

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

+ + + + +

ORAL ARGUMENT

2015 JAN -2 AM 11:21
ENVIR. APPEALS BOARD

RECEIVED
U.S. E.P.A.

IN THE MATTER OF: :
: :
CHARLES RIVER POLLUTION : NPDES
CONTROL DISTRICT : Appeal No.
: 14-01
:
NPDES Permit No. MA 0102598 :
:

Thursday,
December 11, 2014

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 10:00 a.m.

BEFORE:

THE HONORABLE RANDOLPH L. HILL
Environmental Appeals Judge

THE HONORABLE LESLYE M. FRASER
Environmental Appeals Judge

THE HONORABLE KATHIE A. STEIN
Environmental Appeals Judge

ORIGINAL

APPEARANCES:On Behalf of the Charles River Pollution Control District:

ROBERT D. COX, JR.
of: Bowditch & Dewey, LLP
311 Main Street
Worcester, MA 01615
(508) 926-3409
(508) 929-3012 fax

On Behalf of the Environmental Protection Agency Region I:

SAMIR BUKHARI
Environmental Protection Agency
of: Office of Regional Counsel
Region 1
5 Post Office Square
Suite 100
Boston, MA 02109
(617) 918-1095

CONTENTS

Arguments by Robert Cox	5
Arguments by Samir Bukhari	51
Rebuttal by Robert Cox	103

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

2 10:01 a.m.

3 JUDGE HILL: Well good morning
4 everyone. My name is Randy Hill. To my left,
5 your right, is Judge Kathie Stein and to my right
6 is Judge Leslye Fraser.

7 I think most of you have come down
8 from the Boston area. And we do appreciate you
9 being here in person today. And good morning to
10 whoever is watching us on video.

11 Let me explain how we'll proceed
12 today. We have allocated 45 minutes for each
13 side. We'll hear first from the Petitioners and
14 then from EPA Region 1.

15 Mr. Cox, you may reserve up to ten
16 minutes of your time for rebuttal if you wish.
17 Do you wish?

18 MR. COX: I'd like to do so, Your
19 Honor.

20 JUDGE HILL: Okay. Good. Before we
21 begin, let me ask each of you at counsel table to
22 introduce yourself and for whom you're appearing.

1 Starting with Petitioner.

2 MR. COX: I am Robert Cox for the
3 Petitioner, the towns, as well as the Upper
4 Blackstone Water Pollution Abatement District.

5 MR. BUKHARI: And my name is Samir
6 Bukhari, I'm representing the Region in this
7 matter.

8 MR. WITT: And I'm Richard Witt. I'm
9 with the Office of General Counsel.

10 JUDGE HILL: Thank you. Thank you
11 all. Mr. Cox?

12 MR. COX: Thank you very much and good
13 morning. We're here because the Region has made
14 a radical change to the NPDES Permit program.
15 Contrary to the plain words at Section 301(a) of
16 the Act which prohibits, absent a permit, a
17 discharge of any pollutant by any person from a
18 point source, and without any regulatory
19 authority.

20 The Region here seeks to make the
21 town's co-permittees to the Charles River
22 Pollution Control District's permit. EPA

1 acknowledges the absence of regulatory authority,
2 but it says it can do so. It can do so because
3 it has crafted an approach to fill in the gap in
4 the regulations.

5 There is no gap in the regulations.
6 Their regulations simply don't apply to it. The
7 Act doesn't apply to co-permittees. The Region
8 has knowingly purported to make the towns co-
9 permittees.

10 This is not the first time that this
11 Board has addressed EPA's authority to seek to
12 make municipal sewer collection systems co-
13 permittees. And the EPA in Region 1 tried to do
14 this before in the Upper Blackstone matter in
15 2010.

16 It says that -- this Board said to the
17 Region, wait, hold on, you need to show that you
18 have legal authority to do so. You need to show
19 a legal basis for expanding beyond the treatment
20 plant to towns that did not discharge directly to
21 U.S. waters.

22 The Region would not be stayed. It

1 comes back with a different basis. And in Upper
2 Blackstone, the Region said it was the treatment
3 plant that was discharging. Now -- now the
4 Region comes back and says it's the whole POTW
5 that includes the municipal satellite collection
6 systems. All that is a discharge.

7 That's why we're here. EPA tried to
8 take one approach years ago. It did not work.
9 Now it's coming back with a different theory.

10 What are the problems with the EPA's
11 approach? Well first, as I said, there's no
12 legal authority to regulate the towns as co-
13 permittees. Second, the application process
14 itself as laid out in the regulations at Section
15 122, the Region either seeks to ignore or in part
16 to rewrite them. These regulations show the
17 absence of authority.

18 Third, if there should be some type of
19 determination that there is indeed statutory
20 authority, it's necessary for the Region to do
21 what it wants to do through a rule. It's not
22 made a rule. It has issued an analysis of 16

1 pages that it says its interpretation.

2 And then finally, the underlying
3 policy concerns that the EPA Region raised with
4 respect to the I/I that sets forth in the
5 response -- the comments it sets forth in its
6 very reply, is displaced by the Massachusetts'
7 DEP's amended to its regulations that directly
8 regulate the source of these modifications that
9 were made to Massachusetts regulations while this
10 permit was pending. While the appeal was pending
11 they made it into the notice here.

12 So first, what the Region says with
13 respect to its claim to authority over municipal
14 satellite collection systems, it's counting on
15 two bases. One is that the municipal satellite
16 collection system is discharging pollutants from
17 a point source.

18 And then second, that appeals a POTW
19 including the municipal satellite collection
20 systems and the entire community system. It's
21 all one point source.

22 Here's the problem. Here's the

1 problem. The municipal satellite collection
2 systems do not discharge pollutants from the
3 point source. They convey sewage flow to the
4 treatment plant for discharge after it's treated
5 from a point source.

6 The Clean Water Act regulates persons.
7 Persons who discharge to navigable waters.
8 That's not my clients. That's not the towns.
9 They have no authority, no control over the point
10 source here. They just act as a conduit to get
11 flow to the treatment plant.

12 JUDGE HILL: So Mr. Cox, so let's go
13 with this notion of they're just a conduit. And
14 let's take this out of the POTW context for a
15 moment.

16 Let's say one of the towns had a
17 vehicle maintenance yard. And they hooked up a
18 pipe to drain the fluids out of that vehicle
19 maintenance yard. And it went into a storm
20 sewer. And let's assume the storm sewer was
21 owned by a different town and it discharged from
22 there into the Charles.

1 Would the town that owns the vehicle
2 maintenance yard be discharging a pollutant or
3 not?

4 MR. COX: Is it a person discharging
5 pollutants from a point source?

6 JUDGE HILL: They are diff -- well,
7 okay, I'm sorry, yes.

8 MR. COX: No.

9 JUDGE HILL: Okay, EPA has said
10 otherwise.

11 MR. COX: I know it has.

12 JUDGE HILL: No, but I mean EPA has
13 said otherwise in a regulatory context. In it's
14 storm water regulations EPA has said, if you're
15 owner A and you're hooked up to sewer system B,
16 that you can also be required to get a permit for
17 the stuff that comes out of sewer system B.

18 Why is that not this situation?

19 MR. COX: Well it is different, so
20 because you've set it out to be a storm water
21 discharge. And under the storm water -- under
22 the regulations, storm water does allow co-

NEAL R. GROSS

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

1 permittees.

2 So there is the ability to have co-
3 permittees there. And that's under the storm
4 water regulations, not the regulations here.

5 Here we're talking about persons that
6 discharge from a point source. That is not the
7 municipality here. They are a conduit, they're
8 sending flow to be treated and then discharged.

9 JUDGE HILL: Let me ask you another
10 example. If you're a person who is discharging
11 not to a publically owned treatment works, but to
12 a privately owned treatment works, EPA has said
13 for a long time that it can permit either the
14 operator of the privately owned treatment works,
15 or the contributors to that privately owned
16 treatment works, or both.

17 And I think both of the examples that
18 I'm giving you are basically what the agency has
19 said that the person A, the upstreamer, we'll
20 call them, is discharging a pollutant because
21 it's passing through a series of conveyances and
22 into the water of the U.S.

1 And so I'm trying to figure out -- and
2 that's essentially what the Region is arguing.
3 And are you saying that both of those regulations
4 are also invalid as they apply to upstreamers?

5 MR. COX: No. No. Not at all.
6 Because there is a specific regulation that
7 governs private treatment and does allow co-
8 permittees there. There's a regulation for that.
9 There is not any regulation for any co-permittee.

10 JUDGE HILL: Then let me be precise.
11 Are you saying there is no statutory authority to
12 permit these satellite systems, or no regulatory
13 authority?

14 MR. COX: Both. There's no statutory
15 authority for doing so and there's no regulatory
16 for doing so.

17 JUDGE HILL: Then where I'm stuck is
18 why is there statutory authority to regulate
19 contributors to privately owned treatment works,
20 but not contributors to publically owned
21 treatment works?

22 MR. COX: If you go back to the

1 statute, the statute itself makes it unlawful to
2 discharge for any person, unlawful to discharge,
3 absent having a permit. The statute is set up to
4 require the permitting requirements.

5 There's no regulatory provision in
6 here to govern co-permittees that are discharging
7 to the pump, sending wastewater through their
8 pipes for discharge in a public treatment
9 facility to U.S. waters.

10 JUDGE STEIN: But why does the statute
11 and the regulations need to expressly provide
12 that you are allowed to have permittees -- co-
13 permittees if the language of the statute for
14 regulations is broad enough to encompass them
15 with that explicit reference?

16 MR. COX: Well they do --

17 JUDGE STEIN: I mean, there are
18 numerous permit programs throughout the agency
19 where there is more than one permittee. You
20 know, whether it's an owner or an operator,
21 whether they're denominated a co-permittee or
22 not.

1 Why must there be explicit statutory
2 authority that uses the magic word that you're
3 using?

4 MR. COX: Well it needs to be because
5 the way the Region has done this is through a
6 legislative rule. Or it has taken its analysis
7 and said no, we're just doing an interpretation
8 here.

9 JUDGE STEIN: Okay. Well, let's
10 assume that don't agree with you on the
11 legislative rule.

12 MR. COX: Okay, fine.

13 JUDGE STEIN: Okay. So let's --
14 before we get to that issue, why does, I don't
15 understand why we have to expressly specify co-
16 permittees in the statute or the regulations
17 here. The regulatory language is broad enough.

18 Now I'm not answering that second
19 question. But if a regulatory or statutory
20 language is broad enough to sweep them in, why
21 must you specify co-permittees expressly?

22 MR. COX: Well, regulatory language is

1 not broad enough to be bring co-permittees.
2 That's where you need to have it. The other
3 examples is vague however the regulations do
4 provide for co-permittees. And in connection
5 with --

6 JUDGE HILL: But before -- I don't
7 want to keep -- before we go on, I want to be
8 very precise as to your position. Because when I
9 asked you the question is there no statutory
10 authority to permit these upstreamer or upstream
11 towns, you said no, there is no statutory
12 authority.

13 MR. COX: Correct.

14 JUDGE HILL: If that is true, and I
15 understand from your brief, and I assume you're
16 continuing that argument, the reason is because
17 they essentially don't operate the pipe where the
18 discharge is actually coming out of. Is that
19 correct?

20 MR. COX: They are not persons who are
21 discharging.

22 JUDGE HILL: Okay. They are not

1 persons who are --

2 MR. COX: They are not the persons who
3 are discharging.

4 JUDGE HILL: They are not persons who
5 are discharging.

6 MR. COX: Correct.

7 JUDGE HILL: Wouldn't the logic of
8 that position mean that any upstreamer is not a
9 person who is discharging? That is to say unless
10 you are the one operating the actual location
11 where it's falling into the river, you are not a
12 person who is discharging?

13 MR. COX: Not a person -- well,
14 according to the Region, they would be persons
15 because they --

16 JUDGE HILL: No, I understand. But
17 I'm saying your position is that they're not
18 persons.

19 MR. COX: Correct. That's correct.

20 JUDGE HILL: And where I'm still stuck
21 is if that -- the logic of that position is that
22 EPA is also wrong to say that contributors to

NEAL R. GROSS

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

1 privately owned treatment works need permits.
2 And how do you reconcile those?

3 MR. COX: I don't think I -- all I'm
4 saying is that the discharger -- the discharger
5 that is subject, needs to be subject to the
6 regulation. That what the statute raises, that
7 the discharger from the point source needs to
8 have them. Otherwise it's a long -- otherwise
9 they're in violation.

10 I don't see a disconnect there between
11 the statutory language in the regulations.

12 JUDGE HILL: But this is my -- but let
13 me try it one more time. My point is that if I'm
14 contributing into a system of interconnected
15 pipes and some pollutants and that -- and I do
16 not own or operate all of that system of
17 interconnected pipes, there's only a person at
18 the end who operates that system of
19 interconnected pipes.

20 If I understand your argument, you're
21 saying it's only the person who operates at the
22 end is the one who is discharging. Am I correct

1 that that's your position?

2 MR. COX: That is correct.

3 JUDGE HILL: Okay. All right.

4 MR. COX: And as you know, the term is
5 defined --

6 JUDGE HILL: If we disagreed with
7 that, what would -- I mean, if we said well,
8 they're basically causing this stuff to go in at
9 point A and it's coming out at point B. If we
10 said that they were discharging on that basis
11 under the statute, where would your argument take
12 you?

13 MR. COX: So if the municipal
14 satellite companies are deemed to be dischargers,
15 that's your question?

16 JUDGE HILL: That's correct.

17 MR. COX: Well, one thing that that
18 would happen is a result in the -- would generate
19 illogical results. Such as requiring the
20 receiving municipal satellite collection system
21 as immaterial to government, okay.

22 JUDGE HILL: Okay.

1 MR. COX: And they're dischargers.
2 And if it is applied to government as the Region
3 says, none would be necessary to be secondary
4 treatment standards. That's set forth in the
5 statute. The POTWs are required to do so.

6 JUDGE HILL: Okay.

7 MR. COX: If the municipal satellite
8 collection systems are deemed to be point sources
9 because they are discharging, they're point
10 sources, then they need to meet technology based
11 standards because that's what the statute
12 requires. The premises must be involved.

13 But the Region's not requiring that.
14 That's why it just doesn't make sense to have
15 these uptight if you will, persons that will be
16 subject to the permit, what you call the
17 dischargers.

18 And further, there are other problems
19 that arise. Other questions that arise if the
20 municipal satellite collection systems are deemed
21 to be dischargers.

22 Does the permit, or should I ask where

1 in the permit does it authorize the municipal --
2 the towns, my clients to discharge to the
3 facility? Nowhere. It doesn't say it.

4 The permit says at part 1(a), the
5 permittee, which is attributed to that, is
6 authorized to discharge as a part of 101.

7 JUDGE HILL: Okay.

8 MR. COX: What if all this has
9 happens, if they're discharged does the permit
10 address that? No. The permit only addresses
11 part 101 as a point source to District.

12 JUDGE FRASER: So would it -- would
13 not your position mean that if one town owned the
14 whole thing, let's say there aren't any other
15 towns. So one town owns the whole 238 miles in
16 the outfall, they would be subject.

17 If that town sold off or gave away the
18 last five miles that is the treatment facility,
19 the town now has under your theory, gotten out of
20 its obligations to have an NPDES Permit when it's
21 still discharging the same material?

22 MR. COX: That's not -- the town is no

1 longer a person discharging fluids from a point
2 source. It is discharging the same material that
3 it collects in its town.

4 But the discharge itself is being
5 treated before it's discharged in the U.S.
6 waters. By someone, a different person.

7 JUDGE FRASER: I'm not even dealing
8 with a treatment facility. I'm just dealing with
9 they sold off or gave away the last five miles of
10 pipe. So they own 238 miles and now they gave
11 away five miles where they gave away the five
12 miles between their town and the outfall.

13 And so now they've, under your
14 argument, the town would no longer be subject to
15 NPDES Permitting just by giving away the
16 ownership rights of the last five miles.

17 MR. COX: That's right. That's right.
18 Because they're not discharging. If I understood
19 your example correctly, at some point, there was
20 treatment and discharge into U.S. water over that
21 last five miles.

22 Someone is doing it, or if it's not,

NEAL R. GROSS

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

1 then that end of the pipe person needs to have a
2 permit owned for that discharge.

3 JUDGE HILL: Mr. Cox, in their
4 permitting approach document, the Region cites to
5 a case called Dague versus City of Burlington,
6 which I believe is a First Circuit case. And in
7 that case, you have a town that basically owned a
8 piece of land that was draining.

9 And it was draining -- it was a
10 landfill. And it was draining through a railroad
11 culvert into a water of the U.S. Or at least at
12 that time it was conceded to be a water of the
13 U.S.

14 And there, it's not 100 percent clear
15 from the opinion. But it's fairly clear from the
16 opinion, that the railroad put up the railroad
17 culvert and probably still ostensibly owned it.

18 And yet in that case, the Court said
19 well, you know, the town is responsible for the
20 landfill. The landfill's pollutants are going
21 through the culvert into the water of the U.S.
22 and the town needs a permit.

NEAL R. GROSS

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

1 Isn't that case kind of squarely
2 disagreeing with the theory you're now espousing?

3 MR. COX: The distinction there is
4 that the railroad was not operating a treatment
5 facility that was discharging into U.S. water
6 zone. The issue there --

7 JUDGE HILL: They were operating a
8 culvert that was discharging to U.S. waters.

9 MR. COX: Yes. It's understood. But
10 it's not analogous in that we're not dealing with
11 sewer flow. Now if those contributed plant is
12 discharged into the U.S. water source.

13 JUDGE HILL: So is your argument that
14 there's a lack of statutory authority to permit
15 the upstream -- the operators of the upstream
16 pipes limited to publically owned treatment
17 works?

18 MR. COX: Correct. That's ours. It's
19 limited -- it's limited to the person that is
20 discharging into U.S. waters, which is the
21 treatment plant. The treatment per -- the
22 treatment plant is our --

1 JUDGE HILL: I'm sorry, I'm still
2 confused. Because you keep saying it's limited
3 to the person who is discharging.

4 MR. COX: Yes.

5 JUDGE HILL: In the Dague case, the
6 person who was discharging was arguably the
7 railroad because they were operating the point
8 source under your analysis.

9 MR. COX: Correct.

10 JUDGE HILL: And yet, the Court there
11 said that the city, who was operating the
12 landfill, which was sending their water, the
13 contaminated water, through the culvert into the
14 water of the U.S., needed a permit.

15 How does that -- isn't that squarely
16 in opposition to what you're now arguing to us
17 here?

18 MR. COX: Again, to distinguish it,
19 because what we're talking about is POTWs here.
20 And the discharge here is subject to treatment
21 and then discharge.

22 So I think there is a distinction

1 here.

2 JUDGE HILL: Okay. All right.

3 JUDGE STEIN: Why are the POTWs so
4 different from the rest of the world under the
5 Clean Water Act?

6 MR. COX: Well, I don't know.

7 JUDGE STEIN: In your case -- I mean,
8 your --

9 MR. COX: I don't know how to answer
10 that, so other than to say that in a connection
11 with the analysis here, it really is not material
12 to what the definition of what a POTW is. What
13 is the focus and should be the focus is the
14 statutory language of who is the person that is
15 discharging at the point source.

16 The Region has gone to great lengths
17 to reach out to the another section in the
18 statute that does not have to do with permitting
19 to use a different definition of POTW that
20 includes the words --

21 JUDGE STEIN: But don't the
22 regulations cross-reference that definition?

1 MR. COX: The regulations cross-
2 reference that regulation, but as I point out in
3 our reply Brief, that change that came about in
4 2002 I think it was, and that change that was
5 made -- the change was made to assist readers in
6 finding specific provisions in the NPDES
7 Regulations.

8 It's not intended to expand the
9 application of the definition if they are
10 restricted to a particular section. So the
11 change that was made that the Region cites to in
12 Section 122.2 of the reg, it says, look, we did
13 what we were supposed to do.

14 We're directed to use the POTW
15 definition in section 403.3(a). And that in turn
16 sends it out to section 122.2. That change in
17 the regulation was not to make any different, not
18 to make anything change in how those different
19 sections remained isolated in their respective
20 parts.

21 JUDGE HILL: So is it your position
22 that the towns are not operating a portion of the

NEAL R. GROSS

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

1 POTW?

2 MR. COX: That's correct. That is
3 correct.

4 JUDGE HILL: Okay.

5 MR. COX: But more importantly, the
6 definition of the POTW was immaterial for you
7 decision making. And as I say --

8 JUDGE HILL: Okay. So I want to --
9 and before you go on, I want to be -- I thought
10 that was your position. But I want to be clear
11 about it.

12 MR. COX: Yes.

13 JUDGE HILL: Your argument about the
14 upstream contribution really doesn't turn on
15 whether they're part of the POTW or not because
16 they're not operating the discharge point?

17 MR. COX: That is correct. That is
18 correct they are not the source.

19 JUDGE HILL: Okay. So the POTW
20 definition issue is kind of a red herring in
21 terms of your argument.

22 MR. COX: It is a red herring. And

1 more then that, it just doesn't make any sense to
2 use or have the definition of POTW be used as a
3 point of source.

4 Because the definition that is used is
5 very broad. It includes -- it's purposely broad
6 because it's used for construction grants and to
7 build source.

8 And it includes not just -- not just
9 sewer collection systems, but also it includes
10 the words, including site acquisition on land
11 that would be and integral part of the treating
12 process, including land and storage for treating
13 wastewater and treatment -- and land treatment
14 systems.

15 That doesn't make sense that you could
16 call an entity that has these features a
17 discharger to having any --

18 JUDGE FRASER: Can I turn to just some
19 factual understanding in the basis. So if I turn
20 to the District treatment plant itself, there is
21 an opinion letter from 1993 in the record that
22 says the towns of Franklin and Medway are member

NEAL R. GROSS

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

1 towns of the District. And then the towns of
2 Millis and Bellingham are customer towns.

