 298:19 448:12 449:6 473:9,17 512:6 certainly 13:3 29:9 37:9 67:25 93:17 113:17 115:9 115:18 116:6,9 125:1 134:16 135:13 144:5 163:18,20 166:2 184:21 212:25 213:18 304:2 319:23 512:8 515:18 518:20 certification 6:13 57:3 101:11 125:14 125:24 certifications 81:9	certified 4:9,15 4:16,17,19 5:11,19,20,21 6:15 7:5 8:4,6 58:14 168:14 219:12,18 224:23 225:10 235:14 377:17 certify 381:13 381:14 521:8 cetera 53:3 CFR 5:23 43:13 61:1 80:3 89:19 91:18,23 95:4 100:17 106:14 174:4 248:21 383:21 chain 98:9,12 180:16 227:12 292:7 challenge 24:16 24:17,23,23 27:12 challenges 24:9 24:15 25:20 26:25 165:1 challenging 25:2 chance 39:8 64:8 186:25 230:20 237:10 307:24 370:23 415:13 435:5 517:25 change 52:19 59:19 65:16 73:1,19,23 74:1 120:15,15 131:10 181:18 181:23 182:21 182:21 183:21 185:9 209:18 242:7,10 260:2 271:15 287:9 305:9 359:4 360:24 450:10 466:23 512:19 changed 62:23
---	--	--	--	--

62:25 63:1,19 70:8 197:11 305:25 331:1 361:6 406:11 504:16,18,21 changes 131:16 187:6 changing 37:5 65:13 66:18 70:9 182:19 187:7 204:19 262:17,21 chaos 476:2 493:1 chapter 191:18 332:16,21 charge 40:13 41:21 44:22 138:9 215:10 281:15 286:15 299:23 320:20 321:1 359:5 364:15 388:6 408:4,25 434:7 434:16 438:21 455:16 456:4 458:14 470:25 501:22 502:6 509:19 charged 44:22 71:11 183:25 185:3 charging 63:12 184:24 185:19 chat 453:8 check 117:12 126:9,16 127:3 128:4,20 133:25 134:8 134:23 434:18 468:13 checking 271:3 checks 130:13 280:6 chemicals 56:8 cherry-picking 473:9	chest 513:18 Chestnut 7:9 133:21 134:11 134:13 Cheyenne 43:20 44:24 85:23 96:6 108:16 110:21 122:1,7 128:18 134:3,9 147:17,25 158:13 193:10 199:24 225:4 247:11,25 280:1 282:23 284:13 298:6,7 298:15 313:6 313:11 323:16 338:3 342:15 363:25 390:22 401:12 420:17 421:7 433:8 445:14 449:1 457:22 460:20 486:25 487:6 488:5 490:13 490:14 492:20 494:14,15 497:7 499:6 chief 435:19 chime 47:11 119:3 214:11 305:3 512:14 choose 258:19 303:19 choosing 240:25 chose 352:16 chosen 101:12 Chris 2:4 5:2 11:13 40:3 413:8,15 Christine 1:10 10:11 Christopher 6:16 7:14 8:9 105:7,8,15 159:20,22,24 chronology	463:6 chunk 398:21 circle 382:7 412:14 485:18 485:22 486:7 486:22 488:18 circled 136:16 Circular 332:16 circulate 348:19 518:14 circulated 518:24 circulation 519:4 circumstance 510:24 511:3 circumstances 44:12 160:8 294:11 511:1 circumstantial 135:9 164:9 511:5 citation 65:13 65:16 66:7,18 70:9 80:22 101:5 181:24 182:20,21 183:22 citations 69:25 71:21 185:9 cite 181:18 187:7 452:4 cited 69:13 182:1 citizens 190:16 city 409:22 475:7 476:20 civil 85:7 claim 65:18,20 65:22 67:5 68:15 211:6 219:20 226:14 316:21 321:10 322:19 342:3 472:8 493:22 claimed 196:17 265:23 322:25	claiming 44:7 69:8 289:13 317:7 330:21 338:18 352:2 claims 64:22 71:9,10 95:2 321:12 490:24 493:22 clarification 25:19 94:11 124:13 164:20 248:24 267:22 268:19 321:24 327:9 388:14 413:6,15 442:11 469:20 clarified 187:6 clarify 43:25 187:3 207:3 342:8 408:1 512:18 clarity 93:18,24 344:14 class 49:17 66:20 73:8,9,9 73:12,12,13,17 74:7 80:24 81:13 91:25 101:13 123:13 123:25 125:25 173:13 175:2 176:5,9,10,10 176:11,17,18 176:20,22,23 176:23,25 177:6,7,11,21 404:11 463:20 471:24 476:18 classes 73:7 463:16 464:15 464:15 476:14 476:17 493:7,9 clean 5:13 11:2 36:6 38:6 40:15 41:2 42:9 51:24 52:1 54:10,19	55:5,7 58:10 67:22 68:23 74:25 84:23 85:1,10 92:18 94:24 95:11 115:12 130:9 239:20,25 266:4,6 451:9 452:4 495:12 Cleaned 150:10 cleaning 132:22 158:12,15 409:8,10 470:11 487:21 509:15 clear 18:11 23:25 28:7 31:3 47:4 57:9 66:3 68:2 71:8 137:6 166:13 182:25 200:12 216:18 220:14 240:1 267:20 378:15 403:20 407:25 413:16 414:18 425:5 449:7 465:24 466:2,15 496:23 501:13 501:20 504:1 513:3,7,24,25 514:20 516:16 clearly 47:2 70:11 96:12 124:8 318:11 clears 187:14 click 517:3 client 92:14 160:11,19,22 161:10 294:24 314:20 client's 160:7 294:10 clinical 462:16 close 16:12 74:10 75:16 234:10 244:14
--	---	---	--	---

266:20 446:15 457:7,16,17 482:4 486:3 514:5,16 closed 416:5 457:6 closes 14:15 514:17 closing 14:4 45:6 514:6,6,9 519:16 Club 122:5 128:18 459:19 459:21 clue 445:6 co-owner 168:8 coal 400:19 cocoa 440:22 cognitive 52:24 cohesive 233:3 cold 460:18 coli 53:2 coliform 53:2 177:5 collaborates 276:4 collect 17:5 75:4 75:7 321:8,13 321:15 490:6 490:19,21 491:2 collected 320:4 320:5,16,25 321:4,9,14 collecting 267:19 411:19 collection 56:5 87:1,2,6,7 321:20,21 collectively 11:1 college 476:20 colloquy 370:17 Colstrip 400:19 combined 69:2 come 16:24 25:2 25:7 27:8 41:14 52:2	54:3 104:19 165:4,12 169:15 171:2 184:10 186:9 186:10 202:24 204:24 206:17 209:2 210:5 217:5,9 224:13 228:10 254:1 273:18 312:3,3 325:2 345:10 346:2 369:1 370:2 387:6 389:16,20 390:4 393:23 394:2 395:25 400:1 427:23 435:10 436:25 437:22,24 451:8 452:16 453:13 467:22 470:17,19 480:13 489:5 495:3 510:5 comes 13:9,19 17:1 20:15 23:6 38:16 60:15 62:18 94:7 213:17 214:3 215:12 240:12 262:25 276:11 311:5 411:1 419:7 447:2 468:25 482:24 comfort 17:2 516:16 comfortable 17:8 20:10,21 415:4 455:23 482:11 518:6 coming 25:18 34:20 201:13 201:16 241:23 266:12 409:21 427:19 440:16 440:17 442:18	461:1 520:7 commenced 373:13 commencing 285:15 327:1 comments 12:22 38:11 commission 43:20 44:24 85:24 108:16 110:22 122:2 134:3 147:18 193:11 199:25 225:5 247:12 247:25 280:1 298:8,15 313:7 313:12 338:3 363:25 390:23 405:22 449:1 486:25 488:5 490:13,14 494:15 497:7 521:22 Commissions 134:9 committed 37:11 common 23:13 277:3 339:22 346:8 437:17 commonly 51:17 communicated 93:23 506:13 communicating 421:1 communication 91:11 506:19 communicatio... 506:15 communities 53:21 community 277:4 278:20 460:8,10 company 40:9 57:22,23 85:10	96:5 122:3 127:4 132:16 132:17,20,23 133:1 154:23 155:8,12,13,16 156:10 158:10 162:4 417:23 418:1,7 419:22 420:16,16 424:12 428:18 456:15,21 459:22 461:24 462:5,6,11 475:4 509:14 company's 449:14 comparable 91:19 compare 329:20 comparing 329:24 330:5 330:23 compensation 41:23 457:1 complainant 2:2 3:7 4:4 11:10 13:6 24:10 29:17 30:7 31:1,7 39:11 39:16 45:13 46:5 187:18 191:4 269:19 274:15 302:14 347:3 348:20 365:19 367:13 369:24 370:8 395:18 396:15 397:13 399:1 399:19,22 400:4 435:3,21 449:19 467:18 469:3 511:14 514:8 515:8 517:8 518:14 complainant's 3:3 22:6 31:25 32:7,11 34:11	34:22 40:1 46:19 76:8,24 78:4,18 79:21 81:21,23 82:19 83:4,16 84:3 85:15 86:10 87:11,23 90:16 91:8 92:4 93:15 94:14 95:19 96:24 97:17 98:6 99:15 104:24 107:7 108:8 109:3,9,15 110:1,10 111:11 112:22 113:12,25 114:23 117:22 119:20 126:6 128:23 133:14 136:23 139:7 141:2 147:3 151:12 152:11 154:13 155:3 167:23 170:11 171:19 247:4 381:4 382:11 382:24 383:2 450:23 452:7 497:9 514:22 complainants 369:13 512:1 complaining 289:22 complaint 37:4 54:13 62:22,24 63:11,18 64:17 64:23 65:3,14 67:1 68:15 70:5,10,12 71:6,11,14 75:25 78:15 83:1 102:7 107:20,22,25 108:3 172:2 181:19,24 182:1,20
---	---	--	--	--

183:25 185:9	483:22	173:6 179:17	322:25 364:20	150:2
187:1,2,8,10	completing	205:25 332:25	concept 24:20	conducted 43:15
193:20,21,23	281:13,25	333:3 356:5	concepts 23:2,13	50:16 85:23
194:2,4,5,6,7,8	496:19	358:7 362:19	concern 168:7	178:21 197:9
194:9,15 198:7	completion	489:18 503:2	191:19 235:21	228:12,17
198:22 200:12	40:14 148:13	complying	298:5	311:17 312:2
200:17 203:11	148:21 444:20	192:1	concerned 28:15	conducting
203:19 204:25	complexity	component	65:9 82:4	13:24,25 337:1
205:5,6 206:3	71:20	299:3	215:16 253:3	conduit 130:9
206:5,22 207:4	compliance 9:6	components	262:20 295:17	cone 419:17
221:7,17	17:24 32:17	217:14 426:3	367:18	confer 368:23
229:15 235:6	48:3,9,17,18	compose 415:18	concerning	conference
235:21 236:4,8	54:15 58:7	compost 60:4	43:14 51:1	17:15 18:4
236:10 247:16	75:9 95:10	composting	283:21 293:2	268:5 368:8
289:20,21	118:16,17	59:17	354:21 384:9	470:4
338:23,25	130:20 137:22	comprehending	384:13,17	conferences
339:25 373:17	143:22 144:15	42:25	496:17 505:5	28:8
374:18 385:23	145:13 146:24	computer 251:9	505:10,25	confident 268:7
452:3 476:4	152:6 161:12	251:15 254:21	506:4	422:9
complaints 48:6	162:19 163:2,5	271:19,20	concerns 297:19	confined 63:13
54:7	163:11 166:8	273:17 291:4,5	conclude 14:4	125:20
complete 120:24	167:6,7,10	305:2,20 306:1	215:1,3 216:1	confirm 62:19
155:17 208:8	169:5,17 171:7	306:18 307:7,8	399:10 520:16	241:10 332:11
328:5 334:24	195:18 214:8	324:11,12	520:17	484:8 491:9
335:18 338:3	216:2 239:17	349:7 350:3	concluded 58:8	501:19
358:4 364:1	241:10 243:23	515:19 517:14	520:22	confirmed
381:16 399:21	247:11,22,23	517:17,20	concludes 14:16	120:19 489:3
417:4 493:19	248:9 256:16	concentrate	concluding	conflating 214:2
493:20 497:1,2	257:25 258:10	209:7	514:14 516:17	conflict 20:7
497:3 499:24	277:15 285:17	concentrated	conclusion	confluence
500:13,17	285:20 303:7	316:20,22	110:3 118:13	245:23 246:20
507:9,11,15	303:12 328:9	317:8 321:10	169:2 172:15	confluences
complete'	332:17 333:13	322:21 330:22	172:20,23	244:12
296:14	333:19 339:6	331:2 338:19	173:9 211:21	conform 15:1
completed 49:17	356:1,20	352:3	212:11 216:19	520:4
50:2 121:4,6	387:11 445:1	concentration	242:7,10	confrontation
133:12 142:25	Compliant	58:1,4,25	conclusions	476:6
223:25 238:13	284:15 285:11	61:15 79:2,2	122:15,24	confronted
282:6,8 284:12	332:14 357:13	81:6 175:18	124:11 143:21	458:24
314:10 318:25	complicated	209:1 235:14	144:1 167:18	confuse 183:9
357:21 358:17	68:19	279:2 289:15	condition	confused 29:25
361:2 362:12	complies 381:11	323:2 331:3,5	189:18 227:7	confusing 63:14
499:5,25 500:4	382:2	456:9	430:3	71:18 194:6
503:11	comply 40:15	concentrations	conditions 259:4	473:11
completely	42:1 61:24	80:23 101:9	259:5,6 261:13	confusion
327:23 450:5	85:10 136:19	175:1,8 177:16	294:15 443:17	183:11,20
456:22 459:1	143:5 155:9	263:17 322:20	conduct 13:13	184:22 187:15

190:17 connect 135:7 162:14 190:24 connected 152:21,22 266:22 267:5 269:18 384:5 connecting 188:8 307:5 connection 67:6 228:8 244:16 connects 427:1 consensus 369:9 consent 237:25 Consequently 43:5 conservation 48:25 consider 37:1 44:18 57:12 118:8 166:4 197:4 201:24 215:15 218:16 234:20 242:21 249:13 256:1,7 257:8 264:16 317:20 368:22 373:4 450:13 451:11 453:2 480:1,9 493:24 495:16 consideration 121:25 495:12 considered 14:5 91:19 150:17 169:9,18 177:23 244:5,9 262:18,22 267:2 315:24 318:22 411:8 considering 36:25 411:8 517:25 considers 85:2 consist 14:9,14 consistency 441:5	consistent 216:3 216:4,5 256:3 440:10 consistently 277:1 consists 278:21 consolidated 30:13 constant 201:7 241:17,22 242:1 constituent 298:4 constitute 341:24 constitutes 133:25 constitutional... 38:4,5 construction 1:3 2:12 3:4,20 5:4 5:5,7,10,12,15 5:16,18 6:23 7:11 8:10,12 8:14,15 10:25 40:10 45:11 50:24 57:20 75:24 77:10,21 77:22 78:13 79:24 86:18,19 88:5 96:1 98:3 98:13,15 99:23 101:17 105:9 106:3 110:25 111:22 113:1 114:8 115:2 117:13,16,18 119:25 120:13 120:24 125:19 126:10,17 127:4,6,14,24 128:5,12 129:4 129:24 130:14 132:7,15 133:22 134:2 135:18 137:14 138:5 139:3	140:4,8 142:13 143:4,13 144:11 145:7 145:21 146:12 146:20 147:10 147:15 148:18 149:7 151:20 152:16 153:4 156:4 157:3 168:9 170:19 178:19 254:2 275:20 276:14 284:4,22 285:7 285:19 286:1 286:16,23 288:20 289:11 293:12 296:8 298:17 299:1,3 299:23 302:2 313:5,8 317:7 326:3,19 331:25 334:22 335:1,16,20,23 336:22,24 337:3 339:2 340:14 343:9 343:15 352:12 352:16,18,21 352:24 353:25 354:3 355:11 356:12 357:5,9 358:4,6,22 361:2,3 362:15 372:2,24 388:6 391:10 405:18 416:24 417:11 421:14,20 424:5 425:16 439:13,20,22 444:17 454:18 455:13,16,17 456:3 457:3 470:6,9 481:10 496:19 497:15 500:4 Construction's 140:12,23	144:17 152:8 154:8 290:5 335:21 442:6 consult 339:4 consultant 142:22 280:17 337:3 342:18 342:20 484:17 484:19 499:2 508:16 509:10 consultants 144:20 consulting 127:17 contact 19:1 28:2 41:14 61:12 74:1,2,6 75:18 81:2 98:12,16 102:15,15 103:13 104:19 122:22 139:11 145:21 175:5 178:4 179:3 193:19,22 219:23 280:7 326:25 327:5 373:16 390:15 416:10 434:16 contacted 76:17 204:10 288:8 339:8 401:5 468:14,15 contacts 474:10 contain 94:1 283:18 412:1,2 521:13 contained 31:24 32:6,10 136:14 149:12 218:8 218:15 283:19 344:18 382:5 containers 177:22 contains 199:9 contaminants 278:4 279:1	contaminated 265:25 contamination 264:17 265:25 386:5,5 contend 43:15 content 52:14,16 53:22 59:25 60:3,23 73:1,5 73:10 99:9 154:3 173:12 196:2 199:15 201:10,14 210:4 217:16 241:21 264:1 contents 173:11 204:21 351:24 context 23:14 25:20 44:23 169:11,20 434:2 466:2 473:24 contingencies 452:23 contingent 515:23 continually 182:5 continuation 77:3 86:13 87:13 91:10 123:8 148:5,25 158:21 170:13 208:11 continue 147:19 160:16 263:12 301:8 325:15 367:16 424:1 424:10 455:23 continued 3:25 4:1,24 5:1,25 6:1,24 7:1,24 8:1,24 9:1 72:3 167:4 476:7 continues 24:10 89:6 continuous
---	---	--	--	---

262:10 264:2	498:11,12	contractor/co...	505:6	100:24 103:17
continuously	510:16	336:23	conversations	107:12 145:23
254:18 267:5	contracted	contractors	194:2 203:3	145:24 153:15
contract 43:19	56:13 57:21	43:17 45:4	206:21 488:25	157:7,11 174:7
125:17 126:16	161:16 162:2,3	232:16 331:20	converted 50:7	190:18,19
127:3 130:16	171:11 214:20	346:1,17	conveyance 55:1	192:1,12,13
133:8 138:10	232:4 281:18	362:24 457:1	conveyed 466:4	194:13 202:15
144:11 148:6	343:18 358:3	459:9,14 468:4	466:5	205:18,21
148:13,22	455:9	468:17 475:22	convinced 38:8	206:19 210:7
149:1,4,11	contracting	498:6	convoluted	210:12 211:10
161:25 163:3	343:20 443:14	contracts 163:3	263:16	217:13 218:20
165:23 170:21	465:1	310:16 360:12	Coolahan 5:20	219:4 220:11
171:4 178:13	contractor 44:9	457:16 459:5	coordinating	220:15 222:15
192:22 193:10	44:25 57:6,15	487:19 489:11	340:19	224:12 225:19
193:18 196:7	58:8,12 86:20	498:9,13,15,16	coordination	233:9,16
197:13 209:15	116:1 125:15	498:19,22	125:20 127:19	237:15 241:7
209:23 211:8,9	125:16 138:4	contractual	coordinations	246:21,25
211:16,18	140:6,17 147:9	210:17	127:19	250:19 252:20
212:6,8,19,19	147:17,20	contradicts	copied 284:6	253:11 254:19
213:11 215:13	148:10,14	44:23	292:22 356:16	255:15 260:5
215:23 216:8	149:6 160:9,15	contributing	copies 218:19	260:16 261:2
218:8,8,15	165:24 170:21	259:20	501:4	261:11 262:11
231:12 232:10	199:25 210:20	control 44:25	copy 45:19	262:15 263:14
232:12 233:15	210:21 211:11	45:5 88:9	155:7 179:23	264:14 265:14
233:21 239:24	211:12,15,18	240:7 252:18	218:10 244:20	310:16 311:6
242:24 243:9	212:5,5 213:11	252:22 253:4,9	250:16 251:5	313:13 315:14
243:12 281:25	215:20 223:20	254:8,9,13,14	298:3 312:11	316:10 319:8,9
282:2 310:19	231:14,16	332:22 337:4,6	348:8,9,21	322:23 327:10
311:4 318:12	232:5,14	358:1 359:8	349:1 501:8	332:1 333:1
327:1 331:17	239:18,24	360:24 416:8,9	corner 245:15	334:16 335:7
338:7,9 344:3	240:1,6,9,13	416:14 420:6	corporation	335:24 336:3
344:9 352:5,11	240:16,23	420:10,12	465:5 481:9	338:16 339:20
352:13,16,23	241:2 252:19	424:7,9 436:25	Corps 248:17,25	342:16,21
353:24,25	253:9 294:12	437:4 438:9	257:10,24	343:14,19
354:2 355:10	294:16 295:3	458:25 466:6	258:3,10,15	350:23 360:10
361:1,3,5	330:21 331:1	468:23 483:4	259:24 260:12	362:10 363:18
364:4,7 365:6	331:21 334:3,6	483:12 485:19	Corps' 249:2	373:24 374:9
372:23 416:23	334:9 343:1	490:18 503:9	correct 12:3	374:21 375:23
431:7,9,11,14	346:14 352:2	controlled	22:9,16,17	376:7 378:4
431:15 438:4,6	358:14 364:15	371:12 439:4	25:23 30:3	379:20 385:2
439:19 443:14	376:6 391:12	controls 274:9	31:17 32:20	385:14 386:21
455:25 463:22	408:6 417:9	convened 10:5	33:14,20 34:12	388:11 390:23
468:2 470:5,9	455:9 470:9	301:18	36:20,21,22	391:1,6,10,13
470:21 483:5,5	472:9 483:5,11	conversation	49:15 63:15	395:13 401:23
484:17 486:4	510:14,17	206:2,4 207:10	66:19 68:13	408:9 410:6
489:20 491:23	contractor's	207:23 423:10	83:2,12 88:1	411:12,13
497:14 498:10	294:18	432:14 440:13	94:3,9 100:23	420:7 431:7,24

440:12 441:14	10:11	18:22 19:3,9	144:6 154:24	250:10,15,23
441:18 442:4,7	council 474:7,9	19:17 20:2,10	157:6,8,14,18	251:1,4,6,8,14
442:23 443:8	487:5 493:2	20:13,24 21:4	161:22 162:5	251:17,21,23
448:16 455:9	counsel 2:5,6	21:9,15,17	162:24 163:6	251:25 252:2
455:10 457:7,8	290:4 292:8	22:11,19 24:2	163:10,14,25	252:10,13
459:11,12,14	counsel's 290:22	24:5,12,19,25	164:17,22	254:23 255:2,8
459:15 461:18	294:5	25:22,24 26:15	166:13,15,18	255:12 256:9
461:19 471:1	counselor's	26:19,23 27:11	166:20 167:2	256:13,16
471:23 472:1	274:7	27:16,19 28:19	168:19 169:3,9	257:10,14
472:10,11	counterparts	29:21,22 30:5	170:3 179:7,14	258:6 259:12
473:14 482:20	11:15	30:9 31:6,21	179:25 180:4	262:1,8,17
485:3,8 492:18	counting 457:15	32:2,4,9,13,15	180:25 181:3,6	267:8,10,13
496:16,20	counts 65:8 70:8	32:23 33:1,8	181:9,11,16	268:6,10,11,14
500:6 501:19	182:22 385:23	33:11,17,23	182:25 183:4,8	268:17,22,25
501:21 502:5	County 521:5,7	34:1,15,18	183:17 184:20	269:5,10,12,16
502:10,13	couple 12:18	35:1,5,11,18	185:16 186:5,8	269:22 270:10
503:2,22 504:4	16:8 30:6	36:12,14,23	186:13,21	270:15,18,21
504:20 505:7,8	50:21 51:16	37:16,18 38:3	187:20,23	271:2,8,11,17
505:12 506:5	52:12 102:17	38:13,22 39:1	188:2,6,9,15	271:22,25
corrections	124:14 234:13	39:6,13,15,19	188:17,19,22	272:4,12,16,20
202:11	267:22 269:1	39:21,23 40:2	189:1 190:2,4	273:4,12,16,22
correctly 12:5	278:5 299:19	42:12,20,20	190:23 191:2,7	273:25 274:5,8
76:3 206:15	354:13 375:15	45:12,17,23,25	191:10 192:7	274:18 290:25
209:22 270:7	385:5 387:23	46:8,14 47:1,8	193:3 194:25	291:6,8,11,14
293:15 315:9	393:11,13,17	47:13 62:11,19	195:10 196:19	292:11,24
501:16	444:7 464:20	63:10,23 64:1	198:13,16	293:6,19,23
correlated 30:20	476:13	64:6,11,14	199:20 200:4	300:2,5,12,20
correlates 31:15	couplers 129:8	65:17 66:1,6	203:25 206:9	301:1,7,13,21
correspondence	129:15	66:12,25 67:23	206:14,24	302:2,17,21,24
4:21,23 5:2,3,5	course 10:15	67:25 68:4,14	207:22 208:13	303:2,16 304:1
5:6,14,16,17	22:23 46:23	69:4,20 70:21	209:12 211:24	304:5,11,16,20
6:17,19,21 7:2	62:4 69:25	71:23 72:18,23	212:9,13,17	305:23 306:8
7:3,14 283:20	101:12 116:12	81:22,25 82:5	213:7,13,25	306:16,19,21
290:15 291:20	178:11 180:18	82:7,10,16,21	214:23 215:9	307:2,8,11,17
293:13 298:4	272:21 345:13	93:16,18,25	215:21 216:10	308:2,4,5,8,16
corresponds	363:23 369:23	94:4,10 107:10	216:12,17	308:24 309:2
33:3,13,19	393:16 399:11	113:13,18,20	224:8 226:24	309:11,15,21
corroborate	399:20 449:9	114:2 115:6,17	227:9 234:3,8	309:23 312:15
481:18	450:15,18	115:20 116:3	234:11,16,18	316:25 317:12
corruption	coursework	116:15 117:24	236:18,20,22	317:17,24
445:2	49:9	118:4,10,25	237:6 238:3,17	318:2,4,15
cost 128:16	court 1:22 4:2	119:2,5,12,18	238:19,24	319:20 320:13
353:11 457:11	10:9 11:22	122:13,23	239:1,4,6,9,13	324:2,5,7,13
costs 314:10	12:1,4,12,14	123:1,4 124:9	245:3 246:6,9	324:17,22,25
Cottontail 2:12	16:2,6,8 17:12	124:12 125:7	246:11,14	325:4,11,13
289:12	17:25 18:8,11	135:4 143:10	248:7 249:9,19	327:9,13 329:3
Coughlin 1:10	18:13,15,18,20	143:16,19	249:23 250:1,7	329:7,11,18

330:10,13,17	397:7,10,13,16	462:10,19,22	515:3,8,12,15	330:18 331:7
333:8,12,16,20	397:25 398:2,9	463:1,3 464:7	515:20 516:2	336:13 337:7
333:23 336:6,9	398:14,19,24	464:11,13,17	516:11,14,20	339:14 340:3
336:11 337:14	399:8,15 400:1	464:22 465:3,8	516:24 517:7	340:12 341:10
339:13 340:3,8	400:8 402:1,8	465:11,16	517:13,18,21	342:13 343:25
340:10 341:7	402:17,21	466:1,9,12,16	518:8,11,16,19	349:10 350:8
341:10,15,22	403:7,10,16	466:21 467:5,9	518:22,24	350:15 351:9
342:5,7 344:13	404:1 406:14	467:13,17	519:9,11,13	353:23 354:19
344:20,23	406:19,23	468:7,9,24	520:13,15,17	359:13,14,22
345:3,5 346:21	407:4,6,9	469:2,6 471:4	521:6	361:8,18
347:1,14,22	408:13,16	471:6 473:12	courtesy 415:4	363:13,16
348:7,11,16,20	409:15 410:4,7	473:15,20	519:22	365:16,24
348:23,25	412:16,20,24	474:1,15,23	Courthouse	373:14,16
349:1,6,12,17	413:2,24 414:5	475:12 476:3,8	1:13 10:24	374:19 391:3
350:1,5,23	414:12,15,23	476:12,16	Courtney 3:10	440:14,15
351:2 359:12	415:2,12,16	477:4,6,8,11	4:7,8,13,20	445:10 471:3,5
361:12,16	418:9,17 419:2	477:23 478:5,9	6:17,19,21 7:2	484:19 488:10
363:5,8,12	419:4,8,15,19	478:17,22,25	7:20,22 8:2,8	489:9
365:13,15,21	420:2 421:17	479:6,11,15,24	8:18 18:2	Courtney's
365:24 366:17	422:24 425:5	480:4,13,16,20	86:23 99:24	217:3 456:8
366:21 367:3	425:11,23,25	481:2,7,13,17	131:1 141:12	courtroom 1:14
368:9,12,21	426:5,8,10,13	481:23 482:3,7	141:20 142:1	16:9 21:7
369:4,7,17,22	426:18,23,25	482:10,19,21	146:13 151:22	268:20 305:15
370:1,4,12,22	427:5,21 428:4	483:25 484:3,7	153:5 154:17	305:21 307:4
373:22 374:12	428:25 429:3	484:20,24	194:1,14 204:6	310:1
376:16,19	432:4,7,11,14	485:1,5,9,15	204:10 205:4	cover 15:18 25:8
377:11,21	432:23 433:1	485:22,25	205:13 206:21	28:11 30:6
378:2,5,8,17	433:25 434:8	486:6,13,20	207:10 208:24	38:24 116:7
378:20 379:2,8	434:10,14,18	487:7,10	216:24 217:23	181:16 268:1
379:11,13	434:22,25	488:16,22	218:3 236:2,12	368:13,14
380:7,20	435:2,12,15,22	489:5,15 490:4	268:4 272:10	369:18 377:17
385:24 386:1,8	436:3 438:15	490:6,19,23	273:8 274:2,14	388:1 414:8,11
386:11,17	438:18,23	491:1,7,14,16	274:23 275:2,5	414:13 458:20
387:21,25	444:3 446:5,8	491:25 492:7	290:18,21,24	480:5
388:19 389:2,5	446:12,15,22	492:13 493:21	291:2,21 292:5	covered 55:17
389:7,9,12,18	447:5,10,13,16	494:21,24	292:12 294:1	113:16 180:17
389:20 390:1,4	447:19,25	495:7,10,19,22	294:21 299:25	444:4 479:4,10
390:9 392:19	448:3,8,20,24	495:25 502:20	300:8,12	486:21
392:25 393:3	449:2,12,16,22	502:23 507:2	302:10 304:22	covering 34:5
393:10,13,19	450:1,4,12	507:16 508:1,7	305:10 307:9	268:2
393:24 394:4,6	451:6,11,14,20	509:21,24	307:20 308:2	covers 344:11
394:9,11,13,16	451:22,25	510:3,13,15,19	308:16,18	cows 283:3
394:18,22	452:9,12	511:11,13,17	309:21 312:11	crazy 23:11
395:1,3,6,8,11	453:11,13,16	511:20,24	312:25 317:3	create 40:23
395:14,17,20	453:19,25	512:3,13,16,21	317:19 318:20	41:4 42:7 62:3
395:23 396:2	454:7 458:8,12	513:10 514:4	325:4,14	65:10 66:23
396:10,17,22	461:22 462:1,6	514:10,13	329:19,22	67:11,16 68:20

178:24 183:20	163:19 164:15	223:8,23	CX23 5:8	286:17,19
184:21 221:11	166:24 184:8	cup 440:22	CX24 5:10	289:24 355:21
231:24 233:23	268:9 300:14	current 146:18	CX25 5:11	CX46 6:19
348:12 349:14	301:11 302:9,9	275:4 277:1	323:11	141:16 155:20
376:17 504:9	325:15 367:11	421:12	CX26 5:12	156:20 157:6
504:24 505:4	369:19 447:8,8	currently 47:23	CX27 5:14	157:19 158:18
created 14:8	447:11,11	125:12,13	CX28 5:16	170:22 469:21
43:19 164:7	448:8 449:18	270:1 289:13	CX29 5:17	CX47 6:21
173:4 320:9	480:17	365:7,9	353:19	CX48 6:23
509:5 510:9	cross-examina...	cursor 314:22	CX3 4:7	CX49 7:2
creating 41:17	26:3 189:2	314:23	CX30 5:19	141:23 297:9
384:9,12,16	241:5 307:20	custody 98:9,12	108:21	CX5 4:9
473:7 504:13	307:25 310:4	180:16 227:12	CX31 5:20	CX50 7:3
credibility 43:8	368:20 372:13	customers'	CX32 5:21	CX51 7:5
credited 156:11	420:3 449:21	447:9	CX33 5:22	CX52 7:6
creek 36:7 89:8	469:7 496:1	cut 279:1 280:12	CX34 5:24	CX53 7:8
225:24,25	cross-examine	311:23 327:21	CX35 6:2	CX54 7:9
226:4,8,11,14	13:15 26:8,13	328:25 422:22	CX36 6:3 35:3	CX55 7:11
226:20 243:24	43:10 116:8	cutting 130:10	191:3,7	CX56 7:12
244:8,11,12,17	369:14	327:19	CX37 6:5	472:12
245:20,21,23	crossed 270:25	CWA-07-2019...	CX38 6:6	CX57 7:14
246:3,19	310:2	1:5 11:3 302:5	CX39 6:8	CX58 7:16 22:8
248:15,17,18	crow 446:19	CX 134:4	CX4 4:8 285:21	29:16,18
248:20 255:14	crucial 42:23	138:13 142:8	CX40 6:10	514:23
255:15,20,23	163:23	161:2 250:18	CX41 6:12	CX59 250:19,21
255:25 259:4	CSR 1:21 521:7	378:14 514:21	135:22 377:23	CX6 4:10
259:22 260:8	culpability 85:6	CX1 4:5 22:8	378:2,16,20	CX7 4:11 355:7
262:22 264:13	Cummins	29:15,18	381:9	CX8 4:12
266:3 278:23	340:13 341:1	514:23	CX42 6:13	CX9 4:14
279:20,21,22	358:22 379:23	CX10 4:15	139:22 405:4	287:17 289:5
409:25,25	394:16,18	247:18 248:10	407:15 416:15	
445:18,19,21	405:21 407:7	CX11 4:16	CX43 6:14	D
446:10,11,12	407:24,24	CX12 4:17	114:1,5 117:4	d 3:1 4:1 5:1 6:1
446:15,18,24	408:24 409:3	81:25	121:12 122:12	7:1 8:1 9:1
447:1,1,3,4	411:12,19	CX13 4:18	123:6,16 125:9	61:8 81:11
crew 168:13	412:15 416:12	CX14 4:19	126:12,24	106:12
171:4 466:22	420:8 425:3	452:8	127:8 128:1,7	D&R 9:4 32:5
470:10,21	438:21 439:9	CX15 4:20	129:21 130:23	140:4,10 391:5
crews 461:8	458:15 475:15	CX16 4:21	131:19	400:20 417:13
cropland 40:7	486:8 489:10	CX17 4:23	CX44 6:15	daily 340:17
crops 189:19	502:2	CX18 5:2	CX45 6:17	375:22 409:9
217:18 430:4	Cummins'	CX19 5:3	144:23 146:4	423:8 454:23
cross 3:8,11,14	358:21	CX2 4:6	148:2,23 149:8	455:5 465:9,15
3:18,24 4:3	cumulative	CX20 5:5	150:25 152:24	466:11,17
13:25 116:6	182:2,9,12,16	CX21 5:6	156:15 159:5	494:19 500:24
119:14 124:16	222:8,10,12,16	107:11	160:2 283:5	Daines 8:20 9:9
125:2 162:15	222:24 223:1,3	CX22 5:7	284:1,18	33:18 297:24

337:10,25	398:12 399:17	450:16	260:10 262:22	342:3
damage 266:5	418:24 420:22	decided 181:23	263:1 264:13	delay 184:9
Dan 2:18 4:18	421:1 425:1,1	181:23 477:1	264:23 265:20	360:4
21:12 83:19	428:11 429:4	493:3	266:2,12,23	delivered
Dana 20:3	433:22,24	decision 15:6,16	278:15 279:8	153:19 286:9
Dance 461:13	437:11 445:13	15:23,25 25:18	279:18,19,23	delivery 468:21
dash 246:2	454:25 455:6,6	37:16,19,19	280:2 282:22	delve 124:16
data 346:7	456:6 465:19	164:3,6 205:18	288:7,11	125:1 163:18
date 11:4 22:14	466:15,23	262:7,17 267:4	296:19 297:1	166:1
41:2 83:8	477:19 509:17	374:6 432:8	298:19 313:9	delving 119:14
85:25 90:24	521:17	452:20 467:22	328:7,7 375:8	213:16
94:20 96:2	days 14:22	477:12 520:7,7	385:4,7 401:10	demand 7:11
97:8 99:25	83:21 95:11	decision-maker	401:11 409:25	150:24
105:10 113:1	398:12 418:2,6	45:2	417:6,6 421:6	demanded
114:9 115:7	424:17,21,22	decisions 450:13	445:18,19,21	41:22
116:8 126:11	424:25 425:2,4	453:22 456:4	445:22,23	demonstrate
126:17 127:4	459:1,2,3	declaration	446:11,12	40:23 41:18
130:5 131:1	460:7,11,18	327:8 331:16	454:19 460:9	44:14 146:24
132:8 203:18	461:8 462:14	375:22 387:1	460:10 475:7	332:17
203:20 286:24	466:24,25	decreased	defending	demonstrative
295:20 318:1,2	467:1,2 476:21	441:13	457:14	94:5
318:4 331:20	482:5 508:3	dedicated	defense 457:18	denied 45:3
332:7 335:3	dead 423:15	154:23 155:16	defensive	deny 501:19
336:17 338:6	deadlines 15:12	deduce 227:19	475:19	department
350:17 351:11	520:3	Deer 7:19 40:7	defer 16:23	320:8 321:6
351:13,14	deal 18:15 27:5	42:4 76:15,19	20:18 251:10	332:15
355:16,18	228:20 240:10	87:2,5 88:18	380:21	dependent
364:3 505:9,16	437:13 470:4	89:1,8 92:14	deficiencies	263:18 265:2
505:24 506:3	477:2	97:6 108:19	240:24,25	depending
dated 4:6,7 7:21	dealing 195:8	110:24 115:11	276:5,10	58:21 60:3
85:22 98:2	205:11 361:14	130:8,10,15	deficiency	73:5 101:12
111:18 115:4	461:16,16	132:18,21,25	278:10,25	201:14 222:2
120:1 121:20	487:5,20	133:4,6 136:9	279:4	252:25 399:3
133:20 134:9	dealings 10:14	137:19,20	define 114:15	455:6 493:12
145:8 147:10	197:9 408:21	140:20 147:24	defined 90:4	depends 240:5
151:20 283:12	437:5	147:25 172:18	defines 43:13	442:14
283:13 284:24	dealt 512:11	195:15,16	definitely	depicted 261:21
286:2 356:13	death 52:21	225:22,23,24	430:13 466:14	depth 217:7
357:5 382:19	170:1	226:4,8,11,20	definition 65:5	DEQ 123:13
dates 106:8	decades 182:7	227:17 241:25	150:16 161:10	125:18,24
258:18 383:15	223:2,2,7	243:24 244:8	220:13 262:18	332:15,16
day 16:14 92:12	December 4:6	244:11,11,17	316:4	describe 40:20
147:14 164:6	109:19 113:2	245:14,19,21	degree 48:24	48:2,22 58:18
301:16,24	121:20 275:14	246:3,19 248:1	49:2,7,7,11	73:4 77:20
302:7 307:18	decide 78:11	248:14,17,20	50:5,6,9,10	80:9 83:5,18
331:22,25	262:2 414:25	255:14,20,23	85:6	84:8,11 95:24
366:2 376:6	415:3 435:8	259:3,19,22	dehydrated	97:5 98:8

