

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

+ + + + +

ORAL ARGUMENT

IN THE MATTER OF:	:	
	:	
CITY OF TAUNTON	:	NPDES Appeal No.
DEPARTMENT OF PUBLIC WORKS	:	15-08
	:	
Permit No. MA0100897	:	
	:	

RECEIVED  
U.S. E.P.A.  
2016 MAR 15 PM 1:37  
ENVIR. APPEALS BOARD

Tuesday,  
March 1, 2016

Administrative Courtroom  
Room 1152  
EPA East Building  
1201 Constitution Avenue, NW  
Washington, DC

The above-entitled matter came on for hearing, pursuant to notice, at 10:24 a.m.

BEFORE:

THE HONORABLE MARY KAY LYNCH  
Environmental Appeals Judge

THE HONORABLE KATHIE A. STEIN  
Environmental Appeals Judge

THE HONORABLE MARY BETH WARD  
Environmental Appeals Judge

ORIGINAL

APPEARANCES:On Behalf of the City of Taunton  
Department of Public Works:

JOHN C. HALL, ESQ.  
BEN KIRBY, ESQ.  
of: Hall & Associates  
1620 I Street, NW  
Suite 701  
Washington, DC 20001  
202-463-1166  
202-463-4207 fax  
jhall@hall-associates.com

On Behalf of the Environmental  
Protection Agency Region I:

SAMIR BUKHARI, ESQ.  
Environmental Protection Agency  
of: Office of Regional Counsel  
Region I  
5 Post Office Square  
Mail Code ORA 18-1  
Boston, MA 02109  
617-918-1095  
617-918-0095 fax  
bukhari.samir@epa.gov

and

LEE SCHROER, ESQ.  
Environmental Protection Agency  
of: Office of General Counsel  
1200 Pennsylvania Avenue, NW  
Mail Code 2355A  
Washington, DC 20460  
202-564-5476  
schroer.lee@epa.gov

## ALSO PRESENT:

Eurika Durr, Clerk of the Board

1 P-R-O-C-E-E-D-I-N-G-S

2 10:24 a.m.

3 THE CLERK: All rise. The Environmental  
4 Appeals Board of the United States Environmental  
5 Protection Agency is now in session for oral  
6 argument In Re: City of Taunton, Department of  
7 Public Works, Permit Number MA-0100897, NPDES  
8 Appeal Number 15-08; the Honorable Judges Kathie  
9 Stein, Mary Beth Ward, Mary Kay Lynch, presiding.

10 Please turn off all cell phones and no  
11 recording devices allowed. Please be seated.

12 JUDGE WARD: Good morning. We're  
13 hearing argument today in the matter of the City  
14 of Taunton. The City has filed an appeal of an  
15 NPDES permit issued by EPA Region I. Each side  
16 will have 30 minutes for argument.

17 Will counsel please introduce  
18 themselves for the record.

19 MR. HALL: Yes, Your Honor. My name is  
20 John Hall. I'm counsel for Petitioner, from Hall  
21 & Associates, and with me here today is Ben Kirby  
22 from Hall & Associates. I'd like to reserve five

1 minutes for rebuttal.

2 JUDGE WARD: Thank you. EPA?

3 MR. BUKHARI: Samir Bukhari, Office of  
4 Regional Counsel, Region I, representing the  
5 Region in this matter. I'm joined by Lee Schroer  
6 of the Office of General Counsel.

7 JUDGE WARD: And, Mr. Bukhari, you did  
8 receive a copy of the City's PowerPoint in  
9 advance of argument?

10 MR. BUKHARI: I did, Your Honor.

11 JUDGE WARD: Do you have any concerns  
12 or objections you wanted to raise to the Board at  
13 this time?

14 MR. BUKHARI: I don't.

15 JUDGE WARD: You do not?

16 MR. BUKHARI: I do not.

17 JUDGE WARD: Okay. And I'd also like to  
18 address the motion that the City filed yesterday  
19 at 5 p.m. to supplement the administrative  
20 record. At this time, we haven't yet heard from  
21 the Region a response. What I'd like to do is ask  
22 the Region to file its response to that motion by



1 this Friday, March 4th, and for the City to file  
2 any reply by next Tuesday, March 8th. And we  
3 won't be hearing argument today as to that  
4 motion.

5 Mr. Hall, you may proceed.

6 MR. HALL: Yes, thank you, Your Honor.  
7 With the Board's permission I'd like to do my  
8 presentation sitting which I would not normally  
9 do. We've had tremendous difficulties trying to  
10 get the laptop up and synced, and I can't use it  
11 from the podium. So with the Board's permission,  
12 if that would be acceptable?

13 JUDGE WARD: That's acceptable.

14 MR. HALL: Thank you very much.

15 Good morning. My name is John Hall.  
16 I'm counsel for Petitioner, City of Taunton. With  
17 me today is Fred Cornaglia, the Commissioner of  
18 Public Works for the City of Taunton; also, Dan  
19 de Abreu ---

20 JUDGE WARD: I'm sorry, Mr. Hall. Could  
21 you repeat the first name you said?

22 MR. HALL: Yes, Fred Cornaglia, and

1 then Assistant City Attorney, Dan de Abreu, and  
2 then Joe Federico, who's the City's consulting  
3 engineer. They have been involved in the process  
4 from the start and, of course, they're intimately  
5 familiar with the facts and the issues.

6 We're here today specifically to get  
7 justice from a series of abusive and patently  
8 illegal tactics that the City has suffered at the  
9 hands of EPA Region I, who over the past 18  
10 months fabricated claims of severe eutrophic  
11 impairment of the Taunton estuary which, by the  
12 way, is a designated wild and scenic river and  
13 has never been classified as impaired by the  
14 State of Massachusetts.

15 JUDGE WARD: Mr. Hall, on that point,  
16 it's true that the river is not listed as  
17 impaired on the State's list, but did the State  
18 ever make an affirmative finding that the river  
19 was not nutrient impaired?

20 MR. HALL: That's what you do when you  
21 submit a 303(d) list.

22 JUDGE WARD: But in this instance did

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE, N.W.  
WASHINGTON, D.C. 20005-3701

1 the State make an affirmative finding? Is there  
2 any place in the record you can point us to where  
3 that finding has been made?

4 MR. HALL: I would point to the very  
5 303(d) list itself as the evidence that the State  
6 concluded that the river is not impaired. They  
7 determined sections of the river upstream of  
8 Taunton should be considered nutrient impaired,  
9 and they identified sections of Mount Hope Bay  
10 that should be considered nutrient impaired. They  
11 have never at any time identified the Taunton  
12 estuary as nutrient impaired, and nor are they  
13 required to issue a separate independent analysis  
14 claiming that it's not nutrient impaired. That's  
15 what the 303(d) list is supposed to encompass, so  
16 I would suggest that the Board's question is  
17 misplaced on that point.

18 Other problems is that the Region  
19 repeatedly ignored requests for backup  
20 documentation on technical issues. And then upon  
21 admitting that many key issues had not been  
22 addressed, issued the permit anyway with

1 extensive new analyses and recommended that this  
2 Board, in fact, ignore the expert opinions  
3 confirming that the entire analysis is grossly  
4 incompetent.

5 JUDGE WARD: Mr. Hall, isn't it  
6 appropriate for the Region to respond to the  
7 comments filed by the City and others, and in  
8 responding those comments address the issues you  
9 put in contention?

10 MR. HALL: Well, Judge Ward, what is  
11 completely inappropriate is to issue a grossly  
12 deficient fact sheet that has no analysis in it  
13 whatsoever, and then at the end of the process  
14 produce 60 pages of new detailed assessments  
15 giving the public no opportunity. They may as  
16 well have issued us the permit for the City of  
17 Pittsburgh, Pennsylvania and then said oops, at  
18 the end of the process.

19 JUDGE STEIN: All of the hyperbole  
20 aside, this is a complicated permit with an  
21 extensive record. And as you well know, I  
22 presume, the Board has on numerous occasions

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 allowed as the regulations contemplate the Region  
2 to put in additional documents into the record at  
3 the time response to comment is issued. Why is  
4 that not allowed by Section 124.18?

5 MR. HALL: I didn't say it wasn't  
6 allowed if you're supplementing an otherwise  
7 acceptable permit record from the get-go. If  
8 you've got a permit record that's so deficient  
9 from the start, which this was, that we could not  
10 even figure out how or why they were doing what  
11 they were doing, you can't then provide the  
12 information at the entire end of the process.  
13 That's why you have provisions for reopening  
14 permit comment periods to allow the public to  
15 have input.

16 Now with regard --

17 JUDGE STEIN: My understanding is if --  
18 in order to reopen a public comment period,  
19 which is within the Region's discretion, there  
20 are certain showings that need to be made. Did  
21 you make those showings?

22 MR. HALL: We believe we made every one

1 of those showings. We repeatedly requested an  
2 opportunity to provide new information. We asked  
3 that the period be reopened. We were told no.

4 Now you're suggesting that this is --

5 JUDGE WARD: Mr. Hall, I think in terms  
6 of the adequacy of the fact sheet, I think  
7 reviewing the fact sheet is fairly detailed and  
8 lengthy. I think that's a fair characterization  
9 of it. And with respect to the nitrogen analysis,  
10 it extends for 20 pages of detailed description  
11 of the basis for the nitrogen limit here, as well  
12 as the data on which the Region relied. I'm not  
13 sure I take your point that it was a plainly  
14 deficient fact sheet.

15 MR. HALL: Would the Board like to  
16 point out to the location in the fact sheet where  
17 they demonstrated that the nutrients were  
18 actually causing the adverse effect that they  
19 claimed? Could you please identify for me? You're  
20 the one that's saying it's a detailed fact sheet.

21 JUDGE WARD: Mr. Hall, the point of  
22 argument is for us to ask you questions, so

1 please proceed.

2 MR. HALL: Well, Your Honor, you just  
3 issued a declaratory statement to me that the  
4 fact sheet contained detailed analysis and,  
5 obviously, you believe it must, so I'm asking you  
6 where is it?

7 JUDGE WARD: Mr. Hall, I think you  
8 should proceed.

9 MR. HALL: Fine. Let's talk about the  
10 sentinel location. We had a series of issues  
11 associated with this permit that, quite frankly,  
12 even somebody with limited technical expertise  
13 would understand that this is not a  
14 scientifically defensible analysis.

15 First off, they claimed that the water  
16 quality achieved at Mount Hope Bay 16 had to be  
17 met in the Taunton estuary, and that was the only  
18 way DO standards would be met. There was no  
19 analysis in the fact sheet to verify or, by the  
20 way, response to comments to verify that this was  
21 a reasonable conclusion. There was no peer review  
22 of this approach that was used, and I've been

1 doing water quality analysis for 35 years, also  
2 as an environmental engineer I have never seen  
3 this approach before in my entire life. And no  
4 rational --

5 JUDGE WARD: Mr. Hall, I think the  
6 Region identified the nutrient criteria guidance  
7 issued by the Agency that describes this kind of  
8 a reference-based approach as a permissible means  
9 of setting a water quality standard.

10 MR. HALL: Actually --

11 JUDGE WARD: A limit that wasn't based  
12 on a water quality standard.

13 MR. HALL: Let's be a little more  
14 specific about that. The Region issued a  
15 declaratory statement that this approach was like  
16 the reference-based approaches, and we submitted  
17 the detailed analyses showing it most certainly  
18 was not. Even reference-based approaches require  
19 you to demonstrate that your reference location  
20 has some rational connection and capability of  
21 predicting what the water quality should be at  
22 the other location. That analysis is completely



1 absent and is still absent from the record.

2 So what did we do after we found that  
3 this methodology was utilized? We contacted a  
4 number of top experts. And Dr. Steven Chapra,  
5 who's the Director of the Tufts Environmental Law  
6 Program, he's an international --

7 JUDGE WARD: Mr. Hall, were these  
8 exhibits included with your comments filed June  
9 of 2013?

10 MR. HALL: No, these exhibits were  
11 included after we had repeated discussions back  
12 and forth with the Region who we asked to  
13 identify where is the basis analyses? And since  
14 they did not have said basis analyses but kept  
15 insisting they were correct we said well, why  
16 don't we try to get some experts and give more  
17 information to the Region? So the basic points of  
18 these expert opinions were all made in the  
19 opening comments. We just got more experts  
20 because, apparently, we couldn't find anybody who  
21 would otherwise listen to the points we were  
22 making.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           Now I might note, the Region and EPA  
2 only has a presumption of technical expertise. It  
3 is not irrebuttable, and it never has been. The  
4 permit writer who wrote this document has  
5 resigned. We've gotten three top technical  
6 experts, including the architect of the very  
7 program that they said they're using all saying  
8 the analysis is grossly deficient.

9           Now I'd like to have an opportunity --

10          JUDGE WARD: As to that reference,  
11 you're referring to the -- is it Dr. Howes, who's  
12 the Director of the MEP?

13          MR. HALL: I'm referring to Steven  
14 Chapra, Dr. Craig Swanson, which was the next --  
15 he also did the hydrogen dynamic model for Great  
16 Bay, and I'm referring to Dr. Howes. And I -- we  
17 would have, I believe, an opportunity to voir  
18 dire who is the expert at the Region who is  
19 capable of saying that these top experts in the  
20 country did not know what they were talking  
21 about. We don't know who this person is. What we  
22 have is conclusory responses saying oh, this is

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 all wrong, or I'm not going to consider it, or  
2 I've considered it but I'm going to ignore it.  
3 That is not a technical defense.

4 Now with regard to the response --

5 JUDGE WARD: I think that the Board's  
6 precedent does require the comments be filed  
7 during the public comment period, and that the  
8 Region is under no obligation to consider later  
9 submitted comments. So why are these properly  
10 before the Board at this time?

11 MR. HALL: Well, the Region did, in  
12 fact, consider the comments. They wrote detailed  
13 rebuttals on these comments, so this isn't a  
14 question of whether or not you -- the Agency  
15 considered it and decided to not look at it.  
16 They, in fact, looked at it and put comment  
17 responses simply claiming that these experts were  
18 wrong in a conclusory fashion. Actually, the  
19 response to comments is right in front of us.  
20 It's the next slide. Let's go to it.

21 JUDGE STEIN: Well, let me just --  
22 before you go there, my understanding is the

1 Region's obligation is to respond to significant  
2 comments. That's what the regulations call for.  
3 Is it your position that they didn't respond to  
4 the significant comments? I understand you don't  
5 like the response, but didn't they, in fact,  
6 respond to those comments, and in so doing put in  
7 information into the record in support of the  
8 response to your very own comments?

9 MR. HALL: Well, actually, I guess --  
10 well, I certainly -- the City of Taunton  
11 certainly didn't care for the response we  
12 received, but let's look at the response.