3 Is that still the same construct?

4 MR. COX: I understand that's still
5 the same.

6 JUDGE FRASER: And what is the
7 distinction between being a member town and a
8 customer town?

9 MR. COX: Well a customer town means
10 that there's a contract relationship in order to
11 accept the flow for treatment and discharge. A
12 member town means that they are part of the
13 organization that's established by statute and
14 have voting rights with respect to how that --
15 how the District operates.

16 JUDGE FRASER: So how many
17 commissioners do Franklin and Medway have on the
18 District's board commission?

19 MR. COX: You're challenging me on
20 this. I do not have an answer to that. I would
21 be happy to provide that for you sometime --

22 JUDGE FRASER: Well originally I think

1 it was three and two commissioners that were
2 appointed and voted on by the town. Do you know
3 whether the other two customer towns have any
4 representation?

5 MR. COX: I do not. But if you give
6 me the opportunity, I will get the information
7 from the District and provide that information to
8 you.

9 JUDGE FRASER: Okay. If we presume at
10 least as to Franklin and Medway, and putting
11 aside the other two towns for a minute. But if
12 we presume that the construct is still the same,
13 that the District itself is managed by
14 commissioners appointed by Franklin and Medway,
15 do you not -- what is your position with respect
16 to -- part of your argument is that the Region
17 did not have adequate information to impose
18 controls on the permittees -- on the co-
19 permittees in this regard.

20 But if the governing body of the
21 District is appointed by the towns, do they not
22 in fact have the information they need?

1 MR. COX: Well no, because the
2 governing body is just like in a corporation
3 where you have directors on it. The operating
4 people are the facility operators and they're the
5 ones that gets the information.

6 So just because someone serves on the
7 board of the District doesn't necessarily mean
8 that that information is passed along. There's
9 an administrator that is engaged to gather
10 information that is separate.

11 JUDGE FRASER: So the Board would not
12 make sure that the administrator who was
13 submitting the application to the Federal
14 government for discharging, and it's the Board's
15 obligation to make sure that entity is operating
16 in compliance with laws, they would have no
17 relationship to make sure the information is
18 adequate going forward?

19 MR. COX: I would not say that. But
20 the practicality of who was completing the
21 application and providing that detailed
22 information. And the detailed information that's

1 called for in the permit application would be
2 done by an administrator and not the board.
3 Knowing that their duties are administrative.

4 JUDGE FRASER: Right. Would that not
5 be the Boards' obligation to make sure that
6 whatever mechanism happens administratively, that
7 that administrator has the information needed to
8 submit to that permit application?

9 MR. COX: There is a duty to make sure
10 that an application submitted by the treatment
11 plant. There is a duty to make sure that all
12 information is provided accurately there.

13 To the extent that that information is
14 passed to the Board and is available to it, the
15 answer is yes. But again, this is an
16 administrative function.

17 And the information that is provided
18 -- that is provided in Form 2A I think it is,
19 with respect to the towns, it is limited. It
20 asked only for information with respect to
21 population of the communities that are served.
22 The type of system, whether it's a combined

1 system or not. And who the owner is.

2 That's the information that goes into
3 the form. That's what is completed. That's what
4 the Region is relying upon in order to make
5 determinations.

6 It's three lines in a 21 page
7 application that the Region plucks up and says
8 oh, I have enough information here. Given it's
9 totalities, and the population served, the type
10 of system that's provided, and that's all we need
11 in order to make permits.

12 JUDGE FRASER: But if these District
13 representatives are appointed by their, and voted
14 upon by their city commissioners or city counsels
15 back in the town or the town's operating body,
16 why is there not a relationship between people
17 being appointed to represent the town and the
18 ability to represent the town at the District and
19 say, we had 250 thousand people.

20 MR. COX: Well I'm not saying that.
21 I'm not saying there's not a relationship, I'm
22 saying it's an administrative function. And yes,

1 they should be sure, but the information going in
2 is very limited. That's the point we raise in
3 our Petition, in our Brief.

4 The information is limited.

5 JUDGE FRASER: But the
6 responsibilities imposed on the co-permittees is
7 very limited too. It's limited to what is within
8 their control.

9 MR. COX: That is true. But the
10 question is that is there afforded to even make
11 them co-permittee in the first place?

12 JUDGE FRASER: Well, assuming we get
13 past the authority question --

14 MR. COX: Right.

15 JUDGE FRASER: And dealing with the
16 practicality questions. And so when part of the
17 argument as I understood in your brief, was that
18 the Region also erred by not having enough
19 information and waiving the requirement to
20 involve the co-permittees in the application
21 process.

22 The Region is responding, we didn't

1 need to because we had sufficient information
2 from the District's application. And I'm
3 querying whether isn't there sufficient
4 relationship there between the District
5 management and the towns that the Region is in
6 fact conceivably correct on that regard?

7 And I understand you don't have an
8 answer to that. But us assuming again that that
9 is correct, what is limited in the permit is just
10 operation and maintenance and maintaining the
11 sewer system within that town's jurisdiction.

12 What more would the town think had to
13 be provided?

14 MR. COX: Right. Well, the issue
15 we've raised there as to the permit itself and
16 where the parties line up. But the real issue
17 that we raised in connection with the application
18 and why the Region was acting outside its
19 authority is that it received the application
20 from the treatment plant and says we can waive
21 everything else.

22 But it also says, the Region also says

1 that municipal satellite communities are
2 dischargers. And if you are a discharger, there
3 is a duty to apply.

4 The Region -- there is a duty to apply
5 that stems from the underlying statutory
6 framework that says look, unless you have a
7 permit, you're acting unlawfully. And what the
8 Region has done here is it seeks to have the
9 towns people as dischargers, but says nothing
10 about the duty to apply.

11 It says it's waived other aspects of
12 the application. But how can it waive the duty
13 to apply? It doesn't address it. The Region
14 says you can ask. The Region says that there's
15 nothing to indicate that they can't.

16 The Region says that the permittee --

17 JUDGE FRASER: Why can't these towns
18 with commissioners who are serving on the
19 District Board be viewed as applying for the
20 permit on these towns' behalf?

21 MR. COX: Well, because the regulation
22 set forth a whole standard for making an

NEAL R. GROSS

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

1 application to different people. It's not to say
2 I'm okay with that. There is a 21 page
3 application. The regulation says --

4 JUDGE FRASER: Why cannot the 21 page
5 application, submitted by the District on behalf
6 of a Board of Directors that are representing the
7 various towns, be constituted in the Region's
8 view, a permit application on behalf of the
9 District and the towns as well?

10 MR. COX: It was signed by the
11 treatment plant facility operator. There's a
12 certification requirement that goes with that.
13 There is nothing that came to the --

14 JUDGE FRASER: Well the certification
15 is just that the information submitted is true
16 and accurate to the best of my ability. It's not
17 certifying anything beyond their independent
18 knowledge of what's provided.

19 MR. COX: Right, look, but the town's
20 made no application here. They did consent to
21 sending the application. They were sent --

22 JUDGE HILL: So let me ask you this --

1 let me ask you this. If we were to find that the
2 towns were dischargers, I understand you're
3 contesting that. But if we were to find the
4 towns were dischargers, and if we were to accept
5 your argument that therefore they had a duty to
6 apply, what should the Region do?

7 What the Region apparently did here
8 was to say, "We think you have a duty to apply,
9 but we've already got an application. And so you
10 don't need to do anything else."

11 Would you have preferred the Region to
12 issue a 308 Order ordering you to comply -- or to
13 apply for the permit? I mean, what would be the
14 Region's remedy if we agreed with your argument
15 about the application, but not your argument
16 about they're a discharger?

17 MR. COX: Well, it could not issue a
18 308 Information Request because that applies --

19 JUDGE HILL: Why not?

20 MR. COX: Because that applies only to
21 dischargers.

22 JUDGE HILL: Okay, but I'm -- wait a

1 second, I already said they're dischargers.

2 MR. COX: Okay, you got to -- so wait,
3 I'm sorry. Well, it gets to the underlying
4 issue. And that is, where is the authority to
5 permit the co-permittees to begin with? Where is
6 the authority to regulate municipal satellite
7 collection systems?

8 It's not in the regulations. They've
9 come up with an analysis that I know has raised a
10 report that they're trying to impose it as such.

11 JUDGE HILL: Well, let's go to the
12 legislative -- let's --

13 MR. COX: But there are all these --
14 all these questions that we're raising -- how
15 does the it work -- that should be brought up by
16 regulatory process so that parties could have an
17 opportunity to notice and comment.

18 They knew what the Region did isn't
19 okay. "We didn't do the proper thing last time.
20 You the Board sent us back to do it and we've
21 come up with something else. We've come up with
22 this 16 page analysis. Here's our authority."

1 It's not here. The authority is not in the
2 directive.

3 JUDGE HILL: Okay, so let me ask you
4 about the legislative rule issue. My question is
5 a practical one. I mean the notion of a
6 legislative rule is that the agency -- an agency
7 can't bind someone to an interpretation of its
8 regs unless they go through notice and comment
9 rulemaking.

10 So let's assume that -- let's assume
11 the counter to what Judge Stein said earlier.
12 Let's assume we agreed with you that the
13 permitting approach was the legislative rule.

14 How would that help you? And here's
15 what I mean by that question. Given that this is
16 a permit proceeding, I mean we can either find
17 that the underlying statute and regulations
18 allows for co-permittees or it doesn't. And
19 you've got a chance to challenge that here in
20 this proceedings.

21 So even if we declared the permitting
22 approach document to be a legislative rule and

1 not binding, don't you still have to show that
2 there's a lack of statutory authority? In other
3 words, how does -- what additional does that
4 argument give you?

5 MR. COX: If you find it's a statutory
6 rule, did they do what was appropriate here?
7 Don't they need to have full -- don't they need
8 to have a regulation to do what they've done
9 here? Don't they need to find a resolution here?
10 That's our position.

11 And our view is that they would need
12 to do some, if you were to find that at all, to
13 send it up --

14 JUDGE HILL: But you do have the
15 chance to contest all of these issues in this
16 very proceeding, correct?

17 MR. COX: Correct.

18 JUDGE HILL: Okay.

19 MR. COX: That's why we raised the
20 legislative rule issue here. So if you find that
21 there's authority, well they need to invite --
22 they need to send out appropriate notice and get

1 comment.

2 JUDGE STEIN: What is the town's
3 principal concern, leaving aside what the
4 authority discussed. Is it having to comply with
5 the I/I requirements? Is it risk of liability?

6 And as I understand the record, the
7 Region has applied this approach elsewhere in the
8 state of Massachusetts, based on what I've seen
9 in the record. So what is the real issue for the
10 towns?

11 MR. COX: The real issue is that the
12 Region is exceeding its authority under the
13 statute and the regulations to a great deal of
14 towns. This is not something that's permitted
15 under the statute and regulations. This is left
16 to the States.

17 There is a State regulation as I
18 mentioned that was recently adopted. That the
19 towns understand that what was defined. There
20 are very specific requirements that are set forth
21 in that regulation.

22 JUDGE STEIN: So what does this permit

1 require them to do that they're not otherwise
2 already required to do?

3 MR. COX: Well, it requires them to
4 buy a plant to employ and amass other things, but
5 the key thing is that it sets off an enforcement
6 reference that the Region would have that it
7 would not otherwise have.

8 JUDGE HILL: Explain that further if
9 you would please.

10 MR. COX: Well, that the Region
11 analysis isn't correct. So that it could take a
12 cause of action through the EPA as opposed to the
13 State for violations of its regulations.

14 For third-parties likewise, it could
15 mean that the claims are true to determine which
16 is opposed to the State obligation.

17 JUDGE HILL: So it's the enforcement
18 of essentially the O&M requirements, that is the
19 Federal enforceability of those O&M requirements
20 that's your primary concern?

21 MR. COX: That's correct. But it's
22 more than that too. That this whole scheme is

NEAL R. GROSS

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

1 setting up for municipal satellite communities to
2 be violators right now. They don't have permits.

3 From what the Region's say well, you
4 need to have a permit. And the law says if you
5 don't have a permit you're in violation. So what
6 the Region is saying is that the towns and the
7 other communities are violators. I don't think
8 that's appropriate; I don't think that's what the
9 statute was designed to do.

10 JUDGE STEIN: So what if the Region
11 were to conclude that without having the towns as
12 co-permittees that based on what they know about
13 this particular system, I understand about Upper
14 Blackstone.

15 MR. COX: Okay.

16 JUDGE STEIN: That without adding the
17 towns, they really can't ensure compliance with
18 the terms of the permit. Would the Region's
19 remedy be to deny the permit to the District so
20 no one could discharge?

21 MR. COX: Well, I haven't thought of
22 that. That certainly is the discharger and the

NEAL R. GROSS

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

1 point source to ensure compliance. And you know
2 from the record that the Region has made efforts
3 to do so. But it's a shared concern.

4 A shared concern with the communities,
5 with the public, and the State to address I/I.
6 The question is how to address I/I. The Region
7 says that the only and best alternative to do it
8 this through a permit.

9 Well, it's not. Other approaches such
10 as the State regulation that I mentioned, the
11 town certainly addressing I/I to the best that
12 they can with their financial resources. I/I is
13 not going to go away, not in our lifetimes.

14 It's a matter of the fact that a sewer
15 system is --

16 JUDGE STEIN: Well I'm really -- I'm
17 really grappling with what the Region's remedy is
18 in this kind of circumstance. Perhaps they could
19 have followed a different procedure then they
20 followed, yes.

21 One route perhaps would have been to
22 amend the regulations. But I don't hear the

NEAL R. GROSS

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

1 Region saying that a one size fits all approach
2 is necessarily the approach that's appropriate.

3 I see them having made some effort in
4 this permitting proceeding to show why as to this
5 particular treatment District, it believes that
6 the town should be co-permittees. So if you're
7 saying that they can't do it by -- without a
8 regulation, and they can't do it at all, isn't
9 their only remedy to say okay, then nobody can
10 discharge?

11 MR. COX: You still have -- you still
12 have a discharge.

13 JUDGE STEIN: Well, really not a
14 discharge, I mean, if the discharge isn't
15 permitted.

16 MR. COX: Correct.

17 JUDGE STEIN: And the towns, it seems
18 to me want to take their waste, and they want to
19 get it discharged through the District. So they
20 kind of need to discharge.

21 And if there's no permit at the end of
22 the pipe, then nobody is discharging, which

1 doesn't really solve very much of anything. But
2 at the same time, doesn't the Region have the
3 authority to conclude that without the towns as
4 additional co-permittees that they can't share
5 compliance with the terms of the permit?

6 MR. COX: They -- no. No. Because
7 there's still the statutory burden obligation for
8 the treatment plant to meet the discharge
9 requirements. I mean secondary standards are --

10 JUDGE STEIN: But EPA doesn't have an
11 obligation to issue this permit does it? I mean
12 the EPA concluded that it didn't have the
13 necessary parties before it. Does it have the
14 authority to not permit it?

15 MR. COX: It should not and I don't
16 think it could deny a permit or not issue a
17 permit because it doesn't have the necessary
18 parties. It has a party before it It's up to
19 the party to demonstrate that --

20 JUDGE HILL: Well but let's -- I think
21 Judge Stein's question is less that it doesn't
22 have the necessary parties, but more that because

1 there is inadequate control of infiltration and
2 inflow upstream. I mean what the record shows is
3 that that Charles River Pollution Control
4 District has a lot of exceedances and they seem
5 to occur during the wet weather.

6 And so I think the question is could
7 EP -- if EPA cannot force through the permitting
8 mechanism the up -- the satellite collection
9 systems to control their I/I. And so that I/I
10 ends up at the treatment plant and causes
11 exceedances.

12 Could the agency say well look, we
13 can't control I/I upstream because we can't
14 permit those folks. And downstream it's causing
15 a bunch of exceedances and so we're going to deny
16 the permit to the POTW.

17 MR. COX: But isn't it still up to the
18 discharger at the treatment plant to demonstrate
19 in its application that it meets with the
20 standards? Isn't it up to the treatment plant to
21 show that the I/I issues are being controlled?

22 I think that's the -- I think that's

1 the approach that is contemplated by the statute.
2 It's contemplated by the --

3 JUDGE FRASER: But what happens when
4 the record shows us here that that is not the
5 case?

6 MR. COX: Well the --

7 JUDGE FRASER: That's the question
8 Judge Stein is asking.

9 MR. COX: Right.

10 JUDGE FRASER: If you're showing that
11 the I/I exceedances are not being controlled, and
12 you're saying you're argument is the upstream
13 towns aren't subject to the permit, then does not
14 the agency -- isn't the remedy to say your permit
15 application is incomplete and we're denying the
16 permit?

17 MR. COX: No, because at least -- as
18 the Region knows, these are ongoing issues with
19 all facilities, collection systems to deal with
20 I/I. And it's going to take years to address and
21 it takes monies to address. And the reg is not
22 to say well, we just get a permit.

1 It is the treatment plant's
2 obligations to meet the discharge requirements.

3 JUDGE FRASER: So continuing to exceed
4 for -- into the future until at some point if the
5 best remedy is to get the towns to maintain their
6 sewer systems, but you're saying they're not
7 subject to the permit and the District has no
8 authority to make them do that, then what is the
9 remedy?

10 MR. COX: Some things there are not
11 remedies. The Clean Water Act doesn't cover all
12 the water related issues. It doesn't deal with
13 the non-clean sources.

14 It simply doesn't apply to --

15 JUDGE FRASER: So the agency is
16 required to issue the permit knowing that it
17 cannot meet the statutory obligation?

18 MR. COX: As I said, it is still the
19 ultimate permit applicant, the treatment plant,
20 to demonstrate that it would dispense.

21 JUDGE HILL: Okay, we will save the
22 rest of this for rebuttal. Thank you Mr. Cox.

NEAL R. GROSS

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

1 MR. COX: Thank you.

2 JUDGE HILL: Eureka, I will give the
3 Region five extra minutes. Mr. Bukhari?

4 MR. BUKHARI: Good morning, Your
5 Honor. My name is Samir Bukhari and I represent
6 -- representing the Region 1 in this matter. I
7 am joined by Richard Witt with the Office of
8 General Counsel.

9 I would like to discuss Petitioner's
10 interpretation of discharge and POTW before
11 moving to issues concerning permit application
12 procedures, interpretive versus legislative rules
13 and State regulations at NPDES permitting.

14 JUDGE HILL: But I'm going to hit you
15 with a question right off the bat and maybe we
16 can dispense with the first issue relatively
17 quickly. Does your argument depend on declaring
18 the satellite collection system a POTW or not?

19 MR. BUKHARI: It does not.

20 JUDGE HILL: Okay. Then why did you
21 go to so much trouble to argue they're a POTW?

22 MR. BUKHARI: Your Honor, we were in

1 the first place responding to Petitioner's claim.

2 JUDGE HILL: No, I'm talking about --
3 I'm talking about in the approach document
4 really.

5 MR. BUKHARI: Right. The basis for
6 issuing the permit is in 402 and technically what
7 you want is the discharge of the point source.
8 So that is the first operating principle that the
9 Region followed.

10 With that said, we believe that it
11 makes sense when looking at these with respect to
12 POTWs to view that entity as a whole. And that
13 is consistent with EPA regulations which view the
14 treatment works as that term's applied in Section
15 212. It's not only constituting a treatment
16 plant, but also the system of pipes and
17 conveyances, collection systems that leads into
18 the treatment plant.

19 And that -- so even from our
20 collective that is a piece of our -- I think
21 that's how the operation works. Even with the
22 department scheme. And I think it's very

1 important, it's a very important distinction to
2 make.

3 And the argument that the POTW is only
4 complies with the treatment plant introduces a
5 great deal of incoherence into the NPDES
6 Permitting program. Particularly as it relates
7 to the pretreatment program.

8 Under Petitioner's proposal, POTW if
9 you, lay it before you, expanding and contracting
10 depending on the regulatory context. Meaning
11 treatment plants alone for the purposes of the
12 NPDES permitting and the treatment plant works as
13 was discussed for pretreatment.

14 Not only is the Petitioner's view
15 contrary to the plain definition of POTW in
16 Section 212 of the Act and parts 122 and 403 and
17 their preambles, it would also generate needless
18 conflict between two programs that Congress
19 intended to work harmoniously.

20 To speed work through the construction
21 as you will hear, is that a handful of words used
22 in different parts of the same act, are intended

NEAL R. GROSS

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

1 to have the same meaning. The District said, the
2 Aloha Company, 515 U.S. 561, 565.

3 Under Petitioner's reading, the town's
4 collection systems are and are not a POTW. They
5 are the POTW for the purposes of pretreatment,
6 but are not for the purposes of NPDES permitting.

7 Even within the NPDES context as Judge
8 Fraser had raised earlier, they are a part of the
9 POTW if owned by a single entity, but are not
10 part of the POTW if the collection system and
11 treatment plant are operated by different
12 entities.

13 I would just note here that
14 Petitioner's theory again, as referred to earlier
15 by Judge Fraser, Petitioner's theory sets up a
16 perverse incentive whereby a discharger has every
17 incentive to convey away that last portion of
18 pipe in order to abate any obligation under the
19 Clean Water Act.

20 This danger under -- it was addressed
21 by as this Court in 1976 in the decision of
22 General Counsel Number 43, Friendswood

1 Development Corporation. And there, when -- in
2 the context of regulating discharges from
3 privately owned treatment -- for discharges to
4 privately owned treatment works, characterized
5 those discharges as discharges within the meaning
6 of Section 301 and 402.