99:20 105:5 109:5,11,17 111:16 112:24 114:6,25 117:10 119:23 121:17 126:8 126:15 127:2 127:11 128:3 128:10 129:2 130:25 132:1 133:19 134:7 137:11 140:2 141:10 142:11 145:5 146:10 147:8 151:18 152:13 153:2 154:15 156:1 157:1 159:11 175:12 181:22 245:11 247:9 248:24 277:10 279:7,21 280:22 282:11 290:14 358:20 371:15 400:16 401:7,14 469:12 described 30:17 54:18 130:18 147:22 191:17 295:25 330:20 330:25 345:15 410:10 484:19 describing 92:23 123:9 145:13 356:20 description 81:13,17 106:7 106:13 190:14 197:3 220:19 264:9 383:15 383:20 430:6,9 430:16,18 473:7 design 92:10 125:21 260:18 275:19	designated 10:11 designation 31:13 designed 104:22 desire 29:5 296:17 347:4 desist 8:21 9:8 33:12 459:3 desludging 76:20 288:11 despite 339:3 507:9 detail 13:1 240:3 401:15 detailed 15:20 details 6:23 113:5 208:23 216:23 341:18 detention 89:5 determination 120:16 196:12 215:19 219:9 221:22 222:15 243:24 244:22 245:8,13 249:1 257:20 258:4 346:3 493:15 determinations 167:8,10 214:12 244:25 determine 25:16 41:10 48:7 49:23 54:11,14 85:1 104:10,17 104:21 165:18 204:20,22 214:10 249:3,5 252:19 259:25 260:11 261:1,8 263:19 319:15 489:16 determined 36:6 85:7 170:18 173:13 177:7 230:18 248:15 257:23 258:11	406:8 470:5 determines 173:14 determining 222:7 256:18 261:11 detrimental 52:18 develop 65:21 81:4 123:22 214:5 231:4,8 232:11 233:16 257:11 316:10 346:15 441:17 441:23 442:6 488:24 developed 66:14 183:23 232:18 232:21 383:10 441:21,24 488:24 492:21 developing 185:3 489:17 489:21 492:2 development 1:3 5:10,12 10:25 36:14,24 40:10 75:24 86:19 96:1 106:3 114:8 119:25 128:12 129:4 137:14 140:8 144:12 147:16 149:7 152:16 157:3 168:9 169:6 214:16 230:11 302:3 453:3 481:10 497:15 Development's 146:21 285:8 357:10 devil 458:3 dewater 59:21 208:7 dewatered 100:3 153:11	197:16,18 198:25 205:17 205:20 210:3 242:16 286:6 dewatering 59:16,23 100:11 150:6 150:14,16 153:14,16 197:9 206:12 206:16 207:23 341:19,22 342:5 dictated 183:22 differ 73:5 difference 35:14 37:13 183:24 185:4 187:3,11 218:4,6 differences 185:7 different 48:16 51:25 52:12 58:21 73:7 102:17 176:9 184:15 201:17 209:10 215:22 215:22,24 216:7,7 224:25 241:19 243:1 243:10,13 269:1 276:10 277:14 279:11 280:5,18 282:15,17 300:22 310:14 311:12 317:11 330:5,7,20,23 352:15 419:7 427:25 461:17 487:4,15,19 493:14 517:4 differently 214:2 241:19 difficult 60:11 178:23 219:22 231:21 288:14	305:2 443:15 443:17 516:8 difficulties 82:13 dig 461:4 508:19 digging 458:20 DigitalGlobe 258:20 261:7 diligently 43:10 dilute 441:6 dilution 441:10 Dion 9:7 33:2 119:24 120:6 156:4,5 157:4 334:13 490:12 491:20 direct 3:8,11,14 3:18,22,23 4:2 13:13,17,24 17:19 43:4,8 47:17 72:3 135:8 139:11 164:9 166:19 166:22 167:4 187:24 188:4 214:25 244:16 268:8 274:21 304:8 317:2 367:10 371:3 373:21 400:10 435:18 436:1,5 454:8 directed 44:1 112:19 121:9 139:20 140:25 152:9 162:4 179:1 220:12 233:4 242:20 295:6 388:9 416:12 504:8 504:23 directing 144:21 230:8 243:16 direction 281:20 388:15 521:12 directions 407:21,23
--	--	--	---	---

411:11 431:19 directive 96:5 directly 24:16 24:17 142:6 154:10 163:22 193:9 202:23 206:22 230:22 255:19 266:1 303:15 317:1,5 318:13 332:24 337:24 343:9 347:16 352:18 362:9 374:23 433:24 434:17 435:17 442:22 445:3 461:1 469:15 482:1 501:10 director 140:14 337:18 directors 492:24 dirt 385:9 458:21 dirty 447:1 disagree 15:25 29:9 322:6 501:22 520:9 disagreement 322:24 364:19 disappeared 308:17 disappearing 468:14 475:21 disaster 330:14 disburse 422:20 discern 75:19 103:16 discharge 55:21 55:22 90:1,7 226:5 227:5 245:19 259:19 259:23 260:2,4 263:3 265:2 266:3,11 267:2 281:7 discharged 150:11 263:5	264:12,18 265:9 dischargers 265:4 discharges 55:2 89:13 225:22 225:24 244:8 246:24 248:14 260:10 263:9 265:11 278:22 279:18,19 discharging 89:7 225:18 260:7,24 264:24 265:7 277:13 discrete 55:1 discretion 26:17 148:10 discuss 38:15 84:16 85:9 368:8 411:14 412:8,11 413:6 discussed 41:24 84:16 184:14 202:19 205:13 218:24 323:6 410:19 411:16 412:13 413:11 431:6 491:13 491:23 504:13 discussing 204:9 303:14 323:3 412:23 discussion 87:4 197:8 205:3 208:22 433:21 488:22 509:11 discussions 179:21,22 206:17 491:8 491:11 519:20 disease-carryi... 103:7 disingenuous 483:23 disk 406:5,10	disked 421:3 dismiss 36:10 dispenses 22:22 dispersal 411:4 displace 53:5 display 323:12 324:10 disposal 6:5 9:4 32:6 43:14 51:21 91:18 114:19 140:4 140:10 332:20 391:5 400:20 417:13 disposing 132:19 dispute 205:19 210:2 322:16 322:19,19,22 338:11,13,20 338:22,23 364:12 471:25 472:3 503:18 508:9,11,13,14 509:24 disruption 305:17 dissatisfaction 76:18 288:10 dissolution 481:24 dissolved 53:21 263:21,22 264:1,4 462:2 481:20,22 distance 104:1 186:1 244:14 distinct 23:2,16 distinction 23:5 160:19 294:13 distinctions 71:2 71:13 district 38:13 ditch 55:2 doable 324:18 docket 1:5 11:2 302:4	document 6:8 6:10 25:8 30:13 32:17,22 33:1,4,11 35:7 35:16,21 39:2 63:12 64:25 76:11 78:20 83:18 84:6 85:18 90:18,25 94:16 95:22 96:25 97:3,9 97:18,21,25 98:8 99:20 105:3 106:23 107:15 108:22 109:5,11,17 110:12 111:17 111:25 112:8 112:24 114:6 114:25 115:4 115:10,14 116:11,20 117:10 119:23 121:7,17 122:8 122:24 124:3,8 126:8,15 127:2 127:12 128:3 128:10 130:25 132:2 133:5,9 133:19 134:7 135:6,13 136:1 136:7,25 137:12 138:16 140:7,16 141:11 142:4 142:11 145:5 146:10 147:8 149:13 151:18 152:14 153:2 154:15 156:2 157:1 159:11 167:25 171:7 171:24 172:10 172:13 184:24 185:19 190:8 190:12 195:1 245:1 247:7	249:12 283:9 284:2,20 285:24 286:21 287:20 290:2 291:22,23 292:1 297:12 297:22 313:2,3 314:2 315:4,10 320:6,8 325:23 325:24 329:8 331:23 333:13 341:13 344:16 344:23 345:13 345:23 346:11 346:25 347:21 350:17 351:7 354:6,18 355:5 355:9 356:7,10 357:3 360:7,20 361:7,18,25 362:3,9 363:1 363:9,17 364:14,25 372:20 375:21 378:23 380:11 380:14 381:5 381:21 382:14 405:6,8 416:19 416:22 469:10 471:18 472:15 472:18 473:8 498:24 502:16 515:11,14,24 517:3,4,5,11 517:14,19 519:8 documentary 14:11 169:19 documentation 44:4 95:3 106:22 121:5 209:21 321:2 454:25 455:11 documented 477:21,24 documents 14:11 30:21
---	--	--	--	---

33:25 70:14	dot 246:2	428:13	158:15	357:4 358:10
94:24 95:14	dots 135:8	driving 238:15		358:12,16
106:17,19	190:25	447:6	E	456:3 458:4
124:25 135:18	double 23:10	drought 258:17	e 1:1 3:1 4:1 5:1	478:2 482:19
141:5,8 162:8	185:5	drove 406:3	6:1 7:1 8:1 9:1	496:9 499:8,15
162:18 166:11	double-check	432:13,15,20	53:2 66:10	500:3 515:19
169:18 200:9	185:13 204:15	433:24	106:13 521:2,2	518:18
200:22 214:25	doubled 456:23	dry 61:16	e-mail 4:8 7:22	e-mailed 88:13
215:25 221:2,4	downhill 482:6	176:12 445:25	83:19 88:12	e-mails 198:2,3
221:10,11	downtown 186:6	due 43:9 241:20	90:21 92:24	198:6 323:1,3
223:24 231:22	dozen 443:9	266:2 321:9	94:19 95:25	482:14
231:22 232:4,6	draft 431:14	340:20	99:22 105:6	E-R-I-N 47:22
233:16 285:2	drafted 431:15	dug 459:22	106:24 109:18	E-R-N-I-E
314:13 340:7	drafting 71:17	duly 46:6 274:16	114:7 119:24	400:15
344:17 345:20	drainage 259:8	370:9 400:5	141:12,19,25	EAB 520:9
365:4 443:7	draining 404:7	454:4 480:24	145:7 146:11	Eaglefeather
465:9 482:8,10	drama 478:7	dump 326:15	151:19 152:14	20:7
482:12 483:7,9	drastically 29:3	394:3 404:8,11	152:15 153:3	Eaglefeathers
483:13,14,16	draw 43:12	407:1 409:12	154:7,16 156:3	20:4
483:18 490:17	124:11 143:20	409:18 410:1,4	157:2 158:22	earlier 16:9
490:20,22	164:14 169:2	411:23,25	159:12,22	50:14 82:24
501:9	229:7 414:16	412:2 416:8,9	161:25 180:2	89:9 100:20
doing 30:20	513:12	419:16 427:24	204:3,5,9,24	124:17 145:20
58:12 67:12	drawing 118:12	433:12,12,14	205:8,10	149:11 153:13
75:15 104:21	119:9 122:15	437:7,12	206:11 216:22	174:5 176:8
135:14 171:4	122:23 144:1	dumped 404:8	216:23 217:3	180:17 192:10
192:9 212:15	214:9 257:16	433:16 441:20	236:6,11 270:1	194:10 210:16
217:23 220:24	drawings	441:24 485:19	270:2 283:10	213:15 227:11
221:1 229:22	147:22	485:19	283:14,18	228:3 229:11
229:25 238:7	drawn 255:19	dumping 416:7	284:22,24	233:8 241:4
238:11 240:20	415:9	433:7,17,19	285:1,12,25	252:17 293:7
255:5 304:23	dredge 150:7	437:10	286:5,14	341:12 344:25
347:15 375:14	152:20 282:16	dumps 409:25	287:11 290:3,7	355:24 358:9
375:17 409:9	dredger 425:17	duplicate 34:10	290:14,22	358:12 373:23
410:11,14	425:18 427:17	35:3,8	292:5,7,21,23	374:3 388:21
422:8 423:25	dredging 150:8	duplicated	294:2,5 295:4	391:15,25
436:8 442:15	468:19	30:25	295:12,14,21	420:25 429:14
445:13 455:7	drew 169:18	duplication 34:5	296:1,7,16,20	431:6 433:5
457:19 458:16	513:17	duties 42:3 56:1	296:24 297:2	436:19 437:9
470:21 480:17	drier 259:5	58:9,13 69:2	297:13,17	442:9 470:24
489:21	drier-than-no...	88:19,21,22	321:23 322:2	489:3 500:21
domestic 51:12	259:6	117:19 118:1,2	326:18,22,23	501:13 504:7
201:9,13	drink 445:24	118:6,8,20	332:4,7,23	506:12 512:4
241:24	drive 23:11	122:9 133:7	333:10 334:11	earliest 267:23
door 19:6	165:15 446:20	277:7,11	334:12 335:3	early 16:9,11,15
448:22	446:20	461:15 494:4	336:14 355:25	164:13 300:15
doors 16:12	driver 418:24	duty 115:22	356:11,15,18	474:19

EARNIE 3:21	424:21,22,24	employees	497:17	2:2,6 5:22 6:6
Earth 256:1,8	508:3	112:12,14	English 6:3 34:7	7:8,16 11:14
256:22 257:8,8	EIT 4:7 7:20	127:24 152:4	35:3 190:6,13	11:18,20,24
258:19 261:2,4	either 16:24	336:24 422:5	191:8 235:1	16:1 21:13
Earth's 256:25	20:16 48:9,17	467:3	492:4	40:4 49:2 52:9
261:21	55:16 63:14	empty 427:12	ensure 43:11	143:2 146:23
ease 397:3	77:23 79:8	Enclosed 298:3	102:25 489:20	277:16 284:14
easier 177:9	177:7 182:21	Enclosure 6:13	ensuring 104:4	285:10 332:13
378:24	189:18 215:2	encounter 434:3	155:16	332:15 357:12
easiest 368:4	228:17 259:4	495:13	enter 250:5,18	370:19 437:18
easily 222:11	264:2 317:12	encourage 166:3	348:4 353:5	499:7
384:24	368:12 385:22	213:16	entered 35:17	EPA 2:3,17 3:3
east 116:21	419:14 427:24	ended 57:25	193:10 244:22	3:7 6:2,4,8,10
461:7	430:2,3 450:9	ends 139:13	310:21 326:11	6:14 7:7 8:16
east-side 114:13	484:8 498:18	407:19 442:10	338:2,6 363:24	10:12 17:23
Eastside 133:4	504:9 520:9	442:12	364:4	23:8 27:15,25
easy 406:12	EJScreen 5:7	Energy 145:16	entering 34:13	36:6 37:24
eat 429:7	elaborate 23:3	153:19 286:9	249:15	40:22 41:1,3,7
echo 271:6	341:11 409:18	314:4	enters 224:15	41:10,18 42:10
272:4 301:8	411:25 421:17	enforcement	entertain 291:1	43:2,5,14,23
echoes 305:13	463:10 492:10	36:18 37:3	entertaining	44:1,15,21
349:15	electrical 130:8	48:10,12,14,15	165:2	45:8 47:25
echoing 349:4	electronic 348:9	50:15,16 51:2	entire 24:23	50:5,8,16,19
ecology 48:25	378:11	54:1 56:22	252:23 396:20	51:23 56:22
economic 85:5	electronically	57:16 77:16	446:14 459:3	58:8 62:7,12
457:9	251:18 252:2	88:23 141:5	460:8,10 461:4	63:4 65:3
edge 245:21	378:9	169:6 178:17	483:12 507:13	67:17 68:22
education 50:3	elements 19:16	214:11 239:18	511:8	69:8 74:16,19
educational	215:10	240:18 256:17	entirely 208:10	75:22 77:11
48:22 276:22	elicit 367:24	engage 148:10	216:14 222:6	78:7 79:15
effect 36:16 37:1	396:24 415:6	216:6 335:18	224:19 232:24	83:22 84:13,18
37:12 52:24	eliminating	engaged 334:24	234:12,14	84:24 85:2,7
222:9,10,12,22	456:21	engages 189:23	260:1,9 449:7	85:23 88:23
effective 338:5	Elimination	engineer 158:12	449:24	91:15 93:1,9
364:3 367:4	55:21	257:25 275:6	entirety 75:2	94:20 95:1,1
effects 52:23	Ella 1:14	275:17,18,24	178:24 474:3	95:10,12 97:10
102:25	else's 40:17	280:8 293:16	entities 193:14	97:23 99:1,18
effectuated 19:3	Email 4:18,20	320:19,22,23	448:16	102:11 103:3
19:8	4:21,23 5:2,3,5	321:5	entitled 147:23	103:16 105:14
efficiency	5:6,8,14,16,17	Engineering	entity 91:5	105:23 107:21
169:13	6:17,19,21 7:2	128:17	179:19 225:1	108:10 110:7
efficiently 15:20	7:3,14 8:7,9,10	engineers	335:6,8	120:3 130:20
effluent 262:25	8:12,13,15,18	144:13 248:17	environment	137:22 141:5
265:9 278:24	emphasize 41:6	248:25 257:11	38:21 41:9	141:15,20
effort 280:20,21	43:7 473:18	258:3,11,15	49:25 104:15	142:1,16 143:3
311:9 320:21	employee 50:7	259:25 260:13	155:10 266:21	143:3,6 144:16
eight 50:13 59:2	257:21	322:12 487:2,3	environmental	145:3,19 146:8

146:23 151:6 151:16 153:7 153:23 155:8,8 156:24 157:10 157:13,16 158:4 159:8 161:10 167:7 167:16 168:3 173:6 178:16 181:23 182:22 190:14 194:4,8 194:10 195:18 198:3 199:8 200:7,9 204:15 205:7 207:5 226:13,16 233:17 239:17 239:23,23 241:10 256:20 262:8 276:3,5 276:7 279:13 280:7 283:11 283:16,21 284:15 285:2 285:10 295:15 295:17 297:14 297:19,19 303:9,12 314:14 321:23 323:9 328:10 332:13 338:24 339:1,1,4,7,10 339:15,19 340:2,7 357:12 369:15 376:23 376:25 377:6 382:17 383:5 383:25 387:11 398:3 404:24 405:10 433:6 437:13 442:1 443:6 465:6 472:21 483:10 483:15 490:15 492:16 505:10 505:25 506:4,6 506:14,21,25	512:5 513:3,7 EPA's 19:13 35:24 40:24 42:6 44:12,16 72:13 93:5 99:5 104:7 133:17 137:3,7 138:24 182:19 241:7 303:8 377:2 517:3 EPA-certified 180:13,25 ephemeral 244:6 246:1 261:9 EQ 91:19,21 equal 92:11 326:16 equation 232:3 equipment 129:19 145:17 150:1 152:2 160:11,14,22 160:25 170:20 294:24 295:2 433:20 458:19 470:7,10 471:19 474:10 484:24 499:9 499:18 500:12 500:17 509:1 510:7 equipment,' 294:19 equitable 42:22 equivalent 440:22 Erin 3:7 4:20,22 4:23 6:18,20 6:22 7:2,4 8:7 8:9,18 17:22 45:18 46:1,4 47:21 105:17 321:23 Ernie 2:18 3:17 5:20 18:5 19:24 43:18,21	44:8 140:4 141:6 173:2 200:23 218:14 220:5,11,17 233:9,13 241:6 352:8 360:8 374:24 375:14 391:5 393:2 394:2,13 400:3 400:14 486:10 486:10 489:20 490:7 498:8 501:23 errors 472:4 474:20,24 especially 26:20 Esq 2:4,5 essential 42:25 essentially 114:18 238:10 establish 248:6 256:24 314:9 316:12 345:23 353:10 established 260:13 286:19 450:18 452:25 establishes 345:18 346:12 establishing 212:23 319:10 319:12 345:16 354:10 estate 125:16 estimate 316:12 319:6,12 328:18,19 329:12,14 353:12,16 estimated 316:14,16 331:3,20 estimates 314:9 315:10 318:24 319:14,18 320:1 estimating	315:8 319:2,4 estimation 138:8 172:10 338:15 estopped 503:16 et 53:3 76:8 78:4 78:18 81:21,24 83:5,16 84:3 85:15 86:10 87:11,23 90:16 91:8 92:4 93:15 94:14 95:19 96:24 97:17 98:6 99:15 104:24 107:11 108:8 109:3,9,15 110:1,10 111:11 112:22 113:12,25 114:1,5,23 117:4 119:20 121:12 123:6 126:6,12 128:1 128:7,24 129:21 130:23 133:14 134:4 134:17 135:23 136:23 138:14 139:7,23 141:2 141:16,23 144:23 146:4 147:3 148:3,23 149:9 151:1,13 152:11,25 154:13 155:4 155:21 156:16 156:20 157:20 158:19 159:6 160:3 167:23 170:11,23 199:19 203:24 284:16 285:11 327:12 332:14 332:22 333:24 336:8,10 337:13 355:21	357:13 361:15 381:9 386:23 407:15 452:8 472:12 497:9 ethics 513:23 eutrophication 53:17 evaluate 257:21 346:2 486:21 evaluation 256:11 evening 251:20 301:9 event 267:25 452:24 events 43:4 44:10 eventually 197:11 415:22 everybody 18:19 27:8 218:11 230:2 301:23 306:23 345:8 348:10 395:21 398:21 452:20 489:12 508:4 509:18 511:9 514:15 520:8 evidence 14:10 14:11,12,16 22:5,12 23:1 23:17,21 24:24 25:2,10,14,16 26:5 27:7 29:18,20 33:25 34:3,14 35:17 41:19 43:6,7 43:10 115:6 116:5,11 124:18 125:4 135:8,9 164:9 164:9 165:11 165:12,19 168:24 211:5 213:22,22 244:23 249:16
---	--	--	---	--

250:18 290:17 304:9 511:6 514:18,20 520:20 evidentiary 14:8 14:14 23:8 164:1,7 165:7 212:22 213:3,4 214:15 514:18 evolved 160:8 294:11 exact 44:4 196:6 197:3 203:18 220:18 315:12 316:4 exactly 55:7 70:18 184:18 243:2 253:17 254:13 377:20 401:24 419:5 441:19 458:1 460:20 472:22 examination 3:8 3:8,9,9,11,11 3:12,12,14,14 3:15,15,16,16 3:18,18,19,22 3:23,24 4:2,3 13:14 43:11 47:17 72:3 166:19 167:4 239:14 268:8 274:21 350:13 368:20 371:3 381:1 388:3 400:10 431:4 436:5 454:8 481:4 examine 215:12 369:13 examined 380:11 examining 380:11 example 75:12 124:20 243:5 305:3 341:20	341:23 422:12 422:15 examples 341:15 438:23 excavator 459:24 exceed 146:22 285:9 332:12 357:11 exceeded 392:16 exceeding 278:25 Excellence 77:16 Excellent 316:13 327:6 excess 59:24 exchange 22:6 22:13 30:23 133:3 204:5 299:7 323:1 501:1 exchanges 236:6 excluded 91:5 exclusively 41:21 excuse 11:19 42:20 139:18 192:17 207:6 225:23 244:5 255:25 304:3 313:25 328:21 334:11 343:4 357:6 363:21 372:6 375:20 406:17 410:15 442:19 481:12 486:11 509:13 excused 304:2 executed 338:5 364:2 exempt 92:15 93:2 106:20 exemptions 92:18 exercise 135:10 256:14	exercised 254:14 exerted 254:15 exhibit 30:18 32:19 33:10 34:11 46:19,24 47:3 76:8,24 78:4,18 79:21 81:21,22,23 82:19 83:5,16 84:3 85:15 86:10 87:11,23 90:16 91:8 92:4 93:15 94:14 95:16,19 96:24 97:17 98:6 99:15 104:24 107:7,9 108:8 109:3,9 109:15 110:1 110:10 111:11 112:22 113:12 113:14,24,25 114:23 116:4 119:20 126:6 128:24 133:14 136:23 139:7 141:2 147:3,23 149:13,13,16 151:13 152:11 154:13 155:3 157:14 167:23 170:11 171:19 171:20 190:24 192:24 195:3 203:22 247:4 249:14 250:22 250:24 252:4 283:4,6,24 295:10 348:4 348:13,19 357:1 361:13 381:4 382:11 382:24 383:2 451:19,23 452:7 497:9 exhibits 4:4 7:18	9:11 21:22 22:1,20 28:21 29:17,19,22 30:6,13 31:11 31:19,25 32:7 32:11 34:3,9 34:21,22 39:7 46:12,17 82:4 82:15 93:25 94:8 193:2 254:5,25 377:20 514:22 514:24,25 520:19 exist 184:22 481:14 existed 462:7 481:15 exit 325:6 exits 419:12 expect 221:9 515:5 expectations 392:16 expected 199:13 expecting 489:14 504:4,5 expediency 28:14 expense 148:14 experience 56:2 56:3,16 58:7 112:5 118:12 119:9 130:19 143:22 144:15 152:6 161:12 166:8 171:6,13 214:8 217:23 239:16,22 272:17 276:23 430:24 443:13 471:21 experienced 23:4 88:22 239:18 expert 212:19 expertise 49:5	166:7 474:10 500:12,17 experts 214:13 expiration 351:22 expires 521:22 explain 12:16 13:5 64:21 190:11 200:4 207:22 208:23 214:1 310:8 311:1 319:21 344:22 345:21 384:3 388:22 423:5 490:10 explained 443:21 487:18 492:25 509:2 explaining 181:18 202:5 469:16 490:16 explains 506:7,8 explanation 235:1 explicitly 360:18 365:2 exposure 52:17 53:1 express 76:18 288:9 extend 83:21 extended 182:6 extension 83:9 extent 71:8 85:3 212:24 292:13 292:14 410:21 479:20 485:10 485:12,18 extra 269:13 437:15 extract 419:10 extremely 252:18 493:13 493:13
--	--	--	---	--

F

F 521:2

F-650 133:2	483:11 484:4	277:6,18,20,24	274:10 305:9	figured 205:24
face 483:23	498:3 503:4	278:15,18,23	305:11 307:14	324:4 440:4
faces 43:2	509:17 513:6	279:24 280:21	310:2 350:2	file 6:14 15:1
facilitate 326:24	516:8	280:24 286:19	feeds 347:1	107:21 184:1,3
facilities 44:25	fact-finding	291:23 292:7	367:7 373:22	187:13
45:3 51:21	212:23	292:18,24	feel 34:5 165:14	filed 107:20
54:5,7 75:6	factor 444:22	297:22 299:15	166:1 183:11	194:8,9 203:12
85:24 92:1	factored 481:25	367:12 383:24	215:17 268:7	filing 62:17
110:23 114:18	factors 23:22	383:25 410:17	377:2 390:20	296:2
177:8 205:23	51:25 52:12	446:9 470:25	403:7,21 415:3	filings 63:4
205:23 208:2,4	85:3,6 263:19	familiarity	443:20 444:9	fill 492:10
224:11 237:17	450:21 451:11	410:22	444:12 480:6	filled 425:18
252:23 254:3	451:16,19,21	familiarize 65:2	513:20	final 21:20,25
260:21 276:14	452:5 453:2	far 19:21 28:6	feeling 444:25	29:22 30:5
276:19,25	494:25	28:14,23 30:22	fees 445:4	31:10 34:9
313:8 337:4,6	facts 21:22	31:17 65:8	feet 508:20	93:24 94:8
facility 48:18	28:21 43:11,22	79:22 82:4	fell 491:20	99:10 133:25
51:13 52:3	45:8 214:6	120:16 182:14	felt 187:12	233:2 296:17
55:16 56:4,6	292:2 510:25	198:8 236:17	215:19 342:19	396:15 438:10
56:19 57:7,11	511:6	238:8 266:20	392:2 455:22	438:12
57:21 58:13	factual 44:22	281:14 282:4	491:5 509:7	finalize 478:13
75:8 89:10,13	214:12,16	288:25 289:17	fertilize 189:19	finally 178:2
90:6,7 93:2	453:3	314:10 322:25	430:3	310:3
118:17,18,23	Fahlstedt 7:11	335:8,8 337:5	fertilizer 51:19	financial 6:14
131:14 132:19	7:12 159:12	356:3 397:1	91:20 145:18	276:9 456:15
201:14 226:17	fail 231:15	411:1,2 467:19	146:19	456:15
240:7,9,10,11	failed 43:24 65:9	510:22	field 74:3 113:6	find 114:12
240:13,14,21	67:19 163:22	fashion 398:6	137:21,24	145:12 174:12
241:24 248:1	232:4 463:17	415:17	138:2 140:20	202:8,9 232:6
248:14 252:18	478:23	fatigued 449:5	178:10,15	292:2 324:18
253:9,12	fails 74:24	fault 305:7	195:17,20	356:19 459:23
254:10,11	failure 65:20	February	207:12 227:20	483:20 484:5
260:23 263:4	104:6 108:1,1	521:22	243:7 276:3	516:16 519:17
265:2 266:13	fair 29:4 42:22	fecal 53:2 177:5	288:4 323:18	finding 516:8
277:8 298:19	435:12	fed 374:5 477:11	323:23 328:8	517:5
409:23 423:4	fairly 23:7	federal 1:13	328:11 339:9	findings 247:17
483:4	215:17 277:1	10:23 38:13	384:23 385:11	247:23
fact 35:23,24	280:24	41:5 56:15	386:10 387:2,7	fine 21:2 30:15
36:24 37:5	fairness 44:17	91:17 145:13	406:5 412:7	32:24 33:9,15
45:2 65:7	fall 89:15 158:2	202:2 224:21	421:3,5 425:9	35:17 72:20
95:12 202:13	297:3 496:10	225:1,2 277:18	425:21 440:1	93:22 236:15
209:18 212:3	falling 458:22	332:21,25	442:13	249:15 255:12
212:25 241:20	falls 165:10	356:20	fields 385:14	261:6 268:12
244:1 292:3	false 381:18	fee 422:11	404:6	268:15 269:9
302:18 310:10	familiar 12:24	feed 68:15	figure 188:13	301:6 304:11
320:17 321:19	23:5 35:15	257:15	273:13 350:7	308:20,21
457:1 475:5	276:18,21	feedback 272:24	377:20	325:1 328:1

330:14 368:15 368:25 387:25 392:10 393:5 397:6,12,18 398:9,16 448:3 453:9 518:11 519:10,12,14 finer 381:19 finger 185:10 fingers 270:25 310:2 finish 14:17,23 68:1 166:21 198:13,17 211:22,24 212:1 224:7 314:25 330:10 330:17 455:18 455:24 502:20 finished 50:6 187:24 365:21 403:14 fire 427:17 fired 463:14 firm 83:7 134:11 134:13 450:13 472:17 firmly 43:16 44:13 first 13:9 17:21 34:7 38:11 42:11 45:14,19 46:6 50:20,21 59:2 65:18 75:22 111:24 113:24 120:9 142:18 149:5 149:22,25 150:6 153:9 168:5 171:20 175:7 179:8 182:15 187:1,8 192:14 198:7 247:4,15 274:16 283:6 288:5 297:9 304:21 306:5	306:13 313:4 326:1 327:8,18 327:20 328:3 355:13 356:6 356:17 357:7 363:20,21 367:14 370:9 370:20 373:12 375:3 382:25 387:1,4,5 393:18,20 394:1 399:2 400:5 403:5 406:2 418:11 418:13,15 444:22 454:4 459:18 468:13 470:15,16 472:21 474:6 475:19 480:24 498:23 firsthand 135:2 135:3 161:20 290:18 291:25 500:19 Firstly 43:1 fitting 152:21 five 11:5 17:5 41:2 63:21 81:5 139:4 188:17,18,19 226:4 230:17 231:6,10 239:3 239:6 273:18 300:3 324:25 389:21,23 405:19 432:6 446:21 456:20 459:3 five-minute 82:2 324:4 389:17 fix 437:22 fixed 9:13 298:16,25 299:3 310:20 310:23,25 311:4,14,16	312:6,11 313:5 313:10 326:6 326:11 329:9 334:3 343:23 344:1,2,14 345:2,11 360:15 460:4 474:8 515:1 fixing 56:7 flexible 269:12 flies 446:19 flip 381:9,25 floating 223:8 flooded 104:3 Floor 1:14 flow 88:9 92:10 145:18 244:10 244:15 256:2 257:9 258:24 260:18,19,20 260:21 flowing 226:18 244:6 246:1 254:19 flows 225:24,25 245:21 248:18 248:19 255:15 261:11 263:1 445:21,22,22 FLUMP 150:7 468:18,22 484:11 focus 185:17 510:24,24 512:25 513:12 focused 169:10 229:18 490:24 focusing 62:9 folks 51:14 follow 13:20,21 23:8 31:7 47:5 47:10 53:14 64:17 179:8 181:12 191:16 202:4,7,10,16 219:19 317:13 330:13 367:12	370:23 379:5 410:24 415:8 456:7 463:4 479:7 488:14 489:13,14,15 496:21,24 503:5 506:7 511:8,10 follow-up 206:1 229:3 236:18 238:20 259:16 341:7 367:21 376:17 380:22 461:23 496:6 follow-ups 474:16 507:4 510:20 followed 76:16 104:12,18 333:5 343:6 488:15 489:19 following 10:7 65:18 66:8 81:4,9 96:15 113:21 125:15 186:20 206:10 207:1 216:10 216:11 231:4,8 263:8 296:4 297:7 301:20 329:4 335:10 383:11 396:9 follows 46:6 106:1 274:16 370:9 400:5 446:25 454:4 480:24 foods 102:21 foolish 236:22 force 38:6 Ford 133:2 foregoing 521:13 foreman 494:17 509:7 forest 61:12 81:1 175:4	178:4 forget 17:3 415:20 474:17 form 6:12 59:20 404:6,8,10 477:25 formerly 18:2 forming 118:13 forms 419:7 forth 478:2 484:14 forward 44:19 71:25 169:13 forwarded 290:8 291:22 292:8,16,19,22 foster 123:23 found 41:12 44:3 60:22 173:25 176:5 200:10 239:23 258:10 259:4 406:4 410:18 475:6 500:25 517:2 foundation 25:4 28:14 49:8 foundational 22:22 24:8 25:9 four 446:20 457:7 459:2 460:7,11 481:16 four-day 28:12 frac 195:15 frack 137:19 139:4 150:23 151:5 207:20 328:6 338:15 338:18 404:4 405:19 417:5 425:9,11,13,15 425:15,18,20 426:14,20 427:4,21,22 428:23 430:25
---	---	---	---	--

432:4 439:24	303:20	328:14,17	generally 14:6	GIS 9:12 515:1
440:2,16,20,24	functioning	330:2,3,19,25	56:12 57:18	gist 204:13
468:17,19	215:4 243:3	373:3 411:5	58:18 118:14	236:16 486:12
484:15,22	fund 115:1	426:24 427:8,9	118:21 127:11	give 13:17 14:2
frame 36:1,20	117:12 126:10	427:10 455:1	180:6 222:24	17:18 69:9
458:9 463:10	128:5 310:11	466:18	229:13 244:24	115:15 165:13
486:5	fundamental	Gallus 5:2 6:16	260:20 279:7	178:21 179:15
framework 65:5	42:23	8:9 90:21	282:11 402:6	187:12 204:8
68:5	funded 281:10	92:23 94:20	403:3,11,23	221:2 231:22
Frank 8:23	310:10	105:7,8,15	480:5	235:10 251:6
31:16 486:16	funding 278:9	159:14,15,20	generate 178:24	288:21 303:3
486:18,19	488:2	159:22,24	230:16 235:11	306:9 307:24
frankly 28:24	funds 279:3	180:3	274:9	332:7 341:6
165:23	furnish 135:9	gaps 492:11	generated	345:9 348:17
Frazier 27:18	147:20 328:4	garbage 114:18	266:17	370:23 386:25
free 166:1	331:21 376:5	Gary 7:11,12	Generation 6:5	396:13 399:15
freeboard	417:3,15	159:12	gentleman	415:8 423:18
204:22 322:4	further 57:24	Gary.' 159:20	21:11 272:22	431:19 451:24
freezing 460:18	79:9 101:10	gas 429:7	303:24 324:19	453:11 454:10
friction 509:5	119:15 175:7	gate 31:3 66:3	472:20	454:24 455:11
510:9	181:14 184:9	88:7 129:8,16	geometric 177:1	463:10 466:2
Friday 114:9	195:19 202:6	416:6 423:7	George 340:12	467:17 479:23
120:1 142:13	208:7 209:7	432:20 459:24	341:1 358:20	480:11 494:19
153:4	219:23 245:22	475:3,5,7	358:22 379:23	513:21
friend 433:22	300:1 328:11	gates 416:5	405:21 407:7	given 21:1 71:19
front 10:20 31:3	359:10 372:11	442:17	407:24,24	96:5 136:12
33:5 216:1	384:20 386:13	gather 54:10	408:24 409:3	177:22 184:3
492:16	388:18 420:1	450:19	411:19 412:15	196:6 198:8
frozen 104:4	432:2 474:14	gears 278:14	416:12 420:8	199:16 200:13
fruition 509:17	479:10 507:1	410:16	425:3 438:21	202:1 209:14
fuel 129:18	511:15 512:18	general 50:25	439:9 458:15	210:1 229:15
fulfill 210:24	514:18 519:19	53:22 71:13	476:5 486:8	235:8 267:3,20
fulfilled 88:19	Furthermore	102:16 109:23	489:9 502:2	270:24 368:24
173:21 179:4	43:23	110:4,21 111:9	getting 11:6	372:16 373:7
282:2		115:1 117:12	24:20 72:19	382:3 387:15
full 18:10 41:3	G	122:1 125:15	106:24 165:22	406:10,21,22
274:25 326:24	G 1:1	126:9 128:4	211:25 215:9	424:23 455:2,3
400:13 418:19	gained 85:5	143:14 165:24	230:14 234:10	457:24 465:20
425:18 428:15	280:19 385:17	170:9 180:10	265:12 270:4	467:14 483:24
448:25 454:10	457:9	199:9,10	272:17 300:14	gives 15:12 45:6
502:12,14,17	Gallatin 521:5,7	201:11 256:23	330:8 347:23	49:22
full-time 50:7	gallery 21:11	261:5 264:20	359:23 373:23	giving 36:17
fully 207:14	gallon 140:19	279:25 294:15	402:5 419:18	69:10 281:22
254:15 363:14	gallons 92:11	332:24 353:15	473:11 482:4	500:24
365:17 367:24	156:12 195:22	356:12 390:25	girls 122:5	gland 129:9,16
480:16	243:9,11,12	420:15 481:12	128:18 459:19	129:17
function 52:25	315:23 316:6	generalized 67:2	459:19,21	glaring 69:13