13 This one is -- these two responses are  
14 the classic examples. You can have a response but  
15 you have to have backup information to show it's  
16 correct, or else it's simply a conclusory  
17 statement, which is what vastly the majority of  
18 the responses are. So the Region responds, "We  
19 agree there are differences between the Taunton  
20 River and Mount Hope Bay, and that these  
21 differences are related to things unrelated to  
22 nutrients." Okay, fine. So what was the



1 conclusion? Well, but our approach is still  
2 consistent with the approach used in multiple  
3 TMDLs, so they created a new answer which, by the  
4 way, is why we went to Dr. Howes and said, "So  
5 what multiple TMDLs do we have here with the MEP  
6 Program" --

7 JUDGE WARD: Mr. Hall, in terms of the  
8 letter from Dr. Howes --

9 MR. HALL: Yes.

10 JUDGE WARD: -- we had -- the Board  
11 had directed you to file the communications that  
12 preceded that letter.

13 MR. HALL: Yes.

14 JUDGE WARD: At least, as I understand  
15 it, the communications were sent in March in the  
16 month before the permit and the response to  
17 comment document was issued, so how is the  
18 response to comment document the prompt for your  
19 asking for the letter from Dr. Howes?

20 MR. HALL: Because at verbal meetings,  
21 at meetings they told us that what they did was  
22 all consistent with the MEP Program. See, we had

1 a series of meetings, or we had one in  
2 September --

3 JUDGE WARD: Well, actually reading the  
4 emails themselves, I don't think that's reflected  
5 either. And, in fact, what you've attached is the  
6 fact sheet. And I think the other question I  
7 would have is, why wasn't the fact sheet, which  
8 at least refers to the MEP approach relating to  
9 TMDLs not sufficient to put you on notice that  
10 that was a question, that if you wanted to  
11 comment that was the time to comment on it and  
12 provide Dr. Howes' views?

13 MR. HALL: Your Honor, we plainly  
14 commented on this issue extensively. I mean,  
15 there's no question about that.

16 JUDGE WARD: I think my question was,  
17 why wasn't that enough for you to have been put  
18 on notice --

19 MR. HALL: Because if that --

20 JUDGE WARD: -- to seek the views of  
21 Dr. Howes at that time?

22 MR. HALL: At that point in time, they

1 were simply saying this approach was consistent  
2 with reference waters and, you know, other  
3 scientifically defensible things. It was like  
4 okay, we don't agree. Here's the analyses showing  
5 it's incorrect. Then after we sent a FOIA to EPA  
6 Headquarters asking was this ever peer reviewed,  
7 Headquarters said, "No." Then we had a meeting  
8 with the Region and they said "No, this is really  
9 all defensible and consistent with what's been  
10 done in the Massachusetts program. So no, your  
11 comments that you submitted to us before, we  
12 don't believe are sufficient."

13 At that point in time I decided to go  
14 to the person who wrote the procedures because of  
15 the claims being made to us. And I would suggest  
16 to the Board that the permit writers manual  
17 dictates that you have to consider this  
18 information.

19 JUDGE LYNCH: Mr. Hall --

20 MR. HALL: The purpose -- let me --

21 JUDGE LYNCH: Mr. Hall, tell me when  
22 was -- when were those meetings and where?

1 MR. HALL: When were those meetings and  
2 where? The first meeting where the Region claimed  
3 that they had responded to the key technical  
4 issues was in the City of Taunton in September of  
5 2014. That was the meeting that I was excluded  
6 from. The Regional Administrator would not meet  
7 if I was present at the meeting. That's why we  
8 sent FOIA requests immediately thereafter.

9 The next meeting that we had was in  
10 February 2015 in the City of Taunton again. We  
11 presented one more time the list of technical  
12 deficiencies that were associated with the  
13 permit, and the Region said no, we've -- this is  
14 consistent with the Massachusetts program. So  
15 right after that meeting, and you'll see the  
16 overheads on the FOIA request, we asked for the  
17 backup information that showed these statements  
18 were, in fact, correct. That was withheld from us  
19 until --

20 JUDGE LYNCH: So is it your contention  
21 that this is inconsistent with the Massachusetts  
22 program?



1 MR. HALL: Oh, it's not simply my  
2 contention, the -- Dr. Brian Howes, who developed  
3 the Massachusetts program said, "Regarding the  
4 selection of Mount Hope Bay 16 as the sentinel  
5 station for the Taunton River estuary reaches the  
6 existing data and studies" -- remember they were  
7 his data and his studies, he's the one that  
8 collected all the information. He says, "It would  
9 not support its use as a valid sentinel site,  
10 particularly as it relates to the Massachusetts  
11 program." So in no uncertain words the top  
12 expert, matter of fact the only expert on the  
13 Massachusetts estuaries program expressly said  
14 what the Region is doing is wrong.

15 JUDGE LYNCH: So, Mr. Hall, did the  
16 State sign this permit in April of 2015?

17 MR. HALL: The --

18 JUDGE LYNCH: Did they issue an  
19 identical permit?

20 MR. HALL: Your Honor, I'm not here to  
21 challenge or otherwise deal with any identical  
22 permit by the State of Massachusetts. I'm only

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE, N.W.  
WASHINGTON, D.C. 20005-3701

1 concerned with the permit that EPA Region I has  
2 issued.

3 JUDGE LYNCH: Did the State sign this  
4 permit issued on April -- in April of 2015?

5 MR. HALL: I have no idea, and nor do  
6 I -- nor does it matter for our legal challenge.

7 JUDGE LYNCH: Do you know if they  
8 issued the 401 certification certifying that  
9 these discharges in the permit were in compliance  
10 with the State Water Quality Standards and with  
11 the Clean Water Act, including 303?

12 MR. HALL: Well --

13 JUDGE LYNCH: Or did they waive that?

14 MR. HALL: They --

15 JUDGE LYNCH: Did they issue a waiver?

16 MR. HALL: I think they just issued a  
17 short letter that said the permit is consistent  
18 with their standards, which basically means if  
19 it's more restrictive than it needs to be, they  
20 don't object. It doesn't --

21 JUDGE LYNCH: Was this under Section  
22 401, the certification?

1 MR. HALL: I believe it was a 401 cert.  
2 I'm sure --

3 JUDGE LYNCH: All right, thank you.

4 MR. HALL: I'm sure it's in the record  
5 somewhere, Your Honor.

6 JUDGE WARD: Mr. Hall, in terms of the  
7 MEP approach, I think there may -- it appears to  
8 me on the record you may be conflating two  
9 different things. So the SMAST study refers to a  
10 more robust modeling and assessment and analysis  
11 that would be done following the SMAST study. And  
12 as the SMAST study itself states, as well as the  
13 fact sheet, that hasn't yet been done. That's  
14 different from the reference-based approach I  
15 think the Region used here, that the MEP has been  
16 using to set TMDLs as that need arises, so  
17 they're really two different things, and I think  
18 you're conflating the two. And it's true that no  
19 modeling was done here, but the Region never  
20 claimed that it was undertaking to do any kind of  
21 modeling of this system.

22 MR. HALL: Your Honor, we are

1 conflating nothing. Okay? They chose a location  
2 in Mount Hope Bay that had nothing to do with the  
3 Taunton River, and said it was consistent with  
4 the way the approach is used in the Massachusetts  
5 estuaries program. As an irrefutable fact, it's  
6 false. And if -- I don't see how there's any  
7 conflict with anything. Even as an irrefutable  
8 fact, it's false under a reference approach that  
9 none of the basic analyses required to do the  
10 reference approach were even used.

11 So if it is correct from the Region's  
12 perspective that none of this data were  
13 sufficient, and this is in their response to  
14 comments, none of the data are sufficient to show  
15 cause and effect or the impact of the nutrients,  
16 they should not have done this analysis in the  
17 first place because if the data are insufficient  
18 to show cause and effect from one location to  
19 another, they're insufficient to show cause and  
20 effect at Mount Hope Bay 16. They are  
21 insufficient to show cause and effect at Mount  
22 Hope Bay 19. You can't have it both ways.



1 JUDGE WARD: But the regulations speak  
2 to the potential to cause or contribute. Does it  
3 require a demonstration of causation to some  
4 certain degree of statistical proof? And I don't  
5 think they've claimed that they've done that, but  
6 that's not what the regulations or the Board  
7 precedent requires.

8 MR. HALL: I don't understand the point  
9 you're making, Your Honor.

10 JUDGE WARD: I think what I'm pointing  
11 out is that you're arguing that the Region failed  
12 to show cause and effect. And my question to you  
13 is, why were they required to given the  
14 regulatory standard?

15 MR. HALL: We briefed in our response  
16 whether or not the words "reasonable potential"  
17 allow the Region to simply make a wild guess as  
18 to whether one location in an estuary should be  
19 used to characterize an impact in another. And  
20 the short is, of course, it doesn't. It's got  
21 nothing to do with whether or not something has  
22 reasonable potential or not. Reasonable potential

1 -- actually, I developed those procedures when I  
2 was in EPA in the early 1980s. Reasonable  
3 potential is a statistical procedure that is used  
4 to project water quality from the effluent to  
5 determine if under a certain condition a  
6 violation might occur. It is not a basis to  
7 ignore whether or not you're using correct  
8 scientific procedures. It is not a basis to make  
9 wild unsupported guesses on the use of particular  
10 locations in an estuary to create a water quality  
11 criteria.

12 JUDGE STEIN: Okay. So, Mr. Hall, what  
13 is it that you want this Board to do --

14 MR. HALL: Well --

15 JUDGE STEIN: -- in a nutshell?

16 MR. HALL: In a nutshell, Your Honor,  
17 really the things that have gone on in this case  
18 are, in my view, astounding. We really want just  
19 several simple things to happen. One, the Region  
20 needs to be directed to have consistency between  
21 the State's determinations on the condition of  
22 the entire Taunton estuary under 303(d), and

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE. N.W.  
WASHINGTON, D.C. 20005-3701

1 their permitting action, number one. That's  
2 mandated by your rules, 130.12(a). Number two,  
3 the permit under -- as required by 122.44(d), the  
4 permit must reflect the billion plus dollars that  
5 was spent in this esturant system, throughout the  
6 system on reducing nutrients, reducing organic  
7 loads that happened since 2004, 2005. Remember  
8 that's when the data sets were collected in the  
9 system, a decade old. They shut down basically  
10 the Brayton Power Plant. As a matter of physics,  
11 that reduction in temperature had to improve the  
12 DO, and it had to reduce algal growth. That's a  
13 scientific fact.

14 Three, confirm please that the  
15 procedures being used, this sentinel method -- I  
16 have to tell you, I'm not anti a sentinel method.  
17 It's not the point, but if you're going to use  
18 that method, you have to show the relationship  
19 between the site you're using and the site you're  
20 projecting as its water quality condition. So you  
21 have to use a scientifically defensible method  
22 for doing that. Fine, if they want to use that,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE. N.W.  
WASHINGTON, D.C. 20005-3701

1 give us a peer reviewed sentinel method that they  
2 applied.

3 And last but not least, given the  
4 Region's own claim that the data can't be used --  
5 now remember we did dozens of graphs because  
6 they were missing from the Fact Sheet, the  
7 connections of nitrogen to Chlorophyll a, to DO.  
8 We did dozens of new graphs with the data they  
9 were using. In response, the Region said you  
10 can't use the data to show those relationships.  
11 Oh my, the Region said the data is simply  
12 insufficient to project how nitrogen affects DO  
13 and Chlorophyll a.

14 Well, okay, we agree, so let's go out  
15 and collect current data and develop those  
16 relationships. And if, in fact, the City of  
17 Taunton, if their discharge is causing or  
18 contributing to a true nutrient impairment  
19 problem when the connections are shown, the City  
20 will put in the treatment. So that's all we're  
21 asking for, is follow your rules.

22 JUDGE STEIN: Didn't the Court in Upper



1 Blackstone --

2 MR. HALL: I'm sorry, Your Honor?

3 JUDGE STEIN: Didn't the Court in Upper  
4 Blackstone indicate that -- I mean, there were  
5 similar arguments made in that case about holding  
6 up permit issuance to collect more data. The  
7 Board rejected that as did the First Circuit.  
8 Now, I understand there are some differences  
9 between the two cases, but what you seem to be  
10 suggesting is based on a permit that was last  
11 issued in 2001, that here we are 15 years later  
12 and we go out and collect more data?

13 MR. HALL: Oh, actually, the answer on  
14 that is very straightforward, Your Honor, and  
15 that -- by the way, it's a very good question.  
16 Not that you need kudos, but that's a perfect  
17 question.

18 In Upper Blackstone, the Narragansett  
19 Bay, that entire section coming down from the  
20 Blackstone River has a severe eutrophic  
21 impairment. It's designated as impaired, it's  
22 been designated as impaired for -- there were

1 fish kills up in that area back in 2003. So there  
2 was even a water quality model for the system,  
3 and the Court noted, as the Region itself had  
4 developed, there were correlations developed  
5 between nitrogen, Chlorophyll a, and the DO  
6 problem.

7 (Whereupon, the proceedings went off  
8 the record at 10:52 a.m., and resumed at 10:54  
9 a.m.)

10 JUDGE WARD: Mr. Hall, apologize for  
11 the sound system here, and given the  
12 interruption give you another two minutes both to  
13 finish answering Judge Stein's question, as well  
14 as any additional wrap-up.

15 MR. HALL: That's fine. Thank you, Your  
16 Honor.

17 Judge Stein again, the recap on the  
18 difference between Upper Blackstone and this  
19 situation is actually quite distinct. In Upper  
20 Blackstone that was clearly listed impaired water  
21 that had major eutrophic problems. In this case,  
22 we don't have an impairment listing. Two, the

1 Agency, as the decision itself noted, they  
2 developed the detailed correlations showing  
3 nutrients affected the Chlorophyll a, which  
4 caused the low DO. The connections were made. In  
5 this case, they're not there. There are no  
6 connections made in the record.

7 The current data in that case was  
8 fairly recent. Matter of fact, I said there were  
9 fish kills in 2003. The State of Rhode Island  
10 then triggered a 50 percent reduction legislative  
11 mandate for all nitrogen sources, and Upper  
12 Blackstone was not in Rhode Island, but they were  
13 a major contributing load, so it was appropriate  
14 to take that action based on current data.

15 And last but not least there was, in  
16 fact, a water quality model that showed how  
17 nitrogen affected the system with the kind of  
18 impacts that would lead one to impose  
19 appropriately a nutrient limit even if you  
20 weren't positive what the requirement should be.  
21 In this particular instance we have none of those  
22 factors.

1           So in closing, and I didn't get a  
2 chance to make the points on any of the  
3 administrative procedural problems that we  
4 encountered, but the record is extraordinarily  
5 clear, the City of Taunton repeatedly asked the  
6 Region for the backup analyses that showed why  
7 they were doing what they were doing. We were  
8 repeatedly put off. I had to sue under the  
9 Freedom of Information Act to get that  
10 information which only showed up in my office  
11 seven days prior to the filing of the petition.

12           JUDGE WARD: But, Mr. Hall, you did  
13 have the opportunity to go to the Region's  
14 offices and examine the record, as the  
15 regulations provide. And I think that's all  
16 that's required.