7 The General Counsel soon after the
8 actual inauguration of the Act held that the
9 Petitioner's narrow point -- narrowed the scope
10 of section 301, focuses solely on the point which
11 pollutants are released into the water. So
12 logically therefore, I think that's the only
13 facility to insulate itself from conflict under
14 the Act of MBCA by simply selling or getting its
15 outflow pipe to someone else.

16 Recognizing the mischief such a
17 situation could cause, Friendswood and its
18 customers emphasized that the industrial
19 pollution in the instant case are not directly
20 discharging their waste through mere conduits,
21 but instead have contracted to have their waste
22 accepted by Friendswood, whose facility has been

1 specifically designed for that treatment.

2 JUDGE HILL: So Mr. Bukhari, so we
3 covered this in a lot of detail with Mr. Cox.
4 And I understand -- I understand your argument
5 based on Friendswood and privately owned
6 treatment works.

7 One thing the Board was very concerned
8 about in Upper Blackstone was one of the
9 questions they asked was -- I mean the logic of
10 Mr. Cox's argument is that it's only the person
11 at the -- it's only the person at the end. The
12 logic of your argument is that it's everybody all
13 the way upstream.

14 And so if I flush my toilet and that
15 toilet flows to the Blue Plains Treatment Plant
16 and is therefore discharged, am I not a
17 discharger under your theory?

18 MR. BUKHARI: You are not a discharger
19 under our theory because we -- as we -- we have
20 defined the discharge as emanating from the
21 publically owned treatment works. And that would
22 exclude the -- in your hypothetical user,

1 primarily you now, release it the use form the
2 private home and it led through a private pipe.

3 JUDGE HILL: But again under the lobby
4 of Friendswood, the lobby of Friendswood is the
5 person upstream is responsible for what comes out
6 at the other end. So -- and you -- and I asked
7 you the question at the beginning, does it matter
8 whether they are a POTW or not. And you said no.

9 So if there -- if it -- I mean, so why
10 is the collection system different then the home
11 line?

12 MR. BUKHARI: The logic -- the logic
13 of Friendswood, what would not capture the user.
14 A homeowner, a domestic user of the treatment
15 works, I would not characterize that as a
16 discharge of a pollutant to U.S. water.

17 I think Friendswood established in
18 their history, discussed the inclusion for
19 indirect pretreaters as pertaining to industrial
20 user and go into some detail as to industrial
21 about why it would not pertain to the user,
22 introducing the pollutants into the publically

1 owned treatment works under your hypothetical by
2 flushing a toilet.

3 JUDGE HILL: So in other words
4 admitted --

5 MR. BUKHARI: It is therefore defined
6 in our analysis document of where the collection
7 system ends. And we defined it as the pipe that
8 read things like apply permits as a principal
9 purpose as and defined the collection system as
10 the point at which the pipes are used to convey -
11 - to collect and convey wastewater from other --
12 in others specifically.

13 JUDGE HILL: So your argument actually
14 really does depend on calling the satellites
15 POTWs, because that's what cuts off the
16 individual homeowners, is that what you're
17 saying?

18 MR. BUKHARI: As I said, it is our --
19 I would say that is correct. I would say it's
20 subsidiary to the point of an addition of
21 characterizing the discharge from the
22 municipality as a -- as indeed a discharger under

1 Section 301 and 402. And then as it is
2 determined where to -- how to define the
3 collection system, and where that discharge
4 begins and ends, we would put that into POTW.
5 Put it as a permit district.

6 JUDGE HILL: Okay.

7 JUDGE FRASER: I'm sorry, I'm still a
8 little, along those same lines, it seems like
9 Friendswood, if I'm correct, was industrial
10 dischargers. And drawing a distinction between
11 municipal and industrial.

12 And here you're dealing with municipal
13 entirely. Are you not subject -- excluding, at
14 least with respect to the four towns that are at
15 issue. And so it seems like you're arguing both.

16 That you're saying well, we're relying
17 on the definition of what is a discharge. And a
18 discharger is anyone who puts something in that's
19 coming out at the end of the pipe, even if
20 they're located 200 plus miles away.

21 And then at the same time you're
22 saying, but no, we're not relying on the

NEAL R. GROSS

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

1 definition of a discharger because we're going to
2 rely on something else to give us a different
3 reason not to include Randy's house, Judge Hill's
4 house.

5 MR. BUKHARI: Your Honor, we relied on
6 -- we looked at Friendswood and the principle
7 actually that I'm relying on and characterized in
8 our analysis of for the proposition that
9 intervening point sources providing treatment to
10 a discharge prior to that discharge entering U.S.
11 water is not relevant under the Act.

12 And in terms of defining where the
13 discharge begins and ends, the regulated
14 discharge begins and ends, for the purposes of
15 our permitting exercise, and remember if you --
16 the permitting exercise is for a discharge from
17 the POTW. It's incumbent upon us to look at the
18 definition of POTW to determine where that entity
19 begins and ends.

20 And that's why I focus on you know,
21 the context of that -- of that entity. And that
22 goes to the focus of the board's concern. And

1 that the line's located, turned out to be drawn
2 down to. That's basically that the problem is
3 whether their discussion in our analysis and why
4 it's important for us. But --

5 JUDGE FRASER: How do you respond to
6 Mr. Cox's concern that if we were to find, if the
7 Board were to agree with you in its entirety that
8 the Region could include these towns as co-
9 permittees under the definition of a POTW as
10 being part of it. And that they are a discharger
11 coming out at the end of a pipe.

12 That immediately upon issuance of that
13 decision, every other town, which is not listed
14 as a co-permittee in some other district is now
15 violating the Act, because they're not listed at
16 -- they don't have a permit to cover their
17 discharge?

18 MR. BUCKARI: Your Honor, it's
19 important to understand how we're looking at
20 POTWs. We are not regarding a regionally
21 integrated treatment system and comprised of in
22 this case five separate POTWs.

1 We are viewing the POTW as a single
2 entity, multiple contributing dischargers. Those
3 dischargers contributing to a single combined
4 effort commingled and in the Act at Section 402
5 is the discharge for which we issued the permit.

6 So in response to attorney Cox's
7 concern, a Regionally integrated treatment plant
8 that has a permit for the discharge under Section
9 402 that determines a permit for the discharge,
10 need not be concerned about discharging without a
11 permit.

12 Our -- the impetus for the co-
13 permittee policy was to address situations like
14 that where in issuing a permit to the District,
15 we are unable as Judge Stein requested earlier,
16 to ensure compliance with water quality standards
17 or other compliance with the Act under Section
18 122.4 (d) .

19 We are prohibited from issuing permits
20 that cannot ensure compliance with the Act. Part
21 of the standard condition for issuing those
22 permits are proper operation and maintenance.

1 Again --

2 JUDGE HILL: Did the Region make a
3 finding in the record, and I couldn't find it if
4 they did, that explicitly said we must permit
5 these four towns, otherwise we cannot assure
6 compliance with water quality standards?

7 MR. BUKHARI: Your Honor, I --

8 JUDGE HILL: In other words, did they
9 invoke 122.4(d)?

10 MR. BUKHARI: Your Honor, I don't
11 recall a specific page number, but that's where
12 the -- that would be that tenet of our proposal.
13 And we are ensuring compliance with water quality
14 standards. And we certainly -- we certainly cite
15 to Section 301(a) and I would be -- I think I --
16 we did and your response is if I can find a page
17 number for you.

18 But another important aspect to our --
19 to the approach case is not only to address
20 problems as they are occurring, but to be noted
21 in the analysis and as you know it ultimately
22 factor response finds, there is a method aspect

1 to this as well.

2 And we don't want to be response only
3 in dealing with issues like I/I and unintended
4 violations of permits and such.

5 JUDGE HILL: So let's get back to
6 Judge Stein's question. If we accepted Mr. Cox's
7 argument that at least under the current
8 regulations you cannot simply impose these co-
9 permittee obligations.

10 What options are available to the
11 Region to address the problems in this system?
12 Is it issue a 308? Is it enforcement for
13 improper discharge? Is it deny the permit to the
14 District?

15 I mean, are there others?

16 MR. BUKHARI: All of those are
17 options. The Section 308 matter option does not
18 get to the heart of the problem, which would be
19 to impose enforceable -- Federally enforceable
20 controls on the town.

21 JUDGE HILL: Let me precise, I'm
22 depositing a 308 letter that says you're

1 discharging. You have a duty to apply. We're
2 basically informing you, you must apply for a
3 permit.

4 MR. BUKHARI: Right. And so all the
5 options that you've just mentioned would lead to
6 some sort of action on the EPA's part for the
7 permitting. And then intended for process and
8 enforcement proceedings.

9 We don't believe that that is how the
10 Act was intended to operate. We intended you
11 know at the NPDES, we believe -- we think that
12 the NPDES program, the definition of discharge
13 and the definition of POTW are sufficient for us
14 to proceed and interpret the regulations in an
15 manner that allows us to effectuate the purposes
16 of the Act without a long wait and other
17 complications that would be attended by
18 initiating enforcement actions against the dozens
19 of regionally populated districts in
20 Massachusetts and the dozens more of individual
21 towns or municipalities.

22 That doesn't make sense for that in

1 our view because it affects as I said the you
2 know, the purpose and at this time we believe is
3 of the essence.

4 JUDGE HILL: Well, let me ask you
5 specifically. Do these satellite collection
6 systems have a duty to apply for a permit or not?

7 MR. BUKHARI: They do have a duty to
8 apply. We -- as we approach the duty to apply
9 issue in both the analysis and in the current
10 proceeding, we require a permit application for
11 the discharge for the POTWs. We think that that
12 makes a great deal of sense.

13 The permit application requires the
14 way they refer to POTW in the -- under the --

15 JUDGE HILL: But your theory is that
16 all of the satellite systems are part of the
17 POTW. So how is that really a permit application
18 unless they've all submitted it together?

19 MR. BUKHARI: Well in this case, I
20 will go back first of all to your asking in
21 regard to what is the goal of the current
22 application requirements. And that is to provide

NEAL R. GROSS

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

1 a current record with the information necessary
2 to developing NPDES permit requirements
3 consistent with the Clean Water Act.

4 Petitioner would be right that an
5 intention under their assessment, the goal of the
6 application requirements is to convey its consent
7 to the requirement of the Clean Water Act and the
8 NPDES permitting program. To get to your
9 specific question, Judge Hill, a single
10 application from a POTW to qualify here, in this
11 case the District, satisfied the requirements of
12 122.21(a) and 122.22.

13 The EPA has not taken the position
14 that the CRCPD is comprised of multiple POTWs.
15 Rather the CRCPD is a single integrated POTW made
16 up both of a treatment plant and the collection
17 facilities.

18 JUDGE HILL: Well but let me say, I
19 accept the argument that it's one POTW. But it's
20 one POTW with several owners. Don't you
21 essentially need a signature from all of the
22 owners for it really to be an application?

1 And this is where I'm going with this.
2 The effect of what you've done is essentially to
3 give a permit to somebody who didn't ask for it.
4 And in fact very much does not want it.

5 And the regulations seem to imply that
6 the permit process is started by the entity who
7 is going to get the permit, to apply for it. So
8 where in the regulations does EPA get the
9 authority to issue a permit to that who does not
10 seek it and does not desire it?

11 MR. BUKHARI: Your Honor, there is
12 nothing in the statute nor in the regulations.
13 There's nothing under 402 that requires though --
14 entails a duty to apply permit.

15 All Section 402 requires is an
16 opportunity for a public hearing. Section 402
17 permitting does not turn on the dischargers'
18 consent.

19 JUDGE FRASER: But the regulations do.
20 Section 122.21(a) says duty to apply. Any person
21 who discharges or proposes to discharge, who does
22 not have an effective permit must submit a

1 complete application.

2 MR. BUKHARI: And you --

3 JUDGE FRASER: And then it goes on and
4 asks in a later subsection, the various
5 components of that application which the Region
6 has deemed it has the ability to waive. Which is
7 the subsection (j).

8 But is the Region also saying they
9 have the ability of the subsection that says you
10 have the ability to waive any of these detailed
11 listed requirements. That you also have the duty
12 to go up to the sub -- to the little -- to the
13 bigger A --

14 MR. BUKHARI: Right, I understand.

15 JUDGE FRASER: And waive that as well.
16 Do you have the ability to waive the duty to
17 apply?

18 MR. BUKHARI: We have not waived the
19 duty to apply. And if you look at
20 122.21(a)(1)(ii), as Your Honor correctly notes,
21 122.21(a)(1) refers to the duty to apply.

22 Subsection (a)(1)(ii) makes reference

1 to the new and existing POTWs. Under Section
2 122.21(a) and in reference to existing POTW, we
3 have received an application that --

4 JUDGE HILL: But Mr. Bukhari, again,
5 I understand your argument is that these four
6 towns are dischargers. And under the language of
7 the statute any person who discharges needs a
8 permit.

9 If you look at 122.21(a)(1), any
10 person who discharges must apply. And I'm
11 assuming you're not arguing that when the
12 District applies that the four persons that
13 constitute the towns as legal entities have
14 applied are you?

15 MR. BUKHARI: No, we're not.

16 JUDGE HILL: So then they as persons
17 who are discharging under your original theory
18 are people who have to apply. That would be the
19 most natural reading of that reg.

20 MR. BUKHARI: But the person as we
21 read through the regulation, the person that who
22 applying is the POTW plant.

1 JUDGE HILL: I understand, but the
2 regs says any person who discharges. It doesn't
3 say any point source that discharges or any
4 discharge point that discharges.

5 It says any person. And you are
6 permitting these four persons here. And they
7 have not applied.

8 MR. BUKHARI: Your Honor, we think
9 that is a rational approach under the regulation.
10 And a reasonable interpretation of the
11 regulation, which does not specifically affect,
12 which does not specifically outline detailed
13 permit application requirements in this context.

14 To view the permit application one way
15 from the District plant, from the operator of the
16 District plant, it's probably for discharge.
17 And if it --

18 JUDGE FRASER: What's your theory for
19 treating the application submitted by the
20 District as an application on behalf of the four
21 towns as well?

22 MR. BUKHARI: Your Honor, we think

1 that that is a reasonable approach and
2 considering the configuration of Regionally
3 integrated treatment plants. There is a District
4 created under State law that has member
5 communities, those obviously in this case frankly
6 met with our representative on the Board and then
7 there are contractual relationships with the
8 member communities.

9 And we think that that central body
10 will serve the coordinated function that is --

11 JUDGE FRASER: But are they not their
12 own legal entity? Their own separate
13 corporation, or -- not -- however it's
14 constructed under State law. Aren't they a
15 separately -- a separate entity with its own
16 rights and obligations?

17 So what is the theory that
18 particularly for the customer towns, let's take
19 it, whatever theory we may have for the member
20 towns, how do you see the District as
21 representing the two customer towns as submitting
22 the application on their behalf?

1 MR. BUKHARI: Your Honor, the -- there
2 are two -- there are different stages in terms of
3 the permit application that the Region has
4 constructed the process. Relying on the duty to
5 comply with regulations.

6 We request a permit application from
7 the District client from the operator of the
8 treatment plant with preexisting, you know with
9 membership of certain communities or preexisting
10 relationship with other users or customer towns.
11 We then review the permit application to
12 determine -- we determine whether there is
13 sufficient information for a permit writer.

14 And in the event that there is not, we
15 would request separate applications from the
16 towns. In this case Your Honor, we have the
17 Exemption I, and certifying that the
18 administrative records section is met.

19 We have more than sufficient
20 information about the operation and the
21 assistance in each of the respective towns,
22 including SSOs, including I/I. The course from

1 each of the towns to make it --

2 JUDGE FRASER: But that gets into what
3 you waived and what you decided you did or did
4 not need in addition from the towns. And I think
5 my colleagues and I are asking the question of
6 both as to is there not an affirmative duty
7 placed on the person who will be permitted to
8 seek the permit in the first place.

9 And what is the Region's theory for
10 saying you don't have to seek the permit in the
11 first place. We can decide if you need one and
12 give it to you based on information we already
13 have.

14 MR. BUKHARI: Your Honor, our theory
15 is that the permit under section 402(a) is for
16 the discharge of a pollutant. And in our view,
17 the POTW writ large is discharging the pollutant.

18 We need not seek separate application
19 or require separate applications from each
20 constituent portion of the POTW in order to
21 comply with the regulations. The same is true,
22 Your Honor, of publically owned or privately

NEAL R. GROSS

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

1 owned treatment works.

2 Privately owned treatment works, under
3 the regulation 122.21(d), the agency specifically
4 said that we may require separate applications
5 for dischargers from -- discharge to privately
6 owned treatment work. But that situation is
7 analogous here.

8 JUDGE HILL: Doesn't that kind of cut
9 the other way for you though? Because I mean,
10 Mr. Cox is -- one of Mr. Cox's principal
11 arguments is that the current regs don't really
12 allow you to do what you've done.

13 And in fact where the agency has
14 wanted to set up co-permitting relationships,
15 they've done so very explicitly for privately
16 owned treatment works and for industrial
17 contributions to storm sewer systems.

18 And so doesn't that actually kind of
19 almost prove the negative? If the agency thought
20 that all you needed to do to be a co-permittee of
21 a POTW was to exist, then maybe they could -- why
22 did they have a separate regulation for these

NEAL R. GROSS

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

1 other situations?

2 MR. BUKHARI: We disagree with that,
3 Your Honor. We think that the -- there are
4 number of -- there is a number of permitting
5 configurations and permitting dynamics for
6 challenges that face our permit letter.

7 But those are evolving and it wasn't
8 until the early 2000s that the issue of I/I and
9 SSO really came to the forefront under the
10 agency's thinking which led to two opinions, but
11 that's an issue of an I/I SSOAP for SSOs.

12 We think that the definition of
13 discharge and definition of POTW are sufficient
14 for us to be seeking our --

15 JUDGE HILL: I want to be sure that --

16 MR. BUKHARI: We do indeed have the
17 expressly, every permit configuration need not be
18 expressly written into the whole thing and the
19 EPA was -- had two initiatives to do that very
20 thing. Clarify the regulation and to explain the
21 co-permittee -- the co-permittee requirements,
22 which is just as are contemplated that the

NEAL R. GROSS

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

1 regulations created.

2 JUDGE STEIN: If I'm lacking a
3 driver's license and I'm driving down the street
4 and a police officer sees me, the typical remedy
5 would be to issue me a fine for driving without a
6 license. It wouldn't be to give me the license.

7 Can you cite examples in which EPA or
8 a State has imposed a permitting requirement on
9 someone who did not seek or does not want one?

10 MR. BUKHARI: Your Honor, I can't --
11 I can't cite that kind of example off the top of
12 my head, at EPA, a specific example off the top
13 of my head in terms of the principle you're
14 implying.

15 We think again, that the regulations
16 as written provide us with the authority to issue
17 a permit. And we have negotiated already through
18 the permit application requirements in a way that
19 allows the permittee provide all the information
20 that's needed to write the permit in the --

21 JUDGE STEIN: Well that might be true
22 that you can write the permit. And it may be

1 that there are other systems for the permitting
2 like this where the towns would not object to it.

3 But I do think that there is a
4 significant procedural issue about how your
5 permit application regulations marry up with you
6 know, your theory of persons and discharging.
7 And it may be that your remedy is not the
8 imposition of a permit on someone who doesn't
9 want it.

10 But it may be that you have to pursue
11 some of those other options that may be less
12 desirable. But I you know, other than some kind
13 of an implied consent theory, I'm trying to
14 figure out how it is that we can force someone to
15 have a permit who doesn't want it.

16 MR. BUKHARI: Your Honor, my only
17 thing about that, and I think to clarify is that
18 -- well, if it's not clear already is that we are
19 viewing the discharge not only from the stand
20 point of the POTW -- with the discharge from the
21 POTW, but also from -- but also we recognize that
22 there are multiple discharges that combine to

1 that one entity.

2 Those theories -- those theories are
3 not interdependent in that they will be
4 sufficient for us to say that the POTW is the
5 discharging entity. We pursued the notion of the
6 town discharging specifically to address the
7 issue of discharge that the issue of multiple
8 dischargers and this issue of treatment that
9 argued that it did not matter whether the
10 discharge was removed from the point source. Nor
11 did it matter if it was treatment.

12 That was the applied for the portion
13 of characterizing each of these towns as a
14 discharger. With that said, it's not
15 inconsistent you know, with this wider view that
16 we have, this broader view that we have, that
17 this is a POTW that's discharging. A POTW that's
18 described in Section 301(b)(1)(B).

19 The POTW is what is referenced in
20 permit application requirements. And the POTW
21 has one commingled discharge that is being
22 permitted pursuant to Section 402.

NEAL R. GROSS

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

1 So we don't believe that it is
2 inconsistent with either the statute or the
3 regulations to impose our permitting requirement
4 on the POTW, all essential portions under
5 statutory and regulatory statutes that I
6 addressed -- that I described.

7 JUDGE STEIN: But you're not imposing
8 them on all of them are you? Didn't you just
9 pick out four towns?

10 MR. BUKHARI: No Your Honor, there are
11 only four towns there to reference.

12 JUDGE STEIN: Okay. So it's
13 everybody.

14 MR. BUKHARI: It is all of them.
15 Absolutely, yes.

16 JUDGE STEIN: Okay.

17 JUDGE HILL: All right, so let me ask
18 that question. As I understand it from you
19 attachment in the record, there are currently 25
20 permits in Region 1 municipality where there are
21 co-permittee municipalities.

22 Has Re -- have you issued a permit at

NEAL R. GROSS

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

1 least since 2000 where the owners of satellite
2 collection systems are not listed as co-
3 permittees?

4 MR. BUKHARI: Your Honor, we have. We
5 issued a permit to the town of Marshfield
6 recently where we -- I can read my -- the
7 responsive comments document, where we determined
8 that it was not necessary under Section 122.21
9 for a deep --

10 JUDGE STEIN: I'm sorry, what page are
11 you on in response to the question?

12 MR. BUKHARI: This isn't on a page,
13 it's my responsive commentary.

14 JUDGE STEIN: Oh, okay.

15 MR. BUKHARI: Unfortunately I don't
16 have the page I think you should hear about,
17 which is still on the Regional website.