GM 96:6 121:20	348:17 354:12	12:5 14:8	412:22,25	gotten 54:8
Gmail 9:6,7,8	355:13 361:21	15:17 19:11	413:16,25	101:21
32:17 33:2,12	363:12 364:9	21:23 24:8	414:2,16 422:7	government
333:13,19	365:16 366:9	25:12 26:10,19	422:15 423:11	43:19 56:15
go 10:21 12:25	366:13 367:14	28:9,19,20	423:13 433:25	127:18 167:13
13:9 15:14	370:25 374:13	29:7 34:19	435:2 450:16	192:18 202:2
16:25 25:3	378:18 380:22	35:19 46:11	452:13 453:5	256:21 257:7
29:14 30:7	381:24,24,25	62:20 65:14	453:11,23	318:9 444:14
34:15 39:16,19	382:10,23,24	67:8 71:5	461:2,15	444:14 503:13
46:9,24 47:14	383:1 389:14	82:14 102:18	463:22,24	515:14 516:10
50:8 63:6,11	390:6 391:9	124:25 162:5	465:1,25	governs 184:25
64:19 69:6	392:23 394:11	162:10,13,17	467:17 468:12	grappling
70:20 72:23	395:4 396:10	163:16 164:2	469:16 473:8	186:24
80:4,13,17,18	399:2 400:9	164:24 172:16	473:16 477:1	grasp 13:2
81:11 82:11	401:17,18,19	177:14 178:14	477:13,20	388:20 437:23
84:15 94:12	401:20,22	183:19 184:7,8	486:2 488:8,8	grass 315:18
116:15 119:18	402:4 404:2,10	186:9 194:20	488:16 489:23	grasses 102:21
123:4 125:7,8	405:11 407:10	199:19 207:2	489:25 509:18	gravity 85:4
134:17 144:3,6	407:13 410:8	207:23 212:14	509:20 512:25	graze 102:18
165:21 167:2	415:23 419:13	212:20,20	513:1,15	grease 204:23
170:3 174:18	419:13 420:21	213:2,15	Golding 5:9	great 14:20
176:1 179:8	423:1 428:6	214:17 224:10	golf 178:11	30:16 47:13
184:6,13,24	433:1,2,14,23	240:17 249:11	good 10:10	64:5 166:20,25
185:21 186:25	434:4,11,16	250:7 251:10	11:12,17,23	174:18 187:23
188:3,6 191:10	435:15,25	257:3 261:22	12:9 21:6 47:5	189:1 241:13
195:10 197:25	437:1,6,8	263:16 264:19	72:21 184:18	251:25 252:5
198:18 203:20	446:25 447:9	265:9 270:21	186:7,8 235:1	256:22 268:10
203:21 204:12	448:13,21	273:17 274:11	243:14 269:7	273:22 307:2
212:16 216:20	450:9 453:7	283:5 290:16	269:10 272:8	307:11 309:2
217:15 225:17	456:4 465:9	300:3,13	272:24 274:23	325:13 348:17
226:17 240:19	466:24 470:14	303:13,19	291:7 300:6	350:11 369:22
249:4 256:14	472:25 474:4	304:22 305:13	301:23 304:17	395:23 451:22
259:15 267:18	475:21 479:2	306:17 307:4	309:24 310:6	518:19,22
270:20,22	482:12 488:8	307:13,17,23	347:7 366:2,13	greater 92:11
273:25 274:19	489:13 490:11	312:16 318:13	395:20 396:1,3	greatest 397:3
279:13 282:3	493:9 502:23	318:15 325:6	398:21 400:12	grind 114:19
283:7 284:17	507:20 520:18	343:22 353:11	414:18 438:3	grinder 87:18
291:7,17	goes 13:3 23:11	353:17 367:5	479:11 489:8	114:19
292:12 293:24	89:5 114:20	368:16 370:1	516:14 519:14	ground 496:4
300:5 301:9,21	118:16 123:24	370:19 374:1,8	goodness 437:10	grounds 71:4,25
303:5,22	125:18 177:15	377:12 379:4	Google 255:18	group 406:3
304:17,20	178:2 220:4	380:14,20	255:20 256:1,8	411:16
307:3 309:3	248:2 263:7	393:5 394:12	256:8,22,25	growing 102:20
310:3 311:23	271:1 385:13	395:24 403:18	257:8,8 258:19	217:18 371:20
312:15 318:16	398:15 411:1	404:1 407:2	261:1,4,21	grown 189:19
330:17 333:14	422:19 447:23	408:11 411:18	516:5	371:18
342:9 343:13	going 10:16 11:8	411:18 412:19	gosh 257:2	growth 52:20

281:4 430:4	hand-in-hand	74:23 118:15	heading 315:5	359:13,14,15
guess 29:15 62:5	421:1	177:20 208:1,5	421:6	359:16,17,22
64:19 67:3	handled 397:6	208:6 438:8	headings 314:19	360:1 402:17
71:7,8 118:11	397:17 512:9	happy 13:4	health 18:2 41:9	403:19 414:19
118:18 143:23	handling 125:17	16:14 183:14	76:22 77:13	501:16 512:9
163:1 169:12	hands 184:5	267:24 303:22	96:12 99:24	heard 18:25
181:11 207:1	451:14	367:22 398:18	104:15 110:23	370:16 379:15
238:20 261:24	hands-off	hard 330:22	131:7 134:2	418:9 443:24
279:7,12	171:10	348:8 390:19	141:9,13 143:5	448:10,14
282:11 292:11	handwriting	417:24 495:5	145:3 146:8,13	476:12 483:3
303:2 304:17	437:11	hardest 71:21	147:6 151:16	492:9
304:21 319:17	handwritten	Hardin 417:24	151:22 153:5,7	hearing 10:5,15
319:21 321:5	465:17	hardness 263:18	154:18 155:24	10:19 12:19
327:7 366:9	handy 190:25	hardship 456:16	156:11 159:13	13:3 14:9,15
368:21 380:8	195:3 451:12	harm 41:8,12	160:10,21	18:10 21:10
396:13 398:5	515:15	75:11 266:5	172:1 178:9	26:4,21 27:1,3
402:6 410:21	hang 308:14	Harvard 125:18	193:7,9,14,22	28:5,11,16,22
447:13 460:24	325:4 415:17	haul 137:20	196:9,22,24	31:10 45:6
476:23 480:11	hanging 186:23	150:22 195:16	197:2,8,14	70:23 93:20
482:7 490:21	happen 57:16	328:8 411:24	198:9 200:13	164:2 186:18
493:1,2 501:17	206:5 208:10	417:6 427:8,24	205:7,15,19	212:22 213:4,5
506:23 512:21	223:4 229:24	436:19	210:1 221:6,16	214:4,5,15
514:14	305:24 402:11	hauled 140:20	221:18,20	267:23 272:21
guidance 36:8	402:11,13,15	412:3 418:23	235:7 275:10	274:6 301:18
45:20	464:7 492:25	427:24 444:23	276:4,15,16	301:24 302:7
guide 6:2,3 8:17	507:21 509:18	444:24	277:2 278:12	310:2 316:20
34:8 35:3	happened 37:4	hauler 108:14	279:3,15	325:7 347:5
91:16 190:13	37:12 77:15	hauling 100:6	281:11 282:4	350:1 365:17
191:8 235:1	79:8 83:6	100:13 154:5	288:9 297:24	396:7 398:8
258:15	161:21 206:2	156:12 201:3	313:7,13 337:8	450:18 453:3
guidelines 225:2	206:22 207:11	253:3 286:12	337:10,17	519:24 520:16
guys 229:3	207:15 209:3	287:6 296:18	338:1 363:23	520:18 521:9
311:4 375:17	209:24 223:10	323:22 404:15	365:8 405:21	521:10
379:25 457:17	307:12 401:24	412:3 417:4,17	448:14	hearsay 23:15
460:17	403:23 423:10	417:22 426:1,3	hear 39:23	23:23 43:6,7
	431:23,25	440:7 488:19	72:19 202:25	heavier 263:11
H	433:17 441:18	hazardous	271:4,9,13,16	heavily 75:3
H 1:1	458:8,13,23	332:20	272:9,25 273:8	483:1
half 177:10	459:20 463:11	he'll 368:13	274:2,5,10,10	heavy 41:11
401:11 443:9	467:10,15	head 187:6	291:1,2,8,10	150:1 263:15
462:8	475:14 486:1	280:3 303:25	305:10,20,22	263:17,20
hammer 423:14	508:3,15	350:19 359:20	306:2,6 307:9	264:16
hand 26:5 42:25	happening	423:14 437:20	309:5,7,9,13	held 17:15 41:20
274:12 318:14	36:23 243:15	438:24,25	309:17,18,19	42:5 210:19
370:5 378:9	417:15 512:10	484:13	309:21,22	496:7
381:5 440:6	happens 14:23	header 98:2	325:18 349:10	Hello 309:5
480:21 521:17	57:18,19 60:7	315:17	350:9,10	359:19,24

HELOC 456:22	94:22 96:3	hinted 213:14	honest 467:11	211:20 213:22
help 48:18 95:15	97:13 100:1,8	hire 118:20	honestly 467:24	233:25 234:7
123:23 190:16	105:19 110:14	152:5 240:9	honor 11:12,17	234:17 236:17
272:19 309:24	110:18 111:25	421:25 422:5	12:9 16:7	238:23 239:2
377:22 419:23	112:11 113:3	422:18 424:12	17:21 19:13,23	239:12 244:20
437:22,23,25	114:10 116:19	468:4	20:5,12,23	248:3 249:18
459:9,10	120:10,21	hired 239:19	21:1,12 22:2	250:9,14,17
466:24 467:2	121:22 123:11	240:1 418:7	22:18 24:1,4	252:12 254:22
468:1,11,16	123:18 126:20	431:16 459:9	24:11,14,22	255:10,17
471:20 477:2	128:14 129:6	508:16	25:23,25 27:22	259:17 267:7,9
516:12	130:3 131:4	hiring 422:10	28:20,25 29:8	268:3,16
helped 187:3	132:12 133:23	history 85:4	30:2,4,8 31:5	269:25 273:14
245:12 462:14	137:16 138:23	465:4 479:21	31:18,20 32:3	290:16 291:19
helper 463:2	139:2,9 140:15	495:7	32:8,12,14,20	292:4 301:12
helpful 71:17	142:19 144:8	hit 261:4 423:14	32:25 33:7,10	302:16,18
258:15 259:13	145:10 146:16	hits 246:23	33:14,16,21,22	303:11 304:19
377:15 394:23	147:12 148:8	hold 27:7 116:3	34:25 35:4,10	307:16 308:1
428:4	149:23 151:3	168:19 194:25	36:4,22 37:15	308:11,23
helping 324:20	151:23 152:18	272:16 273:10	38:11,25 39:5	309:4,7 312:10
464:25	153:10 154:22	290:25 299:22	39:12,14,18,20	317:16,23
helps 16:16	156:8 157:22	333:8 363:5	40:5 42:16,19	318:8 319:19
49:23 103:16	158:6,24 160:5	377:21 378:9	45:16 47:12	323:25 325:16
270:12 426:10	160:16 161:5	378:24 402:1	62:5,12,18	327:11 329:10
hereinafter	168:6,11	402:17,17	63:3,20 67:9	333:22 336:8
147:16,18	170:16,25	406:14 414:5	67:24 68:13	336:10 337:12
hereunder	190:20 194:23	414:15,15	69:7 70:13	340:1,9 341:5
148:12	195:13 199:23	446:5,5 492:17	71:19 82:1,12	342:11 343:22
hereunto 521:16	204:17 208:16	494:12 502:20	82:20 94:9	344:11 345:4
Hertz 5:8 94:19	284:9 285:5	514:21 516:3	107:8 115:3,9	346:18,23
96:2 105:6,12	286:5 287:3	holder 200:1	115:14,25	347:13,17
109:19 198:2	288:6 289:7	489:25	117:23 118:24	348:2,3,6,10
HertzWu 4:22	294:9 295:19	holding 124:2	119:17 124:7	348:15 349:11
4:23 5:2,4,5,7	295:24 298:1	180:19	135:1 143:7	350:24 359:11
5:15,16,18 7:4	298:12,23	holds 32:5 44:9	157:17 161:18	359:21 361:15
8:11,12,13,15	327:15 329:4	125:24 426:24	163:9,13	363:4 365:11
hesitate 17:4	332:9 334:10	hole 458:20	164:19 167:1	365:20,23
HHS 290:4	334:18 335:12	459:25 509:1	168:17 179:5	366:16 368:7
Hi 454:10	336:20 337:23	holes 164:8,8	179:12 181:15	368:15 369:3
high 145:18	363:21 373:1	home 165:15	183:6 184:17	369:11,21
higher 318:12	405:14 407:16	193:25 456:22	187:19,22	373:20 374:11
353:14	413:13,17,23	478:4 515:19	188:1,5,8,12	376:15 377:9
highlight 93:20	416:25 429:20	517:14,17	188:25 190:3	377:19 378:4
highlighted	473:6 497:13	518:3 520:16	191:1,6,9	378:19 379:1
76:13 77:7	498:24	homeowner's	192:4 195:8	385:21 386:23
84:22 86:16	highlighting	282:24	196:13,18	387:22 389:15
87:16 88:3	46:23 94:2,6,8	homes 178:12	199:19 203:24	390:7 394:25
90:24 91:2,13	hill 446:19	487:25,25	206:6 209:11	395:2,5,7,13

396:16 397:5,9 397:23 398:1 399:6,14 402:16,19 403:5 413:5,15 419:25 424:22 426:12 434:24 435:20 448:6 448:25 449:20 450:7 451:5,13 451:16 453:10 461:20 469:4 473:4 479:4,18 482:18,20 484:10 485:4 485:14 492:3 494:23 495:18 495:24 507:1 507:12 511:15 511:23,25 512:14 514:2,3 514:12 515:7,9 515:14 516:7 516:13 517:2 519:5,10,12 520:12,14 honored 499:20 499:22 hook 427:4 hop 184:11 367:5 380:7 hope 270:6 305:23 hopefully 187:14 272:4 hoping 273:6 hopping 474:16 hose 429:6 432:17 hoses 152:20 423:7,12 hot 440:22 hour 16:25 26:6 28:7 112:12,14 185:24 186:3 267:18 328:13 395:20	hour's 186:1 hours 195:21 238:13 392:12 425:22 460:3 463:23 467:7 471:11 506:10 house 309:16 433:23 460:24 460:25 461:2 478:8 housekeeping 10:20 14:13 16:8 21:20 46:15 251:5 303:14 366:3 houses 447:9 Housing 433:8 How's 349:23 human 41:9 53:4 104:14 159:13 humans 41:13 52:18,22 53:11 103:14 104:18 386:5 husband 168:10 424:14 456:12 456:16 457:13 457:21 458:4 458:14,24 459:8,17 460:13 462:19 475:18 509:6 husband's 462:13 Huson 7:4 Huston 6:17,19 6:21 8:18 141:14 hydrogeology 49:10	353:11 426:14 429:8,12,16 483:21 ideas 214:2 305:16 identified 23:9 31:14 36:7 172:13 198:12 313:18,24 326:10 360:14 363:9 374:4 378:22 379:3 513:14 identifies 335:5 identify 10:18 11:9 33:5 47:3 113:14 136:8 163:23 198:4,5 279:14 292:5 294:1 295:12 295:20 333:10 351:3 361:12 370:14 identifying 10:23 195:3 ignore 240:25 IHS 18:2 43:19 76:17,21,21 77:4,12 78:6 83:1 127:17 142:1,15 154:7 156:9,12,24 157:9,13,15 159:9 168:2 192:22 193:5 193:19 196:6 209:16 218:7 218:15 221:12 275:16,17,18 275:22,24 276:2,6,8,11 278:6 286:23 287:13 288:2 289:20 291:21 293:20 294:19 294:23 310:21 311:15,16	312:2,3 315:11 318:25 320:7 322:10 326:4,9 327:2,5 328:22 334:15 338:1,5 338:9 340:23 342:25 343:10 343:18 344:3 352:11,17,20 352:23,25 353:1,2,4,7 354:1,24 355:19 356:23 357:22 362:20 363:24 364:2,7 364:15 373:14 379:24 390:12 390:15 391:3 391:22,23 408:4,25 411:6 420:6,6,9 439:13,13,18 439:21 440:9 444:18 448:14 449:9 454:18 454:22 455:9 455:17 463:12 464:4 468:4,15 469:14 470:1,3 472:21 474:7,8 477:10,20 487:3,16,17 488:1 491:12 491:19,22,24 496:9,18 498:2 499:9,15 500:7 500:14 501:13 501:21,24 502:7,8 503:4 503:8 509:12 510:16,17 IHS's 278:8 295:5 362:6,14 ii 6:11 187:9 231:2 III 16:2 illegally 433:19	437:10 imagery 256:2 256:23 261:6 immediately 421:9 456:6 464:5 483:15 impact 28:15 104:7 impacting 266:21 impacts 49:25 53:19 104:14 imperative 44:20 important 25:13 40:19 102:11 103:3,19 160:18 161:7 169:4,10 182:8 184:23 221:20 252:19,24 266:23 316:24 338:8 364:6 392:3 415:14 452:14 513:21 importantly 36:15 impose 348:11 impossible 104:10 173:17 231:15 235:10 impression 63:2 297:3,6 439:16 439:18 445:8 imprisonment 381:19 improve 276:16 281:6 improvements 240:22 inability 104:13 386:10 inaccurate 70:17 201:22 201:23 202:9 219:6 334:8 inadequate
--	--	--	--	--

440:20 inappropriate 119:7 208:25 incapable 404:14 inches 389:4 incidences 36:17 36:19 37:2 incident 115:4 433:4 incinerate 51:22 include 23:15 29:11 56:5 59:11 79:6 99:10 103:25 125:14 127:19 129:7,15 130:8 130:10 146:25 149:20 158:12 167:13,16 218:11 323:5 332:18 352:12 included 22:5,13 30:22 49:14 168:25 192:23 201:5 254:4 311:15,19 362:19 411:4 includes 79:1 144:12 296:13 497:16,21,24 including 28:3 36:3 45:4 67:12 79:4 143:3 144:19 168:14 252:23 284:15 332:15 381:19 487:4 497:25 incomplete 358:19 391:16 inconvenienced 399:17 incorporate 15:6 incorporated 52:13 217:19	282:19 incorporating 195:20 238:12 328:12 incorporation 59:7 189:9,17 430:1 incorrect 339:21 343:21 increase 281:6 441:12 increases 447:22 indefinite 182:12 independent 43:17 44:9,18 124:19 125:16 403:23 independently 292:19 443:2 485:20 Indian 18:2 76:22 77:13 96:12 99:24 110:23 131:7 134:1 141:9,13 143:4 145:3 146:8,13 147:6 151:16,22 153:5,7 154:17 155:24 156:11 160:10,21 172:1 178:8 193:7,9,13,22 196:9,22,24 197:2,8,14 198:9 200:13 205:7,15,19 210:1 221:6,16 221:18,20 235:7 275:9 276:4,15 277:2 278:12 279:3 279:15 281:11 282:4 288:8 297:24 313:7 313:12 337:8	337:10,17 338:1 363:23 365:8 405:21 448:14 Indians 276:16 indicate 122:8 125:23 132:10 140:11 209:3 246:4,22 254:1 364:14 501:13 502:25 503:3,4 506:20,24 indicated 54:13 86:21 87:18 180:16 198:25 200:17 223:16 228:4 245:16 246:1,2 329:11 indicates 100:12 244:4,9 296:4 296:8 503:6,7 indicating 245:18 364:17 indication 115:16 individual 30:15 277:4 281:1 487:25 individualize 304:7 individually 304:7 351:4 465:6,12 individuals 20:3 162:22 179:17 489:6 indulgence 70:25 industrial 50:23 industry 206:16 341:17 436:15 inference 229:7 inferring 498:17 infiltration 87:6 influence 259:9 259:22,23 260:1	inform 245:12 322:13 information 6:12 17:14 37:20 43:24 44:2 54:8,10 54:11 59:9 60:22 61:24 64:16 68:10,12 70:15 75:4 78:8,22 79:1 79:10,23 81:4 81:5 82:25 83:10,22 84:14 85:11 93:10,11 99:6 101:4,5 101:18,19,23 101:24 102:12 103:4 104:7,9 106:4 107:3,3 108:11,25 109:6,12 110:7 115:13 117:8 120:4 131:22 131:24 133:17 136:4,12,18 137:4,7 138:20 138:23,24 142:15 145:2 146:7 147:5 151:15 153:6 155:23 156:23 157:12 159:8 178:12 196:3 197:7 198:8,21 198:24 199:6 199:10,11 200:2,3,7,18 200:19,20,21 200:24,25 202:1,6 207:8 208:20 209:19 209:25 210:15 210:23 211:1,2 214:9 215:25 217:20 218:17 219:1,3,3,6,14	219:21 221:5,7 221:11,19,21 223:25 228:20 228:22,23 229:2,4,8,11 229:17 231:5,5 231:9,9,13,14 231:16,18,19 233:1,2 235:3 235:22,24 237:22 241:6,7 241:9,13 242:23,25 243:1,18 255:19 257:11 257:15 258:17 258:18,23 259:13 267:21 283:16 292:15 293:16 295:15 295:25 296:1 297:18 311:19 320:24 322:9 351:19 372:1,6 377:2,3,5,14 381:18 382:4 383:13 386:20 404:23 442:2,3 444:10 450:8 450:20 466:18 467:14 483:16 484:5 489:9,10 490:9,11,15 504:19 informed 96:13 120:11 334:20 335:14 informs 49:19 initial 15:6,13 15:16 59:20 102:7 178:8 199:5 217:3 485:16 486:7 486:22 488:17 490:9 492:21 initially 26:1 46:21 177:12
--	---	--	--	--

342:25 357:18	installation	intermix 465:1	278:13 279:5	216:23 257:12
initials 408:2	125:22	intern 50:5,20	280:25 282:5	279:14 283:22
initiate 178:16	installed 281:3	interpret 512:22	292:10 299:17	290:9 293:4,9
339:24	installing	interpretation	323:19 401:15	295:16 303:13
initiated 192:18	487:24	213:2 214:4	408:11 409:2,4	305:6 325:5
192:19 326:6	instance 74:2	215:13 216:8	511:7	340:19 366:2
502:9	103:10 175:24	interpreted	involvement	414:24 415:3
injection 59:7	201:8 229:12	163:4	44:13 98:21	431:22 450:20
189:8,15	240:8 244:7	interpreting	100:10 112:17	461:17 470:5
429:25	257:23	512:23	113:8 115:10	472:21 510:2
injector 145:18	instances 148:12	interrupt	121:8 130:15	513:23
146:19	182:4 294:13	113:21	133:6 135:19	issuing 519:24
input 258:18	438:13	interrupting	139:17 144:17	
inquire 347:15	instruct 456:7	364:11 409:15	148:18 152:8	J
366:9	instructed	introduce 11:15	154:8 161:14	J 7:13 8:6
inquired 93:19	489:22	17:22 53:6	171:8 278:8	J-A-M-E-S
inquiry 347:2	instructions	255:18 406:1	280:19 282:7	275:2
inside 281:5	406:6,15,19,22	introduced	292:20 299:18	Jace 96:7
406:11 426:4	406:22,24	405:20	342:17	Jake's 186:6
475:10 484:13	407:6 419:21	introducing	involves 40:5	James 3:10 4:7
insight 44:11	442:6	10:16	involving 75:23	4:8,13,20 6:17
insistence	intend 17:19	introductions	298:7 301:24	6:19,21 7:2,20
294:13	19:21 398:7	406:16,16,18	465:5	7:22 8:2,8,18
inspect 340:25	intended 103:24	406:20	ISS 408:3	18:1 99:24
358:24 439:7	227:19 299:2	inventory 257:7	issue 15:23	131:1 141:12
inspected 87:6	483:2	257:18	20:15 34:13	141:19,25
inspecting	intent 483:1	invite 270:3	36:13 38:5,16	146:13 151:21
279:12 340:16	intentional	306:22,24	38:23 39:3	153:4 154:17
359:1	380:16	415:25	54:9 55:9	194:1 208:23
inspection 48:5	interaction	invoice 110:16	60:15 62:8	216:23 236:12
77:4 85:21,22	90:12	111:1,18,19	108:10 115:8	268:4 271:4,4
86:1,4,13,22	interchangeably	112:16,25	164:25 198:10	274:14 275:2
87:13,25 88:4	13:7	114:13 116:23	198:23 199:2	294:20 302:10
88:12,16 89:2	interest 283:21	117:1,15 118:5	205:14 217:25	309:5,9,17,17
89:3 178:9	334:23 335:17	127:13 128:11	233:23 261:23	310:6 323:15
226:25 227:2,8	366:7	129:3,23	262:13 264:2	324:16 325:18
253:20 279:13	interested 10:6	invoices 113:15	271:7 308:12	334:2 344:21
inspections	186:19 301:19	130:13,18	493:17 495:16	345:7 346:19
56:15 226:16	396:8 423:24	158:9	512:1 520:2	360:1 373:13
340:18,20,23	458:5 493:4	invoke 303:23	issued 18:24	373:16 374:19
340:24 502:3,4	interfere 366:11	involve 15:17	82:25 86:5	391:3 405:24
inspector	interference	177:17 193:24	108:12 506:21	440:14,15
226:17 340:14	87:20	418:11	issues 15:19	445:10 456:8
358:23 379:24	interject 93:16	involved 60:9	22:19,22 25:3	471:3,5 484:18
394:15 433:18	206:10	75:22 91:5	42:24 82:3	488:10 489:9
inspectors	intermittent	154:10 218:7	166:1 188:7	January 36:1
492:16	261:9	218:11 278:6	204:14 215:23	106:4

Jeffery 8:5	judges 204:21	Kacsur 2:5 3:11	413:9,14,25	334:13 335:5
Jen 252:2	217:4	3:12,18,19,24	415:21,24	336:14 490:12
Jennifer 2:16	judgment 118:9	11:17,19 12:2	416:15,17,18	491:21
10:13 17:14	118:11 177:3	12:3 24:3	419:20,25	kind 13:6 16:25
Jeske 1:21 521:6	July 22:7,14	27:17,17,18,18	431:5 432:2	17:7 23:11,13
jetting 87:8	33:18 85:22,25	27:19 271:4,10	446:1 449:20	30:13 38:20
Jim 275:23	96:2 99:25	271:14 272:5,9	469:4,8,20,22	49:10 50:22
334:15 424:13	105:10,22	272:25 273:6	471:8 472:12	52:20,23,25
424:14 458:14	106:19 133:20	273:10,14,20	472:14,25	54:25 56:1
471:2,7 475:18	134:10 153:4	274:3,22 283:4	473:1,3 474:5	57:2 60:15
476:6 486:9	154:17 286:3	283:8,23,25	474:13 515:9	78:24 79:3
509:6	296:16,20	284:11,17,19	515:22 517:10	93:21 101:5
job 40:18 104:8	July-August	285:21,23	kacsur.kather...	119:15 162:5
104:14,21	36:19	286:17,20	2:9	165:14 217:17
139:14 150:1	jump 379:6	287:1,2,17,19	Kansas 2:8 49:3	217:18 237:1
155:17 167:7	jumping 31:21	289:4,6,24	Kate 11:18,19	258:4,14 259:9
275:4 343:1	jumping-off	290:1,10,13,21	Katherine 2:5	261:4,15 266:8
346:15 376:21	258:5	290:24 291:5,7	keep 16:12 17:7	282:25 291:9
400:19 401:6,7	June 88:13 91:1	292:4 293:25	27:12 53:12	305:17 317:11
407:19 408:18	94:20 127:5	294:6,7 295:9	92:6 101:6,8	327:18 347:1
422:16,18	151:20 152:23	295:11 297:9	102:23 106:21	348:25 368:5
442:10,12	160:14,20	297:11,20,21	113:18 171:16	369:12 374:5,5
443:21 457:10	180:2 295:2	298:9,11,21,22	172:16 230:16	396:25 402:21
457:11 510:8	318:6 351:13	300:1,21,25	270:25 271:2	421:20 426:11
jobs 280:18	499:8,14,14	301:4 308:11	277:22 293:8	426:18 446:8
John 309:17	jurisdiction	317:22,25	305:18 364:11	451:4 453:7
Johnson 158:4	256:19,20	318:3,5 340:1	368:2 409:15	468:16 469:15
join 306:23	jurisdictional	346:21,23	411:18,18,22	477:24 478:19
307:3	244:19 248:16	347:12 348:3	412:5 416:4	481:7 484:20
joined 307:5	249:3,5 257:12	349:5,10,14,18	422:19 458:21	495:10 512:9
joining 274:24	257:19,24	349:24 350:3,8	465:22 488:25	518:23 519:3
joint 9:11 21:21	258:12 260:3	350:11,14,20	501:4	520:2
22:2,11 28:20	260:12 262:23	350:24 351:8	keeping 53:11	kinds 78:21
249:14 250:22	jury 165:17	353:19,22	103:8 230:11	411:21 502:3
250:24 348:4	justice 495:14	354:12,15,17	230:12,13,15	Kleffner 3:7
348:19 514:25	JX 250:20,22	355:1,3,7,8,12	412:8,11	4:20,22,23
520:19	JX1 9:12 251:2	355:15,21,23	keeps 265:12	6:18,20,22 7:2
jot 17:13	251:15 252:5	356:25 357:2	kept 394:1,7	7:4 8:7,9,18
judge 1:11 2:16	520:19	359:10 365:19	467:6	17:22 45:18
10:12 26:11	JX2 9:13 348:17	378:4 398:1,3	key 185:20	46:2,4 47:19
204:20 208:24	350:23 351:7	399:14 400:9	kick 74:11	47:21,24 61:3
216:25 217:1	515:10,23	400:11 402:4,5	kicking 422:1	63:9 65:15
269:18 321:14	520:20	402:9,12	kill 475:10	72:5,25 76:10
321:18,25		404:12,16	killed 462:4	77:2 78:21
322:3 403:14	K	405:4,5 407:10	Killsback 96:7	79:20 80:6
414:19	K-L-E-F-F-N-...	407:11,12	119:24 120:7	82:24 84:5
judge's 187:15	47:22	409:1 410:9	156:5 157:4	85:17 88:16

89:22 90:5	135:8 143:20	387:22 388:19	120:6 135:3,12	labs 145:16
92:7,17 100:8	143:23 162:12	389:15 391:17	145:25 161:20	180:12 314:4
100:20 101:15	163:25 164:4	391:20 392:3	162:25 163:2	lack 446:1
105:2,17	164:14 166:3	396:17 398:19	163:11 164:24	lacks 43:7
107:16 108:10	166:18 169:10	399:3 401:2,4	166:10 168:16	lagging 327:25
112:4,16	169:22 179:18	403:3,17 406:1	168:21,22	lagoon 7:19
114:15 117:6	180:4,5,6	407:1 408:22	169:16 218:20	56:10 76:19
124:3 125:11	182:7 184:23	409:14 410:23	226:13 236:9	87:3 88:10,20
130:12 135:17	185:18 186:2,8	411:7 414:6	264:21 291:25	89:4,6 97:6
135:25 138:17	192:20,24	417:25 418:1,7	299:2 316:21	99:23 108:20
141:4 148:17	197:7 202:17	418:14,22,23	319:24 320:24	110:24 126:22
150:13 158:14	203:4 206:25	422:6 428:2	326:17 340:2,4	136:10 140:20
161:13 167:6	207:16 208:4	429:15 432:7	352:4 381:15	146:15 150:11
172:15 175:12	208:12 209:24	432:11,18	403:8,12,22	170:19 192:16
178:16 181:22	210:3 211:8	433:2 434:6	428:10 446:2	192:17 193:6
182:19 187:2	213:18,24,25	437:23 438:1	447:14 455:8	201:16 204:23
188:4 189:4	214:7,9 224:20	438:18 440:7	455:20 465:3	221:14 225:22
190:9 191:12	225:2,16	445:5,7,23	471:14 477:12	225:23 241:25
192:9,16	226:21,23	449:4 450:9,14	500:20	244:11 245:14
195:12 198:2	227:2,13	451:7 452:15	Knowles 1:14	245:16,18,21
199:22 203:11	230:22 232:5	452:18,18,23	known 51:9	254:11 259:19
204:2 208:15	234:1,21 237:2	458:1,8 460:19		260:10 263:1
216:22 234:25	238:8,22 244:6	462:1 465:7,11	L	264:23 266:23
239:16 244:21	250:10,13	465:14 467:10	lab 56:13 60:22	279:14 280:20
245:7 247:6,21	251:4 253:22	467:21,24	98:1,9,14 99:4	288:11 289:16
248:12 252:17	254:15,24	472:22 473:4	99:8 145:15,22	296:10 297:1
255:22 303:1,6	257:10 258:21	474:1 475:4,24	146:1 153:19	311:25 313:9
303:20 304:5,9	259:21 262:25	476:12,19,23	153:22 173:16	316:18 317:5,8
321:24	263:6 264:9,9	477:15,23,24	176:19 177:11	319:16 331:3
knew 182:15	267:17 269:6	478:1,2,7,11	179:16,18,24	338:4 364:1,13
198:8,22	272:1 277:21	478:11,20	180:17,22,22	401:10 409:8
202:13 433:21	279:17 280:11	479:3,20,21,22	180:25 181:5	409:11,17,21
434:15,15,16	280:14,16	479:25 480:5	202:14,18,20	409:22,24
437:15 469:17	282:20,25	480:17,18	211:3 217:6,10	417:19 420:23
know 12:16,17	288:25 289:17	481:19 482:5	218:15,24	423:25 424:1
13:4 14:17,17	291:24 292:14	482:22 483:17	227:11 242:6	425:12,14,16
15:10,11 16:15	292:14,17	491:7 493:21	286:9 311:15	427:14 430:21
16:18 17:4	300:21 303:4	494:25,25	317:25 318:1,5	433:7,13,16,17
20:20 21:10	305:14 308:5	496:3 507:5,17	323:5,8 350:16	437:12 440:19
25:4 27:4,11	316:4 324:18	507:21 510:21	350:17,21	443:4 447:2,3
28:11 30:24	337:19 338:9	513:11,15	351:22 465:22	447:4,23
36:12 38:22	340:4 341:12	516:2 517:23	labor 127:15,22	454:19 455:18
39:3 47:9 56:8	344:7 346:10	518:13	129:18 152:5	458:11 464:9
63:10 70:22	347:5,10,10	knowing 222:13	501:25	464:21 468:1
71:9,12 75:17	368:17 373:9	235:4 381:20	laboratory	470:6 471:15
106:18 118:1	378:8,21	knowledge 28:1	172:8 288:16	474:25 475:20
124:13,16,22	380:10 383:17	77:19 96:17	351:11	487:20 509:16

lagoons 92:15 130:10 137:19 147:24 195:15 246:16 252:23 278:21 322:17 323:2,22 328:7 338:12 375:7 404:4 417:6 455:21 456:9 461:3 470:25	417:6,6 421:6 445:18,19,21 445:22,22 446:10,11,12 454:19 460:9 460:10 475:7 492:20 land 6:2,8,10 8:16 35:6 43:13 49:12 51:18 52:4,5 57:25 58:3,22 58:23 59:5,8 60:2,5,17,18 60:20 61:11,21 62:4,8 65:24 67:19 68:25 69:13,15,17,18 72:11 74:24 75:5 78:10 81:1 91:15,16 91:20 95:6,7,8 95:8 100:14,21 101:23 102:1 102:20,22 103:24 104:3 106:2,9,11,20 112:8 121:9 131:17 136:10 136:13,14,18 137:25 145:17 146:21 150:20 150:24 151:6 162:2,3 174:22 175:4,15,19,21 178:4,7 179:1 182:7 183:16 185:6 189:6,7 189:8,16,24 191:15,17,22 198:9,23 199:1 199:2,12,16 200:16,18 205:24 207:12 207:15,17,23 208:5,9 216:4 220:6,7,9,13	220:22 221:14 221:25 222:1,5 222:21 223:7 227:15,18 228:11,17 229:14,16,19 230:2,8,8 231:6,20,21,23 231:23 232:1,3 232:19 235:5 236:3,13 237:2 237:3,4,17,18 237:22 238:1,1 238:5 242:19 242:20,21 243:4 253:4,12 253:15,23,24 254:7 266:14 266:15,16,19 266:24 282:25 285:8 296:14 296:22 299:5 313:17 326:9 332:11 357:10 371:14,16,19 372:8 373:18 382:4,6 383:12 383:16,19 384:5 388:11 390:16 400:22 402:6 410:25 411:1 429:23 429:24,25 430:10,22 441:16 503:21 508:13 land-applying 191:18 Lande 486:9 landed 369:12 landfilled 51:20 79:9 landowner 108:13 191:14 191:20,24 194:7 235:2 236:15 326:11	lands 73:22 282:19 283:3 298:20 language 64:21 66:13 294:14 lapse 49:24 laptop 82:15 89:19 100:18 large 177:24 237:12 426:20 426:22 427:25 lastly 33:17 42:5 late 449:4 launched 150:8 law 1:11 2:16 10:12 26:11 36:15,16 37:1 37:11,17,21,21 37:23,23 38:1 41:5 49:16 69:16 83:7 125:17 133:21 134:11,13 165:23 211:8 212:3,19,19,23 213:8 214:16 215:13,14 216:8 220:19 381:14 472:17 492:4 laws 145:14 146:25 225:3 332:17,25 356:21 437:18 lawyer 290:5 294:5 472:23 lay 28:13 451:18 layout 174:15 488:7 LD 99:23 lead 215:3 leadership 41:23 leading 124:10 168:23 learn 89:1 392:11	learned 343:3 leased 137:21 195:17 328:9 401:12 leaseholder 191:14,20,24 leave 18:13 35:19 186:23 273:17 306:10 308:18 347:11 350:6 380:20 422:24 427:9 435:23 leaves 33:25 leaving 267:19 306:12 420:24 led 215:1 434:4 left 19:6 72:6 164:10,10 166:19 189:14 204:22 207:16 207:20 216:14 217:8 228:14 236:23 253:18 300:17 302:8 307:18 308:12 369:18 395:12 418:2 421:5 423:7 440:2 450:6 459:25 465:20 leftover 51:11 legal 38:23 39:3 106:6 165:25 211:21,25 212:21 213:1,6 213:10,13,20 214:3 216:19 261:25 383:15 legitimately 377:3 Lenexa 2:8 length 28:16 498:7 507:22 lessor 235:2 let's 20:13 21:19 39:24 51:7
---	---	--	--	--