17           MR. HALL: Excuse me, Your Honor. The  
18 fact of whether or not somebody says you're  
19 allowed to put a document in a record and I can  
20 come look at it does not mean the document is  
21 there. Under the Freedom of Information Act, they  
22 expressly claimed they could not understand the



1 request we had submitted, and did not provide the  
2 documents. And, in fact, they said they didn't  
3 know what we were looking for. So if they didn't  
4 know what they were looking for, how could you  
5 claim it was already in the administrative  
6 record? In short, they lied, period. And, in  
7 fact, I'll go one --

8 JUDGE WARD: Mr. Hall, I think your  
9 time is almost up here.

10 MR. HALL: My time is -- I'm going to  
11 finish on one last point. In fact, on March 6th,  
12 I sent an email to Regional Counsel asking for  
13 the documentation that the Regional Administrator  
14 said would be given to us. In our February  
15 meeting, I was told it was in the Brockton  
16 permit. That was another lie. It was not in that  
17 permit, it was not in the file, it was nowhere.  
18 It showed up when they issued the response to  
19 comments. This permit needs to be revoked, and it  
20 needs to be revoked hard. Thank you.

21 JUDGE WARD: Mr. Bukhari.

22 MR. BUKHARI: Good morning. I'd like to

1 reserve five minutes of my time for rebuttal. And  
2 I would like to very briefly raise three critical  
3 points from the administrative record that will  
4 directly address what we have just seen and heard  
5 from Petitioner. I'll only spend around a minute  
6 on each. I'd then like to move to Kirby, Howes,  
7 and Chapra in that order. These submissions are  
8 procedurally infirm. They do not help the  
9 Petitioner, they only repeat, on the merits they  
10 only repeat the substantive failings of the  
11 petition.

12 First, Your Honors, the Region's  
13 choice of scale in this permit proceeding. The  
14 Region evaluated the Taunton River and Mount Hope  
15 Bay as two parts of a single integrated estuarian  
16 system that share many common characteristics,  
17 and that have some differences like depth and  
18 width. MHB 16 and 19 are part of a continuous  
19 estuarian complex as the Region pointed out in  
20 RTC B-1, C-7, C-8, C-9, and C-19.

21 This choice of scale made sense, the  
22 particular approach that the Region adopted here.

1 Given that it was -- the permitting approach was  
2 a simplified one that was designed to use  
3 currently available information to identify gross  
4 watershed-wide reductions necessary to achieve  
5 water quality standards throughout the estuarian  
6 complex, including those of downstream states in  
7 accordance with the Act.

8 Petitioner opts for an alternative  
9 approach, first segmenting the estuary into  
10 smaller more discrete pieces, and then  
11 speculating about possible differences that might  
12 result based on a given nitrogen load, but this  
13 bona fide difference in technical approach and  
14 scientific opinion do not warrant review under  
15 this Board's precedents. Number two --

16 JUDGE WARD: Counsel, could --

17 MR. BUKHARI: Yes.

18 JUDGE WARD: -- you address and jump  
19 to the issue concerning the letter from Dr.  
20 Howes, and more broadly what the Region then by  
21 the reference to an MEP approach is contrasted  
22 with what at least I'm reading in the SMAST study

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 as more detailed modeling assessment, and that  
2 that's perhaps a different MEP approach?

3 MR. BUKHARI: As we explained in the  
4 response to comments, and in the Fact Sheet, we  
5 adopted an approach that was consistent with the  
6 MEP. We could not undertake more extensive  
7 modeling and more extensive analysis that was  
8 done in the SMAST studies because we didn't have  
9 the available information, and we didn't have the  
10 modeling capability. The record is very clear and  
11 it was clear from the outset from the Fact Sheet  
12 that we did not undertake a full-blown MEP  
13 approach. Here's what we did do, however.

14 We relied on the Critical Indicators  
15 Report, that's the -- that's SMAST 2003. SMAST  
16 2003 identifies response indicators and causal  
17 indicators that are associated with  
18 eutrophication, culture eutrophication caused by  
19 nitrogen in southeastern Massachusetts waters.  
20 Accordingly, we look at the thresholds identified  
21 in that document for nitrogen, in-stream  
22 nitrogen, for dissolved oxygen, and that

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 intervening piece, Chlorophyll a. So the  
2 foundation of our analysis was based on that  
3 Critical Indicators Report. That's SMAST 2003.  
4 That report was in turn picked up by the State  
5 and credited, and noted with approval in the  
6 Mount COM document, for instance, and is a  
7 perfectly appropriate scientific document to use  
8 under 122.44(d)(1)(vi)(a), which we used to  
9 derive the permit limits here, and also 144(d)(1)  
10 to determine reasonable potential.

11 We also looked --

12 JUDGE LYNCH: Counsel, what did you use  
13 the SMAST data for?

14 MR. BUKHARI: What did we use the SMAST  
15 data for?

16 JUDGE LYNCH: Yes.

17 MR. BUKHARI: We used the SMAST data  
18 for two purposes. Number one, to determine  
19 whether the determination -- whether discharges  
20 from the nitrogen, from the Taunton's wastewater  
21 treatment plant had a reasonable potential to  
22 contribute to a water quality standards

1 violation. We found that it did, and we also then  
2 used it for the purposes of determining an in-  
3 stream threshold that would insure compliance,  
4 that would achieve all applicable water quality  
5 standards.

6 So the SMAST data, the overall  
7 approach that the Region adopted is consistent  
8 with what MEP did. What MEP did was -- in the  
9 SMAST report and Dr. Howes did was to -- was  
10 adopt broadly speaking a reference-based  
11 approach, a sentinel, what he refers to, what the  
12 documents refer to as a sentinel location  
13 approach. So determining a point of the estuary  
14 where water quality standards are met and then  
15 applying that value to an upper portion of the  
16 estuary on the theory that if water quality  
17 standards are met up in the upper portion of the  
18 estuary, water quality standards will be met  
19 below. That made sense from us from the  
20 standpoint of Section 301 as sought to assure  
21 compliance with water quality standards. We also  
22 looked at the transition from unimpaired to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 impaired conditions in the estuary.

2 JUDGE WARD: Counsel, what do you make  
3 of Mr. Hall's argument that the conditions at MHB  
4 16 are so different that you couldn't use that as  
5 the reference for purposes of setting a limit  
6 further upstream?

7 MR. BUKHARI: I think the flawed  
8 premise in that argument is that we only looked  
9 at MHB 16. We looked at a single point of the  
10 estuary, we looked at conditions there, and then  
11 we applied whatever in-stream target, or observed  
12 in-stream conditions we found there to another  
13 point in the estuary, and sort of hoped that  
14 things would react the same way. That's actually  
15 not what we did, and this is also consistent with  
16 the MEP.

17 We looked at water quality data,  
18 nitrogen impacts, and responses to nitrogen in  
19 terms of Chlorophyll a, in terms of DO at more  
20 than almost two dozen different points of the  
21 estuary. These points in the estuary all had  
22 different conditions, different bathymetry,



1 different velocity, different depths, different  
2 widths, but what we found looking at the system  
3 as a whole -- and, again, this goes to the issue  
4 of scale, we found that there was widespread and  
5 longstanding culture eutrophication based on the  
6 pattern of causal and response variables; that is  
7 to say, elevated nitrogen, elevated Chlorophyll  
8 a, and dissolved oxygen that's careening between  
9 supersaturated and even hypoxia at times. And  
10 given this pattern of observed in-stream  
11 conditions throughout the estuary, not only at  
12 MHB 16, EPA would determine that the entire  
13 estuary was suffering from nitrogen-driven  
14 culture eutrophication, and that it was  
15 appropriate but for that point in MHB 16. EPA,  
16 therefore, took that information, but again not  
17 in isolation, took that information, took that  
18 reference-based information and also compared it  
19 against a variety of information outside of  
20 SMAST. We looked at the scientific literature, we  
21 looked at other TMDLs, we looked at other  
22 permits, other actions that Massachusetts had

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 taken, and what we found was that the number that  
2 we have selected was at the very midpoint of all  
3 the values in the scientific literature, as well  
4 as the midpoint more or less of all the other  
5 values that had been derived in other regulatory  
6 actions in southeastern Massachusetts. We,  
7 therefore, on the basis of that found assurance  
8 within the context of Section 301(b)(1)(c) that  
9 we had determined a protective value.

10 Now what we --

11 JUDGE WARD: Counsel, I actually want  
12 to ask you a question kind of related to that,  
13 and it concerns, I think, an argument that the  
14 City makes in reply, and they provide a chart at  
15 page 14 of their reply, which I think is using,  
16 or it states is using the data from 2011, I guess  
17 drawn from the fixed monitoring station in Mount  
18 Hope Bay. They make this presentation and from  
19 there argue that that chart shows there is no  
20 correlation between high algal levels and low  
21 dissolved oxygen levels. What's your take on that  
22 chart?

1 MR. BUKHARI: We believe that, and as  
2 we've pointed out in the response to comments,  
3 that you can slice and dice these data sets in a  
4 variety of different ways. We lay out the way in  
5 which statistical analyses in our view have been  
6 misapplied by Petitioner and others in their  
7 comments.

8 We fully acknowledge that based on the  
9 available data set, we are not capable to run --

10 we are not capable of running statistically  
11 robust or defensible analyses that will show  
12 relationships over time between these eutrophic  
13 indicators. We, instead -- and I think that one  
14 thing that's missing on that chart from 14. I'm  
15 not sure I can find it quickly, is BR squared,  
16 reply 14, EPA TM Criterion Efficacy. Right.

17 JUDGE WARD: I think that's -- is that  
18 the Power -- in the PowerPoint, I think it's from  
19 the SMAST data. There's two charts on page 14 of  
20 the reply. The bottom chart concerns the --

21 MR. BUKHARI: Right, so here's an  
22 example. Here's an example of how statistical

1 analyses could potentially be misleading. And  
2 taking a snapshot of bottom DO and Chlorophyll a  
3 will not necessarily show a relationship -- show  
4 a particular relationship because the occurrence  
5 of DO and the occurrence of Chlorophyll a -- the  
6 occurrence of Chlorophyll a elevations and the  
7 occurrence of DO impacts will occur at different  
8 times during the day. And you will have elevated  
9 DO at certain portions of the day, you will have  
10 depleted DO at certain portions of the day based  
11 on that same high Chlorophyll a number. And  
12 that's because this system -- and it goes to the  
13 point of what the system is undergoing. This is a  
14 severely stressed system. This system is showing  
15 the classic signs of eutrophication as identified  
16 in our conceptual model where you have elevated  
17 DO, and you have depleted DO caused by elevated  
18 Chlorophyll a syndrome. And those will occur at  
19 different portions at different times of the day.  
20 That won't necessarily be reflected in a graph  
21 that doesn't identify when the sample was taken,  
22 and when the particular impacts are occurring,

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 and whether they're occurring in a corresponding  
2 -- corresponding in time.

3           So the overall point that we would  
4 make is that had we had information to undergo --  
5 to conduct a statistical analysis, a full-blown  
6 stressor response analysis, we might have gone  
7 that route. But 122.44(d)(1)(vi) doesn't mandate  
8 that we take a particular approach to -- it is  
9 not prescriptive in terms of the type of approach  
10 that we can take to derive a protective limit. To  
11 the contrary, EPA in crafting that regulation was  
12 crystal clear both on its face, which refers to  
13 relevant information, and in the preamble that  
14 this was meant to provide maximum flexibility for  
15 the permit issuer to derive a protective permit  
16 limit and in-stream criteria based on all the  
17 information that's available at the time of  
18 permit issuance. And we were very clear  
19 throughout our response to comments, throughout  
20 our responsive briefings, throughout this record  
21 that the statistical analyses that will be  
22 presented here in the supplemental PowerPoint



1 presentation and all the briefing does not change  
2 the fact that over 12 years of in-stream water  
3 quality data is consistent both under -- sampled  
4 according to Mass DEP procedures, quality assured  
5 shows a consistent pattern over time, over a long  
6 period of time of elevated nitrogen, elevated  
7 Chlorophyll a, supersaturated DO, and hypoxic DO  
8 at times. And this corresponds, again, with our  
9 conceptual model that is the basis for this  
10 permitting, and that Petitioner himself, counsel  
11 for Petitioner himself in their petition  
12 characterize, and in their comments characterize  
13 as well recognized. We agree, there is no dispute  
14 over how these --

15 JUDGE WARD: So counsel, could you  
16 address why the State hasn't yet included the  
17 Taunton River on its list as impaired for  
18 nitrogen? And I think the point, at least as I  
19 read an argument that City makes in their brief,  
20 is that the TMDL regulations required the State  
21 to consider all reasonably existing and readily  
22 available information which presumably could have

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 included the same data that you looked at. So why  
2 isn't it on the list?

3 MR. BUKHARI: We identified in our  
4 response to comments the fact that the State  
5 undertakes their listing -- their listing process  
6 is subject to a cycle and they have a rotating  
7 watershed basis, rotating watershed system. And  
8 one can only speculate, but we presume that they  
9 simply due to significant resource constraints at  
10 the State were not able to assess the information  
11 that we had in front of us. That will change  
12 going forward.

13 Having said that, I think one  
14 important piece to bear in mind is that the  
15 State, when EPA issued its NPDES permit, the  
16 State not only certified that permit, the State  
17 also issued an identical State permit under  
18 Massachusetts Clean Waters Act that has similar  
19 language relating to culture eutrophication,  
20 nutrient impacts. And this is certainly not the  
21 posture of the State that does not believe  
22 issuing a permit, as it turns out a very

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 controversial permit, with the identical nitrogen  
2 limitation and adopting EPA's response to  
3 comments in that process that doesn't believe --

4 JUDGE WARD: Is that reflected in the  
5 record before us, the State's issuing the permit  
6 under State law incorporating your own response  
7 to comments? Is that in the record before us?

8 MR. BUKHARI: That, I believe, is on  
9 the face of the permit, and maybe in the  
10 certification letter itself. But the State signs  
11 the -- the State co-signs the permit, and we have  
12 under -- in Region I under the Memorandum of  
13 Agreement, we have a joint permitting process  
14 that is EPA issues a permit under federal law,  
15 and in the event that the State agrees with the  
16 determinations made pursuant to its State  
17 statutory and regulatory authority, they issue  
18 that same permit using the same piece of paper,  
19 the same instrument, and they're separately  
20 enforceable. They're two legal documents, but  
21 this is EPA, and this is Mass DEP moving forward  
22 in lockstep on these nitrogen issues as reflected



1 in this particular permit. Otherwise, they  
2 wouldn't have issued the permit. And in the past  
3 they haven't issued the permit, see e.g. Upper  
4 Blackstone.

5 JUDGE LYNCH: When is the last time  
6 that the State undertook an assessment under  
7 their 303 approved process that included the  
8 Taunton?