18 JUDGE HILL: Could you --

19 MR. BUKHARI: But we did convince --

20 JUDGE HILL: Mr. Bukhari, could you
21 submit that to us after argument and provide a
22 copy to Mr. Cox?

1 MR. BUKHARI: Yes, I will, Your Honor.

2 JUDGE HILL: Thank you.

3 MR. BUKHARI: We -- and in keeping
4 with all that, I'll argue that we are permitting
5 POTW and we are not blind or oppressively
6 imposing permits, but we're going to keep the
7 filings on -- in every case that looked at the
8 circumstances of the discharge. We found that
9 based on additional information gathered at the
10 Region and at the EPA, as a group the towns of
11 Duxbury, Pembroke and Kingston, close in the town
12 of Duxbury began being treated at the Marshfield
13 POTW from 1980, indicated the system is yet
14 relatively young. Their collection systems serve
15 the minimal area, serving only 195 homes.

16 Some of these homes are seasonal
17 residences and there are no reports of SSOs and
18 we know that there have been no problems with
19 SSOs either at the facility.

20 So that is an example where --

21 JUDGE HILL: Is that the only one of
22 which you're aware?

1 MR. BUKHARI: That is one, the other
2 is East Hampton, which is a final one. And there
3 are about 45 homes in that small satellite. And
4 then South Ridge is back at the moment. There
5 are probably around 250 people on one of the
6 satellite collection systems. So that's all
7 based on the theory of Mr. Cox might --

8 JUDGE HILL: How many -- do you know
9 the answer, outside of Region 1, have any other
10 EPA Regional offices or States issued permits
11 where satellite collection systems have been
12 included as co-permittees?

13 MR. BUKHARI: Well we have been in
14 discussion, I believe that they have. We've been
15 in discussions with Region 9. That we had two
16 co-permittees that may not be correct. But I
17 would say this co-permittee policy is not a
18 Regional policy. This represents the view of the
19 agency.

20 OGC has signed off that we have
21 extensive coordination with the OGC and the
22 government --

1 JUDGE HILL: That's fine. I'm more
2 interested in where this practice has been used.
3 And in particular, are you aware of any permit
4 that was issued that had municipal co-permittees
5 prior to 2001?

6 MR. BUKHARI: Prior to 2001, I am not
7 aware of prior to 2001.

8 JUDGE HILL: It would be helpful to
9 get something supplemental on that as well. And
10 here's where I'm going with this question.

11 And the agency proposed in 2001 to
12 make this very explicit in the regulations and
13 deal with all of the issues that we're now --
14 that we're now discussing.

15 If the current regulations allow for
16 this interpretation, then why did the agency feel
17 the need to propose on it? And then also in 2010
18 seek comment on whether to revive that proposal?
19 If they had the authority all along?

20 MR. BUKHARI: Your Honor, the question
21 of authority and question of making explicit
22 interpretation under the regulations are two

NEAL R. GROSS

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

1 separate things. I don't think that we should
2 infer from the fact that the agency decided to
3 pursue a rulemaking or undergo co-permittee rule
4 making.

5 I indicate that this is a subject in
6 relation to that rule. I think that did not
7 follow from that fact. We can propose
8 interpretive rules for those comments. Well, if
9 you look at the language --

10 JUDGE HILL: The 2001 rule was not an
11 interpretive rule.

12 MR. BUKHARI: I'm sorry?

13 JUDGE HILL: The 2001 proposal was not
14 interpretative as far as I know.

15 MR. BUKHARI: Your Honor, if you look
16 at the language of that rule and look at the
17 rulemaking, as far as the authority to impose
18 requirements on -- the authority under Section
19 301 and 402, to impose and implement regulations
20 -- to impose programs and requirements on
21 municipal satellite collection systems, that --
22 that --

1 We speak in terms of clarifying. We
2 speak in terms of explaining and we rely on the
3 interpretations of existing regulatory and
4 statutory response.

5 JUDGE HILL: Can you remind me, how
6 did that proposal, I know it was withdrawn before
7 it was published, but how did that proposal deal
8 with application requirements for satellite
9 collection systems? Did it make any changes to
10 122.21?

11 MR. BUKHARI: Your Honor whether there
12 was specific language proposed with respect to
13 the application requirements, I don't know.

14 JUDGE HILL: Because to be honest with
15 you, that's where I'm really stuck. I mean I get
16 the argument about why there might be statutory
17 authority to cover them.

18 But where I'm stuck is that the
19 regulations don't seem to contemplate a system
20 where you say okay, we don't have all of the
21 legal entities for contributing to this discharge
22 at this POTW. So we're going to declare these

1 four to be under the permit.

2 Essentially as I said before, without
3 their consent. And I mean, I'm not saying that
4 that authority doesn't exist. But it certainly
5 isn't the most natural reading of those
6 regulations.

7 And if the agency proposed to rewrite
8 that, that might well be relevant as to whether
9 the existing regs could be read that way.

10 MR. BUKHARI: Your Honor, the current
11 application requirement in the 2001 rulemaking
12 are addressed at page 124 of the advanced notice,
13 the proposed rulemaking 123 and 124 -- I guess
14 just 124.

15 JUDGE HILL: Well, I can look it up
16 later. I just thought maybe you knew off the top
17 of your head.

18 MR. BUKHARI: Right. So that's where
19 it is.

20 JUDGE FRASER: What notice have the
21 towns in Region 1 had for part of these Regional
22 collection systems? What notice other than

NEAL R. GROSS

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

1 seeing the draft permit have the towns had that
2 they may or may not be considered co-permittees?
3 You gave us an example of Marshfield where they
4 were not considered a co-permittee, or you didn't
5 see the need. So is this strictly a case-by-case
6 basis that a town doesn't know until they see the
7 draft permit, or is there any communication from
8 the region, not just to the POTW, when they're
9 submitting a renewal application, but to the
10 towns that this is being contemplated? What's
11 that process looking like?

12 MR. BUKHARI: Your Honor, our -- the
13 reason we drafted or published a co-permittee
14 analysis in the first place was, quote, "to
15 advise the public of relevant considerations
16 concerning our co-permittee practices." That's
17 not a direct quote, but that=s the very purpose
18 behind putting together this document and the
19 attachment to all our permits that are issued to
20 regionally. And then of course --

21 JUDGE FRASER: I'm sorry. That gets
22 attached, and that it went out when it was issued

1 to all the --

2 MR. BUKHARI: In a draft form.

3 JUDGE FRASER: In a draft --

4 (Simultaneous speaking)

5 MR. BUKHARI: That attachment

6 is --

7 JUDGE FRASER: So a town finds out at
8 the draft permit stage as opposed to -- when was
9 the authority document issued?

10 MR. BUKHARI: We completed this in --
11 right about 2012.

12 JUDGE FRASER: '12?

13 MR. COX: We --

14 (Simultaneous speaking)

15 JUDGE FRASER: So did it get sent out
16 to the towns at that point, or was there some
17 communication that said you'll find out before
18 the draft permit? How were towns -- if they're
19 not looking at the regulation and clearly seeing
20 language that says you have a duty to apply as a
21 co-permittee, how are towns finding out that they
22 may or may not be swept into the permit?

1 MR. BUKHARI: They're finding out in
2 -- through the draft permit and the attachments
3 there. We a have draft waiver letter which
4 describes the permit application procedure, and
5 we tried to handle that notice through that as
6 well in the document itself that if you are
7 expecting -- and we believe that a single
8 application for the PODW, for the combined
9 discharge pursuant to Section 402(a) and
10 301(b)(1)(B) is sufficient for us in the first
11 instance. And then we indicate we may provide,
12 we may request separate applications if we --
13 from the regional satellites if we require more.

14 JUDGE FRASER: And this is the draft
15 permit that's being published? They're getting
16 it at that point, or is this a draft permit
17 that's going out before publication?

18 MR. BUKHARI: This is a draft. This
19 would typically be a draft permit that goes out
20 for publication.

21 JUDGE FRASER: So they have basically
22 a 90-day notice and they can comment and say what

NEAL R. GROSS

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

1 do you mean we don't think we should be covered
2 at this point?

3 MR. BUKHARI: Right, they have to be
4 -- right, to get to Judge Hill's earlier point
5 regarding adjudications as opposed to rulemaking
6 in the EPA, this proceeding provides permittees
7 with an opportunity for -- to comment and to
8 appeal these determinations. And there are legal
9 aspects of course and of course there are
10 technical aspects as well. So we perceive that
11 as --

12 (Simultaneous speaking)

13 JUDGE FRASER: Are there other
14 instances beyond this scenario where you have the
15 satellite collection systems? Are there other
16 instances where you're relying on an exception to
17 the reg or some other avenue of covering someone
18 as a co-permittee that when they're looking at
19 the face of the reg they may or may not know they
20 were covered?

21 And where I'm going is that most
22 people who are planning, I would think, to

1 discharge, look at the regulation and it says you
2 must submit an application. And if you already
3 have a permit, then you have to submit a renewal
4 application that gives you a time period for
5 doing that and what it has to include.

6 You now have a category of entities
7 that you're saying are discharge orders under the
8 plain reading of the regulation, but they haven't
9 submitted an application. They weren't intending
10 to be covered. It's not in their planning in
11 terms of budget and finance. And you're telling
12 me they're getting a notice with the draft permit
13 that's notifying them for the first time.
14 There's no other communication before that?

15 MR. BUKHARI: Well, Your Honor, the
16 question of whether they're discharging without a
17 permit or whether they're in peril of some sort
18 of pending enforcement proceeding, the way we've
19 instructed, or our hope here is that they're not,
20 because we have issued a permit for the final
21 legal discharge from the POTW. And so that is
22 number one.

NEAL R. GROSS

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

1 And then number two is that once
2 they've received any permit condition, typically
3 permittees are not under -- they don't have
4 forewarning prior to the draft permit, or at
5 least not very far before the draft permit is
6 published, but what are the terms and conditions
7 --

8 JUDGE FRASER: But they've submitted
9 an application, your other permit -- the other
10 people who are getting a draft permit have their
11 raised their hand and said please give me a
12 permit. I want to discharge. And these entities
13 -- you're relying on a permit that is existing
14 for a POTW. The Charles River Pollution Control
15 District has a permit and you're saying that
16 their permit application is sufficing to cover
17 these other entities that did not co-sign the
18 permit application and did not know from the
19 application terms itself that they were going to
20 be covered.

21 MR. BUKHARI: Your Honor, I don't
22 think they -- I don't think it -- it should not

1 be a surprise for the town of Millis and the town
2 of Bellingham that they are part of the POTW.
3 There are municipal service agreements, there are
4 customer agreements with the POTW that define the
5 POTW as including their collection systems and
6 speculation. These are part of the POTW.

7 JUDGE HILL: Well, they might be a
8 part of the POTW, but up until the last time that
9 the Pollution Control District got a permit they
10 didn't know that they were permittees. I mean,
11 that is a change in their -- a very significant
12 change from their point of view on their status.

13
14 MR. BUKHARI: True.

15 JUDGE HILL: So they may not be
16 surprised to find out they're part of the system,
17 but they may be incredibly surprised -- well,
18 probably not after this proceeding, but may be
19 incredibly surprised to find out that they're now
20 subject to the terms of that permit.

21 MR. BUKHARI: They are subject to
22 terms of them.

1 JUDGE HILL: Yes.

2 MR. BUKHARI: But to the extent that
3 they are surprised or dismayed by that turn of
4 events, they're free to pursue their claim with
5 regards to the permit.

6 JUDGE HILL: So what does the Region
7 think of that first document being -- I know you
8 don't think it's a legislative rule. What is it?

9 MR. BUKHARI: It is an interpretive
10 statement, first of all. It is tightly drawn
11 from the words in the statute, the words of the
12 regulation and the --

13 (Simultaneous speaking)

14 JUDGE HILL: Can it litigated in any
15 permit proceeding?

16 MR. BUKHARI: I'm sorry?

17 JUDGE HILL: Can it be litigated --
18 can the validity of its interpretations be
19 litigated in any permit proceeding?

20 MR. BUKHARI: Proceeding by -- yes
21 Yes, we will -- we articulate our -- which is why
22 we attached this interpretation of the regulation

1 to our fact sheets specific to the permit
2 proceeding. And so, it's an interpretive
3 statement. It also has a -- it is also a policy
4 statement in some respects in that the -- not in
5 any binding way, that we identify SSO's
6 collection system operation and maintenance I/I
7 as it concerns the agency and of course Region 1.
8 And so, it has those two components.

9 JUDGE FRASER: Can I just
10 finish --

11 JUDGE HILL: Yes.

12 JUDGE FRASER: -- up on the permit
13 applications? So the question I had coming out
14 of this, if the Board were to find that this is a
15 permissible reading, next year you're doing a
16 permit for POTW X that has five towns that are
17 satellite systems that feed it, how do those five
18 towns know whether they're going to be co-
19 permittees, not co-permittees? Do they read the
20 regulation and say when the POTW submits its
21 renewal application, we need to co-sign, we don't
22 need to co-sign? If we were to find for you,

NEAL R. GROSS

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

1 what's the notice or the reading that the towns
2 should take away from this? Because what you're
3 telling me is you're making that decision case by
4 case and then you're giving the towns some -- in
5 some cases people are finding out they're co-
6 permittees. In other cases they're finding out
7 they're not.

8 MR. BUKHARI: Your Honor, we can
9 publish the interpretive analysis for one. We
10 can post it on our Web site. We can identify the
11 regional treatment plants in Massachusetts and
12 send them a copy.

13 JUDGE FRASER: But this is the vary
14 argument. Mr. Cox says that if you had done --
15 if the Agency had done rulemaking, all of this
16 would have been done. So how do

17 you --

18 MR. BUKHARI: Well --

19 JUDGE FRASER: -- respond to the very
20 thing that they're asking for in terms of notice
21 and being able to comment and being able to weigh
22 in is what a rulemaking is intended to cover,

1 which arguably is what the Agency was trying to
2 do back in 2000 when they had the proposed rule?

3 MR. BUKHARI: Rulemaking, as Your
4 Honor knows, is a resource-intensive exercise and
5 not required for interpretive rules. Were EPA
6 obliged to go out and do rulemaking every time an
7 issue of interpretation the Clean Water Act, that
8 would frustrate the very aspect of the
9 interpretive rulemaking function under the EPA.
10 That was designed to -- it is another way to
11 inform the public of how we interpret the
12 statute.

13 And if every time we have to make the
14 pronouncement we're required to go through notice
15 and comment rulemaking, that would be contrary to
16 the EPA. That would be contrary to the whole
17 notion of providing the public with notice.
18 There are other means short of rulemaking for us
19 to provide wider notice of our interpretation.
20 But we think that the notice has been sufficient
21 here.

22 This issue has been on the radar

1 screen of municipalities for many years now, ever
2 since the Board issued its decision in Upper
3 Blackstone. And as you know, the National
4 Association of Clean Water Agencies, NACWA,
5 weighed in with the description of the interim
6 policy and the cases on their website. Clearly
7 the municipalities were on notice that this is an
8 issue combined with EPA's rulemaking that there
9 are particularly subject to incorporate review
10 requirements as far as a regional review report.

11 JUDGE STEIN: Am I correct in
12 understanding that prior to the draft permit
13 going out these four towns had no notice that
14 they were going to be co-permittees? Is that a
15 correct statement?

16 MR. BUKHARI: No. Well, no, that's --
17 I think that that is correct. I don't know that
18 -- I think that their attorney also represented
19 Upper Blackstone, so I think they probably had
20 some inkling that this was EPA's practice --

21 (Simultaneous speaking)

22 JUDGE STEIN: Well, but I think what

1 you've told us is that in some cases EPA does
2 this, in some cases EPA doesn't. I mean, my
3 understanding of permitting is you submit an
4 application to a state or the Federal Government.
5 And there's some back and forth and some
6 questions and some information. So clearly one
7 may not know the exact terms and conditions of a
8 draft permit. You're in the process of
9 interacting. Region 1 never before that draft
10 permit went out never formally notifies each town
11 that this is the action that was being --

12 (Simultaneous speaking)

13 MR. BUKHARI: Your Honor, I don't
14 think that that's quite correct though. I think
15 that the co-permittee policy stems out of an
16 existing permitting structure that we found to be
17 insufficient. And in the prior permit we put the
18 permittees on notice throughout Massachusetts
19 that while the full group I/I controls on member
20 communities were to be voluntary in the first
21 instance and coordinated through the district.
22 In the event that they did not succeed, we would

1 change those requirements and approve the other
2 towns as co-permittees.

3 JUDGE STEIN: So when you issued the
4 prior permit, copies were sent to all of these
5 towns? I mean, if the district is the one that
6 applied, then clearly the District would have
7 know about the draft permit. But how were the
8 towns supposed to find out? Are they supposed to
9 read the local newspaper? I mean, what's the
10 mechanism for bringing in someone that didn't
11 file an application?

12 MR. BUKHARI: The towns are. When we
13 issue draft permits regionally, we include the
14 members communities as a matter of practice.

15 JUDGE STEIN: Into the draft?

16 MR. BUKHARI: The draft, yes. Yes,
17 and they --

18 JUDGE STEIN: And it's what, a 30-day
19 period? Thirty days for them to comment?

20 MR. BUKHARI: Under the regulations it
21 would be 30 days unless we received a request for
22 an extension. And they do in fact file, as we

1 saw before.

2 JUDGE STEIN: But you never took this
3 interpretative analysis and published it in local
4 newspapers or the *Federal Register*, any of those
5 kinds of things, this analysis that potentially
6 has applications in many towns in Massachusetts.
7 Up to this point in time it's simply a document
8 attached to the fact sheet in the permit
9 proceeding for this district, is that correct?

10 MR. BUKHARI: That's correct, Your
11 Honor. Just to make one clarification --

12 JUDGE HILL: Okay. Mr. Bukhari, we're
13 like way over. We would like to get two pieces
14 of information from you, the references to the
15 permits that have been issued to POTWs that have
16 not included co-permittees for their satellites,
17 which you started to talk about. And then any
18 other examples that you can find in the next week
19 where -- that are outside of Region 1 where
20 either EPA or an authorized state has issued
21 permits with satellite collection systems as co-
22 permittees and whether any of those co-permittees

1 were asked to or filed a permit application or
2 were simply notified that they were going to be
3 covered. Thank you.

4 MR. BUKHARI: Thank you.

5 And, Mr. Cox, I'll give you 15
6 minutes.

7 MR. COX: Thank you. Just a few
8 points I'd like to make.

9 JUDGE HILL: It's up to you whether to
10 use the full fifteen minutes.

11 MR. COX: First, let me -- because you
12 raised some factual questions, let me affirm that
13 the towns had no notice that they be made co-
14 permittees until they received the draft order.
15 That's the first time that they even saw the term
16 "co-permittee.

17 As the region indicated, the analysis,
18 the 16-page analysis is provided with the draft
19 permit. It has not been widely distributed. It
20 has not been published. No one knows about it.
21 Counsel suggested that these towns may have known
22 because I represented Upper Blackstone. Well, I

NEAL R. GROSS

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

1 assure you I didn't get involved until after that
2 draft permit was issued. So, there was no hint
3 of that there. They were --

4 JUDGE HILL: If I may ask, do you
5 think that -- I mean, you submitted fairly
6 extensive comments on this.

7 MR. COX: Correct.

8 JUDGE HILL: So you did get that
9 opportunity in the time that you had.

10 MR. COX: Correct. And because we
11 were aware that we had the opportunity to make
12 comments, and we did make comments.

13 JUDGE HILL: And in fact, Upper
14 Blackstone also submitted comment as well.

15 MR. COX: Upper Blackstone provided
16 comments as well. That's why Upper Blackstone is
17 a party to this.

18 But I can assure you that the towns
19 were surprised, were surprised that they were
20 identified as co-permittees, as were the towns in
21 the Upper Blackstone several years ago. We
22 didn't submit any application. We didn't get

1 authorization for anyone to sign on our behalf
2 when the application was submitted.

3 The other point I also raise, and I
4 know you looked at this in the 2000 rulemaking, I
5 don't have a copy here, but my memory is that it
6 did include the application process under which
7 satellites either themselves would be directly
8 permitted or they would come under the permits.

9 JUDGE HILL: Do you think EPA has the
10 statutory authority to issue a permit? Say,
11 look, you know, you're out there, you're
12 discharging. We know what you're doing. Here's
13 your permit. Have a nice day.

14 MR. COX: No, absolutely not.

15 JUDGE HILL: Why not?

16 MR. COX: Well, because these are
17 licenses and in order to do something you need to
18 apply to get it. You can't just say, okay, here,
19 go forth and do it. There's a duty to apply
20 which the Region says kicks in here, but they're
21 not waiving it. They can't waive it. There's a
22 duty to apply that can't be undone here. The

1 statute is set up --

2 JUDGE HILL: And to be precise, you're
3 making a statutory argument? Are you saying that
4 --

5 MR. COX: Well, the regulation is
6 based upon the statute the way the statute is
7 constructed.

8 JUDGE HILL: Okay.

9 MR. COX: It says unless you have --
10 these things are unlawful unless. That's how
11 we view it.

12 Another point I wanted to raise
13 relates to the questions that you asked about
14 other co-permittees and other facilities that
15 received a permit without reason, without the co-
16 permittee.

17 And counsel referred to the Mansfield
18 matter. Excuse me. The Marshfield.

19 JUDGE HILL: Marshfield.

20 MR. COX: -- Marshfield. Duxbury.
21 That permit issued on the 12th of this month. It
22 was a permit that the Upper Blackstone commented

1 upon. So to the extent that the co-permittee
2 claimed to remove, I'd like to think passed
3 because of issues that were raised as to
4 authority to do it. And as described, there are
5 very limited issues that arose in connection with
6 I/I that made the reason for removing those
7 parties as co-permittees.