52:8 54:17,23 55:12 58:16 64:4 75:20 88:25 90:11 102:9 103:2 127:8 128:7 134:17 175:6,7 185:21 186:10 225:17 231:1,1 232:1 283:4 285:21 286:17 287:17 289:24 290:3 297:9,20 298:9 304:17 304:20 309:16 319:14 321:7 355:21 356:25 359:16,24 363:8 382:16 382:24 399:15 402:12 405:4 446:8 451:14 496:23 501:20 504:1 letter 4:7,9,12 4:15,16,17,19 5:19,20,21 6:15 7:5,9,12 7:20 8:2,4,6,19 8:22,23 9:9 31:14,16 33:18 69:14 83:7 84:9,12,13,18 84:22 86:5 90:14 94:25 95:11 121:19 123:9 133:20 142:12 145:12 170:14 284:3,5 284:21 286:22 297:23 337:9 356:19 382:17 383:5 404:24 405:2 451:17 469:13,18 490:12 501:7,8 510:18	letters 449:6 letting 308:5 468:4 level 43:8 222:25 237:1 264:12 levels 279:2 447:20 LexisNexis 5:24 liabilities 165:25 liability 15:17 132:15 211:9 211:16,19 212:6 213:11 214:19 215:23 450:15,17 452:22,24 467:22,23 482:23,25 483:6 497:23 liable 58:9 239:24 459:4 liberal 23:7 license 224:18 225:6 478:16 478:20,20 493:18 licensed 513:22 licenses 125:14 lies 385:6 life 41:13 116:22 264:4 388:21 446:14 lift 56:7 87:20 116:23 118:7 130:8 light 42:23 liked 483:23 limit 65:11 176:13 263:20 limitations 43:2 414:24 limited 125:15 132:15 143:24 147:1 332:18 473:18 485:14 limits 263:4	265:1 493:12 line 44:16 120:10,21 121:1 127:20 127:22,23 137:21 142:3 142:19,24 144:9,16 153:17 154:4 155:15 168:11 175:7 195:17 207:1,4 209:10 234:22 244:9 244:13 245:24 246:4,19 287:4 313:25 314:24 315:5,17 327:21 328:1,9 329:4 351:6 360:14,20 363:20 375:23 376:4 387:7 400:16 407:17 460:18 461:4 498:24 499:4 lines 111:25 112:11 116:20 168:6 286:5 363:22 459:25 460:16 link 270:8,11 350:21 links 269:20 liquid 145:18 146:19 419:7 427:20 liquids 51:10 428:1 liquified 404:6 liquify 419:13 427:18,19 list 29:3 66:10 123:24 248:2 443:9 listed 78:14 81:7 98:11,16 106:5 118:6 138:4	140:6,9 175:16 175:22 223:25 243:9 383:14 451:17 listen 509:8 listening 403:17 517:11 lists 125:21 132:6 136:10 247:24 literally 392:22 426:25 475:24 476:4 litigant 42:21 litigants 16:18 litigators 23:4 little 11:6 12:25 29:1 35:13 49:18 50:1 52:8 54:17,23 55:12 58:16 64:15,21 88:25 101:10 119:14 129:12 175:6 176:18 185:5 185:11 214:1 215:16 224:25 241:18 242:25 243:20 259:12 264:21 278:14 305:11 307:14 310:9 317:16 327:17,22 367:6 370:16 376:16 387:23 388:20 390:19 415:17 440:11 442:10 445:18 451:3 461:22 509:5 512:15 516:12 519:17 live 385:1 446:16,17 460:25 lived 446:7,13 lives 446:4 Liz 6:17,19,21	7:4 8:18 141:14 LLC 461:24 load 140:19 264:25 265:5 406:2 426:21 429:10 loaded 139:5 406:3 loading 182:3,9 182:12,17 222:17 223:1,4 loads 106:12 383:19 local 41:13 186:22 301:1,3 locate 100:25 191:2 202:8 located 137:19 195:15 245:15 301:2 328:6 417:5 475:6 location 44:2 106:7,8 201:3 326:24 383:15 383:16 locations 475:4 lock 432:8 locked 254:2 420:23 421:13 421:15 423:3,6 429:5 431:23 432:16,20 433:3 437:1 445:14 459:1 467:12 507:13 508:5 locking 432:23 432:23 437:2,3 lockout 254:7 507:21,24 log 304:21 logbook 466:17 logged 307:1 logistics 17:10 logs 172:9 201:3 288:17 331:22
---	--	--	--	--

331:25 375:22	128:21 178:10	luck 516:25	400:19 455:8	52:15 53:9,12
376:6,10,12,17	181:25 244:7	lunch 16:22,23	461:7 483:11	59:10,10 60:15
376:23,25	282:12 483:1	184:10 185:12	488:6 510:6,14	73:11,14 74:5
long 14:17 37:10	looking 14:7	185:22 186:2,2	maintain 40:24	75:14 79:4
47:2 50:11	31:10 44:4	186:15,22	41:5 42:8	92:1 99:12
113:21 222:2	78:9,20,22	395:19 396:3,4	58:24 59:3,9	102:4,5 103:15
270:22 275:12	79:10,21 83:4	396:13	65:21 66:23	103:19,22,25
308:21 357:15	101:4 108:21		67:16 68:20	104:17 125:19
385:9 387:18	114:5 128:23	M	73:14 74:4	201:1 225:9
399:3,8 415:2	134:4 141:11	M-I-C-H-E-L...	101:7,9 108:1	233:6 235:18
460:5 462:6	144:23 146:4	454:12	182:8 230:17	235:20 275:20
479:8 481:13	155:1 185:11	ma'am 16:5	232:11 353:3	278:6 293:3
longer 25:22	185:14 191:4	21:16 27:10	406:8 490:20	384:9 412:6,7
26:20 159:1	214:9 223:23	42:16 68:3	490:22 492:6	504:10,14,24
325:1 336:22	229:7,16	116:14 119:11	maintained	505:5,11,17,19
358:13 421:9	230:25 245:12	125:6 164:16	44:25 66:14	505:22
458:5 464:1	246:18 257:19	206:13,19	73:18 173:5	manager 109:23
472:8 493:3	319:5 341:12	215:5,8 216:9	183:23 232:14	110:4 111:9
496:13	347:17,19,20	255:6 262:4	232:18,22	122:1 142:22
look 30:19 32:22	347:21 377:3,6	300:4 307:1	383:10 441:22	143:14 152:1
48:12 54:2	377:8 474:2	309:14 318:3	491:4	170:9 279:25
63:16,17,21	looks 35:23	324:15,21	maintaining	332:24 356:13
64:8,9,25	247:12 276:6	329:15,17	41:17 185:4	390:25 420:15
96:25 97:18	402:7	330:16 333:11	492:2	434:9 470:12
126:23 127:8	lost 198:19	333:14 341:9	maintenance	481:12,12
128:7 129:23	lot 49:8 50:21	348:22 361:14	56:5,11 115:24	499:2,17
131:19 170:5	57:18,19 71:1	367:2 396:21	409:9 410:11	508:17 509:9
175:7,9 180:13	165:15,17	399:25 400:7	410:14	managers 40:21
183:1 184:9	177:9 197:15	403:25 409:20	major 91:25	managing 40:11
185:13 187:1	208:2 262:25	435:1 436:2	92:1	275:19
203:17 213:24	281:19 341:18	446:13 453:23	majority 489:8	manholes 87:5
218:2 227:3,22	401:21 403:17	480:11,15,19	making 56:8	manner 177:22
247:15,18	403:18 408:1	481:1 482:1,9	95:2 103:25	509:4
248:8 250:3	443:24 461:17	484:2,23,25	124:21 143:11	manual 476:23
270:1 279:13	475:12 488:6	485:8,24	160:14 163:23	manually
283:4 287:17	493:14 494:8	486:19 487:9	164:13 212:11	271:18
297:20 346:1	510:23,24	488:21 489:2	237:20 244:22	map 9:12 146:15
350:16 351:9	511:5 513:18	490:5,8,22	244:25 249:1	226:3 229:23
355:21 356:25	514:15	492:12 495:21	249:11 250:8	244:3,21
375:25 377:20	lots 16:21 23:10	509:23 510:1	256:11 258:3	245:14,16,22
378:25 379:3,8	241:13 243:13	511:12 515:2	294:13 295:2	246:3,6,19
381:8 422:8	261:6 433:10	Mail 5:11	305:1 423:24	249:9 252:5
444:2 451:19	487:4,11	main 127:23	490:1	255:18,20
452:2 472:12	low 21:1	132:22 133:4	man 405:20	256:5 258:9
497:8 516:12	lower 53:21	210:21 211:12	manageable	261:15,19
looked 30:10	73:10 328:17	334:2,6 343:1	305:11	296:10 441:17
35:8 119:10	353:14	345:19 391:12	management	441:23,25

515:1,1	MCA 332:21	mechanics	memorialized	360:17
mapper 257:3,5	mean 21:9 22:21	306:3	226:25 298:15	mic 272:17
mapping 256:4	26:16 29:10	media 281:5	477:24 488:12	274:7 305:7,19
256:17,22,25	55:19 59:21	meet 54:5 60:19	491:21 518:23	306:10,12,18
257:22 258:1,4	103:8 120:19	79:6 91:21	memory 52:24	307:4,6 309:11
maps 226:7	135:5,6 163:4	92:18 93:2	62:20 171:23	309:11,16
256:8 261:21	165:1 168:25	146:22 171:4	183:19 312:13	347:24 348:1
475:6	169:22 177:1	175:23 176:10	450:5	349:8,13
March 84:10	180:6 186:1	176:16,20,23	mentioned	mic's 72:20
mark 251:9,14	209:23 213:22	177:9 180:18	179:14 181:17	Michael 309:24
marked 34:2	228:1 234:7	285:9 332:12	223:14 302:7	324:19
378:15	249:24 250:1,4	357:11 420:18	360:16 365:1,2	Michael's 324:8
marks 293:14	269:12 282:14	420:20,21	365:3 411:10	Michelle 2:17
406:10,11	291:19 292:11	430:6,16,18	417:9 442:9	3:23 12:13
markup 66:1,6	293:15 304:11	470:21 493:11	465:8 466:17	19:25 132:6,14
Marla 1:21	306:4 311:1	meeting 85:9	474:18 487:22	168:8 299:15
521:6	328:25 341:16	96:11 97:7	493:8 520:1	453:24 454:2
master's 49:1,7	341:19 347:5	131:3 218:22	mentions 100:11	454:10,12
49:7,11 50:5,6	362:13,20	294:20 307:6	mere 41:7	microphone
50:10	367:12 388:23	308:12 356:23	mess 240:14	39:22 349:19
match 79:11	409:19 418:3	390:22 391:9	274:8 403:17	349:25
117:15 128:20	419:4 427:18	408:7,10,14	514:21	microphones
matched 197:3	434:1 442:11	411:17 439:17	message 322:5,7	271:6
matches 209:16	450:22 464:17	439:18 440:14	met 59:1 80:25	mics 270:16
209:16	473:4,15	444:18 466:3	81:14,17,18	305:21
material 212:25	475:25 479:6	475:16 485:17	106:14 139:3	mid-2019
328:4 374:7	479:19,21	486:22,24	175:3 176:23	456:23
417:15	480:5 482:8	487:7,8,17	177:16 180:21	mid-application
materiality	492:3 494:1,7	488:3,4,12,18	263:4 383:21	431:24
23:12	495:6 510:25	491:19,19	405:18 413:11	mid-August
materials 12:24	513:20 516:5,9	513:8	metal 52:16 58:3	458:11
136:9 147:21	516:14 517:22	meetings 127:18	99:9 175:20	middle 295:13
383:12 417:3	518:17	299:20 486:24	458:21 508:21	437:22,25
math 323:2,4	meaning 88:9	487:13,16	metals 41:11	460:15,16
456:8	248:21,22	491:8,11	52:14,17 58:1	469:25
matter 1:3 10:13	400:25 402:25	meets 220:18	58:25 79:1,7	midway 507:25
10:24 11:11	487:3 491:19	430:8	154:2 173:12	miles 226:5
21:20 29:2	means 59:6,16	member 226:13	175:16,24	244:15 264:13
247:25 292:1	163:4 169:24	340:23 422:13	182:9 199:15	267:1 401:11
303:14 368:8	220:15 352:15	members	222:16,22	410:2 417:7
matters 10:20	393:20 414:6	144:14 168:13	223:1,4 235:13	446:17,20
30:24 495:14	421:18 423:5	225:4 487:5	235:17 263:11	milestones
max 195:22	437:24	497:17	263:15,17,20	296:14
315:21 325:21	meant 405:17	Memorandum	263:21,25	milkshake 441:5
328:13 373:2	512:19	4:6	264:4,6	million 92:11
maximum	measures 85:9	memorialize	method 60:14	243:12
260:19	322:4	519:3	102:4 145:19	mind 16:13

27:12 120:16	398:11	1:23 2:13	268:18 300:9	30:8 31:19
144:2 185:21	missing 101:22	10:24 40:7	300:19 301:10	32:12,21,24
349:20 360:24	101:25 102:2	123:13,24	301:17,23	33:9,15,22
361:4 397:1	200:25 235:13	125:24 137:20	302:10 310:6	34:12,17 35:15
468:25 474:16	235:19 515:4	147:25 158:1	428:15 461:12	36:21 38:10,25
495:3	mission 212:23	189:4 195:16	mortgage	39:11,18,20,24
mindful 17:2	310:10	201:7 224:17	456:23	40:2,3 42:13
164:12	Missouri 48:25	224:20,24	motion 20:9	45:15,18,24
mine 307:15	248:19	225:6,15	27:1 28:12,17	46:1,10,11,15
400:19 428:1	misspeak	289:13 301:3,5	29:6 36:10	47:7,15,18
433:22	448:12	314:4 328:7	motions 15:1	60:25 61:2
minimal 281:21	mistaken 62:21	332:14,19	520:3	62:12 63:3,20
minimize 16:19	512:22	357:13 385:2	motivation	63:24 64:4,10
305:17	mistakes 15:3	404:11 417:6	353:17	64:19,24 65:23
minimum	mitigation 84:25	478:15 493:8	Mountain 301:4	66:5,11,17
198:22 260:19	495:17	521:3,8,20	mouth 432:22	67:9 68:13,18
minor 15:5	mixed 212:2	Montana's	move 44:19	69:22 70:18
minute 14:13	mixing 389:7,10	225:3	71:25 95:15	71:19 72:2,4
46:13 179:6	mobilization	month 156:14	113:13 126:5	72:24 76:2,5,9
308:10,15	127:7 149:25	207:7	135:22 187:17	76:23 77:1
397:23 423:18	510:4,6	monthly 175:17	209:10 216:15	78:3,5,17,19
492:8 506:25	moment 20:13	months 433:5	234:6 250:18	80:2,5 81:20
519:16	28:22 271:3	464:20	321:7 333:9	81:22,23 82:1
minutes 11:5	273:11 303:3	moot 235:24	378:13 419:11	82:6,12,17,22
21:24 63:21	347:12 349:21	386:6	419:12	82:23 83:15,17
64:7 96:12	432:16 437:21	MORANO	moved 50:22	84:2,4 85:14
131:3 166:18	momentarily	251:19,24	282:18,18	85:16 86:9,12
188:17,18	514:17	Moreno 2:17	moving 80:1	87:10,12,22,24
239:3,6 269:14	moments 420:25	11:23,23	139:14 169:13	89:18,20 90:15
273:12 294:20	Monday 146:12	156:17,19	234:11,14	90:17 91:7,9
300:3 325:1	154:17 413:11	251:12,16,22	314:16,22	92:3,5 93:14
369:1 388:25	money 132:17	255:3,5,7	340:9 407:20	93:17 94:3,9
389:24 392:2,3	240:18 423:25	270:4 271:12	409:6	94:13,15 95:18
405:20 453:9	439:22 457:13	271:19,23	mowing 56:10	95:21 96:23
453:13,20	468:13,22	272:3,8,15,19	130:10	97:2,16,20
516:15	475:21 488:1	291:3 305:18	muddy 34:19	98:5,7 99:14
misapplication	510:9,11	306:7,15,17,20	Muehlberger	99:16 100:16
75:11	monies 158:9	307:7 308:10	2:4 3:4,8,9,14	100:19 104:23
mischaracteri...	monitor 308:20	308:14 312:16	3:15,16 4:3	105:1 107:6,12
266:9	monitoring	312:20,22	7:15 11:12,13	107:14 108:7,9
mispronounci...	86:25	348:13 350:22	16:7 17:11,21	109:2,4,8,10
172:17	monster 114:13	354:14 361:10	18:1,9,17,19	109:14,16,25
misquote 253:8	114:16,17	361:21 416:16	18:21,23 19:4	110:2,9,11
misread 217:3	115:22 116:2	morning 10:1,10	19:13 20:24	111:4,7,10,12
misremember...	116:22 118:7	11:12,17,23	21:1 22:10	112:21,23
63:18 183:20	223:15,17	12:9 21:6	24:2,4,10	113:11,17,19
missed 79:22	Montana 1:15	267:25 268:12	27:16,22 30:2	113:24 114:3,4

114:22,24	170:24 171:18	452:10,11	440:14 449:14	499:16
115:9,17,18,21	171:22 174:17	495:24 496:2	449:15 454:11	Nation 128:19
116:16,17,18	174:20 175:9	497:8,11	464:6 481:5	National 18:3
117:3,5,21	175:11 176:1,3	502:23,24	named 28:4	55:21 257:6
119:19,22	179:5,9,12	506:25 507:3	494:16 521:10	275:8
121:11,13	181:14,20,21	511:15,25	names 17:18	nationwide
122:11 123:5,7	183:3,6,10	512:4 513:2	naming 158:1	77:18
123:15,17	184:12 185:14	514:2,8 516:19	492:15	Native 422:10
124:5 125:7,8	186:3,12	518:2,6,10	narrative	natives 421:25
125:10 126:5,7	187:18,25	519:5 520:12	512:20	422:3,18
126:12,14,23	188:1 196:13	Muehlberger's	Nathan 1:4 2:11	nature 85:3
127:1,8,10,25	206:6 211:20	508:8	4:2,16,19 5:13	479:20
128:2,7,9,23	212:10 233:25	muehlberger....	8:4,19 11:1	navigable 35:25
129:1,20,22	239:2,5,11,15	2:8	12:8,10 40:9	36:5,13 38:12
130:22,24	244:20 245:4,6	muffin 114:13	75:23 77:9,20	55:11 226:2
131:19,21	246:17 247:3,5	114:16,17	78:12 79:23	244:17 248:22
133:13,15	247:14,20	115:22 116:1	86:20 97:10,14	262:19
134:4,6,17,22	248:5,8,11	116:21 118:7	97:23 98:13	navigated 366:1
135:16,22,24	249:7,15	223:15,17	99:18 101:16	NC 125:20
136:22,24	250:17,21,25	multiple 342:23	105:20,21	127:17 408:3
138:13,15	251:3,7,10	385:13 483:6,9	123:20 132:6	474:7
139:6,8,22,24	252:7 267:9	municipal 91:25	132:14 139:3	NCUC 4:5 7:19
141:1,3,16,18	268:3,7,11	92:2	139:12,13,17	9:5 32:10
141:22,24	269:11,15,17	mute 271:22	142:20 168:10	86:20 87:1
142:8,10 144:5	270:6,10,14,24	muted 271:25	168:12 220:1	96:6,8,13,15
144:7,23 145:1	291:4 302:16	272:18 273:4	280:11,14	96:17 108:14
146:4,6 147:2	303:2,6,25	274:3,7 305:7	281:18,24	108:15,18,19
147:4 148:2,4	366:15,18	305:8 309:11	289:10 290:5	109:13,24
148:23,24	368:7,10 369:3	309:15,25	294:4 295:8	110:7 111:9,14
149:8,10,15,18	369:11,24	349:24,25	296:7,12,16,20	111:22 113:1
150:25 151:2	370:17,25	350:3,4	296:24 298:5	115:1 117:7,19
151:12,14	371:1,4 372:11	muting 349:20	299:12 302:3	120:3,8,11
152:10,12,24	373:20,25		326:18 339:25	121:15,20
153:1 154:12	374:11 377:9	N	342:22 343:1	122:4,9 126:9
154:14 155:1,5	379:1 380:23	N 1:1 3:1 4:1 5:1	401:2 405:18	126:16 127:3
155:20,22	381:2 382:10	6:1 7:1 8:1 9:1	407:7,18,23	127:14,18
156:15,18,20	382:12,23	N-A-T-H-A-N	409:3 416:11	128:4,13 129:5
156:22 157:7	383:3 384:20	481:6	416:12 419:23	130:1 131:6,13
157:11,17,19	385:21 387:22	nailed 479:4	458:15,17	131:23 132:6
157:21 158:18	388:4,18	name 11:13,18	463:18 465:5	133:12,16,20
158:20 159:5,7	394:25 395:5	12:10 21:12	465:12 468:5	134:14,24
160:2,4 161:2	395:13,16,18	40:3 47:20,21	469:25 470:3	141:6 142:21
161:4 163:8,9	395:22 396:1	48:1 121:24	471:10,13	143:5,15 145:9
164:19 166:14	396:16 397:14	168:7 257:3	472:20 475:5	146:14 147:11
166:16 167:3,5	397:23 435:20	274:25 282:24	475:15,17	149:6 151:21
167:22,24	451:16,21,23	371:8 400:13	477:4 480:22	152:2,4,17
170:7,10,12,22	451:24 452:8	400:14 417:25	481:6 498:25	156:7 157:4

158:3,10 159:2 160:10,13,21 160:24 161:25 170:9,20,20 171:13 173:3 192:19 199:25 200:2,11,13,20 209:25 210:20 210:23 211:12 212:6 217:25 218:22 233:20 233:23 254:2,5 254:9 294:21 294:22,23 295:1 298:15 310:21 311:15 313:7 322:10 322:13 332:24 334:2,6,13,20 335:1,5,14,20 335:22 336:1 336:23,25 337:4 338:3,5 338:6 339:3 343:19 344:3 352:11 354:1 354:21,25 355:19,25 356:13 357:18 357:25 358:3 358:14 360:24 361:1,5 362:4 363:25 364:2,3 364:15,18 390:25 391:12 391:23 408:3,3 408:25 434:7 437:18,19 438:6,10,13 439:4,6,13,19 439:20 448:15 448:19,22 449:9 454:18 454:22 455:8 455:11,12,15 456:18 459:9 459:13 461:8	464:1 465:21 466:7 468:2 470:7,8,10 471:9,25 472:3 472:9 474:8,9 483:8,11 484:17 487:18 488:11 489:22 490:4,5 491:4 491:8,22,24 494:13 496:9 496:10,14,18 498:2,5,9,10 498:14,16,18 498:21 499:1,9 499:9,15,18 500:12,16,24 501:3,6 502:13 503:4,8,18 508:25 509:13 NCUC's 86:24 117:12 161:14 171:8 334:23 335:17 357:22 362:9 491:6 NCUC-05-2017 116:24 near 262:10 503:25 508:9 508:12 necess 209:5 necessarily 162:8 209:24 222:2 228:12 260:23 263:23 368:18 517:23 necessary 14:20 61:24 67:19 101:21 103:6 123:23 148:15 155:10 173:5 180:15 202:14 208:17,18,19 210:4,24 211:3 217:21 219:14 221:4,8,10,11 225:18 228:16	231:18 235:11 235:22 237:22 238:6 243:18 328:4 354:8 367:23 368:24 417:3 493:11 necessity 65:15 266:18 need 13:9 19:14 21:23,24 30:6 30:17 47:9 56:8 58:24 59:3,9 65:1 67:6 73:14,17 74:4,9 89:12 94:25 102:18 118:19 136:17 165:15 169:1 169:22,24 175:23 176:14 184:10 185:12 188:10 189:12 195:1 196:3 197:6 202:16 203:22 205:25 208:5,6 213:4 213:22 218:2 218:19 227:1,3 230:16,16 234:19 237:22 240:14,15,24 249:17 267:16 267:18 269:6,7 269:13,18 270:15,22 271:8,17,20 272:14,19,21 273:1,3 290:25 291:15 300:3,8 300:13 302:12 304:3,21,25 305:2,4 308:22 316:25 319:22 319:23 324:7,7 324:10,13,15 330:13 336:6 348:7 353:12	357:16 361:10 367:5 368:18 370:4 377:17 378:10 399:16 402:23 415:16 440:4 448:3 452:12 453:2 464:4 486:21 491:3 509:8 needed 26:25 70:15 152:5 183:23 187:16 207:17 208:20 241:10 293:17 308:7 333:5 369:19 456:4 458:18 460:3 464:5 467:4 483:16 489:13 490:10 505:4 506:9 508:18 509:2 510:7 needs 23:3 102:21 171:5 180:18 185:18 198:13,17 207:20 217:6,9 224:12 263:4 470:22 502:20 506:7 513:25 negatives 23:10 negligible 222:6 negotiation 122:19 negotiations 439:12 491:22 neither 92:14 210:24 514:11 never 41:3 200:19 201:18 233:2 372:9 376:13,21 386:20 463:20 464:23 467:11 467:14 496:7 498:22 499:20 499:22,25	504:8,13 505:4 505:9 509:16 511:2,4 new 35:22 187:13 night 437:22,25 460:15 nine 425:2 427:12 nitrate 153:18 286:8 nitrogen 53:18 60:23 61:15,15 99:9 154:3 173:11 196:2 201:10,14 217:16,17 222:3 228:14 241:21 315:2 316:8 nixed 73:15 Nods 303:25 non-degradati... 332:19 non-highlighted 413:19 non-navigable 36:8 non-public 74:2 non-soiled 442:19 non-tilled 442:20 noncompliance 167:19 nope 463:24 509:18 normal 259:1,4 259:5 368:19 369:23 398:5 399:11,20 normally 53:8 177:25 260:17 282:15 346:6 425:14 north 1:14 245:22 246:7,8
--	--	--	--	---

248:18 446:17	notes 16:9 20:2	336:7 348:4,13	373:20 374:1	368:2 452:17
Northern 43:20	65:20 444:2	361:13 378:14	374:10 377:9	473:16
44:23 85:23	488:12	383:18,19	377:11 385:21	occasions
96:6 108:16	notice 5:13 8:21	413:3 416:4	386:12 404:2	279:11 468:1
110:21 122:1,7	9:8 33:12	451:23	446:1	occur 75:11
128:18 134:3,9	61:24 107:19	numbered 351:4	objections 33:22	121:3 437:17
147:17,25	231:18	numbers 113:15	124:23	occurred 507:21
158:13 193:10	noticed 305:9	243:14 422:16	obligated 37:1	507:24
199:24 225:4	432:20 510:8	456:8	459:10	occurrences
247:11,25	notification	nurse 462:15,17	obligation 69:9	418:11
280:1 282:23	61:14 463:24	nursing 467:1	233:19,20	October 83:8
284:13 298:6,7	477:15	478:19	465:24	offer 24:6 25:10
298:14 313:6	notified 26:6	NWI 257:6	obligations 67:4	39:8 84:14
313:11 323:15	331:19 432:16	NWPR 35:23	235:2 461:15	162:8 342:25
338:2 342:15	November		488:9 489:12	450:12,25
363:25 390:22	114:9 141:14	O	489:14 494:5	480:1 495:3
401:12 420:9	283:13 285:2	o'clock 453:14	observation	510:21
420:17 421:7	295:22 297:16	oath 13:12	226:19	offered 13:16
424:9 433:8	382:19 383:5	274:11 305:5	observations	34:3 169:15
439:10 445:14	NPDES 50:25	307:21 370:4	447:6	210:15 450:22
449:1 457:22	55:17,18,20	400:2 480:2,8	observe 119:8	476:18
460:20 486:25	89:9,10,15,25	480:12 495:15	226:17 428:17	offhand 230:22
487:6 488:4	90:6 91:25	object 62:6	440:23	office 2:6 127:23
490:13,14	92:9 225:11,17	115:3 250:5	observed 440:23	156:9,13
492:20 494:13	244:2 248:2	290:16 303:9	447:17,17	297:25 337:21
494:15 497:7	260:4,16,17,22	321:17 378:23	observer 119:6	370:18 422:22
499:6	266:10,13	402:20	308:25	423:9 432:15
Northwest	489:24 494:7	objection 64:7	observing 21:15	432:21 433:2
48:25	NPN 176:12	64:20 67:8	303:24 442:16	433:10,11,24
Nos 29:17,19	number 11:2	71:5,24 117:23	obstructions	434:17 439:14
520:19	14:19 21:2	119:13 124:7	127:21	462:11 488:5
notarial 521:17	43:3 46:19	135:1,11 143:7	obtain 148:15	officer 17:24
Notary 1:21	47:3 59:18	161:18 162:16	191:21 284:5	48:3 58:8
521:6,20	60:6 76:17	164:20,23	516:25	130:20 144:16
note 12:6 15:3	96:14 106:10	166:6 168:17	obtained 433:12	152:7 161:13
35:7 40:19	106:12 107:8	168:20 169:14	433:15	162:19 163:2
113:22 116:7	110:17 111:19	169:23,24	obtaining	163:11 166:8
124:23 143:11	116:23 121:3,4	196:13,19	515:23	167:6 169:5,17
161:8 187:5	124:1 125:21	206:6,25	obtains 180:7	171:7 214:8
234:4 364:6	127:7 136:6,11	211:20 212:10	obvious 69:11	239:17 243:23
366:3	150:6,9,18	212:13 216:17	454:14	303:7,12 433:6
notebook	155:6 174:25	233:25 248:3	obviously 15:23	Offices 133:21
465:18,21	190:24 195:3	249:19 291:1	16:22 27:4	official 14:24
501:6	203:22 220:4	291:15,18	31:11 36:4	57:3 94:1
noted 30:21	302:4 310:24	292:13 317:22	39:2 53:1	349:1 480:16
317:2 377:22	311:2,5,7	318:16 319:17	162:20 206:16	offload 419:5,24
518:25	330:4 333:10	321:20 340:1	245:20 269:12	443:5

offloaded	56:24 57:9,14	143:16,19	252:5,13,14	360:3,13,22
405:19 412:4,4	58:16 59:13,21	144:6,10	253:5 254:17	365:10,13,15
419:1 428:12	60:7,12,14	149:19,22	255:2,7,10,14	366:3,17,21
428:16	62:11 64:6,11	157:5,8,14,18	259:12 261:18	367:3 368:21
offloading 406:2	65:17,17 66:1	159:18,21	262:5,24 264:8	368:21 369:7
417:25	66:12,25 67:23	162:5,24	266:25 267:7	369:17,22
Oftentimes	69:4,4,20	163:10,14	267:10 268:6	370:3,12,21
276:7	71:23 72:2,8	164:17 166:13	268:10,14,14	371:14,18,22
oh 19:5 21:15	72:17,23 73:4	166:15,20	268:17,24	372:10 373:11
80:18 119:2	73:22 74:9,13	167:2 168:2	269:16,22	374:12 375:6
129:13 241:15	74:23 75:10,20	170:3,4 171:18	270:5,10,14,18	375:13,19
251:12,16	76:5 77:2,6	174:9,14,17,18	271:10,17,25	376:2,14,16,19
257:2 270:5,21	78:2,11,16	174:24 175:6	272:3,9,12,16	378:5,12,20,25
295:19 300:12	79:19,20 80:1	176:4 179:14	272:20 273:4	379:2,7,12,13
309:2 324:13	80:9,13,16,21	180:4 181:3,6	274:8,18 291:6	379:22,22
355:13 361:11	81:12,25 82:10	181:11 182:25	291:11,14	380:2,5,10,20
371:20 375:15	82:16,20 83:4	183:1 184:12	292:11 293:23	381:8 382:9,16
382:24 385:5	83:14 84:1,11	184:20 186:5	300:2,20,25	382:19,22
388:24 390:17	84:21 86:8	186:13 187:23	301:3,21	383:8 384:3
392:5 393:22	88:2,25 89:12	188:2,6,9,19	302:17 304:1,5	385:6,9,16,20
398:3 412:24	89:17 90:11,23	188:22 189:15	304:16,20	386:11,17
440:6 480:15	93:5,13,20	190:1,4,20	306:8,15,21,21	387:24 388:9
515:12	94:4,10 95:20	191:2,7,10	307:2,4,5,8,17	389:5,12,25
okay 11:22 12:4	95:24 96:17,23	192:3 194:16	308:19 309:2,3	390:4,6,18
12:7,12,14	97:5,12,25	194:25 198:15	309:23 310:2	391:8,15,25
16:6,8 17:7,12	98:4,11,14,20	199:20 203:7	312:21 314:16	392:7,14 393:3
17:25 18:8,14	98:25 99:4	203:21,25	314:24 316:25	393:13,19,24
18:15,22 19:3	100:1 102:9	208:13 209:12	317:12,17	394:6,13,18,22
19:9,17,17	107:18,21	211:24 212:9	320:13 321:7	395:11,14,17
20:2,13,24	108:3,7,15,17	214:22 216:10	322:15 324:2	395:20,23,25
21:4,5,9,17,18	108:21,24	216:12,17	324:13,17,24	396:10,17,22
22:11,19 24:2	109:2,21,25	220:13,17	324:25 325:4,8	397:7,10,13,21
24:5,12,19	110:6,9 111:2	223:14 225:17	325:20 327:13	398:14 399:8
27:16,19 28:19	111:10,16,20	227:9,21	328:1 329:11	399:15,18
30:9 31:4,21	112:7,10	228:19 229:1	329:18 333:23	400:1,9 402:1
32:2,4,9,13,15	113:20 114:5	229:20 230:24	334:10 336:5,9	402:14,21
33:1,8,11,17	115:6 116:3,15	230:24 234:8	336:11 337:11	403:7 404:1,3
33:23 34:17	117:10 119:4	234:11,16	337:14,22	406:19,23
35:1,5,11,18	119:12,18	236:16,18,19	338:21 340:3,8	407:4,9 408:16
36:12,23 38:22	122:23 123:1,4	237:13,20	340:10 341:4,7	410:4,7,7
39:1,6,6,15,19	125:7 126:5,23	238:3,17,19,24	341:10,22	412:20 413:2
39:23 45:13	128:14 130:17	238:24 239:13	342:7,24	413:24 414:5
47:8,11 48:1	131:4 132:1	240:3 245:4,11	344:10,13,20	414:21,23
48:11 49:4,13	134:12 136:3	246:9,22 247:2	345:3,5 346:18	415:11,12,15
50:1,11,14	138:3,22 139:1	247:9,14 248:7	348:5,7,16,24	415:22 416:3
51:4,7,14 52:8	141:10,16,22	249:19 250:15	349:9,12,17,18	418:17 419:2,4
54:23 55:4,18	142:8,18	251:1,4,8,25	350:5,8 359:12	419:8,15,19