9 MR. BUKHARI: I believe it's been some  
10 time. It may have been 2001, so it predated. Now  
11 this is important, it predated the SMAST 2003, it  
12 predated SMAST 2007. And as this Board knows, the  
13 Region has been engaged on nutrient permitting  
14 issues elsewhere in the Region largely in New  
15 Hampshire, and only more recently have we turned  
16 our attention to southeastern Massachusetts. We  
17 expect a corresponding re-engagement from the  
18 State on these issues because we have concluded  
19 based on the extensive record before us that the  
20 nitrogen issues are -- and the culture  
21 eutrophication impacts are severe, they're  
22 ongoing, and as we've identified in our

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 permitting documents once the eutrophication  
2 process begins, time is of the essence. We have  
3 to act based on all the information that's  
4 available to us, but we can't defer permitting,  
5 particularly where a -- there is no nitrogen  
6 limit in Taunton's permit. They are discharging  
7 untrammelled with no permit limit to control their  
8 nitrogen impacts. They are the second largest  
9 point source discharger to these receiving  
10 waters. We have presented -- Howes himself, to  
11 the extent that this is a conversation about  
12 Howes, Howes himself in SMAST 2003, in SMAST 2007  
13 specifically identified water quality impacts due  
14 to nitrogen in the Taunton River estuary, in the  
15 Taunton/Mount Hope Bay estuarian complex. Again,  
16 we're looking at this as a single contiguous  
17 estuarian complex, and identified these waters as  
18 an excellent candidate for an MEP and development  
19 of the TMDL. And as Howes in his correspondence,  
20 his March correspondence, we think that Your  
21 Honor's observation about the timing of his  
22 interactions with Howes is on point here.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           He identify -- he himself says it's  
2 about time that we address nitrogen issues in  
3 Mount Hope Bay/Taunton River, and we fully concur  
4 with Howes, at least on that point.

5           JUDGE WARD: I think counsel for the  
6 City also raised the issue of the Brayton Point  
7 thermal discharges. Would you like to address  
8 that argument?

9           MR. BUKHARI: Your Honor, this is a  
10 point of scientific dispute, and Petitioner has  
11 an alternative theory about why those impacts  
12 would make a material difference on the DO regime  
13 in the receiving waters. We disagree, and we have  
14 outlined our disagreement in our response to  
15 comments, we have outlined our disagreement in a  
16 Memorandum to File, we attached is to the  
17 response to petition. But in sum, we noted that,  
18 number one, the Taunton River is naturally warmer  
19 than Mount Hope Bay, and we wouldn't expect  
20 decreases in temperature in Mount Hope Bay to  
21 impact the thermal regime further up in the  
22 estuary.

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1           But the proof is also in the pudding,  
2           so Petitioner can speculate all it wishes about  
3           what the conjectural impacts of Brayton Point  
4           going off line are, but here are the facts.  
5           Number one, the continuous data song in Mount  
6           Hope Bay continues even after Brayton Point went  
7           off line, that was in 2012-2013, we continue to  
8           see the impacts of eutrophication that are  
9           consistent with our conceptual model. We  
10          continued to see high Chlorophyll a numbers, some  
11          of the highest on record. We continued to see low  
12          DO impacts, violations of State Water Quality  
13          Standards. And this information was not viewed in  
14          isolation. We looked at Brayton Point's own  
15          annual reports that looked at the DO impacts in  
16          the receiving waters. They themselves identified  
17          continuing DO impacts even after the plant went  
18          off line. So, we don't dispute that this is an  
19          exceedingly complex permitting situation. The  
20          estuaries are very complex. Nitrogen impacts are  
21          very complex. They may be even more complex in  
22          the absence of --

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1           JUDGE WARD: Counsel, I see you're  
2 running out of time. I wanted to ask another  
3 question in terms of the process. Counsel for the  
4 City has raised some concerns with their -- the  
5 fact that, or the argument that there was a fair  
6 amount of material added to the record at the  
7 end, and that they didn't have a chance to  
8 comment on that, perhaps even to see the record  
9 before the permit was issued. What's your  
10 response to that?

11           MR. BUKHARI: First of all, we would  
12 reject the suggestion that the permittee did not  
13 have the opportunity to examine the record. In  
14 correspondence that we have provided to the Board  
15 we very clearly invite on multiple occasions the  
16 permittees to examine the record, and that was  
17 consistent -- that's consistent with our  
18 obligation under the regulations. We had the  
19 administrative record and it was available for  
20 anyone to look at.

21           But as far as adding information to  
22 the record based on response to comments, under



1 124.17(b), and 124.18(b)(4) we very clearly have  
2 the authority, and indeed the obligation in so  
3 far as it's a response to comments, we are  
4 responding to comment and considering all the  
5 information in the record to add materials to the  
6 record. And the Board has been equally clear that  
7 every time you add a document to the record in  
8 response to comment and for another reason, that  
9 doesn't necessarily mean that you have to reopen  
10 the public comment period. That EPA under 124.14  
11 has the ability to reopen if there are  
12 substantial new questions. We reject the view  
13 here that the new information was substantial. We  
14 reject that it was new. It was cumulative, it was  
15 based on -- it was rehashing information by and  
16 large that was already in the permit record, as  
17 we explained in our response to comment for the  
18 Fact Sheet. And if Petitioner's view is true,  
19 then every time we add records in order to  
20 respond to comments, we will trigger a reopening  
21 of the public comment period, the permit process  
22 would never end. But that's a problem

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE. N.W.  
WASHINGTON, D.C. 20005-3701

1 particularly in a case like this in general, but  
2 in a case like this where we truly have a  
3 pressing environmental harm that needs to be  
4 addressed. And, of course, Petitioner in their  
5 many filings before this Board, and extensive  
6 filings before this Board have availed themselves  
7 of making their grievances known, and there's  
8 certainly a process for that.

9 JUDGE WARD: Thank you, counsel. I  
10 think your time is up. You'll have five minutes  
11 for rebuttal. Mr. Hall?

12 MR. HALL: Thank you, Judge Ward, Board  
13 Members. I'm going to make a number of very quick  
14 points regarding the very last statement that you  
15 heard as to the records available. That was a  
16 nice dodge on your question.

17 The email from Mr. Bukhari, 3/6/15,  
18 Petition Exhibit 55 at 1. First, and this is Mr.  
19 Bukhari's words, "First, regarding the updated  
20 nutrient analysis an updated explanation by the  
21 Region of the basis of the total nitrogen limits  
22 has been included in the recently issued Brockton

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 Fact Sheet." Lie, not contained in there, none of  
2 the analyses put into the response to comment.

3 Number two, regarding Brayton Point  
4 and there being some type of alternative theory  
5 on the part of the City of Taunton. I will read a  
6 quote. This is the Region's own quote in issuing  
7 the Brayton Point facilities permit. "It's likely  
8 the thermal discharge directly and indirectly  
9 reduces dissolved oxygen in Mount Hope Bay." They  
10 talk about it increasing organic degradation,  
11 increasing respiration, increasing algal growth.  
12 This was not a theory on our part. This was the  
13 Region's own conclusion that they ignored when  
14 they issued the permit.

15 JUDGE WARD: I think EPA's response to  
16 that was that the issue really is focused on the  
17 Taunton River estuary, not necessarily Mount Hope  
18 Bay.

19 MR. HALL: Actually not true, because  
20 the selected sentinel site was out in Mount Hope  
21 Bay, so that's where they were drawing all their  
22 connections. So if the DO changes in Mount Hope



1 Bay and increases you get a different answer.  
2 Right?

3 Now with regard to the State's 303(d)  
4 action, nothing in the record shows the State's  
5 303(d) action was not current, and that they did  
6 not use more updated information. In fact, an  
7 opposite position would be claiming that the  
8 Region has been allowing the State to violate  
9 Section 303(d), which mandates every 303(d) list  
10 must be based on current information. So were  
11 they violating it here, or were they violating it  
12 there? I don't think anybody was violating  
13 anything; it was all current.

14 With regard to the State's permitting  
15 action, that is evidence of nothing. This is not  
16 Fox News. One doesn't sit there on a panel, one  
17 person say something, the other person say yes, I  
18 agree, and all of a sudden it becomes facts.  
19 These things are supposed to be independently  
20 assessed and documented. It's not -- the analyses  
21 are not documented in this case.

22 Number four, regarding the claim that



1 12 years of data, quality assess data shows a  
2 consistent pattern of elevated TMDL in  
3 Chlorophyll a, that would be nice. I would love  
4 to see that analysis. It's not contained anywhere  
5 in the record. That, Judge Stein, was one of our  
6 major objections in using 2004 to 2005 data. You  
7 needed to update it to show what was happening  
8 currently. There is no such analysis that counsel  
9 just claimed he had. You know, the parade of just  
10 fictitious analyses go on. Oh, by the way, that's  
11 also why we filed the most recent motion, because  
12 we finally got a document from the Region --

13 JUDGE WARD: Counsel, I think I said at  
14 the outset we're not hearing argument on that  
15 motion. Thank you.

16 MR. HALL: Well, it's six times the  
17 load of -- it's relevant to what was just said.  
18 It's six times the load of the City of Taunton  
19 directly into Mount Hope Bay. It was ignored in  
20 their entire analysis, so it's relevant to a  
21 rebuttal point where they try to imply to you  
22 because we are, you know, a substantial load, we

1 must be regulated. We are not a substantial load.

2 JUDGE LYNCH: Mr. Hall, are you saying  
3 that a permit limit can never be imposed for a  
4 pollutant unless that pollutant is listed on a  
5 303(d) list?

6 MR. HALL: Oh, most certainly not, Your  
7 Honor. I mean quite frankly, there are numerous  
8 instances when you would do it. The difference in  
9 this particular case is they didn't do a  
10 discharge specific like, you know, what's the  
11 copper limit at the point of discharge or  
12 something like that. Those things don't always  
13 get picked up on 303(d) lists. That's perfectly  
14 fine to do that at the time of permitting.

15 When you're claiming an entire estuary  
16 is nutrient impaired and it's inconsistent with  
17 the impairment determinations made by the State,  
18 you've got a problem. You've got to actually show  
19 there's some kind of mistake made in the record  
20 with that. Actually, it's a perfect lead into the  
21 claim that they use this Critical Indicators  
22 Report and the COM allows that. Oh, what load of

1 baloney. That report is nowhere mentioned in the  
2 COM. And, in fact, if you took those algal levels  
3 in that Critical Indicators Report, there  
4 wouldn't be an estuary in the State of  
5 Massachusetts that meets water quality standards.  
6 They're pristine numbers. They were not adopted  
7 by the State of Massachusetts, they have never  
8 been used by the State of Massachusetts. They did  
9 not apply the applicable requirements that are  
10 stated in the State's COM. That's why we got a  
11 different answer on them claiming widespread  
12 eutrophic conditions when, in fact, there's no  
13 such listing showing widespread eutrophic  
14 conditions.

15 JUDGE WARD: So, counsel, your time is  
16 up, but if you'd like to take just a brief moment  
17 to conclude. Thank you.

18 MR. HALL: I make one last point. Your  
19 Honor, Board Members, I'm here representing a  
20 City. They're part of the government. They're  
21 trying to do the right thing. They've got a lot  
22 of things to spend money on. For the Region to

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 come in and claim you shouldn't be looking at the  
2 technical analyses that show things are not being  
3 done properly and would make the City spend tens  
4 of millions of dollars is simply unconscionable.  
5 You've got a serious ethical problem here.

6 The permit writers guide says if you  
7 know there's an error, it's supposed to be  
8 brought to the attention and fixed, not buried in  
9 the back 40 where no one can find it. That is not  
10 acceptable behavior by anyone. I wouldn't come in  
11 and do it, I don't expect EPA to come in and do  
12 it, and I hope you would never support that kind  
13 of outcome simply on some type of procedural  
14 dodge that somebody raises. Thank you.

15 JUDGE WARD: Thank you, Mr. Hall.

16 MR. BUKHARI: Your Honor, as the City  
17 would have it, or the Petitioner would have it,  
18 the Region is out to impose unnecessary nitrogen  
19 reductions on the town where there's an absence  
20 of any evidence of any in-stream impacts. But one  
21 thing to bear in mind, I think, just to snap  
22 things back in focus is that the Region did not

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701



1 stand alone on this permit. We were accompanied  
2 by the State of Massachusetts, we received  
3 supportive comments from the State of Rhode  
4 Island whose water quality is also impacted. We  
5 received comments from numerous NGOs, from sister  
6 federal agencies, in fact, all arrayed with the  
7 Region and contrary to Petitioner on this  
8 particular point.

9 And I would also note that to the  
10 extent that there has been an argument over the  
11 .45 in-stream target and whether there is any  
12 basis behind that, Petitioner in his own --

13 Petitioner's own comments included a scientific  
14 study commissioned by the State of Rhode Island,  
15 the Deacudis and Howes Study, that recommended  
16 in-stream numbers of between .35 and .4.

17 Again, we fall within a zone of  
18 reasonableness, and when making determinations we  
19 use the best information that we have at the time  
20 of permit issuance, the Upper Blackstone case,  
21 this case. This Board's decisions in Attleboro  
22 and in New Market all go to the point that we can

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 draw inferences and draw reasonable inferences  
2 even from the available data, even if that is  
3 less than certain, but is certainly sufficient  
4 within the context of the objectives of the Clean  
5 Water Act, and the implementing regulations to  
6 impose a protective nitrogen limitation. It's  
7 particularly important here because the  
8 Petitioner's permit is long overdue, long  
9 expired. They don't have a nitrogen limitation.  
10 They are currently discharging at an average  
11 concentration of around 11 milligrams per liter,  
12 at least they were at the time of the -- the Fact  
13 Sheet was prepared, based on the DMR data that  
14 was there. But the information -- but  
15 Petitioner's answer to that, their relief in  
16 effect is to wait to study the system more. But  
17 we under the Clean Water Act, and in accordance  
18 with Upper Blackstone's, very clear precedent in  
19 Upper Blackstone, in Attleboro, in New Market  
20 have a mandate to move forward and issue  
21 protective permits as expeditiously as possible,  
22 particularly where there's a pressing water

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS  
1323 RHODE ISLAND AVE., N.W.  
WASHINGTON, D.C. 20005-3701

1 quality harm. Thank you.

2 JUDGE WARD: So again, just to remind  
3 the parties, as I said at the outset, I'd like to  
4 ask the Region to file any response to the motion  
5 to supplement filed by the City yesterday by this  
6 Friday, March 4th, and then for the City to file  
7 a reply, if any, by next Tuesday, March 8th.

8 Thank you for your arguments. This  
9 matter is submitted.

10 THE CLERK: All rise.

11 (Whereupon, the proceedings went off  
12 the record at 11:35 a.m.)