8 JUDGE HILL: Mr. Cox, you haven't
9 talked about one issue in your brief, which is
10 that the -- basically the sharing of liability.
11 It's the Region's position that for the co-
12 permittees they have to do what happens in their
13 system and they're responsible for SSOs within
14 their part of the system and not others. Do you
15 have a concern that the permit is broader than
16 that?

17 MR. COX: Yes.

18 JUDGE HILL: And the Region has
19 represented in their brief that it isn't broader
20 than that. If we were to accept the Region's
21 interpretation as binding on the permit, does
22 that issue go away?

1 MR. COX: No, because it remains. And
2 it's the purpose. The Region's comments on it, I
3 don't think that stands up to the third party
4 challenges. You are subject to this permit and
5 you abide by it even though somebody else did it.
6 I don't think it stands up to the third party
7 challenge, especially where the Region is seeking
8 to have it both ways be subject to the pertinent
9 clauses for the same time, it's not enough.

10 JUDGE HILL: So the satellite systems
11 would be responsible for violations of the
12 effluent limits, you think?

13 MR. COX: Our concern is that a third
14 party could raise that issue. Right now from
15 what the Region is saying, because they
16 acknowledge that there's a duty to apply, and the
17 towns have not applied, they are subject to be
18 violators. They're in violation. And that just
19 doesn't make sense. That is not --

20 JUDGE FRASER: The Region is saying
21 the duty to apply was met when the District
22 submitted the application. And if you take the

1 district is comprised of town representatives,
2 your position would be that that is not meeting
3 the duty to apply obligation for the towns?

4 MR. COX: Correct, it's not, because
5 if the towns are dischargers, it is the
6 discharger that has the duty to apply. These
7 towns did not apply. That someone else submitted
8 an application, you can't delegate that
9 authority, that duty to apply anything. I can't
10 delegate to my daughter to have a drivers license
11 so that I could drive. It's just something that
12 can't be delegated. So there are some -- the
13 duty to apply, which the Region acknowledges,
14 still applies here. That has not been waived.
15 That can't be waived. It can't be delegated. So
16 with towns that are set up to be potential
17 violators because they have not signed and they
18 do not have a permit.

19 The Region indicated that it shouldn't
20 be concerned about that, but frankly I am
21 concerned for the towns.

22 JUDGE HILL: Let me ask you again; I

NEAL R. GROSS

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

1 think we covered this before, but just to be
2 clear, is there any difference in your mind
3 between the member towns and the customer towns?
4 I mean, is there an argument the member towns
5 have applied because the district has applied?

6 MR. COX: No.

7 JUDGE HILL: I mean, I don't know
8 Massachusetts law, and I admit that.

9 MR. COX: Yes, there's no difference.
10 And I'd urge you to take a look at the
11 application form itself. It's 21 pages. Comb
12 it. I think it's paragraph (a) (4). (a) (4), page
13 2 of 21 is the sole place that information is
14 provided regarding the co-permittees. And as I
15 said before, it's just simple information.
16 Population, nature of the system and a couple --
17 I forget, it's on my desk. But that's the sole
18 information that's provided by the permit.

19 JUDGE HILL: Well, but the Region's
20 position is that's enough.

21 MR. COX: Well --

22 JUDGE HILL: And the regulation says

1 if we've got an enough we can waive A, B and C?

2 MR. COX: Well, fine. We get back to
3 the duty to apply --

4 JUDGE HILL: Okay. So --

5 MR. COX: -- and can they really say
6 that?

7 JUDGE HILL: But I just want to
8 be --

9 MR. COX: Okay. We have enough to
10 issue a driver's license to me, based my
11 daughter=s.

12 JUDGE HILL: I just want to understand
13 whether you're contesting their finding that they
14 have enough information or you merely --

15 MR. COX: Yes.

16 JUDGE HILL: You are?

17 MR. COX: Yes. Yes.

18 JUDGE HILL: How come?

19 MR. COX: Well, the Region's saying
20 that they're doing this on a case-by-case basis,
21 right, but they really aren't. They're taking
22 information from the application that says, okay,

1 this town has sewer lines that we need here. Is
2 there any analysis as to each individual town as
3 to whether it should --

4 JUDGE FRASER: Aren't they basing it
5 on a number of overflows though and that there's
6 a need that they have? It's not just the
7 information in the application. They're seeing a
8 need to minimize and get rid of the sanitary
9 sewer overflows.

10 MR. COX: If they are, shouldn't they
11 be looking at some towns and saying, okay, town,
12 you have an overflow problem? You should be a
13 co-permittee. Looking at other towns that do not
14 have that problem or learn that they're --

15 JUDGE FRASER: I thought that's what
16 -- that was the position that they drew the
17 distinction between Marshfield and the four towns
18 in this permit?

19 MR. COX: Sure. That came afterwards
20 and not in this proceeding. So they're raising a
21 simple case-by-case basis. They need to do that
22 here. They haven't done that with the other

1 draft co-permittees -- they're still drafts.
2 But they didn't do that here with respect to
3 these towns and say, wait a minute, you've got a
4 problem. You need to be a co-permittee. Other
5 town, no, you have a newer system. I/I is not
6 such a big issue. You're doing whatever in order
7 to deal with it. Perhaps it's not appropriate
8 for you to be named as a co-permittee.

9 The problem again is as we identify
10 these that it's left to the region to make these
11 determinations on a case-by-case basis and we
12 don't have notice beforehand of what they're
13 going to do. We don't know before the draft
14 permit issues. And what the Region says --

15 JUDGE FRASER: But, is that
16 requirement of the statute or the regs to give
17 advanced notice? It's an adjudication.

18 MR. COX: That's a separate issue.
19 But in terms of the correct process, they're
20 doing it on the application, the application
21 regulations that are some 26 pages that are
22 existing. No, it's not because there's no

NEAL R. GROSS

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

1 provision there.

2 JUDGE HILL: Let me ask you a
3 different question. My understanding is that EPA
4 often issues general NPDES permits, which cover a
5 lot of dischargers at once, and sometimes they
6 ask dischargers to raise their hands and say,
7 yes, I want to take advantage of this general
8 permit, and sometimes they just say anybody who's
9 within this category of dischargers is covered.
10 You could view that as giving someone a permit
11 without an application.

12 MR. COX: You could. You could, but
13 in order to trigger --

14 JUDGE HILL: How is it distinguished
15 from this?

16 MR. COX: You could say that, but in
17 order to trigger the application of the general
18 permit to an individual facility there needs to
19 be a notice of intent.

20 JUDGE HILL: No, but that's what I'm
21 saying. There are some categories of general
22 permits that don't require a notice of intent, as

1 I understand it.

2 MR. COX: I don't know. I don't know
3 the answer to that, but that's in a different
4 category. General permits. We're dealing with
5 individual permits here.

6 One final point I'd like to make, and
7 that's a connection with something that we
8 started off with, and that is the Upper
9 Blackstone case where the panel, the board there
10 seemed very concerned about the limiting
11 principle of how far up the system can you go.
12 The Region still has not addressed that. It's
13 reached over to use the definition of POTW and
14 said, okay, here's the definition. We're going
15 to draw the lines here. But that's just not
16 satisfactory as a limiting principle. It was
17 raised years ago in Upper Blackstone. The Region
18 still has not provided a response. What is the
19 limiting principle? How far up do we go? To say
20 that it's a POTW just isn't a solution.

21 JUDGE FRASER: Mr. Cox, I would also
22 like to get some supplemental information from

1 you, and specifically if you can get me
2 information, or give the Board information on
3 representation from the towns to the districts.
4 So the number of persons. What's the mechanism
5 of them being appointed, their terms and the
6 scope of their authority?

7 MR. COX: I can do so, and I assume
8 promptly.

9 JUDGE FRASER: Yes.

10 JUDGE HILL: Yes, actually -- and do
11 you have anything further?

12 MR. COX: No.

13 JUDGE HILL: Okay. Well, for both of
14 these requests; I don't want to ruin your
15 holidays and I also want to give you enough time,
16 why don't we say -- if you could just submit the
17 additional information by, what would that be,
18 Monday the 22nd? And what I would ask is that
19 each of you just -- I mean, I'm not looking for
20 argument. I'm really looking for -- we're really
21 looking for information. So it can be in letter
22 form, but please serve the other party. And I'm

NEAL R. GROSS

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

1 not looking for responses. If you think that any
2 of the information is incorrect, you can file a
3 response by the 29th. But only if you think the
4 information provided by the other side is
5 incorrect. Does that make reasonable sense?

6 MR. COX: Yes.

7 JUDGE HILL: Okay. All right. Well,
8 I know we've covered a lot of material and this
9 is a difficult case. Thank you all very much,
10 and we will adjourn for the day.

11 MR. COX: Thank you.

12 THE CLERK: All rise.

13 (Whereupon, the above-entitled matter
14 went off the record at 11:58 a.m.)

15

16

17

18

19

20

21

22

A

a.m 1:16 4:2 117:14
abate 54:18
Abatement 5:4
abide 108:5
ability 11:2 33:18 37:16
 69:6,9,10,16
able 97:21,21
above-entitled 1:15
 117:13
absence 6:1 7:17
absent 5:16 13:3
absolutely 80:15
 105:14
accept 29:11 38:4
 67:19 107:20
accepted 55:22 64:6
accurate 37:16
accurately 32:12
acknowledge 108:16
acknowledges 6:1
 109:13
acquisition 28:10
act 5:16 6:7 9:6,10 25:5
 50:11 53:16,22 54:19
 55:8,14 60:11 61:15
 62:4,17,20 65:10,16
 67:3,7 98:7
acting 35:18 36:7
action 43:12 65:6
 100:11
actions 65:18
actual 16:10 55:8
adding 44:16
addition 58:20 74:4
additional 41:3 47:4
 82:9 116:17
address 20:10 36:13
 45:5,6 49:20,21 62:13
 63:19 64:11 79:6
addressed 6:11 54:20
 80:6 87:12 115:12
addresses 20:10
addressing 45:11
adequate 30:17 31:18
adjourn 117:10
adjudication 113:17
adjudications 91:5
administrative 1:12
 32:3,16 33:22 73:18
administratively 32:6
administrator 31:9,12
 32:2,7
admit 110:8
admitted 58:4
adopted 42:18
advanced 87:12 113:17
advantage 114:7

advise 88:15
affect 71:11
affirm 103:12
affirmative 74:6
afforded 34:10
Agencies 99:4
agency 1:2 2:8,10 11:18
 13:18 40:6,6 48:12
 49:14 50:15 75:3,13
 75:19 83:19 84:11,16
 85:2 87:7 96:7 97:15
 98:1
agency's 76:10
ago 7:8 104:21 115:17
agree 14:10 61:7
agreed 38:14 40:12
agreements 94:3,4
allocated 4:12
allow 10:22 12:7 75:12
 84:15
allowed 13:12
allows 40:18 65:15
 77:19
Aloha 54:2
alternative 45:7
amass 43:4
amend 45:22
amended 8:7
analogous 23:10 75:7
analysis 7:22 14:6 24:8
 25:11 39:9,22 43:11
 58:6 60:8 61:3 63:21
 66:9 88:14 97:9 102:3
 102:5 103:17,18
 112:2
answer 25:9 29:20
 32:15 35:8 83:9 115:3
answering 14:18
anybody 114:8
apparently 38:7
appeal 1:8 8:10 91:8
appeals 1:1,19,20,22
 8:18
APPEARANCES 2:1
appearing 4:22
applicant 50:19
application 7:13 26:9
 31:13,21 32:1,8,10
 33:7 34:20 35:2,17,19
 36:12 37:1,3,5,8,20
 37:21 38:9,15 48:19
 49:15 51:11 66:10,13
 66:17,22 67:6,10,22
 69:1,5 70:3 71:13,14
 71:19,20 72:22 73:3,6
 73:11 74:18 77:18
 78:5 79:20 86:8,13
 87:11 88:9 90:4,8
 92:2,4,9 93:9,16,18
 93:19 96:21 100:4
 101:11 103:1 104:22
 105:2,6 108:22 109:8
 110:11 111:22 112:7
 113:20,20 114:11,17
applications 73:15
 74:19 75:4 90:12
 96:13 102:6
applied 19:2 42:7 52:14
 70:14 71:7 79:12
 101:6 108:17 110:5,5
applies 38:18,20 70:12
 109:14
apply 6:6,7 12:4 36:3,4
 36:10,13 38:6,8,13
 50:14 58:8 65:1,2
 66:6,8,8 68:7,14,20
 69:17,19,21 70:10,18
 89:20 105:18,19,22
 108:16,21 109:3,6,7,9
 109:13 111:3
applying 36:19 70:22
appointed 30:2,14,21
 33:13,17 116:5
appreciate 4:8
approach 6:3 7:8,11
 22:4 40:13,22 42:7
 46:1,2 49:1 52:3
 63:19 66:8 71:9 72:1
approaches 45:9
appropriate 41:6,22
 44:8 46:2 113:7
approve 101:1
area 4:8 82:15
arguably 24:6 98:1
argue 51:21 82:4
argued 79:9
arguing 12:2 24:16
 59:15 70:11
argument 1:4 15:16
 17:20 18:11 21:14
 23:13 27:13,21 30:16
 34:17 38:5,14,15 41:4
 49:12 51:17 53:3 56:4
 56:10,12 58:13 64:7
 67:19 70:5 81:21
 86:16 97:14 106:3
 110:4 116:20
arguments 3:12,14
 75:11
arose 107:5
articulate 95:21
aside 30:11 42:3
asked 15:9 32:20 56:9
 57:6 103:1 106:13
asking 49:8 66:20 74:5
 97:20
asks 69:4
aspect 63:18,22 98:8

aspects 36:11 91:9,10
assessment 67:5
assist 26:5
assistance 73:21
Association 99:4
assume 9:20 14:10
 15:15 40:10,10,12
 116:7
assuming 34:12 35:8
 70:11
assure 63:5 104:1,18
attached 88:22 95:22
 102:8
attachment 80:19 88:19
 89:5
attachments 90:2
attended 65:17
attorney 62:6 99:18
attributed 20:5
Aunless 106:10
authority 5:19 6:1,11
 6:18 7:12,17,20 8:13
 9:9 12:11,13,15,18
 14:2 15:10,12 23:14
 34:13 35:19 39:4,6,22
 40:1 41:2,21 42:4,12
 47:3,14 50:8 68:9
 77:16 84:19,21 85:17
 85:18 86:17 87:4 89:9
 105:10 107:4 109:9
 116:6
authorization 105:1
authorize 20:1
authorized 20:6 102:20
available 32:14 64:10
avenue 1:14 91:17
aware 82:22 84:3,7
 104:11

B

B 10:15,17 18:9 111:1
back 7:1,4,9 12:22
 33:15 39:20 64:5
 66:20 83:4 98:2 100:5
 111:2
based 19:10 42:8 44:12
 56:5 74:12 82:9 83:7
 106:6 111:10
bases 8:15
basically 11:18 18:8
 22:7 61:2 65:2 90:21
 107:10
basing 112:4
basis 6:19 7:1 18:10
 28:19 52:5 88:6
 111:20 112:21 113:11
bat 51:15
began 82:12

- beginning** 57:7
begins 59:4 60:13,14 60:19
behalf 2:2,7 36:20 37:5 37:8 71:20 72:22 105:1
believe 22:6 52:10 65:9 65:11 66:2 80:1 83:14 90:7
believes 46:5
Bellingham 29:2 94:2
best 37:16 45:7,11 50:5
beyond 6:19 37:17 91:14
big 113:6
bigger 69:13
bind 40:7
binding 41:1 96:5 107:21
Blackstone 5:4 6:14 7:2 44:14 56:8 99:3,19 103:22 104:14,15,16 104:21 106:22 115:9 115:17
blind 82:5
Blue 56:15
board 1:1 6:11,16 29:18 31:7,11 32:2,14 36:19 37:6 39:20 56:7 61:7 72:6 96:14 99:2 115:9 116:2
board's 31:14 60:22
Boards 32:5
body 30:20 31:2 33:15 72:9
Boston 2:15 4:8
Bowditch 2:4
brief 15:15 26:3 34:3,17 107:9,19
bring 15:1
bringing 101:10
broad 13:14 14:17,20 15:1 28:5,5
broader 79:16 107:15 107:19
brought 39:15
BUCKARI 61:18
budget 92:11
build 28:7
Building 1:13
Bukhari 2:9 3:14 5:5,6 51:3,4,5,19,22 52:5 56:2,18 57:12 58:5,18 60:5 63:7,10 64:16 65:4 66:7,19 68:11 69:2,14,18 70:4,15,20 71:8,22 73:1 74:14 76:2,16 77:10 78:16 80:10,14 81:4,12,15 81:19,20 82:1,3 83:1 83:13 84:6,20 85:12 85:15 86:11 87:10,18 88:12 89:2,5,10 90:1 90:18 91:3 92:15 93:21 94:14,21 95:2,9 95:16,20 97:8,18 98:3 99:16 100:13 101:12 101:16,20 102:10,12 103:4
bunch 48:15
burden 47:7
Burlington 22:5
buy 43:4
-
- C**
- C** 111:1
call 11:20 19:16 28:16
called 22:5 32:1
calling 58:14
can't 109:9
capture 57:13
case 22:5,6,7,18 23:1 24:5 25:7 49:5 55:19 61:22 63:19 66:19 67:11 72:5 73:16 82:7 97:3,4 115:9 117:9
case-by-case 88:5 111:20 112:21 113:11
cases 97:5,6 99:6 100:1 100:2
categories 114:21
category 92:6 114:9 115:4
cause 43:12 55:17
causes 48:10
causing 18:8 48:14
central 72:9
certain 73:9
certainly 44:22 45:11 63:14,14 87:4
certification 37:12,14
certifying 37:17 73:17
challenge 40:19 108:7
challenges 76:6 108:4
challenging 29:19
chance 40:19 41:15
change 5:14 26:3,4,5 26:11,16,18 94:11,12 101:1
changes 86:9
characterize 57:15
characterized 55:4 60:7
characterizing 58:21 79:13
Charles 1:7 2:2 5:21 9:22 48:3 93:14
Circuit 22:6
circumstance 45:18
circumstances 82:8
cite 63:14 77:7,11
cites 22:4 26:11
city 22:5 24:11 33:14,14
claim 8:13 52:1 95:4
claimed 107:2
claims 43:15
clarification 102:11
clarify 76:20 78:17
clarifying 86:1
clauses 108:9
Clear 9:6 25:5 50:11 54:19 67:3,7 98:7 99:4
clear 22:14,15 27:10 78:18 110:2
clearly 89:19 99:6 100:6 101:6
CLERK 117:12
client 73:7
clients 9:8 20:2
close 82:11
co-permittee 12:9 13:21 34:11 61:14 75:20 76:21,21 80:21 83:17 85:3 88:4,13,16 89:21 91:18 100:15 103:16 107:1 112:13 113:4,8
co-permittees 5:21 6:7 13:6 14:21 15:1,4 34:6,20 39:5 40:18 44:12 46:6 47:4 83:12 83:16 84:4 88:2 96:19 99:14 101:2 102:16 102:22 104:20 106:14 107:7 110:14 113:1
co-permitting 75:14
co-sign 93:17 96:21,22
colleagues 74:5
collect 58:11
collection 6:12 7:5 8:14 8:16,19 9:1 18:20 19:8,20 28:9 39:7 48:8 49:19 51:18 52:17 54:4,10 57:10 58:6,9 59:3 66:5 67:16 81:2 82:14 83:6 83:11 85:21 86:9 87:22 91:15 94:5 96:6 102:21
collective 52:20
collects 21:3
Comb 110:11
combine 78:22
combined 32:22 62:3 90:8 99:8
come 4:7 39:9,21,21 105:8 111:18
comes 7:1,4 10:17 57:5
coming 7:9 15:18 18:9 59:19 61:11 96:13
comment 39:17 40:8 42:1 84:18 90:22 91:7 97:21 98:15 101:19 104:14
commentary 81:13
commented 106:22
comments 8:5 81:7 85:8 104:6,12,12,16 108:2
commingled 62:4 79:21
commission 29:18
commissioners 29:17 30:1,14 33:14 36:18
communication 88:7 89:17 92:14
communities 32:21 36:1 44:1,7 45:4 72:5 72:8 73:9 100:20 101:14
community 8:20
companies 18:14
Company 54:2
complete 69:1
completed 33:3 89:10
completing 31:20
compliance 31:16 44:17 45:1 47:5 62:16 62:17,20 63:6,13
complications 65:17
complies 53:4
comply 38:12 42:4 73:5 74:21
components 69:5 96:8
comprised 61:21 67:14 109:1
conceded 22:12
conceivably 35:6
concern 42:3 43:20 45:3,4 60:22 61:6 62:7 107:15 108:13
concerned 56:7 62:10 109:20,21 115:10
concerning 51:11 88:16
concerns 8:3 96:7
conclude 44:11 47:3
concluded 47:12
condition 62:21 93:2
conditions 93:6 100:7
conduit 9:10,13 11:7
conduits 55:20
configuration 72:2 76:17
configurations 76:5
conflict 53:18 55:13

confused 24:2
Congress 53:18
connection 15:4 25:10
 35:17 107:5 115:7
consent 37:20 67:6
 68:18 78:13 87:3
considerations 88:15
considered 88:2,4
considering 72:2
consistent 52:13 67:3
constituent 74:20
constitute 70:13
constituted 37:7
constituting 52:15
Constitution 1:14
construct 29:3 30:12
constructed 72:14 73:4
 106:7
construction 28:6
 53:20
contaminated 24:13
contemplate 86:19
contemplated 49:1,2
 76:22 88:10
CONTENTS 3:9
contest 41:15
contesting 38:3 111:13
context 9:14 10:13
 53:10 54:7 55:2 60:21
 71:13
continuing 15:16 50:3
contract 29:10
contracted 55:21
contracting 53:9
contractual 72:7
contrary 5:15 53:15
 98:15,16
contributed 23:11
contributing 17:14 62:2
 62:3 86:21
contribution 27:14
contributions 75:17
contributors 11:15
 12:19,20 16:22
control 1:8 2:2 5:22 9:9
 34:8 48:1,3,9,13
 93:14 94:9
controlled 48:21 49:11
controls 30:18 64:20
 100:19
convey 9:3 54:17 58:10
 58:11 67:6
conveyances 11:21
 52:17
convince 81:19
coordinated 72:10
 100:21
coordination 83:21
copies 101:4

copy 81:22 97:12 105:5
corporation 31:2 55:1
 72:13
correct 15:13,19 16:6
 16:19,19 17:22 18:2
 18:16 23:18 24:9 27:2
 27:3,17,18 35:6,9
 41:16,17 43:11,21
 46:16 58:19 59:9
 83:16 99:11,15,17
 100:14 102:9,10
 104:7,10 109:4
 113:19
correctly 21:19 69:20
counsel 2:11 4:21 5:9
 51:8 54:22 55:7
 103:21 106:17
counsels 33:14
counter 40:11
counting 8:14
couple 110:16
course 73:22 88:20
 91:9,9 96:7
Court 22:18 24:10
 54:21
Courtroom 1:12
cover 50:11 61:16
 86:17 93:16 97:22
 114:4
covered 56:3 91:1,20
 92:10 93:20 103:3
 110:1 114:9 117:8
covering 91:17
Cox 2:3 3:12,16 4:15,18
 5:2,2,11,12 9:12 10:4
 10:8,11,19 12:5,14,22
 13:16 14:4,12,22
 15:13,20 16:2,6,13,19
 17:3 18:2,4,13,17
 19:1,7 20:8,22 21:17
 22:3 23:3,9,18 24:4,9
 24:18 25:6,9 26:1
 27:2,5,12,17,22 29:4
 29:9,19 30:5 31:1,19
 32:9 33:20 34:9,14
 35:14 36:21 37:10,19
 38:17,20 39:2,13 41:5
 41:17,19 42:11 43:3
 43:10,21 44:15,21
 46:11,16 47:6,15
 48:17 49:6,9,17 50:10
 50:18,22 51:1 56:3
 75:10 81:22 83:7
 89:13 97:14 103:5,7
 103:11 104:7,10,15
 105:14,16 106:5,9,20
 107:8,17 108:1,13
 109:4 110:6,9,21
 111:2,5,9,15,17,19