420:2 422:24 424:18,22 425:11,25 426:5,10,10,17 426:23,25 427:5 428:4 429:3,18 433:9 434:6,8,10,14 434:18 435:2 435:12,14,22 436:12,18 441:15 442:1 443:12 447:10 447:13,25 448:8,20,24 449:2,12,16,22 450:4,12 451:6 451:20 452:1,9 453:11,14,19 453:21,25 454:21 459:16 461:22 462:10 462:19,22 463:1,1,3 464:13,17,17 464:22 465:3,8 466:12,16,21 467:5,9,13,17 467:17 468:9 468:24 469:2 471:6 473:15 474:4,15 475:12 476:3,8 476:11 477:4,8 477:11 478:5,9 478:17,25,25 479:11 480:4 480:13,20,20 481:2,23 482:3 482:12,19,21 483:25 484:7 485:9,15 486:6 486:13,20 487:10 488:16 490:19 491:7 491:14,25 492:7,13	494:21,24 495:10,19,22 496:13,17 497:5,9,22,25 499:23 500:21 501:12,20 502:7,25 503:10,15,18 503:23 504:1,7 504:12,23 505:2,3,9 507:16 508:1,7 509:21,21 510:15,19 511:11,20,24 512:13 513:10 514:4,10,13 515:3,8,20 516:11,14,20 517:13,18 518:6,8,11,19 519:13,15 old 441:10 460:24 475:6 516:9 on-site 100:5 104:5 152:21 229:22 235:16 277:4 286:11 424:16,17,21 424:24 442:24 455:1 463:13 466:6 468:18 once 13:22 14:15,22 15:14 40:3 52:5 54:7 64:7 263:7,9 263:21 397:8 397:19 399:1 435:3 458:23 468:22 493:16 514:16 519:24 520:5 one-man 422:4 one-meeting 485:23 One-third	128:16 one-year 351:22 OneDrive 29:24 ones 38:18 428:9 430:16 455:12 489:25 online 244:3 257:22 onsite 127:24 150:24 open 10:22 16:11,12 21:10 30:17 33:4 121:25 268:20 268:21 269:23 384:23 399:5 516:3 open-ended 198:14 open-endedly 415:9 opened 419:17 opening 3:3,4 14:3 39:9,17 40:1 42:15,18 267:21 269:22 475:2 opens 16:9 268:12 operate 228:13 240:9,11 400:20 493:5 operated 87:1 operates 89:4 277:8 operating 122:4 219:17 220:9 225:3 operation 57:22 76:20 115:21 115:24 191:18 221:16 288:12 483:12 operations 56:4 86:24 125:20 150:8 280:4 operator 42:3	54:21 55:14,15 56:3,25 57:2,4 57:6,15 58:9 58:13,14 69:1 74:16 88:19,22 115:11,16,22 116:2 117:19 118:1,2,8,23 122:9 123:14 123:25 124:1,3 125:19,25 130:16 131:11 133:7,8 158:1 158:3,5,16 159:2 168:13 215:7 216:3 223:16,18,21 224:1,4,23 228:5 253:1 437:25 457:22 457:24 458:6 463:8,13,13,14 463:15,15,17 463:23 464:1 471:10,14,17 471:23 476:9,9 476:25 477:9 477:17,21 478:13,15 481:11 492:8 492:15,17,19 492:22 493:6 493:11,25 494:3,3,8,11 494:13,14,16 494:17 496:8 496:11,14 511:2,2 operator's 224:18 225:5 493:18 operators 42:5 56:1,12,17,21 74:20 115:19 130:19 172:18 225:10,14 opinion 37:13	161:19 166:9 213:6,10 216:1 217:22 244:18 261:25 351:24 361:6 437:16 440:24 471:13 475:13 opportunity 13:15,17 14:2 15:1,9 27:24 45:7,10 184:1 184:3 187:13 192:21 367:11 415:8 448:8 450:19 467:18 473:21 513:21 oppose 28:17 opposed 434:5 opposing 367:11 opposition 452:22 option 51:20 101:12 228:11 360:17 473:21 options 51:16 59:2,18 60:6 order 15:12 41:8 48:18 54:15 57:3 74:10 118:16 121:2 134:10 171:15 175:22 176:10 179:3,16 180:23,24 209:1 214:10 247:11,22,23 248:9 257:25 258:10 262:8 269:17 271:9 287:9 305:8 346:15 366:3 368:5 369:10 385:10 403:20 451:8 456:24 471:17 478:13 485:1 494:1 520:3
--	--	---	---	--

orderly 415:17	overgrowth 53:20	P	134:4,18	126:10 343:15
orders 118:17	overhearing 423:20	P-I-E-R-C-E	135:23 137:6	482:4 504:4,5
Ordinarily 367:8	overlap 49:19	454:13 481:6	139:2,7,23	paperwork 41:7
organisms 53:6	71:1 185:7	p.m 186:16,16	141:2,17,23,23	paragraph 65:4
103:8	overlaps 70:19	186:19 301:16	142:8 143:20	125:23 126:2
orient 195:2	overrule 71:5	396:5,8 520:23	144:23 146:4	154:24 170:5
336:7	119:13 196:19	P.O 1:22	147:3 148:3,23	248:9,13,13
oriented 246:6	206:24 258:1	PACE 127:20	149:9,14 151:1	288:5 327:15
original 200:17	292:13 318:15	pack 129:17	151:9 155:2,21	327:16 357:8
207:4 240:13	386:11 404:1	519:17	156:16,20	375:20 387:5
240:16,23	overruled 71:24	packet 193:6	157:20 158:19	417:10 452:3
267:1 289:15	164:21 438:14	312:4 319:5	159:6,19 160:3	469:24 470:15
331:2	oversee 161:17	321:2 344:19	161:3 166:7	470:17
originally 105:9	overseeing 243:17	345:10,22,25	167:23 170:11	paragraphs
105:13 180:1	oversight 281:20,21,22	345:25 346:10	170:23 171:19	65:6 67:2
181:25 292:23	282:1	346:11 352:5	191:8 195:9	71:13
origination 287:7	overview 35:23	353:9 390:13	203:9 247:4,15	paralegal 2:17
outline 356:22	86:24	packet' 294:14	247:18 248:6	11:24 251:11
outlined 92:20	overwhelm 265:10	packs 129:9,17	248:10,10	parameters
110:20	owe 457:1	paddle 423:6	283:5,6,23	143:25 391:9
outreach 339:1	owed 132:17,20	page 3:2 17:17	284:1,10,17	Park 18:3 275:8
339:4	132:23 133:1	26:11 31:2	285:22 286:18	parse 165:17
outset 29:15	158:9 439:21	35:13 76:8,14	287:18 289:4	part 6:4 17:19
305:4 520:1	457:15	76:24 77:7	289:25 290:11	27:24 28:1,11
outside 45:5	owned 92:10	78:4,18 79:20	290:12 292:6	30:23 34:8
55:8 63:11	122:3 137:21	81:24 82:19	294:2 295:9,13	59:2 60:19
223:20 244:1	195:17 328:9	83:5,16 85:15	296:6 297:10	63:8 65:10
266:17 385:7	387:7 401:12	86:10,11,17	297:20 298:10	68:5,6,14 75:5
406:12 424:4	436:9,16	87:11,17,23	313:4 351:5,10	75:9 79:6,12
442:21 460:19	owner 54:21	90:16 91:8	353:20 354:13	80:11,23 81:14
478:4	74:16 76:15	92:4 93:15	354:16 355:2	87:25 89:21
outstanding 158:9	77:22 108:19	94:14 95:19	355:13,14,22	91:18,24 95:5
overabundance 53:18	131:14 161:9	96:24 97:17	356:25 378:20	99:8,17 100:23
overall 217:25	240:13 254:12	98:6 99:15	381:8,24	101:20 104:11
242:20 334:25	288:7 481:11	104:24 107:11	382:23,25	111:13 112:4
335:19 483:4	owner/agent 147:18	108:8 109:15	383:1 405:12	115:23 117:7
overapplied 53:15 102:8	owner/operator 55:13 68:21	110:1,10	407:13,15	118:17,19
103:17 104:2	79:16	111:11 112:22	416:16,17	120:2,20
overarching 311:13	oxygen 53:21	113:12,25	469:21,24	121:14 124:13
overcome 222:11		114:1,5,23	470:14,16	131:15,18,22
		119:21 122:12	472:13,25	133:16 137:2
		123:6,16 125:9	515:6	139:18 142:15
		126:6,13,24	pages 35:14	143:3 145:2
		127:8 128:1,8	157:15 193:2	146:7,23
		128:21,24	351:4,7 354:7	150:14,17
		129:21 130:23	354:13 521:13	151:8 153:6,14
		131:19 133:14	paid 40:11	153:25 157:8,9

159:8 173:22 174:1,21 175:13,17,23 176:15 178:25 180:9,10,20 191:16 193:1,8 193:11 199:13 200:11,15,24 205:25 207:14 208:19 219:15 226:15 230:18 231:17 232:10 232:15 233:21 235:18 236:5 237:14,21 238:14 241:20 242:15 243:19 248:21 256:16 263:13 266:9 266:18 284:15 285:1,11,18 312:19 320:11 323:9 327:15 332:13 345:8 345:14 353:3 354:23 357:13 358:7 360:9 366:25 369:20 384:1 390:16 410:18 411:15 416:1 443:1,3 454:17 463:4 471:4 474:25 478:7 499:7 500:23 501:25 505:12,13 512:7 partial 428:2 partially 244:6 246:1 participate 404:20 417:21 participating 18:4 230:2 participation 474:11 particle 264:3	particles 263:24 particular 23:1 23:17,21 26:5 49:7 52:4 71:15 157:14 165:11 183:22 185:2 235:20 240:4 314:1 320:8,20 414:8 434:4 457:10 457:11 481:24 513:12 particularly 23:14 403:24 462:1 parties 10:6,17 11:9 13:17 14:2,25 22:23 39:8 41:16,25 42:7 84:17 105:11 132:5 145:25 167:11 173:1 178:18 178:22 186:19 231:19 268:13 301:19 302:13 366:8 374:7 379:4 380:22 396:8,14 415:5 434:19 473:17 513:11 parts 5:23 50:23 58:21 129:7,15 496:4 506:8 party 224:13 303:18 352:5,8 367:9 414:7 498:9,10,11,12 498:14,16 pass 176:12 493:16 passed 174:18 494:20 passing 478:12 pathogen 53:2 66:21 73:10 79:2 80:24	81:14 99:9 101:13 173:12 173:12 175:2 176:5,12 199:15 235:14 235:17 265:17 pathogens 41:11 52:13 53:1 58:25 66:21 73:8 79:7 154:2 patience 366:1 Paul's 460:24 pause 179:11 291:15 pay 112:2,3,13 112:14 134:10 140:18 352:17 352:20 362:20 421:23 422:17 440:4 444:19 455:12 468:17 468:21 payable 115:2 117:13 paying 422:11 439:20 456:24 459:13,14 payment 110:16 111:1 113:7 115:1,15 117:18,25 118:2,2 121:2 127:7 134:1,25 135:18 156:13 193:8 287:5,13 287:15 293:12 293:17 296:17 296:25 299:13 339:3 343:14 343:17 444:15 444:16,17 456:19 468:15 468:16,20 475:20 491:22 510:2,3,5,6 payments 9:7	33:2 510:12 PDF 34:8 348:12 351:6 penalties 84:24 381:17 451:10 penalty 15:18 48:17 54:15 58:4 62:25 84:20 85:2,7,8 85:12 108:5 381:13,14 421:24 450:17 450:21 451:12 451:18 452:6 453:1 467:23 482:23 494:25 495:12,17,17 people 92:13 102:24 123:2 163:23 197:5 218:5,7 229:14 231:24 264:10 268:23 409:4,6 409:7,8 410:10 410:13 411:2 433:13 437:19 438:4 444:10 449:4 487:4 497:21 511:7 Peppers 4:15 percent 294:17 387:17 439:23 439:24 440:3 440:21,25 perception 214:12 peren 245:25 perennial 226:8 244:5,10,13 245:25 246:4 246:23 248:15 259:10 261:9 perfect 34:25 72:23 164:11 191:10 195:10 270:5 300:20 332:3 337:11	337:22 348:6 348:24 360:3 366:21 373:11 392:18 443:12 444:7 445:16 448:2 453:12 461:14 perfectly 268:15 269:9 368:15 392:10 perform 56:2 96:18 147:21 148:11 160:20 294:17 296:9 299:5 328:4 338:8 344:4 364:5 417:3,15 459:17 performance 120:12 334:21 335:15 336:2 338:10 364:8 364:10,11 performed 42:3 43:17 69:1 87:8 96:20 122:9 132:21 133:3 147:24 148:16 160:12 160:23 281:8,9 294:25 340:24 352:19 504:6 performing 58:9 77:8 88:21 289:9 319:11 335:6 353:6 period 15:8 28:12 83:24 95:13 102:24 182:6 457:25 463:9 475:23 492:23 periodically 305:3 permanent 55:10 262:19 permissible
---	---	---	--	--

45:22	personal 135:12	229:22,25	34:21,25 35:4	188:25 189:3
permission	164:23 166:10	238:15 423:6	35:10 36:4,22	189:21 190:3,5
253:15,21	168:21,22	484:9,11	37:15 39:5,13	190:7,25 191:1
437:7,8 477:17	169:15 292:15	pick 72:5 166:23	39:14 40:9,12	191:6,9,11
permit 89:10,16	337:20 340:2	186:11 272:13	40:16 42:14,16	192:4,8,14,15
90:6 155:7	403:8,21	300:8,16	42:19 45:12	193:4 194:17
191:21 196:21	444:25 446:1	301:10 306:5	47:9,12 62:5	194:19 195:5,7
200:1 224:22	personally	picked 72:19	62:17 67:24	195:8,11
225:1,8,11,17	122:14 291:23	271:23 347:24	68:3 69:4,6,7	196:15 197:1
244:2 248:2	337:19 444:9	picking 72:20	70:13 75:23	197:25 198:1
260:4,16,18,22	478:11	270:16	76:4 77:9,21	198:15,25
263:4,9,20	personnel 150:1	pickup 421:7	77:23 78:9,12	199:4,18,21
264:25 265:6,8	280:6	424:17	79:24 84:10	203:7,9,10,20
266:10,13	persons 44:3	pickups 409:6	86:20,23 87:5	203:23,24
433:12 489:25	136:8 220:23	picture 255:23	87:18 88:7	204:1,18 206:8
494:7	220:25 221:1	pictures 261:1	90:22 96:22	206:13,19
permits 89:10	229:25	piece 23:1,17,21	97:10,14,23	207:8 208:14
89:25 148:15	perspective 44:9	25:17 165:11	98:13,17 99:5	209:10,13
224:22	44:18 451:1	165:11 208:16	99:18 101:16	211:17,22
permitted	persuasion 13:9	230:4 237:12	105:16 107:2,8	212:4,14 213:6
303:17 336:25	pertain 187:7	238:11,16	108:18 113:21	213:10,21
337:1	pertains 147:23	252:25 450:15	115:3,14,25	214:22 215:5,8
permittees	206:12	485:10,12	116:14 117:23	215:18 216:9
91:25 92:9	pertinent 213:1	489:1 492:1,8	117:25 119:14	216:11,15,21
permitting	293:15,16	pieces 125:3	119:17 120:16	220:1 224:14
191:19 264:20	295:16	217:20 232:25	121:19 122:9	227:10 230:19
264:21	phone 76:16	238:6 243:1	122:14,18,19	230:21 234:6,9
persistent 264:7	289:21 423:19	piecing 484:20	123:21 124:2,7	234:13,17,21
person 4:18 7:13	438:22 439:1	Pierce 1:4 2:11	124:10 125:6	234:24 236:16
8:6 12:21 44:6	466:3	2:17 3:5,8,9,11	125:24 132:7	238:22,25
61:10,13,19,20	phonetically	3:12,14,15,16	132:14 135:1	242:6,8,11,15
61:22,23 66:9	12:6 27:20	3:18,22,23,23	136:10 142:21	243:16 248:3
66:16 78:14	photograph	4:2,16,19 5:13	143:7 151:25	249:17,21,24
81:3 95:5,6	227:5,7	8:4,19 11:1	159:4,17 160:1	250:5,9,13,20
136:8 173:4	photographic	12:8,9,10,13	161:18 162:1,4	250:22 252:3
181:6 189:22	261:14	12:13,16 16:4	163:1,13,20	252:10,12,16
189:23 191:15	photographs	16:5 19:20,23	164:16 166:25	254:21,24
191:24 220:1	178:9 207:12	19:25 20:5,12	168:8,10,17,22	255:3,6,9,13
224:3 229:6,21	258:19 261:16	20:22,23 22:17	170:2 172:12	255:17,21
231:3,7 233:3	photos 227:4	23:25 24:1,13	172:17,21,24	259:16,18
253:10 291:21	phrase 358:10	24:14,22 25:19	173:3 174:6	262:4,6 267:7
314:5 319:11	physical 59:6,15	25:23,25 26:18	176:20 178:18	268:15,19,24
343:17 441:15	60:13 102:4	26:22 27:10,14	178:20 180:2	269:3,9,19,23
441:17 457:24	220:20 251:5	28:2 30:4,11	182:23 184:17	269:25 270:5
483:3,12,17	351:5 501:25	31:5,18 32:1,2	186:6 187:21	280:11,14,16
492:5 501:24	physically 44:6	32:3,8,14,20	188:2,5,7,12	281:18,24
510:10	220:22,24,25	33:7,14,20	188:16,18,24	287:10 289:1

291:16,17,19	359:21,24	453:9,12,15,23	387:7 417:7	83:18 84:8,21
295:8 296:7,12	360:3,6 361:11	453:24 454:2,9	place 13:12	86:16 88:2
296:16,20,24	361:13,14,17	454:12 459:7	25:17 36:19	91:13 92:6
298:5 299:9,12	361:22 363:4,7	461:20 463:7	53:13 165:19	94:23 95:24
299:15,22	363:11,15	465:5,12 469:9	187:5 206:18	96:4,25 97:5
300:2,4 301:12	365:11,14,22	471:10,13	225:9 274:11	97:12 99:21
302:1,3,9,17	365:23 366:23	473:4,14,19,25	370:4 400:1	100:2,18 105:5
302:18 303:1	367:2 368:15	474:18 477:4,9	406:4 410:3	105:19 109:11
303:11 304:3,6	369:17,21	479:2,3,9,12	420:24 484:5	109:17 110:14
304:14,19	370:22 372:1,7	479:18 480:3	503:19 521:10	110:18 111:5
306:24 307:1	372:14,18,19	480:11,15,19	placed 375:1	111:17,24
307:15,19,24	374:4,14,17	480:22 481:3,5	placeholder 9:2	112:11,24
308:1,4,17,23	376:15,22	481:6,17	9:3,5 31:22,23	113:4 114:6,10
309:1,3,4,7	377:19 378:1,7	486:16,17,18	places 185:25	114:12,15,25
310:3,5 312:10	378:14,16,19	486:19 492:9	plain 6:3 34:7	116:15,19
312:18,21,23	379:14 380:6	495:23 496:3	35:2 190:5,13	117:11 119:23
317:12,15,18	384:3,8,22	498:6 499:1,16	191:8 220:19	120:9,22 121:1
318:8,19	385:24,25	500:21 511:18	234:25 492:4	121:12,18,23
319:19 320:2	386:3,9,18,23	511:23 512:14	plaintiff 435:17	123:12,19
320:18 323:11	386:24 387:19	512:17 514:3	plan 18:1,5,12	125:9 126:8,15
323:13,14,25	388:5,9,15	514:11 515:2,6	19:9 63:9	127:2,16,22
324:3,6,9,15	389:15,19	515:7,13,17,25	146:18 268:3	128:3,10,15
324:21,24	390:7,11	516:7,13 517:1	268:17 296:3,5	129:2,6 130:4
325:3,15,16,17	392:18 393:8	517:2,9,16,19	369:15 396:18	130:25 131:5
326:19 327:11	395:2,6,7	518:2,5,17,20	398:11 452:23	132:1,12
327:16,20,23	397:5,9,16	519:6,10,12	planned 87:2	133:19,24
328:15 329:6,9	399:5,6 401:2	520:14	planning 20:4	134:7 135:23
329:15,17,22	401:4,5 402:16	Pierce's 67:8	267:14 396:19	136:6,11
330:1,12,16	402:19 403:1	88:17 98:21	plans 28:11	137:11,16
331:6 333:8,11	407:24 408:5	100:9 115:10	plant 264:4	138:22 139:1
333:14,19,22	409:3 411:11	121:8 133:6	277:12	140:2,15
333:24 334:1	411:14 412:5,8	139:17 290:5	plants 53:20	141:10 142:9
336:8,10,12	412:11,15	294:4 295:4	play 212:14	142:18,24
337:12,15	413:5,20	297:4 317:1	446:25	144:9 145:6,10
339:18,25	419:23 420:4	380:13	played 458:1	145:12 146:10
340:9,11 341:5	422:10 423:1,2	Pierce/Adamas	513:16	146:16 147:8
341:9 342:9,11	426:12 427:17	342:23	players 218:23	147:12,19
342:12 343:1	428:7 429:11	Pierces 453:21	487:1 488:6	148:8,9 149:15
343:22,24	431:7,13,15	Pine 494:17,20	please 10:17	149:22 150:18
344:11,17,21	434:21 435:1,5	Pioneer 487:2	11:9 17:4 23:3	151:3,18,23
345:2,4,6	435:15,23	pipe 55:1 129:8	39:16,19,21	152:13,19
346:18 347:6	436:2,4,6	129:16 139:15	40:2 42:19,20	153:2,9,17,21
347:17,21	439:3 444:6	152:20 407:20	46:2,8,9,13	154:4,15 155:4
348:1,6,8,9,15	446:4 448:2,6	pivot 137:21	47:14,20 48:2	155:15 156:1,8
348:22,24	448:25 450:6,6	195:17 313:24	61:9,18 76:13	157:1,22 158:6
349:20,22	450:7 451:5,10	315:6,14 328:8	77:6 80:3,21	158:24 159:11
359:13,16,19	451:13,18	360:14,20	81:11 82:11	160:5,16 161:5

167:2 168:5,11 170:16,25 174:24 175:10 176:2 179:6 188:6 191:10 194:23 210:9 245:4,11 247:9 247:19 248:12 255:4 270:9 273:11,14 274:19 275:1 284:11 287:8 301:22 310:3 323:11 327:16 332:10 336:18 336:20 342:9 351:10 353:20 353:21 355:7 355:13 356:19 358:20 369:25 370:12,25 371:7 374:13 381:12 382:1 382:11,25 383:1,8 397:15 397:24 400:8,9 400:13 405:4 405:14 407:13 454:7,11 474:4 479:2 481:2 495:25 497:13 498:23 499:4 505:15 506:25 plenty 10:14 PLLC 1:3 2:12 5:10,13 10:25 97:15 117:13 131:8 147:16 302:3 362:6 461:24 plug 129:17 plugged 519:18 plugging 394:1 394:8 plus 112:2,3,13 112:14 462:16 podium 349:8	349:13 point 11:8 25:13 27:6,23 28:17 38:3,11,14 46:17 47:8 52:2 54:22,24 54:25 55:2,14 55:23 56:1,17 56:25 68:21 72:1 74:17 79:17 89:7,14 90:1,3 96:14 98:11,16 145:21 149:25 150:2,6,7,10 150:20 160:7 160:18 163:17 163:24 169:4 181:17 185:19 192:4 207:25 216:13 226:5 227:5 229:17 234:6,16 235:24 238:1 244:8 245:19 253:16,22 254:14 258:5 258:25 260:24 263:3,5 265:16 267:2 273:1 275:9 294:10 303:23 304:8 306:11 312:8 316:24 362:3 374:25 386:4,7 393:8 406:25 411:14 413:15 413:18 435:17 438:9 450:4,8 452:6 463:6 464:25 473:22 475:9 483:9,20 484:4 488:10 491:23 493:3 496:4 497:12 514:14 517:24 519:15	pointed 124:17 200:9 pointing 34:6 124:21 386:6 511:1 points 27:23 30:7 116:13 125:1 265:22 267:22 449:3 473:17 510:17 policies 146:21 285:8 357:10 policy 23:7 pollutant 55:21 80:23 81:6 101:9 175:1,8 177:15 182:2 182:17 223:3,8 263:17 pollutant,' 90:3 pollutants 55:23 89:14 90:1 136:14 382:5 pollution 332:21 441:9,9 pond 430:25 ponder 450:24 ponds 278:22 281:2,4 319:16 484:13,14 pool 422:20 population 92:12 385:4 porta-potty 400:21 portion 76:14 77:7 84:22 90:24 91:3,14 96:3 97:13 105:20 110:15 110:19 114:11 121:22 123:12 126:20 128:15 128:16 129:6 131:5 133:23 138:23 139:2,9 139:18 140:16	145:11 149:23 151:4,24 152:19 153:10 156:8 157:23 158:7,25 160:6 160:17 161:6 170:17 171:1 190:21 191:13 194:24 195:13 199:7,23 200:16 204:17 208:15 217:12 218:13 229:4,9 229:19 243:24 302:20 314:17 314:21 315:1 332:10 334:11 334:19 335:13 336:21 337:24 363:21 373:1 386:10 387:2,9 429:20 portions 86:17 87:17 88:3 94:6,22 100:2 113:4 123:18 130:4 132:13 137:17 146:17 147:13 148:9 413:17,19,23 445:25 473:6 473:10 position 19:14 20:20 38:8 42:6,7 48:2,4 72:13 91:4 93:5 121:25 206:14 275:16 275:24 303:8 304:12 334:7 458:6 462:11 492:18 493:5 512:17,24 possess 471:14 possession 68:9 181:4 383:11 491:6	possibility 208:3 381:19 possible 16:20 35:8 208:11 209:6 212:6 220:8 222:6 223:22 224:11 271:5 312:14 386:5 438:6 498:22 515:22 possibly 268:9 511:1 Post 127:23 post-haste 347:23 post-hearing 15:9,11 39:4 164:14 214:18 520:2 post-Sackett 38:16,21 post-tilled 407:3 Postal 132:24 postpone 12:19 70:23 potency 441:12 potential 41:12 52:9 66:21 75:11 84:15 103:12 293:17 295:16 potentially 52:6 103:7,13 258:1 402:22 491:4 POTW 42:5 88:18 89:1,1 92:15 115:11 115:22 130:15 130:19 133:6 158:15 172:18 243:25 279:9 279:18 280:2 POTWs 92:10 92:12 power 240:20 459:25 460:1 466:14
---	---	---	---	--

PPLC 86:19	prefer 46:20,25	150:15 154:1	presented 24:24	312:7,12 313:5
practicality	preferable	161:11 173:10	31:1 86:23	313:11 326:6
367:6	257:20	183:12 199:1,2	presenting	326:12 329:9
practice 26:11	prehearing	199:13,17	13:10 43:3	334:3 343:23
339:22 346:9	17:15 22:6,13	200:12,14	preserve 14:20	344:1,2,14
353:15 478:21	28:8 30:23	215:4 216:6	180:15	345:2,11 346:2
505:17,19	31:16 32:19	228:10,17	preside 10:12	360:15 434:23
506:11	93:23 501:1	229:18 230:7	president 96:7	474:8 515:1
practices 52:15	prejudice 70:10	231:17,20,21	462:20	prices 310:23
53:10,12 59:10	Preliminarily	231:23,24	Presiding 1:11	319:10 345:16
59:11 60:16	12:15	232:2,17	pressure 427:9	345:18,24
73:11,15 74:5	preliminary	242:15,18	presumably	346:12 354:10
75:14 79:4	256:10 295:19	253:11 501:21	68:10	pride 236:23
99:12 102:4,5	481:8	preparers 63:19	presumed 90:5	primacy 277:16
103:15,20,22	prep 149:24	65:7,12,24	pretty 15:20	339:5
103:25 104:17	195:19 328:11	67:2,18 68:25	69:11 104:10	primarily 87:9
201:2 233:6	prepaid 433:15	69:23 70:2,6	206:8 234:9	198:4 228:20
235:19,20	433:21	74:14,19	235:1 392:2	276:17 279:14
384:9 412:6	preparation	100:21 101:1,3	429:19 483:1	281:22
504:10,14,24	10:15 40:6	101:6 102:13	485:18 488:7	primary 44:24
505:6,11,17,22	59:15,19 112:5	185:6 229:14	492:5 514:20	160:8,15
pre-constructi...	112:19 153:14	242:8	prevent 41:8	278:12 294:11
96:11 97:7	162:3 198:5	prepares 61:10	87:20 163:16	295:3 375:16
131:3 218:22	358:17 404:20	61:19,22 81:3	prevented	470:8 486:23
294:20 408:14	431:1,2 500:23	95:5 231:3	459:13 513:4	prime 170:21
487:8,12,16,17	prepare 59:13	preparing 88:5	previous 36:10	199:25
488:4	288:1 352:25	141:4 230:3	93:1 128:21	principles 44:17
pre-disking	353:1	501:25	134:15 137:6	prior 29:6 58:2
416:9	prepared 16:24	preponderance	151:9 168:18	60:18 85:4
pre-file 84:18,22	22:2 38:15,20	41:19	170:5 194:20	194:2 197:8
86:5 90:13	42:10 63:6	present 2:15	221:25 279:25	205:24 221:17
451:17	172:21 177:21	10:6 19:2,21	360:7 375:7,7	228:15 236:10
pre-filing 84:9	179:1 300:9	22:24 28:4	404:9 408:7	318:7 327:1
84:12,13	348:3 366:20	29:1 48:8	previously 22:3	341:25 404:21
122:19	369:15 512:8	56:14 73:8	30:12 204:14	462:7 465:4
pre-tilled 407:2	514:5	86:21 104:11	221:13 222:5	479:21 487:13
pre-tilling 406:4	preparer 57:25	122:20 162:13	222:13,20	495:8
Precip 258:22	58:23,24 60:7	179:2 186:19	241:14 280:19	private 423:23
precipitate	62:2,10,13	235:15 254:5	311:20 315:7	privy 203:2
263:12,14,23	63:2,6 64:21	301:19 321:21	325:25 327:5	221:10 331:13
precipitation	65:5 67:4,10	396:8 397:4	328:23 354:4	pro 2:10 12:16
258:14 259:2,8	68:8,9,16 69:8	439:12 512:24	363:3,16	12:20,21 13:1
precise 44:1	70:14,16 71:3	presentation	466:17	42:21 452:18
precluded	71:7 72:9,14	13:24 366:11	price 9:13	457:19
173:19	74:23 75:4	367:17 398:6	298:17 299:1,3	probably 12:20
preface 257:18	100:12 101:22	435:4,18	310:20,25	60:12,14
264:19	131:11,17	511:21	311:4,14,16	162:10 182:6

192:23 201:25 227:4 234:22 237:13 253:19 259:8 264:10 265:5 267:18 278:11 300:6 378:11 403:18 446:19 451:7 457:16 458:10 464:10 487:13 487:15 507:25 problem 21:17 82:7 269:14 324:1,9 368:12 389:20 426:12 517:23 problems 474:21 procedures 10:19 86:25 146:21 285:8 357:10 proceed 19:11 96:7 366:19 368:4 369:23 398:4 399:18 proceeding 12:16,20 13:1 14:24 20:10,22 21:3 36:11 43:6 162:11 164:7 396:20 452:18 proceedings 1:7 3:2 10:7 17:3 41:15 44:19 45:11 165:15 179:11 186:20 301:15,20 303:9 396:9 520:22 process 12:25 13:20,21,25 16:3 20:17 51:12 121:2 150:17 176:14 180:6 193:8	201:15 217:6 242:18 265:24 303:19 331:8 344:22 367:15 368:16 374:3 397:15 403:3 403:10,22 431:1,1,2 442:25 454:17 493:19,20 processed 57:24 79:9 180:21 317:5,8 processes 401:16,18 processing 180:18 produce 42:8 65:10 67:16 93:6 506:21 515:16 518:3 519:6 produced 287:21 328:22 producing 328:20 500:24 501:14 506:14 514:9 product 326:16 428:13 production 400:18 products 91:20 professional 118:8,11 132:15 177:3 244:18 professionalism 519:22 program 50:5 55:17 77:18 89:16,25 276:13,15,16 310:13 314:8 322:11 340:15 358:23 488:2 programs 50:25	prohibited 160:13,24 295:1 project 40:11,14 40:22 41:22,24 45:1 49:12 60:10 62:4 78:10 98:22 99:2,23 100:10 110:24 112:18 113:9 114:14 120:18,20 121:8,10 125:19 126:22 127:19 131:9 131:12 132:22 133:11,12 134:1 135:20 138:9 139:19 139:20 142:22 142:23 144:18 144:22 145:14 146:2,15 148:19 149:20 152:1,1,3,8,9 154:9 155:19 158:8,12,15 160:9,13,15,23 161:15 170:19 171:9 192:17 192:17,18 193:6 194:13 200:1 218:23 230:3 243:4 253:13 279:2,5 279:10 280:22 280:25 281:8 281:10,16,20 281:23 282:12 282:13 284:23 285:12 286:15 292:10 293:2,5 293:9,16 294:12 295:1,3 295:7 296:5 297:5 299:11 299:17 311:7	311:11 318:7 320:17,19,20 320:22,23,25 321:8 334:24 335:18 338:2,4 338:4 340:17 342:13,14 351:15,20 356:21,22 357:19 358:2 358:17,21 359:5 360:9 362:7,15 363:24 364:1,2 364:16 373:13 380:3 384:6 388:7 390:13 390:21 391:10 391:16,18,20 391:23 393:16 393:21 401:15 402:7,25 404:19 407:22 409:2 417:14 420:7,11,13 423:4,25 424:2 424:8,10 425:4 429:12 431:10 431:17,20,23 431:24 432:1,9 434:5,12 435:7 438:15 445:5 454:19 455:7 455:16,18,23 456:14 457:2 458:11,19 459:3,6 460:23 462:4 468:2,5 470:7,12 471:1 472:10 474:11 474:25 475:20 481:24 482:2 484:8 487:1,14 487:21,22,23 488:7 490:3 491:2 496:18 496:20 497:1,3	497:4 499:2,3 499:11,16,17 499:23,25 500:6,11,13,18 500:23 502:9 502:19 503:1,7 503:9,12 504:4 504:6 507:9,10 507:14,15,22 507:25 508:4,5 508:16,24 509:3,9,15,16 509:22 510:3 511:4,5,8 project's 314:20 Project.' 296:11 297:1 298:20 projected 271:14 projecting 272:6 272:12 273:7 273:10 projection 305:15 306:4 324:14 projector 82:15 90:11 192:5 255:2 projects 87:2 175:15 275:20 276:17 278:9 290:9 298:6 310:10,12 311:9,13 345:10 403:2 436:8,11 437:22 455:20 458:15 459:16 460:12 464:9 464:21 470:11 470:12 474:12 475:2 476:5 487:24 494:10 508:17 509:12 509:14 prompted 433:1 434:10
--	---	--	--	--

promptly 331:19 376:4	377:7 444:10	315:10 318:10	215:25 427:1	144:20 472:23
prong 450:16	Protectin 5:22	318:24 319:13	475:9	push 271:18
pronouncing 12:5 76:3 270:7	Protection 2:2,6 7:8,16 11:14	379:20 442:2	pulls 427:2	put 45:7 118:18
pronunciation 449:6	11:19,20,24	488:1	pump 130:9	184:5 185:10
proof 210:6,11	21:13 35:25	provides 61:20	133:2 419:10	190:14 192:5
proper 148:13	38:12 40:4	66:6 310:13	427:16	192:22 225:9
148:21 208:20	143:2 146:23	providing 28:6	pumped 100:3	243:18 245:4
458:18 461:3	277:17 284:14	221:19 279:3	150:23 153:11	253:7 257:5
509:4	285:10 332:13	288:23 291:25	171:3,3 282:17	346:1 349:7
properly 196:3	357:12 370:19	proving 19:16	286:6 322:17	388:24 392:22
430:11 458:19	499:7	provision 65:22	338:12,14	392:25 394:19
512:12	protocol 475:16	184:14 224:24	364:13 404:4,6	404:4,7 411:3
properties 336:25	prove 95:1	225:12 452:5	427:14 455:1	417:19 451:7
property 76:15	176:21 209:21	provisions	466:18 470:20	451:14 455:15
76:19 147:24	proved 505:14	110:21 191:16	470:20 484:14	459:5 468:19
161:8 182:16	provide 22:4	public 1:21 5:13	pumping 100:5	476:24 477:16
222:14 237:12	36:8 43:4 44:3	61:12 74:1,6	112:1,4,15	484:13 504:2
254:9 288:7,11	44:11 47:19	75:18 81:1	113:5 152:23	509:3
319:7 326:21	48:9 60:8	102:15,15	153:13 156:11	puts 258:15,23
328:24 339:17	61:13,23 67:13	107:19 175:5	253:3 286:11	putting 40:7
371:12 374:19	67:15,19 68:22	178:4 244:24	287:6 417:4,16	425:6 430:25
374:25 375:4	74:24 84:14	249:24 255:19	417:22 418:16	453:4
375:11 377:7	85:11 106:4,17	277:22 312:12	424:11 440:19	PVC 129:7,8,9
385:6 386:15	166:8 172:7	384:24 385:16	pumps 56:7	129:10,15,16
401:11 410:5	173:16 192:10	516:10 521:7	87:21 152:20	129:16,17
421:10,14,16	200:3 221:21	521:20	purely 213:7	
423:11,21	231:12,14	publically 92:9	214:15	Q
426:2 444:10	232:4 233:16	346:24	purports 35:24	qualification
461:2 485:2	233:19,20,22	publicly 244:3	purpose 36:2	317:2
488:20 500:2	240:3 250:2	245:1 249:10	214:5 265:8	qualifications
504:3	276:8 281:19	249:23 250:1	266:9 277:21	476:10
Property.'	288:15 375:22	257:4 258:16	277:22 283:14	qualify 92:15
296:23	376:10,12	344:25 347:8	297:17 314:8	319:23
Proposal 4:5	376:10,12	350:16 515:11	314:11 319:4	quality 49:9
7:19	383:13 400:13	518:1 519:8	345:20	59:20 131:16
propose 395:19	405:1 454:23	publicly-owned	purposes 16:13	204:19 263:18
proposed 30:12	473:24 483:15	42:4 57:11	47:2 63:13	265:3 332:15
30:13 31:15	489:10 490:11	278:16 279:9	103:20,22	332:19
32:19 62:24	490:15,17	published	212:22 315:8	quantities
313:21	508:19	344:24	319:3 367:6	315:12 330:5
prospect 472:4	provided 68:10	pull 46:12 65:19	448:9	346:12 353:10
protect 155:10	68:11 95:1	80:2 119:15	pursuant 41:1,5	353:16
	105:22 197:2,5	230:19 254:21	110:20 131:23	quantity 345:18
	218:24,25	283:5 377:13	137:3,7 138:24	quarter 267:13
	219:3,7,10	380:8 427:4	299:4,6	question 18:6
	241:17 242:3	516:6 518:1	pursue 493:4	37:9 43:5
	281:21 299:7	pulled 64:15	purview 119:17	44:10 45:15