13  
14  
15  
16  
17  
18  
19  
20  
21  
22



**A**  
 a.m 1:15 3:2 30:8,9  
 63:12  
 ability 53:11  
 able 46:10  
 above-entitled 1:15  
 Abreu 5:19 6:1  
 absence 51:22 60:19  
 absent 13:1,1  
 abusive 6:7  
 acceptable 5:12,13 9:7  
 60:10  
 accompanied 61:1  
 achieve 35:4 38:4  
 achieved 11:16  
 acknowledge 42:8  
 act 22:11 32:9,21 35:7  
 46:18 49:3 62:5,17  
 action 27:1 31:14 56:4  
 56:5,15  
 actions 40:22 41:6  
 add 53:5,7,19  
 added 52:6  
 adding 52:21  
 additional 9:2 30:14  
 address 4:18 8:8 34:4  
 35:18 45:16 50:2,7  
 addressed 7:22 54:4  
 adequacy 10:6  
 administrative 1:12  
 4:19 32:3 33:5 34:3  
 52:19  
 Administrator 20:6  
 33:13  
 admitting 7:21  
 adopt 38:10  
 adopted 34:22 36:5  
 38:7 59:6  
 adopting 47:2  
 advance 4:9  
 adverse 10:18  
 affirmative 6:18 7:1  
 agencies 61:6  
 Agency 1:2 2:9,10,17  
 3:5 12:7 15:14 31:1  
 agree 16:19 19:4 28:14  
 45:13 56:18  
 Agreement 47:13  
 agrees 47:15  
 algal 27:12 41:20 55:11  
 59:2  
 allow 9:14 25:17  
 allowed 3:11 9:1,4,6  
 32:19  
 allowing 56:8  
 allows 58:22  
 alternative 35:8 50:11  
 55:4

amount 52:6  
 analyses 8:1 12:17  
 13:13,14 19:4 24:9  
 32:6 42:5,11 43:1  
 44:21 55:2 56:20  
 57:10 60:2  
 analysis 7:13 8:3,12  
 10:9 11:4,14,19 12:1  
 12:22 14:8 23:10  
 24:16 36:7 37:2 44:5  
 44:6 54:20 57:4,8,20  
 annual 51:15  
 answer 17:3 29:13 56:1  
 59:11 62:15  
 answering 30:13  
 anti 27:16  
 anybody 13:20 56:12  
 anyway 7:22  
 apologize 30:10  
 apparently 13:20  
 appeal 1:7 3:8,14  
 Appeals 1:1,18,20,21  
 3:4  
**APPEARANCES** 2:1  
 appears 23:7  
 applicable 38:4 59:9  
 applied 28:2 39:11  
 apply 59:9  
 applying 38:15  
 approach 11:22 12:3,8  
 12:15 17:1,2 18:8  
 19:1 23:7,14 24:4,8  
 24:10 34:22 35:1,9,13  
 35:21 36:2,5,13 38:7  
 38:11,13 44:8,9  
 approaches 12:16,18  
 appropriate 8:6 31:13  
 37:7 40:15  
 appropriately 31:19  
 approval 37:5  
 approved 48:7  
 April 21:16 22:4,4  
 architect 14:6  
 area 30:1  
 argue 41:19  
 arguing 25:11  
 argument 1:4 3:6,13,16  
 4:9 5:3 10:22 39:3,8  
 41:13 45:19 50:8 52:5  
 57:14 61:10  
 arguments 29:5 63:8  
 arises 23:16  
 arrayed 61:6  
 aside 8:20  
 asked 10:2 13:12 20:16  
 32:5  
 asking 11:5 17:19 19:6  
 28:21 33:12

assess 46:10 57:1  
 assessed 56:20  
 assessment 23:10 36:1  
 48:6  
 assessments 8:14  
 Assistant 6:1  
 associated 11:11 20:12  
 36:17  
 Associates 2:4 3:21,22  
 assurance 41:7  
 assure 38:20  
 assured 45:4  
 astounding 26:18  
 attached 18:5 50:16  
 attention 48:16 60:8  
 Attleboro 61:21 62:19  
 Attorney 6:1  
 authority 47:17 53:2  
 available 35:3 36:9 42:9  
 44:17 45:22 49:4  
 52:19 54:15 62:2  
 availed 54:6  
 Avenue 1:13 2:18  
 average 62:10

**B**

B-1 34:20  
 back 13:11 30:1 60:9,22  
 backup 7:19 16:15  
 20:17 32:6  
 baloney 59:1  
 based 12:11 29:10  
 31:14 35:12 37:2 40:5  
 42:8 43:10 44:16  
 48:19 49:3 52:22  
 53:15 56:10 62:13  
 basic 13:17 24:9  
 basically 22:18 27:9  
 basis 10:11 13:13,14  
 26:6,8 41:7 45:9 46:7  
 54:21 61:12  
 bathymetry 39:22  
 Bay 7:9 11:16 14:16  
 16:20 21:4 24:2,20,22  
 29:19 34:15 41:18  
 49:15 50:19,20 51:6  
 55:9,18,21 56:1 57:19  
 Bay/Taunton 50:3  
 bear 46:14 60:21  
 begins 49:2  
 Behalf 2:2,8  
 behavior 60:10  
 believe 9:22 11:5 14:17  
 19:12 23:1 42:1 46:21  
 47:3,8 48:9  
 Ben 2:4 3:21  
 best 61:19  
 Beth 1:21 3:9

billion 27:4  
 Blackstone 29:1,4,18  
 29:20 30:18,20 31:12  
 48:4 61:20 62:19  
 Blackstone's 62:18  
 Board 1:1 2:22 3:4 4:12  
 8:2,22 10:15 15:10  
 17:10 19:16 25:6  
 26:13 29:7 48:12  
 52:14 53:6 54:5,6,12  
 59:19  
 Board's 5:7,11 7:16  
 15:5 35:15 61:21  
 bona 35:13  
 Boston 2:13  
 bottom 42:20 43:2  
 BR 42:15  
 Brayton 27:10 50:6  
 51:3,8,14 55:3,7  
 Brian 21:2  
 brief 45:19 59:16  
 briefed 25:15  
 briefing 45:1  
 briefings 44:20  
 briefly 34:2  
 broadly 35:20 38:10  
 Brockton 33:15 54:22  
 brought 60:8  
 Building 1:13  
 Bukhari 2:10 4:3,3,7,10  
 4:14,16 33:21,22  
 35:17 36:3 37:14,17  
 39:7 42:1,21 46:3  
 47:8 48:9 50:9 52:11  
 54:17 60:16  
 Bukhari's 54:19  
 bukhari.samir@epa....  
 2:14  
 buried 60:8

**C**

C 2:3  
 C-19 34:20  
 C-7 34:20  
 C-8 34:20  
 C-9 34:20  
 call 16:2  
 candidate 49:18  
 capability 12:20 36:10  
 capable 14:19 42:9,10  
 care 16:11  
 careening 40:8  
 case 26:17 29:5 30:21  
 31:5,7 54:1,2 56:21  
 58:9 61:20,21  
 cases 29:9  
 causal 36:16 40:6  
 causation 25:3



- cause 24:15,18,19,21  
 25:2,12  
 caused 31:4 36:18  
 43:17  
 causing 10:18 28:17  
 cell 3:10  
 cert 23:1  
 certain 9:20 25:4 26:5  
 43:9,10 62:3  
 certainly 12:17 16:10  
 16:11 46:20 54:8 58:6  
 62:3  
 certification 22:8,22  
 47:10  
 certified 46:16  
 certifying 22:8  
 challenge 21:21 22:6  
 chance 32:2 52:7  
 change 45:1 46:11  
 changes 55:22  
 Chapra 13:4 14:14 34:7  
 characteristics 34:16  
 characterization 10:8  
 characterize 25:19  
 45:12,12  
 chart 41:14,19,22 42:14  
 42:20  
 charts 42:19  
 Chlorophyll 28:7,13  
 30:5 31:3 37:1 39:19  
 40:7 43:2,5,6,11,18  
 45:7 51:10 57:3  
 choice 34:13,21  
 chose 24:1  
 Circuit 29:7  
 City 1:7 2:2 3:6,13,14  
 4:18 5:1,16,18 6:1,8  
 8:7,16 16:10 20:4,10  
 28:16,19 32:5 41:14  
 45:19 50:6 52:4 55:5  
 57:18 59:20 60:3,16  
 63:5,6  
 City's 4:8 6:2  
 claim 28:4 33:5 56:22  
 58:21 60:1  
 claimed 10:19 11:15  
 20:2 23:20 25:5 32:22  
 57:9  
 claiming 7:14 15:17  
 55:7 58:15 59:11  
 claims 6:10 19:15  
 classic 16:14 43:15  
 classified 6:13  
 Clean 22:11 46:18 62:4  
 62:17  
 clear 32:5 36:10,11  
 44:12,18 53:6 62:18  
 clearly 30:20 52:15  
 53:1  
 Clerk 2:22 3:3 63:10  
 closing 32:1  
 co-signs 47:11  
 Code 2:12,18  
 collect 28:15 29:6,12  
 collected 21:8 27:8  
 COM 37:6 58:22 59:2  
 59:10  
 come 32:20 60:1,10,11  
 coming 29:19  
 comment 9:3,14,18  
 15:7,16 17:17,18  
 18:11,11 52:8 53:4,8  
 53:10,17,21 55:2  
 commented 18:14  
 comments 8:7,8 11:20  
 13:8,19 15:6,9,12,13  
 15:19 16:2,4,6,8  
 19:11 24:14 33:19  
 36:4 42:2,7 44:19  
 45:12 46:4 47:3,7  
 50:15 52:22 53:3,20  
 61:3,5,13  
 commissioned 61:14  
 Commissioner 5:17  
 common 34:16  
 communications 17:11  
 17:15  
 compared 40:18  
 completely 8:11 12:22  
 complex 34:19 35:6  
 49:15,17 51:19,20,21  
 51:21  
 compliance 22:9 38:3  
 38:21  
 complicated 8:20  
 concentration 62:11  
 conceptual 43:16 45:9  
 51:9  
 concerned 22:1  
 concerning 35:19  
 concerns 4:11 41:13  
 42:20 52:4  
 conclude 59:17  
 concluded 7:6 48:18  
 conclusion 11:21 17:1  
 55:13  
 conclusory 14:22 15:18  
 16:16  
 concur 50:3  
 condition 26:5,21 27:20  
 conditions 39:1,3,10,12  
 39:22 40:11 59:12,14  
 conduct 44:5  
 confirm 27:14  
 confirming 8:3  
 conflating 23:8,18 24:1  
 conflict 24:7  
 conjectural 51:3  
 connection 12:20  
 connections 28:7,19  
 31:4,6 55:22  
 consider 15:1,8,12  
 19:17 45:21  
 considered 7:8,10 15:2  
 15:15  
 considering 53:4  
 consistency 26:20  
 consistent 17:2,22 19:1  
 19:9 20:14 22:17 24:3  
 38:5 38:7 39:15 45:3  
 45:5 51:9 52:17,17  
 57:2  
 Constitution 1:13  
 constraints 46:9  
 consulting 6:2  
 contacted 13:3  
 contained 11:4 55:1  
 57:4  
 contemplate 9:1  
 contention 8:9 20:20  
 21:2  
 context 41:8 62:4  
 contiguous 49:16  
 continue 51:7  
 continued 51:10,11  
 continues 51:6  
 continuing 51:17  
 continuous 34:18 51:5  
 contrary 44:11 61:7  
 contrasted 35:21  
 contribute 25:2 37:22  
 contributing 28:18  
 31:13  
 control 49:7  
 controversial 47:1  
 conversation 49:11  
 copper 58:11  
 copy 4:8  
 Cornaglia 5:17,22  
 correct 13:15 16:16  
 20:18 24:11 26:7  
 correlation 41:20  
 correlations 30:4 31:2  
 correspondence 49:19  
 49:20 52:14  
 corresponding 44:1,2  
 48:17  
 corresponds 45:8  
 counsel 2:11,17 3:17  
 3:20 4:4,6 5:16 33:12  
 35:16 37:12 39:2  
 41:11 45:10,15 50:5  
 52:1,3 54:9 57:8,13  
 59:15  
 country 14:20  
 course 6:4 25:20 54:4  
 Court 28:22 29:3 30:3  
 Courtroom 1:12  
 crafting 44:11  
 Craig 14:14  
 create 26:10  
 created 17:3  
 credited 37:5  
 criteria 12:6 26:11  
 44:16  
 Criterion 42:16  
 critical 34:2 36:14 37:3  
 58:21 59:3  
 crystal 44:12  
 culture 36:18 40:5,14  
 46:19 48:20  
 cumulative 53:14  
 current 28:15 31:7,14  
 56:5,10,13  
 currently 35:3 57:8  
 62:10  
 cycle 46:6
- D**
- D.C 1:2  
 Dan 5:18 6:1  
 data 10:12 21:6,7 24:12  
 24:14,17 27:8 28:4,8  
 28:10,11,15 29:6,12  
 31:7,14 37:13,15,17  
 38:6 39:17 41:16 42:3  
 42:9,19 45:3 46:1  
 51:5 57:1,1,6 62:2,13  
 day 43:8,9,10,19  
 days 32:11  
 DC 1:14 2:6,19  
 de 5:19 6:1  
 Deacudis 61:15  
 deal 21:21  
 decade 27:9  
 decided 15:15 19:13  
 decision 31:1  
 decisions 61:21  
 declaratory 11:3 12:15  
 decreases 50:20  
 defense 15:3  
 defensible 11:14 19:3,9  
 27:21 42:11  
 defer 49:4  
 deficiencies 20:12  
 deficient 8:12 9:8 10:14  
 14:8  
 degradation 55:10  
 degree 25:4  
 demonstrate 12:19  
 demonstrated 10:17  
 demonstration 25:3

DEP 45:4 47:21  
 Department 1:8 2:2 3:6  
 depleted 43:10,17  
 depth 34:17  
 depths 40:1  
 derive 37:9 44:10,15  
 derived 41:5  
 describes 12:7  
 description 10:10  
 designated 6:12 29:21  
 29:22  
 designed 35:2  
 detailed 8:14 10:7,10  
 10:20 11:4 12:17  
 15:12 31:2 36:1  
 determination 37:19  
 determinations 26:21  
 47:16 58:17 61:18  
 determine 26:5 37:10  
 37:18 40:12  
 determined 7:7 41:9  
 determining 38:2,13  
 develop 28:15  
 developed 21:2 26:1  
 30:4,4 31:2  
 development 49:18  
 devices 3:11  
 dice 42:3  
 dictates 19:17  
 difference 30:18 35:13  
 50:12 58:8  
 differences 16:19,21  
 29:8 34:17 35:11  
 different 23:9,14,17  
 36:2 39:4,20,22,22  
 40:1,1,1 42:4 43:7,19  
 43:19 56:1 59:11  
 difficulties 5:9  
 dire 14:18  
 directed 17:11 26:20  
 directly 34:4 55:8 57:19  
 Director 13:5 14:12  
 disagree 50:13  
 disagreement 50:14,15  
 discharge 28:17 55:8  
 58:10,11  
 discharger 49:9  
 discharges 22:9 37:19  
 50:7  
 discharging 49:6 62:10  
 discrete 35:10  
 discretion 9:19  
 discussions 13:11  
 dispute 45:13 50:10  
 51:18  
 dissolved 36:22 40:8  
 41:21 55:9  
 distinct 30:19