112:10,19 113:18
 114:12,16 115:2,21
 116:7,12 117:6,11
Cox's 56:10 61:6 62:6
 64:6 75:10
crafted 6:3
CRCPD 67:14,15
created 72:4 77:1
cross 26:1
cross-reference
 25:22
culvert 22:11,17,21
 23:8 24:13
current 64:7 66:9,21
 67:1 75:11 84:15
 87:10
currently 80:19
customer 29:2,8,9 30:3
 72:18,21 73:10 94:4
 110:3
customers 55:18
cut 75:8
cuts 58:15

D

D 2:3
D.C 1:2
Dague 22:5 24:5
danger 54:20
daughter 109:10
daughter=s 111:11
day 105:13 117:10
days 101:19,21
DC 1:14
deal 42:13 49:19 50:12
 53:5 66:12 84:13 86:7
 113:7
dealing 21:7,8 23:10
 34:15 59:12 64:3
 115:4
December 1:11
decide 74:11
decided 74:3 85:2
decision 27:7 54:21
 61:13 97:3 99:2
declare 86:22
declared 40:21
declaring 51:17
deemed 18:14 19:8,20
 69:6
deep 81:9
define 59:2 94:4
defined 18:5 42:19
 56:20 58:5,7,9
defining 60:12
definition 25:12,19,22
 26:9,15 27:6,20 28:2
 28:4 53:15 59:17 60:1
 60:18 61:9 65:12,13
 76:12,13 115:13,14
delegate 109:8,10
delegated 109:12,15
demonstrate 47:19
 48:18 50:20
denominated 13:21
deny 44:19 47:16 48:15
 64:13
denying 49:15
DEP's 8:7
department 52:22
depend 51:17 58:14
depending 53:10
depositing 64:22
described 79:18 80:6
 107:4
describes 90:4
description 99:5
designed 44:9 56:1
 98:10
desirable 78:12
desire 68:10
desk 110:17
detail 56:3 57:20
detailed 31:21,22 69:10
 71:12
determination 7:19
determinations 33:5
 91:8 113:11
determine 43:15 60:18
 73:12,12
determined 59:2 81:7
determines 62:9
developing 67:2
Development 55:1
Dewey 2:4
diff 10:6
difference 110:2,9
different 7:1,9 9:21
 10:19 21:6 25:4,19
 26:17,18 37:1 45:19
 53:22 54:11 57:10
 60:2 73:2 114:3 115:3
difficult 117:9
direct 88:17
directed 26:14
directive 40:2
directly 6:20 8:7 55:19
 105:7
directors 31:3 37:6
disagree 76:2
disagreed 18:6
disagreeing 23:2
discharge 5:17 6:20 7:6
 9:2,4,7 10:21 11:6
 13:2,2,8 15:18 20:2,6
 21:4,20 22:2 24:20,21
 27:16 29:11 44:20
 46:10,12,14,14,20

47:8 50:2 51:10 52:7
56:20 57:16 58:21
59:3,17 60:10,10,13
60:14,16 61:17 62:5,8
62:9 64:13 65:12
66:11 68:21 71:4,16
74:16 75:5 76:13
78:19,20 79:7,10,21
82:8 86:21 90:9 92:1
92:7,21 93:12
discharged 9:21 11:8
20:9 21:5 23:12 46:19
56:16
discharger 17:4,4,7
28:17 36:2 38:16
44:22 48:18 54:16
56:17,18 58:22 59:18
60:1 61:10 79:14
109:6
dischargers 18:14 19:1
19:17,21 36:2,9 38:2
38:4,21 39:1 59:10
62:2,3 68:17 70:6
75:5 79:8 109:5 114:5
114:6,9
discharges 55:2,3,5,5
68:21 70:7,10 71:2,3
71:4 78:22
discharging 7:3 8:16
10:2,4 11:10,20 13:6
15:21 16:3,5,9,12
17:22 18:10 19:9
20:21 21:1,2,18 23:5
23:8,20 24:3,6 25:15
31:14 46:22 55:20
62:10 65:1 70:17
74:17 78:6 79:5,6,17
92:16 105:12
disconnect 17:10
discuss 51:9
discussed 42:4 53:13
57:18
discussing 84:14
discussion 61:3 83:14
discussions 83:15
dismayed 95:3
dispense 50:20 51:16
displaced 8:6
distinction 23:3 24:22
29:7 53:1 59:10
112:17
distinguish 24:18
distinguished 114:14
distributed 103:19
district 1:8 2:2 5:4
20:11 28:20 29:1,15
30:7,13,21 31:7 33:12
33:18 35:4 36:19 37:5
37:9 44:19 46:5,19

48:4 50:7 54:1 59:5
61:14 62:14 64:14
67:11 70:12 71:15,16
71:20 72:3,20 73:7
93:15 94:9 100:21
101:5,6 102:9 108:21
109:1 110:5
District's 5:22 29:18
35:2
districts 65:19 116:3
document 22:4 40:22
52:3 58:6 81:7 88:18
89:9 90:6 95:7 102:7
doing 12:15,16 14:7
21:22 92:5 96:15
105:12 111:20 113:6
113:20
domestic 57:14
downstream 48:14
dozens 65:18,20
draft 88:1,7 89:2,3,8,18
90:2,3,14,16,18,19
92:12 93:4,5,10 99:12
100:8,9 101:7,13,15
101:16 103:14,18
104:2 113:1,13
drafted 88:13
drafts 113:1
drain 9:18
draining 22:8,9,10
draw 115:15
drawing 59:10
drawn 61:1 95:10
drew 112:16
drive 109:11
driver's 77:3 111:10
drivers 109:10
driving 77:3,5
duties 32:3
duty 32:9,11 36:3,4,10
36:12 38:5,8 65:1
66:6,7,8 68:14,20
69:11,16,19,21 73:4
74:6 89:20 105:19,22
108:16,21 109:3,6,9
109:13 111:3
Duxbury 82:11,12
106:20
dynamics 76:5

E

earlier 40:11 54:8,14
62:15 91:4
early 76:8
East 1:13 83:2
effect 68:2
effective 68:22
effectuate 65:15

effluent 108:12
effort 46:3 62:4
efforts 45:2
either 7:15 11:13 40:16
80:2 82:19 102:20
105:7
emanating 56:20
emphasized 55:18
employ 43:4
encompass 13:14
ends 48:10 58:7 59:4
60:13,14,19
enforceability 43:19
enforceable 64:19,19
enforcement 43:5,17
64:12 65:8,18 92:18
engaged 31:9
ensure 44:17 45:1
62:16,20
ensuring 63:13
entails 68:14
entering 60:10
entire 8:20
entirely 59:13
entirety 61:7
entities 54:12 70:13
86:21 92:6 93:12,17
entity 28:16 31:15
52:12 54:9 60:18,21
62:2 68:6 72:12,15
79:1,5
Environmental 1:1,2,19
1:20,22 2:7,10
EP 48:7
EPA 1:13 4:14 5:22 6:13
7:7 8:3 10:9,12,14
11:12 16:22 43:12
47:10,12 48:7 52:13
67:13 68:8 76:19 77:7
77:12 82:10 83:10
91:6 98:5,9,16 100:1
100:2 102:20 105:9
114:3
EPA's 6:11 7:10 65:6
99:8,20
erred 34:18
especially 108:7
espousing 23:2
essence 66:3
essential 80:4
essentially 12:2 15:17
43:18 67:21 68:2 87:2
established 29:13
57:17
Eureka 51:2
event 73:14 100:22
events 95:4
everybody 56:12 80:13
evolving 76:7

exact 100:7
example 11:10 21:19
77:11,12 82:20 88:3
examples 11:17 15:3
77:7 102:18
exceed 50:3
exceedances 48:4,11
48:15 49:11
exceeding 42:12
exception 91:16
exclude 56:22
excluding 59:13
Excuse 106:18
Exemption 73:17
exercise 60:15,16 98:4
exist 75:21 87:4
existing 70:1,2 86:3
87:9 93:13 100:16
113:22
expand 26:8
expanding 6:19 53:9
expecting 90:7
explain 4:11 43:8 76:20
explaining 86:2
explicit 13:15 14:1
84:12,21
explicitly 63:4 75:15
expressly 13:11 14:15
14:21 76:17,18
extension 101:22
extensive 83:21 104:6
extent 32:13 95:2 107:1
extra 51:3

F

face 76:6 91:19
facilities 49:19 67:17
106:14
facility 13:9 20:3,18
21:8 23:5 31:4 37:11
55:13,22 82:19
114:18
fact 30:22 35:6 45:14
68:4 75:13 85:2,7
96:1 101:22 102:8
104:13
factor 63:22
factual 28:19 103:12
fairly 22:15 104:5
falling 16:11
far 85:14,17 93:5 99:10
115:11,19
fax 2:6
features 28:16
Federal 31:13 43:19
100:4 102:4
Federally 64:19
feed 96:17

feel 84:16
fifteen 103:10
figure 12:1 78:14
file 101:11,22 117:2
filed 103:1
filings 82:7
fill 6:3
final 83:2 92:20 115:6
finally 8:2
finance 92:11
financial 45:12
find 38:1,3 40:16 41:5,9
 41:12,20 61:6 63:3,16
 89:17 94:16,19 96:14
 96:22 101:8 102:18
finding 26:6 63:3 89:21
 90:1 97:5,6 111:13
finds 63:22 89:7
fine 14:12 77:5 84:1
 111:2
finish 96:10
first 4:13 6:10 7:11 8:12
 22:6 34:11 51:16 52:1
 52:8 66:20 74:8,11
 88:14 90:10 92:13
 95:7,10 100:20
 103:11,15
fits 46:1
five 20:18 21:9,11,11,16
 21:21 51:3 61:22
 96:16,17
flow 9:3,11 11:8 23:11
 29:11
flows 56:15
fluids 9:18 21:1
flush 56:14
flushing 58:2
focus 25:13,13 60:20
 60:22
focuses 55:10
folks 48:14
follow 85:7
followed 45:19,20 52:9
force 48:7 78:14
forefront 76:9
forewarning 93:4
forget 110:17
form 32:18 33:3 57:1
 89:2 110:11 116:22
formally 100:10
forth 8:4,5 19:4 36:22
 42:20 100:5 105:19
forward 31:18
found 82:8 100:16
four 59:14 63:5 70:5,12
 71:6,20 80:9,11 87:1
 99:13 112:17
framework 36:6
Franklin 28:22 29:17

30:10,14
frankly 72:5 109:20
Fraser 1:20 4:6 20:12
 21:7 28:18 29:6,16,22
 30:9 31:11 32:4 33:12
 34:5,12,15 36:17 37:4
 37:14 49:3,7,10 50:3
 50:15 54:8,15 59:7
 61:5 68:19 69:3,15
 71:18 72:11 74:2
 87:20 88:21 89:3,7,12
 89:15 90:14,21 91:13
 93:8 96:9,12 97:13,19
 108:20 112:4,15
 113:15 115:21 116:9

free 95:4
Friendswood 55:22
Friendswood 54:22
 55:17 56:5 57:4,4,13
 57:17 59:9 60:6
frustrate 98:8
full 41:7 100:19 103:10
function 32:16 33:22
 72:10 98:9
further 19:18 43:8
 116:11
future 50:4

G

gap 6:3,5
gather 31:9
gathered 82:9
general 5:9 51:8 54:22
 55:7 114:4,7,17,21
 115:4
generate 18:18 53:17
getting 55:14 90:15
 92:12 93:10
give 30:5 41:4 51:2 60:2
 68:3 74:12 77:6 93:11
 103:5 113:16 116:2
 116:15
Given 33:8 40:15
gives 92:4
giving 11:18 21:15 97:4
 114:10
go 9:12 12:22 15:7 18:8
 27:9 39:11 40:8 45:13
 51:21 57:20 66:20
 69:12 98:6,14 105:19
 107:22 115:11,19
goal 66:21 67:5
goes 33:2 37:12 60:22
 69:3 90:19
going 22:20 31:18 34:1
 45:13 48:15 49:20
 51:14 60:1 68:1,7
 82:6 84:10 86:22
 90:17 91:21 93:19

96:18 99:13,14 103:2
 113:13 115:14
good 4:3,9,20 5:12 51:4
gotten 20:19
govern 13:6
governing 30:20 31:2
government 18:21 19:2
 31:14 83:22 100:4
governs 12:7
grants 28:6
grappling 45:17
great 25:16 42:13 53:5
 66:12
group 82:10 100:19
guess 87:13

H

Hampton 83:2
hand 93:11
handful 53:21
handle 90:5
hands 114:6
happen 18:18
happens 20:9 32:6 49:3
 107:12
happy 29:21
harmoniously 53:19
head 77:12,13 87:17
hear 4:13 45:22 53:21
 81:16
hearing 1:16 68:16
heart 64:18
held 55:8
help 40:14
helpful 84:8
herring 27:20,22
Hill 1:18 4:3,4,20 5:10
 9:12 10:6,9,12 11:9
 12:10,17 15:6,14,22
 16:4,7,16,20 17:12
 18:3,6,16,22 19:6
 20:7 22:3 23:7,13
 24:1,5,10 25:2 26:21
 27:4,8,13,19 37:22
 38:19,22 39:11 40:3
 41:14,18 43:8,17
 47:20 50:21 51:2,14
 51:20 52:2 56:2 57:3
 58:3,13 59:6 63:2,8
 64:5,21 66:4,15 67:9
 67:18 70:4,16 71:1
 75:8 76:15 80:17
 81:18,20 82:2,21 83:8
 84:1,8 85:10,13 86:5
 86:14 87:15 94:7,15
 95:1,6,14,17 96:11
 102:12 103:9 104:4,8
 104:13 105:9,15
 106:2,8,19 107:8,18

108:10 109:22 110:7
 110:19,22 111:4,7,12
 111:16,18 114:2,14
 114:20 116:10,13
 117:7
Hill's 60:3 91:4
hint 104:2
history 57:18
hit 51:14
hold 6:17
holidays 116:15
home 57:2,10
homeowner 57:14
homeowners 58:16
homes 82:15,16 83:3
honest 86:14
Honor 4:19 51:5,22
 60:5 61:18 63:7,10
 68:11 69:20 71:8,22
 73:1,16 74:14,22 76:3
 77:10 78:16 80:10
 81:4 82:1 84:20 85:15
 86:11 87:10 88:12
 92:15 93:21 97:8 98:4
 100:13 102:11
HONORABLE 1:18,20
 1:21
hooked 9:17 10:15
hope 92:19
house 60:3,4
hypothetical 56:22 58:1

I

I/I 8:4 42:5 45:5,6,11,12
 48:9,9,13,21 49:11,20
 64:3 73:22 76:8,11
 96:6 100:19 107:6
 113:5
identified 104:20
identify 96:5 97:10
 113:9
ignore 7:15
ii 69:22
illogical 18:19
immaterial 18:21 27:6
immediately 61:12
impetus 62:12
implement 85:19
implied 78:13
imply 68:5
implying 77:14
important 53:1,1 61:4
 61:19 63:18
importantly 27:5
impose 30:17 39:10
 64:8,19 80:3 85:17,19
 85:20
imposed 34:6 77:8

imposing 80:7 82:6
imposition 78:8
improper 64:13
inadequate 48:1
inauguration 55:8
incentive 54:16,17
include 60:3 61:8 92:5
 101:13 105:6
included 83:12 102:16
includes 7:5 25:20 28:5
 28:8,9
including 8:19 28:10,12
 73:22,22 94:5
inclusion 57:18
incoherence 53:5
incomplete 49:15
inconsistent 79:15 80:2
incorporate 99:9
incorrect 117:2,5
incredibly 94:17,19
incumbent 60:17
independent 37:17
indicate 36:15 85:5
 90:11
indicated 82:13 103:17
 109:19
indirect 57:19
individual 58:16 65:20
 112:2 114:18 115:5
industrial 55:18 57:19
 57:20 59:9,11 75:16
infer 85:2
infiltration 48:1
inflow 48:2
inform 98:11
information 30:6,7,17
 30:22 31:5,8,10,17,22
 31:22 32:7,12,13,17
 32:20 33:2,8 34:1,4
 34:19 35:1 37:15
 38:18 67:1 73:13,20
 74:12 77:19 82:9
 100:6 102:14 110:13
 110:15,18 111:14,22
 112:7 115:22 116:2,2
 116:17,21 117:2,4
informing 65:2
initiating 65:18
initiatives 76:19
inkling 99:20
instance 90:11 100:21
instances 91:14,16
instant 55:19
instructed 92:19
insufficient 100:17
insulate 55:13
integral 28:11
integrated 61:21 62:7
 67:15 72:3

intended 26:8 53:19,22
 65:7,10,10 97:22
intending 92:9
intent 114:19,22
intention 67:5
interacting 100:9
interconnected 17:14
 17:17,19
interdependent 79:3
interested 84:2
interim 99:5
interpret 65:14 98:11
interpretation 8:1 14:7
 40:7 51:10 71:10
 84:16,22 95:22 98:7
 98:19 107:21
interpretations 86:3
 95:18
interpretative 85:14
 102:3
interpretive 51:12 85:8
 85:11 95:9 96:2 97:9
 98:5,9
intervening 60:9
introduce 4:22
introduces 53:4
introducing 57:22
invalid 12:4
invite 41:21
invoke 63:9
involve 34:20
involved 19:12 104:1
isolated 26:19
issuance 61:12
issue 14:14 23:6 27:20
 35:14,16 38:12,17
 39:4 40:4 41:20 42:9
 42:11 47:11,16 50:16
 51:16 59:15 64:12
 66:9 68:9 76:8,11
 77:5,16 78:4 79:7,7,8
 98:7,22 99:8 101:13
 105:10 107:9,22
 108:14 111:10 113:6
 113:18
issued 7:22 62:5 80:22
 81:5 83:10 84:4 88:19
 88:22 89:9 92:20 99:2
 101:3 102:15,20
 104:2 106:21
issues 41:15 48:21
 49:18 50:12 51:11
 64:3 84:13 107:3,5
 113:14 114:4
issuing 52:6 62:14,19
 62:21

J

j 69:7
joined 51:7
JR 2:3
Judge 1:19,20,22 4:3,5
 4:6,20 5:10 9:12 10:6
 10:9,12 11:9 12:10,17
 13:10,17 14:9,13 15:6
 15:14,22 16:4,7,16,20
 17:12 18:3,6,16,22
 19:6 20:7,12 21:7
 22:3 23:7,13 24:1,5
 24:10 25:2,3,7,21
 26:21 27:4,8,13,19
 28:18 29:6,16,22 30:9
 31:11 32:4 33:12 34:5
 34:12,15 36:17 37:4
 37:14,22 38:19,22
 39:11 40:3,11 41:14
 41:18 42:2,22 43:8,17
 44:10,16 45:16 46:13
 46:17 47:10,20,21
 49:3,7,8,10 50:3,15
 50:21 51:2,14,20 52:2
 54:7,15 56:2 57:3
 58:3,13 59:6,7 60:3
 61:5 62:15 63:2,8
 64:5,6,21 66:4,15
 67:9,18 68:19 69:3,15
 70:4,16 71:1,18 72:11
 74:2 75:8 76:15 77:2
 77:21 80:7,12,16,17
 81:10,14,18,20 82:2
 82:21 83:8 84:1,8
 85:10,13 86:5,14
 87:15,20 88:21 89:3,7
 89:12,15 90:14,21
 91:4,13 93:8 94:7,15
 95:1,6,14,17 96:9,11
 96:12 97:13,19 99:11
 99:22 101:3,15,18
 102:2,12 103:9 104:4
 104:8,13 105:9,15
 106:2,8,19 107:8,18
 108:10,20 109:22
 110:7,19,22 111:4,7
 111:12,16,18 112:4
 112:15 113:15 114:2
 114:14,20 115:21
 116:9,10,13 117:7
jurisdiction 35:11