47:9 69:11,12	questioning	113:14 122:13	217:12,15	88:2 89:24
99:1 105:24,25	47:4 209:11	190:23 271:1	218:1,3,9,10	90:23 91:2,13
115:5,19 116:1	399:9	342:24 349:16	218:20,23	94:22 96:3
116:5,12	questions 13:4	351:3 380:9	219:14 222:7	97:12 100:1
124:24 179:7	16:3 17:9 24:3	434:19 451:15	233:3 235:8,18	105:19 110:14
183:7 184:11	86:22 99:6	514:16,19	235:23 237:7	110:18 111:24
194:20 196:15	106:25 124:14	quiet 291:9	237:18 241:15	112:10 113:3
196:21 198:14	163:18 164:18	Quintin 470:1,3	241:16,23	114:10 116:19
198:16 207:18	179:13 181:14	quit 422:13	242:6 312:3,4	120:9,21
210:10 211:23	184:22 188:3	quite 216:11	315:6,21,22,24	121:22 123:11
211:24 212:1,2	204:11 206:11	244:14 393:5	316:3,5,10,14	123:18 125:11
212:17,18,24	214:23,24	510:9	316:16,17	126:20 127:15
213:7,14,20,23	234:14 236:17	quote 441:10	317:21 318:10	128:14 129:6
214:16,21	239:12 249:8	474:23	318:11,12,21	130:3 131:4
216:13 217:4	252:9,11 300:1	quotes 294:16	318:22 319:7	132:12 133:23
228:25 234:3,5	310:7 344:12		325:21 328:8	135:5,12 136:6
234:15,20	359:10 367:20	R	328:14 329:5	136:11 137:16
238:20 251:13	370:24 372:12	R 1:1 521:2	329:13 372:1,5	138:22 139:1,9
254:16 255:10	379:5 384:20	R-O-B-I-N-S-...	372:16 373:3,5	140:15 142:18
256:5,10	387:24 388:18	371:9	373:8 379:20	142:24 143:20
295:20 299:22	394:24 397:8	rainfall 258:17	380:14 382:4	144:4,8 145:10
316:19 317:1,3	397:20 415:7	raise 238:21	411:4,4 440:18	146:16 147:12
317:10,13	415:12,21	274:12 370:5	rate-wise 319:2	147:19 148:8
318:17 319:22	420:1 432:3	480:21 511:13	rates 172:7	149:22 150:18
320:20 326:7	434:20 435:6	512:1	218:16 221:8	151:3,23
329:3 330:23	443:10 444:7	raised 93:23	288:16 315:18	152:18 153:9
339:23 340:5	449:21 452:16	243:22	317:8 319:12	153:17 154:4
358:11 363:13	453:21 467:19	ran 259:2 429:8	329:21 331:4	154:22 155:6
366:22,25	469:5 474:14	484:13	383:22 408:10	155:15 156:8
367:8,24	479:10 495:23	ranch 446:18	504:19	157:22 158:6
370:20 374:14	496:6 507:1	rate 53:14 59:12	Raymond	158:24 160:5
379:23 380:8	508:9 511:16	60:21 75:15	494:17	161:5 166:6
380:13 382:1,3	520:10	79:4 92:11	re-agitate	168:5 169:1
389:16 392:20	quick 17:12 30:6	99:10 102:6	427:17	170:16,25
398:10 399:2	82:2 93:16	106:15 136:13	re-cross 434:22	172:4 174:24
401:23 402:3	113:22 195:6	136:18 137:20	434:23	189:5 190:15
402:22 429:19	203:21 310:7	140:21 173:18	RE-DIRECT	190:20 191:12
434:1 447:24	319:15 329:2	173:21 194:21	431:4	194:23 195:12
456:11 469:3	341:7 345:9	195:16,22,25	reach 223:3	199:22 204:12
476:9 478:10	347:2 356:21	196:4,6,8,23	300:13 453:1	204:17 208:15
479:22 482:15	366:3,22	197:3,5,12,16	490:10 495:16	234:25 248:12
499:12 502:21	375:13 379:22	197:23 201:4,6	reached 472:20	284:9 285:5
505:15 507:6	429:18 444:7	201:17,18,21	read 23:9 61:6	286:4 287:3
questioned	456:11 474:16	202:15,15	61:18 76:13	288:5 289:7
367:9	476:8 480:12	208:18,21	77:6 80:21	294:8 295:18
questioner	507:4 516:5	209:2,14,17,22	81:11 84:21	295:23 298:1
480:7	quickly 113:13	210:5 211:4	86:16 87:16	298:12,23

313:3 315:16 327:7,14,18 329:5 331:16 332:9 334:10 334:18 335:12 336:17,20 337:23 351:10 355:24 356:6 356:17 357:7 357:16 358:9 358:12 362:2 363:20 373:1 381:12 383:8 387:2,9 405:11 405:14 407:16 412:18,19,20 412:25 413:12 413:17,18,23 414:1,3 416:1 416:2,25 429:19 470:2 470:18 473:2 473:13 474:6 497:12 498:23 499:4	real-time 37:20 realistically 331:10 385:16 reality 417:14 realize 26:16 390:18 452:21 473:16 485:11 realized 182:1 really 14:7,20 15:5 28:23 29:12 36:1 37:25 38:8 60:14 94:4 103:10 119:7 163:17 164:3 165:6 181:12 185:17,17 186:6 213:4,19 215:15 237:21 238:20 240:5 263:16,20 269:14 306:3 308:7 311:8 316:22 317:9 341:18 349:1 349:16 357:15 378:12 397:2 448:9 479:22 490:24 495:1 509:22 511:6 514:20 516:3 realm 208:3 reason 37:18 116:10 184:19 264:11 308:8 319:21 391:8 421:13 reasonable 228:21 229:6 399:10 reasons 28:16 432:24 rebuttal 435:19 511:24 recall 86:1 196:23 236:14 293:14 310:24	312:5,7,13 314:15 315:8 322:5,14 323:3 323:10,19,24 326:22 393:4,6 396:23 454:21 501:17 recalling 452:2 Receipt 5:11 receive 48:5 83:22 86:4 93:9 99:1 102:11 103:4 117:18 137:18 195:14 200:21 201:22 203:14 207:9 219:13 219:16 233:4,5 233:10 241:9 322:7 326:20 328:5 371:25 372:5 374:24 383:5 received 41:3 49:1 50:9 77:4 83:7 86:1,3 88:14 95:14 98:17,19 99:5 99:18 101:16 101:20 110:7 111:14 113:1 117:7 131:23 138:24 141:8 142:6 145:3 151:15 153:7 155:23 156:23 159:9 167:11 176:19 178:13 194:15 198:7 198:24 200:24 201:1 202:1,20 203:1,5 218:9 218:17 229:15 233:9 241:6 242:5 298:4 350:20 490:16 504:19 506:14	receiving 150:22 227:7 278:2 recess 64:13 82:9 186:14,15 188:21 239:8 273:24 300:13 301:9 325:10 369:6 390:3 396:4 453:18 516:23 recessed 186:25 301:15 reclamation 61:12 81:2 175:5 178:5 recognize 12:19 44:20 61:3 76:10 80:6 84:5 85:17 89:21 90:18 94:16 95:22 97:3,21 105:2 107:15 108:22 110:12 135:25 136:25 138:16 139:25 162:6 162:15 167:25 169:13 185:4 190:8 204:2 247:6 283:9 284:2,20 285:24 286:21 287:20 290:2 297:12 325:22 336:14 337:7 354:6,18 356:10 357:3 361:7 372:17 372:20 382:13 405:6 416:19 452:22 469:9 472:15,17 recognized 337:3 recognizing 66:25 71:12 335:22 367:4	recollect 392:6 recollection 77:3 109:21 134:12 194:11 214:24 344:25 347:7 390:19 428:12 486:7 recommend 214:10 216:25 recommended 146:19 209:17 reconnect 308:18 reconvened 186:18 396:7 record 4:14 8:3 10:9,18,22 11:10 12:18 14:8,14,24 18:24 19:15 23:18,19 25:15 29:15 34:19 40:21 45:8 47:2,20 63:14 64:3,14 82:11 93:19 94:1 98:15 124:18 161:13 162:9 164:7,10 165:5 165:12 167:19 172:1 184:6 186:21 187:14 188:22 193:12 196:11,16,17 196:20 237:25 239:9 244:23 249:24 250:6 270:20,22 271:2,9 274:1 286:18 290:17 292:1 301:22 312:12 325:6 325:11 349:2 351:3 369:7 370:14 371:7 378:15 379:17 390:5 396:11
---	--	---	--	--

396:12 411:25 412:2 450:8,11 452:13 453:19 470:15 473:5 473:13 481:5 482:8 496:5 503:5,7 506:16 506:20,23 512:2,6,7,11 513:3,5,6,25 514:16,18 515:21 516:3 516:24 518:9 518:25 519:7 519:16,20 520:18 521:13 recorded 272:5 recordkeeping 58:17 62:15 66:19 70:1 72:15,25 73:16 73:19,24,25 74:8,11 79:12 80:12,14 100:22 104:7 136:20 153:23 154:1 173:6,14 173:21,25 174:3,10 179:4 182:13 183:13 221:24 222:25 230:4,15,24,25 232:9 237:15 241:11 384:4 411:15 494:6 501:15 records 40:24 41:1,4,10,18 42:8 44:12 58:25 60:9 62:3 65:10,21 66:8,13,15 67:11,13,15,16 67:19,21 68:20 68:22 69:3,15 69:16 70:7 71:2,15 73:14	73:18 74:15,21 74:24 75:7,13 78:9 79:15 88:11,12,14 93:3,7 95:12 108:1 122:16 122:18 167:11 171:14,15 173:5 182:8 183:23 184:13 185:2 198:4,5 200:15 202:8 228:15 230:3,9 230:10,12,13 230:15,17 231:25 232:11 232:20 235:10 235:11 253:25 288:21,23 289:1,3 353:3 383:11 384:9 384:13,17 411:18,18,21 411:23,23 412:5,8,12 433:23 441:18 441:21,23,24 454:23 465:23 471:17,22 483:18,21 488:9,23 489:1 489:17,22 490:1,6 491:3 491:9,24 492:1 492:2,2,6 500:24,25 501:14 502:25 503:3,4 504:9 504:13,24 505:4,10,18,19 505:25 506:4 506:14,21 516:10 recovery 118:7 recross 3:9,12 3:15,16 13:18 RECROSS-E...	252:15 360:5 384:21 390:10 rectangle-sha... 426:22 rectify 45:7 recurring 164:25 168:20 Redelegation 7:6 Redgrave 9:10 33:18 337:17 363:1,17 redirect 3:9,12 3:15,16,19 13:18 239:1,3 239:10,14 346:22 350:13 381:1 388:3 473:22 507:6 reduce 59:25 103:6 reduced 14:18 29:3 reducing 87:19 reduction 59:1,6 60:13 79:3 81:16,18 85:12 99:13 101:11 102:3 103:5 235:15 238:11 238:14 265:16 265:17 386:4 412:9 506:11 refer 34:21,22 63:19 94:5 112:8 195:1 249:20 250:11 250:13 345:1 347:4,9 reference 45:21 155:12,13 293:19 323:20 341:13 344:13 492:15 referenced 86:14 200:1 311:10	references 62:23 63:1 67:1 68:7 71:6 100:9 referencing 158:22 173:2 referral 75:25 referred 172:11 249:9 288:18 344:15 377:16 487:8 referring 77:23 77:24 301:1 378:6 401:8 408:13 418:12 refinance 456:22 reflected 506:15 refresh 171:23 344:24 347:6 refuse 422:14 refusing 172:7 288:15,21 refute 304:9 refutes 206:22 regard 14:13 21:21 22:25 23:7 24:21 27:7 34:24 65:18,20 68:7 71:15 165:2 187:15 293:8 368:5 369:10 399:12 437:18 451:12 452:6 476:9 481:8 484:7,21 485:9 490:23 494:2 494:22 495:7 511:21 513:13 regarding 35:25 43:4 95:2 229:4,8 277:19 284:22 292:9 298:5 323:1 338:11 339:8 364:12 373:16 383:11 386:21	417:16 regardless 68:8 69:19 79:15 232:11 237:2 242:17 483:10 regards 316:8 regime 177:11 region 2:7 7:7,8 7:16 11:10 13:6,13 16:6 17:17,23 38:9 38:17 47:25 48:3 50:6 54:3 75:22 76:1 77:14,14,14,15 83:20 85:23 94:20 102:7 105:7,14 141:15 162:13 193:24,25,25 194:4,12 207:5 227:6,6 382:17 492:16 Region's 13:20 366:11 regional 2:5,6 290:4,22 292:8 294:5 370:18 regions 167:16 registered 225:14 462:15 regs 63:18 regular 241:20 regularity 393:15 regulate 51:23 regulated 52:1 55:5 56:25 58:13 239:19 regulates 41:8 55:22 regulation 38:7 49:19 69:13 75:3 91:6 96:16 104:22 177:14 178:2 183:16 243:19
--	---	--	--	---

regulations 6:6 38:18 40:15,24 41:25 42:2 45:20 48:19 49:15,17,22,24 49:24 52:12 58:18 59:3 60:20 61:4 62:16 63:7,7 65:11 66:24 67:10,17,21 68:18 70:20 71:20 74:25 80:7,10,12 89:22 92:19 93:7 100:25 103:21 106:21 136:19 137:23 143:6 146:25 151:7 153:15 155:9,19 174:22 175:13 178:25 190:15 190:15 192:1 195:19 199:14 237:14 266:24 277:19,25 284:14 285:18 328:10 332:18 333:1,3 383:25 384:1,5 387:12 410:18 430:14 496:22,25 499:6 503:2 511:9,10	335:11 345:16 345:19 353:12 356:5 357:21 357:24 362:17 reimbursement 276:9 281:12 282:5 311:10 311:12 313:14 313:17,18 331:4 333:4,6 334:5 335:9 343:10,12 344:5 345:15 352:14 353:13 354:10,24 356:3 357:23 362:12 364:17 364:20,23 365:5 reimburseme... 310:18 reiterate 484:8 489:11 reiterated 131:6 294:21 362:4 488:11 reiterating 362:23 rejected 500:14 503:14 rejoined 308:13 relate 66:15 67:5 341:25 related 193:6 341:1 346:12 379:25 relates 64:22 257:12 415:14 435:7 486:20 493:21 relating 488:18 relation 43:18 177:25 200:5 261:10 345:12 456:8 relationship 77:20 108:17	131:8 153:22 210:17,18 276:2 362:6,14 362:24 454:15 relative 116:9 507:22 relatively 55:9 175:18 177:24 262:18 relaxed 397:2 relay 322:9 release 365:17 449:24 released 395:3 399:4 relevance 23:12 37:7 62:6 68:7 69:18 248:4,6 317:25 318:8 385:22,24 relevancy 71:4 71:25 386:1,3 relevant 36:2 37:10 46:22 100:25 166:2 174:10,21 177:14 213:18 245:8 296:2 339:23 356:2 385:22 415:2 reliability 43:8 165:4,7 212:7 reliance 165:20 relied 244:21,24 relief 108:4 rely 43:5 75:3 256:18,23 257:7,22 258:2 259:24 260:12 relying 237:11 259:7 remain 20:21 21:7,19 148:12 170:21 303:21 470:8 518:8 remainder 398:7	remained 503:8 remaining 33:25 120:25 396:19 440:2 remains 31:23 remarks 14:4 remember 70:21 184:18 184:19 318:18 350:17 362:25 363:3 373:12 392:20,22 393:14 412:16 421:22 485:25 507:18 remembered 323:21 remembering 124:17 187:4 remind 153:21 305:4 307:21 reminded 504:16 reminder 105:11 remitter 134:8 remoteness 386:8,9,14 removal 7:19 40:22 41:21 60:9 77:9 88:6 96:8 97:7 110:24 112:18 113:8 120:13 120:17 125:17 131:7 132:18 133:10 134:1 135:19 144:18 146:2 148:19 150:5,14 152:1 158:8 162:2 227:17 280:20 280:21 281:15 282:14 286:15 287:14,16 289:10 299:5 299:11 313:9	320:21 321:8 334:22 335:1 335:16,20 336:3 342:13 358:4 362:5,10 362:14 401:9 417:4,22 454:19 496:17 499:10,17 500:5,22 Removal.' 296:19 remove 127:20 150:8 281:18 282:16 287:8 427:10 440:5 removed 140:19 151:5 289:15 298:18 345:18 417:18 439:23 477:8 removing 280:25 417:16 484:22 Renner 2:7 renovated 375:8 renovation 338:4 364:1 487:21 rental 400:21 repair 130:8,9 132:24 repaired 508:18 repeat 169:23 210:10 228:24 302:4 318:17 339:11,13 372:4 397:15 repeated 19:1 repeatedly 40:12,16,20 41:20,24 42:1 42:4 repetitive 23:13 rephrase 216:13 222:19 224:16 317:16 318:16
--	--	--	--	---

318:17 328:21	95:4 210:25	108:25 109:6	495:14 516:3	173:14,25
354:5 402:3	277:13 308:8	109:12 110:7	required 40:23	174:3,10,11,12
491:18	494:7	110:16 117:8	40:25 41:4	174:16 175:3
replace 53:7	reports 48:5,6	120:4 131:24	42:8 54:19	176:5,11,15,16
replacement	155:8 288:1	133:17 136:4	66:23 67:11,13	179:4 183:12
51:19 223:15	494:19	137:4,8 138:24	67:21 68:19,21	183:13 210:25
reply 15:13	represent 40:4	152:3 157:12	68:22 69:2	222:25 231:18
report 4:10 5:7	45:10 134:13	199:6,8 200:2	70:14 74:15,19	232:9 237:15
7:22 54:6,14	representation	200:7 202:2	79:14 93:6	241:11 243:19
77:4,11,17	256:2 257:9	207:8 221:5	101:6,8 106:21	277:14,25
78:6 85:21	351:19,24	228:19 229:2	107:2 154:1	278:1,3,5
86:2,4,14	representations	229:11 235:3	155:8 173:22	285:9 296:10
87:14,25 88:14	204:16 507:9	236:1 241:7	175:17,20	332:12,20
88:17 89:3	representative	242:23 283:15	176:16 191:21	351:21 353:5
92:25 93:3	86:20 193:19	287:5 296:18	224:18 225:9	357:11 384:4
128:17 172:2	303:18 408:21	304:14 346:24	230:7 316:9	392:11 411:15
178:9 226:25	439:11	377:3,6,14	326:4 338:8	488:11,14,23
227:2,11	represented	398:4 404:23	343:13 353:2	493:13 494:6
253:21 260:21	83:11 122:21	405:10 414:1,3	364:5 454:24	501:15 508:19
287:21,23	158:4 334:23	443:6 444:9,12	455:12,21	requirements.'
288:4 314:4,6	335:17 408:24	444:13 490:9	456:19 493:9	96:16
314:14 339:7	420:9 491:21	490:16 506:15	505:11	requires 89:25
339:10,16,19	representing	506:22 510:11	requirement	229:23
339:22,24	11:14 17:23	510:12 515:10	54:5 73:16	requisite 471:14
351:11,13	90:22 143:17	requested 44:2	75:6 81:18	471:21
353:5 445:10	159:25 163:7	83:23 93:4,10	92:25 173:22	reread 65:1
445:12 509:20	303:7 370:18	94:24 95:13	176:25 180:20	reschedule
reported 260:22	405:23 407:25	101:18,25	182:13 223:6	12:19
521:11	408:5,23 498:2	155:7 200:3	224:21 230:4	research 212:21
reporter 29:23	represents	232:23 356:22	230:10 326:13	213:15,20
34:1 72:22	166:9	442:1,3	326:17 478:12	214:18
93:25 129:11	reprocess 208:6	requesting	491:2	reservation
189:11,14	reproductive	79:23 181:7	requirements	122:7 148:1
197:21,24	52:20	200:22 221:2	58:17 61:25	158:2,13 276:6
211:13 251:6	reputation	228:23 236:12	62:15 66:20	280:5 282:23
252:2 270:11	263:21	283:16 287:11	69:23 70:2	298:6 323:16
270:13,17,19	request 6:12	287:12 296:25	72:15 73:1,19	342:15 401:12
308:5 325:12	41:1 44:12	321:24 501:8	73:23,25 74:11	421:21,24
330:8 339:11	54:10,20 68:12	requests 43:24	79:7,12 80:14	422:1 459:17
347:19 348:20	68:16 71:16	95:10 99:6	80:24 81:14,16	461:17 487:6
349:1 403:13	78:8,12,23	108:11 115:13	91:17,21,24	488:1 492:20
518:16,24	79:11 82:25	198:3 201:19	92:19,25 93:3	reservations
520:17 521:6	83:10 85:9	236:8	95:4 100:22	277:15 456:20
Reporters 1:22	88:11,12,15	require 89:16	101:13 102:17	reserves 152:5
reporting 54:4	93:11 101:19	200:22 212:20	118:18 131:15	Residential
75:6 91:23,24	106:17,18	212:21 214:4	136:20 146:22	436:13
92:16,18,24	107:4 108:12	326:9 392:12	153:23 173:6	residents 432:19

residing 521:21	34:2,9 42:18	405:1,9 483:24	rest 43:9 144:4	203:1,5 211:3
resolution 42:22	91:11 112:17	483:24 501:1	445:13 511:23	218:24 237:19
resolve 204:13	130:14 131:11	508:8 510:21	restart 189:13	242:6 311:15
334:25 335:19	399:13 514:24	responses 9:2,3	restate 234:3	318:1,1,5
resolved 205:15	respondents	9:5 31:23	326:7 363:13	350:16,18,21
213:3	11:1 27:24	32:10 101:15	resting 435:17	351:1,18,22
resources 14:21	31:11 40:9,19	169:11 377:24	restoration	465:23
257:1	40:25 41:4,15	responsibilities	116:21	retain 81:5 88:9
respect 28:8	41:20,22,24	68:17 165:25	restricted	175:24 231:5,9
29:2 38:4 67:2	42:2,3,6 62:13	277:7,11	313:23	231:25
104:14 133:7	63:5 65:6,9	responsibility	restriction	retained 66:8
133:10 138:9	66:15 67:18	59:8 60:17,21	102:12	503:9
153:23 165:10	68:25 70:6	148:20 249:2	restrictions	return 63:24
386:14 414:24	78:22 79:14	285:20 296:4	52:14 53:10,10	368:11
438:15 450:21	83:1,12,23	315:11 335:10	59:10 60:12	reversals 449:6
465:6 482:23	86:6 90:13	356:4,4 357:22	73:12,15 74:5	reverse 349:16
491:1 493:24	92:17 93:6	425:19,21	79:5 99:11	review 10:19
494:24 507:8	113:7 122:22	483:8 497:18	102:2,14,16,23	12:17 19:20
508:7 512:24	179:15,23	502:12,14,17	106:14 201:2	21:25 25:16
respectfully	185:3 187:13	503:1	233:5 383:20	37:18 48:7
121:24 287:5	302:4 348:5	responsible	384:13 410:25	77:17 141:5
respond 43:24	359:4 369:14	40:13,16 41:16	412:12,14,17	167:20 169:17
54:19 62:11	396:18,23	44:5 62:15	416:4 504:14	169:19 184:17
64:20 83:10	399:23 511:21	70:7 72:14	504:25 505:7	192:22 227:2
108:2 115:7,17	511:23	96:9,13,15	506:1	244:2 253:25
115:18 118:4	responder 480:8	100:22 120:12	restroom 17:6	449:8 467:21
170:3 173:5	responding	120:17 131:6	rests 13:23	reviewed 54:8
199:15 206:25	68:16 83:20	148:12 160:12	399:1 435:4,21	105:21 196:11
292:12,14	responds 402:22	160:22 171:14	resubmitted	196:16,17,20
303:3 317:1	response 6:12	191:25 221:23	467:16	218:15 226:7
319:22 329:18	27:21 32:6	232:7 237:16	result 42:6	233:12 236:11
340:5 347:15	68:12 69:20	285:17 294:22	52:21 53:16	258:9
386:13 415:21	88:15 92:20	294:23,25	70:8 133:2	reviewer 216:2
483:22	93:9 99:17	297:7 299:10	456:14	reviewing 15:15
responded 44:1	105:21,23	299:13 319:11	resulting 293:4	89:3 94:12
201:25 241:12	110:6 111:13	334:21 335:6	results 58:2	161:13 165:13
411:10 483:14	117:7 133:16	335:15 336:2	60:23 67:13	520:6
respondent 3:20	136:4 138:20	355:25 357:19	98:1,10,14	revoked 237:25
7:18 29:19	139:16 200:6	357:20 362:5,9	99:2,4,8	253:15,21
30:25 70:11	201:5,19,24	362:11,13	145:22 173:11	rhymes 27:18
184:1 187:21	202:3,12 207:9	432:8 483:19	173:16,19,20	right 10:9 12:15
196:14 234:2	219:12,13,15	488:13 489:24	176:19,22	16:15 18:6
249:16 454:3	219:21 220:1	496:19 501:14	177:4,12	19:5,17,18
454:15 479:16	241:6 243:6	responsibly	178:22 179:15	21:4 24:5,19
480:23 514:11	290:20 294:5	237:6,23	179:16,18,24	24:25 27:19
respondent's	317:2 339:2	responsive	181:1,4 202:14	28:22 30:1
3:4 22:13 30:5	359:18 380:12	106:18	202:18,21	31:3 32:1,15

32:19 33:13,23 34:11 35:5,9 39:6,15 42:12 47:13 55:9 64:14 66:3,11 66:17 72:23 80:1 94:2,10 119:12 152:5 155:1 164:25 166:17 167:2 168:21 169:7 183:5 184:20 186:8,21 187:20,23,24 188:2 189:1 195:10 198:19 206:12 207:3 208:16 216:12 238:19 239:9 245:20 246:14 250:15,20,21 254:13 256:21 259:12 267:13 272:18,20,24 273:17,22 274:12 275:25 285:13 293:23 301:7,13,23 303:24 304:17 304:23 306:8 307:2,17 308:5 309:2,3 312:15 312:22 314:2 314:21 315:4 319:25 324:17 328:2 333:16 333:18 342:7 353:3 355:19 357:14 365:24 370:2,5 371:20 373:11 377:23 378:3,19 379:2 380:21 381:6 387:3,9 389:12 390:6 394:22 395:3,8 396:2 396:12 398:6	398:23 399:18 399:23 405:13 414:10 415:1,6 415:20 421:3 423:9 424:23 429:21 431:25 432:15,21,21 434:13,15 435:12,13 438:25 440:14 446:18 447:15 447:18 448:20 449:11,12,16 449:22 450:1,6 450:15 453:16 458:10 464:22 468:24 469:2 469:25 471:10 477:6 479:11 480:18,20,21 482:21 490:25 497:19 499:11 500:13 501:2 503:21 504:10 506:16,22 507:2 510:4,9 511:13,17 514:4,13 515:17 516:20 517:13,19,21 518:10,11 519:13,13 520:15 right-hand 245:15 rise 36:17 37:2 risk 264:17 risks 52:10 River 226:1 244:16 248:19 248:20 264:14 road 34:16 385:9 446:20 446:22,23,24 446:25 447:6 Robichaud 4:17 8:5,6	Robinson 3:13 5:19 7:5 9:2 18:24,25 28:3 31:24 43:18 76:16 108:13 109:1 113:6 136:5,17 137:3 137:8,15,22 138:7 141:7 161:9 172:3 173:3 178:23 195:18 203:12 204:25 205:4,6 206:3 209:15 210:18,19,24 218:14,19,21 219:11,16,22 220:18 221:5,9 221:13 222:1,4 222:13,18,20 227:20 230:6 233:19 235:4 235:24 236:12 236:15 237:25 238:4,8 242:3 242:5,24 243:5 253:14,23 282:24 288:8 289:17,22 296:23 309:1 315:14 326:2 326:20,25 328:9 331:12 331:24 339:8 339:16 341:2 352:4 353:24 354:3 355:11 360:9,19 366:5 366:20,25 367:14,19 368:18 369:13 369:14,16,25 370:1,7,15 371:5,9,11,25 372:6,15 374:4 374:15 377:14 377:25 378:24	379:4 380:10 381:6,22 382:13 383:4 383:24 384:23 386:25 387:3 387:21 388:2,5 389:22 390:4 390:12 394:24 397:6,18 398:18 401:13 408:8 411:17 412:15 418:19 420:25,25 421:5 425:7,9 428:8 429:8,12 430:6,16,22 435:24 442:22 443:4 445:5,9 445:12 485:6 486:4,10,11 490:7 498:8,20 504:8,12 506:7 506:13,21 507:14,17 Robinson's 19:14 140:20 182:16 206:5 236:1 254:9 313:21,24 318:12 323:18 360:14 369:10 406:4 410:3,5 417:7 418:10 420:24 425:2 425:21 426:1 442:13 485:2 488:20 500:2 503:20 504:3 508:13 role 41:23 58:21 88:17 111:8 140:12,23 180:5 243:22 248:25 276:11 276:13,15 277:2 279:8 280:2 297:4,6	299:20 303:20 342:20,20 358:21,23 360:12 424:15 425:6 462:10 481:9 roles 342:23 358:25 rolled 297:19 441:3 room 202:25 271:15 272:13 273:7 325:7 345:8 349:4 350:6 443:25 Rosebud 225:25 244:12 245:23 248:18 255:15 255:25 rotation 367:22 368:17 rough 422:16 458:9 roughly 464:7 481:13 roundtrip 417:8 rule 6:4 15:4 23:8 27:3 34:8 35:25 38:12 69:21 92:16 191:17 206:9 402:23 Rule.' 91:22 ruled 37:24 262:8 rules 23:9 26:10 146:25 155:9 155:18 165:7 212:15 215:17 303:17 304:13 332:17 406:9 410:23 ruling 27:21 28:19 29:10 38:1 71:10 234:19 run 31:6 53:15
--	--	---	---	---

77:17 240:21 406:6 rundown 17:13 204:8 345:9 running 271:2 461:12 runoff 52:7 runs 56:4 249:12 279:22 279:23 rural 385:1 rush 452:14 RX 31:13 333:10 336:6 RX1 7:19 22:15 29:16,19 31:11 33:24 34:19 514:24 RX10 8:7 203:24 RX11 8:9 RX12 8:10 RX13 8:12 RX14 8:13 RX15 8:15 RX16 8:16 35:8 35:19 RX17 8:18 RX18 8:19 31:12 RX19 8:21 RX2 7:20 361:15 RX20 8:22 31:14 RX21 8:23 31:16 RX22 9:2 31:22 RX23 9:3 32:5 RX24 9:5 32:9 RX25 9:6 32:16 32:18 333:22 RX26 9:7 33:3 336:8 RX27 9:8 33:13 336:10 RX28 9:9 22:16	29:16,20 33:19 337:12 363:4 363:10,11 514:25 RX3 7:22 RX4 7:22 RX5 7:23 195:9 327:10,11 386:23 RX6 8:2 RX7 8:3 RX8 8:4 RX9 8:6 199:19 Rydquist 321:5 <hr/> S <hr/> S-P-R-A-G-U-E 400:15 Sackett 262:3,7 267:3 safe 277:23 509:4 520:15 safety 125:20 296:3,5 458:16 458:19 475:17 508:19 509:1 sake 169:12 salad 186:7 salmonella 53:3 53:7 sample 58:2 99:1 145:22 153:18 175:20 177:2,2,4 180:14 217:4 227:12,13 228:5 237:19 286:8 sampled 171:16 173:10 263:5 sampler 199:17 samples 56:14 96:9,10 98:1 98:23 139:14 146:1 153:22 177:1 180:7 181:1 218:16	228:4 320:5,9 320:16,25 321:4,8,9,13 321:22 323:5,8 353:7 407:19 409:7,11,13 410:11,14 440:15 455:1,3 465:19 466:19 467:15 sampling 57:23 67:12 96:18,20 99:9 175:16,24 176:22 177:8 178:20,21 179:15 218:4 222:11 228:9 228:12,15 235:9 323:7 494:6 sanitation 110:22 276:5 276:10,14 278:10 313:8 Sara 4:22,23 5:2 5:4,5,7,15,16 5:18 7:4 8:11 8:12,13,15 94:19 96:1 105:6,12 109:18 Sarah 2:17 11:23 272:7 308:11 sat 156:9 281:3 saved 479:9 saw 139:14 214:25 393:8 393:14 407:19 409:7,7 425:3 467:11 saying 83:21 154:23 246:18 257:18 333:2 344:2 369:18 401:21 437:9 440:17,18	444:22,24 452:25 458:5 479:24 513:4 518:3 says 61:6 66:7 85:25 105:25 110:16 112:1 112:12 114:12 116:21,22,23 126:22 127:6 127:15 129:18 130:7 149:16 150:7,20 155:6 156:4 159:1 161:7,8 174:25 176:4 227:17 240:13,16 265:1 313:3 315:13 364:22 375:25 376:5 383:9 387:3,6 387:7 405:16 407:18 413:3,4 416:3,4 417:2 424:23 429:23 433:18 437:14 449:15 scan 251:9,14 scattered 475:1 487:23,23 508:17 509:12 509:13,21 scenario 45:2 scene 375:13 380:2 scenes 307:13 schedule 296:12 340:20 520:5 Schedule.' 296:15 scheduled 213:8 scheduling 16:13 school 467:2 science 49:10,14 49:19 sciences 49:8,21	scientific 261:20 263:16 scope 143:24 149:12,20,24 151:8 162:25 163:1 367:19 368:5 373:21 374:2 397:1 502:16 screen 46:12,17 46:20 255:18 308:19 312:17 314:23 372:21 377:16 437:14 screens 409:8,11 Screw 509:8 scroll 101:9 111:4 143:10 149:15 195:5 283:23 284:11 287:1 289:4 290:10 294:6 295:9 298:9,21 313:16 327:17 327:22 333:9 333:20 350:25 353:20,20 354:7 355:1,12 469:23 473:3 scrolled 327:23 scrolling 159:18 351:2 se 2:10 12:17,20 12:21 13:1 42:21 452:18 457:19 seal 521:17 Sean 8:22 20:3,5 31:14 475:5 486:9 search 516:5 searched 517:16 seasons 447:21 seat 46:8 370:13 400:8 454:7 481:2 second 18:16
---	--	---	---	--

19:19 32:21	171:2 192:24	send 78:12	470:2,16,18	279:15 281:11
47:10 62:24	194:17 203:22	180:22 228:19	sentences	282:4 288:9
63:17 64:16,22	231:1,1 245:7	229:1,2 269:20	473:10	297:24 313:8
71:6 113:25	245:16,24	270:11 287:8	separate 25:15	337:10,18
116:3 142:24	255:7 272:13	326:18 339:7	57:22 127:20	338:1 363:24
149:6 150:2	280:18 282:1,7	348:10,21	165:5,6,9	365:8
153:17 183:2	290:3 306:10	456:2 458:4	232:9 338:7	Service's 172:2
187:1,10	306:13 308:2,6	465:22 493:18	364:4 368:18	services 1:3 5:10
194:25 203:9	308:9,13,17,17	501:10 518:4	509:22	5:13 10:25
232:3 252:10	308:19,20,21	518:20	separately 25:15	18:2 40:10
290:25 308:4	308:22 312:24	sending 519:25	septage 201:7,8	75:24 76:22
328:1 331:16	313:1,1 314:23	sends 199:8	201:16 241:18	77:13 86:19
333:8 341:6	324:16,22	sense 114:19	241:18	96:1,12 99:24
357:7 362:2	328:1 360:12	220:20 223:23	September	106:3 117:13
375:20,22	361:9,18,24	235:12 262:16	93:11 99:7	126:10,17,17
376:1,4 377:21	378:13 396:2	366:9 434:1	101:18 107:3	127:4 128:5,12
380:9 382:25	399:16,20	sent 14:25 34:1	132:9 203:14	129:4 137:15
386:19,25	437:13 439:2	69:14 77:13,14	205:7 207:6,7	141:13 143:5
395:16 402:1	447:7 470:19	78:8,23 84:10	septic 400:20	145:3 146:8,13
406:14 414:6	516:21	90:13 99:7	427:6 432:18	147:6,16 149:7
446:5,6 450:16	seeing 325:25	105:9 109:1,7	433:7,13,16	151:16,22
451:24 452:3	363:3	109:13,19	436:11,13,14	153:5,7 154:18
472:25 499:4	seek 84:24 108:3	120:3 141:13	septics 487:24	155:24 156:11
514:21	135:18 339:2	142:13 145:8	seq 284:16	157:3 159:13
secretary	seeking 42:22	146:8,12	285:11 332:14	160:21 178:9
437:11 462:23	84:19,20	151:21 153:4	332:22 357:13	193:7,9,14,23
Section 50:24	106:25 113:7	154:16 157:3	sequence 89:4	196:9,23,24
54:18,20 67:22	117:1 200:10	157:10 159:13	sequester	197:2,8,14
68:20 70:7	287:15 293:12	180:8,12,17	302:19 304:15	198:9 200:13
74:25 84:23	299:13 484:6	200:7 207:7,9	sequestered	205:7,16 210:1
94:25 95:11	seen 31:19 56:16	221:4 242:23	20:17	221:6,16,19
106:20 115:12	57:15 58:12	285:2,12	sequestering	235:7 261:6
174:1,3 175:2	178:1 326:1	286:23 290:15	303:10	302:3 313:13
248:23 294:15	359:6 364:25	294:2 297:15	sequestration	337:8 405:22
sections 62:16	375:15 379:15	323:3 339:10	20:15	448:14 481:10
84:25 93:21	409:12 489:11	339:15 355:4	serious 423:15	487:3
secured 326:5	seize 433:19	357:4 358:16	served 182:18	Services' 131:8
security 268:23	self-clean 263:2	377:14 404:23	490:8	144:12 497:15
sediment 263:24	self-cleans 263:6	405:9 443:6	service 18:3	SESSION 10:1
263:25 264:3	self-explanatory	451:17 463:24	19:3,8 92:12	186:17 301:17
see 15:10 28:4	321:3	490:12 499:15	110:23 132:25	396:6
30:18,19 34:4	self-implemen...	501:7 520:8	134:2 141:9	set 21:22 22:2
35:22,22 37:7	75:3	sentence 172:4	160:10 223:17	28:20 61:3
46:19,21 70:1	semisolids 51:11	195:24 288:19	223:17 275:8	78:25 176:15
70:19 71:1	Senator 9:9	335:24 356:7	275:10 276:4	269:7 285:1
82:20 132:9	33:18 297:24	356:17 357:7	276:15 277:3	419:14 424:11
134:14,19	337:10,24	357:15 469:25	278:12 279:3	426:18 442:16