DMR 62:13  
 document 14:4 17:17  
 17:18 32:19,20 36:21  
 37:6,7 53:7 57:12  
 documentation 7:20  
 33:13  
 documented 56:20,21  
 documents 9:2 33:2  
 38:12 47:20 49:1  
 dodge 54:16 60:14  
 doing 9:10,11 12:1 16:6  
 21:14 27:22 32:7,7  
 dollars 27:4 60:4  
 downstream 35:6  
 dozen 39:20  
 dozens 28:5,8  
 Dr 13:4 14:11,14,16  
 17:4,8,19 18:12,21  
 21:2 35:19 38:9  
 draw 62:1,1  
 drawing 55:21  
 drawn 41:17  
 due 46:9 49:13  
 Durr 2:22  
 dynamic 14:15

## E

e.g 48:3  
 early 26:2  
 East 1:13  
 effect 10:18 24:15,18  
 24:20,21 25:12 62:16  
 Efficacy 42:16  
 effluent 26:4  
 either 18:5  
 elevated 40:7,7 43:8,16  
 43:17 45:6,6 57:2  
 elevations 43:6  
 email 33:12 54:17  
 emails 18:4  
 encompass 7:15  
 encountered 32:4  
 enforceable 47:20  
 engaged 48:13  
 engineer 6:3 12:2  
 entire 8:3 9:12 12:3  
 26:22 29:19 40:12  
 57:20 58:15  
 environmental 1:1,2,18  
 1:20,21 2:8,10,17 3:3  
 3:4 12:2 13:5 54:3  
 EPA 1:13 3:15 4:2 6:9  
 14:1 19:5 22:1 26:2  
 40:12,15 42:16 44:11  
 46:15 47:14,21 53:10  
 60:11  
 EPA's 47:2 55:15  
 equally 53:6

error 60:7  
 ESQ 2:3,4,10,16  
 essence 49:2  
 estuarian 34:15,19 35:5  
 49:15,17  
 estuaries 21:13 24:5  
 51:20  
 estuary 6:11 7:12 11:17  
 21:5 25:18 26:10,22  
 35:9 38:13,16,18 39:1  
 39:10,13,21,21 40:11  
 40:13 49:14 50:22  
 55:17 58:15 59:4  
 esturant 27:5  
 ethical 60:5  
 Eureka 2:22  
 eutrophic 6:10 29:20  
 30:21 42:12 59:12,13  
 eutrophication 36:18  
 36:18 40:5,14 43:15  
 46:19 48:21 49:1 51:8  
 evaluated 34:14  
 event 47:15  
 evidence 7:5 55:15  
 60:20  
 examine 32:14 52:13  
 52:16  
 example 42:22,22  
 examples 16:14  
 exceedingly 51:19  
 excellent 49:18  
 excluded 20:5  
 Excuse 32:17  
 Exhibit 54:18  
 exhibits 13:8,10  
 existing 21:6 45:21  
 expect 48:17 50:19  
 60:11  
 expeditiously 62:21  
 expert 8:2 13:18 14:18  
 21:12,12  
 expertise 11:12 14:2  
 experts 13:4,16,19 14:6  
 14:19 15:17  
 expired 62:9  
 explained 36:3 53:17  
 explanation 54:20  
 expressly 21:13 32:22  
 extends 10:10  
 extensive 8:1,21 36:6,7  
 48:19 54:5  
 extensively 18:14  
 extent 49:11 61:10  
 extraordinarily 32:4

## F

fabricated 6:10  
 face 44:12 47:9

facilities 55:7  
 fact 8:2,12 10:6,7,14,16  
 10:20 11:4,19 15:12  
 15:16 16:5 18:5,6,7  
 20:18 21:12 23:13  
 24:5,8 27:13 28:6,16  
 31:8,16 32:18 33:2,7  
 33:11 36:4,11 45:2  
 46:4 52:5 53:18 55:1  
 56:6 59:2,12 61:6  
 62:12  
 factors 31:22  
 facts 6:5 51:4 56:18  
 failed 25:11  
 failings 34:10  
 fair 10:8 52:5  
 fairly 10:7 31:8  
 fall 61:17  
 false 24:6,8  
 familiar 6:5  
 far 52:21 53:3  
 fashion 15:18  
 fax 2:7,14  
 February 20:10 33:14  
 federal 47:14 61:6  
 Federico 6:2  
 fictitious 57:10  
 fide 35:13  
 figure 9:10  
 file 4:22 5:1 17:11 33:17  
 50:16 63:4,6  
 filed 3:14 4:18 8:7 13:8  
 15:6 57:11 63:5  
 filing 32:11  
 filings 54:5,6  
 finally 57:12  
 find 13:20 42:15 60:9  
 finding 6:18 7:1,3  
 fine 11:9 16:22 27:22  
 30:15 58:14  
 finish 30:13 33:11  
 first 5:21 11:15 20:2  
 24:17 29:7 34:12 35:9  
 52:11 54:18,19  
 fish 30:1 31:9  
 five 3:22 34:1 54:10  
 fixed 41:17 60:8  
 flawed 39:7  
 flexibility 44:14  
 focus 60:22  
 focused 55:16  
 FOIA 19:5 20:8,16  
 follow 28:21  
 following 23:11  
 forth 13:12  
 forward 46:12 47:21  
 62:20  
 found 13:2 38:1 39:12



40:2,4 41:1,7  
**foundation** 37:2  
**four** 56:22  
**Fox** 56:16  
**frankly** 11:11 58:7  
**Fred** 5:17,22  
**Freedom** 32:9,21  
**Friday** 5:1 63:6  
**front** 15:19 46:11  
**full-blown** 36:12 44:5  
**fully** 42:8 50:3  
**further** 39:6 50:21

## G

**general** 2:17 4:6 54:1  
**get-go** 9:7  
**give** 13:16 28:1 30:12  
**given** 25:13 28:3 30:11  
 33:14 35:1,12 40:10  
**giving** 8:15  
**go** 15:20,22 19:13  
 28:14 29:12 32:13  
 33:7 57:10 61:22  
**goes** 40:3 43:12  
**going** 15:1,2 27:17  
 33:10 46:12 51:4  
 54:13  
**good** 3:12 5:15 29:15  
 33:22  
**gotten** 14:5  
**government** 59:20  
**graph** 43:20  
**graphs** 28:5,8  
**Great** 14:15  
**grievances** 54:7  
**gross** 35:3  
**grossly** 8:3,11 14:8  
**growth** 27:12 55:11  
**guess** 16:9 25:17 41:16  
**guesses** 26:9  
**guidance** 12:6  
**guide** 60:6

## H

**Hall** 2:3,4 3:19,20,20,22  
 5:5,6,14,15,20,22  
 6:15,20 7:4 8:5,10 9:5  
 9:22 10:5,15,21 11:2  
 11:7,9 12:5,10,13  
 13:7,10 14:13 15:11  
 16:9 17:7,9,13,20  
 18:13,19,22 19:19,20  
 19:21 20:1 21:1,15,17  
 21:20 22:5,12,14,16  
 23:1,4,6,22 25:8,15  
 25:12,14,16 29:2,13  
 30:10,15 32:12,17  
 33:8,10 54:11,12

55:19 57:16 58:2,6  
 59:18 60:15  
**Hall's** 39:3  
**Hampshire** 48:15  
**hands** 6:9  
**happen** 26:19  
**happened** 27:7  
**happening** 57:7  
**hard** 33:20  
**harm** 54:3 63:1  
**Headquarters** 19:6,7  
**heard** 4:20 34:4 54:15  
**hearing** 1:15 3:13 5:3  
 57:14  
**help** 34:8  
**high** 41:20 43:11 51:10  
**highest** 51:11  
**holding** 29:5  
**Honor** 3:19 4:10 5:6  
 11:2 18:13 21:20 23:5  
 23:22 25:9 26:16 29:2  
 29:14 30:16 32:17  
 50:9 58:7 59:19 60:16  
**Honor's** 49:21  
**Honorable** 1:18,19,21  
 3:8  
**Honors** 34:12  
**hope** 7:9 11:16 16:20  
 21:4 24:2,20,22 34:14  
 41:18 49:15 50:3,19  
 50:20 51:6 55:9,17,20  
 55:22 57:19 60:12  
**hoped** 39:13  
**Howes** 14:11,16 17:4,8  
 17:19 18:12,21 21:2  
 34:6 35:20 38:9 49:10  
 49:12,12,19,22 50:4  
 61:15  
**hydrogen** 14:15  
**hyperbole** 8:19  
**hypoxia** 40:9  
**hypoxic** 45:7

## I

**idea** 22:5  
**identical** 21:19,21  
 46:17 47:1  
**identified** 7:9,11 12:6  
 36:20 43:15 46:3  
 48:22 49:13,17 51:16  
**identifies** 36:16  
**identify** 10:19 13:13  
 35:3 43:21 50:1  
**ignore** 8:2 15:2 26:7  
**ignored** 7:19 55:13  
 57:19  
**illegal** 6:8  
**immediately** 20:8

**impact** 24:15 25:19  
 50:21  
**impacted** 61:4  
**impacts** 31:18 39:18  
 43:7,22 46:20 48:21  
 49:8,13 50:11 51:3,8  
 51:12,15,17,20 60:20  
**impaired** 6:13,17,19 7:6  
 7:8,10,12,14 29:21,22  
 30:20 39:1 45:17  
 58:16  
**impairment** 6:11 28:18  
 29:21 30:22 58:17  
**implementing** 62:5  
**imply** 57:21  
**important** 46:14 48:11  
 62:7  
**impose** 31:18 60:18  
 62:6  
**imposed** 58:3  
**improve** 27:11  
**in-stream** 36:21 39:11  
 39:12 40:10 44:16  
 45:2 60:20 61:11,16  
**inappropriate** 8:11  
**included** 13:8,11 45:16  
 46:1 48:7 54:22 61:13  
**including** 14:6 22:11  
 35:6  
**incompetent** 8:4  
**inconsistent** 20:21  
 58:16  
**incorporating** 47:6  
**incorrect** 19:5  
**increases** 56:1  
**increasing** 55:10,11,11  
**independent** 7:13  
**independently** 56:19  
**indicate** 29:4  
**indicators** 36:14,16,17  
 37:3 42:13 58:21 59:3  
**indirectly** 55:8  
**inferences** 62:1,1  
**infirm** 34:8  
**information** 9:12 10:2  
 13:17 16:7,15 19:18  
 20:17 21:8 32:9,10,21  
 35:3 36:9 40:16,17,18  
 40:19 44:4,13,17  
 45:22 46:10 49:3  
 51:13 52:21 53:5,13  
 53:15 56:6,10 61:19  
 62:14  
**input** 9:15  
**insisting** 13:15  
**instance** 6:22 31:21  
 37:6  
**instances** 58:8

**instrument** 47:19  
**insufficient** 24:17,19,21  
 28:12  
**insure** 38:3  
**integrated** 34:15  
**interactions** 49:22  
**international** 13:6  
**interruption** 30:12  
**intervening** 37:1  
**intimately** 6:4  
**introduce** 3:17  
**invite** 52:15  
**involved** 6:3  
**irrebuttable** 14:3  
**irrefutable** 24:5,7  
**Island** 31:9,12 61:4,14  
**isolation** 40:17 51:14  
**issuance** 29:6 44:18  
 61:20  
**issue** 7:13 8:11 18:14  
 21:18 22:15 35:19  
 40:3 47:17 50:6 55:16  
 62:20  
**issued** 3:15 7:22 8:16  
 9:3 11:3 12:7,14  
 17:17 22:2,4,8,16  
 29:11 33:18 46:15,17  
 48:2,3 52:9 54:22  
 55:14  
**issuer** 44:15  
**issues** 6:5 7:20,21 8:8  
 11:10 20:4 47:14,22  
 48:14,18,20 50:2  
**issuing** 46:22 47:5 55:6

## J

**jhall@hall-associate...**  
 2:7  
**Joe** 6:2  
**John** 2:3 3:20 5:15  
**joined** 4:5  
**joint** 47:13  
**Judge** 1:18,20,21 3:12  
 4:2,7,11,15,17 5:13  
 5:20 6:15,22 8:5,10  
 8:19 9:17 10:5,21  
 11:7 12:5,11 13:7  
 14:10 15:5,21 17:7,10  
 17:14 18:3,16,20  
 19:19,21 20:20 21:15  
 21:18 22:3,7,13,15,21  
 23:3,6 25:1,10 26:12  
 26:15 28:22 29:3  
 30:10,13,17 32:12  
 33:8,21 35:16,18  
 37:12,16 39:2 41:11  
 42:17 45:15 47:4 48:5  
 50:5 52:1 54:9,12

55:15 57:5,13 58:2  
59:15 60:15 63:2  
Judges 3:8  
jump 35:18  
June 13:8  
justice 6:7

## K

Kathie 1:19 3:8  
Kay 1:18 3:9  
kept 13:14  
key 7:21 20:3  
kills 30:1 31:9  
kind 12:7 23:20 31:17  
41:12 58:19 60:12  
Kirby 2:4 3:21 34:6  
know 8:21 14:20,21  
19:2 22:7 33:3,4 57:9  
57:22 58:10 60:7  
known 54:7  
knows 48:12  
kudos 29:16

## L

language 46:19  
laptop 5:10  
large 53:16  
largely 48:14  
largest 49:8  
law 13:5 47:6,14  
lay 42:4  
lead 31:18 58:20  
Lee 2:16 4:5  
legal 22:6 47:20  
legislative 31:10  
lengthy 10:8  
let's 11:9 12:13 15:20  
18:12 28:14  
letter 17:8,12,19 22:17  
35:19 47:10  
levels 41:20,21 59:2  
lie 33:16 55:1  
lied 33:6  
life 12:3  
limit 10:11 12:11 31:19  
39:5 44:10,16 49:6,7  
58:3,11  
limitation 47:2 62:6,9  
limited 11:12  
limits 37:9 54:21  
line 51:4,7,18  
list 6:17,21 7:5,15 20:11  
45:17 46:2 56:9 58:5  
listed 6:16 30:20 58:4  
listen 13:21  
listing 30:22 46:5,5  
59:13  
lists 58:13

liter 62:11  
literature 40:20 41:3  
little 12:13  
load 31:13 35:12 57:17  
57:18,22 58:1,22  
loads 27:7  
location 10:16 11:10  
12:19,22 24:1,18  
25:18 38:12  
locations 26:10  
lockstep 47:22  
long 45:5 62:8,8  
longstanding 40:5  
look 15:15 16:12 32:20  
36:20 52:20  
looked 15:16 37:11  
38:22 39:8,9,10,17  
40:20,21,21 46:1  
51:14,15  
looking 33:3,4 40:2  
49:16 60:1  
lot 59:21  
love 57:3  
low 31:4 41:20 51:11  
Lynch 1:18 3:9 19:19  
19:21 20:20 21:15,18  
22:3,7,13,15,21 23:3  
37:12,16 48:5 58:2

## M

MA 2:13  
MA-0100897 3:7  
MA0100897 1:9  
Mail 2:12,18  
major 30:21 31:13 57:6  
majority 16:17  
making 13:22 25:9 54:7  
61:18  
mandate 31:11 44:7  
62:20  
mandated 27:2  
mandates 56:9  
manual 19:16  
March 1:11 5:1,2 17:15  
33:11 49:20 63:6,7  
Market 61:22 62:19  
Mary 1:18,21 3:9,9  
Mass 45:4 47:21  
Massachusetts 6:14  
19:10 20:14,21 21:3  
21:10,13,22 24:4  
36:19 40:22 41:6  
46:18 48:16 59:5,7,8  
61:2  
material 50:12 52:6  
materials 53:5  
matter 1:6,15 3:13 4:5  
21:12 22:6 27:10 31:8