K

Kathie 1:21 4:5
keep 15:7 24:2 82:6
keeping 82:3
key 43:5
kicks 105:20
kind 23:1 27:20 45:18
 46:20 75:8,18 77:11

78:12
kinds 102:5
Kingston 82:11
knew 39:18 87:16
know 10:11 13:20 18:4
 22:19 25:6,9 30:2
 39:9 44:12 45:1 60:20
 63:21 65:11 66:2 73:8
 78:6,12 79:15 82:18
 83:8 85:14 86:6,13
 88:6 91:19 93:18
 94:10 95:7 96:18 99:3
 99:17 100:7 101:7
 105:4,11,12 110:7
 113:13 115:2,2 117:8
knowing 32:3 50:16
knowingly 6:8
knowledge 37:18
known 103:21
knows 49:18 98:4
 103:20

L

L 1:18
lack 23:14 41:2
lacking 77:2
laid 7:14
land 22:8 28:10,12,13
landfill 22:10,20 24:12
landfill's 22:20
language 13:13 14:17
 14:20,22 17:11 25:14
 70:6 85:9,16 86:12
 89:20
large 74:17
law 44:4 72:4,14 110:8
laws 31:16
lay 53:9
lead 65:5
leads 52:17
learn 112:14
leaving 42:3
led 57:2 76:10
left 4:4 42:15 113:10
legal 6:18,19 7:12 70:13
 72:12 86:21 91:8
 92:21
legislative 14:6,11
 39:12 40:4,6,13,22
 41:20 51:12 95:8
lengths 25:16
Leslye 1:20 4:6
let's 9:12,14,16,20 14:9
 14:13 20:14 39:11,12
 40:10,10,12 47:20
 64:5 72:18
letter 28:21 64:22 76:6
 90:3 116:21

liability 42:5 107:10
license 77:3,6,6 109:10
 111:10
licenses 105:17
lifetimes 45:13
likewise 43:14
limited 23:16,19,19
 24:2 32:19 34:2,4,7,7
 35:9 107:5
limiting 115:10,16,19
limits 108:12
line 35:16 57:11
line's 61:1
lines 33:6 59:8 112:1
 115:15
listed 61:13,15 69:11
 81:2
litigated 95:14,17,19
little 59:8 69:12
LLP 2:4
lobby 57:3,4
local 101:9 102:3
located 59:20 61:1
location 16:10
logic 16:7,21 56:9,12
 57:12,12
logically 55:12
long 11:13 17:8 65:16
longer 21:1,14
look 26:12 36:6 37:19
 48:12 60:17 69:19
 70:9 85:9,15,16 87:15
 92:1 105:11 110:10
looked 60:6 82:7 105:4
looking 52:11 61:19
 88:11 89:19 91:18
 112:11,13 116:19,20
 116:21 117:1
lot 48:4 56:3 114:5
 117:8

M

M 1:20
MA 1:9 2:5,15
magic 14:2
Main 2:4
maintain 50:5
maintaining 35:10
maintenance 9:17,19
 10:2 35:10 62:22 96:6
making 27:7 36:22
 84:21 85:4 97:3 106:3
managed 30:13
management 35:5
manner 65:15
Mansfield 106:17
marry 78:5
Marshfield 81:5 82:12
 88:3 106:18,19,20

112:17
Massachusetts 8:6,9
 42:8 65:20 97:11
 100:18 102:6 110:8
material 20:21 21:2
 25:11 117:8
matter 1:6,15 5:7 6:14
 45:14 51:6 57:7 64:17
 79:9,11 101:14
 106:18 117:13
MBCA 55:14
mean 10:12 13:17 16:8
 18:7 20:13 25:7 31:7
 38:13 40:5,15,16
 43:15 46:14 47:9,11
 48:2 56:9 57:9 64:15
 75:9 86:15 87:3 91:1
 94:10 100:2 101:5,9
 104:5 110:4,7 116:19
meaning 53:10 54:1
 55:5
means 29:9,12 98:18
mechanism 32:6 48:8
 101:10 116:4
Medway 28:22 29:17
 30:10,14
meet 19:10 47:8 50:2
 50:17
meeting 109:2
meets 48:19
member 28:22 29:7,12
 72:4,8,19 100:19
 110:3,4
members 101:14
membership 73:9
memory 105:5
mentioned 42:18 45:10
 65:5
mere 55:20
merely 111:14
met 72:6 73:18 108:21
method 63:22
miles 20:15,18 21:9,10
 21:11,12,16,21 59:20
Millis 29:2 94:1
mind 110:2
minimal 82:15
minimize 112:8
minute 30:11 113:3
minutes 4:12,16 51:3
 103:6,10
mischievous 55:16
modifications 8:8
moment 9:15 83:4
Monday 116:18
monies 49:21
month 106:21
morning 4:3,9 5:13
 51:4

moving 51:11
multiple 62:2 67:14
 78:22 79:7
municipal 6:12 7:5 8:13
 8:15,19 9:1 18:13,20
 19:7,20 20:1 36:1
 39:6 44:1 59:11,12
 84:4 85:21 94:3
municipalities 65:21
 80:21 99:1,7
municipality 11:7 58:22
 80:20

N

NACWA 99:4
name 4:4 5:5 51:5
named 113:8
narrow 55:9
narrowed 55:9
National 99:3
natural 70:19 87:5
nature 110:16
navigable 9:7
necessarily 31:7 46:2
necessary 7:20 19:3
 47:13,17,22 67:1 81:8
need 6:17,18 13:11
 15:2 17:1 19:10 30:22
 33:10 35:1 38:10 41:7
 41:7,9,11,21,22 44:4
 46:20 62:10 67:21
 74:4,11,18 76:17
 84:17 88:5 96:21,22
 105:17 112:1,6,8,21
 113:4
needed 24:14 32:7
 75:20 77:20
needless 53:17
needs 14:4 17:5,7 22:1
 22:22 70:7 114:18
negative 75:19
negotiated 77:17
never 100:9,10 102:2
new 70:1
newer 113:5
newspaper 101:9
newspapers 102:4
nice 105:13
non-clean 50:13
note 54:13
noted 63:20
notes 69:20
notice 1:16 8:11 39:17
 40:8 41:22 87:12,20
 87:22 90:5,22 92:12
 97:1,20 98:14,17,19
 98:20 99:7,13 100:18
 103:13 113:12,17
 114:19,22

notified 103:2
notifies 100:10
notifying 92:13
notion 9:13 40:5 79:5
 98:17
NPDES 1:7,9 5:14 20:20
 21:15 26:6 51:13 53:5
 53:12 54:6,7 65:11,12
 67:2,8 114:4
number 54:22 63:11,17
 76:4,4 92:22 93:1
 112:5 116:4
numerous 13:18
NW 1:14

O

O&M 43:18,19
object 78:2
obligation 31:15 32:5
 43:16 47:7,11 50:17
 54:18 109:3
obligations 20:20 50:2
 64:9 72:16
obliged 98:6
obviously 72:5
occur 48:5
occurring 63:20
Office 2:11,13 5:9 51:7
officer 77:4
offices 83:10
OGC 83:20,21
oh 33:8 81:14
okay 4:20 10:7,9 14:9
 14:12,13 15:22 18:3
 18:21,22 19:6 20:7
 25:2 27:4,8,19 30:9
 37:2 38:22 39:2,19
 40:3 41:18 44:15 46:9
 50:21 51:20 59:6
 80:12,16 81:14 86:20
 102:12 105:18 106:8
 111:4,9,22 112:11
 115:14 116:13 117:7
once 93:1 114:5
ones 31:5
ongoing 49:18
operate 15:17 17:16
 65:10
operated 54:11
operates 17:18,21
 29:15
operating 16:10 23:4,7
 24:7,11 26:22 27:16
 31:3,15 33:15 52:8
operation 35:10 52:21
 62:22 73:20 96:6
operator 11:14 13:20
 37:11 71:15 73:7

operators 23:15 31:4
opinion 22:15,16 28:21
opinions 76:10
opportunity 30:6 39:17
 68:16 91:7 104:9,11
opposed 43:12,16 89:8
 91:5
opposition 24:16
oppressively 82:5
option 64:17
options 64:10,17 65:5
 78:11
ORAL 1:4
order 29:10 33:4,11
 38:12 54:18 74:20
 103:14 105:17 113:6
 114:13,17
ordering 38:12
orders 92:7
organization 29:13
original 70:17
originally 29:22
ostensibly 22:17
outfall 20:16 21:12
outflow 55:15
outline 71:12
outside 35:18 83:9
 102:19
overflow 112:12
overflows 112:5,9
owned 9:21 11:11,12
 11:14,15 12:19,20
 17:1 20:13 22:2,7,17
 23:16 54:9 55:3,4
 56:5,21 58:1 74:22
 75:1,2,6,16
owner 10:15 13:20 33:1
owners 67:20,22 81:1
ownership 21:16
owns 10:1 20:15

P

P-R-O-C-E-E-D-I-N-G-S
 4:1
page 33:6 37:2,4 39:22
 63:11,16 81:10,12,16
 87:12 110:12
pages 8:1 110:11
 113:21
panel 115:9
paragraph 110:12
part 7:15 20:4,6,11
 27:15 28:11 29:12
 30:16 34:16 54:8,10
 61:10 62:20 65:6
 66:16 87:21 94:2,6,8
 94:16 107:14
particular 26:10 44:13
 46:5 84:3

particularly 53:6 72:18
 99:9
parties 35:16 39:16
 47:13,18,22 107:7
parts 26:20 53:16,22
party 47:18,19 104:17
 108:3,6,14 116:22
passed 31:8 32:14
 107:2
passing 11:21
Pembroke 82:11
pending 8:10,10 92:18
people 31:4 33:16,19
 36:9 37:1 70:18 83:5
 91:22 93:10 97:5
perceive 91:10
percent 22:14
peril 92:17
period 92:4 101:19
permissible 96:15
permit 1:9 5:14,16,22
 8:10 10:16 11:13
 12:12 13:3,18 15:10
 19:16,22 20:1,4,9,10
 20:20 22:2,22 23:14
 24:14 32:1,8 35:9,15
 36:7,20 37:8 38:13
 39:5 40:16 42:22 44:4
 44:5,18,19 45:8 46:21
 47:5,11,14,16,17
 48:14,16 49:13,14,16
 49:22 50:7,16,19
 51:11 52:6 59:5 61:16
 62:5,8,9,11,14 63:4
 64:13 65:3 66:6,10,13
 66:17 67:2 68:3,6,7,9
 68:14,22 70:8 71:13
 71:14 73:3,6,11,13
 74:8,10,15 76:6,17
 77:17,18,20,22 78:5,8
 78:15 79:20 80:22
 81:5 84:3 87:1 88:1,7
 89:8,18,22 90:2,4,15
 90:16,19 92:3,12,17
 92:20 93:2,4,5,9,10
 93:12,13,15,16,18
 94:9,20 95:5,15,19
 96:1,12,16 99:12
 100:8,10,17 101:4,7
 102:8 103:1,19 104:2
 105:10,13 106:15,21
 106:22 107:15,21
 108:4 109:18 110:18
 112:18 113:14 114:8
 114:10,18
permits 17:1 33:11 44:2
 58:8 62:19,22 64:4
 80:20 82:6 83:10
 88:19 101:13 102:15

102:21 105:8 114:4
 114:22 115:4,5
permitted 42:14 46:15
 74:7 79:22 105:8
permittee 13:19 20:5
 36:16 62:13 64:9
 77:19 106:16
permittees 6:9,13 7:13
 11:1,3 12:8 13:12,13
 14:16 30:18,19 61:9
 81:3 91:6 93:3 94:10
 96:19 97:6 100:18
 102:22 103:14 107:12
permitting 13:4 21:15
 22:4 25:18 40:13,21
 46:4 48:7 51:13 53:6
 53:12 54:6 60:15,16
 65:7 67:8 68:17 71:6
 76:4,5 77:8 78:1 80:3
 82:4 100:3,16
person 4:9 5:17 10:4
 11:10,19 13:2 16:9,12
 16:13 17:17,21 21:1,6
 22:1 23:19 24:3,6
 25:14 56:10,11 57:5
 68:20 70:7,10,20,21
 71:2,5 74:7
persons 9:6,7 11:5
 15:20 16:1,2,4,14,18
 19:15 70:12,16 71:6
 78:6 116:4
pertain 57:21
pertaining 57:19
pertinent 108:8
perverse 54:16
Petition 34:3
Petitioner 5:1,3 67:4
Petitioner's 51:9 52:1
 53:8,14 54:3,14,15
 55:9
Petitioners 4:13
pick 80:9
piece 22:8 52:20
pieces 102:13
pipe 9:18 15:17 21:10
 22:1 46:22 54:18
 55:15 57:2 58:7 59:19
 61:11
pipes 13:8 17:15,17,19
 23:16 52:16 58:10
place 34:11 52:1 74:8
 74:11 88:14 110:13
placed 74:7
plain 5:15 53:15 92:8
Plains 56:15
planning 91:22 92:10
plant 6:20 7:3 9:4,11
 23:11,21,22 28:20
 32:11 35:20 37:11

43:4 47:8 48:10,18,20
 50:19 52:16,18 53:4
 53:12 54:11 56:15
 62:7 67:16 70:22
 71:15,16 73:8
plant's 50:1
plants 53:11 72:3 97:11
please 43:9 93:11
 116:22
plucks 33:7
plus 59:20
PODW 90:8
point 5:18 8:17,21 9:3,5
 9:9 10:5 11:6 17:7,13
 18:9,9 19:8,9 20:11
 21:1,19 24:7 25:15
 26:2 27:16 28:3 34:2
 45:1 50:4 52:7 55:9
 55:10 58:10,20 60:9
 71:3,4 78:20 79:10
 89:16 90:16 91:2,4
 94:12 102:7 105:3
 106:12 115:6
points 103:8
police 77:4
policy 8:3 62:13 83:17
 83:18 96:3 99:6
 100:15
pollutant 5:17 10:2
 11:20 57:16 74:16,17
pollutants 8:16 9:2 10:5
 17:15 22:20 55:11
 57:22
pollution 1:7 2:2 5:4,22
 48:3 55:19 93:14 94:9
populated 65:19
population 32:21 33:9
 110:16
portion 26:22 54:17
 74:20 79:12
portions 80:4
position 15:8 16:8,17
 16:21 18:1 20:13
 26:21 27:10 30:15
 41:10 67:13 107:11
 109:2 110:20 112:16
post 2:13 97:10
potential 109:16
potentially 102:5
POTW 7:4 8:18 9:14
 25:12,19 26:14 27:1,6
 27:15,19 28:2 48:16
 51:10,18,21 53:3,8,15
 54:4,5,9,10 57:8 59:4
 60:17,18 61:9 62:1
 65:13 66:14,17 67:10
 67:15,19,20 70:2,22
 74:17,20 75:21 76:13
 78:20,21 79:4,17,17

79:19,20 80:4 82:5,13
 86:22 88:8 92:21
 93:14 94:2,4,5,6,8
 96:16,20 115:13,20
POTWs 19:5 24:19 25:3
 52:12 58:15 61:20,22
 66:11 67:14 70:1
 102:15
practical 40:5
practicality 31:20 34:16
practice 84:2 99:20
 101:14
practices 88:16
preambles 53:17
precise 12:10 15:8
 64:21 106:2
preexisting 73:8,9
preferred 38:11
premises 19:12
presume 30:9,12
pretreaters 57:19
pretreatment 53:7,13
 54:5
primarily 57:1
primary 43:20
principal 42:3 58:8
 75:10
principle 52:8 60:6
 77:13 115:11,16,19
prior 60:10 84:5,6,7
 93:4 99:12 100:17
 101:4
private 12:7 57:2,2
privately 11:12,14,15
 12:19 17:1 55:3,4
 56:5 74:22 75:2,5,15
probably 22:17 71:16
 83:5 94:18 99:19
problem 8:22 9:1 61:2
 64:18 112:12,14
 113:4,9
problems 7:10 19:18
 63:20 64:11 82:18
procedural 78:4
procedure 45:19 90:4
procedures 51:12
proceed 4:11 65:14
proceeding 40:16
 41:16 46:4 66:10 91:6
 92:18 94:18 95:15,19
 95:20 96:2 102:9
 112:20
proceedings 40:20
 65:8
process 7:13 28:12
 34:21 39:16 65:7 68:6
 73:4 88:11 100:8
 105:6 113:19
program 5:14 53:6,7

65:12 67:8
programs 13:18 53:18
 85:20
prohibited 62:19
prohibits 5:16
promptly 116:8
pronouncement 98:14
proper 39:19 62:22
proposal 53:8 63:12
 84:18 85:13 86:6,7
propose 84:17 85:7
proposed 84:11 86:12
 87:7,13 98:2
proposes 68:21
proposition 60:8
Protection 1:2 2:7,10
prove 75:19
provide 13:11 15:4
 29:21 30:7 66:22
 77:16,19 81:21 90:11
 98:19
provided 32:12,17,18
 33:10 35:13 37:18
 103:18 104:15 110:14
 110:18 115:18 117:4
provides 91:6
providing 31:21 60:9
 98:17
provision 13:5 114:1
provisions 26:6
public 13:8 45:5 68:16
 88:15 98:11,17
publically 11:11 12:20
 23:16 56:21 57:22
 74:22
publication 90:17,20
publish 97:9
published 86:7 88:13
 90:15 93:6 102:3
 103:20
pump 13:7
purported 6:8
purpose 58:9 66:2
 88:17 108:2
purposely 28:5
purposes 53:11 54:5,6
 60:14 65:15
pursuant 1:16 79:22
 90:9
pursue 78:10 85:3 95:4
pursued 79:5
put 22:16 59:4,5 100:17
puts 59:18
putting 30:10 88:18

Q

qualify 67:10
quality 62:16 63:6,13

querying 35:3
question 14:19 15:9
 18:15 34:10,13 40:4
 40:15 45:6 47:21 48:6
 49:7 51:15 57:7 64:6
 67:9 74:5 80:18 81:11
 84:10,20,21 92:16
 96:13 114:3
questions 19:19 34:16
 39:14 56:9 100:6
 103:12 106:13
quickly 51:17
quite 100:14
quote 88:14,17

R

radar 98:22
radical 5:14
railroad 22:10,16,16
 23:4 24:7
raise 34:2 105:3 106:12
 108:14 114:6
raised 8:3 35:15,17
 39:9 41:19 54:8 93:11
 103:12 107:3 115:17
raises 17:6
raising 39:14 112:20
RANDOLPH 1:18
Randy 4:4
Randy's 60:3
rational 71:9
reach 25:17
reached 115:13
read 58:8 70:21 81:6
 87:9 96:19 101:9
readers 26:5
reading 54:3 70:19 87:5
 92:8 96:15 97:1
real 35:16 42:9,11
really 25:11 27:14 44:17
 45:16,17 46:13 47:1
 52:4 58:14 66:17
 67:22 75:11 76:9
 86:15 111:5,21
 116:20,20
reason 15:16 60:3
 88:13 106:15 107:6
reasonable 71:10 72:1
 117:5
rebuttal 3:16 4:16 50:22
recall 63:11
received 35:19 70:3
 93:2 101:21 103:14
 106:15
receiving 18:20
recognize 78:21
Recognizing 55:16
reconcile 17:2

record 28:21 42:6,9
 45:2 48:2 49:4 63:3
 67:1 80:19 117:14
records 73:18
red 27:20,22
refer 66:14
reference 13:15 26:2
 43:6 69:22 70:2 80:11
referenced 79:19
references 102:14
referred 54:14 106:17
refers 69:21
reg 26:12 49:21 70:19
 91:17,19
regard 30:19 35:6 66:21
regarding 61:20 91:5
 110:14
regards 95:5
region 2:8,12 4:14 5:6
 5:13,20 6:7,13,17,22
 7:2,4,15,20 8:3,12
 12:2 14:5 16:14 19:2
 22:4 25:16 26:11
 30:16 33:4,7 34:18,22
 35:5,18,22 36:4,8,13
 36:14,16 38:6,7,11
 39:18 42:7,12 43:6,10
 44:6,10 45:2,6 46:1
 47:2 49:18 51:3,6
 52:9 61:8 63:2 64:11
 69:5,8 73:3 80:20
 82:10 83:9,15 87:21
 88:8 95:6 96:7 100:9
 102:19 103:17 105:20
 107:18 108:7,15,20
 109:13,19 113:10,14
 115:12,17
Region's 19:13 37:7
 38:14 44:3,18 45:17
 74:9 107:11,20 108:2
 110:19 111:19
regional 2:11 81:17
 83:10,18 87:21 90:13
 97:11 99:10
regionally 61:20 62:7
 65:19 72:2 88:20
 101:13
Register 102:4
regs 40:8 71:2 75:11
 87:9 113:16
regulate 7:12 8:8 12:18
 39:6
regulated 60:13
regulates 9:6
regulating 55:2
regulation 12:6,8,9
 17:6 26:2,17 36:21
 37:3 41:8 42:17,21
 45:10 46:8 70:21 71:9