442:17 521:16 sets 452:5 520:3 setting 165:8 settings 305:2 305:19 settle 263:13 settled 281:1 427:15 441:1 settlement 84:16 132:3,4 456:18 491:12,19 seven 177:1 401:11 sewage 6:2,8,10 8:16 35:6 40:6 41:12 51:9 59:13,22 60:1 60:8 61:10,14 61:16,19,20,21 61:22,23 62:3 62:14 65:24 66:9,16 67:11 67:14 68:8 69:1 73:2,20 74:14,20 75:12 80:15,25 81:3 81:8 91:16,18 91:21 95:5,7,7 95:9 100:21 101:6 103:16 112:4,5 131:12 150:15 172:21 172:24 174:6 175:3 177:16 177:17,19,20 178:1,3 189:7 189:8,9,16,17 189:18 231:4,8 237:3 241:18 242:8,11 253:2 277:19 281:15 289:18 371:11 371:14 372:2,7 384:10,13,17 388:6,10 400:23 401:16 402:24 404:10	404:20 409:8 409:20,21 429:24,25 430:1,2 447:2 461:1 468:19 503:12 sewer 7:19 43:14 122:6 123:23 127:20 132:21 147:24 158:1,3,5,11 158:14 159:2 168:13 193:6 223:21 252:23 319:16 436:8 436:10,14 455:18,21 457:21,23 459:19 461:3 461:16 463:13 463:15,17 464:9 468:1 476:18,22 487:20,21 492:19 494:2 496:10,14 509:14,15 SFC 298:17 310:9,11,13 313:8 314:8 320:7 321:6,6 322:11 340:15 354:21,25 358:23 Shakes 359:20 share 29:24 289:1 312:16 312:18 361:10 361:21 414:19 415:9,13,20 438:24 449:23 480:8 492:1 493:23 494:22 513:19 shared 17:14 128:16 179:18 231:19,23	284:7 293:1 325:24 340:21 354:3 359:3 363:2,17 sharing 289:2 415:4 she'd 45:19 she'll 271:8 shed 42:23 sheet 35:23,24 422:13 Shepherd 2:13 289:13 Sheri 4:9,12 7:14 8:2 28:3 96:6 111:6,22 114:8 142:14 143:14 145:8 146:14 149:5 151:21 152:16 154:20 157:24 170:6,6,8 171:2 279:24 284:4 332:5,24 356:12 390:25 420:14,15,18 420:20,21 421:11 422:21 431:19 432:10 433:5 436:24 437:1,3,6 454:25 455:19 456:2 458:2,5 458:17 463:11 463:16 465:9 468:8 469:17 470:1,3,11,17 470:19,24 475:18 477:6,8 486:8 487:1 492:14 494:19 509:6,19 510:10 Sheri's 458:14 shift 461:10 Shifting 278:14 shifts 462:16	shoot 361:11 short 64:5 shorten 16:16 shorthand 521:11 shortly 516:17 shoulders 164:12 shovel 441:3 show 46:17 60:25 76:7,23 78:3,17 81:20 82:15,18 83:15 84:2 85:14 86:9 87:10,22 89:19 90:15 91:7 92:3 93:14 95:18 96:12,23 97:16 98:5 99:14 100:16 104:23 107:6 108:7 109:2,8,14,25 110:9 111:10 112:21 113:11 114:22 117:3 117:21 119:20 121:11 122:11 123:15 124:5 126:12 127:25 129:20 130:22 155:3 167:22 171:18 245:1 245:23 247:3 261:3 290:12 312:6,11 350:20,21 351:1 353:19 355:7 364:22 405:4 433:18 437:24 441:19 493:10 517:7,9 showed 139:4 171:20 218:7 226:3,3 227:12 360:15 405:17 405:19 408:12	408:19 418:20 418:21 420:22 428:11 showing 94:13 123:5 133:13 136:22 138:13 139:6,22 141:1 147:2 148:2,23 149:8 150:25 152:10,24 154:12 155:20 156:15 157:19 158:18 159:5 160:2 170:10 170:22 254:25 261:15 378:17 429:9 445:13 shown 147:21 227:11 360:23 483:7 519:23 shows 115:15 255:20 483:8 shut 306:11 391:18,19,20 391:23 429:13 429:15,16 shutdown 434:11 shutting 440:7 sic 406:6 408:3,4 435:24 444:20 siccing 444:13 sick 53:4 side 15:8,24 20:16 34:14 116:21 246:8 312:1 367:11 370:23 409:11 409:12,18,18 443:4,5 461:7 520:9 sides 20:18 22:5 25:6 28:24 29:2,13 348:18 367:13,23 379:8,10 414:16 444:22
--	---	---	--	---

513:15 520:1 sign 168:12 306:9 381:21 416:6 signage 411:3 signatories 149:3 signatory 498:18 signature 19:5,7 134:19 149:5,6 482:15,18 signed 111:2,6 157:25 294:20 298:25 331:24 337:16 353:25 354:1 431:13 474:7 486:3 487:14 significant 100:3 101:22 102:5 153:11 259:25 286:7 381:17 silent 12:1 similar 88:22 183:15 231:3 460:13 494:9 simple 40:8 56:10,11 simpler 378:22 simplest 367:13 368:2,25 simply 34:18 39:9 115:14 144:4 169:1 183:20 292:16 303:24 330:24 365:5 377:7 378:24 398:25 461:15 494:9 512:23 single 175:20 177:2 304:7 sir 387:17 site 52:14 53:10 53:10 59:9	60:11 61:12,13 73:11,15 74:1 74:2,4,6 79:5 81:2,2 99:11 102:2,12,14,16 102:16,18,23 103:13,23 106:13 125:19 149:24 150:1 153:19 171:2 175:5,5 178:4 178:5 182:5,10 182:14 201:2 208:21 217:16 221:17 222:5 227:15,18,23 227:25 228:6 228:16 233:4 243:15 250:3 252:24 255:20 257:21 266:24 269:20 286:9 287:22,22,24 296:3,5 313:21 313:22,23 315:13 326:5 326:10,24 327:2 339:22 383:20 384:13 385:18 393:8 410:2,4 412:12 412:13,17 418:4 422:2 434:17 437:4,7 437:9 440:1 455:20 458:14 458:19 467:4 467:12 470:12 470:19 472:4 474:19,24 475:1 476:5 483:4 487:23 487:23 503:9 504:14,25 505:7,25 508:17 509:12 509:13,22	sites 223:5,5 sitting 428:15 situation 42:25 45:7 265:22 310:17 469:16 469:17 503:17 situations 346:8 six 195:21 238:13 328:13 392:12 425:22 433:5 487:13 506:10 size 87:19 91:5 191:19 493:12 skill 123:22 521:15 skills 493:11 skipped 473:6 skipping 161:2 473:9 slide 192:14 194:17 199:18 203:8 slides 192:5 sloughs 508:22 slow 113:19 129:11,13 189:11 sludge 6:2,9,11 7:19 8:17 35:6 40:6,11,14,21 41:12,14,21 43:14 51:10 59:14,22 60:1 60:8,9 61:11 61:14,16,20,20 61:21,22,23 62:3,14 65:7 65:25 66:9,16 66:20,22 67:11 67:14 68:9 69:1 73:2,20 74:15,20 75:12 76:18 77:8 80:15,25 81:4 81:8 88:5 91:18,19,21	92:1 95:6,7,8,9 96:8,9,10,18 96:21 97:6 98:21,23 99:2 100:4,6,10,21 101:6 103:17 110:24 112:1,2 112:5,7,8,13 112:15,18 113:5,6,8 120:12,17,25 121:4,8 131:7 131:12,16 132:18,19 133:10 134:1 135:19 136:14 137:18 138:1 139:18 140:12 140:19,23 144:17 146:1 148:19 150:5,9 150:14,15,19 150:22 151:5 152:1,8,9 153:12,14 158:8 161:9,10 161:15 162:2 171:8 172:8,21 172:24 174:6 175:4 177:16 177:18,19,20 178:1,3 189:7 189:8,9,16,17 189:18,24 192:11 195:14 195:20 197:16 198:6 204:19 204:21 205:11 205:20 207:16 207:20 208:24 209:1 216:5,24 217:1,4,7,17 220:2,5 221:14 222:21 227:17 228:6 231:4,8 235:4 236:2,13 237:4,11 238:5	238:9 242:8,12 253:2 277:19 278:2,3 280:19 280:21 281:1 281:15,18 282:14,16,18 282:20 283:17 286:7,11 287:7 287:14,15 288:10,12,16 289:10,14,15 289:18,23 295:6 296:18 296:19,22,23 297:1,4 298:20 299:10 311:25 313:9 315:21 316:1,6,20 317:4,7,11,19 318:20 319:6 319:16 320:21 321:8,10,14,16 321:16,18,25 322:3,17,20,23 323:17,22 326:15,20 327:2 328:6,12 328:24 329:21 330:21 331:5 334:21 335:1 335:15,20 336:2 338:11 338:14 339:8 341:13,25 342:4,13 351:25 352:2 352:25 353:1,8 358:4 362:5,10 362:14 364:13 364:19,20 371:11,15 372:2,8 373:17 374:19,24 375:4,10 382:6 384:10,14,18 388:7,10 389:7 394:19 400:23
--	---	---	---	---

401:9,16	485:7 506:10	72:18 86:11	sound 305:15	178:5 184:13
402:24 404:3,8	soiled 442:19,20	90:24 105:8	sounds 24:7	185:2,8 277:25
404:20 417:5	soils 278:2	107:9 119:6	59:23 238:3	299:20 311:8
417:17,18,19	sold 177:22	129:11,13	251:3 349:9	378:22 402:8,9
417:22 419:13	solely 40:13	152:14 154:21	396:1 425:25	481:19 494:4,4
425:6 427:13	257:22 259:7	156:18,20	488:18	499:14
429:24,25	455:16	161:17 172:16	source 52:2	specifically
430:1,2 436:20	solid 201:10	189:11,12	54:22,24,25	75:21 96:14
440:3,5,7	244:9,12	192:17 197:21	55:14,23 56:17	174:2 176:6
441:6,7,12,16	245:24 246:3	198:19 203:21	56:25 68:22	183:14,22
444:23 454:19	246:12,19	203:23 210:10	74:17 79:17	224:22 276:12
456:9 472:1	404:10 427:20	211:13 222:18	89:7,14 90:1	278:15 292:6
484:22 485:6	427:23 436:19	228:2,24	source,' 90:3	313:23 326:22
488:19 496:17	solids 51:10	234:22 240:16	sources 56:2	404:19 438:19
499:10,17	59:25 60:3	241:15 242:4	256:18 257:15	specifications
500:1,5,22,22	87:19 114:20	247:16 251:12	452:1	147:22
501:21 502:1,7	197:10 204:21	253:7 261:25	south 245:22	specifics 71:14
502:8 503:12	208:17,25	280:13 282:3	246:7 450:5	specified 360:18
503:20 504:2	210:4 217:5,5	295:19 300:11	space 125:20	specifying 319:1
504:10 505:10	217:9,11 321:9	300:12 309:17	Spang 5:21 7:10	speculation
505:17,19,22	323:7 404:14	311:22 313:25	109:13,18,22	206:7 212:11
505:25 506:9	404:15 419:6	327:11 330:8	110:4	234:1 377:10
508:12 510:3	427:18,19	331:5 339:11	speak 36:13	402:20
Sludge' 91:16	428:2,3 439:23	344:1 347:20	37:6 75:10	speed 406:9
sludge-related	439:24 440:21	349:5 355:13	122:13 162:21	407:1 442:16
136:9 383:12	440:25	356:7 358:10	163:21 213:19	442:18
small 175:18	solution 441:8,9	359:21 360:3	232:15 269:23	spell 47:19
208:19 217:12	somebody 40:17	363:7 364:9	273:1 340:6	274:25 371:8
237:11 240:8	122:21 143:8	382:24 383:1	341:3 346:7	400:13 454:11
419:12 427:7	214:13 216:3,4	385:25 397:14	349:15 403:10	spelled 47:22
smaller 118:21	224:15 228:21	403:13,15	403:12 423:22	spelling 27:20
snake 475:10,10	268:1 319:5	409:15 426:10	434:4,11	Spencer 486:9
so-called 456:17	324:22 341:17	436:3,3 449:13	513:24	spend 21:23
soil 49:9 98:23	392:8 438:7	469:20 477:5	speaker 272:14	240:17
189:10,17,19	494:18 513:14	486:17 499:13	291:3 306:1	spent 457:14,17
189:20 195:21	somebody's	505:20	307:16	spills 447:3
217:16 222:3	231:12	sort 25:12 69:12	speaking 37:16	spinning 468:23
222:11 227:12	somewhat	190:16 213:14	363:5 401:6	spiral 465:17
227:13 228:4,5	143:24 262:9	216:23 310:9	404:18 513:5	501:6
228:11,14,15	386:6 410:20	317:15 344:22	speaks 115:10	spiraled 458:25
278:2 316:8	son 461:10	345:9 367:7	specialist 163:3	spirit 237:21
328:12 389:2	467:1	373:22 391:9	280:9	plotches 245:17
389:10,10	soon 331:19	463:5 479:4	specialization	246:11
392:1,21,23	406:11 432:19	485:17 487:18	50:19	spoke 252:17
393:1 394:4,20	sophisticated	491:20 508:4	specific 67:5	404:9 408:8
425:7 426:6	12:21	509:5 519:17	69:16 173:25	421:11 440:15
430:2,3,4	sorry 46:22	sought 71:3	175:13 176:15	481:17 485:17

506:18	506:17,20	479:16 495:1	201:7,20	262:11,15
sponte 20:19	507:12,19	standalone	217:11 220:5	266:4 267:3
spots 16:22	508:2 512:4,18	35:21	224:17,20,23	314:18,25
Sprague 2:18	513:13,18	standard 91:19	225:6,14,18	336:1 337:24
3:17,21 5:20	Sprague's 44:14	288:3	231:3 253:23	492:5 516:10
18:5,9 19:18	44:18 201:5	standards 91:17	266:17 274:25	States' 90:4
19:24 20:14	202:12 485:10	143:1 284:13	291:18 315:4	stating 294:16
21:5,8,19	spray 393:23	499:6	356:21 362:8	294:21 296:17
43:18,22 44:8	394:7 430:19	standing 169:14	371:7 404:11	296:21 326:19
45:4 108:13	430:20	stands 55:20	430:13 454:14	332:24 358:13
109:7 118:24	sprayed 220:5	start 16:15	478:15,22	360:11 362:16
119:1,4 138:21	419:18 485:5	129:14 242:4	493:8,17,17	362:21 456:3
139:16 140:5	spraying 189:6	267:19 268:1	521:3,8,20	497:20
141:6 173:2	238:10,15	268:18 269:6	stated 24:15	station 87:20
178:24 200:23	428:9,18,25	285:22 307:19	88:7 178:14	116:22,23
201:3,25 202:4	429:2,23	322:16 324:25	231:11 253:6	118:7 130:8
202:16,20	441:16	381:3 382:16	254:17 255:14	429:7
218:14,19,21	spread 60:4,4	383:4 390:13	288:12 315:9	stations 56:7
220:5,11,18	217:19 288:13	402:12 405:13	336:4 386:20	88:8
221:9 230:5	404:5 426:5	418:15 446:8	391:15 429:14	status 115:16
233:9,13 241:6	485:6	started 10:21	484:17	293:9
241:12,16	spreading 189:7	16:11 21:21	statement 3:3,5	statute 230:19
242:3,5,23	238:10 429:24	50:20 158:11	6:13 39:9,17	230:23
243:7,11	spring 464:10	236:7 258:8	40:1 42:15,18	statutes 495:13
302:21,22,22	spur 437:21	267:24 292:6	81:10 159:3	statutory 65:4
302:23,23,24	squared 21:18	300:15 302:11	168:15 219:18	247:24 451:18
302:25 303:10	35:20 39:7	304:18 307:14	235:7 285:16	stay 64:2 103:23
303:22 304:1,4	188:24	307:18 322:18	381:12,15	104:4 124:25
352:8 360:8	ss 521:4	331:15 393:18	409:5 411:5	264:1,4,7
374:24 391:5	SSOs 86:25	393:20 395:14	416:1 424:23	303:8 350:5
393:2 394:2,13	stabilization	406:25 414:22	445:3 480:12	367:15 389:22
394:19 395:12	59:17	418:19 464:21	497:19 514:9	396:24 399:23
396:17,18,19	staff 152:3	468:2,14,23	statements 14:3	406:10 435:13
398:5,25	170:20 470:8	474:21 475:21	297:2 299:9	452:12
399:21 400:3	499:10,18	476:1,6 510:2	381:18 448:22	stayed 443:3
400:12,14,17	stage 29:4	starting 11:6	480:1	461:11
413:16,21	236:23 238:4	91:14 105:20	states 6:5 38:16	staying 47:11
415:25 416:20	stages 393:21	125:11 268:12	55:24 65:3	stays 222:3
420:5 428:8	stagger 15:10	287:17 294:2	89:15 90:2,8	steak 186:7
431:6 434:20	stall 444:15,16	472:5	105:25 124:8	steamrolled
436:2,4,7	444:17	starts 154:22	125:13 132:24	482:5
449:23 484:21	stand 42:21	248:13 295:13	155:11 189:5	stem 481:24
485:5 486:10	45:21 46:2	327:20 353:15	191:23 219:25	step 282:10
486:11 489:3	367:16,20	state 45:9 49:1	225:19,22	steps 282:12
490:7 498:8,19	368:13 390:5	56:15 96:14	226:10 233:15	401:15
501:23 504:7	396:25 397:7	125:18 145:14	243:21,25	Steve 8:20
505:3 506:13	397:19 422:7	157:25 166:16	245:9 248:21	337:24

stick 69:18 146:18 395:21 436:11 441:2	stream 246:23 248:15 258:25 259:10 261:8 263:2,7 264:1 264:6 277:13	195:19 210:17 210:22 211:16 231:13 232:14 239:19 240:1,6 240:12,19 241:2 252:20 288:15,18 289:9 328:3,11 331:18,21 334:22 335:16 335:23 376:3,5 408:6 417:2,12 431:18 438:1,3 485:11 494:9	180:23 219:17 289:20 296:12 314:5,7 468:13 505:10,16,24 506:3,6 520:6	351:25 Sun 461:13
stiff 441:2	stream's 227:7		submitting 41:17 70:7 121:24 145:22 381:18	supervise 485:12
stips 27:8	streambed 258:22 261:4 261:14 263:14 263:25 264:5		subpart 61:25 80:19 174:19 184:16	supervised 295:6
stipulate 24:11 25:22 26:20 519:11	streamline 93:21 518:12		subpoena 18:24 20:9 27:25 366:5,6 367:4 370:16 374:6 395:4	supervising 280:5
stipulated 21:22 25:5 28:21 165:1	streams 246:1		subsequently 37:13 334:24 335:18	Supervision 112:1,2
stipulating 22:21 24:25 25:11	street 106:6 383:14	subcontractors 144:13,19 148:11 165:24 173:17,20 179:17 232:16 254:3 336:24 437:20 489:16 497:16,19 498:1,3,4,12 503:19	substantial 43:3	supervisor 275:21 400:18 462:17
stipulation 22:4 22:12 24:23 27:2 28:13 29:6 34:4 362:20	stressful 16:18		substantiate 43:22	supervisors 40:21
stipulations 22:3 24:17 25:21 26:2,12 28:18 180:11 333:5	strict 493:14		successful 106:23,24	Supplements 22:7,14
stood 411:17 412:14	stringent 176:18 411:9 493:13	subject 115:12 157:12 480:17	suck 428:2,24 441:4	supplied 209:15 316:6 465:12 465:15,16 466:18
stop 238:2 253:24 354:15 357:14 423:13 447:24 453:5	Structural 128:17	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	sucked 427:25 430:21	supplies 460:2
stopped 253:22 421:8,10 433:9 433:11 445:6	studies 49:4,14	stuff 49:10 52:25 401:22 407:5 432:19 448:23 465:1 472:23	sucking 430:24	supply 331:24 376:19 518:15
storage 150:23	study 49:15	subject 115:12 157:12 480:17	sucks 428:1	support 6:8,10 121:5 188:13 211:5 307:12 365:4
store 208:7 209:6	stuff 49:10 52:25 401:22 407:5 432:19 448:23 465:1 472:23	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	sucked 427:25 430:21	supporting 209:21
stored 120:25 490:2	sua 20:18	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	sucking 430:24	supports 259:10
stormwater 50:23,24 57:20	sub-consultants 144:13	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	suffice 306:13	suppose 23:23 218:18 250:2 265:15 399:3
story 243:18	subconsultants 497:17	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	suffices 513:11	supposed 104:5 105:24 197:10 283:21 388:10 398:16 409:22 437:14 455:11 476:24 507:23 509:9 510:5
straight 50:8 433:1	subcontract 233:12 438:4,7 506:6	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	sufficient 19:16 99:5 186:4 191:19 207:9	supposedly 511:3
straightened 82:3	subcontracted 142:21 230:5 489:7 498:5 499:1	submit 15:9,13 40:25 41:5 65:10 67:20 69:2 79:15 104:6 107:2 146:1 249:13 251:17 296:17	sufficiently 87:19	Supreme 36:14 37:16,17 261:24 262:8 262:17
straightforward 206:8 234:9	subcontractor 4:11 7:23 43:21 77:8 97:14 120:14 137:13 138:3,6 140:3,9,18 172:5,6,11,14	submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	suggested 313:21 368:17	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	suggest 306:17	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	suggested 313:21 368:17	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	sum 140:18	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	summarize 287:10	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	summary 4:10 7:22 314:3	
		submitted 22:3 29:22 30:12 32:19 36:9 93:25 97:9,23 105:23 110:25 117:16 129:24 130:13 142:16 147:5 156:13 157:13,25 168:2 177:12	summer 351:17	

sure 12:4 13:2 17:16 18:17 26:18,22 31:2 31:8 32:23 36:1 42:17 45:17,23,25 46:14 60:18 63:14,23 64:24 66:3,5,19 68:1 72:19,20 73:6 76:2 82:5 92:8 94:7 102:1,19 103:23,25 107:10 113:24 115:20 143:12 155:18 170:2 179:7 181:20 181:25 183:8 185:1,17 188:15,15 190:22 192:23 197:13 201:24 205:3 206:10 207:18 208:12 216:14 220:10 223:19 224:20 225:16 226:18 226:23 227:3 238:14 245:3 245:14 249:25 251:21 253:17 254:7,13,23 255:12 258:21 259:21 260:1,9 264:8 265:8 266:18 270:13 270:16,19 299:18,20 301:2 305:1 315:13,13 322:7 324:5,7 327:23 333:7 344:23 345:17 347:14 349:22 362:22,25 363:2 365:1 368:12 372:5	375:16 378:10 389:18,23 390:9 397:25 407:14 408:19 408:22 409:16 418:20 421:2,2 423:16 424:20 426:15 430:12 430:15 435:8 440:13 451:25 452:19 463:5 467:21 469:6 469:15 473:19 473:25 480:3 482:22 484:10 488:15 490:1 499:14 502:22 512:3,10 513:2 513:19 514:15 515:4,12,13 518:17 surface 51:20 189:7,9,16 217:19 392:22 392:25 429:24 430:1 508:20 surgery 462:16 surprise 205:10 226:5 392:11 surprised 196:5 206:1 surrounding 44:13 283:17 293:4 survey 150:3 survive 456:24 sustain 144:1 212:13 377:11 sustainable 135:11 162:16 164:22 166:5 373:25 374:9 sustained 135:4 164:20 216:18 340:8 swear 272:2,22 switch 190:5	455:25 switched 272:6 switching 82:14 410:16 sworn 13:13 46:6,9 119:6 274:16,19 307:23 370:9 370:15 400:5 454:4 480:24 synonymous 57:12 synthesize 237:1 system 55:21 56:6,10 87:3,6 87:7 88:10 114:20 115:24 118:22 150:12 223:21 224:13 230:11 278:20 278:24 280:6 281:6 492:19 493:12 494:3,5 494:13 519:2 systems 87:1 123:24 125:22 158:2 256:22 277:4,5 432:18 494:14	163:12 166:23 180:14 183:1,3 184:9 186:25 188:9,11,12 206:18 217:7 223:7 232:2 237:10 240:18 241:1 267:15 270:22 283:4 302:12 324:3 325:5 349:6 353:7 367:19 369:1 379:11 381:8 390:5 395:19 396:14 396:23 397:19 399:23 407:21 427:12 444:2 452:2,13 453:6 463:19,21 464:23 465:22 465:25 469:6 476:24 477:20 493:10 502:11 502:14 503:1,6 507:23 511:4 514:15,23,24 516:11,15 519:16 taken 51:2 64:13 82:9 85:10 98:1 177:2 186:16 188:21 227:13 235:6 237:16 239:8 273:24 282:13 317:5 318:6 320:9 325:10 326:15 342:4 369:6 390:3 396:4 453:18 457:25 459:4 463:9 465:20 466:19 471:24 516:23 521:9 takes 14:21 15:21 131:16	258:17,23 325:1 397:7 517:4 talk 19:18 20:13 21:20 49:18 50:1,18 51:7 52:8 54:17 55:12 58:16 88:25 103:2 174:9 176:6 184:15 194:14 222:8 319:14 330:15 384:8 384:12,16 458:17 496:5 talked 49:13 55:13 122:18 176:8 209:5 241:14 418:10 418:23 429:15 476:14 478:3 498:7 502:15 talking 92:24 192:25 212:18 222:16 253:1 262:2,12,14 265:18,19 314:19 317:11 341:17 351:15 373:10 377:24 410:1 418:20 429:1,5 436:10 448:15 449:8 453:6 talks 36:5 100:13 170:5 387:1 tank 400:20 426:4,15,20,20 426:22 427:4,6 427:8,12 428:14,15,23 431:1 440:2 tanker 393:22 417:24 418:20 424:25 428:11 428:20,22,24
T				
T 521:2,2				
T-E-C-O 421:22				
T-O-M 371:9				
table 81:7 175:16,22 255:5,11 272:7				
tailor 69:19				
take 10:20 14:18 15:19 16:22,25 16:25 32:21 48:9,11,17 54:7 56:13 58:4 63:16,17 63:21,21 64:4 64:6,8,9 77:16 82:2 96:9				

439:8	tech 130:7	435:9 445:17	421:15,18,19	26:13 63:9
tankers 150:21	188:13 270:20	495:15	421:19,21	65:15 143:8
tanks 137:19	309:14,16,20	telling 143:4	422:11,12,13	162:17 183:15
139:4 150:11	technical 4:14	496:24 512:5	422:17 445:4	212:12 214:6
150:23 151:5	6:8,10 8:3	513:8 517:12	445:15	253:14 377:18
152:20 195:15	82:13 127:17	tells 258:24	terrible 305:13	398:16 403:22
205:11 207:16	142:22 171:25	259:6	terribly 367:18	450:14
207:20 282:17	200:3 224:12	template 78:25	test 176:12	testifying
282:18 321:16	249:4 257:14	229:12	181:4 309:16	143:16 196:14
328:6 338:15	276:8 278:11	temporary	351:18 359:25	395:9
338:18 404:4,7	280:8 307:12	159:1 464:3	359:25,25,25	testimonial 14:9
405:19 417:5	310:14,15	492:22 494:16	359:25,25,25	testimony 13:12
417:18,20	324:1 325:5	494:18 496:14	359:25 406:6	13:16 19:15
418:16 425:9	366:2 474:10	ten 51:6 64:6	440:1 463:18	21:23 28:21
425:11,14,15	484:16 487:2	289:14 331:2	463:21 464:23	43:4,9,21
425:15,18,20	499:2 508:16	425:4 433:7,16	476:16,24	44:10,14 47:4
425:23 426:1,4	509:10	453:9	477:1,13	63:8 69:25
427:10,21,23	technically	ten-mile-an-h...	478:12,22	93:21 116:13
430:21 432:5	185:23 268:25	406:9 407:1	493:10,16,20	143:24 163:16
433:8,13,16	373:24 374:9	ten-minute 17:5	tested 227:25	169:14,16,21
439:24 440:16	technician	366:19	316:18 439:25	171:21 187:3
440:20,24	223:17	ten-person	440:1	188:4 193:16
441:1,2 468:18	technique	485:17	testified 46:6	194:3,10
468:19 484:15	440:19	tend 12:25 15:9	50:14 57:14	206:20 209:18
484:22	technological	180:7	82:24 89:9	241:4,5 267:11
target 172:7	82:3 272:17	tends 25:3	100:20 103:15	293:7 307:22
288:16	technology 6:7	term 137:24	125:5 145:20	346:19 347:7
targeted 44:15	188:23 270:25	144:11 194:6	149:11 153:13	360:8 365:25
165:7	tell 30:22 34:10	342:5 497:15	161:21 174:5	366:10,14
Task 149:24	78:21 88:17	497:20,24	192:10 228:3	367:10,24
150:4,13,18	98:20 112:17	498:1	233:8 241:5	368:5,19
tasked 25:15	116:25 121:7	terminate 432:9	253:19 274:16	369:10 374:2
340:16,18,23	130:14 133:5,9	terminates	360:22 370:9	380:12 386:19
tasks 275:19	137:25 139:17	226:4	372:15 393:7	392:1,21
Tasmanian	140:22 143:25	terms 13:7	400:5 409:13	396:24 399:4
458:2	144:16,21	29:24 40:8	420:5 436:24	399:11,22
team 139:13	148:17 152:7	52:11,18 57:10	442:21 445:9	401:21 414:17
144:14 269:20	154:8 161:14	57:12 68:15	454:4 470:24	415:5 418:10
320:11 356:23	162:1 171:7	90:2 165:23	471:9 480:24	425:3 443:24
407:18 455:19	188:10 225:21	215:2 237:14	500:21 501:23	450:2,10,22,25
458:17 497:17	314:1,17	298:16 393:21	504:8,12 505:3	463:4 467:20
Teams 18:5	315:21 322:2	397:3 443:17	506:12,17	476:13 479:13
268:5 269:19	323:21 325:22	450:24 461:23	507:13,14,17	479:23 483:3
269:22,24	340:12 341:15	466:16 473:12	507:19	489:4 492:9
270:3 304:21	371:18 393:4	497:6	testifies 13:11	495:4 503:8
304:23 306:22	393:20 403:19	TERO 31:14	14:10	504:17,18,21
306:25 312:18	424:13 426:16	125:21 421:12	testify 25:7 26:8	507:8 508:8

511:18 513:9 521:14 testing 145:15 150:2 217:24 271:23 277:14 278:1,3 314:12 349:18 353:18 494:6 tests 172:8 288:17 311:19 311:24 312:1,2 314:6 463:19 text 46:18,23 284:9 285:5 289:8 294:8 295:19,24 298:1,12,24 332:2 354:22 405:14 416:25 texts 354:20 thank 12:7,12 12:14 17:25 21:8 27:20 34:25 39:20 42:12 45:9,12 45:24 46:8,11 47:7,15 48:21 53:24 61:17 62:1 64:5,10 64:24 69:4 70:25 71:23 72:2,22 81:19 82:6,12,17,22 85:13 90:10 97:1,19 101:14 107:12 114:2 114:21 116:17 119:19 123:5 130:6 138:12 139:21 151:11 161:1 166:14 173:23 174:19 175:10,25 177:13 186:12 186:13 188:16 190:4 193:16 193:17 197:20	197:24,25 198:11 203:25 210:14 220:21 223:13 224:6 229:20 238:24 238:25 239:5 241:3 242:2 245:5 247:2,18 249:6 252:5,7 255:8,9 267:7 267:10,12 269:15 270:14 271:3 273:21 274:23 293:23 299:25 301:12 301:13 307:11 308:1 309:23 310:6 324:6 325:3,16,20 327:13 330:6 332:3 333:23 336:5 346:18 346:19 353:21 357:16 359:9 359:12 361:16 365:14,15 369:3,4 371:1 371:5,10,24 372:11,18 374:12 380:6 382:25 383:23 387:19 388:14 388:17 389:19 390:1,7 392:18 394:22 395:10 398:3 400:8 404:12,17 407:9,11 410:7 419:19,25 422:25 428:4 431:3 432:2 435:22 437:10 448:4 449:2,17 450:1,3 451:5 451:22,25 452:9 453:12 453:15 454:7	464:22 470:13 470:23 474:13 478:25 479:12 479:14 497:9 500:9 507:2 511:17,19 513:10 514:2 518:12 519:24 520:14,15,16 thanks 54:16 55:25 58:6 60:24 74:13 79:19 94:13 111:5 137:10 179:9 274:18 309:24 342:7 365:24 370:12 389:12 395:8 thick 419:9 427:16 440:11 thing 22:23 29:4 44:5 52:20 57:9 71:18 102:5 162:6 169:25 180:13 209:1 212:15 231:7 232:7 265:24 293:10 310:11 329:24 366:4 368:6 392:3 396:25 414:4 424:19 428:21,22 438:3 445:17 451:2 461:3 464:3 466:10 467:25 483:19 484:18 485:23 504:2 things 21:25 24:21 46:16 62:20 121:3 162:14 165:18 214:8,25 215:3 233:9 271:15 316:9 330:24 368:3 402:14	415:19 468:23 471:19 475:2 478:3 481:8,25 482:14,25 494:8 502:3 512:6 513:18 518:12 520:5 think 10:13 11:6 12:22 14:12,19 20:14 21:2,23 26:23 28:14,22 28:24 29:3,12 30:11,14,24 32:4 34:18 35:13,18,20 37:11,15 38:13 47:1,5 51:4 63:3 67:7 68:2 68:5 71:4 79:25 80:3 93:22 95:15,17 98:25 107:10 109:23 115:25 116:5,11 119:13 120:8 124:15 143:17 143:19 162:10 163:16,21 164:24 165:8 165:20,22 166:2,9,25 168:20 169:3 169:10,25 174:17 177:4 179:21,23 181:17 183:17 184:17 185:25 186:3 187:9 188:7 191:3,7 193:8 194:5,6 197:15 202:19 203:8,17,18 204:13 205:13 207:11,24 209:20 210:8 211:25 213:13 213:17,21	214:2,20 215:10,15 216:15,18 217:2 218:2 223:22 228:8 230:14 232:24 232:25 234:10 234:21 237:24 238:23 243:5,8 243:13 244:14 248:5 253:17 254:4 257:5,17 261:20 266:8 270:21 271:6,9 272:20 273:1,3 273:19,20 274:6 283:3 284:6 292:22 293:6,13,13,19 300:6 303:3,23 305:12,18 306:4,11,11 308:6 309:24 309:25 311:25 316:25 320:6 320:15,16 323:13 326:1,1 326:14 329:23 331:13 333:12 333:20 344:11 347:22,23 349:6,19 350:11 351:5 354:12 357:14 357:15 359:6 360:17 365:11 367:3,5 369:17 370:16 373:15 377:12,15,17 377:22,23 379:22 381:3,4 382:10 385:5 387:25 388:20 389:16 392:5 393:7,10 395:12 396:14 397:5 398:19
--	---	---	--	---

398:20 399:8,9 402:2 415:13 418:13 425:5 430:15 435:2 436:18 437:19 444:4,8,13 448:6,15 449:2 449:5 450:4,7 450:24 451:4 452:15 453:9 461:20 463:6,8 466:17 467:24 473:5,23 474:19 479:3,9 479:18 481:17 482:24 483:19 483:22 486:12 486:14 487:12 492:4 495:2 503:16 504:18 508:10 510:23 511:6 512:19 513:10,16,24 513:24 514:18 514:19 519:14 thinking 187:4 240:4 306:16 448:11 third 16:14 224:12 497:12 thorough 15:21 43:11 thoroughly 196:11,17 thought 62:21 62:25 68:1 183:18,18,21 183:24 185:8 198:20 250:23 293:3 397:17 414:16 426:14 thoughts 415:18 450:12 thousand 64:25 385:5 threaded 129:17 three 14:22	18:20 30:21 33:25 89:4 112:13 127:23 201:19 235:19 286:4 439:23 439:24 440:3 440:21,25 460:17 462:15 487:15,19 threshold 54:6 402:22 thrown 243:14 408:2 throws 53:22 Thursday 105:10 tight 415:17 till 186:10,14 195:20 220:6 328:12 371:11 388:12,22 389:6 392:23 425:7,22 506:9 506:9 tilled 238:9 371:15 372:2,7 375:1 392:1 425:10 442:20 485:7 tilling 229:24 235:16 288:14 392:21 428:9 428:18 time 11:7 14:21 15:19,21 16:16 16:23 17:1 20:8 27:2 35:25 36:16,20 37:2,12,17,21 37:23 38:19 40:15 48:20 54:9 89:5 102:19,22,25 122:7,18 166:24 180:19 182:6 183:3 185:23 186:22	188:9,11 195:1 207:1,4 208:8 220:9 222:4 227:8 254:24 259:1,3 260:24 261:13 263:11 267:16,21 269:7 280:7 287:24 288:3,4 292:9 293:11 298:25 300:6 300:22 301:2,3 301:4 326:1 330:22 341:6 356:13 358:19 366:13 375:3,7 375:10,17 379:11 387:18 393:6 398:22 412:3,3 417:25 418:11,13 419:17 422:15 433:15 438:8 447:9,12 449:14 453:6 455:7,15 457:2 458:9 459:18 460:22 461:6 461:11 463:10 466:6 469:6 479:23 485:20 486:3,5 491:13 494:12 503:23 503:25 504:2 507:22 508:10 508:12 514:15 516:15 521:10 timeline 166:21 times 12:18 65:1 70:24 289:14 323:17 331:2 375:15 393:11 393:14,18 425:4 439:4,11 446:21 448:11 460:14 476:13 498:14	tired 514:16 title 33:5 48:1 332:20 titled 32:17 33:1 33:12 97:6 99:22 123:20 171:25 today 26:9 42:21 44:8 45:9 100:5 152:23 274:24 286:11 300:7,13 302:6 307:22 350:15 359:3 366:1,6 366:6 367:5 371:6 372:16 379:16 395:9 398:13,22 399:5,11 429:14 445:9 457:20 464:5 479:19 483:7,9 503:8 today's 10:15 11:4 267:23 Todd 321:5 toggle 89:18 100:17 174:2 290:11 told 224:1 392:5 392:8 412:18 412:20,22 413:6,11 421:8 422:4,6,21 423:10,12,13 423:18 428:13 432:12 438:20 445:3 455:22 458:18 463:12 468:10 471:2 477:10,15 488:13 496:18 496:21 505:4 509:19 513:3 Tom 3:13 7:5 9:2 18:24 31:24 43:17	137:3,8,22 139:12 140:20 141:6 161:9 173:3 195:18 203:12 209:15 210:18,18,24 218:14 220:18 233:19 236:12 253:14 289:17 296:23 309:1 313:24 326:2 326:19,25 328:9 331:24 339:8,16 341:1 352:4 353:24 354:3 355:10 360:8 366:20 369:25 370:7 371:9 387:3,7 401:13 406:4,4 408:8,8 410:2 411:17 412:14 416:8,8,11 417:7 420:24 420:24,25 421:5 425:2 428:8 429:8,12 430:5,15,22 442:12,22 443:2,4 445:4 445:8,12 486:4 486:10,11 489:20 490:7 498:8 506:6 507:14 Tom's 406:10 Tommy 5:19 76:16 282:24 288:8 289:22 313:20 tomorrow 16:14 251:23 267:24 268:12,18 300:9,14,19 301:10 398:11 398:15 tool 258:14,23
--	---	---	--	---