63:9  
maximum 44:14  
mean 18:14 29:4 32:20  
53:9 58:7  
means 12:8 22:18  
meant 44:14  
meet 20:6  
meeting 19:7 20:2,5,7,9  
20:15 33:15  
meetings 17:20,21 18:1  
19:22 20:1  
meets 59:5  
Members 54:13 59:19  
Memorandum 47:12  
50:16  
mentioned 59:1  
MEP 14:12 17:5,22 18:8  
23:7,15 35:21 36:2,6  
36:12 38:8,8 39:16  
49:18  
merits 34:9  
met 11:17,18 38:14,17  
38:18  
method 27:15,16,18,21  
28:1  
methodology 13:3  
MHB 34:18 39:3,9 40:12  
40:15  
midpoint 41:2,4  
milligrams 62:11  
millions 60:4  
mind 46:14 60:21  
minute 34:5  
minutes 3:16 4:1 30:12  
34:1 54:10  
misapplied 42:6  
misleading 43:1  
misplaced 7:17  
missing 28:6 42:14  
mistake 58:19  
model 14:15 30:2 31:16  
43:16 45:9 51:9  
modeling 23:10,19,21  
36:1,7,10  
moment 59:16  
money 59:22  
monitoring 41:17  
month 17:16  
months 6:10  
morning 3:12 5:15  
33:22  
motion 4:18,22 5:4  
57:11,15 63:4  
Mount 7:9 11:16 16:20  
21:4 24:2,20,21 34:14  
37:6 41:17 50:3,19,20  
51:5 55:9,17,20,22  
57:19

move 34:6 62:20  
moving 47:21  
multiple 17:2,5 52:15

## N

name 3:19 5:15,21  
Narragansett 29:18  
naturally 50:18  
necessarily 43:3,20  
53:9 55:17  
necessary 35:4  
need 9:20 23:16 29:16  
needed 57:7  
needs 22:19 26:20  
33:19,20 54:3  
never 6:13 7:11 12:2  
14:3 23:19 53:22 58:3  
59:7 60:12  
new 8:1,14 10:2 17:3  
28:8 48:14 53:12,13  
53:14 61:22 62:19  
News 56:16  
NGOs 61:5  
nice 54:16 57:3  
nitrogen 10:9,11 28:7  
28:12 30:5 31:11,17  
35:12 36:19,21,22  
37:20 39:18,18 40:7  
45:6,18 47:1,22 48:20  
49:5,8,14 50:2 51:20  
54:21 60:18 62:6,9  
nitrogen-driven 40:13  
normally 5:8  
note 14:1 61:9  
noted 30:3 31:1 37:5  
50:17  
notice 1:15 18:9,18  
NPDES 1:7 3:7,15  
46:15  
number 3:7,8 13:4 27:1  
27:2 35:15 37:18 41:1  
43:11 50:18 51:5  
54:13 55:3 56:22  
numbers 51:10 59:6  
61:16  
numerous 8:22 58:7  
61:5  
nutrient 6:19 7:8,10,12  
7:14 12:6 28:18 31:19  
46:20 48:13 54:20  
58:16  
nutrients 10:17 16:22  
24:15 27:6 31:3  
nutshell 26:15,16  
NW 1:13 2:5,18

## O

object 22:20



objections 4:12 57:6  
 objectives 62:4  
 obligation 15:8 16:1  
 52:18 53:2  
 observation 49:21  
 observed 39:11 40:10  
 obviously 11:5  
 occasions 8:22 52:15  
 occur 26:6 43:7,18  
 occurrence 43:4,5,6,7  
 occurring 43:22 44:1  
 office 2:11,12,17 4:3,6  
 32:10  
 offices 32:14  
 oh 14:22 21:1 28:11  
 29:13 57:10 58:6,22  
 okay 4:17 16:22 19:4  
 24:1 26:12 28:14  
 old 27:9  
 once 49:1  
 ongoing 48:22  
 oops 8:17  
 opening 13:19  
 opinion 35:14  
 opinions 8:2 13:18  
 opportunity 8:15 10:2  
 14:9,17 32:13 52:13  
 opposite 56:7  
 opts 35:8  
 ORA 2:12  
 oral 1:4 3:5  
 order 9:18 34:7 53:19  
 organic 27:6 55:10  
 outcome 60:13  
 outlined 50:14,15  
 outset 36:11 57:14 63:3  
 outside 40:19  
 overall 38:6 44:3  
 overdue 62:8  
 overheads 20:16  
 oxygen 35:22 40:8  
 41:21 55:9

## P

P-R-O-C-E-E-D-I-N-G-S  
 3:1  
 p.m. 4:19  
 page 41:15 42:19  
 pages 8:14 10:10  
 panel 56:16  
 paper 47:18  
 parade 57:9  
 part 34:18 55:5,12  
 59:20  
 particular 26:9 31:21  
 34:22 43:4,22 44:8  
 48:1 58:9 61:8  
 particularly 21:10 49:5

54:1 62:7,22  
 parties 63:3  
 parts 34:15  
 patently 6:7  
 pattern 40:6,10 45:5  
 57:2  
 peer 11:21 19:6 28:1  
 Pennsylvania 2:18 8:17  
 percent 31:10  
 perfect 29:16 58:20  
 perfectly 37:7 58:13  
 period 9:18 10:3 15:7  
 33:6 45:6 53:10,21  
 periods 9:14  
 permissible 12:8  
 permission 5:7,11  
 permit 1:9 3:7,15 7:22  
 8:16,20 9:7,8,14  
 11:11 14:4 17:16  
 19:16 20:13 21:16,19  
 21:22 22:1,4,9,17  
 27:3,4 29:6,10 33:16  
 33:17,19 34:13 37:9  
 44:15,15,18 45:15,16  
 46:17,22 47:1,5,9,11  
 47:14,18 48:1,2,3  
 49:6,7 52:9 53:16,21  
 55:7,14 58:3 60:6  
 61:1,20 62:8  
 permits 40:22 62:21  
 permittee 52:12  
 permittees 52:16  
 permitting 27:1 35:1  
 45:10 47:13 48:13  
 49:1,4 51:19 56:14  
 58:14  
 person 14:21 19:14  
 56:17,17  
 perspective 24:12  
 petition 32:11 34:11  
 45:11 50:17 54:18  
 Petitioner 3:20 5:16  
 34:5,9 35:8 42:6  
 45:10,11 50:10 51:2  
 54:4 60:17 61:7,12  
 Petitioner's 53:18  
 61:13 62:8,15  
 phones 3:10  
 physics 27:10  
 picked 37:4 58:13  
 piece 37:1 46:14 47:18  
 pieces 35:10  
 Pittsburgh 8:17  
 place 7:2 24:17  
 plainly 10:13 18:13  
 plant 27:10 37:21 51:17  
 please 3:10,11,17 10:19  
 11:1 27:14

plus 27:4  
 podium 5:11  
 point 6:15 7:2,4,17  
 10:13,16,21 18:22  
 19:13 25:8 27:17  
 33:11 38:13 39:9,13  
 40:15 43:13 44:3  
 45:18 49:9,22 50:4,6  
 50:10 51:3,6 55:3,7  
 57:21 58:11 59:18  
 61:8,22  
 Point's 51:14  
 pointed 34:19 42:2  
 pointing 25:10  
 points 13:17,21 32:2  
 34:3 39:20,21 54:14  
 pollutant 58:4,4  
 portion 38:15,17  
 portions 43:9,10,19  
 position 16:3 56:7  
 positive 31:20  
 possible 35:11 62:21  
 Post 2:12  
 posture 46:21  
 potential 25:2,16,22,22  
 26:3 37:10,21  
 potentially 43:1  
 Power 27:10 42:18  
 PowerPoint 4:8 42:18  
 44:22  
 preamble 44:13  
 preceded 17:12  
 precedent 15:6 25:7  
 62:18  
 precedents 35:15  
 predated 48:10,11,12  
 predicting 12:21  
 premise 39:8  
 prepared 62:13  
 prescriptive 44:9  
 present 2:21 20:7  
 presentation 5:8 41:18  
 45:1  
 presented 20:11 44:22  
 49:10  
 presiding 3:9  
 pressing 54:3 62:22  
 presumably 45:22  
 presume 8:22 46:8  
 presumption 14:2  
 prior 32:11  
 pristine 59:6  
 problem 28:19 30:6  
 53:22 58:18 60:5  
 problems 7:18 30:21  
 32:3  
 procedural 32:3 60:13  
 procedurally 34:8

procedure 26:3  
 procedures 19:14 26:1  
 26:8 27:15 45:4  
 proceed 5:5 11:1,8  
 proceeding 34:13  
 proceedings 30:7  
 63:11  
 process 6:3 8:13,18  
 9:12 46:5 47:3,13  
 48:7 49:2 52:3 53:21  
 54:8  
 produce 8:14  
 program 13:6 14:7 17:6  
 17:22 19:10 20:14,22  
 21:3,11,13 24:5  
 project 26:4 28:12  
 projecting 27:20  
 prompt 17:18  
 proof 25:4 51:1  
 properly 15:9 60:3  
 Protection 1:2 2:9,10  
 2:17 3:5  
 protective 41:9 44:10  
 44:15 62:6,21  
 provide 9:11 10:2 18:12  
 32:15 33:1 41:14  
 44:14  
 provided 52:14  
 provisions 9:13  
 public 1:8 2:2 3:7 5:18  
 8:15 9:14,18 15:7  
 53:10,21  
 pudding 51:1  
 purpose 19:20  
 purposes 37:18 38:2  
 39:5  
 pursuant 1:15 47:16  
 put 8:9 9:2 15:16 16:6  
 18:9,17 28:20 32:8,19  
 55:2

## Q

quality 11:16 12:1,9,12  
 12:21 22:10 26:4,10  
 27:20 30:2 31:16 35:5  
 37:22 38:4,14,16,18  
 38:21 39:17 45:3,4  
 49:13 51:12 57:1 59:5  
 61:4 63:1  
 question 7:16 15:14  
 18:6,10,15,16 25:12  
 29:15,17 30:13 41:12  
 52:3 54:16  
 questions 10:22 53:12  
 quick 54:13  
 quickly 42:15  
 quite 11:11 30:19 58:7  
 quote 55:6,6

**R**  
 raise 4:12 34:2  
 raised 50:6 52:4  
 raises 60:14  
 rational 12:4,20  
 re-engagement 48:17  
 roaches 21:5  
 react 39:14  
 read 45:19 55:5  
 readily 45:21  
 reading 18:3 35:22  
 really 19:8 23:17 26:17  
 26:18 55:16  
 reason 53:8  
 reasonable 11:21 25:16  
 25:22,22 26:2 37:10  
 37:21 62:1  
 reasonableness 61:18  
 reasonably 45:21  
 rebuttal 4:1 34:1 54:11  
 57:21  
 rebuttals 15:13  
 recap 30:17  
 receive 4:8  
 received 16:12 61:2,5  
 receiving 49:9 50:13  
 51:16  
 recognized 45:13  
 recommended 8:1  
 61:15  
 record 3:18 4:20 7:2  
 8:21 9:2,7,8 13:1 16:7  
 23:4,8 30:8 31:6 32:4  
 32:14,19 33:6 34:3  
 36:10 44:20 47:5,7  
 48:19 51:11 52:6,8,13  
 52:16,19,22 53:5,6,7  
 53:16 56:4 57:5 58:19  
 63:12  
 recording 3:11  
 records 53:19 54:15  
 reduce 27:12  
 reduces 55:9  
 reducing 27:6,6  
 reduction 27:11 31:10  
 reductions 35:4 60:19  
 refer 38:12  
 reference 12:19 14:10  
 19:2 24:8,10 35:21  
 39:5  
 reference-based 12:8  
 12:16,18 23:14 38:10  
 40:18  
 referring 14:11,13,16  
 refers 18:8 23:9 38:11  
 44:12  
 reflect 27:4  
 reflected 18:4 43:20

47:4,22  
 regard 9:16 15:4 56:3  
 56:14  
 regarding 21:3 54:14  
 54:19 55:3 56:22  
 regime 50:12,21  
 Region 2:9,11 3:15 4:4  
 4:5,21,22 6:9 7:18 8:6  
 9:1 10:12 12:6,14  
 13:12,17 14:1,18 15:8  
 15:11 16:18 19:8 20:2  
 20:13 21:14 22:1  
 23:15,19 25:11,17  
 26:19 28:9,11 30:3  
 32:6 34:14,19 22  
 35:20 38:7 47:12  
 48:13,14 54:21 56:8  
 57:12 59:22 60:18,22  
 61:7 63:4  
 Region's 9:19 16:1  
 24:11 28:4 32:13  
 34:12 55:6,13  
 Regional 2:11 4:4 20:6  
 33:12,13  
 regulated 58:1  
 regulation 44:11  
 regulations 9:1 16:2  
 25:1,6 32:15 45:20  
 52:18 62:5  
 regulatory 25:14 41:5  
 47:17  
 rehashing 53:15  
 reject 52:12 53:12,14  
 rejected 29:7  
 related 16:21 41:12  
 relates 21:10  
 relating 18:8 46:19  
 relationship 27:18 43:3  
 43:4  
 relationships 28:10,16  
 42:12  
 relevant 44:13 57:17,20  
 relied 10:12 36:14  
 relief 62:15  
 remember 21:6 27:7  
 28:5  
 remind 63:2  
 reopen 9:18 53:9,11  
 reopened 10:3  
 reopening 9:13 53:20  
 repeat 5:21 34:9,10  
 repeated 13:11  
 repeatedly 7:19 10:1  
 32:5,8  
 reply 5:2 41:14,15  
 42:16,20 63:7  
 report 36:15 37:3,4  
 38:9 58:22 59:1,3

reports 51:15  
 representing 4:4 59:19  
 request 20:16 33:1  
 requested 10:1  
 requests 7:19 20:8  
 require 12:18 15:6 25:3  
 required 7:13 24:9  
 25:13 27:3 32:16  
 45:20  
 requirement 31:20  
 requirements 59:9  
 requires 25:7  
 reserve 3:22 34:1  
 resigned 14:5  
 resource 46:9  
 respect 10:9  
 respiration 55:11  
 respond 8:6 16:1,3,6  
 53:20  
 responded 20:3  
 responding 8:8 53:4  
 responds 16:18  
 response 4:21,22 9:3  
 11:20 15:4,19 16:5,8  
 16:11,12,14 17:16,18  
 24:13 25:15 28:9  
 33:18 36:4,16 40:6  
 42:2 44:6,19 46:4  
 47:2,6 50:14,17 52:10  
 52:22 53:3,8,17 55:2  
 55:15 63:4  
 responses 14:22 15:17  
 18:13,18 39:18  
 responsive 44:20  
 restrictive 22:19  
 result 35:12  
 resumed 30:8  
 review 11:21 35:14  
 reviewed 19:6 28:1  
 reviewing 10:7  
 revoked 33:19,20  
 Rhode 31:9,12 61:3,14  
 right 15:19 20:15 23:3  
 42:16,21 56:2 59:21  
 rise 3:3 63:10  
 river 6:12,16,18 7:6,7  
 16:20 21:5 24:3 29:20  
 34:14 45:17 49:14  
 50:3,18 55:17  
 robust 23:10 42:11  
 Room 1:12  
 rotating 46:6,7  
 route 44:7  
 RTC 34:20  
 rules 27:2 28:21  
 run 42:9  
 running 42:10 52:2