71:11 75:3,22 76:20
 89:19 92:1,8 95:12,22
 96:20 106:5 110:22
regulations 6:4,5,6
 7:14,16 8:7,9 10:14
 10:22 11:4,4 12:3
 13:11,14 14:16 15:3
 17:11 25:22 26:1,7
 39:8 40:17 42:13,15
 43:13 45:22 51:13
 52:13 64:8 65:14 68:5
 68:8,12,19 73:5 74:21
 77:1,15 78:5 80:3
 84:12,15,22 85:19
 86:19 87:6 101:20
 113:21
regulatory 5:18 6:1
 10:13 12:12,15 13:5
 14:17,19,22 39:16
 53:10 80:5 86:3
related 50:12
relates 53:6 106:13
relation 85:6
relationship 29:10
 31:17 33:16,21 35:4
 73:10
relationships 72:7
 75:14
relatively 51:16 82:14
release 57:1
released 55:11
relevant 60:11 87:8
 88:15
relied 60:5
rely 60:2 86:2
relying 33:4 59:16,22
 60:7 73:4 91:16 93:13
remained 26:19
remains 108:1
remedies 50:11
remedy 38:14 44:19
 45:17 46:9 49:14 50:5
 50:9 77:4 78:7
remember 60:15
remind 86:5
remove 107:2
removed 79:10
removing 107:6
renewal 88:9 92:3
 96:21
reply 8:6 26:3
report 39:10 99:10
reports 82:17
represent 33:17,18
 51:5
representation 30:4
 116:3
representative 72:6
representatives 33:13

109:1
represented 99:18
 103:22 107:19
representing 5:6 37:6
 51:6 72:21
represents 83:18
request 38:18 73:6,15
 90:12 101:21
requested 62:15
requests 116:14
require 13:4 43:1 66:10
 74:19 75:4 90:13
 114:22
required 10:16 19:5
 43:2 50:16 98:5,14
requirement 34:19
 37:12 67:7 77:8 80:3
 87:11 113:16
requirements 13:4 42:5
 42:20 43:18,19 47:9
 50:2 66:22 67:2,6,11
 69:11 71:13 76:21
 77:18 79:20 85:18,20
 86:8,13 99:10 101:1
requires 19:12 43:3
 66:13 68:13,15
requiring 18:19 19:13
reserve 4:15
residences 82:17
resolution 41:9
resource-intensive
 98:4
resources 45:12
respect 8:4,13 29:14
 30:15 32:19,20 52:11
 59:14 86:12 113:2
respective 26:19 73:21
respects 96:4
respond 61:5 97:19
responding 34:22 52:1
response 8:5 62:6
 63:16,22 64:2 81:11
 86:4 115:18 117:3
responses 117:1
responsibilities 34:6
responsible 22:19 57:5
 107:13 108:11
responsive 81:7,13
rest 25:4 50:22
restricted 26:10
result 18:18
results 18:19
review 73:11 99:9,10
revive 84:18
rewrite 7:16 87:7
Richard 5:8 51:7
rid 112:8
Ridge 83:4
right 4:5,5 18:3 21:17

21:17 25:2 32:4 34:14
 35:14 37:19 44:2 49:9
 51:15 52:5 65:4 67:4
 69:14 80:17 87:18
 89:11 91:3,4 108:14
 111:21 117:7
rights 21:16 29:14
 72:16
rise 117:12
risk 42:5
river 1:7 2:2 5:21 16:11
 48:3 93:14
Robert 2:3 3:12,16 5:2
Room 1:13
route 45:21
ruin 116:14
rule 7:21,22 14:6,11
 40:4,6,13,22 41:6,20
 85:3,6,10,11,16 95:8
 98:2
rulemaking 40:9 85:3
 85:17 87:11,13 91:5
 97:15,22 98:3,6,9,15
 98:18 99:8 105:4
rules 51:12 85:8 98:5

S

Samir 2:9 3:14 5:5 51:5
sanitary 112:8
satellite 7:5 8:14,15,19
 9:1 12:12 18:14,20
 19:7,20 36:1 39:6
 44:1 48:8 51:18 66:5
 66:16 81:1 83:3,6,11
 85:21 86:8 91:15
 96:17 102:21 108:10
satellites 58:14 90:13
 102:16 105:7
satisfactory 115:16
satisfied 67:11
save 50:21
saw 102:1 103:15
saying 12:3,11 16:17
 17:4,21 24:2 33:20,21
 33:22 44:6 46:1,7
 49:12 50:6 58:17
 59:16,22 69:8 74:10
 87:3 92:7 93:15 106:3
 108:15,20 111:19
 112:11 114:21
says 6:2,16 7:4 8:1,12
 19:3 20:4 26:12 28:22
 33:7 35:20,22,22 36:6
 36:9,11,14,14,16 37:3
 44:4 45:7 64:22 68:20
 69:9 71:2,5 89:20
 92:1 97:14 105:20
 106:9 110:22 111:22
 113:14

scenario 91:14
scheme 43:22 52:22
scope 55:9 116:6
screen 99:1
seasonal 82:16
second 7:13 8:18 14:18
 39:1
secondary 19:3 47:9
section 5:15 7:14 25:17
 26:10,12,15,16 52:14
 53:16 55:6,10 59:1
 62:4,8,17 63:15 64:17
 68:15,16,20 70:1
 73:18 74:15 79:18,22
 81:8 85:18 90:9
sections 26:19
see 17:10 46:3 72:20
 88:5,6
seeing 88:1 89:19
 112:7
seek 6:11 68:10 74:8,10
 74:18 77:9 84:18
seeking 76:14 108:7
seeks 5:20 7:15 36:8
seen 42:8
ses 77:4
selling 55:14
send 41:13,22 97:12
sending 11:8 13:7
 24:12 37:21
sends 26:16
sense 19:14 28:1,15
 52:11 65:22 66:12
 108:19 117:5
sent 37:21 39:20 89:15
 101:4
separate 31:10 61:22
 72:12,15 73:15 74:18
 74:19 75:4,22 85:1
 90:12 113:18
separately 72:15
series 11:21
serve 72:10 82:14
 116:22
served 32:21 33:9
serves 31:6
service 94:3
servicing 36:18 82:15
set 10:20 13:3 19:4
 36:22 42:20 75:14
 106:1 109:16
sets 8:4,5 43:5 54:15
setting 44:1
sewage 9:3
sewer 6:12 9:20,20
 10:15,17 23:11 28:9
 35:11 45:14 50:6
 75:17 112:1,9
share 47:4

- shared** 45:3,4
sharing 107:10
sheet 102:8
sheets 96:1
short 98:18
show 6:17,18 7:16 41:1
 46:4 48:21
showing 49:10
shows 48:2 49:4
side 4:13 117:4
sign 105:1
signature 67:21
signed 37:10 83:20
 109:17
significant 78:4 94:11
simple 110:15 112:21
simply 6:6 50:14 55:14
 64:8 102:7 103:2
Simultaneous 89:4,14
 91:12 95:13 99:21
 100:12
single 54:9 62:1,3 67:9
 67:15 90:7
site 28:10 97:10
situation 10:18 55:17
 75:6
situations 62:13 76:1
size 46:1
small 83:3
sold 20:17 21:9
sole 110:13,17
solely 55:10
solution 115:20
solve 47:1
somebody 68:3 108:5
soon 55:7
sorry 10:7 24:1 39:3
 59:7 81:10 85:12
 88:21 95:16
sort 65:6 92:17
source 5:18 8:8,17,21
 9:3,5,10 10:5 11:6
 17:7 20:11 21:2 23:12
 24:8 25:15 27:18 28:3
 28:7 45:1 52:7 71:3
 79:10
sources 19:8,10 50:13
 60:9
South 83:4
speak 86:1,2
speaking 89:4,14 91:12
 95:13 99:21 100:12
specific 12:6 26:6
 42:20 63:11 67:9
 77:12 86:12 96:1
specifically 56:1 58:12
 66:5 71:11,12 75:3
 79:6 116:1
specify 14:15,21
speculation 94:6
speed 53:20
Square 2:13
squarely 23:1 24:15
SSO 76:9
SSO's 96:5
SSOAP 76:11
SSOs 73:22 76:11
 82:17,19 107:13
stage 89:8
stages 73:2
stand 78:19
standard 36:22 62:21
standards 19:4,11 47:9
 48:20 62:16 63:6,14
stands 108:3,6
started 68:6 102:17
 115:8
Starting 5:1
state 42:8,17 43:13,16
 45:5,10 51:13 72:4,14
 77:8 100:4 102:20
statement 95:10 96:3,4
 99:15
States 42:16 83:10
status 94:12
statute 13:1,1,3,10,13
 14:16 17:6 18:11 19:5
 19:11 25:18 29:13
 40:17 42:13,15 44:9
 49:1 68:12 70:7 80:2
 95:11 98:12 106:1,6,6
 113:16
statutes 80:5
statutory 7:19 12:11,14
 12:18 14:1,19 15:9,11
 17:11 23:14 25:14
 36:5 41:2,5 47:7
 50:17 80:5 86:4,16
 105:10 106:3
stayed 6:22
Stein 1:21 4:5 13:10,17
 14:9,13 25:3,7,21
 40:11 42:2,22 44:10
 44:16 45:16 46:13,17
 47:10 49:8 62:15 77:2
 77:21 80:7,12,16
 81:10,14 99:11,22
 101:3,15,18 102:2
Stein's 47:21 64:6
stems 36:5 100:15
storage 28:12
storm 9:19,20 10:14,20
 10:21,22 11:3 75:17
street 2:4 77:3
strictly 88:5
structure 100:16
stuck 12:17 16:20
 86:15,18
stuff 10:17 18:8
sub 69:12
subject 17:5,5 19:16
 20:16 21:14 24:20
 49:13 50:7 59:13 85:5
 94:20,21 99:9 108:4,8
 108:17
submit 32:8 68:22
 81:21 92:2,3 100:3
 104:22 116:16
submits 96:20
submitted 32:10 37:5
 37:15 66:18 71:19
 92:9 93:8 104:5,14
 105:2 108:22 109:7
submitting 31:13 72:21
 88:9
subsection 69:4,7,9,22
subsidiary 58:20
succeed 100:22
sufficient 35:1,3 65:13
 73:13,19 76:13 79:4
 90:10 98:20
sufficing 93:16
suggested 103:21
Suite 2:14
supplemental 84:9
 115:22
supposed 26:13 101:8
 101:8
sure 31:12,15,17 32:5,9
 32:11 34:1 76:15
 112:19
surprise 94:1
surprised 94:16,17,19
 95:3 104:19,19
sweep 14:20
swept 89:22
system 8:16,20 10:15
 10:17 17:14,16,18
 18:20 32:22 33:1,10
 35:11 44:13 45:15
 51:18 52:16 54:10
 57:10 58:7,9 59:3
 61:21 64:11 82:13
 86:19 94:16 96:6
 107:13,14 110:16
 113:5 115:11
systems 6:12 7:6 8:14
 8:20 9:2 12:12 19:8
 19:20 28:9,14 39:7
 48:9 49:19 50:6 52:17
 54:4 66:6,16 75:17
 78:1 81:2 82:14 83:6
 83:11 85:21 86:9
 87:22 91:15 94:5
 96:17 102:21 108:10
table 4:21
take 7:8 9:14 18:11
 43:11 46:18 49:20
 72:18 97:2 108:22
 110:10 114:7
taken 14:6 67:13
takes 49:21
talk 102:17
talked 107:9
talking 11:5 24:19 52:2
 52:3
technical 91:10
technically 52:6
technology 19:10
telling 92:11 97:3
ten 4:15
tenet 63:12
term 18:4 103:15
term's 52:14
terms 27:21 44:18 47:5
 60:12 73:2 77:13 86:1
 86:2 92:11 93:6,19
 94:20,22 97:20 100:7
 113:19 116:5
Thank 5:10,10,12 50:22
 51:1 82:2 103:3,4,7
 117:9,11
that=s 88:17
theories 79:2,2
theory 7:9 20:19 23:2
 54:14,15 56:17,19
 66:15 70:17 71:18
 72:17,19 74:9,14 78:6
 78:13 83:7
thing 18:17 20:14 39:19
 43:5 56:7 76:18,20
 78:17 97:20
things 43:4 50:10 58:8
 85:1 102:5 106:10
think 4:7 11:17 17:3
 24:22 26:4 29:22
 32:18 35:12 38:8 44:7
 44:8 47:16,20 48:6,22
 48:22 52:20,22 55:12
 57:17 63:15 65:11
 66:11 71:8,22 72:9
 74:4 76:3,12 77:15
 78:3,17 81:16 85:1,6
 91:1,22 93:22,22 95:7
 95:8 98:20 99:17,18
 99:19,22 100:14,14
 104:5 105:9 107:2
 108:3,6,12 110:1,12
 117:1,3
thinking 76:10
third 7:18 108:3,6,13
third-parties 43:14
Thirty 101:19
thought 27:9 44:21

T

75:19 87:16 112:15
thousand 33:19
three 30:1 33:6
Thursday 1:11
tightly 95:10
time 4:16 6:10 11:13
 17:13 22:12 39:19
 47:2 59:21 66:2 92:4
 92:13 94:8 98:6,13
 102:7 103:15 104:9
 108:9 116:15
today 4:9,12
toilet 56:14,15 58:2
told 100:1
top 77:11,12 87:16
totalities 33:9
town 9:21 10:1 20:13
 20:15,17,19,22 21:3
 21:12,14 22:7,19,22
 29:7,8,9,12 30:2
 33:15,17,18 35:12
 45:11 46:6 61:13
 64:20 79:6 81:5 82:11
 88:6 89:7 94:1,1
 100:10 109:1 112:1,2
 112:11 113:5
town's 5:21 33:15 35:11
 37:19 42:2 54:3
towns 5:3 6:8,20 7:12
 9:8,16 15:11 20:2,15
 26:22 28:22 29:1,1,2
 30:3,11,21 32:19 35:5
 36:9,17,20 37:7,9
 38:2,4 42:10,14,19
 44:6,11,17 46:17 47:3
 49:13 50:5 59:14 61:8
 63:5 65:21 70:6,13
 71:21 72:18,20,21
 73:10,16,21 74:1,4
 78:2 79:13 80:9,11
 82:10 87:21 88:1,10
 89:16,18,21 96:16,18
 97:1,4 99:13 101:2,5
 101:8,12 102:6
 103:13,21 104:18,20
 108:17 109:3,5,7,16
 109:21 110:3,3,4
 112:11,13,17 113:3
 116:3
treated 9:4 11:8 21:5
 82:12
treating 28:11,12 71:19
treatment 6:19 7:2 9:4
 9:11 11:11,12,14,16
 12:7,19,21 13:8 17:1
 19:4 20:18 21:8,20
 23:4,16,21,21,22
 24:20 28:13,13,20
 29:11 32:10 35:20

37:11 46:5 47:8 48:10
 48:18,20 50:1,19
 52:14,15,18 53:4,11
 53:12 54:11 55:3,4
 56:1,6,15,21 57:14
 58:1 60:9 61:21 62:7
 67:16 72:3 73:8 75:1
 75:2,6,16 79:8,11
 97:11
tried 6:13 7:7 90:5
trigger 114:13,17
trouble 51:21
true 15:14 34:9 37:15
 43:15 74:21 77:21
 94:14
try 17:13
trying 12:1 39:10 78:13
 98:1
turn 26:15 27:14 28:18
 28:19 68:17 95:3
turned 61:1
two 8:15 30:1,3,11
 53:18 72:21 73:2
 76:10,19 83:15 84:22
 93:1 96:8 102:13
type 7:18 32:22 33:9
typical 77:4
typically 90:19 93:2

U

U.S. 1:2 6:21 11:22 13:9
 21:5,20 22:11,13,21
 23:5,8,12,20 24:14
 54:2 57:16 60:10
ultimate 50:19
ultimately 63:21
unable 62:15
undergo 85:3
underlying 8:2 36:5
 39:3 40:17
understand 14:15
 15:15 16:16 17:20
 29:4 35:7 38:2 42:6
 42:19 44:13 56:4,4
 61:19 69:14 70:5 71:1
 80:18 111:12 115:1
understanding 28:19
 99:12 100:3 114:3
understood 21:18 23:9
 34:17
undone 105:22
Unfortunately 81:15
unintended 64:3
unlawful 13:1,2 106:10
unlawfully 36:7
Upper 5:3 6:14 7:1
 44:13 56:8 99:2,19
 103:22 104:13,15,16
 104:21 106:22 115:8

115:17
upstream 15:10 23:15
 23:15 27:14 48:2,13
 49:12 56:13 57:5
upstreamer 11:19
 15:10 16:8
upstreamers 12:4
uptight 19:15
urge 110:10
use 25:19 26:14 28:2
 57:1 103:10 115:13
user 56:22 57:13,14,20
 57:21
users 73:10
uses 14:2

V

vague 15:3
validity 95:18
various 37:7 69:4
vary 97:13
vehicle 9:17,18 10:1
versus 22:5 51:12
video 4:10
view 37:8 41:11 52:12
 52:13 53:14 66:1
 71:14 74:16 79:15,16
 83:18 94:12 106:11
 114:10
viewed 36:19
viewing 62:1 78:19
violating 61:15
violation 17:9 44:5
 108:18
violations 43:13 64:4
 108:11
violators 44:2,7 108:18
 109:17
voluntary 100:20
voted 30:2 33:13
voting 29:14

W

wait 6:17 38:22 39:2
 65:16 113:3
waive 35:20 36:12 69:6
 69:10,15,16 105:21
 111:1
waived 36:11 69:18
 74:3 109:14,15
waiver 90:3
waiving 34:19 105:21
want 15:7,7 27:8,9,10
 46:18,18 52:7 64:2
 68:4 76:15 77:9 78:9
 78:15 93:12 111:7,12
 114:7 116:14,15
wanted 75:14 106:12

wants 7:21
Washington 1:2,14
wasn't 76:7
waste 46:18 55:20,21
wastewater 13:7 28:13
 58:11
watching 4:10
water 5:4 9:6 10:14,20
 10:21,22 11:4,22
 21:20 22:11,12,21
 23:5,12 24:12,13,14
 25:5 50:11,12 54:19
 55:11 57:16 60:11
 62:16 63:6,13 67:3,7
 98:7 99:4
waters 6:21 9:7 13:9
 21:6 23:8,20
way 14:5 56:13 66:14
 71:14 75:9 77:18 87:9
 92:18 96:5 98:10
 102:13 106:6
ways 108:8
we'll 4:11,13 11:19
we're 5:13 7:7 11:5 14:7
 23:10 24:19 26:14
 39:14 48:15 49:15
 59:16,22 60:1 61:19
 65:1 70:15 82:6 84:13
 84:14 86:22 98:14
 102:12 115:4,14
 116:20
we've 35:15 38:9 39:20
 39:21 83:14 92:18
 111:1 117:8
weather 48:5
Web 97:10
website 81:17 99:6
week 102:18
weigh 97:21
weighed 99:5
went 9:19 88:22 100:10
 117:14
weren't 92:9
wet 48:5
widely 103:19
wider 79:15 98:19
wish 4:16,17
withdrawn 86:6
Witt 5:8,8 51:7
Worcester 2:5
word 14:2
words 5:15 25:20 28:10
 41:3 53:21 58:3 63:8
 95:11,11
work 7:8 39:15 53:19
 53:20 75:6
works 11:11,12,14,16
 12:19,21 17:1 23:17
 52:14,21 53:12 55:4

56:6,21 57:15 58:1
75:1,2,16
world 25:4
wouldn't 16:7 77:6
writ 74:17
write 77:20,22
writer 73:13
written 76:18 77:16
wrong 16:22

X

X 96:16

Y

yard 9:17,19 10:2
year 96:15
years 7:8 49:20 99:1
104:21 115:17
young 82:14

Z

zone 23:6

0

0102598 1:9
01615 2:5
02109 2:15

1

1 2:12 4:14 6:13 51:6
69:22 80:20 83:9
87:21 96:7 100:9
102:19
1(a) 20:4
10:00 1:16
10:01 4:2
100 2:14 22:14
101 20:6,11
103 3:16
11 1:11
11:58 117:14
1152 1:13
12 89:12
1201 1:14
122 7:15 53:16
122.2 26:12,16
122.21 81:8 86:10
122.21(a) 67:12 68:20
70:2
122.21(a)(1) 69:21 70:9
122.21(a)(1)(ii) 69:20
122.21(d) 75:3
122.22 67:12
122.4(d) 62:18 63:9
123 87:13
124 87:12,13,14
12th 106:21
14-01 1:8

15 103:5
16 7:22 39:22
16-page 103:18
195 82:15
1976 54:21
1980 82:13
1993 28:21

2

2 110:13
200 59:20
2000 81:1 98:2 105:4
2000s 76:8
2001 84:5,6,7,11 85:10
85:13 87:11
2002 26:4
2010 6:15 84:17
2012 89:11
2014 1:11
21 33:6 37:2,4 110:11
110:13
212 52:15 53:16
22nd 116:18
238 20:15 21:10
25 80:19
250 33:19 83:5
26 113:21
29th 117:3
2A 32:18

3

30 101:21
30-day 101:18
301 55:6,10 59:1 85:19
301(a) 5:15 63:15
301(b)(1)(B) 79:18
90:10
308 38:12,18 64:12,17
64:22
311 2:4

4

4 110:12,12
402 52:6 55:6 59:1 62:4
62:9 68:13,15,16
79:22 85:19
402(a) 74:15 90:9
403 53:16
403.3(a) 26:15
43 54:22
45 4:12 83:3

5

5 2:13 3:12
508 2:5,6
51 3:14
515 54:2
561 54:2

565 54:2

6

617 2:16

7**8****9**

9 83:15
90-day 90:22
918-1095 2:16
926-3409 2:5
929-3012 2:6

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Charles River Pollution Control
District

Before: EPA

Date: 12-11-2014

Place: Washington, D.C.

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