259:2 260:25	424:25 460:25	114:20 132:19	475:12	389:16 419:16
tools 460:2	train 198:19	150:17 177:10	trip 287:21	483:10 512:19
top 83:8 96:25	transcribed	201:13,15	339:10,16,21	Tuesday 1:8
97:18 110:15	521:12	226:17 240:8	trips 427:12	10:1 11:4
147:10 149:21	transcript 1:7	241:24 242:17	truck 133:2	152:23 186:17
217:8 246:8	14:23 15:2	248:1 260:20	238:15 393:22	tunnel 55:1
247:19 283:7	94:6,11 330:14	265:1 266:12	404:14 406:7	turf 102:21
290:12 327:21	344:15 403:16	276:12,19,25	417:24 419:1,5	turn 74:15,21
327:24 350:19	448:10 449:3	277:5,8 278:16	419:24 423:8	75:20 267:15
354:7 382:16	507:20 519:25	279:9 281:2,6	426:22 427:1,3	271:5,11,21
389:9 394:19	520:4	298:19 409:23	427:7,24,25	272:14,18
406:10 426:6	transfer 88:8	430:25 431:1	428:1,13,22,24	285:21 286:17
438:24,25	transferring	trench 508:19	436:19 439:8	289:24 297:9
442:19 472:17	401:10	508:21 509:3	442:16,17	301:7 307:3,4
total 59:25	transfers 409:23	trespassing	trucks 150:21	309:13 314:13
61:15 128:19	transmit 252:1	416:7	420:22	367:4 398:25
197:10 204:20	348:23	tribal 96:7	true 27:7 32:5	399:12,24
208:17,25	transparency	127:18 145:13	45:8 53:4	416:15 435:3
217:5,5,9,11	44:17 518:13	193:14 224:25	219:12,25	461:23 495:20
294:17 321:9	transpiring	284:14 335:8	220:4 265:15	501:9
323:7 351:7	491:17	356:20 405:22	326:4 360:25	turned 180:1
424:21,22	transport	405:24,25	381:16 502:18	200:19 232:22
425:2 487:13	149:25 425:20	408:20 420:9	521:13	323:8 404:8
totality 23:18	485:1	433:8 474:7,9	truthfully	459:23 460:3
totally 208:3	Transportation	487:5 493:2	380:16	491:4
228:15	150:19,21	tribe 139:12	try 12:5 15:19	turning 141:16
touch 243:20	transported	276:9 279:16	16:19 17:1	141:22 151:12
408:20 438:3	404:21 428:20	284:7 311:13	29:6 39:24	307:16 492:7
touched 293:6	Transporting	354:11 405:23	43:9 69:19	turnip 495:6
310:9 436:18	425:8	408:22 416:10	71:20 162:13	twice 113:5
touching 438:2	trap 204:23	422:14 456:18	202:10 213:25	two 14:22 20:2
town 279:23	traveled 263:10	457:22	214:1 267:15	23:1 24:21
385:7	385:10	tribes 310:14	276:7 306:5,13	30:23 38:10
track 17:7 47:11	travels 264:13	tribunal 513:20	306:18 309:16	48:16 51:25
182:9 183:4	520:16	519:23	346:2 359:16	54:4 58:20
368:3 422:19	treasurer	tributary	359:24 467:25	71:10 73:7
467:7	462:23	248:18	516:7,25	84:17 111:24
tracking 519:2	treat 180:11	tried 305:12	trying 33:4 66:2	112:10,12
tractor 220:6	278:22	393:25 423:13	113:18 135:7	113:15 116:19
323:22 406:5	treated 176:21	457:23 463:9	143:8 177:9	127:20 168:5
traditionally	241:19 263:8	471:9,11	183:4 184:5,6	176:9,11 179:7
55:10 226:1	264:11,18	483:15 484:4	205:14 208:23	184:11 245:17
244:17 262:19	treatment 42:4	511:8,9	236:25 253:7	246:11 278:12
traffic 161:25	51:12,13 52:3	tries 190:16	270:1 271:15	278:12 347:9
Trail 2:12	56:6,12,19	233:1	282:1 316:15	363:21 379:10
289:12	57:7,10,11	trigger 223:8	334:23 335:17	418:2,6,11
trailer 419:14	92:10 114:18	triggered	339:2 386:3	448:17 452:1

458:25 460:17	252:21 256:12	116:10 124:12	225:19,21	216:25 229:12
462:8 474:15	257:13 350:22	135:7,10	226:9 243:21	256:21 257:1,7
476:1,21	354:15 368:9	206:24 259:14	243:25 245:9	258:1,4,6,13
486:24 498:6	393:9 431:12	294:12 303:16	248:20 262:10	258:20 261:7
498:13 507:4	461:25	306:3 341:18	262:15 266:4	261:16 321:18
510:19 514:25	ultimate 352:10	366:4 369:11	267:3 516:9	321:24 324:14
two-day 476:18	ultimately 96:15	392:20 393:5	units 281:3,3	346:14 349:12
two-sided 379:9	131:14 353:7	414:6,14	University 49:1	352:15 362:24
type 22:23 39:9	483:8 488:13	426:13 443:15	49:3	422:15 470:7
103:9 106:22	489:23	443:18 512:17	unleashed	uses 154:11
137:25 257:1	um 26:15 28:19	513:11,23	421:11	USGS 226:8
293:9 366:4	36:4,12 124:9	517:24	unmute 272:1	244:3,21 256:3
451:2	143:10 189:4	understanding	273:2 291:4,5	257:2,21 258:2
types 26:24	205:6 238:22	35:2,12 36:18	305:12 307:6	258:3,9
73:22 176:9	259:21 265:15	63:15 66:12	unmuted 309:12	usually 13:19
487:15	290:8 364:24	68:4 152:2	unrealistic	20:17 48:15
typewriting	428:10	163:6 166:10	322:20 338:19	56:14 60:22
521:12	umbrella 158:3	206:15 268:22	unsure 104:18	122:20 177:20
typical 54:1	496:10	281:17 317:6	unusual 240:7	180:10,12
115:22 130:18	un-bury 475:8	321:4 366:24	387:23	199:9 228:9,16
158:15	unable 20:6	409:16 413:20	Update 99:22	246:2 263:19
typically 15:4	75:19 95:1	463:5 499:18	296:19	277:16 288:1
48:4 56:2 60:1	308:6 319:20	understands	updated 296:15	436:11 460:15
62:3 114:17	519:6	162:18	340:20	utilities 85:24
211:8 229:2	unambiguously	understood 26:2	updates 118:22	108:16 110:22
260:17 311:3	40:12,17 70:5	120:23 142:20	upgrades	134:3 247:12
typo 405:17	unaware 223:9	144:10 165:16	118:19,22	247:25 280:1
406:16	225:13	169:3 374:11	240:15	298:8,15 313:6
typos 15:3	uncertain 284:8	380:12 478:9	UPS 19:6	405:22,25
	unchanged	497:14 498:25	uptaken 264:3	411:6 420:9,16
	361:4	undo 272:22	uptown 429:6	420:16,17
U	unclear 19:1	unduly 23:12	urge 479:25	421:7,7 424:9
U.S 2:2,6 7:7,8	uncomfortable	unequivocally	URL 250:2	439:10 445:15
7:16 137:22	517:24	43:25	346:24 347:15	448:19,21
143:2 146:23	uncommon	unfairly 44:15	515:10,24	utility 43:20
195:18 248:16	205:22	unfortunate	516:16,25	44:24 122:1
248:17,25	undergrad 49:6	205:23	517:5,16 518:3	134:9 147:17
257:24 259:24	undergraduate	unfortunately	519:6	193:11 199:24
266:11 284:14	48:24	70:23 494:20	USC 248:23	225:5 280:3,18
285:10 328:10	underneath	uninterrupted	284:15 285:11	281:12,17,19
332:13 357:12	126:21 129:18	254:19	332:14,22	281:25 282:1,6
382:17 499:7	261:15	unique 12:3	357:13	282:9 286:23
UC 410:15	underpin 42:24	44:9	use 6:5 13:7	287:13 288:24
UCNC 444:20	understand	United 6:5 38:15	17:6 27:25	293:18,21
Uh-huh 56:20	14:18 16:11	55:24 89:15	51:18 91:18	299:14 310:18
117:24 181:10	24:20 29:21	90:2,4,7	152:4 170:20	310:23 313:12
194:22 195:7	38:3 62:9	132:24 155:11	208:24 216:24	333:6 337:5
236:21 237:5				

338:3 342:18 342:21,23 343:11,13,14 343:16 345:17 352:14 353:10 362:17 363:25 390:22 410:15 420:22 449:1 459:21 475:3 486:25 488:5 490:13,14 494:15 497:7 utilize 253:15 267:16 utilizing 390:15 utter 476:2	265:16 384:17 386:4 412:9 504:15,25 505:5 506:4,10 vegetation 189:19 430:4 vehicles 410:14 410:15 veracity 95:2 verbal 466:9,10 492:21 505:6 verbatim 474:23 verification 102:2 233:6 verify 75:16 110:3 175:22 219:19 226:14 321:12 515:11 Version 5:7 versus 35:14 71:3 369:19 viable 457:3 video 18:4 268:5 view 258:21 517:10 violation 38:19 49:24 58:4 68:24 85:4 104:11 215:10 247:17,23 266:5,7 483:2 violations 41:7 48:8 54:12,12 58:10 84:15,25 85:5 107:24 116:9 167:19 239:25 276:6 339:3 381:20 437:17 465:4 495:8 virtue 12:21 visit 287:22 288:4 visited 287:24 visiting 339:16 visits 339:22 visually 426:18	voice 270:16 volume 6:9,11 271:21 272:18 273:4 305:8,10 305:19 306:1 316:1 349:7 426:4 voucher 115:2 VP 462:23	250:11 262:2 264:6 267:15 268:1 269:7 273:12 291:17 293:8 304:6 305:1 307:6,21 327:14,18 341:8 347:9 348:18 349:15 351:3 366:10 367:21 368:1 368:14,23 380:7 386:13 392:19 395:14 396:22,24 397:8 399:1 402:10 403:19 407:25 408:2 409:10,16 413:18 414:8 414:10,12,17 414:19,19 415:3,5,6,20 434:18 435:8 435:15 442:10 444:21 445:23 448:13 449:23 450:14 451:19 452:13,19 460:23 473:17 473:22 479:17 479:25 480:13 481:18 491:25 492:25 493:4 495:3,15 496:5 501:12 507:5 512:9,10,23 513:2,12 514:6 514:15,21 515:4,20 516:11 wanted 18:10 25:13 26:24 27:1 28:4 29:9 40:10 46:16 66:18 94:10 113:22 139:4	204:13,15 229:3 237:10 238:21 253:24 270:20 279:1 291:14 292:4 326:20 333:9 341:11 342:8 366:25 397:20 405:19 424:11 433:19 448:9 449:8 463:4 467:20 468:2,3 479:7 492:18 493:23 494:21 510:21 513:17 513:19 wanting 513:23 wants 452:20 warrant 85:12 washed 104:20 wasn't 25:5 62:25 75:16,18 178:11 198:16 198:23 202:5 208:25 210:6 210:11 219:7 219:10 231:22 254:6 256:5 270:19 288:23 297:8 306:2 315:11 323:19 328:19 342:14 357:23 375:5 412:22 415:9 418:24 419:14 440:9,17 444:24 463:24 466:25 470:24 477:1,12,22 478:6,6 500:25 507:9,10 510:9 517:10 waste 95:3 201:9 264:25 265:5 332:20 401:9 wastewater 51:12 52:3
V				
vac 427:25 428:1 vacancy 121:20 vacated 38:12 vacuum 427:9 vacuuming 87:7 valid 115:25 validate 249:21 validity 204:16 valuable 44:11 valve 129:8,16 442:17 475:5 valves 88:7 459:24 475:3,7 variations 447:20 variety 23:22 448:10 various 85:3 127:17,18 275:19 283:19 vary 56:9 201:14 vector 59:1,5 60:12 79:2 81:15,17 99:12 101:11 102:3 103:2,5 235:15 238:11,13				

56:6,19 57:7	266:3,4,7,11	104:22 176:21	46:11,16 47:5	web 314:20
57:10 86:24	266:20 267:1,2	183:24 184:18	47:11 62:6,9	website 5:10
123:13,25	276:17 279:17	197:10 209:24	63:6 77:23,24	517:3
125:22,25	280:4 332:19	246:20 247:13	78:20 82:14	Wednesday 1:8
132:18 201:13	332:21 342:3	250:3 304:23	124:10 165:22	100:4 141:13
226:16 240:8	411:2 419:11	321:15 333:16	168:23 178:22	153:12 286:7
248:1 260:20	441:6,11 447:2	333:17 345:1	179:13 186:21	301:17 302:6
266:12 276:12	447:4,7,8,9,11	349:2,7 357:21	188:7,22 191:4	396:6
276:17,18,25	447:20,22	368:4,13 377:6	192:9 194:6	week 100:7,14
277:4,8 278:20	451:9 452:4	395:4 397:5,17	195:8 212:18	154:6 286:13
278:21,22	457:21,24	398:17 427:11	214:2 215:9	446:21 475:23
280:4 281:2	459:23,25	440:4 508:22	220:14 252:25	weekends
298:19	460:3,4,5,11	513:3 516:5	269:13 271:15	416:13 438:20
watching 475:25	461:12,13	518:23	272:24 292:2	439:9
water 5:13 11:2	463:12,14,15	ways 54:4	300:13 301:24	weekly 409:9
36:5,7 38:6	463:17 476:18	244:14 278:12	302:11 303:13	weeks 476:1
40:15 41:2	476:22 492:19	282:15	304:8 307:13	weigh 339:5
42:9 48:4 49:9	495:13	we'll 10:21	307:17 308:21	weight 22:25
51:24 52:1,7	watered 436:22	15:10 16:22	309:24 317:10	23:17,20 24:18
53:5,7,16,18	waterline	18:15 19:18	330:5 337:12	24:24 25:17
53:23 54:10,19	459:20,22	69:24 71:25	348:3 350:23	61:16 124:19
55:3,4,6,7,23	461:7 508:18	185:14 186:10	361:14 367:5	125:3 163:17
58:10 59:24	waters 35:25	186:13 187:17	367:18 378:20	164:13 165:10
67:22 68:23	36:13 38:12,15	208:7 248:5	390:5 395:23	165:13,19
74:10,25 75:17	38:20 55:5,11	252:3 268:17	396:12,15	176:13 192:11
84:23 85:1,10	90:2,3 225:19	270:25 271:2	401:6 435:2	welcome 17:25
89:5,14 90:7	243:21,25	285:22 300:8	440:7 449:8	21:6 114:3
92:18 94:25	245:8 249:3	300:14 301:8,9	450:5 469:21	162:15 189:4
95:11 104:2,20	257:3 260:12	301:10 305:21	473:5 487:5	268:23 346:20
115:12 122:6	262:15	306:8,13	512:2,19	452:11 473:24
123:23 125:22	watershed	324:25 325:1	514:14 516:14	well-tread 496:3
132:24 133:4	264:24 265:4	349:9 369:1,22	516:24 518:6	wells 487:24
150:10 217:8	265:11 266:15	389:20 399:18	we've 12:18,21	went 30:19 63:2
225:21 226:2,9	waterway 226:9	399:20 405:11	14:12 28:7	157:9 406:2
239:20,25	226:18 244:10	415:21 422:24	31:19 33:23	408:10 422:21
244:4,17,19	249:4,12	435:23 444:8	34:19 57:10	422:22 423:9
246:5,20,24,24	256:19,25	452:6 453:6,13	166:18 173:2	423:19 429:6,6
248:16,20,22	259:7,11 263:9	516:16,20	180:16 183:11	432:17,17,19
254:18 256:2	263:22 264:6	519:1,20,24,25	202:19 209:5	433:20 434:17
257:9,24	waterways	520:2,18	269:1 308:12	439:25,25
258:12,21	41:13 55:10	we're 11:6 15:20	351:15 378:22	440:1 458:25
259:3,9,20	155:10 261:20	17:16 21:2,23	379:2,15 479:3	463:16 466:7,7
260:3 261:3,22	way 16:24 24:7	26:21 28:23	479:9 483:2	467:15,25
262:9,10,15,19	30:9,16 41:10	29:4,5 31:2,8	498:7,13	475:15 476:5
262:19,23	75:8 77:15	32:24 33:9,15	502:15 514:19	476:22 477:18
263:13,18	88:9 103:13	35:15,17,20	wealthy 456:12	485:16,20
265:3,10,13	104:16,17,20	38:19 39:7	weather 416:8	508:5

weren't 178:11 199:12 221:10 320:3 359:7 388:7 411:8 437:2,14 461:15 462:23	29:11 37:8,9 39:3 43:6 125:2 143:21 225:10 367:25 514:5 wishes 20:16 withdraw 27:2 28:17 29:6 304:14,16	139:6,22 141:1 143:8,9,13,18 147:2 148:2 149:8,16 150:25 152:10 152:24 154:12 154:25 155:3 155:20 156:15 157:19 158:18 159:5 160:2 161:19,24 162:23 166:12 167:23 168:18 168:23 169:2,8 169:16 170:4 170:10,22 171:19 179:20 180:1,9 181:2 181:5,8,10 183:15 184:13 189:12,15 196:22 197:23 198:19 206:20 206:23 207:3 208:1 211:15 211:21 212:12 213:19 215:6 224:10 227:1 236:17,19,21 237:5,9 238:8 238:18,23 246:8,10,13,15 247:4 252:8,11 252:14 256:12 256:15,21 257:13,17 258:8 262:5 267:12 272:11 273:9 274:4,6 274:15,19 284:12 286:18 290:19,22 291:9,13 292:20 293:1 293:11,22 300:10,18,24 301:6 303:13	305:4 307:10 308:3,6 309:6 309:10,19,22 317:4 318:9 319:19,25 320:14 325:8 327:14,17,21 327:25 329:11 329:16,20,23 330:9,19 339:15 340:6 341:14,21 342:2,6 346:20 350:10 359:15 359:18,20,23 360:2 366:8 367:8 370:3,8 370:11,21 374:5,16 376:18,21 379:7,10,12 380:19 381:11 382:2 386:16 387:20 388:24 389:3,6,8,11 389:25 392:24 393:2,9,12,17 393:22,25 394:5,7,10,12 394:15,17,21 395:10,12 396:15,21 397:12,19 398:5,10,15,23 399:25 400:4,7 402:10,14,20 403:4,9,12,15 403:25 404:3 404:13 406:17 406:21,24 407:5,7 408:15 408:17 409:20 410:6 412:18 412:22,25 413:3,8,10,22 414:2,10,14,21 415:1,11,15	418:15,18 419:3,6,9,16 421:19 425:8 425:13,24 426:3,7,9,17 426:20,24 427:3,6,22 429:2,4 432:6 432:10,12,15 432:25 433:4 434:6,9,13,15 435:10,14 438:17,19,25 444:4 446:3,7 446:11,13,17 446:24 447:8 447:11,15,18 447:22 448:1,5 448:18,21 449:11,13,25 450:3 454:3,6 458:10,13 461:25 462:3,8 462:13,21,25 463:2,11 464:8 464:12,14,19 464:23 465:7 465:10,14,17 466:5,10,13,20 466:22 467:6 467:10,14,24 468:8,10 469:1 471:5,7 474:22 474:25 475:14 476:4,11,15,17 477:5,7,10,14 478:1,6,14,18 478:24 479:14 480:23 481:1 481:11,15,21 482:1,4,9,17 482:20,24 484:2,4,10,23 484:25 485:3,8 485:14,16,24 486:2,8,14,23 487:9,11														
west 401:11 410:2 476:20	wetland 262:13 262:16	withdrawing 28:23	withdrawn 234:20	withhold 483:25														
wetlands 55:8 257:5,6,18 262:12,20	whatever's 397:2	witness 13:11,14 13:15 14:10 18:12,18 25:7 29:3 42:11 45:14,19 46:5 46:9 61:1 76:7 76:24 78:4,18 81:21 82:18 83:16 84:3 85:15 86:10 87:11,23 89:19 90:16 91:8 92:4 93:15 94:14 95:19,20 96:24 97:17 98:6 99:15 100:17 104:24 107:7 108:8 109:3,9,15 110:1,10 111:6 111:11 112:22 113:12 114:23 115:19,23 117:4,22 118:5 118:14 119:11 119:20 121:12 122:12,17,25 123:3,6,16 124:6 128:1 129:13,21 130:23 133:13 134:19 135:2 136:22 138:13	what'd 347:20	whatsoever 305:9 477:2 509:1	wheel 145:18 146:19 313:25 426:21	WHEREOF 521:16	whirl 306:9 399:16	White 275:23 299:1 334:15 471:7	wife 122:3 168:8 454:16 462:14 462:25 487:22 493:8 508:15	wild 103:9	wildfire 475:25	wildlife 52:18,19 52:21 53:4 103:7,11 264:3	willing 463:19 519:11	winch 426:22 427:3	wind 243:2	winter 460:17	wire 130:9	wish 14:3,4 25:22 27:12

488:21 489:2,8 489:19 490:5,8 490:21,25 491:5,11,15,18 492:3,12,14 494:1,23 495:5 495:9,18,21 502:22 507:12 507:24 508:2 508:14 509:23 510:1,4,14,16 510:23 511:12 511:19 512:25 513:4,13 521:14,16 witness's 347:6 witnessed 214:13 witnesses 3:6,20 13:21,22 14:1 14:19 17:13,19 19:21,24,25 20:16 21:2 26:2,7 27:25 28:2,9 37:9 43:3 124:11 162:7 163:21 214:6 302:19 366:4 404:9 450:23 wonderful 16:10 wondering 378:21 434:3 words 143:20 148:21 154:11 473:9 work 15:20 16:15 43:16 44:6 47:23,25 49:20 50:2,15 50:19,22 51:1 56:17,22 77:9 96:13 116:1 118:14 121:5 131:7 132:21 133:3 142:25 147:21,23	148:11,15 149:12,20,24 150:3 151:8 152:22 156:13 160:12,23 180:23,23 188:13 193:17 220:24 221:1 223:20 224:3 224:13 229:22 229:25 239:19 269:18 273:3 275:7,12 276:22 277:3 281:13,24 282:6,7 284:12 285:15 289:10 293:12 294:18 294:23,25 299:14 300:21 314:10 317:9 318:25 319:1 319:11 324:23 326:14 328:4 331:11,19 333:2 335:6 337:1 338:8,10 343:16,18 344:4 346:13 349:2,8 350:12 351:5 352:15 352:18,21 353:5,15 354:10 356:4 357:20,23 358:3,5,24 359:8 361:2,5 362:5,10,11,14 362:17,18 364:6,10,12 365:8 374:23 375:14,17 389:1,3 394:1 397:10 398:12 400:16 405:18 406:2 416:13 417:3,16	419:21 421:8 421:24,25 422:8,14 423:9 427:11 428:18 433:10 438:20 439:5,20 442:15,15 456:19 470:10 470:12 485:12 499:5 500:5 502:16 503:11 504:5 516:18 work,' 160:20 294:22 worked 51:5 56:21 57:17 221:12,15 275:9,14 276:24 292:9 323:15 337:20 342:15 397:6 400:22 402:25 403:4 410:12 421:1 436:14 439:9 442:22 460:13 462:15 465:19 467:8 475:2 484:16 workers 139:12 405:24 416:10 508:25 workforce 160:11,14,22 160:24 294:18 294:24 295:2 working 46:16 56:7 277:2 288:2 310:1 320:7 348:25 366:23 378:11 406:12 422:3 439:7 442:12 466:22 467:7 494:16 works 18:3 42:4 57:11 92:10 193:14 250:25	269:11 278:16 279:9 300:22 301:5 306:14 344:22 379:1 395:22 494:9 501:24 516:19 worries 273:16 273:16 397:16 449:16 463:3 worry 185:12 456:25 worth 34:5 119:13 wouldn't 26:14 28:13 37:18 69:10 206:4 209:3 213:8 215:14,15 225:7 232:6 233:23 235:22 241:25 253:12 257:22 265:7 343:20 357:24 364:25 394:1 436:25 439:8 445:24,24 wrap 520:10 write 224:21 287:23 288:4 321:23 465:18 writing 15:15 501:5 written 12:23 61:14 209:23 415:19 463:22 520:7 wrong 217:24 257:3 449:14 449:15 464:16 469:14 472:22 478:18 508:10 wrote 159:20 362:3 469:18 499:8 508:10 Wu 5:8 94:19 96:2 105:6,12 109:19	Wu's 198:2 Wyatt 5:9 <hr/> X <hr/> X 3:1 4:1 5:1 6:1 7:1 8:1 9:1 <hr/> Y <hr/> yeah 18:21 19:5 35:12 38:3,10 47:1 49:16 57:1 58:20 62:19 64:1,4 70:21 71:1,19 82:7 95:17 119:2,5,5 124:12 154:25 180:9 183:17 184:20 185:16 206:9 208:1 213:25 215:21 217:2 218:5 223:19 227:1 230:15 240:5 247:17 250:23 268:22 278:4 279:10 280:14 282:4 285:14 290:3,19 291:14 294:4 300:12 301:1 303:16 304:6 304:11 305:23 308:16 311:24 314:7 315:25 317:15 319:20 319:25 327:4 327:11,25 328:1 330:10 331:5 347:23 354:9,23 359:7 361:4,5 362:16 363:12 368:12 378:5,17 379:11 387:5,8 387:22 389:20 392:10 394:15 397:16 403:9
--	--	--	--	---

403:16 406:17 413:22 427:18 427:22 429:2 432:10 441:19 449:2 451:6 456:25 458:13 464:19 466:20 475:11 479:6 489:19 502:3 515:15 516:2 518:17 year 93:1 132:10 132:11 157:24 259:1 318:7 year-round 279:23 years 41:3 50:13 50:21 81:5 221:13 230:17 231:6,10 387:16 436:7 456:20 457:7 462:9,17,18 481:16 Yellowstone 226:1 244:15 248:19 264:14 Yep 346:20 448:5 yesterday 156:9 302:8 304:24 305:5,6,24 307:22,23 310:8 342:19 398:17 437:14 younger 350:6	02-cc-2018 110:17 111:19 04 521:22 <hr/> 1 <hr/> 1 6:9 41:19 65:20 67:5 76:8,14 78:4 81:21,24 82:19 83:5,16 84:3 85:15 86:10 89:24 90:16 92:1,11 93:15 94:14 95:19 104:24 106:4 107:11 108:8 109:3,9,15 121:3 127:7 135:23 136:6 136:23 141:2 141:17,23 149:24 150:11 171:19 195:9 199:19 203:24 247:4 285:22 287:18 295:9 309:16 327:12 333:24 336:8 336:10 337:13 361:15 378:20 381:24 386:23 452:8 472:13 514:25 1,000 176:12 1,176.56 117:2 117:14 1,419.55 128:6 128:19 1:45 186:10 1:52 186:16,18 186:22 10 95:11 96:24 155:21 188:17 247:4 446:19 10-day 95:13 10,000 92:12 422:17	10/16 424:24 100 387:17 100,000 422:16 103 35:14 105 35:14 11 78:4,18 79:21 121:12 152:11 298:14 11(h) 190:2 11:25 395:11,23 396:5 11:30 395:24 11201 2:7 113 130:23 11th 26:6 28:6 132:9 338:6 355:6 364:3 12 33:19 81:21 81:23 82:19 83:5 97:17 122:12 123:6 125:9 463:23 12-hour 462:16 12/12/2018 126:18 12:15 166:17 12:30 395:25 12:32 396:5,7,13 12:40 185:22 12:41 185:22 12:45 186:16 120 482:5 122.1 89:19,24 122.2 90:4 248:21 1251 332:22 128 133:14 134:18 129 134:5 13 65:4 83:16 123:16 159:6 289:25 290:11 290:12 292:6 294:3 132 131:20 136 180:10,20 1362(7) 248:23	13th 99:25 109:19 153:4 286:3 351:13 14 84:3 160:3 290:12 14-foot 509:1 14th 91:1 382:19 15 166:18 186:10 369:1,2 417:7 453:11 453:13 462:17 516:15,21 15-minute 368:8 15th 147:11,14 338:7 364:5 16 161:3 296:21 296:25 461:11 16550 2:12 289:12 16th 286:25 418:22,25 17 90:16 91:8 92:4 147:3 17th 83:8 97:8 418:25 18 4:7 7:21 93:15 94:14 148:3 189 3:8 18th 105:10 294:19 19 31:12 95:19 96:24 97:17 98:6 99:15 148:23 19,000 411:5 1999 133:2 1C 123:13,25 125:25	150:9,13 220:4 301:24 302:7 307:18 309:16 313:9 332:16 348:4,19 381:9 381:9 382:23 404:11 413:3 416:4 493:22 515:1 2- 129:9 2.8 91:23 2/7/2018 126:11 2:00 453:14,20 20 154:13 166:18 243:7 462:18 20,000 426:24 427:11 200 427:9 200,000 457:12 457:15 2000 456:23 2009 436:9,10 436:15,17 2015 4:6 247:13 248:4 257:25 260:14 2016 275:14 323:16 462:8 2017 114:9 115:4 318:6 351:13,18 437:13 2018 4:7 5:7 7:21 33:2 36:20 40:7 41:21 83:8 85:22,25 88:13 93:11 97:8 98:2 99:7,25 101:19 106:4 107:3 113:2 120:1 121:21 127:5 131:2 136:15 142:14 145:8 146:13 147:11,15
<hr/> Z <hr/> zero 306:2 zeroed 306:2 Ziontz 133:21 134:10,13 zone 300:22 zoom 46:18,21 46:22,22 <hr/> 0 <hr/> 00710 294:15			<hr/> 2 <hr/> 2 41:22 68:15 88:5 91:8 110:1 121:5 129:9,16,17 130:9 138:14 139:2 150:4,6	

151:20 152:23	20th 85:22,25	427:7	95:11 105:25	248:10 267:14
153:4 157:4	141:14 142:13	252 3:9	108:25 115:12	289:4 382:1
160:14,21	283:13 285:2	257 5:23	157:9,12	389:3 416:17
203:13,15,16	295:22 356:23	25th 93:11	179:22 199:8	4-inch 129:7,8,8
205:8 207:5,6	21 88:13 104:24	101:19	219:11,21,25	129:9,9,9
207:7 208:10	155:4	26 98:6 107:7	242:23 243:6	4,000 132:23
275:25 281:9	21st 94:21 145:8	318:6	501:1 506:14	4,655 126:11
284:25 286:3	151:20 160:14	2601 1:14	506:22	4:41 301:16
286:25 288:9	160:20 295:2	26th 152:23	309 84:23	40 3:4 5:23
295:2 296:8,17	297:16 356:13	157:4	30th 146:12	43:12 61:1
296:21,25	499:15	27 110:10	154:17 284:25	80:2 89:19
298:14 331:21	22 10:1 27:24	151:13	357:5	91:18,23 95:4
332:8 335:4	28:1 31:21	274 3:11	31 99:15 109:3	100:17 106:14
336:19 338:6,7	136:15 186:17	27th 131:2 288:9	310 3:11	137:22 174:4
351:17,20,25	446:17	28 30:14 33:24	31st 133:20	195:18 243:8
355:6,17	22,000 195:22	34:20 111:11	32 109:9 144:24	248:21 284:15
356:14,24	328:14,16	113:25	355:21,22	285:11 328:10
357:5 364:3,5	330:2 373:3	28,000 177:5	320 140:18	332:14 357:13
371:12,22	411:7	29th 134:10	33 142:8 248:23	383:21 387:11
372:3 382:7	22,950 127:5	159:13 336:19	283:6,23 284:1	400 3:18
383:13 384:6	22.2 294:16	2E 123:13,25	294:17 332:22	403 5:23
458:12 462:3	22nd 1:8 11:5	125:25	497:9	404 50:24
464:11,12	382:7	2nd 1:14 96:2	34 112:12,14	405 84:25
496:9 499:8,15	23 4:6 36:1	98:2 105:22	126:24 149:9	406-647-8312
500:2	106:19 167:23		35 65:6 151:1	288:8
2019 33:19	301:17 396:6	3	350 3:12	406-697-3022
84:10 86:3	23,000 328:18	3 41:24 81:7	36 34:11	289:11
91:1 94:21	330:2 411:7	92:4 126:6	360 3:12	406)582-0668
96:2 105:10,22	23,950 315:23	139:7 150:18	37 146:5 284:17	1:23
106:19 109:20	325:22	175:16,22	356:25	406)697-3022
133:21 134:10	2300 427:8,10	247:17,18	371 3:14	2:13
141:14 159:14	239 3:9	378:21 407:15	372 3:14	41 381:4
205:2,8 207:6	239,000 299:7	3:30 461:11	381 3:15	42 3:5 138:13
283:13 285:3	23rd 1:8 302:6	3:46 520:23	384 3:15	139:7
295:22 297:3	24 33:2 170:11	30 83:21 108:8	388 3:16	420 3:18
297:16 382:20	460:3 463:23	296:8 351:10	39 26:12 127:9	43 109:15 110:1
383:6 439:14	469:21 471:11	382:11,24	390 3:16	110:10 111:11
462:3 481:21	24-hour 457:25	383:2		112:22 113:12
500:4	463:9 492:23	30-day 83:23	4	113:25 114:23
2020 36:1	24th 114:9 120:1	308 9:2,3,5	4 42:2 76:24	119:20 126:6
2022 22:7,15	335:4	31:23 32:6,10	80:20 96:15	128:1,24
38:13 275:15	25 22:7,15 30:14	54:10,18,20	126:13 129:15	133:14 134:4
2023 1:8,8 10:1	32:16 50:17	67:22 68:12,16	129:16,16,16	134:17 286:18
186:17 301:17	170:23 470:16	68:20 70:8	129:16,17	430-some 193:1
396:6 521:18	25,000 468:21	71:16 75:1	136:11 139:23	431 3:19
2027 521:22	2500 140:19	78:12,23 79:11	174:19,25	432 157:15
208 105:25	2500-gallon	84:25 94:25	187:12 231:1	436 3:22

44 128:8 351:7 351:10	146:24 150:17 151:6 173:22	80:24 175:2,8 175:10 176:4	<hr/> 7 <hr/>	8:15 269:8,9 300:16 301:4
45 141:2 142:8 147:3 152:11 154:13 155:3 156:17,19 161:2 388:25 392:2,3,14 497:9	174:1,1 175:23 176:15 178:25 180:9 190:2,17 191:16 192:1 195:18 199:13 205:25 229:1 229:22 230:18 231:17 232:10 232:15 235:3 237:14,21 241:20 243:19 266:9 283:21 284:15,15 285:11,11,18 285:20 295:16 295:16 296:4,9 297:7,19 328:10 332:14 332:14 333:5 333:13 339:3,5 339:23 351:21 353:3 356:1,5 357:13,13 358:7 362:20 384:1 386:21 387:11 392:11 392:16 410:18 411:15 488:11 488:14,23 489:8,10,18,24 490:23 491:9 492:1 496:21 496:25 499:7 501:15 505:12 505:13 506:8	503.17 65:11,23 80:3 100:17 101:1 174:4,4 174:12 176:1 230:24 231:10 503.17(a)(4) 182:18 503.17(a)(4)(i) 101:2 503.17(a)(4)(ii) 66:7 174:13 187:10 503.17(a)(5) 182:2,11 187:8 503.18 91:24 503.32(b) 80:25 81:14 175:3 176:6 503.32(b)(5) 106:14 503.33(b)(1) 81:16 51 191:9 59 250:19 59079 2:13 289:13 59771 1:23 5hp 130:9	72:7 7:7 11:10 13:6 16:11,12 17:23 47:25 48:3 50:6 54:3 75:22 77:14,15 83:20 87:23 94:20 105:7,14 105:24,25 112:22 114:1 136:23 141:15 158:19 193:24 194:4 207:5 227:6 267:21 268:25 297:20 382:17 7.5 410:2 7/27/2017 130:5 7:30 268:23,25 70 244:15 264:13 267:1 7311 1:22 75 332:20 75,000 457:16 457:17 7th 113:2	8:30 269:4,6,8 300:16 301:18 302:10 8:53 10:5 80 332:16 84,000 243:11 8733 124:1 89 332:16 8th 127:5
<hr/> 5 <hr/>			<hr/> 9 <hr/>	
5 16:12 22:7,14 85:15 86:10,11 87:11,23 129:15 156:16 156:21 157:6 182:13 184:16 187:9,11 267:17 332:21 353:20 383:9	503's 266:18 503, ' 91:18 503.11(h) 43:13 189:5 190:3 220:14 503.12 61:1 63:7 503.12(d) 61:7 503.12(f) 61:18 503.13 81:7 503.13(b)(3)	<hr/> 6 <hr/>	<hr/> 8 <hr/>	9 76:8,24 119:21 152:25 171:19 296:16 9:00 1:9 11:5 90 482:5,5 90,000 456:24 9th 332:8
5 16:12 22:7,14 85:15 86:10,11 87:11,23 129:15 156:16 156:21 157:6 182:13 184:16 187:9,11 267:17 332:21 353:20 383:9	503's 266:18 503, ' 91:18 503.11(h) 43:13 189:5 190:3 220:14 503.12 61:1 63:7 503.12(d) 61:7 503.12(f) 61:18 503.13 81:7 503.13(b)(3)	6 78:18 79:20 87:11 113:12 114:5 155:6 157:20 296:6 383:1 6,000 156:14 6,620.86 126:19 6/21/2018 111:18 60 452:3 60-day 83:9 600,000 156:12 65 114:23 66 117:4 66219 2:8	8 7:8,16 76:1 77:14,14 81:17 85:23 102:7 193:25 194:12 248:9,13 267:24 268:13 268:14,18 269:1,2,5 331:21 355:17 492:16 8-24-2018 9:7 8,406.60 132:21 8/16 418:21 8/18-ish 486:4 8/27/2018 76:17 8/9 405:13 408:19 424:24 8/9/18 405:17 8/9/19 405:16	