**S**  
 Samir 2:10 4:3  
 sample 43:21  
 sampled 45:3  
 saying 10:20 14:7,19  
 14:22 19:1 58:2  
 says 21:8 32:18 50:1  
 60:6  
 scale 34:13,21 40:4  
 scenic 6:12  
 Schroer 2:16 4:5  
 schroer.lee@epa.gov  
 2:20  
 scientific 26:8 27:13  
 35:14 37:7 40:20 41:3  
 50:10 61:13  
 scientifically 11:14  
 19:3 27:21  
 seated 3:11  
 second 49:8  
 section 9:4 22:21 29:19  
 38:20 41:8 56:9  
 sections 7:7,9  
 see 17:22 20:15 24:6  
 48:3 51:8,10,11 52:1  
 52:8 57:4  
 seek 18:20  
 seen 12:2 34:4  
 segmenting 35:9  
 selected 41:2 55:20  
 selection 21:4  
 sense 34:21 38:19  
 sent 17:15 19:5 20:8  
 33:12  
 sentinel 11:10 21:4,9  
 27:15,16 28:1 38:11  
 38:12 55:20  
 separate 7:13  
 separately 47:19  
 September 18:2 20:4  
 series 6:7 11:10 18:1  
 serious 60:5  
 session 3:5  
 set 23:16 42:9  
 sets 27:8 42:3  
 setting 12:9 39:5  
 seven 32:11  
 severe 6:10 29:20  
 48:21  
 severely 43:14  
 share 34:16  
 sheet 8:12 10:6,7,14,16  
 10:20 11:4,19 18:6,7  
 23:13 28:6 36:4,11  
 53:18 55:1 62:13  
 short 22:17 25:20 33:6  
 show 16:15 24:14,18,19  
 24:21 25:12 27:18



28:10 42:11 43:3,3  
57:7 58:18 60:2  
showed 20:17 31:16  
32:6,10 33:18  
showing 12:17 19:4  
31:2 43:14 59:13  
showings 9:20,21 10:1  
shown 28:19  
shows 41:19 45:5 56:4  
57:1  
shut 27:9  
side 3:15  
sign 21:16 22:3  
significant 16:1,4 46:9  
signs 43:15 47:10  
similar 29:5 46:18  
simple 26:19  
simplified 35:2  
simply 15:17 16:16  
19:1 21:1 25:17 28:11  
46:9 60:4,13  
single 34:15 39:9 49:16  
sister 61:5  
sit 56:16  
site 21:9 27:19,19 55:20  
sitting 5:8  
situation 30:19 51:19  
six 57:18,18  
slice 42:3  
slide 15:20  
smaller 35:10  
SMAST 23:9,11,12  
35:22 36:8,15,15 37:3  
37:13,14,17 38:6,9  
40:20 42:19 48:11,12  
49:12,12  
snap 60:21  
snapshot 43:2  
somebody 11:12 32:18  
60:14  
song 51:5  
sorry 5:20 29:2  
sort 39:13  
sought 38:20  
sound 30:11  
source 49:9  
sources 31:11  
southeastern 38:19  
41:6 48:16  
speak 25:1  
speaking 38:10  
specific 12:14 58:10  
specifically 6:6 49:13  
speculate 46:8 51:2  
speculating 35:11  
spend 34:5 59:22 60:3  
spent 27:5  
Square 2:12

squared 42:15  
stand 61:1  
standard 12:9,12 25:14  
standards 11:18 22:10  
22:18 35:5 37:22 38:5  
38:14,17,18,21 51:13  
59:5  
standpoint 38:20  
start 6:4 9:9  
State 6:14,17 7:1,5  
21:16,22 22:3,10 31:9  
37:4 45:16,20 46:4,10  
46:15,16,16,17,21  
47:6,10,11,15,16 48:6  
48:18 51:12 56:8  
58:17 59:4,7,8 61:2,3  
61:14  
State's 6:17 26:21 47:5  
56:3,4,14 59:10  
stated 59:10  
statement 11:3 12:15  
16:17 54:14  
statements 20:17  
states 3:4 23:12 35:6  
41:16  
station 21:5 41:17  
statistical 25:4 26:3  
42:5,22 44:5,21  
statistically 42:10  
statutory 47:17  
Stein 1:19 3:9 8:19 9:17  
15:21 26:12,15 28:22  
29:3 30:17 57:5  
Stein's 30:13  
Steven 13:4 14:13  
straightforward 29:14  
stream 38:3  
Street 2:5  
stressed 43:14  
stressor 44:6  
studies 21:6,7 36:8  
study 23:9,11,12 35:22  
61:14,15 62:16  
subject 46:6  
submissions 34:7  
submit 6:21  
submitted 12:16 15:9  
19:11 33:1 63:9  
substantial 53:12,13  
57:22 58:1  
substantive 34:10  
sudden 56:18  
sue 32:8  
suffered 6:8  
suffering 40:13  
sufficient 18:9 19:12  
24:13,14 62:3  
suggest 7:16 19:15

suggesting 10:4 29:10  
suggestion 52:12  
Suite 2:5  
sum 50:17  
supersaturated 40:9  
45:7  
supplement 4:19 63:5  
supplemental 44:22  
supplementing 9:6  
support 16:7 21:9  
60:12  
supportive 61:3  
supposed 7:15 56:19  
60:7  
sure 10:13 23:2,4 42:15  
Swanson 14:14  
synced 5:10  
syndrome 43:18  
system 23:21 27:5,6,9  
30:2,11 31:17 34:16  
40:2 43:12,13,14,14  
46:7 62:16

## T

tactics 6:8  
take 10:13 31:14 41:21  
44:8,10 59:16  
taken 41:1 43:21  
talk 11:9 55:10  
talking 14:20  
target 39:11 61:11  
Taunton 1:7 2:2 3:6,14  
5:16,18 6:11 7:8,11  
11:17 16:10,19 20:4  
20:10 21:5 24:3 26:22  
28:17 32:5 34:14  
45:17 48:8 49:14  
50:18 55:5,17 57:18  
Taunton's 37:20 49:6  
Taunton/Mount 49:15  
technical 7:20 11:12  
14:2,5 15:3 20:3,11  
35:13 60:2  
tell 19:21 27:16  
temperature 27:11  
50:20  
tens 60:3  
terms 10:5 17:7 23:6  
39:19,19 44:9 52:3  
thank 4:2 5:6,14 23:3  
30:15 33:20 54:9,12  
57:15 59:17 60:14,15  
63:1,8  
theory 38:16 50:11 55:4  
55:12  
thermal 50:7,21 55:8  
thing 42:14 59:21 60:21  
things 16:21 19:3 23:9  
23:17 26:17,19 39:14  
56:19 58:12 59:22  
60:2,22  
think 10:5,6,8 11:7 12:5  
15:5 18:4,6,16 22:16  
23:7,15,17 25:5,10  
32:15 33:8 39:7 41:13  
41:15 42:13,17,18  
45:18 46:13 49:20  
50:5 54:10 55:15  
56:12 57:13 60:21  
three 14:5 27:14 34:2  
threshold 38:3  
thresholds 36:20  
time 4:13 20:7 11:9 3  
15:10 18:11,21,22  
19:13 20:11 33:9,10  
34:1 42:12 44:2,17  
45:5,6 48:5,10 49:2  
50:2 52:2 53:7,19  
54:10 58:14 59:15  
61:19 62:12  
times 40:9 43:8,19 45:8  
57:16,18  
timing 49:21  
TM 42:16  
TMDL 45:20 49:19 57:2  
TMDLs 17:3,5 18:9  
23:16 40:21  
today 3:13,21 5:3,17  
6:6  
told 10:3 17:21 33:15  
top 13:4 14:5,19 21:11  
total 54:21  
town 60:19  
transition 38:22  
treatment 28:20 37:21  
tremendous 5:9  
trigger 53:20  
triggered 31:10  
true 6:16 23:18 28:18  
53:18 55:19  
truly 54:2  
try 13:16 57:21  
trying 5:9 59:21  
Tuesday 1:10 5:2 63:7  
Tufts 13:5  
turn 3:10 37:4  
turned 48:15  
turns 46:22  
two 16:13 23:8,17,18  
27:2 29:9 30:12,22  
34:15 35:15 37:18  
39:20 42:19 47:20  
55:3  
type 44:9 55:4 60:13

## U



U.S 1:2  
 uncertain 21:11  
 unconscionable 60 4  
 undergo 44:4  
 undergoing 43:13  
 understand 11:13 16:4  
 17:14 25:8 29:8 32:22  
 understanding 9:17  
 15:22  
 undertake 36:6,12  
 undertakes 46:5  
 undertaking 23:20  
 undertook 48:6  
 unimpaired 38:22  
 United 3:4  
 unnecessary 60:18  
 unrelated 16:21  
 unsupported 26 9  
 untrammelled 49:7  
 update 57:7  
 updated 54:19,20 56:8  
 upper 28:22 29:3,18  
 30:18,19 31:11 38:15  
 38:17 48:3 61:20  
 62:18,19  
 upstream 7:7 39:6  
 use 5:10 21:9 26:9  
 27:17,21,22 28:10  
 35:2 37:7,12,14 39:4  
 56:6 58:21 61:19  
 utilized 13:3

## V

valid 21:9  
 value 38:15 41:9  
 values 41:3,5  
 variables 40 6  
 variety 40 19 42:4  
 vastly 16:17  
 velocity 40:1  
 verbal 17:20  
 verify 11:19,20  
 view 26:18 42 5 53:12  
 53:18  
 viewed 51:13  
 views 18:12,20  
 violate 56:8  
 violating 56:11,11,12  
 violation 26:6 38:1  
 violations 51:12  
 voir 14:17

## W

wait 62:16  
 waive 22:13  
 waiver 22:15  
 want 26:13,18 27:22  
 41:11

wanted 4:12 18:10 52:2  
 Ward 1 21 3 9,12 4 2,7  
 4:11,15,17 5:13,20  
 6:15,22 8:5,10 10 5  
 10:21 11:7 12:5,11  
 13:7 14:10 15:5 17:7  
 17:10,14 18:3,16,20  
 23:6 25:1,10 30:10  
 32:12 33:8,21 35:16  
 35:18 39:2 41:11  
 42:17 45:15 47:4 50:5  
 52:1 54:9,12 55:15  
 57:13 59:15 60:15  
 63:2

warmer 50:18  
 warrant 35:14  
 Washington 1:2,14 2:6  
 2:19

wasn't 9:5 12:11 18:7  
 18:17  
 wastewater 37:20  
 water 11:15 12:1,9,12  
 12:21 22:10,11 26:4  
 26:10 27:20 30:2,20  
 31:16 35:5 37:22 38:4  
 38:14,16,18,21 39:17  
 45:2 49:13 51:12 59:5  
 61:4 62:5,17,22

waters 19:2 36:19  
 46:18 49:10,17 50:13  
 51:16

watershed 46:7,7  
 watershed-wide 35:4  
 way 6:12 11:18,20 17:4  
 24:4 29:15 39:14 42:4  
 57:10

ways 24 22 42:4  
 we're 3:12 6 6 28 20  
 49:16 57:14  
 we've 5 9 14:5 20:13  
 42:2 48:22  
 went 17:4 30:7 51:6,17  
 63:11

weren't 31:20  
 whatsoever 8:13  
 widespread 40:4 59:11  
 59:13

width 34:18  
 widths 40:2  
 wild 6:12 25:17 26:9  
 wishes 51:2  
 withheld 20:18

words 21:11 25:16  
 54:19  
 Works 1:8 2 2 3:7 5:18  
 wouldn't 48 2 50:19  
 59:4 60:10  
 wrap-up 30:14

writer 14:4  
 writers 19:16 60 6  
 wrong 15:1,18 21:14  
 wrote 14:4 15:12 19:14

## X

## Y

years 12:1 29:11 45:2  
 57:1  
 yesterday 4:18 63:5

## Z

zone 61:17

## 0

02109 2:13

## 1

1 1:11 54:18  
 10:24 1:15 3:2  
 10:52 30:8  
 10:54 30:8  
 11 62:11  
 11:35 63:12  
 1152 1:12  
 12 45:2 57:1  
 1200 2:18  
 1201 1:13  
 122.44(d) 27:3  
 122.44(d)(1)(vi) 44:7  
 122.44(d)(1)(vi)(a) 37:8  
 124.14 53:10  
 124.17(b) 53:1  
 124.18 9:4  
 124.18(b)(4) 53:1  
 130.12(a) 27:2  
 14 41:15 42:14,16,19  
 144(d)(1) 37:9  
 15 29:11  
 15-08 1 8 3:8  
 16 11:16 21:4 24:20  
 34:18 39:4,9 40:12,15  
 1620 2:5  
 18 6:9  
 18-1 2:12  
 19 24:22 34:18  
 1980s 26:2

## 2

20 10:10  
 20001 2:6  
 2001 29:11 48:10  
 2003 30:1 31:9 36:15,16  
 37:3 48:11 49:12  
 2004 27:7 57:6  
 2005 27:7 57:6  
 2007 48:12 49:12

2011 41:16  
 2012-2013 51:7  
 2013 13:9  
 2014 20:5  
 2015 20:10 21:16 22:4  
 2016 1:11  
 202-463-1166 2:6  
 202-463-4207 2:7  
 202-564-5476 2:19  
 20460 2:19  
 2355A 2:18

## 3

3/6/15 54:17  
 30 3:16  
 301 38:20  
 301(b)(1)(c) 41:8  
 303 22:11 48:7  
 303(d) 6:21 7:5,15  
 26:22 56:3,5,9,9 58:5  
 58:13  
 35 12:1 61:16

## 4

4 61:16  
 40 60:9  
 401 22:8,22 23:1  
 45 61:11  
 4th 5:1 63:6

## 5

5 2:12 4:19  
 50 31:10  
 55 54:18  
 60 8:14  
 617-918-0095 2:14  
 617-918-1095 2:13  
 6th 33:11

## 7

701 2:5

## 8

8th 5:2 63:7

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: City of Taunton Department  
of Public Works

Before: US EPA/EAB

Date: 03-01-16

Place: Washington, DC

was duly recorded and accurately transcribed under  
my direction; further, that said transcript is a  
true and accurate record of the proceedings.

*Neal R. Gross*

-----  
Court Reporter

**NEAL R. GROSS**

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701